



TJIWARL PALYAKUWA

INDIGENOUS LAND USE AGREEMENT

(BODY CORPORATE AGREEMENT)

Tjiwarl Palyakuwa: Tiiwa kuwarri yampa ngula

A Tjiwarl Agreement: from the Past, for the Present and into the Future

BETWEEN

Tjiwarl (Aboriginal Corporation) RNTBC (ICN 8628)

Tjiwarl Applicants in WAD 142 of 2020

Tjiwarl Applicants in WAD 269 of 2020

AND

State of Western Australia

Minister for Lands

Conservation and Parks Commission

Department of Biodiversity, Conservation and Attractions

Western Australian Museum

Minister for Aboriginal Affairs

Minister for Environment

Minister for Water

Minister for Regional Development

Minister for Mines and Petroleum

Goldfields-Esperance Development Commission

Minister for Education

Commissioner of Main Roads

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DATE

This Agreement is made on the 1st day of December 2022

PARTIES

Tjiwarl AC

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

**Tjiwarl Applicants
(WAD 142 of 2020)**

Brett Lewis, Allan Ashwin, Edwin Beaman, Tanya Bingham, Cheryl Bond, Lawrence Harris, Allan James, Jennifer Narrier, Nathan Redmond and Joyce Tullock-Taylor in their own right and for and on behalf of the Tjiwarl People, care of Unit 6, 254 Abernethy Road, Kewdale, Western Australia

**Tjiwarl Applicants
(WAD 269 of 2020)**

Shirley Wonyabong, Allan James, Brett Lewis, Allan Ashwin, Lawrence Harris, Jennifer Narrier, Kado Muir and Michael Tullock in their own right and for and on behalf of the Tjiwarl People, care of Unit 6, 254 Abernethy Road, Kewdale, Western Australia

AND**State of Western Australia**

Acting through the Premier and Treasurer of the State of Western Australia, care of the Department of the Premier and Cabinet, of 12th Floor, Dumas House, 2 Havelock Street, West Perth, Western Australia

Minister for Lands

A body corporate established under section 7(1) of the LA Act, care of the Department of Planning, Lands and Heritage, Gordon Stephenson House, Level 2, 140 William Street, Perth, Western Australia

Conservation and Parks Commission	Of 17 Dick Perry Avenue, Technology Park, Western Precinct, Kensington, Western Australia
Department of Biodiversity, Conservation and Attractions	The Chief Executive Office of the Department of Biodiversity, Conservation and Attractions, acting through the Conservation and Land Management Executive Body, of 17 Dick Perry Avenue, Technology Park, Western Precinct, Kensington, Western Australia
Western Australian Museum	Of 49 Kew Street, Welshpool, Western Australia
Minister for Aboriginal Affairs	Of 11th Floor, Dumas House, 2 Havelock Street, West Perth, Western Australia
Minister for Environment	Of 12th Floor, Dumas House, 2 Havelock Street, West Perth, Western Australia
Minister for Water	Of 8th Floor, Dumas House, 2 Havelock Street, West Perth, Western Australia
Minister for Regional Development	Of 11th Floor, Dumas House, 2 Havelock Street, West Perth, Western Australia
Minister for Mines and Petroleum	Of 9th Floor, Dumas House, 2 Havelock Street, West Perth, Western Australia
Goldfields-Esperance Development Commission	Established under section 5(1) of the <i>Regional Development Commissions Act 1993</i> (WA) of Suite 4/377 Hannan Street, Kalgoorlie, Western Australia
Minister for Education	Of 11th Floor, Dumas House, 2 Havelock Street, West Perth, Western Australia
Commissioner of Main Roads	A body corporate established under section 9 of the <i>Main Roads Act 1930</i> (WA) of Don Aitken Centre, Waterloo Crescent, East Perth, Western Australia

(the State Parties)

PREAMBLE

Pipala ngaanya yaaliku tjuma kangaralpitjanu. Nyalpa pirniku tjuma, ngali kuwarriku tjuma, tjitjipirniku tjuma marla ngaralanyi. Pipila mulartu watjalku, walypala pirnilu pika mirri yuntunu nyalpa pirni, nyarru. kuwarri ngali wiltu ngarala. Palyalku ma kalkamunu wantirri. Ngaanya Tjiwarl Palyakuwa: Tiiwa Kuwarri Yampa Ngula.

*Palunya.*¹

- A. This Preamble sets out the background to, and process of, the negotiation of the Tjiwarl Palyakuwa: Tiiwa Kuwarri Yampa Ngula (**Tjiwarl Palyakuwa (Agreement)**). The words in the title, written in the Ngalia language, represent the foundations of the *palyakuwa* (agreement):
- (a) **Palyakuwa**, means to agree, approve, authorise. In spoken form it would be used in the phrase mularrtu watjalku, speak in truth, watjanu palyakuwa to speak in agreement, to authorise or approve.
 - (b) **Tiiwa**, meaning past, as the Tjiwarl Palyakuwa (Agreement) is the result of the settlement of three claims brought before the Federal Court on behalf of Tjiwarl Applicants and Tjiwarl AC for compensation for things done in the past on Tjiwarl Country. Those things had occurred without the consent of Tjiwarl People on Tjiwarl Country in which they know to hold, and have been determined by the Federal Court to hold, native title. The negotiation of the Tjiwarl Palyakuwa (Agreement) and its content provides an avenue for Tjiwarl People to tell their truth to the State, and to the broader community, about the events of their history, the pride in their culture and the strength in their heritage.
 - (c) **Kuwarri**, meaning present, encapsulates the State's acknowledgement of the past wrongs which have caused immeasurable pain, suffering and cultural loss to Tjiwarl People. *Kuwarri* acknowledges that the Tjiwarl People and the State have come to the table to address the past, but also look to the present and future generations – strengthening culture, providing economic development and managing country in a way which puts Tjiwarl People back in a position to influence decisions made about country.
 - (d) **Yampa**, meaning reciprocation, is central to Tjiwarl and Western Desert Peoples' culture. Through the process of the negotiation of, and the outcomes, objectives and processes

¹ This paper tells the story from our past. It's our old peoples' story; our story today; and the story of our children to come after us to stand strong. The paper tells the truth. The white people came and caused disruption and death to our old people, poor old people. Today we stand strong. We do things to make it right. This Tjiwarl agreement is for the past, for the present and for the future. The end.

contained in the Tjiwarl Palyakuwa (Agreement), the State is compensating the Tjiwarl People for the recognised past wrongs. This compensation is not simply monetary compensation, but also the building of a relationship to achieve a comprehensive settlement of past wrongs. The State owns the past and makes amends for the future by entering into the Tjiwarl Palyakuwa (Agreement) today.

- B. Tjiwarl People are desert people, sharing a common culture, beliefs and spiritual and kinship relationships with other desert peoples, other desert countries and the spirit world. These relationships are supported by cultural and social institutions, including these influential concepts which have informed the development of the Tjiwarl Palyakuwa (Agreement):
- (a) *Tjukurrpa* – Spirituality and Law;
 - (b) *Kunta* – Respect and dignity (i.e. reconciliation, recognition, respecting traditional authority and decision-making processes, alternative processes);
 - (c) *Kulinu nintirringu* - deep listening, comprehension and understanding, awareness;
 - (d) *Ngapatjika* – Accountability and reciprocity (i.e. exchange, compensation);
 - (e) *Nyaamiri* – Relationships; and
 - (f) *Mularr watjalku* – Truth telling.

Tjiwarl Statement of Truth

- C. The following is the Tjiwarl Statement of Truth:

Tjiwarl People have maintained their rights in the Tjiwarl Determination area despite its history of intensive colonial impacts. Since the late 1890's and early 1900's ancestors of Tjiwarl People suffered massive disruption and upheaval, including the massacre of families, the arrest and exile/deportation to Rottnest Island of key leaders, men who are family of the Tjiwarl People today. They have suffered the occupation of territories by miners, pastoralists and a number of briefly settled towns. After the blunt force trauma of colonisation, Tjiwarl People were only allowed to live on Tjiwarl Country to accommodate pastoral interests. They were subjected to over regulation and policing by Native Welfare laws and other assimilationist policies of the Western Australian Government. Tjiwarl families suffer indelible memories of over policing and regulation, including the fear of children being forcibly removed from family and Tjiwarl Country. The last generation of elders told stories of hiding in fear as police came to shoot all the dogs to discourage their old people from walking and living free, hunting with dogs and gathering sustenance from the lands. The movements of the Old People were

progressively curtailed and restricted as pastoralism and mining expanded and a failing of the Western Australian Government to legislate for an Aboriginal reserve further forced most all Tjiwarl People off Tjiwarl land.

The disruption and suffering caused by these processes were compounded by the entirely destructive impacts of intensive mineral exploration and mining on Tjiwarl land since the late 1960's. Situated in the Western Australian Goldfields region, Tjiwarl land has, and continues to be, subject to an extremely intensive State regime of the successive granting of rights to conduct mineral exploration, prospect and mine myriad mineral types, and rights to take Tjiwarl waters for use in mineral exploitation. Tjiwarl People were thus prevented from exercising their traditionally-held right of access to resources they once owned, and large-scale destruction of the spiritual integrity of the cultural landscapes that once made up Tjiwarl lands was enabled.

The approach taken by Tjiwarl People in the negotiation of the Tjiwarl Palyakuwa (Agreement) has been focused on restitution for impacted rights, with the goal of repositioning the relationship between Tjiwarl People and the State, in accordance with Tjiwarl social relationship management rules known generally 'ngapatjika'. It is the intention of Tjiwarl People that this Tjiwarl Palyakuwa (Agreement) addresses, as broadly as possible, the social and economic impacts suffered by Tjiwarl People as a result of State acts.

State acknowledgement of Tjiwarl Statement of Truth

- D. The State acknowledges that Tjiwarl People have suffered a sense of loss of connection to Tjiwarl Country as a result of the disruption to the spiritual integrity of the cultural landscape caused by things done in the past on Tjiwarl Country.
- E. The State enters into the Tjiwarl Palyakuwa (Agreement) acknowledging its role in that sense of loss of connection suffered by Tjiwarl People.
- F. This Tjiwarl Palyakuwa (Agreement) provides compensation to Tjiwarl People in accordance with the Native Title Act for the effects of things done by the State in the past for which Tjiwarl People have an entitlement to compensation. However, those things have not been considered in isolation. From the State's perspective, important in reaching agreement has been a growing appreciation of the nature and extent of Tjiwarl People's rights and responsibilities under their traditional laws and customs.

- G. The Tjiwarl Palyakuwa (Agreement) reflects the Tjiwarl People's connection to Tjiwarl Country, its spiritual essence and the interconnections between all living entities, elements and forces that comprise it (called 'Ngurrara' in this Tjiwarl Palyakuwa (Agreement)). The commitments made by the State to the Tjiwarl People under this Tjiwarl Palyakuwa (Agreement) go some way toward righting the wrongs of the past. Importantly, those commitments include agreement under recent changes to the Native Title Act to the restoration of native title in conservation areas where native title had been extinguished.
- H. The commitments under this Tjiwarl Palyakuwa (Agreement) are informed by the need for Truth-Telling about the effect of things done on Tjiwarl Country and the impact this has had, and continues to have, on Tjiwarl People. The Parties intend that this Tjiwarl Palyakuwa (Agreement) will strengthen Tjiwarl People's ability to exercise their rights in relation to land and water, and further their social and economic development (including education, business advancement, community and individual wellbeing, and cultural strengthening). This Tjiwarl Palyakuwa (Agreement) also provides a monetary component as part of the compensation payable by the State to Tjiwarl People for the effects of things done in the past. Tjiwarl-directed funding for economic empowerment and research and development is designed to create a pipeline of social and economic improvement opportunities and outcomes for Tjiwarl People and Ngurrara over the short and long term.
- I. The State enters into the Tjiwarl Palyakuywa (Agreement) in a spirit of partnership with the Tjiwarl People and looks to a future where the lives of the Tjiwarl People are enriched by this partnership and the benefits delivered by the Agreement.

RECITALS

- A. Tjiwarl AC holds native title rights and interests for and on behalf of the Tjiwarl People in accordance with the Tjiwarl Determination.
- B. The State recognises the Tjiwarl People and their ongoing connection to Tjiwarl Country.
- C. This Agreement provides for:
- (a) full and final settlement of the State's liability for Compensation to the Tjiwarl People, as specified in this Agreement;
 - (b) the Compensation Claims to be resolved to the extent they claim Compensation against the State;
 - (c) the future act consents provided by Tjiwarl AC;
 - (d) the Tjiwarl Compensation, including:
 - (i) the Tjiwarl Monetary Compensation;
 - (ii) the delivery of an alternative future act regime with respect to certain mining and petroleum activities on Tjiwarl Country;
 - (iii) the ongoing management of water on Tjiwarl Country, including an alternative future act regime with respect to the grant of licences under the RIWI Act;
 - (iv) the creation of the Tjiwarl Land Estate;
 - (v) the creation of the Tjiwarl Conservation Estate, including the recognition of exclusive native title rights under section 47C of the Native Title Act with respect to Wanjarri Nature Reserve and the Yeelirrie Lake Mason Reserve;
 - (vi) the recognition of, and opportunity to record, Tjiwarl Peoples culture, heritage and history through a process of Truth-Telling; and
 - (vii) the support for Tjiwarl businesses and economic opportunities; and
 - (e) the Parties' willingness to work together to implement this Agreement, through a number of specific Working Groups and other agreed forums, and to deliver on aspects of this Agreement to provide Tjiwarl with an opportunity to raise issues at the highest levels of Government.
- D. The Parties acknowledge that they have engaged in a collaborative manner to negotiate and develop this Agreement.
- E. A summary of this Agreement is contained in Schedule 9.

THE PARTIES AGREE AS FOLLOWS:

1. Definitions and Interpretation

Throughout this Agreement there are terms that are capitalised and they are given a specific meaning that is set out in clauses 1.1 and 1.2.

Clause 1.3 sets out the rules which help explain the way in which this Agreement should be read to avoid any confusion.

1.1 General definitions

In this Agreement, unless it is a defined term in clause 1.2 or the context otherwise requires:

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

1.2 Specific definitions

In this Agreement, unless the context requires otherwise:

Aboriginal Affairs Coordinating Committee means the committee established under section 19 of the *Aboriginal Affairs Planning Authority Act 1972* (WA).

Aboriginal Cultural Business means a funeral, event or other ceremony, socio-cultural or cultural duty that any members of the Tjiwarl People or Tjiwarl AC are required to attend under their traditional laws and customs and that prevents any of them from performing their obligations under this Agreement.

Additional Funding Applications has the meaning set out in clause 10.10.

Agreement means this agreement and includes the schedules to this agreement.

Agreement Area has the meaning given in clause 2.

ACHA means the *Aboriginal Cultural Heritage Act 2021* (WA).

AHA means the *Aboriginal Heritage Act 1972* (WA).

Authorisation means any approval, authorisation, consent, exemption, licence, notarisation, registration or waiver however described and any renewal of or variation to any of them.

Baseline Socio-Economic Study means a project to inform Tjiwarl individual, family and community socio-economic priorities and strategies to achieve desired outcomes through the Tjiwarl Sustainability Framework.

Baseline Socio-Economic Study Funding has the meaning given in clause 10.1.

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

Body Corporate ILUA means an indigenous land use agreement (body corporate agreement) as described in Part 2, Division 3, Subdivision B of the Native Title Act.

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

CATSI Act means the *Corporations (Aboriginal and Torres Strait Islander) Act 2016* (Cth).

Compensation means compensation for any loss, diminution, impairment or other effect on native title rights and interests (in the Agreement Area) under the Native Title Act, State Law or otherwise, but excludes compensation for any tortious liability which may be attributable to the State.

Compensable Acts means:

- (a) all acts done within the Agreement Area up to and including 17 June 2020 that are attributable to the State, and for which an entitlement to Compensation arises that is payable (or alleged to be payable) by the State, whether or not such acts are included in the Compensation Claims which, for the avoidance of doubt, includes any entitlement to Compensation payable (or alleged to be payable) by the State under or notwithstanding section 125A of the Mining Act; and

- (b) the following acts done within the Agreement Area after 17 June 2020, being acts that are attributable to the State and are included in the Compensation Claims, for which an entitlement to Compensation arises that is payable (or alleged to be payable) by the State which, for the avoidance of doubt, includes any entitlement to Compensation payable (or alleged to be payable) by the State under or notwithstanding section 125A of the Mining Act:
 - (i) the extensions of term of the following exploration licences:
 - (A) E36/535 on 1 December 2020 for 1 year;
 - (B) E36/832-I on 9 October 2020 for 5 years;
 - (C) E53/1480 on 28 August 2020 for 2 years;
 - (D) E57/577-I on 3 July 2020 for 1 year; and
 - (ii) the re-issue of the following groundwater licences:
 - (A) GWL 178593 on 24 July 2020 for a further term expiring 2 April 2024; and
 - (B) GWL 202960 on 31 March 2021 for a further term expiring 30 March 2031.

Compensation Claims means the three compensation applications made by the Tjiwarl Applicants the subject of proceedings:

- (a) WAD 141 of 2020;
- (b) WAD 142 of 2020; and
- (c) WAD 269 of 2020,

in the Federal Court of Australia.

Conclusive Registration means, once this Agreement has been Registered, that this Agreement remains Registered:

- (a) at a date that is 60 Business Days after the date on which a decision is made to Register this Agreement, provided that no Review Proceedings have been commenced in respect of such Registration; or
- (b) otherwise, at a date that is 40 Business Days following the exhaustion and determination of the final available Review Proceedings in respect of such Registration, and **Conclusively Registered** has a corresponding meaning.

Conclusive Registration Date has the meaning given in clause 3.6.

Confidential Information has the meaning given in clause 24.1(a).

Conservation Estate Schedule means Schedule 7 to this Agreement.

Contaminated Sites has the meaning given in the *Contaminated Sites Act 2003* (WA).

Corporations Act means the *Corporations Act 2001* (Cth).

Cost Exemption Applications has the meaning set out in clause 10.10(a)(ii).

CPI means the Consumer Price Index, All Groups Index, number for Perth, Western Australia, published from time to time by the Australian Bureau of Statistics (catalogue number 6401.0). If that index ceases to be published by the Australian Bureau of Statistics then CPI will mean such other index as represents the rise in the cost of living in Perth, Western Australia, as the State reasonably determines after consulting with Tjiwarl AC.

CPI Adjustment Date means the date occurring no later than 20 Business Days after the relevant CPI Quarterly Publication referred to in the definition of CPI Calculation.

CPI Calculation means:

$$A \times CPI_n / CPI_{base}$$

where:

A = the initial base payments as summarised in clause 10.4(a)(i) or 10.5(a)(i) of this Agreement;

CPI_n = the latest CPI Quarterly Publication, that immediately proceeds the payment date;

CPI_{base} = the latest CPI Quarterly Publication, that immediately proceeds the Conclusive Registration Date.

CPI Quarterly Publication means the quarterly Perth CPI number as published by the Australian Bureau of Statistics.

Defaulting Party has the meaning given in clause 22.1.

Disclosing Party has the meaning given in clause 24.1.

Dispute has the meaning given in clause 23.2.

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.

DWER means the department of the public service of the State principally assisting the Minister for Water in the administration of the RIWI Act which, at the Execution Date, is the Department of Water and Environmental Regulation.

Economic Empowerment Funding has the meaning given in clause 10.5(a)

Economic Empowerment Working Group means the working group established under clause 9.4.

Event of Default has the meaning given in clause 22.1.

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

First Compensation Payment has the meaning given in clause 10.3(a).

Force Majeure means an event that prevents a Party from performing its obligations, or receiving the benefit of the other Party's obligations, in whole or part, under this Agreement and which is unforeseeable and beyond the reasonable control of the affected Party including:

- (a) an act of God, lightning, storm, flood, fire, earthquake, explosion, cyclone or wind and wave conditions associated with a cyclone, tidal wave or tsunami, landslide, adverse weather conditions, volcanic eruption;
- (b) strike, lockout or other labour difficulty;
- (c) an act of public enemy, war, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic or pandemic, terrorism, radioactive or biological contamination, impact of vehicles or aircraft, failure of a public utility; or
- (d) the effect of any applicable Law or any authority exercised by a government or other competent authority.

but does not include:

- (e) lack of or inability to use funds for any reason;
- (f) any occurrence which results from the wrongful or negligent act or omission of the affected Party or the failure by the affected Party to act in a reasonable and prudent manner;
- (g) an event or circumstance where the event or circumstance or its effects on the affected Party or the resulting inability of the affected Party to perform its obligations, or receive the benefit of the other Parties' obligations, could have been prevented, overcome or remedied by the exercise by the affected Party of the standard of care and diligence consistent with that of a reasonable and prudent person;

- (h) the failure by a third party to fulfil a contractual commitment with the affected Party other than as a result of any of (a) to (d); and
- (i) any act or omission of an agent or contractor of the affected Party.

Future Carbon Operations has the meaning given in clause 13.4(b).

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

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

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

Goldfields Native Title Forum has the meaning set out in clause 9.6(a)(i).

GST Act means the *A New Tax System (Goods and Services Act) Act 1999* (Cth).

Handover has the meaning set out in clause 2.2 of the Land Estate Schedule.

ILUA Registration Application means an application to register a Body Corporate ILUA that meets the requirements of the ILUA Regulations and is in the form, or substantially in the form, of the document annexed at Schedule 2.

ILUA Regulations means the *Native Title (Indigenous Land Use Agreements) Regulations 1999* (Cth).

Implementation Committee means the committee established under clause 9.2.

Implementation Funding has the meaning given in clause 10.6(a).

Insolvency Event means where a Party which is a body corporate:

- (a) commits an act of insolvency under and for the purposes of the Corporations Act or the CATSI Act; or
- (b) is placed under external administration under and for the purposes of Chapter 5 of the Corporations Act, including as applied by Parts 11.3 or 11.4 of the CATSI Act; or

- (c) is placed under special administration under and for the purposes of Chapter 11 of the CATSI Act; or
- (d) is unable to pay all its debts as and when they become due and payable.

Joint Management Body has the meaning given in clause 2.2 of the Conservation Estate Schedule.

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

Land Assembly Activities means the land assembly activities required to give effect to the creation of the Tjiwarl Conservation Estate as provided for in the Conservation Estate Schedule.

Land Estate Schedule means Schedule 6 to this Agreement.

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

Landholding Body has the meaning set out in clause 2.2 the Land Estate Schedule.

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

Local Government means a local government established under the *Local Government Act 1995* (WA).

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

Mining Business Schedule means Schedule 4 to this Agreement.

Mining Business Working Group means the working group established under clause 4 of the Mining Business Schedule.

Mining Exploration Tenure has the meaning given in clause 5.1 of the Mining Business Schedule.

Mining Infrastructure Licence has the meaning given in clause 7.1 of the Mining Business Schedule.

Mining Water Licence has the meaning given in clause 8.1 of the Mining Business Schedule.

Minister for Aboriginal Affairs means the Minister of the State to whom the administration of the AHA and ACHA is for the time being committed by the Governor.

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

Native Title Deputies Group means the sub-group established under the Aboriginal Affairs Coordinating Committee with the responsibility of providing strategic oversight of the State's activities relating to native title.

Notice of Dispute has the meaning given in clause 23.2.

Other Mining Tenure has the meaning given in clause 6.1 of the Mining Business Schedule.

Other PGER Tenure has the meaning given in clause 10.1 of the Mining Business Schedule.

Original Wanjarri Nature Reserve Area means the area the subject of Wanjarri Nature Reserve as at the Execution Date, being an area that was excluded from the area the subject of the Tjiwarl Determination by reason of extinguishment.

Parliament means the Parliament of the State.

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

PBC Regulations means the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth).

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

PGER Exploration Tenure has the meaning given in clause 9.1 of the Mining Business Schedule.

PGER Title means a permit, drilling reservation, access authority, lease, licence or special prospecting authority granted under the PGER Act.

Proposed Economic Development Activities has the meaning given in clause 10.5(b).

Proposed Research and Development Activities has the meaning given in clause 10.4(b).

Public Sector Standards means any code of conduct, standard, policy or procedure of the State with respect to the accountability, integrity, transparency or ethical conduct of the State or the State's Personnel.

Receiving Party has the meaning given in clause 24.1.

Recipient has the meaning given in clause 27.3(a).

Registered means registered under Part 2, Division 3, Subdivision B of the Native Title Act, on the Register of Indigenous Land Use Agreements, and both **Register** and **Registration** have a corresponding meaning.

Released Act has the meaning given in clause 7.1(a).

Replacement Agreement has the meaning given in clause 4.5(b).

Replacement RNTBC has the meaning given in clause 26.2(a).

Research and Development Funding has the meaning given in clause 10.4(a).

Research and Development Working Group means the working group established under clause 9.3.

Resolution Institute means the dispute resolution company of that name. If Resolution Institute ceases to exist as a company, then Resolution Institute will be taken to mean any other dispute resolution organisation with similar objects agreed to by a consensus of the Parties to the relevant dispute or if no consensus can be reached, decided by the Party that first notified the relevant dispute.

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

Review Proceedings means:

- (a) an application (**Primary Proceedings**) made, under sections 5 or 6 (respectively) of the *Administrative Decisions (Judicial Review) Act 1977* (Cth) by a person aggrieved by:
 - (i) a decision of the Native Title Registrar to register this Agreement; or
 - (ii) conduct engaged, or proposed to be engaged, in by the Native Title Registrar for the purpose of making a decision to register this Agreement, for an order of review in respect of that decision or conduct (as the case may be);
 - (iii) an application (also **Primary Proceedings**) made under section 39B of the *Judiciary Act 1903* (Cth), in reliance on the original jurisdiction of the Federal Court of Australia, for declaratory or other relief with respect to the decision of the Native Title Registrar to register this Agreement; and
- (b) each appeal, rehearing or other court proceedings (**Secondary Proceedings**) that may be commenced in consequence of any judgment handed down in respect of:
 - (i) any Primary Proceedings; or

- (ii) any prior Secondary Proceedings that are ultimately referable to such Primary Proceedings.

RIWI Act means the *Rights in Water and Irrigation Act 1914 (WA)*.

RIWI Licence has the meaning given in clause 6.1 of the Water Schedule.

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 all regulations and other instruments made under any statute.

State Parties means the State acting through the State Parties.

State's Personnel means the State's employees, officers, agents, consultants and contractors.

Sunset Date has the meaning given in clause 3.7(a).

Supplier has the meaning given in clause 27.3(a).

Termination Date has the meaning given in clause 4.3.

Third Party Acts has the meaning given in clause 7.5.

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 Applicant in WAD 141 of 2020 means Tjiwarl AC in its capacity as applicant in relation to the compensation application the subject of Federal Court of Australia proceeding WAD 142 of 2020.

Tjiwarl Applicant in WAD 142 of 2020 means Brett Lewis, Allan Ashwin, Edwin Beaman, Tanya Bingham, Cheryl Bond, Lawrence Harris, Allan James, Jennifer Narrier, Nathan Redmond and Joyce Tullock-Taylor in their capacity as applicant in relation to the compensation application the subject of Federal Court of Australia proceeding WAD 142 of 2020.

Tjiwarl Applicant in WAD 269 of 2020 means Shirley Wonyabong, Allan James, Brett Lewis, Allan Ashwin, Lawrence Harris, Jennifer Narrier, Kado Muir and Michael Tullock in their capacity as applicant in relation to the compensation application the subject of Federal Court of Australia proceeding WAD 269 of 2020.

Tjiwarl Applicants means two or more of Tjiwarl Applicant in WAD 141 of 2020, Tjiwarl Applicant in WAD 142 of 2020 and Tjiwarl Applicant in WAD 269 of 2020 as the context requires.

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

Tjiwarl Compensation has the meaning given in clause 6(a).

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

Tjiwarl Conservation Estate Native Title Determination means an approved determination of native title made in relation to Wanjarri Nature Reserve and the Yeelirrie Lake Mason Reserve as provided for in Schedule 8 of this Agreement.

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

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

Tjiwarl Cultural Materials means objects that are of cultural, social, spiritual, historical or aesthetic importance to 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 of Australia 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 has the meaning referred to in clause 2.2 of the Land Estate Schedule.

Tjiwarl Monetary Compensation has the meaning given in clause 10.2.

Tjiwarl Parties means Tjiwarl AC, Tjiwarl Applicants and the Tjiwarl People.

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

Tjiwarl Water Plan has the meaning given in clause 2.2 of the Water Schedule.

Tjiwarl Water Study has the meaning given in clause 2.2 of the Water Schedule.

Wanjarri Nature Reserve means all that land and water comprising Reserve 30897, that is classified under the LA Act as a class A reserve, being Lot 569 on Deposited Plan 73751 and being the whole of the land in Certificate of Crown Land Title Volume LR3162 Folio 538 including, as the context requires:

- (a) the setting aside of that reserve; and
- (b) that reserve as expanded to include the Wanjarri Nature Reserve Addition as provided for in the Conservation Estate Schedule.

Wanjarri Nature Reserve Addition means Lot 568 on Deposited Plan 73751 and being the whole of the land in Certificate of Crown Land Title Volume LR3162 Folio 537 to be included in Wanjarri Nature Reserve as provided for in the Conservation Estate Schedule.

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

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

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

Water Schedule means Schedule 5 to this Agreement.

Water Working Group means the working group established under clause 3 of the Water Schedule.

Working Groups has the meaning given in clause 9.1(b)(ii).

Yeelirrie Lake Mason non-exclusive area means that part of Yeelirrie Lake Mason Reserve which comprises part of the land that is currently designated UCL 239, being an area in relation to which Tjiwarl AC holds non-exclusive native title in trust for the Tjiwarl People in accordance with the Tjiwarl Determination.

Yeelirrie Lake Mason Reserve means all that land and water comprising a new reserve for the purpose of National Park to be classified under the LA Act as a Class A reserve, to be created within the Agreement Area as provided for in the Conservation Estate Schedule including, as the context requires:

- (a) the setting aside of that reserve; and

- (b) that reserve when created.

1.3 Interpretation – General

In this Agreement, unless the contrary intention appears:

- (a) headings, subheadings and text boxes are for ease of reference only and do not govern the meaning or construction of this Agreement or of any provision contained in this Agreement;
- (b) words expressed in the singular include the plural and vice versa;
- (c) words expressed in one gender include the other;
- (d) a reference to a Party to this Agreement includes that Party's successors, permitted substitutes, persons taking by novation, permitted transferees, receivers, managers, administrators and permitted assignees and, in the case of a natural person, also includes that person's executors and administrators;
- (e) an expression importing a natural person includes a company, partnership, joint venture, association, authority, registered native title body corporate or other body corporate or governmental or semi-governmental entity;
- (f) a reference to a person which has ceased to exist or has reconstituted, amalgamated, reconstructed or merged, or the functions of which have become exercisable by another person, is a reference to the person established or constituted in its place or by which its functions have become exercisable;
- (g) a reference to a person established under any written law includes a reference to any person or body (corporate or unincorporate) established or continuing to perform the same or a substantially similar function;
- (h) a reference to a thing includes any part of a thing but is not taken as implying that performance of part of an obligation is the performance of the whole;
- (i) a reference to a clause, Schedule or Annexure is a reference to a clause in, or Schedule or Annexure to, this Agreement;
- (j) 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 succeeding Business Day;
- (k) an agreement, representation or warranty on the part of or in favour of two or more persons binds, and is enforceable against, those persons jointly and each of them severally;

- (l) no rules of construction apply to the disadvantage of a Party because that Party was responsible for the drafting of this Agreement or of any of the provisions of this Agreement;
- (m) a reference to any statute includes every regulation, code, order, ordinance, by-law, subordinated or delegated legislation and proclamation issued under that statute and all consolidations, amendments, re-enactments and replacements of any of them;
- (n) where a word or phrase is given a defined meaning in this Agreement, any part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (o) a reference to any document, instrument or agreement, including this Agreement, includes a reference to that document, instrument or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (p) a reference to any government department, professional body, committee, council or other body, or to any position within any such body, includes the successors to that body or position or to any relevant activity or function of that body or position;
- (q) “including” means “including, but not limited to”.

2. Agreement Area

This clause explains the area to which this Agreement applies, with the help of the maps set out in Schedule 1.

This Agreement applies to all the land and waters within the external boundaries of the area:

- (a) described in item A of Schedule 1 to this Agreement; and
- (b) shown on the map in item B of Schedule 1 to this Agreement

(Agreement Area).

3. Registration of this Agreement

The Native Title Act says that the Agreement needs to be registered for it to work.

This clause sets out the process the parties will follow to ensure that this Agreement is registered under the Native Title Act as soon as possible after it has been signed.

Once the agreement is registered, this means that it will be added to the Register of Indigenous Land Use Agreements as a Body Corporate ILUA.

3.1 Registration on Register of Indigenous Land Use Agreements

The Parties acknowledge:

- (a) their intentions that this Agreement be registered on the Register of Indigenous Land Use Agreements as a Body Corporate ILUA as soon as reasonably practicable after the Execution Date;
- (b) that, when this Agreement is registered on the Register of Indigenous Land Use Agreements, this Agreement will have the additional effects conferred by sections 24BB to 24BE of the Native Title Act, including the effects on compensation provided by those sections;
- (c) that the Agreement Area is also the relevant area for the purpose of section 24BB of the Native Title Act (Coverage of body corporate agreements); and
- (d) in accordance with the requirements of the Native Title Act for registering this Agreement on the Register of Indigenous Land Use Agreements as a Body Corporate ILUA Tjiwarl AC is the registered native title body corporate in relation to the whole of the Agreement Area (a requirement of section 24BC of the Native Title Act).

3.2 Consent to application for registration

- (a) The Parties consent to the State:
 - (i) preparing an ILUA Registration Application in writing to the Native Title Registrar for this Agreement to be registered on the Register of Indigenous Land Use Agreements in accordance with section 24BG of the Native Title Act; and
 - (ii) applying to the Native Title Registrar for this Agreement to be registered on the Register of Indigenous Land Use Agreements as a body corporate agreement under

Part 2, Division 3, Subdivision B of the Native Title Act and regulation 6 of the ILUA Regulations.

- (b) The Parties acknowledge that it is intended that the ILUA Registration Application will also include those documents or information prescribed by section 24BG(2) of the Native Title Act and regulations 6(2) to 6(5) of the ILUA Regulations.

3.3 Registration procedure

- (a) Tjiwarl AC will provide the State with all the necessary supporting documents and information required to effect registration of this Agreement under section 24BG of the Native Title Act, within 20 Business Days after the Execution Date.
- (b) The State will apply for registration of this Agreement as an indigenous land use agreement under section 24BG of the Native Title Act within 10 Business Days of receipt of the documents and information in clause 3.3(a) from Tjiwarl AC.
- (c) If, after the 10 Business Days referred to in clause 3.3(b), the State does not apply for registration in accordance with clause 3.3(b) then Tjiwarl AC may apply for registration of this Agreement under section 24BG(1) of the Native Title Act.

3.4 Further assurances in respect of registration

Subject to clause 20.2, the Parties will do all things reasonably necessary to assist with the timely registration of this Agreement on the Register of Indigenous Land Use Agreements and to maintain the registration of this Agreement on the Register of Indigenous Land Use Agreements.

3.5 No objections

- (a) Without limiting clauses 3.3 and 3.4, a Party must not object to the registration of this Agreement on the Register of Indigenous Land Use Agreements.
- (b) If any Party becomes aware of an objection having been lodged in relation to the registration of this Agreement on the Register of Indigenous Land Use Agreements, then that Party must notify the other Party and each Party must do all things within their power and necessary to be done and incidental to what may be required to be done to ensure that the objection is withdrawn.

3.6 State to issue notice of Conclusive Registration

Subject to clause 3.7, when this Agreement has been Conclusively Registered, the State must within five Business Days issue Tjiwarl AC with written notice confirming the date upon which this Agreement has been Conclusively Registered (the **Conclusive Registration Date**).

3.7 Consequences of non-registration or Review Proceedings

- (a) Subject to clause 3.7(b), if this Agreement has not been Conclusively Registered within 12 months of the date of lodgement of the application for registration (**Sunset Date**), either Party may exercise their discretion, by notice to the other Party within 60 Business Days following the Sunset Date, to elect to terminate this Agreement.
- (b) Before a Party exercises its discretion to terminate this Agreement and to issue notice to the other Party as contemplated in clause 3.7(a), that Party must first provide at least 20 Business Days' notice to the other Parties of its proposed decision to terminate this Agreement.
- (c) If this Agreement is terminated as contemplated in this clause 3.7, following consideration by the other Parties of the relevant Party's proposed decision to terminate this Agreement in accordance with clause 3.7(b), no Party will have any claim against any other Party with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- (d) If, as at the Sunset Date, Review Proceedings have commenced in respect of Registration, then the Parties agree that the Sunset Date will be extended to a date that is 40 Business Days following the exhaustion and determination of the final available Review Proceedings in respect of such Registration in order to enable the Agreement to reach Conclusive Registration.

4. Commencement, Term and Termination

This clause sets out when the Agreement starts and explains that the Agreement will last forever, unless particular circumstances arise which cause the Agreement to end. If the ILUA comes to an end, some clauses will continue and the Parties will meet to discuss a replacement Agreement.

4.1 Commencement

Except for this clause 4 and clauses 1, 2, 3, 5, 20.1, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and clause 11 of the Mining Business Schedule which commence on the Execution Date, this Agreement commences upon the Conclusive Registration Date and binds each of the Parties, their successors and permitted assigns.

4.2 Term

Subject to clause 4.3, this Agreement continues indefinitely.

4.3 Termination

This Agreement will terminate only on the occurrence of the following events, whichever is the first to occur (the **Termination Date**):

- (a) where all Parties agree in writing to end this Agreement;
- (b) where one of the Parties has exercised its discretion to terminate the agreement under clause 3.7;
- (c) where this Agreement is removed from the Register of Indigenous Land Use Agreements by the Native Title Registrar in accordance with section 199C of the Native Title Act; or
- (d) where a Replacement Agreement comes into effect in accordance with clause 4.5(b).

4.4 No other termination

For the avoidance of doubt, except as otherwise provided in clause 4.3, no Party is entitled to terminate this Agreement, including by reason of breach or repudiation of this Agreement by any Party, but any Party may exercise any other remedy available to it in respect of such breach.

4.5 Consequences of Termination

- (a) Unless otherwise provided for in this Agreement, if this Agreement is terminated in accordance with clause 4.3:
 - (i) it ceases to have any force or effect on and from the Termination Date; and
 - (ii) all rights and obligations of the Parties which accrued and consents that were given under this Agreement before the Termination Date will remain binding and enforceable.

- (b) If this Agreement is terminated as a result of events described in clauses 4.3(a), 4.3(b) or 4.3(c) the Parties will meet to discuss arrangements for entering into a new agreement (**Replacement Agreement**) to be registered as an Indigenous Land Use Agreement on the Register of Indigenous Land Use Agreements.

- (c) For the avoidance of doubt:
 - (i) the following clauses survive termination under clause 4.3:
 - (A) clause 4.5(b) (Discussion following termination);
 - (B) clause 5 (Authorities, representations and warranties);
 - (C) clause 7 (Full and final settlement of the State's liability), except in the case of termination by agreement under clause 4.3(b) where the Agreement has not been Conclusively Registered;
 - (D) clause 24 (Confidentiality);
 - (E) clause 25 (Publication and Announcements); and
 - (ii) neither termination nor anything in relation to the termination of this Agreement affects the validity of any acts done by or on behalf of the State prior to termination in accordance with this Agreement or permitted by this Agreement, whether for the purpose of the Native Title Act or State Law.

4.6 Termination after registration

- (a) If the Parties propose to terminate this Agreement under clause 4.3, then all Parties must advise the Native Title Registrar in writing in accordance with section 199C(1)(c)(ii) of the Native Title Act and request the Native Title Registrar to remove it from the Register of Indigenous Land Use Agreements.

- (b) If this Agreement is terminated under clause 4.3(b), the State will, for and on behalf of the Parties, advise the Native Title Registrar in writing that this Agreement has been terminated and request the Native Title Registrar to remove it from the Register of Indigenous Land Use Agreements.

5. Authorities, representations and warranties

This clause makes it clear that Tjiwarl AC is authorised to enter into this Agreement on behalf of the Tjiwarl People, the State is authorised to enter into this Agreement and the Parties are not aware of anything which would stop them from entering into this Agreement.

5.1 Tjiwarl Parties' Representations and Warranties

- (a) Tjiwarl AC represents and warrants:
- (i) it is the registered native title body corporate under the Native Title Act that holds on trust native title rights and interests for and on behalf of the Tjiwarl People;
 - (ii) it has full power and authority to enter into this Agreement on behalf of the Tjiwarl People;
 - (iii) all conditions and things required by applicable law to be fulfilled or done (including the obtaining of any necessary Authorisations) in order to enable it lawfully to enter into, exercise its rights and perform its obligations under this Agreement have been fulfilled or done; and
 - (iv) it knows of no impediment to it performing its obligations under this Agreement.
- (b) The Tjiwarl Applicant in WAD 142 of 2020 represents and warrants:
- (i) it is authorised in accordance with section 251B of the Native Title Act to make the Compensation Claim in WAD 142 of 2020; and
 - (ii) it has full power and authority to enter into this Agreement on behalf of the Tjiwarl People.
- (c) The Tjiwarl Applicant in WAD 269 of 2020 represents and warrants:
- (i) it is authorised in accordance with section 251B of the Native Title Act to make the Compensation Claim in WAD 269 of 2020; and

- (ii) it has full power and authority to enter into this Agreement on behalf of the Tjiwarl People.

5.2 State Parties' Representations and Warranties

The State Parties each represent and warrant:

- (a) they have full power and authority to enter into this Agreement;
- (b) all conditions and things required by applicable law to be fulfilled or done (including the obtaining of any necessary Authorisations) in order to enable them to lawfully to enter into, exercise its rights and perform its obligations under this Agreement have been fulfilled or done; and
- (c) they know of no impediment to it performing its obligations under this Agreement.

5.3 Reliance on such Warranties

The State, Tjiwarl AC and Tjiwarl Applicants each acknowledge and agree that:

- (a) this Agreement is valid and enforceable; and
- (b) they have relied on the warranties provided in this clause 5 (as may be applicable) to enter into this Agreement.

5.4 Acknowledgement regarding legal advice

The State, Tjiwarl AC and Tjiwarl Applicants each acknowledge that it has:

- (a) had the benefit of its own legal advice in respect of all matters in this Agreement and the effect of the rights, obligations and liabilities of each Party to it; and
- (b) been provided with an opportunity to consider that advice and all of the provisions of this Agreement before entering into it.

5.5 Application of this Agreement to the State and the State Parties

- (a) By entering into this Agreement, the State binds itself but not the other State Parties.
- (b) By entering into this Agreement, each State Party binds itself, but not the State (except to the extent otherwise provided by law) or any other State Party.

5.6 Ministers may act through authorised officers

Where in this Agreement reference is made to a Minister of the State, and the relevant Minister may, or is required to, give any notice or do any other act or thing, that notice may be given, and that other act or other thing may be done, by a duly authorised officer of the relevant department of the State in the name of and on behalf of the relevant Minister.

5.7 Acts by State - no fetter upon discretion

Each Party acknowledges and agrees that nothing in this agreement can fetter or control the exercise by any person (including the Minister of the State) of a statutory power or discretion otherwise than in accordance with the relevant statute.

6. Tjiwarl Compensation

This clause lists the components of the Tjiwarl Compensation package to be delivered by the State to Tjiwarl AC for the benefit of the Tjiwarl People.

- (a) The Compensation to be paid or delivered by the State to Tjiwarl AC for the benefit of the Tjiwarl People under this Agreement comprises:
- (i) the Tjiwarl Monetary Compensation (clause 10); and
 - (ii) the State's commitments regarding:
 - (A) Working Together (clause 9);
 - (B) Tjiwarl Healing (clause 11);
 - (C) Support for Tjiwarl Businesses and Economic Opportunities (clause 12);
 - (D) Mining Business (clause 14 and Schedule 4);
 - (E) Tjiwarl Water (clause 15 and Schedule 5);
 - (F) Tjiwarl Land Estate (clause 16 and Schedule 6);
 - (G) Tjiwarl Conservation Estate (clause 17 and Schedule 7); and
 - (H) Restoring Rights to Country (clause 18 and Schedule 8),
- (Tjiwarl Compensation).**

- (b) The Tjiwarl Compensation will be paid or delivered by the State to Tjiwarl AC as specified in the Agreement, in full and final settlement of the State's liability for Compensation to the Tjiwarl People, as specified in clause 7.
- (c) The Parties acknowledge and agree that:
 - (i) Tjiwarl AC will receive and deal with the Tjiwarl Compensation in accordance with regulation 6(1) of the PBC Regulations; and
 - (ii) the Tjiwarl Compensation is intended to be native title benefits as defined in section 59.50(5) of the *Income Tax Assessment Act 1997* (Cth).

7. Settlement of the State's Compensation liability

Here the Parties agree that the compensation money to be paid to the Tjiwarl People under this Agreement, and the other things the State will do for the Tjiwarl People under this Agreement, are enough compensation for things that happened in the past, as well as the things that will happen in the future with the Tjiwarl People's consent under the Agreement. The Tjiwarl People can't claim any more compensation from the State for those things.

7.1 Full and final settlement of the State's Compensation liability

The Parties acknowledge and agree that, subject to clauses 7.3, 7.4 and 7.5:

- (a) the Tjiwarl Compensation paid or delivered by the State to Tjiwarl AC, for the benefit of the Tjiwarl People, in accordance with this Agreement will constitute full and final satisfaction of:
 - (i) the State's Compensation liability;
 - (ii) any Compensation entitlement of the Tjiwarl Parties which is recoverable from the State; and
 - (iii) any Compensation entitlement of anyone else who holds or, but for the acts described in clauses 7.1(a)(iv) to (viii) inclusive, would have held native title in the Agreement Area which is recoverable from the State,
 in respect of:
 - (iv) Compensable Acts;
 - (v) Third Party Acts;

- (vi) any act done by the State in respect of the creation of the Tjiwarl Land Estate in accordance with clause 16 and the Land Estate Schedule;
- (vii) any act done by the State in respect of the creation, joint vesting and joint management of the Tjiwarl Conservation Estate in accordance with clause 17 and the Conservation Estate Schedule, comprising:
 - (A) the addition of the Wanjarri Nature Reserve Addition to Wanjarri Nature Reserve;
 - (B) the creation of the Yeelirrie Lake Mason Reserve;
 - (C) the joint vesting and joint management of Wanjarri Nature Reserve and the Yeelirrie Lake Mason Reserve;
 - (D) the creation of the Wanjarri Nature Reserve Access Easement; and
 - (E) the creation, joint vesting and joint management of any Future Conservation Reserves; and
- (viii) the doing of any act (including a future act) by the State under or pursuant to Wanjarri Nature Reserve, the Wanjarri Nature Reserve Access Easement, the Yeelirrie Lake Mason Reserve or any Future Conservation Reserves, including the construction or establishment of any public work, whether the act is done before or after the Tjiwarl Conservation Estate Native Title Determination is made,

each a **Released Act**.

- (b) in consideration for the Tjiwarl Compensation paid or delivered by the State to Tjiwarl AC, for the benefit of the Tjiwarl People, the Tjiwarl Parties each release the State from any further liability for Compensation in relation to the Released Acts; and
- (c) the Tjiwarl Compensation delivered by the State to Tjiwarl AC, for the benefit of the Tjiwarl People, constitutes Compensation in respect of the Released Acts.

7.2 Acts done within Original Wanjarri Nature Reserve Area before Native Title Determination

The Tjiwarl Parties acknowledge and agree:

- (a) that, as at the Execution Date, native title does not exist in relation to the Original Wanjarri Nature Reserve Area by reason of extinguishment by the creation of prior interests;

- (b) that if the Tjiwarl Conservation Estate Native Title Determination is made, any prior extinguishment will be disregarded by operation of section 47C of the Native Title Act;
- (c) that the disregarding of extinguishment by operation of section 47C of the Native Title Act does not give rise to an entitlement for Compensation for any act (including a future act) done in relation to the Original Wanjarri Nature Reserve Area before the Tjiwarl Conservation Estate Native Title Determination is made;
- (d) not to make any claim for Compensation, nor to authorise any other person to bring such a claim on behalf of any member of the Tjiwarl People, against the State for the effects of, or the exercise of any right or obligations created by, any act (including a future act) done in relation to the Original Wanjarri Nature Reserve Area before the Tjiwarl Conservation Estate Native Title Determination is made; and
- (e) that if a claim for Compensation is made under the Native Title Act, or any other State Law, in breach of clause 7.2(d), then any of the State Parties may plead the terms of this Agreement in bar of, or in response to, that claim for Compensation in favour of the State.

7.3 Post 17 June 2020 State Compensation Liability for renewal etc of mining tenements excluded from Compensable Acts

For the avoidance of doubt, the Parties acknowledge and agree that the full and final settlement of the liability of the State for Compensable Acts in clause 7.1(a)(iv) excludes any Compensation liability of the State in respect of any grant, renewal or extension of a mining tenement within the Agreement Area after 17 June 2020 which is not a Compensable Act, regardless of whether the initial grant or any previous renewal or extension of a mining tenement was a Compensable Act.

7.4 Liability unrelated to Compensation excluded from Released Acts

The Parties acknowledge and agree that the full and final settlement of the liability of the State in clause 7.1 excludes liability unrelated to Compensation for an effect on native title under the Native Title Act and State Law, including any entitlement to compensation that is payable (or alleged to be payable) by the State in respect of any obligation on the State to remedy any Contaminated Sites or undertake rehabilitations works on Contaminated Sites.

7.5 Post 11 January 1999 Compensation Liability of third parties under the Mining Act excluded from Released Acts

The Parties acknowledge and agree that the full and final settlement of the liability of the State in clause 7.1 excludes any Compensation liability for or in respect of any act for which an entitlement to Compensation arises for which a third party is or may be liable, including:

- (a) under the Native Title Act, whether or not the subject of the Compensation Claims, including the grant, renewal or extension of a mining tenement under the Mining Act where the grant, renewal or extension occurred on or after 11 January 1999; and
- (b) as provided under section 125A of the Mining Act, comprising grants, extensions or renewals to which Subdivision M of the Native Title Act applies,

(Third Party Acts).

7.6 Withdrawal of Compensation Claims and no further claim for Compensation against the State

- (a) The Tjiwarl Parties agree that in consideration for the Tjiwarl Compensation delivered by the State to Tjiwarl AC, for the benefit of the Tjiwarl People, in accordance with this Agreement, they will:
 - (i) as soon as practicable following the Conclusive Registration Date, do all things necessary to seek leave to withdraw any claims to Compensation made against the State in the Compensation Claims in relation to any Released Act, including any Compensable Acts;
 - (ii) not make any further claim for Compensation, nor will they authorise any other person to bring such a claim on behalf of any member of the Tjiwarl People, against the State for the effects of, or the exercise of any right or obligations created by, a Released Act on any native title rights and interests in the Agreement Area; and
 - (iii) do everything which is lawfully and reasonably within its capability, other than bringing legal proceedings, to ensure that each person who is from time to time an adult member of Tjiwarl AC does not make any further claim for Compensation, whether on their own behalf or on behalf of any other member of the Tjiwarl People, against the State, for the effects of, or the exercise of any right or obligations created by, a Released Act on any native title rights and interests in the Agreement Area.
- (b) For the avoidance of doubt, the Parties agree that the Compensation Claim the subject of proceedings WAD 141 of 2020 may remain on foot in relation to Third Party Acts, but the

Tjiwarl Parties will, as soon as practicable following the Conclusive Registration Date, seek leave to withdraw any claims to Compensation made against the State in respect of a Third Party Act in the Compensation Claims.

- (c) If a further claim for Compensation is made under the Native Title Act, or any other State Law, in breach of clause 7.6(a), then any of the State Parties may plead:
- (i) the terms of this Agreement; and
 - (ii) section 49 of the Native Title Act,
- in bar of, or in response to, that claim for Compensation in favour of the State.

7.7 Full and final settlement of the State's liability survives termination of this Agreement

For the avoidance of doubt, in the event that this Agreement is terminated under clause 4.3, the full and final settlement of the State's liability under this clause 7 survives termination, except in the case of termination under clause 4.3(b) where the Agreement has not been Conclusively Registered.

8. Consent to Future Acts

This clause sets out the things parties agree will happen after the Agreement starts and are required to provide the Tjiwarl Compensation package to the Tjiwarl People. This clause is needed by the Native Title Act and ensures that this Agreement can be registered as an ILUA.

8.1 Parties' Consent

The Parties state as follows:

- (a) to the extent that they are future acts, the acts set out in clauses 8.2, 8.3, 8.4 and 8.5 are consented to by the Parties with the intent that such statement of consent satisfies the requirements of section 24EB(1)(b) of the Native Title Act; and
- (b) for the avoidance of doubt and to the extent, if at all, that the following acts are not considered to be consented to for the purpose of clause 8.1(a), the Parties consent to the doing of all things ancillary to the acts described in clauses 8.2, 8.3, 8.4 and 8.5, with the intent that such statement of consent satisfies the requirements of section 24EB(1)(b) of the Native Title Act.

8.2 Parties' consent to future acts in the Mining Business Schedule

Each Party consents to:

- (a) the grant of Mining Exploration Tenure in accordance with clause 5.4(d) or 5.5(b) of the Mining Business Schedule;
- (b) the grant of Other Mining Tenure in accordance with clause 6.5(c) or 6.6(b)(ii) of the Mining Business Schedule;
- (c) the grant of Mining Infrastructure Licences in accordance with clause 7.4(c) or 7.5(b)(ii) of the Mining Business Schedule;
- (d) the grant of Mining Water Licences in accordance with clause 8.4(c) or 8.6(d) of the Mining Business Schedule;
- (e) the grant of PGER Exploration Tenure in accordance with clause 9.4(c) or 9.5(b)(ii) of the Mining Business Schedule; and
- (f) the grant of Other PGER Tenure in accordance with clause 10.6(b) or 10.7(b)(ii) of the Mining Business Schedule.

8.3 Parties' consents to future acts in the Water Schedule

Each Party consents to the grant of RIWI Licences in accordance with clause 6.4(b) or 6.6(b) of the Water Schedule.

8.4 Parties' consents to future acts in the Land Estate Schedule

To the extent that it is a future act, each Party consents to:

- (a) the grant, issue, transfer, conveyance, reservation, conferral or creation of any tenure, interest or authority in, or over, land under the LA Act:
 - (i) to the Landholding Body; or
 - (ii) which is directly necessary to facilitate Handover to the Landholding Body; and
- (b) any land assembly activities required to give effect to clause 8.4(a).

8.5 Parties' consents to future acts in the Conservation Estate Schedule

Each Party consents to the doing of the following future acts in accordance with the Conservation Estate Schedule:

- (a) the addition of the Wanjarri Nature Reserve Addition to the Wanjarri Nature Reserve by order of the Minister for Lands under section 42(3)(a) of the LA Act;
- (b) the reservation of the Yeelirrie Lake Mason Reserve for the purpose of National Park and for it to be classified as a class A reserve by orders of the Minister for Lands under sections 41 and 42 of the LA Act;
- (c) the Joint Vesting in the Commission and Tjiwarl AC of the Wanjarri Nature Reserve and the Yeelirrie Lake Mason Reserve;
- (d) the creation of the Wanjarri Nature Reserve Access Easement;
- (e) the creation of a right of access to Reserve 12207;
- (f) the creation and Joint Vesting of the Future Conservation Reserves;
- (g) the Land Assembly Activities; and
- (h) the grant, issue or creation, from time to time, of any lease, licence permit or other authority which is granted, issued or created under the CALM Act or the Biodiversity Conservation Act over the Wanjarri Nature Reserve, the Yeelirrie Lake Mason Reserve or the Future Conservation Reserves.

8.6 Agreement to future act includes exercise of rights

For the avoidance of doubt, the consent to the doing of the future acts referred to in clauses 8.2, 8.3, 8.4 and 8.5 includes consent to the exercise of any power, duty or right or the discharge of any obligation created by those acts by the person on whom the power, duty, right or obligation is conferred.

8.7 Non-extinguishment principle applies

- (a) The Parties acknowledge that the non-extinguishment principle applies to the future acts referred to in clauses 8.2, 8.3, 8.4 and 8.5.
- (b) For the avoidance of doubt, the doing of the future acts referred to in clauses 8.2, 8.3, 8.4 and 8.5, and the exercise of any power, duty or right or the discharge of any obligation created by those acts, shall prevail over any native title rights or interests and any exercise of those rights and interests, but does not extinguish them.

8.8 No Right to Negotiate

The Parties agree that, on and from Conclusive Registration:

- (a) the right to negotiate procedure under Part 2, Division 3, Subdivision P of the Native Title Act does not apply to any of the acts referred to in clauses 8.2, 8.3, 8.4 and 8.5, with the intent that such statement satisfies the requirement of section 24EB(1)(c) of the Native Title Act; and
- (b) no other procedural requirements in Part 2 Division 3 of the NT Act apply to the future acts referred to in clauses 8.2, 8.3, 8.4 and 8.5.

8.9 No Objection

- (a) Each Tjiwarl Party agrees:
 - (i) not to make any objection to the doing of the future acts consented to in clauses 8.2, 8.3, 8.4 and 8.5, nor to authorise any other person to make any objection on its behalf or on behalf of any member of the Tjiwarl People; and
 - (ii) not to challenge the validity (under the Native Title Act, the LA Act or otherwise) of any of the future acts consented to in clauses 8.2, 8.3, 8.4 and 8.5, nor to authorise any other person to make any such challenge on its behalf or on behalf of any member of the Tjiwarl People,

other than in accordance with the processes provided in this Agreement.
- (b) If a Tjiwarl Party or any member of the Tjiwarl People makes any objection or other challenge in breach of clause 8.9(a), the State, the Tjiwarl Parties or any member of the Tjiwarl Parties may plead the terms of this Agreement in bar of that claim.

8.10 Consent preserved in event of breach

A breach of this Agreement by any Party does not nullify the consent to, or the doing of, the future acts referred to in clauses 8.2, 8.3, 8.4 and 8.5 where the consent is given in accordance with the processes provided in this Agreement.

9. Working together

This clause describes how the State and Tjiwarl AC will work together through an Implementation Committee and other Working Groups and meetings to progress the Parties' commitments under this Agreement.

9.1 Relationship between the Parties

- (a) The Parties acknowledge their commitment to working together to continue an ongoing, direct relationship and dialogue.
- (b) In light of the Parties' commitment in clause 9.1(a), the Parties have agreed to:
 - (i) establish the Implementation Committee;
 - (ii) establish the following groups (together the **Working Groups**):
 - (A) Research and Development Working Group;
 - (B) Economic Empowerment Working Group;
 - (C) Mining Business Working Group;
 - (D) Water Working Group; and
 - (E) Land Estate Working Group; and
 - (iii) to hold the meetings referred to in clauses 9.5, 9.6 and 9.7.

9.2 Implementation Committee

- (a) The Parties agree to establish an Implementation Committee for the purpose of ensuring and facilitating the implementation of this Agreement in accordance with the Implementation Committee's Terms of Reference given in Schedule 3.
- (b) The Implementation Committee will be:
 - (i) co-chaired by the State and Tjiwarl AC; and
 - (ii) comprised of representatives from relevant State agencies and Tjiwarl AC.
- (c) The Implementation Committee will meet:
 - (i) every month during the first two years following Conclusive Registration; and
 - (ii) subject to clause 9.2(d), at least every six months during the Term of this Agreement,

unless otherwise agreed between the Parties at a meeting of the Implementation Committee.

- (d) Following the second anniversary of Conclusive Registration, and every four years during the term of this Agreement, the Parties will review their commitment and timing for ongoing meetings of the Implementation Committee.

9.3 Research and Development Working Group

The Parties agree to establish a Research and Development Working Group to work collaboratively to:

- (a) facilitate Tjiwarl AC to manage the expenditure of the Research and Development Funding in accordance with Tjiwarl AC policies and directions;
- (b) allow Tjiwarl AC to benefit from the State's knowledge in relation to potential Proposed Research and Development Activities;
- (c) identify opportunities for the State's support of potential Proposed Research and Development Activities;
- (d) identify additional sources of funding (or funding partners), and non-monetary support, and secure third party investments for the Proposed Research and Development Activities; and
- (e) to establish sub-groups for focused areas identified by the Research and Development Working Group,

in accordance with the Research and Development Working Group Terms of Reference set out in Schedule 3.

9.4 Economic Empowerment Working Group

The Parties agree to establish an Economic Empowerment Working Group to work collaboratively to:

- (a) facilitate Tjiwarl AC to manage the expenditure of the Economic Empowerment Funding in accordance with Tjiwarl AC policies and directions;
- (b) share knowledge in relation to potential economic empowerment opportunities for Tjiwarl People and Tjiwarl Businesses;
- (c) identify opportunities for the State's support of potential Economic Development Activities; and
- (d) identify additional sources of funding (or funding partners), and non-monetary support, and secure third party investments for the Proposed Facilitation of Economic Opportunities,

in accordance with the Economic Empowerment Working Group Terms of Reference set out in Schedule 3.

9.5 Meetings between Tjiwarl AC and the Minister for Aboriginal Affairs

- (a) The Parties acknowledge the importance of maintaining a direct relationship and dialogue between the Minister for Aboriginal Affairs and Tjiwarl AC.
- (b) The Minister for Aboriginal Affairs agrees to meet with Tjiwarl AC each year, for the first three years of the term of this Agreement. The first meeting will be arranged through the Implementation Committee, within six months of Conclusive Registration, or as otherwise agreed between the Parties and the agenda settled between the Implementation Committee and the office of the Minister for Aboriginal Affairs.
- (c) Following the third meeting with the Minister for Aboriginal Affairs, the Parties will review their commitment and timing for ongoing meetings through the Implementation Committee.

9.6 Regional meeting of the Aboriginal Affairs Coordinating Committee

- (a) Prior to the meeting contemplated in clause 9.7(a), the Implementation Committee will prepare a proposal to be tabled at the Native Title Deputies Group regarding a recommendation to the Aboriginal Affairs Coordinating Committee for:
 - (i) an annual regional meeting to be scheduled to be held in the Goldfields region of Western Australia (**Goldfields Native Title Forum**); and
 - (ii) representatives of Tjiwarl AC to be invited to attend the annual regional meeting.
- (b) The proposal will outline the objectives of the meeting, proposed attendance, duration and regularity.

9.7 Meetings with the Native Title Deputies Group

The Native Title Deputies Group agrees to invite nominated representatives from Tjiwarl AC to attend:

- (a) the first meeting of the Native Title Deputies Group scheduled following Conclusive Registration to reach agreement in relation to the following:
 - (i) the objectives of the Goldfields Native Title Forum;

- (ii) the recommendation to be made to the Aboriginal Affairs Coordinating Committee referred to in clause 9.6(a)(i);
 - (iii) the frequency of future meetings; and
 - (iv) the representatives to be invited to attend future meetings; and
- (b) three further meetings of the Native Title Deputies Group during the first year following Conclusive Registration.

10. Monetary payments

This clause sets out the monetary payments to be paid by the State to Tjiwarl AC for the benefit of the Tjiwarl People, totalling up to \$25.475 million, the purposes for each of the monetary payments and the manner in which these payments are to be made.

10.1 Funding for Socio-Economic Study paid by the State to Tjiwarl AC

The Parties acknowledge that funding of up to \$400,000.00 for the purpose of funding the Baseline Socio-Economic Study (**Baseline Socio-Economic Study Funding**) will be provided by the State prior to the Conclusive Registration Date.

10.2 Summary of monetary payments to be paid by the State to Tjiwarl AC

The State agrees to pay to Tjiwarl AC, for the benefit of the Tjiwarl People, the monetary payments in the manner specified in clauses 10.3, 10.4, 10.5 and 10.6 (**Tjiwarl Monetary Compensation**).

10.3 Compensation Money

- (a) The State agrees to pay Tjiwarl AC the sum of \$18,810,000, by one instalment payment, within 20 Business Days of the Conclusive Registration Date following receipt by the State of an invoice from Tjiwarl AC (**First Compensation Payment**).
- (b) The Parties acknowledge and agree that:
 - (i) the First Compensation Payment provided under clause 10.3(a) is to be expended by Tjiwarl AC for the benefit of the Tjiwarl People in its full discretion;

- (ii) the State will not have any involvement in Tjiwarl AC's decision-making process or the decisions made by the Tjiwarl AC in relation to the expenditure of the First Compensation Payment; and
- (iii) notwithstanding anything else in this Agreement, the State is not bound to enquire as to the manner in which the First Compensation Payment is expended by Tjiwarl AC.

10.4 Research and Development Funding

- (a) The State agrees to pay Tjiwarl AC the sum of \$2,290,000, by two instalment payments as follows:
 - (i) \$1,145,000 within 20 Business Days of the Conclusive Registration Date following receipt by the State of an invoice from Tjiwarl AC; and
 - (ii) \$1,145,000, adjusted for CPI in accordance with clause 10.9, within 20 Business Days of the first anniversary of the Conclusive Registration Date following receipt by the State of an invoice from Tjiwarl AC, which invoice may not be sent prior to the CPI Adjustment Date

(the **Research and Development Funding**).
- (b) The Parties acknowledge and agree that the Research and Development Funding is to be expended by Tjiwarl AC for the benefit of the Tjiwarl People for some or all of the following purposes: in consultation with the Research and Development Working Group:
 - (i) undertaking research on the Tjiwarl People's history including engaging experts and data management;
 - (ii) funding language programs and arts development;
 - (iii) establishing on-country operations and an on-country cultural hub;
 - (iv) funding potential repatriation of the Tjiwarl People's cultural material;
 - (v) funding arts programs;
 - (vi) undertaking consultation regarding on-country signage;
 - (vii) funding secondment and employment opportunities;
 - (viii) undertaking scientific data gathering on Tjiwarl Country;
 - (ix) undertaking cultural heritage mapping;

- (x) undertaking the Tjiwarl Water Study and creating the Tjiwarl Water Plan described in clause 16 and the Water Schedule; and/or
 - (xi) funding any other research and development activities as otherwise agreed,
(together the **Proposed Research and Development Activities**).
- (c) The Parties acknowledge that the Research and Development Funding is a contribution by the State towards the Proposed Research and Development Activities and nothing in this Agreement prevents the Parties from identifying other sources of funding to supplement the Research and Development Funding.

10.5 Economic Empowerment Funding

- (a) The State agrees to pay Tjiwarl AC the sum of \$3,000,000, by two instalment payments as follows:
- (i) \$1,500,000 within 20 Business Days of the Conclusive Registration Date following receipt by the State of an invoice from Tjiwarl AC; and
 - (ii) \$1,500,000, adjusted for CPI in accordance with clause 10.9, within 20 Business Days of the first anniversary of the Conclusive Registration Date following receipt by the State of an invoice from Tjiwarl AC, which invoice may not be sent prior to the CPI Adjustment Date
- (the **Economic Empowerment Funding**).
- (b) The Parties acknowledge and agree that the Economic Empowerment Funding is to be expended by Tjiwarl AC for the benefit of the Tjiwarl People for some or all of the following purposes through consultation with the Economic Empowerment Working Group:
- (i) facilitating economic opportunities for the Tjiwarl People identified by the Baseline Socio-Economic Study;
 - (ii) facilitating the economic opportunities identified in clause 13; and/or
 - (iii) funding any other activities or opportunities for the economic development of the Tjiwarl People
- (together the **Proposed Economic Development Activities**).
- (c) The Parties acknowledge that the Economic Empowerment Funding is a contribution by the State towards the Proposed Economic Development Activities and nothing in this

Agreement prevents the Parties from identifying other sources of funding to supplement the Economic Empowerment Funding.

10.6 Implementation Funding

- (a) The State agrees to pay Tjiwarl AC the sum of \$1,375,000, by one instalment payment, within 20 Business Days of the Conclusive Registration Date following receipt by the State of an invoice from Tjiwarl AC (the **Implementation Funding**).
- (b) The Parties acknowledge and agree that the Implementation Funding is to be expended by Tjiwarl AC for the benefit of the Tjiwarl People for the purpose of supporting the implementation of this Agreement by Tjiwarl AC.
- (c) For the avoidance of doubt, other than the Implementation Funding described in this clause 10.6, each Party bears its own costs of implementation of this Agreement, including the costs of attending meetings of the Implementation Committee, the Working Groups or any other meetings required by, or held in accordance with, any Schedule of this Agreement.

10.7 Manner of payment

- (a) Tjiwarl AC must within 20 Business Days of the Execution Date:
 - (i) to the extent it has not already done so, establish an interest bearing bank account or bank accounts with an Australian bank into which the Tjiwarl Monetary Compensation is to be paid; and
 - (ii) provide the State with details of that bank account or bank accounts, and details regarding which monetary payment should be paid into the nominated bank account or bank accounts.
- (b) At any time after the Execution Date, Tjiwarl AC may provide written notice to the State nominating an alternative interest bearing bank account or bank accounts into which any Tjiwarl Monetary Compensation payable after the date of the notice is to be paid, together with details regarding which monetary payment should be paid into the nominated bank account or bank accounts.
- (c) The State Parties agree to pay the Tjiwarl Monetary Compensation to Tjiwarl AC in clear funds by way of electronic funds transfer into the bank account or bank accounts nominated by Tjiwarl AC in a notice provided under clause 10.7(a) or 10.7(b).

10.8 Interest on Late Payments

- (a) If the State fails to pay any Tjiwarl Monetary Compensation within 30 Business Days of the date on which an invoice is rendered by Tjiwarl AC (**Due Date**), then the State will pay interest on the outstanding amount at the interest rate prescribed under section 8(1)(a) of the *Civil Judgments Enforcement Act 2004* (WA) from the Due Date to the date of payment.
- (b) Any such interest will be payable by the State into the bank account(s) nominated by Tjiwarl AC in a notice provided under clause 10.7(a) or 10.7(b).

10.9 CPI adjustment

On each CPI Adjustment Date, each of the monetary payments payable by the State under clauses 10.4(a)(ii) and 10.5(a)(ii) will be cumulatively adjusted in accordance with the CPI Calculation, but never so as to reduce in any year the amount of a monetary payment in comparison with the equivalent amount that was paid in the preceding year.

10.10 Support for additional funding

- (a) The State acknowledges that Tjiwarl AC or the Landholding Body may seek to apply to:
 - (i) secure additional funding, to supplement the Tjiwarl Monetary Compensation to be paid by the State, to assist to progress all aspects of this Agreement (**Additional Funding Applications**); and
 - (ii) obtain relief, or an exemption from, any requirement to pay transactional costs such as Local Government rates, stamp duty or other taxes under State legislation (**Cost Exemption Applications**).
- (b) The State, acting through the Implementation Committee, agrees to provide Tjiwarl AC with:
 - (i) ongoing support with Additional Funding Applications, including by:
 - (A) identifying any relevant State, Commonwealth or other grant opportunities for Additional Funding; and
 - (B) upon Tjiwarl AC's request, providing letters of support for Additional Funding Applications where appropriate; and
 - (ii) appropriate support with Cost Exemption Applications, as identified by the Implementation Committee.

11. Tjiwarl Healing

This clause explains how the State and Tjiwarl AC will work together, through the Research and Development Working Group, to:

- *deliver a statement in WA Parliament about this Agreement;*
- *to make submissions regarding the naming or renaming of places on Tjiwarl Country;*
- *to develop a way to co-manage or return Tjiwarl Cultural Materials to Tjiwarl People; and*
- *to share information about Tjiwarl language, history and culture in schools.*

11.1 Parliamentary Statement

- (a) The State, acting through the Minister for Aboriginal Affairs, agrees to:
- (i) liaise with Tjiwarl AC in relation to the nature of a ministerial statement to be prepared and delivered to Parliament; and
 - (ii) consider feedback from Tjiwarl AC regarding the proposed content of the ministerial statement with respect to the matters set out in clause 11.1(b).
- (b) Subject to clause 11.1(c), the State, acting through the Minister for Aboriginal Affairs, agrees to deliver a ministerial statement in Parliament acknowledging:
- (i) the matters contained in the Preamble;
 - (ii) the co-design process undertaken by the Parties to negotiate and draft this Agreement;
 - (iii) the importance of this Agreement;
 - (iv) the recognition of Tjiwarl People as the traditional owners of Tjiwarl Country; and
 - (v) the meaningful ongoing relationship between the Parties,
- within 60 Business Days of Conclusive Registration and on a date when Parliament is sitting.
- (c) The State will inform Tjiwarl AC when the Minister for Aboriginal Affairs intends to deliver a ministerial statement in Parliament by providing Tjiwarl AC with as much prior notice as reasonably practicable.

11.2 Tjiwarl Language Place Names

- (a) Subject to clause 11.2(b), the State and Tjiwarl AC, acting through the Research and Development Working Group, agree to make joint submissions to the Geographic Names Committee with respect to a proposal to name, or rename, any place within Tjiwarl Country.
- (b) The joint submissions referred to in clause 11.2(a) will only be submitted to the Geographic Names Committee in relation to places that are within the jurisdiction of the Geographic Names Committee under the LA Act.
- (c) The Parties agree to do all things necessary to support the joint submissions during any the public consultation undertaken in respect of the proposal to name, or rename, any place within Tjiwarl Country.
- (d) The State agrees to support Tjiwarl AC, acting through the Research and Development Working Group, to approach the relevant Local Government to erect appropriate signage in Tjiwarl Country.

11.3 Repatriation of Cultural Materials

The State and Tjiwarl AC, acting through the Research and Development Working Group, agree to jointly develop an agreed:

- (a) process for the identification of Tjiwarl Cultural Materials within the WA Museum collections; and
- (b) approach to the ongoing co-custodial management of the Tjiwarl Cultural Materials and their potential return to the Tjiwarl People where appropriate.

11.4 Tjiwarl Culture in Schools

The State agrees to work with Tjiwarl AC, through the Research and Development Working Group, to explore how information about Tjiwarl People's language, history and culture can be incorporated into regional schools attended by Tjiwarl People as part of the Department of Education's commitment to developing culturally responsive schools.

12. Tjiwarl Knowledge

This clause talks about the aspirations of Tjiwarl People to recognise, protect, maintain and record Tjiwarl Cultural and Intellectual Property and describes how the Parties will work together to further those aspirations.

- (a) The Parties acknowledge and recognise that:
 - (i) Tjiwarl Cultural and Intellectual Property is important to the Tjiwarl People; and
 - (ii) Tjiwarl AC aspires to establish a framework with respect of the use, transfer, protection and recording of Tjiwarl Cultural and Intellectual Property which:
 - (A) recognises, protects and respects the value of Tjiwarl Cultural and Intellectual Property;
 - (B) promotes engagement and collaboration with, and seeks the prior informed consent of, the holders of Tjiwarl Cultural and Intellectual Property for the use or transfer of that material;
 - (C) provides for the sharing, in a fair and equitable way, of any benefits arising from the use or transfer of the Tjiwarl Cultural and Intellectual Property;
 - (D) promotes opportunities for Tjiwarl People to benefit from existing or new opportunities in respect of natural resources, including genetic resources, for research, development and commercial exploitation; and
 - (E) documents and records Tjiwarl Cultural and Intellectual Property in a knowledge register.
- (b) The State, acting through the Research and Development Working Group will, to the extent that it is lawful and in accordance with relevant Public Sector Standards, work with Tjiwarl AC to:
 - (i) maximise existing and new opportunities to recognise, protect, maintain, record and further their aspirations in respect of Tjiwarl Cultural and Intellectual Property; and
 - (ii) support Tjiwarl AC's aspirations to establish a framework with respect of the use, transfer, protection and recording of Tjiwarl Cultural and Intellectual Property as described in clause 12(a)(ii).

- (c) The Parties acknowledge and agree that to the extent that this Agreement results in the creation of Tjiwarl Cultural and Intellectual Property, the Parties will engage through the Research and Development Working Group to jointly develop an agreed process for the management of that Tjiwarl Cultural and Intellectual Property.
- (d) For the avoidance of doubt, any financial assistance required by Tjiwarl AC for their aspirations in respect of Tjiwarl Cultural and Intellectual Property identified in this clause 12 must be derived from the Research and Development Funding or additional funding secured by Tjiwarl AC through Additional Funding Applications

13. Support for Tjiwarl businesses and economic opportunities

This clause explains how the State and Tjiwarl AC will work together, through the Economic Empowerment Working Group, to:

- *support Tjiwarl People's participation in projects being developed on Tjiwarl Country;*
- *support Tjiwarl Businesses and economic opportunities for Tjiwarl People; and*
- *identify future carbon and sandalwood opportunities for Tjiwarl People.*

13.1 Support for equity ownership and engaging Tjiwarl Businesses

The State, acting through the Economic Empowerment Working Group, agrees to:

- (a) establish a general expectation that Tjiwarl AC and Tjiwarl People should be given the opportunity to participate in project development on Tjiwarl Country by way of equity ownership; and
- (b) encourage the engagement of Tjiwarl Businesses in project development on Tjiwarl Country,

including in material produced and published by the State as part of the implementation of the Mining Business Schedule.

13.2 Additional support for Tjiwarl Businesses

The State will, in accordance with the Aboriginal Procurement Policy, any other relevant State policy and to the extent that it is lawful and in accordance with relevant Public Sector Standards:

- (a) facilitate the provision of advice and the delivery of training to assist Tjiwarl People in applying for and holding mining tenements, including information with respect to compliance obligations that arise as a result of the holding of a mining tenement;
- (b) facilitate Tjiwarl Businesses' access to programs that may, from time to time, provide procurement advisory support and to State government officers who can refer and assist Tjiwarl Businesses to those programs;
- (c) support Tjiwarl Businesses to obtain information about, and complete applications for, the registration of their businesses on recognised local, State and national capability and business registers;
- (d) provide advice to Tjiwarl Businesses to identify tendering opportunities in the Goldfields-Esperance region;
- (e) work with Tjiwarl Businesses to ensure that the State has access to current contact details for those businesses and information about the type of work they have the capacity to undertake; and
- (f) ensure that Tjiwarl People are made aware of regional events with respect to local business capacity building and local business procurement by issuing Tjiwarl AC with relevant information about such events or inviting Tjiwarl AC to attend such events.

13.3 Procurement and contracting opportunities with Main Roads

In addition to the commitments contained in clause 13.2, the Commissioner of Main Roads will, in accordance with the Aboriginal Procurement Policy, any other relevant State policy and to the extent that it is lawful and in accordance with relevant Public Sector Standards, explore and provide opportunities for Tjiwarl Businesses to be engaged in, either directly or facilitated through subcontracting, opportunities to undertake road maintenance and construction work activities on the national and state road network in the Goldfields-Esperance region.

13.4 Support for carbon initiatives

- (a) The Parties acknowledge and recognise that carbon initiatives are important to Tjiwarl People.
- (b) The State, acting through the Economic Empowerment Working Group, is committed to working with Tjiwarl AC to maximise existing and new carbon initiatives, including recognition of the Tjiwarl People's carbon rights in the context of emerging future carbon opportunities, including human induced regeneration carbon farming and fire management

programs (**Future Carbon Operations**), to the extent that it is lawful and in accordance with relevant Public Sector Standards.

- (c) The State acknowledges that:
 - (i) Tjiwarl AC may be an eligible interest holder under the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) whose consent is required for future carbon farming initiatives; and
 - (ii) where the Joint Management Body gives its approval of, or support for, a Future Carbon Operation on the Tjiwarl Conservation Estate, the State will use its best endeavours to support the Tjiwarl People to undertake the Future Carbon Operations to the extent that it is lawful, reasonable and appropriate.

13.5 Support for sandalwood opportunities

- (a) The Parties acknowledge that sandalwood grows on Tjiwarl Country and is important to Tjiwarl People.
- (b) The State, acting through the Economic Empowerment Working Group, is committed to working with Tjiwarl AC to maximise commercial opportunities in relation to sandalwood, including recognition of Tjiwarl AC's private harvesting rights, to the extent that it is lawful, and in accordance with relevant Public Sector Standards.

13.6 Funding for carbon initiatives and sandalwood opportunities

For the avoidance of doubt, any financial assistance required by Tjiwarl AC for:

- (a) carbon initiatives identified in clause 13.4; or
- (b) sandalwood opportunities identified in clause 13.5,

must be derived from the Economic Empowerment Funding or additional funding secured by Tjiwarl AC through Additional Funding Applications.

14. Mining Business

This clause confirms that Schedule 4 (Mining Business) sets out all of the things and processes that the Parties have agreed about how mining will occur on Tjiwarl Country.

The Parties acknowledge and agree that:

- (a) the Mining Business Schedule forms an essential part of this Agreement;
- (b) the Mining Business Schedule contains, among other things, the processes:
 - (i) to be followed by the State and Tjiwarl AC when the State intends granting a mining tenement or PGER Title that is a future act, within the Agreement Area;
 - (ii) for the establishment of a Mining Business Working Group; and
 - (iii) for reviewing the Mining Business Schedule and its annexures; and
- (c) for the avoidance of doubt, each Party, on and from the Conclusive Registration Date, will observe and be bound by the obligations, terms and conditions that apply to that Party, as set out in the Mining Business Schedule.

15. Tjiwarl Water

This clause confirms that Schedule 5 (Water) sets out the things and processes that the Parties have agreed in relation the grant of water licences on Tjiwarl Country and how the parties will work together to create the Tjiwarl Water Plan.

The Parties acknowledge and agree that:

- (a) the Water Schedule forms an essential part of this Agreement;
- (b) the Water Schedule contains, among other things, the process:
 - (i) for the establishment of a Water Working Group;
 - (ii) to undertake the Tjiwarl Water Study and develop the Tjiwarl Water Plan;
 - (iii) by which Tjiwarl AC can access information relating to licences and permits granted under the RIWI Act in the Agreement Area; and
 - (iv) to be followed by the State and Tjiwarl AC when the State intends granting a RIWI Licence in the Agreement Area.

- (c) for the avoidance of doubt, each Party, on and from the Conclusive Registration Date, will observe and be bound by the obligations, terms and conditions that apply to that Party, as set out in the Water Schedule.

16. Tjiwarl Land Estate

This clause confirms that Schedule 6 (Land Estate) sets out the things and processes that the Parties have agreed in relation the grant of land in Tjiwarl Country to the Tjiwarl People

The Parties acknowledge and agree that:

- (a) the Land Estate Schedule forms an essential part of this Agreement;
- (b) the Land Estate Schedule contains, among other things:
 - (i) the establishment of a Land Estate Working Group;
 - (ii) the processes for the establishment of the Tjiwarl Land Estate; and
 - (iii) the tenure deeds that will reflect the general conditions for Handover of land to form part of the Tjiwarl Land Estate; and
- (c) for the avoidance of doubt, each Party, on and from the Conclusive Registration Date, will observe and be bound by the obligations, terms and conditions that apply to that Party, as set out in the Land Estate Schedule.

17. Tjiwarl Conservation Estate

This clause confirms that Schedule 7 (Conservation Estate) sets out the things and processes that the Parties have agreed in relation the creation of the Tjiwarl Conservation Estate.

The Parties acknowledge and agree that:

- (a) the Conservation Estate Schedule forms an essential part of this Agreement;
- (b) the Conservation Estate Schedule contains, among other things:
 - (i) the processes for the creation, joint vesting and joint management of the Tjiwarl Conservation Estate; and

- (ii) the Parties' obligations in relation to the joint management of the Tjiwarl Conservation Estate, including the State's obligations in relation to funding joint management of the Tjiwarl Conservation Estate; and
- (c) for the avoidance of doubt, each Party, on and from the Conclusive Registration Date, will observe and be bound by the obligations, terms and conditions that apply to that Party, as set out in the Conservation Estate Schedule.

18. Restoration of rights on Tjiwarl Country

This clause confirms that Schedule 8 (Restoring Rights to Country) sets out how the Parties will go about restoring exclusive possession native title to the Wanjarri Nature Reserve and parts of the Yeelirrie Lake Mason Reserve.

The Parties acknowledge and agree that:

- (a) the Restoring Rights to Country Schedule forms an essential part of this Agreement;
- (b) the Restoring Rights to Country Schedule contains, among other things:
 - (i) a process to enable the Tjiwarl People to seek a determination of exclusive native title in relation to the:
 - (A) Wanjarri Nature Reserve;
 - (B) Yeelirrie Lake Mason non-exclusive area; and
 - (ii) the Parties' obligations under that process; and
- (c) for the avoidance of doubt, each Party, on and from the Conclusive Registration Date, will observe and be bound by the obligations, terms and conditions that apply to that Party, as set out in the Restoring Rights to Country Schedule.

19. Review

In this clause the Parties agree that they will review the Agreement every 5 years to try and fix any problems that may have occurred and make sure that the Agreement keeps working properly.

19.1 General Principle

The Parties:

- (a) recognise the importance of engaging in regular dialogue regarding the various matters arising under this Agreement to promote its effective implementation and, where appropriate, its variation, to meet their shared and individual objectives in a spirit of partnership and building long-term relationships; and
- (b) agree that if any concerns arise about the implementation of this Agreement, they must first refer such concerns to the Implementation Committee.

19.2 Regular review of the Agreement

- (a) Subject to clause 19.1(b), and in addition to any review provided for in any Schedule of this Agreement, the Implementation Committee must undertake a review of this Agreement on or near the fifth anniversary of the Conclusive Registration Date and every 5 years thereafter (or such other period as is agreed by the Parties).
- (b) If a Party considers that a matter under clause 19.3(c)(iv) arises more than 6 months prior to a review under clause 19.1(a), that Party may request that the Implementation Committee review this Agreement.

19.3 Manner of Review

- (a) Within 30 Business Days of the circumstances in clause 19.2(a) arising or a request being made under clause 19.2(b), the Implementation Committee must meet to commence the review of this Agreement.
- (b) The quorum for a meeting of the Implementation Committee with respect to a review of this Agreement will be four persons, including at least one representative from the State and two from Tjiwarl AC.
- (c) When conducting a review of this Agreement, the Implementation Committee must:

- (i) consider the operation of this Agreement;
 - (ii) identify any implementation issues, the circumstances creating such issues and consider improvements to implementation;
 - (iii) consider whether the Schedules to the Agreement are being implemented effectively and consider any need for changes to the Schedules to improve the workability of those Schedules; and
 - (iv) consider any changes to the law or variations made to the Tjiwarl Determination (other than the variation provided for in this Agreement) which may materially affect this Agreement.
- (d) The Implementation Committee must maintain minutes of its meetings with respect to the review of the Agreement.
- (e) Within three months of completing a review, the Implementation Committee will provide its findings to the Parties for their consideration.
- (f) The findings of the review referred to in clause 19.3(e) are confidential, must be kept confidential and will not be disclosed except as permitted by clause 24.2.

19.4 Outcomes of review

The findings of the review referred to in clause 19.3(e) must be reasonably considered by the Parties. However, no Party is bound to accept or comply with any outcome or recommendations of those findings.

19.5 Agreement to continue

For the avoidance of doubt, unless and until varied under clause 20, the Agreement will continue in full force and effect.

19.6 Costs

Each Party must bear its own costs in relation to any review of the Agreement under this clause.

20. Variation

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

20.1 Variation of this Agreement

- (a) Subject to clause 20.1(b), this Agreement may not be varied unless the variation is effected in writing and executed by all of the Parties.
- (b) The Parties agree that:
 - (i) The Mining Business Schedule may be amended in accordance with clause 13 of that Schedule;
 - (ii) The Water Schedule may be amended in accordance with clause 7 of that Schedule;
 - (iii) The Conservation Estate Schedule may be amended in accordance with clause 5 of that Schedule; and
 - (iv) The Land Estate Schedule may be amended in accordance with clause 19 of that Schedule.

20.2 Variation of Agreement once registered on ILUA Register

- (a) If this Agreement is registered on the ILUA Register, the Parties each agree that they will not, without the prior written consent of each of the other Parties, make any application to revoke or vary the registration of this Agreement on the ILUA Register.
- (b) If the Parties have agreed in accordance with this Agreement to replace or vary the Agreement in a way which requires variation of the details of the Agreement as entered on the ILUA Register:
 - (i) the Parties each agree to do all things necessary to vary the details of this Agreement as entered on the ILUA Register including, if necessary, having this Agreement removed from the ILUA Register and replaced with a varied Agreement; and
 - (ii) any variation of this Agreement only takes effect upon the entry of those amended details on the ILUA Register.

21. Force Majeure

This clause sets out what happens if cultural business or other things beyond the control of the parties (such as floods, fires or pandemics) occur and stop people doing things under the Agreement in time.

21.1 Notice of Force Majeure or Aboriginal Cultural Business

- (a) If any Party is prevented in whole or in part from carrying out its obligations under this Agreement as a result of an event of Force Majeure or Aboriginal Cultural Business, it must immediately notify the other Parties. The notice must be in writing and must:
- (i) specify the obligations it cannot perform;
 - (ii) fully describe the event of Force Majeure or Aboriginal Cultural Business;
 - (iii) estimate the time during which the Force Majeure or Aboriginal Cultural Business will continue; and
 - (iv) specify the measures proposed to be adopted to remedy or abate the Force Majeure or the reasonable steps that will be taken to address the Aboriginal Cultural Business.
- (b) The Party affected by the Force Majeure or Aboriginal Cultural Business will give immediate notice to the other Parties of the cessation of the delay.

21.2 Agreement to continue

While the Force Majeure or Aboriginal Cultural Business continues, this Agreement will continue and remain in force but:

- (a) a Party will not be in default for as long as it continues to be prevented or delayed by such Force Majeure or Aboriginal Cultural Business; and
- (b) the obligations which cannot be performed because of the Force Majeure or Aboriginal Cultural Business will be extended by a period equivalent to the period of the Force Majeure or Aboriginal Cultural Business,

provided that:

- (c) in the case of Force Majeure, the cause of the Force Majeure is remedied as soon as is reasonably practicable by the affected Party;

- (d) in the case of Aboriginal Cultural Business, the Party must use reasonable endeavours to comply with the Agreement as soon as, and to the extent, possible consistently with the Aboriginal Cultural Business; and
- (e) in any case, no Party will be required to settle any strike, lockout, or other industrial disturbance on terms that it does not regard as satisfactory.

21.3 Duty to mitigate

The Party that is prevented from carrying out its obligations under this Agreement as a result of an event of Force Majeure or Aboriginal Cultural Business must take all action reasonably practicable to mitigate any loss suffered by the other Party as a result of its failure to carry out its obligations under this Agreement.

21.4 Suspension of performance

If the Force Majeure or Aboriginal Cultural Business cannot be overcome within 60 Business Days, either Party may, by notice to the other Party, suspend the performance of its obligations and the affected Party's rights under this Agreement until the Force Majeure or Aboriginal Cultural Business has ceased.

22. Default

This clause is about what happens if a Party doesn't do something they are supposed to do under the Agreement in time.

