

2016

BETWEEN:

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

and

BALANGGARRA ABORIGINAL CORPORATION RNTBC ICN 2923

**SECTION 56A
JOINT MANAGEMENT AGREEMENT
FOR THE NORTH KIMBERLEY MARINE PARK (BALANGGARRA
PART)**



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28 Barrack Street
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Ref: SSO 3533-13

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THIS AGREEMENT is made the 17th day of December 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, Western Australia (**CEO**)

AND

BALANGGARRA ABORIGINAL CORPORATION RNTBC (ICN 2923) a body corporate taken to have been established under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* care of Kimberley Land Council East Kimberley Office, Button Drive, Kununurra Western Australia (**PBC**)

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. The PBC is the prescribed body corporate (as that term is used in Division 6 of Part 2 of the Native Title Act) in respect of the Native Title Group for the Determination.
- C. The State, the Minister for Lands, the Minister, the Commission the CEO and the PBC entered into the ILUA.
- D. The ILUA provides for the joint management of the North Kimberley Marine Park (Balanggarra Part).
- E. The Governor reserved the North Kimberley Marine Park (Balanggarra Part) in accordance with section 13 of the Conservation and Land Management Act.
- F. In accordance with Part II Division 3 of the Conservation and Land Management Act, the Commission prepared, and the Minister approved, the Management Plan.
- G. The Management Plan requires the CEO to manage the North Kimberley Marine Park (Balanggarra Part) jointly with the PBC.
- H. 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.

1. JOINT MANAGEMENT OF THE NORTH KIMBERLEY MARINE PARK

The North Kimberley Marine Park (Balanggarra Part) shall be jointly managed by the PBC and the CEO through the Joint Management Body in accordance with the Management Plan and this Agreement.

2. 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 nine (9) Representative Members, nominated in accordance with clause 4.1.

3. ROLE OF THE JOINT MANAGEMENT BODY

3.1 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;
 - (ii) in accordance with the Management Plan, assist in the preparation of policies, programs and other such management instruments for the management of the North Kimberley Marine Park (Balanggarra Part);
 - (iii) strategically monitor the management of the North Kimberley Marine Park (Balanggarra Part) including the implementation of the Management Plan;
 - (iv) provide advice to the CEO and the Commission (as appropriate) on all aspects of the use, management and development of the North Kimberley Marine Park (Balanggarra Part) including:
 - (1) the value of the North Kimberley Marine Park (Balanggarra Part) land and waters to the culture and heritage of Aboriginal people, or the methods to determine this;
 - (2) 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;
 - (3) the expenditure of the annual operational budget for the North Kimberley Marine Park (Balanggarra Part) as it

relates to the purposes set out in clause [12.1] of the ILUA;

- (4) the employment of staff to work in relation to the North Kimberley Marine Park (Balangarra Part); and
 - (5) any proposed new management plan, or any proposed amendments to the management plan, for the North Kimberley Marine Park (Balangarra Part),
 - (v) provide advice to other State Government agencies that are responsible for the implementation of specific management actions in the Management Plan; and
 - (vi) work cooperatively with the CEO and the PBC to obtain additional funding for the joint management of the North Kimberley Marine Park (Balangarra Part), through State and Federal funding programs and other relevant third parties.
- (b) For the purposes of sections 33(1) and 33(3) of the Conservation and Land Management 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.
 - (c) The role of the Joint Management Body does not include undertaking the day-to-day management of the North Kimberley Marine Park (Balangarra Part).

4. MEMBERSHIP OF THE JOINT MANAGEMENT BODY

4.1 Representative Members

- (a) After the Commencement Date but before the first meeting convened pursuant to clause 5.1 and thereafter, at the last meeting before the expiry of each three (3) year term referred to in (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) the PBC shall nominate:
 - (1) six (6) persons to be Representative Members of the Joint Management Body; and
 - (2) three (3) persons to be Alternate Members of the Joint Management Body,
 - (ii) the CEO shall nominate:
 - (1) three (3) persons to be Representative Members of the Joint Management Body; and

- (2) three (3) persons to be Alternate Members of the Joint Management Body.
- (b) The Members nominated by the CEO, 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 marine park.
- (c) Representative Members and Alternate Members shall be nominated for a term of three years and may be renominated.
- (d) Before the first meeting of the Joint Management Body, each Party shall give to the other Parties, written notice, in accordance with clause 24, of the nominated Representative Members or, where applicable, the nominated Alternate Members.

