

AGENDA

Special Council Meeting

I HEREBY give NOTICE that a Special Council Meeting will be held on:

17 August 2026

Shire of Victoria Plains
Council Chambers, Calingiri
AND
via E-Meeting Protocol

Commencing – 10:30 PM

DISCLAIMER:

The recommendations contained in this document are officers' recommendations only and should not be acted upon until Council has resolved to adopt those recommendations.

The resolutions of Council should be confirmed by perusing the minutes of the Council meeting at which these recommendations were considered. Resolutions are not considered final until the minutes of the meeting are confirmed or advised in writing by the CEO or authorised person.

Members of the public should also note that they act at their own risk if they enact any resolution prior to receiving official written notification of Council's decision.

Recording of Meeting

Members of the public are advised that meetings of Council are audio recorded to assist with ensuring an accurate record of the meeting is provided for the formal minutes of the meeting. In terms of the Privacy Act 1998 this may involve the recording of personal information provided at the meeting. The provision of any information that is recorded is voluntary, however if any person does not wish to be recorded they should not address or request to address the meeting. By remaining in this meeting, you consent to the recording of the meeting.

You are not permitted to record this meeting with any recording device, unless you have the express authorisation of the Council of the Shire of Victoria Plains.

E – Disclaimer

It is the Presiding Member's responsibility to preserve order in the meeting and this can be more difficult in an eMeeting. Therefore, each Council Member must consistently and respectfully follow the Local Government's Meeting Procedures Local Law, any additional eMeeting guidance provided by the Local Government and support the Presiding Member in their conduct of the eMeeting.

The pace of an eMeeting should be slow and orderly. The following practices will help avoid confusion and support effective eMeetings:

Speak clearly and slowly, as connections may be distorted or delayed;

Always state your name to indicate to the Presiding Member that you wish to speak. Restate your name if the Presiding Member has not heard you at first;

In debate, only speak after the Presiding Member has acknowledged you. Then state your name, so that others know who is speaking;

Follow the Presiding Member's directions and rulings;

If you are unclear about what is happening in an eMeeting, immediately state your name to draw the Presiding Member's attention and enable you to then seek clarification from the Presiding Member;

Avoid looking for opportunities to call Points of Order; instead, politely and respectfully gain the Presiding Member's attention and explain any deviation from your Meeting Procedures, the Local Government Act or any other relevant matter.

Commonly used abbreviations

AAS / AASB	Australian Accounting Standard / Australian Accounting Standards Board
BF Act	Bush Fire Act 1954
BFB	Bush fire brigade
CEO	Chief Executive Officer
CDO	Community Development Officer
DBCA	Dept of Biodiversity, Conservation and Attractions
DFES	Dept of Fire and Emergency Services
DPLH	Dept of Planning, Lands and Heritage
DWER	Dept of Water and Environmental Regulation
EHO	Environmental Health Officer
EFT	Electronic Funds Transfer
FAM	Finance and Administration Manager
JSCDL	Parliamentary Joint Standing Committee on Delegated Legislation
LEMA	Local Emergency Management Arrangements
LEMC	Local Emergency Management Committee
LG Act	Local Government Act 1995
LGGC	WA Local Government Grant Commission
LPP	Local Planning Policy
LPS	Local Planning Scheme
MOU	Memorandum of Understanding
MRWA	Main Roads WA
NNTT	National Native Title Tribunal
OAG	Office of Auditor General
OCM	Ordinary Council Meeting
PTA	Public Transport Authority
RRG	Regional Roads Group
RTR	Roads to Recovery
SAT	State Administrative Tribunal
SEMC	State Emergency Management Committee
SGC	Superannuation Guarantee Contribution
SJAA	St John Ambulance Association
SWALSC	South West Aboriginal Land and Sea Council
WAEC	WA Electoral Commission
WALGA	WA Local Government Association
WSM	Works and Services Manager
WSFN	Wheatbelt Secondary Freight Network
EPA	Environmental Protection Authority
DPIRD	Department of Primary Industries and Regional Development
HCWA	Heritage Council of Western Australia
WAPC	Western Australian Planning Commission
WDC	Wheatbelt Development Commission

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AGENDA

Special Council Meeting of the Victoria Plains Shire Council

To be Held in the Shire of Victoria Plains, Council Chambers, Calingiri, AND, via E-Meeting Protocol

on 17 August 2026 commencing at 2:00 PM

1 DECLARATION OF OPENING

1.1 Opening

1.2 Announcements by Shire President

2 REMOTE ATTENDANCE BY ELECTED MEMBERS

THAT:

Under regulation 14C (2)(b) of the Admin Regulations, the Shire President can approve Elected Member attendance by electronic means;

In doing so, under r.14C (5) the Shire President must have regard as to whether the location that the Elected Member intends to attend the meeting, and the equipment intended to be used to attend the meeting, are suitable;

Electronic means includes, as per r.14CA(2) by telephone or video conference;

Suitable equipment would include an electronic device that can hold a Teams meeting, and perhaps, the use of headphones;

In accordance with r.14CA (5) the Elected Member must declare that they are able to maintain confidentiality during the meeting. Under r.14CA(7), the declaration by the Elected Member is recorded in the minutes of the meeting;

Summarily, according to Departmental guidance, a suitable location is one that is quiet and private e.g. a private room in your house. If there are other people at the location at the time of the meeting, an Elected Member may be required to close a door and wear headphones.

Approval to Attend and Declaration of Confidentiality
--

THAT:

Cr _____ has been approved to attend the 17 August 2026 Special Council Meeting by electronic means as approved by the Shire President and that a declaration has been received regarding confidentiality and other requirements as noted in Section 2 herewith.

3 RECORD OF ATTENDANCE

Members present

Staff attending

Apologies

Approved leave of absence N/A

Visitors

Members of the public

4 DISCLOSURES OF INTEREST

Refer – Local Government Act, Regulations, Code of Conduct, and Declaration Forms in Councillor folders.

Type	Item	Person / Details
------	------	------------------

5 PUBLIC QUESTION TIME

Refer – Local Government Act, Regulations, Local Law and Submission Form & Guidelines circulated.

5.1 Public Questions with Notice

Nil

5.2 Public Question Without Notice**6 PRESENTATIONS AND DEPUTATIONS****6.1 Presentations****6.2 Deputations**

7 APPLICATIONS FOR LEAVE OF ABSENCE

8 MINUTES OF MEETING

N/A

PUBLIC SCM

9 REPORTS REQUIRING DECISION

9.1 Proclamation and Deproclamation of Great Northern Hwy H006 – Batty Bog

File Reference	
Report Date	4 August 2026
Applicant/Proponent	Main Roads Western Australia
Officer Disclosure of Interest	Nil
Previous Meeting Reference	Nil
Prepared by	Sean Flectcher, Chief Executive Officer
Senior Officer	N/A
Authorised by	Chief Executive officer
Attachments	1. Main Roads Western Australia correspondence dated 15 July 2026 and proclamation drawings 201421-0036-03, 202121-0007-00 and 202521-000012-00, contained in 260804 Main Roads WA - Proclamation and deproclamation of Great Northern Highway H006 - Batty Bog. Page 12

PURPOSE

Council is requested to endorse Main Roads Western Australia's proclamation drawings for the proclamation of the current Great Northern Highway H006 alignment and the deproclamation of the superseded Great Northern Highway H006 alignment in the Batty Bog area, within the Shire of Victoria Plains.

BACKGROUND

Main Roads Western Australia has written to the Shire regarding the "Proclamation and deproclamation of Great Northern Highway H006 – Batty Bog." The correspondence states that, as part of the Muchea to Wubin improvement works completed in 2016, Main Roads realigned sections of Great Northern Highway within the Shire of Victoria Plains between Batty Bog Road and the boundary with the Shire of Moora. At the time, proclamation of the new alignment and deproclamation of the superseded alignment did not occur.

Main Roads has advised that, to rectify this anomaly, and in accordance with section 13 of the *Main Roads Act 1930*, the Commissioner of Main Roads intends making a recommendation to the Minister for Transport to proclaim the new alignment as a highway and deproclaim the superseded alignment.

Main Roads has provided three proclamation drawings for Council endorsement:

- Drawing 201421-0036-03;
- Drawing 202121-0007-00; and
- Drawing 202521-000012-00.

The drawings show the sections of Great Northern Highway H006 to be proclaimed and deproclaimed. The overview and detailed proclamation plans are included in Attachment One.

Before making the recommendation to the Minister, the Commissioner requires endorsement of the proclamation drawings by Council, including details of the Council resolution number and meeting date.

Main Roads has advised that the proposed proclamation of the new alignment and deproclamation of the superseded section of Great Northern Highway will have no impact on the Shire of Victoria Plains, and that the actions are administrative in nature and serve solely to formalise the existing road configuration.