22.1 Events of Default

A Party (the **Defaulting Party**) commits an **Event of Default** for the purposes of this clause 22 where the Defaulting Party:

- (a) commits a material breach of any of the following terms of this Agreement: clause 3, 5, 6, 7.1(b), 8, 10, 11.1, 14, 15, 16, 17, 18, 23.1, 23.5, 23.6, 23.7, 24 or 25;
- (b) in the case of Tjiwarl AC, commits an Insolvency Event; or
- (c) commits 5 material breaches of any of its obligations under this Agreement over any 12 month period, provided that notice of those earlier breaches had been given to the

Defaulting Party at or around the time the breach occurred and that notice identifies that it is a breach for the purpose of this clause 22.1(c).

22.2 Event of Default under clause 22.1(a) or 22.1(c)

- (a) If the Defaulting Party causes an Event of Default referred to in clause 22.1(a) or 22.1(c), any of the other Parties (the **Non-defaulting Party**) may serve a notice (**Default Notice**) on the Defaulting Party specifying:
 - (i) the Event of Default; and
 - (ii) any particular and reasonable action to be taken by the Defaulting Party to remedy, guard against the repeat of, or otherwise address, the Event of Default.
- (b) On receiving the Default Notice under clause 22.2(a), the Defaulting Party must, in good faith, use all reasonable endeavours to remedy the Event of Default within 20 Business Days after receiving the Default Notice.
- (c) If the Defaulting Party could not reasonably remedy the Event of Default within 20 Business Days after receiving the Default Notice, the Defaulting Party must:
 - (i) commence taking steps, in good faith, to remedy the Event of Default within the period of 20 Business Days;
 - (ii) continue taking steps, in good faith, to remedy the Event of Default after the period of 20 Business Days; and
 - (iii) remedy the Event of Default as soon as reasonably practicable but in any event within 60 Business Days after receiving the Default Notice.
- (d) If a Defaulting Party fails to remedy the Event of Default referred to in clause 22.1(a) or 22.1(c) within 20 Business Days of receiving the Default Notice, each of the Non-defaulting Parties may, by notice in writing to the Defaulting Party, suspend the performance of its obligations and the Defaulting Party's rights under this Agreement to the extent specified in the notice until:
 - (i) the Event of Default is remedied;
 - (ii) the Event of Default no longer exists; or
 - (iii) the Non-defaulting Party gives notice in writing that the Event of Default has been waived or remedied to the reasonable satisfaction of the Non-defaulting Party.

22.3 Event of Default under clause 22.1(b)

- (a) If an Event of Default referred to in clause 22.1(b) occurs, the Tjiwarl Parties will continue to be bound by the provisions of this Agreement and Tjiwarl AC will provide notice to all of the State Parties (**Insolvency Notice**) as soon as possible after each of:
- (i) the Insolvency Event occurring;
 - (ii) the appointment of any receiver, manager, receiver and manager, trustee, administrator, controller (as defined in section 9 of the *Corporations Act*) or similar officer (as the case may be); and
 - (iii) the relevant Event of Default ceasing to exist.
- (b) If within 20 Business Days of receiving the Insolvency Notice, the Event of Default referred to in clause 22.1(b) has not been remedied, the State Parties may, subject to clause 22.3(c), by notice in writing to the Tjiwarl Parties, suspend the performance of the State Parties' obligations and the Tjiwarl Parties' rights under this Agreement to the extent specified in the notice until:
- (i) the Event of Default is remedied;
 - (ii) the Event of Default no longer exists; or
 - (iii) the State Parties give notice in writing that the Event of Default has been waived or remedied to the reasonable satisfaction of the State Parties.
- (c) the State may not suspend the performance of the State Parties' obligations and the Tjiwarl Parties' rights under the Mining Business Schedule in the circumstances described in clause 22.3(b).

22.4 Duty to mitigate

A party must take all reasonable steps open to it to mitigate the effects of an Event of Default and take all steps, to the satisfaction of the Non-defaulting Party (acting reasonably), to ensure that further breaches of this Agreement do not occur.

22.5 Remedies do not prejudice any other rights a Party may have

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

23. Dispute Resolution

This clause says that Parties should try and avoid getting into disputes about the Agreement but that if a disagreement happens the clause sets out how the Parties should try and resolve it through negotiation and mediation.

23.1 Avoiding Disputes

The Parties agree that they will each make every effort to ensure that disputes do not arise and that if a dispute does arise the Parties will make every reasonable effort to resolve the dispute informally and within the any relevant Working Group to which the dispute relates before recourse to this clause 23.

23.2 Notice

If there is a dispute between any or all of the Parties in relation to any matter arising out of or in connection with this Agreement (a **Dispute**), any party may serve a written notice of dispute on the other parties to the Dispute (a **Notice of Dispute**). The Notice of Dispute must identify the matter in dispute and provide reasonable details of dispute, including any documentary evidence of the dispute.

23.3 Negotiation of the Dispute

- (a) Following the issue of a Notice of Dispute, the Implementation Committee will meet and seek to resolve the Dispute in good faith.
- (b) If the Implementation Committee has not resolved the Dispute within 10 Business Days of a Notice of Dispute being served (or such other longer period as may be agreed between the Parties), any Party to the Dispute may refer the Dispute to senior representatives of the Parties, being:
 - (i) the directors and the chief executive officer of Tjiwarl AC; and
 - (ii) the Native Title Deputies Group.
- (c) If the senior representatives of the Parties have not resolved the Dispute within 10 Business Days of the Dispute being referred to them under clause 23.3(b) (or such other longer period as may be agreed between the Parties), any Party to the Dispute may refer to the Dispute to mediation in accordance with clause 23.4.

23.4 Mediation

- (a) If the Dispute is referred to mediation under clause 23.3(c):
 - (i) the Parties to the Dispute must seek to agree on the appointment of an independent mediator with relevant experience; or
 - (ii) if the Parties to the Dispute cannot agree on a mediator within 10 Business Days of the referral to mediation, the Chairman of the Resolution Institute will appoint a mediator and the Parties to the Dispute must accept that appointment.
- (b) The role of the mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a Party to the Dispute except if the Party agrees in advance in writing.
- (c) Each Party to a Dispute will pay its own costs of complying with this clause 23.4, save that the State will pay the reasonable costs of a mediator appointed under this clause.
- (d) The Parties to the Dispute will engage in the mediation process in good faith and in an open and conciliatory manner, taking into account any cultural or customary concerns or considerations, with a view to reaching a mutually acceptable compromise to the issues in dispute.
- (e) If the Parties to the Dispute fail to achieve a resolution of the Dispute within 45 Business Days of the appointment of the mediator (or such other longer period as may be agreed between the Parties to the Dispute), any Party to the Dispute may by written notice to the other Parties to the Dispute terminate the mediation process.
- (f) Any Party to the Dispute may, if the mediation is terminated in accordance with clause 23.4(e), take such action as it considers appropriate, including commencing legal proceedings.

23.5 Court Proceedings and Other Relief

- (a) Subject to clause 23.5(b), a Party to a Dispute may not start court proceedings in relation to a Dispute unless:
 - (i) the Dispute has first been referred to negotiation under clause 23.3;
 - (ii) the Dispute has then been referred to a mediator under clause 23.4; and
 - (iii) the mediation has been terminated in accordance with clause 23.4(e).

- (b) Nothing in this clause 23 precludes a Party from seeking urgent interlocutory relief relative to the subject matter of a Dispute from a court of competent jurisdiction, including the right to seek injunctive relief.

23.6 Without Prejudice

Unless otherwise agreed between the Parties to the Dispute, any information or documents obtained through the dispute resolution processes provided by clause 23.3 and 23.4 must be kept confidential and may only be used to attempt to resolve the Dispute, except in connection with a claim for costs associated with a court proceeding.

23.7 Obligations continue

Subject to clause 23.8, if a Dispute is referred for resolution under any part of this clause 23 or court proceedings are started in respect of it, the Parties must continue to perform their respective obligations under this Agreement so far as circumstances will allow and such performance will be without prejudice to the final resolution, decision or judgment made in respect of the matter in Dispute.

23.8 Extension of time

Without prejudice to the power of a mediator or court to extend or vary any period or date referred to in this Agreement, in order to preserve the rights of a Party to a Dispute, the Parties or the Parties to the Dispute (as applicable) will consult with each other and use all reasonable endeavours to agree any extension or variation so required.

23.9 Breach of this clause

If a Party to a Dispute breaches clauses 23.2 to 23.4, the other Parties to the Dispute do not have to comply with those clauses in relation to the Dispute before starting court proceedings.

24. Confidentiality

This clause sets out what information about the Agreement must stay confidential between the parties and when it can be given to other people.

24.1 Generally

- (a) Each Party agrees that all information disclosed by one Party (**Disclosing Party**) to another Party (**Receiving Party**) during negotiations leading up to executing this Agreement and during the term of this Agreement which is identified by the Disclosing Party as confidential at the time of disclosure, but not including:
- (i) information the Receiving Party, prior to disclosure, already knew or created (whether alone or jointly with any third person) independently of the Disclosing Party; or
 - (ii) information that is public knowledge (otherwise than as a result of a breach of confidentiality by the Receiving Party or any of its permitted disclosees),
- is confidential, must be kept confidential and will not be disclosed except as permitted by this clause 24 (**Confidential Information**).
- (b) The Parties acknowledge and agree that:
- (i) some or all of the information referred to in clause 24.1(a) may be information given, a statement made or a document produced at a mediation conference which is the subject of a direction under section 94L(1) of the Native Title Act;
 - (ii) if Confidential Information is also the subject of a direction under section 94L(1) of the Native Title Act, that information may not be disclosed otherwise than in accordance with the Native Title Act; and
 - (iii) nothing in this Agreement authorises disclosure of that information otherwise than in accordance with the Native Title Act.

24.2 Permitted disclosure

Subject to clauses 24.1(b) and 24.3, a Receiving Party may disclose Confidential Information:

- (a) if it has the prior written consent of the Disclosing Party;
- (b) to the extent required by Law;

- (c) to the extent that the information is reasonably necessary for any processes or application under any Law or related to any approvals under or in accordance with this Agreement;
- (d) subject to clause 23.6, in connection with any dispute or litigation concerning this Agreement or its subject matter;
- (e) to the Receiving Party's members (including Tjiwarl People in the case of Tjiwarl AC), agents, officers, employees, advisers and consultants insofar as such disclosure is reasonably necessary for the purposes of this Agreement;
- (f) to the Receiving Party's auditors, financiers, and related bodies corporate insofar as such disclosure is reasonably necessary for the purposes of this Agreement;
- (g) to a proposed assignee of a Party's interest under this Agreement; and
- (h) if a State Party is required to disclose the Confidential Information to any parliamentary body, Minister or governmental entity, including, without limitation, disclosure in response to parliamentary questions, ministerial inquiries and inquiries conducted by or on behalf of the Auditor-General of the State of Western Australia.

24.3 Disclosure requirements

Before making any disclosure to a person under clause 24.2, the Receiving Party must:

- (a) in each case, inform the entity or person to whom the Confidential Information is being disclosed of the Receiving Party's obligations under this Agreement;
- (b) in the case of a disclosure under clause 24.2(b), 24.2(c) or 24.2(d), notify the Disclosing Party and give that Party a reasonable opportunity to take any steps that that Party considers necessary to protect the confidentiality of that information; and
- (c) in the case of a disclosure to a person or entity under clause 24.2(g), procure that the person or entity executes a deed with the Disclosing Party, in such form acceptable to the Disclosing Party (acting reasonably), imposing on the person or entity an undertaking of confidentiality having substantially similar effect as clause 24 of this Agreement.

24.4 Party may seek injunction

Each Party acknowledges that

- (a) it is aware that any breach of this clause 24 may result in the Disclosing Party suffering loss or damage, for which monetary damages may not be an adequate remedy; and

- (b) in the event of a suspected or actual breach of this clause 24 or any obligation of confidentiality under this Agreement, any adversely affected Disclosing Party is entitled to seek injunctive relief or an order for specific performance of the terms of this clause.

24.5 No waiver or transfer of intellectual property rights

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

25. Publication and Announcements

This clause says that the Agreement can be made public on the Conclusive Registration Date and that the Parties must agree before making press releases or announcements about the Agreement.

25.1 Publication of the Agreement

The Parties agree that any Party may publish:

- (a) this Agreement as at the Conclusive Registration Date;
- (b) any subsequent variation to this Agreement; and
- (c) subject to clause 24, any information in relation to this Agreement.

25.2 Press Releases and Public Announcements

The Parties must not make or authorise a written press release or written public announcement relating to this Agreement (**Announcement**) unless:

- (a) it is required to be made by Law and the disclosing party has given as much notice as possible to, and has consulted (to the fullest extent reasonable in the circumstances) with, the non-disclosing parties as to the form and content of the Announcement; or
- (b) it has the prior written approval from the State and Tjiwarl AC.

26. Assignment and Encumbrances

This clause sets out when a Party can transfer their interests in the Agreement to another person. It says that the State can't transfer its interests and that Tjiwarl AC can only transfer its interest to a new PBC which may replace Tjiwarl AC in the future.

26.1 General

- (a) The State Parties may not assign, transfer, novate or otherwise dispose of their rights, title, obligations or interest under this Agreement except as may otherwise be permitted by this Agreement.
- (b) The Tjiwarl Parties may not assign, transfer, novate or otherwise dispose of their rights, title, obligations or interests under this Agreement except in accordance with this clause 26.2.

26.2 Tjiwarl AC assignment

- (a) Tjiwarl AC may only assign, transfer, novate or otherwise dispose of its rights, title, obligations or interests under this Agreement to a registered native title body corporate (**Replacement RNTBC**) that has replaced it as the prescribed body corporate for the Tjiwarl Determination by a determination of the Federal Court of Australia under sections 56 or 57 of the Native Title Act.
- (b) If Tjiwarl AC proposes to assign, transfer novate or otherwise dispose of its rights, title, obligations and interest under this Agreement (**Proposed Assignment**) to the Replacement RNTBC under clause 26.2(a), it must give written notice to the State which sets out:
 - (i) the identity of the proposed Replacement RNTBC;
 - (ii) material establishing that the proposed Replacement RNTBC satisfies the requirements set out in clause 26.2(a); and
 - (iii) the date on which the Proposed Assignment is to take effect, which must be no less than 20 Business Days after the date of the written notice.
- (c) Within 20 Business Days of receiving a notice under clause 26.2(b), the State must give written notice to Tjiwarl AC as to whether the State consents to the Proposed Assignment, which consent may not be unreasonably withheld.

- (d) If the State gives its consent under clause 26.2(c), Tjiwarl AC must:
- (i) promptly procure the execution of a deed by the Replacement RNTBC, in a form acceptable to the State Parties (acting reasonably), by which the Replacement RNTBC agrees to:
 - (A) be bound by this Agreement and to assume all of Tjiwarl AC's obligations under the Agreement; and
 - (B) execute all documents and do (or refrain from doing) all acts and things necessary to ensure the performance of and compliance with those obligations in a timely manner,as if it were a party to this Agreement; and
 - (ii) do all other things necessary to give effect to the assumption by the Replacement RNTBC of the obligations of Tjiwarl AC under this Agreement.

26.3 No encumbrance

No Party may grant an encumbrance, mortgage or charge in respect of the whole or any part of its rights, title, obligations and interests under this Agreement.

27. GST

This clause is about when GST is payable and who must pay it.

27.1 Interpretation

Any reference in this clause 27 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.

27.2 Amounts payable exclusive of GST

Unless otherwise indicated, all amounts and other consideration for any Taxable Supply made under this Agreement are exclusive of GST.

27.3 GST Payable

- (a) If GST is or becomes payable by a Party in relation to any supply that it makes under, in connection with or resulting from this Agreement (**Supplier**), the Parties agree that, in

addition to any consideration provided by a Party (**Recipient**) for a supply from the Supplier, the Recipient must also pay the Supplier, at the same time as providing the consideration, the amount of any GST for which the Supplier is liable in relation to that supply (**additional amount**).

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

28. Costs and Duties

- (a) Subject to any provision of this Agreement to the contrary, the State will bear any duties, fees or taxes associated with this Agreement and its registration on the ILUA Register.
- (b) The Tjiwarl Parties agree to do all things as may reasonably be required by the State Parties to facilitate an assessment of this Agreement for, or an exemption from, any duties, fees or taxes.
- (c) Except where otherwise agreed under an agreement or arrangement between the State and Tjiwarl AC made before the Execution Date, each Party will bear their own costs including legal costs associated with the negotiation, drafting and execution of this Agreement.

29. Notices

This clause sets how the Parties must send notices to each other under the Agreement.

29.1 Notices under this Agreement

Subject to clause 29.3, any notice or other communication that may or must be under this Agreement:

- (a) must be in writing;
- (b) may be given by an authorised officer of the Party giving the notice;

- (c) must be delivered to its intended recipient by hand, prepaid post or email to the address in clause 29.2, or to the address the intended recipient last indicated to the sender as a suitable address;
- (d) subject to clause 29.1(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.

29.2 Addresses for Service

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

(a) **For Tjiwarl AC:**

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

(b) **For the State:**

- (i) By email: tjiwarlagreement@dpc.wa.gov.au
- (ii) By post: C/- Department of the Premier and Cabinet
Dumas House
Level 4, 2 Havelock Street
West Perth WA 6005

29.3 Notices under Schedules

Notices required to be given in accordance with the Mining Business Schedule, the Water Schedule, the Land Estate Schedule and the Conservation Estate Schedule must be given in accordance with the notice provisions contained in those Schedules.

30. General Legal Terms

30.1 Entire Agreement

To the extent permitted by law, in relation to its subject matter, this Agreement:

- (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.

30.2 Governing Law and Jurisdiction

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

30.3 Further Assurances

- (a) Each Party must, at the Party's expense unless otherwise agreed in this Agreement, promptly do all things necessary or desirable to give full effect to the Agreement and the matters contemplated by it.
- (b) Time is of the essence in relation to rights and obligations set out in this Agreement.

30.4 Severance

- (a) If any provision of this Agreement 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 Agreement; or
 - (B) the legality, validity or enforceability under the law of any other jurisdiction or that of any other provision of this Agreement; 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 Agreement to the extent necessary unless it would materially change the intended effect and objectives of this Agreement.

- (b) If a part of this Agreement is severed in accordance with clause 30.4 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.

30.5 No merger

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

30.6 Counterparts

- (a) This agreement may be executed in counterparts. All executed counterparts, taken together, constitute one document.
- (b) Each Party must execute a number of counterparts that will enable each Party to have at least one original version of each counterpart.

EXECUTED BY THE PARTIES AS AN AGREEMENT

EXECUTED by **TJIWARL ABORIGINAL CORPORATION (RNTBC) ICN 8628** in accordance with section 99.5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) in the presence of:



Signature of Director



Signature of Director

MICHAEL FRANCIS
EDWARDS TULLOCK

Full name of Director

Michael Jason James

Full name of Director

17/11/22

Date

17/11/22

Date

Bingham

Signature of Director



Signature of Director

TANIA LEE BINGHAM

Full name of Director

KADO MOIR

Full name of Director


17/11/22

Date


17/11/22

Date

SIGNED by BRETT LEWIS, ALLAN ASHWIN, EDWIN BEAMAN, TANYA BINGHAM, CHERYL BOND, LAWRENCE HARRIS, ALLAN JAMES, JENNIFER NARRIER, NATHAN REDMOND and JOYCE TULLOCK-TAYLOR in their capacity as the applicant under section 61 of the *Native Title Act 1993* (Cth) in compensation application WAD 142 of 2020, for and on behalf of themselves and for and on behalf of the Tjiwarl People in the presence of:



BRETT LEWIS



Signature of Witness

17/11/22

Date

Shelby Alice O'Connor

Witness (print full name)



ALLAN ASHWIN



Signature of Witness

17/11/22


Date

PATRICK DESMOND SMITH

Witness (print full name)



EDWIN BEAMAN



Signature of Witness

17/11/22

Date

Shelby Alice O'Connor

Witness (print full name)

Bingham

TANYA BINGHAM



Signature of Witness

17/11/22

Date

Shelby Alice O'Connor

Witness (print full name)

Cheryl Bond
CHERYL BOND

[Signature]
Signature of Witness

17/11/22
Date

Shelby Alice O'Conner
Witness (print full name)

[Signature]
LAWRENCE HARRIS

Carl J. O'Neil
Signature of Witness

17/11/22
Date

Malcolm O'Dell
Witness (print full name)

[Signature]
ALLAN JAMES

[Signature]
Signature of Witness

17/11/2022.
Date


Shelby Alice O'Conner
Witness (print full name)

Jennifer NARRIER
JENNIFER NARRIER

[Signature]
Signature of Witness

17/11/22
Date

Shelby Alice O'Conner
Witness (print full name)



NATHAN REDMOND

17/11/22


Date



JOYCE TULLOCK-TAYLOR

17/11/22

Date



Signature of Witness

Shelby Alice O'Carroll

Witness (print full name)




Signature of Witness

PATRICK DESMOND SMITH

Witness (print full name)

SIGNED by SHIRLEY WONYABONG, ALLAN JAMES, BRETT LEWIS, ALLAN ASHWIN, LAWRENCE HARRIS, JENNIFER NARRIER, KADO MUIR and MICHAEL TULLOCK in their capacity as the applicant under section 61 of the *Native Title Act 1993* (Cth) in compensation application WAD 269 of 2020 for and on behalf of themselves and for an on behalf of the Tjiwarl People in the presence of:


SHIRLEY WONYABONG


Signature of Witness

17/11/22
Date

Shelby Alice O'Conner
Witness (print full name)


ALLAN JAMES


Signature of Witness

17/11/2022.
Date

Shelby Alice O'Conner
Witness (print full name)


BRETT LEWIS


Signature of Witness

17/11/22
Date

Shelby Alice O'Conner
Witness (print full name)


ALLAN ASHWIN


Signature of Witness

17/11/22
Date

PATRICK DESMOND SMITH
Witness (print full name)



LAWRENCE HARRIS

17/11/22

Date



Signature of Witness

Shelby Alice O'Connor

Witness (print full name)



JENNIFER NARRIER

17/11/22

Date



Signature of Witness

Shelby Alice O'Connor

Witness (print full name)



KADO MUIR

17/11/22

Date



Signature of Witness

Shelby Alice O'Connor

Witness (print full name)



MICHAEL TULLOCK

17/11/22

Date

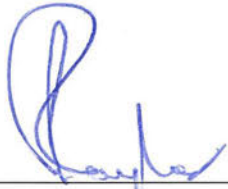


Signature of Witness

Shelby Alice O'Connor

Witness (print full name)

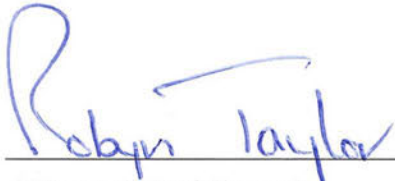
SIGNED for and on behalf of THE STATE)
OF WESTERN AUSTRALIA by the)
PREMIER, the Hon. Mark McGowan MLA,)
in the presence of:)



Signature of Witness

28 NOV 2022

Date



Witness (print full name)

2 Havelock St
Demas House
West Perth WA 6005

Address of witness



Occupation of witness

SIGNED by the MINISTER FOR
ABORIGINAL AFFAIRS, the Hon. Dr
Tony Buti MLA, in the presence of:

)
)
)

Tony Buti

[Handwritten Signature]

Signature of Witness

30/11/2022

Date

LISA CHIGATING

Witness (print full name)

*% DUMAS HOUSE
2 HAVLOCK ST, WEST PERTH WA 6005*

Address of witness

SENIOR POLICY ADVISER

Occupation of witness

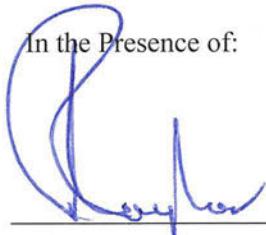
THE COMMON SEAL IS HEREUNTO)
AFFIXED for and on behalf of the STATE)
OF WESTERN AUSTRALIA by the)
MINISTER FOR LANDS, a body corporate)
under section 7 of the *Lands Administration*)
Act 1997 (WA):)



HON. JOHN CAREY MLA
MINISTER FOR LANDS
28 NOV 2022

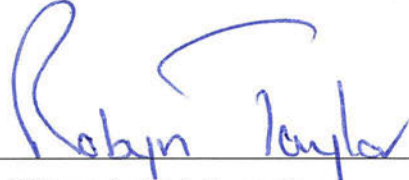
In the Presence of:

Date



Signature of Witness

Signature of Witness



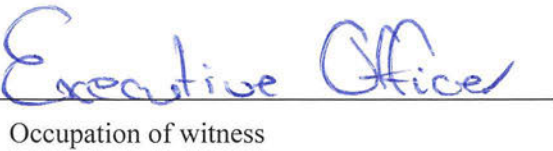
Witness (print full name)

Witness (print full name)

2 Havelock St
Dumas House
West Perth WA 6005

Address of witness

Address of witness



Occupation of witness

Occupation of witness



SIGNED by the MINISTER FOR MINES)
AND PETROLEUM, the Hon. William)
(Bill) Joseph Johnston MLA, in the presence)
of:)

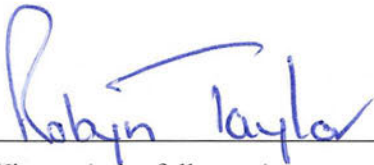




Signature of Witness

28 NOV 2022

Date



Witness (print full name)

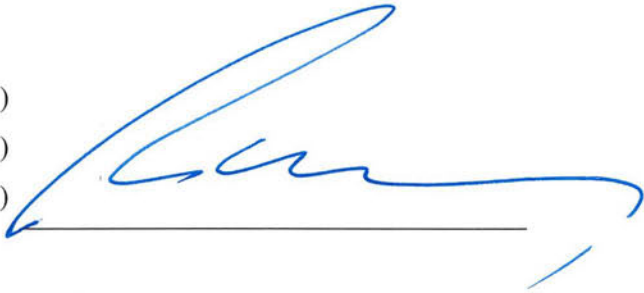
2 Havelock St
Dumas House
West Perth WA 6005

Address of witness



Occupation of witness

SIGNED by the **MINISTER FOR ENVIRONMENT**, the Hon. Reece Whitby MLA, in the presence of:

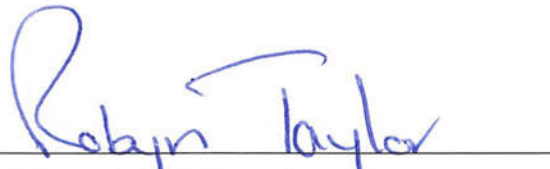
)
)
)




28 NOV 2022

Signature of Witness

Date



Witness (print full name)

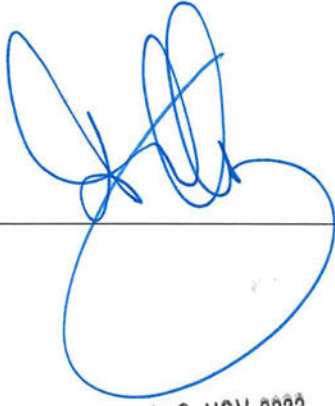
2 Howlock St
Dumas House
West Perth WA 6005

Address of witness




Occupation of witness

SIGNED by the MINISTER FOR WATER,)
Hon. David (Dave) Joseph Kelly MLA, in the)
presence of:)

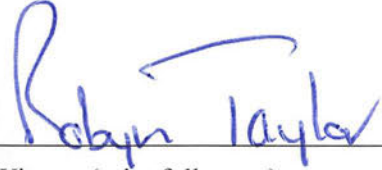


28 NOV 2022



Signature of Witness


Date



Witness (print full name)

2 Havelock St
West Perth 6005
Damas Hare


Address of witness



Occupation of witness

SIGNED by the MINISTER FOR)
REGIONAL DEVELOPMENT, the Hon.)
Alannah Joan Geraldine MacTiernan MLC, in)
the presence of:)

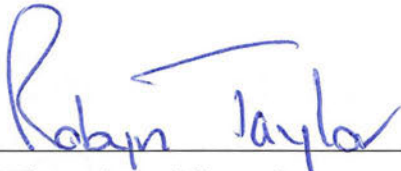




Signature of Witness

28 NOV 2022

Date



Witness (print full name)

2 Havelock St
Dumas House
West Perth WA 6005

Address of witness



Occupation of witness

SIGNED by the MINISTER FOR)
EDUCATION AND TRAINING, the Hon.)
Sue Ellery MLC, in the presence of:)





Signature of Witness

28 NOV 2022

Date



Witness (print full name)

2 Howlock St
Dumas House

West Perth WA 6005

Address of witness



Occupation of witness

SIGNED by Kris Starcevich, Chief Executive)
 Officer, for and on behalf of the)
GOLDFIELDS-ESPERANCE)
DEVELOPMENT COMMISSION in)
 accordance with section 22 of the *Regional*)
Development Commissions Act 1993 (WA), in)
 the presence of:)

 Signature of Witness

1.12.2022

 Date

LAUREN PEAKE

 Witness (print full name)

40 DUMAS HOUSE
 2 HAVENOCK ST
 WEST PERTH WA 6005

 Address of witness

PUBLIC SERVANT

 Occupation of witness

The COMMON SEAL of the WESTERN AUSTRALIAN MUSEUM was hereunto affixed in the presence of:



Melissa Parke

Hon Melissa Parke
Chair of Trustees
Western Australian Museum

[Signature]

Signature of Witness

29.11.2022

Date

LAUREN PEAKE

Witness (print full name)

40 DR, 2 HAVELOCK ST, WEST PERTH WA 6005

Address of witness

PUBLIC SERVANT

Occupation of witness

[Signature]

~~Alec Coles OBE~~ *Diana Jones AM*
Chief Executive Officer
Western Australian Museum

Acting

[Signature]

Signature of Witness

29.11.2022

Date

LAUREN PEAKE

Witness (print full name)

40 DR, 2 HAVELOCK ST, WEST PERTH WA 6005

Address of witness

PUBLIC SERVANT

Occupation of witness

The **COMMON SEAL** of the)
CONSERVATION AND PARKS)
COMMISSION was affixed in)
accordance with section 26AB of the)
Conservation and Land Management)
Act 1984 (WA) in the presence of:)



[Signature]
Signature of Member

C Doepel
Signature of Member

Tania Donovan
Member (print full name)

Christopher Doepel
Member (print full name)

[Signature]
Signature of Witness

[Signature]
Signature of Witness

Kathleen Lowry Lukonich
Witness (print full name)

Kathleen Lowry Lukonich
Witness (print full name)

17 Dick Perry Ave
Address of witness Kensington

17 Dick Perry Ave
Address of witness Kensington

Director Conservation & Parks Commission
Occupation of witness

Director Conservation & Parks Commission
Occupation of witness

30. NOV 2022
Date

30 NOV 2022
Date

EXECUTED by the CONSERVATION)
 AND LAND MANAGEMENT)
 EXECUTIVE BODY by the Chief Executive)
 Officer in accordance with section 38 of the)
Conservation and Land Management Act)
 1984 (WA) in the presence of:)

Wheller
 Signature of Chief Executive Officer

30 NOV 2022.
 Date

[Signature]
 Signature of Witness

Kathleen Lowry
 Witness (print full name)

17 Dick Perry Ave
 Kensington
 Address of witness

Director Conservation
 & Parks Commission
 Occupation of witness

SIGNED for and on behalf of the)
COMMISSIONER OF MAIN ROADS:)
)



Signature


JOHN ERCEG

Name & Title MANAGING DIRECTOR

29/11/2022

Date

In the presence of:



Signature of Witness
(Officer, Main Roads Western Australia)

NICK KITIN

Witness (print full name)

TJIWARL PALYAKUWA (AGREEMENT)

SCHEDULE 1

Agreement Area

Item A – Agreement Area (Technical Description)

Item B – Agreement Area (Map)

Item A – Agreement Area (Technical Description)

The Agreement Area comprises all those lands and waters within the external boundary of the Tjiwarl Determination as described in Schedule 1, Part 1 of the Tjiwarl Determination (including, for the avoidance of doubt, the Excluded Areas described in Schedule 1, Part 2), being:

All those lands and waters commencing at the northernmost northeastern corner of Pastoral Lease N049747 (Gidgee) and extending easterly to the northernmost northwestern corner of Lot 60 as shown on Deposited Plan 238007; Then easterly along the northern boundary of that lot to a western boundary of Pastoral Lease N049508 (Yeelirrie); Then northerly and easterly along boundaries of that pastoral lease to a western boundary of Pastoral Lease N049530 (Albion Downs); Then northerly along boundaries of that pastoral lease to the intersection with a southern boundary of Native Title Determination WAD248/2007 Tarlpa (WCD2013/004); Then easterly, northerly, again easterly, northwesterly, generally southeasterly and again easterly along boundaries of that native title determination to the southernmost southeastern corner of the eastern severance of Pastoral Lease N050051 (Lake Way), being a point of the present boundary of Pastoral Lease N049448 (Mt Keith); Then generally easterly and southerly along boundaries of that pastoral lease to the northeastern corner of Reserve 30897; Then generally southerly along boundaries of that reserve to a northeastern corner of Pastoral Lease N049476 (Yakabindie); Then generally southerly along boundaries of that pastoral lease to a northeastern corner of Pastoral Lease N049438 (Leinster Downs); Then generally southerly along boundaries of that pastoral lease to Latitude 27.998685 South; Then westerly to the intersection with a eastern boundary of the northeastern severance of Reserve 10513 at Latitude 27.998687 South; Then westerly to the intersection with a eastern boundary of the eastern severance of Pastoral Lease N049967 (Depot Springs) at Latitude 27.998691 South; Then southerly and generally westerly along the boundaries of that pastoral lease to the southeastern corner of Pastoral Lease N050557 (Booylgoo Spring); Then westerly, northerly and again westerly along boundaries of that pastoral lease to longitude 119.713751 East; Then northerly to a southwestern corner of Lot 74 as shown on Deposited Plan 220987, being a point on the present boundary of Pastoral Lease N050557 (Booylgoo Spring); Then generally northerly along boundaries of that pastoral lease to its northernmost northwestern corner; Then northwesterly to the easternmost southeastern corner of Pastoral Lease N049747 (Gidgee); Then northwesterly to the southernmost southwestern corner of Pastoral Lease N049934 (Youno Downs); Then northerly along the boundary of that pastoral lease back to the commencement point.

Note: Geographic Coordinates provided in Decimal Degrees.

All referenced Deposited Plans and Diagrams are held by the Western Australian Land Information Authority, trading as Landgate.

Cadastral boundaries sourced from Landgate's Spatial Cadastral Database dated 3rd January 2017.

For the avoidance of doubt the Agreement Area excludes any land and waters subject to:

- Native Title Determination Application WAD248/2007 Tarlpa (WCD2013/004) as Determined in the Federal Court on the 29th July 2013.
- Native Title Determination Application WAD225/2018 Kultju (WCD2019/012) as Determined in the Federal Court on the 30th October 2019.
- Native Title Determination Application WAD142/2018 Darlot (WCD2022/002) as Determined in the Federal Court on the 5th July 2022.

Datum: Geocentric Datum of Australia 1994 (GDA94)

Prepared By: Graphic Services (Landgate) 30th September 2022

Use of Coordinates:

Where coordinates are used within the description to represent cadastral or topographical boundaries or the intersection with such, they are intended as a guide only. As an outcome to the custodians of cadastral and topographic data continuously recalculating the geographic position of their data based on improved survey and data maintenance procedures, it is not possible to accurately define such a position other than by detailed ground survey.




Item B – Agreement Area (Map)

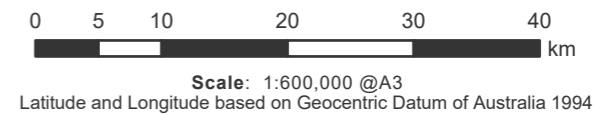
Tjiwarl Palyakuwa (Agreement)

Schedule 1

Agreement Area

Legend

-  Tjiwarl Palyakuwa ILUA - Agreement Area
-  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



- Data Sources**
- Cadastral and Tenure information: Landgate Spatial Cadastral Database (SCDB), 03/01/2017.
 - Administrative boundaries: Landgate Administrative Boundaries Dataset.
 - Topographical data: PSMA Dataset.
 - Road names: Landgate Road Centreline Dataset.

- Data Notes**
- Coastlines and shorelines are interpreted from aerial photography or recorded from ground surveys.
 - Local Authorities terminate at Low Water Mark (LWM) unless otherwise specified.
 - Pastoral Leases terminate 40 metres landward High Water Mark (HWM) unless otherwise specified.
 - Islands shown are Unallocated Crown Land (UCL) unless otherwise specified.
 - All referenced Deposited Plans and Diagrams are held by the Western Australian Land Information Authority, trading as Landgate.
 - Insets, if shown, are not to scale.

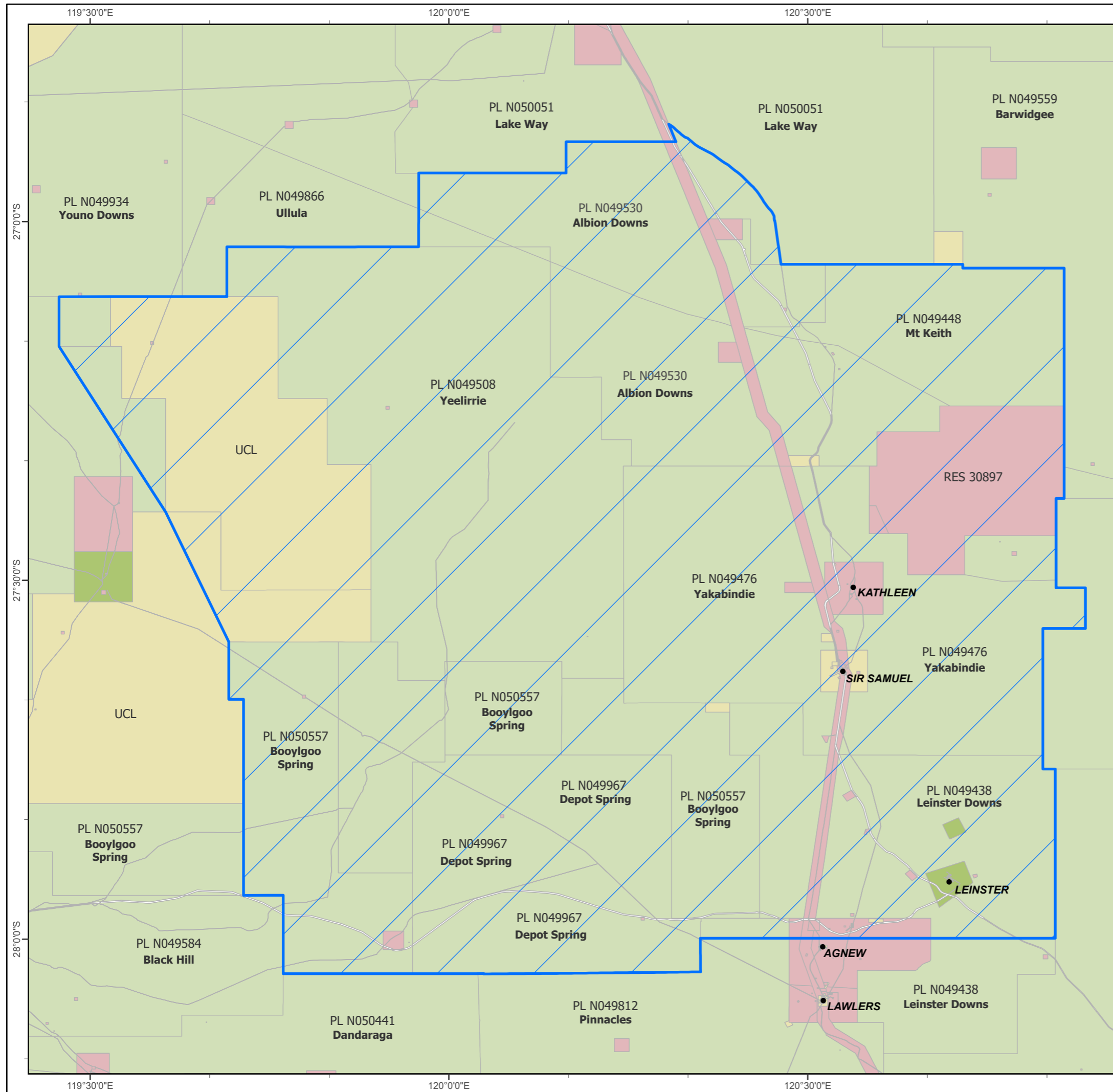


Disclaimer
 For informational purposes only. This map is a pictorial representation of data extracted from Landgate Datasets and is intended to be an overview of general geospatial information. Waterlines shown on this map do not necessarily depict an exact cadastral boundary. Native title application boundaries interpolated from descriptions held by the National Native Title Tribunal (NNTT) and Federal Court. Reference should be made to the NNTT for confirmation of this boundary for any legal purposes. In the event of any discrepancy between the written application boundary description and the areas depicted on this map the written description shall take preference as the maps and/or enlargements are indicative only.

Graphic Services
 Date produced: 27/10/2022
 Job Reference: NT4087
 T: (08) 9273 7373 F: (08) 9250 3187
 Graphic.Services@landgate.wa.gov.au
 www.landgate.wa.gov.au



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TJIWARL PALYAKUWA (AGREEMENT)

SCHEDULE 2

Registration



National
Native Title
Tribunal

Applying for Registration of a Body Corporate Agreement— Application Form

An application for registration of a body corporate agreement must be made in writing.

Information must be provided which complies with the requirements of the:

- *Native Title Act 1993* (Cth) (NTA)
- *Native Title (Indigenous Land Use Agreements) Regulations 1999* (Cth) (ILUA Regulations) and
- *Native Title (Prescribed Body Corporate) Regulations 1999* (Cth) (PBC Regulations).

The Native Title Registrar (Registrar) has developed this application form to assist applicants in applying for registration of a body corporate agreement. This form should be used where the relevant ‘native title decision’ (as defined in reg 3 of the PBC Regulations) was made on or after **25 March 2021**.



National
Native Title
Tribunal

Application Form

Part A—Application details

1. Short name of agreement	Tjiwarl Palyakuwa (Agreement)
-----------------------------------	-------------------------------

Part B—Party details

2. First party details (s 24DH(1) NTA)	Name	The State of Western Australia (acting through the Premier and Treasurer of the State of Western Australia)
	Contact Name	[To be inserted prior to lodgement]
	Postal Address	c/o the Department of the Premier and Cabinet, of 12 th Floor, Dumas House, 2 Havelock Street, WEST PERTH WA 6005
	Telephone number	[To be inserted prior to lodgement]
	Fax number (if available)	[To be inserted prior to lodgement]
	Email address (if available)	[To be inserted prior to lodgement]
	Is this also the party applying for registration of the agreement?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Representative's name, address and telephone number (if applicable)	Company Name	State Solicitor's Office
	Contact Name	[To be inserted prior to lodgement]
	Postal Address	David Malcolm Justice Centre, 28 Barrack Street, PERTH WA 6000
	Telephone number	[To be inserted prior to lodgement]
	Fax number (if available)	[To be inserted prior to lodgement]
	Email address (if available)	[To be inserted prior to lodgement]
	Representative's contact address for notification?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Representative's contact address for Register entry?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	

Second party details (s 24DH(1) NTA)	Name	Tjiwarl (Aboriginal Corporation) RNTBC (ICN 8628) in its own right and in its capacity as a registered native title body corporate holding native title on trust for the Tjiwarl People
	Contact Name	[To be inserted prior to lodgement]
	Postal Address	c/o Unit 6, 524 Abernethy Road, KEWDALE WA 6105
	Telephone number	[To be inserted prior to lodgement]
	Fax number (if available)	[To be inserted prior to lodgement]
	Email address (if available)	[To be inserted prior to lodgement]
	Is this party also the applicant?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Representative's name, address and telephone number (if applicable)	Company Name	M Watts Legal
	Contact Name	[To be inserted prior to lodgement]
	Postal Address	7 Yalgan Pass CANNING VALE WA 6155
	Telephone number	[To be inserted prior to lodgement]
	Fax number (if available)	[To be inserted prior to lodgement]
	Email address (if available)	[To be inserted prior to lodgement]
	Representative's contact address for notification?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Representative's contact address for Register entry?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	

Third party details (Reg 6(3)(a) ILUA Regulations)	Name	Brett Lewis, Allan Ashwin, Edwin Beaman, Tanya Bingham, Cheryl Bond, Lawrence Harris, Allan James, Jennifer Narrier, Nathan Redmond and Joyce Tullock-Taylor in their capacity as the applicant under section 61 of the <i>Native Title Act 1993</i> (Cth) in compensation application WAD 142 of 2020 in their own right and for and on behalf of the Tjiwarl People
	Contact Name	[To be inserted prior to lodgement]
	Postal Address	c/o Unit 6, 524 Abernethy Road, KEWDALE WA 6105
	Telephone number	[To be inserted prior to lodgement]
	Fax number (if available)	[To be inserted prior to lodgement]
	Email address (if available)	[To be inserted prior to lodgement]
	Is this party also the applicant?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Representative's name, address and telephone number (if applicable)	Company Name	Central Desert Native Title Services Ltd
	Contact Name	[To be inserted prior to lodgement]
	Postal Address	76 Wittenoom St EAST PERTH WA 6004
	Telephone number	[To be inserted prior to lodgement]
	Fax number (if available)	[To be inserted prior to lodgement]
	Email address (if available)	[To be inserted prior to lodgement]
	Representative's contact address for notification?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Representative's contact address for Register entry?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	

Fourth party details (Reg 6(3)(a) ILUA Regulations)	Name	Shirley Wonyabong, Allan James, Brett Lewis, Allan Ashwin, Lawrence Harris, Jennifer Narrier, Kado Muir and Michael Tullock in their capacity as the applicant under section 61 of the <i>Native Title Act 1993</i> (Cth) in compensation application WAD 269 of 2020 in their own right and for and on behalf of the Tjiwarl People
	Contact Name	[To be inserted prior to lodgement]
	Postal Address	c/o Unit 6, 524 Abernethy Road, KEWDALE WA 6105
	Telephone number	[To be inserted prior to lodgement]
	Fax number (if available)	[To be inserted prior to lodgement]
	Email address (if available)	[To be inserted prior to lodgement]
	Is this party also the applicant?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Representative's name, address and telephone number (if applicable)	Company Name	Central Desert Native Title Services Ltd
	Contact Name	[To be inserted prior to lodgement]
	Postal Address	76 Wittenoom St EAST PERTH WA 6004
	Telephone number	[To be inserted prior to lodgement]
	Fax number (if available)	[To be inserted prior to lodgement]
	Email address (if available)	[To be inserted prior to lodgement]
	Representative's contact address for notification?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Representative's contact address for Register entry?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	

Fifth party details (s 24DH(1) NTA)	Name	Minister for Lands
	Contact Name	[To be inserted prior to lodgement]
	Postal Address	c/o the Department of Planning, Lands and Heritage, Gordon Stephenson House, Level 2, 140 William Street, PERTH WA 6000
	Telephone number	[To be inserted prior to lodgement]
	Fax number (if available)	[To be inserted prior to lodgement]
	Email address (if available)	[To be inserted prior to lodgement]
	Is this also the party applying for registration of the agreement?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Representative's name, address and telephone number (if applicable)	Company Name	State Solicitor's Office
	Contact Name	[To be inserted prior to lodgement]
	Postal Address	David Malcolm Justice Centre, 28 Barrack Street, PERTH WA 6000
	Telephone number	[To be inserted prior to lodgement]
	Fax number (if available)	[To be inserted prior to lodgement]
	Email address (if available)	[To be inserted prior to lodgement]
	Representative's contact address for notification?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Representative's contact address for Register entry?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	

Sixth party details (s 24DH(1) NTA)	Name	Conservation and Parks Commission
	Contact Name	[To be inserted prior to lodgement]
	Postal Address	17 Dick Perry Avenue, Technology Park, Western Precinct, KENSINGTON WA 6151
	Telephone number	[To be inserted prior to lodgement]
	Fax number (if available)	[To be inserted prior to lodgement]
	Email address (if available)	[To be inserted prior to lodgement]
	Is this also the party applying for registration of the agreement?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Representative's name, address and telephone number (if applicable)	Company Name	State Solicitor's Office
	Contact Name	[To be inserted prior to lodgement]
	Postal Address	David Malcolm Justice Centre, 28 Barrack Street, PERTH WA 6000
	Telephone number	[To be inserted prior to lodgement]
	Fax number (if available)	[To be inserted prior to lodgement]
	Email address (if available)	[To be inserted prior to lodgement]
	Representative's contact address for notification?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Representative's contact address for Register entry?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	

Seventh party details (s 24DH(1) NTA)	Name	Department of Biodiversity, Conservation and Attractions (acting through the Conservation and Land Management Executive Body)
	Contact Name	[To be inserted prior to lodgement]
	Postal Address	17 Dick Perry Avenue, Technology Park, Western Precinct, KENSINGTON WA 6151
	Telephone number	[To be inserted prior to lodgement]
	Fax number (if available)	[To be inserted prior to lodgement]
	Email address (if available)	[To be inserted prior to lodgement]
	Is this also the party applying for registration of the agreement?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Representative's name, address and telephone number (if applicable)	Company Name	State Solicitor's Office
	Contact Name	[To be inserted prior to lodgement]
	Postal Address	David Malcolm Justice Centre, 28 Barrack Street, PERTH WA 6000
	Telephone number	[To be inserted prior to lodgement]
	Fax number (if available)	[To be inserted prior to lodgement]
	Email address (if available)	[To be inserted prior to lodgement]
	Representative's contact address for notification?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Representative's contact address for Register entry?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	

Eighth party details (s 24DH(1) NTA)	Name	Western Australian Museum
	Contact Name	[To be inserted prior to lodgement]
	Postal Address	49 Kew Street, WELSHPOOL WA 6106
	Telephone number	[To be inserted prior to lodgement]
	Fax number (if available)	[To be inserted prior to lodgement]
	Email address (if available)	[To be inserted prior to lodgement]
	Is this also the party applying for registration of the agreement?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Representative's name, address and telephone number (if applicable)	Company Name	State Solicitor's Office
	Contact Name	[To be inserted prior to lodgement]
	Postal Address	David Malcolm Justice Centre, 28 Barrack Street, PERTH WA 6000
	Telephone number	[To be inserted prior to lodgement]
	Fax number (if available)	[To be inserted prior to lodgement]
	Email address (if available)	[To be inserted prior to lodgement]
	Representative's contact address for notification?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Representative's contact address for Register entry?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	

Ninth party details (s 24DH(1) NTA)	Name	Minister for Aboriginal Affairs
	Contact Name	[To be inserted prior to lodgement]
	Postal Address	c/o the Department of the Premier and Cabinet, of 11 th Floor, Dumas House, 2 Havelock Street, WEST PERTH WA 6005
	Telephone number	[To be inserted prior to lodgement]
	Fax number (if available)	[To be inserted prior to lodgement]
	Email address (if available)	[To be inserted prior to lodgement]
	Is this also the party applying for registration of the agreement?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Representative's name, address and telephone number (if applicable)	Company Name	State Solicitor's Office
	Contact Name	[To be inserted prior to lodgement]
	Postal Address	David Malcolm Justice Centre, 28 Barrack Street, PERTH WA 6000
	Telephone number	[To be inserted prior to lodgement]
	Fax number (if available)	[To be inserted prior to lodgement]
	Email address (if available)	[To be inserted prior to lodgement]
	Representative's contact address for notification?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Representative's contact address for Register entry?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	

Tenth party details (s 24DH(1) NTA)	Name	Minister for Environment
	Contact Name	[To be inserted prior to lodgement]
	Postal Address	c/o the Department of the Premier and Cabinet, of 12 th Floor, Dumas House, 2 Havelock Street, WEST PERTH WA 6005
	Telephone number	[To be inserted prior to lodgement]
	Fax number (if available)	[To be inserted prior to lodgement]
	Email address (if available)	[To be inserted prior to lodgement]
	Is this also the party applying for registration of the agreement?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Representative's name, address and telephone number (if applicable)	Company Name	State Solicitor's Office
	Contact Name	[To be inserted prior to lodgement]
	Postal Address	David Malcolm Justice Centre, 28 Barrack Street, PERTH WA 6000
	Telephone number	[To be inserted prior to lodgement]
	Fax number (if available)	[To be inserted prior to lodgement]
	Email address (if available)	[To be inserted prior to lodgement]
	Representative's contact address for notification?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Representative's contact address for Register entry?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	

Eleventh party details (s 24DH(1) NTA)	Name	Minister for Water
	Contact Name	[To be inserted prior to lodgement]
	Postal Address	c/o the Department of the Premier and Cabinet, of 8 th Floor, Dumas House, 2 Havelock Street, WEST PERTH WA 6005
	Telephone number	[To be inserted prior to lodgement]
	Fax number (if available)	[To be inserted prior to lodgement]
	Email address (if available)	[To be inserted prior to lodgement]
	Is this also the party applying for registration of the agreement?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Representative's name, address and telephone number (if applicable)	Company Name	State Solicitor's Office
	Contact Name	[To be inserted prior to lodgement]
	Postal Address	David Malcolm Justice Centre, 28 Barrack Street, PERTH WA 6000
	Telephone number	[To be inserted prior to lodgement]
	Fax number (if available)	[To be inserted prior to lodgement]
	Email address (if available)	[To be inserted prior to lodgement]
	Representative's contact address for notification?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Representative's contact address for Register entry?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	

Twelfth party details (s 24DH(1) NTA)	Name	Minister for Regional Development
	Contact Name	[To be inserted prior to lodgement]
	Postal Address	c/o the Department of the Premier and Cabinet, of 11 th Floor, Dumas House, 2 Havelock Street, WEST PERTH WA 6005
	Telephone number	[To be inserted prior to lodgement]
	Fax number (if available)	[To be inserted prior to lodgement]
	Email address (if available)	[To be inserted prior to lodgement]
	Is this also the party applying for registration of the agreement?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Representative's name, address and telephone number (if applicable)	Company Name	State Solicitor's Office
	Contact Name	[To be inserted prior to lodgement]
	Postal Address	David Malcolm Justice Centre, 28 Barrack Street, PERTH WA 6000
	Telephone number	[To be inserted prior to lodgement]
	Fax number (if available)	[To be inserted prior to lodgement]
	Email address (if available)	[To be inserted prior to lodgement]
	Representative's contact address for notification?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Representative's contact address for Register entry?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	

Thirteenth party details (s 24DH(1) NTA)	Name	Minister for Mines and Petroleum
	Contact Name	[To be inserted prior to lodgement]
	Postal Address	c/o the Department of the Premier and Cabinet, of 9 th Floor, Dumas House, 2 Havelock Street, WEST PERTH WA 6005
	Telephone number	[To be inserted prior to lodgement]
	Fax number (if available)	[To be inserted prior to lodgement]
	Email address (if available)	[To be inserted prior to lodgement]
	Is this also the party applying for registration of the agreement?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Representative's name, address and telephone number (if applicable)	Company Name	State Solicitor's Office
	Contact Name	[To be inserted prior to lodgement]
	Postal Address	David Malcolm Justice Centre, 28 Barrack Street, PERTH WA 6000
	Telephone number	[To be inserted prior to lodgement]
	Fax number (if available)	[To be inserted prior to lodgement]
	Email address (if available)	[To be inserted prior to lodgement]
	Representative's contact address for notification?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Representative's contact address for Register entry?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	

Fourteenth party details (s 24DH(1) NTA)	Name	Goldfields-Esperance Development Commission
	Contact Name	[To be inserted prior to lodgement]
	Postal Address	Suite 4/377 Hannan Street, KALGOORLIE WA 6430
	Telephone number	[To be inserted prior to lodgement]
	Fax number (if available)	[To be inserted prior to lodgement]
	Email address (if available)	[To be inserted prior to lodgement]
	Is this also the party applying for registration of the agreement?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Representative's name, address and telephone number (if applicable)	Company Name	State Solicitor's Office
	Contact Name	[To be inserted prior to lodgement]
	Postal Address	David Malcolm Justice Centre, 28 Barrack Street, PERTH WA 6000
	Telephone number	[To be inserted prior to lodgement]
	Fax number (if available)	[To be inserted prior to lodgement]
	Email address (if available)	[To be inserted prior to lodgement]
	Representative's contact address for notification?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Representative's contact address for Register entry?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	

Fifteenth party details (s 24DH(1) NTA)	Name	Minister for Education
	Contact Name	[To be inserted prior to lodgement]
	Postal Address	c/o the Department of the Premier and Cabinet, of 11 th Floor, Dumas House, 2 Havelock Street, WEST PERTH WA 6005
	Telephone number	[To be inserted prior to lodgement]
	Fax number (if available)	[To be inserted prior to lodgement]
	Email address (if available)	[To be inserted prior to lodgement]
	Is this also the party applying for registration of the agreement?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Representative's name, address and telephone number (if applicable)	Company Name	State Solicitor's Office
	Contact Name	[To be inserted prior to lodgement]
	Postal Address	David Malcolm Justice Centre, 28 Barrack Street, PERTH WA 6000
	Telephone number	[To be inserted prior to lodgement]
	Fax number (if available)	[To be inserted prior to lodgement]
	Email address (if available)	[To be inserted prior to lodgement]
	Representative's contact address for notification?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Representative's contact address for Register entry?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	

Sixteenth party details (s 24DH(1) NTA)	Name	Commissioner of Main Roads
	Contact Name	[To be inserted prior to lodgement]
	Postal Address	Don Aitken Centre, Waterloo Crescent, EAST PERTH 6004
	Telephone number	[To be inserted prior to lodgement]
	Fax number (if available)	[To be inserted prior to lodgement]
	Email address (if available)	[To be inserted prior to lodgement]
	Is this also the party applying for registration of the agreement?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Representative's name, address and telephone number (if applicable)	Company Name	State Solicitor's Office
	Contact Name	[To be inserted prior to lodgement]
	Postal Address	David Malcolm Justice Centre, 28 Barrack Street, PERTH WA 6000
	Telephone number	[To be inserted prior to lodgement]
	Fax number (if available)	[To be inserted prior to lodgement]
	Email address (if available)	[To be inserted prior to lodgement]
	Representative's contact address for notification?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Representative's contact address for Register entry?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	

Part C—Mandatory parties

<p>3. Registered native title body/bodies corporate (RNTBC/s) (s 24BD(1) NTA)</p>	<p>State the RNTBCs that are a party to the agreement:</p> <p>Tjiwarl (Aboriginal Corporation) RNTBC (ICN 8628)</p>
<p>4. Government parties (ss 24BD(2), 24EBA(1)(a)(i) and (ii), (b) and (c), 24EBA(2)–(4) NTA and Reg 6(3)(c) ILUA Regulations)</p>	<p>Does the agreement make provision for the extinguishment of native title rights and interests by surrendering them to the Commonwealth or a State or Territory government (relevant government)?</p> <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>Does the agreement validate the purported past extinguishment of native title rights and interests by surrender to the relevant government?</p> <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>If the answer to either of the above questions is yes, is the relevant government party to the agreement?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, please identify which party/parties:</p> <p>N/A</p>

Part D—Other parties

<p>5. Representative Aboriginal/Torres Strait Island Bodies (RATSIBs) or Native Title Service Providers (NTSPs) for the area (s 24BD(4) NTA and Reg 6(3)(b) ILUA Regulations)</p>	<p>Are there any RATSIB/ NTSPs for any of the area covered by the agreement?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, are any RATSIBs/NTSPs for any of the area a party to the agreement?</p> <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>If yes, please identify which RATSIBs/NTSPs:</p>
<p>6. Government parties (Reg 6(3)(c) ILUA Regulations)</p>	<p>If not previously identified in question 4, is the Commonwealth, State or Territory government a party to the agreement?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, please identify which party/parties:</p> <p>The State of Western Australia</p>

Part E—Informing RATSIBs/NTSPs of intention to enter agreement

<p>7. Informing RATSIBs or NTSPs of intention to enter agreement (s 24BD(4) NTA and Reg 6(4) ILUA Regulations)</p>	<p>If there is one or more RATSIB(s)/NTSP(s) for any of the agreement area and none are parties to the agreement, has a party that is a RNTBC informed at least one of those bodies of its intention to enter into the agreement?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, please specify which RATSIBs/NTSPs have been informed, how and when they were notified and by whom:</p> <p>[Further details to be inserted prior to lodgement]</p>
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Part F—Agreement area

<p>8. Complete description of agreement area (s 24BG(2) NTA and Reg 6(2)(c) and 5 ILUA Regulations)</p>	<p>Provide a ‘complete description’ of the agreement area, including any areas within the external boundary of the agreement area that are excluded from the agreement area (or refer to relevant section of agreement):</p> <p>See description of ‘Agreement Area’ in clause 2 of the Agreement and Schedule 1 (technical description of the Agreement Area and accompanying map).</p> <p>Note: a map of the agreement area showing geographic coordinates must be attached to this application or be contained within the agreement.</p>
<p>9. Complete description of surrender area (s 24BG(2) NTA and Reg 6(2)(d) and 5 ILUA Regulations)</p>	<p>Does the agreement provide for the surrender of native title that is intended to extinguish native title rights and interests in the agreement area?</p> <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>If yes, please provide a ‘complete description’ of those areas (or refer to relevant section of agreement):</p> <p>N/A</p> <p>Note: a map showing geographic coordinates which identifies any areas where the surrender of native title is intended to extinguish native title rights and interests must be attached to this application or be contained within the agreement.</p>

Part G—Operating period

<p>10. Operating period (Reg 6(3)(d) ILUA Regulations)</p>	<p>Does the agreement specify a time period during which it will operate?</p> <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>If applicable, please provide the commencement date here (the commence date may also be defined by reference to a specified event or activity, e.g. once a determination of native title is made by the Federal Court):</p> <p>Save for clauses 1, 2, 3, 4, 5, 20.1, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30 of the Agreement which commence on the date of the execution of the Agreement, the Agreement commences on the Conclusive Registration Date.</p> <p>The Conclusive Registration Date is defined in clause 1.2 of the Agreement.</p> <p>If applicable, please write the end date here (the end date may also be defined by reference to a specified event or activity, e.g. upon completion of a particular project):</p> <p>The Agreement will terminate on the occurrence of the events described in clause 4.3 of the Agreement, whichever is the first to occur. Subject to this, the Agreement continues indefinitely.</p> <p>Please specify where in the agreement details of the operating period are located:</p> <p>Clauses 1.2, 4.1, 4.2 and 4.3.</p>
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Part H—Statements in the agreement

<p>11. Consent to future acts (s 24EB(1)(b) NTA and Reg 6(5)(a) ILUA Regulations)</p>	<p>Does the agreement contain any statement(s) consenting to the doing of a particular future act, or class of acts, whether or not subject to conditions?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, please specify where each such statement is located in the agreement (e.g. clause 5 and 6 plus definitions):</p> <p>Clauses 1.2, 8.1, 8.2, 8.3, 8.4 and 8.5</p>
<p>12. Acts excluded from the right to negotiate (s 24EB(1)(c) NTA and Reg 6(5)(b) ILUA Regulations)</p>	<p>Does the agreement include any statements to the effect that the right to negotiate provisions of the NTA (Part 2, Division 3, Subdivision P of the NTA) are not intended to apply to any or all of the future acts included in the agreement?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, please specify where each such statement is located in the agreement:</p> <p>Clauses 1.2 and 8.8</p>
<p>13. Surrender intended to extinguish native title (s 24EB(1)(d) NTA and Reg 6(5)(c) ILUA Regulations)</p>	<p>Does the agreement provide for the surrender of native title rights and interests in the future?</p> <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>If yes, does the agreement contain a statement to the effect that the surrender is intended to extinguish native title rights and interests?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, please specify where each such statement is located in the agreement (please also ensure that question 4 has also been completed):</p> <p>N/A</p>

<p>14. Validation of future acts that have already been done invalidly (s 24EBA(1)(a)(i)–(ii) NTA and Reg 6(5)(d)–(e) ILUA Regulations)</p>	<p>Does the agreement provide for the validation of future acts or class of future acts (other than intermediate period acts or the surrender of native title) that have already been done invalidly, whether or not subject to conditions?</p> <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>If yes, please specify where each such statement is located in the agreement:</p> <p>N/A</p>
<p>15. Intermediate period acts affected (s 24EBA(1)(a)(iii) NTA and Reg 6(5)(f) ILUA Regulations)</p>	<p>Does the agreement provide for changing the effects on native title of the validation of an intermediate period act or class of acts?</p> <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>If yes, please specify where each such statement is located in the agreement:</p> <p>N/A</p>
<p>16. Validation of the previous purported surrender of native title (s 24EBA(1) and (4) NTA and Reg 6(5)(g) ILUA Regulations)</p>	<p>Does the agreement provide for the validation of the extinguishment of native title rights and interests by surrender which has already occurred invalidly?</p> <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>If yes, does the agreement contain a statement to the effect that the surrender is intended to have extinguished those native title rights and interests?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, please specify where each such statement is located in the agreement (please ensure that question 4 has also been completed):</p> <p>N/A</p>

<p>17. Any other comments about required statements in the agreement?</p>	<p>N/A <input checked="" type="checkbox"/> Yes <input type="checkbox"/></p>
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Part I—Parts of the Register to be kept confidential

<p>18. Confidential information (s 199E(1)–(2) NTA)</p>	<p>Please indicate if there is any information or documents which you do not wish to be available for inspection by the public if the agreement is registered:</p> <p>[To be inserted prior to lodgement]</p> <p>Note: the Registrar can only keep information confidential to the extent that the law allows.</p>
	<p>Is the agreement between the parties confidential?</p> <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>

Part J—Document checklist

[To be completed prior to lodgement]

Documents that must accompany the application (s 24BG(2) NTA, Reg 6(2) ILUA Regulations and Reg 9 PBC Regulations)	A copy of the agreement (the original is not required) including any attachments or appendices—s 24BG(2).	Yes <input type="checkbox"/>
	A copy of each determination of native title for each party that is a RNTBC—Reg 6(2)(a).	Yes <input type="checkbox"/>
	A statement by each party to the agreement, signed by or for the party, that the party agrees to the application being made—Reg 6(2)(b).	Yes <input type="checkbox"/> Specify where in agreement/application:
	A complete description of the agreement area (Regs 6(2)(c) and (5)) including: <ul style="list-style-type: none"> any areas within the external boundary of the agreement area that are not included in the agreement area, and a map of the ILUA area showing geographic coordinates. 	Yes <input type="checkbox"/> Specify where in agreement/application:
	If applicable: <ul style="list-style-type: none"> a complete description of any areas where the surrender of native title is intended to extinguish native title rights and interests in the agreement area and any areas not included, and a map showing geographic coordinates of that area—Regs 6(2)(d) and (5). 	Yes <input type="checkbox"/> N/A <input type="checkbox"/> Specify where in agreement/application:

	<p>If</p> <ul style="list-style-type: none"> • the agreement gives effect to a ‘native title decision’, and • for any part of the agreement area there is one or more RATSIBs or NTSPs, and • none of them is party (or there is no RATSIB/ NTSP for the agreement area)— <p>a certificate under Reg 9 of the PBC Regulations (see Reg 6(2)(e) ILUA Regulations) –</p>	<p>Yes <input type="checkbox"/> N/A <input type="checkbox"/></p>
	<p>Statement in writing as to whether or not there is any other written agreement made between some or all of the parties to the agreement in connection with the doing of an act to which the agreement relates: Reg 6(3)(e)</p>	<p>Yes <input type="checkbox"/> N/A <input type="checkbox"/></p> <p>Specify where in agreement/application:</p>
	<p>If there is a RATSIB/NTSP for the agreement area and it is not a party, a statement signed by a party that is a RNTBC that at least one RATSIB/NTSP was informed of the intention of the RNTBC to enter into the agreement— Reg 6(4).</p>	<p>Yes <input type="checkbox"/> N/A <input type="checkbox"/></p> <p>Specify where in agreement/application:</p>

Attachment A— Regulation 9 certificate

EXPLANATORY NOTE:

If:

- the agreement gives effect to a ‘native title decision’ as defined in Reg 3 of the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth) (PBC Regulations), and
- for any part of the agreement area there is one or more representative Aboriginal / Torres Strait Islander Bodies (RATSIBs) or Native title Service Providers (NTSPs), and
- none of them is party (or there is no RATSIB/ NTSP for the agreement area)

then your application must be accompanied by a certificate under Reg 9 of the PBC Regulations.

The Registrar has developed the following template to assist in drafting a Reg 9 certificate.

[To be completed prior to lodgement]

Regulation 9 of the *Native Title (Prescribed Bodies Corporate) Regulations 1999 (Cth) (PBC Regulations)*

Certification by Prescribed Body Corporate

INSERT RNTBC name (the body corporate) certifies that::

Provide details of whether the body corporate consulted and obtained consent of the common law holders about the proposed decision to enter into the Agreement in accordance with PBC Reg 8 or 8A, including the process of making the decision to enter into the Agreement (see PBC Regs 8(3), 8(4) and 8A) and persons who participated in the process of making the decision

OR

Provide details of approval of the common law holders of the standing instruction decision to enter into the Agreement in accordance with PBC Reg 8, including the process of approval (see PBC Reg 8(2) and 8(8))

Date: _____

Executed by the body corporate in accordance with subsection 99-5(1) or (2) of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth)*:

_____ PRINT NAME	_____ POSITION	_____ SIGNATURE
_____ PRINT NAME	_____ POSITION	_____ SIGNATURE

OR

Signed by the chief executive officer of the body corporate:

_____ PRINT NAME	_____ SIGNATURE
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TJIWARL PALYAKUWA (AGREEMENT)

SCHEDULE 3

Terms of Reference

Item A – Implementation Committee

Item B – Research and Development Working Group

Item C – Economic Empowerment Working Group

Item A – Implementation Committee

The following Terms of Reference for the Implementation Committee is provided for the purpose of clause 9.2 of the Tjiwarl Palyakuwa (Agreement).

TJIWARL PALYAKUWA (AGREEMENT)

TERMS OF REFERENCE

Implementation Committee

1. Background

- (a) In accordance with clause 9.2 of the Agreement, the Parties have agreed to establish the Implementation Committee to:
 - (i) oversee and facilitate the delivery of the commitments and processes provided in the Agreement; and
 - (ii) foster open and regular communication between the State and Tjiwarl AC with respect to the Agreement, including to provide Tjiwarl with an opportunity to raise issues at the highest levels of Government.
- (b) This document sets out the Terms of Reference for the Implementation Committee.
- (c) All capitalised terms are as defined in the Agreement.

2. Aim and Purpose

The aim and purpose of the Implementation Committee is to:

- (a) work collaboratively to oversee, facilitate and implement the Agreement in a manner which meets the Parties' shared and individual objectives in a spirit of partnership;
- (b) foster regular and open communication between the Parties regarding the various matters arising under this Agreement to promote its effective implementation;
- (c) build an on-going and long term relationship between the Parties;
- (d) provide a forum to address any issues or opportunities which the Parties may want to raise relating to the implementation of the Agreement;
- (e) conduct reviews of the Agreement pursuant to clause 19 of the Agreement;
- (f) resolve Disputes in relation to the Agreement in accordance with clause 23 of the Agreement; and
- (g) achieve the objectives of these Terms of Reference.

3. Membership and Attendees

3.1 Members

- (a) The members of the Implementation Committee are as follows:

Name	Role
Tjiwarl AC	2 Members and a Co-Chair
Department of the Premier and Cabinet	Member and Co-Chair
Department of Planning, Lands and Heritage	Member
Department of Biodiversity, Conservation and Attractions	Member
Department of Mines, Industry Regulation and Safety	Member
Department of Primary Industry and Regional Development	Member
Department of Water and Environmental Regulation	Member
Department of Education	Member
Department of Communities	Member
Department of Jobs, Tourism, Science and Innovation	Member
Department of Local Government, Sport and Cultural Industries	Member
Department of Treasury	Member
Department of Finance	Member
Western Australian Museum	Member
Goldfields-Esperance Development Commission	Member
Main Roads Department	Member

- (b) For the avoidance of doubt, a reference to the above government departments, statutory authorities, organisations or bodies includes any successors to, or bodies subsequently carrying out the relevant activity or function of, the above government departments, statutory authorities, organisations or bodies.
- (c) The members nominated by the above government departments must be persons who have the regular day to day responsibility and appropriate seniority for the matters considered

by this committee. There is an expectation that all members of the Implementation Committee will attend all meetings of the Implementation Committee or provide an appropriate proxy.

3.2 Co-Chairs

The Implementation Committee will be co-chaired by a Tjiwarl Director nominated by Tjiwarl AC and a representative nominated by the State from the Department of the Premier and Cabinet (DPC) (the **Co-Chairs**).

3.3 Non Member Attendees

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

4. Meetings

4.1 Attendance & Quorum

- (a) The members agree that, for a meeting of the Implementation Committee to proceed, the following members must be present:
 - (i) the Co-Chairs; and
 - (ii) at least four other members, including at least one representative from the State and one representative from Tjiwarl AC.
- (b) 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, however physical attendance is preferred.

4.2 Meeting Agenda

- (a) DPC, in consultation with Co-Chairs, 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 items to be added to the agenda after the finalised agenda has been circulated by written notice to members of the Implementation Committee.

4.3 Frequency and Location of Meetings

- (a) Unless otherwise agreed between the members at a meeting of the Implementation Committee, the Implementation Committee will meet on dates to be agreed by the Co-Chairs:
 - (i) every month during the first two years following the Conclusive Registration Date; and
 - (ii) at least every six months during the Term of the Agreement.
- (b) The Implementation Committee will review their commitment and timing for ongoing meetings on the second anniversary of the Conclusive Registration Date and every four years thereafter during the Term of the Agreement. Following each review, the Implementation Committee will provide an update to the Parties as to the commitment and timing for ongoing meetings.
- (c) Meetings of the Implementation Committee are to be convened in Perth or at a location nominated by Tjiwarl AC as far as is practicable.

4.4 Costs

Members and attendees of the Implementation Committee will each bear their own costs of attendance, including travel and accommodation as required.

4.5 Resolutions

- (a) The Implementation Committee 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 Implementation Committee 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 Implementation Committee unless approved by consensus of the Implementation Committee.
- (c) Any matters of procedure or membership of the Implementation Committee will be determined by the Co-Chairs.

5. Roles and Obligations

5.1 Co-Chair Responsibilities

The Co-Chairs' 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 Implementation Committee meetings will be provided by DPC and all costs associated with the provision of that administrative support will be met by DPC.
- (b) Appropriate records of the Implementation Committee will be maintained in accordance with DPC'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 Implementation Committee 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 Implementation Committee 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 Implementation Committee.
- (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 Implementation Committee, DPC will, from time to time, update and confirm the contact list for the members of the Implementation Committee.

- (b) Any other information required by the members of the Implementation Committee will be provided within the agreed timeframe at the time of request.

6.2 Minutes of Meetings

- (a) DPC will provide the minutes of each meeting to the members of the Implementation Committee via email no later than 20 Business Days after each Implementation Committee 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 Implementation Committee.

6.3 Reporting

DPC will, as required, report on the progress of matters before the Implementation Committee to:

- (a) members of the Implementation Committee by way of update;
- (b) other agencies across State government where required to support the outcomes of the Implementation Committee or the Agreement; and
- (c) the Parties to the Agreement where required or reasonably requested.

7. Amendment of the Terms of Reference

These Terms of Reference may only be amended by unanimous agreement of the members of the Implementation Committee. The Co-Chairs must, within 15 Business Days of any amendment to these Terms of Reference, provide the Parties with a copy of the amended Terms of Reference.

Item B – Research and Development Working Group

The following Terms of Reference for the Research and Development Working Group is provided for the purpose of clause 9.3 of the Tjiwarl Palyakuwa (Agreement).

TJIWARL PALYAKUWA (AGREEMENT)

TERMS OF REFERENCE

Research and Development Working Group

1. Background

- (a) In accordance with clause 9.3 of the Agreement, the Parties have agreed to establish the Research and Development Working Group to:
 - (i) oversee the delivery of the commitments and processes provided in clauses 9.3, 10.4, 11 and 12 of the Agreement; 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 for the Research and Development Working Group.
- (c) All capitalised terms are as defined in the Agreement

2. Aim and Purpose

The aim and purpose of the Research and Development Working Group is to work collaboratively to:

- (a) facilitate Tjiwarl AC to manage the expenditure of the Research and Development Funding in accordance with Tjiwarl AC policies and directions;
- (b) report on, and provide feedback about, the expenditure of the Research and Development Funding and any Proposed Research and Development Activities which may be undertaken;
- (c) allow Tjiwarl AC to benefit from the State's knowledge in relation to potential Proposed Research and Development Activities;
- (d) identify opportunities for the State's support of potential Proposed Research and Development Activities;
- (e) identify additional sources of funding (or funding partners), and non-monetary support, and secure third party investments for the Proposed Research and Development Activities and potential Proposed Research and Development Opportunities from time to time;
- (f) to establish sub-groups for focus areas identified by the Research and Development Working Group;

- (g) facilitate the commitments made in clause 11 of the Agreement with respect to:
 - (i) jointly approaching relevant Local Governments to erect appropriate signage in Tjiwarl Country;
 - (ii) proposals to name, or rename, places within Tjiwarl Country;
 - (iii) the identification and approach to the ongoing co-custodial management of the Tjiwarl Cultural Materials held within WA Museum collections; and
 - (iv) the exploration of how information about Tjiwarl People's language, history and culture can be incorporated into regional schools attended by Tjiwarl People;
- (h) facilitate the commitments made in clause 12 of the Agreement with respect to Tjiwarl People's aspirations in respect of Tjiwarl Cultural and Intellectual Property, including:
 - (i) jointly developing an agreed process for the management of any Tjiwarl Cultural and Intellectual Property which is created as a result of the Agreement; and
 - (ii) identifying opportunities for the State to support Tjiwarl AC's aspirations in respect to the creation of a framework for the use, transfer, protection and recording of Tjiwarl Cultural and Intellectual Property; and
- (i) achieve the objectives of these Terms of Reference.

3. Membership and Attendees

3.1 Members

The members of the Research and Development Working Group are up to four persons nominated by Tjiwarl AC and no less than two persons nominated the Department of the Premier and Cabinet (DPC) (the **Co-Chairs**).

3.2 Co-Chairs

The Research and Development Working Group will be co-chaired by a Tjiwarl Director nominated by Tjiwarl AC and a representative from DPC nominated by the State.

3.3 Non Member Attendees

- (a) The Co-Chairs may, as required from time to time, invite any person with specialist knowledge, experience or responsibility relevant to the priorities and objectives of the

Research and Development Working Group, including representatives of other State agencies, to attend meetings of the Research and Development Working Group.

- (b) All non-member attendees will be provided with a copy of these Terms of Reference in advance of attending a meeting of the Research and Development Working Group.

4. Meetings

4.1 Attendance & Quorum

- (a) There is an expectation that all members of the Research and Development Working Group will attend all meetings of the Research and Development Working Group.
- (b) The members agree that, for a meeting of the Research and Development Working Group to proceed the following members must be present:
 - (i) the Co-Chairs;
 - (ii) at least 1 other DPC representative; and
 - (iii) at least 1 other Tjiwarl AC representative.
- (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, however physical attendance is preferred.

4.2 Meeting Agenda

- (a) DPC, in consultation with the Chair, 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 Research and Development Working Group.

4.3 Frequency and Location of Meetings

- (a) Unless otherwise agreed between the members at a meeting of the Research and Development Working Group, the Research and Development Working Group will meet:
 - (i) quarterly during the first two 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 one during each subsequent year.
- (b) The Research and Development Working Group will review their commitment and timing for ongoing meetings on the second 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 Research and Development Working Group are to be convened in Perth or at a location nominated by Tjiwarl AC as far as is practicable.

4.4 Costs

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

4.5 Resolutions

- (a) The Research and Development 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 Research and Development 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 Research and Development Working Group unless approved by consensus of the Research and Development Working Group
- (c) Any matters of procedure or membership of the Research and Development Working Group will be determined by the Co-Chairs.

5. Roles and Obligations

5.1 Co-Chair Responsibilities

The Co-Chairs' 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 Research and Development Working Group meetings will be provided by DPC and all costs associated with the provision of that administrative support will be met by DPC.
- (b) Appropriate records of the Research and Development Working Group will be maintained in accordance with DPC'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 Research and Development 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 Research and Development 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 Research and Development 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 Research and Development Working Group, DPC will, from time to time, update and confirm the contact list for the members of the Research and Development Working Group.
- (b) Any other information required by the members of the Research and Development Working Group will be provided within the agreed timeframe at the time of request.

6.2 Minutes of Meetings

- (a) DPC will provide the minutes of each meeting to the members of the Research and Development Working Group via email no later than 20 Business Days after each Research and Development 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 Research and Development Working Group.

6.3 Reporting

DPC will, as required, report on the progress of matters before the Research and Development Working Group to:

- (a) members of the Research and Development Working Group by way of update;
- (b) other agencies across State government where required to support the outcomes of the Research and Development 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 the members of the Research and Development Working Group; and
 - (ii) where the Implementation Committee has endorsed the amendment agreed by the Research and Development Working Group.
- (b) The Co-Chairs must, within 15 Business Days of any amendment to these Terms of Reference being agreed to by the Research and Development Working Group, provide the Implementation Committee with a copy of the proposed amended Terms of Reference for its consideration.

Item C – Economic Empowerment Working Group

The following Terms of Reference for the Economic Empowerment Working Group is provided for the purpose of clause 9.4 of the Tjiwarl Palyakuwa (Agreement).

TJIWARL PALYAKUWA (AGREEMENT)

TERMS OF REFERENCE

Economic Empowerment Working Group

1. Background

- (a) In accordance with clause 9.4 of the Agreement, the Parties have agreed to establish the Economic Empowerment Working Group to:
 - (i) oversee the delivery of the commitments and processes provided in clauses 9.4, 10.5, and 13 of the Agreement; 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 Economic Empowerment Working Group.
- (c) All capitalised terms are as defined in the Agreement

2. Aim and Purpose

The aim and purpose of Economic Empowerment Working Group is to work collaboratively to:

- (a) facilitate Tjiwarl AC to manage the expenditure of the Economic Empowerment Funding in accordance with Tjiwarl AC policies and directions;
- (b) report on, and provide feedback about, the expenditure of the Economic Empowerment Funding and any Proposed Economic Development Activities which may be undertaken;
- (c) identify opportunities for the State's support of potential Proposed Economic Development Activities;
- (d) identify additional sources of funding (or funding partners), and non-monetary support, and secure third party investments for the Proposed Economic Development Activities and any other potential economic empowerment opportunities for Tjiwarl People;
- (e) facilitate the commitments made in clause 13 of the Agreement with respect to:
 - (i) supporting Tjiwarl People's and Tjiwarl Business participation in projects being developed on Tjiwarl Country;
 - (ii) supporting Tjiwarl Businesses and economic opportunities for Tjiwarl People and Tjiwarl Businesses; and
 - (iii) identifying future carbon and sandalwood opportunities for Tjiwarl People and Tjiwarl Businesses;

- (f) share knowledge in relation to potential economic empowerment opportunities for Tjiwarl People and Tjiwarl Businesses; and
- (g) achieve the objectives of these Terms of Reference.

3. Membership and Attendees

3.1 Members

The members of the Economic Empowerment Working Group are:

- (a) up to four persons nominated by Tjiwarl AC;
- (b) no less than three persons nominated in total by:
 - (i) the Department of the Premier and Cabinet (**DPC**);
 - (ii) the Department of Primary Industry and Regional Development; and
 - (iii) the Goldfields-Esperance Development Commission,being persons who have the day to day responsibility and appropriate seniority for the matters considered by the Economic Empowerment Working Group

3.2 Co-chairs

The Economic Empowerment Working Group will be co-chaired by a Tjiwarl Director nominated by Tjiwarl AC and a representative nominated by the State (the **Co-Chairs**).

3.3 Non Member Attendees

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

4. Meetings

4.1 Attendance & Quorum

- (a) There is an expectation that all members of the Economic Empowerment Working Group will attend all meetings of the Economic Empowerment Working Group.
- (b) The members agree that, for a meeting of the Economic Empowerment Working Group to proceed the following members must be present:
 - (i) the Co-Chairs;
 - (ii) at least 2 other State representatives; and
 - (iii) at least 1 other Tjiwarl AC representative.
- (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, however physical attendance is preferred where practicable.

4.2 Meeting Agenda

- (a) The State, in consultation with the Chair, 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 items to be added to the agenda after the finalised agenda has been circulated by written notice to members of the Economic Empowerment Working Group.

4.3 Frequency and Location of Meetings

- (a) Unless otherwise agreed between the members at a meeting of the Economic Empowerment Working Group, the Economic Empowerment Working Group will meet:
 - (i) quarterly during the first two 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 once each subsequent year.

- (b) The Economic Empowerment Working Group will review their commitment and timing for ongoing meetings on the second 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 Economic Empowerment Working Group are to be convened in Perth or at a location nominated by Tjiwarl AC as far as is practicable.

4.4 Costs

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

4.5 Resolutions

- (a) The Economic Empowerment 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 Economic Empowerment 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 Economic Empowerment Working Group unless approved by consensus of the Economic Empowerment Working Group.
- (c) Any matters of procedure or membership of the Economic Empowerment 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 Economic Empowerment Working Group meetings will be provided by the State and all costs associated with the provision of that administrative support will be met by the State.
- (b) Appropriate records of the Economic Empowerment Working Group will be maintained in accordance with the State'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 Economic Empowerment 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 Economic Empowerment 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 Economic Empowerment 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 Economic Empowerment Working Group, the State will, from time to time, update and confirm the contact list for the members of the Economic Empowerment Working Group.
- (b) Any other information required by the members of the Economic Empowerment Working Group will be provided within the agreed timeframe at the time of request.

6.2 Minutes of Meetings

- (a) The State will provide the minutes of each meeting to the members of the Economic Empowerment Working Group via email no later than 20 Business Days after each Economic Empowerment 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 Economic Empowerment Working Group.

6.3 Reporting

The State will, as required, report on the progress of matters before the Economic Empowerment Working Group to:

- (a) members of the Economic Empowerment Working Group by way of update;

- (b) other agencies across State government where required to support the outcomes of the Economic Empowerment 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 Terms of the Reference

- (a) These Terms of Reference may only be amended:
 - (i) by the unanimous agreement of the members of the Economic Empowerment Working Group; and
 - (ii) where the Implementation Committee has endorsed the amendment agreed by the Economic Empowerment Working Group.
- (b) The Co-Chairs must, within 15 Business Days of any amendment to these Terms of Reference being agreed to by the Economic Empowerment Working Group, provide the Implementation Committee with a copy of the proposed amended Terms of Reference for its consideration.

TJIWARL PALYAKUWA (AGREEMENT)

SCHEDULE 4

Mining Business

Tjawalpayi

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1. Overview

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

1.1 What this Schedule contains

This Schedule outlines:

- (a) the processes to be followed by the State and Tjiwarl AC when granting mining tenements and PGER Titles within the Agreement Area, which depend upon the type and location of the relevant mining tenement or PGER Title. These are summarised in the table at clause 1.2 below. Flow charts showing each of the processes are located at Annexure 1 to this Schedule;
- (b) the establishment of a Mining Business Working Group (see clause 4); and
- (c) reviews of this Schedule and its annexures (see clause 12).

1.2 Summary of the Processes for Grant

The following table provides a summary of the clauses which apply to the grant of particular mining tenements and PGER Titles within the Agreement Area:

Tenement / Title	Clause
<i>Mining Act</i>	
Exploration Licence <ul style="list-style-type: none"> • Not in an Identified Area • In an Identified Area 	Clause 5 Clause 6
Prospecting Licence <ul style="list-style-type: none"> • Not in an Identified Area • In an Identified Area 	Clause 5 Clause 6
Retention Lease <ul style="list-style-type: none"> • Not in an Identified Area • In an Identified Area 	Clause 5 Clause 6
Mining Lease	Clause 6

Tenement / Title	Clause
General Purpose Lease	Clause 6
Miscellaneous Licence <ul style="list-style-type: none"> • For purposes including other than "taking water" or "search for groundwater" purposes • For "taking water" or "search for groundwater" purposes only 	Clause 7 Clause 8
<i>PGER Act</i>	
Special Prospecting Authorities <ul style="list-style-type: none"> • Not in an Identified Area • In an Identified Area 	Clause 9 Clause 10
Access Authorities <ul style="list-style-type: none"> • Not in an Identified Area • In an Identified Area 	Clause 9 Clause 10
Drilling reservations	Clause 10
Leases	Clause 10
Licences	Clause 10
Permits	Clause 10

For the avoidance of doubt this table is provided for ease of reference only and is not to be used to interpret this Agreement.

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, unless a specific definition in clause 2.2 applies:

- (a) Words and expressions defined in the Native Title Act including **act attracting the expedited procedure, arbitral body, future act, independent person and relevant Minister**, have the same meaning when used in this Schedule.
- (b) Words and expressions defined in the Mining Act, including exploration licence, general purpose lease, mining lease, mining registrar, mining tenement, miscellaneous licence, prospecting licence, retention licence and warden have the same meaning when used in this Schedule.
- (c) Words and expressions defined in the PGER Act, including **access authority, drilling reservation, lease, licence, permit or special prospecting authority** have the same meaning when used in this Schedule.

2.2 Specific Definitions

In this Schedule, unless the context requires otherwise:

Acreage Release means the invitation for applications for the grant of a permit or drilling reservation referred to in section 30(1) or section 43A(1) of the PGER Act.

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.

ACHA means the *Aboriginal Cultural Heritage Act 2021* (WA) and any regulations.

AHA means the *Aboriginal Heritage Act 1972* (WA).

Certification Form means the document that is substantially in the form, subject to any necessary modifications as required for the relevant mining tenement or PGER Title, of the 'Certification Form' attached at Annexure 4 to this Schedule.

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

Deed for Grant means the deed that is substantially in the form, subject to any necessary modifications as required for the relevant mining tenement or PGER Title, of the 'Deed for Grant' at Annexure 7 to this Schedule.

Deed of Release means the deed that is substantially in the form, subject to any necessary modifications as required for the relevant Mining Exploration Tenure, of the 'Deed of Release' at Annexure 5 to this Schedule.

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.

DWER means the department of the public service of the State principally assisting the Minister for Water in the administration of the *Rights in Water and Irrigation Act 1914* (WA) which, at the Execution Date, is the Department of Water and Environmental Regulation.

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

Expedited Procedure Determination means the determination of the arbitral body referred to in section 32(4) of the Native Title Act.

Expedited Procedure Objection Application means the application referred to in section 32(3) of the Native Title Act objecting to the inclusion of the statement that an act is an act attracting the expedited procedure.

Future Act Determination Application means the application referred to in section 35 of the Native Title Act for a determination in relation to a future act.

Future Act Determination means the determination made under section 36A or section 38 of the Native Title Act.

Identified Area means areas marked on the map attached at Annexure 2 to this Schedule as 'Identified Areas' and further areas which are subsequently agreed between the Tjiwarl AC and the State from time to time to be 'Identified Areas' pursuant to clause 12 and are depicted on a publicly available map and/or spatial database published by the State.

