

Noongar Heritage Agreement for Local Government

South West Aboriginal Land & Sea Council Aboriginal Corporation, ICN 3832 for and on behalf of the Gnaala Karla Booja People Agreement Group.

Name of Local Government: Shire of Serpentine Jarrahdale

NHALG Reference Number: [Click here to enter text.](#)

Date: 15/09/2021

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Date

THIS AGREEMENT is made on 8/09/2021

Parties

South West Aboriginal Land & Sea Council Aboriginal Corporation, ICN 3832 (SWALSC) for and on behalf of the **Gnaala Karla Booja Agreement Group**.

Local Government: Shire of Serpentine Jarrahdale

ABN or ACN: 98 924 720 841

Recitals

- A. SWALSC represents the Gnaala Karla Booja Agreement Group in relation to Aboriginal Heritage matters in the Agreement Area.
- B. The Local Government wishes to conduct Activities in the Agreement Area.
- C. The Parties have entered into this Agreement to ensure that the Activities are carried out in a manner that protects Aboriginal Sites and Aboriginal Objects to the greatest extent possible.
- D. Under the *Aboriginal Heritage Act 1972 (WA)* the Minister for Aboriginal Affairs and his delegated officers have the responsibility for recording, preserving and protecting places that are of significance in Western Australia. Officers in DPLH may provide the Parties with information about the evaluation and recording of sites upon request to assist with the processes set out in this NHALG.

The Parties agree as follows:

Agreed Terms

1. Definitions and interpretation

1.1 Definitions

In this NHALG, unless the contrary intention appears:

Aboriginal Consultants means:

- (a) those members of the Agreement Group or Noongar persons who have been identified by SWALSC as persons who can speak about the Survey Area; and, where applicable
- (b) persons identified by DPLH in consultation with SWALSC who have previously been recorded on the Aboriginal Heritage Act Register in relation to particular sites in the Survey Area.

Aboriginal Cultural Business means a funeral, event or other ceremony that, in accordance with traditional laws and customs, the members of the Agreement Group are required to attend or that prevents the members of the Agreement Group from attending to day to day business.

Aboriginal Heritage means the cultural heritage value of an Aboriginal Site or of an Aboriginal Object.

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

Aboriginal Heritage Act Minister means the Minister in the Government of the State from time to time responsible for the administration of the Aboriginal Heritage Act.

Aboriginal Heritage Act Register means the register of places and objects established and maintained under section 38 of the Aboriginal Heritage Act.

Aboriginal Heritage Act Registrar means the 'Registrar of Aboriginal Sites' appointed under section 37(1) of the Aboriginal Heritage Act.

Aboriginal Heritage Act Section 16 Application means an application to the Aboriginal Heritage Act Registrar for authorisation under section 16 of the Aboriginal Heritage Act to enter upon an Aboriginal Site and to excavate the site or to examine or remove anything on or under the site.

Aboriginal Heritage Act Section 18 Application means an application to the Aboriginal Heritage Act Minister for consent under section 18 of the Aboriginal Heritage Act to use land.

Aboriginal Heritage Agreement means an agreement with SWALSC or one or more members of the Agreement Group concerning Aboriginal Heritage Surveys in the Agreement Area. To avoid doubt, this NHALG is a form of Aboriginal Heritage Agreement.

Aboriginal Heritage Liaison Officer means the person appointed under clause 10.1(a)(ii).

Aboriginal Heritage Service Provider means the person or company engaged by SWALSC, or by the Local Government, to plan and carry out a Survey or Surveys in the Agreement Area. The Aboriginal Heritage Service Provider may be the same as the Principal Aboriginal Heritage Consultant, or may be a separate entity or person. The Aboriginal Heritage Service Provider may also be SWALSC.

Aboriginal Heritage Survey means a survey conducted to assess the potential impacts of Activities on Aboriginal Heritage, whether or not conducted under this NHALG and may include anthropological, ethnographic or archaeological investigations as appropriate. To avoid doubt, an Aboriginal Heritage Survey includes a Survey.

Aboriginal Object means an object to which the Aboriginal Heritage Act applies by operation of section 6 of the Aboriginal Heritage Act.

Aboriginal Site means a place to which the Aboriginal Heritage Act applies by operation of section 5 of the Aboriginal Heritage Act, including sites that are not on the Aboriginal Heritage Act Register.

ACMC means the Aboriginal Cultural Material Committee established under section 28 of the Aboriginal Heritage Act.

Activity means physical works or operations, involving entry onto the Agreement Area (whether on the surface of the land or waters, or under or over that surface).

Activity Notice means a notice issued by the Local Government to SWALSC under clause 8.2.

Activity Notice Response means notice given by SWALSC to the Local Government under clause 8.3(a).

Activity Program means all Activities described in an Activity Notice.

Agreement Area means the area to which this NHALG applies, being the land and waters described in Schedule 3.

Agreement Group means the Native Title Agreement Group as defined in the ILUA.

Business Day means a day that is not a Saturday, Sunday or public holiday in Perth, Western Australia.

CATSI Act means the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

Confidential Information has the meaning given in clause 19.1.

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

CPI Calculation means:

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

where:

A = the initial base payment under this NHALG as set out in Schedule 5;

CPI_n = the latest June quarterly CPI number as published each year by the Australian Bureau of Statistics;

CPI_{base} = the June 2014 quarterly CPI number as published by the Australian Bureau of Statistics in the second half of the 2014 calendar year.

DPLH has the meaning given to Department in section 4 of the Aboriginal Heritage Act and as at the Effective Date is the State's Department of Planning, Lands and Heritage.

DPLH Guidelines means the Guidelines with respect to preparing Aboriginal Heritage Survey reports and applications to the ACMC under section 18 of the Aboriginal Heritage Act published on the DPLH website as modified from time to time.

Due Diligence Guidelines means the current Aboriginal heritage due diligence guidelines issued by the DPLH as amended from time to time.

Effective Date means the date on which this NHALG comes into force and effect as an agreement between the Parties, as more particularly described in clause 4.1.

Estimated Survey Costs has the meaning given in clause 9.5(b).

Event of Default means any of the events described in clause 17.1(b).

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 a government authority or official by law.

GPS means a global positioning system device.

Ground Disturbing Activity means any Activity that is not Low Ground Disturbance Activity or Minimal Impact Activity.

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

Heritage Information Submission Form means the form referred to in Schedule 7 and, if that form is up-dated by DPLH, that form as set out at the relevant time on the DPLH website.

ILUA means the Indigenous Land Use Agreement described in items 1 to 4 of Schedule 2.

Insolvency Event means where a Party:

- (a) commits an act of insolvency under and for the purposes of the Corporations Act 2001 (Cth) or the CATSI Act; or
- (b) is placed under external administration under and for the purposes of Chapter 5 of the Corporations Act 2001 (Cth); or
- (c) is placed under external administration under and for the purposes of Chapter 11 of the CATSI Act; or
- (d) is unable to pay all its debts as and when they become due and payable.

Last Fieldwork Day has the meaning given in clause 12.1.

Local Government Procurement Requirements means the Local Government Act 1995 (WA), the Local Government (Functions and General) Regulations 1996 (WA), and the Local Government Purchasing Policy, as amended from time to time.

Local Government Purchasing Policy means a purchasing policy adopted by the Local Government under regulation 11A of the Local Government (Functions and General) Regulations 1996 (WA).

Low Ground Disturbance Activity means any Activity that involves only minor ground disturbance. Low Ground Disturbance Activity includes the following:

- (a) sampling using hand methods (including hand augering); and
- (b) geophysical, biological, environmental or conservation surveys, including installing monitoring plots and marker posts; and
- (c) establishing temporary camps for exploration, environment or conservation purposes, where the establishment of the temporary camp does not require the removal of trees or shrubs and does not require any earthworks; and
- (d) reconnaissance and patrol in light vehicles; and
- (e) drilling using hand held rig or rig mounted on 4 wheel vehicle and only on cleared tracks; and
- (f) drilling using existing access and without the construction of new roads and tracks (and where use of the existing roads or tracks involves no disturbance to plant roots); and
- (g) digging pitfall traps and temporary trenches for small animals; baiting and installation of temporary fences and nest boxes; and

- (h) removing soil and flora samples and cores up to 20 kilograms, and up to a depth of two metres from the natural surface; and
- (i) collecting and removing loose rocks, firewood, flora or fauna; and
- (j) fossicking for rocks and gemstones; and
- (k) conducting tests for water, site contamination, or other scientific or conservation purposes; and
- (l) maintaining and refurbishing existing facilities, including recreation and camping facilities, water points, signs and other structures; and
- (m) maintaining but not widening existing roads, drains, culverts, bridges, trails, tracks, fence lines and firebreaks; and
- (n) erecting signage and barriers using hand and mechanical augers; and
- (o) revegetating of degraded areas, including fencing areas of vegetation; and
- (p) rehabilitating previously disturbed areas, including ripping, scarifying, matting, brushing, seeding and planting; and
- (q) carrying out species recovery programs; and
- (r) erosion control activities around existing roads, infrastructure or facilities; and
- (s) weed control using hand, mechanical and chemical methods of control excluding excavation or furrowing of soil; and
- (t) conducting tourism operations that:
 - (i) are based in established facilities; or
 - (ii) require the establishment of new facilities that require no, or only minor, ground disturbance; and
- (u) any other use of hand-held tools, not referred to in the preceding paragraphs; and
- (v) events such as car rallies and marathons using existing roads, stock routes or pastoral lease tracks; and
- (w) walking, driving or riding tours using existing roads, stock routes, pastoral lease tracks or historical trails (official or unofficial); and
- (x) exercise of grazing rights permitted under Division 3, Subdivision G of the *Native Title Act 1993*; and
- (y) the laying of water pipelines across the ground where no excavation is required; and

- (z) any other Activities agreed in writing by the Parties to be Low Ground Disturbance Activities.

Minimal Impact Activity means any Activity that involves minimal or no ground disturbance. Minimal Impact Activity includes the following:

- (a) Walking, photography, filming; and
- (b) Aerial surveying and magnetic surveys; and
- (c) Use of existing tracks and water courses; and
- (d) Environmental monitoring; and
- (e) Water and soils sampling; and
- (f) Fossicking using hand held instruments; and
- (g) Spatial measurement; and
- (h) Scientific research, using hand held tools; and
- (i) Cultivation and grazing in previously cultivated/grazed areas; and
- (j) Maintenance of existing paths, walls, fences, roads, tracks, bridges, public infrastructure (e.g. electrical, water, sewage) and community utilities within the existing footprint and adjacent service areas; and
- (k) Feral animal eradication, weed, vermin and pest control, vegetation control and fire prevention; but excluding construction of fences, infrastructure and clearing of native vegetation; and
- (l) Light vehicular access and camping using existing tracks and involving no clearance of vegetation.

Noongar Boodja Trust Deed means the Trust Deed as defined in the ILUA.

Noongar Boodja Trustee means the Trustee appointed under the Noongar Boodja Trust Deed from time to time.

NHALG means this Noongar Heritage Agreement for Local Government.

Party means a party to this NHALG and **Parties** mean any 2 or more of them as the case requires.

Preliminary Advice means advice, in writing, complying with clause 12.3(a).

Principal Aboriginal Heritage Consultant means the anthropologist, archaeologist or other appropriately qualified professional nominated and agreed under clauses 8.3(d) or 9.6.

Program of Proposed Works means the program of proposed works for a specified period prepared by a Local Government that will be carried out, wholly or partially, in the Agreement Area.

Regional Corporation has the meaning given in the Noongar Boodja Trust Deed.

Related Agreement Areas has the same meaning as given in the ILUA.

Related Agreement Group means the Related Native Title Agreement Group as defined in the ILUA

Sensitive Heritage Information means culturally restricted information about Aboriginal Sites or any other items of Aboriginal Heritage, provided by the Aboriginal Consultants during the course of or in relation to a Survey, including where such information is contained in any Survey Report.

Site Avoidance Model means a Survey methodology involving the identification of areas where Activity should not be undertaken because of the presence of an Aboriginal Site within that area.

Site Avoidance Survey means a Survey carried out using the Site Avoidance Model.

Site Identification Model means a Survey methodology involving the identification of Aboriginal Sites.

Site Identification Survey means a Survey carried out using the Site Identification Model.

Survey means an Aboriginal Heritage Survey conducted under this NHALG.

Survey Agreement Date has the meaning given in clauses 9.1(a) or 9.1(b).

Survey Agreement Period has the meaning given in clause 9.1(d).

Survey Area means the area of land or waters the subject of a Survey, or proposed to be the subject of a Survey.

Survey Methodology means either a Site Avoidance Model or a Site Identification Model.

Survey Report means a report of the results of a Survey, containing the information set out in clause 12.4 and Schedule 6.

Survey Team has the meaning given in clause 10.1.

