

EXECUTION COPY

2022

BETWEEN

**CHIEF EXECUTIVE OFFICER OF
THE DEPARTMENT OF BIODIVERSITY,
CONSERVATION AND ATTRACTIONS**

and

**MAYALA INNINALANG ABORIGINAL CORPORATION RNTBC (ICN 9067) ON
BEHALF OF THE MAYALA NATIVE TITLE GROUP**

**SECTION 56A
JOINT MANAGEMENT AGREEMENT
FOR
MAYALA CONSERVATION ESTATE**



State Solicitor's Office
28 Barrack Street
Perth WA 6000
SSO Ref: 4799-19

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THIS AGREEMENT is made on the

day of

2022

BETWEEN

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*, care of 17 Dick Perry Avenue, Technology Park, Western Precinct, Kensington, Western Australia (**CEO**)

and

MAYALA INNINALANG ABORIGINAL CORPORATION RNTBC (ICN 9067) ON BEHALF OF THE MAYALA NATIVE TITLE GROUP a body corporate established for and on behalf of the Mayala Native Title Group, of 11 Gregory Street, Broome, Western Australia (**PBC**)

This box contains a summary of the background of this agreement. At the beginning of each clause in the agreement there are other text boxes like this one, which summarise in plain English what the clause says.

The Mayala People have a determination of native title over an area which includes part of the Buccaneer Archipelago.

The Mayala Inninalang Aboriginal Corporation (**PBC**) is the prescribed body corporate holding native title rights and interests on trust for the Mayala People.

This agreement is a Joint Management Agreement between the PBC and the Chief Executive Officer of the Department of Biodiversity, Conservation and Attractions (**CEO**).

The Joint Management Agreement forms part of Indigenous Land Use Agreement (**ILUA**) outcomes committed to by the State and the Mayala People to create a jointly vested and jointly managed marine park in the Mayala area of the Buccaneer Archipelago.

The Conservation and Parks Commission (**Commission**) will prepare a Management Plan for the Mayala Conservation Estate. The Management Plan will attach the Joint Management Agreement, which establishes a Joint Management Body through which the PBC and the CEO will manage the Mayala Conservation Estate.

RECITALS

- A. The CEO is acting through the Conservation and Land Management Executive Body, the body corporate established under section 36 of the *Conservation and Land Management Act (CALM Act)*.
- B. The Mayala Inninalang Aboriginal Corporation RNTBC (ICN 9067) is the registered native title body corporate (as that term is used in Division 6 of Part 2 of the Native Title Act) in respect of the Determination Area, and is the body corporate nominated by the Native Title Group to jointly manage the Mayala Conservation Estate.
- C. The State, the Minister for Lands, the Minister for Environment, the Commission, the CEO, the PBC and the PBC entered into the ILUA, which among other things, provides for joint management of the Mayala Conservation Estate on the terms set out in this Agreement.
- D. In accordance with Part V Division 1 of the CALM Act, the Commission prepared (and the Minister approved) the Management Plan for the Mayala Conservation Estate, which requires the CEO to manage the Mayala Conservation Estate jointly with the PBC.
- E. This Agreement constitutes the agreement that is required to be attached to the Management Plan and that gives effect to joint management of the land and waters referred to in Recital D and sets out the role of the Joint Management Body.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

Throughout this Joint Management Agreement (**JMA**) there are words and terms that have specific meanings, which are explained in this clause. This clause also sets out interpretation rules, which explain the way that the JMA should be read.

1.1. General Definitions

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

- (a) Words and expressions defined in the Native Title Act, including common law holder, future act, native title, Native Title Registrar, native title rights and interests, non-extinguishment principle, Register of Indigenous Land Use Agreements and registered native title body corporate, have the same meaning when used in this Agreement.
- (b) Words and expressions defined in the CALM Act, including **CEO, conservation park, Department, management plan, marine park, national park** and **responsible body** have the same meaning when used in this Agreement.
- (c) Words and expressions defined in the LA Act including **Crown land, qualified certificate of Crown land title, management order** and **reserve** 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 a funeral or other ceremony that some or all of the directors of the PBC or the Representative Members of the Joint Management Body nominated by the PBC are required to attend under traditional laws and customs.

Affected Party has the meaning given in clause 24.

Agreement means this joint management agreement and includes the Schedules.

Alternate Member means a person who is nominated under clause 5.2.

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

Biodiversity Conservation 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 WST and finishing at 5.00pm WST.

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

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

Chairperson means a Representative Member elected to be Chairperson of the Joint Management Body under clause 5.3.

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

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

Confidential Information means information that is confidential in accordance with clause 18.1 or clause 18.2 (as may be applicable).

Conflict of Interest has the meaning given in clause 5.9.

Default Notice has the meaning given in clause 16.2.

Defaulting Party has the meaning given in clause 16.1.

Determination means the determination on 26 May 2018 by the Federal Court of Australia in *Wiggan v Western Australia* [2018] FCA 1485 and the determination by the Federal Court of Australia on 25 July 2019 in *Davey on behalf of the Mayala #2 Native Title Claim Group v State of Western Australia* [2019] FAC 1137 that native title exists over land and waters and is held by the members of the Native Title Group.

Disclosing Party means:

- (a) for the purposes of clause 18.1, the Party who discloses information in the circumstances contemplated under that clause; and
- (b) for the purposes of clause 18.2, the Representative Member who discloses in the circumstances contemplated under that clause.

Disclosure has the meaning given in clause 5.7.

Event has the meaning given in clause 24.

Event of Default has the meaning given in clause 16.1.

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) strike, lockout or other labour difficulty;
- (c) act of public enemy, war, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic, terrorism; or
- (d) the effect of any law or authority exercised by government official by law.

ILUA means the Indigenous Land Use Agreement entered into by the State of Western Australia, the Minister for Lands, the Minister for Environment, the Commission, the CEO, and the PBC for the creation and joint management of the Mayala Conservation Estate in the areas the subject of the Determination, which was entered on the Register of Indigenous Land Use Agreements.

Insolvency Event means where the PBC:

- (a) commits an act of insolvency under and for the purposes of the *Corporations Act 2001* (Cth) or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth);
- (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 under and for the purposes of Chapter 11 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth);
- (d) is unable to pay all its debts as and when they become due and payable; or
- (e) is deregistered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth);

as may be applicable.

Joint Management Body means the body established in clause 3.

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

Management Plan means a management plan approved under section 60 of the CALM Act in respect of the Mayala Conservation Estate and to which this Agreement is attached.

Marine Optional Reserves has the meaning given in the ILUA.

Mayala Conservation Estate means the Mayala Conservation Estate as that term is defined in the ILUA and established as contemplated by it, including:

- (a) the Mayala Country Marine Park;

- (b) the Tanner Island Nature Reserve; and
- (c) any Marine Optional Reserves.

Mayala Country Marine Park has the same meaning as given in the ILUA and, for ease of reference only, is the area shown in Schedule 1.

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 continued under section 7 of the LA Act.

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

Native Title Group means the Mayala People specified in the Determination.

Non-defaulting Party has the meaning given in clause 16.2.

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

Receiving Party means:

- (a) for the purposes of clause 18.1, the Party to whom information is disclosed by the other Party in the circumstances contemplated under that clause; and
- (b) for the purposes of clause 18.2, the Representative Member to whom information is disclosed by another Representative Member in the circumstances contemplated under that clause.