Independent Person Determination means the determination made by the independent person referred to in section 24MD(6B)(g) of the Native Title Act.

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

Mining Act Compliance Date means:

- (a) in respect of an exploration licence, retention licence, mining lease or general purpose lease; the date on which the mining registrar or warden makes a recommendation to the Minister for Mines and Petroleum or their delegate that the relevant mining tenement should be granted; or
- (b) in respect of a prospecting licence or miscellaneous licence the date on which DMIRS or the warden determine that the application could proceed to grant, save for satisfaction of the processes in this Agreement or the Native Title Act.

Mining Exploration Tenure has the meaning given by clause 5.1.

Mining Infrastructure Licence has the meaning given by clause 7.1.

Mining Regulations means the *Mining Regulations 1981* (WA).

Mining Water Licence has the meaning given by clause 8.1.

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.

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

Negotiation Parties means Tjiwarl AC and a Proponent.

Negotiation Period means in respect of:

- (a) Mining Exploration Tenure, a period of 80 Business Days commencing on the Mining Act Compliance Date;
- (b) Other Mining Tenure, a period of 100 Business Days commencing on the Mining Act Compliance Date;
- (c) Mining Infrastructure Licences, a period of 100 Business Days commencing on the Mining Act Compliance Date;
- (d) Mining Water Licences, a period of 100 Business Days commencing on the Mining Act Compliance Date;

- (e) PGER Exploration Tenure, a period of 80 Business days commencing on the PGER Compliance Date; and
- (f) Other PGER Tenure, a period of 100 Business Days commencing on the PGER Compliance Date.

Other Mining Tenure has the meaning given in clause 6.1.

Other PGER Tenure has the meaning given in clause 10.1.

Pending Mining Exploration Tenure has the meaning given in clause 11(a).

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

PGER Act Compliance Date means the date on which DMIRS determines that the application for the PGER Title is suitable for offer, save for satisfaction of the processes in this Agreement or the Native Title Act.

PGER Exploration Tenure has the meaning given in clause 9.1.

PGER Lease means a lease granted under the PGER Act.

PGER Licence means a licence granted under the PGER Act.

PGER Permit means a permit granted under the PGER Act.

PGER Title means a permit, drilling reservation, access authority, lease, licence, or special prospecting authority granted under the PGER Act.

Proponent means a person who has made an application for the grant of a mining tenement or a PGER Title to which this Schedule applies.

Proponent Statutory Declaration means a statutory declaration required to be executed by, or on behalf of, a Proponent in accordance with this Schedule. The form of the statutory declaration, subject to any necessary modifications as required for the relevant mining tenement or PGER Title, to be executed in compliance with:

- (a) clause 5.4(c), is contained in Annexure 9 at Item A;
- (b) the condition on title imposed in clauses 5.9(a), 6.11(a), 7.10(a), 8.6(d), 9.9(a) or 10.11(a), is contained in Annexure 9 at Item B.

Section 24MD Notice means the notice given by the State in accordance with section 24MD(6B)(c) of the Native Title Act.

Section 24MD Objection means the objection to the doing of an act referred to in section 24MD(6B)(d) of the Native Title Act.

Section 29 Notice means the notice given by the State in accordance with section 29 of the Native Title Act.

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

Tenement Application Form means the form of application for a mining tenement prescribed by the Mining Regulations, which, at the Execution Date, is Form 21 of the Mining Regulations.

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 Engagement Protocol means the protocol that is substantially in the form, subject to any necessary modifications as required for the relevant mining tenement or PGER Title, of the 'Tjiwarl Engagement Protocol' at Annexure 8 to this Schedule.

Tjiwarl Exploration Agreement means the agreement that is substantially in the form, subject to any necessary modifications as required for the relevant Mining Exploration Tenure, of the 'Tjiwarl Exploration Agreement' at Annexure 6 to this Schedule.

Tjiwarl Heritage Agreement means the agreement that is substantially in the form, subject to any necessary modifications as required for the relevant mining tenement or PGER Title, of the 'Tjiwarl Heritage Agreement' at Annexure 10 to this Schedule.

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

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.

2.4 State acting through DMIRS

In this Schedule, unless otherwise indicated, the State is the State acting through DMIRS.

3. Principles and Objectives

This clause sets out what the Parties intend to achieve in this Schedule.

The Parties acknowledge and recognise that:

- (a) the processes contained in this Schedule for the grant of mining tenements and PGER Act Titles on Tjiwarl Country are a fundamental part of the Agreement and the Parties commit to working together to implement the Schedule in a certain and efficient manner;
- (b) This Schedule prioritises agreement making between Tjiwarl AC and Proponents in a way that:
 - (i) provides Tjiwarl AC with timely notice of applications for mining tenements and PGER Act Titles;
 - (ii) encourages early engagement between Tjiwarl AC and Proponents; and
 - (iii) provides an efficient process for the valid grant of mining tenements and PGER Act Titles where agreement can be reached, without the need for future act notifications to be made under the Native Title Act; and
- (c) the processes contained in this Schedule are intended to reduce the circumstances in which Tjiwarl AC may have reason to object under the Mining Act to the grant of Mining Tenure. As a result, objections made by Tjiwarl AC under the Mining Act to the grant of mining tenements will be minimised. However, nothing in this Schedule affects rights that Tjiwarl AC have at law, including under the Mining Act.

4. Mining Business Working Group

This clause establishes the Mining Business Working Group.

The Parties agree to establish a Mining Business Working Group to work collaboratively to oversee and inform the implementation of the processes contained in this Schedule in relation to the granting of mining tenements and PGER Titles within the Agreement Area, in accordance with the Mining Business Working Group Terms of Reference set out in Annexure 3 to this Schedule.

5. Process for the grant of Mining Exploration Tenure

This clause sets out the process the State and Tjiwarl AC will follow to grant exploration type tenements that are not located in Identified Areas. A diagram of the process described in this clause is contained in Annexure 1.

5.1 Application of this clause

This clause applies to the following mining tenements that are applied for on or after the Conclusive Registration Date to the extent that they are future acts located within the Agreement Area:

- (a) exploration licences, prospecting licences and retention leases where the area of land applied for does not include an Identified Area; and
- (b) exploration licences, prospecting licences and retention leases where the area of land applied for includes an Identified Area but where the nomination in clause 6.2(b) has been made by Tjiwarl AC.

(Mining Exploration Tenure).

5.2 Notification of application for a Mining Exploration Tenure

- (a) Within 10 Business Days of receiving an application for a Mining Exploration Tenure referred to in clause 5.1(a) the State must give Tjiwarl AC:
 - (i) a copy of the Tenement Application Form for the Mining Exploration Tenure;
 - (ii) a map showing the boundaries of the Mining Exploration Tenure as applied for; and

- (iii) a statement that clause 5 applies to the Mining Exploration Tenure.
- (b) Within 10 Business Days of receiving an application for a Mining Exploration Tenure referred to in clause 5.1(a), or within 10 Business Days of receiving the nomination referred to in clause 6.2(b), the State must give the Proponent:
 - (i) the contact details of Tjiwarl AC;
 - (ii) a copy of the Tjiwarl Exploration Agreement;
 - (iii) a copy of this Schedule, or information as to where this Schedule is published or has otherwise been made publicly available;
 - (iv) a statement that clause 5 applies to the Mining Exploration Tenure; and
 - (v) a request that the Proponent provide Tjiwarl AC with a copy of any additional documentation lodged in support of the Mining Exploration Tenure that identifies the activities to be undertaken on the Mining Exploration Tenure.
- (c) Within 5 Business Days of the Mining Act Compliance Date for the Mining Exploration Tenure the State must give the Negotiation Parties notice of the Negotiation Period, including a statement specifying the day on which the Negotiation Period ends.

5.3 Engagement with the Proponent about Mining Exploration Tenure

- (a) Upon receiving the notification under clause 5.2(c), the State and Tjiwarl AC acknowledge that there is an expectation that Tjiwarl AC and the Proponent will use reasonable endeavours within the Negotiation Period to commence discussions regarding entry into the Tjiwarl Exploration Agreement with respect to the grant of Mining Exploration Tenure, noting that the State may make enquiries of the Negotiation Parties to ascertain progress.
- (b) The Negotiation Parties may, at any time during the Negotiation Period, request that the State facilitate and/or participate in discussions between the Negotiation Parties or provide such other guidance or assistance to the Negotiation Parties as may be reasonably required.
- (c) A request for the State's assistance under clause 5.3(b) must:
 - (i) be made in writing to the State;
 - (ii) be provided to the other Negotiation Party; and
 - (iii) contain sufficient detail of:
 - (A) the assistance or participation being sought from the State; and

- (B) the discussions that have occurred between Negotiation Parties as at the date of such request, or evidence of attempts to hold such discussions between Negotiation Parties,

to enable the State to reasonably assist the Negotiation Parties or participate in their discussions.

5.4 Execution of Tjiwarl Exploration Agreement during Negotiation Period

- (a) If, prior to the end of the Negotiation Period, the Proponent executes the Tjiwarl Exploration Agreement and provides a copy to Tjiwarl AC for execution, Tjiwarl AC must, within 15 Business Days of receiving the Tjiwarl Exploration Agreement from the Proponent:
 - (i) execute the Tjiwarl Exploration Agreement and provide a copy of the executed Tjiwarl Exploration Agreement to the Proponent; and
 - (ii) provide the State with:
 - (A) a Certification Form; and
 - (B) an executed Deed of Release.
- (b) Tjiwarl AC agrees that, if it fails to provide the State with the Certification Form and executed Deed of Release in accordance clause 5.4(a)(ii) within 20 Business Days of it executing the Tjiwarl Exploration Agreement, the Proponent may provide the State with a copy of the Tjiwarl Exploration Agreement executed by both Negotiation Parties.
- (c) Tjiwarl AC agrees that, if it fails to execute and return a Tjiwarl Exploration Agreement within 20 Business Days of receiving an executed Tjiwarl Exploration Agreement from a Proponent in accordance with 5.4(a), the Proponent for the Mining Exploration Tenure may provide the State and Tjiwarl AC with a Proponent Statutory Declaration as evidence that:
 - (i) the Proponent has executed the Tjiwarl Exploration Agreement and provided a copy to Tjiwarl AC for execution; and
 - (ii) 20 Business Days have passed since provision of the executed Tjiwarl Exploration Agreement to Tjiwarl AC and the Proponent has not received an executed Tjiwarl Exploration Agreement from Tjiwarl AC.
- (d) The Minister for Mines and Petroleum may, upon receipt of the documents referred to in clause 5.4(a)(ii) or (b) (as the case may be), grant the Mining Exploration Tenure to the Proponent. Subject to clause 5.7 of the Agreement, the Minister for Mines and Petroleum

agrees, in granting the Mining Exploration Tenement, to impose the following endorsement on the Mining Exploration Tenure (subject to any necessary modifications of terminology as required for the relevant Mining Exploration Tenure):

To the extent that this [type of tenement] is located over the area of land the subject of the Tjiwarl Palyakuwa Indigenous Land Use Agreement (Tjiwarl Palyakuwa (Agreement)), the [tenement holder, e.g. licensee] has executed and entered into the Tjiwarl Exploration Agreement (as defined in Tjiwarl Palyakuwa (Agreement)) and maintains such agreement for the term of this [type of tenement].

- (e) The Minister for Mines and Petroleum may, upon receipt of the documents referred to in clause 5.4(c), grant the Mining Exploration Tenure to the Proponent. Subject to clause 5.7 of the Agreement, the Minister for Mines and Petroleum agrees, in granting the Mining Exploration Tenement, to impose the condition contained in clause 5.9(a) on the Mining Exploration Tenure (subject to any necessary modifications of terminology as required for the relevant Mining Exploration Tenure).

5.5 Request for documents at the end of the Negotiation Period

- (a) If, at the end of the Negotiation Period, the State has not received the documents referred to in clause 5.4(a)(ii), (b) or (c), the State must give a notice to the Negotiation Parties:
- (i) informing them of the end of the Negotiation Period;
 - (ii) requesting, within 10 Business Days, copies of the documents referred to in clause 5.4(a)(ii), (b) or (c) (as applicable); and
 - (iii) if neither Negotiation Party has executed the Tjiwarl Exploration Deed, information with respect to the discussions that have occurred between Negotiation Parties to date, or evidence of attempts to hold such discussions between Negotiation Parties, including, in particular, the reasons why the Tjiwarl Exploration Agreement has not been entered into.
- (b) If the documents referred to in clause 5.4(a)(ii), (b) or (c) are provided to the State following the request in clause 5.5(a)(ii)(a), the Minister for Mines and Petroleum may grant the Mining Exploration Tenure to the Proponent in accordance with clause 5.4(d) or 5.4(e) (as applicable).

5.6 Tjiwarl Exploration Agreement not executed during Negotiation Period

- (a) If the documents referred to in clause 5.4(a)(ii), (b) or (c) are not provided to the State within 10 Business Days of the notice given in clause 5.5(a), on the basis of any information received in response to the request made at clause 5.5(a)(iii), together with any other facts or matters the State determines to be relevant, the State will consider whether a recommendation should be made to the Minister for Mines and Petroleum that the application for the Mining Exploration Tenure not be granted on the grounds contained in section 111A(1) of the Mining Act.
- (b) If the Minister for Mines and Petroleum does not refuse the application for the Mining Exploration Tenure under section 111A of the Mining Act, the State may give a Section 29 Notice in respect the Mining Exploration Tenure and will, pursuant to section 29(7) of the Native Title Act, include in that Section 29 Notice a statement that the State considers that the grant of the Mining Exploration Tenure is an act attracting the expedited procedure.

5.7 State Participation in an Expedited Procedure Objection Application

If, following the Section 29 Notice referred to in clause 5.6(b), Tjiwarl AC makes an Expedited Procedure Objection Application, the State will:

- (a) if requested, facilitate and/or participate in discussions between the Negotiation Parties or provide such other guidance or assistance to the Negotiation Parties as may be reasonably required; and
- (b) include in any information provided to the arbitral body for the purpose of the Expedited Procedure Determination, the intention of the Minister for Mines and Petroleum to impose the condition referred to in clause 5.9(a) on the Mining Exploration Tenure (subject to any necessary modification of terminology as required for the Mining Exploration Tenure).

5.8 Tjiwarl Exploration Agreement executed after Expedited Procedure Objection Application

- (a) If, after Tjiwarl AC lodges an Expedited Procedure Objection Application, but prior to the arbitral body making an Expedited Procedure Determination, the Proponent executes the Tjiwarl Exploration Agreement and provides a copy to Tjiwarl AC for execution, Tjiwarl AC must, within 10 Business Days of receipt of the Tjiwarl Exploration Agreement from the Proponent:

- (i) execute the Tjiwarl Exploration Agreement and provide a copy of the executed Tjiwarl Exploration Agreement to the Proponent;
 - (ii) withdraw the Expedited Procedure Objection Application; and
 - (iii) provide the State with:
 - (A) a Certification Form; and
 - (B) an executed Deed of Release.
- (b) Following the withdrawal of the Expedited Procedure Objection Application, the Minister for Mines and Petroleum, in granting the Mining Exploration Tenure, agrees to impose the endorsement referred to in clause 5.4(d) on the Mining Exploration Tenure (subject to any necessary modifications of terminology as required for the relevant Mining Exploration Tenure).

5.9 Expedited Procedure Objection Application not made or where the Expedited Procedure applies

- (a) If, following the Section 29 Notice referred to in clause 5.6(b):
- (i) Tjiwarl AC does not make an Expedited Procedure Objection Application; or
 - (ii) the arbitral body makes an Expedited Procedure Determination that the grant of the Mining Exploration Tenure is an act attracting the expedited procedure,
- subject to clause 5.7 of the Agreement, the Minister for Mines and Petroleum, in granting the Mining Exploration Tenure, agrees to impose the following condition on the Mining Exploration Tenure (subject to any necessary modification of terminology as required for the Mining Exploration Tenure):

*As the Tjiwarl Palyakuwa Indigenous Land Use Agreement (**Tjiwarl Palyakuwa (Agreement)**) applies to this [type of tenement, e.g. exploration licence]:*

- a. the [tenement holder, e.g. licensee] must, before exercising any of the rights, powers or duties pursuant to this [type of tenement] over that portion of the area of land the subject of the Tjiwarl Palyakuwa (Agreement) execute and enter into the Tjiwarl Exploration Agreement (as defined in the Tjiwarl Palyakuwa (Agreement)) with Tjiwarl AC (as defined in the Tjiwarl Palyakuwa (Agreement)) and maintain such agreement for the term of the [type of tenement].*

- b. Where:*
- i. the [tenement holder] executes the Tjiwarl Exploration Agreement and provides a copy to Tjiwarl AC for execution; and*
 - ii. within 40 Business Days of receiving the executed Tjiwarl Exploration Agreement, Tjiwarl AC does not execute the Tjiwarl Exploration Agreement and provide a copy of the executed Tjiwarl Exploration Agreement to the [tenement holder]; and*
 - iii. the [tenement holder] provides to the Minister for Mines and Petroleum a declaration from the [tenement holder] (or if the [tenement holder] is a corporation, from a director of that corporation on its behalf) in the form of Annexure 9 to Schedule 4 of the Tjiwarl Palyakuwa (Agreement) as evidence that the requirements of paragraph (b)(i) and (ii) of this condition have been met*

then, as and from the date on which the declaration in (b)(iii) is received by the Minister for Mines and Petroleum, the requirements of paragraph (a) of this condition do not apply and the [tenement holder] may proceed to exercise any of the rights, powers or duties pursuant to this [type of tenement] over that portion of the area of land the subject of the Tjiwarl Palyakuwa (Agreement).

- (b) If, following the grant of the Mining Exploration Tenure in accordance clause 5.9(a), the Proponent executes and enters into the Tjiwarl Exploration Agreement, Tjiwarl AC must within 10 Business Days of receiving the executed Tjiwarl Exploration Agreement from the Proponent:
- (i) execute the Tjiwarl Exploration Agreement and provide the Proponent with a copy of the completed Tjiwarl Exploration Agreement; and
 - (ii) provide the State with:
 - (A) a Certification Form; and
 - (B) an executed Deed of Release.

5.10 Where the Expedited Procedure does not apply

If, following the Section 29 Notice referred to in clause 5.6(b), the arbitral body makes an Expedited Procedure Determination that the grant of the Mining Exploration Tenure is not an act attracting the expedited procedure, clauses 6.8 to 6.11 apply:

- (a) as if a reference to "*Other Mining Tenure*" was a reference to "*Mining Exploration Tenure*";
- (b) as if a reference to the "*Section 29 Notice referred to in clause 6.7(b)*" was a reference to the "*Section 29 Notice referred to in clause 5.6(b)*"; and
- (c) subject to any other necessary modification of terminology as required for the Mining Exploration Tenure.

6. Process for the grant of Other Mining Tenure

This clause sets out the process the State and Tjiwarl AC will follow to grant exploration type tenements that are located in Identified Areas, mining leases and general purpose leases. A diagram of the process described in this clause is contained in Annexure 1.

6.1 Application of this clause

This clause applies to the following mining tenements that are applied for on or after the Conclusive Registration Date to the extent that they are future acts located within the Agreement Area:

- (a) mining leases;
- (b) general purpose leases; and
- (c) exploration licences, prospecting licences and retention leases where the area of land applied for includes an Identified Area and where, for the avoidance of doubt, a nomination of the kind described in clause 6.2(b) has not been made.

(Other Mining Tenure).

6.2 Nomination for a mining tenement to be a Mining Exploration Tenure

- (a) Where an exploration licence, prospecting licence or retention lease is a future act applied for in the Agreement Area on or after the Conclusive Registration Date and the area of land applied for includes an Identified Area, the State must, within 10 Business Days of receiving the application, give Tjiwarl AC:
 - (i) a copy of the Tenement Application Form for the mining tenement;
 - (ii) a map showing the boundaries of the mining tenement as applied for; and

- (iii) a request for Tjiwarl AC to nominate whether clause 5, instead of clause 6, will apply to the mining tenement.
- (b) If, within 10 Business Days of the provision of the information in clause 6.2(a), Tjiwarl AC nominate that clause 5 should apply to the mining tenement, the mining tenement is, on and from the date of the nomination, a Mining Exploration Tenure to which clause 5 applies.
- (c) For the avoidance of doubt if, after 10 Business Days of the provision of the information in clause 6.2(a), a nomination under clause 6.2(b) has not been received by the State, the mining tenement is an Other Mining Tenure to which this clause 6 applies.

6.3 Notification of application for Other Mining Tenure

- (a) Within 10 Business Days of receiving an application for an Other Mining Tenure referred to in 6.1(a) or 6.1(b) the State must give Tjiwarl AC:
 - (i) a copy of the Tenement Application Form for the Other Mining Tenure;
 - (ii) a map showing the boundaries of the Other Mining Tenure as applied for; and
 - (iii) a statement that clause 6 applies to the Other Mining Tenure.
- (b) Within 10 Business Days of receiving an application for an Other Mining Tenure referred to in clause 6.1(a) or 6.1(b), or within 30 Business Days of receiving an application for an Other Mining Tenure referred to in clause 6.1(c), the State must give the Proponent:
 - (i) the contact details of Tjiwarl AC;
 - (ii) a copy of the Tjiwarl Engagement Protocol;
 - (iii) a copy of this Schedule, or information as to where this Schedule is published or has otherwise been made publicly available;
 - (iv) a statement that clause 6 applies to the Other Mining Tenure; and
 - (v) a request that the Proponent provide Tjiwarl AC with a copy of any additional documentation lodged in support of the Other Mining Tenure that identifies the activities to be undertaken on the Other Mining Tenure.
- (c) Within 5 Business Days of the Mining Act Compliance Date for the Other Mining Tenure the State must give the Negotiation Parties notice of the Negotiation Period, including a statement specifying the day on which the Negotiation Period ends.

6.4 Engagement with the Proponent about Other Mining Tenure

- (a) Upon receiving the notification under clause 6.3(c), the State and Tjiwarl AC acknowledge that there is an expectation that Tjiwarl AC and the Proponent will use reasonable endeavours within the Negotiation Period to commence discussions regarding entry into the Tjiwarl Engagement Protocol and the grant of the Other Mining Tenure, noting that the State may make enquiries of the Negotiation Parties to ascertain progress.
- (b) The Negotiation Parties may, at any time during the Negotiation Period, request that the State facilitate and/or participate in discussions between the Negotiation Parties or provide such other guidance or assistance to the Negotiation Parties as may be reasonably required.
- (c) A request for the State's assistance under clause 6.4(b) must:
 - (i) be made in writing to the State;
 - (ii) be provided to the other Negotiation Party; and
 - (iii) contain sufficient detail of:
 - (A) the assistance being sought from the State; and
 - (B) the discussions that have occurred between Negotiation Parties as at the date of such request, or evidence of attempts to hold such discussions between Negotiation Parties,to enable the State to reasonably assist the Negotiation Parties or participate in their discussions.

6.5 Agreement as to grant of the Other Mining Tenure during Negotiation Period

- (a) If, prior to the end of the Negotiation Period, the Negotiation Parties reach agreement as to the grant of the Other Mining Tenure, Tjiwarl AC must, within 15 Business Days of reaching agreement with the Proponent, provide the State with a Certification Form.
- (b) Within 40 Business Days of receipt of the Certification Form referred to in clause 6.5(a), Tjiwarl AC and the State will agree, and Tjiwarl AC will execute, a deed in the form, or substantially in the form of, the Deed of Release (subject to any necessary modifications as required by the relevant Other Mining Tenure or the terms of the agreement reached by the Negotiation Parties).
- (c) The Minister for Mines and Petroleum may, upon receipt of the Certification Form referred to in clause 6.5(a), grant the Other Mining Tenure to the Proponent. Subject to clause 5.7

of the Agreement, the Minister for Mines and Petroleum agrees, in granting the Other Mining Tenement, to impose the following endorsement on the Other Mining Tenure (subject to any necessary modifications of terminology as required for the relevant Other Mining Tenure):

*To the extent that this [type of tenement] is located over the area of land the subject of Tjiwarl Palyakuwa Indigenous Land Use Agreement (**Tjiwarl Palyakuwa Agreement**), the [tenement holder, e.g. licensee] has executed and entered into an agreement with Tjiwarl AC (as defined in Tjiwarl Palyakuwa Agreement) and maintains such agreement for the term of this [type of tenement].*

6.6 Request for documents at the end of the Negotiation Period

- (a) If, at the end of the Negotiation Period, the State has not received the Certification Form referred to in clause 6.5(a), the State must give a notice to the Negotiation Parties:
 - (i) informing them of the end of the Negotiation Period;
 - (ii) requesting, within 10 Business Days:
 - (A) if an agreement has been reached between the Negotiation Parties as to the grant of the Other Mining Tenure, a Certification Form; or
 - (B) if the Negotiation Parties have not reached agreement as to the grant of the Other Mining Tenure, information with respect to the discussions that have occurred between Negotiation Parties to date, or evidence of attempts to hold such discussions between Negotiation Parties.
- (b) If a Certification Form is provided to the State following the request in clause 6.6(a)(ii)(A):
 - (i) within 40 Business Days of receipt of the Certification Form, Tjiwarl AC and the State will agree, and Tjiwarl AC will execute, a deed in the form, or substantially in the form of, the Deed of Release (subject to any necessary modifications as required by the relevant Other Mining Tenure or the terms of the agreement reached by the Negotiation Parties); and
 - (ii) the Minister for Mines and Petroleum may, upon receipt of the Certification Form, grant the Other Mining Tenure to the Proponent. Subject to clause 5.7 of the Agreement, the Minister for Mines and Petroleum agrees, in granting the Other Mining Tenement, to impose the following endorsement on the Other Mining Tenure (subject to any necessary modifications of terminology as required for the relevant Other Mining Tenure):

*To the extent that this [type of tenement] is located over the area of land the subject of the Tjiwarl Palyakuwa Indigenous Land Use Agreement (**Tjiwarl Palyakuwa (Agreement)**), the [tenement holder, e.g. licensee] has executed and entered into an agreement with Tjiwarl AC (as defined in Tjiwarl Palyakuwa (Agreement) and maintains such agreement for the term of this [type of tenement].*

6.7 Agreement not reached during Negotiation Period

- (a) If a Certification Form is not provided to the State within 10 Business Days of the notice given in clause 6.6(a), on the basis of any information received in response to the request made at clause 6.6(a)(ii)(B), together with any other facts or matters the State determines to be relevant, the State will consider whether a recommendation should be made to the Minister for Mines and Petroleum that the application for the Other Mining Tenure not be granted on the grounds contained in section 111A(1) of the Mining Act.
- (b) If the Minister for Mines and Petroleum does not refuse the application for the Other Mining Tenure under section 111A of the Mining Act, the State may give a Section 29 Notice in respect the Other Mining Tenure.

6.8 State Participation following Section 29 Notice

- (a) Following the Section 29 Notice referred to in clause 6.7(b) the State will, if requested, facilitate and/or participate in discussions between the Negotiation Parties or provide such other guidance or assistance to the Negotiation Parties as may be reasonably required.
- (b) A request for the State's assistance under clause 6.8(a) must:
 - (i) be made in writing to the State;
 - (ii) be provided to the other Negotiation Party; and
 - (iii) contain sufficient detail of:
 - (A) the assistance or participation being sought from the State; and
 - (B) the discussions that have occurred between Negotiation Parties as at the date of such request, or evidence of attempts to hold such discussions between Negotiation Parties,to enable the State to reasonably assist the Negotiation Parties or participate in their discussions.

6.9 Future Act Determination Application

If, following the Section 29 Notice referred to in clause 6.7(b), Tjiwarl AC or the Proponent make a Future Act Determination Application, the State will:

- (a) to the extent reasonably practicable, or if required by the arbitral body, participate in the Future Act Determination Application including, where appropriate, making submissions as to whether a Negotiation Party has negotiated in good faith with a view to reaching agreement (as referred to in section 31(1)(b) of the Native Title Act) and/or whether the Other Mining Tenure should be granted and, if so, on what conditions; and
- (b) include in any information provided for the purpose of the Future Act Determination, the intention of the Minister for Mines and Petroleum to impose the following condition on the Other Mining Tenure (subject to any necessary modification of terminology as required for the Other Mining Tenure):

*As the Tjiwarl Palyakuwa Indigenous Land Use Agreement (**Tjiwarl Palyakuwa (Agreement)**) applies to this [type of tenement, e.g. exploration licence]:*

- a. *the [tenement holder, e.g. licensee] must, before exercising any of the rights, powers or duties pursuant to this [type of tenement] over that portion of the area of land the subject of the Tjiwarl Palyakuwa (Agreement) execute and enter into the Tjiwarl Heritage (Agreement) (as defined in the Tjiwarl Palyakuwa (Agreement)) with Tjiwarl AC (as defined in the Tjiwarl Palyakuwa (Agreement)) and maintain such agreement for the term of the [type of tenement].*
- b. *Where:*
 - i. *the [tenement holder] executes the Tjiwarl Heritage Agreement and provides a copy to Tjiwarl AC for execution; and*
 - ii. *within 40 Business Days of receiving the executed Tjiwarl Heritage Agreement, Tjiwarl AC does not execute the Tjiwarl Heritage Agreement and provide a copy of the executed Tjiwarl Heritage Agreement to the [tenement holder]; and*
 - iii. *the [tenement holder] provides to the Minister for Mines and Petroleum a declaration from the [tenement holder] (or if the [tenement holder] is a corporation, from a director of that corporation on its behalf) in the form of Annexure 9 to Schedule 4 of the Tjiwarl Palyakuwa (Agreement)*

as evidence that the requirements of paragraph (b)(i) and (ii) of this condition have been met

then, as and from the date on which the declaration in (b)(iii) is received by the Minister for Mines and Petroleum, the requirements of paragraph (a) of this condition do not apply and the [tenement holder] may proceed to exercise any of the rights, powers or duties pursuant to this [type of tenement] over that portion of the area of land the subject of the Tjiwarl Palyakuwa (Agreement).

6.10 Agreement reached following Section 29 Notice

- (a) If, following the Section 29 Notice referred to in clause 6.7(b), Tjiwarl AC and the Proponent reach an agreement of the kind referred to in section 31(1)(b) of the Native Title Act, Tjiwarl AC must within 20 Business Days of reaching agreement provide the State with a Certification Form and a Deed for Grant executed by the Tjiwarl AC and the Proponent.
- (b) Upon receipt of the documents referred to in clause 6.10(a), the State will:
 - (i) execute the Deed for Grant and provide a completed copy to the Tjiwarl AC and the Proponent;
 - (ii) give a copy of the executed Deed for Grant to the arbitral body in accordance with section 41A(1)(a) and (c) of the Native Title Act; and
 - (iii) advise the relevant Minister for the purpose of the Native Title Act in writing of the making of the Deed for Grant.

6.11 Where a Future Act Determination is made

If a Future Act Determination is made that the Other Mining Tenure may be granted subject to the condition contained in clause 6.9(b):

- (a) the Minister for Mines and Petroleum, in granting the Other Mining Tenure, agrees to impose that condition (subject to any necessary modification of terminology as required for the Other Mining Tenure); and
- (b) Tjiwarl AC must, within 10 Business Days of receiving an executed Tjiwarl Heritage Agreement from the Proponent provide the State with a Certification Form.

7. Process for the grant of Mining Infrastructure Licences

This clause sets out the process the State and Tjiwarl AC will follow to grant miscellaneous licences that are not for the purpose of taking water or searching for groundwater. A diagram of the process described in this clause is contained in Annexure 1. The process for granting miscellaneous licences for taking or searching for water can be found in clause 8.

7.1 Application of this clause

This clause applies to the following mining tenements that are applied for on or after the Conclusive Registration Date to the extent that they are future acts located within the Agreement Area:

- (a) miscellaneous licences where the miscellaneous licence is not a Mining Water Licence, to which clause 8 applies

(Mining Infrastructure Licences).

7.2 Notification of application for Mining Infrastructure Licence

- (a) Within 10 Business Days of the lodgement of the written details referred to in regulation 37(3) of the Mining Regulations in respect of the Mining Infrastructure Licence the State must give:
 - (i) Tjiwarl AC:
 - (A) a copy of the Tenement Application Form for the Mining Infrastructure Licence;
 - (B) a map showing the boundaries of the Mining Infrastructure Licence as applied for; and
 - (C) a statement that clause 7 applies to the Mining Infrastructure Licence; and
 - (ii) the Proponent:
 - (A) the contact details of Tjiwarl AC;
 - (B) a copy of the Tjiwarl Engagement Protocol;
 - (C) a copy of this Schedule, or information as to where this Schedule is published or has otherwise been made publicly available;
 - (D) a statement that clause 7 applies to the Mining Infrastructure Licence; and

- (E) a request that the Proponent provide Tjiwarl AC with a copy of any additional documentation lodged in support of the Mining Infrastructure Licence that identifies the activities to be undertaken on the Mining Infrastructure Licence.
- (b) Within 5 Business Days of the Mining Act Compliance Date for the Mining Infrastructure Licence the State must give the Negotiation Parties notice of the Negotiation Period, including a statement specifying the day on which the Negotiation Period ends.

7.3 Engagement with the Proponent about Mining Infrastructure Licence

- (a) Upon receiving the notification under clause 7.2(b), the State and Tjiwarl AC acknowledge that there is an expectation that Tjiwarl AC and the Proponent will use reasonable endeavours within the Negotiation Period to commence discussions regarding entry into the Tjiwarl Engagement Protocol and the grant of the Mining Infrastructure Licence, noting that the State may make enquiries of the Negotiation Parties to ascertain progress.
- (b) The Negotiation Parties may, at any time during the Negotiation Period, request that the State facilitate and/or participate in discussions between the Negotiation Parties or provide such other guidance or assistance to the Negotiation Parties as may be reasonably required.
- (c) A request for the State's assistance under clause 7.3(b) must:
 - (i) be made in writing to the State;
 - (ii) be provided to the other Negotiation Party; and
 - (iii) contain sufficient detail of:
 - (A) the assistance being sought from the State; and
 - (B) the discussions that have occurred between Negotiation Parties as at the date of such request, or evidence of attempts to hold such discussions between Negotiation Parties,to enable the State to reasonably assist the Negotiation Parties or participate in their discussions.

7.4 Agreement to grant of Mining Infrastructure Licence during Negotiation Period

- (a) If, prior to the end of the Negotiation Period, the Negotiation Parties reach agreement as to the grant of the Mining Infrastructure Licence, Tjiwarl AC must, within 15 Business Days of reaching agreement with the Proponent, provide the State with a Certification Form.

- (b) Within 40 Business Days of receipt of the Certification Form referred to in clause 7.4(a), Tjiwarl AC and the State will agree, and Tjiwarl AC will execute, a deed in the form, or substantially in the form of, the Deed of Release (subject to any necessary modifications as required by the relevant Mining Infrastructure Licence or the terms of the agreement reached by the Negotiation Parties).
- (c) The Minister for Mines and Petroleum may, upon receipt of the Certification Form referred to in clause 7.4(a), grant the Mining Infrastructure Licence to the Proponent. Subject to clause 5.7 of the Agreement, the Minister for Mines and Petroleum agrees, in granting the Mining Infrastructure Licence, to impose the following endorsement on the Mining Infrastructure Licence (subject to any necessary modifications of terminology as required for the relevant Mining Infrastructure Licence):

*To the extent that this [type of tenement] is located over the area of land the subject of Tjiwarl Palyakuwa Indigenous Land Use Agreement (**Tjiwarl Palyakuwa (Agreement)**), the [tenement holder, e.g. licensee] has executed and entered into an agreement with Tjiwarl AC (as defined in Tjiwarl Palyakuwa (Agreement)) and maintains such agreement for the term of this [type of tenement].*

7.5 Request for documents at the end of the Negotiation Period

- (a) If, at the end of the Negotiation Period, the State has not received the Certification Form referred to in clause 7.4(a), the State must give a notice to the Negotiation Parties:
 - (i) informing them of the end of the Negotiation Period;
 - (ii) requesting, within 10 Business Days:
 - (A) if an agreement has been reached between the Negotiation Parties as to the grant of the Mining Infrastructure Licence, a Certification Form; or
 - (B) if the Negotiation Parties have not reached agreement as to the grant of the Mining Infrastructure Licence Tenure, information with respect to the discussions that have occurred between Negotiation Parties to date, or evidence of attempts to hold such discussions between Negotiation Parties.
- (b) If a Certification Form is provided to the State following the request in clause 7.5(a)(ii)(A):
 - (i) within 40 Business Days of receipt of the Certification Form, Tjiwarl AC and the State will agree, and Tjiwarl AC will execute, a deed in the form, or substantially in the form of, the Deed of Release (subject to any necessary modifications as required

by the relevant Mining Infrastructure Licence or the terms of the agreement reached by the Negotiation Parties); and

- (ii) the Minister for Mines and Petroleum may, upon receipt of the Certification Form, grant the Mining Infrastructure Licence to the Proponent. Subject to clause 5.7 of the Agreement, the Minister for Mines and Petroleum agrees, in granting the Mining Infrastructure Licence, to impose the following endorsement on the Mining Infrastructure Licence (subject to any necessary modifications of terminology as required for the relevant Mining Infrastructure Licence):

*To the extent that this [type of tenement] is located over the area of land the subject of Tjiwarl Palyakuwa Indigenous Land Use Agreement (**Tjiwarl Palyakuwa (Agreement)**), the [tenement holder, e.g. licensee] has executed and entered into an agreement with Tjiwarl AC (as defined in Tjiwarl Palyakuwa (Agreement) and maintains such agreement for the term of this [type of tenement].*

7.6 Agreement not reached during Negotiation Period

- (a) If a Certification Form is not provided to the State within 10 Business Days of the notice given in clause 7.5(a), on the basis of any information received in response to the request made at clause 7.5(a)(ii)(B), together with any other facts or matters the State determines to be relevant, the State will consider whether a recommendation should be made to the Minister for Mines and Petroleum that the application for the Mining Infrastructure Licence not be granted on the grounds contained in section 111A(1) of the Mining Act.
- (b) If the Minister for Mines and Petroleum does not refuse the application for the Mining Infrastructure Licence under section 111A of the Mining Act, the State may give a Section 24MD Notice in respect the Mining Infrastructure Licence.

7.7 State Participation following Section 24MD Notice

- (a) Following the Section 24MD Notice referred to in clause 7.6(b) the State will, if requested, facilitate and/or participate in discussions between the Negotiation Parties or provide such other guidance or assistance to the Negotiation Parties as may be reasonably required.
- (b) A request for the State's assistance under clause 7.7(a) must:
 - (i) be made in writing to the State;
 - (ii) be provided to the other Negotiation Party; and

- (iii) contain sufficient detail of:
 - (A) the assistance or participation being sought from the State; and
 - (B) the discussions that have occurred between Negotiation Parties as at the date of such request, or evidence of attempts to hold such discussions between Negotiation Parties,
 to enable the State to reasonably assist the Negotiation Parties or participate in their discussions.

7.8 Section 24MD Objection

If, following the Section 24MD Notice referred to in clause 7.6(b), Tjiwarl AC makes a Section 24MD Objection, the State will:

- (a) participate in any hearing of the Section 24MD Objection by the independent person including, where appropriate, making submissions as to whether the Mining Infrastructure Licence should be granted and, if so, on what conditions; and
- (b) include in the information provided in any hearing of the Section 24MD Objection by the independent person, the intention of the Minister for Mines and Petroleum to impose the following condition on the Mining Infrastructure Licence (subject to any necessary modification of terminology as required for the Mining Infrastructure Licence):

*As the Tjiwarl Palyakuwa Indigenous Land Use Agreement (**Tjiwarl Palyakuwa Agreement**)) applies to this [type of tenement, e.g. exploration licence]:*

- a. *the [tenement holder, e.g. licensee] must, before exercising any of the rights, powers or duties pursuant to this [type of tenement] over that portion of the area of land the subject of the Tjiwarl Palyakuwa Agreement execute and enter into the Tjiwarl Heritage Agreement (as defined in the Tjiwarl Palyakuwa Agreement)) with Tjiwarl AC (as defined in the Tjiwarl Palyakuwa Agreement)) and maintain such agreement for the term of the [type of tenement].*
- b. *Where:*
 - i. *the [tenement holder] executes the Tjiwarl Heritage Agreement and provides a copy to Tjiwarl AC for execution; and*
 - ii. *within 40 Business Days of receiving the executed Tjiwarl Heritage Agreement, Tjiwarl AC does not execute the Tjiwarl Heritage*

Agreement and provide a copy of the executed Tjiwarl Heritage Agreement to the [tenement holder]; and

- iii. the [tenement holder] provides to the Minister for Mines and Petroleum a declaration from the [tenement holder] (or if the [tenement holder] is a corporation, from a director of that corporation on its behalf) in the form of Annexure 9 to Schedule 4 of the Tjiwarl Palyakuwa (Agreement) as evidence that the requirements of paragraph (b)(i) and (ii) of this condition have been met*

then, as and from the date on which the declaration in (b)(iii) is received by the Minister for Mines and Petroleum, the requirements of paragraph (a) of this condition do not apply and the [tenement holder] may proceed to exercise any of the rights, powers or duties pursuant to this [type of tenement] over that portion of the area of land the subject of the Tjiwarl Palyakuwa (Agreement).

7.9 Agreement reached prior to Independent Person Determination

- (a) If, following the Section 24MD Notice referred to in clause 7.6(b) but prior to the Independent Person Determination, the Negotiation Parties reach agreement as to the grant of the Mining Infrastructure Licence, Tjiwarl AC must, within 15 Business Days of reaching agreement with the Proponent:
- (i) provide the State with a Certification Form; and
 - (ii) withdraw any Section 24MD Objection.
- (b) Within 40 Business Days of receipt of the Certification Form referred to in clause 7.9(a), Tjiwarl AC and the State will agree, and Tjiwarl AC will execute, a deed in the form, or substantially in the form of, the Deed of Release (subject to any necessary modifications as required by the relevant Mining Infrastructure Licence or the terms of the agreement reached by the Negotiation Parties).
- (c) The Minister for Mines and Petroleum may, upon the withdrawal of the Section 24MD Objection, grant the Mining Infrastructure Licence to the Proponent. Subject to clause 5.7 of the Agreement, the Minister for Mines and Petroleum agrees, in granting the Mining Infrastructure Licence, to impose the following endorsement on the Mining Infrastructure Licence (subject to any necessary modifications of terminology as required for the relevant Mining Infrastructure Licence):

*To the extent that this [type of tenement] is located over the area of land the subject of Tjiwarl Palyakuwa Indigenous Land Use Agreement (**Tjiwarl Palyakuwa (Agreement)**), the [tenement holder, e.g. licensee] has executed and entered into an agreement with Tjiwarl AC (as defined in Tjiwarl Palyakuwa (Agreement)) and maintains such agreement for the term of this [type of tenement].*

7.10 Where an Independent Person Determination is made

If an Independent Person Determination is made that the Mining Infrastructure Licence may be granted subject to the condition contained in clause 7.8(b):

- (a) the Minister for Mines and Petroleum, in granting the Mining Infrastructure Licence, agrees to impose that condition (subject to any necessary modification of terminology as required for the Mining Infrastructure Licence); and
- (b) Tjiwarl AC must, within 10 Business Days of receiving an executed Tjiwarl Heritage Agreement from the Proponent provide the State with a Certification Form.

8. Process for the grant of Mining Water Licences

This clause sets out the process the State and Tjiwarl AC will follow to grant miscellaneous licences that are for the purpose of taking water or searching for groundwater. A diagram of the process described in this clause is contained in Annexure 1.

8.1 Application of this clause

This clause applies to the following mining tenements that are applied for on or after the Conclusive Registration Date to the extent that they are future acts located within the Agreement Area:

- (a) miscellaneous licences where:
 - (i) the purpose(s) of the miscellaneous licence are only those prescribed by regulation 42B(i) ("taking water") or 42B(ia) ("search for ground water") of the Mining Regulations; and
 - (ii) the written details lodged by the Proponent pursuant to regulation 37(3) of the Mining Regulations do not contemplate the Proponent conducting any works or operations pursuant to which the land would be used for any other purpose prescribed by regulation 42B of the Mining Regulations,

(Mining Water Licences).

8.2 Notification of application for Mining Water Licence

- (a) Within 10 Business Days of the lodgement of the written details referred to in regulation 37(3) of the Mining Regulations in respect of the Mining Water Licence the State must give:
- (i) Tjiwarl AC:
 - (A) a copy of the Tenement Application Form for the Mining Water Licence;
 - (B) a map showing the boundaries of the Mining Water Licence as applied for; and
 - (C) a statement that clause 8 applies to the Mining Water Licence; and
 - (ii) the Proponent:
 - (A) the contact details of Tjiwarl AC;
 - (B) a copy of the Tjiwarl Engagement Protocol;
 - (C) a copy of this Schedule, or information as to where this Schedule is published or has otherwise been made publicly available;
 - (D) a statement that clause 8 applies to the Mining Water Licence; and
 - (E) a request that the Proponent provide Tjiwarl AC with a copy of any additional documentation lodged in support of the Mining Water Licence that identifies the activities to be undertaken on the Mining Water Licence.
- (b) Within 5 Business Days of the Mining Act Compliance Date for the Mining Water Licence the State must give the Negotiation Parties notice of the Negotiation Period, including a statement specifying the day on which the Negotiation Period ends.

8.3 Engagement with the Proponent about Mining Water Licence

- (a) Upon receiving the notification under clause 8.2(b), the State and Tjiwarl AC acknowledge that there is an expectation that Tjiwarl AC and the Proponent will use reasonable endeavours within the Negotiation Period to commence discussions regarding entry into the Tjiwarl Engagement Protocol and the grant of the Mining Water Licence, noting that the State may make enquiries of the Negotiation Parties to ascertain progress.
- (b) The Negotiation Parties may, at any time during the Negotiation Period, request that the State facilitate and/or participate in discussions between the Negotiation Parties or provide such other guidance or assistance to the Negotiation Parties as may be reasonably required.

- (c) A request for the State's assistance under clause 8.3(a) must:
 - (i) be made in writing to the State;
 - (ii) be provided to the other Negotiation Party; and
 - (iii) contain sufficient detail of:
 - (A) the assistance being sought from the State; and
 - (B) the discussions that have occurred between Negotiation Parties as at the date of such request, or evidence of attempts to hold such discussions between Negotiation Parties,to enable the State to reasonably assist the Negotiation Parties or participate in their discussions.

8.4 Agreement to grant of the Mining Water Licence during Negotiation Period

- (a) If, prior to the end of the Negotiation Period, the Negotiation Parties reach agreement as to the grant of the Mining Water Licence, Tjiwarl AC must, within 15 Business Days of reaching agreement with the Proponent, provide the State with a Certification Form.
- (b) Within 40 Business Days of receipt of the Certification Form referred to in clause 8.4(a), Tjiwarl AC and the State will agree, and Tjiwarl AC will execute, a deed in the form, or substantially in the form of, the Deed of Release (subject to any necessary modifications as required by the relevant Mining Water Licence or the terms of the agreement reached by the Negotiation Parties).
- (c) The Minister for Mines and Petroleum may, upon receipt of the Certification Form referred to in clause 8.4(a), grant the Mining Water Licence to the Proponent. Subject to clause 5.7 of the Agreement, the Minister for Mines and Petroleum agrees, in granting the Mining Water Licence, to impose the following endorsement on the Mining Water Licence (subject to any necessary modifications of terminology as required for the relevant Mining Water Licence):

*To the extent that this [type of tenement] is located over the area of land the subject of Tjiwarl Palyakuwa Indigenous Land Use Agreement (**Tjiwarl Palyakuwa (Agreement)**), the [tenement holder, e.g. licensee] has executed and entered into an agreement with Tjiwarl AC (as defined in Tjiwarl Palyakuwa (Agreement)) and maintains such agreement for the term of this [type of tenement].*

8.5 Request for documents at the end of the Negotiation Period

- (a) If, at the end of the Negotiation Period, the State has not received the Certification Form referred to in clause 8.4(a), the State must give a notice to the Negotiation Parties:
- (i) informing them of the end of the Negotiation Period; and
 - (ii) requesting, within 10 Business Days, a Certification Form if an agreement has been reached between the Negotiation Parties as to the grant of the Mining Water Licence.
- (b) If a Certification Form is provided to the State following the request in clause 8.5(a)(ii):
- (i) within 40 Business Days of receipt of the Certification Form, Tjiwarl AC and the State will agree, and Tjiwarl AC will execute, a deed in the form, or substantially in the form of, the Deed of Release (subject to any necessary modifications as required by the relevant Mining Water Licence or the terms of the agreement reached by the Negotiation Parties).
 - (ii) the Minister for Mines and Petroleum may, upon receipt of the Certification Form, grant the Mining Water Licence to the Proponent. Subject to clause 5.7 of the Agreement, the Minister for Mines and Petroleum agrees, in granting the Mining Water Licence, to impose the following endorsement on the Mining Water Licence (subject to any necessary modifications of terminology as required for the relevant Mining Water Licence):

*To the extent that this [type of tenement] is located over the area of land the subject of Tjiwarl Palyakuwa Indigenous Land Use Agreement (**Tjiwarl Palyakuwa (Agreement)**), the [tenement holder, e.g. licensee] has executed and entered into an agreement with Tjiwarl AC (as defined in Tjiwarl Palyakuwa (Agreement)) and maintains such agreement for the term of this [type of tenement].*

8.6 Agreement not reached during Negotiation Period

- (a) If a Certification Form is not provided to the State within 10 Business Days of the notice given in clause 8.5(a), the State must give a notice to the Negotiation Parties:
- (i) informing them that it is proceeding with the consideration of the application for the Mining Water Licence;
 - (ii) requesting, within 40 Business Days, any submissions from a Negotiation Parties that address:

- (A) whether the Mining Water Licence should be granted and, if so, on what conditions; and
 - (B) any discussions that have occurred between Negotiation Parties to date, or evidence of attempts to hold such discussions between Negotiation Parties; and
- (iii) including a statement that, if the Mining Water Licence is granted, the Minister for Mines and Petroleum intends to impose the following condition on the Mining Water Licence (subject to any necessary modification of terminology as required for the Mining Water Licence):

*As the Tjiwarl Palyakuwa Indigenous Land Use Agreement (**Tjiwarl Palyakuwa (Agreement)**) applies to this [type of tenement, e.g. exploration licence]:*

- a. *the [tenement holder, e.g. licensee] must, before exercising any of the rights, powers or duties pursuant to this [type of tenement] over that portion of the area of land the subject of the Tjiwarl Palyakuwa (Agreement) execute and enter into the Tjiwarl Heritage Agreement (as defined in the Tjiwarl Palyakuwa (Agreement)) with Tjiwarl AC (as defined in the Tjiwarl Palyakuwa (Agreement)) and maintain such agreement for the term of the [type of tenement].*
- b. *Where:*
 - i. *the [tenement holder] executes the Tjiwarl Heritage Agreement and provides a copy to Tjiwarl AC for execution; and*
 - ii. *within 40 Business Days of receiving the executed Tjiwarl Heritage Agreement, Tjiwarl AC does not execute the Tjiwarl Heritage Agreement and provide a copy of the executed Tjiwarl Heritage Agreement to the [tenement holder]; and*
 - iii. *the [tenement holder] provides the Minister for Mines and Petroleum a declaration from the [tenement holder] (or if the [tenement holder] is a corporation, from a director of that corporation on its behalf) in the form of Annexure 9 to Schedule 4 of the Tjiwarl Palyakuwa (Agreement) as evidence that the requirements of paragraph (b)(i) and (ii) of this condition have been met*

then, as and from the date on which the declaration in (b)(iii) is received by the Minister for Mines and Petroleum, the requirements of paragraph (a) of this condition do not apply and the [tenement holder] may proceed to exercise

any of the rights, powers or duties pursuant to this [type of tenement] over that portion of the area of land the subject of the Tjiwarl Palyakuwa (Agreement).

- (b) At the same time as providing the notice under clause 8.6(a), DMIRS must provide DWER with a notice containing:
 - (i) copy of the notice referred to in clause 8.6(a);
 - (ii) a copy of the Tenement Application Form for the Mining Water Licence; and
 - (iii) an opportunity, within 40 Business Days, to provide any submissions as to whether the Mining Water Licence should be granted and, if so, on what conditions.
- (c) On the basis of any information received in response to the request made at clause 8.6(a) or 8.6(b), together with any other facts or matters the State determines to be relevant, the State will consider whether a recommendation should be made to the Minister for Mines and Petroleum that the application for the Mining Infrastructure Licence not be granted on the grounds contained in section 111A(1) of the Mining Act.
- (d) If the Minister for Mines and Petroleum does not refuse the application for the Mining Infrastructure Licence under section 111A of the Mining Act, the Minister for Mines and Petroleum may grant the Mining Water Licence to the Proponent. Subject to clause 5.7 of the Agreement, the Minister for Mines and Petroleum agrees, in granting the Mining Water Licence, to impose the condition contained in clause 8.6(a)(iii) (subject to any necessary modifications of terminology as required for the relevant Mining Water Licence):
- (e) If the Mining Water Licence is granted in accordance with clause 8.6(d), Tjiwarl AC must, within 10 Business Days of receiving an executed Tjiwarl Heritage Agreement from the Proponent provide the State with a Certification Form.

9. Process for the grant of PGER Exploration Tenure

This clause sets out the process the State and Tjiwarl AC will follow to grant petroleum special prospecting authorities and access authorities that are not located in an Identified Area. A diagram of the process described in this clause is contained in Annexure 1.

9.1 Application of this clause

This clause applies to the following PGER Titles that are applied for on or after the Conclusive Registration Date to the extent that they are future acts located within the Agreement Area:

- (a) access authorities and special prospecting authorities where the area of land applied for does not include an Identified Area; and
- (b) access authorities and special prospecting authorities where the area of land applied for includes an Identified Area but where the nomination in clause 10.2(b) has been made by Tjiwarl AC

(PGER Exploration Tenure).

9.2 Notification of application for a PGER Exploration Tenure

- (a) Within 10 Business Days of the PGER Compliance Date in respect of a PGER Exploration Tenure referred to in clause 9.1(a) the State must give Tjiwarl AC:
 - (i) notice of the application for the PGER Exploration Tenure;
 - (ii) a map showing the boundaries of the PGER Exploration Tenure as applied for;
 - (iii) a statement that clause 9 applies to the PGER Exploration Tenure; and
 - (iv) notice of the Negotiation Period, including a statement specifying the day on which the Negotiation Period ends.
- (b) Within 10 Business Days of the PGER Compliance Date in respect of a PGER Exploration Tenure to referred to in clause 9.1(a), or within 10 Business Days of receiving the nomination referred to in clause 10.2(b), the State must give the Proponent:
 - (i) the contact details of Tjiwarl AC;
 - (ii) a copy of the Tjiwarl Engagement Protocol;

- (iii) a copy of this Schedule, or information as to where this Schedule is published or has otherwise been made publicly available;
- (iv) a statement that clause 9 applies to the PGER Exploration Tenure;
- (v) notice of the Negotiation Period, including a statement specifying the day on which the Negotiation Period ends; and
- (vi) a request that the Proponent provide Tjiwarl AC with a copy of any additional documentation lodged in support of the PGER Exploration Tenure that identifies the activities to be undertaken on the PGER Exploration Tenure.

9.3 Engagement with the Proponent about PGER Exploration Tenure

- (a) Upon receiving the notification under clause 9.2(a), the State and Tjiwarl AC acknowledge that there is an expectation that Tjiwarl AC and the Proponent will use reasonable endeavours within the Negotiation Period to commence discussions regarding entry into the Tjiwarl Engagement Protocol and the grant of the PGER Exploration Tenure, noting that the State may make enquiries of the Negotiation Parties to ascertain progress
- (b) The Negotiation Parties may, at any time during the Negotiation Period, request that the State facilitate and/or participate in discussions between the Negotiation Parties or provide such other guidance or assistance to the Negotiation Parties as may be reasonably required.
- (c) A request for the State's assistance under clause 9.3(b) must:
 - (i) be made in writing to the State;
 - (ii) be provided to the other Negotiation Party; and
 - (iii) contain sufficient detail of:
 - (A) the assistance being sought from the State; and
 - (B) the discussions that have occurred between Negotiation Parties as at the date of such request, or evidence of attempts to hold such discussions between Negotiation Parties,to enable the State to reasonably assist the Negotiation Parties or participate in their discussions.

9.4 Agreement to grant of the PGER Exploration Tenure during Negotiation Period

- (a) If, prior to the end of the Negotiation Period, the Negotiation Parties reach agreement as to the grant of the PGER Exploration Tenure, Tjiwarl AC must, within 15 Business Days of reaching agreement with the Proponent, provide the State with a Certification Form.
- (b) Within 40 Business Days of receipt of the Certification Form referred to in clause 9.4(a), Tjiwarl AC and the State will agree, and Tjiwarl AC will execute, a deed in the form, or substantially in the form of, the Deed of Release (subject to any necessary modifications as required by the relevant PGER Exploration Tenure or the terms of the agreement reached by the Negotiation Parties).
- (c) The Minister for Mines and Petroleum may, upon receipt of the Certification Form referred to in clause 9.4(a), grant the PGER Exploration Tenure to the Proponent. Subject to clause 5.7 of the Agreement, the Minister for Mines and Petroleum agrees, in granting the PGER Exploration Tenure, to impose the following endorsement on the PGER Exploration Tenure (subject to any necessary modifications of terminology as required for the relevant PGER Exploration Tenure):

*To the extent that this [type of title] is located over the area of land the subject of Tjiwarl Palyakuwa Indigenous Land Use Agreement (**Tjiwarl Palyakuwa (Agreement)**), the [title holder, e.g. licensee] has executed and entered into an agreement with Tjiwarl AC (as defined in Tjiwarl Palyakuwa (Agreement)) and maintains such agreement for the term of this [type of title].*

9.5 Request for documents at the end of the Negotiation Period

- (a) If, at the end of the Negotiation Period, the State has not received the Certification Form referred to in clause 9.4(a), the State must give a notice to the Negotiation Parties:
 - (i) informing them of the end of the Negotiation Period;
 - (ii) requesting, within 10 Business Days, a Certification Form if an agreement has been reached between the Negotiation Parties as to the grant of the PGER Exploration Tenure.
- (b) If a Certification Form is provided to the State following the request in clause 9.5(a)(ii):
 - (i) within 40 Business Days of receipt of the Certification Form, Tjiwarl AC and the State will agree, and Tjiwarl AC will execute, a deed in the form, or substantially in the form of, the Deed of Release (subject to any necessary modifications as required

by the relevant Mining Infrastructure Licence or the terms of the agreement reached by the Negotiation Parties); and

- (ii) the Minister for Mines and Petroleum may, upon receipt of the Certification Form, grant the PGER Exploration Tenure to the Proponent. Subject to clause 5.7 of the Agreement, the Minister for Mines and Petroleum agrees, in granting the PGER Exploration Tenure, to impose the following endorsement on the PGER Exploration Tenure (subject to any necessary modifications of terminology as required for the relevant PGER Exploration Tenure):

*To the extent that this [type of title] is located over the area of land the subject of Tjiwarl Palyakuwa Indigenous Land Use Agreement (**Tjiwarl Palyakuwa Agreement**), the [title holder, e.g. licensee] has executed and entered into an agreement with Tjiwarl AC (as defined in Tjiwarl Palyakuwa (Agreement)) and maintains such agreement for the term of this [type of tenement].*

9.6 Agreement not reached during Negotiation Period

If a Certification Form is not provided to the State within 10 Business Days of the notice given in clause 9.5(a), the State may give a Section 29 Notice in respect the PGER Exploration Tenure and will, pursuant to section 29(7) of the Native Title Act, include in that Section 29 Notice a statement that the State considers that the grant of the PGER Exploration Tenure is an act attracting the expedited procedure.

9.7 State Participation in an Expedited Procedure Objection Application

If, following the Section 29 Notice referred to in clause 9.6, Tjiwarl AC makes an Expedited Procedure Objection Application, the State will:

- (a) if requested, facilitate and/or participate in discussions between the Negotiation Parties or provide such other guidance or assistance to the Negotiation Parties as may be reasonably required; and
- (b) include in any information provided to the arbitral body for the purpose of the Expedited Procedure Determination, the intention of the Minister for Mines and Petroleum to impose the condition referred to in clause 9.9(a) on the PGER Exploration Tenure (subject to any necessary modification of terminology as required for the PGER Exploration Tenure).

9.8 Tjiwarl Exploration Agreement executed after Expedited Procedure Objection Application

- (a) If, after Tjiwarl AC lodges an Expedited Procedure Objection Application but prior to the arbitral body making an Expedited Procedure Determination, the Negotiation Parties reach agreement as to the grant of the PGER Exploration Tenure, Tjiwarl AC must, within 15 Business Days of reaching agreement with the Proponent:
- (i) withdraw the Expedited Procedure Objection Application; and
 - (ii) provide the State with a Certification Form.
- (b) Within 40 Business Days of receipt of the Certification Form referred to in clause 9.8(a), Tjiwarl AC and the State will agree, and Tjiwarl AC will execute, a deed in the form, or substantially in the form of, the Deed of Release (subject to any necessary modifications as required by the relevant PGER Exploration Tenure or the terms of the agreement reached by the Negotiation Parties).
- (c) The Minister for Mines and Petroleum may, upon the withdrawal of the Expedited Procedure Objection, grant the PGER Exploration Tenure to the Proponent. Subject to clause 5.7 of the Agreement, the Minister for Mines and Petroleum agrees, in granting the PGER Exploration Tenure, to impose the following endorsement on the PGER Exploration Tenure (subject to any necessary modifications of terminology as required for the relevant PGER Exploration Tenure):

*To the extent that this [type of title] is located over the area of land the subject of Tjiwarl Palyakuwa Indigenous Land Use Agreement (**Tjiwarl Palyakuwa (Agreement)**), the [title holder, e.g. licensee] has executed and entered into an agreement with Tjiwarl AC (as defined in Tjiwarl Palyakuwa (Agreement)) and maintains such agreement for the term of this [type of title].*

9.9 Expedited Procedure Objection Application not made or where the Expedited Procedure applies

- (a) If, following the Section 29 Notice referred to in clause 9.6:
- (i) Tjiwarl AC does not make an Expedited Procedure Objection Application; or
 - (ii) the arbitral body makes an Expedited Procedure Determination that the grant of the PGER Exploration Tenure is an act attracting the expedited procedure,

subject to clause 5.7 of the Agreement, the Minister for Mines and Petroleum, in granting the PGER Exploration Tenure, agrees to impose the following condition on the PGER Exploration Tenure (subject to any necessary modification of terminology as required for the Mining Exploration Tenure):

*As the Tjiwarl Palyakuwa Indigenous Land Use Agreement (**Tjiwarl Palyakuwa (Agreement)**) applies to this [type of tenement, e.g. exploration licence]:*

- a. *the [title holder, e.g. licensee] must, before exercising any of the rights, powers or duties pursuant to this [type of title] over that portion of the area of land the subject of the Tjiwarl Palyakuwa (Agreement) execute and enter into the Tjiwarl Heritage Agreement (as defined in the Tjiwarl Palyakuwa (Agreement)) with Tjiwarl AC (as defined in the Tjiwarl Palyakuwa (Agreement)) and maintain such agreement for the term of the [type of tenement].*
- b. *Where:*
 - i. *the [title holder] executes the Tjiwarl Heritage Agreement and provides a copy to Tjiwarl AC for execution; and*
 - ii. *within 40 Business Days of receiving the executed Tjiwarl Heritage Agreement, Tjiwarl AC does not execute the Tjiwarl Heritage Agreement and provide a copy of the executed Tjiwarl Heritage Agreement to the [title holder]; and*
 - iii. *the [title holder] provides to the Minister for Mines and Petroleum a declaration from the [title holder] (or if the [title holder] is a corporation, from a director of that corporation on its behalf) in the form of Annexure 9 to Schedule 4 of the Tjiwarl Palyakuwa (Agreement) as evidence that the requirements of paragraph (b)(i) and (ii) of this condition have been met*

then, as and from the date on which the declaration in (b)(iii) is received by Minister for Mines and Petroleum, the requirements of paragraph (a) of this condition do not apply and the [tenement holder] may proceed to exercise any of the rights, powers or duties pursuant to this [type of tenement] over that portion of the area of land the subject of the Tjiwarl Palyakuwa (Agreement).

- (b) If, following the grant of the PGER Exploration Tenure in accordance clause 9.9(a), the Proponent executes and enters into the Tjiwarl Heritage Agreement, Tjiwarl AC must

within 10 Business Days of receiving the executed Tjiwarl Heritage Agreement from the Proponent provide the State with a Certification Form.

9.10 Where the Expedited Procedure does not apply

If, following the Section 29 Notice referred to in clause 9.6, the arbitral body makes an Expedited Procedure Determination that the grant of the PGER Exploration Tenure is not an act attracting the expedited procedure, clauses 10.9 to 10.11 below apply:

- (a) as if a reference to “*Other PGER Tenure*” was a reference to “*PGER Exploration Tenure*”;
- (b) as if a reference to the “*Section 29 Notice referred to in clause 10.8*” was a reference to the “*Section 29 Notice referred to in clause 9.6*”; and
- (c) subject to any other necessary modification of terminology as required for the PGER Exploration Tenure.

10. Process for the grant of Other PGER Tenure

This clause sets out the process the State and Tjiwarl AC will follow to grant petroleum leases, licences and permits (as well as special prospecting authorities and access authorities that are in an Identified Area). A diagram of the process described in this clause is contained in Annexure 1.

10.1 Application of this clause

This clause applies to the following PGER Titles that are applied for on or after the Conclusive Registration Date to the extent that they are future acts located within the Agreement Area:

- (a) PGER Leases and PGER Licences; and
- (b) drilling reservations and PGER Permits;
- (c) access authorities and special prospecting authorities where the area of land applied for includes an Identified Area and where, for the avoidance of doubt, a nomination of the kind described in clause 10.2(b) has not been made,

(Other PGER Tenure).

10.2 Nomination for a PGER Title to be a PGER Exploration Tenure

- (a) Where an access authority or special prospecting authority is a future act applied for in the Agreement Area on or after the Conclusive Registration Date and the area of land applied for includes an Identified Area, the State must, within 10 Business Days of the PGER Compliance Date for the PGER Title, give Tjiwarl AC:
 - (i) notice of the application for the PGER Title;
 - (ii) a map showing the boundaries of the PGER Title as applied for;
 - (iii) notice of the Negotiation Period, including a statement specifying the day on which the Negotiation Period ends; and
 - (iv) a request for Tjiwarl AC to nominate whether clause 9, instead of clause 10, will apply to the PGER Title.
- (b) If, within 10 Business Days of the provision of the information in clause 10.2(a), Tjiwarl AC nominate that clause 9 should apply to the PGER Title, the PGER Title is, on and from the date of the nomination, a PGER Exploration Tenure to which clause 9 applies.
- (c) For the avoidance of doubt if, after 10 Business Days of the provision of the information in clause 10.2(a), a nomination under clause 10.2(b) has not been received by the State, the PGER Title is an Other PGER Tenure to which this clause 10 applies.

10.3 Acreage Releases

- (a) Where the State is considering an Acreage Release in respect of land or waters within the Agreement Area the State will, as part of any consultation it may undertake in respect of the proposed Acreage Release, provide Tjiwarl AC with notice of the area of the proposed Acreage Release and an opportunity to comment on it.
- (b) Where the State makes an Acreage Release in respect of land or waters within the Agreement Area the State will include in any information to be provided for an Acreage Release:
 - (i) a copy of this Schedule, or information as to where this Schedule is published or has otherwise been made publicly available;
 - (ii) a copy of the Tjiwarl Engagement Protocol; and

- (iii) a recommendation that an applicant for an Acreage Release engage with Tjiwarl AC with respect to their application and, where possible, obtain evidence of the support of Tjiwarl AC with respect to the application
- (c) The State will, in assessing applications for the award of PGER Permits and drilling reservations in the Agreement Area, consider the ability of the applicant to comply with the Native Title Act, the AHA, the ACHA and this Schedule, together with any other facts or matters the State determines to be relevant.

10.4 Notification of application for Other PGER Tenure

- (a) Within 10 Business Days of the PGER Compliance Date for an Other PGER Tenure referred to in clauses 10.1(a) or 10.1(b), the State must give Tjiwarl AC:
 - (i) notice of the application for the Other PGER Tenure;
 - (ii) a map showing the boundaries of the Other PGER Tenure as applied for;
 - (iii) a statement that clause 10 applies to the Other PGER Tenure; and
 - (iv) notice of the Negotiation Period, including a statement specifying the day on which the Negotiation Period ends.
- (b) Within 10 Business Days of the PGER Compliance Date for an Other PGER Tenure referred to in clauses 10.1(a) or 10.1(b), or within 30 Business Days of the PGER Compliance Date for an Other PGER Tenure referred to in clause 10.1(c), the State must give the Proponent:
 - (i) the contact details of Tjiwarl AC;
 - (ii) a copy of the Tjiwarl Engagement Protocol;
 - (iii) a copy of this Schedule, or information as to where this Schedule is published or has otherwise been made publicly available; and
 - (iv) a statement that clause 10 applies to the Other PGER Tenure;
 - (v) notice of the Negotiation Period, including a statement specifying the day on which the Negotiation Period ends; and
 - (vi) a request that the Proponent provide Tjiwarl AC with a copy of any additional documentation lodged in support of the Other PGER Tenure that identifies the activities to be undertaken on the Other PGER Tenure.

10.5 Engagement with the Proponent about Other PGER Tenure

- (a) Upon receiving the notification under clause 10.4(a), the State and Tjiwarl AC acknowledge that there is an expectation that Tjiwarl AC and the Proponent will use reasonable endeavours within the Negotiation Period to commence discussions regarding entry into the Tjiwarl Engagement Protocol and the grant of the Other PGER Tenure, noting that the State may make enquiries of the Negotiation Parties to ascertain progress.
- (b) The Negotiation Parties may, at any time during the Negotiation Period, request that the State facilitate and/or participate in discussions between the Negotiation Parties or provide such other guidance or assistance to the Negotiation Parties as may be reasonably required.
- (c) A request for the State's assistance under clause 10.5(b) must:
 - (i) be made in writing to the State;
 - (ii) be provided to the other Negotiation Party; and
 - (iii) contain sufficient detail of:
 - (A) the assistance being sought from the State; and
 - (B) the discussions that have occurred between Negotiation Parties as at the date of such request, or evidence of attempts to hold such discussions between Negotiation Parties,to enable the State to reasonably assist the Negotiation Parties or participate in their discussions.

10.6 Agreement as to grant of the Other PGER Tenure during Negotiation Period

- (a) If, prior to the end of the Negotiation Period, the Negotiation Parties reach agreement as to the grant of the Other PGER Tenure, Tjiwarl AC must, within 15 Business Days of reaching agreement with the Proponent, provide the State with a Certification Form.
- (b) Within 40 Business Days of receipt of the Certification Form referred to in clause 10.6(a), Tjiwarl AC and the State will agree, and Tjiwarl AC will execute, a deed in the form, or substantially in the form of, the Deed of Release (subject to any necessary modifications as required by the relevant Other PGER Tenure or the terms of the agreement reached by the Negotiation Parties).
- (c) The Minister for Mines and Petroleum may, upon receipt of the Certification Form referred to in clause 10.6(a), grant the Other PGER Tenure to the Proponent. Subject to clause 5.7

of the Agreement, the Minister for Mines and Petroleum agrees, in granting the Other PGER Tenement, to impose the following endorsement on the Other PGER Tenure (subject to any necessary modifications of terminology as required for the relevant Other PGER Tenure):

*To the extent that this [type of tenement] is located over the area of land the subject of Tjiwarl Palyakuwa Indigenous Land Use Agreement (**Tjiwarl Palyakuwa (Agreement)**), the [title holder, e.g. licensee] has executed and entered into an agreement with Tjiwarl AC (as defined in Tjiwarl Palyakuwa (Agreement)) and maintains such agreement for the term of this [type of title].*

10.7 Request for documents at the end of the Negotiation Period

- (a) If, at the end of the Negotiation Period, the State has not received the Certification Form referred to in clause 10.6(a), the State must give a notice to the Negotiation Parties:
 - (i) informing them of the end of the Negotiation Period;
 - (ii) requesting, within 10 Business Days:
 - (A) if an agreement has been reached between the Negotiation Parties as to the grant of the Other PGER Tenure, a Certification Form; or
 - (B) if the Negotiation Parties have not reached agreement as to the grant of the Other PGER Tenure, information with respect to the discussions that have occurred between Negotiation Parties to date, or evidence of attempts to hold such discussions between Negotiation Parties.
- (b) If a Certification Form is provided to the State following the request in clause 10.7(a)(ii)(A):
 - (i) within 40 Business Days of receipt of the Certification Form, Tjiwarl AC and the State will agree, and Tjiwarl AC will execute, a deed in the form, or substantially in the form of, the Deed of Release (subject to any necessary modifications as required by the relevant Other PGER Tenure or the terms of the agreement reached by the Negotiation Parties); and
 - (ii) the Minister for Mines and Petroleum may, upon receipt of the Certification Form, grant the Other PGER Tenure to the Proponent. Subject to clause 5.7 of the Agreement, the Minister for Mines and Petroleum agrees, in granting the Other PGER Tenement, to impose the following endorsement on the Other PGER Tenure

(subject to any necessary modifications of terminology as required for the relevant Other PGER Tenure):

*To the extent that this [type of title] is located over the area of land the subject of Tjiwarl Palyakuwa Indigenous Land Use Agreement (**Tjiwarl Palyakuwa (Agreement)**), the [title holder, e.g. licensee] has executed and entered into an agreement with Tjiwarl AC (as defined in Tjiwarl Palyakuwa (Agreement)) and maintains such agreement for the term of this [type of title].*

10.8 Agreement not reached during Negotiation Period

If a Certification Form is not provided to the State within 10 Business Days of the notice given in clause 10.6(a), the State may give a Section 29 Notice in respect the Other PGER Tenure.

10.9 Future Act Determination Application

If, following the Section 29 Notice referred to in clause 10.8, Tjiwarl AC or the Proponent make a Future Act Determination Application, the State will:

- (a) to the extent reasonably practicable or if required by the arbitral body, participate in the Future Act Determination Application including, where appropriate, making submissions as to whether a Negotiation Party has negotiated in good faith with a view to reaching agreement (as referred to in section 31(1)(b) of the Native Title Act) and/or whether the Other PGER Tenure should be granted and, if so, on what conditions; and
- (b) include in any information provided for the purpose of the Future Act Determination, the intention of the Minister for Mines and Petroleum to impose the following condition on the Other PGER Tenure (subject to any necessary modification of terminology as required for the Other Mining Tenure):

*As the Tjiwarl Palyakuwa Indigenous Land Use Agreement (**Tjiwarl Palyakuwa (Agreement)**) applies to this [type of tenement, e.g. exploration licence]:*

- a. *the [title holder, e.g. licensee] must, before exercising any of the rights, powers or duties pursuant to this [type of title] over that portion of the area of land the subject of the Tjiwarl Palyakuwa (Agreement) execute and enter into the Tjiwarl Heritage Agreement (as defined in the Tjiwarl Palyakuwa (Agreement)) with Tjiwarl AC (as defined in the Tjiwarl Palyakuwa (Agreement)) and maintain such agreement for the term of the [type of title].*

- b. *Where:*
- i. *the [title holder] executes the Tjiwarl Heritage Agreement and provides a copy to Tjiwarl AC for execution; and*
 - ii. *within 40 Business Days of receiving the executed Tjiwarl Heritage Agreement, Tjiwarl AC does not execute the Tjiwarl Heritage Agreement and provide a copy of the executed Tjiwarl Heritage Agreement to the [title holder]; and*
 - iii. *the [title holder] provides to the Minister for Mines and Petroleum a declaration from the [title holder] (or if the [title holder] is a corporation, from a director of that corporation on its behalf) in the form of Annexure 9 to Schedule 4 of the Tjiwarl Palyakuwa (Agreement) as evidence that the requirements of paragraph (b)(i) and (ii) of this condition have been met*

then, as and from the date on which the declaration in (b)(iii) is received by the Minister for Mines and Petroleum, the requirements of paragraph (a) of this condition do not apply and the [title holder] may proceed to exercise any of the rights, powers or duties pursuant to this [type of title] over that portion of the area of land the subject of the Tjiwarl Palyakuwa (Agreement).

10.10 Agreement reached following Section 29 Notice

- (a) If, following the Section 29 Notice referred to in clause 10.8, Tjwarl AC and the Proponent reach an agreement of the kind referred to in section 31(1)(b) of the Native Title Act, Tjiwarl AC must within 20 Business Days of reaching agreement provide the State with a Certification Form and a Deed for Grant executed by the Tjiwarl AC and the Proponent.
- (b) Upon receipt of the documents referred to in clause 10.10(a), the State will:
 - (i) execute the Deed for Grant and provide a completed copy to the Tjwarl AC and the Proponent;
 - (ii) give a copy of the executed Deed for Grant to the arbitral body in accordance with section 41A(1)(a) and (c) of the Native Title Act; and
 - (iii) advise the relevant Minister for the purposes of the Native Title Act in writing of the making of the Deed for Grant.

10.11 Where a Future Act Determination is made

If a Future Act Determination is made that the Other PGER Tenure may be granted subject to the condition contained in clause 10.9(b):

- (a) the Minister for Mines and Petroleum, in granting the Other PGER Tenure, agrees to impose that condition (subject to any necessary modification of terminology as required for the Other PGER Tenure); and
- (b) Tjiwarl AC must, within 10 Business Days of receiving an executed Tjiwarl Heritage Agreement from the Proponent provide the State with a Certification Form.

11. Pending Mining Exploration Tenure applied for prior to the Conclusive Registration Date and pending grant as at the Execution Date

This clause sets out the process that applies to applications for exploration licences, prospecting licences and retention leases made before the Conclusive Registration Date.

- (a) This clause 11 applies to exploration licences, prospecting licences and retention leases (both that include and do not include Identified Areas) to the extent that they are future acts located within the Agreement Area that:
 - (i) are the subject of a valid application made under the Mining Act prior to the Conclusive Registration Date; but
 - (ii) as at the Execution Date, have not been granted by the Minister for Mines and Petroleum,

(Pending Mining Exploration Tenure).
- (b) The Minister for Mines and Petroleum, in granting Pending Mining Exploration Tenure, agrees to impose the following condition on the Pending Mining Exploration Tenure (subject to any necessary modification of terminology as required for the Pending Mining Exploration Tenure):

*As the Tjiwarl Palyakuwa Indigenous Land Use Agreement (**Tjiwarl Palyakuwa (Agreement)**) applies to this [type of tenement, e.g. exploration licence]:*

- a. *the [tenement holder, e.g. licensee] must, before exercising any of the rights, powers or duties pursuant to this [type of tenement] over that portion of the area of land the subject of the Tjiwarl Palyakuwa (Agreement) execute and*

enter into the Tjiwarl Exploration Agreement (as defined in the Tjiwarl Palyakuwa (Agreement)) with Tjiwarl AC (as defined in the Tjiwarl Palyakuwa (Agreement)) and maintain such agreement for the term of the [type of tenement].

b. Where:

- i. the [tenement holder] executes the Tjiwarl Exploration Agreement and provides a copy to Tjiwarl AC for execution; and*
- ii. within 40 Business Days of receiving the executed Tjiwarl Exploration Agreement, Tjiwarl AC does not execute the Tjiwarl Exploration Agreement and provide a copy of the executed Tjiwarl Exploration Agreement to the [tenement holder]; and*
- iii. the [tenement holder] provides to the Minister for Mines and Petroleum a declaration from the [tenement holder] (or if the [tenement holder] is a corporation, from a director of that corporation on its behalf) in the form of Annexure 9 to Schedule 4 of the Tjiwarl Palyakuwa (Agreement) as evidence that the requirements of paragraph (b)(i) and (ii) of this condition have been met,*

then, as and from the date on which the declaration in (b)(iii) is received by the Minister for Mines and Petroleum, the requirements of paragraph (a) of this condition do not apply and the [tenement holder] may proceed to exercise any of the rights, powers or duties pursuant to this [type of tenement] over that portion of the area of land the subject of the Tjiwarl Palyakuwa (Agreement).

- (c) If, following the grant of the Pending Mining Exploration Tenure in accordance clause 11(b), the Proponent executes and enters into the Tjiwarl Exploration Agreement, Tjiwarl AC must within 10 Business Days of receiving the executed Tjiwarl Exploration Agreement from the Proponent execute the Tjiwarl Exploration Agreement and provide the Proponent with a copy of the completed Tjiwarl Exploration Agreement.

12. Review of Tjiwarl Heritage Agreement & Tjiwarl Exploration Agreement

This clause sets out the process the State and Tjiwarl AC will follow to review the Tjiwarl Heritage Agreement and the Tjiwarl Exploration Agreement.

12.1 Review following repeal of the AHA

- (a) Notwithstanding clause 19 of the Agreement, within six months of the repeal of the AHA, the State and Tjiwarl AC must undertake a review of the Tjiwarl Heritage Agreement and Schedule 2 of the Tjiwarl Exploration Agreement to consider whether the ACHA, or any subsidiary legislation made under the ACHA (**ACHA Regulations**), materially affects the operation of those agreements.
- (b) The State and Tjiwarl AC agree that the review in clause 12.1(a):
 - (i) is only for the purpose of considering such changes to the Tjiwarl Heritage Agreement and Schedule 2 of the Tjiwarl Exploration Agreement as may be reasonably necessary to meet the requirements of the ACHA or the ACHA Regulations;
 - (ii) shall not require Tjiwarl AC or the Tjiwarl People to give consent to or otherwise support the disturbance of Aboriginal cultural heritage to any greater extent or in a materially different way than that presently contemplated by the Tjiwarl Heritage Agreement or Schedule 2 of the Tjiwarl Exploration Agreement; and
 - (iii) will not otherwise materially alter the substance or effect of the Tjiwarl Heritage Agreement or Schedule 2 of the Tjiwarl Exploration Agreement.
- (c) The outcomes of a review under clause 12.1(a) must be reasonably considered by the State and Tjiwarl AC.
- (d) In the event that the State and Tjiwarl AC are unable to agree any proposed variation to the Tjiwarl Heritage Agreement or Schedule 2 of the Tjiwarl Exploration Agreement arising out of the review under clause 12.1(a), the matter becomes a dispute for the purposes of clause 23 of this Agreement.
- (e) For the avoidance of doubt unless and until varied under clause 13, the Tjiwarl Heritage Agreement and Schedule 2 of the Tjiwarl Exploration Agreement will remain in the form contained in the Annexures to this Schedule.

12.2 General Review

- (a) For the avoidance of doubt, the reviews contemplated by clause 19 of the Agreement include a consideration of the Tjiwarl Heritage Agreement and the Tjiwarl Exploration Agreement.
- (b) To the extent that any review conducted under clause 19 of the Agreement includes a review of the Tjiwarl Heritage Agreement or the Tjiwarl Exploration Agreement, the State and Tjiwarl AC acknowledge that, unless both Parties agree otherwise:
 - (i) the monetary compensation as provided by Schedule 5, clause 2 of the Tjiwarl Exploration Agreement will not be reduced;
 - (ii) fixed payments in the Tjiwarl Heritage Agreement or the Tjiwarl Exploration Agreement will be adjusted for CPI and taking into account industry standards;
 - (iii) Tjiwarl AC or the Tjiwarl People shall not be required to give consent to or otherwise support the disturbance of Aboriginal cultural heritage to any greater extent than that presently contemplated by the Tjiwarl Heritage Agreement or Schedule 2 of the Tjiwarl Exploration Agreement; and
 - (iv) the Tjiwarl Heritage Agreement and the Tjiwarl Exploration Agreement will not be varied in any way that results in Tjiwarl AC being materially worse off.

13. 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 and Tjiwarl AC, with the variation put in writing and executed by the State and Tjiwarl AC.

14. Notices

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

14.1 Notices under this Schedule

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

- (a) must be in writing;
- (b) may be given by an authorised officer of the Party giving the notice;
- (c) must be delivered to its intended recipient by hand, prepaid post or email to the address in clause 14.2, or to the address the intended recipient last indicated to the sender as a suitable address;
- (d) subject to clause 14.1(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.

14.2 Addresses for Service

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

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

(b) For the **State**:

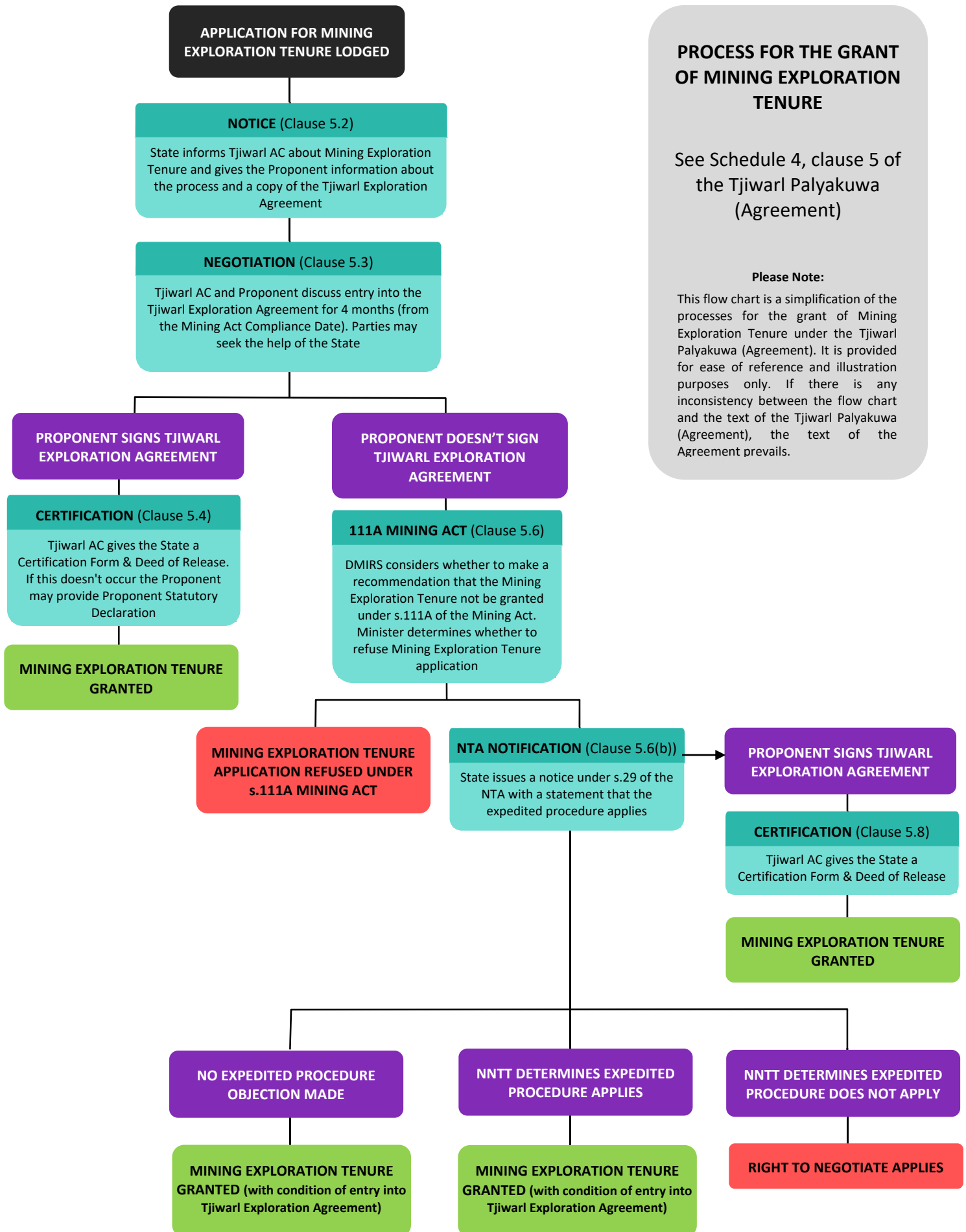
- (i) By post: Department of Mines, Industry Regulation and Safety
100 Plain Street
East Perth WA 6004

15. No funding assistance

For the avoidance of doubt, as provided under clause 10.6(c) of the Agreement, to the extent that clauses 5 to 10 (inclusive) require the State to facilitate and/or participate in discussions between the Negotiation Parties or provide any such other guidance or assistance to the Negotiation Parties as may be reasonable required, any such assistance in this Agreement of itself does not include the provision of any funding to the Negotiation Parties for meetings (or otherwise) and Tjiwarl AC acknowledges that there will not be any further funding provided by the State to the Negotiation Parties for this purpose.

