

2016

BETWEEN:

**CHIEF EXECUTIVE OFFICER OF
THE DEPARTMENT OF PARKS AND WILDLIFE**

and

DAMBIMANGARI ABORIGINAL CORPORATION (ICN 4691)

SECTION 56A

**JOINT MANAGEMENT AGREEMENT FOR
NORTH LALANG-GARRAM MARINE PARK AND LALANG-
GARRAM / HORIZONTAL FALLS MARINE PARK**



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28 Barrack Street
Perth WA 6000
Ref: SSO 3371-12

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THIS AGREEMENT is made the 23rd day of November 2016.

BETWEEN

THE CHIEF EXECUTIVE OFFICER OF THE DEPARTMENT OF PARKS AND WILDLIFE, 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 (CEO)

and

DAMBIMANGARI ABORIGINAL CORPORATION (ICN 4691) a body corporate taken to have been established under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), of 15 Guildford Street, Derby, Western Australia (DAC)

THE PARTIES AGREE AS FOLLOWS:

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).
- B. DAC is the body corporate that the Dambimangari Native Title Group would like to jointly manage the Conservation Estate.
- C. The State, the Aboriginal Affairs Planning Authority, the Minister for Aboriginal Affairs, the Minister for Lands, the Minister, the Commission, the CEO, the PBC and DAC have entered into the ILUA.
- D. The ILUA provides for (among other things) the joint management of the Conservation Estate.
- E. In accordance with Part II Division 3 of the Conservation and Land Management Act, the Commission prepared, and the Minister approved, the Management Plan.
- F. Prior to the approval referred to in Recital E, the CEO engaged in a substantial process of consultation with DAC in relation to the Management Plan.
- G. The Management Plan requires the CEO to manage the Conservation Estate jointly with DAC.
- H. This Agreement constitutes the agreement that is required to be attached to the Management Plan, that is required to be signed as soon as practicable after that Plan is approved, that sets out the role of the Joint Management

Body and that gives effect to joint management of the land and waters referred to in Recital D.

1. FORCE AND EFFECT OF THIS AGREEMENT

This Agreement has force and effect in respect to:

- (a) The North Lalang-garram Marine Park Subtidal Area and the Lalang-garram / Horizontal Falls Marine Park Subtidal Area from the Commencement Date.
- (b) The North Lalang-garram Marine Park Intertidal Area and the Lalang-garram / Horizontal Falls Marine Park Intertidal Area upon the reservation of the waters comprising those portions of the North Lalang-garram Marine Park and the Lalang-garram / Horizontal Falls Marine Park, respectively.

2. JOINT MANAGEMENT OF THE CONSERVATION ESTATE

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

3. ESTABLISHMENT OF JOINT MANAGEMENT BODY

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

4. ROLE OF THE JOINT MANAGEMENT BODY

4.1. Role of the Joint Management Body

- (a) The role of the Joint Management Body shall be to, consistently with the Conservation and Land Management Act and Wildlife Conservation Act and any regulations made under those Acts:
 - (i) make management decisions consistent with the Management Plan, including:
 - a. allocating the funding referred to in clause 14.1 of the ILUA (and for the purposes referred to in that clause) in relation to the Conservation Estate;
 - b. implementing other state or regional land and sea management programs that occur in, or support the management of, the Conservation Estate;

- c. assisting and overseeing the preparation of policies, programs and other such management instruments specific to the management of the Conservation Estate; and
- d. strategically monitoring the management of the Conservation Estate;
- e. making recommendations as to the grant of any licence, permit or authority in accordance with Division 2 and 3 of Part VIII of the Conservation and Land Management Act;
- f. in relation to the conduct of research within the Conservation Estate including decisions in relation to the provision, use and publication (whether to the media or otherwise) of data from that research;

(ii) subject to subparagraph (i), provide advice to the CEO, the Commission and DAC (as appropriate) on all aspects of the use, management and development of the Conservation Estate including:

- a. the value of the 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 Conservation and Land Management Act, Conservation and Land Management Regulations, Wildlife Conservation Act and Wildlife Conservation Regulations;
- c. the employment of staff to work in relation to the Conservation Estate;
- d. priorities for any matters required to be done in accordance with or in furtherance of the Management Plan;
- e. 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 Conservation Estate;
- f. any proposed new management plan, or any proposed amendments to the management plan, for the Conservation Estate; and
- g. the names given to places within the Conservation Estate;

- (iii) provide advice to other State Government agencies that are responsible for the implementation of specific management actions in the Management Plan;
 - (iv) work cooperatively with the CEO and DAC to obtain additional funding for the joint management of the Conservation Estate, through State and Federal funding programs and other relevant third parties; and
 - (v) ensure the provision of cross-cultural training for employees of the Public Service who are working in relation to the Conservation Estate.
- (b) The Joint Management Body will take account of the Dambimangari Healthy Country Plan, or any other relevant Dambimangari plans, when making decisions or providing advice in relation to the Conservation Estate in accordance with clause 4.1(a).
 - (c) The role of the Joint Management Body does not include undertaking the day-to-day management of the Conservation Estate.

4.2. Decisions of the Joint Management Body

- (a) For the purposes of sections 33(1), 33(3) and 33(6) of the Conservation and Land Management Act, the CEO shall take into account any 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 Conservation and Land Management Act, the Wildlife Conservation Act, any regulations made under those Acts or the Management Plan.
- (b) In the event that the CEO fails to give effect to a management 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

- (a) 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 year term referred to in paragraph (c), for the purposes of section 56A(6) of the Conservation and Land Management Act, the Parties shall each nominate persons to be Representative Members of the Joint Management Body and Alternate Members of the Joint Management Body in the following manner:

- (i) DAC shall nominate:
 - a. nine persons to be Representative Members of the Joint Management Body; and
 - b. three persons to be Alternate Members of the Joint Management Body; and
 - (ii) the CEO shall nominate:
 - a. three persons to be Representative Members of the Joint Management Body; and
 - b. three persons to be Alternate Members of the Joint Management Body.
- (b) The Members nominated by the CEO:
- (i) unless otherwise agreed by the Parties, shall be employees of the department of the Public Service principally assisting in the administration of the Conservation and Land Management Act, and, if possible, should include regional staff with operational responsibility for the Conservation Estate; and
 - (ii) for the first term referred to in paragraph (c), shall include the District Manager West Kimberley Region as one of the Representative Members.
- (c) Representative Members and Alternate Members shall be nominated for a term of three years and may be renominated.
- (d) Each Party shall give to the other Parties written notice, in accordance with clause 25, of the nominated Representative Members or, where applicable, the nominated Alternate Members.

5.2. Alternate Members

- (a) Upon receiving notice of a meeting, if a Representative Member nominated by DAC is temporarily unable to attend the meeting by reason of sickness, absence or incapacity he or she 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:
 - (i) of the Representative Member's inability to attend the meeting; and
 - (ii) which Alternate Member nominated by DAC will attend the meeting.

- (b) If the CEO is informed under paragraph (a), the CEO shall notify the Alternate Member referred to in subparagraph (a)(ii) 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 CEO is informed under paragraph (c) that a Representative Member nominated by the CEO is temporarily unable to attend a meeting, the CEO shall notify an Alternate Member nominated by the CEO 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 this clause 5.2.

5.3. Chairperson

- (a) At the first meeting of the Joint Management Body, the Representative Members shall elect a Chairperson from the Representative Members nominated by DAC, to serve for a twelve month term.
- (b) Notwithstanding anything in paragraph (a), the Chairperson remains in the Chairperson position after the expiry of a 12 month term until another Chairperson is elected or he is re-elected.
- (c) The Chairperson shall preside at a meeting of the Joint Management Body, but, if the Chairperson is absent from such a meeting, the meeting shall elect a Representative Member to preside at that meeting.