4.2 Alternate Members

- (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 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:
 - (i) of the Representative Member's inability to attend the meeting; and
 - (ii) which Alternate Member nominated by the PBC will attend the meeting.
- (b) If the CEO is informed under paragraph (a), the CEO shall notify the Alternate Member referred to in paragraph (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 4.2.

4.3 Chairperson

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

4.4 Persons ineligible to be members

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

4.5 Vacancy of Member

- (a) The position of a Member becomes vacant if he:
 - (i) resigns his position by notice delivered to the Chairperson; or
 - (ii) is absent, without leave from the Chairperson, for three consecutive meetings of which he has had notice under clause 24; or
 - (iii) is removed from the position by the Joint Management Body under clause 4.7 or 4.8; 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 the PBC, the PBC shall nominate the new Member.
 - (ii) If the Member was nominated by the CEO, the CEO shall nominate the new Member.
 - (iii) A Party shall give to the other Party, written notice, in accordance with clause 24, of a nominated new Member.

4.6 Vacancy of Chairperson

- (a) The position of Chairperson becomes vacant if he:
 - (i) resigns his position by notice delivered to the CEO; or
 - (ii) is absent without leave from the CEO for three consecutive meetings of which he has notice under clause 24; or
 - (iii) is removed from the position by the Joint Management Body under clause 4.7 or 4.8; 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 4.3 for the remainder of the twelve month term.

4.7 Removal for bankruptcy

- (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 he becomes aware of that fact, disclose it to 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 9 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 4.5 or, if it is the Chairperson, for the purposes of clause 4.6.

4.8 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 4.5 or, if it is the Chairperson, for the purposes of clause 4.6.

4.9 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 he is aware of this interest, disclose the nature of his 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 in a matter 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 9 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 North Kimberley Marine Park (Balangarra Part) or because he or she is a native title holder or a director of the PBC.

4.10 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.
- (d) At the discretion of the Joint Management Body, invitees may be paid fees for attending meetings of the Joint Management Body.

5. CONVENING MEETINGS

5.1 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.

5.2 Subsequent meetings

- (a) Subject to paragraph 5.3(b)(i) or 5.3(b)(ii), the CEO shall be responsible for convening meetings.
- (b) At the first meeting, or at any subsequent meeting, the Joint Management Body shall decide the venue for the subsequent meeting or meetings.

5.3 Frequency

- (a) The Joint Management Body shall meet at least once every six (6) months.
- (b) The Joint Management Body may meet more often in the following circumstances:
 - (i) the Chairperson requests a meeting of the Joint Management Body by giving at least fifteen (15) Business Days' notice in writing to the CEO; or

- (ii) the CEO calls a meeting of the Joint Management Body by giving at least fifteen (15) Business Days' notice to the Chairperson and Members.

5.4 Administrative responsibility

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.

5.5 Travel Allowance

- (a) The Representative Members nominated by the PBC shall be paid a travel allowance consistent with an amount determined from time to time to be reasonable by the Australian Commissioner of Taxation (being, for example, the amount determined to be reasonable for the substantial exception in Subdivision 900-B of the *Income Tax Assessment Act 1997*).
- (b) The amount referred to in paragraph (a) is in addition to the amount paid to the PBC pursuant to clause 1 of Schedule 4 to the ILUA, but is included within the benefits required to be paid by the State under clause 12 of the ILUA.

6. 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.

7. SUB-COMMITTEES

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

8. QUORUM

Six (6) Representative Members constitute a quorum, comprising at least four (4) Representative Member nominated by the PBC and at least two (2) Representative Member nominated by the CEO.

9. 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 4.9(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 the PBC 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 the PBC 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 clause 10.

10. JOINT MANAGEMENT BODY DISPUTE

10.1 Referral to CEO and PBC

- (a) If the circumstances in clause 9(d) arise, the Chairperson shall, within five (5) Business Days of the second meeting, give notice of the Dispute to the Chairperson of the PBC, setting out details of the Dispute.
- (b) Upon receiving notice of a Dispute under paragraph (a), the CEO and the Chairperson of the PBC, 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 10.2; or
 - (iii) remit the Dispute to the Joint Management Body to decide; or
 - (iv) refer the Dispute to the Minister to decide.
- (c) When deciding the Dispute under sub paragraph (b)(i), the CEO and the Chairperson of the PBC may consult with any person.
- (d) A determination of the Dispute by the CEO and the Chairperson of the PBC under subparagraph (b)(i) 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 what course of action to take under paragraph (b), they shall refer the Dispute to a Mediator and clause 10.2 applies.