TJIWARL PALYAKUWA (AGREEMENT)**SCHEDULE 4 – Annexure 1**

Mining Business Process Flow Charts

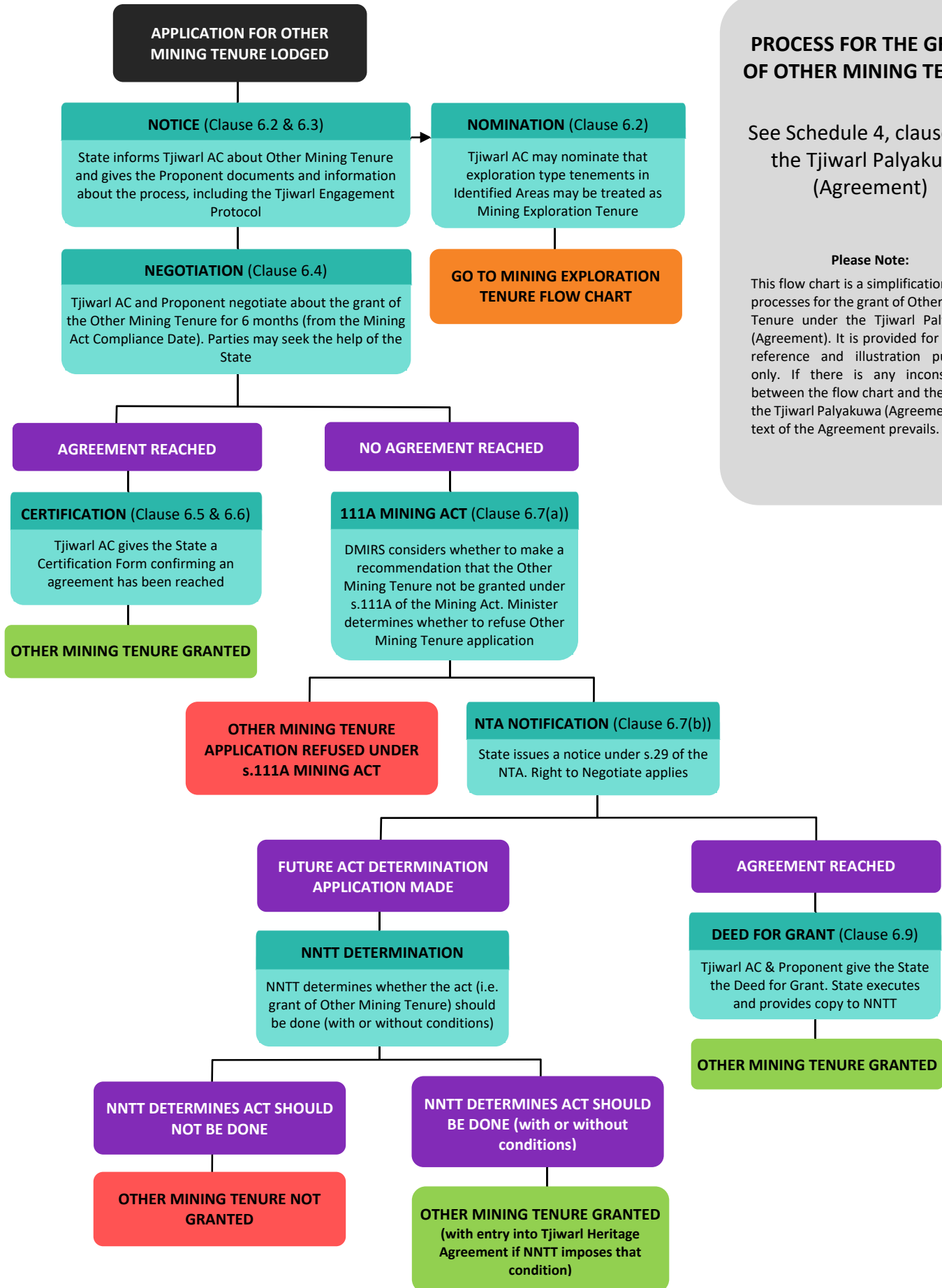


PROCESS FOR THE GRANT OF MINING EXPLORATION TENURE

See Schedule 4, clause 5 of the Tjiwarl Palyakuwa (Agreement)

Please Note:

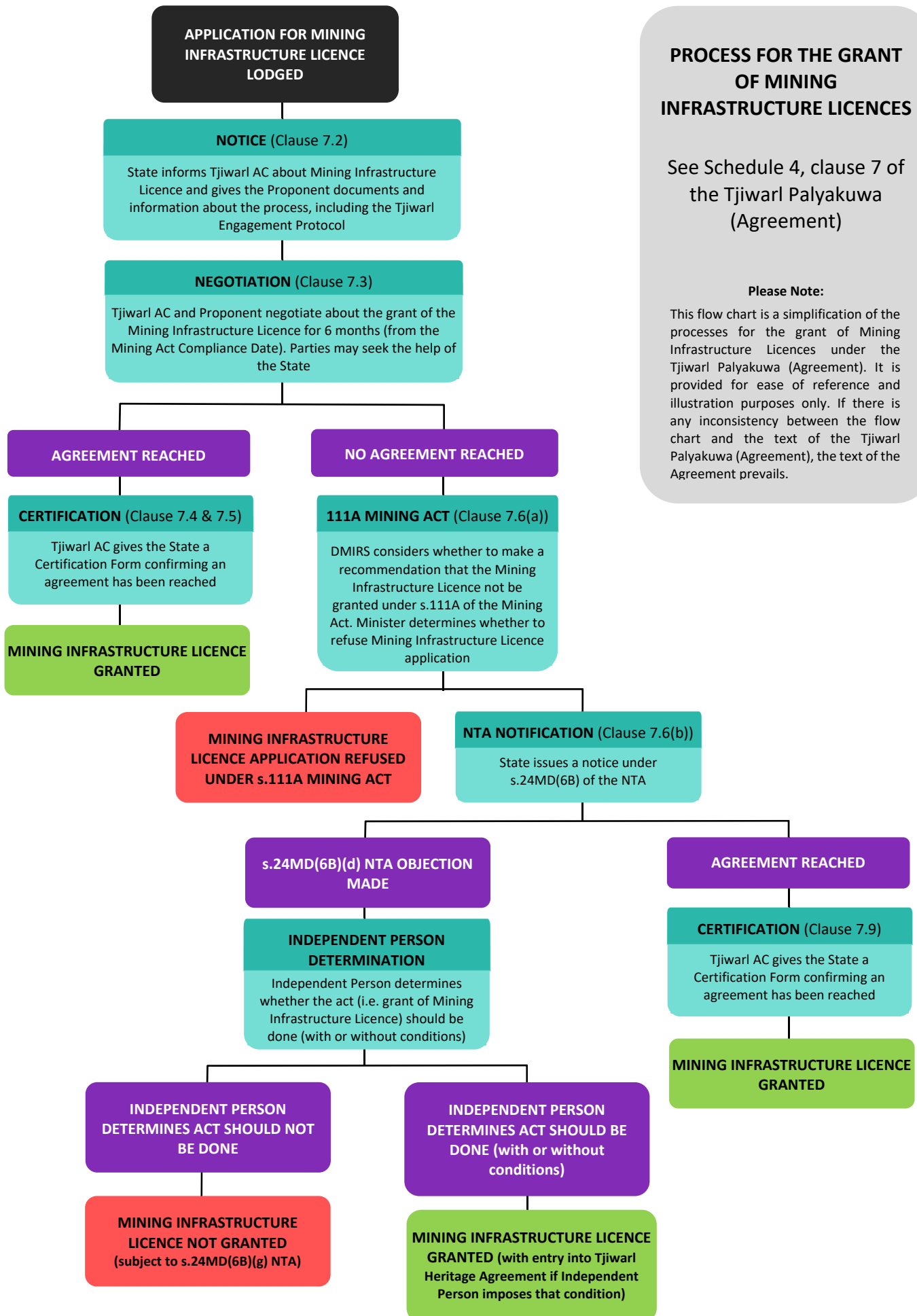
This flow chart is a simplification of the processes for the grant of Mining Exploration Tenure under the Tjiwarl Palyakuwa (Agreement). It is provided for ease of reference and illustration purposes only. If there is any inconsistency between the flow chart and the text of the Tjiwarl Palyakuwa (Agreement), the text of the Agreement prevails.



PROCESS FOR THE GRANT OF OTHER MINING TENURE

See Schedule 4, clause 6 of the Tjiwarl Palyakuwa (Agreement)

Please Note:
This flow chart is a simplification of the processes for the grant of Other Mining Tenure under the Tjiwarl Palyakuwa (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 Tjiwarl Palyakuwa (Agreement), the text of the Agreement prevails.

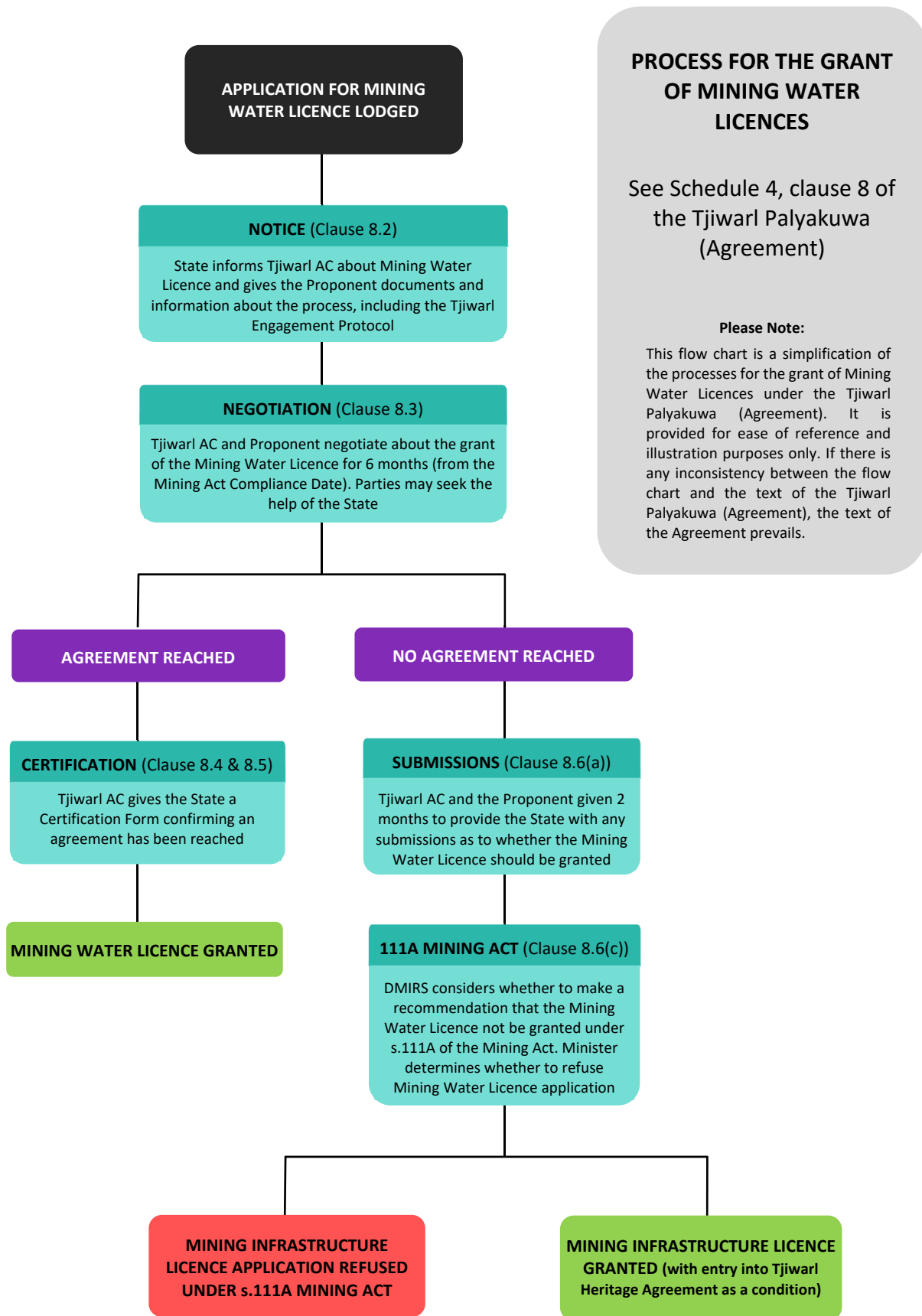


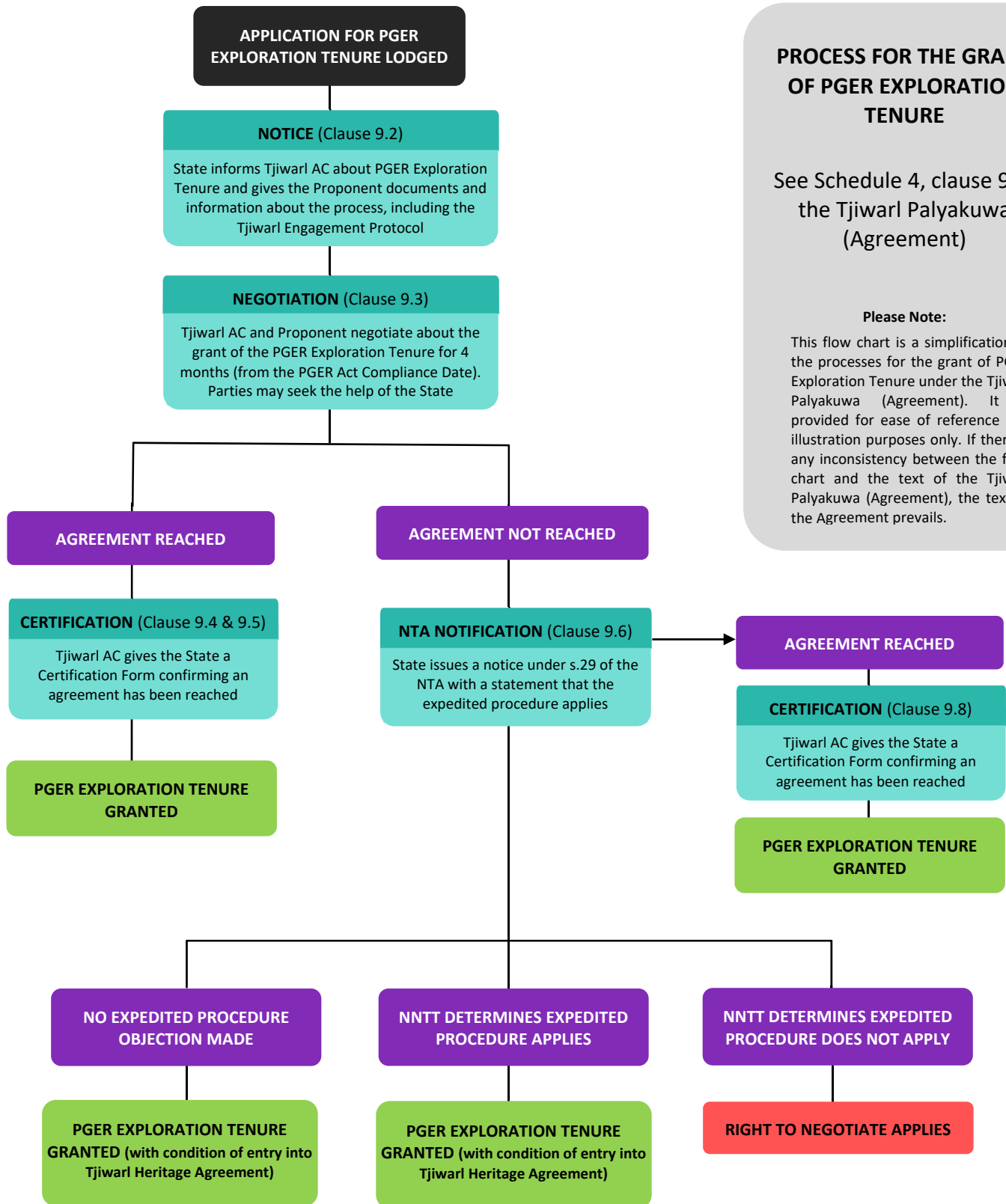
PROCESS FOR THE GRANT OF MINING INFRASTRUCTURE LICENCES

See Schedule 4, clause 7 of the Tjiwarl Palyakuwa (Agreement)

Please Note:

This flow chart is a simplification of the processes for the grant of Mining Infrastructure Licences under the Tjiwarl Palyakuwa (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 Tjiwarl Palyakuwa (Agreement), the text of the Agreement prevails.



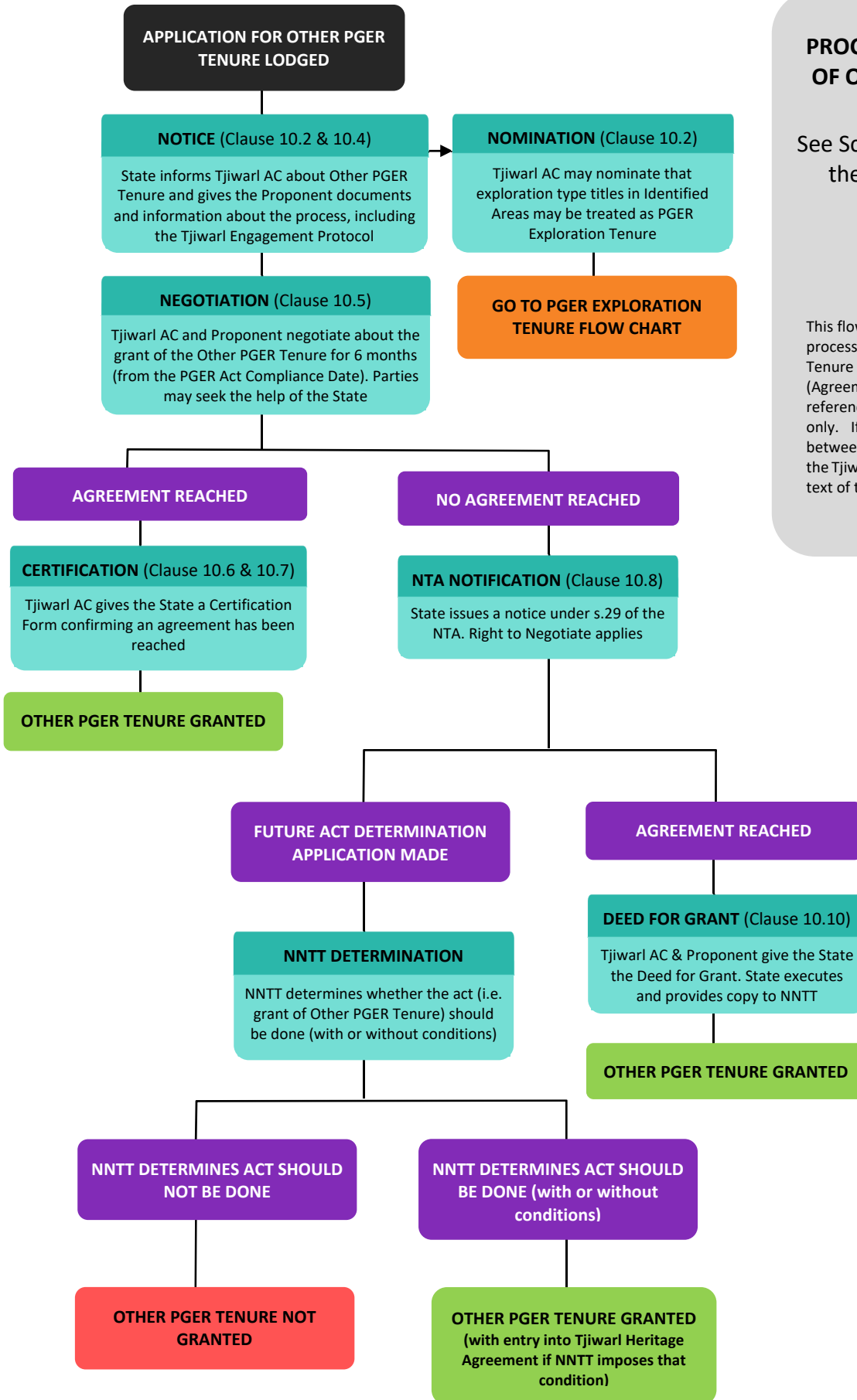


PROCESS FOR THE GRANT OF PGER EXPLORATION TENURE

See Schedule 4, clause 9 of the Tjiwarl Palyakuwa (Agreement)

Please Note:

This flow chart is a simplification of the processes for the grant of PGER Exploration Tenure under the Tjiwarl Palyakuwa (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 Tjiwarl Palyakuwa (Agreement), the text of the Agreement prevails.



PROCESS FOR THE GRANT OF OTHER PGER TENURE

See Schedule 4, clause 10 of the Tjiwarl Palyakuwa (Agreement)

Please Note:

This flow chart is a simplification of the processes for the grant of Other PGER Tenure under the Tjiwarl Palyakuwa (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 Tjiwarl Palyakuwa (Agreement), the text of the Agreement prevails.

TJIWARL PALYAKUWA (AGREEMENT)

SCHEDULE 4 – Annexure 2

Identified Areas Map

119°30'0"E 120°0'0"E 120°30'0"E 121°0'0"E

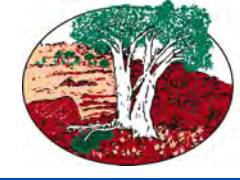
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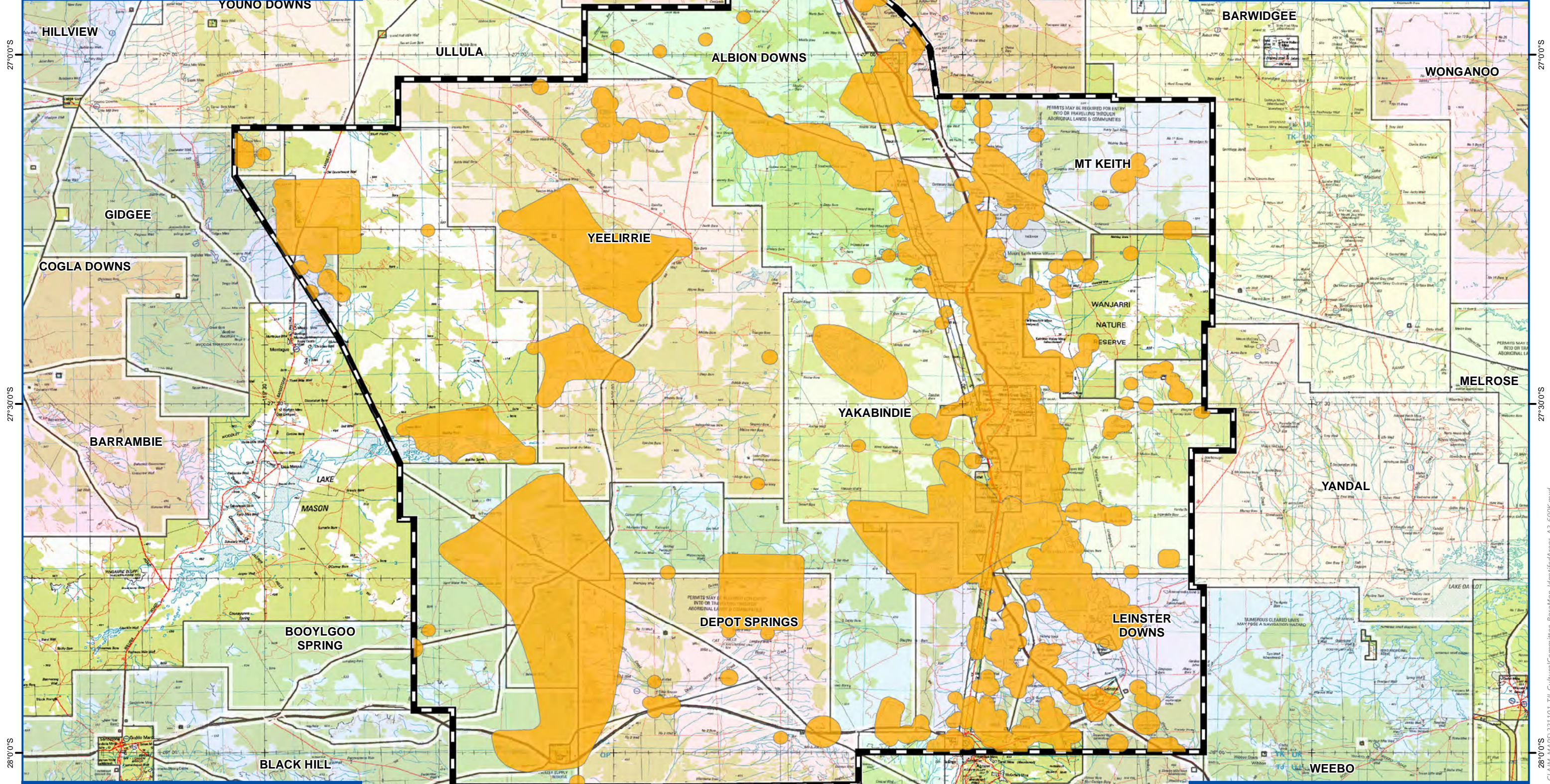
Scale 1:600,000
Coordinate System: GDA2020
Datum: GDA2020
Base map: NatMap (GeoScience 2008)

01 November 2022




TJIWARL ABORIGINAL CORPORATION (RNTBC)



TJIWARL
ABORIGINAL CORPORATION (RNTBC)



LEGEND

-  Identified Areas (Tjiwarl AC 2022)
-  Tjiwarl Determination Boundary (NNTT 2022)
-  Pastoral Lease Boundaries (Landgate 2019)

A3 MAP



**IDENTIFIED AREAS
SCHEDULE 4, ANNEXURE 2**

119°30'0"E 120°0'0"E 120°30'0"E 121°0'0"E

27°0'0"S
27°30'0"S
28°0'0"S

27°0'0"S
27°30'0"S
28°0'0"S

TJIWARL PALYAKUWA (AGREEMENT)

SCHEDULE 4 – Annexure 3

Mining Business Working Group Terms of Reference

TJIWARL PALYAKUWA (AGREEMENT)

TERMS OF REFERENCE

Mining Business Working Group

1. Background

- (a) In accordance with clause 4 of the Mining Business Schedule to the Agreement, the Parties have agreed to establish the Mining Business Working Group to:
 - (i) oversee and inform the implementation of the processes contained in the Mining Business Schedule in relation to the granting of mining tenements and PGER Titles within the Agreement Area;
 - (ii) track and report on mining tenements and PGER Titles within the Tjiwarl determination area, including the identification of trends and issues as they arise; and
 - (iii) 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 Mining Business Working Group.
- (c) All capitalised terms are as defined in the Agreement.

2. Aim and Purpose

The aim and purpose of the Mining Business Working Group is to work collaboratively to:

- (a) oversee and inform the implementation of the processes contained in the Mining Business Schedule in relation to the granting of mining tenements and PGER Titles within the Agreement Area, including:
 - (i) developing information materials for third parties in relation to the processes; and
 - (ii) developing a process for:
 - (A) Tjiwarl AC to report to the State any issues of an Explorer's non-compliance under an executed Tjiwarl Exploration Agreement; and
 - (B) the State to consider any reports of non-compliance reported by Tjiwarl as part of its decision-making process with respect to Programmes of Works;
- (b) inform the reviews of the Tjiwarl Heritage Agreement and Schedule 2 of the Tjiwarl Exploration Agreement as required in the Mining Business Schedule with a view to providing recommendations to the Parties;
- (c) act as the communication forum for all matters relating to the granting of mining tenements and PGER Titles within the Agreement Area;

- (d) report on, and provide feedback about, the implementation of the processes contained in the Mining Business Schedule; and
- (e) achieve the objectives of these Terms of Reference.

3. Membership and Attendees

3.1 Members

The members of the Mining Business Working Group are Tjiwarl AC and the Department of Mines, Industry Regulation and Safety (**DMIRS**).

3.2 Co-Chairs

The Mining Business Working Group will be co-chaired by a Tjiwarl Director nominated by Tjiwarl AC and a representative from DMIRS nominated by the State (the **Co-Chairs**).

3.3 Non Member Attendees

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

4. Meetings

4.1 Attendance & Quorum

- (a) There is an expectation that all members of the Mining Business Working Group will attend all meetings of the Mining Business Working Group.
- (b) The members agree that, for a meeting of the Mining Business Working Group to proceed the following members must be present:
 - (i) the Co-Chairs;
 - (ii) at least 1 other DMIRS representative; and

- (iii) at least 1 other Tjiwarl AC representative.
- (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, however physical attendance is preferred.

4.2 Meeting Agenda

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

4.3 Frequency and Location of Meetings

- (a) Unless otherwise agreed between the members at a meeting of the Mining Business Working Group, the Mining Business Working Group will meet:
 - (i) quarterly during the first year 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 once each year.
- (b) The Mining Business Working Group will review their commitment and timing for ongoing meetings on the second 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 Mining Business Working Group are to be convened in Perth or at a location nominated by Tjiwarl AC as far as is practicable and which is agreed by the members.

4.4 Costs

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

4.5 Resolutions

- (a) The Mining Business 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 Mining Business 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 Mining Business Working Group unless approved by consensus of the Co-Chairs.
- (c) Any matters of procedure or membership of the Mining Business Working Group will be determined by the Co-Chairs.

5. Roles and Obligations

5.1 Co-Chairs Responsibilities

The Co-Chairs' 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 Mining Business Working Group meetings will be provided by DMIRS.
- (b) Appropriate records of the Mining Business Working Group will be maintained in accordance with DMIRS'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 Mining Business 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 Mining Business 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 Mining Business 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 Mining Business Working Group, DMIRS will, from time to time, update and confirm the contact list for the members of the Mining Business Working Group.
- (b) Any other information required by the members of the Mining Business Working Group will be provided within the agreed timeframe at the time of request.

6.2 Minutes of Meetings

- (a) DMIRS will provide the minutes of each meeting to the members of the Mining Business Working Group via email no later than 20 Business Days after each Mining Business 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 Mining Business Working Group.

6.3 Reporting

DMIRS will, as required, report on the progress of matters before the Mining Business Working Group to:

- (a) members of the Mining Business Working Group by way of update;
- (b) other agencies across State government where required to support the outcomes of the Mining Business 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 to the Terms of Reference

- (a) These Terms of Reference may only be amended:
 - (i) by the unanimous agreement of the members of the Mining Business Working Group; and
 - (ii) where the Implementation Committee has endorsed the amendment agreed by the Mining Business Working Group.

- (b) The Co-Chairs must, within 15 Business Days of any amendment to these Terms of Reference being agreed to by the Mining Business Working Group, provide the Implementation Committee with a copy of the proposed amended Terms of Reference for its consideration.

TJIWARL PALYAKUWA (AGREEMENT)

SCHEDULE 4 – Annexure 4

Certification Forms

Item A – Certification Form for Mining Exploration Tenure

Item B – Certification Form for Other Mining Tenure

Item C – Certification Form for Mining Infrastructure Licences

Item D – Certification Form for Mining Water Licences

Item E – Certification Form for PGER Exploration Tenure

Item F – Certification Form for Other PGER Tenure

Item A – Certification Form for Mining Exploration Tenure

The following Certification Form is provided for the purpose of Schedule 4, clause 5 of the Tjiwarl Palyakuwa (Agreement) in relation to Mining Exploration Tenure.

CERTIFICATION FORM FOR MINING EXPLORATION TENURE

Schedule 4, clause 5 of the Tjiwarl Palyakuwa (Agreement)

This Certification Form applies to the following Mining Exploration Tenure (as defined in Schedule 4, clause 5.1 of the Tjiwarl Palyakuwa (Agreement)).

ITEM	DETAILS
1. Tenure	Tenement 1: Application No: Tenement Type: Tenement 2: Application No: Tenement Type: <i>[insert or delete as required]</i>
2. Proponent(s)	Tenement Applicant / Holder 1: Name*: *include ACN if a company Address: Tenement Applicant / Holder 2: Name*: *include ACN if a company Address: <i>[insert or delete as required]</i>

On behalf of Tjiwarl (Aboriginal Corporation) RNTBC, it is hereby certified that:

()(**)*Delete whichever is not applicable

1. I am a director of Tjiwarl (Aboriginal Corporation) RNTBC (**Tjiwarl AC**) and am duly authorised by it to give this certification.
2. The Tenure is a Mining Exploration Tenure as defined in Schedule 4, clause 5.1 of the Tjiwarl Palyakuwa (Agreement).
3. The Proponent for the Tenure and Tjiwarl AC executed a copy of the Tjiwarl Exploration Agreement (as defined in the Tjiwarl Palyakuwa (Agreement)), subject only to necessary modifications in terminology for the Tenure, on:

[Insert date]

4. By executing the Tjiwarl Exploration Agreement, Tjiwarl AC acknowledges and agrees that:
 - (*) The Minister for Mines and Petroleum may grant the Tenure to the Proponent in accordance with Schedule 4, (*) clause 5.4(d) / (**) clause 5.8(b) of the Tjiwarl Palyakuwa (Agreement).
 - (**) The Proponent has satisfied the conditions (imposed in accordance with Schedule 4, clause 5.9(a) of the Tjiwarl Palyakuwa (Agreement)) applicable to the Tenure.
5. A copy of the Deed of Release (as defined in the Tjiwarl Palyakuwa (Agreement)) is attached to this Certification Form.

Signature of Director

Signature of Director

Full name

Full name

Date

Date

Item B – Certification Form for Other Mining Tenure

The following Certification Form is provided for the purpose of Schedule 4, clause 6 of the Tjiwarl Palyakuwa (Agreement) in relation to Other Mining Tenure.

CERTIFICATION FORM FOR OTHER MINING TENURE

Schedule 4, clause 6 of the Tjiwarl Palyakuwa (Agreement)

This Certification Form applies to the following Other Mining Tenure (as defined in Schedule 4, clause 6.1 of the Tjiwarl Palyakuwa (Agreement)).

ITEM	DETAILS
1. Tenure	Tenement 1: Application No: Tenement Type: Tenement 2: Application No: Tenement Type: <i>[insert or delete as required]</i>
2. Proponent(s)	Tenement Applicant / Holder 1: Name*: *include ACN if a company Address: Tenement Applicant / Holder 2: Name*: *include ACN if a company Address: <i>[insert or delete as required]</i>

On behalf of Tjiwarl (Aboriginal Corporation) RNTBC, it is hereby certified that:

()(**)(***) Delete whichever is not applicable*

1. I am a director of Tjiwarl (Aboriginal Corporation) RNTBC (**Tjiwarl AC**) and am duly authorised by it to give this certification.
2. The Tenure is an Other Mining Tenure as defined in Schedule 4, clause 6.1 of the Tjiwarl Palyakuwa (Agreement).
3. (*) *Certification for purpose of Schedule 4, clause 6.5(a): Where a Section 29 Notice has not been issued*

The Proponent for the Tenure and Tjiwarl AC have reached an agreement as to the grant of the Tenure, on:

[Insert date]

and Tjiwarl AC acknowledges and agrees that the Minister for Mines and Petroleum may grant the Tenure to the Proponent in accordance with Schedule 4, clause 6.5(c) of the Tjiwarl Palyakuwa (Agreement).

- (**) *Certification for the purpose of Schedule 4, clause 6.9(a): Where a Section 29 Notice has been issued*

The Proponent for the Tenure and Tjiwarl AC have reached an agreement as to the grant of the Tenure on:

[Insert date]

and a copy of the Deed for Grant (as defined in the Tjiwarl Palyakuwa (Agreement)) executed by Tjiwarl AC and the Proponent is attached to this Certification Form in accordance with Schedule 4, clause 6.9(a) of the Tjiwarl Palyakuwa (Agreement).

*(***) Certification for the purpose of Schedule 4, clause 6.10(a): Where the Other Mining Tenure has been granted with the condition set out in Schedule 4, clause 6.8(b) of the Tjiwarl Palyakuwa (Agreement)*

The Proponent for the Tenure and Tjiwarl AC executed a copy of the Tjiwarl Heritage Agreement (as defined in the Tjiwarl Palyakuwa (Agreement)), subject only to necessary modifications in terminology for the Tenure, on:

[Insert date]

and Tjiwarl AC acknowledges and agrees that the Proponent has satisfied the conditions (imposed in accordance with Schedule 4, clause 6.10(a) of the Tjiwarl Palyakuwa (Agreement)) applicable to the Tenure.

Signature of Director

Signature of Director

Full name

Full name

Date

Date

Item C – Certification Form for Mining Infrastructure Licences

The following Certification Form is provided for the purpose of Schedule 4, clause 7 of the Tjiwarl Palyakuwa (Agreement) in relation to Mining Infrastructure Licences.

CERTIFICATION FORM FOR MINING INFRASTRUCTURE LICENCES

Schedule 4, clause 7 of the Tjiwarl Palyakuwa (Agreement)

This Certification Form applies to the following Mining Infrastructure Licences (as defined in Schedule 4, clause 7.1 of the Tjiwarl Palyakuwa (Agreement)).

ITEM	DETAILS
1. Tenure	Tenement 1: Application No: Tenement Type: Tenement 2: Application No: Tenement Type: <i>[insert or delete as required]</i>
2. Proponent(s)	Tenement Applicant / Holder 1: Name*: *include ACN if a company Address: Tenement Applicant / Holder 2: Name*: *include ACN if a company Address: <i>[insert or delete as required]</i>

On behalf of Tjiwarl (Aboriginal Corporation) RNTBC, it is hereby certified that:

()(**)(***) Delete whichever is not applicable*

1. I am a director of Tjiwarl (Aboriginal Corporation) RNTBC (**Tjiwarl AC**) and am duly authorised by it to give this certification.
2. The Tenure is a Mining Infrastructure Licence as defined in Schedule 4, clause 7.1 of the Tjiwarl Palyakuwa (Agreement).
3. (*) *Certification for the purpose of Schedule 4, clause 7.4(a) or 7.9(a): Where agreement has been reached as to the grant of the Tenure*

The Proponent for the Tenure and Tjiwarl AC have reached an agreement as to the grant of the Tenure, on:

[Insert date]

and Tjiwarl AC acknowledges and agrees that the Minister for Mines and Petroleum may grant the Tenure to the Proponent in accordance with Schedule 4, (*) clause 7.4(c) / (**) clause 7.9(c) of the Tjiwarl Palyakuwa (Agreement).

- (**) *Certification for the purpose of Schedule 4, clause 7.10(a): Where the Tenure has been granted with the condition set out in Schedule 4, clause 7.8(b) of the Tjiwarl Palyakuwa (Agreement).*

The Proponent for the Tenure and Tjiwarl AC executed a copy of the Tjiwarl Heritage Agreement (as defined in the Tjiwarl Palyakuwa (Agreement)), subject only to necessary modifications in terminology for the Tenure, on:

[Insert date]

and Tjiwarl AC acknowledges and agrees that the Proponent has satisfied the conditions (imposed in accordance with Schedule 4, clause 7.10(a) of the Tjiwarl Palyakuwa (Agreement)) applicable to the Tenure.

Signature of Director

Signature of Director

Full name

Full name

Date

Date

Item D – Certification Form for Mining Water Licences

The following Certification Form is provided for the purpose of Schedule 4, clause 8 of the Tjiwarl Palyakuwa (Agreement) in relation to Mining Water Licences.

CERTIFICATION FORM FOR MINING WATER LICENCES

Schedule 4, clause 8 of the Tjiwarl Palyakuwa (Agreement)

This Certification Form applies to the following Mining Water Licences (as defined in Schedule 4, clause 8.1 of the Tjiwarl Palyakuwa (Agreement)).

ITEM	DETAILS
1. Tenure	Tenement 1: Application No: Tenement Type: Tenement 2: Application No: Tenement Type: <i>[insert or delete as required]</i>
2. Proponent(s)	Tenement Applicant / Holder 1: Name*: *include ACN if a company Address: Tenement Applicant / Holder 2: Name*: *include ACN if a company Address: <i>[insert or delete as required]</i>

On behalf of Tjiwarl (Aboriginal Corporation) RNTBC, it is hereby certified that:

()(**)* Delete whichever is not applicable

1. I am a director of Tjiwarl (Aboriginal Corporation) RNTBC (**Tjiwarl AC**) and am duly authorised by it to give this certification.
2. The Tenure is a Mining Water Licence as defined in Schedule 4, clause 8.1 of the Tjiwarl Palyakuwa (Agreement).
3. (*) *Certification for the purpose of Schedule 4, clause 8.4(a): Where agreement has been reached as to the grant of the Tenure*

The Proponent for the Tenure and Tjiwarl AC have reached an agreement as to the grant of the Tenure, on:

[Insert date]

and Tjiwarl AC acknowledges and agrees that the Minister for Mines and Petroleum may grant the Tenure to the Proponent in accordance with Schedule 4, clause 8.4(c) of the Tjiwarl Palyakuwa (Agreement).

- (**) *Certification for the purpose of Schedule 4, clause 8.6(e): Where the Tenure has been granted with the condition set out in Schedule 4, clause 8.6(a)(iii) of the Tjiwarl Palyakuwa (Agreement).*

The Proponent for the Tenure and Tjiwarl AC executed a copy of the Tjiwarl Heritage Agreement (as defined in the Tjiwarl Palyakuwa (Agreement)), subject only to necessary modifications in terminology for the Tenure, on:

[Insert date]

and Tjiwarl AC acknowledges and agrees that the Proponent has satisfied the conditions (imposed in accordance with Schedule 4, clause 8.6(d) of the Tjiwarl Palyakuwa (Agreement)) applicable to the Tenure.

Signature of Director

Signature of Director

Full name

Full name

Date

Date

Item E – Certification Form for PGER Exploration Tenure

The following Certification Form is provided for the purpose of Schedule 4, clause 9 of the Tjiwarl Palyakuwa (Agreement) in relation to PGER Exploration Tenure.

CERTIFICATION FORM FOR PGER EXPLORATION TENURE

Schedule 4, clause 9 of the Tjiwarl Palyakuwa (Agreement)

This Certification Form applies to the following PGER Exploration Tenure (as defined in Schedule 4, clause 9.1 of the Tjiwarl Palyakuwa (Agreement)).

ITEM	DETAILS
1. Tenure	Title 1: Application No: Title Type: Title 2: Application No: Title Type: <i>[insert or delete as required]</i>
2. Proponent(s)	Title Applicant / Holder 1: Name*: *include ACN if a company Address: Title Applicant / Holder 2: Name*: *include ACN if a company Address: <i>[insert or delete as required]</i>

On behalf of Tjiwarl (Aboriginal Corporation) RNTBC, it is hereby certified that:

()(**) Delete whichever is not applicable*

1. I am a director of Tjiwarl (Aboriginal Corporation) RNTBC (**Tjiwarl AC**) and am duly authorised by it to give this certification.
2. The Tenure is a PGER Exploration Tenure as defined in Schedule 4, clause 9.1 of the Tjiwarl Palyakuwa (Agreement).
3. (*) *Certification for the purpose of Schedule 4, clause 9.4(a) or 9.8(a): Where agreement has been reached as to the grant of the Tenure*

The Proponent for the Tenure and Tjiwarl AC have reached an agreement as to the grant of the Tenure, on:

[Insert date]

and Tjiwarl AC acknowledges and agrees that the Minister for Mines and Petroleum may grant the Tenure to the Proponent in accordance with Schedule 4, (*) clause 9.4(c) / (**) clause 9.8(c) of the Tjiwarl Palyakuwa (Agreement).

- (**) *Certification for the purpose of Schedule 4, clause 9.9(b): Where the Tenure has been granted with the condition set out in Schedule 4, clause 9.9(a) of the Tjiwarl Palyakuwa (Agreement).*

The Proponent for the Tenure and Tjiwarl AC executed a copy of the Tjiwarl Heritage Agreement (as defined in the Tjiwarl Palyakuwa (Agreement)), subject only to necessary modifications in terminology for the Tenure, on:

[Insert date]

and Tjiwarl AC acknowledges and agrees that the Proponent has satisfied the conditions (imposed in accordance with Schedule 4, clause 9.9(a) of the Tjiwarl Palyakuwa (Agreement)) applicable to the Tenure.

Signature of Director

Signature of Director

Full name

Full name

Date

Date

Item F – Certification Form for Other PGER Tenure

The following Certification Form is provided for the purpose of Schedule 4, clause 10 of the Tjiwarl Palyakuwa (Agreement) in relation to Other PGER Tenure.

CERTIFICATION FORM FOR OTHER PGER TENURE

Schedule 4, clause 10 of the Tjiwarl Palyakuwa (Agreement)

This Certification Form applies to the following Other PGER Tenure (as defined in Schedule 4, clause 10.1 of the Tjiwarl Palyakuwa (Agreement)).

ITEM	DETAILS
1. Tenure	Title 1: Application No: Title Type: Title 2: Application No: Title Type: <i>[insert or delete as required]</i>
2. Proponent(s)	Title Applicant / Holder 1: Name*: *include ACN if a company Address: Title Applicant / Holder 2: Name*: *include ACN if a company Address: <i>[insert or delete as required]</i>

On behalf of Tjiwarl (Aboriginal Corporation) RNTBC, it is hereby certified that:

()(**)(***) Delete whichever is not applicable*

1. I am a director of Tjiwarl (Aboriginal Corporation) RNTBC (**Tjiwarl AC**) and am duly authorised by it to give this certification.
2. The Tenure is an Other PGER Tenure as defined in Schedule 4, clause 10.1 of the Tjiwarl Palyakuwa (Agreement).
3. (*) *Certification for the purpose of Schedule 4, clause 10.6(a): Where a Section 29 Notice has not been issued*

The Proponent for the Tenure and Tjiwarl AC have reached an agreement as to the grant of the Tenure, on:

[Insert date]

and Tjiwarl AC acknowledges and agrees that the Minister for Mines and Petroleum may grant the Tenure to the Proponent in accordance with Schedule 4, clause 10.6(c) of the Tjiwarl Palyakuwa (Agreement).

- (**) *Certification for the purpose of Schedule 4, clause 10.10(a): Where a Section 29 Notice has been issued:*

The Proponent for the Tenure and Tjiwarl AC have reached an agreement as to the grant of the Tenure on:

[Insert date]

and a copy of the Deed for Grant (as defined in the Tjiwarl Palyakuwa (Agreement)) executed by Tjiwarl AC and the Proponent is attached to this Certification Form in accordance with Schedule 4, clause 10.10(a) of the Tjiwarl Palyakuwa (Agreement).

*(***) Certification for the purpose of Schedule 4, clause 10.11(b): Where the Other PGER Tenure has been granted with the condition set out in Schedule 4, clause 10.9(b) of the Tjiwarl Palyakuwa (Agreement).*

The Proponent for the Tenure and Tjiwarl AC executed a copy of the Tjiwarl Heritage Agreement (as defined in the Tjiwarl Palyakuwa (Agreement)), subject only to necessary modifications in terminology for the Tenure, on:

[Insert date]

and Tjiwarl AC acknowledges and agrees that the Proponent has satisfied the conditions (imposed in accordance with Schedule 4, clause 10.11(a) of the Tjiwarl Palyakuwa (Agreement)) applicable to the Tenure.

Signature of Director

Signature of Director

Full name

Full name

Date

Date

TJIWARL PALYAKUWA (AGREEMENT)

SCHEDULE 4 – Annexure 5

Deed of Release

DEED OF RELEASE

By

Tjiwarl (Aboriginal Corporation) RNTBC (ICN 8628)

In Favour of

The State of Western Australia

Details of Deed

THIS DEED is made on the day of 20

By **Tjiwarl (Aboriginal Corporation) RNTBC (ICN 8628)** in its own right and for and on behalf of the Tjiwarl People of Unit 6, 542 Abernethy Road, Kewdale in the State of Western Australia (**Tjiwarl AC**).

In favour of: **State of Western Australia** of c/- the Department of Mines, Industry Regulation and Safety of Mineral House, 100 Plain St, East Perth in the State of Western Australia (**the State**).

Recitals

- A. Tjiwarl AC is an incorporated body under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) and is the Registered Native Title Body Corporate determined to hold native title rights and interests on trust for the Tjiwarl People.
- B. Tjiwarl AC and the State have entered into an Indigenous Land Use Agreement entitled the Tjiwarl Palyakuwa (Agreement). Clause 5 of Schedule 4 of the Tjiwarl Palyakuwa (Agreement) provides a process for the grant of Mining Exploration Tenure.
- C. The Proponent has applied for the Licence within the Tjiwarl Palyakuwa (Agreement) Area. The Licence is a Mining Exploration Tenure as defined in clause 5.1 of Schedule 4 of the Tjiwarl Palyakuwa (Agreement).
- D. On the Agreement Date, Tjiwarl AC entered into the Tjiwarl Exploration Agreement with the Proponent, pursuant to clause 5 of Schedule 4 of the Tjiwarl Palyakuwa (Agreement).
- E. The State is not a party to the Tjiwarl Exploration Agreement.
- F. Tjiwarl AC has agreed that the Proponent's obligations under the Tjiwarl Exploration Agreement are intended to be in full and final satisfaction of all liability for Native Title Compensation which Tjiwarl AC or the Tjiwarl People previously had, currently have, or might have in the future, against the State and/or the State's Personnel.
- G. Tjiwarl AC provides this Deed in accordance with clause 5 of Schedule 4 of the Tjiwarl Palyakuwa (Agreement).

OPERATIVE PROVISIONS:

1. Definitions and Interpretation

1.1 Definitions

In this Deed, unless the context requires otherwise:

Agreement Date means the date listed at item 3 of the Schedule to this Deed, being the date on which the Tjiwarl Exploration Agreement was entered into by Tjiwarl AC and the Proponent.

Execution Date means the date on which this Deed of Release is executed by Tjiwarl AC.

Licence means the mining tenement(s) listed at item 1 of the Schedule to this Deed.

Mining Exploration Tenure has the meaning given by clause 5.1 of Schedule 4 to the Tjiwarl Palyakuwa (Agreement).

Native Title Compensation means any compensation, damages, restitution, benefits, costs, expenses or loss whatsoever, whether arising or recoverable under any State or Commonwealth statute (including the *Native Title Act 1993* (Cth), *Mining Act 1978* (WA), or any other statute), or under common law or in equity, arising out of, or in connection with, any extinguishment, loss, diminution, impairment or other effect on native title rights and interests by:

- (a) the grant, renewal or extension of the Licence; or
- (b) the doing of any act (including a future act) or any activity (whether or not subject to any conditions) in accordance with the Licence and any such conditions.

Proponent means the party listed at item 2 of the Schedule to this Deed.

Registered Native Title Body Corporate has the meaning given to it in the *Native Title Act 1993* (Cth).

State means the legal entity of the Crown in right of the State of Western Australia.

State's Personnel means the State's employees, officers, agents, consultants and contractors.

Tjiwarl Determination means the orders of the Federal Court of Australia made in native title determination applications WAD 228 of 2011 (Tjiwarl) and WAD 302 of 2015 (Tjiwarl #2) by Mortimer J on 27 April 2017 as amended by order 2 of the Full Court of the Federal Court of

Australia on 1 February 2018 (as itself amended by order 2 of the High Court of Australia on 17 April 2019).

Tjiwarl Exploration Agreement means the agreement made by Tjiwarl AC and the Proponent on the Agreement Date that is substantially in the form of the 'Tjiwarl Exploration Agreement' at Annexure 6 to Schedule 4 of the Tjiwarl Palyakuwa (Agreement) and which relates to.

- (a) the Licence and any grant, renewal or extension of the Licence;
- (b) the doing of any act (including a future act) or any activity (whether or not subject to any conditions) in accordance with the Licence and any such conditions; and
- (c) the payment of Native Title Compensation by the Proponent to Tjiwarl AC in relation to (a) and (b).

Tjiwarl Palyakuwa (Agreement) means the *Tjiwarl Palyakuwa (Agreement)*, an indigenous land use agreement (body corporate agreement) as described in Part 2, Division 3, Subdivision B of the *Native Title Act 1993* (Cth) that was entered into on [insert date] and which was entered on the Register of Indigenous Land Use Agreements on [insert date].

Tjiwarl Palyakuwa (Agreement) Area means the area of land and waters of the Tjiwarl Palyakuwa (Agreement) as described in clause 2 of that agreement.

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

1.2 Interpretation

In this Deed, unless context requires otherwise:

- (a) headings are for reference only and do not govern the meaning or construction of this Deed or any provision contained in this Deed;
- (b) a reference to a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
- (c) a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) a reference to a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
- (e) reference to a person or party includes that person's or party's successors, permitted substitutes, persons taking by novation, permitted transferees, receivers, managers,

administrators and permitted assignees and, in the case of a natural person, also includes that person's executors and administrators;

- (f) a singular word includes the plural, and vice versa;
- (g) the word "including" is to be read as if it were followed by, "but not limited to";
- (h) a word that suggests one gender includes the other genders;
- (i) if a word is defined, a derivative of the word has a corresponding meaning;
- (j) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally; and
- (k) a reference to any thing is a reference to the whole or any part of it and a reference to a group of persons is a reference to any one or more of them.

2. Release and Discharge

2.1 Full and final satisfaction of the State's Native Title Compensation liability

On and from the Execution Date, Tjiwarl AC and the Tjiwarl People acknowledge and agree that the Proponent's obligations under the Tjiwarl Exploration Agreement, including making the monetary compensation payments referred to in clause 4 of the Tjiwarl Exploration Agreement, are intended to be in full and final satisfaction of all liabilities, determinations, orders, applications, actions, suits, proceedings, claims or demands for, or any other entitlement to, Native Title Compensation which Tjiwarl AC or the Tjiwarl People now have or had at any time previously or might have in the future, against the State and/or the State's Personnel.

2.2 Deed may be pleaded

On and from the Execution Date, Tjiwarl AC and the Tjiwarl People:

- (a) release the State and/or the State's Personnel from, and acknowledge that this Deed may be pleaded as an absolute bar against, all liabilities, determinations, orders, applications, actions, suits, proceedings, claims or demands for, or any other entitlement to, Native Title Compensation; and
- (b) acknowledge and agree that Tjiwarl AC and the Tjiwarl People must not make, commence or facilitate any application, action, suit, proceeding, claim or demand against the State and/or the State's Personnel in any court, tribunal or other authority for Native Title Compensation, provided that the Proponent has complied with its obligations to make the

monetary compensation payments referred to in clause 4 of the Tjiwarl Exploration Agreement.

3. Governing Law

- (a) This deed is governed by the law in force in the State of Western Australia.
- (b) Tjiwarl AC and the Tjiwarl People irrevocably and unconditionally submit to the non-exclusive jurisdiction of the Courts of Western Australia.

EXECUTED AS A DEED:

EXECUTED by **TJIWARL ABORIGINAL CORPORATION (RNTBC) ICN 8628** in accordance with section 99.5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) in the presence of:

Signature of Director

Signature of witness

Full name of Director

Full name of witness

Date

Date

Signature of Director

Signature of witness

Full name of Director

Full name of witness

Date

Date

Schedule – Details of the Tjiwarl Exploration Agreement

ITEM	DETAILS
<p>1. Licence</p>	<p>Tenement 1:</p> <p style="padding-left: 40px;">Application No:</p> <p style="padding-left: 40px;">Tenement Type:</p> <p>Tenement 2:</p> <p style="padding-left: 40px;">Application No:</p> <p style="padding-left: 40px;">Tenement Type:</p> <p><i>[insert or delete as required]</i></p>
<p>2. Proponent</p>	<p>Tenement Applicant / Holder 1:</p> <p style="padding-left: 40px;">Name*:</p> <p style="padding-left: 40px;">*include ACN if a company</p> <p style="padding-left: 40px;">Address:</p> <p>Tenement Applicant / Holder 2:</p> <p style="padding-left: 40px;">Name*:</p> <p style="padding-left: 40px;">*include ACN if a company</p> <p style="padding-left: 40px;">Address:</p> <p><i>[insert or delete as required]</i></p>
<p>3. Agreement Date</p>	<p>Date:</p>

Tjiwarl Palyakuwa (Agreement)

SCHEDULE 4 – Annexure 6

Tjiwarl Exploration Agreement

Item A – Tjiwarl Exploration Agreement

Item B – Instructions for executing the Tjiwarl Exploration Agreement

Item A – Tjiwarl Exploration Agreement

The following form of Tjiwarl Exploration Agreement is provided for the purpose of Schedule 4, clause 5 of the Tjiwarl Palyakuwa (Agreement).

Instructions for completing the Tjiwarl Exploration (Agreement) are provided at Item B of this Annexure.

TJIWARL EXPLORATION AGREEMENT

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Details of Agreement

THIS AGREEMENT is made on the date specified in item 1 of Schedule 1.

BETWEEN

TJIWARL (ABORIGINAL CORPORATION) RNTBC (ICN 8628) in its own right and for and on behalf of the Tjiwarl People (**Tjiwarl AC**)

and

The **EXPLORER** described in item 3 of Schedule 1.

Recitals

- A. The Explorer has made an application for the Licence in order to conduct activities for the purpose of exploring or prospecting for minerals within in the Tjiwarl Determination Area.
- B. Pursuant to the Tjiwarl Determination, Tjiwarl AC is the registered native title body corporate that holds the native title rights and interests on trust for the Tjiwarl People. Tjiwarl AC is an incorporated body under the CATSI Act. It is governed by the Tjiwarl Rule Book.
- C. Tjiwarl AC and the State have entered into an ILUA (body corporate agreement) entitled the Tjiwarl Palyakuwa (Agreement). The Agreement Area in relation to the Tjiwarl Palyakuwa (Agreement) includes part or all of the area of the Licence.
- D. Schedule 4 to the Tjiwarl Palyakuwa (Agreement) provides a process for the grant of the Licence. Relevantly, clause 5 provides that where Tjiwarl AC and the Explorer enter into this Agreement, Tjiwarl AC agree to:
 - (a) the grant of the Licence to the Explorer;
 - (b) the Explorer conducting Activities in the Licence Area; and
 - (c) where relevant, the Explorer accessing the Exclusive Possession Area for the purpose of conducting Activities in the Licence Area,subject to the terms and conditions contained in this Agreement.

- E. The Parties acknowledge that the AHA currently remains in force and, following the transition period, the ACHA will come into operation and the AHA will be repealed. Further, the Parties agree that this Agreement will need to be reviewed once the ACHA comes into operation.
- F. The Parties have agreed that they will conduct Surveys and monitoring (where applicable) using the processes and lines of communication established by this Agreement.

THE PARTIES AGREE THAT:

1. Definitions and Interpretation

Definitions

- 1.1 In this Agreement, unless the context requires otherwise the following words and phrases have the following meanings

Aboriginal Cultural Heritage has the meaning given to it in section 12 of the ACHA.

Aboriginal Cultural Material Committee means the ‘Committee’ as defined in the AHA (until such time as it is repealed).

Aboriginal Object means an object (including Aboriginal remains) of particular significance to the Tjiwarl People in accordance with their laws and customs.

Aboriginal Site means a place, area or object of significance to the Tjiwarl People and may include, but is not limited to, any place that is:

- (a) an “Aboriginal Site” as defined in the AHA (until such time as it is repealed);
- (b) an “Aboriginal place” as defined in the ACHA;
- (c) an “Aboriginal cultural landscape” as defined in the ACHA;
- (d) a “significant Aboriginal area” as defined in the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth); or
- (e) an ‘area or site of particular significance’ within the meaning of section 237(b) of the Native Title Act.

ACHA means the Aboriginal Cultural Heritage Act 2021 (WA).

Activity means any activity done pursuant to the Licence within the Licence Area and includes both Non-Ground Disturbing Activity and Ground Disturbing Activity.

Agreement means this agreement and its schedules and includes any variation or replacement of it.

AHA means the *Aboriginal Heritage Act 1972 (WA)*.

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

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

Cleared Area means an area over which a Survey has been carried out in accordance with this Agreement and which is confirmed in the Survey Report to be cleared for the Ground Disturbing Activity identified in the relevant Work Program.

Commencement Date means the date on which both Parties have executed this Agreement, being date specified in item 1 of Schedule 1.

Confidential Information means:

- (a) all information disclosed by one Party to another Party during the negotiations leading up to executing this Agreement and during the term of this Agreement;
- (a) all information, reports, maps and other documents about or relating to the traditional laws and customs of Tjiwarl People, Aboriginal Sites or Aboriginal Objects, including the names of Aboriginal participants in Surveys and Survey Reports and other documents produced in relation to Surveys;
- (b) any information that Tjiwarl AC nominates as being provided on a confidential basis; and
- (c) the Explorer's commercially sensitive information and any information the Explorer nominates as being provided on a confidential basis.

Construct, in relation to roads or tracks, means undertaking activities with the purpose of creating new roads or tracks, including excavation or clearing, but does not include travelling over land without clearing vegetation, and Construction has the corresponding meaning;

Cultural Awareness Training Package means the cultural awareness package referred to in clause 11.1(b).

Deed of Release has the meaning given by Schedule 4, clause 2.2 of the Tjiwarl Palyakuwa (Agreement).

Dispute has the meaning given by clause 23.1.

Dispute Notice has the meaning given by clause 23.1.

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.

DMIRS Programme of Work means a programme of work for ground disturbing equipment referred to in section 46(aa) or section 63(aa) of the Mining Act, a copy of which is provided by the Explorer to Tjiwarl AC pursuant to Schedule 2, clause 4.

Environmental Surveys means biodiversity surveys, flora and fauna surveys, environmental assessments and any other similar activities.

Exclusive Possession Area means the parts of the Tjiwarl Determination Area which are identified in the Tjiwarl Determination as areas where the Tjiwarl People hold the right of possession, occupation, use and enjoyment to the exclusion of all others;

Existing Roads means any roads and tracks in existence as at the Commencement Date which are:

- (a) recognised by the Federal Court of Australia in Schedule 1 or 4 of the Tjiwarl Determination (Other Interests); or
- (b) agreed between the Parties to be a road or track in existence,

and, for the avoidance of doubt, excludes any existing roads which were excluded from the Tjiwarl Determination Area, as set out in Schedule 1 of the Tjiwarl Determination (Determination Area: Part 2 – Excluded Areas).

Expenditure Report means the Report on Mining Tenement (Form 5 – Exploration Report) as required by section 51, 68 and 82 of the Mining Act and regulations 16, 22 and 32 of the Mining Regulations.

Exploration Expenditure means expenditure in connection with exploration on the Licence, but does not include the cost of assaying, valuation or other works or services conducted outside the Tjiwarl Determination Area.

Explorer means the party described in described in item 3 of Schedule 1 and includes its successors and assigns.

Explorer’s Nominee means an employee or nominee of the Explorer who attends the fieldwork component of a Survey pursuant to Schedule 2, clause 7 and **Explorer’s Nominee(s)** has the corresponding meaning.

First Review Date has the meaning set out in clause 29.2(a).

Ground Disturbing Activity means an Activity that disturbs the ground and includes, but is not limited to:

- (a) the recording of seismic soundings along seismic lines using seismic vehicles;
- (b) drilling (including drilling on existing tracks);
- (c) digging (with mechanised equipment);
- (d) digging trenches (with or without mechanised equipment);
- (e) blasting;
- (f) earthmoving;
- (g) vegetation clearance;
- (h) grading;
- (i) gravel extraction;
- (j) construction of new or widening of existing roads and tracks; and
- (k) the establishing of camps involving heavy vehicles, water bores or more than ten vehicles (including caravans) at any one time,

but does not include the matters listed in paragraphs (a) to (d) of the definition of Non-Ground Disturbing Activity.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Heritage Acts means the AHA, the ACHA and the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) and includes subsidiary legislation made under these Acts.

Heritage Monitor means a member of the Tjiwarl People nominated by Tjiwarl AC to monitor Ground Disturbing Activities as specified in Schedule 2, clause 12(a).

Heritage Monitoring Team means:

- (a) up to two (2) Heritage Monitors; and
- (b) a Liaison Officer.

Index Rate means the rate calculated as follows:

$$\text{Index Rate} = \left(\frac{\text{CPI}(1) - \text{CPI}(2)}{\text{CPI}(2)} \right) \times 100$$

where:

- (a) CPI(1) is the consumer price index number (All Groups) Perth as published quarterly by the Australian Bureau of Statistics (or any such index number published quarterly in substitution thereof) being the last such index number published before the date upon which the Index Rate is to be applied;
- (b) CPI(2) is the consumer price index number (All Groups) Perth as published quarterly in the Australian Bureau of Statistics (or any such index number published quarterly in substitution thereof) as published for:
 - (i) the quarter immediately prior to the Commencement Date; or
 - (ii) the quarter of the previous year that corresponds to CPI(1),

whichever is the later.

Where the Commonwealth Government ceases to publish the consumer price index number (All Groups) Perth, the Index Rate shall be determined by a person agreed upon by the Parties and, in the absence of such an agreement, by a person nominated by the President for the time being of the Australian Institute of Chartered Accountants, being a person having appropriate qualifications and experience, who will make the determination acting as an expert.

Initial Payment means the payment made in accordance with Schedule 2, clause 8(a).

ILUA (body corporate agreement) means an indigenous land use agreement (body corporate agreement) as described in Part 2, Division 3, Subdivision B of the Native Title Act.

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

Law Business Period means the period approximately between 1 December and 1 March of each year during which the Tjiwarl People are often unavailable due to significant cultural responsibilities.

Liaison Officer means a person nominated by Tjiwarl AC, to liaise between Tjiwarl AC and the Explorer to facilitate the work, pursuant to this Agreement, of any:

- (a) Survey Team; or
- (b) Heritage Monitoring Team;

and includes that person's delegate.

Licence means the mining tenement applied for by the Explorer and/or granted to the Explorer under the Mining Act and identified Schedule 1, item 2 and includes that Licence when its term has been renewed or extended.

Licence Area means that part of the land or waters the subject of the Licence that is within the Tjiwarl Determination Area.

Maintain means to undertake activities for the purpose of preserving the condition of a road or track, which does not include:

- (a) widening the road or track;
- (b) deviating from the road or track;
- (c) re-routing the road or track; or
- (d) changing the character or purpose of the road or track,

and Maintaining has the corresponding meaning.

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

Mining Regulations means the *Mining Regulations 1981* (WA).

Mining tenement has the meaning given in the Mining Act.

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

Native Title Compensation means any compensation, damages, restitution, benefits, costs, expenses or loss whatsoever, whether arising or recoverable under any State or Commonwealth statute (including the Native Title Act, Mining Act or any other statute, or under common law or in equity, arising out of, or in connection with, any extinguishment, loss, diminution, impairment or other effect on native title rights and interests by:

- (a) the grant, renewal or extension of the Licence; or

(b) the doing of any act (including a future act) or any Activity (whether or not subject to any conditions) in accordance with the Licence and any such conditions, within the Tjiwarl Determination Area.

Non-Ground Disturbing Activity means an Activity that is not Ground Disturbing Activity and includes, but is not limited to:

- (a) aerial surveying;
- (b) the use of hand tools for sampling surficial materials including rock, soil, water and stream sediment;
- (c) geophysical surveying;
- (d) the establishing of tent or caravan camps not involving heavy vehicles, water bores or more than ten vehicles (including caravans) at any one time; and
- (e) Environmental Surveys.

Objection means any objection:

- (a) under section 32(3) and (4) of the Native Title Act to the expedited procedure applying to the proposed grant of the Licence; and
- (b) to the grant of the Licence under the provisions of the Mining Act.

Parties means the Explorer and Tjiwarl AC.

Personnel includes agents, employees, contractors and sub-contractors of the Explorer.

Recipient has the meaning given in clause 19.

Registered Native Title Body Corporate has the meaning given to it in the Native Title Act.

Related Body Corporate has the meaning given to it in the *Corporations Act 2001*(Cth) and, with respect to Tjiwarl AC, it has the meaning given to it in the CATSI Act.

Replacement RNTBC has the meaning given in clause 7.3.

Retention Status has the same meaning given to it under section 8(5) of the Mining Act.

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

Supplier has the meaning given in clause 19.

Survey means an ethnographic and/or archaeological survey of the Work Areas identified in a Work Program that is carried out in accordance with this Agreement to determine which parts of those Work Areas are Cleared Areas for the conduct of the Ground Disturbing Activity identified in that Work Program.

Survey Report means the Report referred to in Schedule 2, clause 9(a).

Survey Team means the people appointed to conduct a Survey referred to in Schedule 2, clause 7(a).

Termination Date means the date when the Explorer or its assignees cease to hold an interest in the Licence, or the Agreement is terminated pursuant to clause 7.2, 8.2(b) or 28.2.

Traditional Owners means those Tjiwarl People who have authority to speak for the relevant Work Area in accordance with the traditional laws and customs of the Tjiwarl People.

Tjiwarl AC means Tjiwarl (Aboriginal Corporation) RNTBC (ICN 8628) of Unit 6, 524 Abernethy Road, Kewdale, WA, 6105 and includes the Tjiwarl AC acting through its duly appointed agent from time to time.

Tjiwarl Determination means the orders of the Federal Court of Australia made in native title determination applications WAD 228 of 2011 (Tjiwarl) and WAD 302 of 2015 (Tjiwarl #2) by Mortimer J on 27 April 2017 as amended by order 2 of the Full Court of the Federal Court of Australia on 1 February 2018 (as itself amended by order 2 of the High Court of Australia on 17 April 2019).

Tjiwarl Determination Area means the area of land and waters the subject of the Tjiwarl Determination.

Tjiwarl Palyakuwa (Agreement) means the Tjiwarl Palyakuwa (Agreement), the indigenous land use agreement (body corporate agreement) that was entered into on [*insert date*] and which was entered on the Register of Indigenous Land Use Agreements on [*insert date*].

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

Tjiwarl Payments Account means a bank account nominated by Tjiwarl AC as the Tjiwarl Payments Account.

Tjiwarl Rule Book means the consolidated rule book of Tjiwarl AC registered on 9 November 2020 and amended from time to time.

Upgrade means undertaking activities for the purpose of improving the condition of a road or track, including widening a road or track, which go beyond Maintaining that road or track, and Upgrading has a corresponding meaning;

Work Area means the area identified in a Work Program as the area in which the Explorer proposes to carry out Activities pursuant to that Work Program.

Work Program means the Explorer's notice to Tjiwarl AC of its proposed Activities pursuant to Schedule 2, clauses 2 or 4.

Interpretation

1.2 In this Agreement, unless context requires otherwise:

- (a) a reference to a recital, clause or Schedule is to a recital, clause or Schedule of this Agreement;
- (b) headings are for reference only and do not govern the meaning or construction of this Agreement or of any provision contained in this Agreement;
- (c) a reference to a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
- (d) a reference to legislation or regulations is a reference to that legislation or regulation as amended, replaced or re-enacted for the time being in force and any by-laws, statutory instruments, rules, regulations, notices, orders, directions, consents or permissions made thereunder and any conditions attaching thereto;
- (e) reference to a person or party includes that person's or party's successors, permitted substitutes, persons taking by novation, permitted transferees, receivers, managers, administrators and permitted assignees and, in the case of a natural person, also includes that person's executors and administrators;
- (f) a singular word includes the plural, and vice versa;
- (g) a word that suggests one gender includes the other genders;
- (h) the word "including" is to be read as if it were followed by, "but not limited to";
- (i) if a word is defined, a derivative of the word has a corresponding meaning;
- (j) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally; and

- (k) a reference to any thing is a reference to the whole or any part of it and a reference to a group of persons is a reference to any one or more of them.

2. No Extinguishment of Native Title

The Explorer acknowledges that the native title rights and interests of the Tjiwarl People are not extinguished or partially extinguished by the grant of the Licence or anything done pursuant to this Agreement.

3. Agreement to the grant of the Licence

Subject to this Agreement, Tjiwarl AC agrees:

- (a) to the grant of the Licence as listed in Schedule 1, item 1 to the Explorer;
- (b) that the Explorer and its Personnel may conduct Activities within the Licence Area;
- (c) not to lodge any Objection in relation to the Licence; and/or
- (d) to withdraw any existing Objection it has lodged in relation to the Licence.

4. Monetary Compensation

- 4.1 The Explorer shall compensate the Tjiwarl People in accordance with Schedule 5 in full and final satisfaction of any obligation by the Explorer to pay Native Title Compensation to Tjiwarl AC.
- 4.2 The Parties acknowledge that:
 - (a) under section 125A of the Mining Act, the Explorer is liable to pay Native Title Compensation to the Tjiwarl People; and
 - (b) pursuant to the Tjiwarl Palyakuwa (Agreement), Tjiwarl AC agrees to enter into a Deed of Release with the State to evidence that the State is released from any obligation to pay Native Title Compensation to the Tjiwarl People.

5. Access within and to the Licence Area

Access within the Licence Area

- 5.1 Within the Licence Area, the Explorer and its Personnel:
- (a) may traverse the area in connection with its Activities but wherever reasonably practicable shall travel on Existing Roads;
 - (b) may Maintain any Existing Roads if permitted by the Licence, any other interest held by the Explorer or as otherwise permitted at law; and
 - (c) shall only Construct new roads or tracks or Upgrade any Existing Roads:
 - (i) if permitted by the Licence, any other interest held by the Explorer or otherwise permitted at law; and
 - (ii) in accordance with clause 4 in Schedule 2 and Schedule 4.

Access outside of the Licence Area

- 5.2 Within the Tjiwarl Determination Area but outside the Licence Area, the Explorer and its Personnel:
- (a) shall only travel on Existing Roads;
 - (b) may Maintain Existing Roads, subject to the Explorer giving Tjiwarl AC ten (10) Business Days' notice prior to Maintaining an Existing Road; and
 - (c) shall not, subject to clause 5.3(b), construct new roads or tracks or Upgrade any Existing Roads except by agreement between the Explorer and the Tjiwarl AC in accordance with Schedule 4.

Lawful Access

- 5.3 The parties acknowledge that:
- (a) any access within the Tjiwarl Determination Area the subject of this clause 5 must be otherwise lawful; and
 - (b) this clause 5 does not:
 - (i) restrict the Explorer's right to apply for; or
 - (ii) relieve the Explorer's obligation to apply for,

a miscellaneous licence or any other tenement under the Mining Act, or any other permit, licence, approval or other authority, under any other statute for a road or track within the Tjiwarl Determination Area.

6. Notification of changes to licences

- 6.1 If the Explorer makes any application for an extension of term or for Retention Status in relation to a Licence, the Explorer shall give Tjiwarl AC:
- (a) a copy of that application within fifteen (15) Business Days of lodging it with DMIRS; and
 - (b) notice of the result of that application within fifteen (15) Business Days of receiving notification of that result.
- 6.2 The Explorer shall give Tjiwarl AC notice of the surrender of any part of a Licence within fifteen (15) Business Days of that surrender taking effect.

7. Assignment

Assignment by the Explorer

- 7.1 The Explorer agrees that it will not assign, transfer, novate or otherwise dispose of (whether by farm-out, joint venture, sale or otherwise) any part of its interest in a Licence or its rights, interests or obligations under this Agreement unless:
- (a) the Explorer notifies Tjiwarl AC in writing of the name of the prospective assignee at least twenty (20) Business Days before the assignment;
 - (b) at the request of Tjiwarl AC, the Explorer consults with Tjiwarl AC about the prospective assignee;
 - (c) the Explorer procures the prospective assignee to execute a deed of assumption by which the prospective assignee agrees to:
 - (i) be bound by this Agreement and to assume all of the Explorer's obligations under the Agreement; and
 - (ii) execute all documents and do (or refrain from doing) all acts and things necessary to ensure the performance of and compliance with those obligations in a timely manner,as if it were a party to this Agreement; and

(d) evidence of that assumption is provided to Tjiwarl AC.

7.2 In the event that the Explorer purports to assign its interest in the Licence or its rights, interests or obligations under this Agreement without following the assignment process contemplated in clause 7.1, Tjiwarl AC may terminate the Agreement without further notice to the Explorer.

Assignment by Tjiwarl AC

7.3 Tjiwarl AC agrees that it may only assign, transfer, novate or otherwise dispose of its rights obligations or interests under this Agreement to a registered native title body corporate (**Replacement RNTBC**) that has replaced it as the prescribed body corporate for the Tjiwarl Determination by a determination of the Federal Court of Australia under sections 56 or 57 of the Native Title Act.

7.4 If Tjiwarl AC proposes to assign, transfer novate or otherwise dispose of its rights, interests or obligations under this Agreement to the Replacement RNTBC it must:

- (a) give notice in writing of the name of the Replacement RNTBC at least twenty (20) Business Days before the assignment;
- (b) procure the Replacement RNTBC to execute a deed of assumption by which the Replacement RNTBC agrees to:
 - (i) be bound by this Agreement and to assume all of Tjiwarl AC's obligations under the Agreement; and
 - (ii) execute all documents and do (or refrain from doing) all acts and things necessary to ensure the performance of and compliance with those obligations in a timely manner,
as if it were a party to this Agreement; and
- (c) give evidence of that assumption to the Explorer.

7.5 Tjiwarl AC will be released from its obligations under this Agreement to the extent that those obligations have been assumed by the Replacement RNTBC, save for any obligations pursuant to clause 21.

8. Defaults and Termination

8.1 If the Explorer:

- (a) fails to make any payment due to Tjiwarl AC pursuant to this Agreement; and
- (b) is in breach of any term or condition of this Agreement,

then Tjiwarl AC may issue the Explorer with a notice of default notifying the Explorer of the details of the default and giving the Explorer twenty (20) Business Days to pay the amount owing or remedy the default, as the case may be.

8.2 Where the Explorer fails to:

- (a) make the payment due to Tjiwarl AC; or
- (b) remedy or commence to remedy any breach of the Agreement,

and the requirements of clause 8.1 have been met then Tjiwarl AC may terminate the Agreement without further notice to the Explorer.

9. Rights of the Tjiwarl People

The Explorer acknowledges that the Tjiwarl People have the right to exercise their native title rights in accordance with the Tjiwarl Determination except where their presence in a particular area of the Licence Area may:

- (a) reasonably cause danger to health and safety; or
- (b) materially reduce the efficiency of a particular Activity.

10. Cultural Protection and Respect

10.1 The Explorer shall prohibit all Personnel involved in the Activities from behaving in a manner that is deliberately disrespectful to the culture or traditions of the Tjiwarl People or in a manner that is offensive to the Tjiwarl People.

10.2 The Explorer shall inform its Personnel of the Explorer's obligations under this Agreement and under the Heritage Acts.

10.3 The Explorer shall require its Personnel to comply with the provisions of this Agreement.

11. Cultural Awareness Training

Cultural Awareness

11.1 The Explorer shall:

- (a) promote, amongst all Personnel involved in Activities, knowledge, understanding and respect of the traditions and culture of the Tjiwarl People; and
- (b) ensure that all Personnel are given appropriate cultural awareness training on aspects of the traditions, history and culture of the Tjiwarl People as per the Cultural Awareness Training Package, which may include any or all of the following:
 - (i) a live presentation;
 - (ii) a video presentation;
 - (iii) on country trips; and
 - (iv) printed material.

Cultural Awareness Training Package

11.2 The Parties shall meet and agree on the form of the particular Cultural Awareness Training Package relevant to those Activities to:

- (a) facilitate the cultural understanding mentioned in clause 11.1(a); and
- (b) to ensure that the Cultural Awareness Training Package referred to in clause 11.1(b) is tailored to suit the circumstances of the particular Activities of the Explorer.

11.3 Tjiwarl AC will provide to the Explorer a budget of its reasonable expenses in relation to the Cultural Awareness Training Package, which may include reasonable expenses for any continuing development and improvement of the Cultural Awareness Training Package and any other function under this clause. The Parties shall negotiate with a view to agreeing the budget and the Explorer shall reimburse Tjiwarl AC for the agreed expenses.

12. Environmental Protection and Rehabilitation

Activities conducted to minimise environmental impact

12.1 The Explorer shall ensure that all Activities are conducted so as to minimise:

- (a) any adverse environmental impact;

- (b) any harm or adverse effect upon any naturally occurring water courses, water holders or subterranean water systems;
- (c) disturbance of soil or vegetation;
- (d) erosion;
- (e) the introduction of non-native flora and fauna; and
- (f) the discharge of harmful substances onto the land, into the waters or into the atmosphere.

Rehabilitation

- 12.2 The Explorer shall, at the completion of its Activities at any Activity location, and in any event prior to relinquishing any relevant Licence, rehabilitate the area of the Activity as required under the conditions of the relevant Licence, this Agreement, the Mining Act and any other relevant law and in accordance with the directions of the relevant government department.
- 12.3 The Explorer will use its best endeavours to engage the Tjiwarl People in rehabilitation work pursuant to this clause 12.
- 12.4 Without limiting the generality of clause 12.2, prior to relinquishing the relevant Licence, the Explorer shall:
- (a) replace topsoil removed from disturbed areas and, where appropriate, reseed local native flora;
 - (b) remedy any erosion of disturbed areas caused by Activities;
 - (c) cap all drill holes and backfill trenches;
 - (d) leave the surface in a safe condition and in a reasonable contour having regard to the state of the surface area and its contour prior to the Activity;
 - (e) ensure that all topsoil which is removed and stockpiled from any Activity is re-spread evenly over the disturbed areas for the purpose of aiding re-vegetation; and
 - (f) rehabilitate areas as soon as practicable after the conclusion of the Activity.
- 12.5 After rehabilitating any part of the Licence Area pursuant to clauses 12.2 and 12.4, the Explorer shall advise Tjiwarl AC in writing of the steps it has taken to rehabilitate the Licence Area within fifteen (15) Business Days of the rehabilitation having been completed.

Inspections and Consultation

- 12.6 Where requested by Tjiwarl AC, the Explorer shall facilitate an inspection of its rehabilitation activities by the Tjiwarl People.
- 12.7 Tjiwarl AC will provide to the Explorer a budget of its reasonable expenses in relation to the inspection mentioned in clause 12.6 and any other function under this clause. The Parties shall negotiate with a view to agreeing on each budget and the Explorer shall reimburse Tjiwarl AC for the agreed expenses.
- 12.8 Without derogating from the clauses 12.1 to 12.7 above, the Explorer acknowledges that the Tjiwarl People have legitimate concerns in relation to minimising the impact on the environment and rehabilitation of the Licence Area and, if Tjiwarl AC so requests, the Parties shall meet to consult about the concerns.

13. Employment and Contracting

- 13.1 The Explorer will use its best endeavours to give employment and contracting preferences to members of the Tjiwarl People, Tjiwarl AC or companies nominated by Tjiwarl AC provided that they are capable of carrying out the particular work required in a satisfactory and cost effective manner.
- 13.2 In order to facilitate clause 13.1, the Explorer must provide Tjiwarl AC with a written notice of all employment or contracting opportunities that arise in connection with the Licence as soon as reasonably practicable after such opportunity arises.
- 13.3 Where a member of the Tjiwarl People, Tjiwarl AC or companies nominated by Tjiwarl AC applies for any employment opportunity or tenders for any contract opportunity and the Explorer does not employ or engage them then the Explorer shall advise Tjiwarl AC and, at the request of Tjiwarl AC, give reasons why their application or tender was not successful.

14. Warranties

- 14.1 Tjiwarl AC warrants that:
- (a) it is authorised to enter into this Agreement on behalf of the Tjiwarl People and the terms of this Agreement are binding on them;
 - (b) to the best of their knowledge and information, the Tjiwarl People nominated by Tjiwarl AC to the Survey Team pursuant to Schedule 2, clause 7(a) are those who have the

authority to speak for the relevant Work Area in accordance with the traditional laws and customs of the Tjiwarl People and are Knowledge Holders for the purpose of the ACHA; and

(c) a Survey completed in accordance with this Agreement shall bind all Tjiwarl People.

14.2 The Explorer warrants that it has full power and authority to enter into this Agreement and it is bound by the terms of this Agreement.

15. Aboriginal Cultural Heritage Protection

15.1 The Explorer shall not enter the Licence Area or conduct any Activities except in accordance with this Agreement.

15.2 The Parties agree to follow the processes set out in Schedule 2 of this Agreement in relation to the protection of Aboriginal Cultural Heritage in the Licence Area.

15.3 Nothing in this Agreement is intended to or purports to:

- (a) authorise the Explorer to breach the Heritage Acts;
- (b) exclude, limit or modify the operation of the ACHA; or
- (c) exclude, limit or modify any duty owed under the ACHA.

16. Feedback

The Explorer shall use its best endeavours to give Tjiwarl AC, by the end of February each year, a brief written summary of its exploration Activities in the Licence Area during the previous calendar year including the types of Activities undertaken, the progress of the exploration program and any steps the Explorer has taken to rehabilitate the Licence Area.

17. Indemnity and Insurance

17.1 The Explorer releases Tjiwarl AC, Survey Team members and Heritage Monitoring Team members from any liability for loss or damage to the Explorer's vehicles, equipment and employees except to the extent such loss or damage is caused by the negligence or wilful misconduct by Tjiwarl AC, Survey Team members or Heritage Monitoring Team members.

17.2 The Explorer indemnifies and holds harmless Tjiwarl AC in relation to any loss or damage to a third party caused by any Activity by the Explorer, save to the extent that Tjiwarl AC caused such loss or damage.

18. Implementation Costs

18.1 The Explorer shall pay to Tjiwarl AC an amount as listed below at clause 18.2 within ten (10) Business Days of the Commencement Date for the forthcoming year or part thereof towards Tjiwarl AC's costs of administering and implementing this Agreement, including the costs associated with:

- (a) liaising with the Explorer regarding the implementation of the terms and conditions of this Agreement;
- (b) providing appropriate accounting and other assistance as and when required;
- (c) assessing compliance by the Explorer; and
- (d) securing appropriate advice for the Tjiwarl People in relation to the Agreement and its implementation.

18.2 The Explorer shall pay to the Tjiwarl AC the following amount as it relates to their Licence:

- (a) for exploration licences / retention licences:
 - (i) with a Licence Area which is below or up to 20 blocks – \$1,000.00 per annum;
 - (ii) with a Licence Area which is between 21 and 80 blocks – \$3,000.00 per annum;
 - (iii) with a Licence Area which equals or exceeds 81 blocks – \$5,000.00 per annum;and
- (b) for prospecting licences – \$1,000.00 per annum.

18.3 Upon the anniversary of the Commencement Date, for the forthcoming year or part thereof, the Explorer shall pay to Tjiwarl AC, until the Termination Date, an amount determined by increasing the sum of the previous year's costs of implementation by the Index Rate.

19. GST

19.1 Any reference in this clause 19 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.

- 19.2 Unless otherwise indicated, all amounts and other consideration for any Taxable Supply made under this Agreement are exclusive of GST.
- 19.3 If GST is or becomes payable by a Party in relation to any supply that it makes under, in connection with or resulting from this Agreement (**Supplier**), the Parties agree that, in addition to any consideration provided by a Party (**Recipient**) for a supply from the Supplier, the Recipient must also pay the Supplier, at the same time as providing the consideration, the amount of any GST for which the Supplier is liable in relation to that supply (**additional amount**).
- 19.4 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.
- 19.5 If a Recipient is required under this Agreement to reimburse or pay to a Supplier an amount calculated by reference to a cost, expense or an amount paid or incurred by that Supplier, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which the Supplier is entitled in respect of any acquisition relating to that cost, expense or other amount.

20. Duty

The Explorer shall pay all duty assessed on this Agreement, if any, including any duty payable by way of fine or penalty.

21. Confidentiality

- 21.1 A Party shall not:
- (a) subject to 21.2, disclose the other Party's Confidential Information to a third party; or
 - (b) use the other Party's Confidential Information unless that use is reasonably necessary for a Party to exercise its rights or comply with its obligations under this Agreement or any law.
- 21.2 A Party may disclose the other Party's Confidential Information to a third party:
- (a) with the prior written consent of the other Party;
 - (b) to the extent required by law or any rule of a stock exchange;
 - (c) to obtain legal advice or for use in legal proceedings;

- (d) to the extent that Confidential Information is already in the public domain, otherwise than by breach of this clause; or
- (e) where such third party is:
 - (i) a bona fide actual or potential assignee of all or part of the Explorer's interest in the Licence;
 - (ii) a recognised financial institution that requires the disclosure in connection with any loans sought by a Party;
 - (iii) one of the Explorer's Personnel;
 - (iv) Tjiwarl AC's officer, employee, agent, consultant, contractor or advisor; or
 - (v) a Party's Related Body Corporate,provided that the third party provides a written undertaking to Tjiwarl AC and the Explorer to be bound by this clause 21.

21.3 The Parties shall take all steps reasonably necessary to ensure that the Confidential Information is known only to such persons (including any employees of the Parties) as may reasonably require knowledge thereof in the course of their duties or functions.

21.4 Without limiting the operation of this Agreement, the Agreement applies to all Confidential Information whether or not any Confidential Information was disclosed to or accessed by the Explorer before the date of this Agreement.

21.5 The obligations of the Parties under this clause 21 survive the termination of this Agreement.

22. Unexpected Delays

- 22.1 If a delay in performing an obligation under this Agreement occurs, which is caused by:
- (a) any COVID-19 public health restrictions;
 - (b) the Law Business Period;
 - (c) weather and road conditions;
 - (d) bona fide cultural responsibilities (including funerals) of the relevant Traditional Owners;
 - (e) illness of the relevant Traditional Owners;
 - (f) force majeure; or

- (g) the other Party's failure to comply in a timely way or at all with its obligations under this Agreement,

then the time period of that delay shall be excluded from the calculation of any period of time mentioned in this Agreement.

- 22.2 A Party asserting the existence of a delay to which clause 22.1 above applies shall advise the other Party of that delay and take reasonable steps to mitigate that delay.
- 22.3 Where delay caused by the matters listed in clause 22.1 above occurs, the Explorer shall pay the reasonable, unrecoverable costs of Tjiwarl AC incurred as a result of that delay.

23. Dispute Resolution

Notification and Negotiation of a Dispute

- 23.1 If a dispute arises between the Parties in connection with this Agreement or a Survey Report (**Dispute**) either Party may give notice in writing to the other Party identifying the nature of the Dispute (**Dispute Notice**).
- 23.2 Following the issue of a Dispute Notice, senior representatives of the Parties shall consult with each other in good faith in a timely manner to seek to resolve the Dispute.
- 23.3 If the Parties cannot resolve the Dispute within twenty (20) Business Days of a Dispute Notice being served (or other such longer period as may be agreed between the Parties) any Party may refer the dispute to mediation.

Mediation

- 23.4 If the Dispute is referred to mediation:
- (a) the Parties must seek to agree on the appointment of an independent mediator with relevant experience; or
 - (b) if the Parties cannot agree on a mediator within seven (7) Business Days of the referral to mediation, a person nominated by the President or Acting President of the Law Society of Western Australia.
- 23.5 The reasonable cost of the mediator is to be borne by the Party that refers the Dispute to mediation.

- 23.6 The role of the mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a Party to the Dispute except if the Party agrees in advance in writing.
- 23.7 The Parties to the Dispute will engage in the mediation process in good faith and in an open and conciliatory manner, taking into account any cultural or customary concerns or considerations, with a view to reaching a mutually acceptable compromise to the issues in dispute.
- 23.8 If the Parties to the Dispute fail to achieve a resolution of the Dispute within thirty (30) Business Days of the appointment of the mediator (or such other longer period as may be agreed between the Parties to the Dispute), any Party to the Dispute may by written notice to the other Parties to the Dispute terminate the mediation process.

Costs

- 23.9 Subject to clause 23.5, the Parties shall bear their own costs of participating in any consultation or mediation conducted pursuant to this clause 23.

Court Proceedings

- 23.10 Subject to clause 23.11, a Party to a Dispute may not start court proceedings in relation to a Dispute unless the Dispute has first been referred to mediation and the mediation has been terminated in accordance with clause 23.8.
- 23.11 Nothing in this clause 23 precludes a Party from seeking urgent interlocutory relief relative to the subject matter of a Dispute from a court of competent jurisdiction, including the right to seek injunctive relief.

24. Notice

Notice

- 24.1 Each notice or other communication given by one Party to another pursuant to this Agreement:
- (a) shall be in writing;
 - (b) must be delivered to the address for the Party specified in clause 24.3 or to such other address as a Party may nominate in writing;
 - (c) subject to clause 24.2 and Schedule 2, will be taken to be duly given or made:

- (i) if delivered by hand, upon delivery;
- (ii) if sent by ordinary pre-paid post, ten (10) Business Days after posting; and
- (iii) if sent by email, at the earlier of:
 - (A) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
 - (B) the time that the intended recipient confirms receipt of the email by reply email; and
 - (C) four (4) hours after the time that the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that four (4) hour period, an automated message that the email has not been delivered.

24.2 If the result of clause 24.1(c) is that a notice or other communication would be taken to be given or made on a day that is not a Business Day, or is later than 4.00pm (local time), in the place to which the notice or other communication is sent, it will be taken to have been duly given or made at 9.00am on the next Business Day in that place.

Address for Notices

24.3 For the purpose of this clause 24, unless notified by a Party otherwise, the address to which notices and other communications are to be sent shall be:

- (a) for Tjiwarl AC:

In-House Legal Counsel
Tjiwarl (Aboriginal Corporation) RNTBC
Unit 6/524 Abernethy Road
Kewdale WA 6105
Telephone: 08 9200 3730
By Email: compliance@tjiwarl.org.au

- (b) for the Explorer: as set out in Schedule 1, item 4

25. Entire Agreement

This Agreement represents the entire understanding of the Parties in connection with its subject matter.