1.2 Interpretation — general

In this NHALG, unless the contrary intention appears:

- (a) the headings and subheadings in this NHALG are inserted for guidance only and do not govern the meaning or construction of any provision of this NHALG;
- (b) words expressed in the singular include the plural and vice versa;
- (c) a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure to this NHALG and a reference to this NHALG includes any recital, schedule or annexure;

- (d) a reference to a document, agreement (including this NHALG) or instrument is to that document, agreement or instrument as varied, amended, supplemented, or replaced;
- (e) a 'person' includes a company, partnership, firm, joint venture, association, authority, corporation or other body corporate, trust, public body, Local Government or Government Proponent;
- (f) a reference to a 'person' (including a Party to this NHALG) includes a reference to the person's executors, administrators, successors and permitted assigns, transferees or substitutes (including persons taking by permitted novation);
- (g) a reference to a person, statutory authority or government body (corporate or unincorporate) established under any statute, ordinance, code, legislation or other law includes a reference to any person (corporate or unincorporate) established or continuing to perform the same or substantially similar function;
- (h) a reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not it is in writing;
- (i) 'including' means 'including but not limited to';
- (j) a reference to a statute, ordinance, code, legislation or other law includes regulations and other instruments under it and amendments, re-enactments, consolidations or replacements of any of them;
- (k) a reference to dollars or \$ is a reference to the currency of Australia;
- (l) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (m) a reference to a month is to be interpreted as the period of time commencing at the start of any day in one of the calendar months and ending immediately before the start of the corresponding day of the next calendar month or if there is no such day, at the end of the next calendar month;
- (n) references to time are to local time in Perth, Western Australia;
- (o) where time is to be reckoned from a day or event, that day or the day of that event is excluded;
- (p) if the day on or by which a person must do something under this NHALG is not a Business Day, the person must do it on or by the next Business Day; and
- (q) if any conflict arises between the terms and conditions contained in the clauses of this NHALG and any recitals, schedules or annexures to this NHALG, the terms and conditions of the clauses of this NHALG shall prevail.

1.3 Interpretation — liabilities and benefits

In this NHALG, unless the contrary intention appears:

- (a) any agreement, representation, warranty or indemnity set out in this NHALG which is in favour of SWALSC and the members of the Agreement Group is for the benefit of them jointly and severally; and
- (b) any agreement, representation, warranty or indemnity in favour of the Local Government, where the Local Government comprises more than one entity, is for the benefit of them jointly and severally; and
- (c) any agreement, representation, warranty or indemnity which is given by the Local Government, where the Local Government comprises more than one entity, binds them jointly and severally.

2. No Application of this NHALG to Emergency Activities

This Agreement does not apply to Activities which are urgently required to secure life, health or property, or to prevent or address an imminent hazard to life, health or property of any person.

3. Execution and effect of this NHALG

- (a) Execution of this NHALG may take place by SWALSC and the Local Government executing any number of counterparts of this NHALG, with all counterparts together constituting the one instrument.
- (b) If this NHALG is to be executed in counterparts, the Parties must execute sufficient numbers for each of them to retain one instrument (constituted by the counterparts).
- (c) Notwithstanding the prior provisions of this clause 3, the Parties acknowledge that, in order to avoid possible confusion, it is their intention that all Parties shall execute one instrument (in sufficient copies for each Party to retain an executed copy).

4. Term and termination

4.1 Commencement

This NHALG comes into force and effect as between the Local Government and SWALSC on the date that the last of those Parties executes this NHALG.

4.2 Termination

This NHALG shall terminate on the occurrence of whichever of the following events is first to occur:

- (a) all Parties agree in writing to end this NHALG;

- (b) as referred to in clause 17.2(d), a court order is made to wind up either Party as the result of an Event of Default.
- (c) At any time following the commencement of the NHALG under clause 4.1 either party may, at its sole discretion, terminate this NHALG for its convenience by giving the other Party 30 days' written notice (in which case the NHALG will terminate upon the expiry of that notice period).

4.3 Termination or de-registration of ILUA does not affect NHALG

Notwithstanding the termination or de-registration of the ILUA, this NHALG shall continue to apply to the Parties with full force and effect, to the extent that this NHALG has commenced under clause 4.1.

4.4 Survival of provisions and entitlements upon termination

This NHALG ceases to have any force or effect on and from the date of termination, save that:

- (a) any entitlements, obligations or causes of action which accrued under this NHALG prior to termination survive termination;
- (b) clauses 1, 4.4, 6, 12.7, 13, 18, 19, 21, 22, 25.2, 25.3, 25.4 and 25.6 survive termination.

5. Area to which this NHALG applies

This NHALG applies to the Agreement Area.

6. Authority, representations and warranties

6.1 SWALSC representations and warranties

SWALSC represents and warrants, for the benefit of the Local Government, that:

- (a) it represents the members of the Agreement Group in respect of Aboriginal Heritage matters within the Agreement Area; and
- (b) all conditions and things required by applicable law to be fulfilled or done (including the obtaining of any necessary authorisations) in order to enable it lawfully to enter into, exercise its rights and perform its obligations under, this NHALG have been fulfilled or done; and
- (c) it knows of no impediment to it performing its obligations under this NHALG.

6.2 Local Government representations and warranties

The Local Government represents and warrants, for the benefit of SWALSC and the members of the Agreement Group, that:

- (a) it is authorised to enter into this NHALG; and
- (b) all conditions and things required by applicable law to be fulfilled or done (including the obtaining of any necessary authorisations) in order to enable the Local Government lawfully to enter into, exercise its rights and perform its obligations under, this NHALG have been fulfilled or done; and
- (c) it knows of no impediment to the Local Government performing its obligations under this NHALG.

6.3 Reliance on warranties

Each Party acknowledges that the other Parties have relied on the warranties provided in clauses 6.1 or 6.2 (as the case may be) to enter into this NHALG.

6.4 Acknowledgement regarding legal advice

Each Party acknowledges that it has:

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

7. Cooperation regarding Aboriginal Sites and proposed Activities

7.1 Early exchange of information — Program of Proposed Works

The Parties acknowledge the importance of an early exchange of information between the Local Government and SWALSC about proposed Activities in the Agreement Area to enable informed decisions to be made. In accordance with this objective:

- (a) wherever practical, the Local Government shall provide SWALSC with a Program of Proposed Works for which Activity Notices are likely to be provided in the foreseeable future; and
- (b) where, as a result of receiving the Program of Proposed Works SWALSC becomes aware of any particular cultural heritage concern arising from a proposal to conduct an Activity (including concerns as to the extent of the proposed Activity and the number of sites that may be affected), SWALSC will use its best endeavours to raise those concerns with the Local Government as soon as practicable after receipt of the Program of Proposed Works.

7.2 Due Diligence Guidelines

- (a) The Parties acknowledge the application of the Due Diligence Guidelines as part of the assessment process for considering the impact of any proposed Activity on Aboriginal Heritage; and
- (b) Following the issuing of the Activity Notice if there is any doubt as to the impact of any proposed Activity on Aboriginal Heritage after considering the Due Diligence Guidelines, the Parties may seek the advice and assistance of the Aboriginal Heritage Act Registrar or other relevant officer from DPLH, with respect to the provision of further information if appropriate.

7.3 No breach of Heritage Act

- (a) Nothing in this NHALG purports to authorise any act or omission that would be in breach of the Aboriginal Heritage Act.
- (b) If the Local Government carries out any Activities through contractors, then the Local Government shall ensure that such contractors are made aware of the obligations of the Aboriginal Heritage Act and of this NHALG.

8. The Activity Notice

8.1 Circumstances where no Activity Notice needs to be given

- (a) If the Local Government has reasonable grounds to form the opinion that no Survey is required (taking into account the matters referred to in clause 8.1(b) and the Due Diligence Guidelines), the Local Government may elect not to issue an Activity Notice in respect of a proposed Activity Program.
- (b) The Local Government does not have to issue an Activity Notice where the Activities proposed to be conducted consist entirely of:
 - (i) Minimal Impact Activities; or
 - (ii) Low Ground Disturbance Activities of a class that SWALSC has notified in writing to the Local Government need not be the subject of an Activity Notice.
- (c) If the Local Government has any doubt, including because of consideration of the Due Diligence Guidelines, as to whether clauses 8.1(a) and 8.1(b) operate to exempt the Local Government from issuing an Activity Notice, then the Local Government shall issue the Activity Notice in any event.

8.2 Giving the Activity Notice

- (a) Except where clause 8.1(a) or (b) applies, if the Local Government intends to undertake an Activity in the Agreement Area, it shall issue a notice in writing to SWALSC in accordance with this clause 8.2 (Activity Notice).

- (b) The main purposes of an Activity Notice are:
- (i) to provide adequate information to assist SWALSC to make an assessment as to whether a Survey is required and if so, whether a Site Identification Survey or a Site Avoidance Survey; and
 - (ii) if a Survey is required, to provide information relevant to the conduct of that Survey.
- (c) The Activity Notice shall contain:
- (i) the basic information specified in part 1.1 of Schedule 4; and
 - (ii) the key statements and nominations specified in part 1.2 and the detailed contents specified in part 1.3 of Schedule 4; and
- may also contain:
- (iii) the additional contents specified in part 2 of Schedule 4.
- (d) If the Local Government omits to specify or nominate, in an Activity Notice, any of the particular items referred to in parts 1.2 and 1.3 of Schedule 4, then the default provisions provided in part 3 of Schedule 4 shall apply.
- (e) The Parties acknowledge that the Local Government may require compliance with the DPLH Guidelines where the Local Government envisages that it may wish to file an Aboriginal Heritage Act Section 18 Application or Aboriginal Heritage Act Section 16 Application.
- (f) SWALSC acknowledges that the inclusion in an Activity Notice of the matters described in parts 1.2(c) to (f) of Schedule 4 does not prejudice any statement by the Local Government that it considers that no Survey is required.
- (g) To avoid doubt, the Local Government may modify any aspect of the Activity Notice up to the time of receiving the Activity Notice Response. Proposed modifications to the Activity Notice after receipt of the Activity Notice Response shall be discussed between the Parties but, acting reasonably, SWALSC shall have the right to request a fresh Activity Notice instead of dealing with the proposed modified Activity Notice. If a fresh Activity Notice is issued the time limits in clause 16.1(a) shall apply as if that were a new Activity Notice. The Local Government may also request any of the items referred to in part 1.2(f) of Schedule 4 at any later time, in accordance with clause 12.2.

8.3 Considering the Activity Notice and deciding whether a Survey is required

- (a) SWALSC will consider the Activity Notice and shall, within 15 Business Days after receipt of such Activity Notice or modified Activity Notice, notify the Local Government in writing as to whether SWALSC considers that a Survey is required (**Activity Notice Response**). In coming to its decision SWALSC shall take into account:
- (i) the extent to which the Activity Program described in the Activity Notice consists of Low Ground Disturbance Activities; and
 - (ii) the extent to which the land and waters the subject of the Activity Notice have been the subject of a previous Aboriginal Heritage Survey. In considering this factor, SWALSC will consider whether it is clear from the reported results of the previous Aboriginal Heritage Survey that the Activities disclosed in the Activity Notice can be carried out without damaging Aboriginal Heritage; and
 - (iii) any relevant previous decisions by SWALSC under clause 8.3(b); and
 - (iv) any other matter SWALSC reasonably considers relevant, including if appropriate a visit to the Agreement Area with representatives from the Local Government and from DPLH.
- (b) The Local Government shall be free to carry out any Activity in the Agreement Area without conducting a Survey where:
- (i) SWALSC so agrees in writing; or
 - (ii) SWALSC waives its right under this NHALG to require a Survey of the proposed Activity;
- whether in an Activity Notice Response or otherwise.
- (c) Either Party may request additional information from the other at any time to enable discussion and proper consideration of the Activity Notice.
- (d) If in its Activity Notice Response SWALSC indicates that it considers that a Survey is required, then the Activity Notice Response shall set out the following additional information:
- (i) if different to the opinion given by the Local Government in the Activity Notice in accordance with part 1.2(a) of Schedule 4 a statement of the extent to which the Activity Program consists of Low Ground Disturbance Activity, in SWALSC's opinion; and
 - (ii) if different to the nomination by the Local Government in the Activity Notice in accordance with part 1.2(c) Schedule 4, a nomination of SWALSC's proposed Survey Methodology; and

- (iii) if different to the date or dates nominated by the Local Government in the Activity Notice in accordance with part 1.2(e) of Schedule 4, a nomination of a proposed Survey start date or finish date taking into account the availability of the Aboriginal Heritage Service Provider, if contracted by SWALSC; and
- (iv) if practicable, and subject to clause 9.5(a), an estimate of costs to conduct the Survey; and
- (v) where consistent with the Local Government Procurement Requirements for direct contracting of SWALSC, an election, or not, by SWALSC as to whether it will:
 - (A) contract the Aboriginal Heritage Service Provider; or
 - (B) perform the functions of the Aboriginal Heritage Service Provider itself and, if so, whether it will need to contract a Principal Aboriginal Heritage Consultant; and
- (vi) where consistent with the Local Government Procurement Requirements for direct contracting of SWALSC, if electing to contract the Aboriginal Heritage Service Provider, a nomination of SWALSC's preferred proposed Aboriginal Heritage Service Providers and (if different to the Aboriginal Heritage Service Provider,) Principal Aboriginal Heritage Consultants; and
- (vii) if SWALSC does not elect either to be the Aboriginal Heritage Service Provider or to contract the Aboriginal Heritage Survey Provider under clause 8.3(d)(v), it will provide the names and contact details of the proposed Aboriginal Consultants for the Survey. If these details are not provided to the Local Government either in the Activity Notice Response or within 10 Business Days after the Survey Agreement Date, the Local Government may contact DPLH for details of persons identified by DPLH who have previously been recorded on the Aboriginal Heritage Register in relation to particular sites in the Survey Area.

