

## FEDERAL COURT OF AUSTRALIA

### **Chubby on behalf of the Puutu Kunti Kurrama People and the Pinikura People #1 and #2 [2015] FCA 940**

Citation: Chubby on behalf of the Puutu Kunti Kurrama People and the Pinikura People #1 and #2 [2015] FCA 940

Parties: **JOHN ASHBURTON, DIANNE CHUBBY, MAURICE DAUBLIN, SUZETTE JILBA, ROBERT MCKAY and DONNA MEYER v STATE OF WESTERN AUSTRALIA, SHIRE OF ASHBURTON, YAMATJI MARLPA ABORIGINAL CORPORATION, HAMERSLEY IRON PTY LTD, ROBE RIVER MINING CO PTY LTD, MARTIN LAWRENCE AVERY, CHEELA PLAINS PASTORAL CO PTY LTD, JOHN DIGBY CORKER, ROCKLEA STATION PTY LTD and SAMCO BEEF PTY LTD**

**JOHN ASHBURTON, DIANNE CHUBBY, MAURICE DAUBLIN, SUZETTE JILBA, ROBERT MCKAY and DONNA MEYER v STATE OF WESTERN AUSTRALIA, API MANAGEMENT PTY LTD, DEBORAH ALICE AVERY, MARTIN LAWRENCE AVERY, BAMBI PTY LTD, CHEELA PLAINS PASTORAL CO PTY LTD, JOHN DIGBY CORKER, LEANNE MARGARET CORKER, ANDREW NICHOLAS GLENN, JANETTE ANN GLENN, PETER ROBERT GREY, SUSAN JEAN GREY and RED SKY STATIONS PTY LTD**

File numbers: WAD 6007 of 2001  
WAD 126 of 2005

Judge: **MCKERRACHER J**

Date of judgment: 2 September 2015

Catchwords: **NATIVE TITLE** - consent determination of native title – requirements under s 87 of the *Native Title Act 1993* (Cth) – whether native title claimant group must be described the same in determination - agreement of parties – role of mediation

Legislation: *Native Title Act 1993* (Cth) ss 13(1)(a), 55, 56, 57, 87, s 94A, 225, 251B

Cases cited: *Billy Patch and Others on behalf of the Birriliburu People v State of Western Australia* [2008] FCA 944  
*Brown (on behalf of the Ngarla People) v State of Western Australia* [2007] FCA 1025  
*Hughes (on behalf of the Eastern Guruma People) v Western Australia* [2007] FCA 365  
*Lander v State of South Australia* [2012] FCA 427  
*Lota Warri (on behalf of the Poruma and Masig Peoples) v Queensland* (2005) 223 ALR 62  
*Lovett on behalf of the Gunditjmara People v State of Victoria* [2007] FCA 474  
*Munn for and on behalf of the Gunggari People v State of Queensland* (2001) 115 FCR 109  
*Ward v State of Western Australia* [2006] FCA 1848  
*Watson v State of Western Australia (No 3)* [2013] FCA 127  
*WF (Deceased) on behalf of the Wiluna People v State of Western Australia* [2013] FCA 755

Date of hearing: 2 September 2015

Place: House Creek, Western Australia

Division: GENERAL DIVISION

Category: Catchwords

Number of paragraphs: 46

**WAD 6007 of 2001:**

Counsel for the Applicants: Mr G O'Dell with Dr C Tan

Solicitor for the Applicants: Pilbara Native Title Service

Counsel for the First Respondent: Mr A Rorrison

Solicitor for the First Respondent: State Solicitors Office

Counsel for the Third Respondent: The Third Respondent did not appear

Counsel for the Fourth Respondent: The Fourth Respondent did not appear

Counsel for the Fifth Respondents: The Fifth Respondents did not appear

Counsel for the Sixth Respondents:

Ms M Watts

Solicitor for the Sixth Respondents:

Cornerstone Legal, M Watts Legal and Ashurst Australia

**WAD 126 of 2005:**

Counsel for the Applicants:

Mr G O'Dell with Dr C Tan

Solicitor for the Applicants:

Pilbara Native Title Service

Counsel for the First Respondent:

Mr A Rorrison

Solicitor for the First Respondent:

State Solicitors Office

Counsel for the Second Respondent:

The Second Respondent did not appear

Counsel for the Third Respondents:

Ms M Watts

Solicitor for the Third Respondents:

Cornerstone Legal and M Watts Legal

**IN THE FEDERAL COURT OF AUSTRALIA  
WESTERN AUSTRALIA DISTRICT REGISTRY  
GENERAL DIVISION**

**WAD 6007 of 2001**

**BETWEEN: JOHN ASHBURTON, DIANNE CHUBBY, MAURICE  
DAUBLIN, SUZETTE JILBA, ROBERT MCKAY AND  
DONNA MEYER  
Applicants**

**AND: STATE OF WESTERN AUSTRALIA  
First Respondent**

**SHIRE OF ASHBURTON  
Third Respondent**

**YAMATJI MARLPA ABORIGINAL CORPORATION  
Fourth Respondent**

**HAMERSLEY IRON PTY LTD and ROBE RIVER MINING  
CO PTY LTD  
Fifth Respondents**

**MARTIN LAWRENCE AVERY, CHEELA PLAINS  
PASTORAL CO PTY LTD, JOHN DIGBY CORKER,  
ROCKLEA STATION PTY LTD and SAMCO BEEF PTY LTD  
Sixth Respondents**

**IN THE FEDERAL COURT OF AUSTRALIA  
WESTERN AUSTRALIA DISTRICT REGISTRY  
GENERAL DIVISION**

**WAD 126 of 2005**

**BETWEEN: JOHN ASHBURTON, DIANNE CHUBBY, MAURICE  
DAUBLIN, SUZETTE JILBA, ROBERT MCKAY and DONNA  
MEYER  
Applicants**

**AND: STATE OF WESTERN AUSTRALIA  
First Respondent**

**API MANAGEMENT PTY LTD  
Second Respondent**

**DEBORAH ALICE AVERY, MARTIN LAWRENCE AVERY,  
BAMBI PTY LTD, CHEELA PLAINS PASTORAL CO PTY  
LTD, JOHN DIGBY CORKER, LEANNE MARGARET  
CORKER, ANDREW NICHOLAS GLENN, JANETTE ANN**

**GLENN, PETER ROBERT GREY, SUSAN JEAN GREY and  
RED SKY STATIONS PTY LTD  
Third Respondents**

**JUDGE: MCKERRACHER J**  
**DATE OF ORDER: 2 SEPTEMBER 2015**  
**WHERE MADE: HOUSE CREEK, WESTERN AUSTRALIA**

**THE COURT NOTES THAT:**

- A. The Applicants in proceedings WAD 6007 of 2001 and WAD 126 of 2005 have made native title determination applications (**PKKP Applications**) that relate to an area of land and waters the subject of the attached minute of proposed consent determination (**Determination**).
- B. The Applicants in the PKKP Applications, the State of Western Australia and the other Respondents to the proceedings (**the parties**) have reached an agreement as to the terms of the Determination which the parties submit should be made in relation to the land and waters covered by the PKKP Applications (**Determination Area**). The external boundaries of the Determination Area are described in Schedule One to the Determination.
- C. Pursuant to s 87(1) of the *Native Title Act 1993* (Cth) the parties have filed with this Court an agreement in writing setting out the terms of the agreement reached by the parties in relation to the PKKP Applications.
- D. The terms of the agreement involve the making of consent orders for a determination pursuant to s 87 and s 94A of the *Native Title Act 1993* (Cth) that native title exists in relation to the land and waters of the Determination Area.
- E. The PKKP Applications are made on behalf of two separate but related language groups (Puutu Kunti Kurrama People and Pinikura People) who together claim rights and interests within the claim area. The applications are made on the basis that within the application area, as between the Puutu Kunti Kurrama People and Pinikura People, the Puutu Kunti Kurrama People speak for Puutu Kunti Kurrama country, Pinikura People speak for Pinikura country, and together they both speak for a shared area of country. While this delineation is not apparent in the terms of the

Determination, it is reflected in the membership and decision making structure of the prescribed body corporate nominated by the Applicants to hold the determined native title on trust for the native title holders (see Recitals I and J below). On that basis, the parties have agreed that a single determination in favour of the Puutu Kuntj Kurrama Pinikura People is appropriate in the circumstances.