26. Counterparts

- 26.1 This Agreement may be executed in two counterparts.
- 26.2 If executed in two counterparts, both counterparts together shall be taken to constitute one instrument.

27. Governing Law

This Agreement is governed by the laws in force in the State of Western Australia and the Commonwealth of Australia.

28. Term and Termination

- 28.1 This Agreement shall commence on the Commencement Date and shall come to an end on the Termination Date.
- 28.2 The Parties may terminate this Agreement by mutual agreement in writing.

29. Review of Agreement

Briefings and Discussion

- 29.1 The Explorer shall liaise with Tjiwarl AC on an annual basis or any other agreed period to ascertain whether Tjiwarl AC requires a briefing in relation to any Work Program conducted or proposed, or to discuss any issues related to this Agreement and, if so, the Parties will meet for that purpose.

Review of the Agreement

- 29.2 Subject to clause 29.3, at the request of any Party, the Parties will meet:
- (a) as soon as reasonably practicable following the ACHA coming into operation (**First Review Date**); and
 - (b) no more than every two (2) years from the First Review Date,
- to review the operation of the non-essential terms of this Agreement and to use their best endeavours to agree to such changes that may be required to ensure that this Agreement operates fairly to each of the Parties.

29.3 The Parties agree that:

- (a) clauses 2, 3, 4, 5, 14, 25, 27 and 28 of this Agreement are essential terms of this Agreement which will not form part of the review contemplated by clause 29.2; and
- (b) if any party requests a review of the clauses relating to the protection of Aboriginal cultural heritage (clause 15 and Schedule 2), then that party must invite the State to participate in any such review undertaken by the Parties by notifying the following representative of the State in writing:

Department of Mines, Industry Regulation and Safety
100 Plain Street
East Perth WA 6000

Costs of Review

29.4 Subject to clause 29.5, the Parties will bear their own costs, including legal costs, associated with the review of this Agreement.

29.5 If, as a result of a review of this Agreement under clause 29, the Explorer requires Tjiwarl AC to consider proposed amendments to the Agreement, the Explorer shall pay the reasonable costs of Tjiwarl AC incurred to consider such amendments, including the reasonable costs of legal advice and representation.

EXECUTED by the parties as an agreement

SIGNED by **TJIWARL ABORIGINAL CORPORATION (RNTBC) ICN 8628** in accordance with section 99.5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) in the presence of:

Signature of Director

Signature of Director

Full name of Director (print)

Full name of Director (print)

Date

Date

EXPLORER¹

SIGNED by [INSERT FULL NAME OF
EXPLORER] in the presence of:

Signature of [*insert Explorer name*]

Signature of witness

Date

Full name of witness (print)

Address of witness

Occupation of witness

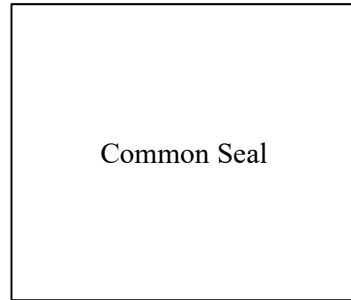
¹ Delete this footnote, the heading and the execution clauses for the Explorer that are not applicable.

OR IF THE EXPLORER IS A COMPANY

Note: This deed must be executed by affixing the common seal of the company to the deed in the presence of two directors, or one director and the company secretary. Alternatively, under section 127(1) of the Corporations Act 2001 (Cth) a company can execute a document without using a common seal if the document is signed by two directors, or a director and a company secretary or for a proprietary company that has a sole director who is also the company secretary – that director.

WITH A COMMON SEAL

The **COMMON SEAL** of [INSERT
COMPANY NAME] ACN [*insert ACN*]
was affixed to this deed in the presence of



Signature of Director

Signature of Director / Secretary*

*delete whichever is not applicable

Full name of Director (print)

Full name (print)

Date

Date

WITHOUT A COMMON SEAL

SIGNED for [INSERT **COMPANY NAME**] ACN
[*insert ACN*] in accordance with section 127(1) of the
Corporations Act 2001 (Cth) in the presence of:

Signature of Director

Signature of Director / Secretary*

*delete whichever is not applicable

Full name of Director (print)

Full name (print)

Date

Date

SOLE PROPRIETOR COMPANY

SIGNED for **[INSERT COMPANY NAME]** ACN
[*insert ACM*] in accordance with section 127(1) of the
Corporations Act 2001 (Cth) in the presence of:

Signature of Director
(as sole Director and Secretary)

Full name (print)

Date

Schedule 1 – Details of the Tjiwarl Exploration Agreement

ITEM	DETAILS
1. Date of Agreement (to be entered by Tjiwarl AC only)	
2. Licence(s)	Licence 1: Application No: Tenement Type: Licence 2: Application No: Tenement Type: <i>[insert / delete as required]</i>
3. Explorer Details	Explorer 1: Name*: *include ACN if a company Address: Explorer 2: Name*: *include ACN if a company Address: <i>[insert / delete as required]</i>
4. Explorer's Address	Contact Name: Company: Address: Telephone: Email:

Schedule 2 – Heritage Protection

1. Interpretation

- (a) Unless the contrary intention appears, a reference in this Schedule to a clause is to a clause of this Schedule.
- (b) Unless the contrary intention appears, any word or phrase used in this Schedule has the same meaning as given to it in clause 1.2 of the main body of this Agreement.

2. Notification of Intention to Undertake Non-Ground Disturbing Activity

- (a) At least twenty (20) Business Days before conducting any Non-Ground Disturbing Activity, the Explorer shall:
 - (i) provide to Tjiwarl AC a Work Program containing at least the following information:
 - (A) 1:250,000 topographic map showing the proposed Work Area;
 - (B) the nature of the proposed Non-Ground Disturbing Activity, including the techniques, types of equipment and vehicles to be used;
 - (C) an estimation of when and for how long the proposed Non-Ground Disturbing Activity is to take place; and
 - (D) an estimation of the number of Personnel who will access the Claim Area in connection with the conduct of the proposed Non-Ground Disturbing Activity; and
 - (ii) pay to Tjiwarl AC the Initial Payment.
- (b) Subject to clause 2(a), the Explorer shall use its best endeavours to provide all Work Programs relating to Non-Ground Disturbing Activity proposed for any calendar year to Tjiwarl AC by the end of February of that year.
- (c) Should Tjiwarl AC reasonably consider that the Activity outlined in the Work Program provided pursuant to clause 2(a) is:
 - (i) not Non-Ground Disturbing Activity; or
 - (ii) likely to damage, disturb or interfere with an Aboriginal Site or Aboriginal Object,

then Tjiwarl AC shall notify the Explorer of its concerns within fifteen (15) Business Days of receipt of the completed Work Program and the Parties shall meet to endeavour to resolve the matter.

3. Where Non-Ground Disturbing Activity May Be Undertaken

If:

- (a) the Explorer has notified Tjiwarl AC of the proposed Non-Ground Disturbing Activity in a Work Program provided in accordance with clause 2(a); and
- (b) any concerns about that proposed Non-Ground Disturbing Activity that Tjiwarl AC has notified the Explorer pursuant to clause 2(c) have been resolved,

then the Explorer may undertake that Non-Ground Disturbing Activity, as identified in the relevant Work Program.

4. Notification of Intention to Undertake Ground Disturbing Activity

- (a) Before conducting Ground Disturbing Activity (unless otherwise agreed by Tjiwarl AC), the Explorer shall:
 - (i) provide to Tjiwarl AC a Work Program containing at least the following information:
 - (A) 1:250,000 topographic map (two (2) copies) and 1:50,000 topographic map or similar scale aerial photograph (two (2) copies) showing the Work Area;
 - (B) the location of the proposed Work Area, proposed Ground Disturbing Activity and any access routes as follows:
 - 1. in digital format, preferably in shapefile format (.shp), including a note of the relevant projection and datum; and
 - 2. if relevant, as x and y co-ordinates of vertices, including a note of the relevant projection and datum, preferably in GDA2020 MGA zone 51;
 - (C) the nature of the proposed Ground Disturbing Activity, including the techniques, types of equipment, infrastructure and vehicles to be used;
 - (D) an estimation of when and for how long the proposed Ground Disturbing Activity is to take place;
 - (E) any water, biological or other materials or resources proposed to be obtained from the Licence Area;

- (F) an estimation of the number of Personnel who will access the Claim Area in connection with the conduct of the Ground Disturbing Activity; and
 - (G) any requirement that may be applied to restrict access to the area by Tjiwarl People and, if so, the nature and extent of that restriction; and
- (ii) pay to Tjiwarl AC the Initial Payment.
- (b) Subject to clause 4(a), in order to facilitate the orderly, expeditious and efficient conduct of Surveys, the Explorer shall use its best endeavours to provide all Work Programs relating to Ground Disturbing Activity proposed for any calendar year to Tjiwarl AC by the end of February of that year.
- (c) In addition to the Work Program(s) referred to in clauses 4(a) and 4(b), the Explorer shall provide Tjiwarl AC with a copy of its DMIRS Programme of Work within five (5) Business Days of submission to DMIRS.

5. Consultation about whether a Survey is required

- (a) After the Explorer delivers a Work Program for Ground Disturbing Activity to Tjiwarl AC under clause 4, the Parties shall consult with each other to determine whether a Survey is required.
- (b) The Parties shall use best endeavours to undertake and resolve these consultations within twenty (20) Business Days of Tjiwarl AC receiving the Work Program for Ground Disturbing Activity and payment of the Initial Payment from the Explorer pursuant to clause 4(a).
- (c) The Parties shall take the following factors into account in consultations pursuant to clause 5(a):
- (i) the views of the Tjiwarl People;
 - (ii) whether any survey has been conducted in relation to the proposed Work Area within the previous five years and the results, methodology, date, participants and quality of any such survey, including the nature of the Ground Disturbing Activity for which areas were cleared or not cleared by that survey;
 - (iii) the extent to which the proposed Work Area has been disturbed by previous Activity;

- (iv) whether the register of places and objects maintained pursuant to section 38 of the AHA discloses the existence of any potential Aboriginal Sites or Aboriginal Objects in the proposed Work Area;
 - (v) the nature of the proposed Ground Disturbing Activity; and
 - (vi) any other relevant factor raised by either of the Parties.
- (d) The Explorer shall provide Tjiwarl AC with a copy of any report containing the results of any survey on which the Explorer wants to rely in consultations pursuant to clause 5(a).
- (e) If, after the Parties have consulted pursuant to clause 5(a):
- (i) the Parties agree that a survey has been conducted over the Work Area within the previous five years and, having regard to the factors in clause 5(c), the Parties agree that the previous survey was insufficient to determine which parts of the Work Area are Cleared Areas for the conduct of the Ground Disturbing Activity identified in the relevant Work Program; or
 - (ii) the Parties agree that no survey has been conducted over the Work Area within the previous five years and Tjiwarl AC, having considered the factors set out in clause 5(c), reasonably determines that a Survey is required; or
 - (iii) the Explorer requests,
- Tjiwarl AC shall arrange for a Survey over the proposed Work Area.
- (f) To avoid doubt, if a survey has been conducted over the Work Area within the previous five years and the Parties cannot reach agreement on whether that survey was sufficient in accordance with clause 5(e)(i), either Party may refer the matter to the dispute resolution process in clause 23 of the Agreement.

6. Conduct of Survey

- (a) Tjiwarl AC shall use its best endeavours to arrange for the Survey to commence no later than twenty (20) Business Days after the Explorer has accepted the estimate of costs pursuant to clause 8(b) subject to:
- (i) any delays by the Explorer pursuant to clause 8(b)(ii);
 - (ii) the exclusions in clause 22.1 of the Agreement; or
 - (iii) the Parties agreeing otherwise.

- (b) In relation to any Survey:
 - (i) Tjiwarl AC shall:
 - (A) appoint a Survey Team to conduct the Survey on behalf of Tjiwarl AC; and
 - (B) use its best endeavours to ensure that the Survey Team diligently completes the fieldwork component of the Survey as soon as practicable; and
 - (ii) subject to clause 7(d), the Explorer will confirm the name(s) of the Explorer's Nominee(s) to accompany the Survey Team.
- (c) If the Survey Team considers it likely that there are Aboriginal Objects in a Work Area, the Survey Team may recommend that a Heritage Monitoring Team monitor the conduct of all or some types of Ground Disturbing Activity in all or part of that Work Area.

7. The Survey Team

- (a) The Survey Team shall consist of:
 - (i) subject to clauses 7(b) and 7(c), a suitably qualified anthropologist appointed by Tjiwarl AC and, if Tjiwarl AC considers it necessary and the Explorer agrees, an anthropologist of the other gender;
 - (ii) such Traditional Owners as Tjiwarl AC considers necessary;
 - (iii) if nominated by Tjiwarl AC, a Liaison Officer; and
 - (iv) if Tjiwarl AC considers it necessary, an archaeologist.
- (b) If the Explorer has, on reasonable grounds, concerns about any anthropologist to be appointed to the Survey Team, it may request Tjiwarl AC to consider appointing a different anthropologist to the Survey Team.
- (c) If the Parties do not agree as to which anthropologist is to be appointed to the Survey Team, either Party may request the President of the National Native Title Tribunal to appoint an anthropologist to the Survey Team.
- (d) The Explorer shall ensure that the Explorer's Nominees accompanying the Survey Team:
 - (i) have the authority to make amendments to the Work Program if necessary;
 - (ii) are capable of identifying all relevant aspects of the Work Program;
 - (iii) respect the privacy of the Traditional Owners when sensitive cultural matters are being discussed; and

- (iv) if Tjiwarl AC requests, be of a particular gender.

8. Survey Payments and Costs

- (a) When submitting a Work Program in accordance with clause 2(a) or 4(a) (as the case may be) the Explorer shall pay the amount of two thousand (2000) dollars for the costs associated with preliminary work in relation to progressing the Work Program (**Initial Payment**), such that:
 - (i) in the event that a Survey:
 - (A) does not proceed and/or the Explorer does not make the payment in accordance with clause 8(b)(ii), Tjiwarl AC will issue an invoice for any costs incurred by Tjiwarl AC associated with the preliminary work undertaken in progressing the Work Program; and
 - (B) any invoice provided in accordance with clause 8(a)(i)(A) will be credited/offset against the two thousand (2000) dollar Initial Payment; or
 - (ii) in the event that a Survey does proceed, any invoice provided in accordance with sub-clause 7.2(a) or 7.2(b) will be credited/offset against the two thousand (2000) dollar Initial Payment.
- (b) The Explorer shall pay for the costs of the Survey in accordance with the following process:
 - (i) prior to the commencement of a Survey, Tjiwarl AC shall submit an estimate of the costs of the Survey to the Explorer for its approval within ten (10) Business Days of all the requirements of clause 4 being met;
 - (ii) following agreement between the Parties on the estimate of costs provided pursuant to clause 8(b)(i), the Explorer shall pay, on receipt of an invoice, fifty per cent (50%) of the agreed estimate of costs, prior to the commencement of the Survey.
 - (iii) the Explorer will be invoiced for all outstanding payments due under the agreed estimate of costs within fifteen (15) Business Days after the completion of the Survey.
- (c) The Explorer shall pay the following costs and expenses, in connection with any Survey, at the following rates:
 - (i) Traditional Owners' fees at eight hundred dollars (800) dollars (excluding GST and superannuation contributions) per day per person to a maximum of eight (8) Traditional Owners (unless otherwise agreed by the Parties);

- (ii) unless meals are provided by the Explorer, food costs at fifty (50) dollars per day per person but for no more than eight (8) Traditional Owners (unless otherwise agreed by the Parties);
 - (iii) unless vehicles are provided by the Explorer:
 - (A) the cost of repair and maintenance to the vehicle in relation to any damage sustained during the Survey;
 - (B) the cost of tyre repair or replacement (where any tyres are damaged); and
 - (C) the direct cost of vehicle fuel used;
 - (iv) the anthropologist's professional costs (including for time spent travelling, attending the Survey and preparing the Survey Report) at cost;
 - (v) if an archaeologist is appointed to the Survey Team pursuant to clause 7(a)(iv), the archaeologist's professional costs (including for time spent travelling, attending the Survey and preparing the Survey Report) at cost;
 - (vi) the cost of the anthropologist's and (if relevant) the archaeologist's and Traditional Owners' necessary air travel from locations within Australia;
 - (vii) the anthropologist's and (if relevant) the archaeologist's and Traditional Owners' reasonable accommodation costs;
 - (viii) the Liaison Officer's fee at eight hundred (800) dollars per day (excluding GST and superannuation contributions); and
 - (ix) for administration costs, a sum equivalent to 15% of the payments to be made pursuant to clauses 8(c)(i) – 8(c)(viii) (inclusive) before the addition of any GST.
- (d) The payments in clauses 8(c)(i) and 8(c)(viii) shall be Index Rate Adjusted each twelve (12) months from the Commencement Date.
 - (e) The payments in clause 8(c)(i) shall be adjusted every two years from 1 January 2023 to the greater of that payment once Index Rate Adjusted and the prevailing industry standard payment to Aboriginal participants at that time.
 - (f) The Parties will meet to review the provisions of clause 8(c) as soon as practicable after the expiry of two (2) years after the Commencement Date and every two (2) years thereafter while this Agreement remains in force.

9. Survey Report

- (a) Within five (5) Business Days of receipt of payment of the invoiced costs of the Survey, Tjiwarl AC shall provide the Explorer with a report which details the outcome of the Survey and contains the information referred to in items 1 to 5 (inclusive) of Schedule 3 (the **Survey Report**).
- (b) The Explorer shall provide any comments on the Survey Report to Tjiwarl AC within ten (10) Business Days of receipt of the Survey Report.
- (c) Where the Explorer has provided comments on the Survey Report pursuant to clause 9(b), Tjiwarl AC shall request the anthropologist and, where relevant, the archaeologist, to take into consideration any comments made by the Explorer and either amend the Survey Report or, where no change is made, prepare a reasonable explanation. Tjiwarl AC shall provide any such amended Survey Report or reasonable explanation to the Explorer as soon as possible.

10. Intellectual Property

All intellectual property rights in:

- (a) the Survey Report; or
 - (b) the nature of information about the traditions, laws and customs of the Tjiwarl People,
- remain with or vest in Tjiwarl AC or the Traditional Owners, as the case may be.

11. Where Ground Disturbing Activity may be undertaken

- (a) If:
 - (i) the Explorer has notified Tjiwarl AC of the proposed Ground Disturbing Activity in a Work Program provided in accordance with clause 4(c);
 - (ii) a Survey was required pursuant to clause 5(e); and
 - (iii) that Survey has been conducted,
- then the Explorer may undertake that Ground Disturbing Activity, as identified in the relevant Work Program, within Cleared Areas.

- (b) If:
- (i) the Explorer has notified Tjiwarl AC of the proposed Ground Disturbing Activity in a Work Program provided in accordance with clause 4(c); and
 - (ii) the Parties agree, after consultations pursuant to clause 5(a), that a Survey is not required,
- then the Explorer may undertake that Ground Disturbing Activity, as identified in the relevant Work Program, except in areas identified by any previous survey relied on by the Parties to not be cleared for such Activities.

12. Heritage Monitoring

- (a) If recommended pursuant to clause 6(c), and subject to clause 12(b), the Heritage Monitoring Team may accompany the Explorer when it conducts Ground Disturbing Activity of a type and in an area the subject of the recommendation in order to advise, direct and assist the Explorer in avoiding interfering with:
- (i) any Aboriginal Objects; or
 - (ii) Aboriginal Sites,
- contrary to the traditional law and customs of the Tjiwarl People.
- (b) Unless otherwise agreed by the Parties, the Heritage Monitoring Team shall not monitor the same Ground Disturbing Activity in the same place for more than one day.
- (c) The Explorer shall:
- (i) facilitate the attendance of the Heritage Monitoring Team at the relevant Ground Disturbing Activities in accordance with this clause; and
 - (ii) provide any relevant safety equipment and clothing (except boots) to the Heritage Monitoring Team for the duration of their attendance at the relevant Ground Disturbing Activities in accordance with this clause.
- (d) Unless otherwise agreed by the Parties, the Explorer shall pay invoiced costs and expenses in connection with monitoring done in accordance with this clause on the cost structure (as applicable) specified in clause 8(c), including Heritage Monitors' fees, which shall be at the same rate as the Traditional Owners' fees.

13. No employment or agency relationship

This Agreement does not create a relationship of employment or agency between the Explorer and:

- (a) Tjiwarl AC;
- (b) members of the Survey Team; or
- (c) members of the Heritage Monitoring Team.

14. If the Explorer finds an Aboriginal Site or Object

The Explorer shall immediately report to Tjiwarl AC or to the Heritage Monitoring Team (if present) the location of any previously unidentified potential Aboriginal Site or Aboriginal Object of which it becomes aware during the course of conducting Activities.

15. Consent to section 16 or 18 AHA applications

The Explorer will not make an application under section 16 or 18 of the AHA in relation to any Aboriginal Site or Aboriginal Object without the prior written consent of Tjiwarl AC.

Schedule 3 – Contents of Survey Reports

1. Copyright / Confidentiality

A statement to the effect that the Report may only be copied in accordance with the Agreement and subject to any other restrictions agreed to by the Parties from time to time.

2. Assessment Personnel

- (a) Author's name in full, occupation and business/company name.
- (b) Confirmation that the anthropologist considers the Traditional Owners to be appropriate to speak for Aboriginal heritage in relation to the relevant Work Area.

3. Survey Date(s)

The date/s the fieldwork component of the Survey was conducted.

4. Survey Information

- (a) Details of the area surveyed, including the general location, the relevant Licence numbers and reference to the Work Area identified in the Work Program.
- (b) Location of Cleared Areas as x and y co-ordinates of vertices, including a note of the relevant projection and datum, preferably in GDA2020 MGA zone 51.
- (c) Attach a copy or otherwise identify the relevant Work Program.

5. Heritage Monitors

Whether the Survey Team recommends that Heritage Monitors monitor Ground Disturbing Activity in the Work Area and, if so:

- (a) indicate the types of Ground Disturbing Activities to be monitored, by reference to the Ground Disturbing Activities identified in the Work Program; and
- (b) identify in which parts of the Work Area that Ground Disturbing Activity is to be monitored, by reference to where it is located in relation to the Work Area and significant topographical features and, if practicable, as x and y co-ordinates or vertices, preferably in GDA2020 MGA zone 51, including a note of the relevant projection and datum.

Schedule 4 – Process to Construct New Roads or Tracks

1. Interpretation

Unless the contrary intention appears, any word or phrase used in this Schedule has the same meaning as given to it in clause 1 of the main body of this Agreement.

2. Application

The following procedure applies, in accordance with clause 5.2(c) of this Agreement, whenever the Parties negotiate about how the Explorer may Construct a new track or road (**Proposed Road**) outside the Licence Area but inside the Tjiwarl Determination Area.

3. Process for negotiation about a Proposed Road

- (a) The Explorer shall provide Tjiwarl AC:
 - (i) a plan depicting the location and dimensions of the Proposed Road; and
 - (ii) the reasons for the location of the Proposed Road.
- (b) The Parties shall consult, in a timely manner, about whether it is necessary to negotiate to obtain Tjiwarl AC's agreement with respect to the Proposed Road.
- (c) If the Parties agree that it is not necessary to negotiate to obtain Tjiwarl AC's agreement in respect of the Proposed Road then the Explorer may, in accordance with Schedule 2, clause 4, Construct the Proposed Road. In that instance, the Construction will be deemed an Activity for the purposes of the Agreement.
- (d) If the Parties agree that it is necessary to obtain Tjiwarl AC's agreement in respect of the Proposed Road, then the Parties shall negotiate with each other in good faith, in a timely manner, in order for the Parties to reach agreement.

Schedule 5 – Monetary Compensation

1. Interpretation

- (a) Unless the contrary intention appears, a reference in this Schedule to a clause is to a clause or clause of this Schedule.
- (b) Unless the contrary intention appears, any word or phrase used in this Schedule has the same meaning as given to it in clause 1 of the main body of this Agreement.

2. Compensation Payments

The Explorer shall make the payments required under clause 4 of this Agreement to Tjiwarl AC by depositing in the Tjiwarl Payments Account the following amounts in relation to each Licence:

- (a) an initial upfront Payment of \$150.00 per square kilometre payable within twenty (20) Business Days of the date of grant of the Licence or the Commencement Date, whichever is the later; and
- (b) an annual amount equivalent to the greater of:
 - (i) 7% of the annual Exploration Expenditure on that Licence, as calculated from Expenditure Reports; or
 - (ii) 30% of the annual rental payable to the State in respect of that Licence, for so long as that Licence remains in force.

3. Calculation of Payments

- (a) The payments referred to in clause 2(b) are calculated and payable as follows:
 - (i) payments shall be calculated from the:
 - (A) date of grant of each Licence, where a Licence has not been granted as at the Commencement Date; or
 - (B) Commencement Date, where a Licence is already granted as at the Commencement Date;
 - (ii) the first payment shall be due and payable following the filing of the first Expenditure Report with DMIRS;
 - (iii) the second and subsequent payments shall be due and payable following the filing of the second and subsequent (as the case may be) Expenditure Reports with DMIRS;

- (iv) the final Payment shall be due and payable following the filing of the final Expenditure Report with DMIRS; and
 - (v) each payment made under clause 3(a)(ii), 3(a)(iii) or 3(a)(iv) (as the case may be) shall be in consideration of the preceding year or part thereof.
- (b) For the purposes of calculating the payments mentioned in this Schedule, if the payment periods for each Licence do not coincide then the Parties shall meet to endeavour to reach a payment formula which may bring those payments into line with each other.

4. Manner of Payment

- (a) At the same time as filing the Expenditure Reports referred to in clause 3(a)(ii), 3(a)(iii) or 3(a)(iv) (as the case may be), the Explorer must provide a copy of each Expenditure Report to Tjiwarl AC.
- (b) If the Explorer does not provide Tjiwarl AC with a copy of an Expenditure Report pursuant to clause 4(a):
 - (i) Tjiwarl AC may apply to DMIRS to gain access to the Expenditure Report(s); and
 - (ii) the Explorer shall not oppose such an application.
- (c) When providing a copy of the Expenditure Report to Tjiwarl AC as required by clause 4(a), the Explorer will also provide a calculation of the amounts payable under 2(b)(i) or 2(b)(ii) (as the case may be), together with a summary of how that calculation was derived.
- (d) If Tjiwarl AC agrees with the calculation provided by the Explorer under clause 4(c) then Tjiwarl AC shall provide a tax invoice to the Explorer in that amount as soon as is reasonably practical.
- (e) If Tjiwarl AC disagrees with the calculation provided by the Explorer under clause 4(c) then the Parties shall meet to discuss the calculation. If, following that discussion, the Parties:
 - (i) agree an amount payable, then Tjiwarl AC shall provide a tax invoice to the Explorer in that agreed amount as soon as is reasonably practical; or
 - (ii) fail to reach agreement, then clause 23 of the main body of this Agreement shall apply.
- (f) Within ten (10) Business Days of receiving the tax invoice referred to in clause 4(d) or 4(e)(i) (as the case may be), the Explorer shall make the payment as invoiced.

Item B – Instructions for completing Tjiwarl Exploration Agreement

The following is a guide for completing and executing the Tjiwarl Exploration Agreement. Please read this guide before attempting to complete the Tjiwarl Exploration Agreement as errors may render the Agreement invalid or may result in Tjiwarl AC declining to execute the Agreement

1. Form of the Tjiwarl Exploration Agreement

- (a) Tjiwarl AC will execute the Tjiwarl Exploration Agreement only in the form provided by the Tjiwarl Palyakuwa (Agreement). Do not amend or otherwise attempt to change the document without the prior agreement of Tjiwarl AC. Tjiwarl AC is not obliged to consider, or agree to, any changes to the standard form of the Agreement contained in the Tjiwarl Palyakuwa (Agreement).
- (b) The Tjiwarl Exploration Agreement has been designed to be submitted as an original document, but in the event of the Tjiwarl Exploration Agreement being re-typed, every care should be taken to avoid errors.

2. Completing the Tjiwarl Exploration Agreement

- (a) Only the applicant(s) for the mining tenement (the Explorer), Tjiwarl AC, and those duly authorised by a power of attorney can sign the Agreement.
- (b) All parties must sign in accordance with their governing Articles of Association, except for individuals (whose signature must be witnessed).
- (c) All signatures must be witnessed by an independent party to the document.
- (d) Do not fill in the date in item 1 of the Schedule. This will be filled in with the date on which Tjiwarl AC signs the Tjiwarl Exploration Agreement.
- (e) Any changes or alterations must be initialled by all parties to the Tjiwarl Exploration Agreement.

3. Provision of the Tjiwarl Exploration Agreement

- (a) It is important to forward the Tjiwarl Exploration Agreement to Tjiwarl AC for execution as soon as possible.
- (b) If you have any queries in relation to the completion of this Agreement or require further copies please contact Tjiwarl AC (at the address provided in clause 24 of the Tjiwarl Exploration Agreement).

4. Checklist for the Tjiwarl Exploration Agreement

Have you ensured that:

- The Tjiwarl Exploration Agreement is in the correct form and has not been amended without the prior agreement of Tjiwarl AC?
- Any changes or alterations to the Tjiwarl Exploration Agreement have been initialled by all Parties?
- Schedule 1 has been completed?
- The Explorer has signed the document and where appropriate the company seal has been included?
- The Explorer's signature has been witnessed (if the Explorer is an individual)?
- Tjiwarl AC has signed the document?

TJIWARL PALYAKUWA (AGREEMENT)

SCHEDULE 4 – Annexure 7

Deed for Grant

Item A – Form of Deed for Grant

Item B – Instructions for executing the Deed for Grant

Item A – Deed for Grant

The following form of Deed for Grant is provided for the purpose of Schedule 4, clauses 6.9 or 10.10 of the Tjiwarl Palyakuwa (Agreement).

Instructions for completing the Deed for Grant are provided at Item B of this Annexure.

DEED FOR GRANT

BETWEEN

Tjiwarl (Aboriginal Corporation) RNTBC (ICN 8628)

The State of Western Australia

The Minister for Mines and Petroleum

Grantee Party

Details of Deed

THIS DEED is made on the date specified in item 1 of the Schedule.

BETWEEN

The **STATE OF WESTERN AUSTRALIA** and the **MINISTER FOR MINES AND PETROLEUM** as the Minister responsible for the administration of the *Mining Act 1978 (WA)* and the *Petroleum and Geothermal Energy Resources Act 1967 (WA)* (together the **Government Party**).

and

TJIWARL (ABORIGINAL CORPORATION) RNTBC (ICN 8628) in its own right and for and on behalf of the Tjiwarl People (**Tjiwarl AC**).

and

The **GRANTEE PARTY** described in item 3 of the Schedule (**Grantee Party**).

Recitals

- A. The Grantee Party has made an application for the Tenure over the Subject Area.
- B. If the grant of the Tenure affects native title, the grant is a future act which passes the freehold test in Part 2 Division 3 Subdivision M of the Native Title Act.
- C. A determination of native title has been made over the Tjiwarl Determination Area. Pursuant to the Tjiwarl Determination, Tjiwarl AC is the registered native title body corporate that holds the native title rights and interest on trust for the Tjiwarl People. The Tjiwarl Determination Area includes part or all of the Subject Area.
- D. Tjiwarl AC and the Government Party have entered into an Indigenous Land Use Agreement entitled the Tjiwarl Palyakuwa (Agreement). The Agreement Area in relation to the Tjiwarl Palyakuwa (Agreement) includes part or all of the Subject Area.
- E. Schedule 4 to the Tjiwarl Palyakuwa (Agreement) provides a process for the grant of the Tenure. Relevantly, the Tjiwarl Palyakuwa (Agreement) provides that, where Tjiwarl AC and the Grantee Party were unable to come to an agreement regarding the grant of the Tenure under the processes provided by the Tjiwarl Palyakuwa (Agreement), the Government Party is to give notice of its

intention to grant the Tenure in accordance with section 29 of the Native Title Act, with the effect that right to negotiate provisions in Subdivision P apply in accordance with section 26(1)(c)(i) of the Native Title Act.

- F. The Government Party gave notice of its intention to grant the Tenure in accordance with section 29 of the Native Title Act.
- G. In accordance with Part 2 Division 3 Subdivision P of the Native Title Act, negotiations in respect of the grant of the Tenure have been conducted in good faith between the Government Party, the Grantee Party and Tjiwarl AC.
- H. Tjiwarl AC agrees to the grant of the Tenure and this Deed is entered into for the purpose of ensuring the validity of the Tenure under the Native Title Act and is provided in accordance with Schedule 4, clauses 6.9 or 10.10 of the Tjiwarl Palyakuwa (Agreement).

OPERATIVE PROVISIONS:

1. Definitions and Interpretation

1.1 General Definitions

In this Schedule words and expressions defined in the Native Title Act including **arbitral body, common law holders, determination of native title, future act, National Native Title Register, native title, native title rights and interests, registered native title body corporate, and relevant Minister**, have the same meaning when used in this Deed.

1.2 Specific Definitions

In this Deed, unless the context requires otherwise:

Act means an Act of the Parliament of the Commonwealth or of the State of Western Australia.

Agreement Area means the land and waters of the Tjiwarl Palyakuwa (Agreement).

Ancillary Agreement means the agreement described in item 4 of the Schedule or any other agreement made between Tjiwarl AC and the Grantee Party or any other person in connection with the grant of the Tenure and/or the Grantee Party exercising its rights and discharging its obligations under the Tenure.

Execution Date is the date on which this Deed is made, being the date specified in item 1 of the Schedule.

Government Party means the Party named in this deed as the Government Party and, for the purposes of clauses 4, 5 and 6 includes the State, any State government department, agency, instrumentality, Minister and any body whether corporate or unincorporated that is established or continued for a public purpose by, or under, an Act of the State (including body corporate Ministers) and any State Personnel.

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

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

Native Title Compensation means any compensation, damages, restitution, benefits, costs, expenses or loss whatsoever, whether arising or recoverable under any State or Commonwealth statute (including the Native Title Act, Mining Act or any other statute), or under common law or in equity, arising out of, or in connection with, any extinguishment, loss, diminution, impairment or other effect on native title rights and interests by:

- (a) the grant, renewal or extension of the Tenure; or
- (b) the doing of any act (including a future act) or any activity (whether or not subject to any conditions) in accordance with the Tenure and any such conditions.

Party means a party to this deed and **Parties** means the Government Party, Tjiwarl AC and the Grantee Party, collectively.

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

State means the legal entity of the Crown in right of the State of Western Australia.

State's Personnel means the State's employees, officers, agents, consultants and contractors.

Subject Area means the land and waters (if applicable) the subject of the application for the Tenure.

Tenure means the mining tenement(s) or petroleum title(s) described in item 2 of the Schedule to be granted under the Mining Act or the PGER Act.

Tjiwarl Determination means the orders of the Federal Court of Australia made in native title determination applications WAD 228 of 2011 (Tjiwarl) and WAD 302 of 2015 (Tjiwarl #2) by Mortimer J on 27 April 2017 as amended by order 2 of the Full Court of the Federal Court of

Australia on 1 February 2018 (as itself amended by order 2 of the High Court of Australia on 17 April 2019).

Tjiwarl Determination Area means the area of land and waters the subject of the Tjiwarl Determination.

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

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

1.3 Interpretation

In this Deed, unless context requires otherwise:

- (a) headings are for reference only and do not govern the meaning or construction of this Deed or any provision contained in this Deed;
- (b) a reference to a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
- (c) a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) reference to a person or party includes that person's or party's successors, permitted substitutes, persons taking by novation, permitted transferees, receivers, managers, administrators and permitted assignees and, in the case of a natural person, also includes that person's executors and administrators;
- (e) a reference to a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
- (f) a singular word includes the plural, and vice versa;
- (g) a word that suggests one gender includes the other genders;
- (h) the word "including" is to be read as if it were followed by, "but not limited to";
- (i) if a word is defined, a derivative of the word has a corresponding meaning;
- (j) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally; and

- (k) a reference to any thing is a reference to the whole or any part of it and a reference to a group of persons is a reference to any one or more of them.

2. Authority to Enter into this Deed

Tjiwarl AC represents and warrants that all necessary authorisations have been obtained to enter into this Deed and this Deed is valid, binding and enforceable in accordance with its terms against Tjiwarl AC and the Tjiwarl People.

3. Agreement to the Grant of the Tenure

- (a) The Parties agree that they have negotiated in good faith for the purposes of section 31(1)(b) of the Native Title Act and that this Deed is an agreement for the purposes of section 28(1)(f) and section 31(1)(b) of the Native Title Act; and
- (b) Tjiwarl AC agrees to the grant of the Tenure and to the Grantee Party exercising its rights and discharging its obligations under the Tenure.

4. Release and Discharge

4.1 Government Party not liable for Native Title Compensation

On and from the Execution Date, Tjiwarl AC, the Tjiwarl People and the Grantee Party agree that Government Party is not liable for any Native Title Compensation which Tjiwarl AC or the Tjiwarl People now have, or had at any time previously or might have in the future, against the Government Party respect of the grant by the Government Party of the Tenure or the exercise by the Grantee Party of its rights and obligations under the Tenure.

4.2 Deed may be pleaded

On and from the Execution Date, Tjiwarl AC and the Tjiwarl People:

- (a) acknowledge and agree that Tjiwarl AC and the Tjiwarl People must not make, commence or facilitate any application, action, suit, proceeding, claim or demand against the Government Party in any court, tribunal or other authority for Native Title Compensation; and
- (b) release the Government Party from, and acknowledge that this Deed may be pleaded as an absolute bar against, all liabilities, determinations, orders, applications, actions, suits,

proceedings, claims or demands for, or any other entitlement to, Native Title Compensation.

5. Government Party not liable for Ancillary Agreement

Tjiwarl AC and the Grantee Party acknowledge that the Government Party does not have any obligations or liability whatsoever in connection with the rights and obligations of Tjiwarl AC or the Grantee Party under the Ancillary Agreement.

6. Conditions and Position of the Government Party

6.1 Conditions for the Purpose of Section 41(1) of the Native Title Act

- (a) Clause 4 of this Deed constitutes conditions to be complied with by the Parties for the purposes of subsection 41(1) of the Native Title Act.
- (b) The terms of this deed and of the Ancillary Agreement are not conditions precedent nor conditions subsequent to the agreement of Tjiwarl AC to the grant of the Tenure and to the Grantee Party exercising its rights and discharging its obligations under the Tenure.
- (c) The provisions of this Deed and the Ancillary Agreement are not conditions of the Tenure when granted under the Mining Act or the PGER Act (as applicable).

6.2 Position of the Government Party

- (a) Nothing in this Deed or the Ancillary Agreement shall fetter, act as an estoppel or an agreement in any way about:
 - (i) the exercise by any person (including a Minister of the Crown) of a statutory power or a discretion otherwise than in accordance with the Act under which the power or discretion is granted; or
 - (ii) the exercise by any person (including a Minister of the Crown) of a decision making power and this includes in respect of any decision of the Government Party.
- (b) The provisions of this Deed and of the Ancillary Agreement are not conditions of the Tenure when granted under the Mining Act or PGER Act (as applicable).

7. Deed Prevails

The Grantee Party and Tjiwarl AC acknowledge that the provisions of this Deed prevail over the provisions of the Ancillary Agreement to the extent of any inconsistency.

8. Determination By Arbitral Body and Copy of Deed to Arbitral Body and Relevant Minister

8.1 Determination by arbitral body

If a determination under section 38 of the Native Title Act is applied for in relation to the Tenure, the Parties consent to the arbitral body making a determination to the effect that the Tenure may be granted subject only to the conditions in clause 4 of this Deed.

8.2 Copy of Deed to arbitral body and relevant Minister

The Grantee Party and Tjiwarl AC authorise the Government Party, and the Government Party agrees, to give a copy of this deed to the arbitral body and to advise the relevant Minister in writing of the making of this deed.

9. General

9.1 Severability

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

9.2 Further Acts

Each Party agrees, at its own expense, on the request of another Party, to do everything reasonably necessary to give effect to this deed and the matters contemplated by it.

9.3 Costs and Duty

- (a) Subject to clause 9.3(b), each Party will pay its own legal and other costs and expenses in connection with the preparation and completion of this deed.
- (b) The Grantee Party is to pay all duty (including fines or penalties) payable on or with respect to this deed pursuant to the *Duties Act 2008* (WA).

9.4 Governing Law

- (a) This Deed is governed by the law in force in the State of Western Australia.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia, and any court that may hear appeals from any of those courts, for any proceeding in connection with this deed, subject only to the right to enforce a judgment obtained in any of those courts in any other jurisdiction.

9.5 Counterparts

- (a) This Deed may be executed in any number of counterparts and all counterparts taken together constitute one instrument.
- (b) If this Deed is to be executed in counterparts, the Parties must agree this ahead of the Deed being prepared in final form so that sufficient copies can be prepared and executed by each Party to enable each Party to have one complete instrument (as constituted by the counterparts).

EXECUTED AS A DEED:

SIGNED for and on behalf of the
MINISTER FOR MINES AND
PETROLEUM and the **STATE OF**
WESTERN AUSTRALIA by

Full name of Authorised Person (print)

Signature of Authorised Person

Signature of witness

Date

Full name of witness (print)

Address of witness

Occupation of witness

SIGNED by **TJIWARL ABORIGINAL CORPORATION (RNTBC) ICN 8628** in accordance with section 99.5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) in the presence of:

Signature of Director

Signature of Director

Full name of Director (print)

Full name of Director (print)

Date

Date

GRANTEE PARTY¹

SIGNED by [INSERT FULL NAME OF
GRANTEE PARTY] in the presence of:

Signature of [*insert Grantee Party name*]

Signature of witness

Date

Full name of witness (print)

Address of witness

Occupation of witness

¹ Delete this footnote, the heading and the execution clauses for the Grantee Party that are not applicable.

OR IF THE GRANTEE IS A COMPANY

Note: This deed must be executed by affixing the common seal of the company to the deed in the presence of two directors, or one director and the company secretary. Alternatively, under section 127(1) of the Corporations Act 2001 (Cth) a company can execute a document without using a common seal if the document is signed by two directors, or a director and a company secretary or for a proprietary company that has a sole director who is also the company secretary – that director.

WITH A COMMON SEAL

The **COMMON SEAL** of [INSERT
COMPANY NAME] ACN [*insert ACM*]
was affixed to this deed in the presence of



Signature of Director

Signature of Director / Secretary*
*delete whichever is not applicable

Full name of Director (print)

Full name of Director / Secretary* (print)

Date

Date

WITHOUT A COMMON SEAL

SIGNED for [INSERT **COMPANY NAME**] ACN
[*insert ACM*] in accordance with section 127(1) of the
Corporations Act 2001 (Cth) in the presence of:

Signature of Director

Signature of Director / Secretary*
*delete whichever is not applicable

Full name of Director (print)

Full name of Director / Secretary* (print)

Date

Date

SOLE PROPRIETOR COMPANY

SIGNED for **[INSERT COMPANY NAME]** ACN
[*insert ACM*] in accordance with section 127(1) of the
Corporations Act 2001 (Cth) in the presence of:

Signature of Director
(as sole Director and Secretary)

Full name (print)

Date

Schedule – Details of the Tjiwarl Exploration Agreement

ITEM	DETAILS
<p>1. Date of Deed (to be entered by Minister's representative only)</p>	
<p>2. Tenure</p>	<p>Tenement / Title 1: Application No: Tenement / Title Type:</p> <p>Tenement / Title 2: Application No: Tenement / Title Type:</p> <p><i>[insert / delete as required]</i></p>
<p>3. Grantee Party details</p>	<p>Tenement / Title Applicant 1: Name*: *include ACN if a company</p> <p>Address:</p> <p>Tenement / Title Applicant 2: Name*: *include ACN if a company</p> <p>Address:</p> <p><i>[insert / delete as required]</i></p>
<p>4. Ancillary Agreement Details</p>	<p>Parties:</p> <p>Date of Ancillary Agreement:</p>

Item B – Instructions for completing Deed for Grant

The following is a guide for completing and executing the Deed for Grant. Please read this guide before attempting to complete the Deed for Grant as errors may render the Deed invalid or may result in the Government party declining to execute the Deed

1. Form of the Deed for Grant

- (a) The Minister for Mines and Petroleum (or his representative) will execute the Deed for Grant only in the form provided by the Tjiwarl Palyakuwa (Agreement) and after execution by all other parties to the Deed. In exceptional circumstances, if the parties need to amend the basic document, then they should discuss the desired amendments with Department of Mines, Industry Regulation and Safety (**DMIRS**) before amending or signing the Deed.
- (b) The Deed for Grant, has been designed to be submitted as an original document, but in the event of the Deed for Grant being re-typed, every care should be taken to avoid errors.

2. Completing the Deed of Grant

- (a) Only the applicant(s) for the mining tenement or the petroleum title (the Grantee Party), Tjiwarl AC, and those duly authorised by a power of attorney can sign the Deed.
- (b) All parties must sign in accordance with their governing Articles of Association, except for individuals, who must follow the directions contained within the Deed.
- (c) All signatures must be witnessed by an independent party to the document.
- (d) Do not fill in the date in item 1 of the Schedule. This will be filled in with the date on which the Minister for Mines and Petroleum (or his representative) signs the Deed for Grant.
- (e) Any changes or amendments must be initialled by all parties to the Deed for Grant.

3. Provision of the Deed of Grant to DMIRS

- (a) It is important to forward the Deed to the DMIRS, Resource Tenure Branch, for execution as soon as possible after all other parties have signed it as the Deed is not operative until it is executed by the Minister for Mines and Petroleum (or his representative).

(b) Forward at least one single unbound signed Deed to:

Department of Mines, Industry Regulation and Safety
Resource Tenure Branch
Locked Bag 100
East Perth WA 6892

If you have any queries in relation to the completion of this Deed or require further copies (available via email) please contact the Resource Tenure Branch.

4. Checklist for the Deed for Grant

Have you ensured that:

- The Deed for Grant is in the correct form and has not been amended without the prior agreement of DMIRS?
- Any changes or alterations to the Deed for Grant have been initialled by all Parties?
- Each item of the Schedule has been completed?
- The Grantee Party has signed the document and where appropriate the company seal has been included?
- The Grantee Party signature has been witnessed (if the Grantee is an individual)?
- Tjiwarl AC has signed the document?

Tjiwarl Palyakuwa (Agreement)

SCHEDULE 4 – Annexure 8

Tjiwarl Engagement Protocol

Item A – Tjiwarl Engagement Protocol

Item B – Instructions for executing the Tjiwarl Engagement Protocol

Item A – Tjiwarl Engagement Protocol

The following form of Tjiwarl Engagement Protocol is provided for the purpose of Schedule 4 of the Tjiwarl Palyakuwa (Agreement).

Instructions for completing the Tjiwarl Engagement Protocol are provided at Item B of this Annexure.

TJIWARL ENGAGEMENT PROTOCOL

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Details of Engagement Protocol

THIS ENGAGEMENT PROTOCOL is made on the date specified in item 1 of Schedule 1.

BETWEEN

TJIWARL (ABORIGINAL CORPORATION) RNTBC (ICN 8628) in its own right and for and on behalf of the Tjiwarl People (**Tjiwarl AC**)

and

The **PROPONENT** described in item 3 of Schedule 1.

Recitals

- A. The Proponent has made an application for the Tenure in the Tjiwarl Determination Area and wishes to establish the Tenure Operations.
- B. Pursuant to the Tjiwarl Determination, Tjiwarl AC is the registered native title body corporate that holds the native title rights and interest on trust for the Tjiwarl People.
- C. Tjiwarl AC is an incorporated body under the CATSI Act. It is governed by the Tjiwarl Rule Book and has the power to, amongst other things:
 - (a) negotiate with the Proponent;
 - (b) enter into agreements; and
 - (c) exercise procedural rights under the Native Title Acton behalf of the Tjiwarl People in accordance with the Tjiwarl Rule Book and the CATSI Act.
- D. Tjiwarl AC and the State have entered into an ILUA (body corporate agreement) entitled the Tjiwarl Palyakuwa (Agreement). The Agreement Area in relation to the Tjiwarl Palyakuwa (Agreement) includes part or all of the area of the Tenure.
- E. Schedule 4 to the Tjiwarl Palyakuwa (Agreement) provides a process for the grant of the Tenure. Relevantly, the Tjiwarl Palyakuwa (Agreement) provides that Tjiwarl AC and the Proponent are to enter into Negotiations about the grant of the Tenure and the Tenure Operations. The content of the Negotiations includes those initial matters listed at Schedule 4

to this Engagement Protocol in a way that is consistent with the Tjiwarl People's native title rights and interests with a view to reaching agreement for the parties' mutual benefit.

- F. This Engagement Protocol sets out the rules that the Parties must abide by during the Negotiations.

THE PARTIES AGREE THAT:

1. Definitions and Interpretation

General Definitions

- 1.1 In this Engagement Protocol words and expressions defined in the Native Title Act including **native title, native title rights and interests, prescribed body corporate** and **registered native title body corporate** have the same meaning when used in this Engagement Protocol.

Specific Definitions

- 1.2 In this Engagement Protocol, unless the context requires otherwise the following words and phrases have the following meanings:

Australian Stock Exchange means the stock exchange known as the 'Australian Securities Exchange' operated by ASX Limited ABN 98 008 624 691.

Budget Estimate means a written, itemised estimation of costs and expenses prepared in accordance with clause 10.

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

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

Commencement Date means the date on which both Parties have executed this Engagement Protocol, being date specified in item 1 of Schedule 1.

Confidential Information means:

- (a) all information disclosed by one Party to another Party during the negotiations leading up to executing this Engagement Protocol and during the term this Engagement Protocol;

- (b) all information, reports, maps, photographs, videos and other documents about or relating to the traditional laws and customs of the Tjiwarl People and any information that Tjiwarl AC nominates as being provided on a confidential basis; and
- (c) the Proponent's commercially sensitive information and any information the Proponent nominates as being provided on a confidential basis.

Confirmation of Budget has the meaning set out in clause 10.8.

Confirmation of Budget Revision has the meaning set out in clause 10.12.

Consultation Meetings means the meetings described at clause 7.1.

Consumer Price Index means the Consumer Price Index, All Groups Index, number for Perth, Western Australia, published from time to time by the Australian Bureau of Statistics (catalogue number 6401.0). If that index ceases to be published by the Australian Bureau of Statistics then Consumer Price Index will mean such other index as agreed by the Parties that reasonably reflects changes in the normal cost of living for permanent residents in Perth, Western Australia.

CPI Calculation means the following calculation

$$R = \frac{A \times B}{C}$$

where:

R is the specified rate adjusted for CPI.

A is the rate payable immediately prior to the Review Date.

B is the Consumer Price Index last published prior to the Review Date.

C is the Consumer Price Index last published prior to the Commencement Date.

Review Date means, successively, each anniversary of the Commencement Date.

Cultural Business means a funeral, event or other ceremony or cultural duty that any members of Tjiwarl AC or the Tjiwarl Negotiation Team are required to attend under their traditional laws and customs and that prevents any of them from performing their obligations under this Engagement Protocol. This includes, for the avoidance of doubt, the law business period between approximately 1 December to 1 March of each year.

Delay Event means an event that prevents a Party from performing its obligations under this Engagement Protocol and which is unforeseeable and beyond the reasonable control of the affected Party including:

- (a) an act of God, lightning, storm, flood, fire, earthquake, explosion, cyclone or wind and wave conditions associated with a cyclone, tidal wave or tsunami, landslide, adverse weather conditions, volcanic eruption;
- (b) strike, lockout or other labour difficulty;
- (c) act of public enemy, war, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic or pandemic, terrorism, radioactive or biological contamination, impact of vehicles or aircraft, failure of a public utility; or
- (d) the effect of any applicable Law or any authority exercised by a government or other competent authority.

Dispute has the meaning given in clause 18.1.

Dispute Notice has the meaning given in clause 18.1.

Engagement Protocol means this means this protocol and its schedules and includes any variation or replacement of it.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

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

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

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

Negotiation Matters means those matters about which the Parties have from time to time agreed to negotiate as part of the Negotiations and include, but are not limited to, those matters listed at Schedule 4;

Negotiation Meetings means meetings held between the Parties in accordance with clause 5 of this Engagement Protocol.

Negotiations mean the negotiations to be conducted under this Engagement Protocol.

Negotiators means the members of each of the Proponent Negotiation Team and the Tjiwarl Negotiation Team.

Party means a party to this deed and **Parties** means the Tjiwarl AC and the Proponent collectively.

PBC Regulations means the *Native Title (Prescribed Bodies Corporate) Regulations 1999*.

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

Proponent means the party described in described in item 3 of Schedule 1 and includes its successors and assigns.

Proponent Co-ordinator means the person co-ordinating the Negotiations on behalf of the Proponent and until notified otherwise shall be that person named at Schedule 3.

Proponent Negotiation Team means those people appointed from time to time to conduct the Negotiation on behalf of the Proponent and initially comprises the people named at Schedule 3.

Proponent Advisors means the people appointed from time to time to support, assist and advise the Proponent Negotiation Team by attending Negotiation Meetings and Consultation Meetings and participating in Negotiations as necessary, and initially comprises the people named at Schedule 3.

Public Announcement has the meaning given in clause 15.1.

Recipient has the meaning given in clause 12.

Replacement RNTBC has the meaning given in clause 16.3.

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

Supplier has the meaning given in clause 12.

Tenure means the mining tenement or petroleum title described in item 2 of Schedule 1 applied for by the Proponent under the Mining Act or the PGER Act.

Tenure Operations means the grant of the Tenure and any activities or approvals required or proposed to be conducted or obtained by the Proponent pursuant to, and in accordance with, the Tenure.

Termination Date means the date on which:

- (a) the Tenure is granted under the Mining Act or the PGER Act; or
- (b) the Engagement Protocol is terminated in accordance with clause 19.2.

Tjiwarl Consent Requirements means the requirements detailed in clause 6.

Tjiwarl Co-ordinator means the person co-ordinating the Negotiations on behalf of Tjiwarl AC and, until notified otherwise, shall be that person named at Schedule 2.

Tjiwarl Cultural Advisors means those Tjiwarl People appointed from time to time to advise Tjiwarl AC and Tjiwarl Negotiation Team in relation to cultural matters and initially comprises the people named at Schedule 2.

Tjiwarl Determination means the orders of the Federal Court of Australia made in native title determination applications WAD 228 of 2011 (Tjiwarl) and WAD 302 of 2015 (Tjiwarl #2) by Mortimer J on 27 April 2017 as amended by order 2 of the Full Court of the Federal Court of Australia on 1 February 2018 (as itself amended by order 2 of the High Court of Australia on 17 April 2019).

Tjiwarl Determination Area means the area of land and waters the subject of the Determination.

Tjiwarl Expert Advisors means those experts consulted or engaged by the Tjiwarl Negotiation Team to provide independent technical advice on matters relating to the Negotiations or the Tenure Operations and may include the following fields of expertise:

- (a) economic;
- (b) legal;
- (c) geological;
- (d) environmental;
- (e) hydrological;
- (f) radiation;
- (g) anthropology;
- (h) commercial and business; and/or
- (i) social impact,

and initially comprises the people named at Schedule 2.

Tjiwarl Negotiation Team means those people appointed from time to time to conduct the Negotiations on behalf of Tjiwarl AC and, until notified otherwise, shall be those people named at Schedule 2.

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

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

Tjiwarl Rule Book means the consolidated rule book of Tjiwarl AC registered on 9 November 2020 and amended from time to time.

Interpretations

1.3 In this Engagement Protocol, unless context requires otherwise:

- (a) a reference to a recital, clause or Schedule is to a recital, clause or Schedule of this Engagement Protocol;
- (b) headings are for reference only and do not govern the meaning or construction of this Engagement Protocol or of any provision contained in this Engagement Protocol;
- (c) a reference to a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
- (d) a reference to legislation or regulations is a reference to that legislation or regulation as amended, replaced or re-enacted for the time being in force and any by-laws, statutory instruments, rules, regulations, notices, orders, directions, consents or permissions made thereunder and any conditions attaching thereto;
- (e) reference to a person or party includes that person's or party's successors, permitted substitutes, persons taking by novation, permitted transferees, receivers, managers, administrators and permitted assignees and, in the case of a natural person, also includes that person's executors and administrators;
- (f) a singular word includes the plural, and vice versa;
- (g) a word that suggests one gender includes the other genders;
- (h) the word "including" is to be read as if it were followed by, "but not limited to";

- (i) if a word is defined, a derivative of the word has a corresponding meaning;
- (j) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally; and
- (k) a reference to any thing is a reference to the whole or any part of it and a reference to a group of persons is a reference to any one or more of them.

2. Agreement to Negotiate

- 2.1 The Parties agree to negotiate in good faith on the matters contemplated under this Engagement Protocol, with a view to entering into a comprehensive agreement:
- (a) about the Tenure Operations, including agreement in relation to each of the Negotiation Matters; and
 - (b) that preserves the traditional way of life of the Tjiwarl People, including their language, cultural heritage and laws and customs.
- 2.2 Nothing in this Engagement Protocol is to be read as a commitment to entering into a comprehensive agreement with respect to the matters referred to in clause 2.1.

3. Negotiation Teams

Tjiwarl Negotiation Team

- 3.1 Tjiwarl AC:
- (a) shall be represented in the Negotiations by the Tjiwarl Negotiation Team; and
 - (b) may change the members of the Tjiwarl Negotiation Team by providing written notice of the change to the Proponent.
- 3.2 The Tjiwarl Negotiation Team and its role in the Negotiations shall be co-ordinated by the Tjiwarl Co-ordinator.
- 3.3 The Tjiwarl Co-ordinator shall be the primary contact with the Proponent in relation to the Negotiations.
- 3.4 The Tjiwarl Negotiation Team:
- (a) may, at its discretion, be assisted by Tjiwarl Expert Advisors and Tjiwarl Cultural Advisors;

- (b) shall show courtesy, respect and professionalism towards the Proponent Negotiation Team and respond to requests from the Proponent in a timely manner;
- (c) shall direct all contact with the Proponent in relation to the matters the subject of this Engagement Protocol through the Proponent Co-ordinator; and
- (d) shall notify the Proponent Co-ordinator immediately in the event that members of the Tjiwarl Negotiation Team or the Tjiwarl People are contacted directly by officers of the Proponent or members of the Proponent Negotiation Team in relation to the matters the subject of this Engagement Protocol.

Proponent Negotiation Team

3.5 The Proponent:

- (a) shall be represented in the Negotiations by the Proponent Negotiation Team; and
- (b) may change the members of the Proponent Negotiation Team by providing written notice of the change to the Tjiwarl AC.

3.6 The Proponent Negotiation Team and its role in the Negotiations shall be co-ordinated by the Proponent Co-ordinator.

3.7 The Proponent Co-ordinator shall be the primary contact with Tjiwarl AC in relation to the Negotiations.

3.8 The Proponent Negotiation Team:

- (a) may, at its discretion, be assisted by Proponent Advisors;
- (b) shall show courtesy, respect and professionalism towards the Tjiwarl Negotiation Team and respond to requests from Tjiwarl AC in a timely manner;
- (c) shall direct all contact with Tjiwarl AC in relation to the matters the subject of this Engagement Protocol through the Tjiwarl Co-ordinator; and
- (d) shall notify the Tjiwarl Co-ordinator immediately in the event that officers of the Proponent are contacted directly by members of the Tjiwarl Negotiation Team or the Tjiwarl People in relation to the matters the subject of this Engagement Protocol.

4. Authority of the Negotiators

4.1 The Negotiators are authorised to:

- (a) conduct the Negotiations; and
- (b) make recommendations to the Parties in relation to the Negotiations.

4.2 The Negotiators are not authorised to:

- (a) execute any final agreement; or
- (b) otherwise bind the Parties.

4.3 For the avoidance of doubt any agreement reached by the Negotiators is an agreement ‘in principle’ only until ratified and executed in accordance with the respective rules and procedures of the Parties.

5. Negotiation Meetings

Holding of Negotiation Meetings

5.1 Negotiation Meetings shall:

- (a) only proceed with the agreement of both Parties;
- (b) occur with a timing and frequency agreed by the Negotiators, with an indicative schedule agreed at the first Negotiation Meeting; and
- (c) unless otherwise agreed, take place either at an ‘on-country’ location nominated by either Party in relation to the Tenure Operations, in Leinster or in Perth.

Other Meetings

5.2 The Tjiwarl Co-ordinator, the Proponent Co-ordinator and any relevant Negotiators will meet in between Negotiation Meetings as required to:

- (a) discuss the agenda of Negotiation Meetings or Consultation Meetings and matters preparatory to these meetings;
- (b) implement or follow up on the outcomes of Negotiation Meetings or Consultation Meetings; and
- (c) develop proposals to progress Negotiations that can be put to Negotiation Meetings or Consultation Meetings for discussion.

6. Tjiwarl Consent Requirements

- 6.1 The Proponent acknowledges and agrees that Tjiwarl AC is required to consult with, and obtain the consent of, the Tjiwarl People before making any native title decision (as defined in the PBC Regulations). This includes agreement to any act that affects the native title rights and interests of the Tjiwarl People.
- 6.2 The Proponent acknowledges and agrees that, in accordance with clause 6.1, the Tjiwarl AC is required to:
- (a) consult with the Tjiwarl People, in a manner that accords with their traditional laws and custom, prior to agreeing or authorising any proposal with respect to the Tenure Operations; and
 - (b) be satisfied that the Tjiwarl People, in particular those native title holders for the area affected:
 - (i) understand the nature and purpose of any proposal with respect to the Tenure Operations;
 - (ii) have the opportunity to express their views; and
 - (iii) consent to any proposal with respect to the Tenure Operations.

7. Consultation Meetings

Purpose of Consultation Meetings

- 7.1 The Proponent acknowledges and agrees that, in addition to Negotiation Meetings, meetings of the Tjiwarl People are required to fulfil the Native Title Party Consent Requirements (**Consultation Meetings**).
- 7.2 The purpose of Consultation Meetings includes:
- (a) fully informing the Tjiwarl People of the proposals in relation to Tenure Operations and the general progress of the Negotiations;
 - (b) seeking directions from the Tjiwarl People on how to proceed with the Negotiations; and
 - (c) obtaining instructions from the Tjiwarl People on any in-principle or final agreement with respect to the Tenure Operations.

Manner in which Consultation Meetings are to be held

- 7.3 The Proponent acknowledges and agrees that Tjiwarl AC is required to conduct Consultation Meetings in a culturally appropriate manner that is consistent with the traditional decision-making processes of the Tjiwarl People.
- 7.4 Consultation Meetings shall take place at Perth or Leinster, unless otherwise agreed by the Parties.
- 7.5 Tjiwarl AC may invite the Proponent to attend Consultation Meetings for the purpose of assisting Tjiwarl AC in fulfilling the Native Title Party Consent Requirements but, subject to clause 7.6, the Proponent is not otherwise entitled to attend Consultation Meetings.
- 7.6 If the Proponent seeks to attend a Consultation Meeting to provide written or oral information to the Tjiwarl People with respect to the Tenure Operations or the Negotiations, then:
- (a) the Proponent shall inform the Tjiwarl Co-ordinator that it seeks to attend a Consultation Meeting in order to provide that information; and
 - (b) the Tjiwarl Negotiation Team shall consider such requests and shall not unreasonably withhold permission for the Proponent to attend a Consultation Meeting.
- 7.7 The Proponent acknowledges and agrees that any information it provides for the purpose of Consultation Meeting will be provided in a culturally appropriate medium that allows the Tjiwarl People to understand the information and may include a ‘plain English’ version of that information.

8. Information about the Tenure Operations

Provision of Information about Tenure Operations

- 8.1 The Proponent acknowledges that the provision of comprehensive and up to date information with respect to the Tenure Operation is central to Tjiwarl AC fulfilling the Native Title Party Consent Requirements.
- 8.2 The Proponent shall, prior to each Negotiation Meeting, and from time to time during the term of this Engagement Protocol, provide the Tjiwarl Co-ordinator and the Tjiwarl Negotiation Team with information about the nature and scope of the Tenure Operations, including information with respect to the extent, timing, impact, return, production and output projections of Tenure Operations.

- 8.3 The manner in which the information referred to in clause 8.2 will be provided by the Proponent is to be agreed by the Parties, but may include provision by way of:
- (a) presentations to the Tjiwarl Negotiation Team;
 - (b) discussions with the Tjiwarl Negotiation Team; and /or
 - (c) the provision of relevant information in writing.
- 8.4 The Proponent acknowledges and agrees that any information it provides under this clause 8 will be provided in a culturally appropriate medium that allows the Tjiwarl Negotiation Team or the Tjiwarl People to understand the information and may include a ‘plain English’ version of that information.

On-country Visit

- 8.5 After the first Negotiation Meeting, and if reasonably requested by the Tjiwarl Negotiation Team, the Proponent shall fund, at the rates set out in Schedule 5, a visit by the Tjiwarl Negotiation Team to an ‘on-country’ location nominated by either Party with respect to the Tenure Operations.

9. Tjiwarl Expert Advisors

- 9.1 To meet the Native Title Party Consent Requirements, Tjiwarl AC may engage, as required, Tjiwarl Expert Advisors.
- 9.2 If Tjiwarl AC engages any Tjiwarl Expert Advisor under clause 9.1, as soon as reasonably practicable after engaging any Tjiwarl Expert Advisor, the Tjiwarl Co-ordinator will provide the Proponent a written notice setting out:
- (a) the name, qualifications and practice area of that Tjiwarl Expert Advisor;
 - (b) a statement of the proposed scope of work of that Tjiwarl Expert Advisor;
 - (c) a copy of any written undertaking required to be procured from that Tjiwarl Expert Advisor pursuant to clause 14.4; and
 - (d) an initial schedule of rates for that Tjiwarl Expert Advisor and any update of that schedule from time to time.
- 9.3 The Proponent will provide Tjiwarl Expert Advisors with all reasonably requested information in order to ensure that accurate and timely advice can be provided to the Tjiwarl Negotiation Team and Tjiwarl AC.

10. Negotiation and Consultation Funding

Proponent's Costs

10.1 The Proponent is responsible for all of its own costs in relation to the Negotiations.

Tjiwarl AC's Costs

10.2 The Proponent acknowledges that Tjiwarl AC is unfunded and is unable to fund the Negotiations or any of the matters contemplated under this Engagement Protocol.

10.3 Subject to the Budget Estimate process set out in clauses 10.5 – 10.10 (inclusive), the Proponent shall fully fund the reasonable costs incurred by Tjiwarl AC in relation to the Negotiations agreed in accordance with this clause 10.

10.4 To avoid doubt, this clause does not prevent the Parties from agreeing on other items, rates or amounts from time to time.

Budget Estimate Process & Payment of Costs

10.5 As soon as reasonably practicable prior to each Negotiation Meeting and Consultation Meeting, Tjiwarl AC will provide the Proponent with a Budget Estimate setting out the costs it expects to incur in relation to that Negotiation Meeting or Consultation Meeting.

10.6 Tjiwarl AC will also, from time to time, provide a Budget Estimate to the Proponent setting out the costs:

- (a) for any Tjiwarl Expert Advisors engaged under clause 9.1;
- (b) the meetings contemplated by clause 5.2; and
- (c) any on-country visit contemplated by clause 8.5,

to be incurred by Tjiwarl AC in relation to the Negotiations.

10.7 The Parties shall use the rates set out in Schedule 5, and any rates for Tjiwarl Expert Advisors notified by Tjiwarl AC under clause 9.2(d) (if applicable), as a guide to determine the costs of the Negotiations and the formulation of the Budget Estimate.

10.8 Each Budget Estimate provided pursuant to clause 10.5 or 10.6 must be accompanied by a written statement of the purposes for which those costs are sought to be incurred.

- 10.9 Within five (5) Business Days of receipt of a Budget Estimate provided pursuant to clause 10.5 or 10.6 the Proponent must provide Tjiwarl AC with a written statement of whether or not it agrees with the Budget Estimate (**Confirmation of Budget**).
- 10.10 Following receipt of the Confirmation of Budget by Tjiwarl AC, the Proponent will pay:
- (a) in respect of any Budget Estimate provided pursuant to clause 10.5:
 - (i) 50% of the amounts shown in the agreed Budget Estimate, within five (5) Business Days of agreeing to that Budget Estimate; and
 - (ii) the balance of the actual costs incurred by Tjiwarl AC in relation to the relevant Negotiation Meeting or Consultation Meeting within ten (10) Business Days of receipt of a tax invoice from Tjiwarl AC; and
 - (b) in respect of any Budget Estimate provided pursuant to clause 10.6, the costs incurred by Tjiwarl AC within ten (10) Business Days of receipt of a tax invoice from Tjiwarl AC.
- 10.11 If Tjiwarl AC considers that it will incur costs that are substantially increased from those set out in a Budget Estimate previously provided to the Proponent, Tjiwarl AC shall, as soon as practicable, notify the Proponent of:
- (a) the estimated increase of those costs;
 - (b) the purposes for which those costs are sought to be incurred; and
 - (c) the reasons for the cost increase,
- and provide the Proponent with a revised Budget Estimate.
- 10.12 Within five (5) Business Days of receipt of a revised Budget Estimate provided pursuant to clause 10.11, the Proponent must provide Tjiwarl AC with a written statement of whether or not it agrees with the revised Budget Estimate (**Confirmation of Budget Revision**).
- 10.13 If the Proponent is unable to provide Tjiwarl AC with:
- (a) Confirmation of Budget under clause 10.9; or
 - (b) Confirmation of Budget Revision under clause 10.12,
- then the Parties agree to follow the dispute resolution process set out in clause 18.

11. Review of Rates

On each anniversary of the Commencement Date the Parties will review the rates specified in Schedule 5 and will, where necessary, adjust those rates:

- (a) to reflect movements in the market price of the relevant rates; and/or
- (b) in accordance with the CPI Calculation.

12. GST

- 12.1 Any reference in this clause 12 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.
- 12.2 Unless otherwise indicated, all amounts and other consideration for any Taxable Supply made under this Agreement are exclusive of GST.
- 12.3 If GST is or becomes payable by a Party in relation to any supply that it makes under, in connection with or resulting from this Engagement Protocol (**Supplier**), the Parties agree that, in addition to any consideration provided by a Party (**Recipient**) for a supply from the Supplier, the Recipient must also pay the Supplier, at the same time as providing the consideration, the amount of any GST for which the Supplier is liable in relation to that supply (**additional amount**).
- 12.4 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.
- 12.5 If a Recipient is required under this Engagement Protocol 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.

13. Duty

The Proponent shall pay all duty assessed on this Engagement Protocol, if any, including any duty payable by way of fine or penalty.

14. Confidentiality

- 14.1 Subject to clause 14.2 the following shall be treated by the Parties as confidential:
- (a) information given by the Proponent to Tjiwarl AC under this Engagement Protocol, including any correspondence exchanged between the Parties in relation to this Engagement Protocol;
 - (b) information given by Tjiwarl AC to the Proponent in respect of cultural information, photographs or video; and
 - (c) information furnished in, or pursuant to, this Engagement Protocol or in the course of negotiating this Engagement Protocol by or on behalf of Tjiwarl AC.
- 14.2 Notwithstanding clause 14.1, the Parties may divulge Confidential Information to a third party:
- (a) with the prior written consent of the other Party (which consent shall not be unreasonably withheld);
 - (b) to the extent required by law;
 - (c) to the extent expressly permitted under this Engagement Protocol, or required to enforce its rights under this Engagement Protocol ;
 - (d) to the extent that such information is already, or becomes, in the public domain, otherwise than by breach of this clause 14;
 - (e) who is a financier of, or holding company, or wholly owned subsidiary of the Proponent or Tjiwarl AC;
 - (f) who is the State for the purpose of the Tjiwarl Palyakuwa (Agreement);
 - (g) to the extent required to comply with the listing rules of the Australian Stock Exchange; or
 - (h) who is a prospective joint venturer or assignee.
- 14.3 The Parties shall take all steps reasonably necessary to ensure that the Confidential Information is known only to such persons (including any employees of the Parties) as may reasonably require knowledge thereof in the course of their duties or functions.
- 14.4 Notwithstanding the provisions of clause 14.2 the Parties shall, to the extent permitted by law, require any person (other than members of Tjiwarl AC) to whom it intends to disclose such Confidential Information (who is not under a statutory, professional or contractual duty to keep

such Confidential Information confidential) to give a written undertaking to keep such Confidential Information confidential in accordance with clause 14.1.

14.5 The obligations of the Parties under this clause 14 shall survive the termination of this Engagement Protocol.

15. Public Announcements

15.1 The Parties must not make or authorise any comments or statements to the media and/or the public about the Negotiations (**Public Announcement**) unless:

- (a) it has been agreed in writing by the Proponent and Tjiwarl AC; or
- (b) is required to be made by Law and the disclosing party has given as much notice as possible to, and has consulted (to the fullest extent reasonable in the circumstances) with, the non-disclosing party as to the form and content of the Public Announcement.

15.2 For the avoidance of doubt, a Public Announcement includes comments or statements made on any social media or networking site.

15.3 The Parties will use their best endeavours to stop their members, employees or officers making Public Announcements.

15.4 If a Public Announcement is made contrary to this clause 15, the Parties will meet as soon as possible and issue a joint statement in response to that unauthorised Public Announcement.

16. Assignment

Assignment by the Proponent

16.1 The Proponent may assign, transfer, novate or otherwise dispose of any or all of its rights, interests and obligations under this Engagement Protocol to any person provided that:

- (a) the Proponent notifies Tjiwarl AC in writing of the name and nature of the prospective assignee at least twenty (20) Business Days before the assignment;
- (b) the Proponent consults with Tjiwarl AC about the prospective assignee;
- (c) Tjiwarl AC consents to the assignment, which consent will not be unreasonable withheld;
- (d) the Proponent procures the prospective assignee to execute a deed of assumption by which the prospective assignee agrees to:

- (i) be bound by this Engagement Protocol and to assume all of the Proponent's obligations under the Engagement Protocol; and
- (ii) execute all documents and do (or refrain from doing) all acts and things necessary to ensure the performance of and compliance with those obligations in a timely manner,
as if it were a party to this Engagement Protocol; and
- (e) evidence of that assumption is provided to Tjiwarl AC.

16.2 The Proponent will be released from its obligations under this Engagement Protocol to the extent that those obligations have been assumed by an assignee, save for any obligations pursuant to clause 14.

Assignment by Tjiwarl AC

16.3 Tjiwarl AC agrees that it may only assign, transfer, novate or otherwise dispose of its rights obligations or interests under this Engagement Protocol to a registered native title body corporate (**Replacement RNTBC**) that has replaced it as the prescribed body corporate for the Tjiwarl Determination by a determination of the Federal Court of Australia under sections 56 or 57 of the Native Title Act.

16.4 If Tjiwarl AC proposes to assign, transfer novate or otherwise dispose of its rights, interests or obligations under this Engagement Protocol to the Replacement RNTBC it must:

- (a) give notice in writing of the name of the Replacement RNTBC at least twenty (20) Business Days before the assignment;
- (b) procure the Replacement RNTBC to execute a deed of assumption by which the Replacement RNTBC agrees to:
 - (i) be bound by this Engagement Protocol and to assume all of Tjiwarl AC's obligations under the Engagement Protocol; and
 - (ii) execute all documents and do (or refrain from doing) all acts and things necessary to ensure the performance of and compliance with those obligations in a timely manner,
as if it were a party to this Engagement Protocol; and
- (c) give evidence of that assumption to the Proponent.

16.5 Tjiwarl AC will be released from its obligations under this Engagement Protocol to the extent that those obligations have been assumed by the Replacement RNTBC, save for any obligations pursuant to clause 14.

17. Unexpected Delays

Notice of Unexpected Delays

17.1 The Parties each acknowledge that Delay Events and Cultural Business may cause legitimate delays in the Parties progressing the Negotiations or performing obligations under this Engagement Protocol.

17.2 If a Party is prevented in whole or in part from carrying out its obligations under this Engagement Protocol or progressing the Negotiations as a result of a Delay Event or Cultural Business it must immediately notify the other Party of:

- (a) the obligations it cannot perform;
- (b) the nature of the Delay Event or Cultural Business; and
- (c) time during which it is estimated that the Delay Event or Cultural Business will continue.

17.3 For the avoidance of doubt, the Parties acknowledge that Cultural Business may not necessarily preclude the planning or holding of Negotiation Meetings or Consultation Meetings if the relevant personnel are available to meet.

17.4 The Party affected by the Delay Event or Cultural Business will give immediate notice to the other Parties of the cessation of the delay.

18. Dispute Resolution

Notification and Negotiation of a Dispute

18.1 If a dispute arises between the Parties in connection with the Negotiations or this Engagement Protocol (**Dispute**) either Party may give notice in writing to the other Party identifying the nature of the Dispute (**Dispute Notice**).

- 18.2 Following the issue of a Dispute Notice, senior representatives of the Parties shall consult with each other in good faith in a timely manner to seek to resolve the Dispute. A Party may also, for the avoidance of doubt, seek the assistance of the State to resolve the Dispute in accordance with Schedule 4 of the Tjiwarl Palyakuwa (Agreement).
- 18.3 If the Parties cannot resolve the Dispute within twenty (20) Business Days of a Dispute Notice being served (or other such longer period as may be agreed between the Parties) any Party may refer the dispute to mediation.

Mediation

- 18.4 If the Dispute is referred to mediation:
- (a) the Parties must seek to agree on the appointment of an independent mediator with relevant experience; or
 - (b) if the Parties cannot agree on a mediator within seven (7) Business Days of the referral to mediation, a person nominated by the President or Acting President of the Law Society of Western Australia.
- 18.5 The reasonable cost of the mediator is to be borne by the Party that refers the Dispute to mediation.
- 18.6 The role of the mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a Party to the Dispute except if the Party agrees in advance in writing.
- 18.7 The Parties to the Dispute will engage in the mediation process in good faith and in an open and conciliatory manner, taking into account any cultural or customary concerns or considerations, with a view to reaching a mutually acceptable compromise to the issues in dispute.
- 18.8 If the Parties to the Dispute fail to achieve a resolution of the Dispute within thirty (30) Business Days of the appointment of the mediator (or such other longer period as may be agreed between the Parties to the Dispute), any Party to the Dispute may by written notice to the other Parties to the Dispute terminate the mediation process.

Costs

18.9 Subject to clause 18.5, the Parties shall bear their own costs of participating in any consultation or mediation conducted pursuant to this clause 18.

Court Proceedings

18.10 Subject to clause 18.11, a Party to a Dispute may not start court proceedings in relation to a Dispute unless the Dispute has first been referred to mediation and the mediation has been terminated in accordance with clause 18.8.

18.11 Nothing in this clause 18 precludes a Party from seeking urgent interlocutory relief relative to the subject matter of a Dispute from a court of competent jurisdiction, including the right to seek injunctive relief.

19. Term and Termination

Term

19.1 This Engagement Protocol commences on the Commencement Date and terminates on the Termination Date.

Termination

19.2 This Engagement Protocol may be terminated by:

- (a) any Party by giving the other Parties no less than ten (10) Business Days written notice of such termination; or
- (b) by the mutual agreement of the Parties in writing.

19.3 If this Engagement Protocol is terminated for any reason:

- (a) each Party will remain liable to the other Party in respect of all obligations accrued under this Engagement Protocol to the date of termination; and
- (b) save for clause 14, the Parties will have no further rights or obligations under this Engagement Protocol.

20. Without Prejudice

- 20.1 This Engagement Protocol and the Negotiations are without prejudice to the legal positions of the Parties and will not be construed as admissions of fact or liability in relation to any legal proceeding or process except that, subject to clause 20.2, they may be used as evidence that the Parties have attempted to negotiate in good faith and/or consulted with each other.
- 20.2 Neither this Engagement Protocol nor the fact of the Negotiations are conclusive proof in themselves of a Party having negotiated in good faith.

21. Entire Agreement

This Engagement Protocol constitutes the entire agreement between the Parties relating to its subject matter.

22. Variation

This Engagement Protocol may only be varied by agreement in writing signed by both Parties.

23. Further Assurances

Each Party will, on the request of the other Party, do everything reasonably necessary to give effect to this Engagement Protocol.

24. Severance

If any part of this Engagement Protocol is or becomes unenforceable, that part is or will be severed from this Engagement Protocol so that the rest of this Engagement Protocol remains in force.

25. Governing Law

This Engagement Protocol is governed by the laws in force in the State of Western Australia and the Commonwealth of Australia.

26. Counterparts

- 26.1 This Engagement Protocol may be executed in two counterparts.
- 26.2 If executed in two counterparts, both counterparts together shall be taken to constitute one instrument.

27. Notice

Notice

- 27.1 Each notice or other communication given by one Party to another pursuant to this Engagement Protocol:
- (a) shall be in writing;
 - (b) must be delivered to the address for the Party specified in clause 27.3 or to such other address as a Party may nominate in writing;
 - (c) subject to clause 27.2, will be taken to be duly given or made:
 - (i) if delivered by hand, upon delivery;
 - (ii) if sent by ordinary pre-paid post, ten (10) Business Days after posting; and
 - (iii) if sent by email, at the earlier of:
 - (A) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
 - (B) the time that the intended recipient confirms receipt of the email by reply email; and
 - (C) four (4) hours after the time that the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that four (4) hour period, an automated message that the email has not been delivered.
- 27.2 If the result of clause 27.1(c) is that a notice or other communication would be taken to be given or made on a day that is not a Business Day, or is later than 4.00pm (local time), in the place to which the notice or other communication is sent, it will be taken to have been duly given or made at 9.00am on the next Business Day in that place.

Address for Notices

27.3 For the purpose of this clause 27, unless notified by a Party otherwise, the address to which notices and other communications are to be sent shall be:

(a) for Tjiwarl AC:

The CEO

Tjiwarl (Aboriginal Corporation) RNTBC

Unit 6, 524 Abernethy Road,

Kewdale WA 6105

Telephone: +61 (8) 9200 3730

Email: compliance@tjiwarl.org.au

(b) for the Proponent: as set out in Schedule 1, item 4

EXECUTED by the parties as an agreement

SIGNED by **TJIWARL ABORIGINAL CORPORATION (RNTBC) ICN 8628** in accordance with section 99.5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) in the presence of:

Signature of Director

Signature of Director

Full name of Director (print)

Full name of Director (print)

Date

Date

PROPONENT¹

SIGNED by [INSERT FULL NAME OF
PROPONENT] in the presence of:

Signature of [*insert Proponent name*]

Signature of witness

Date

Full name of witness (print)

Address of witness

Occupation of witness

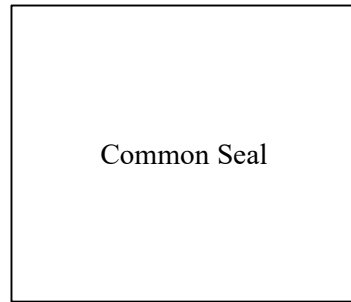
¹ Delete this footnote, the heading and the execution clauses for the Proponent that are not applicable.

OR IF THE PROPONENT IS A COMPANY

Note: This deed must be executed by affixing the common seal of the company to the deed in the presence of two directors, or one director and the company secretary. Alternatively, under section 127(1) of the Corporations Act 2001 (Cth) a company can execute a document without using a common seal if the document is signed by two directors, or a director and a company secretary or for a proprietary company that has a sole director who is also the company secretary – that director.

WITH A COMMON SEAL

The **COMMON SEAL** of [INSERT
COMPANY NAME] ACN [*insert ACM*] was
affixed to this deed in the presence of



Signature of Director

Signature of Director / Secretary*

*delete whichever is not applicable

Full name of Director (print)

Full name (print)

Date

WITHOUT A COMMON SEAL

SIGNED for [INSERT COMPANY NAME] ACN
[*insert ACM*] in accordance with section 127(1) of the
Corporations Act 2001 (Cth) in the presence of:

Signature of Director

Signature of Director / Secretary*

*delete whichever is not applicable

Full name of Director (print)

Full name (print)

Date

Date

SOLE PROPRIETOR COMPANY

SIGNED for **[INSERT COMPANY NAME]** ACN
[*insert ACM*] in accordance with section 127(1) of the
Corporations Act 2001 (Cth) in the presence of:

Signature of Director
(as sole Director and Secretary)

Full name (print)

Date

Schedule 1 – Details of the Tjiwarl Engagement Protocol

ITEM	DETAILS
<p>1. Date of Protocol (to be entered by Tjiwarl AC only)</p>	
<p>2. Tenure(s)</p>	<p>Tenure 1: Application No: Tenure Type:</p> <p>Licence 2: Application No: Tenure Type:</p> <p><i>[insert / delete as required]</i></p>
<p>3. Proponent Details</p>	<p>Proponent 1: Name*: *include ACN if a company</p> <p>Address:</p> <p>Proponent 2: Name*: *include ACN if a company</p> <p>Address:</p> <p><i>[insert/ delete as required]</i></p>
<p>4. Proponent's Address</p>	<p>Contact Name: Company: Address: Telephone: Email:</p>

Schedule 2 – Initial Tjiwarl Negotiation Team

ROLE	DETAIL
Tjiwarl Co-ordinator	
Tjiwarl People	1. 2. 3. 4. [<i>insert / delete as required</i>]
Tjiwarl Cultural Advisors	1. 2. 3. [<i>insert / delete as required</i>]
Tjiwarl Expert Advisors	1. 2. 3. [<i>insert / delete as required</i>]
Legal Services	

Schedule 3 – Initial Proponent Negotiation Team

ROLE	DETAIL
Proponent Co-ordinator	
Proponent Members	1. 2. 3. 4. <i>[insert / delete as required]</i>
Proponent Advisors	1. 2. 3. <i>[insert / delete as required]</i>
Legal Services	

Schedule 4 – Matters for Negotiation

1. Culture, Country and Community

- (a) Heritage protection, including protection of sites.
- (b) Avoiding damage to sites.
- (c) Facilitating ‘care for country’ obligations and maintaining connection with country.
- (d) Minimising the impact of the Tenure Operations on country and on native title.
- (e) Rehabilitation and restoration of country.
- (f) Support for law and culture.
- (g) Social impact base line assessment and minimising negative social impacts and maximising positive social impacts.
- (h) Environmental assurances and insurances.
- (i) Water Management.
- (j) Processes for involving Tjiwarl People in environmental matters.

2. Relationship between Tjiwarl AC, Tjiwarl People and the Proponent

- (a) Development of long-term relationship between Tjiwarl AC, the Tjiwarl People and the Proponent.
- (b) Process for ongoing consultation between the Tjiwarl AC and the Proponent about the development, operation, decommissioning and rehabilitation of the Tenure Operations, including any issues and opportunities that arise during the life of the Tenure Operations.
- (c) Process for resolution of disputes between Tjiwarl AC and the Proponent.
- (d) Processes for assisting the Proponent to create a safe, productive and culturally aware workplace.
- (e) Cultural awareness training for all Proponent employees and contractors involved in the Tenure Operations.
- (f) Establishing a committee of representatives of the Proponent and Tjiwarl People to manage the ongoing relationship and the interface between the Proponent and Tjiwarl People.

3. Access and Consent

- (a) Access by Tjiwarl People to the area of the Tenure over the life of the Tenure Operations.
- (b) Consent to the grant of the Tenure, the Tenure Operations and any other required approvals.

4. Community Development

- (a) Maximising the economic viability of Tjiwarl AC.
- (b) Providing business and employment opportunities for Tjiwarl AC and Tjiwarl People.
- (c) Maximising training opportunities for Tjiwarl People.
- (d) Maximising economic development opportunities for Tjiwarl AC and Tjiwarl People.
- (e) Providing a legacy for Tjiwarl People.

5. Compensation

- (a) Nature and quantum of compensation.
- (b) Body to hold compensation and other community benefits.

6. Tjiwarl Peoples' Lives

- (a) Minimising any adverse impacts of the Tenure Operations on Tjiwarl People.
- (b) Minimising any adverse impact of Tenure Operations on the Tjiwarl Peoples' native title rights and interests.
- (c) Maximising education, training and mentoring opportunities for Tjiwarl People, including the development of a training and employment policy.
- (d) Maximising the social development of Tjiwarl People generally.
- (e) Support for sporting events in which Tjiwarl People participate.
- (f) Improving the general health and well-being of Tjiwarl People.
- (g) Ensuring that contractors and subcontractors working on Tenure Operations must comply with the Proponent's undertakings.
- (h) Development of management plans for the Tenure Operations.

7. Project Agreement

- (a) Structure and content of the agreement with respect to the Tenure Operations, including parties to such an agreement.

- (b) Strong processes for implementation of the agreement with respect to the Tenure Operations.

8. Commercial Matters

- (a) Providing commercial and contracting opportunities during the life of the Tenure Operations to Tjiwarl People and entities owned by Tjiwarl People.
- (b) Exploring the opportunity for Tjiwarl AC and Tjiwarl People be included in equity opportunities.

Schedule 5 – Negotiation Cost Guidelines

ITEM	RATE
Tjiwarl Negotiation Team Members	\$750
Tjiwarl Cultural Advisors	At cost
Tjiwarl Expert Advisors	At cost
GIS Officer	\$60 per hour or \$500 per day
Fuel	At cost
Meals (where catering not provided)	\$80 per day per person
Catering of meals	At cost
Accommodation	At cost
Airfares	At cost
Venue Hire	At cost
Administration	20%

Item B – Instructions for completing the Tjiwarl Engagement Protocol

The following is a guide for completing and executing the Tjiwarl Engagement Protocol. Please read this guide before attempting to complete the Tjiwarl Engagement Protocol as errors may render the Engagement Protocol invalid or may result in Tjiwarl AC declining to execute the Engagement Protocol

1. Form of the Tjiwarl Engagement Protocol

- (a) The final form of the Tjiwarl Engagement Protocol is to be agreed between the applicant(s) for the mining tenement or the petroleum title (the Proponent) and Tjiwarl AC. Any amendments or changes to the document will need to be discussed and agreed between the parties. Do not amend or otherwise attempt to change the document without the prior agreement of Tjiwarl AC.
- (b) The Tjiwarl Engagement Protocol has been designed to be submitted as an original document, but in the event of the Tjiwarl Engagement Protocol being re-typed, every care should be taken to avoid errors.

2. Completing the Tjiwarl Engagement Protocol

- (a) Only the Proponent, Tjiwarl AC, and those duly authorised by a power of attorney can sign the Tjiwarl Engagement Protocol.
- (b) All parties must sign in accordance with their governing Articles of Association, except for individuals, whose signature must be witnessed.
- (c) All signatures must be witnessed by an independent party to the document.
- (d) Do not fill in the date in item 1 of the Schedule. This will be filled in by Tjiwarl AC with the date on which Tjiwarl AC signs the Tjiwarl Engagement Protocol.
- (e) Any changes or alterations must be initialled by all parties to the Tjiwarl Engagement Protocol.

3. Provision of the Tjiwarl Engagement Protocol

- (a) Once the form of the Tjiwarl Engagement Protocol has been agreed between the Proponent and Tjiwarl AC and it has been signed by the Proponent it is important to forward the Tjiwarl Engagement Protocol to Tjiwarl AC for execution as soon as possible.
- (b) If you have any queries in relation to the Tjiwarl Engagement Protocol please contact Tjiwarl AC (at the address contained in clause 27 of the Tjiwarl Engagement Protocol).