5.4. Persons ineligible to be members

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

5.5. Vacancy of Member

- (a) The position of a Member becomes vacant if that Member:

- (i) resigns his or her position by notice delivered to the Chairperson; or
 - (ii) is absent, without leave from the Chairperson, for three consecutive meetings of which the Member has had notice under clause 25;
 - (iii) is removed from the position by the Joint Management Body under clause 5.7 or 5.8; or
 - (iv) dies.
- (b) If the position of any Member becomes vacant for any reason, including because of paragraph (a), a new Member shall be nominated for the remainder of the three year term in the following way:
- (i) If the Member was nominated by DAC, DAC shall nominate the new Member.
 - (ii) If the Member was nominated by the CEO, the CEO shall nominate the new Member.
 - (iii) Each Party shall give to the other Parties written notice, in accordance with clause 25, of the nominated new Member.

5.6. Vacancy of Chairperson

- (a) The position of Chairperson becomes vacant if he or she:
- (i) resigns the position of Chairperson by notice delivered to the CEO; or
 - (ii) is absent without leave from the CEO for three consecutive meetings of which he or she has notice under clause 25;
 - (iii) is removed from the position by the Joint Management Body under clause 5.7 or 5.8; or
 - (iv) dies.
- (b) If the position of the Chairperson becomes vacant for any reason, including because of paragraph (a), a new Chairperson shall be elected in accordance with clause 5.3 for the remainder of the twelve month term.

5.7. Removal for bankruptcy etc

- (a) The Joint Management Body may remove a Member, including the Chairperson, in accordance with this clause.
- (b) A Member who is:

- (i) according to the *Interpretation Act 1984* (WA) section 13D, a bankrupt or a person whose affairs are under 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 *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth)

shall at the first meeting after that Member 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 10 as to whether the disclosing Member shall be removed from the Joint Management Body, the results of which vote 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, also for the purposes of clause 5.6.

5.8. 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 Representative Member may move that the performance of a 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, also for the purposes of clause 5.6.

5.9. Conflict of interest

- (a) A Representative Member who has a material personal or financial interest in a matter that is being considered by a meeting of the Joint Management Body (**Conflict of Interest**) shall, as soon as possible after that Representative Member is aware of this interest, disclose the nature of his or her Conflict of Interest to the other Representative Members who are at that meeting, and that disclosure shall be recorded in the minutes.
- (b) Subject to paragraph (c), if a Representative Member discloses a Conflict of Interest under paragraph (a) the Representative Member shall not:
 - (i) take part in the consideration or discussion of the matter; or
 - (ii) vote on the matter.
- (c) Following the disclosure of a Conflict of Interest under paragraph (a):
 - (i) the remaining Representative Members (other than the Representative Member with a Conflict of Interest) shall vote in accordance with clause 10 as to whether the Representative Member with the Conflict of Interest may take part in the consideration or discussion of the matter and/or vote on the matter; and
 - (ii) the results of that vote 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 that Representative Member's particular traditional interest or seniority in relation to an area of sea or land country within or adjoining the Conservation Estate.

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

- (a) The Joint Management Body may invite an organisation or individual to attend a Joint Management Body meeting to 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 part of a meeting an invitee shall be present.
- (c) Invitees do not have a right to vote at a Joint Management Body meeting.

5.11. Invitation from Chair of DAC to attend Joint Management Body meeting

- (a) The Chair of DAC may invite up to 4 advisors to attend a Joint Management Body meeting to provide advice on any issue the Chair of DAC deems necessary.
- (b) The Chair of DAC must notify the CEO 2 weeks prior to a Joint Management Body meeting of his or her intention to invite an advisor under paragraph (a).

6. PROTECTION FROM PERSONAL LIABILITY

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

7. CONVENING MEETINGS

7.1. First meeting

Within 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.

7.2. Subsequent meetings

- (a) Subject to clause 7.3(b)(i) or 7.3(b)(ii), the CEO shall be responsible for convening meetings, in consultation with the Chairperson.
- (b) At the first meeting, or at any subsequent meeting, the Joint Management Body shall decide the venue for the subsequent meeting or meetings.

7.3. Frequency

- (a) The Joint Management Body shall meet at least once every six (6) months, and will endeavour to meet four (4) times a year.
- (b) The Joint Management Body may meet more often in the following circumstances:
 - (i) the Chair of DAC requests a meeting of the Joint Management Body by giving at least fifteen Business Days' notice to the CEO and the Chairperson, upon which the CEO shall convene a meeting; or
 - (ii) the CEO calls a meeting of the Joint Management Body by giving at least fifteen Business Days' notice to the Members.