- F. The parties acknowledge that, upon the Determination taking effect, the members of the native title claim group, in accordance with the traditional laws acknowledged and the traditional customs observed by them, will be recognised as the native title holders for the Determination Area as set out in the Determination.
- G. The parties have requested that the Court hear and determine the proceedings the subject of the PKKP Applications together and that, pursuant to s 87(2) of the *Native Title Act 1993* (Cth), the Court determine those proceedings without holding a hearing.
- H. The pastoral respondents Cheela Plains Pastoral Co Pty Ltd, A N & J A Glenn, P R & S J Grey, Stamco Beef Pty Ltd and Red Sky Stations Pty Ltd have agreed to the terms of the Determination on the basis of having reached agreements with the Applicants in relation to those portions of their respective pastoral leases that are situated within the Determination Area. Following the Determination taking effect, those agreements will be executed and application will be made for the agreements to be registered as Indigenous Land Use Agreements on the Register of Indigenous Land Use Agreements as body corporate agreements pursuant to s 24BG of the *Native Title Act 1993* (Cth).
- I. The Applicants in the PKKP Applications intend that the PKKP Aboriginal Corporation (ICN 7630) be nominated pursuant to s 56(2)(a) of the *Native Title Act 1993* (Cth) to hold the determined native title in trust for the native title holders. As at the date of these orders, the Applicants are not in a position to make that nomination, but expect to be able to do so within 6 months of the date of these orders.
- J. The parties have reached agreement the subject of these orders on the basis that, when the Determination takes effect:

- (i) the native title will be held in trust by the PKKP Aboriginal Corporation (ICN 7630), or such other corporation as the PKKP Applicants may, with the consent of the parties, nominate;
- (ii) the members of that corporation will have adopted either:
  - (A) the rule book at Attachment B, being the rule book approved by a resolution passed by a duly convened meeting of members of the PKKP native title claim groups on 13 February 2015; or
  - (B) the rule book at Attachment B as amended and approved in writing by the State of Western Australia in its capacity as First Respondent to the proceedings;
- (iii) if necessary, the Registrar of Indigenous Corporations will have approved and registered the rule book; and
- (iv) the corporation nominated to hold the native title will expeditiously execute the agreements as agreed between Cheela Plains Pastoral Co Pty Ltd, A N & J A Glenn, P R & S J Grey, Stamco Beef Pty Ltd and Red Sky Stations Pty Ltd.

**BEING SATISFIED** that a determination of native title in the terms set out in Attachment A would be within the power of the Court and, it appearing to the Court appropriate to do so, pursuant to s 87 and s 94A of the *Native Title Act 1993* (Cth) and by the consent of the parties:

**THE COURT ORDERS THAT:**

1. In relation to the Determination Area, there be a determination of native title in WAD 6007 of 2001 and WAD 126 of 2005 in terms of the Determination as provided for in Attachment A. The Determination is to take effect immediately upon the making of a determination under s 56(1) of the *Native Title Act 1993* (Cth) provided that within 6 months of the date upon which these orders are made:
  - (a) a representative of the common law holders of the native title rights and interests shall nominate in writing to the Federal Court (and copied to the parties) a prescribed body corporate to hold the native title rights and interests held in trust on behalf of the native title holders; and

(b) the representative of the common law holders shall include within the nomination:

(i) the written consent of the body corporate; and

(ii) a statement that either:

(i) the rule book at Attachment B; or

(ii) the rule book at Attachment B as amended and approved in writing by the State of Western Australia in its capacity as First Respondent to the proceedings,

has been adopted by the members of the corporation and, if necessary, approved by the Registrar of Indigenous Corporations.

2. If a prescribed body corporate is nominated in accordance with order 1, it shall hold the determined native title in trust for the native title holders pursuant to s 56(2)(b) of the *Native Title Act 1993* (Cth).