4. Checklist for the Tjiwarl Engagement Protocol

Have you ensured that:

- The Tjiwarl Engagement Protocol is in the correct form and has not been amended without the prior agreement of Tjiwarl AC?
- Any changes or alterations to the Tjiwarl Engagement Protocol have been initialled by all Parties?
- Schedules 1, 2 and 3 have been completed?
- The Proponent has signed the document and where appropriate the company seal has been included?
- The Proponent's signature has been witnessed (where the Proponent is an individual)?
- Tjiwarl AC has signed the document?

TJIWARL PALYAKUWA (AGREEMENT)

SCHEDULE 4 – Annexure 9

Proponent Statutory Declarations

Item A – Form of Statutory Declaration for Schedule 4, clause 5.4(c)

Item B – Form of Statutory Declaration relating to conditions on title

Item C – Instructions for making a Statutory Declaration

Item A – Statutory Declaration (Clause 5.4(c))

The following form of statutory declaration is provided for the purpose of Schedule 4, clause 5.4(c) of the Tjiwarl Palyakuwa (Agreement).

Instructions for completing the statutory declaration are provided at Item C of this Annexure.

Statutory Declaration

Oaths, Affidavits and Statutory Declarations Act 2005 (WA)

I, _____, a _____
[Insert full name] [Insert occupation]
of _____
[Insert address]

Do solemnly and sincerely declare:

((** Delete whichever is not applicable*

1. (*) I am the applicant for the following Tenure: _____
[Insert details]

(**) I am a director of : _____
[Insert name of corporation]

being the applicant for the following Tenure: _____
[Insert details]

and am duly authorised by it to make this declaration.

2. The applicant for the Tenure has executed a copy of the Tjiwarl Exploration Agreement (as defined in the Tjiwarl Palyakuwa (Agreement)), subject only to necessary modifications for the Tenure, and provided a copy of the Tjiwarl Exploration Agreement to Tjiwarl (Aboriginal Corporation) RNTBC (**Tjiwarl AC**) for execution on:

[Insert date]

3. The applicant for the Tenure has made reasonable endeavours to obtain an executed copy of the Tjiwarl Exploration Agreement from Tjiwarl AC within 20 Business Days of the date in paragraph 2 above.

4. By executing the Tjiwarl Exploration Agreement and providing a copy to Tjiwarl AC in the manner provided in paragraphs 2 and 3 above and, not having received a copy that is executed by Tjiwarl AC within 20 Business Days of the date in paragraph 2 above, I believe that the applicant for the Tenure will, by providing this Statutory Declaration to the State of Western Australia, have satisfied the conditions contained in Schedule 4, clause 5.4(c) of the Tjiwarl Palyakuwa (Agreement).

5. Attached to this declaration is:
- (a) a copy of the Tjiwarl Exploration Agreement as executed by the applicant for the Tenure that was provided to Tjiwarl AC for execution;
 - (b) any covering email or letter which accompanied the executed Tjiwarl Exploration Agreement; and
 - (c) any proof of delivery or receipt of the executed Tjiwarl Exploration Agreement by Tjiwarl AC.
6. This declaration is true and I know that it is an offence to make a declaration knowing that it is false in any material particular.
7. This declaration is made under the *Oaths, Affidavits and Statutory Declarations Act 2005* (WA).

Declared by:

(Signature of person making declaration)

In the presence of:

(Signature of Authorised Witness)

(Name and Qualifications of Authorised Witness)

Item B – Statutory Declaration (Condition on Title)

The following form of statutory declaration is provided for the purpose of the condition imposed on the mining tenement or PGER Title pursuant to Schedule 4, clauses 5.9, 6.10, 7.10, 8.6, 9.9 or 10.11 of the Tjiwarl Palyakuwa (Agreement).

Instructions for completing the statutory declaration are provided at Item C of this Annexure.

Statutory Declaration

Oaths, Affidavits and Statutory Declarations Act 2005 (WA)

I, _____, a _____
[Insert full name] [Insert occupation]
of _____
[Insert address]

Do solemnly and sincerely declare:

((** Delete whichever is not applicable)*

1. (*) I am the registered holder of the following Tenure: _____
[Insert details]

(**) I am a director of : _____
[Insert name of corporation]

being the registered holder for the following Tenure: _____
[Insert details]

and am duly authorised by it to make this declaration.

2. (*) The registered holder of the Tenure has executed a copy of the Tjiwarl Exploration Agreement (as defined in the Tjiwarl Palyakuwa (Agreement)), subject only to necessary for the Tenure, and provided a copy of the Tjiwarl Exploration Agreement to Tjiwarl (Aboriginal Corporation) RNTBC (**Tjiwarl AC**) for execution on:

[Insert date]

(**) The registered holder of the Tenure has executed a copy of the Tjiwarl Heritage Agreement (as defined in the Tjiwarl Palyakuwa (Agreement)) subject only to necessary modifications in terminology for the Tenure, and provided a copy of the Tjiwarl Heritage Agreement to Tjiwarl (Aboriginal Corporation) RNTBC (**Tjiwarl AC**) for execution on:

[Insert date]

3. The registered holder for the Tenure has made reasonable endeavours to obtain an executed copy of the (*) Tjiwarl Exploration Agreement / (**) Tjiwarl Heritage Agreement from Tjiwarl AC within 40 Business Days of the date in paragraph 2 above.
4. By executing the (*) Tjiwarl Exploration Agreement / (**) Tjiwarl Heritage Agreement and providing a copy to Tjiwarl AC in the manner provided in paragraphs 2 and 3 above and, not having received a copy of the (*) Tjiwarl Exploration Agreement / (**) Tjiwarl Heritage Agreement that is executed by Tjiwarl AC within 40 Business Days of the date in paragraph 2 above, I believe that the registered holder of the Tenure will, by providing this Statutory Declaration to the State of Western Australia, have satisfied the conditions applicable to the Tenure.
5. Attached to this declaration is:
 - (a) a copy of the (*) Tjiwarl Exploration Agreement / (**) Tjiwarl Heritage Agreement as executed by the applicant for the Tenure that was provided to Tjiwarl AC for execution;
 - (b) any covering email or letter which accompanied the executed (*) Tjiwarl Exploration Agreement / (**) Tjiwarl Heritage Agreement; and
 - (c) any proof of delivery or receipt of the executed (*) Tjiwarl Exploration Agreement / (**) Tjiwarl Heritage Agreement by Tjiwarl AC .
6. This declaration is true and I know that it is an offence to make a declaration knowing that it is false in any material particular.
7. This declaration is made under the *Oaths, Affidavits and Statutory Declarations Act 2005* (WA).

Declared by:

(Signature of person making declaration)

In the presence of:

(Signature of Authorised Witness)

(Name and Qualifications of Authorised Witness)

Item C – Instructions to complete a Statutory Declaration

The following is a guide for executing a statutory declaration pursuant to the *Oaths, Affidavits and Statutory Declarations Act 2005* (WA). Please read this guide carefully before attempting to complete the Proponent Statutory Declaration as errors may render the declaration invalid.

It is also recommended that prior to executing the Proponent Statutory Declaration the person making the declaration should consult the provisions of *Oaths, Affidavits and Statutory Declarations Act 2005* (WA) to ensure compliance with that Act.

1. Form of the Proponent Statutory Declaration

- (a) The Proponent Statutory Declaration will only be accepted by the Department of Mines, Industry Regulation and Safety (**DMIRS**) if executed in the form provided. In exceptional circumstances, if a Proponent needs to alter the basic form, then they should discuss the desired amendment with DMIRS prior to executing the declaration.
- (b) The Proponent Statutory Declaration, has been designed to be submitted as an original document, but in the event of the Proponent Statutory Declaration being re-typed, every care should be taken to avoid errors.

2. Signature by the person making the statutory declaration

The person who is making the Proponent Statutory Declaration must:

- (a) sign or personally mark the statutory declaration;
- (b) sign or initial any amendment that has been made to the statutory declaration (if any); and
- (c) in the presence of an authorised witness declare orally:
 - (i) that he or she is the person named as the maker of the statutory declaration;
 - (ii) that the contents of the statutory declaration are true;
 - (iii) that the signature or mark is his or hers; and
 - (iv) if necessary, that any attachment to the statutory declaration is the attachment referred to in it.

3. Witnessing of a statutory declaration

After the maker of the Proponent Statutory Declaration has complied with the above the authorised witness must:

- (a) sign or personally mark the statutory declaration;
- (b) sign or initial any amendment in the statutory declaration (if any); and
- (c) imprint or clearly write his or her name and qualification as an authorised witness.

4. Categories of authorised witnesses

The Proponent Statutory Declaration must be made before one of the following persons (**authorised witnesses**):

Academic (post-secondary institution), Accountant, Architect, Australian Consular Officer, Australian Diplomatic Officer, Bailiff, Bank Manager, Chartered Secretary, Chemist, Chiropractor, Company Auditor or Liquidator, Court Officer, Defence Force Officer, Dentist, Doctor, Electorate Officer of a Member of State Parliament, Engineer, Commonwealth Industrial Organisation Secretary, Insurance Broker, Justice of the Peace, Landgate Officer, Lawyer, Local Government CEO or Deputy CEO, Local Government Councillor, Loss Adjuster, Marriage Celebrant, Member of Parliament, Minister of Religion, Nurse, Optometrist, Patent Attorney, Physiotherapist, Podiatrist, Police Officer, Post Office Manager, Psychologist, Public Notary, Public Servant (Commonwealth), Public Servant (State), Real Estate Agent, Settlement Agent, Sheriff or Deputy Sheriff, Surveyor, Teacher, Tribunal Officer or Veterinary Surgeon.

5. Provision of the Proponent Statutory Declaration to DMIRS

It is important to forward the executed Proponent Statutory Declaration to DMIRS as soon as possible after execution.

6. Evidence of provision of the Tjiwarl Exploration Agreement or Tjiwarl Heritage Agreement to Tjiwarl AC

It is recommended that you keep an accurate record of the date and manner of provision of the Tjiwarl Exploration Agreement or Tjiwarl Heritage Agreement to Tjiwarl AC. This may include, for example, copies of emails or registered post tracking numbers and receipts. These are required to be attached to the executed Proponent Statutory Declaration

Tjiwarl Palyakuwa (Agreement)

SCHEDULE 4 – Annexure 10

Tjiwarl Heritage Agreement

Item A – Tjiwarl Heritage Agreement

Item B – Instructions for executing the Tjiwarl Heritage Agreement

Item A – Tjiwarl Heritage Agreement

The following form of Tjiwarl Heritage Agreement is provided for the purpose of Schedule 4 of the Tjiwarl Palyakuwa (Agreement).

Instructions for completing the Tjiwarl Heritage (Agreement) are provided at Item B of this Annexure.

TJIWARL HERITAGE AGREEMENT

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Details of Agreement

THIS AGREEMENT is made on the date specified in item 1 of Schedule 1.

BETWEEN

TJIWARL (ABORIGINAL CORPORATION) RNTBC (ICN 8628) in its own right and for and on behalf of the Tjiwarl People (**Tjiwarl AC**)

and

The **PROPONENT** described in item 3 of Schedule 1.

Recitals

- A. The Proponent holds the Tenure within in the Tjiwarl Determination Area.
- B. Pursuant to the Tjiwarl Determination, Tjiwarl AC is the registered native title body corporate that holds the native title rights and interests on trust for the Tjiwarl People. Tjiwarl AC is an incorporated body under the CATSI Act. It is governed by the Tjiwarl Rule Book.
- C. Tjiwarl AC and the State have entered into an ILUA (body corporate agreement) entitled the Tjiwarl Palyakuwa (Agreement). The Agreement Area in relation to the Tjiwarl Palyakuwa (Agreement) includes part or all the area of the Tenure.
- D. In accordance with Schedule 4 of the Tjiwarl Palyakuwa (Agreement), the Tenure has been granted subject to a condition imposed on the Tenure requiring the Proponent to enter into this Agreement, and maintain it for the term of the Tenure, before exercising any of the rights, powers or duties pursuant to the Tenure.
- E. The Proponent has agreed to enter into this Agreement with Tjiwarl AC to comply with the abovementioned condition imposed on the Tenure.
- F. The Parties acknowledge that the AHA currently remains in force and, following the transition period, the ACHA will come into operation and the AHA will be repealed. Further, the Parties agree that this Agreement will need to be reviewed once the ACHA comes into operation.

THE PARTIES AGREE THAT:

1. Definitions and Interpretation

Definitions

1.1 In this Agreement, unless the context requires otherwise the following words and phrases have the following meanings

Aboriginal Cultural Heritage has the meaning given to it in section 12 of the ACHA.

Aboriginal Cultural Material Committee means the ‘Committee’ as defined in the AHA (until such time as it is repealed).

Aboriginal Object means an object (including Aboriginal remains) of particular significance to the Tjiwarl People in accordance with their laws and customs.

Aboriginal Site means a place, area or object of significance to the Tjiwarl People and may include, but is not limited to, any place that is:

- (a) an “Aboriginal Site” as defined in the AHA (until such time as it is repealed);
- (b) an “Aboriginal place” as defined in the ACHA;
- (c) an “Aboriginal cultural landscape” as defined in the ACHA;
- (d) a “significant Aboriginal area” as defined in the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth); or
- (e) an ‘area or site of particular significance’ within the meaning of section 237(b) of the Native Title Act.

ACHA means the *Aboriginal Cultural Heritage Act 2021* (WA).

Activity means any activity done pursuant to the Tenure within the Tenure Area and includes both Non-Ground Disturbing Activity and Ground Disturbing Activity.

Agreement means this agreement and its schedules and includes any variation or replacement of it.

AHA means the *Aboriginal Heritage Act 1972* (WA).

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

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

Cleared Area means an area over which a Survey has been carried out in accordance with this Agreement and which is confirmed in the Survey Report to be cleared for the Ground Disturbing Activity identified in the relevant Work Program.

Commencement Date means the date on which both Parties have executed this Agreement, being date specified in item 1 of Schedule 1.

Confidential Information means:

- (a) all information disclosed by one Party to another Party during the exchange of communications leading up to executing this Agreement and during the term of this Agreement;
- (a) all information, reports, maps and other documents about or relating to the traditional laws and customs of Tjiwarl People, Aboriginal Sites or Aboriginal Objects, including the names of Aboriginal participants in Surveys and Survey Reports and other documents produced in relation to Surveys;
- (b) any information that Tjiwarl AC nominates as being provided on a confidential basis; and
- (c) the Proponent's commercially sensitive information and any information the Proponent nominates as being provided on a confidential basis.

Construct, in relation to roads or tracks, means undertaking activities with the purpose of creating new roads or tracks, including excavation or clearing, but does not include travelling over land without clearing vegetation, and Construction has the corresponding meaning;

Dispute has the meaning given by clause 13.1.

Dispute Notice has the meaning given by clause 13.1.

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.

Environmental Surveys means biodiversity surveys, flora and fauna surveys, environmental assessments and any other similar activities.

First Review Date has the meaning set out in clause 19.1(a).

Ground Disturbing Activity means an Activity that disturbs the ground and includes, but is not limited to:

- (a) the recording of seismic soundings along seismic lines using seismic vehicles;
- (b) drilling (including drilling on existing tracks);
- (c) digging (with mechanised equipment);
- (d) digging trenches (with or without mechanised equipment);
- (e) blasting;
- (f) earthmoving;
- (g) vegetation clearance;
- (h) grading;
- (i) gravel extraction;
- (j) construction of new or widening of existing roads and tracks; and
- (k) the establishing of camps involving heavy vehicles, water bores or more than ten vehicles (including caravans) at any one time,

but does not include the matters listed in paragraphs (a) to (d) of the definition of Non-Ground Disturbing Activity.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Heritage Acts means the AHA, the ACHA and the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) and includes subsidiary legislation made under these Acts.

Heritage Monitor means a member of the Tjiwarl People nominated by Tjiwarl AC to monitor Ground Disturbing Activities as specified in Schedule 2, clause 12(a).

Heritage Monitoring Team means:

- (a) up to two (2) Heritage Monitors; and
- (b) a Liaison Officer.

Index Rate means the rate calculated as follows:

$$\text{Index Rate} = \left(\frac{\text{CPI}(1) - \text{CPI}(2)}{\text{CPI}(2)} \right) \times 100$$

where:

- (a) CPI(1) is the consumer price index number (All Groups) Perth as published quarterly by the Australian Bureau of Statistics (or any such index number published quarterly in substitution thereof) being the last such index number published before the date upon which the Index Rate is to be applied;
- (b) CPI(2) is the consumer price index number (All Groups) Perth as published quarterly in the Australian Bureau of Statistics (or any such index number published quarterly in substitution thereof) as published for:
 - (i) the quarter immediately prior to the Commencement Date; or
 - (ii) the quarter of the previous year that corresponds to CPI(1),

whichever is the later.

Where the Commonwealth Government ceases to publish the consumer price index number (All Groups) Perth, the Index Rate shall be determined by a person agreed upon by the Parties and, in the absence of such an agreement, by a person nominated by the President for the time being of the Australian Institute of Chartered Accountants, being a person having appropriate qualifications and experience, who will make the determination acting as an expert.

Initial Payment means the payment made in accordance with Schedule 2, clause 8(a).

ILUA (body corporate agreement) means an indigenous land use agreement (body corporate agreement) as described in Part 2, Division 3, Subdivision B of the Native Title Act.

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

Law Business Period means the period approximately between 1 December and 1 March of each year during which the Tjiwarl People are often unavailable due to significant cultural responsibilities.

Liaison Officer means a person nominated by Tjiwarl AC, to liaise between Tjiwarl AC and the Proponent to facilitate the work, pursuant to this Agreement, of any:

- (a) Survey Team; or
- (b) Heritage Monitoring Team;

and includes that person's delegate.

Maintain means to undertake activities for the purpose of preserving the condition of a road or track, which does not include:

- (a) widening the road or track;
- (b) deviating from the road or track;
- (c) re-routing the road or track; or
- (d) changing the character or purpose of the road or track,

and Maintaining has the corresponding meaning.

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

mining tenement has the meaning given in the Mining Act.

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

Non-Ground Disturbing Activity means an Activity that is not Ground Disturbing Activity and includes, but is not limited to:

- (a) aerial surveying;
- (b) the use of hand tools for sampling surficial materials including rock, soil, water and stream sediment;
- (c) geophysical surveying;
- (d) the establishing of tent or caravan camps not involving heavy vehicles, water bores or more than ten vehicles (including caravans) at any one time; and
- (e) Environmental Surveys.

Parties means the Proponent and Tjiwarl AC.

Personnel includes agents, employees, contractors and sub-contractors of the Proponent.

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

PGER Title means a permit, drilling reservation, access authority, lease, licence, or special prospecting authority granted under the PGER Act.

Proponent means the party described in described in item 3 of Schedule 1 and includes its successors and assigns.

Proponent's Nominee means an employee or nominee of the Proponent who attends the fieldwork component of a Survey pursuant to Schedule 2, clause 7 and **Proponent's Nominee(s)** has the corresponding meaning.

Recipient has the meaning given in clause 9.

Registered Native Title Body Corporate has the meaning given to it in the Native Title Act.

Related Body Corporate has the meaning given to it in the *Corporations Act 2001*(Cth) and, with respect to Tjiwarl AC, it has the meaning given to it in the CATSI Act.

Replacement RNTBC has the meaning given in clause 4.3.

Retention Status has the same meaning given to it under section 8(5) of the Mining Act.

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

Supplier has the meaning given in clause 9.

Survey means an ethnographic and/or archaeological survey of the Work Areas identified in a Work Program that is carried out in accordance with this Agreement to determine which parts of those Work Areas are Cleared Areas for the conduct of the Ground Disturbing Activity identified in that Work Program.

Survey Report means the Report referred to in Schedule 2, clause 9(a).

Survey Team means the people appointed to conduct a Survey referred to in Schedule 2, clause 7(a).

Tenure means the mining tenement or PGER Title held by the Proponent and identified Schedule 1, item 2 and includes a renewal or extension of that Tenure from time to time.

Tenure Area means that part of the land or waters the subject of the Tenure that is within the Tjiwarl Determination Area.

Termination Date means the date when the Proponent or its assignees cease to hold an interest in the Tenure, or the Agreement is terminated pursuant to clause 4.2, 5.2(b) or 18.2.

Traditional Owners means those Tjiwarl People who have authority to speak for the relevant Work Area in accordance with the traditional laws and customs of the Tjiwarl People.

Tjiwarl AC means Tjiwarl (Aboriginal Corporation) RNTBC (ICN 8628) of Unit 6, 524 Abernethy Road, Kewdale, WA, 6105 and includes the Tjiwarl AC acting through its duly appointed agent from time to time.

Tjiwarl Determination means the orders of the Federal Court of Australia made in native title determination applications WAD 228 of 2011 (Tjiwarl) and WAD 302 of 2015 (Tjiwarl #2) by Mortimer J on 27 April 2017 as amended by order 2 of the Full Court of the Federal Court of Australia on 1 February 2018 (as itself amended by order 2 of the High Court of Australia on 17 April 2019).

Tjiwarl Determination Area means the area of land and waters the subject of the Tjiwarl Determination.

Tjiwarl Palyakuwa (Agreement) means the Tjiwarl Palyakuwa (Agreement), the ILUA (body corporate agreement) that was entered into on [*insert date*] and which was entered on the Register of Indigenous Land Use Agreements on [*insert date*].

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

Tjiwarl Payments Account means a bank account nominated by Tjiwarl AC as the Tjiwarl Payments Account.

Tjiwarl Rule Book means the consolidated rule book of Tjiwarl AC registered on 9 November 2020 and amended from time to time.

Work Area means the area identified in a Work Program as the area in which the Proponent proposes to carry out Activities pursuant to that Work Program.

Work Program means the Proponent's notice to Tjiwarl AC of its proposed Activities pursuant to Schedule 2, clauses 2 or 4.

Interpretation

1.2 In this Agreement, unless context requires otherwise:

- (a) a reference to a recital, clause or Schedule is to a recital, clause or Schedule of this Agreement;
- (b) headings are for reference only and do not govern the meaning or construction of this Agreement or of any provision contained in this Agreement;

- (c) a reference to a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
- (d) a reference to legislation or regulations is a reference to that legislation or regulation as amended, replaced or re-enacted for the time being in force and any by-laws, statutory instruments, rules, regulations, notices, orders, directions, consents or permissions made thereunder and any conditions attaching thereto;
- (e) reference to a person or party includes that person's or party's successors, permitted substitutes, persons taking by novation, permitted transferees, receivers, managers, administrators and permitted assignees and, in the case of a natural person, also includes that person's executors and administrators;
- (f) a singular word includes the plural, and vice versa;
- (g) a word that suggests one gender includes the other genders;
- (h) the word "including" is to be read as if it were followed by, "but not limited to";
- (i) if a word is defined, a derivative of the word has a corresponding meaning;
- (j) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally; and
- (k) a reference to any thing is a reference to the whole or any part of it and a reference to a group of persons is a reference to any one or more of them.

2. Aboriginal Cultural Heritage Protection

- 2.1 The Proponent shall not enter the Tenure Area or conduct any Activities except in accordance with this Agreement.
- 2.2 The Parties agree to follow the processes set out in Schedule 2 of this Agreement in relation to the protection of Aboriginal Cultural Heritage in the Tenure Area.
- 2.3 Nothing in this Agreement is intended to or purports to:
 - (a) authorise the Explorer to breach the Heritage Acts;
 - (b) exclude, limit or modify the operation of the ACHA; or
 - (c) exclude, limit or modify any duty owed under the ACHA.

3. Notification of changes to the Tenure

- 3.1 If the Proponent makes any application for an extension of the term in relation to the Tenure (or for Retention Status in the case of a mining tenement), the Proponent shall give Tjiwarl AC:
- (a) a copy of that application within fifteen (15) Business Days of lodging it with DMIRS; and
 - (b) notice of the result of that application within fifteen (15) Business Days of receiving notification of that result.
- 3.2 The Proponent shall give Tjiwarl AC notice of the surrender of any part the Tenure within fifteen (15) Business Days of that surrender taking effect.

4. Assignment

Assignment by the Proponent

- 4.1 The Proponent agrees that it will not assign, transfer, novate or otherwise dispose of (whether by farm-out, joint venture, sale or otherwise) any part of its interest in the Tenure or its rights, interests or obligations under this Agreement unless:
- (a) the Proponent notifies Tjiwarl AC in writing of the name of the prospective assignee at least twenty (20) Business Days before the assignment;
 - (b) at the request of Tjiwarl AC, the Proponent consults with Tjiwarl AC about the prospective assignee;
 - (c) the Proponent procures the prospective assignee to execute a deed of assumption by which the prospective assignee agrees to:
 - (i) be bound by this Agreement and to assume all of the Proponent's obligations under the Agreement; and
 - (ii) execute all documents and do (or refrain from doing) all acts and things necessary to ensure the performance of and compliance with those obligations in a timely manner,as if it were a party to this Agreement; and
 - (d) evidence of that assumption is provided to Tjiwarl AC.

4.2 In the event that the Proponent purports to assign its interest in the Tenure or its rights, interests or obligations under this Agreement without following the assignment process contemplated in clause 4.1, Tjiwarl AC may terminate the Agreement without further notice to the Proponent.

Assignment by Tjiwarl AC

4.3 Tjiwarl AC agrees that it may only assign, transfer, novate or otherwise dispose of its rights obligations or interests under this Agreement to a registered native title body corporate (**Replacement RNTBC**) that has replaced it as the prescribed body corporate for the Tjiwarl Determination by a determination of the Federal Court of Australia under sections 56 or 57 of the Native Title Act.

4.4 If Tjiwarl AC proposes to assign, transfer novate or otherwise dispose of its rights, interests or obligations under this Agreement to the Replacement RNTBC it must:

- (a) give notice in writing of the name of the Replacement RNTBC at least twenty (20) Business Days before the assignment;
- (b) procure the Replacement RNTBC to execute a deed of assumption by which the Replacement RNTBC agrees to:
 - (i) be bound by this Agreement and to assume all of Tjiwarl AC's obligations under the Agreement; and
 - (ii) execute all documents and do (or refrain from doing) all acts and things necessary to ensure the performance of and compliance with those obligations in a timely manner,
as if it were a party to this Agreement; and
- (c) give evidence of that assumption to the Proponent.

4.5 Tjiwarl AC will be released from its obligations under this Agreement to the extent that those obligations have been assumed by the Replacement RNTBC, save for any obligations pursuant to clause 11.

5. Defaults and Termination

5.1 If the Proponent:

- (a) fails to make any payment due to Tjiwarl AC pursuant to this Agreement; and
- (b) is in breach of any term or condition of this Agreement,

then Tjiwarl AC may issue the Proponent with a notice of default notifying the Proponent of the details of the default and giving the Proponent twenty (20) Business Days to pay the amount owing or remedy the default, as the case may be.

5.2 Where the Proponent fails to:

- (a) make the payment due to Tjiwarl AC; or
- (b) remedy or commence to remedy any breach of the Agreement,

and the requirements of clause 5.1 have been met then Tjiwarl AC may terminate the Agreement without further notice to the Proponent.

6. Cultural Protection and Respect

6.1 The Proponent shall prohibit all Personnel involved in the Activities from behaving in a manner that is deliberately disrespectful to the culture or traditions of the Tjiwarl People or in a manner that is offensive to the Tjiwarl People.

6.2 The Proponent shall inform its Personnel of the Proponent's obligations under this Agreement and under the Heritage Acts.

6.3 The Proponent shall require its Personnel to comply with the provisions of this Agreement.

7. Warranties

7.1 Tjiwarl AC warrants that:

- (a) it is authorised to enter into this Agreement on behalf of the Tjiwarl People and the terms of this Agreement are binding on them;
- (b) to the best of their knowledge and information, the Tjiwarl People nominated by Tjiwarl AC to the Survey Team pursuant to Schedule 2, clause 7(a) are those who have the authority to speak for the relevant Work Area in accordance with the traditional laws

and customs of the Tjiwarl People and are Knowledge Holders for the purpose of the ACHA; and

(c) a Survey completed in accordance with this Agreement shall bind all Tjiwarl People.

7.2 The Proponent warrants that it has full power and authority to enter into this Agreement and it is bound by the terms of this Agreement.

8. Indemnity and Insurance

8.1 The Proponent releases Tjiwarl AC, Survey Team members and Heritage Monitoring Team members from any liability for loss or damage to the Proponent's vehicles, equipment and employees except to the extent such loss or damage is caused by the negligence or wilful misconduct by Tjiwarl AC, Survey Team members or Heritage Monitoring Team members.

8.2 The Proponent indemnifies and holds harmless Tjiwarl AC in relation to any loss or damage to a third party caused by any Activity by the Proponent, save to the extent that Tjiwarl AC caused such loss or damage.

9. GST

9.1 Any reference in this clause 9 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.

9.2 Unless otherwise indicated, all amounts and other consideration for any Taxable Supply made under this Agreement are exclusive of GST.

9.3 If GST is or becomes payable by a Party in relation to any supply that it makes under, in connection with or resulting from this Agreement (**Supplier**), the Parties agree that, in addition to any consideration provided by a Party (**Recipient**) for a supply from the Supplier, the Recipient must also pay the Supplier, at the same time as providing the consideration, the amount of any GST for which the Supplier is liable in relation to that supply (**additional amount**).

9.4 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.

9.5 If a Recipient is required under this Agreement to reimburse or pay to a Supplier an amount calculated by reference to a cost, expense or an amount paid or incurred by that Supplier, the amount of the reimbursement or payment will be reduced by the amount of any input tax

credits to which the Supplier is entitled in respect of any acquisition relating to that cost, expense or other amount.

10. Duty

The Proponent shall pay all duty assessed on this Agreement, if any, including any duty payable by way of fine or penalty.

11. Confidentiality

11.1 A Party shall not:

- (a) subject to 11.2, disclose the other Party's Confidential Information to a third party; or
- (b) use the other Party's Confidential Information unless that use is reasonably necessary for a Party to exercise its rights or comply with its obligations under this Agreement or any law.

11.2 A Party may disclose the other Party's Confidential Information to a third party:

- (a) with the prior written consent of the other Party;
- (b) to the extent required by law or any rule of a stock exchange;
- (c) to obtain legal advice or for use in legal proceedings;
- (d) to the extent that Confidential Information is already in the public domain, otherwise than by breach of this clause; or
- (e) where such third party is:
 - (i) a bona fide actual or potential assignee of all or part of the Proponent's interest in the Tenure;
 - (ii) a recognised financial institution that requires the disclosure in connection with any loans sought by a Party;
 - (iii) one of the Proponent's Personnel;
 - (iv) Tjiwarl AC's officer, employee, agent, consultant, contractor or advisor; or
 - (v) a Party's Related Body Corporate,

provided that the third party provides a written undertaking to Tjiwarl AC and the Proponent to be bound by this clause 11.

- 11.3 The Parties shall take all steps reasonably necessary to ensure that the Confidential Information is known only to such persons (including any employees of the Parties) as may reasonably require knowledge thereof in the course of their duties or functions.
- 11.4 Without limiting the operation of this Agreement, the Agreement applies to all Confidential Information whether or not any Confidential Information was disclosed to or accessed by the Proponent before the date of this Agreement.
- 11.5 The obligations of the Parties under this clause 11 survive the termination of this Agreement.

12. Unexpected Delays

- 12.1 If a delay in performing an obligation under this Agreement occurs, which is caused by:
- (a) any COVID-19 public health restrictions;
 - (b) the Law Business Period;
 - (c) weather and road conditions;
 - (d) bona fide cultural responsibilities (including funerals) of the relevant Traditional Owners;
 - (e) illness of the relevant Traditional Owners;
 - (f) force majeure; or
 - (g) the other Party's failure to comply in a timely way or at all with its obligations under this Agreement,
- then the time period of that delay shall be excluded from the calculation of any period of time mentioned in this Agreement.
- 12.2 A Party asserting the existence of a delay to which clause 12.1 above applies shall advise the other Party of that delay and take reasonable steps to mitigate that delay.
- 12.3 Where delay caused by the matters listed in clause 12.1 above occurs, the Proponent shall pay the reasonable, unrecoverable costs of Tjiwarl AC incurred as a result of that delay.

13. Dispute Resolution

Notification and Negotiation of a Dispute

- 13.1 If a dispute arises between the Parties in connection with this Agreement or a Survey Report (**Dispute**) either Party may give notice in writing to the other Party identifying the nature of the Dispute (**Dispute Notice**).
- 13.2 Following the issue of a Dispute Notice, senior representatives of the Parties shall consult with each other in good faith in a timely manner to seek to resolve the Dispute.
- 13.3 If the Parties cannot resolve the Dispute within twenty (20) Business Days of a Dispute Notice being served (or other such longer period as may be agreed between the Parties) any Party may refer the dispute to mediation.

Mediation

- 13.4 If the Dispute is referred to mediation:
- (a) the Parties must seek to agree on the appointment of an independent mediator with relevant experience; or
 - (b) if the Parties cannot agree on a mediator within seven (7) Business Days of the referral to mediation, a person nominated by the President or Acting President of the Law Society of Western Australia.
- 13.5 The reasonable cost of the mediator is to be borne by the Party that refers the Dispute to mediation.
- 13.6 The role of the mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a Party to the Dispute except if the Party agrees in advance in writing.
- 13.7 The Parties to the Dispute will engage in the mediation process in good faith and in an open and conciliatory manner, taking into account any cultural or customary concerns or considerations, with a view to reaching a mutually acceptable compromise to the issues in dispute.
- 13.8 If the Parties to the Dispute fail to achieve a resolution of the Dispute within thirty (30) Business Days of the appointment of the mediator (or such other longer period as may be

agreed between the Parties to the Dispute), any Party to the Dispute may by written notice to the other Parties to the Dispute terminate the mediation process.

Costs

13.9 Subject to clause 13.5, the Parties shall bear their own costs of participating in any consultation or mediation conducted pursuant to this clause 13.

Court Proceedings

13.10 Subject to clause 13.11, a Party to a Dispute may not start court proceedings in relation to a Dispute unless the Dispute has first been referred to mediation and the mediation has been terminated in accordance with clause 13.8.

13.11 Nothing in this clause 13 precludes a Party from seeking urgent interlocutory relief relative to the subject matter of a Dispute from a court of competent jurisdiction, including the right to seek injunctive relief.

14. Notice

Notice

14.1 Each notice or other communication given by one Party to another pursuant to this Agreement:

- (a) shall be in writing;
- (b) must be delivered to the address for the Party specified in clause 14.3 or to such other address as a Party may nominate in writing;
- (c) subject to clause 14.2 and Schedule 2, will be taken to be duly given or made:
 - (i) if delivered by hand, upon delivery;
 - (ii) if sent by ordinary pre-paid post, ten (10) Business Days after posting; and
 - (iii) if sent by email, at the earlier of:
 - (A) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
 - (B) the time that the intended recipient confirms receipt of the email by reply email; and

- (C) four (4) hours after the time that the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that four (4) hour period, an automated message that the email has not been delivered.

14.2 If the result of clause 14.1(c) is that a notice or other communication would be taken to be given or made on a day that is not a Business Day, or is later than 4.00pm (local time), in the place to which the notice or other communication is sent, it will be taken to have been duly given or made at 9.00am on the next Business Day in that place.

Address for Notices

14.3 For the purpose of this clause 14, unless notified by a Party otherwise, the address to which notices and other communications are to be sent shall be:

- (a) for Tjiwarl AC:

In-House Legal Counsel
Tjiwarl (Aboriginal Corporation) RNTBC
Unit 6/524 Abernethy Road
Kewdale WA 6105
Telephone: 08 9200 3730
By Email: compliance@tjiwarl.org.au

- (b) for the Proponent: as set out in Schedule 1, item 4

15. Entire Agreement

This Agreement represents the entire understanding of the Parties in connection with its subject matter.

16. Counterparts

16.1 This Agreement may be executed in two counterparts.

16.2 If executed in two counterparts, both counterparts together shall be taken to constitute one instrument.

17. Governing Law

This Agreement is governed by the laws in force in the State of Western Australia and the Commonwealth of Australia.

18. Term and Termination

18.1 This Agreement shall commence on the Commencement Date and shall come to an end on the Termination Date.

18.2 The Parties may terminate this Agreement by mutual agreement in writing.

19. Review of Agreement

Review of the Agreement

19.1 Subject to clause 19.2, at the request of any Party, the Parties will meet:

(a) as soon as reasonably practicable following the ACHA coming into operation (**First Review Date**); and

(b) no more than every two (2) years from the First Review Date,

to review the operation of this Agreement and to use their best endeavours to agree to such changes that may be required to ensure that this Agreement operates fairly to each of the Parties.

19.2 The Parties agree that if any party requests a review of this Agreement, then that party must invite the State to participate in any such review undertaken by the Parties by notifying the following representative of the State in writing:

Department of Mines, Industry Regulation and Safety
100 Plain Street
East Perth WA 6000

Costs of Review

19.3 Subject to clause 19.4, the Parties will bear their own costs, including legal costs, associated with the review of this Agreement.

19.4 If, as a result of a review of this Agreement under clause 19, the Proponent requires Tjiwarl AC to consider proposed amendments to the Agreement, the Proponent shall pay the reasonable costs of Tjiwarl AC incurred to consider such amendments, including the reasonable costs of legal advice and representation.

EXECUTED by the parties as an agreement

SIGNED by **TJIWARL ABORIGINAL CORPORATION (RNTBC) ICN 8628** in accordance with section 99.5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) in the presence of:

Signature of Director

Signature of Director

Full name of Director (print)

Full name of Director (print)

Date

Date

PROPONENT¹

SIGNED by [INSERT FULL NAME OF
PROPONENT] in the presence of:

Signature of [*insert Explorer name*]

Signature of witness

Date

Full name of witness (print)

Address of witness

Occupation of witness

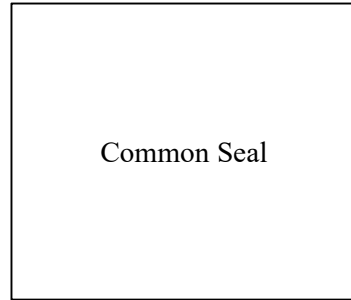
¹ Delete this footnote, the heading and the execution clauses for the Explorer that are not applicable.

OR IF THE PROPONENT IS A COMPANY

Note: This deed must be executed by affixing the common seal of the company to the deed in the presence of two directors, or one director and the company secretary. Alternatively, under section 127(1) of the Corporations Act 2001 (Cth) a company can execute a document without using a common seal if the document is signed by two directors, or a director and a company secretary or for a proprietary company that has a sole director who is also the company secretary – that director.

WITH A COMMON SEAL

The **COMMON SEAL** of [INSERT
COMPANY NAME] ACN [*insert ACM*]
was affixed to this deed in the presence of



Signature of Director

Signature of Director / Secretary*

*delete whichever is not applicable

Full name of Director (print)

Full name (print)

Date

Date

WITHOUT A COMMON SEAL

SIGNED for [INSERT **COMPANY NAME**] ACN
[*insert ACN*] in accordance with section 127(1) of the
Corporations Act 2001 (Cth) in the presence of:

Signature of Director

Signature of Director / Secretary*

*delete whichever is not applicable

Full name of Director (print)

Full name (print)

Date

Date

SOLE PROPRIETOR COMPANY

SIGNED for [INSERT COMPANY NAME] ACN
[insert ACN] in accordance with section 127(1) of the
Corporations Act 2001 (Cth) in the presence of:

Signature of Director
(as sole Director and Secretary)

Full name (print)

Date

Schedule 1 – Details of the Tjiwarl Heritage Agreement

ITEM	DETAILS
1. Date of Agreement (to be entered by Tjiwarl AC only)	
2. Tenure	Tenure 1: Tenure No: Tenure Type: Tenure 2: Tenure No: Tenure Type: <i>[insert / delete as required]</i>
3. Proponent Details	Proponent 1: Name*: *include ACN if a company Address: Proponent 2: Name*: *include ACN if a company Address: <i>[insert / delete as required]</i>
4. Proponent's Address	Contact Name: Company: Address: Telephone: Email:

Schedule 2 – Heritage Protection

1. Interpretation

- (a) Unless the contrary intention appears, a reference in this Schedule to a clause is to a clause of this Schedule.
- (b) Unless the contrary intention appears, any word or phrase used in this Schedule has the same meaning as given to it in clause 1.2 of the main body of this Agreement.

2. Notification of Intention to Undertake Non-Ground Disturbing Activity

- (a) At least twenty (20) Business Days before conducting any Non-Ground Disturbing Activity, the Proponent shall:
 - (i) provide to Tjiwarl AC a Work Program containing at least the following information:
 - (A) 1:250,000 topographic map showing the proposed Work Area;
 - (B) the nature of the proposed Non-Ground Disturbing Activity, including the techniques, types of equipment and vehicles to be used;
 - (C) an estimation of when and for how long the proposed Non-Ground Disturbing Activity is to take place; and
 - (D) an estimation of the number of Personnel who will access the Claim Area in connection with the conduct of the proposed Non-Ground Disturbing Activity; and
 - (ii) pay to Tjiwarl AC the Initial Payment.
- (b) Subject to clause 2(a), the Proponent shall use its best endeavours to provide all Work Programs relating to Non-Ground Disturbing Activity proposed for any calendar year to Tjiwarl AC by the end of February of that year.
- (c) Should Tjiwarl AC reasonably consider that the Activity outlined in the Work Program provided pursuant to clause 2(a) is:
 - (i) not Non-Ground Disturbing Activity; or
 - (ii) likely to damage, disturb or interfere with an Aboriginal Site or Aboriginal Object,

then Tjiwarl AC shall notify the Proponent of its concerns within fifteen (15) Business Days of receipt of the completed Work Program and the Parties shall meet to endeavour to resolve the matter.

3. Where Non-Ground Disturbing Activity May Be Undertaken

If:

- (a) the Proponent has notified Tjiwarl AC of the proposed Non-Ground Disturbing Activity in a Work Program provided in accordance with clause 2(a); and
- (b) any concerns about that proposed Non-Ground Disturbing Activity that Tjiwarl AC has notified the Proponent pursuant to clause 2(c) have been resolved,

then the Proponent may undertake that Non-Ground Disturbing Activity, as identified in the relevant Work Program.

4. Notification of Intention to Undertake Ground Disturbing Activity

- (a) Before conducting Ground Disturbing Activity (unless otherwise agreed by Tjiwarl AC), the Proponent shall:
 - (i) provide to Tjiwarl AC a Work Program containing at least the following information:
 - (A) 1:250,000 topographic map (two (2) copies) and 1:50,000 topographic map or similar scale aerial photograph (two (2) copies) showing the Work Area;
 - (B) the location of the proposed Work Area, proposed Ground Disturbing Activity and any access routes as follows:
 - 1. in digital format, preferably in shapefile format (.shp), including a note of the relevant projection and datum; and
 - 2. if relevant, as x and y co-ordinates of vertices, including a note of the relevant projection and datum, preferably in GDA2020 MGA zone 51;
 - (C) the nature of the proposed Ground Disturbing Activity, including the techniques, types of equipment, infrastructure and vehicles to be used;
 - (D) an estimation of when and for how long the proposed Ground Disturbing Activity is to take place;
 - (E) any water, biological or other materials or resources proposed to be obtained from the Tenure Area;

- (F) an estimation of the number of Personnel who will access the Claim Area in connection with the conduct of the Ground Disturbing Activity; and
 - (G) any requirement that may be applied to restrict access to the area by Tjiwarl People and, if so, the nature and extent of that restriction; and
- (ii) pay to Tjiwarl AC the Initial Payment.
- (b) Subject to clause 4(a), in order to facilitate the orderly, expeditious and efficient conduct of Surveys, the Proponent shall use its best endeavours to provide all Work Programs relating to Ground Disturbing Activity proposed for any calendar year to Tjiwarl AC by the end of February of that year.

5. Consultation about whether a Survey is required

- (a) After the Proponent delivers a Work Program for Ground Disturbing Activity to Tjiwarl AC under clause 4, the Parties shall consult with each other to determine whether a Survey is required.
- (b) The Parties shall use best endeavours to undertake and resolve these consultations within twenty (20) Business Days of Tjiwarl AC receiving the Work Program for Ground Disturbing Activity and payment of the Initial Payment from the Proponent pursuant to clause 4(a).
- (c) The Parties shall take the following factors into account in consultations pursuant to clause 5(a):
 - (i) the views of the Tjiwarl People;
 - (ii) whether any survey has been conducted in relation to the proposed Work Area within the previous five years and the results, methodology, date, participants and quality of any such survey, including the nature of the Ground Disturbing Activity for which areas were cleared or not cleared by that survey;
 - (iii) the extent to which the proposed Work Area has been disturbed by previous Activity;
 - (iv) whether the register of places and objects maintained pursuant to section 38 of the AHA discloses the existence of any potential Aboriginal Sites or Aboriginal Objects in the proposed Work Area;
 - (v) the nature of the proposed Ground Disturbing Activity; and
 - (vi) any other relevant factor raised by either of the Parties.

- (d) The Proponent shall provide Tjiwarl AC with a copy of any report containing the results of any survey on which the Proponent wants to rely in consultations pursuant to clause 5(a).
- (e) If, after the Parties have consulted pursuant to clause 5(a):
 - (i) the Parties agree that a survey has been conducted over the Work Area within the previous five years and, having regard to the factors in clause 5(c), the Parties agree that the previous survey was insufficient to determine which parts of the Work Area are Cleared Areas for the conduct of the Ground Disturbing Activity identified in the relevant Work Program; or
 - (ii) the Parties agree that no survey has been conducted over the Work Area within the previous five years and Tjiwarl AC, having considered the factors set out in clause 5(c), reasonably determines that a Survey is required; or
 - (iii) the Proponent requests,
Tjiwarl AC shall arrange for a Survey over the proposed Work Area.
- (f) To avoid doubt, if a survey has been conducted over the Work Area within the previous five years and the Parties cannot reach agreement on whether that survey was sufficient in accordance with clause 5(e)(i), either Party may refer the matter to the dispute resolution process in clause 13 of the Agreement.

6. Conduct of Survey

- (a) Tjiwarl AC shall use its best endeavours to arrange for the Survey to commence no later than twenty (20) Business Days after the Proponent has accepted the estimate of costs pursuant to clause 8(b) subject to:
 - (i) any delays by the Proponent pursuant to clause 8(b)(ii);
 - (ii) the exclusions in clause 12.1 of the Agreement; or
 - (iii) the Parties agreeing otherwise.
- (b) In relation to any Survey:
 - (i) Tjiwarl AC shall:
 - (A) appoint a Survey Team to conduct the Survey on behalf of Tjiwarl AC; and
 - (B) use its best endeavours to ensure that the Survey Team diligently completes the fieldwork component of the Survey as soon as practicable; and

- (ii) subject to clause 7(d), the Proponent will confirm the name(s) of the Proponent's Nominee(s) to accompany the Survey Team.
- (c) If the Survey Team considers it likely that there are Aboriginal Objects in a Work Area, the Survey Team may recommend that a Heritage Monitoring Team monitor the conduct of all or some types of Ground Disturbing Activity in all or part of that Work Area.

7. The Survey Team

- (a) The Survey Team shall consist of:
 - (i) subject to clauses 7(b) and 7(c), a suitably qualified anthropologist appointed by Tjiwarl AC and, if Tjiwarl AC considers it necessary and the Proponent agrees, an anthropologist of the other gender;
 - (ii) such Traditional Owners as Tjiwarl AC considers necessary;
 - (iii) if nominated by Tjiwarl AC, a Liaison Officer; and
 - (iv) if Tjiwarl AC considers it necessary, an archaeologist.
- (b) If the Proponent has, on reasonable grounds, concerns about any anthropologist to be appointed to the Survey Team, it may request Tjiwarl AC to consider appointing a different anthropologist to the Survey Team.
- (c) If the Parties do not agree as to which anthropologist is to be appointed to the Survey Team, either Party may request the President of the National Native Title Tribunal to appoint an anthropologist to the Survey Team.
- (d) The Proponent shall ensure that the Proponent's Nominees accompanying the Survey Team:
 - (i) have the authority to make amendments to the Work Program if necessary;
 - (ii) are capable of identifying all relevant aspects of the Work Program;
 - (iii) respect the privacy of the Traditional Owners when sensitive cultural matters are being discussed; and
 - (iv) if Tjiwarl AC requests, be of a particular gender.

8. Survey Payments and Costs

- (a) When submitting a Work Program in accordance with clause 2(a) or 4(a) (as the case may be) the Proponent shall pay the amount of two thousand (2000) dollars for the costs associated with preliminary work in relation to progressing the Work Program (**Initial Payment**), such that:
- (i) in the event that a Survey:
 - (A) does not proceed and/or the Proponent does not make the payment in accordance with clause 8(b)(ii), Tjiwarl AC will issue an invoice for any costs incurred by Tjiwarl AC associated with the preliminary work undertaken in progressing the Work Program; and
 - (B) any invoice provided in accordance with clause 8(a)(i)(A) will be credited/offset against the two thousand (2000) dollar Initial Payment; or
 - (ii) in the event that a Survey does proceed, any invoice provided in accordance with sub-clause 7.2(a) or 7.2(b) will be credited/offset against the two thousand (2000) dollar Initial Payment.
- (b) The Proponent shall pay for the costs of the Survey in accordance with the following process:
- (i) prior to the commencement of a Survey, Tjiwarl AC shall submit an estimate of the costs of the Survey to the Proponent for its approval within ten (10) Business Days of all the requirements of clause 4 being met;
 - (ii) following agreement between the Parties on the estimate of costs provided pursuant to clause 8(b)(i), the Proponent shall pay, on receipt of an invoice, fifty per cent (50%) of the agreed estimate of costs, prior to the commencement of the Survey.
 - (iii) the Proponent will be invoiced for all outstanding payments due under the agreed estimate of costs within fifteen (15) Business Days after the completion of the Survey.
- (c) The Proponent shall pay the following costs and expenses, in connection with any Survey, at the following rates:
- (i) Traditional Owners' fees at eight hundred dollars (800) dollars (excluding GST and superannuation contributions) per day per person to a maximum of eight (8) Traditional Owners (unless otherwise agreed by the Parties);

- (ii) unless meals are provided by the Proponent, food costs at fifty (50) dollars per day per person but for no more than eight (8) Traditional Owners (unless otherwise agreed by the Parties);
 - (iii) unless vehicles are provided by the Proponent:
 - (A) the cost of repair and maintenance to the vehicle in relation to any damage sustained during the Survey;
 - (B) the cost of tyre repair or replacement (where any tyres are damaged); and
 - (C) the direct cost of vehicle fuel used;
 - (iv) the anthropologist's professional costs (including for time spent travelling, attending the Survey and preparing the Survey Report) at cost;
 - (v) if an archaeologist is appointed to the Survey Team pursuant to clause 7(a)(iv), the archaeologist's professional costs (including for time spent travelling, attending the Survey and preparing the Survey Report) at cost;
 - (vi) the cost of the anthropologist's and (if relevant) the archaeologist's and Traditional Owners' necessary air travel from locations within Australia;
 - (vii) the anthropologist's and (if relevant) the archaeologist's and Traditional Owners' reasonable accommodation costs;
 - (viii) the Liaison Officer's fee at eight hundred (800) dollars per day (excluding GST and superannuation contributions); and
 - (ix) for administration costs, a sum equivalent to 15% of the payments to be made pursuant to clauses 8(c)(i) – 8(c)(viii) (inclusive) before the addition of any GST.
- (d) The payments in clauses 8(c)(i) and 8(c)(viii) shall be Index Rate Adjusted each twelve (12) months from the Commencement Date.
- (e) The payments in clause 8(c)(i) shall be adjusted every two years from 1 January 2023 to the greater of that payment once Index Rate Adjusted and the prevailing industry standard payment to Aboriginal participants at that time.
- (f) The Parties will meet to review the provisions of clause 8(c) as soon as practicable after the expiry of two (2) years after the Commencement Date and every two (2) years thereafter while this Agreement remains in force.

9. Survey Report

- (a) Within five (5) Business Days of receipt of payment of the invoiced costs of the Survey, Tjiwarl AC shall provide the Proponent with a report which details the outcome of the Survey and contains the information referred to in items 1 to 5 (inclusive) of Schedule 3 (the **Survey Report**).
- (b) The Proponent shall provide any comments on the Survey Report to Tjiwarl AC within ten (10) Business Days of receipt of the Survey Report.
- (c) Where the Proponent has provided comments on the Survey Report pursuant to clause 9(b), Tjiwarl AC shall request the anthropologist and, where relevant, the archaeologist, to take into consideration any comments made by the Proponent and either amend the Survey Report or, where no change is made, prepare a reasonable explanation. Tjiwarl AC shall provide any such amended Survey Report or reasonable explanation to the Proponent as soon as possible.

10. Intellectual Property

All intellectual property rights in:

- (a) the Survey Report; or
 - (b) the nature of information about the traditions, laws and customs of the Tjiwarl People,
- remain with or vest in Tjiwarl AC or the Traditional Owners, as the case may be.

11. Where Ground Disturbing Activity may be undertaken

- (a) If:
 - (i) the Proponent has notified Tjiwarl AC of the proposed Ground Disturbing Activity in a Work Program provided in accordance with clause 4;
 - (ii) a Survey was required pursuant to clause 5(e); and
 - (iii) that Survey has been conducted,
- then the Proponent may undertake that Ground Disturbing Activity, as identified in the relevant Work Program, within Cleared Areas.

- (b) If:
- (i) the Proponent has notified Tjiwarl AC of the proposed Ground Disturbing Activity in a Work Program provided in accordance with clause 4; and
 - (ii) the Parties agree, after consultations pursuant to clause 5(a), that a Survey is not required,
- then the Proponent may undertake that Ground Disturbing Activity, as identified in the relevant Work Program, except in areas identified by any previous survey relied on by the Parties to not be cleared for such Activities.

12. Heritage Monitoring

- (a) If recommended pursuant to clause 6(c), and subject to clause 12(b), the Heritage Monitoring Team may accompany the Proponent when it conducts Ground Disturbing Activity of a type and in an area the subject of the recommendation in order to advise, direct and assist the Proponent in avoiding interfering with:
- (i) any Aboriginal Objects; or
 - (ii) Aboriginal Sites,
- contrary to the traditional law and customs of the Tjiwarl People.
- (b) Unless otherwise agreed by the Parties, the Heritage Monitoring Team shall not monitor the same Ground Disturbing Activity in the same place for more than one day.
- (c) The Proponent shall:
- (i) facilitate the attendance of the Heritage Monitoring Team at the relevant Ground Disturbing Activities in accordance with this clause; and
 - (ii) provide any relevant safety equipment and clothing (except boots) to the Heritage Monitoring Team for the duration of their attendance at the relevant Ground Disturbing Activities in accordance with this clause.
- (d) Unless otherwise agreed by the Parties, the Proponent shall pay invoiced costs and expenses in connection with monitoring done in accordance with this clause on the cost structure (as applicable) specified in clause 8(c), including Heritage Monitors' fees, which shall be at the same rate as the Traditional Owners' fees.

13. No employment or agency relationship

This Agreement does not create a relationship of employment or agency between the Proponent and:

- (a) Tjiwarl AC;
- (b) members of the Survey Team; or
- (c) members of the Heritage Monitoring Team.

14. If the Proponent finds an Aboriginal Site or Object

The Proponent shall immediately report to Tjiwarl AC or to the Heritage Monitoring Team (if present) the location of any previously unidentified potential Aboriginal Site or Aboriginal Object of which it becomes aware during the course of conducting Activities.

15. Consent to section 16 or 18 AHA applications

The Explorer will not make an application under section 16 or 18 of the AHA in relation to any Aboriginal Site or Aboriginal Object without the prior written consent of Tjiwarl AC.

Schedule 3 – Contents of Survey Reports

1. Copyright / Confidentiality

A statement to the effect that the Report may only be copied in accordance with the Agreement and subject to any other restrictions agreed to by the Parties from time to time.

2. Assessment Personnel

- (a) Author's name in full, occupation and business/company name.
- (b) Confirmation that the anthropologist considers the Traditional Owners to be appropriate to speak for Aboriginal heritage in relation to the relevant Work Area.

3. Survey Date(s)

The date/s the fieldwork component of the Survey was conducted.

4. Survey Information

- (a) Details of the area surveyed, including the general location, the relevant Tenure details and reference to the Work Area identified in the Work Program.
- (b) Location of Cleared Areas as x and y co-ordinates of vertices, including a note of the relevant projection and datum, preferably in GDA2020 MGA zone 51.
- (c) Attach a copy or otherwise identify the relevant Work Program.

5. Heritage Monitors

Whether the Survey Team recommends that Heritage Monitors monitor Ground Disturbing Activity in the Work Area and, if so:

- (a) indicate the types of Ground Disturbing Activities to be monitored, by reference to the Ground Disturbing Activities identified in the Work Program; and
- (b) identify in which parts of the Work Area that Ground Disturbing Activity is to be monitored, by reference to where it is located in relation to the Work Area and significant topographical features and, if practicable, as x and y co-ordinates or vertices, preferably in GDA2020 MGA zone 51, including a note of the relevant projection and datum.

Item B – Instructions for completing Tjiwarl Heritage Agreement

The following is a guide for completing and executing the Tjiwarl Heritage Agreement. Please read this guide before attempting to complete the Tjiwarl Heritage Agreement as errors may render the Agreement invalid or may result in Tjiwarl AC declining to execute the Agreement

1. Form of the Tjiwarl Heritage Agreement

- (a) Tjiwarl AC will execute the Tjiwarl Heritage Agreement only in the form provided by the Tjiwarl Palyakuwa (Agreement). Do not amend or otherwise attempt to change the document without the prior agreement of Tjiwarl AC. Tjiwarl AC is not obliged to consider, or agree to, any changes to the standard form of the Agreement contained in the Tjiwarl Palyakuwa (Agreement).
- (b) The Tjiwarl Heritage Agreement has been designed to be submitted as an original document, but in the event of the Tjiwarl Heritage Agreement being re-typed, every care should be taken to avoid errors.

2. Completing the Tjiwarl Heritage Agreement

- (a) Only the holder of the Tenure (the Proponent), Tjiwarl AC, and those duly authorised by a power of attorney can sign the Agreement.
- (b) All parties must sign in accordance with their governing Articles of Association, except for individuals (whose signature must be witnessed).
- (c) All signatures must be witnessed by an independent party to the document.
- (d) Do not fill in the date in item 1 of the Schedule. This will be filled in with the date on which Tjiwarl AC signs the Tjiwarl Heritage Agreement.
- (e) Any changes or alterations must be initialled by all parties to the Tjiwarl Heritage Agreement.

3. Provision of the Tjiwarl Heritage Agreement

- (a) It is important to forward the Tjiwarl Heritage Agreement to Tjiwarl AC for execution as soon as possible.
- (b) If you have any queries in relation to the completion of this Agreement or require further copies please contact Tjiwarl AC (at the address provided in clause 14 of the Tjiwarl Heritage Agreement).

4. Checklist for the Tjiwarl Heritage Agreement

Have you ensured that:

- The Tjiwarl Heritage Agreement is in the correct form and has not been amended without the prior agreement of Tjiwarl AC?
- Any changes or alterations to the Tjiwarl Heritage Agreement have been initialled by all Parties?
- Schedule 1 has been completed?
- The Proponent has signed the document and where appropriate the company seal has been included?
- The Explorer's signature has been witnessed (if the Proponent is an individual)?
- Tjiwarl AC has signed the document?

TJIWARL PALYAKUWA (AGREEMENT)**SCHEDULE 5**

Water*Kapi*

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1. Overview

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

1.1 Background

- (a) The State recognises the:
 - (i) spiritual relationship of Tjiwarl People to water and the value that wetlands, rivers, springs, bushland and caves have to Tjiwarl People, including for their cultural significance and the ecosystem benefits they provide; and
 - (ii) the importance to Tjiwarl People of access to water resources, including for economic development purposes.

- (b) The State and Tjiwarl AC acknowledge that:
 - (i) they have agreed to undertake the Tjiwarl Water Study to, amongst other things, identify the water resources located in the Agreement Area and their cultural, environmental and economic values;
 - (ii) the agreed scope of the Tjiwarl Water Study is contained in the Water Scope Document;
 - (iii) following the Tjiwarl Water Study, the State and Tjiwarl AC will develop the Tjiwarl Water Plan; and
 - (iv) the aims of the Tjiwarl Water Plan include:
 - (A) describing the quality, quantity and location of water resources in the Agreement Area (and their cultural, environmental and economic values);
 - (B) identifying any opportunities for water allocation to Tjiwarl People; and
 - (C) helping to set environmental and cultural water outcomes and optimise the management of water in the Agreement Area.

1.2 What this Schedule contains

This Schedule outlines:

- (a) the establishment of a Water Working Group (see clause 3);

- (b) the processes to undertake the Tjiwarl Water Study and develop the Tjiwarl Water Plan (see clause 4);
- (c) access by Tjiwarl AC to information relating to licences and permits granted under the RIWI Act in the Agreement Area (see clause 5); and
- (d) the processes to be followed by the State and Tjiwarl AC with respect to the grant of RIWI Licences in the Agreement Area (see clause 6). A flow chart setting out these processes is contained in Annexure 3 to this Schedule.

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 defined in the Native Title Act, including **future act** and **registered native title body corporate** 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.

Certification Form means the means the document that is substantially in the form, subject to any necessary modifications as required for the relevant RIWI Licence, of the 'Certification Form' contained in Annexure 5 to this Schedule.

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

Confidential Water Information has the meaning given by clause 5.1(a).

DWER means the department of the public service of the State principally assisting the Minister for Water in the administration of the RIWI Act which, at the Execution Date, is the Department of Water and Environmental Regulation.

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

Minster for Water means the Minister in the Government for the time being responsible for the administration of the RIWI Act.

Negotiation Parties means Tjiwarl AC and a Proponent.

Negotiation Period means a period of 80 Business Days commencing on the RIWI Licence Compliance Date.

Proponent means a person who has made an application for the grant of a RIWI Licence.

Research and Development Funding has the meaning given in clause 10.4(b) of the Agreement.

RIWI Act means the *Rights in Water and Irrigation Act 1914* (WA).

RIWI Licence has the meaning given by clause 6.1.

RIWI Licence Compliance Date means the date on which the RIWI Licence is accepted by DWER or, in respect of those RIWI Licences to which an application fee applies, the date on which the relevant fee is paid.

RIWI Regulations means the *Rights in Water and Irrigation Regulations 2000* (WA).

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

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

Tjiwarl 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 Engagement Protocol means the protocol that is substantially in the form, subject to any necessary modifications as required for the relevant RIWI Licence, of the 'Tjiwarl Engagement Protocol' contained in Annexure 4 to this Schedule.

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

Tjiwarl Water Plan means a plan to identify, understand and optimise the management of water resources in the Agreement Area, the scope of which is contained in the Water Scope Document.

Tjiwarl Water Study means research which is undertaken to inform the development of the Tjiwarl Water Plan, the scope of which is contained in the Water Scope Document.

Water Register means the web-based application administered by the DWER that allows anyone to search, view and print information about water availability and RIWI Licences.

Water Scope Document means the document contained in Annexure 2 to this Schedule.

2.3 Interpretation – General

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

2.4 State acting through DWER

In this Schedule, unless otherwise indicated, the State is the State acting through DWER.

3. Water Working Group

This clause establishes the Water Working Group.

The Parties agree to establish a Water Working Group to work collaboratively to:

- (a) undertake the Tjiwarl Water Study;
- (b) develop the Tjiwarl Water Plan; and
- (c) follow the processes contained in this Schedule in relation to the grant of RIWI Licences in accordance with the Water Working Group Terms of Reference contained in Annexure 1 of this Schedule.

4. Tjiwarl Water Study and Tjiwarl Water Plan

This clause sets out the process to undertake the Tjiwarl Water Study and develop the Tjiwarl Water Plan.

4.1 Tjiwarl Water Study

On and from the Conclusive Registration Date, the Water Working Group will initiate and oversee the Tjiwarl Water Study, including:

- (a) agreeing upon and engaging the person(s) who will conduct the Tjiwarl Water Study;
- (b) identifying any persons who may need to be consulted for the purpose of the Tjiwarl Water Study;
- (c) agreeing a timeframe in which the Tjiwarl Water Study is to be undertaken; and
- (d) monitoring the conduct of the Tjiwarl Water Study.

4.2 Tjiwarl Water Plan

- (a) Upon completion of the Tjiwarl Water Study, the Water Working Group will oversee the development of the Tjiwarl Water Plan, including:
 - (i) agreeing upon and engaging the person(s) who will draft the Tjiwarl Water Plan (or parts thereof);
 - (ii) identifying any persons who may need to be consulted about, or review the drafting of, the Tjiwarl Water Plan;
 - (iii) agreeing a timeframe in which the Tjiwarl Water Plan is to be completed; and
 - (iv) otherwise monitoring the finalisation of the Tjiwarl Water Plan.
- (b) The Tjiwarl Water Plan must address all matters contained in the Water Scope Document.
- (c) The Parties acknowledge that the Tjiwarl Water Plan:
 - (i) does not have statutory effect as plan under Division 3D of the RIWI Act; and
 - (ii) the information contained in the Tjiwarl Water Plan, including any recommendations regarding the management of water on Tjiwarl Country, is a relevant consideration to be taken into account by the State with respect to the State's management of water abstraction in the Agreement Area, including water licencing decisions.

4.3 Funding for the Tjiwarl Water Study and Tjiwarl Water Plan

The State and Tjiwarl AC agree that the Tjiwarl Water Study and the development of the Tjiwarl Water Plan will be funded from the Research and Development Funding, with the amount of any such funding to be determined by Tjiwarl AC in consultation with the Water Working Group.

5. Provision of Confidential Water Information

This clause contains a process for Tjiwarl AC to access certain information relating to licences and permits granted under the RIWI Act in the Agreement Area.

5.1 Confidential Water Information

- (a) The State acknowledges that Tjiwarl AC wish to access information with respect to licences and permits granted under the RIWI Act in the Agreement Area that is not be publically available on the Water Register and may be confidential information as defined in section 112 of the *Water Agencies (Power) Act 1984 (WA)* (**Confidential Water Information**).
- (b) For the avoidance of doubt, the following information is likely to be Confidential Water Information:
 - (i) applications for licences and permits in the Agreement Area made under the RIWI Act;
 - (ii) licence and permit instruments issued in the Agreement Area under the RIWI Act; and
 - (iii) hydrological, operational or monitoring reports developed in support, or as a condition, of licences and permits issued in the Agreement Area under the RIWI Act.

5.2 Request for Confidential Water Information

- (a) The Water Working Group may identify Confidential Water Information and may make a request to the State to obtain that Confidential Water Information.
- (b) Any request for Confidential Water Information under clause 5.2(a) must be:
 - (i) in writing;

- (ii) contain a sufficiently detailed description of the particular Confidential Water Information, or categories of Confidential Water Information, to enable the State to make a request under clause 5.2(c); and
 - (iii) include the reason for requesting the Confidential Information and the intended use of the Confidential Information.
- (c) Within 20 Business Days of receiving a request under clause 5.2(b), the State will seek permission from the applicant or holder of the licence or permit to which the Confidential Information relates, to provide the Confidential Information to the Water Working Group.
- (d) Tjiwarl AC acknowledges that the State will not provide Confidential Information to the Water Working Group without the consent of the person or persons to whom the Confidential Information relates.

6. Process for the grant of RIWI Licences

This clause sets out the process that apply to the grant RIWI Licences in the Agreement Area. A diagram of the process described in this clause is contained in Annexure 3 to this Schedule.

6.1 Application of this clause

This clause applies to the following licences that are applied for on or after the Conclusive Registration Date to the extent that they are future acts located within the Agreement Area:

- (a) licences to take water granted pursuant to section 5C of the RIWI Act; and
- (b) licences to commence, construct, enlarge, deepen or alter a well granted pursuant to section 26D of the RIWI Act which are related to the licences referred to in clause 6.1(a)

(RIWI Licences).

6.2 Notification of application for RIWI Licence

Within 10 Business Days of the RIWI Licence Compliance Date the State must give:

- (a) Tjiwarl AC:
 - (i) notice of the application for the RIWI Licence;
 - (ii) a statement that this clause 6 applies to the RIWI Licence; and

- (iii) notice of the Negotiation Period, including a statement specifying the day on which the Negotiation Period ends; and
- (b) the Proponent:
 - (i) the contact details of Tjiwarl AC;
 - (ii) a copy of the Tjiwarl Engagement Protocol;
 - (iii) a copy of this Schedule, or information as to where this Schedule is published or has otherwise been made publically available;
 - (iv) a statement that this clause 6 applies to the RIWI Licence; and
 - (v) notice of the Negotiation Period, including a statement specifying the day on which the Negotiation Period ends.

6.3 Engagement with the Proponent about Mining Water Licence

- (a) Upon receiving the notification under clause 6.2(a), Tjiwarl AC must use reasonable endeavours within the Negotiation Period to commence discussions with the Proponent regarding entry into the Tjiwarl Engagement Protocol and the grant of the RIWI Licence.
- (b) The Negotiating Parties may, at any time during the Negotiation Period, request that the State facilitate and/or participate in discussions between the Negotiation Parties or provide such other guidance or assistance to the Negotiation Parties as may be reasonably required.
- (c) A request for the State's assistance under clause 6.3(b) must:
 - (i) be made in writing to the State;
 - (ii) be provided to the other Negotiation Party; and
 - (iii) contain sufficient detail of:
 - (A) the assistance being sought from the State; and
 - (B) the discussions that have occurred between Negotiation Parties to date, or evidence of attempts to hold such discussions between Negotiation Parties, so as to enable the State to reasonably assist the Negotiation Parties or participate in their discussions.
- (d) For the avoidance of doubt, as provided under clause 10.6(c) of the Agreement, to the extent that clause 6.3(b) requires the State to facilitate and/or participate in discussions between the Negotiation Parties or provide any other guidance or assistance to the Negotiation Parties as may be reasonable required, any such assistance does not include the provision

of any funding to the Negotiation Parties for meetings (or otherwise) and the Negotiation Parties bear their own costs for participation in those discussions.

6.4 Agreement to the grant of the RIWI Licence during Negotiation Period

- (a) If, prior to the end of the Negotiation Period, the Negotiating Parties reach agreement as to the grant of the RIWI Licence, Tjiwarl AC must, within 15 Business Days of reaching agreement with the Proponent, provide the State with a Certification Form.
- (b) The Minister for Water may, upon receipt of the Certification Form referred to in clause 6.4(a), and subject to any other relevant considerations, grant the RIWI Licence to the Proponent.

6.5 Request for documents at the end of the Negotiation Period

- (a) If, at the end of the Negotiation Period, the State has not received the Certification Form referred to in clause 6.4(a), the State must give a notice to the Negotiating Parties:
 - (i) informing them of the end of the Negotiation Period; and
 - (ii) requesting, within 10 Business Days, a Certification Form if an agreement has been reached between the Negotiating Parties as to the grant of the RIWI Licence.
- (b) If a Certification Form is provided to the State following the request in clause 6.5(a)(ii), the Minister for Water may upon receipt of the Certification Form, and subject to any other relevant considerations, grant the RIWI Licence to the Proponent.

6.6 Agreement not reached during the Negotiation Period

- (a) If a Certification Form is not provided to the State within 10 Business Days of the notice given in clause 6.5(a), the State must give a notice to the Negotiating Parties:
 - (i) informing them that it is proceeding with the consideration of the application for the Mining Water Licence; and
 - (ii) requesting, within 40 Business Days, any submissions from the Negotiating Parties that address whether the RIWI Licence should be granted and, if so, on what conditions.
- (b) Following the end of period referred to in clause 6.6(a)(ii), the State will assess the application for the RIWI Licence having regard to all matters it considers relevant, including:

- (i) those matters set out in clause 7(2) of Schedule 1 to the RIWI Act and regulations 7(2) and 35(2) of the RIWI Regulations;
 - (ii) any submissions received following the request made in clause 6.6(a)(ii); and
 - (iii) any other relevant legislation, policy, plan, standard or guideline (including the information and recommendations set out in the Tjiwarl Water Plan)
- and the Minister for Water may grant the RIWI Licence to the Proponent.

7. 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 and Tjiwarl AC, with the variation put in writing and executed by the State and Tjiwarl AC.

8. Notices

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

8.1 Notices under this Schedule

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

- (a) must be in writing;
- (b) may be given by an authorised officer of the Party giving the notice;
- (c) must be delivered to its intended recipient by hand, prepaid post or email to the address in clause 8.2, or to the address the intended recipient last indicated to the sender as a suitable address;
- (d) subject to clause 8.1(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.

8.2 Addresses for Service

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

(a) **For Tjiwarl AC:**

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

(b) **For the State:**

- (i) By email: ellam.reception@dwer.wa.gov.au
- (ii) By post: C/- Department of Water and Environmental Regulation
Swan Avon Regional Centre
7 Ellam Street
Victoria Park WA 6001

TJIWARL PALYAKUWA (AGREEMENT)**SCHEDULE 5 – Annexure 1**

Water Working Group Terms of Reference

TJIWARL PALYAKUWA AGREEMENT

TERMS OF REFERENCE

Water Working Group

1. Background

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

2. Aim and Purpose

The aim and purpose of the Water Working Group is to work collaboratively to:

- (a) initiate and oversee the Tjiwarl Water Study;
- (b) oversee the development of the Tjiwarl Water Plan, including:
 - (i) describing the quality, quantity and location of water resources in the Agreement Area (and their cultural, environmental and economic values);
 - (ii) identifying any opportunities for water allocation to Tjiwarl People; and
 - (iii) helping to set environmental and cultural water outcomes and optimise the management of water in the Agreement Area;
- (c) identify Confidential Water Information that is of interest to Tjiwarl AC and make requests to the State to obtain that Confidential Water Information;
- (d) facilitate the objectives and commitments made in clause 5 of the Water Schedule with respect to the identification of, and requests for, Confidential Water Information;
- (e) implement and manage the processes contained in the Water Schedule in relation to the grant of RIWI Licences within the Agreement Area; and
- (f) achieve the objectives of these Terms of Reference.

3. Membership and Attendees

3.1 Members

The members of the Water Working Group are up to four persons nominated by Tjiwarl AC (including a specialist water adviser) and no less than two persons nominated by the Department of Water and Environmental Regulation (**DWER**) who have the day to day responsibility and appropriate seniority for the matters considered by the Water Working Group.

3.2 Co-chairs

The Water Working Group will be co-chaired by a Tjiwarl Director nominated by Tjiwarl AC and a representative from DWER nominated by the State (the **Co-Chairs**).

3.3 Non Member Attendees

- (a) The Co-Chairs may, as required from time to time, invite any person with specialist knowledge, experience or responsibility relevant to the priorities and objectives of the Water Working Group, including representatives of other State agencies, to attend meetings of the Water 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 Water Working Group.

4. Meetings

4.1 Attendance & Quorum

- (a) There is an expectation that all members of the Water Working Group will attend all meetings of the Water Working Group.
- (b) The members agree that, for a meeting of the Water Working Group to proceed the following members must be present:
 - (i) the Co-Chairs;
 - (ii) at least 1 other DWER representative; and
 - (iii) at least 1 other Tjiwarl AC representative.

- (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, however physical attendance is preferred.

4.2 Meeting Agenda

- (a) DWER, in consultation with the Co-Chairs, 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 items to be added to the agenda after the finalised agenda has been circulated by written notice to members of the Water Working Group.

4.3 Frequency and Location of Meetings

- (a) Unless otherwise agreed between the members at a meeting of the Water Working Group, the Water Working Group will meet:
 - (i) no less than 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 Water 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 Water Working Group are to be convened in Perth or at a location nominated by Tjiwarl AC as far as is practicable.

4.4 Costs

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

4.5 Resolutions

- (a) The Water 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 Water 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 Water Working Group unless approved by consensus of the Water Working Group.
- (c) Any matters of procedure or membership of the Water 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 Water Working Group meetings will be provided by DWER and all costs associated with the provision of that administrative support will be met by DWER.

- (b) Appropriate records of the Water Working Group will be maintained in accordance with DWER'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 Water Working Group will:

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

5.4 Conflict of Interest

All members of the Water 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 Water 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 Water Working Group, DWER will, from time to time, update and confirm the contact list for the members of the Water Working Group.
- (b) Any other information required by the members of the Water Working Group will be provided within the agreed timeframe at the time of request.

6.2 Minutes of Meetings

- (a) DWER will provide the minutes of each meeting to the members of the Water Working Group via email no later than 20 Business Days after each Water 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 Water Working Group.

6.3 Reporting

DWER will, as required, report on the progress of matters before the Water Working Group to:

- (a) members of the Water Working Group by way of update;
- (b) other agencies across State government where required to support the outcomes of the Water 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 the members of the Water Working Group; and
 - (ii) where the Implementation Committee has endorsed the amendment agreed by the Water Working Group.

- (b) The Co-Chairs must, within 15 Business Days of any amendment to these Terms of Reference being agreed to by the Water Working Group, provide the Implementation Committee with a copy of the proposed amended Terms of Reference for its consideration.

TJIWARL PALYAKUWA (AGREEMENT)

SCHEDULE 5 – Annexure 2

Water Scope Document

Water Scope Document

1. Key Principles

The Parties acknowledge that the Tjiwarl Water Plan, as informed by the outcomes of the Tjiwarl Water Study, is intended to:

- (a) provide clarity in respect of the water resources located in the Agreement Area, including how much water is available from any particular water resource or area and its anticipated quality;
- (b) identify the cultural, environmental, economic and other use values of water resources located in the Agreement Area;
- (c) help set environmental and cultural water outcomes and optimise the management of water resources in the Agreement Area, including ensuring the long-term sustainability of those water resources;
- (d) identify any opportunities for water allocation to Tjiwarl People for cultural purposes, environmental preservations and/or economic/commercial purposes; and
- (e) detail which local policies and conditions may be applied to licences issued under the RIWI Act to meet the objectives of the Tjiwarl Water Plan.

2. State and Tjiwarl AC to act in partnership

The State and Tjiwarl AC agree that the Tjiwarl Water Study and Tjiwarl Water Plan:

- (a) will be conducted and developed in partnership between the State and the Tjiwarl People;
- (b) requires cultural and environmental input from the Tjiwarl People; and
- (c) will utilise the State's expertise in hydrological and ecological sciences.

3. Scope of the Tjiwarl Water Study and Tjiwarl Water Plan

The matters and topics to be addressed by the Tjiwarl Water Study and the Tjiwarl Water Plan are as follows:

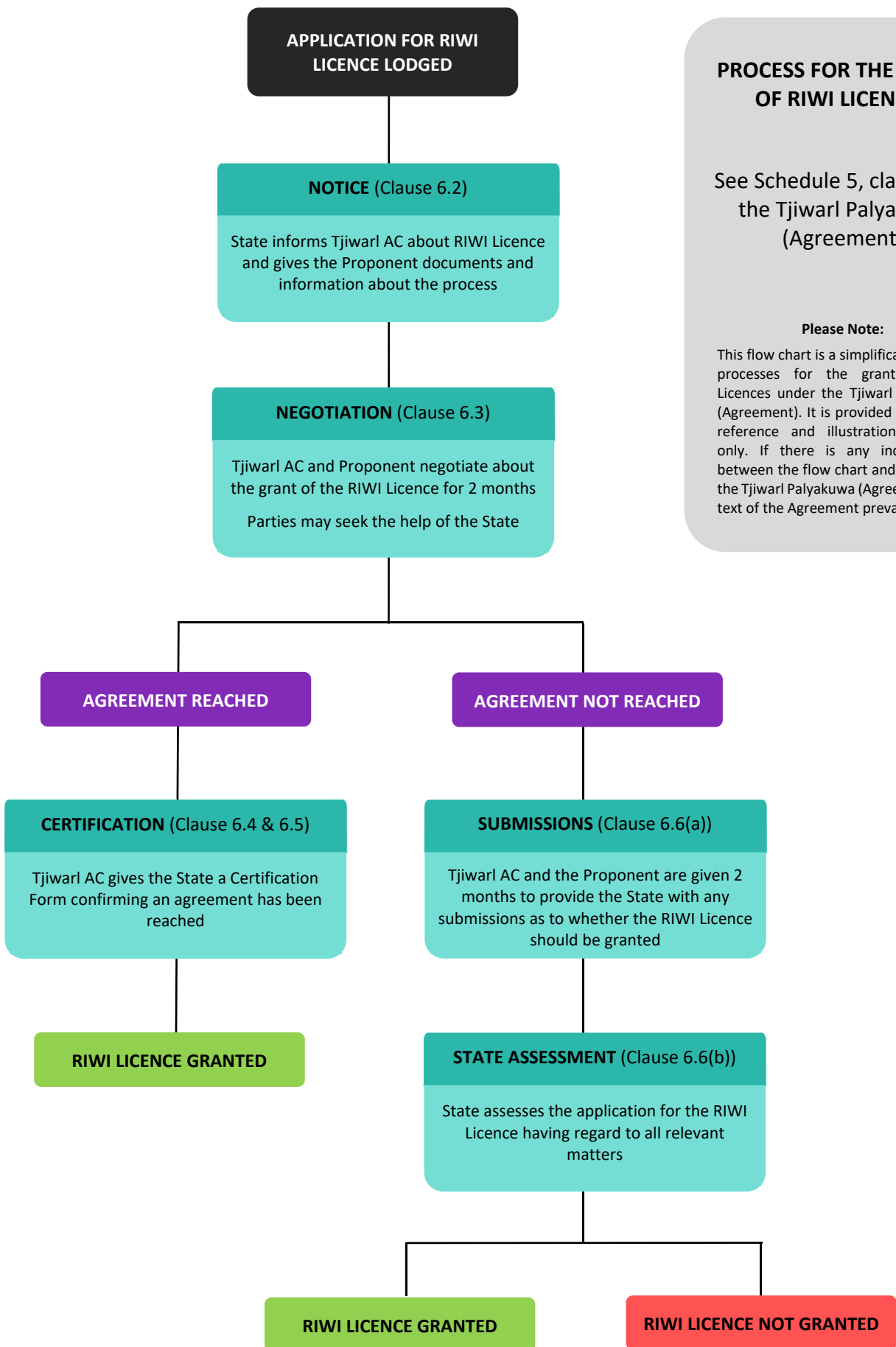
Topic	Matters to be addressed
Introduction to the land and water in Tjiwarl country	<ul style="list-style-type: none">• Description of the geographical location of the Agreement Area.• Description of the land and water in the Agreement Area.

Topic	Matters to be addressed
Purpose of the Tjiwarl Water Plan	<ul style="list-style-type: none"> • Description of the purpose, objects, proposed outcomes and effects of the Tjiwarl Water Plan. • Description of the strategies proposed to achieve the outcomes and objectives of the Tjiwarl Water Plan. • Description of how the Tjiwarl Water Plan relates to legislation, including: <ul style="list-style-type: none"> ○ RIWI Act; ○ AHA and/or ACHA; and ○ Native Title Act. • Whether and how the parties engage with other stakeholders to complete the Tjiwarl Water Plan.
Where the water comes from	<ul style="list-style-type: none"> • High level description of the water resources in the Agreement Area, including: <ul style="list-style-type: none"> ○ hydrogeology and aquifers; ○ conceptual diagram of hydrogeology and aquifers; ○ water quality; ○ water quantity (if possible); ○ impacts of climate change; ○ capacity of the resource to meet current and future demand; ○ collating and summarising available data from existing water licensees (where available); and ○ identification of any data gaps (mapping the gaps).
Water-dependent ecosystems	<ul style="list-style-type: none"> • Description of the water-dependent ecosystems in the Agreement Area and implications for water management and use.
The cultural importance of water	<ul style="list-style-type: none"> • Description of the water-dependent cultural and social values in the Agreement Area and implications for water management and use. • Identification of culturally significant sites that require further detailed investigation and/or targeted project work (such as springs).
How water is used in the Agreement Area	<ul style="list-style-type: none"> • Overview of current licences and use types. • Overview of exempt water use. • Overview of future demand for water. • Subject to the outcome of the Tjiwarl Water Study, the identification of any opportunities for water allocation to Tjiwarl priorities, including: <ul style="list-style-type: none"> ○ any water allocations for Tjiwarl people for cultural purposes, environmental preservations and/or economic/commercial purposes; and

Topic	Matters to be addressed
	<ul style="list-style-type: none"> ○ any water savings gained from water efficiency measures.
How water is monitored in the Agreement Area	<ul style="list-style-type: none"> ● Description of existing monitoring, evaluation, reporting and response actions in the Agreement Area.
How water is licenced in the Agreement Area	<ul style="list-style-type: none"> ● Description of groundwater allocation limits (if available) and how they apply. ● Description of local licensing policies for licence conditions and the assessment of licences (for example, legislative requirements, setting of water use efficiency targets, water trades, transfers and agreements, dewatering and discharge, metering, and monitoring). ● Description of any management zones where additional rules apply to licences for the protection of ecological, cultural or social places of value to achieve the environmental outcomes. ● Overview of Tjiwarl expectations in regard to the economic value of water and consideration of this in licensing policy.
Role of Tjiwarl in how water is licenced in the Agreement Area	<ul style="list-style-type: none"> ● Description of the processes established by the Tjiwarl Palyakuwa (Agreement) for the grant of RIWI Licences in the Agreement Area. ● Description of how information or advice collected from Tjiwarl People will be used by the State, including for licencing decisions. ● Description of the processes established by the Tjiwarl Palyakuwa (Agreement) for the provision of Confidential Water Information.
Implementing and evaluating the Tjiwarl Water Plan	<ul style="list-style-type: none"> ● Description of when and how the Tjiwarl Water Plan will be evaluated and reported on. ● Identification of performance indicators that will be used to determine the effectiveness of the Tjiwarl Water Plan. ● Description of what an evaluation of the Tjiwarl Water Plan will include. ● Inclusion of details regarding the role and function of the Water Working Group in any evaluation of the Tjiwarl Water Plan.
Actions	<ul style="list-style-type: none"> ● Identification of any further actions needed to manage the water in the Agreement Area.

TJIWARL PALYAKUWA (AGREEMENT)**SCHEDULE 5 – Annexure 3**

Water Process Flow Chart



PROCESS FOR THE GRANT OF RIWI LICENCES

See Schedule 5, clause 6 of the Tjiwarl Palyakuwa (Agreement)

Please Note:
This flow chart is a simplification of the processes for the grant of RIWI Licences under the Tjiwarl Palyakuwa (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 Tjiwarl Palyakuwa (Agreement), the text of the Agreement prevails.

Tjiwarl Palyakuwa (Agreement)

SCHEDULE 5 – Annexure 4

Tjiwarl Engagement Protocol (Water)

Item A – Tjiwarl Engagement Protocol (Water)

Item B – Instructions for executing the Tjiwarl Engagement Protocol

Item A – Tjiwarl Engagement Protocol (Water)

The following form of Tjiwarl Engagement Protocol is provided for the purpose of Schedule 5 of the Tjiwarl Palyakuwa (Agreement).

Instructions for completing the Tjiwarl Engagement Protocol are provided at Item B of this Annexure.

TJIWARL ENGAGEMENT PROTOCOL (WATER)

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Details of Engagement Protocol

THIS ENGAGEMENT PROTOCOL is made on the date specified in item 1 of Schedule 1.

BETWEEN

TJIWARL (ABORIGINAL CORPORATION) RNTBC (ICN 8628) in its own right and for and on behalf of the Tjiwarl People (**Tjiwarl AC**)

and

The **PROPONENT** described in item 3 of Schedule 1.

Recitals

- A. The Proponent has made an application for the RIWI Licence in the Tjiwarl Determination Area and wishes to conduct the Licence Activities.
- B. Pursuant to the Tjiwarl Determination, Tjiwarl AC is the registered native title body corporate that holds the native title rights and interest on trust for the Tjiwarl People.
- C. Tjiwarl AC is an incorporated body under the CATSI Act. It is governed by the Tjiwarl Rule Book and has the power to, amongst other things:
 - (a) negotiate with the Proponent;
 - (b) enter into agreements; and
 - (c) exercise procedural rights under the Native Title Acton behalf of the Tjiwarl People in accordance with the Tjiwarl Rule Book and the CATSI Act.
- D. Tjiwarl AC and the State have entered into an ILUA (body corporate agreement) entitled the Tjiwarl Palyakuwa (Agreement). The Agreement Area in relation to the Tjiwarl Palyakuwa (Agreement) includes part or all of the area of the RIWI Licence.
- E. Schedule 5 to the Tjiwarl Palyakuwa (Agreement) provides a process for the grant of the RIWI Licence. Relevantly, the Tjiwarl Palyakuwa (Agreement) provides that Tjiwarl AC and the Proponent are to enter into Negotiations about the grant of the RIWI Licence and the Licence Activities. The content of the Negotiations includes those initial matters listed at Schedule 4

to this Engagement Protocol in a way that is consistent with the Tjiwarl People's native title rights and interests with a view to reaching agreement for the parties' mutual benefit.

- F. This Engagement Protocol sets out the rules that the Parties must abide by during the Negotiations.

THE PARTIES AGREE THAT:

1. Definitions and Interpretation

General Definitions

- 1.1 In this Engagement Protocol words and expressions defined in the Native Title Act including **native title, native title rights and interests, prescribed body corporate and registered native title body corporate** have the same meaning when used in this Engagement Protocol.

Specific Definitions

- 1.2 In this Engagement Protocol, unless the context requires otherwise the following words and phrases have the following meanings:

Australian Stock Exchange means the stock exchange known as the 'Australian Securities Exchange' operated by ASX Limited ABN 98 008 624 691.

Budget Estimate means a written, itemised estimation of costs and expenses prepared in accordance with clause 10.

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

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

Commencement Date means the date on which both Parties have executed this Engagement Protocol, being date specified in item 1 of Schedule 1.

Confidential Information means:

- (a) all information disclosed by one Party to another Party during the negotiations leading up to executing this Engagement Protocol and during the term this Engagement Protocol;

- (b) all information, reports, maps, photographs, videos and other documents about or relating to the traditional laws and customs of the Tjiwarl People and any information that Tjiwarl AC nominates as being provided on a confidential basis; and
- (c) the Proponent's commercially sensitive information and any information the Proponent nominates as being provided on a confidential basis.

Confirmation of Budget has the meaning set out in clause 10.8.

Confirmation of Budget Revision has the meaning set out in clause 10.12.

Consultation Meetings means the meetings described at clause 7.1.

Consumer Price Index means the Consumer Price Index, All Groups Index, number for Perth, Western Australia, published from time to time by the Australian Bureau of Statistics (catalogue number 6401.0). If that index ceases to be published by the Australian Bureau of Statistics then Consumer Price Index will mean such other index as agreed by the Parties that reasonably reflects changes in the normal cost of living for permanent residents in Perth, Western Australia.