7.4. Administrative responsibility

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

8. PROCEDURE

The Joint Management Body may adopt such further 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.

9. QUORUM

Five (5) Representative Members nominated by DAC and two (2) Representative Members nominated by the CEO constitute a quorum.

10. VOTING

- (a) Each Representative Member present at a meeting of the Joint Management Body, including the Chairperson, has one vote and shall exercise that vote, subject to clause 5.9(b).
- (b) Subject to paragraph (c), the Joint Management Body shall try to reach a unanimous decision.
- (c) If the Joint Management Body cannot reach a unanimous decision, decisions shall be made by a majority of each of the Representative Members nominated by DAC present at the meeting and the Representative Members nominated by the CEO present at the meeting.
- (d) If a majority of each of the Representative Members nominated by DAC present at the meeting and the Representative Members nominated by the CEO present at the meeting cannot agree the outcome of the same agenda item at two (2) consecutive meetings of the Joint Management Body, then the business which is the subject of that agenda item becomes a Dispute for the purposes of clause 11.

11. JOINT MANAGEMENT BODY DISPUTE

In this clause 11, the **CEO** means the CEO or a person nominated by the CEO, and **DAC** means the Chair of DAC or a person nominated by the Chair of DAC.

11.1. Referral to CEO and DAC

- (a) If the circumstances in clause 10(d) arise, the Chairperson of the Joint Management Body shall, within 5 Business Days of the second

meeting, give notice of the Dispute to the CEO and DAC, setting out details of the Dispute.

- (b) Upon receiving notice of a Dispute under paragraph (a), the CEO and DAC, shall, within 20 Business Days of the date of that notice:
 - (i) decide the Dispute; or
 - (ii) refer the Dispute to a Mediator in accordance with clause 11.2; or
 - (iii) remit the Dispute to the Joint Management Body to decide; or
 - (iv) refer the Dispute to the Minister to decide in accordance with clause 11.3.
- (c) When deciding the Dispute under subparagraph (b)(i), the CEO and DAC may consult with any person.
- (d) A determination of the Dispute by the CEO and DAC under subparagraph (b)(i) shall be deemed to be a determination of the Joint Management Body.
- (e) If the CEO and DAC are unable to agree what course of action to take under paragraph (b), they shall refer the Dispute to a Mediator and clause 11.2 applies.

11.2. Referral to Mediation

- (a) The CEO and DAC will try to agree a mediator, who is a member of a recognised professional mediation group, to mediate the Dispute.
- (b) If within 10 Business Days after a referral under clause 11.1(b)(ii) or 11.1(e) the CEO and DAC cannot agree on a mediator, the Chairman of LEADR will appoint a mediator at the request of either Party.
- (c) The CEO and DAC 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 mediation the CEO and DAC may determine the Dispute.
- (e) Any information or documents disclosed by the CEO and DAC under this clause 11:
 - (i) must be kept confidential; and
 - (ii) may only be used to attempt to resolve the Dispute.

- (f) The CEO and DAC shall pay its own costs of complying with this clause 11 and the CEO and DAC shall equally pay the costs of any mediator.
- (g) A determination of the Dispute by the CEO and DAC during or following mediation under this clause 11.2 is deemed to be a determination of the Joint Management Body.
- (h) If the CEO and DAC fail to resolve the Dispute by mediation within 20 Business Days of the appointment of a mediator, or such further time as is agreed by the CEO and DAC, either the CEO or DAC may refer the Dispute to the Minister under clause 11.3.

11.3. Referral to Minister

- (a) If the CEO and DAC refer the Dispute to the Minister for a decision, the Minister shall consult with the CEO and DAC regarding how the Dispute ought to be determined, and do one or both of the following:
 - (i) decide as to how the Dispute is to be determined; or
 - (ii) decide the Dispute.
- (b) For the avoidance of doubt, the Minister is not required to act in accordance with any advice or recommendation made by the CEO or DAC in the course of the consultation process.
- (c) A determination of the Dispute by the Minister under this clause 11.3 shall be deemed to be a decision of the Joint Management Body.