Remaining Representative Members means each of the Representative Members who are not the subject of a motion or vote to be removed as a Representative Member under clauses 5.7 or 5.8 or a Conflict of Interest in clause 5.9.

Representative Member means a person specified and nominated under clause 5.1.

Resolution Institute means the dispute resolution organisation of that name. If the Resolution Institute ceases to exist as an organisation, Resolution Institute shall 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.

State means the State of Western Australia, through the Department of the Attorney General.

Tanner Island Nature Reserve has the same meaning as given in the ILUA and, for ease of reference only, is the area shown in Schedule 1.

Term means the term of this Agreement specified in clause 19.1.

1.3. Interpretation

In this Agreement, unless the contrary intention appears:

- (a) words and expressions defined in the Native Title Act have the same meaning where used in this Agreement;
- (b) 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;
- (c) words expressed in the singular include the plural and vice versa;
- (d) words expressed in one gender include all other genders;
- (e) 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;
- (f) an expression importing a natural person includes a company, partnership, joint venture, association, authority or other body corporate or governmental or semi-governmental entity;
- (g) 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;
- (h) a reference to person established under any written law includes a reference to any person or body (corporate or unincorporated) established or continued to perform the same or substantially similar function;
- (i) 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;
- (j) a reference to a clause, Schedule or annexure is a reference to a clause of or Schedule or annexure to this Agreement;
- (k) 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;
- (l) 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;
- (m) 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;
- (n) 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;
- (o) 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;

- (p) 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; and
- (q) "including" means "including, but not limited to".

1.4. Consultation and consent

- (a) Subject to paragraph (b), for the purpose of this Agreement:
 - (1) a requirement to consult or negotiate with or request anything from the PBC shall be deemed to have been met where the Representatives Members appointed by the PBC to the Joint Management Body have been consulted, or negotiated with, or presented with a request (as the case may be) in respect of the relevant matter; and
 - (2) a requirement to obtain the consent or agreement of the PBC shall be deemed to have been met where the Representatives Members appointed by the PBC to the Joint Management Body or the PBC provide the CEO with written notice that the PBC has passed a resolution (duly recorded in the minutes of the Directors' Meeting or General Meeting, as the case may be) consenting or agreeing to the relevant matter.
- (b) The Joint Management Body, in consultation with the PBC, will endeavour to develop a protocol in respect of consultation by the Joint Management Body with the PBC, including in respect of obtaining consents from the PBC for the purposes of this Agreement.

2. JOINT MANAGEMENT OF THE MAYLA CONSERVATION ESTATE

The ILUA must be registered with the National Native Title Tribunal (NNTT) and the Management Plan must be approved by the Minister for the Environment. After that, the PBC and the CEO will sign the JMA and jointly manage the Mayala Conservation Estate through the Joint Management Body (JMB).

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

3. ESTABLISHMENT OF JOINT MANAGEMENT BODY

The JMB will comprise 8 members, who are called Representative Members. The CEO shall take into account advice given by the JMB and shall not unreasonably fail to give effect to its management decisions.

- (a) A Joint Management Body is established for the purposes of section 56A of the CALM Act.
- (b) The Joint Management Body comprises eight (8) Representative Members, nominated in accordance with clause 5.1.

4. ROLE OF THE JOINT MANAGEMENT BODY

The role of the JMB is to:

- (a) make management decisions consistent with the Management Plan;
- (b) assist in the preparation of policies & programs for management of the Mayala Conservation

Estate;

- (c) monitor management of the Mayala Conservation Estate, including implementation of the Management Plan;
- (d) provide advice to the PBC, the CEO and the Commission on the use, management and development of the Mayala Conservation Estate;
- (e) provide advice to other government agencies that are implementing management actions through the Management Plan; and
- (f) work with the CEO and the Native Title Group to obtain additional funding for the joint management of the Mayala Conservation Estate.

The role of the JMB does not include undertaking the day-to-day management of the Mayala Conservation Estate.

The CEO shall take into account advice given by the JMB and shall not unreasonably fail to give effect to its management decisions.

4.1. Role of the Joint Management Body

- (a) The role of the Joint Management Body shall be to, consistently with the CALM Act, the Biodiversity Conservation Act and any regulations made under those Acts:
 - (1) make management decisions consistent with the Management Plan and agreed protocols regarding consultation with the PBC, including:
 - (A) allocating the joint management funding amounts referred to in clause 14.1 of the ILUA (and for the purposes referred to in that clause) in relation to the Mayala Conservation Estate; and
 - (B) assisting with the implementation of other state or regional land and sea management programs that occur in, or support the management of, the Mayala Conservation Estate;
 - (C) assisting and overseeing in the preparation of policies, programs and other such management instruments specific to the management of the Mayala Conservation Estate;
 - (D) strategically monitor the management of the Mayala Conservation Estate, including the implementation of the Management Plan;
 - (E) making recommendations as to the grant of any licence, permit or authority in the Mayala Conservation Estate in accordance with Division 2 and 3 of Part VIII of the CALM Act; and
 - (F) in relation to the conduct of research within the Mayala Conservation Estate, including decisions in relation to the provision, use and publication (whether to the media or otherwise) of data from that research and, where practicable, to extend to input into the design of research proposals, or comment on research proposals; and
 - (2) subject to paragraph (i), provide advice to the CEO, the Commission and the PBC (as appropriate) on all aspects of the use, management and development of the Conservation Estate including:

- (A) the value of the Mayala Conservation Estate land and water 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, CALM Regulations, Biodiversity Conservation Act and Biodiversity Conservation Regulations;
 - (C) priorities for any matters required to be done in accordance with or in furtherance of the Management Plan;
 - (D) the expenditure of State funding (other than joint management funding referred to in subparagraph (i)) for land and sea management programs that occur in, or support the management of, the Mayala Conservation Estate;
 - (E) any proposed new management plan, or any proposed amendments to the management plan, for the Mayala Conservation Estate;
 - (F) the development of new business and employment opportunities for the Native Title Group and businesses associated with the management and operations of the Mayala Conservation Estate; and
 - (G) the employment of staff and contractors and the method of employment, to work in the Mayala Conservation Estate;
- (3) provide advice to other State Government agencies responsible for the implementation of specific management actions in the Management Plan;
 - (4) work cooperatively with the CEO and the PBC to obtain additional funding for the joint management of the Mayala Conservation Estate, through State and Federal funding programs and other relevant third parties;
 - (5) ensure the provision of cross-cultural training for employees of the Public Service who are working in relation to the Mayala Conservation Estate; and
 - (6) create protocols and policies regarding how the Joint Management Body will consult with the PBC about the matters referred to in this clause 4.1 and as contemplated in clause 1.4.
- (b) The role of the Joint Management Body does not include undertaking the day-to-day management of the Mayala Conservation Estate.

4.2. Decisions of the Joint Management Body

- (a) For the purposes of sections 33(1) and 33(3) of the CALM Act, the CEO shall 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, unless that decision is inconsistent with the Management Plan, the CALM Act, the Biodiversity Conservation Act, any regulations made under those Acts, or any other applicable laws of the State.
- (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 failing to give effect to it.