CPI Calculation means the following calculation

$$R = \frac{A \times B}{C}$$

where:

R is the specified rate adjusted for CPI.

A is the rate payable immediately prior to the Review Date.

B is the Consumer Price Index last published prior to the Review Date.

C is the Consumer Price Index last published prior to the Commencement Date.

Review Date means, successively, each anniversary of the Commencement Date.

Cultural Business means a funeral, event or other ceremony or cultural duty that any members of Tjiwarl AC or the Tjiwarl Negotiation Team are required to attend under their traditional laws and customs and that prevents any of them from performing their obligations under this Engagement Protocol. This includes, for the avoidance of doubt, the law business period between approximately 1 December to 1 March of each year.

Delay Event means an event that prevents a Party from performing its obligations under this Engagement Protocol and which is unforeseeable and beyond the reasonable control of the affected Party including:

- (a) an act of God, lightning, storm, flood, fire, earthquake, explosion, cyclone or wind and wave conditions associated with a cyclone, tidal wave or tsunami, landslide, adverse weather conditions, volcanic eruption;
- (b) strike, lockout or other labour difficulty;
- (c) act of public enemy, war, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic or pandemic, terrorism, radioactive or biological contamination, impact of vehicles or aircraft, failure of a public utility; or
- (d) the effect of any applicable Law or any authority exercised by a government or other competent authority.

Dispute has the meaning given in clause 18.1.

Dispute Notice has the meaning given in clause 18.1.

Engagement Protocol means this means this protocol and its schedules and includes any variation or replacement of it.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

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

Licence Activities means the grant of the RIWI Licence and any activities or approvals required or proposed to be conducted or obtained by the Proponent pursuant to, and in accordance with, the RIWI Licence.

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

Negotiation Matters means those matters about which the Parties have from time to time agreed to negotiate as part of the Negotiations and include, but are not limited to, those matters listed at Schedule 4;

Negotiation Meetings means meetings held between the Parties in accordance with clause 5 of this Engagement Protocol.

Negotiations mean the negotiations to be conducted under this Engagement Protocol.

Negotiators means the members of each of the Proponent Negotiation Team and the Tjiwarl Negotiation Team.

Party means a party to this deed and **Parties** means the Tjiwarl AC and the Proponent collectively.

PBC Regulations means the *Native Title (Prescribed Bodies Corporate) Regulations 1999*.

Proponent means the party described in described in item 3 of Schedule 1 and includes its successors and assigns.

Proponent Co-ordinator means the person co-ordinating the Negotiations on behalf of the Proponent and until notified otherwise shall be that person named at Schedule 3.

Proponent Negotiation Team means those people appointed from time to time to conduct the Negotiation on behalf of the Proponent and initially comprises the people named at Schedule 3.

Proponent Advisors means the people appointed from time to time to support, assist and advise the Proponent Negotiation Team by attending Negotiation Meetings and Consultation Meetings and participating in Negotiations as necessary, and initially comprises the people named at Schedule 3.

Public Announcement has the meaning given in clause 15.1.

Recipient has the meaning given in clause 12.

Replacement RNTBC has the meaning given in clause 16.3.

RIWI Act means the *Rights in Water and Irrigation Act 1914* (WA).

RIWI Licence means the licence described in item 2 of Schedule 1 applied for by the Proponent under the RIWI Act.

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

Supplier has the meaning given in clause 12.

Termination Date means the date on which:

- (a) the RIWI Licence is granted under the RIWI Act; or

(b) the Engagement Protocol is terminated in accordance with clause 19.2.

Tjiwarl Consent Requirements means the requirements detailed in clause 6.

Tjiwarl Co-ordinator means the person co-ordinating the Negotiations on behalf of Tjiwarl AC and, until notified otherwise, shall be that person named at Schedule 2.

Tjiwarl Cultural Advisors means those Tjiwarl People appointed from time to time to advise Tjiwarl AC and Tjiwarl Negotiation Team in relation to cultural matters and initially comprises the people named at Schedule 2.

Tjiwarl Determination means the orders of the Federal Court of Australia made in native title determination applications WAD 228 of 2011 (Tjiwarl) and WAD 302 of 2015 (Tjiwarl #2) by Mortimer J on 27 April 2017 as amended by order 2 of the Full Court of the Federal Court of Australia on 1 February 2018 (as itself amended by order 2 of the High Court of Australia on 17 April 2019).

Tjiwarl Determination Area means the area of land and waters the subject of the Determination.

Tjiwarl Expert Advisors means those experts consulted or engaged by the Tjiwarl Negotiation Team to provide independent technical advice on matters relating to the Negotiations or the Licence Activities and may include the following fields of expertise:

- (a) economic;
- (b) legal;
- (c) geological;
- (d) environmental;
- (e) hydrological;
- (f) radiation;
- (g) anthropology;
- (h) commercial and business; and/or
- (i) social impact,

and initially comprises the people named at Schedule 2.

Tjiwarl Negotiation Team means those people appointed from time to time to conduct the Negotiations on behalf of Tjiwarl AC and, until notified otherwise, shall be those people named at Schedule 2.

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

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

Tjiwarl Rule Book means the consolidated rule book of Tjiwarl AC registered on 9 November 2020 and amended from time to time.

Interpretations

1.3 In this Engagement Protocol, unless context requires otherwise:

- (a) a reference to a recital, clause or Schedule is to a recital, clause or Schedule of this Engagement Protocol;
- (b) headings are for reference only and do not govern the meaning or construction of this Engagement Protocol or of any provision contained in this Engagement Protocol;
- (c) a reference to a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
- (d) a reference to legislation or regulations is a reference to that legislation or regulation as amended, replaced or re-enacted for the time being in force and any by-laws, statutory instruments, rules, regulations, notices, orders, directions, consents or permissions made thereunder and any conditions attaching thereto;
- (e) reference to a person or party includes that person's or party's successors, permitted substitutes, persons taking by novation, permitted transferees, receivers, managers, administrators and permitted assignees and, in the case of a natural person, also includes that person's executors and administrators;
- (f) a singular word includes the plural, and vice versa;
- (g) a word that suggests one gender includes the other genders;
- (h) the word "including" is to be read as if it were followed by, "but not limited to";

- (i) if a word is defined, a derivative of the word has a corresponding meaning;
- (j) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally; and
- (k) a reference to any thing is a reference to the whole or any part of it and a reference to a group of persons is a reference to any one or more of them.

2. Agreement to Negotiate

- 2.1 The Parties agree to negotiate in good faith on the matters contemplated under this Engagement Protocol, with a view to entering into a comprehensive agreement:
- (a) about the Licence Activities, including agreement in relation to each of the Negotiation Matters; and
 - (b) that preserves the traditional way of life of the Tjiwarl People, including their language, cultural heritage and laws and customs.
- 2.2 Nothing in this Engagement Protocol is to be read as a commitment to entering into a comprehensive agreement with respect to the matters referred to in clause 2.1.

3. Negotiation Teams

Tjiwarl Negotiation Team

- 3.1 Tjiwarl AC:
- (a) shall be represented in the Negotiations by the Tjiwarl Negotiation Team; and
 - (b) may change the members of the Tjiwarl Negotiation Team by providing written notice of the change to the Proponent.
- 3.2 The Tjiwarl Negotiation Team and its role in the Negotiations shall be co-ordinated by the Tjiwarl Co-ordinator.
- 3.3 The Tjiwarl Co-ordinator shall be the primary contact with the Proponent in relation to the Negotiations.
- 3.4 The Tjiwarl Negotiation Team:
- (a) may, at its discretion, be assisted by Tjiwarl Expert Advisors and Tjiwarl Cultural Advisors;

- (b) shall show courtesy, respect and professionalism towards the Proponent Negotiation Team and respond to requests from the Proponent in a timely manner;
- (c) shall direct all contact with the Proponent in relation to the matters the subject of this Engagement Protocol through the Proponent Co-ordinator; and
- (d) shall notify the Proponent Co-ordinator immediately in the event that members of the Tjiwarl Negotiation Team or the Tjiwarl People are contacted directly by officers of the Proponent or members of the Proponent Negotiation Team in relation to the matters the subject of this Engagement Protocol.

Proponent Negotiation Team

3.5 The Proponent:

- (a) shall be represented in the Negotiations by the Proponent Negotiation Team; and
- (b) may change the members of the Proponent Negotiation Team by providing written notice of the change to the Tjiwarl AC.

3.6 The Proponent Negotiation Team and its role in the Negotiations shall be co-ordinated by the Proponent Co-ordinator.

3.7 The Proponent Co-ordinator shall be the primary contact with Tjiwarl AC in relation to the Negotiations.

3.8 The Proponent Negotiation Team:

- (a) may, at its discretion, be assisted by Proponent Advisors;
- (b) shall show courtesy, respect and professionalism towards the Tjiwarl Negotiation Team and respond to requests from Tjiwarl AC in a timely manner;
- (c) shall direct all contact with Tjiwarl AC in relation to the matters the subject of this Engagement Protocol through the Tjiwarl Co-ordinator; and
- (d) shall notify the Tjiwarl Co-ordinator immediately in the event that officers of the Proponent are contacted directly by members of the Tjiwarl Negotiation Team or the Tjiwarl People in relation to the matters the subject of this Engagement Protocol.

4. Authority of the Negotiators

4.1 The Negotiators are authorised to:

- (a) conduct the Negotiations; and
- (b) make recommendations to the Parties in relation to the Negotiations.

4.2 The Negotiators are not authorised to:

- (a) execute any final agreement; or
- (b) otherwise bind the Parties.

4.3 For the avoidance of doubt any agreement reached by the Negotiators is an agreement ‘in principle’ only until ratified and executed in accordance with the respective rules and procedures of the Parties.

5. Negotiation Meetings

Holding of Negotiation Meetings

5.1 Negotiation Meetings shall:

- (a) only proceed with the agreement of both Parties;
- (b) occur with a timing and frequency agreed by the Negotiators, with an indicative schedule agreed at the first Negotiation Meeting; and
- (c) unless otherwise agreed, take place either at an ‘on-country’ location nominated by either Party in relation to the Licence Activities, in Leinster or in Perth.

Other Meetings

5.2 The Tjiwarl Co-ordinator, the Proponent Co-ordinator and any relevant Negotiators will meet in between Negotiation Meetings as required to:

- (a) discuss the agenda of Negotiation Meetings or Consultation Meetings and matters preparatory to these meetings;
- (b) implement or follow up on the outcomes of Negotiation Meetings or Consultation Meetings; and
- (c) develop proposals to progress Negotiations that can be put to Negotiation Meetings or Consultation Meetings for discussion.

6. Tjiwarl Consent Requirements

- 6.1 The Proponent acknowledges and agrees that Tjiwarl AC is required to consult with, and obtain the consent of, the Tjiwarl People before making any native title decision (as defined in the PBC Regulations). This includes agreement to any act that affects the native title rights and interests of the Tjiwarl People.
- 6.2 The Proponent acknowledges and agrees that, in accordance with clause 6.1, the Tjiwarl AC is required to:
- (a) consult with the Tjiwarl People, in a manner that accords with their traditional laws and custom, prior to agreeing or authorising any proposal with respect to the Licence Activities; and
 - (b) be satisfied that the Tjiwarl People, in particular those native title holders for the area affected:
 - (i) understand the nature and purpose of any proposal with respect to the Licence Activities;
 - (ii) have the opportunity to express their views; and
 - (iii) consent to any proposal with respect to the Licence Activities.

7. Consultation Meetings

Purpose of Consultation Meetings

- 7.1 The Proponent acknowledges and agrees that, in addition to Negotiation Meetings, meetings of the Tjiwarl People are required to fulfil the Native Title Party Consent Requirements (**Consultation Meetings**).
- 7.2 The purpose of Consultation Meetings includes:
- (a) fully informing the Tjiwarl People of the proposals in relation to Licence Activities and the general progress of the Negotiations;
 - (b) seeking directions from the Tjiwarl People on how to proceed with the Negotiations; and
 - (c) obtaining instructions from the Tjiwarl People on any in-principle or final agreement with respect to the Licence Activities.

Manner in which Consultation Meetings are to be held

- 7.3 The Proponent acknowledges and agrees that Tjiwarl AC is required to conduct Consultation Meetings in a culturally appropriate manner that is consistent with the traditional decision-making processes of the Tjiwarl People.
- 7.4 Consultation Meetings shall take place at Perth or Leinster, unless otherwise agreed by the Parties.
- 7.5 Tjiwarl AC may invite the Proponent to attend Consultation Meetings for the purpose of assisting Tjiwarl AC in fulfilling the Native Title Party Consent Requirements but, subject to clause 7.6, the Proponent is not otherwise entitled to attend Consultation Meetings.
- 7.6 If the Proponent seeks to attend a Consultation Meeting to provide written or oral information to the Tjiwarl People with respect to the Licence Activities or the Negotiations, then:
- (a) the Proponent shall inform the Tjiwarl Co-ordinator that it seeks to attend a Consultation Meeting in order to provide that information; and
 - (b) the Tjiwarl Negotiation Team shall consider such requests and shall not unreasonably withhold permission for the Proponent to attend a Consultation Meeting.
- 7.7 The Proponent acknowledges and agrees that any information it provides for the purpose of Consultation Meeting will be provided in a culturally appropriate medium that allows the Tjiwarl People to understand the information and may include a ‘plain English’ version of that information.

8. Information about the Licence Activities

Provision of Information about Licence Activities

- 8.1 The Proponent acknowledges that the provision of comprehensive and up to date information with respect to the Licence Activities is central to Tjiwarl AC fulfilling the Native Title Party Consent Requirements.
- 8.2 The Proponent shall, prior to each Negotiation Meeting, and from time to time during the term of this Engagement Protocol, provide the Tjiwarl Co-ordinator and the Tjiwarl Negotiation Team with information about the nature and scope of the Licence Activities, including information with respect to the extent, timing, impact and water usage projections of the Licence Activities.

- 8.3 The manner in which the information referred to in clause 8.2 will be provided by the Proponent is to be agreed by the Parties, but may include provision by way of:
- (a) presentations to the Tjiwarl Negotiation Team;
 - (b) discussions with the Tjiwarl Negotiation Team; and /or
 - (c) the provision of relevant information in writing.
- 8.4 The Proponent acknowledges and agrees that any information it provides under this clause 8 will be provided in a culturally appropriate medium that allows the Tjiwarl Negotiation Team or the Tjiwarl People to understand the information and may include a ‘plain English’ version of that information.

On-country Visit

- 8.5 After the first Negotiation Meeting, and if reasonably requested by the Tjiwarl Negotiation Team, the Proponent shall fund, at the rates set out in Schedule 5, a visit by the Tjiwarl Negotiation Team to an ‘on-country’ location nominated by either Party with respect to the Licence Activities.

9. Tjiwarl Expert Advisors

- 9.1 To meet the Native Title Party Consent Requirements, Tjiwarl AC may engage, as required, Tjiwarl Expert Advisors.
- 9.2 If Tjiwarl AC engages any Tjiwarl Expert Advisor under clause 9.1, as soon as reasonably practicable after engaging any Tjiwarl Expert Advisor, the Tjiwarl Co-ordinator will provide the Proponent a written notice setting out:
- (a) the name, qualifications and practice area of that Tjiwarl Expert Advisor;
 - (b) a statement of the proposed scope of work of that Tjiwarl Expert Advisor;
 - (c) a copy of any written undertaking required to be procured from that Tjiwarl Expert Advisor pursuant to clause 14.4; and
 - (d) an initial schedule of rates for that Tjiwarl Expert Advisor and any update of that schedule from time to time.
- 9.3 The Proponent will provide Tjiwarl Expert Advisors with all reasonably requested information in order to ensure that accurate and timely advice can be provided to the Tjiwarl Negotiation Team and Tjiwarl AC.

10. Negotiation and Consultation Funding

Proponent's Costs

10.1 The Proponent is responsible for all of its own costs in relation to the Negotiations.

Tjiwarl AC's Costs

10.2 The Proponent acknowledges that Tjiwarl AC is unfunded and is unable to fund the Negotiations or any of the matters contemplated under this Engagement Protocol.

10.3 Subject to the Budget Estimate process set out in clauses 10.5 – 10.10 (inclusive), the Proponent shall fully fund the reasonable costs incurred by Tjiwarl AC in relation to the Negotiations agreed in accordance with this clause 10.

10.4 To avoid doubt, this clause does not prevent the Parties from agreeing on other items, rates or amounts from time to time.

Budget Estimate Process & Payment of Costs

10.5 As soon as reasonably practicable prior to each Negotiation Meeting and Consultation Meeting, Tjiwarl AC will provide the Proponent with a Budget Estimate setting out the costs it expects to incur in relation to that Negotiation Meeting or Consultation Meeting.

10.6 Tjiwarl AC will also, from time to time, provide a Budget Estimate to the Proponent setting out the costs:

- (a) for any Tjiwarl Expert Advisors engaged under clause 9.1;
- (b) the meetings contemplated by clause 5.2; and
- (c) any on-country visit contemplated by clause 8.5,

to be incurred by Tjiwarl AC in relation to the Negotiations.

10.7 The Parties shall use the rates set out in Schedule 5, and any rates for Tjiwarl Expert Advisors notified by Tjiwarl AC under clause 9.2(d) (if applicable), as a guide to determine the costs of the Negotiations and the formulation of the Budget Estimate.

10.8 Each Budget Estimate provided pursuant to clause 10.5 or 10.6 must be accompanied by a written statement of the purposes for which those costs are sought to be incurred.

- 10.9 Within five (5) Business Days of receipt of a Budget Estimate provided pursuant to clause 10.5 or 10.6 the Proponent must provide Tjiwarl AC with a written statement of whether or not it agrees with the Budget Estimate (**Confirmation of Budget**).
- 10.10 Following receipt of the Confirmation of Budget by Tjiwarl AC, the Proponent will pay:
- (a) in respect of any Budget Estimate provided pursuant to clause 10.5:
 - (i) 50% of the amounts shown in the agreed Budget Estimate, within five (5) Business Days of agreeing to that Budget Estimate; and
 - (ii) the balance of the actual costs incurred by Tjiwarl AC in relation to the relevant Negotiation Meeting or Consultation Meeting within ten (10) Business Days of receipt of a tax invoice from Tjiwarl AC; and
 - (b) in respect of any Budget Estimate provided pursuant to clause 10.6, the costs incurred by Tjiwarl AC within ten (10) Business Days of receipt of a tax invoice from Tjiwarl AC.
- 10.11 If Tjiwarl AC considers that it will incur costs that are substantially increased from those set out in a Budget Estimate previously provided to the Proponent, Tjiwarl AC shall, as soon as practicable, notify the Proponent of:
- (a) the estimated increase of those costs;
 - (b) the purposes for which those costs are sought to be incurred; and
 - (c) the reasons for the cost increase,
- and provide the Proponent with a revised Budget Estimate.
- 10.12 Within five (5) Business Days of receipt of a revised Budget Estimate provided pursuant to clause 10.11, the Proponent must provide Tjiwarl AC with a written statement of whether or not it agrees with the revised Budget Estimate (**Confirmation of Budget Revision**).
- 10.13 If the Proponent is unable to provide Tjiwarl AC with:
- (a) Confirmation of Budget under clause 10.9; or
 - (b) Confirmation of Budget Revision under clause 10.12,
- then the Parties agree to follow the dispute resolution process set out in clause 18.

11. Review of Rates

On each anniversary of the Commencement Date the Parties will review the rates specified in Schedule 5 and will, where necessary, adjust those rates:

- (a) to reflect movements in the market price of the relevant rates; and/or
- (b) in accordance with the CPI Calculation.

12. GST

- 12.1 Any reference in this clause 12 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.
- 12.2 Unless otherwise indicated, all amounts and other consideration for any Taxable Supply made under this Agreement are exclusive of GST.
- 12.3 If GST is or becomes payable by a Party in relation to any supply that it makes under, in connection with or resulting from this Engagement Protocol (**Supplier**), the Parties agree that, in addition to any consideration provided by a Party (**Recipient**) for a supply from the Supplier, the Recipient must also pay the Supplier, at the same time as providing the consideration, the amount of any GST for which the Supplier is liable in relation to that supply (**additional amount**).
- 12.4 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.
- 12.5 If a Recipient is required under this Engagement Protocol 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.

13. Duty

The Proponent shall pay all duty assessed on this Engagement Protocol, if any, including any duty payable by way of fine or penalty.

14. Confidentiality

- 14.1 Subject to clause 14.2 the following shall be treated by the Parties as confidential:
- (a) information given by the Proponent to Tjiwarl AC under this Engagement Protocol, including any correspondence exchanged between the Parties in relation to this Engagement Protocol;
 - (b) information given by Tjiwarl AC to the Proponent in respect of cultural information, photographs or video; and
 - (c) information furnished in, or pursuant to, this Engagement Protocol or in the course of negotiating this Engagement Protocol by or on behalf of Tjiwarl AC.
- 14.2 Notwithstanding clause 14.1, the Parties may divulge Confidential Information to a third party:
- (a) with the prior written consent of the other Party (which consent shall not be unreasonably withheld);
 - (b) to the extent required by law;
 - (c) to the extent expressly permitted under this Engagement Protocol, or required to enforce its rights under this Engagement Protocol ;
 - (d) to the extent that such information is already, or becomes, in the public domain, otherwise than by breach of this clause 14;
 - (e) who is a financier of, or holding company, or wholly owned subsidiary of the Proponent or Tjiwarl AC;
 - (f) who is the State for the purpose of the Tjiwarl Palyakuwa (Agreement);
 - (g) to the extent required to comply with the listing rules of the Australian Stock Exchange; or
 - (h) who is a prospective joint venturer or assignee.
- 14.3 The Parties shall take all steps reasonably necessary to ensure that the Confidential Information is known only to such persons (including any employees of the Parties) as may reasonably require knowledge thereof in the course of their duties or functions.
- 14.4 Notwithstanding the provisions of clause 14.2 the Parties shall, to the extent permitted by law, require any person (other than members of Tjiwarl AC) to whom it intends to disclose such Confidential Information (who is not under a statutory, professional or contractual duty to keep

such Confidential Information confidential) to give a written undertaking to keep such Confidential Information confidential in accordance with clause 14.1.

14.5 The obligations of the Parties under this clause 14 shall survive the termination of this Engagement Protocol.

15. Public Announcements

15.1 The Parties must not make or authorise any comments or statements to the media and/or the public about the Negotiations (**Public Announcement**) unless:

- (a) it has been agreed in writing by the Proponent and Tjiwarl AC; or
- (b) is required to be made by Law and the disclosing party has given as much notice as possible to, and has consulted (to the fullest extent reasonable in the circumstances) with, the non-disclosing party as to the form and content of the Public Announcement.

15.2 For the avoidance of doubt, a Public Announcement includes comments or statements made on any social media or networking site.

15.3 The Parties will use their best endeavours to stop their members, employees or officers making Public Announcements.

15.4 If a Public Announcement is made contrary to this clause 15, the Parties will meet as soon as possible and issue a joint statement in response to that unauthorised Public Announcement.

16. Assignment

Assignment by the Proponent

16.1 The Proponent may assign, transfer, novate or otherwise dispose of any or all of its rights, interests and obligations under this Engagement Protocol to any person provided that:

- (a) the Proponent notifies Tjiwarl AC in writing of the name and nature of the prospective assignee at least twenty (20) Business Days before the assignment;
- (b) the Proponent consults with Tjiwarl AC about the prospective assignee;
- (c) Tjiwarl AC consents to the assignment, which consent will not be unreasonable withheld;
- (d) the Proponent procures the prospective assignee to execute a deed of assumption by which the prospective assignee agrees to:

- (i) be bound by this Engagement Protocol and to assume all of the Proponent's obligations under the Engagement Protocol; and
- (ii) execute all documents and do (or refrain from doing) all acts and things necessary to ensure the performance of and compliance with those obligations in a timely manner,
as if it were a party to this Engagement Protocol; and
- (e) evidence of that assumption is provided to Tjiwarl AC.

16.2 The Proponent will be released from its obligations under this Engagement Protocol to the extent that those obligations have been assumed by an assignee, save for any obligations pursuant to clause 14.

Assignment by Tjiwarl AC

16.3 Tjiwarl AC agrees that it may only assign, transfer, novate or otherwise dispose of its rights obligations or interests under this Engagement Protocol to a registered native title body corporate (**Replacement RNTBC**) that has replaced it as the prescribed body corporate for the Tjiwarl Determination by a determination of the Federal Court of Australia under sections 56 or 57 of the Native Title Act.

16.4 If Tjiwarl AC proposes to assign, transfer novate or otherwise dispose of its rights, interests or obligations under this Engagement Protocol to the Replacement RNTBC it must:

- (a) give notice in writing of the name of the Replacement RNTBC at least twenty (20) Business Days before the assignment;
- (b) procure the Replacement RNTBC to execute a deed of assumption by which the Replacement RNTBC agrees to:
 - (i) be bound by this Engagement Protocol and to assume all of Tjiwarl AC's obligations under the Engagement Protocol; and
 - (ii) execute all documents and do (or refrain from doing) all acts and things necessary to ensure the performance of and compliance with those obligations in a timely manner,
as if it were a party to this Engagement Protocol; and
- (c) give evidence of that assumption to the Proponent.

16.5 Tjiwarl AC will be released from its obligations under this Engagement Protocol to the extent that those obligations have been assumed by the Replacement RNTBC, save for any obligations pursuant to clause 14.

17. Unexpected Delays

Notice of Unexpected Delays

17.1 The Parties each acknowledge that Delay Events and Cultural Business may cause legitimate delays in the Parties progressing the Negotiations or performing obligations under this Engagement Protocol.

17.2 If a Party is prevented in whole or in part from carrying out its obligations under this Engagement Protocol or progressing the Negotiations as a result of a Delay Event or Cultural Business it must immediately notify the other Party of:

- (a) the obligations it cannot perform;
- (b) the nature of the Delay Event or Cultural Business; and
- (c) time during which it is estimated that the Delay Event or Cultural Business will continue.

17.3 For the avoidance of doubt, the Parties acknowledge that Cultural Business may not necessarily preclude the planning or holding of Negotiation Meetings or Consultation Meetings if the relevant personnel are available to meet.

17.4 The Party affected by the Delay Event or Cultural Business will give immediate notice to the other Parties of the cessation of the delay.

18. Dispute Resolution

Notification and Negotiation of a Dispute

18.1 If a dispute arises between the Parties in connection with the Negotiations or this Engagement Protocol (**Dispute**) either Party may give notice in writing to the other Party identifying the nature of the Dispute (**Dispute Notice**).

18.2 Following the issue of a Dispute Notice, senior representatives of the Parties shall consult with each other in good faith in a timely manner to seek to resolve the Dispute. A Party may also, for the avoidance of doubt, seek the assistance of the State to resolve the Dispute in accordance with Schedule 4 of the Tjiwarl Palyakuwa (Agreement).

18.3 If the Parties cannot resolve the Dispute within twenty (20) Business Days of a Dispute Notice being served (or other such longer period as may be agreed between the Parties) any Party may refer the dispute to mediation.

Mediation

18.4 If the Dispute is referred to mediation:

- (a) the Parties must seek to agree on the appointment of an independent mediator with relevant experience; or
- (b) if the Parties cannot agree on a mediator within seven (7) Business Days of the referral to mediation, a person nominated by the President or Acting President of the Law Society of Western Australia.

18.5 The reasonable cost of the mediator is to be borne by the Party that refers the Dispute to mediation.

18.6 The role of the mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a Party to the Dispute except if the Party agrees in advance in writing.

18.7 The Parties to the Dispute will engage in the mediation process in good faith and in an open and conciliatory manner, taking into account any cultural or customary concerns or considerations, with a view to reaching a mutually acceptable compromise to the issues in dispute.

18.8 If the Parties to the Dispute fail to achieve a resolution of the Dispute within thirty (30) Business Days of the appointment of the mediator (or such other longer period as may be agreed between the Parties to the Dispute), any Party to the Dispute may by written notice to the other Parties to the Dispute terminate the mediation process.

Costs

18.9 Subject to clause 18.5, the Parties shall bear their own costs of participating in any consultation or mediation conducted pursuant to this clause 18.

Court Proceedings

18.10 Subject to clause 18.11, a Party to a Dispute may not start court proceedings in relation to a Dispute unless the Dispute has first been referred to mediation and the mediation has been terminated in accordance with clause 18.8.

18.11 Nothing in this clause 18 precludes a Party from seeking urgent interlocutory relief relative to the subject matter of a Dispute from a court of competent jurisdiction, including the right to seek injunctive relief.

19. Term and Termination

Term

19.1 This Engagement Protocol commences on the Commencement Date and terminates on the Termination Date.

Termination

19.2 This Engagement Protocol may be terminated by:

- (a) any Party by giving the other Parties no less than ten (10) Business Days written notice of such termination; or
- (b) by the mutual agreement of the Parties in writing.

19.3 If this Engagement Protocol is terminated for any reason:

- (a) each Party will remain liable to the other Party in respect of all obligations accrued under this Engagement Protocol to the date of termination; and
- (b) save for clause 14, the Parties will have no further rights or obligations under this Engagement Protocol.

20. Without Prejudice

- 20.1 This Engagement Protocol and the Negotiations are without prejudice to the legal positions of the Parties and will not be construed as admissions of fact or liability in relation to any legal proceeding or process except that, subject to clause 20.2, they may be used as evidence that the Parties have attempted to negotiate in good faith and/or consulted with each other.
- 20.2 Neither this Engagement Protocol nor the fact of the Negotiations are conclusive proof in themselves of a Party having negotiated in good faith.

21. Entire Agreement

This Engagement Protocol constitutes the entire agreement between the Parties relating to its subject matter.

22. Variation

This Engagement Protocol may only be varied by agreement in writing signed by both Parties.

23. Further Assurances

Each Party will, on the request of the other Party, do everything reasonably necessary to give effect to this Engagement Protocol.

24. Severance

If any part of this Engagement Protocol is or becomes unenforceable, that part is or will be severed from this Engagement Protocol so that the rest of this Engagement Protocol remains in force.

25. Governing Law

This Engagement Protocol is governed by the laws in force in the State of Western Australia and the Commonwealth of Australia.

26. Counterparts

- 26.1 This Engagement Protocol may be executed in two counterparts.
- 26.2 If executed in two counterparts, both counterparts together shall be taken to constitute one instrument.

27. Notice

Notice

- 27.1 Each notice or other communication given by one Party to another pursuant to this Engagement Protocol:
- (a) shall be in writing;
 - (b) must be delivered to the address for the Party specified in clause 27.3 or to such other address as a Party may nominate in writing;
 - (c) subject to clause 27.2, will be taken to be duly given or made:
 - (i) if delivered by hand, upon delivery;
 - (ii) if sent by ordinary pre-paid post, ten (10) Business Days after posting; and
 - (iii) if sent by email, at the earlier of:
 - (A) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
 - (B) the time that the intended recipient confirms receipt of the email by reply email; and
 - (C) four (4) hours after the time that the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that four (4) hour period, an automated message that the email has not been delivered.
- 27.2 If the result of clause 27.1(c) is that a notice or other communication would be taken to be given or made on a day that is not a Business Day, or is later than 4.00pm (local time), in the place to which the notice or other communication is sent, it will be taken to have been duly given or made at 9.00am on the next Business Day in that place.

Address for Notices

27.3 For the purpose of this clause 27, unless notified by a Party otherwise, the address to which notices and other communications are to be sent shall be:

(a) for Tjiwarl AC:

The CEO

Tjiwarl (Aboriginal Corporation) RNTBC

Unit 6, 524 Abernethy Road,

Kewdale WA 6105

Telephone: +61 (8) 9200 3730

Email: compliance@tjiwarl.org.au

(b) for the Proponent: as set out in Schedule 1, item 4

EXECUTED by the parties as an agreement

SIGNED by **TJIWARL ABORIGINAL CORPORATION (RNTBC) ICN 8628** in accordance with section 99.5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) in the presence of:

Signature of Director

Signature of Director

Full name of Director (print)

Full name of Director (print)

Date

Date

PROPONENT¹

SIGNED by [INSERT FULL NAME OF
PROPONENT] in the presence of:

Signature of [*insert Proponent name*]

Signature of witness

Date

Full name of witness (print)

Address of witness

Occupation of witness

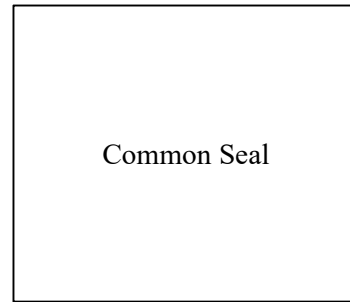
¹ Delete this footnote, the heading and the execution clauses for the Proponent that are not applicable.

OR IF THE PROPONENT IS A COMPANY

Note: This deed must be executed by affixing the common seal of the company to the deed in the presence of two directors, or one director and the company secretary. Alternatively, under section 127(1) of the Corporations Act 2001 (Cth) a company can execute a document without using a common seal if the document is signed by two directors, or a director and a company secretary or for a proprietary company that has a sole director who is also the company secretary – that director.

WITH A COMMON SEAL

The **COMMON SEAL** of [INSERT
COMPANY NAME] ACN [*insert ACM*] was
affixed to this deed in the presence of



Signature of Director

Signature of Director / Secretary*

*delete whichever is not applicable

Full name of Director (print)

Full name (print)

Date

WITHOUT A COMMON SEAL

SIGNED for [INSERT COMPANY NAME] ACN
[*insert ACM*] in accordance with section 127(1) of the
Corporations Act 2001 (Cth) in the presence of:

Signature of Director

Signature of Director / Secretary*

*delete whichever is not applicable

Full name of Director (print)

Full name (print)

Date

Date

SOLE PROPRIETOR COMPANY

SIGNED for [INSERT COMPANY NAME] ACN
[insert ACM] in accordance with section 127(1) of the
Corporations Act 2001 (Cth) in the presence of:

Signature of Director
(as sole Director and Secretary)

Full name (print)

Date

Schedule 1 – Details of the Tjiwarl Engagement Protocol

ITEM	DETAILS
<p>1. Date of Protocol (to be entered by Tjiwarl AC only)</p>	
<p>2. RIWI Licence(s)</p>	<p>RIWI Licence 1: Application No: RIWI Licence Type:</p> <p>RIWI Licence 2: Application No: RIWI Licence Type:</p> <p><i>[insert / delete as required]</i></p>
<p>3. Proponent Details</p>	<p>Proponent 1: Name*: *include ACN if a company</p> <p>Address:</p> <p>Proponent 2: Name*: *include ACN if a company</p> <p>Address:</p> <p><i>[insert/ delete as required]</i></p>
<p>4. Proponent's Address</p>	<p>Contact Name: Company: Address: Telephone: Email:</p>

Schedule 2 – Initial Tjiwarl Negotiation Team

ROLE	DETAIL
Tjiwarl Co-ordinator	
Tjiwarl People	1. 2. 3. 4. [<i>insert / delete as required</i>]
Tjiwarl Cultural Advisors	1. 2. 3. [<i>insert / delete as required</i>]
Tjiwarl Expert Advisors	1. 2. 3. [<i>insert / delete as required</i>]
Legal Services	

Schedule 3 – Initial Proponent Negotiation Team

ROLE	DETAIL
Proponent Co-ordinator	
Proponent Members	1. 2. 3. 4. <i>[insert / delete as required]</i>
Proponent Advisors	1. 2. 3. <i>[insert / delete as required]</i>
Legal Services	

Schedule 4 – Matters for Negotiation

1. Culture, Country and Community

- (a) Heritage protection, including protection of sites.
- (b) Avoiding damage to sites.
- (c) Facilitating ‘care for country’ obligations and maintaining connection with country.
- (d) Minimising the impact of the Licence Activities on country and on native title.
- (e) Rehabilitation and restoration of country.
- (f) Support for law and culture.
- (g) Social impact base line assessment and minimising negative social impacts and maximising positive social impacts.
- (h) Environmental assurances and insurances.
- (i) Water Management.
- (j) Processes for involving Tjiwarl People in environmental matters.

2. Relationship between Tjiwarl AC, Tjiwarl People and the Proponent

- (a) Development of long-term relationship between Tjiwarl AC, the Tjiwarl People and the Proponent.
- (b) Process for ongoing consultation between the Tjiwarl AC and the Proponent about the development, operation, decommissioning and rehabilitation of the area of the Licence Activities, including any issues and opportunities that arise during the life of the Licence Activities.
- (c) Process for resolution of disputes between Tjiwarl AC and the Proponent.
- (d) Processes for assisting the Proponent to create a safe, productive and culturally aware workplace.
- (e) Cultural awareness training for all Proponent employees and contractors involved in the Licence Activities.
- (f) Establishing a committee of representatives of the Proponent and Tjiwarl People to manage the ongoing relationship and the interface between the Proponent and Tjiwarl People.

3. Access and Consent

- (a) Access by Tjiwarl People to the area of the RIWI Licence over the life of the Licence Activities.
- (b) Consent to the grant of the RIWI Licence, the Licence Activities and any other required approvals.

4. Community Development

- (a) Maximising the economic viability of Tjiwarl AC.
- (b) Providing business and employment opportunities for Tjiwarl AC and Tjiwarl People.
- (c) Maximising training opportunities for Tjiwarl People.
- (d) Maximising economic development opportunities for Tjiwarl AC and Tjiwarl People.
- (e) Providing a legacy for Tjiwarl People.

5. Compensation

- (a) Nature and quantum of compensation.
- (b) Body to hold compensation and other community benefits.

6. Tjiwarl Peoples' Lives

- (a) Minimising any adverse impacts of the Licence Activities on Tjiwarl People.
- (b) Minimising any adverse impact of Licence Activities on the Tjiwarl Peoples' native title rights and interests.
- (c) Maximising education, training and mentoring opportunities for Tjiwarl People, including the development of a training and employment policy.
- (d) Maximising the social development of Tjiwarl People generally.
- (e) Support for sporting events in which Tjiwarl People participate.
- (f) Improving the general health and well-being of Tjiwarl People.
- (g) Ensuring that contractors and subcontractors working on Licence Activities must comply with the Proponent's undertakings.
- (h) Development of management plans for the Licence Activities.

7. Project Agreement

- (a) Structure and content of the agreement with respect to the Licence Activities, including parties to such an agreement.
- (b) Strong processes for implementation of the agreement with respect to the Licence Activities.

8. Commercial Matters

- (a) Providing commercial and contracting opportunities during the life of the Licence Activities to Tjiwarl People and entities owned by Tjiwarl People.
- (b) Exploring the opportunity for Tjiwarl AC and Tjiwarl People be included in equity opportunities.

Schedule 5 – Negotiation Cost Guidelines

ITEM	RATE
Tjiwarl Negotiation Team Members	\$750
Tjiwarl Cultural Advisors	At cost
Tjiwarl Expert Advisors	At cost
GIS Officer	\$60 per hour or \$500 per day
Fuel	At cost
Meals (where catering not provided)	\$80 per day per person
Catering of meals	At cost
Accommodation	At cost
Airfares	At cost
Venue Hire	At cost
Administration	20%

Item B – Instructions for completing the Tjiwarl Engagement Protocol

The following is a guide for completing and executing the Tjiwarl Engagement Protocol. Please read this guide before attempting to complete the Tjiwarl Engagement Protocol as errors may render the Engagement Protocol invalid or may result in Tjiwarl AC declining to execute the Engagement Protocol

1. Form of the Tjiwarl Engagement Protocol

- (a) The final form of the Tjiwarl Engagement Protocol is to be agreed between the applicant(s) for the RIWI Licence (the Proponent) and Tjiwarl AC. Any amendments or changes to the document will need to be discussed and agreed between the parties. Do not amend or otherwise attempt to change the document without the prior agreement of Tjiwarl AC.
- (b) The Tjiwarl Engagement Protocol has been designed to be submitted as an original document, but in the event of the Tjiwarl Engagement Protocol being re-typed, every care should be taken to avoid errors.

2. Completing the Tjiwarl Engagement Protocol

- (a) Only the Proponent, Tjiwarl AC, and those duly authorised by a power of attorney can sign the Tjiwarl Engagement Protocol.
- (b) All parties must sign in accordance with their governing Articles of Association, except for individuals, whose signature must be witnessed.
- (c) All signatures must be witnessed by an independent party to the document.
- (d) Do not fill in the date in item 1 of the Schedule. This will be filled in by Tjiwarl AC with the date on which Tjiwarl AC signs the Tjiwarl Engagement Protocol.
- (e) Any changes or alterations must be initialled by all parties to the Tjiwarl Engagement Protocol.

3. Provision of the Tjiwarl Engagement Protocol

- (a) Once the form of the Tjiwarl Engagement Protocol has been agreed between the Proponent and Tjiwarl AC and it has been signed by the Proponent it is important to forward the Tjiwarl Engagement Protocol to Tjiwarl AC for execution as soon as possible.
- (b) If you have any queries in relation to the Tjiwarl Engagement Protocol please contact Tjiwarl AC (at the address contained in clause 27 of the Tjiwarl Engagement Protocol).

4. Checklist for the Tjiwarl Engagement Protocol

Have you ensured that:

- The Tjiwarl Engagement Protocol is in the correct form and has not been amended without the prior agreement of Tjiwarl AC?
- Any changes or alterations to the Tjiwarl Engagement Protocol have been initialled by all Parties?
- Schedules 1, 2 and 3 have been completed?
- The Proponent has signed the document and where appropriate the company seal has been included?
- The Proponent 's signature has been witnessed (where the Proponent is an individual)?
- Tjiwarl AC has signed the document?

TJIWARL PALYAKUWA (AGREEMENT)

SCHEDULE 5 – Annexure 5

Certification Form for RIWI Licence

CERTIFICATION FORM FOR RIWI LICENCES
Schedule 5, clause 6 of the Tjiwarl Palyakuwa (Agreement)

This Certification Form applies to the following RIWI Licences (as defined in Schedule 5, clause 6.1 of Tjiwarl Palyakuwa (Agreement)).

ITEM	DETAILS
1. Tenure	<p>Licence 1:</p> <p style="padding-left: 40px;">Application No:</p> <p style="padding-left: 40px;">Licence Type:</p> <p>Licence 2:</p> <p style="padding-left: 40px;">Application No:</p> <p style="padding-left: 40px;">Licence Type:</p> <p><i>[insert / delete as required]</i></p>
2. Proponent(s)	<p>Licence Applicant 1:</p> <p style="padding-left: 40px;">Name*:</p> <p style="padding-left: 80px;">*include ACN if a company</p> <p style="padding-left: 40px;">Address:</p> <p>Licence Applicant 2:</p> <p style="padding-left: 40px;">Name*:</p> <p style="padding-left: 80px;">*include ACN if a company</p> <p style="padding-left: 40px;">Address:</p> <p><i>[insert / delete as required]</i></p>

On behalf of Tjiwarl (Aboriginal Corporation) RNTBC, it is hereby certified that:

1. I am a director of Tjiwarl (Aboriginal Corporation) RNTBC (**Tjiwarl AC**) and am duly authorised by it to give this certification.
2. The Tenure is a RIWI Licence as defined in Schedule 5, clause 6.1 of the Tjiwarl Palyakuwa (Agreement).
3. The Proponent for the Tenure and Tjiwarl AC have reached an agreement as to the grant of the Tenure, on:

[Insert date]
4. Tjiwarl AC acknowledges and agrees that the Minister for Water may grant the Tenure to the Proponent in accordance with Schedule 5, clause 6.4(b) of the Tjiwarl Palyakuwa (Agreement).

Signature of Director

Signature of Director

Full name

Full name

Date

Date

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 Stage 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)

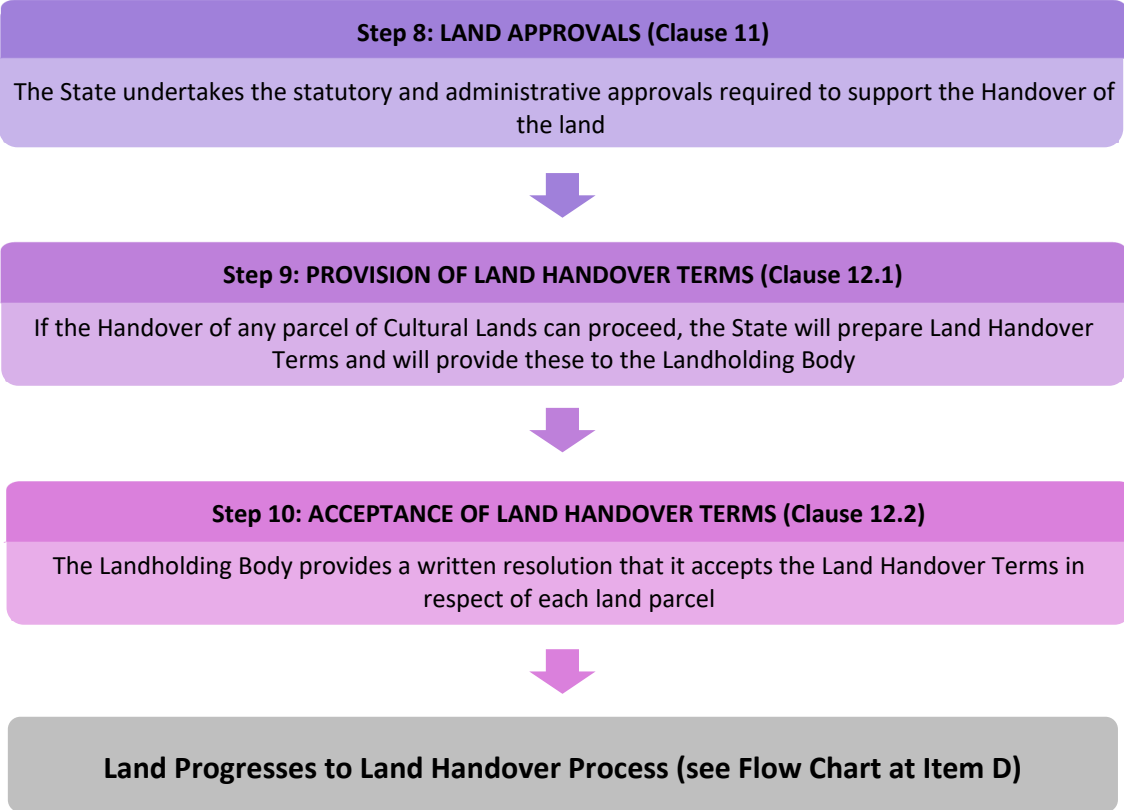
The State provides a report indicating if the land is eligible for selection and including any land information to support the Landholding Body's selection of land and tenure



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

Step 1: PROVISION OF LIST OF FUTURE LANDS (Clause 9.1(b))

On each anniversary of the Conclusive Registration Date, the State will provide the Landholding Body with a list of Future Lands that have reverted to UCL or become an unmanaged reserve.



Step 2: ELIGIBILITY ASSESSMENT (Clause 10.1)

The State will undertake an assessment of Future 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 Future 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 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

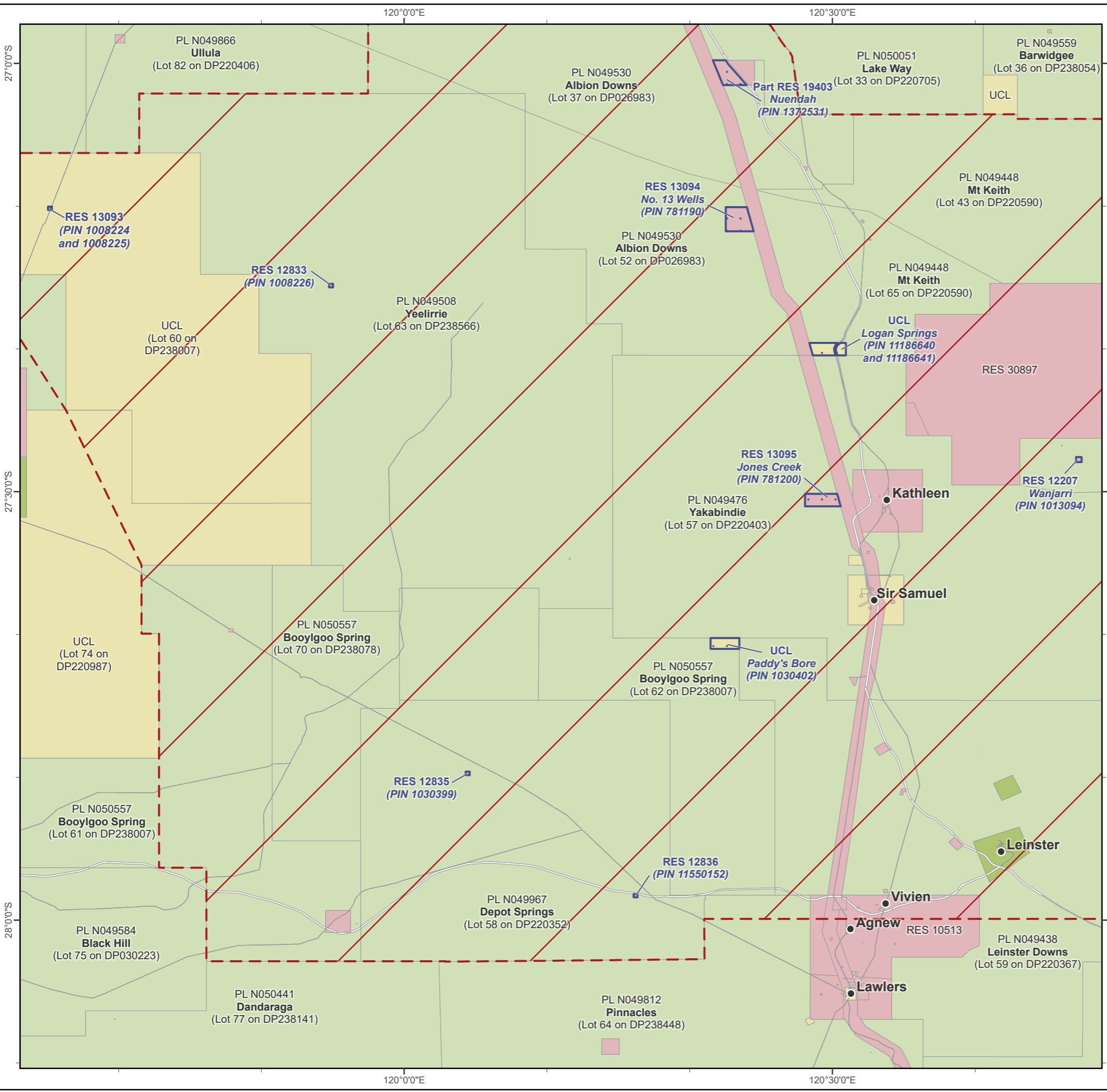
- #### Data Sources
- Cadastral and Tenure information: Landgate Spatial Cadastral Database (SCDB), 28/09/2022.
 - Mining information: Department of Mines, Industry Regulation and Safety, 12/10/2022
 - Administrative boundaries: Landgate Administrative Boundaries Dataset.
 - Topographical data: PSMA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

- #### Data Notes
- Coastlines and shorelines are interpreted from aerial photography or recorded from ground surveys.
 - Local Authorities terminate at Low Water Mark (LWM) unless otherwise specified.
 - Pastoral Leases terminate 40 metres landward High Water Mark (HWM) unless otherwise specified.
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 - All referenced Deposited Plans and Diagrams are held by the Western Australian Land Information Authority, trading as Landgate.
 - Insets, if shown, are not to scale.



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 www.landgate.wa.gov.au



Tjiwarl Palyakuwa (Agreement)

Overview Map

Legend

-  First Stage Lands
 -  Tjiwarl Palyakuwa (Agreement) - Agreement Area
- #### Land Tenure
-  Freehold
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 -  Reserves
 -  State Forest
 -  Marine Park
 -  Unallocated Crown Land
 -  Road Survey; Road Lease; Miscellaneous Tenure



Latitude and Longitude based on Geocentric Datum of Australia 2020

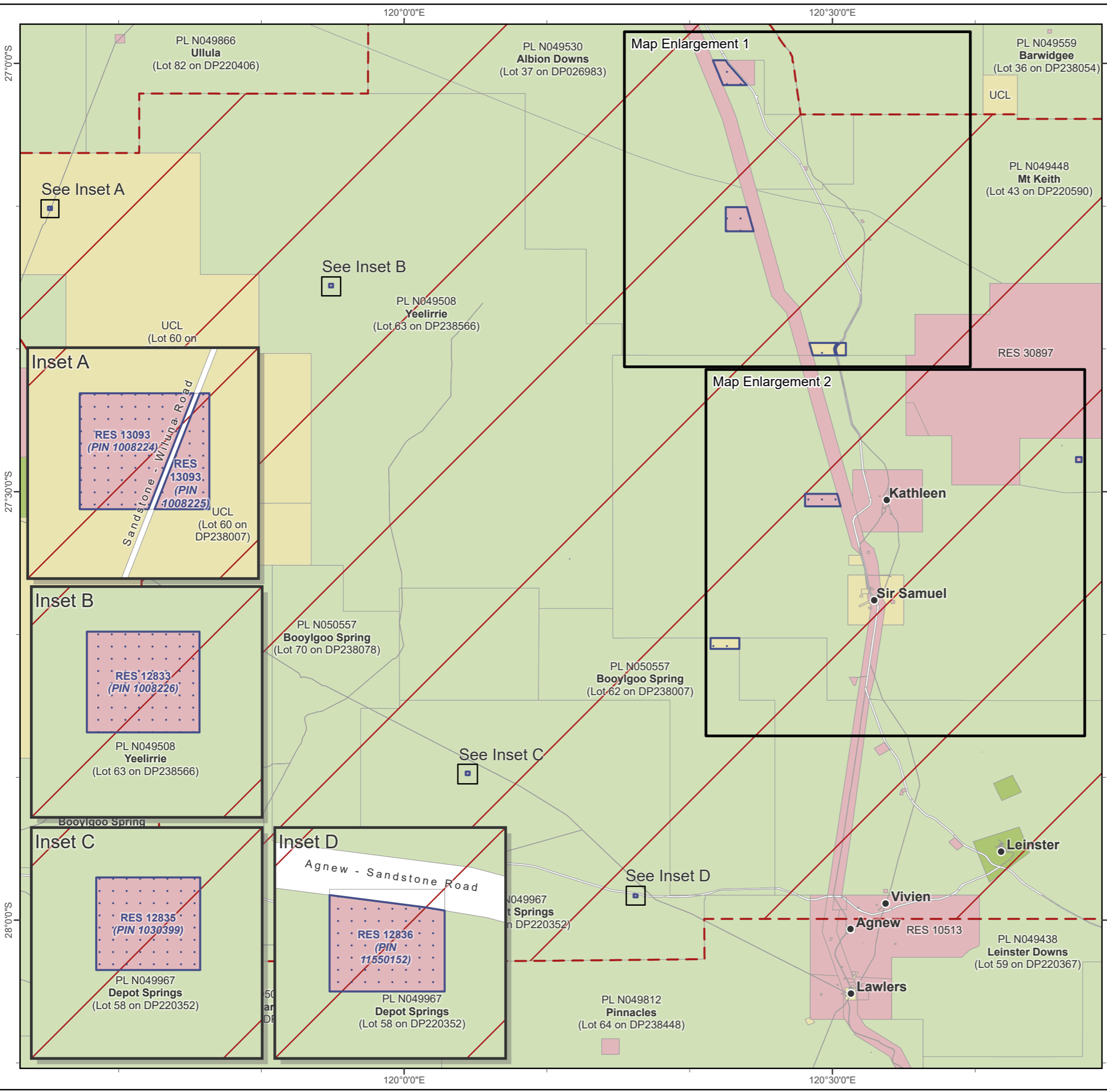
- #### Data Sources
- Cadastral and Tenure information: Landgate Spatial Cadastral Database (SCDB), 28/09/2022.
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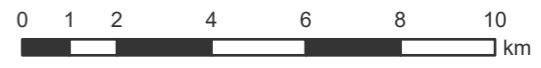


Tjiwarl Palyakuwa (Agreement)

Map Enlargement 1

Legend

-  First Stage Lands
 -  Tjiwarl Palyakuwa (Agreement) - Agreement Area
- #### Land Tenure
-  Freehold
 -  Pastoral Leases
 -  General and Special Purpose Leases
 -  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



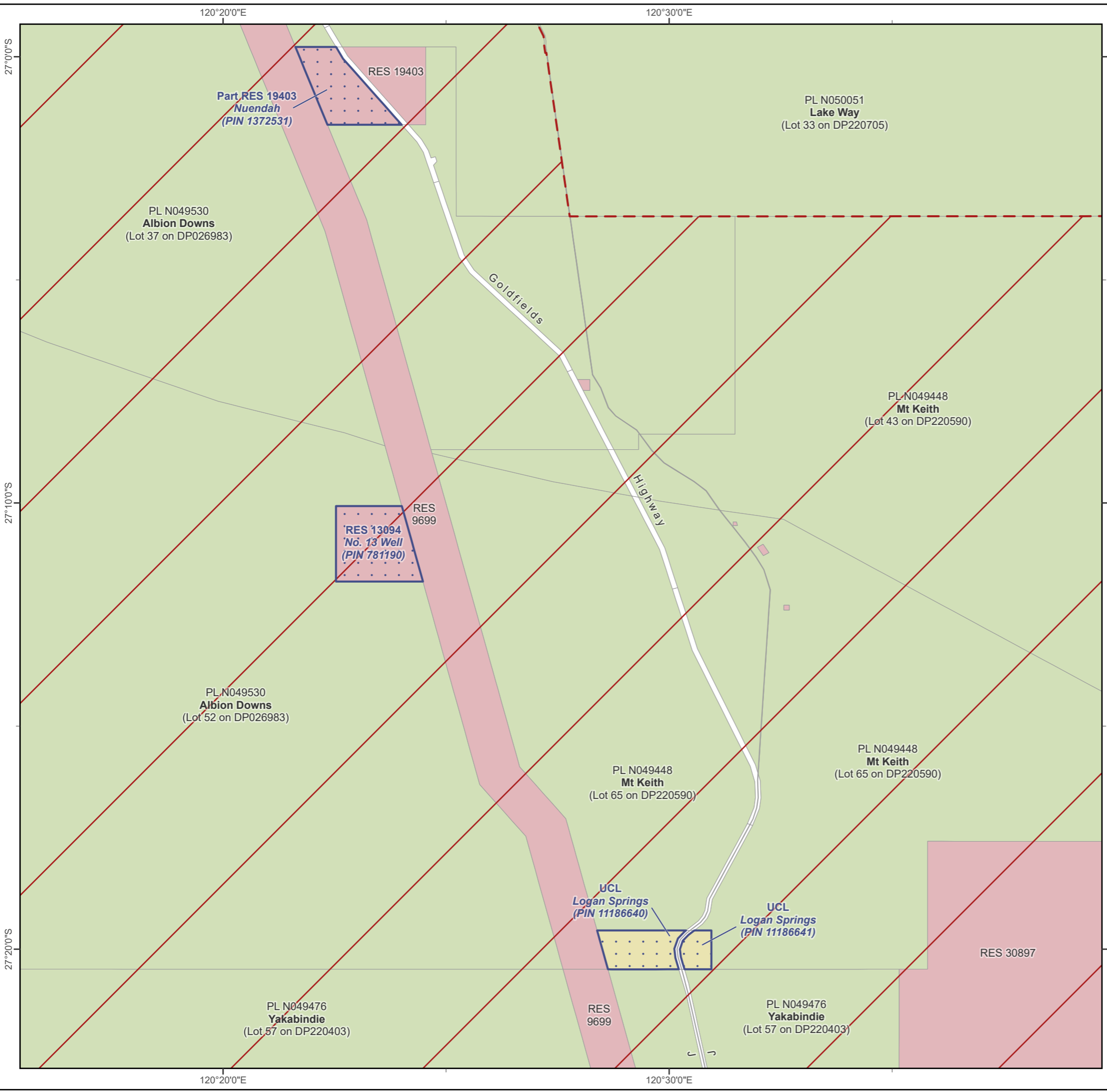
- #### Data Sources
- Cadastral and Tenure information: Landgate Spatial Cadastral Database (SCDB), 28/09/2022.
 - Mining information: Department of Mines, Industry Regulation and Safety, 12/10/2022
 - Administrative boundaries: Landgate Administrative Boundaries Dataset.
 - Topographical data: PSMA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

- #### Data Notes
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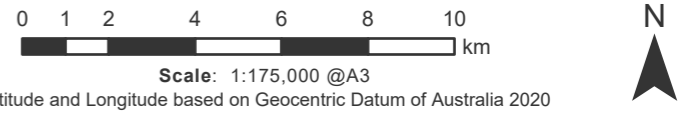


Tjiwarl Palyakuwa (Agreement)

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
 -  Reserve Leases
 -  Reserves
 -  State Forest
 -  Marine Park
 -  Unallocated Crown Land
 -  Road Survey; Road Lease; Miscellaneous Tenure



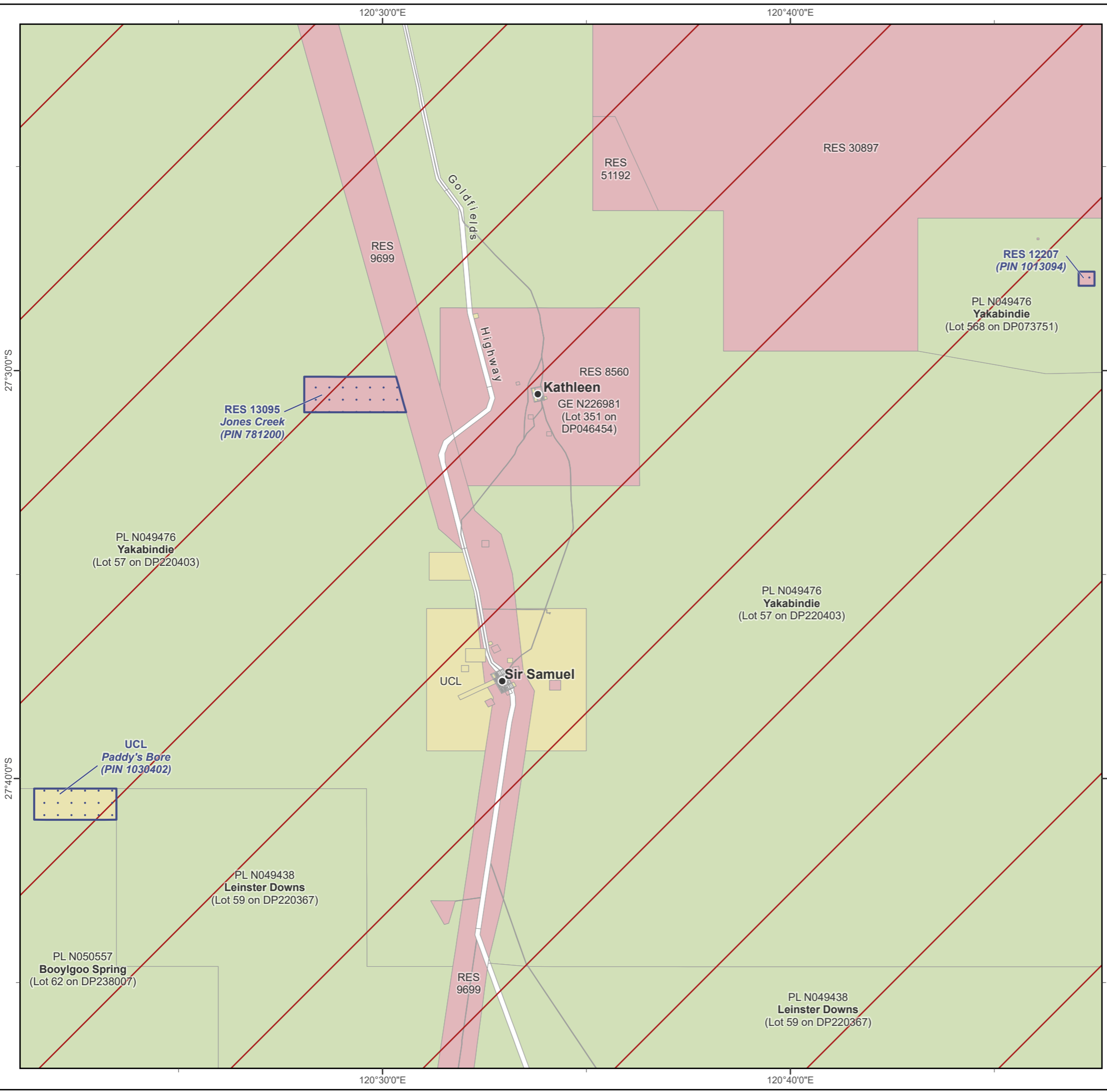
- ### Data Sources
- Cadastral and Tenure information: Landgate Spatial Cadastral Database (SCDB), 28/09/2022.
 - Mining information: Department of Mines, Industry Regulation and Safety, 12/10/2022
 - Administrative boundaries: Landgate Administrative Boundaries Dataset.
 - Topographical data: PSMA Dataset.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

- ### Data Notes
- Coastlines and shorelines are interpreted from aerial photography or recorded from ground surveys.
 - Local Authorities terminate at Low Water Mark (LWM) unless otherwise specified.
 - Pastoral Leases terminate 40 metres landward High Water Mark (HWM) unless otherwise specified.
 - Islands shown are Unallocated Crown Land (UCL) unless otherwise specified.
 - All referenced Deposited Plans and Diagrams are held by the Western Australian Land Information Authority, trading as Landgate.
 - Insets, if shown, are not to scale.



Disclaimer
For informational purposes only. This map is a pictorial representation of data extracted from Landgate Datasets and is intended to be an overview of general geospatial information. Waterlines shown on this map do not necessarily depict an exact cadastral boundary. Native title application boundaries interpolated from descriptions held by the National Native Title Tribunal (NNTT) and Federal Court. Reference should be made to the NNTT for confirmation of this boundary for any legal purposes. In the event of any discrepancy between the written application boundary description and the areas depicted on this map the written description shall take preference as the maps and/or enlargements are indicative only.

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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)

TJIWARL PALYAKUWA (AGREEMENT)**SCHEDULE 7**

Conservation Estate*Parna Tirtu Kanyilku*

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1. Overview

1.1 What this Schedule contains

This Schedule outlines:

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

2. Definitions and Interpretation

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

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

2.1 General Definitions

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

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

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

2.2 Specific Definitions

In this Schedule, unless the context requires otherwise:

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

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

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

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

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

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

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

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

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

FTE means full-time equivalent.

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

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

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

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

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

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

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

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

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

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

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

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

Land Estate Schedule means Schedule 6 to this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.3 Interpretation – General

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

3. Creation of Tjiwarl Conservation Estate

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

3.1 Expansion of Original Wanjarri Nature Reserve

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

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

3.2 Access to Reserve 12207

Each Party acknowledges and agrees that:

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

3.3 Joint vesting of Wanjarri Nature Reserve

In accordance with section 8AA of the CALM Act:

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

3.4 Creation of public access easement to Wanjarri Nature Reserve

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

3.5 Exclusion of areas from Yeelirrie Lake Mason Reserve

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

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

3.6 Effect of exclusion of areas from Yeelirrie Lake Mason Reserve

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

3.7 Naming of Yeelirrie Lake Mason Reserve

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

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

3.8 Creation and Joint Vesting of Yeelirrie Lake Mason Reserve

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

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

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

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

3.10 Creation and Joint Vesting of Future Conservation Reserves

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

4. Joint Management of Tjiwarl Conservation Estate

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

4.1 Management Plan and Joint Management Agreement for Tjiwarl Conservation Estate

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

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

4.2 Approach to Joint Management

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

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

4.3 Interim Joint Management Body

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

4.4 Expenditure for the Joint Management of Tjiwarl Conservation Estate

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

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

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

(ii) the following general funding allocations:

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

(Tjiwarl Joint Management Funding).

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

(Departmental Joint Management Implementation Support Funds).

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

4.5 Priority joint management projects

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

4.6 Unexpended joint management money

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

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

4.7 Joint management of Tjiwarl Conservation Estate after 10 years

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

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

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

4.8 Ending or suspending Joint Management

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

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

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

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

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

5. Variation

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

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

6. Notices

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

6.1 Notices under this Schedule

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

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

6.2 Addresses for Service

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

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

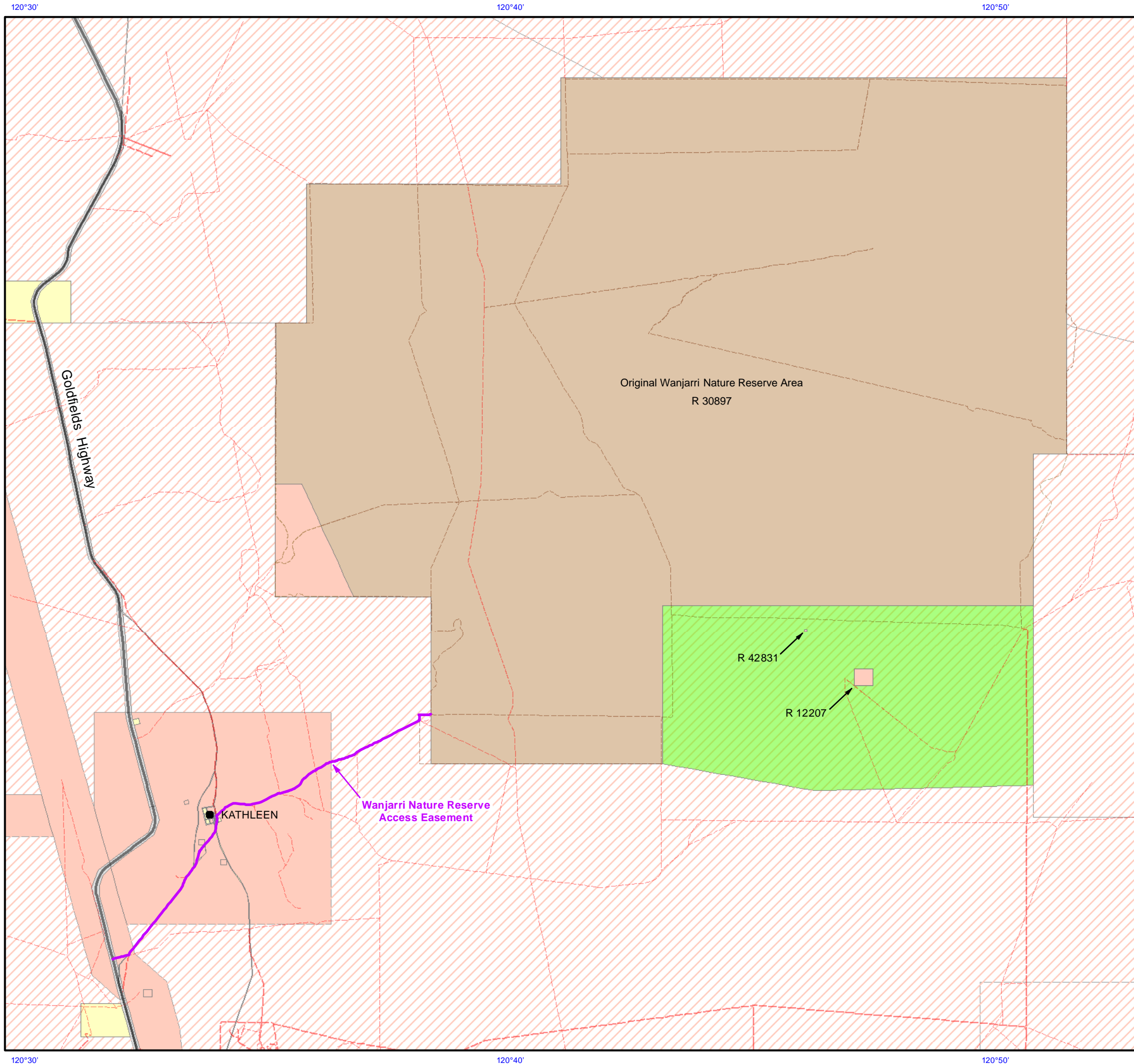
(b) **For the State:**

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

TJIWARL PALYAKUWA (AGREEMENT)

SCHEDULE 7 – Annexure 1

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



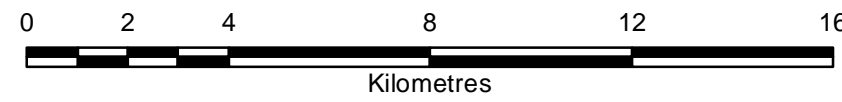
Original Wanjarri Nature Reserve Area & Wanjarri Nature Reserve Addition

Legend

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



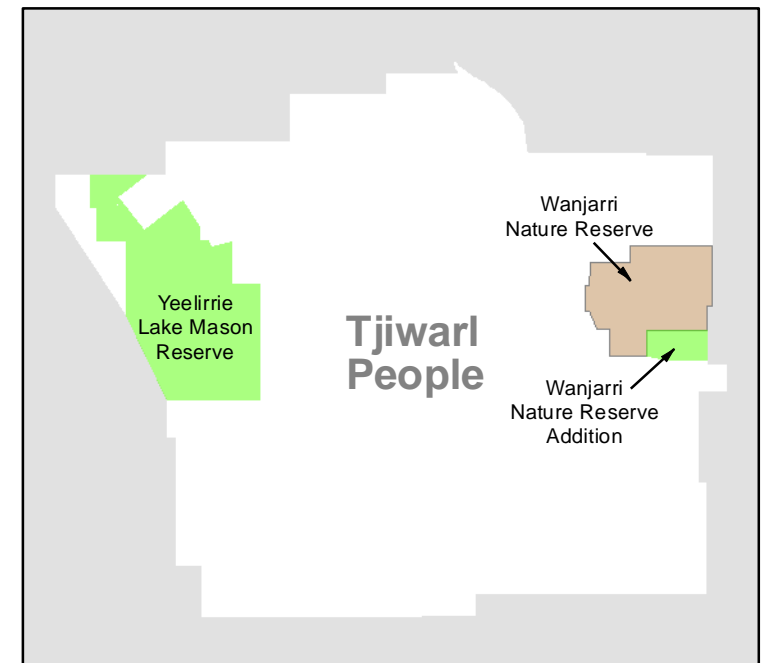
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Longitude and Latitude based on
Geocentric Datum of Australia 1994



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TJIWARL PALYAKUWA (AGREEMENT)

SCHEDULE 7 – Annexure 2

Map of the Yeelirrie Lake Mason Reserve

119°30'

119°40'

119°50'

120°

-27°10'

-27°10'

-27°20'

-27°20'

-27°30'

-27°30'

119°30'

119°40'

119°50'

120°

Tjiwarl Palyakuwa (Agreement) Schedule 7 - Annexure 2

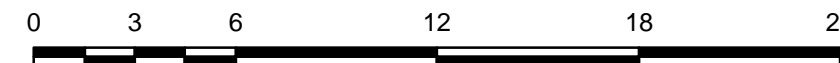
Yeelirrie Lake Mason Reserve

Legend

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



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(A3)



Kilometres

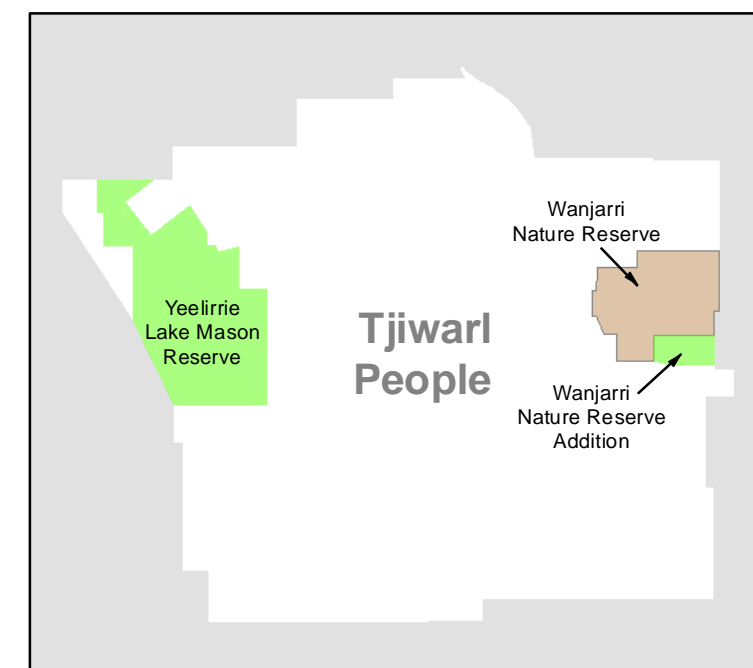
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Department of Biodiversity,
Conservation and Attractions

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Department of Biodiversity, Conservation and Attractions

Produced Oct 18, 2022



TJIWARL PALYAKUWA (AGREEMENT)

SCHEDULE 7 – Annexure 3

Map of the Wanjarri Nature Reserve Access Easement

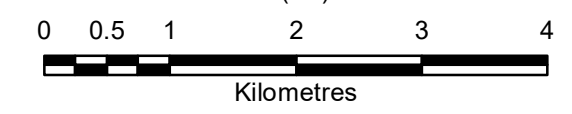
Wanjarri Nature Reserve Access Easement

Legend

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



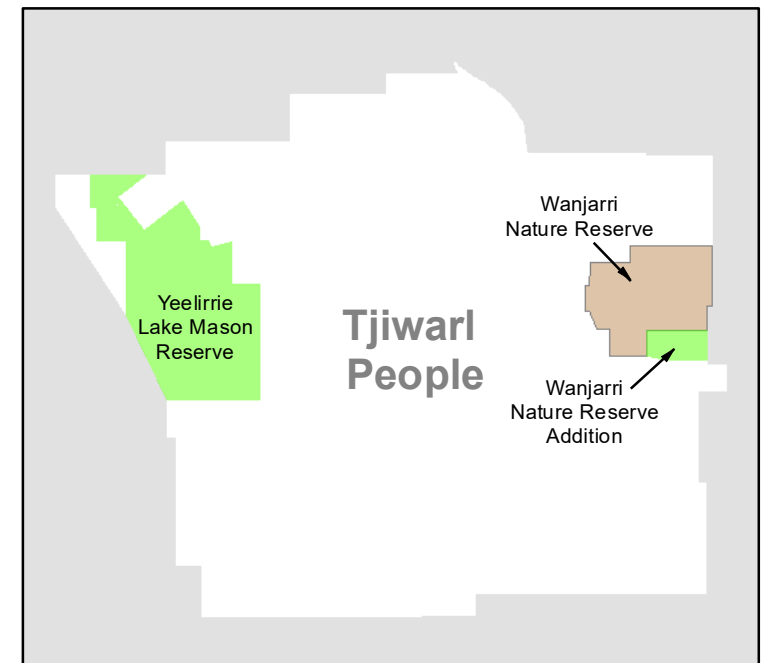
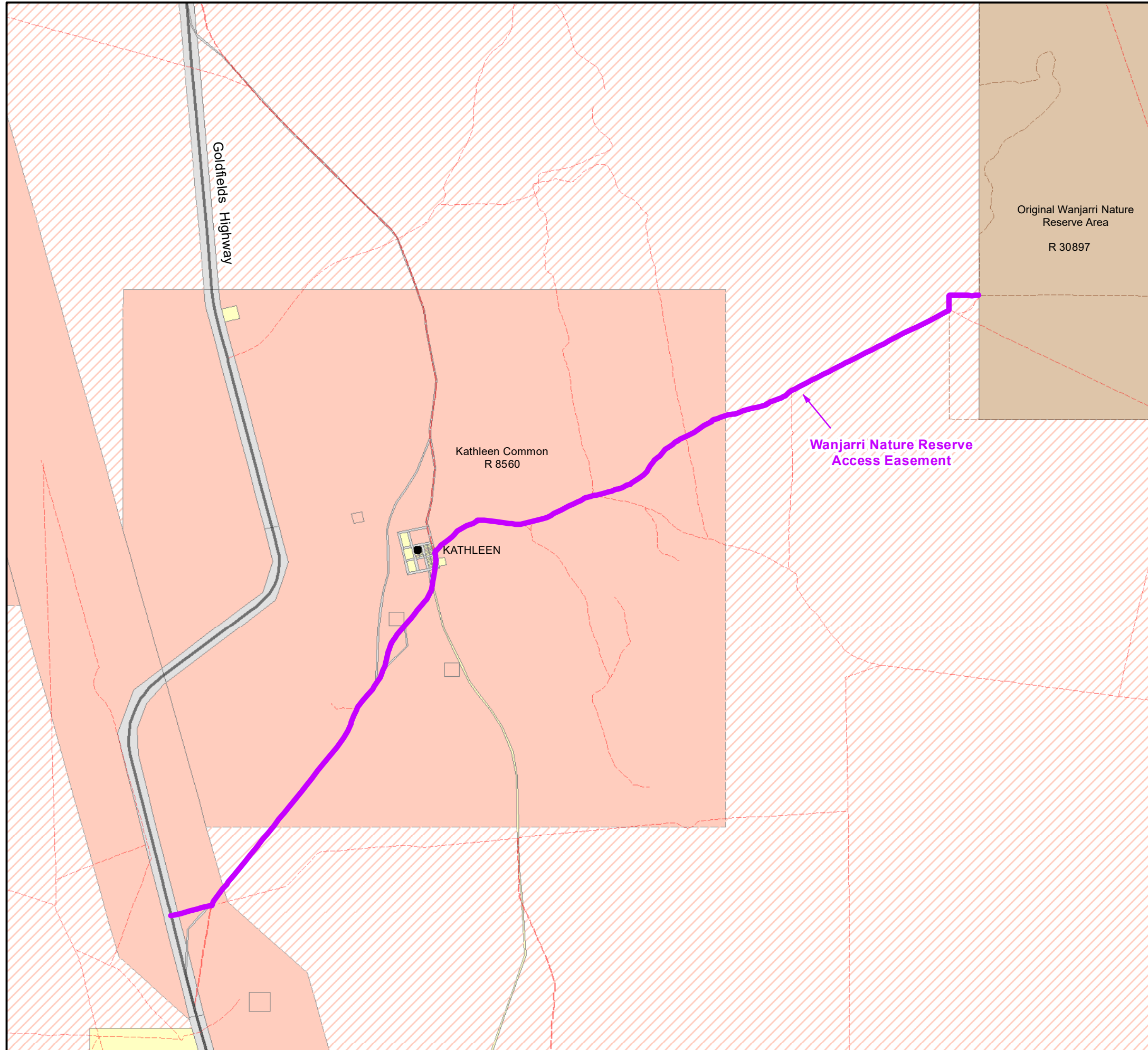
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TJIWARL PALYAKUWA (AGREEMENT)**SCHEDULE 7 – Annexure 4**

Joint Management Agreement

Section 56A CALM Act

JOINT MANAGEMENT AGREEMENT

For the Tjiwarl Conservation Estate

BETWEEN

Tjiwarl Aboriginal Corporation (ICN 8628)

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

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DATE

This Agreement is made on the day of 202

PARTIES

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

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

RECITALS

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

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

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

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

THE PARTIES AGREE AS FOLLOWS:

1. Definitions and Interpretation

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

1.1 General Definitions

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

1.2 Specific Definitions

In this Agreement, unless the context otherwise requires:

Aboriginal Cultural Business means any ceremonial and other cultural obligation:

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

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

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

Agreement means this joint management agreement and its Schedules.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Defaulting Party has the meaning given in clause 12.1.

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

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

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

Event of Default has the meaning given in clause 12.1.

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

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

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

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

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

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

Joint Management Body means the body established in clause 4.

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

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

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

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

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

Member means a Representative Member or an Alternate Member.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

State means the State of Western Australia.

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

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

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

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

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

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

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

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

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

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

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

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

1.3 Interpretation

In this Agreement, unless the contrary intention appears:

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

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

2. Term and Termination

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

2.1 Term

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

2.2 Termination

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

3. Joint Management of the Tjiwarl Conservation Estate

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

4. Establishment of Joint Management Body

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

5. Joint Management Body Role and Decisions

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

5.1 Role of the Joint Management Body

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

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

5.2 Decisions of the Joint Management Body

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

6. Membership of the Joint Management Body

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

6.1 Representative Members

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

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

6.2 Representative Member unable to attend a Joint Management Body Meeting

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

6.3 Chairperson

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

6.4 Persons not eligible to be members

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

6.5 Vacancy of Member

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

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

6.6 Vacancy of Chairperson

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

6.7 Removal for bankruptcy

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

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

6.8 Removal for misbehaviour etc.

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

6.9 Conflict of Interest

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

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

7. Protection From Personal Liability

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

8. Meetings and Procedure of the Joint Management Body

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

8.1 First meeting

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

8.2 Convening and frequency of meetings

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

8.3 Administrative responsibility

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

8.4 Invitation to attend Joint Management Body meeting

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

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

8.5 Procedure

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

8.6 Sub-Committees

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

8.7 Quorum

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

8.8 Voting

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

present at the meeting.

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

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

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

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

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

10. **Joint Management Body Dispute**

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

10.1 **Interpretation**

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

10.2 Referral to CEO and Tjiwarl AC

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

10.3 Referral to Mediation

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

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

10.4 Referral to Minister

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

10.5 Obligations continue

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

11. Party Disputes

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

11.1 No Court proceedings

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

11.2 Notification

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

11.3 Parties to resolve Party Dispute

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

11.4 Mediation

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

12. Default

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

12.1 Events of Default

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

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

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

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

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

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

12.4 Suspension of Obligations

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

12.5 Duty to Mitigate

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

12.6 Remedies do not prejudice other rights of a Party

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

13. Confidentiality

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

13.1 Between Parties

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

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

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

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

13.2 Between Members of the Joint Management Body

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

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

13.3 Permitted disclosure

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

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

13.4 Disclosure requirements

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

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

13.5 Party may seek injunction

The Parties acknowledge that they are aware that:

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

13.6 No waiver or transfer of intellectual property rights

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

14. Intellectual Property

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

15. Acts By State – No Fetter Upon Discretion

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

16. No Assignment Without Consent

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

17. Force Majeure

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

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

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

18. Review

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

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

19. Variation

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

20. Notice

20.1 Requirements for giving notices and other communication

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

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

20.2 Addresses for notices and other communications

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

CEO (DBCA)

Attention: [insert detail]

Address: [insert detail]

Email Address: [insert detail]

Tjiwarl AC

Attention: [insert detail]

Address: [insert detail]

Email Address: [insert detail]

21. General

21.1 Entire agreement

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

21.2 Governing law and jurisdiction

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

21.3 Severance

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

21.4 Election and Waiver

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

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

21.5 Survival

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

EXECUTED BY THE PARTIES AS AN AGREEMENT

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

Signature of Chief Executive Officer

Signature of witness

Date

Full name of witness (print)

Address of witness

Occupation of witness

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

Director (Signature)

Director (Signature)

Director (print name)

Director (print name)

Date

Date

TJIWARL PALYAKUWA (AGREEMENT)**SCHEDULE 8**

Restoring Rights to Country*Ngurrara Malaku Kanyira*

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1. Overview

1.1 What this Schedule contains

This Schedule sets out:

- (a) a process to enable the Tjiwarl People to seek a determination of exclusive native title in relation to:
 - (i) Wanjarri Nature Reserve (including the Wanjarri Nature Reserve Addition) (see clause 6);
 - (ii) the Yeelirrie Lake Mason non-exclusive area (see clause 6); and
- (b) the Parties' obligations under that process (see clauses 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 defined in the Native Title Act including **applicant**, **approved determination of native title**, **authorise**, **claimant application**, **determination of native title**, **facilitation and assistance functions**, **native title determination application**, **non-extinguishment principle**, **public work** and **representative Aboriginal/Torres Strait Islander body** have the same meaning when used in this Schedule.

2.2 Specific Definitions

In this Schedule, unless the context requires otherwise:

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

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

Authorised Applicant has the meaning given in clause 4.1(c).

Conservation Estate Schedule means Schedule 7 to this Agreement.

Determination Application means a native title determination application, to be made by an Authorised Applicant under section 61(1) of the Native Title Act that:

- (a) relying on the operation of Section 47C, seeks recognition of exclusive possession native title in relation to the Original Wanjarri Nature Reserve Area; and
 - (b) is proposed to be heard and determined together with the Variation Application,
- being the relevant claimant application for the purposes of section 47C(1)(a) of the Native Title Act.

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

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

Native Title Claims means the Variation Application and the Determination Application.

Native Title Determination means a determination of native title on the Native Title Claims that native title exists in relation to the Reserves that is substantially in the form annexed to the minute of proposed orders contained at Annexure 3 to this Schedule.

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

Reserves means:

- (a) Wanjarri Nature Reserve when it is expanded to include the Wanjarri Nature Reserve Addition; and
- (b) Yeelirrie Lake Mason Reserve when it is created.

Section 47C means section 47C of the Native Title Act.

Section 47C Agreement means an agreement between the State and Tjiwarl AC (and, in relation to Wanjarri Nature Reserve, the Authorised Applicant) made under section 47C(1)(b) of the Native Title Act that, in relation to:

- (a) Wanjarri Nature Reserve is substantially in the form contained at Annexure 1 to this Schedule; and
- (b) Yeelirrie Lake Mason Reserve is substantially in the form contained at Annexure 2 to this Schedule.

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 of Australia 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 Determination Area means the area the subject of the Tjiwarl Determination.

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

Variation Application means a revised native title determination application to be made by Tjiwarl AC on behalf of the Tjiwarl People under section 61(1) of the Native Title Act in relation to the Reserves (to the extent they are in the Tjiwarl Determination Area) that:

- (a) seeks to vary the Tjiwarl Determination by recognising:
 - (i) on the basis of Section 47C, exclusive possession native title in relation to the:
 - (A) Wanjarri Nature Reserve Addition; and
 - (B) Yeelirrie Lake Mason non-exclusive area; and
 - (ii) each of the Reserves as an other interest for the purposes of section 225(c) of the Native Title Act; and
- (b) is proposed to be heard and determined together with the Determination Application, being the relevant revised native title determination application for the purposes of section 47C(1)(a) of the Native Title Act.

Wanjarri Nature Reserve means all that land and water comprising Reserve 30897 for the purpose of Conservation of Flora and Fauna which is classified under the LA Act as a class A

reserve, being the Original Wanjarri Nature Reserve Area, as expanded to include the Wanjarri Nature Reserve Addition as provided for in clause 3.1 of the Conservation Estate Schedule.

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

Yeelirrie Lake Mason non-exclusive area means that part of Yeelirrie Lake Mason Reserve which comprises part of the land that is currently designated UCL 239, being an area in relation to which Tjiwarl AC holds non-exclusive native title in trust for the Tjiwarl People in accordance with the Tjiwarl Determination.

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

2.3 Interpretation – General

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

3. Application of this Schedule

This Schedule applies in relation to the Reserves once they are jointly vested in accordance with clauses 3.3 and 3.8 of the Conservation Estate Schedule.

4. Obligations of Tjiwarl AC

This clause explains what Tjiwarl AC has to do to get the new claims for exclusive native title filed in the Federal Court under section 47C of the Native Title Act.