11.4. Obligations continue

If a Dispute is being dealt with under any part of this clause 11, the Joint Management Body shall, pending the making of a decision on the 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 Dispute.

12. REVIEW

- (a) The Parties shall review this Agreement, including assessing its operation and implementation, in the following circumstances, whichever is the sooner:
 - (i) a substitute management plan for the Management Plan is being prepared for the purposes of Part II Division 3 of the Conservation and Land Management Act; or
 - (ii) they agree that a review is necessary.

- (b) A review under paragraph (a) shall be commenced within 3 months of the circumstances in subparagraph (a)(i) or (a)(ii) occurring.

13. VARIATION

The Parties may vary this Agreement by Deed of Variation.

14. OBLIGATION OF PARTIES IN RESPECT OF MEMBERS

The Parties shall procure that:

- (a) Members perform their role 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 in clause 4; and
 - (ii) the Conservation and Land Management Act; and
 - (iii) any other applicable State legislation.
- (b) for the purposes of clause 9, the required number of Representative Members nominated by each Party are present at every meeting of the Joint Management Body.

15. DEFAULT AND ENFORCEMENT

15.1. Events of Default

- (a) In this clause 15, a reference to a Party means a party to the default.
- (b) A Party (the **Defaulting Party**) causes an **Event of Default** for the purposes of this clause 15:
 - (i) where a Party commits a breach of this Agreement that is incapable of being remedied;
 - (ii) where the Party breaches any of clauses 5.1, 5.2, 7.1, 7.2(a), 16.1, 17 or 22;
 - (iii) where the Party breaches its obligation in clause 14(a) in respect of a Member's obligations in clause 5.7, 5.8, or 5.9;
 - (iv) where the Party breaches its obligation in clause 14(b) in respect of three (3) consecutive meetings;
 - (v) a Party commits 3 breaches of its obligations under this Agreement over any 12 month period, provided that the Party not in breach has given the Defaulting Party notice of any such breaches and of whether or not the Defaulting Party has rectified such breaches; or

(vi) when an Insolvency Event occurs.

15.2. Default under clause 15.1(b)(i), 15.1(b)(ii), 15.1(b)(iii), 15.1(b)(iv) and 15.1(b)(v)

(a) If a Defaulting Party causes an Event of Default under clause 15.1(b)(i), 15.1(b)(ii), 15.1(b)(iii), 15.1(b)(iv) or 15.1(b)(v), the other Party (the **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:

(i) remedy the Event of Default within 20 Business Days; or

(ii) if the Event of Default cannot reasonably be remedied in 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 default must be remedied by no later than 3 months from the date of the Default Notice.

15.3. Default under clause 15.1(b)(vi)

(a) If an Event of Default occurs under clause 15.1(b)(vi), DAC shall as soon as possible notify the CEO:

(i) that the Event of Default has occurred;

(ii) of the appointment of any administrator, receiver or manager to DAC; and

(iii) when the relevant Event of Default ceases to exist.

(b) Where the Event of Default results in an order to wind up DAC, the Dambimangari Native Title Group shall take steps to cause a replacement body corporate representing the Dambimangari Native Title Group to be determined as soon as possible.

15.4. Consequences of event of default

(a) The Non-defaulting Party may, by notice to the Defaulting Party, suspend the performance of its obligations and the Defaulting Party's rights under this Agreement until clause 15.2(b) is complied with, or the Event of Default no longer exists, as applicable.

(b) Any remedy exercised under this clause 15 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).

16. PARTY DISPUTES

16.1. 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 clause 11, a Party must comply with this clause 16 before commencing court proceedings (except proceedings for urgent interlocutory relief).

16.2. Notification

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

16.3. Parties to resolve Party Dispute

During the 20 Business Days after a notice is given under clause 16.2 (or longer period if the Parties agree in writing), each Party must use its reasonable endeavours to resolve the Party Dispute. If the Parties cannot resolve the Party Dispute within that period, any Party may request that the Party Dispute be referred to a mediator and, if a Party so requests, the Party Dispute must be referred to mediation in accordance with clause 16.4.