8.4 Disagreements following Activity Notice Response

If, following receipt by the Local Government of the Activity Notice Response, the Parties are in disagreement on any matter concerning the conduct of a proposed Survey, the Parties shall then endeavour to agree on all outstanding matters by following the provisions of clause 9. To avoid doubt, until the Parties have consulted under clause 9 during the period of 20 Business Days referred to in clause 9.1(d), no Party is entitled to invoke the dispute resolution provisions of clause 18 in respect of any matter the subject of this clause 8.

9. Survey agreement and planning

9.1 Operation of this clause 9 – Survey Agreement Date

- (a) Subject to clause 9.1(b), the date on which agreement is reached on all matters referred to in clauses 9.2 to 9.7 (inclusive) is the **Survey Agreement Date**.
- (b) If after receipt by the Local Government of the Activity Notice Response under clause 8.3(a) the Parties are in agreement about all matters regarding a proposed Survey, then the date of receipt of the Activity Notice Response shall be deemed to be the Survey Agreement Date referred to in clause 9.1(a).
- (c) The Parties' discussions under this clause 9 shall be conducted reasonably and in good faith.
- (d) The Parties shall ensure that the Survey Agreement Date occurs within 20 Business Days after the date of receipt by the Local Government of the Activity Notice Response (**Survey Agreement Period**).
- (e) If any of the matters referred to in clauses 9.2 to 9.7 (inclusive) cannot be agreed during the Survey Agreement Period, then either Party may serve a notice of Dispute in accordance with clause 18.9(a) on or after the first Business Day after the expiry of the 20 Business Days comprising the Survey Agreement Period referred to in 9.1(d).

9.2 Whether a Survey is required

- (a) The Parties' discussions regarding whether a Survey is required will be guided by the matters in clauses 8.3(a), and 9.2(b).
- (b) The following provisions shall apply to the Parties' discussions about whether a Survey is required.
 - (i) Where no previous Aboriginal Heritage Survey (whether under this NHALG or otherwise) has been undertaken in relation to the area of land and waters the subject of the Activity Notice, there is a non-binding presumption that a Survey is required unless otherwise agreed or waived in accordance with clause 8.3(b).
 - (ii) Where this NHALG does not deal with the particular circumstance as to whether a Survey is required, there is a non-binding presumption that a Survey is required.
 - (iii) Where a previous Aboriginal Heritage Survey (whether conducted under this NHALG or otherwise) has, or if not clear, reasonably appears to have, covered the area the subject of the Activity Notice, there is no presumption either way as to whether a Survey is required. Subject to confidentiality provisions, the Local Government must (if it is in their

possession or control) provide by way of notice a copy of the written report of the previous Aboriginal Heritage Survey to SWALSC (if such copy has not already been provided with the Activity Notice).

- (iv) Subject to the presumptions in clauses 9.2(b)(i) and 9.2(b)(ii), and the matters described in clause 9.2(b)(iii), in determining whether a Survey is required, the Parties will have regard to the following matters:
- (A) the nature of the Activities outlined in the Activity Notice; and
 - (B) whether there has been any previous Aboriginal Heritage Survey and the age, methodology, participants, standard and results of that survey; and
 - (C) the extent to which the land has been affected by previous ground disturbing activities; and
 - (D) whether the Aboriginal Heritage Act Register discloses any Aboriginal Sites on the land the subject of the Activity Notice; and
 - (E) any relevant matters relating to Noongar practices, laws and customs; and
 - (F) any other relevant matters raised by any of the Parties.

9.3 Agreements regarding Low Ground Disturbance Activity

- (a) The Parties' discussions to confirm the extent of Low Ground Disturbance Activity, and whether a Survey is required in respect of such Activity, will be guided by the definition of Low Ground Disturbance Activity in this NHALG.
- (b) If SWALSC considers that a Survey in respect of any Low Ground Disturbance Activity is required, then SWALSC and the Local Government will each use their reasonable endeavours to address the concerns of SWALSC, by modifying the proposed Low Ground Disturbance Activity to limit the impact it may have on Aboriginal Heritage to the extent necessary to remove the need to conduct a Survey.

9.4 Selection of Survey Methodology

The discussions between SWALSC and the Local Government about Survey Methodology shall be conducted with a view to reaching agreement on a Survey Methodology that is fit for purpose, having regard to SWALSC's concerns for the Survey Area and the Activities proposed by the Local Government.

9.5 Estimate of costs of Survey when SWALSC is contracting Aboriginal Heritage Service Provider

Where SWALSC has elected to be the Aboriginal Heritage Service Provider or to contract an Aboriginal Heritage Service Provider under 8.3(d)(v), the following provisions apply:

- (a) the Parties acknowledge that it may not always be possible for SWALSC or SWALSC's nominated Aboriginal Heritage Service Provider to provide an accurate cost estimate at the time of providing an Activity Notice Response, and that a cost estimate in many cases may need to be provided, or revised, following resolution of all other matters under this clause 9.
- (b) if an estimate of Survey costs has not been provided earlier, then SWALSC must ensure that by the end of the Survey Agreement Period, the Aboriginal Heritage Service Provider submits a written and itemised estimate of Survey costs to the Local Government for approval by the Local Government (the **Estimated Survey Costs**).

9.6 Selection of Aboriginal Heritage Service Provider and Principal Aboriginal Heritage Consultant

- (a) If SWALSC is contracting an Aboriginal Heritage Service Provider, and SWALSC's Activity Notice Response does not identify SWALSC's nominated Aboriginal Heritage Service Provider and (if different to the Aboriginal Heritage Service Provider) the Principal Aboriginal Heritage Consultant, then SWALSC will advise the Local Government of these nominations during the Survey Agreement Period.
- (b) The Parties acknowledge that, if SWALSC is contracting an Aboriginal Heritage Service Provider, the Local Government will not usually have any role in nominating an Aboriginal Heritage Service Provider or a Principal Aboriginal Heritage Consultant (if different), subject however to the rights of the Local Government under clause 16.1(e) in the event of delays.
- (c) If the Local Government or SWALSC has reasonable concerns about the expense, competence or impartiality of the Aboriginal Heritage Service Provider or the Principal Aboriginal Heritage Consultant (as the case may be) to be contracted by SWALSC or the Local Government (as the case may be), it may request the other Party to consider another anthropologist, archaeologist or appropriately qualified professional to act as Aboriginal Heritage Service Provider or the Principal Aboriginal Heritage Consultant (as the case may be).
- (d) If the Parties cannot reach agreement on the Aboriginal Heritage Service Provider or the Principal Aboriginal Heritage Consultant (as the case may be) to be contracted by SWALSC or the Local Government within the Survey Agreement Period, then in addition to and without limiting the Local Government's general rights under clause 16.1(e), SWALSC or the Local

Government (whichever is the non-contracting party) may nominate an alternative proposed Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant and the other Party shall promptly respond to any such nomination and shall ensure that it does not unreasonably withhold its approval to appointing such nominee as the Aboriginal Heritage Service Provider or the Principal Aboriginal Heritage Consultant (as the case may be).

9.7 Estimate of time for Survey commencement or completion

If following the Activity Notice Response and where SWALSC is contracting the Aboriginal Heritage Service Provider the Parties are not in agreement about the date of commencement of fieldwork for the Survey or the date of completion of fieldwork for the Survey (as the case may be), then during the Survey Agreement Period, the Parties shall agree on such date or dates.

10. Survey Team and commencement of Survey

10.1 Survey team

- (a) As soon as possible after the Survey Agreement Date, and where either SWALSC or the Local Government is contracting the Aboriginal Heritage Service Provider, the Aboriginal Heritage Service Provider, in conjunction with the Principal Aboriginal Heritage Consultant if appointed, after receiving names and contact details of the Aboriginal Consultants from SWALSC or DPLH in accordance with 8.3(d)(vii), will organise a Survey Team (Survey Team), which shall consist of:
 - (i) Between 2 and 8 Aboriginal Consultants, with appropriate experience and authority, as are necessary, in the opinion of the Aboriginal Heritage Service Provider in consultation with SWALSC and agreed to by the Parties, to examine the Survey Area and assist in the Survey; and
 - (ii) if considered necessary by the Aboriginal Heritage Service Provider and agreed to by the Parties, an Aboriginal Heritage Liaison Officer, who will be responsible for Survey logistics and on-ground operations; and
 - (iii) where considered necessary by the Aboriginal Heritage Consultants, SWALSC or the Aboriginal Heritage Service Provider, and agreed to by the Parties, another anthropologist of a specific gender; and
 - (iv) where the Survey being conducted is a Site Identification Survey, or where considered necessary by the Aboriginal Heritage Service Provider and agreed to by the Parties, including during the course of the Survey, an archaeologist.

- (b) Where considered necessary by the Aboriginal Heritage Service Provider and agreed to by SWALSC and the Local Government, more than one archaeologist may be appointed to the Survey Team.
- (c) The number of paid Aboriginal Consultants to be appointed to the Survey Team will not be more than the number specified in clause 10.1(a)(i) unless particular circumstances can be demonstrated to exist including, for example:
 - (i) a large number of registered Aboriginal Sites are known to exist within a Survey Area and the number of Aboriginal people who have authority to speak for those Aboriginal Sites and should be consulted about them is greater than 8; and/or
 - (ii) the Survey Area crosses the boundary of the Agreement Area and one or more Related Agreement Areas.

In these circumstances the Local Government and SWALSC must agree on the number of additional Aboriginal Consultants for the Survey Team.

- (d) Additional Aboriginal Consultants may accompany the Survey Team but the Local Government will not be liable for additional costs.
- (e) The Local Government may send one or two nominees with appropriate authority on the Survey to assist the Survey Team conducting the Survey with provision of information and requests where required.

10.2 Commencement and conduct of Survey

- (a) If SWALSC is contracting the Aboriginal Heritage Service Provider, SWALSC will use its, and must ensure that the Aboriginal Heritage Service Provider and the Principal Aboriginal Heritage Consultant (if different to the Aboriginal Heritage Service Provider) each uses its best endeavours to commence the Survey within the time agreed by the Parties, or in the absence of agreement within 30 Business Days after the Survey Agreement Date unless clauses 11(c) and 18.9 apply, in which case the time for commencement of the Survey will be extended in accordance with the timeframes set out in the relevant clauses if the Dispute is resolved.
- (b) SWALSC and/or the Local Government (depending upon which is contracting the Aboriginal Heritage Service Provider) will ensure that the Survey Team observes and complies with any safety and other procedures and policies implemented from time to time by the Local Government over the Survey Area. The Local Government will provide SWALSC with details of and explain these procedures and policies in order for SWALSC to provide these details and explain the procedures and policies to the Aboriginal Consultants before the Survey commences. The Local Government will also provide members of the Survey Team (and any other attending members of the Agreement Group) with protective clothing and equipment if reasonably necessary in all the circumstances. To the extent

that the Local Government has control of the Survey Area, the Local Government shall take such measures as are practicable to ensure that the members of the Survey Team are not exposed to hazards.

- (c) SWALSC acknowledges that the members of the Survey Team are not employees of the Local Government, and that the Local Government is not required to have insurance in place for the protection of Survey Team members. The onus is on the Party contracting the Aboriginal Heritage Service Provider to ensure that the Aboriginal Heritage Service Provider has insurance in place to adequately cover the Survey Team.
- (d) The Survey Team will as appropriate in the circumstances:
 - (i) visit the Survey Area; and
 - (ii) identify any Aboriginal Sites in the Survey Area or, in the case of a Site Avoidance Survey, determine the area to be avoided due to the presence of an Aboriginal Site; and
 - (iii) provide sufficient information to the Aboriginal Heritage Service Provider, or any other heritage consultant accompanying the Survey Team, to enable them to:
 - (A) record the external boundaries of all Aboriginal Sites or, in the case of a Site Avoidance Survey, the area to be avoided due to the presence of an Aboriginal Site, using a GPS; and
 - (B) record relevant Aboriginal Site information or, in the case of a Site Avoidance Survey, the area to be avoided, on a Heritage Information Submission Form; and
 - (C) mark the external boundaries of identified Aboriginal Sites or, in the case of a Site Avoidance Survey, the external boundaries of the area to be avoided due to the presence of an Aboriginal Site, on a map; and
 - (D) make recommendations for the protection and management of any Aboriginal Site identified by the Survey Team; and
 - (E) generally, prepare a Survey Report that complies with the requirements of clause 12.
- (e) When in the field, and in response to Aboriginal Heritage concerns raised by the Aboriginal Consultants, the representatives of the Local Government nominated under clause 10.1(e):
 - (i) shall withdraw from discussion and inspections in order to ensure the confidentiality of Sensitive Heritage Information or other information pertaining to Aboriginal Sites; and

- (ii) may make modifications to the Activity Program and the Survey Team will then proceed to assess the Aboriginal Heritage significance of the modified Activity Program in accordance with the applicable Survey Methodology.