10.2 Referral to Mediation

- (a) The CEO and the Chairperson of the PBC will try to agree a mediator, who is a member of a recognised professional mediation group, to mediate the Dispute.

- (b) If within ten (10) Business Days after a referral under clause 10.1(a) or 10.1(e) the CEO and the Chairperson of the PBC cannot agree on a mediator, the Chairman of the Resolution Institute will appoint a mediator at the request of either Party.
- (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 and the Chairperson of the PBC under this clause 10:
 - (i) must be kept confidential; and
 - (ii) may only be used to attempt to resolve the Dispute.
- (f) The CEO and the Chairperson of the PBC shall pay its own costs of complying with this clause 10 and the CEO and the Chairperson of the PBC shall equally pay the costs of any 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 is agreed by the CEO and the Chairperson of the PBC, either the CEO or the Chairperson of the PBC may refer the Dispute to the Minister under clause 10.3.

10.3 Referral to Minister

- (a) If the CEO and the Chairperson of the PBC refer the Dispute to the Minister for a decision, the Minister shall consult with the CEO and the Chairperson of the PBC 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 the Chairperson of the PBC in the course of the consultation process.
- (c) A determination of the Dispute by the Minister under this clause 10.3 shall be deemed to be a decision of the Joint Management Body.

10.4 Obligations continue

If a Dispute is being dealt with under any part of this clause 10, the Joint Management Body shall, pending the making of a decision on the 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.

11. 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; or
 - (iii) where the Chairperson gives Notice to the CEO and the Chairperson of the PBC in accordance with clause 10.1(a) three (3) times over any 12 month period.
- (b) A review under paragraph (a) shall be commenced within 6 months of the circumstances in subparagraphs (a)(i),(a)(ii) or (a)(iii) occurring.
- (c) The review shall be undertaken by persons selected by the Parties in accordance with terms of reference agreed to by the Parties.
- (d) The agreed costs of the review shall be met by the CEO.

12. VARIATION

To the extent permitted by law, the Parties may vary this Agreement by Deed of Variation.

13. OBLIGATION OF PARTIES IN RESPECT OF MEMBERS

- (a) The Parties shall use all reasonable efforts to procure that 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 3; and
 - (ii) the Conservation and Land Management Act; and
 - (iii) any other applicable State legislation.
- (b) For the purposes of clause 14.1(b)(iv), each Party must ensure that its Representative Members attend each meeting of the Joint Management Body in sufficient numbers to achieve quorum for the purposes of clause 8.

14. DEFAULT AND ENFORCEMENT

14.1 Events of Default

- (a) In this clause 14, 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 134:
 - (i) where a Party commits a breach of this Agreement that is incapable of being remedied; or
 - (ii) where the Party breaches clauses 4.1, 8, 15.1, 16 or 21; or
 - (iii) where the Party breaches its obligation in clause 13 in respect of a Member's obligations in clauses 4.7, 4.8 and 4.9; or
 - (iv) where the Party breaches its obligations in clause 13(b) in respect of three (3) consecutive meetings; or
 - (v) a Party commits three (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 whether or not the Defaulting Party has rectified such breaches; or
 - (vi) when an Insolvency Event occurs.

14.2 Default under clause 14.1(b)(i), 14.1(b)(ii), 14.1(b)(iii) and 14.1(b)(v),

- (a) If a Defaulting Party causes an Event of Default under clause 14.1(b)(i), 14.1(b)(ii), 14.1(b)(iii) or 14.1(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 twenty (20) Business Days; or
 - (ii) if the Event of Default cannot reasonably be remedied in 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 default must be remedied by no later than three (3) months from the date of the Default Notice.