16.4. Mediation

- (a) If the Parties cannot agree on a mediator within 10 Business Days after a request under clause 16.3, the Chairman of LEADR will appoint a mediator at the request of either Party.
- (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 to the Party Dispute except if the Party agrees in advance in writing.
- (c) Any information or documents disclosed by a Party under this clause 16.4:
 - (i) must be kept confidential; and
 - (ii) may only be used to attempt to resolve the Party Dispute.
- (d) Each Party must pay its own costs of complying with this clause 16.4. The Parties must equally pay the costs of any 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 within 20 Business Days of the appointment of a mediator under this clause, or such further time as is agreed by the Parties, any Party may take such action as it considers appropriate, including (subject to paragraph (f)) commencing legal proceedings.

- (f) If a Party breaches clause 16.2, 16.3 or 16.4, the other Party does not have to comply with those clauses in relation to the Party Dispute before commencing legal proceedings.

17. CONFIDENTIALITY

17.1. Between Parties

- (a) Subject to paragraph (b), 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, that is identified by the Disclosing Party as confidential, is confidential and must be kept confidential and shall not be disclosed except as permitted by this clause 17 (**Confidential Information**).
- (b) The following information is not 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 as a result of a breach of confidentiality by the Receiving Party or any of its permitted disclosees).

17.2. Between Members of the Joint Management Body

- (a) Subject to paragraph (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 Party as confidential, is confidential and must be kept confidential and will not be disclosed except as permitted by this clause 17 (**Confidential Information**).
- (b) The following information is not 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 as a result of a breach of confidentiality by the Receiving Party or any of its permitted disclosees).

17.3. Permitted disclosure

A Receiving Party may, in turn, 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) subject to clause 17.4, to the extent that the information is reasonably necessary for any processes or applications under any native title laws or related to any approvals;
- (d) subject to clause 17.4, in connection with any dispute or litigation concerning the Agreement or its subject matter;
- (e) to the Receiving Party's members, officers, employees, agents, auditors, advisers, financiers and consultants and related bodies corporate;
- (f) subject to clause 17.4, to a proposed registered native title body corporate assignee of DAC's interest under this Agreement; and
- (g) to any judicial, legislative or executive arm of the Government of Western Australia.

17.4. Disclosure requirements

Before making any disclosure to a person under clause 17.3(c), 17.3(d), or 17.3(f) 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) before doing so notify the Disclosing Party and give that Disclosing 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 17.3(f), ensure that the person or entity executes a deed with DAC, in such form acceptable to the Disclosing Party (acting reasonably), imposing on the person or entity an undertaking of confidentiality having substantially similar effect to this clause 17.

17.5. Party may seek injunction

The Parties acknowledge that:

- (a) they are aware that any breach of this clause 17 by one Party 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 this clause 17 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 this clause 17.

17.6. 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.

18. TERM AND TERMINATION

18.1. Term

Subject to clause 18.2, this Agreement remains in force from the Commencement Date for as long as the Management Plan (or a new management plan to which this Agreement is attached in accordance with section 56B(1) of the Conservation and Land Management Act) remains in force.

18.2. Termination

- (a) This Agreement shall terminate in the following circumstances, whichever is the sooner:
 - (i) the Management Plan expires and a new plan is substituted for it (unless this Agreement is attached to the new plan in accordance with section 56B(1) of the Conservation and Land Management Act);
 - (ii) the Management Plan is revoked and a new plan is substituted for it (unless this Agreement is attached to the new plan in accordance with section 56B(1) of the Conservation and Land Management Act);
 - (iii) a new Agreement is substituted for this Agreement; or
 - (iv) subject always to clause 13 of the ILUA, the Management Plan or any new plan substituted for it 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 this Agreement varied as agreed by the parties, for the purposes of section 56A(3) of the Conservation and Land Management Act, unless the new plan does not require joint management.
- (c) This Agreement shall continue until:
 - (i) the Management Plan is amended so that joint management is no longer required (subject always to clause 13 of the ILUA); or
 - (ii) a new Agreement is substituted for it.