Main Roads has also advised that, if Council does not support the changes, section 13A(2) of the *Main Roads Act 1930* provides for Council to lodge an objection with the Commissioner of Main Roads, and that any objection must be lodged with Main Roads by 18 September 2026.

COMMENT

The request from Main Roads Western Australia is administrative in nature and seeks Council endorsement of the proclamation drawings to formalise the existing road configuration for Great Northern Highway H006 in the Batty Bog area.

The road realignment works have already been completed, and the request does not seek approval for new construction works or operational changes by the Shire. Main Roads has advised that the proposed proclamation and deproclamation will have no impact on the Shire of Victoria Plains.

Council endorsement will allow the Commissioner of Main Roads to proceed with the recommendation to the Minister for Transport to proclaim the current alignment and deproclaim the superseded alignment under the *Main Roads Act 1930*. Section 13 of the *Main Roads Act 1930* provides for the Governor, on the recommendation of the Commissioner, to declare by proclamation that a section or part of a road is a highway or main road, or ceases to be so.

Section 13A of the *Main Roads Act 1930* requires local government consultation before certain recommendations are made, including where a road is proposed to be declared a highway or main road, and provides for local government objections to be considered by the Commissioner before making a recommendation.

It is recommended that Council endorse the proclamation drawings, authorise the Chief Executive Officer to sign the drawings on behalf of the Shire with the relevant Council resolution details, and request that the original signed drawings be returned to Main Roads Western Australia. Main Roads has requested that the original signed drawings be returned to its East Perth office and that a duplicate copy be retained by the Shire pending formal proclamation.

CONSULTATION

Consultation has occurred with Main Roads Western Australia through its correspondence dated 15 July 2026 and a follow-up meeting between the author and Mr Gren Putland (Main Roads) on 28 July 2026. The author then briefed Council on this matter on 29 July 2026.

No broader community consultation is proposed, as Main Roads Western Australia has advised that the matter is administrative in nature, formalises the existing road configuration, and will have no impact on the Shire of Victoria Plains.

STATUTORY CONTEXT

Main Roads Act 1930

Section 13 of the *Main Roads Act 1930* provides that, on the recommendation of the Commissioner of Main Roads, the Governor may by proclamation declare that any section or part of a road is a highway or main road, or ceases to be so.

Section 13A of the *Main Roads Act 1930* requires local government to be consulted before the Commissioner makes certain recommendations, including a recommendation that a road be declared a highway or main road, or that the plans of a proposed new highway, main road or deviation be

approved. It also provides that a local government may make an objection before the date specified in the notification, which must be not less than 30 days from the date of notification.

CORPORATE CONTEXT

Strategic Business Plan/Corporate Business Plan

There are no direct strategic or corporate plan implications arising from this matter. The request is administrative in nature (tactical) and relates to formalising the legal status of the existing Great Northern Highway H006 road configuration. Main Roads Western Australia has advised that the proposal will have no impact on the Shire of Victoria Plains.

Delegation

Nil

Policy Implications

Nil

Other Corporate Document

Nil

Risk Analysis

Consequence	Consequence Rating:	Likelihood Rating:	Risk Rating	Risk Acceptance/ Controls	Mitigation and Outcome
Compliance If Council does not consider the request, the Shire may not provide a clear position to Main Roads Western Australia within the required timeframe..	Minor (2)	Possible (3)	Medium (6)	Operational Manager Risk acceptable with adequate controls	Council consideration of the matter provides a clear formal position. If endorsed, the signed drawings and resolution details can be returned to Main Roads Western Australia. If Council does not support the proposal, an objection must be lodged with Main Roads by 18 September 2026.

FINANCIAL IMPLICATIONS

Nil

VOTING REQUIREMENTS

Absolute majority required: No

Officer Recommendation

That Council:

1. **ENDORSES** Main Roads Western Australia proclamation drawings 201421-0036-03, 202121-0007-00 and 202521-000012-00 for the proclamation of the current Great Northern Highway H006 alignment and the deproclamation of the superseded Great Northern Highway H006 alignment in the Batty Bog area, within the Shire of Victoria Plains.
2. **AUTHORISES** the Chief Executive Officer to endorse the proclamation drawings on behalf of the Shire of Victoria Plains by inserting the Council resolution number and date of meeting and signing the drawings where required.
3. **REQUESTS** that the original signed proclamation drawings be returned to Main Roads Western Australia and that a duplicate copy be retained as Council's interim record pending formal proclamation.
4. **NOTES** that, following proclamation, Main Roads Western Australia will provide Council with final drawings showing gazettal details for the Shire's records.

PUBLIC SCM

Enquiries: Joanne Cammack or Lesley Vaeth
Our Ref: 26/140 & 20/9300 - D25#373277
Your Ref: N/A

15 July 2026

Mr Sean Fletcher
Chief Executive Officer
Shire of Victoria Plains
PO Box 21
Calingiri WA 6569

Dear Sir,

Proclamation and deproclamation of Great Northern Highway H006 - Batty Bog

As part of the Muchea to Wubin improvement works completed in 2016, Main Roads realigned sections of Great Northern Highway within the Shire of Victoria Plains, between Batty Bog Road and the boundary with the Shire of Moora. At the time proclamation of the new alignment and de-proclamation of the superseded alignment did not occur.

To rectify this anomaly, in accordance with Section 13 of the Main Roads Act, the Commissioner of Main Roads intends making a recommendation to the Hon. Minister for Transport, to proclaim the new alignment as a 'highway' and de-proclaim the superseded alignment, as shown on proclamation drawings: 201421-0036-03, 202121-0007-00 and 202521-000012-00.

Before making the recommendation to the Minister, the Commissioner requires endorsement of the proclamation drawings by Council. Subject to Council's agreement, will you please endorse the drawings with details of the Council's resolution number and date of meeting in support of the proposal.

The proposed proclamation of the new alignment and de-proclamation of the superseded section of Great Northern Highway will have no impact on the Shire of Victoria Plains. These actions are administrative in nature and serve solely to formalise the existing road configuration.

Please return the original signed drawings to Main Roads' East Perth office, marked to the attention of Network Development Support Officer, Lesley Vaeth. A duplicate copy should be retained as Council's interim record, pending formal proclamation. Following proclamation, a copy of the final drawings showing gazettal details will be sent to Council for its records.

If Council does not support the changes, Section 13A (2) of the Main Roads Act makes provision for Council to lodge an objection with the Commissioner of Main Roads. Any objection needs to be lodged with Main Roads by 18 September 2026.



mainroads
WESTERN AUSTRALIA

If you require any further information regarding the proclamation action, please contact Joanne Cammack on 9323 4743 or Lesley Vaeth on 9323 4296.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Douglas Morgan".

Douglas Morgan

Executive Director Planning and Technical Services

Encl: 201421-0036-03, 202121-0007-00 and 202521-000012-00.

PUBLIC SCM

AMENDMENTS

1. Proclaim H006, Great Northern Hwy
2. Deproclaim H006, Great Northern Hwy

PROCLAMATION
LEGEND

EXISTING PROCLAIMED ROUTE

H006 Highway
(^ Road Name)

M042 Main Road
(^ Road Name)

SECTION TO BE DEPROCLAIMED

H002 **M012**

SECTION TO BE PROCLAIMED

H006 Highway

M042 Main Road

^ Landgate approved local usage name.

PATHWAY RESPONSIBILITY

P018 Main Roads Controlled Path

P018 Other Path

P018 MR Controlled Path Removed

Controlled paths (shared, pedestrian or bicycle) depicted on this drawing are those for which Main Roads Western Australia has responsibility.

Paths, shared, pedestrian or bicycle, the responsibility of other entities are not shown.

This is to certify that Local Government endorsed the proposal shown on this plan.

By Council Resolution:.....of

Council Meeting Held On:.....

OR by Delegated Authority by

Chief Executive Officer

Date:.....

OR in accordance with Section 5.41(d) and (2)(c)(ii) of the Local Government Act 1995.

Chief Executive Officer

Date:.....

Gazette:.....

Page No:.....