11. Payment for Surveys when SWALSC is contracting the Aboriginal Heritage Service Provider

Where SWALSC has elected to contract an Aboriginal Heritage Service Provider or to perform the functions of the Aboriginal Heritage Service Provider under clause 8.3(d)(v), the following provisions apply:

- (a) The Local Government shall pay the costs and expenses of the Survey at the rates set out in Schedule 5.
- (b) The Local Government agrees to pay 100% of the approved Estimated Survey Costs to SWALSC:
 - (i) within 10 Business Days before the commencement of the Survey, or
 - (ii) within 10 Business Days after the approval of the Estimated Survey Costs under clause 9.5(b),
 whichever is the earlier (the Relevant Period).
- (c) If the Local Government fails to pay the Estimated Survey Costs within the Relevant Period SWALSC may serve a notice of Dispute in accordance with clause 18.9(a) on or after the first Business Day following the end of the Relevant Period.
- (d) The monies constituting the Estimated Survey Costs must be:
 - (i) held by SWALSC in an account established specifically for survey costs at a bank and must be kept separate from all other bank accounts of, or monies received or held by, SWALSC; and
 - (ii) used only for the payment of the Estimated Survey Costs and any repayment to the Local Government under clause 11(e) or 11(g).
- (e) If the Survey is cancelled by the Local Government before it is completed, the part of the Estimated Survey Costs that has been expended and any of the disbursements that have been paid and cannot be recovered will be forfeited and the balance will be refunded to the Local Government.
- (f) SWALSC must provide a tax invoice of the Survey costs to the Local Government that reconciles the Estimated Survey Costs with the costs incurred. This tax invoice must be accompanied by all relevant receipts and invoices, and any other relevant supporting documentation, and must be certified as correct by the chief executive officer of SWALSC or their delegate.

- (g) If the costs incurred are less than the Estimated Survey Costs, SWALSC shall refund the balance of the monies paid in accordance with clause 11(b) to the Local Government.
- (h) If the costs incurred exceed the Estimated Survey Costs by 5% or less, the Local Government shall pay the additional amount to SWALSC within 20 Business Days of receiving a tax invoice (accompanied by all relevant receipts and invoices and any other relevant supporting documentation) that must be certified as correct by the chief executive officer of SWALSC or their delegate. The Local Government shall not be liable to pay SWALSC for any Survey costs exceeding this capped amount, except in accordance with clause 11(i).
- (i) If the Local Government receives notification of revised costs from SWALSC under clause 12.2(b), the Local Government will pay 100% of any additional costs to SWALSC within 10 Business Days of their approval by the Local Government. Once paid, these monies will be added to the Estimated Survey Costs and dealt with in accordance with (c) – (h) above.

12. Survey Report

12.1 Timing of Preliminary Advice and Survey Report

After the last day of fieldwork for a Survey (**Last Fieldwork Day**) if either the Local Government or SWALSC is contracting the Aboriginal Heritage Service Provider, the Local Government or SWALSC, as the case may be, will ensure that Aboriginal Heritage Service Provider or the Principal Aboriginal Heritage Consultant provides the Parties with:

- (a) Preliminary Advice (if requested by the Local Government in the Activity Notice or at any other time under clause 12.2), as soon as reasonably practicable, and in any event to SWALSC within 5 Business Days after the Last Fieldwork Day and, after taking into account any comments from SWALSC, to the Local Government within 12 Business Days after the Last Fieldwork Day;
- (b) a draft Survey Report (if requested by the Local Government in the Activity Notice or at any other time under clause 12.2), as soon as reasonably practicable, and in any event to SWALSC within 15 Business Days after the Last Fieldwork Day, to enable SWALSC to comment on it; and after taking into account any comments from SWALSC, to the Local Government within 25 Business Days after the Last Fieldwork Day;
- (c) a final Survey Report, taking into account any comments from the Local Government about any identified technical, factual or typographical errors or any issues of non-compliance with the guidelines in part 1, part 2 and/or part 3 of Schedule 6, within 35 Business Days after the Last Fieldwork Day.

12.2 Requests for reports and compliance with DPLH Guidelines at any time

- (a) Notwithstanding the relevant nominations by the Local Government in the Activity Notice under:
- (i) part 1.2(f)(i) and (ii) of Schedule 4 the Local Government may by notice in writing at any time ask that SWALSC (if contracting the Aboriginal Heritage Service Provider) request the Aboriginal Heritage Service Provider to provide a Preliminary Advice or draft Survey Report.
 - (ii) part 1.2(f)(iii) of Schedule 4, the Local Government may by notice in writing at any time advise SWALSC that it has become aware that an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application may need to be made and ask that SWALSC (if contracting the Aboriginal Heritage Service Provider) request the Aboriginal Heritage Service Provider to comply with the DPLH Guidelines when preparing the Survey Report. The Parties shall discuss any changes required to matters previously agreed under clause 9 and clause 10, to enable the Aboriginal Heritage Service Provider to comply with the DPLH Guidelines when preparing the Survey Report. If the Parties cannot agree on any changes required, then either Party may serve a notice of Dispute in accordance with clause 18.9(a) 5 Business Days after receiving the notice in writing.
 - (iii) part 1.2(f)(iii) of Schedule 4, if the party contracting the Aboriginal Heritage Service Provider is notified by the Aboriginal Heritage Service Provider that they have become aware that an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application may need to be made, the contracting Party shall by notice in writing advise the other Party, and the Parties shall discuss any changes required to matters previously agreed under clause 9 and clause 10, to enable the Aboriginal Heritage Service Provider to comply with the DPLH Guidelines when preparing the Survey Report. If the Parties cannot agree on any changes required, then either Party may serve a notice of Dispute in accordance with clause 18.9(a) 5 Business Days after receiving the notice in writing.
- (b) The Local Government acknowledges that a notification under clause 12.2(a)(i) – (iii), may impact on the times and costs for the Survey, and, if SWALSC is contracting the Aboriginal Heritage Service Provider, SWALSC shall ensure that any revised times and costs (together with supporting documentation) are notified promptly to the Local Government.

12.3 Preliminary Advice

- (a) The Preliminary Advice should provide sufficient information (without disclosing any Sensitive Heritage Information) to allow the Local

Government to know whether to proceed or not with any Activities, with or without conditions.

- (b) Upon receipt by the Local Government of the Preliminary Advice, and subject to any reasonable recommendations in the Preliminary Advice, the Local Government may commence the Activities described in the relevant Activity Program (except any Activities indicated in the Preliminary Advice as potentially resulting in a breach of the Aboriginal Heritage Act).

12.4 Contents of Survey Report

The Party contracting the Aboriginal Heritage Service Provider must ensure the following:

- (a) that the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant will, in consultation with the Survey Team, prepare a Survey Report in accordance with the guidelines:
 - (i) in part 1 and part 2 of Schedule 6, where the Survey being conducted is a Site Avoidance Survey; or
 - (ii) in part 1 and part 3 of Schedule 6, where the Survey is a Site Identification Survey.
- (b) where the Local Government has requested in writing (whether in the Activity Notice or at any other time allowable under clause 12.2) that the Survey Report complies with the DPLH Guidelines and the Local Government envisages that it may wish to file an Aboriginal Heritage Act Section 18 Application or Aboriginal Heritage Act Section 16 Application, that the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant includes sufficient information in the Survey Report to assist:
 - (i) the ACMC in considering an Aboriginal Heritage Act Section 18 Application; or
 - (ii) the Aboriginal Heritage Act Registrar in considering an Aboriginal Heritage Act Section 16 Application.
- (c) that in addition to the matters described in Schedule 6, the Survey Report:
 - (i) describes which aspects (if any) of the Activity Program described in an Activity Notice, if carried out, would be likely to result in a breach of the Aboriginal Heritage Act;
 - (ii) records sufficient information to enable the Local Government to plan and, subject to the law and this NHALG to comply with the Aboriginal Heritage Act in the course of undertaking the things that are the subject of the Activity Notice; and
 - (iii) complies with the DPLH Guidelines.

12.5 Provision of Aboriginal Heritage Information to DPLH

Following the preparation of the Survey Report:

- (a) if SWALSC is the Aboriginal Heritage Service Provider it must provide: or
- (b) if SWALSC is not the Aboriginal Heritage Service Provider the Party contracting the Aboriginal Heritage Service Provider must ensure that the Aboriginal Heritage Service Provider provides,

the following information to the Aboriginal Heritage Act Registrar:

- (c) a copy of the Survey Report; and
- (d) if Aboriginal Sites have been identified during the Survey, a Heritage Information Submission Form (as attached at Schedule 7, or as amended from time to time) with respect to each site.

12.6 Provision of Survey Information to DPLH

- (a) If the Local Government contracted the Aboriginal Heritage Service Provider, the Local Government must, within 15 Business Days after the preparation of the Survey Report, provide to SWALSC, in writing, the details required by items 24 and 25 of Schedule 8.
- (b) Subject to clause 12.6(a), following the preparation of the Survey Report SWALSC must ensure that the information set out in Schedule 8 is provided to the Aboriginal Heritage Act Registrar.

12.7 Reliance on Survey Report

The Parties each acknowledge that they may rely upon the contents of a Survey Report.

13. Intellectual property

13.1 Intellectual property of the Local Government to be assigned to SWALSC

If the Local Government is contracting the Aboriginal Heritage Service Provider, the Local Government assigns all intellectual property rights it holds in the Survey Report to SWALSC upon its creation.

13.2 Licence to use Survey Report

Subject to clause 19, SWALSC shall grant to the Local Government an irrevocable, transferable, non exclusive, royalty-free licence to use any Survey Report for the purposes of the Local Government:

- (a) conducting its Activities as set out in the Activity Notice; or

- (b) seeking any necessary or desirable statutory approvals relevant to its Activities including under the Aboriginal Heritage Act; or
- (c) enforcing, defending or establishing its rights, including through court proceedings, and complying with its obligations, under this NHALG or any relevant statutory approvals.

14. Effect of NHALG on other Aboriginal Heritage Agreements

If the Local Government:

- (a) has entered into one or more Aboriginal Heritage Agreements (other than this NHALG) prior to the Effective Date (including ones entered into prior to the ILUA, and which is or are specified in item 5 of Schedule 2; and
- (b) the pre-existing Aboriginal Heritage Agreement applies to an Activity to which this NHALG relates,

then the provisions of this NHALG shall prevail over the provisions of any such pre-existing Aboriginal Heritage Agreement unless otherwise provided in item 6 of Schedule 2.

15. Local Government must consult about Aboriginal Heritage Act applications

- (a) The Local Government shall not lodge an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application in respect of any area within the Agreement Area without first giving SWALSC at least 30 Business Days' notice of its intention to do so.
- (b) The Local Government must consult, including by making reasonable efforts to meet with SWALSC, about any proposal that is the subject of such an Aboriginal Heritage Act Section 16 Application or Aboriginal Heritage Act Section 18 Application.
- (c) Prior to the APMC considering the Aboriginal Heritage Act Section 18 Application or the Aboriginal Heritage Act Registrar considering the Aboriginal Heritage Act Section 16 Application, as the case may be, the Local Government must give reasonable notice to the APMC (or the Aboriginal Heritage Act Registrar as the case may be) and to the Aboriginal Heritage Service Provider of the detail of the consultation that has taken place.
- (d) Subject to clause 15(a), nothing in this NHALG prevents the Local Government lodging an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application.