5. MEMBERSHIP OF THE JOINT MANAGEMENT BODY

5.1. Representative Members

The PBC and the CEO shall each nominate people to be Representative Members and Alternate Members of the JMB. The PBC shall nominate up to 5 Representative Members and equivalent Alternate Members, and the CEO shall nominate up to 3 Representative Members and equivalent Alternate Members. Representative Members and Alternate Members are nominated for 3 years and may be re-nominated.

- (a) After the Commencement Date (but before the first meeting convened pursuant to clause 7.1), for the purposes of section 56A(6) of the CALM Act the PBC shall nominate persons to be Representative Members and Alternate Members of the Joint Management Body, in the following manner:
 - (1) up to five (5) members of the Native Title Group to be Representative Members of the Joint Management Body;
 - (2) an equivalent number of members of the Native Title Group to be Alternate Members of the Joint Management Body;
 - (3) three (3) of the Representative Members appointed in accordance with clause 5.1(a)(i) and three (3) of the Alternate Members appointed in accordance with clause 5.1(a)(ii) shall be appointed for a term of two (2) years;
 - (4) thereafter at the last meeting before the expiry of the two (2) year term referred to in clause 5.1(a)(iii), the PBC shall nominate three (3) Representative Members and three (3) Alternative Members for a three (3) year term to replace the Representative Members and Alternative Members whose term is expires in accordance with clause 5.1(a)(iii);
 - (5) two (2) of the of the Representative Members appointed in accordance with clause 5.1(a)(i) and two (2) of the Alternate Members appointed in accordance with clause 5.1(a)(ii) shall be appointed for a term of three (3) years; and
 - (6) thereafter at the last meeting before the expiry of the three (3) year term referred to in clause 5.1(a)(v), the PBC shall nominate two (2) Representative Members and two (2) Alternative Members to replace the Representative Members and Alternative Members whose term is expires in accordance with clause 5.1(a)(v).
- (b) After the Commencement Date (but before the first meeting convened pursuant to clause 7.1) and thereafter at the last meeting before the expiry of each three (3) year term referred to in clause 5.1(b)(iii), for the purposes of s 56A(6) of the CALM Act, the CEO shall nominate:
 - (1) up to three (3) persons to be Representative Members of the Joint Management Body; and
 - (2) an equivalent number of persons to be Alternate Members of the Joint Management Body.
- (c) Representative Members and Alternative Members nominated by the CEO shall be nominated for a term of three (3) years.
- (d) Unless otherwise agreed by the Parties, the Members nominated by the CEO shall be employees of the department of the Public Service who have principal responsibility

for assisting in the administration of the CALM Act and, if possible, include regional staff with operational responsibility for the Mayala Conservation Estate.

- (e) Representative Members and Alternate Members may be renominated.
- (f) Before the first meeting of the Joint Management Body, each Party shall give to the other Parties notice, in accordance with clause 26, of the nominated Representative Members or, where applicable, the nominated Alternate Members.

5.2. Alternate Representative Members

Any Representative Member nominated by the PBC who is temporarily unable to attend a meeting shall advise the chairperson as to which Alternate Member will attend instead. At the meeting, the Alternate Member will have the rights and responsibilities of the absent Representative Member.

- (a) Upon receiving notice of a meeting, if a Representative Member nominated by the PBC is temporarily unable to attend the meeting by reason of sickness, absence or incapacity they shall, as soon as possible after becoming aware of that fact, inform the Chairperson and the Chairperson shall, as soon as possible, inform the CEO:
 - (1) of the Representative Member's inability to attend the meeting; and
 - (2) which Alternate Member nominated by the PBC will attend the meeting.
- (b) If the Chairperson is informed under paragraph (a), the Chairperson shall notify the Alternate Member referred to in paragraph (a) that they are required to attend the meeting.
- (c) Upon receiving notice of a meeting, if a Representative Member nominated by the CEO is temporarily unable to attend the meeting by reason of sickness, absence or incapacity, he shall, as soon as possible after he becomes aware of that fact, inform the Chairperson and the Chairperson shall, as soon as possible, inform the CEO.
- (d) If the Chairperson is informed under paragraph (c) that a Representative Member nominated by the CEO is temporarily unable to attend a meeting, the Chairperson shall notify an Alternate Member nominated by the CEO that they are required to attend the meeting.
- (e) An Alternate Member notified under paragraph (b) or (d) shall attend the meeting in place of the absent Representative Member.
- (f) When acting in the place of the absent Representative Member, the Alternate Member has the rights and responsibilities of the absent Representative Member, and any reference to the Representative Member in this Agreement includes an Alternate Member acting in the position of a Representative Member, including the obligations under clause 4.

5.3. Chairperson

At the first meeting of the JMB, the Representative Members nominated by the PBC shall elect a Chairperson to serve for 12 months. If the Chairperson is absent from a meeting, the meeting shall elect a Representative Member to preside as chair.

- (a) At the first meeting of the Joint Management Body, the Representative Members shall elect a Chairperson from the Representative Members nominated by the PBC, to serve for a twelve (12) month term.

- (b) Notwithstanding anything in paragraph (a), the Chairperson remains in the Chairperson position after the expiry of the 12 month term until another Chairperson is elected, or the current Chairperson is re-elected.
- (c) The Chairperson shall preside at meetings of the Joint Management Body, but if the Chairperson is absent the meeting shall elect a Representative Member to preside at that meeting.

5.4. Persons ineligible to be members

A member of the Native Title Group who is an employee of the CEO is not eligible to be nominated as a Member of the JMB.

Unless otherwise agreed by the Parties, a member of the Native Title Group who is an employee of the CEO is not eligible to be nominated as a Member of the Joint Management Body.

5.5. Vacancy of Member

The position of a Member becomes vacant if they resign, or are absent without leave for 3 consecutive meetings, or are removed for bankruptcy or misbehaviour, or die. If the position of a Member becomes vacant, a new Member shall be nominated for the remainder of the 3-year term.

- (a) The position of a Member becomes vacant if they:
 - (1) resign their position by notice delivered to the Chairperson;
 - (2) are absent without leave from the Chairperson, for three (3) consecutive meetings of which they have had notice in accordance with clause 26;
 - (3) are removed from the position by the Joint Management Body under clause **Error! Reference source not found.** or 5.8; or
 - (4) die.
- (b) If the position of any Member becomes vacant for any reason, a new Member shall be nominated for the remainder of the term in the following way:
 - (1) if the Member was nominated by the PBC, the PBC shall nominate the new Member; or
 - (2) if the Member was nominated by the CEO, the CEO shall nominate the new Member; and
 - (3) a Party shall give to the other Party written notice, in accordance with clause 26, of a nominated new Member.

5.6. Vacancy of Chairperson

The position of Chairperson becomes vacant if they resign, or are absent without leave for 3 consecutive meetings, or are removed for bankruptcy or misbehaviour, or die. If the position of the Chairperson becomes vacant, a new Chairperson shall be elected for the remainder of the 12 months term.

- (a) The position of Chairperson becomes vacant if they:
 - (1) resign their position by notice delivered to the CEO; or

- (2) are absent without leave from the CEO for three (3) consecutive meetings of which they have had notice in accordance with clause 26; or
 - (3) are removed from the position by the CEO under clause **Error! Reference source not found.** or 5.8; or
 - (4) die.
- (b) If the position of the Chairperson becomes vacant for any reason, a new Chairperson shall be elected in accordance with clause (a) for the remainder of the twelve (12) month term.