DATE OF ORIGINAL ISSUE: 23 Apr 14

DRAWING AMENDMENT DATE: 30 Mar 18 15 Feb 21 28 Mar 23

THIS DRAWING SUPERSEDES: DWG-201421-0036-02

RECOMMENDED

Signature: *NPDM*

Position: *NPDM*

Date: *3/7/2026*

APPROVED

Signature: *EDPTS*

Position: *EDPTS*

Date: *16/7/26*

0 2.5 5 10 15 20
Kilometres

Planning and Technical Services Directorate

PROCLAMATION PLAN

Declared Roads

SHIRE OF VICTORIA PLAINS

SHIRE of VICTORIA PLAINS - LG No. 517

SHEET 1 of 1

MAIN ROADS WESTERN AUSTRALIA

DWG TYPE

FILE No

DWG NUMBER

20:00

20/9300
26/140

201421-0036-03

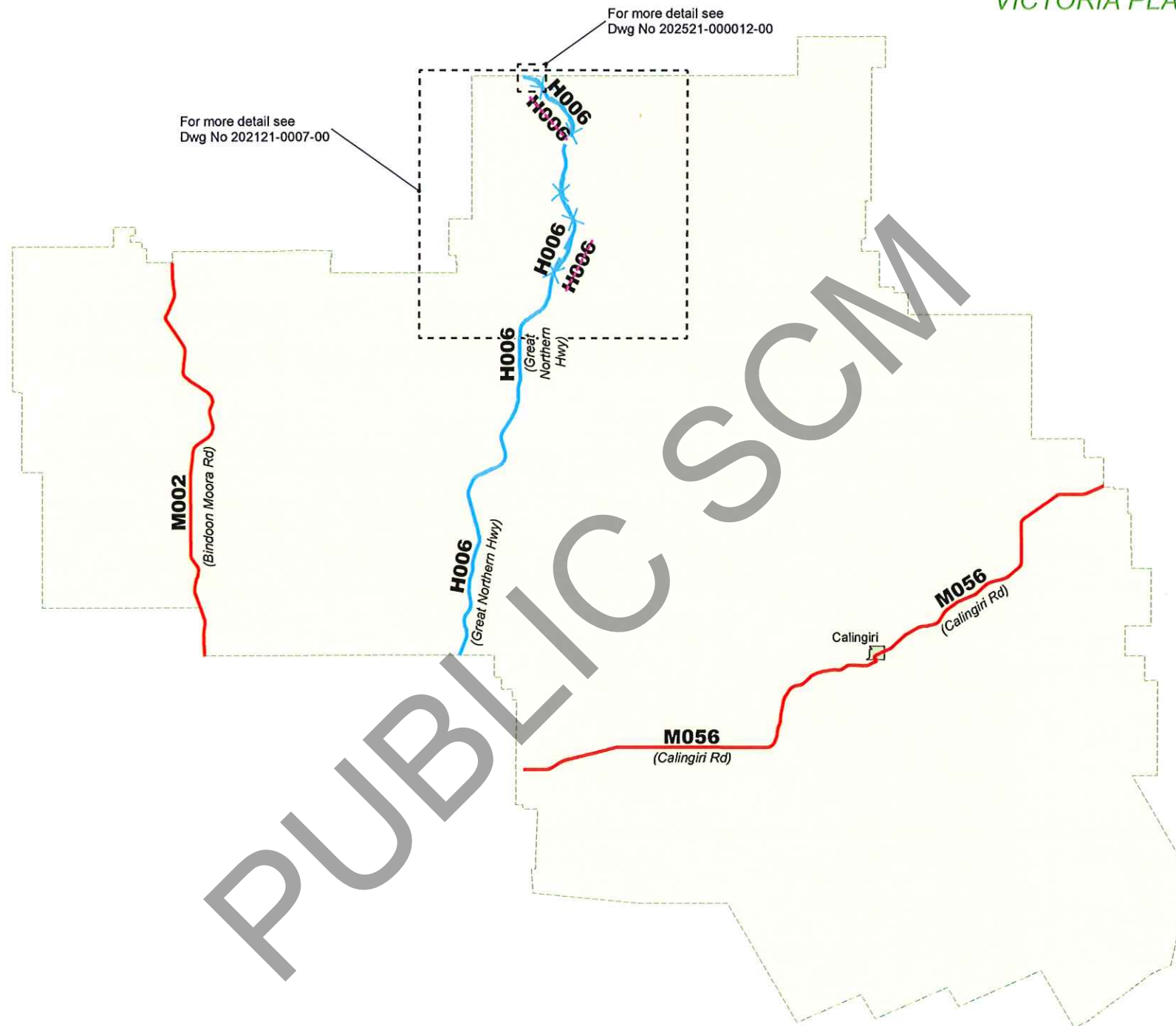
NOTES:

Roads and/or paths are represented by centrelines which are a notional reference line that generates and approximates the centre of the pavement extent.

Ramp intersections are shown schematically. The point at which the lines meet represents the end of the median which separates the converging or diverging carriageways.

Slip lanes where ramps intersect other roads are not shown.

SHIRE OF
VICTORIA PLAINS



WHEATBELT
REGION

SHIRE OF
VICTORIA PLAINS

BASE MAP
LEGEND

- Town Site Area And Boundary
- Local Government Area And Boundary
- Cadastre
- Local Road

NOTE: FOR DETAIL OF TOWNSITES - REFER TO TOWNSITE DRAWINGS

AMENDMENTS

PROCLAMATION
LEGEND

EXISTING PROCLAIMED ROUTE

H006 Highway
(^ Road Name)

M042 Main Road
(^ Road Name)

SECTION TO BE DEPROCLAIMED

~~H002~~ ~~M012~~

SECTION TO BE PROCLAIMED

H006 Highway

M042 Main Road

^ Landgate approved local usage name.

PATHWAY RESPONSIBILITY

P018 Main Roads Controlled Path

P018 Other Path

~~P018~~ MR Controlled Path Removed

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the proposal shown on this plan.

By Council Resolution:.....of

Council Meeting Held On:.....

OR by Delegated Authority by

Chief Executive Officer

Date:.....

OR in accordance with Section 5.41(d)
and (2)(c)(ii) of the Local Government Act 1995.

Chief Executive Officer

Date:.....

Gazette:.....

Page No:.....

DATE OF ORIGINAL ISSUE: 2 Apr 25

DRAWING AMENDMENT DATE:

THIS DRAWING SUPERSEDES:

RECOMMENDED

Signature: *[Signature]*

Position: NPDM

Date: 3/7/2026

APPROVED

Signature: *[Signature]*

Position: EDPTS

Date: 16/7/26

0 1 2 3 4 5
Kilometres

Planning and Technical Services Directorate

PROCLAMATION PLAN

Declared Roads
Proclaim H006 Great Northern Hwy
Deproclaim H006 Great Northern Hwy
Realignment - Batty Bog to Walebing
H006 - SLK 122.77 to 142.27

SHIRE of VICTORIA PLAINS - LG No. 517

SHEET 1 of 2

MAIN ROADS WESTERN AUSTRALIA

DWG TYPE

FILE No

20:00

20/9300

DWG NUMBER

202121-0007-00

15

SHIRE OF MOORA

(Gabalong West Rd)

SHIRE OF
VICTORIA PLAINS

For more detail see
Dwg No 202521-000012-00

(Wallamarra Rd)

(Essex Rd)

(Wongan Hills - Waddington Rd)

(Rick Rd)

(Halligan Rd)

(Skilling Rd)

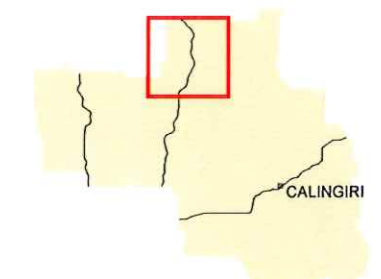
(Putnam Rd)

(Batty Bog Rd)

H006
(Great Northern Hwy)

PUBLIC SCM

NOTE:
Remove bitumen and
rehabilitate landscaping



SHIRE OF
VICTORIA PLAINS

BASE MAP
LEGEND

- Local Government Boundary
- Town Site Area And Boundary
- Cadastre
- Local Road

NOTE: FOR DETAIL OF TOWNSITES - REFER TO TOWNSITE DRAWINGS

AMENDMENTS

PROCLAMATION
LEGEND

EXISTING PROCLAIMED ROUTE

H006 Highway
(^ Road Name)

M042 Main Road
(^ Road Name)

SECTION TO BE DEPROCLAIMED

~~**H002**~~ ~~**M012**~~

SECTION TO BE PROCLAIMED

H006 Highway

M042 Main Road

^ Landgate approved local usage name.

PATHWAY RESPONSIBILITY

P018 Main Roads Controlled Path

Other Path

~~**P018**~~ MR Controlled Path Removed

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This is to certify that Local Government endorsed the proposal shown on this plan.

By Council Resolution:.....of

Council Meeting Held On:.....

OR by Delegated Authority by

Chief Executive Officer

Date:.....

OR in accordance with Section 5.41(d) and (2)(c)(ii) of the Local Government Act 1995.

Chief Executive Officer

Date:.....

Gazette:.....

Page No:.....