14.3 Default under clause 14.1(b)(vi),

- (a) If an Event of Default occurs under clause 14.1(b)(vi), the PBC shall as soon as possible, notify the CEO:

- (i) that the Event of Default has occurred;
 - (ii) of the appointment of any administrator, receiver, manager or Liquidator to the PBC; and
 - (iii) subject to subclause (b), when the relevant Event of Default ceases to exist.
- (b) If pursuant to an Event of Default under clause 14.1(b)(vi), an order is made that to wind up the PBC, the Native Title Group shall take steps to cause a replacement registered native title body corporate to be determined as soon as possible and for this Agreement to be assigned to them pursuant to clause 21.

14.4 Consequences of failure to remedy

The Non-defaulting Party may, by notice in writing to the Defaulting Party, suspend the performance of its obligations and the Defaulting Party's rights under this Agreement:

- (a) where clause 14.2(a) applies, until clause 14.2(b) is complied with, or the Event of Default no longer exists, as applicable; or
- (b) where clause 14.3(a) applies, until notice is given to the CEO under clause 14.3(a)(iii), that the relevant Event of Default has ceased and the CEO is satisfied that is the case or, in the case of clause 14.3(b) applying, this Agreement being assigned to the replacement registered native title body corporate.

14.5 Duty to mitigate

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

14.6 Remedies exercised under this clause 14 do not prejudice any other rights a Party may have

Any remedy exercised under this clause 14 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).

15. PARTY DISPUTES

15.1 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 10, a Party must comply with this clause 15 before commencing court proceedings (except proceedings for urgent interlocutory relief).

15.2 Notification

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

15.3 Parties to resolve Party Dispute

During the twenty (20) Business Days after a notice is given under clause 15.215.2 (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 15.4.

15.4 Mediation

- (a) If the Parties cannot agree on a mediator within ten (10) Business Days after a request under clause 15.3, the Chairman of the Resolution Institute 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 15.4:
 - (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 15.4. 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 with twenty (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 clauses 15.2, 15.3 and 15.4, the other Party does not have to comply with those clauses in relation to the Party Dispute before commencing legal proceedings.

16. CONFIDENTIALITY

16.1 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 16 (**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 (otherwise than as a result of a breach of confidentiality by the Receiving Party or any of its permitted disclosees).

16.2 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 clause this clause 16 (**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 (otherwise than as a result of a breach of confidentiality by the Receiving Party or any of its permitted disclosees).

16.3 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 16.4, in connection with any dispute or litigation concerning the Agreement or its subject matter;
- (d) to the Receiving Party's members, officers, employees, agents, auditors, advisers, financiers and consultants and related bodies corporate;

- (e) subject to clause 16.4, to a proposed registered native title body corporate assignee of the PBC's interest under this Agreement; and
- (f) to any judicial, legislative or executive arm of the Government of Western Australia.

16.4 Disclosure requirements

Before making any disclosure to a person under clause 16.3(c), 16.3(e) 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 16.3(e), ensure that the person or entity executes a deed with the PBC, 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 16.

16.5 Party may seek injunction

The Parties acknowledge that:

- (a) they are aware that any breach of this clause 16 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 16 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 16.

16.6 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.

17. TERM AND TERMINATION

17.1 Term

Subject to clause 17.2, this Agreement remains in force from the Commencement Date for as long as the Management Plan remains in force.

17.2 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; or
 - (ii) the Management Plan is revoked and a new plan is substituted for it; or
 - (iii) a new Agreement is substituted for this Agreement; or
 - (iv) the Management Plan is amended so that joint management is no longer required.
- (b) In the circumstances outlined in (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) If the Conservation and Land Management 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:
 - (i) the Management Plan, as amended or replaced from time to time, is amended so that joint management is no longer required; or
 - (ii) a new Agreement is substituted for it.

18. INTELLECTUAL PROPERTY

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

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

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

20. 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.

21. NO ASSIGNMENT WITHOUT CONSENT

The PBC may not assign or otherwise dispose of its rights, title, obligations and interests under this Agreement except:

- (a) if an Event of Default occurs under clause 14.1(b)(vi) and a replacement registered native title body corporate is determined in accordance with clause 14.3(b); or
- (b) if the ILUA is assigned by the PBC under clause 20.3 of the ILUA; or
- (c) otherwise, with the consent of the CEO.

22. 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, then 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 as far as possible shall be remedied as soon as is reasonably practicable by the affected Party; or
- (ii) the Aboriginal Cultural Business is address by the PBC as soon as is reasonably practicable; and
- (iii) no Party shall be required to settle any strike, lockout, or other industrial disturbance on terms that it does not regard as satisfactory.