5.7. Removal for bankruptcy

The JMB may remove a Member who is bankrupt or whose affairs are under insolvency laws, or who is disqualified from managing a corporation under the *Corporations Act 2001* (Cth) or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth). If any of those things apply to a Member, then they must disclose that information to the other Representative Members as soon as possible. The Remaining Representative Members will vote as to whether the Member shall be removed from the JMB, and if they vote to do so then the position of that Member becomes vacant.

- (a) The Joint Management Body may remove a Member, including the Chairperson, in accordance with this clause.
- (b) A Member who is:
 - (1) according to the *Interpretation Act 1984* (WA) section 13D, an undischarged bankrupt or a person whose affairs are under insolvency laws; or
 - (2) disqualified from managing a corporation under Part 2D.6 of the *Corporations Act 2001* (Cth) or Part 6-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth);
 shall, at the first meeting after he becomes aware of that fact, disclose it to the other Representative Members (**Remaining Representative Members**) who are at that meeting (**Disclosure**), and the Disclosure shall be recorded in the minutes.
- (c) Following a Disclosure under paragraph (b), the Remaining Representative Members shall vote in accordance with clause 11 as to whether the disclosing Member shall be removed from the Joint Management Body, the results of which shall be recorded in the minutes.
- (d) If the Remaining Representative Members vote to remove a Member from the Joint Management Body under paragraph (c), the position of that Member becomes vacant for the purposes of clause 5.5 or, if it is the Chairperson, for the purposes of clause 5.6.

5.8. Removal for misbehaviour etc.

A Representative Member may move that the performance of another Member is impaired by misbehaviour, or incompetence, or mental or physical incapacity. 'Misbehaviour' includes any behaviour that makes the Member unfit to be a Member, even if it does not relate to any function of the JMB. The other Representative Members will vote as to whether that Member's performance is impaired by any of these things and if they vote that it is, then the position of that Member becomes vacant.

- (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 Representative Member may move that the performance of another Member, including the Chairperson (**Affected Member**), is impaired by misbehaviour or incompetence or mental or physical incapacity, other than temporary illness.
- (c) Where paragraph (b) applies, the Representative Members, other than the Affected Member (**Remaining Representative Members**), shall vote as to whether the Affected Member's performance is impaired by misbehaviour or incompetence or mental or physical incapacity, other than temporary illness, the results of which shall be recorded in the minutes.
- (d) If the Remaining Representative Members vote under paragraph (c) that the Affected Member's performance is impaired by misbehaviour or incompetence or mental or physical incapacity, other than temporary illness, the position of that Member becomes vacant for the purposes of clause 5.5 or, if it is the Chairperson, for the purposes of clause 5.6.

5.9. Conflict of Interest

A Representative Member who has a personal or financial interest in a matter being considered by the JMB has a conflict of interest. As soon as a Member is aware of a conflict of interest, they must disclose it to the other Representative Members at the next meeting and their disclosure will be recorded in the minutes.

A Representative Member who discloses a conflict of interest shall not take part in the consideration or discussion of the matter or vote on the matter, unless the other Representative Members allow that members to do so. The remaining Representative Members will vote on whether that Member may take part in the consideration or discussion of the matter, and/or vote on the matter, and the results of the vote shall be recorded in the minutes.

A Representative Member will not have a conflict of interest just because of their traditional interest or seniority in relation to an area of country within the Mayala Conservation Estate, or because they are a native title holder, or a director of the PBC.

- (a) A Representative Member who has a material personal or financial interest in a matter being considered by a meeting of the Joint Management Body (**Conflict of Interest**) shall, as soon as possible after he is aware of that interest, disclose the nature of the Conflict of Interest to the Remaining Representative Members at that meeting, which disclosure shall be recorded in the minutes.

- (b) Subject to paragraph (c), if a Representative Member discloses a Conflict of Interest in a matter under paragraph (a) that Representative Member shall not:
 - (1) take part in the consideration or discussion of the matter; or
 - (2) vote on the matter.
- (c) Following the disclosure of a Conflict of Interest under paragraph (a):
 - (1) the Remaining Representative Members shall vote in accordance with clause 11 as to whether the Representative Member with the Conflict of Interest may take part in the consideration or discussion of the matter or vote on the matter; and
 - (2) the results shall be recorded in the minutes of the meeting.
- (d) A Representative Member shall not be taken to have a Conflict of Interest solely due to their particular traditional interest or seniority in relation to an area of sea or land country within or adjoining the Mayala Conservation Estate, or because they are a native title holder or a director of the PBC.

6. PROTECTION FROM PERSONAL LIABILITY

Section 132 of the CALM Act says that a person does not incur liability if they do something in good faith while performing functions under the CALM Act. This means that parties to the JMA and members of the JMB are protected from being personally liable in relation to the management of the Mayala Conservation Estate.

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

7. CONVENING MEETINGS

The CEO must arrange the first meeting of the JMB within 60 days of the signing of the JMA and is responsible for convening further meetings.

7.1. First meeting

Within sixty (60) days of the Commencement Date, the CEO shall convene the first meeting of the Joint Management Body, to be held at a place agreed by the Parties. If the location of the Meeting is not agreed, it will be held at One Arm Point Community.

7.2. Subsequent meetings

Subject to clause (a)-(b):

- (a) the CEO shall be responsible for convening subsequent meetings and the Joint Management Body shall decide the place for those meetings;
- (b) meetings may be held using suitable technology which allows all members to effectively participate in consideration and decision making at the meeting and ensure as a minimum:
 - (1) that all participants are able to simultaneously hear each other during the meeting; or

- (2) that all communication during the meeting is immediately transmitted to each participant and each participant is able to immediately send messages to all other participants; and
- (c) if a meeting of the Joint Management Body is to be held using technology, all participants must be informed that the meeting will be conducted using such technology.

7.3. Frequency

The JMB shall meet at least three times per calendar year but may meet more often if the Chairperson or the CEO requests a meeting.

The Joint Management Body shall meet at least three (3) times per calendar year, and may meet more often if:

- (a) the Chairperson requests a meeting of the Joint Management Body by giving at least fifteen (15) Business Days' notice in writing to the CEO and Members; or
- (b) the CEO calls a meeting of the Joint Management Body by giving at least fifteen (15) Business Days' notice to the Chairperson and Members.

7.4. Administrative responsibility

The CEO shall provide administrative support for the JMB and the PBC may assist with that support.

The CEO shall provide administrative support for the Joint Management Body, including preparing and circulating meeting notices, agendas and papers, and the PBC may assist with that support.

7.5. Invitation to attend a meeting of the Joint Management Body

The JMB may invite anyone to attend a meeting to provide advice and has discretion to determine at which meetings an invitee shall be present. Invitees do not have a right to vote at a JMB meeting but may be paid fees for attending the meeting, at the discretion of the JMB.

- (a) The Joint Management Body may invite an organisation or individual to attend a Joint Management Body meeting and provide advice on any issue the Joint Management Body deems necessary.
- (b) The Joint Management Body has absolute discretion to determine at which meetings, or parts of meetings, an invitee may be present.
- (c) An invitee has no right to vote at a Joint Management Body meeting.
- (d) An invitee may be paid a fee for attending a meeting of the Joint Management Body, at the discretion of the Joint Management Body.

8. PROCEDURE

The JMB may adopt such rules and procedures as it considers necessary, but if there is any inconsistency between those rules and procedures and the JMA, then the JMA will apply.