16. Time limits

16.1 Time for compliance and consequences of non-compliance

- (a) The Parties, as applicable, must each meet the time limits imposed under the following provisions of this NHALG:
 - (i) the receipt by the Local Government of an Activity Notice Response (clause 8.3(a)); and
 - (ii) subject to clauses 9.1(e) and 18.9, the reaching of the Survey Agreement Date within the Survey Agreement Period (clause 9.1(d)); and
 - (iii) the commencement of fieldwork for a Survey (clause 10.2(a)) and the agreed date (if any) for completion of the fieldwork for a Survey (clauses 8.3(d)(iii)) or 9.7; and
 - (iv) the receipt by the Local Government of the Preliminary Advice following completion of a Survey (clause 12.1(a)); and
 - (v) the receipt by SWALSC and by the Local Government of the draft Survey Report (clause 12.1(b));
 - (vi) the receipt by the Local Government of the final Survey Report (clause 12.1(c)).
- (b) The time limits on the steps referred to in clause 16.1(a) may be extended by agreement in writing between the Parties. Any such agreed extension will apply only to a single Activity Program, unless expressly agreed otherwise in the written agreement under this clause.
- (c) To avoid doubt, any failure to comply with the time limits for the steps described in clause 16.1(a) does not give a Party a right to terminate this NHALG, but failure to comply with those time limits has the consequences described in the following provisions of this clause 16.1.
- (d) If SWALSC does not meet, or, if SWALSC is contracting the Aboriginal Heritage Service Provider, fails to ensure that the Aboriginal Heritage Service Provider meets, any applicable time limits on the steps listed in clause 16.1(a), then the Local Government may provide a written notice to SWALSC, with such a notice to nominate a date by which the non-compliance with the time limits must be rectified. The date nominated by the Local Government must allow a reasonable period, in all the circumstances, for rectification of the non-compliance with the time limits, and in any event the date must not be less than 10 Business Days after the date on which the notice of non-compliance is sent.
- (e) If SWALSC fails to comply with a notice sent by the Local Government under clause 16.1(d), then the Local Government may notify SWALSC that

the Local Government is no longer bound by clauses 9 to 12 inclusive of this NHALG in respect of the relevant Activity Program with effect from the date on which SWALSC receives the latter notice. The Local Government may then at its election:

- (i) decide not to proceed with the relevant Activity Program; or
 - (ii) after seeking the advice and assistance of the Aboriginal Heritage Act Registrar or other relevant officer from DPLH if appropriate, make alternative arrangements for the carrying out of Aboriginal Heritage Surveys, including appointing an independent anthropologist or archaeologist, or other appropriately qualified professional, to conduct such surveys.
- (f) If the Parties to a Dispute referred to mediation under clause 18.9 fail to resolve that Dispute, then the Local Government may notify SWALSC that the Local Government is no longer bound by clauses 9 to 12 inclusive of this NHALG in respect of the relevant Activity Program with effect from the date on which SWALSC receives the latter notice. The Local Government may then at its election:
- (i) decide not to proceed with the relevant Activity Program; or
 - (ii) after seeking the advice and assistance of the Aboriginal Heritage Act Registrar or other relevant officer from DPLH if appropriate, make alternative arrangements for the carrying out of Aboriginal Heritage Surveys, including appointing an independent anthropologist or archaeologist, or other appropriately qualified professional, to conduct such surveys.
- (g) In the circumstances described in clauses 16.1(e) and (f), where the Local Government makes arrangements for an Aboriginal Heritage Survey to be conducted by an independent anthropologist, archaeologist or other professional, then:
- (i) the Local Government shall inform SWALSC of the alternative arrangements made (including any advice and assistance obtained from DPLH); and
 - (ii) SWALSC shall not have any claim against the Local Government arising from the making of those alternative arrangements.
- (h) To avoid doubt:
- (i) the effect of this clause 16.1 is not limited by any dispute resolution processes under clause 18 of this NHALG other than those set out in clause 18.9, and in particular the time limits on the steps referred to in clause 16.1 continue to apply where a dispute resolution process is commenced under clause 18.1; and

- (ii) the dispute resolution provisions in clause 18 of this NHALG do not apply to any decision by the Local Government to issue a notice of non-compliance under clause 16.1(d). However, the Local Government may elect, by notice in writing to SWALSC, to allow use of the dispute resolution provisions in clause 18.
- (i) The Local Government will act reasonably in asserting its rights under this clause 16.1.

16.2 Justifiable delay

- (a) Delay caused by any event of Force Majeure or Aboriginal Cultural Business notified under clause 24 will be excluded from the time limits referred to in clause 16.1.
- (b) A Party asserting the existence of a delay to which clause 16.2(a) applies must advise the other Party of that delay and take reasonable steps to mitigate that delay.

17. Default and enforcement

17.1 Interpretation

- (a) In this clause 17 a reference to a Party means a party to the default or dispute.
- (b) An **Event of Default** occurs where a Party:
 - (i) breaches an obligation under this NHALG; or
 - (ii) commits an Insolvency Event.

17.2 Default

- (a) If a Party (the **Defaulting Party**) commits an Event of Default, the other Party (the **Non-defaulting Party**) may serve a notice (**Default Notice**) on the Defaulting Party specifying the Event of Default and, on receiving the Default Notice, the Defaulting Party must remedy the Event of Default within 5 Business Days after receiving the Default Notice.
- (b) If the Event of Default is of the kind described in clause 17.1(b)(ii) and applies to SWALSC, then SWALSC shall as soon as possible notify the Local Government:
 - (i) that the Event of Default has occurred; and
 - (ii) of the appointment of any administrator, receiver or manager to manage the affairs of SWALSC; and
 - (iii) when the relevant Event of Default ceases to exist.

- (c) If the Event of Default is of the kind described in clause 17.1(b)(ii) and applies to the Local Government, then the Local Government shall as soon as possible notify SWALSC:
 - (i) that the Event of Default has occurred; and
 - (ii) of the appointment of any administrator, receiver or manager to manage the affairs of the Local Government; and
 - (iii) when the relevant Event of Default ceases to exist.
- (d) Where the Event of Default results in a court order to wind up either Party, this NHALG shall by force of this clause terminate with effect from the date of the court order.
- (e) 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 NHALG until either clause 17.2(a) is complied with or the Event of Default no longer exists, as applicable.
- (f) Any remedy exercised under this clause 17 is without prejudice to any other rights a Party may have under this NHALG or otherwise at law (including the right to seek interlocutory relief and specific performance).

18. Dispute resolution

18.1 No arbitration or court proceedings

- (a) Subject to clause 18.1(b) and 18.9, if a dispute arises under this NHALG including a dispute in respect of this clause 18.1 (Dispute), a Party must comply with clauses 18.2 to 18.4 before commencing arbitration or court proceedings (except proceedings for urgent interlocutory relief).
- (b) The provisions of this clause 18 are subject to clause 8.4.

18.2 Notification

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

18.3 Parties to resolve Dispute

During the 20 Business Days after a notice is given under clause 18.2 (or longer period if the Parties to the Dispute agree in writing), each Party to the Dispute must use its reasonable endeavours to resolve the Dispute. If the Parties cannot resolve the Dispute within that period, any Party to the Dispute may request that the Dispute be referred to a mediator and, if a Party so requests, the Dispute must be referred to mediation in accordance with clause 18.4.

18.4 Mediation

- (a) If the Parties to the Dispute cannot agree on a mediator within 10 Business Days after a request under clause 18.3, the chair 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 Dispute. A mediator may not make a binding decision on a Party to the Dispute except if the Party agrees in advance in writing.
- (c) Any information or documents disclosed by a Party under this clause 18:
 - (i) must be kept confidential; and
 - (ii) may only be used to attempt to resolve the Dispute.
- (d) Each Party to a Dispute must pay its own costs of complying with this clause 18.4. The Parties to the Dispute 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 Dispute. If the Parties fail to achieve a resolution of the 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 clause 18.6) referring the matter to arbitration or commencing legal proceedings.

18.5 Arbitration

- (a) If the Parties to a Dispute have complied with clauses 18.2 to 18.4 then the Dispute may be referred to arbitration by either Party under the *Commercial Arbitration Act 2012 (WA)*.
- (b) The arbitration will be held within the Agreement Area or any other place agreed by the Parties.
- (c) The Parties shall appoint a person agreed between them to be the arbitrator of the Dispute.
- (d) If the Parties fail to agree on a person to be the arbitrator under clause 18.5(c), then the Parties shall request the President of the Law Society of Western Australia to appoint an arbitrator who has experience in the area of the Dispute and in Indigenous cultural matters.
- (e) Any Party to a Dispute may appeal to the Supreme Court of Western Australia on any question of law arising out of an interim or final award in the arbitration.

18.6 Breach of this clause

If a Party to a Dispute breaches clauses 18.1 to 18.4, the other Parties to the Dispute do not have to comply with those clauses in relation to the Dispute before starting court proceedings.

18.7 Obligations continue

Subject to clause 18.8, if a Dispute is referred for mediation or arbitration under any part of this clause 18 or court proceedings are started in respect of it, the Parties must, during the period of such mediation, arbitration or litigation and pending the making of a decision, determination or judgment as the case may be, continue to perform their respective obligations under this NHALG so far as circumstances will allow and such performance will be without prejudice to the final decision, determination or judgment made in respect of the matter in dispute.

18.8 Extension of time

Without prejudice to the power of a mediator, arbitrator or court to grant any extension of any period or variation of any date referred to in this NHALG, in order to preserve the rights of a Party to a Dispute, the Parties to the Dispute will consult with each other and use all reasonable endeavours to agree such extension or variation so required.

18.9 Dispute in relation to clauses 9, 11(b) or 12.2(a)(ii) and (iii)

- (a) A Party claiming a Dispute has arisen in relation to any matter to be agreed under clauses 9, 11(b), or 12.2(a)(ii) and (iii) must give the other Parties to the Dispute notice setting out details of the Dispute, and at the same time as the notice is served upon the other Parties must request the chair of the Resolution Institute to appoint a mediator within 5 Business Days.
- (b) The role of the mediator with respect to a Dispute arising in relation to any matter to be agreed under clauses 9, 11(b), or clause 12.2(a)(ii) and (iii), is to assist in negotiating a resolution of the Dispute. A mediator cannot make a binding decision on a Party to the Dispute except if the Party agrees in advance in writing.
- (c) Any information or documents disclosed by a Party under this clause 18.9:
 - (i) must be kept confidential; and
 - (ii) may only be used to attempt to resolve the Dispute.
- (d) Each Party to a Dispute must pay its own costs of complying with this clause 18.9. The Parties to the Dispute 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 Dispute. To the extent possible, all

issues identified under clauses 9, 11(b), and 12.2(a)(ii) and (iii) should be dealt with and resolved in the one mediation.

- (f) If the Parties fail to achieve a resolution of the Dispute by mediation within 15 Business Days of the appointment of a mediator under this clause, or such further time as is agreed by the Parties, the provisions of clause 16.1(f) – (g) will apply.

19. Confidentiality

19.1 Confidential information

Each Party agrees that the following information disclosed by one Party (**Disclosing Party**) to another Party (**Receiving Party**) is confidential (**Confidential Information**) and may not be disclosed except in accordance with clause 19.2:

- (a) information disclosed during the course of a Survey and the contents of any Survey Report provided under this NHALG, including any Sensitive Heritage Information; and
- (b) information given by the Local Government to SWALSC in respect of the Activities of the Local Government where the Local Government advises SWALSC that the relevant information is confidential; and
- (c) any other information disclosed by one Party to another under this NHALG which is identified by the Disclosing Party as confidential,

but not including information:

- (d) the Receiving Party, prior to disclosure, already knew or created (whether alone or jointly with any third person) independently of the Disclosing Party; or
- (e) that is public knowledge (otherwise than as a result of a breach of confidentiality by the Receiving Party or any of its permitted disclosees).

19.2 Permitted disclosure

- (a) Subject to clauses 19.2(b) and 19.2(c), a Receiving Party may disclose Confidential Information:
 - (i) if it has the prior consent of the Party which provided the information;
 - (ii) to the extent required by any law or applicable securities regulation or rule;
 - (iii) to the extent that the information is reasonably necessary for any processes or applications or related to any statutory approvals;
 - (iv) in connection with any dispute or litigation concerning this NHALG or its subject matter;

- (v) to the Receiving Party's members, officers, employees, agents, auditors, advisers, financiers, consultants, contractors, joint venturers, partners and related bodies corporate, or an Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant appointed under this NHALG;
 - (vi) where the Receiving Party is the Local Government, to a bona fide proposed assignee of the Local Government's rights or obligations under this NHALG;
 - (vii) where the disclosure is for the purpose of managing or planning any existing, planned or potential Activity;
 - (viii) to a proposed Regional Corporation assignee of SWALSC's rights, title and interests under this NHALG;
 - (ix) in accordance with clauses 12.5 and 12.6;
 - (x) where disclosure is required by the Local Government to any judicial, legislative or executive arm of the Government of Western Australia or of the Commonwealth of Australia; and
 - (xi) as otherwise permitted or required by the terms of this NHALG.
- (b) To avoid doubt, where the Confidential Information is contained in a Survey Report, then the Local Government may disclose that Confidential Information to the DPLH and APMC, including for the purposes of the Local Government:
- (i) making an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application;
 - (ii) providing a copy of each Survey Report to the DPLH for DPLH's collection of Aboriginal Heritage Survey reports; and
 - (iii) seeking any necessary or desirable statutory approvals or enforcing, defending or establishing its rights, including through court proceedings, under this NHALG or any relevant statutory approvals, including under the Aboriginal Heritage Act.
- (c) To avoid doubt, except for the circumstances described in clause 19.2(b), disclosure of Sensitive Heritage Information may only occur if SWALSC consents to the form and content of the disclosure or the disclosure is required by any law or applicable securities regulation or rule.
- (d) SWALSC must inform the Local Government of any information contained in a Survey Report, which comprises Sensitive Heritage Information.