DATE OF ORIGINAL ISSUE: 2 Apr 25

DRAWING AMENDMENT DATE:

THIS DRAWING SUPERSEDES:

0 100 200 300 400 500
Metres

Planning and Technical Services Directorate

PROCLAMATION PLAN

Declared Roads

Proclaim H006 Great Northern Hwy
Deproclaim H006 Great Northern Hwy
Realignment - Batty Bog to Walebing, Gabalong West Rd Intersection
H006 - SLK 140.57 to 142.27
SHIRE of VICTORIA PLAINS - LG No. 517

SHEET 2 of 2

MAIN ROADS WESTERN AUSTRALIA

DWG TYPE

FILE No

DWG NUMBER

20:00

20/9300
26/140

202521-000012-00

NOTES:

Roads and/or paths are represented by centrelines which are a notional reference line that generates and approximates the centre of the pavement extent.



SHIRE OF
VICTORIA PLAINS

BASE MAP
LEGEND

- Local Government Boundary
- Town Site Area And Boundary
- Cadastral
- Local Road

NOTE: FOR DETAIL OF TOWNSITES - REFER TO TOWNSITE DRAWINGS

9.2 Adoption of Shire of Victoria Plains Yued Heritage Agreement

File Reference	
Report Date	4 August 2026
Applicant/Proponent	Yued Aboriginal Corporation
Officer Disclosure of Interest	Nil
Previous Meeting Reference	Ordinary Council Meeting, 29 April 2026, Item 9.11, Resolution 2604-12
Prepared by	Sean Flectcher, Chief Executive Officer
Senior Officer	N/A
Authorised by	Chief Executive officer
Attachments	1. Noongar Heritage Agreement for Local Government – Yued – Page 26 2. 260724 Yued_Heritage_Agreement_Advice – Page 91

PURPOSE

Council is requested to adopt the Noongar Heritage Agreement for Local Government - Yued between the Shire of Victoria Plains and Yued Aboriginal Corporation and authorise the Shire President and Chief Executive Officer to execute the agreement on behalf of the Shire, including use of the common seal where required. The agreement has been prepared following Council's April 2026 resolution to progress the Noongar Heritage Agreement for Local Government as the Shire's preferred framework and to return a final agreement and implementation approach to Council for consideration and execution.

BACKGROUND

Discussions between the Shire of Victoria Plains and Yued Aboriginal Corporation regarding an Aboriginal heritage agreement have been occurring since January 2025. In April 2025, discussions progressed directly with Rewi Lyall, Chief Executive Officer of Yued Aboriginal Corporation, who provided correspondence enclosing two agreement templates: the Yued Aboriginal Heritage Protection Agreement and the Noongar Heritage Agreement for Local Government. The correspondence identified Yued Aboriginal Corporation's preferred agreement position at that time and provided the Noongar Heritage Agreement for Local Government for comparison purposes.

Given the significance of selecting an agreement framework suitable for a local government, Council requested direct advice from the Department of Planning, Lands and Heritage. Glenn Shaw, Manager – Partnerships and Agreements, Heritage and Property Services, Department of Planning, Lands and Heritage, subsequently briefed Council on Aboriginal heritage agreement pathways on 30 July 2025, accompanied by a Senior Heritage Officer. The advice received was that while Regional Corporations may develop alternative agreements, the Noongar Standard Heritage Agreement and the Noongar Heritage Agreement for Local Government remain the Government-endorsed heritage agreement forms, and that local governments should seek independent advice to ensure any agreement aligns with governance, financial and operational requirements.

Council considered this matter at its Ordinary Council Meeting held on 29 April 2026. Council resolved to endorse, in principle, the Noongar Heritage Agreement for Local Government as the Shire's preferred agreement framework, support the application of the key principles of the NHALG as an interim governance and engagement framework, request the Chief Executive Officer to undertake the necessary legal, financial and operational review, continue engagement with Yued Aboriginal

Corporation in good faith, and return a final agreement and proposed implementation framework to Council for consideration and execution.

Following Council's decision, the Chief Executive Officer advised Rewi Lyall of Council's position and continued engagement with Yued Aboriginal Corporation. A formal letter was prepared confirming the outcome of the 29 April 2026 Ordinary Council Meeting and noting that the Shire would work with Yued Aboriginal Corporation in accordance with the values and principles reflected in the NHALG model, including good faith engagement, clear communication, proportionate and risk-based heritage processes, recognition of Aboriginal cultural heritage values, sound governance, and cooperation in relation to essential and emergency works.

Further engagement occurred during July 2026. Email correspondence records the Chief Executive Officer advised Council support staff that work with Rewi Lyall on the agreement would commence on 22 July 2026. The calendar record confirms a Teams meeting titled Proposed Aboriginal Heritage Agreement was held on 22 July 2026 between Sean Fletcher and Rewi Lyall. The meeting was not transcribed, but the event record identifies the related draft agreement file and related email correspondence.

A further Teams meeting titled Yued heritage agreement discussion was held on 24 July 2026. That meeting was also not transcribed. The event metadata confirms that the meeting was a Microsoft Teams meeting with Rewi Lyall as organiser and Sean Fletcher as invitee, with related emails including Shire of Victoria Plains - Draft Protection Heritage Agreement, Change of Time - Signing Of Yued Heritage Agreement, and RE: NSHA - Local Government and YHPA.

On 24 July 2026, the Chief Executive Officer advised Councillors in the weekly update that significant progress had been made on the proposed heritage protection agreement with Rewi Lyall, Chief Executive Officer of Yued Aboriginal Corporation, and that the draft agreement was effectively complete. That update also advised that, subject to final review and endorsement processes, the intention was for the agreement to be formally signed with Yued Aboriginal Corporation on 17 August 2026.

On 27 July 2026, correspondence was sent to Rewi Lyall proposing that the signing of the Yued Heritage Agreement occur at 11.00am on 17 August 2026. On 28 July 2026, the Chief Executive Officer sent the draft agreement to Rewi Lyall for information.

The final agreement now presented to Council is the Noongar Heritage Agreement for Local Government - Yued. It identifies Yued Aboriginal Corporation as Yued Aboriginal Corporation (ICN: 9579), the local government as the Shire of Victoria Plains, the NHALG reference number as YAC01, and the agreement date as 17 August 2026.

The agreement applies to the Agreement Area described in Schedule 3, being the Shire of Victoria Plains local government district.

COMMENT

The agreement provides a standing process for the Shire and Yued Aboriginal Corporation to engage in relation to proposed Shire activities within the Agreement Area. It is not an approval of individual works. Rather, it establishes the agreed process for identifying when Activity Notices are required, when heritage surveys may be required, how surveys are planned and costed, how survey reports are managed, and how statutory heritage processes are supported where required.

The agreement has been reviewed from an operational, governance and risk perspective. The core position remains that the agreement is suitable for the Shire because it recognises Aboriginal heritage, provides a transparent engagement process, preserves emergency response powers, allows many

routine and low-impact activities to continue, includes defined timeframes, includes termination rights, and provides delay protections that are important to local government service delivery.

A key operational feature of the agreement is that it does not apply to activities that are urgently required to secure life, health or property, or to prevent or address an imminent hazard to life, health or property. This preserves the Shire's ability to respond immediately to emergency and public safety matters.

The agreement also recognises Minimal Impact Activities and Low Ground Disturbance Activities. These categories are particularly important for local government because they include, among other things, activities such as environmental monitoring, use of existing tracks, maintenance within existing footprints, maintenance of existing roads, drains, culverts, bridges, fence lines and firebreaks, signage and barriers, revegetation, rehabilitation works and tourism operations involving minor disturbance.

Clause 8.1 provides that the Shire does not need to issue an Activity Notice where it has reasonable grounds to form the opinion that no survey is required, or where the proposed activities consist entirely of Minimal Impact Activities or Low Ground Disturbance Activities of a class that Yued Aboriginal Corporation has notified in writing need not be the subject of an Activity Notice. Where there is doubt, the agreement requires the Shire to issue an Activity Notice.

Where an Activity Notice is required, the agreement sets out the matters that must be included. These include information about the proposed activity, mapping, whether the activity is considered Low Ground Disturbance Activity, whether the Shire considers a survey is required, the preferred survey methodology, proposed fieldwork timing, and whether preliminary advice, a draft survey report, or statutory application support may be required.

A practical implementation issue is that clause 9 contains a non-binding presumption that a survey is required where no previous Aboriginal Heritage Survey has been undertaken in relation to the land and waters the subject of an Activity Notice, unless otherwise agreed or waived. The operational guidance prepared for the Shire identifies that this issue will require practical discussion with Yued Aboriginal Corporation in relation to established road reserves, existing gravel pits, previously cleared areas and routinely maintained infrastructure.

The agreement provides a process for survey team composition, including between 2 and 8 Yued Aboriginal Consultants, a Yued Aboriginal Heritage Liaison Officer where necessary and agreed, and anthropological or archaeological expertise where required and agreed. The number and composition of the survey team will affect costs and will need to be managed through the agreement's Activity Notice and survey planning process.