The Joint Management Body may, from time to time, adopt such rules and procedures as it considers necessary, but should any inconsistency arise between those rules and procedures and this Agreement, this Agreement shall prevail.

9. SUB-COMMITTEES

The JMB may appoint sub-committees to investigate, advise, or make recommendations to the JMB on such matters as the JMB sees fit.

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

10. QUORUM

There must be a quorum of 5 Representative Members present for a meeting to be held, comprising at least 3 Members nominated by the PBC and at least 2 Members nominated by the CEO.

The attendance of five (5) Representative Members at a Joint Management Body meeting constitutes a quorum, comprising at least three (3) Representative Members nominated by the PBC and at least two (2) Representative Members nominated by the CEO.

11. VOTING

Each Representative Member present at a meeting of the JMB, including the Chairperson, has 1 vote. The JMB will try to reach unanimous decisions, but if it cannot then the decision will be by a majority of the PBC Members and a majority of the CEO Members present at the meeting. If a majority of each of the PBC Members and the CEO Members cannot agree the outcome of the same agenda item at 3 consecutive meetings, then that agenda item becomes a dispute under clause 12 of the JMA.

- (a) Each Representative Member present at a Joint Management Body meeting, including the Chairperson, has one (1) vote and may exercise that vote subject to clause 5.9(b).
- (b) Subject to paragraph (c), the Joint Management Body shall try to reach unanimous decisions at Joint Management Body meetings.
- (c) If the Joint Management Body cannot reach a unanimous decision, the decision shall be made by a majority of the Representative Members nominated by the PBC and a majority of the Representative Members nominated by the CEO present at the meeting.
- (d) If a majority of the Representative Members nominated by the PBC and a majority of the Representative Members nominated by the CEO present at the meeting cannot agree the outcome of the same agenda item at three (3) consecutive meetings, then the business the subject of that agenda item becomes a Dispute for the purposes of clause 12.

12. JOINT MANAGEMENT BODY DISPUTE

12.1. Interpretation

In this clause 12:

- (a) **CEO** means the CEO or a person nominated by the CEO; and
- (b) **Chairperson of the PBC** means the Chairperson of the PBC or a person nominated by the Chairperson.

12.2. Referral to CEO and the PBC

If a majority of each of the PBC Members and the CEO Members cannot agree the outcome of the same agenda item at 3 consecutive meetings, then the Chairperson shall give notice of the dispute to the CEO and the Chairperson of the PBC. The CEO and the Chairperson of the PBC may decide the dispute, or refer it to a mediator, or send it to the JMB to decide; or refer it to the Minister to decide. If the CEO and the Chairperson of the PBC can't agree what course of action to take, then they must refer the dispute to a mediator.

- (a) If a majority of the Representative Members nominated by the PBC and a majority of the Representative Members nominated by the CEO present at a meeting cannot agree the outcome of the same agenda item at three (3) consecutive meetings [clause 11(d)], the Chairperson shall within five (5) Business Days of the third meeting give a notice of Dispute to the CEO and the Chairperson of the PBC, setting out details of the Dispute.
- (b) Upon receiving a notice of Dispute, the CEO and the Chairperson of the PBC shall within twenty (20) Business Days of the date of that notice:
 - (1) decide the Dispute;
 - (2) refer the Dispute to a Mediator in accordance with clause 12.3;
 - (3) remit the Dispute to the Joint Management Body to decide; or
 - (4) refer the Dispute to the Minister to decide.
- (c) If deciding the Dispute, the CEO and the Chairperson of the PBC may consult with any person.
- (d) If the Dispute is decided by the CEO and the Chairperson of the PBC, it shall be deemed to be a determination of the Joint Management Body.
- (e) If the CEO and the Chairperson of the PBC are unable to agree a course of action under paragraph (b), they shall refer the Dispute to a Mediator, upon which clause 12.3 shall apply.

12.3. Referral to Mediation

The CEO and the Chairperson of the PBC will try to agree upon a mediator for the dispute, but if they cannot agree then the Chairperson of Resolution Institute (a WA dispute resolution organisation) will appoint a mediator. The CEO and the Chairperson of the PBC shall engage in mediation in good faith and aim to reach a resolution. Any information disclosed by the CEO and the Chairperson of the PBC for the mediation must be kept confidential and may only be used to attempt to resolve the dispute. The CEO and the Chairperson of the PBC shall equally pay the costs of the mediator. If they can't resolve the dispute by mediation within 20 days of the appointment of a mediator, then either of them may refer the dispute to the Minister for his decision.

- (a) The CEO and the Chairperson of the PBC will try to agree a mediator, who shall be a member of a recognised professional mediation group, to mediate the Dispute.
- (b) If within ten (10) Business Days after a decision to refer the matter to a mediator under clause 12.2(b)(2), the CEO and the Chairperson of the PBC cannot agree on a mediator, either party may request that Resolution Institute appoint a mediator.
- (c) The CEO and the Chairperson of the PBC shall engage in the mediation process in good faith and with the aim of reaching a resolution of the Dispute.
- (d) The role of the mediator is to assist in negotiating a resolution of the Dispute, during or following which the CEO and the Chairperson of the PBC may decide the Dispute.
- (e) Any information or documents disclosed by the CEO or the Chairperson of the PBC under this clause must be kept confidential and may only be used to attempt to resolve the Dispute.
- (f) The CEO and the Chairperson of the PBC shall pay their own costs of complying with this clause and shall equally pay the costs of a mediator.
- (g) If the CEO and the Chairperson of the PBC fail to resolve the Dispute by mediation within twenty (20) Business Days of the appointment of a mediator, or such further time as they may agree, either of them may refer the Dispute to the Minister under clause 12.4.

12.4. Referral to Minister

The Minister shall consult with the CEO and the Chairperson of the PBC as to how the dispute ought to be determined. The Minister may then decide how the dispute will be determined, or decide the dispute himself. The Minister is not required to act on any advice or recommendation made by the CEO, or the Chairperson of the PBC and the determination of the dispute shall be treated as a decision of the JMB.

- (a) If the Dispute is referred to the Minister for a decision, the Minister shall consult with the CEO and the Chairperson of the PBC regarding how it ought to be determined and may then either decide how the Dispute should be determined or decide the Dispute.
- (b) For the avoidance of doubt, the Minister is not required to act in accordance with any advice from, or recommendation made by, the CEO or the Chairperson of the PBC in the course of the consultation process.
- (c) A determination of the Dispute by the Minister under this clause shall be deemed to be a decision of the Joint Management Body.

12.5. Obligations continue

While a dispute is being dealt with, the JMB shall continue to perform its obligations under the JMA so far as possible, and this will not have any effect on the final decision on the dispute.

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

13. REVIEW

The Parties may review the JMA if a substitute management plan for the Management Plan is being prepared, or if they agree that a review is necessary. The agreed costs of the review shall be paid by the CEO.

- (a) The Parties shall commence a review of this Agreement, including assessing its operation and implementation, within six (6) months of the sooner of the following:
 - (1) a substitute management plan for the Management Plan being prepared for the purposes of Part II Division 3 of the CALM Act; or
 - (2) the Parties agreeing that a review is necessary.
- (b) The review shall be undertaken by persons selected by the Parties in accordance with terms of reference agreed to by the Parties.
- (c) The agreed costs of the review shall be met by the CEO.