4.1 Making the Native Title Claims

As soon as is reasonably practicable after the Reserves are jointly vested in accordance with clauses 3.3 and 3.8 of the Conservation Estate Schedule, Tjiwarl AC will:

- (a) give notice to the State requesting a Section 47C Agreement in relation to each of the Reserves;
- (b) obtain any necessary approvals to make the Variation Application;
- (c) assist the Tjiwarl People to authorise an applicant to make the Determination Application (**Authorised Applicant**) and enter into the Section 47C Agreement in relation to Wanjarri Nature Reserve;
- (d) once the Section 47C agreements have been entered into:
 - (i) file the Variation Application in the Federal Court of Australia;
 - (ii) use its best endeavours to:
 - (A) have the Authorised Applicant referred to in clause 4.1(c) file the Determination Application in the Federal Court of Australia; and
 - (B) arrange that the Native Title Claims are filed in the Federal Court of Australia at the same time.

4.2 Facilitation and assistance function

For the avoidance of doubt, the assistance to be given to the Authorised Applicant in clause 4.1(c) may include Tjiwarl AC making a request on behalf of the Tjiwarl People for the relevant representative Aboriginal/Torres Strait Islander body to exercise its facilitation and assistance functions in relation to the Determination Application.

5. Obligations of the State

This clause explains what the State needs to do to ensure the Tjiwarl People can lodge new claims for exclusive native title in the conservation reserves.

5.1 Entry into s 47C Agreements

It is the State's intention as at the Execution Date that, as soon as is reasonably practicable after the receipt of the notice provided to the State pursuant to clause 4.1(a) the State will:

- (a) comply with the requirements in the Native Title Act to notify the proposed Section 47C Agreements in respect of the Reserves and to give interested parties an opportunity to comment on the proposed Section 47C Agreements; and
- (b) subject to those requirements, execute a Section 47C Agreement in respect of the Reserves and provide the executed copies to Tjiwarl AC.

5.2 Determination of Native Title Claims

It is the State's intention as at the Execution Date that, if:

- (a) Tjiwarl AC makes a Variation Application; and
- (b) an Authorised Applicant makes a Determination Application,

in accordance with clause 6, the State will consent to the Native Title Determination.

6. Determining Native Title Claims

This clause says that once the new claims are lodged, Tjiwarl AC and the State will work together to get exclusive native title recognised by the Federal Court in the conservation reserves.

6.1 Filing of minute of proposed orders

It is the intention of the Parties as at the Execution Date that the Parties will, as soon as is reasonably practicable after the Native Title Claims are made, prepare and file in the Federal Court of Australia a minute of proposed orders that is substantially in the form contained at Annexure 3 to this Schedule seeking the Native Title Determination.

6.2 Parties to negotiate necessary amendments

If the Federal Court of Australia does not agree to make orders in accordance with the minute of proposed orders described in clause 6.1, then the Parties will, as required, and as soon as is reasonably practicable:

- (a) negotiate in good faith to make any necessary amendments to the minute of proposed orders;
- (b) prepare and file in the Federal Court of Australia a further minute of proposed orders; and
- (c) otherwise work co-operatively and do all things reasonably necessary to have the Federal Court of Australia make the Native Title Determination.

6.3 Effect of determination

The Parties agree that:

- (a) the Native Title Determination will not affect:
 - (i) the validity of the creation of the Reserves or any other prior interest in relation to the area the subject of the Reserves; nor
 - (ii) any interest of the State in any capacity, or of any statutory authority (including a local government body), in any public works in relation to the area the subject of the Native Title Determination; and
- (b) on and from the date of the Native Title Determination, the non-extinguishment principle applies to the creation of the Reserves and any other prior interest in relation to the area the subject of the Native Title Determination.

TJIWARL PALYAKUWA (AGREEMENT)**SCHEDULE 8 – Annexure 1**

Agreement to the operation of section 47C of the Native Title Act (Wanjarri Nature Reserve)

AGREEMENT TO OPERATION OF SECTION 47C NATIVE TITLE ACT

In relation to Wanjarri Nature Reserve

BETWEEN

State of Western Australia

Proposed Tjiwarl Applicant

Tjiwarl (Aboriginal Corporation) RNTBC (ICN 8628)

DATE

This Agreement is made on the day of 202

PARTIES

State **STATE OF WESTERN AUSTRALIA**, represented by the Minister for Aboriginal Affairs of 12th Floor, Dumas House, 2 Havelock Street, West Perth, Western Australia

Proposed Tjiwarl Applicant [NAME(S)] in their own right and for and on behalf of the Tjiwarl People, care of Unit 6, 254 Abernethy Road, Kewdale, Western Australia

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

RECITALS

- A. Among other things, the Tjiwarl Palyakuwa (Agreement) settles the State's liability for all claims for compensation for the loss, diminution, impairment or other effect on the Tjiwarl People's native title rights and interests by certain acts done within the area the subject of the Tjiwarl Determination.
- B. The Tjiwarl Palyakuwa (Agreement) also provides the Tjiwarl People's consent to, among other things, the expansion of the Original Wanjarri Nature Reserve Area to include the Wanjarri Nature Reserve Addition.
- C. Since the Tjiwarl Palyakuwa (Agreement) was registered:
 - (a) the Original Wanjarri Nature Reserve Area has been expanded to include the Wanjarri Nature Reserve Addition;
 - (b) Wanjarri Nature Reserve has been vested jointly in the Conservation and Parks Commission and Tjiwarl AC; and

- (c) the State and Tjiwarl AC have commenced developing a management plan for approval under section 60 of the *Conservation and Land Management Act 1984* (WA) in respect of Wanjarri Nature Reserve.
- D. The Original Wanjarri Nature Reserve Area was excluded from the area the subject of the Tjiwarl Determination by reason of extinguishment, so native title was not recognised in relation to that area. As such, the Original Wanjarri Nature Reserve Area is not the subject of an approved determination of native title. The Tjiwarl Determination recognises non-exclusive native title in relation to the area the subject of the Wanjarri Nature Reserve Addition.
- E. The Tjiwarl Palyakuwa (Agreement) provides for means by which the Tjiwarl People can seek a determination of exclusive native title in relation to Wanjarri Nature Reserve by relying on section 47C of the Native Title Act. The Tjiwarl Palyakuwa (Agreement) contemplates that any prior extinguishment of native title in relation to the Wanjarri Nature Reserve will be disregarded by:
 - (a) Tjiwarl AC making the Variation Application; and
 - (b) the Proposed Tjiwarl Applicant making the Determination Application,with the Native Title Claims to be determined at the same time.
- F. At a meeting held at [insert location] on [insert date] (**authorisation meeting**), the Tjiwarl People authorised:
 - (a) Tjiwarl AC to enter into the Tjiwarl Palyakuwa (Agreement);
 - (b) Tjiwarl AC to make the Variation Application; and
 - (c) the Proposed Tjiwarl Applicant to make the Determination Application.
- G. Consistent with the authorisation given by the Tjiwarl People at the authorisation meeting, the Proposed Tjiwarl Applicant comprises those authorised persons who remain willing and able to act as applicant for the purposes of this Agreement and the Determination Application.
- H. In relation to the Native Title Claims, the Parties agree that Wanjarri Nature Reserve should be recognised in any determination of native title as an 'other interest' for the purposes of section 225(c) of the Native Title Act.
- I. In accordance with the Tjiwarl Palyakuwa (Agreement) and Section 47C:
 - (a) on [insert date] Tjiwarl AC, on behalf of the Tjiwarl People, requested the State's agreement to the operation of Section 47C in relation to Wanjarri Nature Reserve; and

- (b) on [insert date], the State arranged for notification of the proposed terms of this Agreement by publishing a public notice in *The West Australian*. The notice was also published on the Department of the Premier and Cabinet's website on the same date. The purpose of the notification was to give interested persons an opportunity to comment on the proposed agreement. The period for comment ended on [insert date].
- J. The Parties enter this Agreement for the purposes of section 47C(1)(b) of the Native Title Act to enable:
- (a) Tjiwarl AC to make the Variation Application; and
- (b) the Proposed Tjiwarl Applicant to make the Determination Application, on the basis that any prior extinguishment of their native title is to be disregarded.
- K. Tjiwarl AC and the State are, or intend to be, parties to an agreement for the purposes of section 47C(1)(b) of the Native Title Act in relation to Yeelirrie Lake Mason Reserve which is within the area the subject of the Tjiwarl Determination and is proposed to be the subject of the Variation Application.
- L. The Parties intend that the Native Title Claims will be made and determined at the same time.

THE PARTIES AGREE AS FOLLOWS:

1. General Definitions

In this Agreement, words and expressions defined in the Native Title Act including **approved determination of native title, determination of native title, indigenous land use agreement, public work, relevant public work** and **Register of Indigenous Land Use Agreements** have the same meaning when used in this Agreement.

2. Specific Definitions

In this Agreement the following words and phrases have the following meanings:

Agreement Area means all the land and waters the subject of Wanjarri Nature Reserve being the area generally shown on the map at Schedule 1.

Determination Application means a native title determination application, to be made by the Proposed Tjiwarl Applicant on behalf of the Tjiwarl People in accordance with section 251B of the Native Title Act, under section 61(1) of that Act that:

- (a) relying on the operation of Section 47C, seeks recognition of exclusive possession native title in relation to the Original Wanjarri Nature Reserve Area; and
 - (b) is proposed to be heard and determined together with the Variation Application,
- being the relevant claimant application for the purposes of section 47C(1)(a) of the Native Title Act.

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

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

Native Title Claims means the Variation Application and the Determination Application.

Original Wanjarri Nature Reserve Area means the area that was the subject of Reserve 30897 when the Tjiwarl Determination was made, being Lot 569 on Deposited Plan 73751 and being the whole of the land in Certificate of Crown Land Title Volume LR3162 Folio 538, being an area that was excluded from the area the subject of the Tjiwarl Determination by reason of extinguishment.

Parties means the Proposed Tjiwarl Applicant, Tjiwarl AC and the State.

Proposed Tjiwarl Applicant means the person or persons authorised by the Tjiwarl People in accordance with section 251B of the Native Title Act to make the Determination Application.

Section 47C means section 47C of the Native Title Act.

State means the Crown in right of the State of Western Australia, acting through the Minister for Aboriginal Affairs.

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 of Australia 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 Determination Area means the area the subject of the Tjiwarl Determination.

Tjiwarl Palyakuwa (Agreement) means the indigenous land use agreement of that name that was entered on the Register of Indigenous Land Use Agreements on [insert date].

Tjiwarl People means the persons described at Schedule 2 to the Tjiwarl Determination.

Variation Application means a revised native title determination application to be made by Tjiwarl AC on behalf of the Tjiwarl People under section 61(1) of the Native Title Act that:

- (a) seeks to vary the Tjiwarl Determination by:
 - (i) relying on the operation of Section 47C, exclusive possession native title in relation to the:
 - (A) Wanjarri Nature Reserve Addition; and
 - (B) Yeelirrie Lake Mason non-exclusive area; and
 - (ii) recognising each of Wanjarri Nature Reserve and Yeelirrie Lake Mason Reserve as an ‘other interest’ for the purposes of section 225(c) of the Native Title Act; and
- (b) is proposed to be heard and determined together with the Determination Application, being the relevant revised native title determination application for the purposes of section 47C(1)(a) of the Native Title Act.

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

Wanjarri Nature Reserve Addition means Lot 568 on Deposited Plan 73751 and being the whole of the land in Certificate of Crown Land Title Volume LR3162 Folio 537, that was added to the area of the Original Wanjarri Nature Reserve on [insert date], being an area in relation to which Tjiwarl AC holds non-exclusive native title in trust for the Tjiwarl People in accordance with the Tjiwarl Determination.

Yeelirrie Lake Mason non-exclusive area means that part of Yeelirrie Lake Mason Reserve which comprises part of the land that was formerly designated UCL 239, being an area in relation to which Tjiwarl AC holds non-exclusive native title in trust for the Tjiwarl People in accordance with the Tjiwarl Determination.

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

3. Interpretation

In this Agreement, unless the context otherwise requires:

- (a) the headings and subheadings are inserted for guidance only and do not govern the meaning or construction of any provision of this Agreement;
- (b) words expressed in the singular include the plural and vice versa;
- (c) a reference to a document, agreement or instrument is to that document, agreement or instrument as varied, amended, supplemented, or replaced;
- (d) 'including' means 'including but not limited to'; and
- (e) a reference to a written law will be deemed to include any amendment, re-enactment or consolidation of the written law.

4. Application of section 47C to the Agreement Area

- (a) The Parties agree to the operation of Section 47C in relation to the Agreement Area.
- (b) Without limiting clause 4(a), the Parties agree that, for all purposes under the Native Title Act in relation to the Native Title Claims, any extinguishment of native title by the setting aside, granting or vesting of, or by placing the care, control and management of, Wanjarri Nature Reserve, and by the creation of any other prior interest in relation to the Agreement Area, is to be disregarded.
- (c) In accordance with section 47C(4) of the Native Title Act, the State agrees that the extinguishing effect of any of its relevant public works in the Agreement Area is to be disregarded.

5. Governing law and jurisdiction

- (a) Apart from its operation under the Native Title Act, this Agreement is governed by the law applicable in the State of Western Australia.
- (b) Each Party irrevocably and unconditionally submits to the jurisdiction of the Federal Court of Australia and to the non-exclusive jurisdiction of the courts of Western Australia.

6. Costs

Each Party will bear its own costs in relation to the negotiation, preparation and execution of this Agreement.

7. Counterparts

- (a) This Agreement may be executed in counterparts. All executed counterparts, taken together, constitute one document.
- (b) Each Party must execute a number of counterparts that will enable each Party to have at least one original version of each counterpart.

8. Further action and time

Each Party must use its best endeavours to do all things necessary or desirable to give effect to this Agreement and the matters contemplated by it.

EXECUTED AS AN AGREEMENT

EXECUTED for and on behalf of **the**)
Proposed Tjiwarl Applicant in the)
Determination Application, by the following)
members of the proposed Applicant:)

[Name] (signature)

Witness (signature)

Date

Name of witness (please print)

[Name] (signature)

Witness (signature)

Date

Name of witness (please print)

[Name] (signature)

Witness (signature)

Date

Name of witness (please print)

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

Director (Signature)

Director (Signature)

Director (print name)

Director (print name)

Date

Date

SIGNED for and on behalf of the **STATE**)
OF WESTERN AUSTRALIA by the)
HONOURABLE [insert details], Minister)
for Aboriginal Affairs of the State of)
Western Australia, in the presence of:)

Signature of witness

Signature

Full name of witness (print)

Date

Address of witness

Occupation of witness

Schedule 1 – Map of Agreement Area

TJIWARL PALYAKUWA (AGREEMENT)**SCHEDULE 8 – Annexure 2**

Agreement to the operation of section 47C of the Native Title Act (Yeelirrie Lake Mason Reserve)

AGREEMENT TO OPERATION OF SECTION 47C NATIVE TITLE ACT

In relation to the Yeelirrie Lake Mason Reserve

BETWEEN

Tjiwarl (Aboriginal Corporation) RNTBC (ICN 8628)

State of Western Australia

DATE

This Agreement is made on the day of 202

PARTIES

State **STATE OF WESTERN AUSTRALIA**, represented by the Minister for Aboriginal Affairs of 12th Floor, Dumas House, 2 Havelock Street, West Perth, Western Australia

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

RECITALS

- A. Among other things, the Tjiwarl Palyakuwa (Agreement) settles the State's liability for all claims for compensation for the loss, diminution, impairment or other effect on the Tjiwarl People's native title rights and interests by certain acts done within the area the subject of the Tjiwarl Determination.
- B. The Tjiwarl Palyakuwa (Agreement) also provides the Tjiwarl People's consent to, among other things, the creation of Yeelirrie Lake Mason Reserve.
- C. Since the Tjiwarl Palyakuwa (Agreement) was registered:
- (a) Yeelirrie Lake Mason Reserve has been created;
 - (b) Yeelirrie Lake Mason Reserve has been vested jointly in the Conservation and Parks Commission and Tjiwarl AC; and
 - (c) the Parties have commenced developing a management plan for approval under section 60 of the *Conservation and Land Management Act 1984* (WA) in respect of the Yeelirrie Lake Mason Reserve.
- D. Yeelirrie Lake Mason Reserve did not exist when the Tjiwarl Determination was made. In relation to the area the subject of the Yeelirrie Lake Mason Reserve the Tjiwarl Determination recognises that Tjiwarl People have:

- (a) exclusive native title in relation to that part of Yeelirrie Lake Mason Reserve which was unallocated Crown land when the Tjiwarl Determination was made; and
 - (b) non-exclusive native title in relation to the balance.
- E. The Tjiwarl Palyakuwa (Agreement) provides for means by which the Tjiwarl People can seek a determination of exclusive native title in relation to the Agreement Area by relying on section 47C of the Native Title Act. The Tjiwarl Palyakuwa (Agreement) contemplates that any prior extinguishment of native title in relation to the Yeelirrie Lake Mason Reserve will be disregarded by:
 - (a) Tjiwarl AC making the Variation Application; and
 - (b) the Proposed Tjiwarl Applicant making the Determination Application,with the Native Title Claims to be determined at the same time.
- F. At a meeting held at [insert location] on [insert date] (**authorisation meeting**), the Tjiwarl People authorised:
 - (a) Tjiwarl AC to enter into the Tjiwarl Palyakuwa (Agreement); and
 - (b) Tjiwarl AC to make the Variation Application.
- G. In relation to the Variation Application, the Parties agree that Yeelirrie Lake Mason Reserve should be recognised in any determination of native title as an 'other interest' for the purposes of section 225(c) of the Native Title Act.
- H. In accordance with the Tjiwarl Palyakuwa (Agreement) and Section 47C:
 - (a) on [insert date] Tjiwarl AC requested the State's agreement to the operation of Section 47C in relation to Yeelirrie Lake Mason Reserve; and
 - (b) on [insert date], the State arranged for notification of the proposed terms of this Agreement by publishing a public notice in *The West Australian*. The notice was also published on the Department of the Premier and Cabinet's website on the same date. The purpose of the notification was to give interested persons an opportunity to comment on the proposed agreement. The period for comment ended on [insert date].
- I. The Parties enter this Agreement for the purposes of section 47C(1)(b) of the Native Title Act to enable the Tjiwarl People to make the Variation Application on the basis that any prior extinguishment of their native title is to be disregarded.

- J. The Parties are, or intend to be, parties to an agreement for the purposes of section 47C(1)(b) of the Native Title Act in relation to Wanjarri Nature Reserve, part of which is within the area the subject of the Tjiwarl Determination and proposed to be the subject of the Variation Application.
- K. The Parties intend that the Native Title Claims will be determined at the same time.

THE PARTIES AGREE AS FOLLOWS:

1. General Definitions

In this Agreement, words and expressions defined in the Native Title Act including **approved determination of native title, determination of native title, indigenous land use agreement, public work, relevant public work** and **Register of Indigenous Land Use Agreements** have the same meaning when used in this Agreement.

2. Specific Definitions

In this Agreement the following words and phrases have the following meanings:

Agreement Area means all the land and waters the subject of Yeelirrie Lake Mason Reserve being the area generally shown on the map at Schedule 1.

Determination Application means a native title determination application, to be made by an applicant authorised by the Tjiwarl People in accordance with section 251B, under section 61(1) of the Native Title Act that:

- (a) relying on the operation of Section 47C, seeks recognition of exclusive possession native title in relation to the Original Wanjarri Nature Reserve Area; and
- (b) is proposed to be heard and determined together with the Variation Application, being the relevant claimant application for the purposes of section 47C(1)(a) of the Native Title Act.

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

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

Native Title Claims means the Variation Application and the Determination Application.

Original Wanjarri Nature Reserve Area means the area that was the subject of Reserve 30897 when the Tjiwarl Determination was made, being Lot 569 on Deposited Plan 73751 and being the whole of the land in Certificate of Crown Land Title Volume LR3162 Folio 538.

Parties means Tjiwarl AC and the State.

Section 47C means section 47C of the Native Title Act.

State means the Crown in right of the State of Western Australia, acting through the Minister for Aboriginal Affairs.

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 of Australia 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 Determination Area means the area the subject of the Tjiwarl Determination.

Tjiwarl Palyakuwa (Agreement) means the indigenous land use agreement of that name that was entered on the Register of Indigenous Land Use Agreements on [insert date].

Tjiwarl People means the persons described in Schedule 2 to the Tjiwarl Determination.

Variation Application means a revised native title determination application to be made by Tjiwarl AC on behalf of the Tjiwarl People under section 61(1) of the Native Title Act that:

- (a) seeks to vary the Tjiwarl Determination by:
 - (i) relying on the operation of Section 47C, exclusive possession native title in relation to the:
 - (A) Wanjarri Nature Reserve Addition; and
 - (B) Yeelirrie Lake Mason non-exclusive area; and
 - (i) recognising each of Wanjarri Nature Reserve and Yeelirrie Lake Mason Reserve as an 'other interest' for the purposes of section 225(c) of the Native Title Act; and
- (b) is proposed to be heard and determined together with the Determination Application, being the relevant revised native title determination application for the purposes of section 47C(1)(a) of the Native Title Act.

Wanjarri Nature Reserve means all that land and water comprising Reserve 30897 for the purpose of Conservation, Flora and Fauna which is classified under the LA Act as a class A

reserve, being the Original Wanjarri Nature Reserve Area, as expanded to include the Wanjarri Nature Reserve Addition, as provided for in clause 3.1 of the Conservation Estate Schedule of the Tjiwarl Palyakuwa (Agreement).

Wanjarri Nature Reserve Addition means Lot 568 on Deposited Plan 73751 and being the whole of the land in Certificate of Crown Land Title Volume LR3162 Folio 537, that was added to the area of the Original Wanjarri Nature Reserve on [insert date], being an area in relation to which Tjiwarl AC holds non-exclusive native title in trust for the Tjiwarl People in accordance with the Tjiwarl Determination.

Yeelirrie Lake Mason non-exclusive area means that part of Yeelirrie Lake Mason Reserve which comprises part of the land that was formerly designated UCL 239, being an area in relation to which Tjiwarl AC holds non-exclusive native title in trust for the Tjiwarl People in accordance with the Tjiwarl Determination.

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

3. Interpretation

In this Agreement, unless the context otherwise requires:

- (a) the headings and subheadings are inserted for guidance only and do not govern the meaning or construction of any provision of this Agreement;
- (b) words expressed in the singular include the plural and vice versa;
- (c) a reference to a document, agreement or instrument is to that document, agreement or instrument as varied, amended, supplemented, or replaced;
- (d) 'including' means 'including but not limited to'; and
- (e) a reference to a written law will be deemed to include any amendment, re-enactment or consolidation of the written law.

4. Application of section 47C to the Agreement Area

- (a) The Parties agree to the operation of Section 47C in relation to the Agreement Area.
- (b) Without limiting clause 4(a), the Parties agree that, for all purposes under the Native Title Act in relation to the Native Title Claims, any extinguishment of native title by the setting aside, granting or vesting, or by placing of the care, control and management, of the

Yeelirrie Lake Mason Reserve, and by the creation of any other prior interest in relation to the Agreement Area, is to be disregarded.

- (c) In accordance with section 47C(4) of the Native Title Act, the State agrees that the extinguishing effect of any of its relevant public works in the Agreement Area is to be disregarded.

5. Governing law and jurisdiction

- (a) Apart from its operation under the Native Title Act, this Agreement is governed by the law applicable in the State of Western Australia.
- (b) Each Party irrevocably and unconditionally submits to the jurisdiction of the Federal Court of Australia and to the non-exclusive jurisdiction of the courts of Western Australia.

6. Costs

Each Party will bear its own costs in relation to the negotiation, preparation and execution of this Agreement.

7. Counterparts

- (a) This Agreement may be executed in counterparts. All executed counterparts, taken together, constitute one document.
- (b) Each Party must execute a number of counterparts that will enable each Party to have at least one original version of each counterpart.

8. Further action and time

Each Party must use its best endeavours to do all things necessary or desirable to give effect to this Agreement and the matters contemplated by it.

EXECUTED AS AN AGREEMENT

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

Director (Signature)

Director (Signature)

Director (print name)

Director (print name)

Date

Date

SIGNED for and on behalf of the **STATE**)
OF WESTERN AUSTRALIA by the)
HONOURABLE [insert details], Minister)
for Aboriginal Affairs of the State of)
Western Australia, in the presence of:)

Signature of witness

Signature

Full name of witness (print)

Date

Address of witness

Occupation of witness

Schedule 1 – Map of Agreement Area

TJIWARL PALYAKUWA (AGREEMENT)**SCHEDULE 8 – Annexure 3**

Minute of Proposed Orders and Varied Determination of
Native Title

Minute of Proposed Orders and Varied Determination of Native Title

Federal Court of Australia
District Registry: Western Australia
Division: General

WAD [XXX/202X]

Tjiwarl Aboriginal Corporation (ICN 8628)

Applicant

State of Western Australia & Ors

Respondents

WAD [YYY/202Y]

[Name] & Ors on behalf of the Tjiwarl People

Applicant

State of Western Australia & Ors

Respondents

THE COURT NOTES THAT:

Determination of native title

1. On 27 April 2017, Mortimer J made a determination of native title in WAD 217 of 2017 and WAD 218 of 2017 to the effect that the **Tjiwarl People** (being the persons described in Schedule 2 of Attachment "A" to the determination) hold native title rights and interests in relation to the area the subject of the determination (**Tjiwarl Determination Area**). That determination was the subject of appeals to both the Full Court of this Court and the High Court of Australia. The determination was amended, and became an approved determination of native title, when the High Court of Australia finally determined the appeal in P 38 of 2018 on 17 April 2019 (**Tjiwarl Determination**).
2. Native title in relation to the Tjiwarl Determination Area is held by Tjiwarl (Aboriginal Corporation) RNTBC (ICN 8628) (**Tjiwarl AC**).

3. **Wanjarri Nature Reserve** (Reserve 30897) is within the external boundary of the Tjiwarl Determination Area but the area that was the subject of the reserve when the Tjiwarl Determination was made (**Original Wanjarri Nature Reserve Area**) was excluded from the Tjiwarl Determination Area by reason of extinguishment.

Compensation claims and indigenous land use agreement

4. On 17 June 2020, two compensation applications were made to this Court on behalf of the Tjiwarl People: WAD 141 of 2020 and WAD 142 of 2020. A third compensation application was made on 11 November 2020: WAD 269 of 2020.
5. On [insert date], [insert parties] entered into the Tjiwarl Palyakuwa (Agreement) which was entered on the Register of Indigenous Land Use Agreements on [insert date]. Among other things, the Tjiwarl Palyakuwa (Agreement) settles the State's liability for all claims for compensation for the loss, diminution, impairment or other effect on the Tjiwarl People's native title rights and interests by certain acts done within the area the subject of the Tjiwarl Determination.
6. The Tjiwarl Palyakuwa (Agreement) also provides the Tjiwarl People's consent to, among other things:
 - (a) the expansion of the Original Wanjarri Nature Reserve Area to include an area of approximately 8,431 hectares of land formerly the subject of Yakabindie Pastoral Lease H859693L (**Wanjarri Nature Reserve Addition**); and
 - (b) the creation of a new reserve within the Tjiwarl Determination Area now known as [**Yeelirrie Lake Mason Reserve**] (Reserve [XXXXXX]).
7. Since the Tjiwarl Palyakuwa (Agreement) was registered:
 - (a) the Original Wanjarri Nature Reserve Area has been expanded to include the Wanjarri Nature Reserve Addition;
 - (b) [**Yeelirrie Lake Mason Reserve**] has been created;
 - (c) both Wanjarri Nature Reserve and [**Yeelirrie Lake Mason Reserve**] (**Tjiwarl Conservation Estate**) have been vested jointly in the Conservation and Parks Commission and Tjiwarl AC; and
 - (d) the State and Tjiwarl AC have commenced developing a management plan for approval under section 60 of the *Conservation and Land Management Act 1984* (WA) in respect of the Tjiwarl Conservation Estate.

Current status of native title in relation to Tjiwarl Conservation Estate

8. The Original Wanjarri Nature Reserve Area is not the subject of an approved determination of native title. The Tjiwarl Determination recognises non-exclusive native title in relation to the Wanjarri Nature Reserve Addition.
9. [Yeelirrie Lake Mason Reserve] is also within the external boundary of the Tjiwarl Determination Area, but it did not exist when the Tjiwarl Determination was made. The Tjiwarl Determination recognises that the Tjiwarl People have:
 - (a) exclusive native title in relation to that part of [Yeelirrie Lake Mason Reserve] that was unallocated Crown land when the Tjiwarl Determination was made (UCL 245 and UCL 246); and
 - (b) non-exclusive native title in relation to the balance of [Yeelirrie Lake Mason Reserve] (formerly UCL 239) (**Yeelirrie Lake Mason non-exclusive area**).

Proposed variation and further determination of native title in relation to Tjiwarl Conservation Estate

10. The Tjiwarl Palyakuwa (Agreement) provides for means by which the Tjiwarl People can, by relying on section 47C of the *Native Title Act 1993* (Cth), seek a determination of exclusive native title in relation to those parts of the Tjiwarl Conservation Estate where exclusive native title is not currently recognised. The Tjiwarl Palyakuwa (Agreement) contemplates that any prior extinguishment of native title will be disregarded by:
 - (a) Tjiwarl AC making a revised native title determination application under section 61(1) of the *Native Title Act* in relation to the:
 - (i) Wanjarri Nature Reserve Addition; and
 - (ii) Yeelirrie Lake Mason non-exclusive area; and
 - (b) the Tjiwarl People authorising an applicant to make a native title determination application under section 61(1) of the *Native Title Act* in relation to the Original Wanjarri Nature Reserve Area,and that both applications be heard and determined together.
11. On [insert date], Tjiwarl AC and the State entered into two agreements under section 47C(1)(b) of the *Native Title Act* in relation to the Tjiwarl Conservation Estate, one in relation to Wanjarri Nature Reserve and the other in relation to [Yeelirrie Lake Mason Reserve] (**section 47C Agreements**).

Current applications

12. On [insert date], in accordance with the Tjiwarl Palyakuwa (Agreement) and the section 47C Agreements:
 - (a) the Applicant in WAD [XXX/202X] filed a revised native title determination application under section 61(1) of the *Native Title Act* in relation to the Tjiwarl Conservation Estate to the extent that it is in the Tjiwarl Determination Area (**Variation Application**); and
 - (b) the Applicant in WAD [YYY/202Y], authorised by the Tjiwarl People, filed a native title determination application under section 61(1) of the *Native Title Act* in relation to that part of the Tjiwarl Conservation Estate comprising the Original Wanjarri Nature Reserve Area (**Determination Application**),

(together **the Applications**).
13. The parties to the Applications (**the parties**) have requested that they be heard and determined together with the intention that a determination of the Applications will result in a single approved determination of native title:
 - (a) in relation to an area that includes Wanjarri Nature Reserve (including the Wanjarri Nature Reserve Addition);
 - (b) that recognises exclusive native title in relation to both:
 - (i) Wanjarri Nature Reserve (including the Wanjarri Nature Reserve Addition); and
 - (ii) the Yeelirrie Lake Mason non-exclusive area;
 - (c) that recognises both Wanjarri Nature Reserve (including the Wanjarri Nature Reserve Addition) and [Yeelirrie Lake Mason Reserve] as an ‘other interest’ for the purposes of section 225 of the *Native Title Act*; and
 - (d) that replaces the Tjiwarl Determination.
14. The parties have reached an agreement as to the terms of the orders, including a varied determination of native title, to be made on the Applications.
15. The parties have filed with the Court this Minute of Proposed Orders and Varied Determination of Native Title setting out the terms of the agreement reached by the parties in relation to the Applications.

BEING SATISFIED that orders in the terms sought by the parties are within the power of the Court and, it appearing to the Court appropriate to do so pursuant to sections 13(5) and 87 of the *Native Title Act*, and by the consent of the parties:

THE COURT ORDERS THAT:

1. Pursuant to rule 30.11 of the *Federal Court Rules 2011* (Cth) WAD [XXX/202X] and WAD [YYY/202Y] be heard together.
2. The determination of native title at Attachment "A" to the orders made by Justice Mortimer in *Narrier v State of Western Australia* [2016] FCA 1519, as amended by orders of:
 - (a) the Full Court of the Federal Court on 1 February 2018 in *BHP Billiton Nickel West Pty Ltd v KN (Deceased)* [2018] FCAFC 8 (WAD 217 of 2017 & WAD 218 of 2017); and
 - (b) the High Court on 17 April 2019 in *Tjungarrayi v Western Australia & KN (deceased) and Others (Tjiwarl and Tjiwarl #2) v Western Australia* [2019] HCA 12 (P 38 of 2018),

be varied as follows:

- (c) delete order 10 and replace it with the following:

Areas to which ss 47B and 47C of the Native Title Act apply

10 *For the avoidance of doubt:*

- (a) *section 47B of the Native Title Act applies to the parts of the Determination Area set out in Part 1 of Schedule 5; and*
- (b) *section 47C of the Native Title Act applies to the parts of the Determination Area set out in Part 2 of Schedule 5;*
- (d) in the table in paragraph 2 of Part 2 of Schedule 1, delete "RES 30897";
- (e) in Schedule 3, delete the table and replace it with the following:

<i>RES 30897</i>	<i>RES [XXXXXX]¹</i>
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- (f) in Schedule 4, delete the chapeau and replace it with the following:

With the exception of:

¹ Being the designated reserve number of [Yeelirrie (Lake Mason) Nature Reserve/National Park].

- (a) *Wanjarri Nature Reserve (Reserve 30897), which is an other interest that is included in the Determination Area as a result of this Varied Determination of Native Title; and*
- (b) *Reserve [XXXX], which is an other interest that was created on [insert date],*
the nature and extent of other interests set out in relation to the Determination Area as at 27 April 2017 are:
- (g) in the table in paragraph 1 of Part 1 of Schedule 4, insert "RES 30897" and "RES [XXXXX]"²;
- (h) delete Schedule 5 and replace it with the following:

SCHEDULE 5

AREAS TO WHICH SECTIONS 47B AND 47C OF THE NATIVE TITLE ACT APPLY

Part 1 – s 47B areas

The parts of the Determination Area to which section 47B of the Native Title Act applies (shown generally on the maps in Schedule 6 as shaded green) are those parts of [Yeelirrie Lake Mason Reserve] (Reserve [XXXX]) formerly designated UCL 245 and UCL 246.

Part 2 – s 47C areas

The parts of the Determination Area to which section 47C of the Native Title Act applies (shown generally on the maps in Schedule 6 as shaded [colour]) are:

- (a) *Wanjarri Nature Reserve (Reserve 30897); and*
- (b) *that part of [Yeelirrie Lake Mason Reserve] formerly designated UCL 239.*
- (i) delete the maps in Schedule 6 and replace them with the maps in Schedule 6 of Attachment "A" to these orders.
3. The determination of native title as varied by order 1 above be in the form of Attachment "A" to these orders.
4. Tjiwarl (Aboriginal Corporation) RNTBC (ICN: 8628) shall hold the determined native title in trust for the native title holders pursuant to section 56(2)(a) of the *Native Title Act*.
5. There be no order as to costs.

² Being the designated reserve number of [Yeelirrie (Lake Mason) Nature Reserve/National Park].

ATTACHMENT "A"

VARIED DETERMINATION OF NATIVE TITLE

THE COURT ORDERS, DECLARES AND DETERMINES THAT:

Existence of native title (s 225)

1. Native title exists in relation to the whole of the Determination Area.

Native title holders (s 225(a))

2. The native title in the Determination Area is held by the persons described in Schedule 2 (**native title holders**).

The nature and extent of native title rights and interests (s 225(b); s 225(e))

3. Subject to orders 6 and 7, the nature and extent of the native title rights and interests in relation to each part of the Determination Area referred to in Schedule 3 is the right to possession, occupation, use and enjoyment of those parts to the exclusion of all others.
4. Subject to orders 5 to 7, the nature and extent of the native title rights and interests in relation to each part of the Determination Area, other than those parts of the Determination Area referred to in Schedule 3, are the following rights or interests:
 - (a) the right to access, remain in and use that part;
 - (b) the right to access, take and use the resources of that part for any purpose;
 - (c) the right to engage in spiritual and cultural activities in that part;
 - (d) the right to maintain and protect places of significance on that part; and
 - (e) the right to receive a portion of any traditional resources (not including minerals or petroleum) taken from land or waters by Aboriginal people who are also governed by Western Desert traditional laws and customs.

Qualifications on native title rights and interests (s 225(b); 225(e))

5. The native title rights and interests in order 4 do not confer possession, occupation, use and enjoyment of those parts of the Determination Area on the native title holders to the exclusion of all others.

6. The native title rights and interests are subject to and exercisable in accordance with:
 - (a) the traditional laws and customs of the native title holders; and
 - (b) the laws of the State and the Commonwealth, including the common law.
7. Notwithstanding anything in this Determination there are no native title rights and interests in the Determination Area in or in relation to:
 - (a) minerals or petroleum; or
 - (b) geothermal energy resources and geothermal energy as defined in the *Petroleum and Geothermal Energy Resources Act 1967* (WA).

The nature and extent of any other interests (s 225(c))

8. The nature and extent of other rights and interests in relation to the Determination Area are those set out in Schedule 4 (**other interests**).

Relationship between native title rights and other interests (s 225(d))

9. Except as otherwise provided for by law, the relationship between the native title rights and interests described in orders 3 and 4 and the other interests is as follows:
 - (a) the Determination does not affect the validity of those other interests;
 - (b) to the extent of any inconsistency between the other interests described in Part 1 of Schedule 4 and the continued existence, enjoyment or exercise of the native title rights and interests:
 - (i) the native title rights and interests continue to exist in their entirety, but the native title rights and interests have no effect in relation to the other interests to the extent of the inconsistency during the currency of the other interests; and
 - (ii) otherwise the other interests co-exist with the native title rights and interests and, for the avoidance of doubt, the doing of an activity required or permitted under those interests prevails over the native title rights and interests and their exercise, but does not extinguish them; and
 - (c) to the extent of any inconsistency with the other interests described in Part 2 of Schedule 4 and the continued existence, enjoyment or exercise of the native title rights and interests, those other interests have no force or effect against the native title rights and interests.

Areas to which ss 47B and 47C of the Native Title Act apply

10. For the avoidance of doubt:
- (a) section 47B of the *Native Title Act* applies to the parts of the Determination Area set out in Part 1 of Schedule 5; and
 - (b) section 47C of the *Native Title Act* applies to the parts of the Determination Area set out in Part 2 of Schedule 5.

Definitions and interpretation

11. In this Determination, unless the contrary intention appears:

Determination Area means the land and waters within the external boundary described in Part 1 of Schedule 1 and depicted on the maps at Schedule 6, but not including the Excluded Areas.

Excluded Areas means the land and waters described in Part 2 of Schedule 1 and depicted as such on the maps at Schedule 6.

land and **waters** respectively have the same meanings as in the *Native Title Act*.

minerals means minerals as defined in the *Mining Act 1904* (WA) (repealed) and the *Mining Act 1978* (WA).

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

petroleum means petroleum as defined in the *Petroleum Act 1936* (WA) (repealed) and the *Petroleum and Geothermal Energy Resources Act 1967* (WA).

State means the State of Western Australia.

12. In the event of an inconsistency between the written description of areas in the Schedules and the areas depicted on the maps in Schedule 6, the written descriptions shall prevail.

SCHEDULE 1

DETERMINATION AREA

Part 1 – External boundaries and areas of land and waters where native title exists

The external boundary of the Determination Area, generally shown as bordered in blue on the maps at Schedule 6, is as follows:

All those lands and waters commencing at the northernmost northeastern corner of Pastoral Lease N049747 (Gidgee) and extending easterly to the northernmost northwestern corner of Lot 60 as shown on Deposited Plan 238007; Then easterly along the northern boundary of that lot to a western boundary of Pastoral Lease N049508 (Yeelirrie); Then northerly and easterly along boundaries of that pastoral lease to a western boundary of Pastoral Lease N049530 (Albion Downs); Then northerly along boundaries of that pastoral lease to the intersection with a southern boundary of Native Title Determination WAD248/2007 Tarlpa (WCD2013/004); Then easterly, northerly, again easterly, northwesterly, generally southeasterly and again easterly along boundaries of that native title determination to the southernmost southeastern corner of the eastern severance of Pastoral Lease N050051 (Lake Way), being a point of the present boundary of Pastoral Lease N049448 (Mt Keith); Then generally easterly and southerly along boundaries of that pastoral lease to the northeastern corner of Reserve 30897; Then generally southerly along boundaries of that reserve to a northeastern corner of Pastoral Lease N049476 (Yakabindie); Then generally southerly along boundaries of that pastoral lease to a northeastern corner of Pastoral Lease N049438 (Leinster Downs); Then generally southerly along boundaries of that pastoral lease to Latitude 27.998685 South; Then westerly to the intersection with a eastern boundary of the northeastern severance of Reserve 10513 at Latitude 27.998687 South; Then westerly to the intersection with a eastern boundary of the eastern severance of Pastoral Lease N049967 (Depot Springs) at Latitude 27.998691 South; Then southerly and generally westerly along the boundaries of that pastoral lease to the southeastern corner of Pastoral Lease N050557 (Booylgoo Spring); Then westerly, northerly and again westerly along boundaries of that pastoral lease to longitude 119.713751 East; Then northerly to a southwestern corner of Lot 74 as shown on Deposited Plan 220987, being a point on the present boundary of Pastoral Lease N050557 (Booylgoo Spring); Then generally northerly along boundaries of that pastoral lease to its northernmost northwestern corner; Then northwesterly to the easternmost southeastern corner of Pastoral Lease N049747 (Gidgee); Then northwesterly to the southernmost southwestern corner of Pastoral Lease N049934 (Youno Downs); Then northerly along the boundary of that pastoral lease back to the commencement point.

Note: Geographic Coordinates provided in Decimal Degrees.
 All referenced Deposited Plans and Diagrams are held by the Western Australian Land Information Authority, trading as Landgate.
 Cadastral boundaries sourced from Landgate’s Spatial Cadastral Database dated 3rd January 2017.

For the avoidance of doubt the application excludes any land and waters already claimed by:

- Native Title Determination Application WAD248/2007 Tarlpa (WCD2013/004) as Determined in the Federal Court on the 29th July 2013.
- Native Title Determination Application WAD6064/1998 Wutha (WC1999/010) as Registered in the Federal Court on the 13th January 2017.

Datum: Geocentric Datum of Australia 1994 (GDA94)

Prepared By: Graphic Services (Landgate) 24th March 2017

Use of Coordinates:

Where coordinates are used within the description to represent cadastral or topographical boundaries or the intersection with such, they are intended as a guide only. As an outcome to the custodians of cadastral and topographic data continuously recalculating the geographic position of their data based on improved survey and data maintenance procedures, it is not possible to accurately define such a position other than by detailed ground survey.

Part 2 – Excluded Areas

The following areas within the external boundaries described in Part 1 of this Schedule 1, generally shaded in pink on the maps at Schedule 6, being land and waters where native title has been completely extinguished, are not included in the Determination Area:

Freehold

1. The following grants of freehold title:

CT252/76	GT 17/720	GT 20/119	GT 21/595
CT291/194	GT 17/737	GT 20/260	GT 21/612
CT1121/244	GT18/63	GT 20/261	GT 21/653
CT1676/354	GT18/64	GT 20/262	GT 21/654
CT1676/355	GT18/242	GT 20/502	GT 21/655
CT1850/671	GT 18/521	GT 20/571	GT 21/680
CT121/85	GT18/733	GT 20/572	GT 21/681
CT182/79	GT 18/734	GT 20/591	GT 21/682

CT189/15	GT 19/151	GT 20/650	GT 21/683
CT209/47	GT 19/152	GT 20/769	GT 21/684
CT256/30	GT 19/179	GT 20/770	GT 21/762
CT367/189	GT 19/180	GT 21/34	GT 21/764
CT388/198	GT 19/209	GT 21/35	GT 21/796
CT 390/162	GT 19/210	GT 21/66	GT 21/797
CT 395/102	GT 19/284	GT 21/67	GT 21/798
CT 395/103	GT 19/399	GT 21/328	GT 21/799
CT 395/104	GT 19/456	GT 21/329	GT 21/800
CT 399/5	GT 19/488	GT 21/330	GT 21/801
CT 403/108	GT 19/489	GT 21/335	GT 22/356
CT 413/153	GT 19/490	GT 21/336	GT 22/528
CT 415/139	GT 19/491	GT 21/337	GT 22/529
CT 421/165	GT 19/663	GT 21/338	GT 22/638
CT 423/90	GT 19/705	GT 21/339	GT 22/639
CT 424/81	GT 19/706	GT 21/353	GT 22/754
CT 424/82	GT 19/718	GT 21/354	GT 23/159
CT 424/196	GT 19/749	GT 21/355	GT 23/160
CT 427/200	GT 19/792	GT 21/377	GT 23/182
CT 431/192	GT 19/793	GT 21/399	GT 23/183
CT 451/25	GT 20/26	GT 21/400	GT 23/220
GT 14/36	GT 20/27	GT 21/401	GT 23/369
GT 14/263	GT 20/76	GT 21/402	GT 23/389
GT 14/403	GT 20/77	GT 21/450	GT 23/454
GT 17/305	GT 20/86	GT 21/589	GT 23/652

Reserves

2. The following vested reserves:

RES 5505	RES 39075	RES 42277	RES 51192
RES 8400	RES 41816	RES 42315	
RES 10378	RES 41817	RES 42831	
RES 17675	RES 41818	RES 42934	

Leases of reserves

3. The following leases of reserves under section 41A of the *Land Act 1898* (WA) and section 32 of the *Land Act 1933* (WA):

L332/767	L332/1085	L332/1178	L954/41A
L332/783	L332/1177	L332/1986	

Special leases

4. The following special leases:

3116/6675	3116/6676	3116/6696
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Roads

5. The following roads:

Road 10	Road 15	Closed Road 21
Road 13	Road 16	Closed Road 22
Road 14	Closed Road 20	Closed Road 23

SCHEDULE 2

DESCRIPTION OF THE NATIVE TITLE HOLDERS

1. The persons referred to in order 2 of the Determination are those persons from time to time:
 - (a) who, in accordance with Western Desert traditional laws and customs, have a connection to part or all of the Determination Area through conception, birth, growing up or initiation on the area, acquisition of knowledge through long association, or through descent from a person who has had such a connection; and
 - (b) in respect of whom that claim is recognised according to Western Desert traditional laws and customs.

2. At the date of this Determination, the persons referred to in paragraph 1 of this Schedule 2 are those who:
 - (a) have a connection through:
 - (i) their own birth, or long association with part or all of the Determination Area; or
 - (ii) the birth, or long association with part or all of the Determination Area, of their ancestors by which they claim country; and
 - (b) in respect of whom that claim is recognised according to Western Desert traditional laws and customs,

being such of the descendants of the following ancestors as are recognised, according to Western Desert traditional laws and customs, by the other native title holders as having rights in the Determination Area:

- i. Alfie Ashwin;
- ii. Piman/Charlie Beaman;
- iii. Tjampula/Jumbo Harris;
- iv. Nampu/Scotty Lewis;
- v. Nimpurru/Spider Narrier;
- vi. Tjulyitjutu/Rosie Jones;
- vii. Kathleen Bingham;
- viii. Kurril/Scotty/Ted/Packhorse Rennie Tullock;
- ix. Pukungka/Dolly Walker;

- x. Manyila/Trilby; and
- xi. Dempsey James.

SCHEDULE 3

WHERE NATIVE TITLE IS EXCLUSIVE POSSESSION

The parts of the Determination Area where native title comprises the rights and interests set out in order 3 are as follows, as shown generally shaded green on the maps in Schedule 6:

RES 30897	RES [XXXXXX] ³
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³ Being the designated reserve number of the Yeelirrie Lake Mason Reserve.

SCHEDULE 4

OTHER INTERESTS

With the exception of:

- (a) Wanjarri Nature Reserve (Reserve 30897) which is an other interest that is included in the Determination Area as a result of this Varied Determination of Native Title; and
- (b) Reserve [XXXX], which is an other interest that was created on [insert date],

the nature and extent of other interests in relation to the Determination Area as at 27 April 2017 are:

Part 1 – Other interests which validly affect the native title rights and interests

Reserves

1. The following reserves and the rights and interests of persons who have the care, control and management of the reserves:

RES 4004	RES 9417	RES 12834	RES 15889
RES 6405	RES 9418	RES 12835	RES 16611
RES 6913	RES 9699	RES 12836	RES 18137
RES 7003	RES 10037	RES 13093	RES 18760
RES 7553	RES 10247	RES 13094	RES 19403
RES 7724	RES 10293	RES 13095	RES 30897
RES 9016	RES 10513	RES 13711	RES 46801
RES 9288	RES 12207	RES 13871	RES [XXXX] ⁴
RES 9416	RES 12833	RES 15441	

⁴ Being the designated reserve number of the Yeelirrie Lake Mason Reserve.

Pastoral leases

2. The following current pastoral leases and the rights and interests of the holders from time to time of those pastoral leases:

Albion Downs (N049530)	Gidgee (N049747)	Mount Keith (N049448)	Yeelirrie (N049508)
Booylgoo Springs (N050557)	Lake Way (N050051)	Pinnacles (N049812)	Youno Downs (N049934)
Depot Springs (N049967)	Leinster Downs (N049438)	Yakabindie (N049476)	

Roads

3. The following roads (being roads which are maintained by the Shire of Sandstone and the Shire of Wiluna as at the date of this Determination) marked generally on the maps in Schedule 6 in beige:

Road 2	Road 6	Road 8	Road M069 (Mt Magnet- Leinster Road)
Road 5	Road 7	Road 11	

Water Bores and Gravel Pits

4. The rights of the Commissioner of Main Roads, Shire of Sandstone and the Shire of Wiluna to use and maintain the following water bores and gravel pits as at the date of this Determination:

Location of Main Roads WA Material Pits

No.	SLK	Offset (km)	Direction	Coordinates	
				S	E
Material pits on or near Goldfields Highway					
1.	442.69	0.6	East	27.9192	120.68
2.	444.2	0.2	West	27.919	120.6652
3.	444.73	0.1	East	27.9166	120.6639
4.	445.77	0.2	West	27.9104	120.644

No.	SLK	Offset (km)	Direction	Coordinates	
				S	E
5.	445.77	0.12	East	27.9094	120.6563
6.	455.25	0.3	West	27.8498	120.5814
7.	461.4	0.6	East	27.7999	120.5581
8.	465.2	4.9	East	27.767	120.5937
9.	471.1	1.7	West	27.7199	120.5252
10.	528.4	0.36	West	27.218	120.5077
11.	531.020	1.55	East	27.1933	120.516
12.	533.36	1.52	East	27.1729	120.5099
13.	533.36	1.52	East	27.174	120.5095
14.	534.16	0.54	East	27.1647	120.4981
15.	534.16	0.63	East	27.1648	120.5007
16.	534.955	3.01	East	27.1481	120.513
17.	534.955	3.05	East	27.1464	120.5133
18.	539.15	0.3			
19.	539.75	0.3			
20.	540.2				
21.	540.4				
22.	540.48	0.3	West	27.1258	120.4635
23.	540.95	0.575	East	27.1191	120.4704
24.	543.15				
25.	543.3				
26.	545.9				
27.	546				
28.	546.948	0.96	East	27.0635	120.4328
29.	546.948	0.96	East	27.0602	120.4312
30.	549.4	0.96	East	27.0577	120.4332

No.	SLK	Offset (km)	Direction	Coordinates	
				S	E
31.	549.6	0.3			
32.	550.9	0.4			
33.	551				
34.	552.6	1.2	East	27.0095	120.4119
35.	554.8	2.82	East	26.9941	120.4139
36.	561.6				
37.	563.7	8.77	East	26.9613	120.414
38.	563.7	9.38	East	26.9652	120.418
39.	563.7	9.515	East	26.9643	120.4177
40.	563.7	9.515	East	26.9643	120.4177
41.	565.5	0.02			
42.	569.8				
43.		0.36	West	27.2289	120.5074
44.		1.55	East	27.2042	120.5158
45.		1.52	East	27.1839	120.50970
46.		1.52	East	27.1848	120.5092
47.		0.54	East	27.1755	120.4979
48.		0.63	East	27.1756	120.5004
49.		3.01	East	27.1589	120.5127
50.		3.05	East	27.1573	120.5131
51.		0.96	East	27.0743	120.4326
52.		0.96	East	27.0710	120.4309
53.		0.96	East	27.0685	120.4329
54.		1.2	East	27.0203	120.4116
55.		2.82	East	27.0049	120.4136
56.		8.77	East	26.9721	120.4138

No.	SLK	Offset (km)	Direction	Coordinates	
				S	E
57.		9.38	East	26.9760	120.4177
58.		9.515	East	26.9751	120.4175
59.		9.515	East	26.9751	120.4175
60.		2.075	West	26.8902	120.2891
61.		1.945	West	26.8905	120.2914
62.		0.72	West	27.2338	120.5066
63.		0.87	West	27.2355	120.5056
64.		0.29	West	27.2281	120.5069
65.		0.79	East	27.2082	120.5124
66.		0.735	East	27.1974	120.5068
67.		0.76	East	27.1819	120.5024
68.		0.96	East	27.1808	120.5042
69.		0.4	West	27.1771	120.4890
70.		0.525	West	27.1780	120.4878
71.		0.52	West	27.1723	120.4869
72.		0.52	West	27.1724	120.4869
73.		0.525	West	27.1628	120.4819
74.		0.6	West	27.1630	120.4812
75.		0.525	West	27.1626	120.4831
76.		0.6	West	27.1554	120.4789
77.		0.7	East	27.1541	120.4904
78.		0.747	West	27.1304	120.4604
79.		0.35	West	27.1267	120.4618
80.		1.1	West	27.1233	120.4513
81.		1.1	West	27.1233	120.4513
82.		0.71	West	27.1243	120.4555

No.	SLK	Offset (km)	Direction	Coordinates	
				S	E
83.		0.76	East	27.0809	120.4344
84.		0.56	West	27.0755	120.4150
85.		0.165	East	27.0661	120.4198
86.		0.325	West	27.0689	120.4147
87.		0.3	West	27.0681	120.4150
88.		0.87	East	27.0343	120.4160
89.		0.87	East	27.0321	120.4146
90.		0.83	East	27.0223	120.4061
91.		0.18	West	27.0040	120.3818
92.		0.31	East	27.0026	120.3831
93.		0.15	West	26.9977	120.3767
94.		0.19	West	26.9963	120.3708
95.		0.315	West	26.9963	120.3708
96.		0.2	West	26.9841	120.3691
97.		0.2	West	26.9804	120.3620
98.		0.2	East	26.9705	120.3616
99.		0.2	East	26.9619	120.3564
100.		0.25	East	26.9541	120.3526
101.		0.7	East	26.9089	120.3269
102.		0.2	East	26.9465	120.3470
103.		0.95	East	26.9404	120.3497
104.		0.5	East	26.9182	120.3321
105.		0.65	East	26.9163	120.3332
106.		0.4	East	26.9089	120.3269
107.		0.34	East	26.9055	120.3235
108.		0.2	West	26.8992	120.3125

No.	SLK	Offset (km)	Direction	Coordinates	
				S	E
109.		0.28	West	26.8959	120.3093
Material pits on or near Mt Magnet Leinster Road					
110.	202.91	0.1			
111.	219.77	0.27	South	28.016	119.9398
112.	237.37	0.27	South	27.9357	120.0883
113.	247.15	0.22	South	27.9496	120.1847
114.	260.1	2.4	North	27.954	120.3053
115.	262.6	0.1	North	27.9686	120.3362
116.	267.0	0.15	South	27.9659	120.3799
117.	269.49	0.66	North	27.9575	120.4058
118.	269.5	0.3	South	27.9664	120.4028
119.	272.85	0.8	North	27.9465	120.443

Location of Main Roads WA Water Bores

No.	SLK	Offset (km)	Direction	Coordinates	
				S	E
1.	545.13		East	27.0914	120.48
2.	545.13	1.2	East	27.1022	120.4797
3.	543.65		East	27.1097	120.4703
4.	543.65	0.2	East	27.1205	120.4700
5.	543.05	3.3	East	27.11945	120.471
6.	543.05	4.3	East	27.10067	120.4812
7.	543.05	4.3	East	27.10082	120.48127
8.	525.6	0.3	West	27.2513	120.5203
9.	525.6		East	27.2404	120.5205
10.	525.6	0.2	West	27.2499	120.52188

11.	498.17	4.4	East	27.46885	120.55375
12.	498.17	4.4	East	27.46893	120.55338
13.	484.44	5.06	West	27.6116	120.5012
14.	467.87	1.69	East	27.74223	120.5606
15.	433.5	0.19	West	27.97543	120.74922

Location of the Shire of Sandstone's Gravel Pits And Water Bore

No.	Distance from Leinster Rd	Coordinates	
		S	E
Gravel pits			
1.	38.7	27.8117	119.8486
2.	51.5	27.7556	119.9536
3.	66	27.6411	119.9992
4.	70	27.6053	120.0008
Water bore			
1.	64	27.6572	119.9997

Location of the Shire of Wiluna's Water Bore

No.	SLK	Coordinates	
		S	E
1.	81	27.21859	119.56624

Easements

5. The following easements and the rights and interests of the holders from time to time of those easements:

EASMT 1	EASMT 2(b)	EASMT 4
EASMT 2(a)	EASMT 3	

Mining interests

6. The rights and interests of the holders from time to time of the following current mining interests under the *Mining Act 1978* (WA):

<i>Exploration Licences</i>	
1.	E36/535
2.	E36/602
3.	E36/610
4.	E36/617
5.	E36/684
6.	E36/733
7.	E36/782
8.	E36/787
9.	E36/788
10.	E36/828
11.	E36/829
12.	E36/832-I
13.	E36/836
14.	E36/849
15.	E36/872
16.	E36/878
17.	E53/1136
18.	E53/1167
19.	E53/1243
20.	E53/1273
21.	E53/1480
22.	E53/1593
23.	E57/577-I

24.	E57/675-I
25.	E57/676
<i>Prospecting Licences</i>	
26.	P36/1596
27.	P36/1744
<i>Miscellaneous Licences</i>	
28.	L36/42
29.	L36/51
30.	L36/52
31.	L36/53
32.	L36/54
33.	L36/55
34.	L36/56
35.	L36/60
36.	L36/62
37.	L36/67
38.	L36/68
39.	L36/69
40.	L36/70
41.	L36/71
42.	L36/72
43.	L36/73
44.	L36/74
45.	L36/75
46.	L36/76
47.	L36/77
48.	L36/78

49.	L36/79
50.	L36/80
51.	L36/81
52.	L36/82
53.	L36/85
54.	L36/86
55.	L36/88
56.	L36/89
57.	L36/90
58.	L36/91
59.	L36/93
60.	L36/94
61.	L36/95
62.	L36/97
63.	L36/101
64.	L36/106
65.	L36/107
66.	L36/109
67.	L36/110
68.	L36/111
69.	L36/112
70.	L36/118
71.	L36/119
72.	L36/137
73.	L36/145
74.	L36/159
75.	L36/163

76.	L36/165
77.	L36/166
78.	L36/167
79.	L36/170
80.	L36/171
81.	L36/172
82.	L36/175
83.	L36/178
84.	L36/179
85.	L36/180
86.	L36/187
87.	L36/189
88.	L36/191
89.	L36/194
90.	L36/199
91.	L36/203
92.	L36/206
93.	L53/31
94.	L53/54
95.	L53/56
96.	L53/58
97.	L53/63
98.	L53/64
99.	L53/65
100.	L53/66
101.	L53/67
102.	L53/76

103.	L53/82
104.	L53/89
105.	L53/90
106.	L53/91
107.	L53/92
108.	L53/96
109.	L53/104
110.	L53/105
111.	L53/110
112.	L53/118
113.	L53/119
114.	L53/120
115.	L53/121
116.	L53/122
117.	L53/123
118.	L53/124
119.	L53/128
120.	L53/129
121.	L53/130
122.	L53/131
123.	L53/132
124.	L53/134
125.	L53/135
126.	L53/145
127.	L53/159
128.	L53/160
129.	L53/161

130.	L53/165
131.	L53/171
132.	L53/172
133.	L53/177
<i>Mining Leases</i>	
134.	M36/3
135.	M36/4
136.	M36/9
137.	M36/19
138.	M36/20
139.	M36/24
140.	M36/25
141.	M36/32
142.	M36/34
143.	M36/53
144.	M36/54
145.	M36/61
146.	M36/62
147.	M36/63
148.	M36/64
149.	M36/69
150.	M36/70
151.	M36/71
152.	M36/72
153.	M36/73
154.	M36/74
155.	M36/75

156.	M36/77
157.	M36/78
158.	M36/87
159.	M36/102
160.	M36/103
161.	M36/111
162.	M36/113
163.	M36/114
164.	M36/115
165.	M36/116
166.	M36/119
167.	M36/120
168.	M36/121
169.	M36/123
170.	M36/127
171.	M36/129
172.	M36/130
173.	M36/131
174.	M36/149
175.	M36/155
176.	M36/156
177.	M36/158
178.	M36/159
179.	M36/160
180.	M36/162
181.	M36/163
182.	M36/164

183.	M36/165
184.	M36/166
185.	M36/167
186.	M36/168
187.	M36/174
188.	M36/176
189.	M36/180
190.	M36/182
191.	M36/183
192.	M36/184
193.	M36/185
194.	M36/191
195.	M36/199
196.	M36/212
197.	M36/216
198.	M36/217
199.	M36/218
200.	M36/219
201.	M36/220
202.	M36/230
203.	M36/233
204.	M36/234
205.	M36/242
206.	M36/243
207.	M36/246
208.	M36/264
209.	M36/265

210.	M36/266
211.	M36/273
212.	M36/279
213.	M36/285
214.	M36/286
215.	M36/288
216.	M36/290
217.	M36/291
218.	M36/292
219.	M36/294
220.	M36/299
221.	M36/301
222.	M36/302
223.	M36/303
224.	M36/305
225.	M36/306
226.	M36/307
227.	M36/314
228.	M36/315
229.	M36/316
230.	M36/317
231.	M36/328
232.	M36/329
233.	M36/330
234.	M36/332
235.	M36/336
236.	M36/341

237.	M36/342
238.	M36/349
239.	M36/365
240.	M36/366
241.	M36/367
242.	M36/368
243.	M36/371
244.	M36/375
245.	M36/376
246.	M36/377
247.	M36/384
248.	M36/389
249.	M36/391
250.	M36/399
251.	M36/401
252.	M36/408
253.	M36/409
254.	M36/417
255.	M36/422
256.	M36/439
257.	M36/440
258.	M36/441
259.	M36/443
260.	M36/452
261.	M36/453
262.	M36/454
263.	M36/455

264.	M36/456
265.	M36/457
266.	M36/459
267.	M36/460
268.	M36/467
269.	M36/493
270.	M36/509
271.	M36/510
272.	M36/517
273.	M36/549
274.	M36/580
275.	M36/603
276.	M36/618
277.	M36/631
278.	M36/632
279.	M36/633
280.	M36/657
281.	M36/658
282.	M36/659
283.	M36/660
284.	M36/676
285.	M36/677
286.	M36/678
287.	M36/679
288.	M36/680
289.	M53/1
290.	M53/2

291.	M53/28
292.	M53/35
293.	M53/36
294.	M53/55
295.	M53/56
296.	M53/57
297.	M53/153
298.	M53/165
299.	M53/166
300.	M53/167
301.	M53/187
302.	M53/208
303.	M53/215
304.	M53/216
305.	M53/217
306.	M53/218
307.	M53/238
308.	M53/239
309.	M53/240
310.	M53/241
311.	M53/242
312.	M53/243
313.	M53/252
314.	M53/327
315.	M53/328
316.	M53/371
317.	M53/410

318.	M53/411
319.	M53/462
320.	M53/463
321.	M53/466
322.	M53/467
323.	M53/475
324.	M53/483
325.	M53/484
326.	M53/485
327.	M53/486
328.	M53/487
329.	M53/488
330.	M53/489
331.	M53/490
332.	M53/491
333.	M53/949
334.	ML 255SA
<i>General Purpose Leases</i>	
335.	G53/11
336.	G53/12
337.	G53/13
338.	G53/14
<i>Temporary Reserves</i>	
339.	TR 70/6899
<i>Mineral Claims</i>	
340.	MC 36/2667
341.	MC 36/2668

342.	MC 36/2677
343.	MC 36/2679
344.	MC 36/2680
345.	MC 36/2681
346.	MC 36/2707
347.	MC 36/2708
348.	MC 36/2709
349.	MC 36/2710
350.	MC 36/2711
351.	MC 36/2712
352.	MC 36/2713
353.	MC 36/2714
354.	MC 36/2715
355.	MC 36/2716
356.	MC 36/2717
357.	MC 36/2718
358.	MC 36/2771
359.	MC 36/3313
360.	MC 36/3314
361.	MC 36/3315
362.	MC 36/3316
363.	MC 36/3317
364.	MC 36/3694
365.	MC 53/1098
366.	MC 53/1099
367.	MC 53/1100
368.	MC 53/1101

369.	MC 53/1102
370.	MC 53/1103
371.	MC 53/1104
372.	MC 53/1105
373.	MC 53/1106
374.	MC 53/1107
375.	MC 53/1108
376.	MC 53/1109
377.	MC 53/1110
378.	MC 53/1111
379.	MC 53/1112
380.	MC 53/1113
381.	MC 53/1114
382.	MC 53/1115
383.	MC 53/1116
384.	MC 53/1117
385.	MC 53/1118
386.	MC 53/1119
387.	MC 53/1120
388.	MC 53/1121
389.	MC 53/1122
390.	MC 53/1165
391.	MC 53/1166
392.	MC 53/1167
393.	MC 53/1168
394.	MC 53/1169
395.	MC 53/1170

396.	MC 53/1171
397.	MC 53/1172
398.	MC 53/1173
399.	MC 53/1174
400.	MC 53/1175
401.	MC 53/1176
402.	MC 53/1177
403.	MC 53/1178
404.	MC 53/1179
405.	MC 53/1180
406.	MC 53/1181
407.	MC 53/1182
408.	MC 53/1183
409.	MC 53/1184
410.	MC 53/1185
411.	MC 53/1186
412.	MC 53/1187
413.	MC 53/1188
414.	MC 53/1189
415.	MC 53/1190
416.	MC 53/1191
417.	MC 53/1192
418.	MC 53/1193
419.	MC 53/1194
420.	MC 53/1196
421.	MC 53/1197
422.	MC 53/3147

423.	MC 53/3148
424.	MC 53/3149
425.	MC 53/3150
426.	MC 53/3151
427.	MC 53/3152
428.	MC 53/3153
429.	MC 53/3767
430.	MC 53/3768
431.	MC 53/3769
432.	MC 53/3770
433.	MC 53/3771
434.	MC 53/3772
435.	MC 53/3773
436.	MC 53/3774
437.	MC 53/3775
438.	MC 53/3776
439.	MC 53/3780
440.	MC 53/3781
441.	MC 53/3782
442.	MC 53/3783
443.	MC 53/3784
444.	MC 53/3785
445.	MC 53/3871
446.	MC 53/3904
447.	MC 53/3905
448.	MC 53/3906
449.	MC 53/3908

450.	MC 53/3909
451.	MC 53/3911
452.	MC 53/3912
453.	MC 53/3914
454.	MC 53/3919
455.	MC 53/3927
456.	MC 53/3929
457.	MC 53/3931
458.	MC 53/3933
459.	MC 53/3934
460.	MC 53/3939
461.	MC 53/3940
462.	MC 53/3941
463.	MC 53/3942
464.	MC 53/3943
465.	MC 53/4060
466.	MC 53/4062
467.	MC 53/4063
468.	MC 53/4064
469.	MC 53/4065
470.	MC 53/4115
471.	MC 53/4126
472.	MC 53/4127
473.	MC 53/4358
474.	MC 53/4359
475.	MC 53/4360
476.	MC 53/4529

477.	MC 53/4530
478.	MC 53/4531
479.	MC 53/4805
480.	MC 53/5303
481.	MC 53/5304
482.	MC 53/5305
483.	MC 53/5306
484.	MC 53/5307
485.	MC 53/5308
486.	MC 53/5309
487.	MC 53/5310
488.	MC 53/5311
489.	MC 53/5312
490.	MC 53/5313
491.	MC 53/5314
492.	MC 53/5315
493.	MC 53/5316
494.	MC 53/5317
495.	MC 53/5318
496.	MC 53/5319
497.	MC 53/5320
498.	MC 53/5321

Petroleum interests

7. The rights and interests of the holders of the following current petroleum pipeline licences under the *Petroleum Pipelines Act 1969* (WA):

PL 24	PL 26
PL 25	

Water interests

8. The following groundwater areas under the *Rights in Water and Irrigation Act 1914* (WA) and the rights and interests comprised in, conferred under or in accordance with the *Rights in Water and Irrigation Act 1914* (WA) in respect of those areas:

East Murchison Groundwater Area	Goldfields Groundwater Area
---------------------------------	-----------------------------

Telstra

9. The rights and interests of Telstra Corporation Limited:
- (a) as the owner or operator of telecommunications facilities within the Determination Area;
 - (b) created pursuant to the *Post and Telegraph Act 1901* (Cth), the *Telecommunications Act 1975* (Cth), the *Australian Telecommunications Corporation Act 1989* (Cth), the *Telecommunications Act 1991* (Cth) and the *Telecommunications Act 1997* (Cth) including rights:
 - (i) to inspect land;
 - (ii) to install and operate telecommunications facilities; and
 - (iii) to alter, remove, replace, maintain, repair and ensure the proper functioning of its telecommunications facilities;
 - (c) for its employees, agents or contractors to access its telecommunications facilities in and in the vicinity of the Determination Area in performance of their duties; and
 - (d) under any lease, licence, access agreement or easement relating to its telecommunications facilities in the Determination Area.

Other

10. Rights and interests, including licences and permissions, held under valid or validated grants from the Crown in right of the State or of the Commonwealth pursuant to statute or otherwise in the exercise of its executive power of a kind not otherwise referred to in this Schedule 4.
11. Valid or validated rights or interests of a kind not otherwise referred to in this Schedule 4 held by reason of the force and operation of the laws of the State or of the Commonwealth.
12. The right to access the Determination Area by an employee, agent or instrumentality of:
 - (a) the State;
 - (b) the Commonwealth;
 - (c) any local government authority,as required in the performance of his or her statutory or common law duty where such access would be permitted to private land.
13. So far as confirmed pursuant to section 14 of the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* (WA) as at the date of this Determination, any existing public access to and enjoyment of:
 - (a) waterways;
 - (b) beds and banks or foreshores of waterways; and
 - (c) stock routes.

Part 2 – Other interests which have no force or effect against the native title rights and interests

The following current mining tenements under the *Mining Act 1978* (WA) are invalid future acts which have no force or effect against the native title rights and interests:

Tenure ID	Tenure Type
L36/144	Miscellaneous Licence
L36/148	Miscellaneous Licence
L36/152	Miscellaneous Licence
L53/109	Miscellaneous Licence

SCHEDULE 5

AREAS TO WHICH SECTIONS 47B AND 47C OF NATIVE TITLE ACT APPLY

Part 1 – s 47B areas

The parts of the Determination Area to which section 47B of the *Native Title Act* applies (shown generally on the maps in Schedule 6 as shaded green) are those parts of [Yeelirrie Lake Mason Reserve] (Reserve [XXXX]) formerly designated UCL 245 and UCL 246.

Part 2 – s 47C areas

The parts of the Determination Area to which section 47C of the *Native Title Act* applies (shown generally on the maps in Schedule 6 as shaded [colour]) are:

- (a) Wanjarri Nature Reserve (Reserve 30897); and
- (b) that part of [Yeelirrie Lake Mason Reserve] formerly designated UCL 239.

SCHEDULE 6

MAPS OF THE DETERMINATION AREA

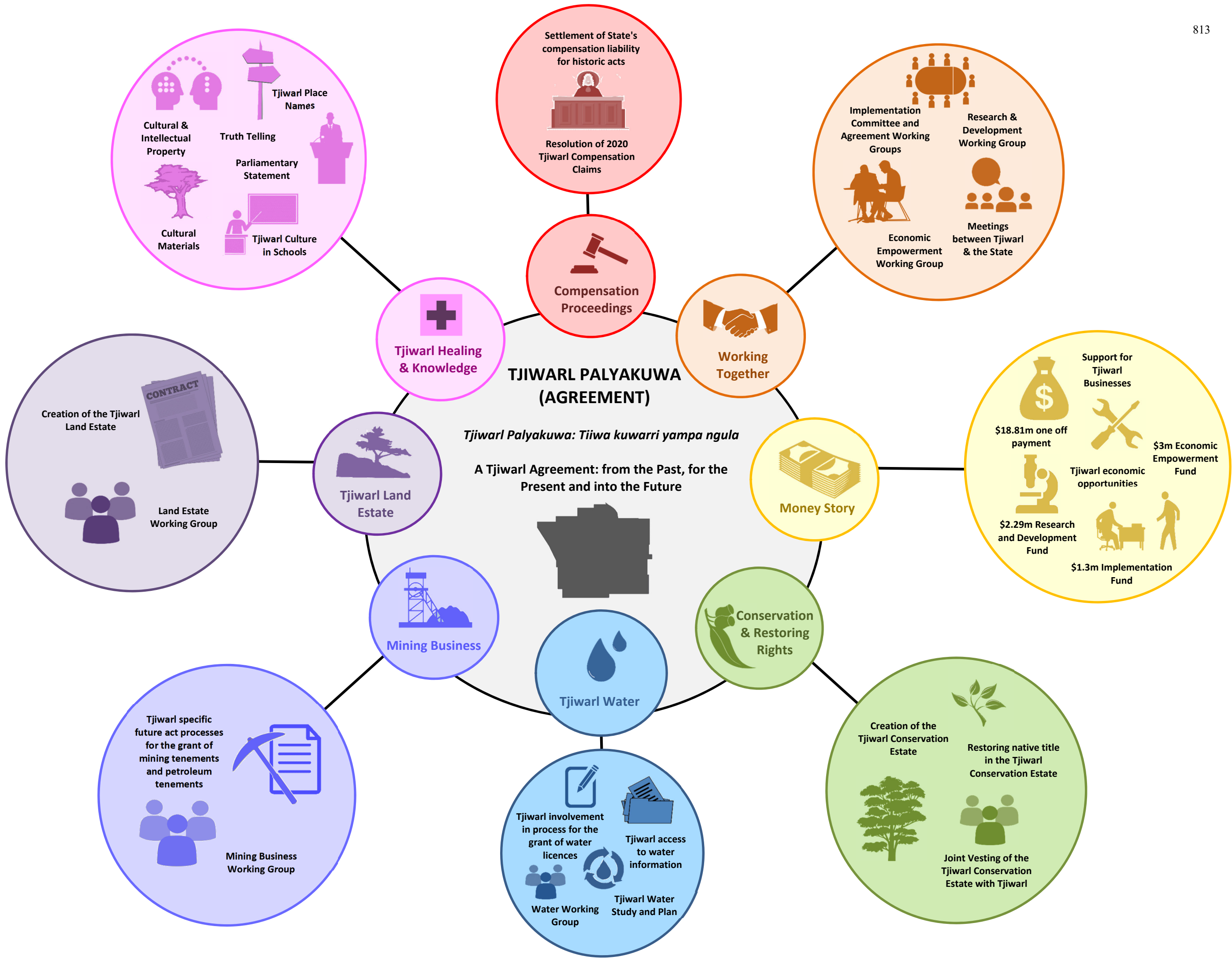
TJIWARL PALYAKUWA (AGREEMENT)

SCHEDULE 9

Agreement Summary

Summary Diagram and Fact Sheets

The following summary diagram and fact sheets are a simplification of the Tjiwarl Palyakuwa (Agreement). They are provided for ease of reference and illustration purposes only. If there is any inconsistency between the summary chart or fact sheets and the text of the Tjiwarl Palyakuwa (Agreement), the text of the Agreement prevails.





***Tjiwarl
Palyakuwa: Tiiwa
kuwarri yampa
ngula***

A Tjiwarl
Agreement: from
the Past, for the
Present and into
the Future

OVERVIEW

Tjiwarl Palyakuwa (Agreement)

What is in the Agreement?

The Tjiwarl Palyakuwa (Agreement) is an indigenous land use agreement (ILUA) between the State and Tjiwarl AC (on behalf of the Tjiwarl people) that resolves the State's native title compensation liability in relation to Tjiwarl Country. The Agreement provides the Tjiwarl people with a package of benefits that compensates them for historic acts by the State that have impaired or extinguished their native title.

It is designed to support the cultural, social and economic aspirations of current and future generations of Tjiwarl people.

The package of benefits includes:

- Monetary compensation of \$25.475 million.
- Funding provided prior to registration for a socio-economic baseline study.
- The transfer of ownership of land parcels to Tjiwarl, including the grant of freehold without affecting native title and a process for any future grants of land.
- The creation and expansion of the Tjiwarl Conservation Estate, including the joint management and joint vesting of the Tjiwarl Conservation Estate with Tjiwarl AC.
- The recognition of exclusive native title rights under s.47C of the *Native Title Act 1993* (Cth) within the Tjiwarl Conservation Estate.
- The involvement of Tjiwarl in the ongoing management of water on Tjiwarl Country, including processes with respect to the grant of licences under the *Rights in Water and Irrigation Act 1914* (WA).
- Tjiwarl specific future act processes for the grant of certain mining and petroleum tenements and titles on Tjiwarl Country.
- Support for Tjiwarl businesses and economic opportunities for Tjiwarl people.
- Support for the recognition or protection of Tjiwarl people's language, culture and history, including with respect to place names, cultural materials and indigenous cultural and intellectual property.



COMPENSATION PROCEEDINGS Tjiwarl Palyakuwa (Agreement)

What is in the Agreement?

The Tjiwarl Palyakuwa (Agreement) resolves the State's native title compensation liability for historic acts and provides the Tjiwarl people with a package of benefits that compensates them for those historic acts that have impaired or extinguished their native title.

The Agreement will also resolve any claim made against the State in the three compensations claims that the Tjiwarl People made in 2020 in the Federal Court of Australia under the *Native Title Act 1993* (Cth).

Settlement of the State's Compensation Liability

The Agreement **will** resolve the State's compensation liability to the Tjiwarl People in relation to:

- all acts done in Tjiwarl Country up until 17 June 2020, whether or not those acts were included in the Tjiwarl compensation claims;
- certain acts that were done after 17 June 2020, limited to the renewal or extension of particular mining tenements; and
- all acts associated with the creation of the Tjiwarl Conservation Estate.

The Agreement **will not** resolve any liability that **holders of mining tenements** have in respect of acts the subject of the Tjiwarl compensation claims that are mining tenements granted on or after the commencement of section 125A of the *Mining Act 1978* (WA) on 11 January 1999 that were valid in accordance with Part 2, Division 3, Subdivision M of the Native Title Act.

Resolution of the Tjiwarl compensation claims

The Agreement provides that the Tjiwarl compensation claims (WAD 141/20, WAD 142/20 and WAD 269/20) will be amended to withdraw any claim against the State.

Settlement of the State's compensation liability for acts done before 17 June 2020 and only certain acts done after

No settlement of mining tenement holders' liabilities which arise under s.125A of the Mining Act 1978 (WA)

Amendment of the Tjiwarl compensation claims to withdraw any claim against the State



WORKING TOGETHER

Tjiwarl Palyakuwa (Agreement)

Implementation Committee

Working Groups

Research and Development

Economic Empowerment

Mining Business

Water

Land Estate

Other Meetings

Minister for Aboriginal Affairs

Native Title Deputies Group

Aboriginal Affairs Coordinating Committee

What is in the Agreement?

The State and the Tjiwarl people have worked together to negotiate the Tjiwarl Palyakuwa (Agreement) and will continue to work together to implement the Agreement through a number of specific working groups and other agreed forums.

Implementation Committee

The Implementation Committee, comprised of Tjiwarl and State government representation, will work collaboratively to oversee, facilitate and implement the Agreement. Its aim is to foster regular and open communication between the State and Tjiwarl people about the Agreement and its operation.

Working Groups

In addition to the Implementation Committee, the Agreement provides for a number of specific working groups to oversee parts of the Agreement. These include the:

- Research and Development Working Group;
- Economic Empowerment Working Group;
- Mining Business Working Group;
- Water Working Group; and
- Land Estate Working Group.

Other meetings

To further encourage an ongoing relationship between the State and Tjiwarl people the Agreement provides for:

- an Annual Meeting between Minister for Aboriginal Affairs and Tjiwarl Aboriginal Corporation for at least the first three years of the Agreement;
- meetings between Tjiwarl AC and the State Native Title Deputies Group; and
- a recommendation for an annual regional meeting of Aboriginal Affairs Coordinating Committee in the Goldfields, with Tjiwarl AC representatives invited to attend.



MONEY STORY

Tjiwarl Palyakuwa (Agreement)

\$25.475M

in monetary payments

\$18.81M

Cash Payment

\$2.29M

Research & Development Fund

\$3M

Economic Empowerment Fund

\$1.375M

Implementation Fund

Up to \$400,000

Socio-economic Baseline Study

Support for Tjiwarl Businesses & Economic Opportunities

What is in the Agreement?

The Tjiwarl Palyakuwa (Agreement) provides monetary payments totalling \$25.475 million, together with funding for a socio-economic baseline study.

The Agreement also provides support for Tjiwarl businesses and economic opportunities for Tjiwarl people.

Monetary Payments

- \$18.81 million one off cash payment.
- \$2.29 million (paid in two instalments) for a Research and Development Fund.
- \$3 million (paid in two instalments) for an Economic Empowerment Fund.
- \$1.375 million one off payment for an Implementation Fund.
- Up to \$400,000 paid prior to the registration of the Agreement to fund a socio-economic baseline study.

Support for Tjiwarl businesses and economic opportunities

The Agreement provides a number of measures to help support Tjiwarl businesses and provide economic opportunities for Tjiwarl people, including:

- State encouragement for equity ownership and the engagement of Tjiwarl businesses in projects on Tjiwarl country;
- State support for Tjiwarl businesses to identify and access local tendering or procurement opportunities and business capacity building programs; and
- a commitment by the State to maximise existing and new carbon opportunities for Tjiwarl people; and
- a commitment by the State to maximise commercial sandalwood opportunities for Tjiwarl people.



CONSERVATION & RESTORING RIGHTS Tjiwarl Palyakuwa (Agreement)

Tjiwarl
Conservation
Estate

Expanded
Wanjarri Nature
Reserve

New Yeelirrie
Lake Mason
Reserve

Joint Vesting &
Management
of the Tjiwarl
Conservation
Estate

\$19.5M
For joint
management

s.47C NTA
Recognition of
exclusive native
title within the
Tjiwarl
Conservation
Estate

What is in the Agreement?

The Tjiwarl Palyakuwa (Agreement) provides for the creation of the Tjiwarl Conservation Estate. The State will expend \$19.5 million over 10 years to jointly manage the Tjiwarl Conservation Estate with the Tjiwarl people.

The Agreement also provides for recognition of exclusive native title rights under s.47C of the *Native Title Act 1993 (Cth)* within the Tjiwarl Conservation Estate.

Tjiwarl Conservation Estate

The Agreement provides for the creation of the Tjiwarl Conservation Estate by the expansion of the existing Wanjarri Nature Reserve and the creation of a new Yeelirrie Lake Mason Reserve.

Tjiwarl people will have the opportunity to name (or rename) the reserves within the Tjiwarl Conservation Estate.

The Tjiwarl Conservation Estate will be jointly vested and jointly managed by the Conservation Commission and Tjiwarl AC. An agreed management plan will apply over the Tjiwarl Conservation Estate.

The State will expend \$19.5 million over 10 years to jointly manage the Tjiwarl Conservation Estate, of which no less than \$11.2 million will be spent for the benefit of Tjiwarl. This funding includes funding for field visits, heritage and cultural mapping, the expansion of a ranger base and the creation of opportunities for Tjiwarl people and Tjiwarl businesses.

Restoring Rights to Country

The Agreement provides for the application of s.47C of the *Native Title Act* to restore exclusive native title over the expanded Wanjarri Nature Reserve and recognise exclusive native title over those parts of Yeelirrie Lake Mason Reserve where non-exclusive native title presently exists.



WATER

Tjiwarl Palyakuwa (Agreement)

Tjiwarl Water Study & Tjiwarl Water Plan

To identify and help optimise the management of water resources in Tjiwarl County

Access to Water Information

Grant of Water Licences

Process for the grant of water licences in Tjiwarl Country

Water Working Group

What is in the Agreement?

The Tjiwarl Palyakuwa (Agreement) recognises the spiritual relationship of Tjiwarl people to water, the importance of access to water resources by Tjiwarl people and the need for Tjiwarl input into the management of water on Tjiwarl Country.

Tjiwarl Water Study and Plan

The State and Tjiwarl AC have agreed to undertake a Tjiwarl Water Study to identify the water resources located in Tjiwarl County and the cultural, environmental and economic values of those water resources. Following the Tjiwarl Water Study, a Tjiwarl Water Plan will be jointly developed to:

- identify the quality, quantity and location of water resources in Tjiwarl Country;
- identify any opportunities for water allocation to Tjiwarl People; and
- help to set environmental and cultural water outcomes and optimise the management of water in Tjiwarl Country.

Access to Water Information

The Agreement establishes a process for Tjiwarl AC to seek to access certain information relating to licenses and permits granted under the *Rights in Water and Irrigation Act 1914* (WA).

Process for the Grant of Water Licences

The Agreement establishes a Tjiwarl specific future act process for the grant of water licenses under the *Rights in Water and Irrigation Act* which provides Tjiwarl people with an opportunity for earlier engagement with licence applicants and involvement in the grant process.

Water Working Group

The Agreement establishes the Water Working Group, a joint body between Tjiwarl AC and the State, to oversee and implement the commitments and processes made with respect to water in Tjiwarl Country.



MINING BUSINESS

Tjiwarl Palyakuwa (Agreement)

Process for the grant of mining tenements and petroleum titles

Early notice of applications

Early engagement with proponents

Negotiation period prior to Native Title Act future act notifications

Avoidance of Native Title Act future act notifications where agreement reached

Tjiwarl Heritage Agreement conditions on title

Mining Business Working Group

What is in the Agreement?

The Tjiwarl Palyakuwa (Agreement) establishes of a process for the grant of tenements under the *Mining Act 1978 (WA)* and the *Petroleum and Geothermal Energy Resources Act 1967 (WA)* within Tjiwarl Country.

Process for the grant of tenements and titles

The Agreement establishes a Tjiwarl specific future act process for the grant of mining tenements and petroleum titles in Tjiwarl Country. The processes to be followed in relation to tenements and titles depend upon the type and location of the relevant tenement or title.

By way of overview, the process provides for:

- identification of areas within Tjiwarl Country where stronger processes will apply for the grant of exploration type tenements and titles;
- early engagement between proponents and Tjiwarl AC with a focus on agreement making, including a standard agreement for certain exploration type tenements and titles;
- increased State involvement in assisting Tjiwarl AC and Proponents; and
- valid grants of tenements and title to occur where an agreement is reached between Tjiwarl AC and the Proponent without needing to undertake a formal notification process under the *Native Title Act 1993 (Cth)*.

The Tjiwarl specific future act process will ensure proponents engage directly with Tjiwarl at the first step of their tenement or title applications.

Mining Business Working Group

The Agreement establishes the Mining Business Working Group, a body between Tjiwarl AC and the State, to oversee and implement the commitments and processes made with respect to the grant of tenements and titles in Tjiwarl Country.



Tjiwarl Land Estate

Handover of the First Stage Lands in freehold

Process to identify, select, approve and handover Second Stage Lands, Cultural Lands and Future Lands

Land Estate Working Group

TJIWARL LAND ESTATE

Tjiwarl Palyakuwa (Agreement)

What is in the Agreement?

The State has worked with the Tjiwarl people, and will continue to work with the Tjiwarl people to identify available land parcels in Tjiwarl Country that can be transferred to Tjiwarl AC (or another Tjiwarl landholding body or bodies) under the Tjiwarl Palyakuwa (Agreement).

Tjiwarl Land Estate

The Agreement provides for the creation of the Tjiwarl Land Estate through the transfer of lands to Tjiwarl AC or a Tjiwarl landholding body or bodies.

Following the commencement of the Agreement, the State will handover certain parcels of land in freehold to Tjiwarl. These lands are called First Stage Lands in the Agreement. The handover of the First Stage Lands and creation of freehold will not extinguish Tjiwarl people's underlying native title rights and interests.

The Agreement also provides processes for the ongoing identification, selection, approval and handover of other lands in Tjiwarl Country to Tjiwarl. These include:

- Second Stage Lands, which are lands that are unallocated Crown land (UCL) or unmanaged reserves (UMR) at the time the Agreement is made;
- Cultural Lands, which are lands that are not UCL or UMR at the time the Agreement is made but are of cultural, social, spiritual or historical importance to the Tjiwarl people; and
- Future Lands, which are lands that are:
 - not UCL or UMR at the time the Agreement is made but which later become UCL or UMR; or
 - are Second Stage Lands which did not get the required statutory or administrative approvals for handover as part of the Second Stage handover.

Land Estate Working Group

The Agreement establishes the Land Estate Working Group, a body between Tjiwarl and the State, to establish the Tjiwarl Land Estate.



TJIWARL HEALING & KNOWLEDGE

Tjiwarl Palyakuwa (Agreement)

Tjiwarl Place Names

Naming, renaming and erecting appropriate signage

Tjiwarl Culture in Schools

Tjiwarl Truth Telling

Cultural Materials

Identification and management of Tjiwarl cultural materials

Tjiwarl Cultural & Intellectual Property

Parliamentary Statement

What is in the Agreement?

In recognising the importance of Tjiwarl people's language, culture and history, the State has made a number of commitments in the Tjiwarl Palyakuwa (Agreement) for the advancement, protection or support of Tjiwarl language, culture and history.

Tjiwarl Place Names

The State and Tjiwarl AC will work together to name, or rename, places within Tjiwarl Country. The State will also support Tjiwarl AC to approach local governments to erect appropriate signage within Tjiwarl Country.

Tjiwarl Culture in Schools

The State and Tjiwarl AC will explore how information about Tjiwarl language, history and culture can be incorporated into regional schools as part of the State's commitment to developing culturally responsive schools.

Cultural Materials

The State and Tjiwarl AC will develop a process for the identification of Tjiwarl cultural materials within the WA Museum collections and develop an approach to the ongoing management of that material and explore options for return.

Cultural and Intellectual Property

The State and Tjiwarl AC will work together to maximise existing and new opportunities to recognise, protect, maintain, record and further Tjiwarl AC's aspirations with respect to its indigenous cultural and intellectual property.

Parliamentary Statement

The Minister for Aboriginal Affairs will deliver a statement in Parliament acknowledging the importance of the Agreement to the State, and its support for the Tjiwarl People.