The agreement requires the Shire to pay survey costs at the rates set out in Schedule 5 where Yued Aboriginal Corporation elects to contract the Aboriginal Heritage Service Provider or perform that function itself. The Shire must pay 100% of the approved Estimated Survey Costs to Yued Aboriginal Corporation within the timeframes specified in the agreement, but Schedule 5 provides a more predictable local government cost framework, including an administration fee of 15% of total expenditure capped at \$5,000, indexed to CPI.

The agreement contains important delay protections. If Yued Aboriginal Corporation or its contracted provider does not meet applicable time limits, the Shire may issue a notice requiring rectification and, if non-compliance is not rectified, the Shire may no longer be bound by clauses 9 to 12 for the relevant Activity Program and may make alternative arrangements for Aboriginal heritage surveys, including

by appointing an independent anthropologist, archaeologist or other appropriately qualified professional after seeking advice from DPLH if appropriate.

The agreement also provides that either party may terminate the agreement for convenience by giving 30 days' written notice. This is a significant governance protection and provides Council with a practical safeguard if implementation issues arise over time.

Confidentiality will need to be actively managed. The agreement treats survey information, survey reports and Sensitive Heritage Information as confidential, subject to permitted disclosures. This has implications for Council agenda material, public reporting, record keeping and any future Freedom of Information request involving heritage information.

The implementation approach should therefore be practical and proportionate. Officers should use the agreement to support early discussion with Yued Aboriginal Corporation where heritage risk is uncertain, while also recognising that many routine, emergency, maintenance and low-impact activities can continue without unnecessary delay where the agreement allows. The practical guidance prepared for officers summarises this approach as: "If in doubt, discuss with YAC first."

It is recommended that Council now adopt the final agreement and authorise execution. This will complete the work requested through Council's April 2026 resolution and provide a consistent, transparent and locally appropriate framework for heritage engagement between the Shire and Yued Aboriginal Corporation.

CONSULTATION

Consultation has occurred with Rewi Lyall, Chief Executive Officer, Yued Aboriginal Corporation, including direct discussions with the Chief Executive Officer and the previous Council, correspondence over the course of 2025 and 2026, and Teams meetings on 22 July 2026 and 24 July 2026. The Teams meetings were not transcribed, so no transcript-based meeting content is available for this report.

Consultation also occurred with the Department of Planning, Lands and Heritage, including through the Council briefing provided by Glenn Shaw, Manager – Partnerships and Agreements, Heritage and Property Services, and a Senior Heritage Officer on 30 July 2025.

Department of Planning, Lands and Heritage (including Glenn Shaw) including with CEO and Council

Internal consultation: Deputy CEO, Planning, Works, Emergency Management / Ranger functions, Community Development Officer

Councillors have also been updated through the Chief Executive Officer's weekly update dated 24 July 2026, which advised that significant progress had been made, the draft agreement was effectively complete, and the intended signing date was 17 August 2026 subject to final review and endorsement processes.

STATUTORY CONTEXT

Aboriginal Heritage Act 1972

The *Aboriginal Heritage Act 1972* provides for the protection and preservation of Aboriginal heritage in Western Australia, makes it an offence to excavate, damage, destroy or alter an Aboriginal site unless authorised, and establishes the framework for consultation, investigation and approval where activities may impact Aboriginal heritage.

The Noongar Heritage Agreement for Local Government operates alongside the *Aboriginal Heritage Act 1972*. It does not displace the Act or remove the need for statutory approvals where required.

Rather, it supports compliance by clarifying consultation pathways, information flows and agreed procedures.

Local Government Act 1995

Section 3.1 of the Local Government Act 1995 establishes the general function of a local government to provide for the good government of persons in its district, and that in performing that function a local government must have regard to matters including the need to recognise the particular interests of Aboriginal people and the need to involve Aboriginal people in decision-making processes.

In this context, the Shire's engagement with Yued Aboriginal Corporation and its consideration of an Aboriginal heritage agreement are consistent with its general function and governance responsibilities.

Agreement Execution

The agreement signing pages provide for execution by Yued Aboriginal Corporation and by the Shire of Victoria Plains where applying the common seal, with execution by the Shire President and Chief Executive Officer by authority of a Council resolution.

CORPORATE CONTEXT

Strategic Business Plan/Corporate Business Plan

The Heritage Agreement is applicable across the Shire's strategies:

STRATEGIC PRIORITIES		WE KNOW WE ARE SUCCEEDING WHEN	
1. COMMUNITY			
1.2 Inclusive community activities, events and initiatives		Community Development Officer jointly plans and works with local groups	
		We increase the number and diversity of sport, recreation, learning and cultural events	
1.3 Recreational, social and heritage spaces are safe and are activated		Shire owned community buildings and places of interest are well maintained and used	

STRATEGIC PRIORITIES		WE KNOW WE ARE SUCCEEDING WHEN	
2. ECONOMY			
2.1 We understand traditional and emerging industries across the Shire		Communities and opportunities are promoted by the Shire We forward plan for emerging industries	

STRATEGIC PRIORITIES		WE KNOW WE ARE SUCCEEDING WHEN	
----------------------	--	--------------------------------	--

3. ENVIRONMENT	
3.2 Conservation of our natural environment and resources	Responsive and a high standard of Ranger services
	Nature reserves in our control are managed and protected
	Shire water resources are efficient, equitable and we advocate for improvements in the network

STRATEGIC PRIORITIES	WE KNOW WE ARE SUCCEEDING WHEN
4. CIVIC LEADERSHIP	
4.2 Shire communication is regular, clear and transparent	Residents and community groups believe they are being listened to and fairly treated

The agreement supports the Shire's strategic direction by providing a consistent process for recognising Aboriginal heritage interests, engaging with Yued Aboriginal Corporation, managing heritage risk, and supporting practical delivery of Shire activities across the district.

Delegation

Nil

Policy Implications

Nil

Other Corporate Document

The agreement should be supported by practical officer guidance, including the 260724 Yued_Heritage_Agreement_Advice, to assist staff in identifying when an Activity Notice may be required, how emergency works are managed, how routine works are treated, and when contact with Yued Aboriginal Corporation should occur.

Risk Analysis

Consequence	Consequence Rating:	Likelihood Rating:	Risk Rating	Risk Acceptance/ Controls	Mitigation and Outcome
Compliance / Business Disruption / Reputation If the Shire does not adopt and implement a consistent Aboriginal heritage agreement framework, there is a risk of inconsistent heritage engagement, non-compliance with heritage legislation, project delays, increased exposure to legal or regulatory challenge, and damage to the Shire's relationship with Yued Aboriginal Corporation and Noongar Traditional Owners.	Major (4)	Possible (3)	High (12)	Senior Management Team Existing controls include heritage due diligence on a project-by-project basis, engagement with DPLH and sector guidance, Council oversight, and inclusion of Aboriginal heritage risks within the Shire's governance and compliance risk profile	Adoption of the Noongar Heritage Agreement for Local Government - Yued will provide a consistent, transparent and legally aligned process for Aboriginal heritage engagement. It will assist early engagement with Yued Aboriginal Corporation, provide defined Activity Notice and survey processes, preserve emergency response capacity, support routine maintenance pathways, and reduce residual risk to a moderate level with routine monitoring.

FINANCIAL IMPLICATIONS

There is no immediate financial implication arising solely from Council's adoption and execution of the agreement, apart from officer time associated with implementation, administration and record keeping.

Future financial implications may arise where a Shire activity requires an Activity Notice, heritage assessment or survey. Where a survey is required, the agreement provides a cost framework through

Schedule 5. The agreement provides for survey-related costs, including Aboriginal Heritage Service Provider costs, Principal Aboriginal Heritage Consultant costs, Yued Aboriginal Heritage Liaison Officer costs where necessary and agreed, Yued Aboriginal Consultants, field expenses, travel expenses and incidental expenses.

The agreement's Schedule 5 includes an administration fee of 15% of total expenditure capped at \$5,000, indexed to CPI. This provides a more predictable and capped administration cost structure than the alternative proponent-style agreement previously considered by Council.

The agreement also requires the Local Government to pay 100% of approved Estimated Survey Costs to Yued Aboriginal Corporation within the timeframes set out in clause 11. This will need to be managed through project planning and budget processes where an Activity Notice or survey is required.