14. VARIATION

The parties may vary the JMA by a Deed of Variation, a simple document that says which parts of the JMA will be amended and which parts will stay the same. The Deed of Variation must be signed by the CEO and the PBC.

The Parties may vary this Agreement only by a Deed of Variation.

15. OBLIGATION OF PARTIES IN RESPECT OF MEMBERS

The parties must make sure that the Members of the JMB perform their roles and comply with their obligations under the JMA and the CALM Act, and that the required number of Representative Members nominated by each party are present at every meeting of the JMB.

The Parties shall ensure that:

- (a) 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:
 - (1) the role of the Joint Management Body in clause 4;
 - (2) the CALM Act; and
 - (3) any other applicable State legislation.

- (b) For the purposes of clause 10, the required number of Representative Members nominated by each Party are present at every meeting of the Joint Management Body.

16. DEFAULT AND ENFORCEMENT

An Event of Default is where a party (the defaulting party) does not comply with its obligations under the JMA. A defaulting party causes an Event of Default by:

- (a) committing a breach of the JMA that cannot be remedied;
- (b) not correctly nominating their Representative Members or Alternate Members;
- (c) not having the right number of CEO and the PBC Members attend a meeting;
- (d) disclosing Confidential Information;
- (e) in the case of the PBC, assigning or disposing of rights or obligations under the JMA without the consent of the CEO;
- (f) breaching the obligation to ensure that JMB members perform their roles and comply with their obligations under the JMA;
- (g) allowing one of their Members to miss 3 consecutive JMB meetings;
- (h) committing 3 breaches of their JMA obligations over any 12 months period; and
- (i) in the case of the PBC, committing an Insolvency Event (e.g. being unable to pay debts; or being placed under administration; or being deregistered).

16.1. Events of Default

- (a) A Party (**Defaulting Party**) causes an **Event of Default** for the purposes of this clause where they:
- (1) commit a breach of this Agreement that is incapable of being remedied;
 - (2) breach any of clauses 5.1, 5.2, 7.1, 7.2(a), 17.1, 18 or 23;
 - (3) breach their obligation in clause 15 in respect of a Member's obligations in clauses **Error! Reference source not found.**, 5.8 and 5.9;
 - (4) breach their obligations in clause (b) in respect of three (3) consecutive meetings;
 - (5) commit three (3) breaches of their obligations under this Agreement over any twelve (12) months period, provided that the Party not in breach has given the Defaulting Party notice of the breaches and whether the Defaulting Party has rectified them; or
 - (6) are subject to an Insolvency Event.

16.2. Default under clause 16.1

These sub-clauses set out what happens when a party commits the breaches listed under 'Events of Default'. A defaulting party must remedy the Event of Default within 20 business Days. If the Event of Default cannot be remedied within 20 business Days, then the defaulting party must take steps to remedy it within 3 months from the date of the Default Notice. If the Event of Default cannot be remedied in that time, then the defaulting party must take steps to ensure that no further breaches occur.

- (a) If a Defaulting Party causes an Event of Default under clause 16.1 the other Party (**Non-defaulting Party**) may serve a notice (**Default Notice**) on the Defaulting Party specifying the Event of Default.
- (b) Upon receiving a Default Notice, the Defaulting Party shall:
 - (1) where the Event of Default is capable of being remedied:
 - (A) remedy the Event of Default within twenty (20) Business Days from the date of the Default Notice; or
 - (B) if the Event of Default cannot be remedied within twenty (20) Business Days, demonstrate that it is taking steps in good faith to remedy the Event of Default and continue to take such steps until the Event of Default is remedied, provided that the Event of Default must be remedied no later than three (3) months from the date of the Default Notice; or
 - (2) where the Event of Default is not capable of being remedied, within twenty (20) Business Days from the date of the Default Notice take all steps to the reasonable satisfaction of the Non-defaulting Party to ensure that further breaches of the Agreement do not occur.

16.3. Default under clause 16.1(b)(vi)

If the PBC commits an insolvency event it must notify the CEO as soon as possible and advise whether any administrator, receiver or manager has been appointed. The PBC must also advise when the Event of Default ceases. If the Event of Default results in an order to wind up the PBC, the Native Title Group must take steps to have a replacement appointed as soon as possible.

- (a) If the Event of Default is an Insolvency Event, the PBC shall as soon as possible notify the CEO:
 - (1) that the Event of Default has occurred;
 - (2) of the appointment of any administrator, receiver or manager; and
 - (3) when the Event of Default ceases to exist.
- (b) Where the Event of Default results in a winding up order, the PBC shall take steps to determine a replacement registered native title body corporate as soon as possible.

16.4. Suspension of Obligations

The non-defaulting party has the right to notify the defaulting party that the performance of the JMA is suspended until the Event of Default is fixed, or no longer exists. Until the Event of Default is remedied or no longer exists, the non-defaulting party will be excused from its obligations under the JMA and the defaulting party's rights will be suspended.

The Non-defaulting Party may, by notice in writing to the Defaulting Party, suspend both the performance of its obligations and the Defaulting Party's rights under this Agreement until clause 16.2(b) is complied with, or the Event of Default no longer exists.

16.5. Duty to mitigate

A party must take all reasonable steps to mitigate (i.e. reduce or lessen the effect of) the effects of an Event of Default. Even if the defaulting party cannot rectify the Event of Default on time, they must take all reasonable steps to make sure its effects on the other parties are minimized as much as possible.

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

16.6. Remedies exercised under clause 16 do not prejudice any other rights of a Party

A party who enforces its remedies (legal rights) under the JMA can still enforce other legal remedies, like the right to seek ‘interlocutory relief’ or ‘specific performance’. Interlocutory relief is where a Court orders a party to do something, or stop doing something, before the final dispute is heard in court. Specific performance is where a court directs a party to perform its obligations under an agreement.

Any remedy exercised under clause 16 is without prejudice to any other rights the Non-defaulting Party may have under this Agreement, or otherwise at law (including the right to seek interlocutory relief and specific performance).

17. PARTY DISPUTES

17.1. No Court proceedings

If a dispute arises under this Agreement between the Parties (**Party Dispute**), other than a dispute of the type referred to in clauses 11(d) and 12, the Parties must comply with clause 17 before commencing court proceedings (other than proceedings for urgent interlocutory relief).

17.2. Notification

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

17.3. Parties to resolve Party Dispute

If a dispute between the parties arises under the JMA the parties must try to resolve it by discussion and mediation before trying other methods. A party claiming that a dispute has arisen must give the other party written notice setting out the details of the dispute, and the parties then have 20 business Days to resolve the dispute. If they can’t do so in that time, then any party may request that it be referred to mediation.

Within the twenty (20) Business Days after a Dispute Notice is given (or longer period if the Parties agree in writing), each Party must use reasonable endeavours to resolve the Party Dispute. If the Parties cannot resolve the Party Dispute within that period, either Party may request that the Party Dispute be referred to a mediator and, if so requested, the Party Dispute must be referred to mediation in accordance with clause 17.4

17.4. Mediation

The CEO and the Chairperson will try to agree upon a mediator for the dispute, but if they cannot agree then the Resolution Institute (a WA dispute resolution organisation) will appoint a mediator. Any

information disclosed by the CEO and the Chairperson for the mediation must be kept confidential and may only be used to attempt to resolve the dispute. The CEO and the Chairperson shall equally pay the costs of the mediator. If they can't resolve the dispute by mediation within 20 business Days of the appointment of a mediator, then either of them may take further action, including commencing legal proceedings. If the party claiming a dispute doesn't comply with the above requirements, then the other party does not have to use mediation before commencing legal proceedings.