19.3 Disclosure requirements

Before making any disclosure to a person under clause 19.2, the Receiving Party must:

- (a) in each case, inform the entity or person to whom the Confidential Information is being disclosed of the Receiving Party's obligations under this NHALG;
- (b) at least 10 Business Days before any disclosure, notify the Disclosing Party of its intention to disclose the Confidential Information and give the Disclosing Party a reasonable opportunity to take any steps that that Party considers necessary to protect the confidentiality of that information; and
- (c) in the case of a disclosure to a person or entity under clauses 19.2(a)(v), 19.2(a)(vi), 19.2(a)(vii), or 19.2(a)(viii), but with the exception of employees or officers of a Receiving Party, procure that the person or entity executes a deed with the Disclosing Party in such form acceptable to the Disclosing Party (acting reasonably) imposing on the person or entity an undertaking of confidentiality having substantially similar effect as this clause 19.

20. Assignment

20.1 Generally

Neither SWALSC nor the Local Government may assign, transfer, novate or otherwise dispose of its rights, title, obligations or interests under this NHALG except in accordance with this NHALG.

20.2 Assignment or Novation by Local Government

- (a) The Local Government may from time to time assign or transfer all or part of its rights, title, and interests under this NHALG to any person (whether by farm out, joint venture, sale or otherwise) where the Local Government is assigning all or part of its interest in the tenure in the Agreement Area to which this NHALG applies.
- (b) Before such assignment or novation, the Local Government must:
 - (i) give SWALSC at least 20 Business Days' notice prior to the proposed assignment or novation;
 - (ii) provide a draft of the proposed deed of assignment or novation for SWALSC's approval, which approval must not be unreasonably withheld, and the Local Government must take into account any reasonable amendments put forward by SWALSC;
 - (iii) within 20 Business Days after receiving SWALSC's approval to the terms of the draft deed of assignment or novation provide to SWALSC either:

- (A) the deed of assignment in the form approved by SWALSC executed by the outgoing Local Government and the incoming Local Government in favour of SWALSC by which the assignee agrees to be bound, alone or jointly with the Local Government, by the provisions of this NHALG and to assume, observe and perform (alone or jointly with the Local Government) the rights and obligations of the Local Government under this NHALG to the extent of the rights, title and interest assigned in accordance with clause 20.2(a); or
- (B) the deed of novation in the form approved by SWALSC executed by the outgoing Local Government and the incoming Local Government in which the incoming Local Government agrees to obtain the rights and obligations of the Local Government under this NHALG, the incoming Local Government being bound by this NHALG and the outgoing Local Government being released from its obligations under this NHALG to the extent of the rights, title and interest transferred in accordance with clause 20.2(a); and
- (c) SWALSC will then execute the deed of assignment or the deed of novation as the case may be and return copies of the fully executed deed to both the outgoing Local Government and the incoming Local Government.

20.3 Assignment by SWALSC

- (a) SWALSC must assign its rights (including intellectual property rights assigned to SWALSC pursuant to clause 13.1), title and interests under this NHALG to a Regional Corporation if:
 - (i) a Regional corporation is appointed by the Noongar Boodja Trustee as the Regional Corporation for land and waters including the land and waters within the Agreement Area; and
 - (ii) the Regional Corporation agrees to enter into a deed, in a form acceptable to the Local Government (each acting reasonably), by which it agrees to be bound by this NHALG and to assume all of SWALSC's obligations under this NHALG, and provides a copy of that deed to the Local Government.
- (b) If the requirements of clause 20.3(a)(i) and (ii) are satisfied, SWALSC must do all other things necessary to give effect to the assumption by the Regional Corporation of the obligations under this NHALG.

20.4 Effect of Assignment or Novation

- (a) Once an assignment or novation by a Local Government of all or any part of its rights, title and interests under this NHALG has occurred under clause 20.2, then the assigning or outgoing Local Government will be deemed to have been released to the extent of the assignment or transfer from all

claims and liabilities arising under or in respect of this NHALG arising after the effective date of the assignment or novation, but without affecting any claim or liability arising prior to such date.

- (b) Once an assignment of this NHALG has occurred under clause 20.3, SWALSC will be deemed to have been released, to the extent of the assignment from all claims and liabilities arising under or in respect of this NHALG arising after the effective date of the assignment, but without affecting any claim or liability arising prior to such date.
- (c) Unless otherwise agreed by the Parties in writing or required by law, an assignment under this clause 20 shall not affect the operation of this NHALG.

20.5 No encumbrance

- (a) Except as permitted by clause 20.5(b), no Party may grant an encumbrance, mortgage or charge in respect of the whole or any part of its rights, title and interests under this NHALG.
- (b) The Local Government may with the prior written consent of SWALSC grant an encumbrance, mortgage or charge in respect of the whole or any part of its rights, title and interests under this NHALG provided that clause 20.2 shall apply with necessary changes to any assignment upon enforcement of such encumbrance, mortgage or charge.

21. Notices

Any notice:

- (a) must be in writing and signed by a person duly authorised by the sender; and
- (b) must be delivered to the intended recipient by registered post or by hand or fax or email to the intended recipient's address or fax number specified in Schedule 1 (or the address in Western Australia or fax number last notified in writing by the intended recipient to the sender, including where so notified in an Activity Notice given to SWALSC under clause 8.2);
- (c) will be taken to be received by the recipient:
 - (i) in the case of delivery in person, when delivered; and
 - (ii) in the case of delivery by post, 2 Business Days after the date of posting; and
 - (iii) in the case of delivery by fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number of name of recipient and indicating that the transmission has been made without error, but if the result is that a notice would be taken to be given

or made on a day that is not a Business Day or at a time that is later than 4.00pm (local time), it will be taken to have been duly given or made at 9.00am on the next Business Day.

- (iv) In the case of delivery by email, at the time shown in the delivery confirmation report generated by the sender's email system which indicates that the email was sent to the recipient's email address, but where an email has been sent after 4.00 pm on a Business Day (the receiving party's local time) or on a non-Business Day, it will be deemed to have been received at 9.00 am on the next Business Day.

22. GST

22.1 Interpretation

Words capitalised in this clause 22 and not otherwise defined have the meaning given in the GST Act.

22.2 GST Payable

- (a) Where an amount of Consideration is payable for a Taxable Supply made under this NHALG (whether that amount is specified or can be calculated in accordance with this NHALG), it does not include GST and must be increased by the GST Rate.
- (b) The Party making a Taxable Supply under this NHALG must issue a Tax Invoice or Adjustment Note to the Recipient in accordance with the GST Act. Notwithstanding any provision to the contrary in this NHALG, payment will be due within 20 Business Days of a Party receiving a Tax Invoice in accordance with this clause 22.
- (c) If any Party has a right to be reimbursed or indemnified for any cost or expense incurred under this NHALG, that right does not include the right to be reimbursed or indemnified for that component of a cost or expense for which the indemnified Party can claim an Input Tax Credit.
- (d) A Party may issue a Recipient-created Tax Invoice in respect of payment made to it by the other Party.

23. Costs and duties

- (a) The Local Government shall bear any duties or fees or taxes of a similar nature associated with this NHALG.
- (b) Each Party shall bear their own costs including legal costs associated with the negotiation, drafting and execution of this NHALG.

24. Force Majeure and Aboriginal Cultural Business

- (a) If a Party is prevented in whole or in part from carrying out its obligations under this NHALG as a result of an event of Force Majeure or Aboriginal Cultural Business, it must promptly notify the other Party accordingly. The notice must:
- (i) specify the obligations it cannot perform;
 - (ii) sufficiently describe the event of Force Majeure or Aboriginal Cultural Business;
 - (iii) estimate the time during which the Force Majeure or Aboriginal Cultural Business will continue; and
 - (iv) specify the measures proposed to be adopted to remedy or abate the Force Majeure or the delay caused by the Aboriginal Cultural Business.
- (b) Following this notice, and while the Force Majeure or Aboriginal Cultural Business continues, this NHALG shall nevertheless continue and remain in force and effect but the obligations which cannot be performed because of the Force Majeure or Aboriginal Cultural Business will be suspended, and any time limit for performance of those obligations will be extended by the period of the Force Majeure or Aboriginal Cultural Business.
- (c) The Party that is prevented from carrying out its obligations under this NHALG 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 NHALG.

25. General

25.1 Review and variation

Where this NHALG is to be amended or varied, then this NHALG may only be amended or varied by a document in writing signed by each of the Parties to the agreed amendment or variation.

25.2 Entire agreement

Subject to clause 14, this NHALG 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.

25.3 Governing law and jurisdiction

- (a) This NHALG 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.

25.4 Severance

If any provisions of this NHALG is void, voidable by any Party, unenforceable or illegal according to the law in force in the State of Western Australia, it shall be read down so as to be valid and enforceable or if it cannot be so read down, the provision (or where possible the offending words), shall be severed from this NHALG to the extent necessary unless it would materially change the intended effect and objectives of this NHALG.

25.5 Waiver

A right or power under this NHALG 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; and
- (b) a waiver of a right or power on one or more occasions by a Party does not operate as a waiver of that right or power if it arises again in the future or prejudices that Party's other rights or powers or future rights or powers in respect of the right or power waived; and
- (c) the exercise of a right or power does not prevent any further exercise of that right or power or of any other right or power.

25.6 No merger

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

25.7 Further action

Each Party must use all reasonable efforts to do all things necessary or desirable to give full effect to this NHALG and the matters contemplated by it.

Schedule 1 — Party Details

(Clause 21 – Notices)

South West Aboriginal Land & Sea Council Aboriginal Corporation Notice Details

Address HomeTown Centre
1490 Albany Highway
Cannington WA 6107

Fax (08) 9358 7499

Email [Click here to enter text](#)

Local Government Notice Details

Local Government Name Shire of Serpentine Jarrahdale

Address 6 Paterson St, Mundijong WA 6123

Fax Fax: 9525 5441 Phone: 95261111
E-mail: info@sjshire.wa.gov.au

Email [Click here to enter text](#)

Schedule 2 — Details of ILUA and Pre-existing Aboriginal Heritage Agreements

Item No.	Item Description	Details
Details of ILUA		
Item 1	Short name of ILUA	Gnaala Karla Booja ILUA
Item 2	National Native Title Tribunal file number	WI2015/005
Item 3	Date registered	17/10/2018
Item 4	Local government region(s)	City of Armadale City of Bunbury City of Cockburn City of Mandurah City of Rockingham Shire of Beverley Shire of Boddington Shire of Boyup Brook Shire of Bridgetown-Greenbushes Shire of Brookton Shire of Capel Shire of Collie Shire of Corrigin Shire of Cuballing Shire of Dardanup Shire of Donnybrook-Balingup Shire of Harvey Shire of Kojonup Shire of Murray Shire of Narrogin Shire of Pingelly Shire of Serpentine-Jarrahdale Shire of Wagin Shire of Wandering Shire of Waroona Shire of West Arthur Shire of Wickepin Shire of Williams

		Shire of Woodanilling City of Busselton City of Kwinana
Pre-existing Aboriginal Heritage Agreements		
Item 5	Details of all pre-existing Aboriginal Heritage Agreements to which clause 14 applies.	Click here to enter text.
Item 6	List of provisions of a pre-existing Aboriginal Heritage Agreement which will prevail over this NHALG (if the entire pre-existing Aboriginal Heritage Agreement prevails, write 'whole agreement').	Click here to enter text.