VOTING REQUIREMENTS

Absolute majority required: No

Officer Recommendation

That Council:

1. **NOTES** the previous consideration of this matter at the Ordinary Council Meeting held on 29 April 2026, at which Council endorsed, in principle, the Noongar Heritage Agreement for Local Government as the Shire's preferred agreement framework for progressing heritage engagement with Yued Aboriginal Corporation.
2. **NOTES** the consultation undertaken with Yued Aboriginal Corporation, including engagement with Rewi Lyall, Chief Executive Officer, Yued Aboriginal Corporation, and the Teams meetings held on 22 July 2026 and 24 July 2026.
3. **NOTES** that the final agreement presented to Council is the Noongar Heritage Agreement for Local Government - Yued, identifying Yued Aboriginal Corporation (ICN: 9579), the Shire of Victoria Plains as the Local Government, NHALG Reference Number YAC01, and agreement date 17 August 2026.
4. **ADOPTS** the Noongar Heritage Agreement for Local Government - Yued between the Shire of Victoria Plains and Yued Aboriginal Corporation, as set out in Attachment One.
5. **AUTHORISES** the Shire President and Chief Executive Officer to execute the Noongar Heritage Agreement for Local Government - Yued on behalf of the Shire of Victoria Plains, including affixing the common seal where required.

6. **AUTHORISES** the Chief Executive Officer to make any minor administrative, formatting or typographical amendments to the agreement prior to execution, provided those amendments do not materially alter the intent, obligations or effect of the agreement.
7. **SUPPORTS** the Chief Executive Officer's practical internal guidance for officers to support the operation of the agreement, including guidance on Activity Notices, emergency activities, Minimal Impact Activities, Low Ground Disturbance Activities, confidentiality, survey cost management and engagement with Yued Aboriginal Corporation, as set out in Attachment Two.
8. **NOTES** that, subject to Council adoption and completion of execution arrangements, the agreement is proposed to be signed with Yued Aboriginal Corporation on 17 August 2026.

For _____ / Against _____

PUBLIC SCM

Noongar Heritage Agreement for Local Government

Yued Aboriginal Corporation (ICN: 9579)

Name of Local Government: Shire of Victoria Plains

NHALG Reference Number: YAC02

Date: 17/08/2026

PUBLIC SCM

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PUBLIC SCM

Date

THIS AGREEMENT is made on [Click here to enter a date.](#)

Parties

Yued Aboriginal Corporation (ICN: 9579) of 23/2 Delhi Street, West Perth 6005 (YAC)

Local Government: Shire of Victoria Plains

ABN: 94 0065 549 61

Recitals

- A. YAC represents the Yued People 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 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 YAC concerning Aboriginal Heritage Surveys in the Agreement Area. To avoid doubt, this NHALG is a form of Aboriginal Heritage Agreement.

Aboriginal Heritage Service Provider means the person or company engaged by YAC, 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 YAC.

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 YAC under clause 8.2.

Activity Notice Response means notice given by YAC 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.

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 YAC.

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 ACHknowledge Portal (achknowledge.dplh.wa.gov.au).

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 Yued 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.

Sensitive Heritage Information means culturally restricted information about Aboriginal Sites or any other items of Aboriginal Heritage, provided by the Yued 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.

Yued Aboriginal Consultants means:

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

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

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

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

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 YAC and the members 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 YAC 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 YAC 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 Yued ILUA does not affect NHALG

Notwithstanding the termination or de-registration of the Yued 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 YAC representations and warranties

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

- (a) it is the Regional Corporation for the Agreement Area;
- (b) it represents the Yued People in respect of Aboriginal Heritage matters within the Agreement Area;
- (c) 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
- (d) 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 YAC and the Yued People, 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 YAC 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 YAC 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 YAC 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), YAC 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 YAC 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 YAC 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 YAC 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; andmay 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) YAC 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, YAC 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) YAC 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 YAC considers that a Survey is required (**Activity Notice Response**). In coming to its decision YAC 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, YAC 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 YAC under clause 8.3(b); and
 - (iv) any other matter YAC 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) YAC so agrees in writing; or
 - (ii) YAC 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 YAC 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 YAC'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 YAC'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 YAC; 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 YAC, an election, or not, by YAC 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 YAC, if electing to contract the Aboriginal Heritage Service Provider, a nomination of YAC's preferred proposed Aboriginal Heritage Service Providers and (if different to the Aboriginal Heritage Service Provider,) Principal Aboriginal Heritage Consultants; and
- (vii) if YAC 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 Yued 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 YAC (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 YAC considers that a Survey in respect of any Low Ground Disturbance Activity is required, then YAC and the Local Government will each use their reasonable endeavours to address the concerns of YAC, 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 YAC 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 YAC's concerns for the Survey Area and the Activities proposed by the Local Government.

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

Where YAC 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 YAC or YAC'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 YAC 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 YAC is contracting an Aboriginal Heritage Service Provider, and YAC's Activity Notice Response does not identify YAC's nominated Aboriginal Heritage Service Provider and (if different to the Aboriginal Heritage Service Provider) the Principal Aboriginal Heritage Consultant, then YAC will advise the Local Government of these nominations during the Survey Agreement Period.
- (b) The Parties acknowledge that, if YAC 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 YAC 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 YAC 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 YAC 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), YAC 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 YAC 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 YAC 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 Yued Aboriginal Consultants from YAC 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 Yued Aboriginal Consultants, with appropriate experience and authority, as are necessary, in the opinion of the Aboriginal Heritage Service Provider in consultation with YAC 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, a Yued 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, YAC 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 YAC and the Local Government, more than one archaeologist may be appointed to the Survey Team.
- (c) The number of paid Yued 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 Regional Corporations' Agreement Area.

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

- (d) Additional Yued 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 YAC is contracting the Aboriginal Heritage Service Provider, YAC 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) YAC 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 YAC with details of and explain these procedures and policies in order for YAC to provide these details and explain the procedures and policies to the Yued Aboriginal Consultants before the Survey commences. The Local Government will also provide members of the Survey Team (and any other attending members of YAC) 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) YAC 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 Yued 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 YAC is contracting the Aboriginal Heritage Service Provider

Where YAC 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 YAC:
 - (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 YAC 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 YAC 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, YAC; 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) YAC 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 YAC or their delegate.

- (g) If the costs incurred are less than the Estimated Survey Costs, YAC 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 YAC 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 YAC or their delegate. The Local Government shall not be liable to pay YAC 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 YAC under clause 12.2(b), the Local Government will pay 100% of any additional costs to YAC 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 YAC is contracting the Aboriginal Heritage Service Provider, the Local Government or YAC, 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 YAC within 5 Business Days after the Last Fieldwork Day and, after taking into account any comments from YAC, 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 YAC within 15 Business Days after the Last Fieldwork Day, to enable YAC to comment on it; and after taking into account any comments from YAC, 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 YAC (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 YAC 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 YAC (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 YAC is contracting the Aboriginal Heritage Service Provider, YAC 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 YAC is the Aboriginal Heritage Service Provider it must provide: or
- (b) if YAC 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 YAC, 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 YAC 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 YAC

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 YAC upon its creation.

13.2 Licence to use Survey Report

Subject to clause 19, YAC 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 Yued 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 YAC 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 YAC, 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 ACMC 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 ACMC (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 YAC 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 YAC does not meet, or, if YAC 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 YAC, 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 YAC fails to comply with a notice sent by the Local Government under clause 16.1(d), then the Local Government may notify YAC 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 YAC 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 YAC 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 YAC 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 YAC of the alternative arrangements made (including any advice and assistance obtained from DPLH); and
 - (ii) YAC 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 YAC, 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 YAC, then YAC 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 YAC; 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 YAC:
 - (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 YAC in respect of the Activities of the Local Government where the Local Government advises YAC 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 YAC'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 ACMC, 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 YAC consents to the form and content of the disclosure or the disclosure is required by any law or applicable securities regulation or rule.
- (d) YAC 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 YAC 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 YAC 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 YAC's approval, which approval must not be unreasonably withheld, and the Local Government must take into account any reasonable amendments put forward by YAC;
 - (iii) within 20 Business Days after receiving YAC's approval to the terms of the draft deed of assignment or novation provide to YAC either:

- (A) the deed of assignment in the form approved by YAC executed by the outgoing Local Government and the incoming Local Government in favour of YAC 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 YAC 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) YAC 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 YAC

- (a) YAC must assign its rights (including intellectual property rights assigned to YAC pursuant to clause 13.1), title and interests under this NHALG to a replacement Regional Corporation if:
 - (i) a replacement 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 YAC'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, YAC 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, the assigning Regional Corporation 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 YAC 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 YAC 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)

Yued Aboriginal Aboriginal Corporation Notice Details

Address 23/2 Delhi Street
WEST PERTH WA 6005

Fax

Email admin@yued.org.au

Local Government Notice Details

Local Government Name Shire of Victoria Plains

Address 28 Cavell Street
CALINGIRI WA 6569

Fax Click here to enter text.