- (a) If the Parties cannot agree on a mediator within ten (10) Business Days after a request under clause 17.3 is made either party may request that the Resolution Institute appoint a mediator.
- (b) The role of the mediator is to assist in negotiating a resolution of the Party Dispute. A mediator may not make a binding decision on a Party, unless the Party agrees in advance in writing.
- (c) All information and documents disclosed by a Party under this clause must be kept confidential and may only be used to attempt to resolve the Party Dispute.
- (d) Each Party must pay its own costs of complying with this clause, provided that the State will pay the costs of a mediator.
- (e) The Parties will engage in the mediation process in good faith and with the aim of reaching a resolution of the Party Dispute. If the Parties fail to achieve a resolution of the Party Dispute by mediation with twenty (20) Business Days of the appointment of a mediator, or such further time as is agreed by the Parties, either Party may take such action as it considers appropriate, including (subject to paragraph (f)) commencing legal proceedings.
- (f) If a Party breaches clauses 17.2, 17.3 or 17.4, the other Party need not comply with those clauses in relation to the Party Dispute before commencing legal proceedings.

18. CONFIDENTIALITY

18.1. Between Parties

If a party who discloses information relating to the JMA advises the other parties that the information is confidential, then the information is not to be disclosed by any of the other parties, except if permitted by the JMA or by law. Information that the other parties already knew and information that is public knowledge is not confidential information.

Subject to clause 18.3, all information disclosed by a Party (**Disclosing Party**) to the other Party (**Receiving Party**) during the negotiation of this Agreement and the term of this Agreement, which is identified by the Disclosing Party as confidential, shall be kept confidential and not disclosed, except as permitted by this clause (**Confidential Information**).

18.2. Between Members of the Joint Management Body

All confidential information disclosed by a member of the JMB to another member of the JMB during the term of the JMA must be kept confidential and shall not be disclosed, except if permitted by the JMA or by law.

Subject to clause 18.3, 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, which is

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

18.3. Information which is not Confidential Information

The following information is not Confidential Information for the purposes of clauses 18.1 and 18.2:

- (a) information that the Receiving Party, prior to disclosure, already knew or created (whether alone or jointly with a third party) independently of the Disclosing Party; and
- (b) 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).

18.4. Permitted disclosure

A receiving party may disclose confidential information to their members, employees, agents, advisers and consultants as long as they have the written consent of the disclosing party, or the disclosure is required by law, or the disclosure is in connection with a dispute about the JMA.

A Receiving Party may disclose Confidential Information:

- (a) with the prior written consent of the Disclosing Party;
- (b) to the extent required by law, or applicable securities regulations or rules;
- (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, consultants or related bodies corporate;
- (e) if the Receiving Party is the PBC, to a proposed registered native title body corporate assignee of the PBC's interests under this Agreement; and
- (f) to any judicial, legislative or executive arm of the Government of Western Australia to the extent required by law.

18.5. Disclosure requirements

Before making a permitted disclosure, the receiving party must inform the person who will receive the information that there are confidentiality obligations under the JMA. The receiving party must then give the disclosing party an opportunity to take steps to protect the confidential information.

For example, if the PBC receives confidential information from the CEO and wants to make a permitted disclosure to one of its members or employees, then the PBC must tell that person about the confidentiality obligations under the JMA, and notify the CEO about the permitted disclosure, to give the CEO an opportunity to take steps to protect the information.

If the PBC intends to assign its interests under the JMA to another Aboriginal corporation, then the PBC must ensure that the Aboriginal corporation signs an agreement to be bound by these confidentiality provisions of the JMA.

Before making any disclosure to a person under clause (c) to (e) the Receiving Party must:

- (a) inform the entity or person to whom the Confidential Information is being disclosed of the Receiving Party's obligations under this Agreement;

- (b) before doing so, notify the Disclosing Party to allow it a reasonable opportunity to take any steps 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 (e), ensure that the person or entity executes a deed with the PBC, in such form reasonably acceptable to the Disclosing Party, imposing on the person or entity an undertaking of confidentiality having substantially similar effect to this clause 18.

18.6. Party may seek injunction

If confidentiality provisions are breached, it could result in loss or damage to the disclosing party. For that reason, the disclosing party may seek an 'injunction' or an order for 'specific performance' from a court. An injunction stops another party from disclosing confidential information, and an order for specific performance directs that party to perform its obligations under the JMA.

The Parties acknowledge that:

- (a) they are aware that any breach of clause 18 may result in the other 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 clause 18 or any obligation of confidentiality under this Agreement, any adversely affected Party is entitled to seek and obtain injunctive relief or an order for specific performance of the terms of clause 18.

18.7. No waiver or transfer of intellectual property rights

Disclosure of confidential information in connection with the JMA does not waive or transfer any intellectual property rights that the disclosing party may have in that confidential information ('waive' means to agree not to enforce a right).

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

19. TERM AND TERMINATION

19.1. Term

The JMA remains in force from the date of signing and for as long as the Management Plan remains in force.

Subject to clause 19.2, this Agreement remains in force from the Commencement Date for as long as the Management Plan remains in force.

19.2. Termination

The JMA will terminate when the first of the following things happens:

- (a) the Management Plan expires, or is revoked, and a new management plan is substituted;
- (b) a new JMA is substituted for this one; or
- (c) the Management Plan is amended so that joint management is no longer required.

In the first case, the CEO shall attach a new JMA (which could be identical to this one or varied as agreed by the parties) unless the new management plan does not require joint management. If the CALM Act is amended so that a JMA does not need to be signed each time a new management plan is substituted, then this JMA shall continue.

- (a) This Agreement shall terminate on the sooner of the following circumstances:
- (1) the Management Plan expires, and a new management plan is substituted for it;
 - (2) the Management Plan is revoked, and a new management plan is substituted for it;
 - (3) a new Agreement is substituted for this Agreement; or
 - (4) the Management Plan is amended so that joint management is no longer required.
- (b) In the circumstances outlined in subparagraphs (a)(i) and (a)(ii), the CEO shall attach a new joint management agreement, identical to this Agreement or to this Agreement varied as agreed by the parties, for the purposes of section 56A(3) of the CALM Act, unless the new plan does not require joint management.
- (c) If the CALM Act is amended to provide, in effect, that a joint management agreement does not have to be signed each time a new management plan is substituted for an existing management plan, then this Agreement shall continue until:
- (1) the Management Plan, as amended or replaced from time to time, is amended so that joint management is no longer required; or
 - (2) a new Agreement is substituted for it.

20. INTELLECTUAL PROPERTY

Intellectual property is the ownership a person has in a new or original idea (e.g. an invention, brand, or design) that they have created. A party may make their intellectual property available to another party under this JMA without their ownership of the intellectual property being affected.

Ownership of a Party's intellectual property will not be affected by that Party making the intellectual property available to the Joint Management Body, the Department, the State, the PBC, the PBC or any other party pursuant to this Agreement.

21. CHIEF EXECUTIVE OFFICER OBLIGATIONS MAY BE PERFORMED BY OTHER OFFICERS

If the CEO acts through a government departmental officer, then any reference in the JMA to the CEO includes the departmental officer acting for the CEO.