19. INTELLECTUAL PROPERTY

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

20. OBLIGATIONS MAY BE PERFORMED BY OTHER OFFICERS

Except in clause 11, any reference to the CEO or DAC in this Agreement includes a reference to the CEO or DAC acting through the agency of a Departmental officer or corporate employee.

21. 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 otherwise than in accordance with the statute.

22. NO ASSIGNMENT WITHOUT CONSENT

DAC may not assign or otherwise dispose of its rights, title, obligations and interests under this Agreement without the consent of the CEO.

23. FORCE MAJEURE AND ABORIGINAL CULTURAL BUSINESS

(a) In the event that a Party becomes wholly or partly unable because of Force Majeure or Aboriginal Cultural Business to perform any of its obligations under the Agreement, the Agreement shall nevertheless continue and remain in force and effect but that Party shall not be in default for as long as it continues to be prevented or delayed by such Force Majeure or Aboriginal Cultural Business, and the time within which such a 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:

(i) the cause of the Force Majeure or Aboriginal Cultural Business as far as possible shall be remedied as soon as is reasonably practicable by the affected Party; and

(ii) no Party shall be required to settle any strike, lockout, or other industrial disturbance on terms that it does not regard as satisfactory.

(b) The Party affected by any event of Force Majeure or Aboriginal Cultural Business shall immediately give notice to the other Party of the occurrence of such event and the likely period of delay. The notice 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 Aboriginal Cultural Business.
- (c) The Party affected by the Force Majeure or Aboriginal Cultural Business shall give immediate notice of the cessation of the delay.
 - (d) 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.
 - (e) If the Force Majeure or Aboriginal Cultural Business cannot be overcome within 3 months, 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.

24. GENERAL

24.1. Entire agreement

The Agreement constitutes the entire agreement between all of the Parties as to its subject matter and, in relation 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.

24.2. Governing law and jurisdiction

- (a) The 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.

24.3. Severance

If any provision of the Agreement 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 the Agreement to the extent necessary unless it would materially change the intended effect and objectives of the Agreement.

24.4. Election and waiver

A right or power under the Agreement shall only be deemed to be waived by notice, 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. NOTICE

Each notice or other communication given under this Agreement:

- (a) shall be in writing;
- (b) shall be delivered to the intended recipient by prepaid post or by hand to the address of the recipient specified in this Agreement or the address last notified by the intended recipient to the sender;
- (c) will be taken to be duly given or made:
 - (i) in the case of delivery in person, when delivered; and
 - (ii) in the case of delivery by post, 7 days after the date of posting.

26. DEFINITIONS AND INTERPRETATION

26.1. General Definitions

Words and expressions defined in the Conservation and Land Management Act have the same meaning when used in this Agreement.

In this Agreement, unless the context otherwise requires:

Aboriginal Affairs Planning Authority means the body corporate preserved and continued under section 8 of the *Aboriginal Affairs Planning Authority Act 1972* (WA).

Aboriginal Cultural Business means a funeral or other ceremony that some or all of the directors of DAC or the Representative Members of the Joint Management Body nominated by DAC are required to attend under traditional laws and customs.

Agreement means this joint management agreement.

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

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

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

Commission means the body corporate established under section 18 of the Conservation and Land Management Act.

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

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

Conservation Estate means the North Lalang-garram Marine Park and the Lalang-garram / Horizontal Falls Marine Park.

Dambimangari Native Title Group means the common law holders of native title under the Determination.

Determination means the determination by the Federal Court of Australia in *Barunga v State of Western Australia* [2011] FCA 518, that native title exists over land and waters.

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.

High water mark has the same meaning as in the Notes section in Schedule 1 of the ILUA.

ILUA means the Indigenous Land Use Agreement executed by the Wanjina-Wunggurr (Native Title) Aboriginal Corporation RNTBC, DAC, the State, the Aboriginal Affairs Planning Authority, the Minister for Aboriginal Affairs, the Minister for Lands, the Minister, the Commission and the CEO on 18 November 2016, which is to be entered on the Register of Indigenous Land Use Agreements.