Schedule 3 — Agreement Area

(Clause 1.1 Definition of Agreement Area)

Insert map and written description which clearly identifies the area to which this NHALG relates

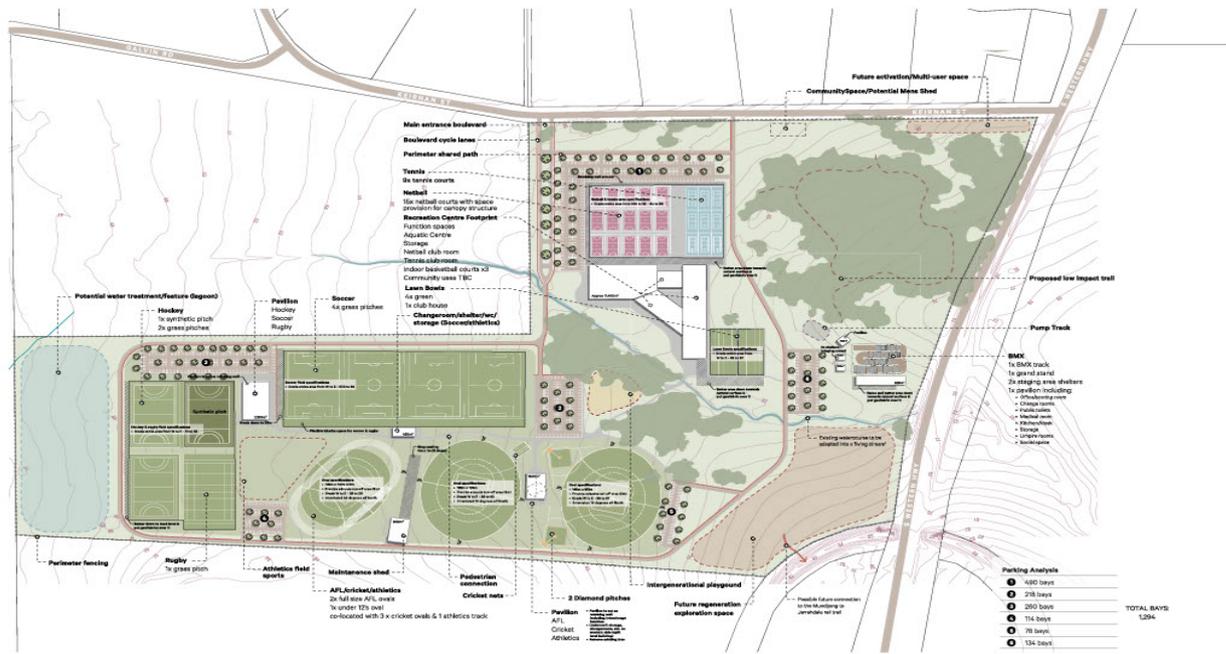
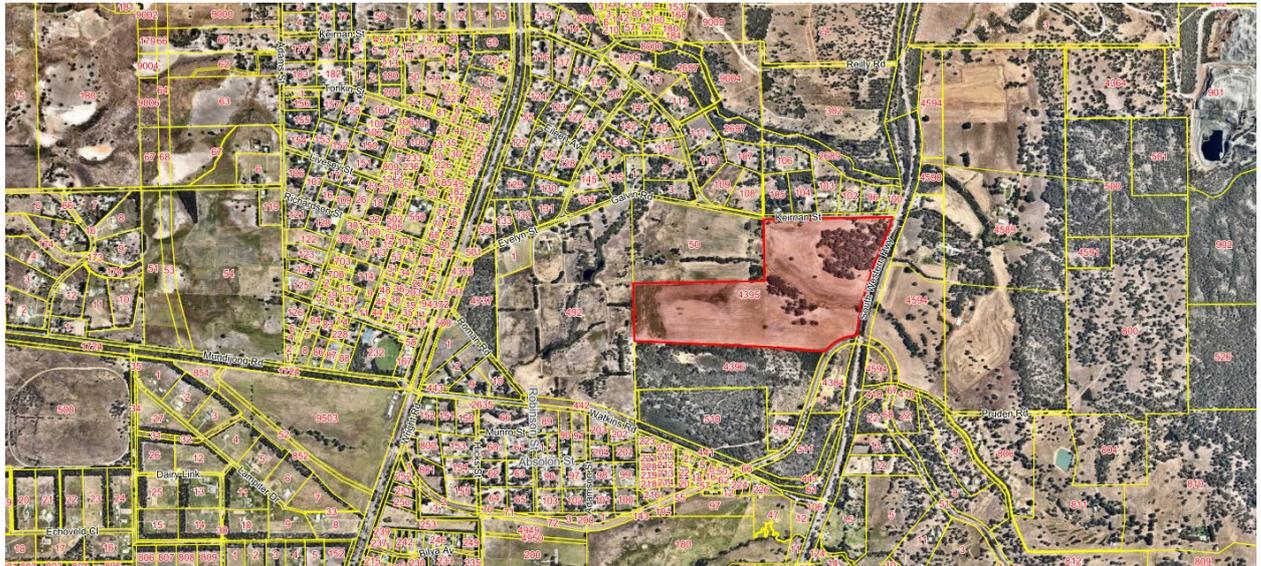
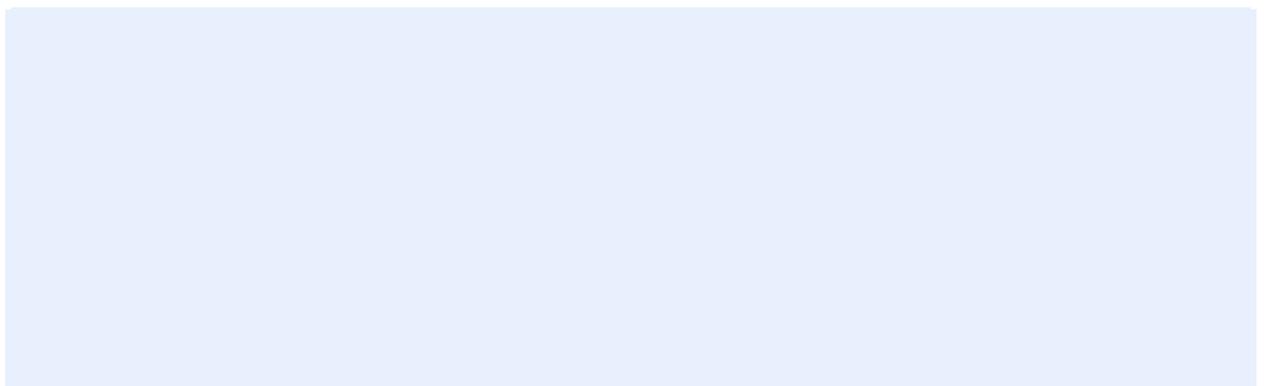
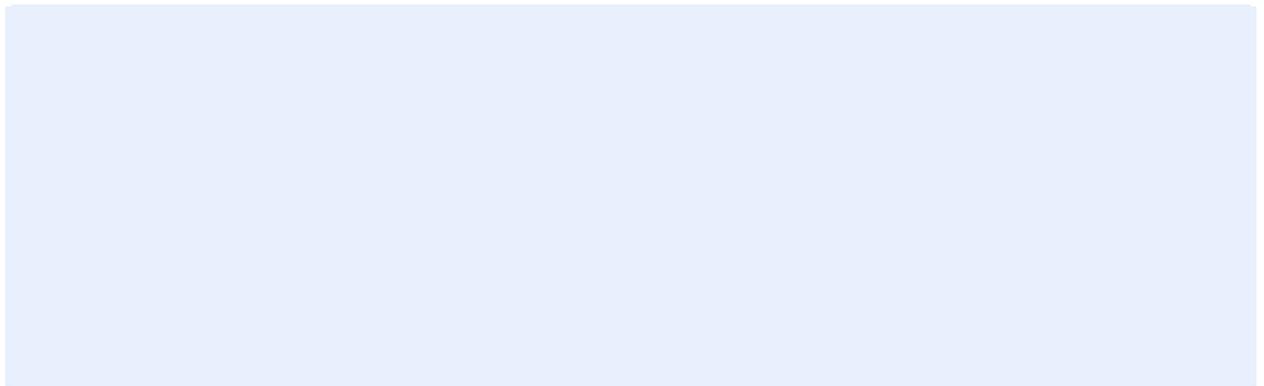
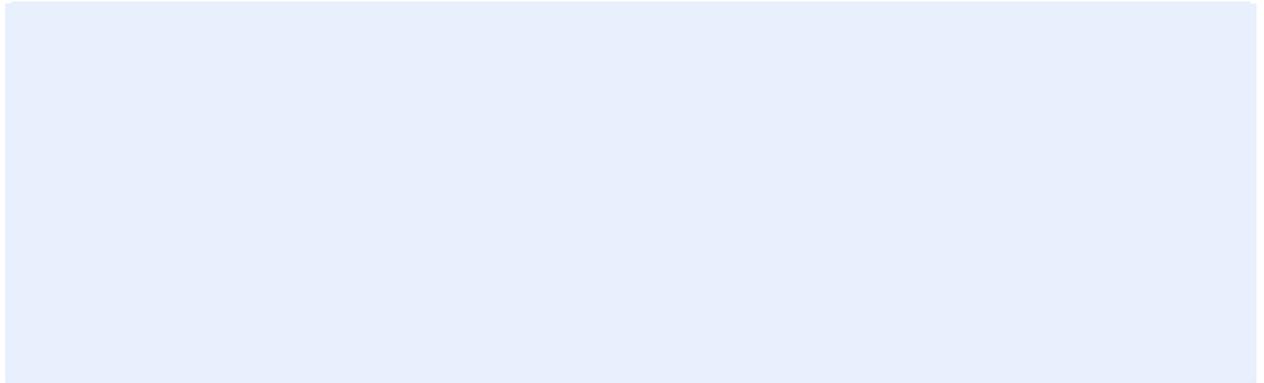


Figure 10 - Final Masterplan
Keirnan Park, Shire of Serpentine Jarrahdale

Date: 26 Feb 2021 Scale: 1:4000 @ A3 12000 @ A1 File: 20-163 Date: 10/11/21 Checked: AH
element.
 Level 18, 90 St George's Terrace, Perth Western Australia 6000
 T: +61 8 9438 3000 F: +61 8 9438 3001 E: info@element.com.au www.element.com.au

Keirnan Park Recreation Prescient

Address: 5 Keirnan Street, Mundijong, WA, 6123



Schedule 4 — Contents of Activity Notice

Part 1 — Primary contents of Activity Notice

(Clause 8.2 Giving the Activity Notice)

1.1 Basic information

Every Activity Notice must contain:

- (a) a statement that it is an Activity Notice issued under this NHALG (by reference to the name of the ILUA as set out in item 1 of Schedule 2);
- (b) the name of the Local Government, and:
 - (i) an address in Western Australia for service of notices, under this NHALG, on the Local Government (if no address for service has previously been given by the Local Government); and
 - (ii) full contact details for a primary contact person within the Local Government (if a body corporate).

1.2 Key statements and nominations under clause 8.2

(Clause 8.2(c)(ii))

Every Activity Notice must, subject to clause 8.2(f), contain the following required key statements:

- (a) a statement of the extent to which the Activity Program consists of Low Ground Disturbance Activity, in the opinion of the Local Government; and
- (b) a statement of whether the Local Government considers that a Survey is required (taking into consideration the matters referred to in clauses 8.1(b) and 8.3); and
- (c) a nomination, by the Local Government, of a preferred Survey Methodology, being either a Site Avoidance Model or a Site Identification Model; and
- (d) where a Site Avoidance Model is nominated, a statement of whether the Local Government requires any Survey to be conducted in respect of:
 - (i) only the area or areas to be impacted by specific Activities as described and mapped in the Activity Notice; or
 - (ii) a broader area or areas, encompassing the Activities and surrounding land as described and mapped in the Activity Notice; and
- (e) a nomination, by the Local Government, of a proposed Survey fieldwork start date or end date; and
- (f) a nomination, by the Local Government, as to whether it requires:

- (i) a Preliminary Advice (see clause 12.1(a));
- (ii) a draft of the Survey Report (see clause 12.1(b));
- (iii) an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application (if known at the relevant time) (see clause 8.2(e)).

Where any of those key statements are omitted, Part 3 of this Schedule 4 provides default provisions.

1.3 – Detailed contents of Activity Notice

(Clause 8.2(c)(ii))

In accordance with clause 8 of this NHALG, the purpose of the information provided in and with the Activity Notice is to determine whether a Survey is required and if so, its nature and extent. In order to facilitate this objective, an Activity Notice must contain the following additional details where applicable:

- (a) a map showing clearly the area the subject of the Activity Notice, identifying the location of the area the subject of the Activity Notice within the Agreement Area and including scale, zone and north point, as well as nearby towns, roads and landscape features; and
- (b) aerial photographs (if available) or smaller scale maps of the area the subject of the Activity Notice which must contain UTM Grid Coordinates (eastings and northings), datum, north point and, where applicable, land tenure details such as parcel identifier, plan or lot, reserve numbers, and coordinates and/or polygon defining the area the subject of the Activity Notice; and
- (c) where applicable, identifying numbers (or other identifying information) of each tenure to which the Activity Notice relates; and
- (d) all known vehicular access routes to the area the subject of the Activity Notice; and
- (e) any ground disturbing notice provided to any government agency including (where mining exploration Activities are proposed) to the District Mining Engineer; and
- (f) details of any Activity Program, and the area and level of potential Activity, on the area the subject of the Activity Notice; and
- (g) the techniques and types of infrastructure, items of equipment and vehicles to be used in relation to any proposed Activity; and
- (h) the approximate number of personnel who will be involved in any proposed Activity; and

- (i) any water, biological or other materials or resources proposed to be obtained from the area the subject of the Activity Notice, in relation to any proposed Activity.
- (j) Where any of the detailed content is omitted, the default provisions of Part 3 of this Schedule 4 will apply.