A reference to the CEO in this Agreement includes a reference to the CEO acting through the agency of a Departmental officer.

22. ACTS BY STATE—NO FETTER UPON DISCRETION

Nothing in the JMA can fetter (e.g. restrict) or control the exercise by any person of a statutory power or discretion. This means that nothing in the JMA can restrict any person (particularly a Minister or the Governor) from carrying out a power or discretion they have under a written law.

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

23. ASSIGNMENT

The PBC can only assign or transfer its rights or obligations under the JMA to a replacement PBC. If the PBC assigns or transfers its rights or obligations to another entity that is appointed by the PBC to replace the PBC, then the replacement entity must sign a deed agreeing to be bound by the JMA and to take over the PBC's obligations under it.

The PBC can only assign its right, title, obligations or interests under this Agreement to replacement PBC, within the meaning of the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth), including in the event of winding up.

24. FORCE MAJEURE AND ABORIGINAL CULTURAL BUSINESS

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.).

If a force majeure or any Aboriginal cultural business (**Event**) prevents a party (**Affected Party**) from performing its JMA obligations, then the Affected Party will not be in default while the Event exists. The Affected Party must tell the other parties that the Event has happened, try to fix it as soon as possible, and tell the other parties when the Event has stopped. The Affected Party must take reasonable steps to make sure the effect of the Event on the other parties is reduced as much as possible. If the Event is still happening 3 months after it started, then the other parties will be excused from performing their JMA obligations and the Affected Party will not be able to enforce its rights under the JMA, until the Event stops.

- (a) If a Party (**Affected Party**) becomes wholly or partly unable because of Force Majeure or Aboriginal Cultural Business (**Event**), to perform any of its obligations under this Agreement, the Agreement shall continue and remain in force and effect, but the Affected Party shall not be in default for as long as it is prevented or delayed by the Event, and the time within which the Affected Party is required to perform any work or satisfy any obligation shall be extended by a period equivalent to that during which such prevention or delay continues, provided that:
 - (1) if the Event is Force Majeure it shall be, as far as possible, remedied by the Affected Party as soon as is reasonably practicable;
 - (2) if the Event is Aboriginal Cultural Business, it shall be addressed by the PBC as soon as is reasonably practicable; and
 - (3) neither Party shall be required to settle any strike, lockout, or other industrial disturbance on terms that it does not regard as satisfactory.
- (b) The Affected Party shall immediately give notice of the Event to the other Party and advise them of the likely period of delay. The notice must:
 - (1) fully describe the Event;
 - (2) specify the obligations the Affected Party cannot perform;
 - (3) estimate the time for which the Event will continue; and

- (4) 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.
- (c) The Affected Party shall give the other Party immediate notice of the cessation of the Event.
- (d) The Affected Party 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.
- (e) If the Event cannot be overcome within three (3) months the Party who is not the Affected Party may, by notice to the Affected Party, suspend both the performance of its obligations and the rights of the Affected Party under this Agreement, until the Event has ceased.

25. GENERAL

There are two types of clauses in commercial contracts—clauses about the deal being done (e.g. future acts, payments, employment, etc.) and general or ‘boilerplate’ clauses, which regulate the operation of the ‘deal’ clauses. The general/boilerplate terms of the JMA cover the following matters:

- (a) entire agreement;
- (b) governing law and jurisdiction;
- (c) severance;
- (d) election and waiver; and
- (e) survival.

25.1. Entire agreement

The JMA is the whole agreement between the parties and overrides any prior agreement, or any other promise, between the parties. The JMA contains everything the parties have agreed to in relation to joint management of the Mayala Conservation Estate and no party will be allowed to rely on any earlier document or statement made before the JMA was signed, except if permitted by law.

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

25.2. Governing law and jurisdiction

The JMA is governed by the law of WA, and any matters that must be decided by a court will be decided by the courts of WA.

The Agreement is governed by the law applicable in the State of Western Australia and both Parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of Western Australia.

25.3. Severance

If any part of the JMA cannot be enforced or is illegal, then that part will be removed to make the rest of

the clause or section valid and enforceable. But if that is not possible, then the whole of the unenforceable or illegal part will be removed from the JMA, unless it would change the effect of the JMA in a major way.

If any provision of the Agreement is void, voidable by either Party, unenforceable, or illegal according to the laws of Western Australia, it shall be read down so as to be valid and enforceable. If the provision cannot be so read down, it—or where possible the offending words—shall be severed from the Agreement to the extent necessary, unless it would materially change the intended effect and objectives of the Agreement.

25.4. Election and waiver

A party can waive (i.e. choose not to enforce) any of its rights or powers under the JMA, but only by giving a written and signed notice to the other parties. Nothing else will operate as a waiver of that party's right or power. If a party waives a right or power on one occasion, that does not mean it automatically waives the same right or power on a future occasion.

A right or power under the Agreement may be waived only 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.

25.5. Survival

The clauses listed below 'survive' termination of the JMA, meaning that the rights and obligations of the parties under that clause continue to be in force after the completion of all transactions under the JMA. This ensures that the parties continue to be responsible to carry out certain obligations.

Clauses 1, 17, 18, 25 (except 25.4) and 26 survive termination of this Agreement.

26. NOTICES

Notices or other communications between the parties must be in writing and delivered by hand or sent by pre-paid post. A notice delivered by hand takes effect at the time it is delivered, and a notice delivered by pre-paid post takes effect 7 days after the date of posting.

Every notice or other communication given under this Agreement:

- (a) must be in writing;

- (b) must be delivered to the intended recipient by prepaid post or by hand to the address below or the address last notified by the intended recipient to the sender or must be sent by email to the email address of the Party receiving the notice last notified by the intended recipient;
- (c) in the case of delivery in person, must be taken to be duly given or made when delivered, and in the case of delivery by post, taken to be duly given or made fourteen (14) days after the date of posting;
- (d) subject to paragraph (e), is taken to be received:
 - (1) in the case of hand delivery, on the date of delivery;
 - (2) in the case of post, on the fourteenth Business Day after posting; and
 - (3) in the case of email, if the sender does not receive a message from its internet service provider or the recipient's mail server indicating that it has not been successfully transmitted, on the day of sending; 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.

EXECUTION

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 *Conservation and Land Management Act*,
was affixed hereto in the presence of:

J Potts
Signature of witness

Wheeler
Signature of Chief Executive Officer

Jane Potts
Full name of witness (print)

5/8/2022
Date

17 Dick Perry Ave Kensington WA 6151
Address of witness

Public Servant
Occupation of witness

EXECUTED in accordance with section 99-5 of
the *Corporations (Aboriginal and Torres Strait
Islander) Act 2006* (Cth) on behalf of **MAYALA
INNINALANG ABORIGINAL
CORPORATION RNTBC** (ICN 9067)

[Signature]
Director (signature)

ROWENA MOWDA
Director (print full name)

31/07/2022
Date

[Signature]
Director/Secretary (signature)

Janella Isaac
Director/Secretary (print full name)

31-07-2022
Date



Witness (Signature)

Witness (Signature)

Peter Dans

Witness (Print full name)

Witness (Print full name)

DBCA Kensington

Address of witness

Address of witness

31.7.22

Date

Date

SCHEDULE 1
MAYALA CONSERVATON ESTATE