(c) The Party affected by any event of Force Majeure or the PBC when affected by Aboriginal Cultural Business, shall immediately give notice to the other Parties 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 identify to the extent that is culturally appropriate the Aboriginal Cultural Business;
- (iii) estimate the time during which the Force Majeure or Aboriginal Cultural Business will continue; and

- (iv) specify the measures proposed to be adopted to remedy or abate the Force Majeure or the reasonable steps that will be taken to address the Aboriginal Cultural Business.
- (d) The Party affected by the Force Majeure or Aboriginal Cultural Business shall give immediate notice of the cessation of the delay.
- (e) 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.
- (f) If the Force Majeure or Aboriginal Cultural Business cannot be overcome within three (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.

23. GENERAL

23.1 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.

23.2 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.

23.3 Severance

If any provisions of the Agreement is void, voidable by any Party, unenforceable or illegal according to the law in force in the State 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.

23.4 Election and waiver

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

- (a) no other conduct of a Party (including a failure to exercise, a delay in exercising or a partial exercise of a right or power or any forbearance

or indulgence granted by one Party to another Party in respect of a right or power) operates as a waiver of the right or power or otherwise prevents the exercise of that right or power;

- (b) a waiver of a right or power on one or more occasions by a Party does not operate as a waiver of that right or power if it arises again in the future or prejudices that Party's other rights or powers or future rights or powers in respect of the right or power waived; 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.

23.5 Survival

Clauses 15, 16, 23 (except 23.4), 24 and 25 survive termination of this Agreement.

24. 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 set out 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.

25. DEFINITIONS AND INTERPRETATION

25.1 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 Cultural Business means sorry camp, a funeral, ceremony, ritual or Aboriginal site protection that the directors of the PBC or PBC representatives of the Joint Management Body are required to attend under traditional laws and customs, or which otherwise affects the capacity of the PBC or PBC representatives to perform their obligations under this Agreement in accordance with traditional laws and customs.

Agreement means this joint management agreement and includes the Schedules.

Alternate Member means a person who is nominated under clause 4.2.

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.

Commission means the Conservation and Parks Commission, a 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).

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

Determinations mean the determinations by the Federal Court of Australia in *Cheinmora v State of Western Australia (No 2)* [2013] FCA 768 and *Smith on behalf of the Balangarra People (Balangarra #4) v State of Western Australia* [2015] FCA 1334, 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.

ILUA means the Indigenous Land Use Agreement (Body Corporate) for the Joint Management of the North Kimberley Marine Park, Sir Graham Moore Islands National Park and Lesueur Island Nature Reserve in Balangarra Country, entered into by the State of Western Australia, the Minister for Lands, the Minister, the Commission, the CEO and the PBC.

Insolvency Event means where any one or more of the following occurs to the PBC:

- (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 wound up or deregistered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

Joint Management Body means the body established in clause 2.

Management Plan means the management plan approved under section 14 of the Conservation and Land Management Act in respect of the North Kimberley Marine Park (Balangarra Part).

Member means a Representative Member or an Alternate Member.

Minister means the Minister to whom the administration of the Conservation and Land Management 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 Land Administration Act.

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

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

North Kimberley Marine Park (Balangarra Part) has the same meaning as in the ILUA.

Party means a party to this Agreement.

Representative Member means a person specified under clause 2 and nominated under clause 4.1.

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

Term means the term of this Agreement specified in clause 17.1.

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

Wildlife Conservation Regulations means the *Wildlife Conservation Regulations 1970*.

25.2 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, PBC 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 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".

26. 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:)



Albert Jacob
Signature of witness

J. Sharp
Signature of Chief Executive Officer

ALBERT JACOB
Full name of witness (print)

17.12.16
Date

SHOP C6 CURRAMBINE CENTRAL 6028
Address of witness

Minister for Environment
Occupation of witness

EXECUTED in accordance with s99-5 of)
the *Corporations (Aboriginal and Torres)*
Strait Islander) Act 2006 (Cth) on behalf)
of the **BALANGGARRA)**
ABORIGINAL CORPORATION)
RNTBC ICN 2923 by:

Matthew Waina

Director (Signature)

Clement Maraltadj

Director/Secretary (Signature)

MATTHEW WAINA

Director (print name)

CLEMENT MARALTADJ

Director/Secretary (print name)