Part 2 – Additional contents of Activity Notice

(Clause 8.2(c)(iii))

An Activity Notice may also set out:

- (a) whether there has been any previous Aboriginal Heritage Survey and, subject to any confidentiality restrictions, the age, methodology, participants, standard and results of that survey. If a written report of that previous Aboriginal Heritage Survey is in the possession or control of the giver of the Activity Notice, then (subject to confidentiality provisions) the Activity Notice shall be accompanied by a copy of the written report; and
- (b) the extent to which the area the subject of the Activity Notice has been affected by previous ground disturbing activities; and
- (c) whether the Aboriginal Heritage Act Register discloses any Aboriginal Sites on the area the subject of the Activity Notice; and
- (d) any additional information which explains what sort of Survey outcome is being sought (if a Survey is required), including whether an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application is intended to be made (if known at the relevant time) (see clause 8.2(e)); and
- (e) any other background material which will better help SWALSC to understand the potential impacts of what is proposed.

Part 3 – Default provisions of Activity Notice

(Clauses 8.2(c)(ii) and 8.2(d))

For the purposes of clause 8.2(d), the following default provisions apply in respect of any item in part 1.2 of this Schedule 4 that is not specified or nominated in the Activity Notice.

Clause No. Default Provision

Item (a)	The Activity Program contains Ground Disturbing Activity.
Item (b)	A Survey is required.
Item (c)	Site Avoidance Model.
Item (d)	Only the areas of specific Activities described in the Activity Notice are required to be Surveyed.
Item (e)	Not applicable (Parties to discuss and agree proposed Survey fieldwork start date or end date).
Item (f)	There is no requirement for a Preliminary Advice or a draft of the Survey Report.

Schedule 5 — Costs for conduct of a Survey

(Clauses 8.3(d)(iv), 9.5 and 11)

No.	Item	Rate	GST	Description
Ethnographic Assessment				
1	Aboriginal Heritage Service Provider	At cost [Usually \$900-\$1000 (Indexed to CPI)] + Administration Fee of 15% of total expenditure capped at \$5,000 (Indexed to CPI) + Disbursements At cost	+GST	per person per day or pro rata for part thereof
2	Principal Aboriginal Heritage Consultant	At cost [Usually \$900-\$1000 (Indexed to CPI)]	+GST	per person per day or pro rata for part thereof
3	Aboriginal Heritage Liaison Officer (if necessary and agreed)	\$500 (Indexed to CPI)	+GST	per person per day or pro rata for part thereof
Archaeological Assessment (if necessary and agreed)				
4	Archaeologist (archaeological team external contractors)	At cost [Usually \$900 - \$1000] (Indexed to CPI)]	+GST	per person per day or pro rata for part thereof
5	Fieldwork and reporting	At cost [Usually \$900 - \$1000] (Indexed to CPI)]	+GST	per person per day or pro rata for part thereof
Aboriginal Consultants				
6	Aboriginal Consultants – between 2 and 8 unless otherwise agreed	\$500 (max) (Indexed to CPI)	+GST	per person per day or pro rata for part thereof

No.	Item	Rate	GST	Description
Field Expenses				
7	Aboriginal Heritage Liaison Officer or Anthropologist accommodation/meals	At cost	+GST	
8	Archaeologist or Archaeological Team accommodation/meals	At cost	+GST	
9	Aboriginal Consultants accommodation/meals	At cost	+GST	
Travel Expenses				
10	Vehicle mileage km	As per Australian Taxation Office tax schedule for location	+GST	per km
11	Hire Vehicle (if survey vehicle is hired)	commercial rates, plus fuel	+GST	
12	<p>Aboriginal Consultants motor vehicle travel expenses (if required) to be calculated as follows.</p> <p>(a) If usual residence within the boundary of the ILUA area - at Distance travelled for return journey from place of usual residence to the survey area.</p> <p>(b) If usual residence outside the boundary of the ILUA area - Distance travelled for return journey within the boundary of the ILUA area plus up to a maximum of 200km return (100km each way) for distance travelled for return journey from place of usual residence outside the ILUA area, to the survey area.</p> <p>(c) Where a particular Aboriginal Consultant is</p>	As per Australian Taxation Office tax schedule for location	+GST	per km

No.	Item	Rate	GST	Description
	considered a 'key knowledge holder' who is essential for the conduct of the survey, and whose usual place of residence is beyond the distances provided for in (b) above, additional motor vehicle expenses can be paid by agreement between the parties.			
13	Airfares	At cost	+GST	
14	Taxi travel (to and from airports or meetings)	At cost	+GST	
Incidental Expenses				
15	Film, maps, report production and expendables	At cost	+GST	

Initials: Aboriginal Heritage Service Provider: _____

Initials: Local Government/Authorised officer of the Local Government: _____

CPI Indexation

Where a rate listed in this annexure is indicated to be "*Indexed to CPI*" it shall be varied annually on 31 August of each year in accordance with the CPI Calculation.

Schedule 6 — Contents of Survey Report

(Clause 12.4)

Part 1 – Guidelines for all Survey Reports

1.1 Copyright and confidentiality

Insert a statement to the effect that the report may only be copied in accordance with this NHALG and subject to any other restrictions agreed to, from time to time, by the Local Government and SWALSC.

1.2 Survey personnel

- (a) Author's name in full and occupation and author's business or company name.
- (b) Full name and gender of each Aboriginal Consultant, and the group they represent.
- (c) Full names and gender of other personnel participating in the Survey and their role.
- (d) Explanation as to how Aboriginal Consultants were selected.

1.3 Survey date(s)

Insert the date(s) on which fieldwork was conducted.

1.4 Spatial information

- (a) The general location of the area within which the Survey was undertaken (e.g. title numbers 'x' to 'z', or the 'abc' pastoral lease, or the area shown on a map contained in the Survey Report).
- (b) Grid references of the Survey Area.
- (c) A map of the Survey Area.

1.5 Other information

- (a) Summary of results of searches of the Aboriginal Heritage Act Register at the DPLH including the site number and name, if given, and the reference number.
- (b) A general description of the fieldwork undertaken.
- (c) Details of ethnographic and (if relevant) archaeological work carried out during the Survey.
- (d) Description of the Survey Methodology used by the Survey Team (that is, a Site Avoidance Model or a Site Identification Model) and any other relevant methodological notes.

- (e) In respect of any Aboriginal Objects identified:
 - (i) a description of such Aboriginal Objects;
 - (ii) the location of any Aboriginal Objects so identified; and
 - (iii) the date on which each Aboriginal Object was identified.
- (f) Any discussion and recommendations.

Part 2 – Additional guidelines for Survey Reports where Site Avoidance Model is used

2.1 Details of areas where Activity should not be undertaken (because of the presences of an Aboriginal Site within that area) and other Survey information

- (a) Description of any areas where Activity should not be carried out because of the presence of an Aboriginal Site within that area.
- (b) Grid references of the area where Activity should not be carried out, i.e. Eastings and Northings (of the coordinate description e.g. AMG/MGA), the AMG Zone (i.e. Zone 51) and the type of equipment used – GPS or DGPS or other.
- (c) Dimensions of the area, e.g. approximately 100m east-west and 50m north-south.
- (d) Location, i.e. where the area to be avoided is located in relation to tenure or significant topographical feature, e.g. the northern corner of mining lease X about 100m east of the prominent hill.
- (e) Full names of person(s) who identified each Aboriginal Site and other persons present when site identified, and date site identified.

Part 3 – Additional guidelines for Survey Reports where Site Identification Model is used

3.1 Details of new or registered Aboriginal Sites recorded during the Survey and other Survey information

- (a) Site name and number, if given to existing sites, and DPLH reference number, if known.
- (b) Site type, e.g. archaeological or ethnographic or both.
- (c) Grid references of the site, i.e. Eastings and Northings (of the coordinate description e.g. AMG/MGA), the AMG Zone (i.e. Zone 51) and the type of equipment used – GPS or DGPS or other.
- (d) Dimensions of the site, e.g. approximately 10m east-west and 5m north-south.
- (e) Location, i.e. where the site is located in relation to tenure or significant topographical feature, e.g. the northern corner of mining lease X about 100m east of the prominent hill.
- (f) Description, e.g. rock pool, granite outcrop.
- (g) Full names of person(s) who identified each Aboriginal Site and other persons present when site identified and date site identified.
- (h) Significance, if known.

3.2 Recommendations and comments

Recommendations regarding the Aboriginal Site, e.g. whether the site is:

- (a) a place of importance or significance where persons of Aboriginal descent have, or appear to have left any object used for or made or adapted for use for any purpose connected with traditional cultural life of Aboriginal people (past or present); and/or
- (b) a sacred/ ritual or ceremonial site of importance and special significance to persons of Aboriginal descent; and/or
- (c) a place of historical, anthropological, archaeological or ethnographic importance and/or significance; and/or
- (d) a place where Aboriginal objects are traditionally stored.

For each potential Aboriginal Site identified, please complete and attach a copy of the *Heritage Information Submission Form*

3.3 Impact on Aboriginal Sites

- (a) Description of any Aboriginal Sites in the Survey Area that may be affected by the Activity.
- (b) Description of how the Activity is likely to impact on the Aboriginal Site(s) within the Survey Area.
- (c) Description of any practical measures that may be taken to avoid or mitigate potential harm to an Aboriginal Site(s) within the Survey Area.
- (d) Recommendations for how the Aboriginal Site(s) may be protected.

Schedule 7 — DPLH Heritage Information Submission Form

(Clause 12.5 Provision of Aboriginal Heritage Information to DPLH)

Complete and submit the form entitled 'Heritage Information Submission Form' that is available on the DPLH website (www.DPLH.wa.gov.au):

Schedule 8 — Noongar Standard Heritage Process Information

(Clause 12.6 Provision of Survey Information to DPLH)

SWALSC will report the following information to DPLH:

Details of the person filling in this form and the Agreement Group SWALSC is acting on behalf of

1. Name:
2. Job Title:
3. Name of Agreement Group SWALSC is acting on behalf of:

About the Local Government

4. Local Government Name:
5. Contact phone number:
6. Brief summary of the project or activity:
7. Does the Project also fall within one or more Related Agreement Areas: Y/N
8. Please list any affected Related Agreement Group:

Activity Notice

9. Did the Activity Notice contain all requisite information (As per Schedule 4):
Y/N
10. If not did SWALSC:
 - (c) Utilise the Default Provisions:
 - (d) Request a new notice:
11. When considering whether or not a survey was required did SWALSC seek advice from the DPLH:

Survey

12. Select the survey methodology used: Site ID/Site Avoidance

Composition of the Survey Team

13. Name of the Aboriginal Heritage Service Provider:
14. Name of the Principal Aboriginal Heritage Consultant:
15. Number of paid Aboriginal Consultants (If more than eight, detail why):
16. Number of additional (unpaid) Aboriginal Consultants (detail why there was additional Consultants):
17. Was an Aboriginal Heritage Liaison Officer appointed: Y/N
18. Was an additional anthropologist/archaeologist or heritage specialist appointed:
19. Were there any Local Government nominees on the survey team:

Survey Reporting

20. If Preliminary Advice was requested was it received by SWALSC within the time period of 5 days after the last day of fieldwork:
21. Did SWALSC provide any additional comments about the Preliminary Advice:
22. If a draft Survey Report was requested was it received by SWALSC within 15 Business Days after the last day of Fieldwork:
23. Did SWALSC provide any additional comments:

Cost and Payments

24. What was the total cost paid to the Aboriginal Heritage Service Provider (if SWALSC was acting as the Aboriginal Heritage Service Provider or was contracting them):
25. What was the total cost of the Aboriginal Consultants:

Other Circumstances

26. Do you know if the Local Government lodged or intended to lodge a section 16 or section 18 application under the Aboriginal Heritage Act 1972:
27. If yes, did SWALSC receive a Notice of this intention at least 30 days before the approval was lodged with the DPLH:
28. During the process did either party access the dispute resolution process: Y/N
29. Did SWALSC access the provisions under 'Dispute in relation to clauses 9, 11(b) or 12.2(a)(ii) and (iii)':

Additional Comments

30. Please provide any additional details about the process worth noting. All comments welcomed.

Signing Pages

EXECUTED as a deed

Executed by South West Aboriginal Land & Sea Council Aboriginal Corporation ICN 3832 in accordance with its constitution in the presence of:

Signature of authorised representative

Signature of authorised representative

Full name of authorised representative

Full name of authorised representative

Date

Date

Executed by Local Government – where applying common seal

The common seal of the *[insert local government]* was hereunto affixed on *[insert date]* by authority of a resolution of the Council in the presence of:

sign here ►

Mayor/President (delete whichever is not applicable)

print name

sign here ►

Chief Executive Officer

print name