Email reception@victoriaplains.wa.gov.au

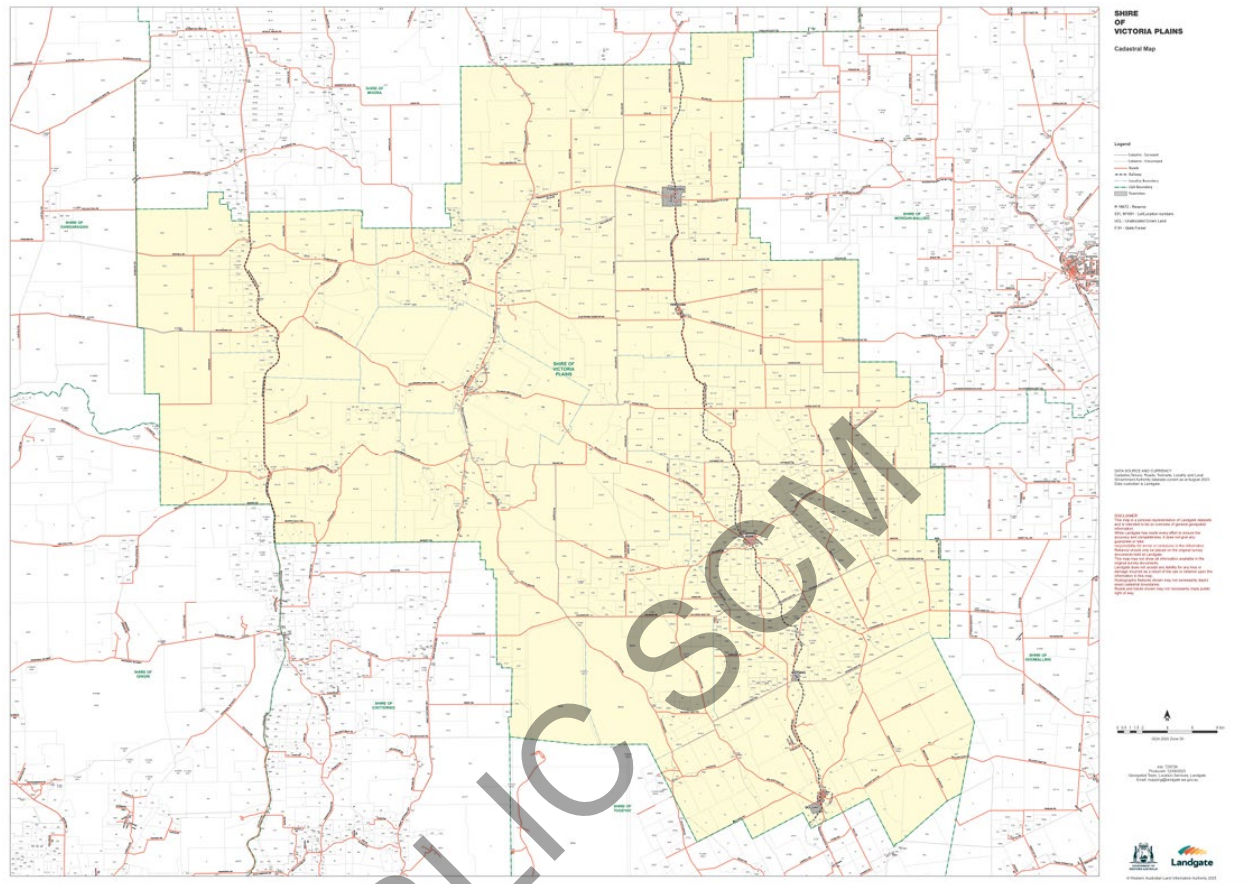
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Schedule 2 — Details of Yued ILUA and Pre-existing Aboriginal Heritage Agreements

Item No.	Item Description	Details
Details of Yued ILUA		
Item 1	Short name of ILUA	Yued ILUA
Item 2	National Native Title Tribunal file number	WI2017/009
Item 3	Date registered	17/10/2018
Item 4	Local government region(s)	City of Wanneroo Shire of Chittering Shire of Coorow Shire of Dalwallinu Shire of Dandaragan Shire of Gingin Shire of Goomalling Shire of Moora Shire of Toodyay Shire of Victoria Plains Shire of Wongan-Ballidu
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)



Shire of Victoria Plains Coordinates -30.98295048211343, 116.2883641373732

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 Yued 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 YAC 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	Yued 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
Yued Aboriginal Consultants				
6	Yued 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	Yued Aboriginal Heritage Liaison Officer or Anthropologist accommodation/meals	At cost	+GST	
8	Archaeologist or Archaeological Team accommodation/meals	At cost	+GST	
9	Yued 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	Yued Aboriginal Consultants motor vehicle travel expenses (if required) to be calculated as follows. (a) If usual residence within the boundary of the Yued ILUA area - at Distance travelled for return journey from place of usual residence to the survey area. (b) If usual residence outside the boundary of the Yued ILUA area - Distance travelled for return journey within the boundary of the Yued 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.	As per Australian Taxation Office tax schedule for location	+GST	per km

No.	Item	Rate	GST	Description
	(c) Where a particular Yued Aboriginal Consultant is 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 YAC.

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 Yued 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 Yued 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.

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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 ACHknowledge Portal (achknowledge.dplh.wa.gov.au).

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Schedule 8 — Noongar Standard Heritage Process Information

(Clause 12.6 Provision of Survey Information to DPLH)

YAC will report the following information to DPLH:

Details of the person filling in this form

1. Name:
2. Job Title:
3. Noongar Corporation Name:

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 Regional Corporation:

Activity Notice

9. Did the Activity Notice contain all requisite information (As per Schedule 4):
Y/N
10. If not did YAC:
 - (c) Utilise the Default Provisions:
 - (d) Request a new notice:
11. When considering whether or not a survey was required did YAC 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 Yued Aboriginal Consultants (If more than eight, detail why):
16. Number of additional (unpaid) Yued Aboriginal Consultants (detail why there was additional Consultants):
17. Was a Yued 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 YAC within the time period of 5 days after the last day of fieldwork:
- 21. Did YAC provide any additional comments about the Preliminary Advice:
- 22. If a draft Survey Report was requested was it received by YAC within 15 Business Days after the last day of Fieldwork:
- 23. Did YAC provide any additional comments:

Cost and Payments

- 24. What was the total cost paid to the Aboriginal Heritage Service Provider (if YAC was acting as the Aboriginal Heritage Service Provider or was contracting them):
- 25. What was the total cost of the Yued 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 YAC 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 YAC 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 Yued Aboriginal
Corporation ICN: 9579** in accordance
with its constitution:

Signature of authorised representative

Click here to enter text.

Full name of authorised representative

Click here to enter text.

Date

Signature of authorised representative

Click here to enter text.

Full name of authorised representative

Click here to enter text.

Date

Executed by Local Government – where applying common seal

The common seal of the Shire of Victoria
Plains was hereunto affixed on Select
date by authority of a resolution of the
Council in the presence of:

sign here ►

Mayor/President (delete whichever is not
applicable)

print name

Cr Pauline Bantock

sign here ►

Chief Executive Officer

print name

Sean Fletcher

Key Message

The Shire supports the principle of the Noongar Heritage Agreement - Local Government (NHALG) because it recognises Aboriginal heritage, provides a transparent process, preserves emergency response powers, includes termination rights, allows routine maintenance activities to continue, and contains protections against unreasonable delay. The key matters requiring practical implementation discussion are when surveys are triggered, how previously disturbed land is treated, how costs are managed, and how the agreement can operate proportionately for a local government delivering continuous public services.

What the Agreement Actually Allows the Shire to Do

The agreement is often misunderstood as a restriction on works. In practice, it is a **process agreement**, not an approval agreement. It allows the Shire to:

1. Continue undertaking normal local government works

The NHALG expressly contemplates the Shire continuing to undertake activities within the Yued Agreement Area. The purpose is to establish a process for determining when heritage surveys are required and when they are not.

2. Continue emergency works immediately

This is one of the strongest provisions for the Shire.

Clause 2 (page 15) provides that the agreement **does not apply to activities urgently required to secure life, health or property or to address an imminent hazard**.