Insolvency Event means where any one or more of the following occurs in relation to DAC:

- (a) it 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) it is placed under external administration under and for the purposes of Chapter 5 of the *Corporations Act 2001* (Cth);
- (c) it 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) it is unable to pay all its debts as and when they become due and payable; or
- (e) it is deregistered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

Joint Management Body means the body established under clause 3.

Lalang-garram / Horizontal Falls Marine Park has the same meaning as in the ILUA.

Lalang-garram / Horizontal Falls Marine Park Intertidal Area means all that portion of Lalang-garram / Horizontal Falls Marine Park that is seaward of the high water mark and landward of the low water mark of the mainland and all islands, and which has yet to be reserved as at the date of this Agreement.

Lalang-garram / Horizontal Falls Marine Park Subtidal Area means all that portion of Lalang-garram / Horizontal Falls Marine Park that is seaward of the low water mark of the mainland and all islands, and which has been reserved as at the date of this Agreement.

Low water mark has the same meaning as in the Notes section of Schedule 1 of the ILUA.

Management Plan means the indicative management plan approved under section 14 of the Conservation and Land Management Act in respect of the Conservation Estate and includes any new management plan to which this Agreement is attached in accordance with section 56B(1) of the Conservation and Land Management Act.

Member means a Representative Member or an Alternate Member.

Minister means the Minister in whom the administration of the Conservation and Land Management Act is committed, which for the time being is the Minister for Environment.

Minister for Aboriginal Affairs means the Minister in whom the administration of the *Aboriginal Affairs Planning Authority Act 1972* (WA) is committed.

Minister for Lands means the body corporate continued under section 7 of the *Land Administration Act 1997* (WA).

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

North Lalang-garram Marine Park has the same meaning as in the ILUA.

North Lalang-garram Marine Park Intertidal Area means that portion of the North Lalang-garram Marine Park that is seaward of the high water mark and landward of the low water mark of the mainland and all islands, and which has yet to be reserved as at the date of this Agreement.

North Lalang-garram Marine Park Subtidal Area means that portion of the North Lalang-garram Marine Park that is seaward of the low water mark of the mainland and all islands, and which has been reserved as at the date of this agreement.

Party means a party to this Agreement.

PBC means the Wanjina-Wunggurr (Native Title) Aboriginal Corporation RNTBC (ICN 4692) on behalf of the Dambimangari Native Title Group, a body corporate established for and on behalf of the Dambimangari Native Title Group.

Representative Member means a person specified under clause 3 and nominated under clause 5.1.

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

Term means the term of this Agreement specified in clause 18.1.

Wildlife Conservation Act means the *Wildlife Conservation Act 1950* (WA).

Wildlife Conservation Regulations means the *Wildlife Conservation Regulations 1970* (WA).

26.2. 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 includes the other;
- (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, 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 unincorporate)

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".

27. 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. Sharp

Signature of Chief Executive Officer

[Handwritten signature]

Signature of witness

18.11.16
Date

Jane O'Neil

Full name of witness (print)

17 Dick Perry Ave Kensington WA 6151
Address of witness

Public Servant

Occupation of witness

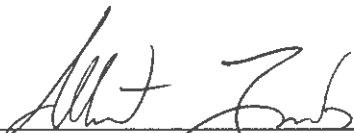
EXECUTED in accordance with section 99-5 of)
the *Corporations (Aboriginal and Torres Strait)*
Islander) Act 2006 (Cth) on behalf of the)
DAMBIMANGARI ABORIGINAL)
CORPORATION (ICN 4691))



Director (Signature)

Francis Woolagoodja

Director (Print full name)



Witness (Signature)

Albert Jacob JP

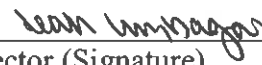
Witness (Print full name)

2 Havelock St, west park

Address of witness

23/11/2016

Date



Director (Signature)

LEAH UMBAGAI

Director (Print full name)



Witness (Signature)

Lee Butler

Witness (Print full name)

7 Blackwood St, Mt. Hawthorn

Address of witness

23/11/2016

Date