Using common sense, this means emergency response works such as (these are examples):

- Flood damage repairs
- Storm recovery
- Bushfire response
- Dangerous tree removal
- Emergency road repairs
- Public safety works

can proceed immediately. **However, the Yued CEO must be notified: 0448 770 229 (Rewi Lyall)**

3. Continue many routine operational works without an Activity Notice

The definitions of **Minimal Impact Activities** and **Low Ground Disturbance Activities** are extremely important. These are works that allow the Shire to go about most of its normal activities and are summarised as follows:

Minimal Impact Activities

- Walking, photography, filming
- Aerial surveying and magnetic surveys
- Environmental monitoring, water and soil sampling

- Use of existing tracks and water courses
- Spatial measurement and scientific activities (hand held tools)
- Cultivation and Grazing in previously cultivated/grazed areas
- Maintenance within existing footprints (eg paths, roads, tracks, bridges, walls fences and so on)
- Pest and weed control (excluding construction of fences, infrastructure and clearing of native vegetation)
- Light vehicle access on existing tracks

Low Ground Disturbance Activities

- Sampling
- Surveys: geophysical, biological, environmental or conservation
- Reconnaissance and patrol in light vehicles
- Removing soil and flora samples and cores up to 20 kgs
- Maintaining existing roads, drains, culverts, bridges, fence lines, firebreaks
- Erecting signs and barriers using hand held augers
- Revegetation works of degraded areas (including fencing of vegetation)
- Rehabilitation works
- Tourism operations with minor disturbance
- Laying of water pipelines across ground where no excavation is required
- Any other activities agreed in writing by the Parties.

Clause 8.1 (page 18) specifically allows the Shire not to issue an Activity Notice where works fall within these categories or where the Shire reasonably considers no survey is required. If in doubt, contact the Yued Aboriginal Corporation.

4. Carry out works after survey outcomes are known

If surveys identify sites, the agreement provides mechanisms to:

- redesign projects,
- avoid sites,
- implement protection measures,
- or if necessary pursue statutory approvals under the Aboriginal Heritage Act.

5. Terminate the agreement

Unlike many heritage protection agreements, the NHALG includes a termination for convenience clause. Either party may terminate on 30 days' notice.

That is a significant governance protection.

Sections The Shire Should Pay Particular Attention To

Clause 8 – Activity Notice Process for Agreement Area (Schedule 3)

This is the operational heart of the agreement.

Key question: **When does the Shire need to notify Yued?**

This will determine workload, timeframes and administrative burden.

Clause 9 – Presumption Surveys Are Required

This is probably the clause the Shire needs to discuss most closely with YAC CEO (Rewi). The agreement creates a presumption that:

Where no previous survey exists, a survey is generally presumed to be required.

Given the amount of local government works undertaken across roads, reserves and infrastructure corridors, this could have a significant cost and timing impact. This means the Shire will need to have practical discussion with YAC from time to time on (See Activity Notice on page 5) regarding:

- established road reserves,
- existing gravel pits,
- previously cleared areas,
- routinely maintained infrastructure.

Clause 10 – Survey Team Composition

Survey teams may include:

- 2–8 Yued consultants,
- liaison officers,
- anthropologists,
- archaeologists.

The composition of survey teams directly affects cost.

Clause 11 – Payment of Survey Costs

The Shire pays:

- survey costs,
- consultants,
- liaison officers,
- travel,
- reporting costs

Importantly:

- The Shire pays **100% of approved estimated survey costs up front**.
- The Shire will want clear discussion regarding:
 - when surveys are triggered;
 - what level of evidence is required before a survey is requested;
 - expectations around cost estimates.

Clause 16 – Delay Protections

This is one of the best provisions from a local government perspective. If YAC or a contracted provider fails to meet agreed timeframes, the Shire may:

- issue notices;
- disengage from clauses 9–12;
- engage its own heritage consultant;
- make alternative arrangements.

This considerably reduces project delay risk.

Clause 15 – Section 16 and Section 18 Applications

The Shire must provide Yued 30 Business Days notice before lodging a formal heritage application. This not unreasonable, but worth noting for project planning.

Clause 19 – Confidentiality

The agreement contains extensive confidentiality obligations relating to:

- survey reports,
- heritage information,
- sensitive cultural information.

This may have implications for:

- Freedom of Information requests;
- Council agenda material;
- public release of reports.

Actual Heritage Locations in Victoria Plains

The agreement relies on:

- DPLH's Aboriginal Heritage Register: [Aboriginal Cultural Heritage Inquiry System](#)
- future surveys,
- heritage information held by YAC,
- survey reports generated under the agreement.

Importantly, some heritage information may be classified as ****Sensitive Heritage Information**** and not available for public disclosure.

Constituted Area (Schedule 3)

The Agreement Area is intended to be the entire Shire of Victoria Plains local government district as constituted from time to time. There are no exempt pockets of land that are under the Shire's administration

State Reserves

In the case of State Reserves, YAC will have a separate agreement with the State.

Activity Notice

If an activity Notice is required, YAC is more than happy to assist the Shire draft such a notice. Sean Fletcher has asked for a copy of the template from Rewi Lyall, which is based on Schedule 4.

Examples:

1. A new road is to be constructed.
2. A new landfill is to be implemented
3. A bitumen road is to be widened ie outside the existing sealed area. A discussion with YAC in the first instance will determine whether an Activity Notice is required or not. This situation is based on:
 - a. The magnitude of the works eg 1.0m to be widened instead of 0.5m;
 - b. The extent of the works eg 10kms as opposed to 100m;
 - c. Surrounding context eg removal of vegetation as opposed to trimmed vegetation,
4. A new walk trail or parts of a new walk trail to be constructed that will bring other walk trails together

Key Message: If in doubt, discuss with YAC first.

Sean Fletcher

Chief Executive Officer

- 10 MEMBER MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**
- 10 NEW BUSINESS OF AN URGENT NATURE REQUIRING DECISION**
- 11 MEETING CLOSED TO PUBLIC**

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12.1 Meeting Closed to the Public re Item 12.2 and 12.3	
File Reference	
Report Date	5 August 2026
Applicant/Proponent	Sean Fletcher, CEO
Officer Disclosure of Interest	Nil
Previous Meeting Reference	Nil
Prepared by	Sean Fletcher, Chief Executive Officer
Senior Officer	N/A
Authorised by	Sean Fletcher, Chief Executive Officer
Attachments	Nil

PURPOSE

For Council to resolve to close the meeting to the public for Agenda Items 12.2 and 12.3 in accordance with the *Local Government Act 1995*.

BACKGROUND

Council is required to consider matters at this meeting that are of a confidential nature and are not appropriate for discussion in an open meeting.

COMMENT

Agenda Items 12.2 and 12.3 contains information that meets the criteria for confidential matters under Section 5.23(2) of the *Local Government Act 1995*.

In accordance with the Act and the *Shire of Victoria Plains Meeting Procedures Local Law 2018*, Council may resolve to close the meeting to members of the public for the consideration of those items.

The information to be considered under Items 12.2 and 12.3 relates to:

- Section 5.23(2)(a) – *a matter affecting an employee or employees;*
- Section 5.23(2)(c) – matters affecting the commercial or financial interests of the local government

CONSULTATION

N/A

STATUTORY CONTEXT

Local Government Act 1995

- Section 5.23(2)(a) – matters affecting employees
- Section 5.23(2)(c) – matters affecting the commercial or financial interests of the local government

Shire of Victoria Plains Meeting Procedures Local Law 2018 – provisions relating to the closure of meetings to the public.

CORPORATE CONTEXT**Strategic Business Plan/Corporate Business Plan**

N/A

Delegation

N/A

Policy Implications

N/A

Other Corporate Document

N/A

Risk Analysis

N/A

FINANCIAL IMPLICATIONS

N/A

VOTING REQUIREMENTS

Absolute majority required: No

Officer Recommendation

That Council, in accordance with Section 5.23(2)(a)(c) of the *Local Government Act 1995* and the Shire of Victoria Plains Meeting Procedures Local Law 2018, resolves to **CLOSE** the meeting at _____ to members of the public for consideration of Agenda Item 12.2 and 12.3.

For ____ / Against ____

12.2 Community Budget Submission Grant Applications (Confidential)

File Reference	
Report Date	13 August 2026
Applicant/Proponent	Shire of Victoria Plains
Officer Disclosure of Interest	NIL
Previous Meeting Reference	29 July 2026 Ordinary Council Meeting
Prepared by	Bridget Ralph – Community Development Officer
Senior Officer	Sean Fletcher
Authorised by	Entered once authorised by CEO
Attachments	1. Updated Community Grant Submissions Package – Page - 102

Voting Requirements

Simple Majority required: Yes / No

PUBLIC SCM

12.3 Quarterly Update – CEO's KPIs July 2026 (Confidential)

File Reference	
Report Date	5 August 2026
Applicant/Proponent	Sean Fletcher, Chief Executive Officer
Officer Disclosure of Interest	Financial
Previous Meeting Reference	Item 12.4 February 2026; Item 12.2 May 2026
Prepared by	Sean Fletcher, Chief Executive Officer
Senior Officer	N/A
Authorised by	Chief Executive officer
Attachments	1. CEO KPI Report July 2026 – Page 173

VOTING REQUIREMENTS

Absolute majority required: Yes

Matter relates to the CEO's contract

PUBLIC SCM

12 CLOSURE OF MEETING

PUBLIC SCM