3. If a prescribed body corporate is not nominated in accordance with order 1 within the time specified, or such later time as the Court may order, the Determination will not take effect and the matter is to be listed for further directions.

4. The parties have liberty to apply in relation to these orders at any time prior to the Determination taking effect.

5. There be no order as to costs.

Date that entry is stamped: 2 September 2015

---

The Honourable Justice McKerracher

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.



**ATTACHMENT A**  
**DETERMINATION**

**THE COURT ORDERS, DECLARES AND DETERMINES THAT:**

**Existence of native title (s 225 *Native Title Act*)**

1. Subject to paragraph 2, native title exists in the Determination Area in the manner set out in paragraph 4 of this determination.
2. Native title does not exist in those parts of the Determination Area the subject of the interests identified in Schedule Three which are shown as generally shaded pink on the maps at Schedule Two.

**Native title holders (s 225(a) *Native Title Act*)**

3. The native title in the Determination Area is held by the Puutu Kunti Kurrama and Pinikura People. The Puutu Kunti Kurrama and Pinikura People are the people referred to in Schedule Five.

**The nature and extent of native title rights and interests and exclusiveness of native title (s 225(b) and s 225(e) *Native Title Act*)**

4. Subject to paragraphs 2, 5, 6 and 8 the nature and extent of the native title rights and interests in relation to the Determination Area are that they confer the following non-exclusive rights on the Puutu Kunti Kurrama and Pinikura People, including the right to conduct activities necessary to give effect to them:
  - (a) the right to enter and remain on the land, camp, erect temporary shelters, and travel over and visit any part of the land and waters of the Determination Area;
  - (b) the right to hunt, fish, gather, take and use the traditional resources of the land;
  - (c) the right to take and use water;
  - (d) the right to engage in cultural activities on the Determination Area, including:
    - (i) visiting places of cultural or spiritual importance and maintaining, caring for, and protecting those places by carrying out lawful activities to preserve their physical or spiritual integrity; and

- (ii) conducting ceremony and ritual, and the transmission of cultural knowledge; and
- (e) the right to be accompanied onto the Determination Area by those people who, though not native title holders, and who (for the avoidance of doubt) cannot themselves exercise any native title right in the Determination Area, are:
  - (i) spouses, parents or children of the native title holders; or
  - (ii) people required by traditional law and custom for the performance of ceremonies or cultural activities on the Determination Area.

### **Qualifications on the native title rights and interests**

5. The native title rights and interests set out in paragraph 4:

- (a) are subject to and exercisable in accordance with:
  - (i) the laws of the State and the Commonwealth, including the common law; and
  - (ii) the traditional laws and customs of the Puutu Kunti Kurrama and Pinikura People for personal, domestic and communal purposes (including social, cultural, religious, spiritual and ceremonial purposes) but not for commercial purposes; and
- (b) do not confer any rights in relation to:
  - (i) minerals as defined in the *Mining Act 1904* (WA) (repealed) and in the *Mining Act 1978* (WA);
  - (ii) petroleum as defined in the *Petroleum Act 1936* (WA) (repealed) and in the *Petroleum and Geothermal Energy Resources Act 1967* (WA);
  - (iii) geothermal energy resources and geothermal energy as defined in the *Petroleum and Geothermal Energy Resources Act 1967* (WA); or
  - (iv) water captured by the holders of the Other Interests pursuant to those Other Interests.

6. The native title rights and interests set out in paragraph 4 do not confer:

- (a) possession, occupation, use and enjoyment on the Puutu Kunti Kurrama and Pinikura People to the exclusion of all others; or

- (b) a right to control the access to, or use of, the land and waters of the Determination Area or its resources.

**The nature and extent of any other interests (s 225(c) *Native Title Act*)**

- 7. The nature and extent of the Other Interests are described in Schedule Four.

**Relationship between native title rights and other interests (s 225(d) *Native Title Act*)**

- 8. Except as otherwise provided for by law, the relationship between the native title rights and interests described in paragraph 4 and the Other Interests is that:
  - (a) to the extent that any of the Other Interests are inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests, the native title rights and interests continue to exist in their entirety, but the native title rights and interests have no effect in relation to the Other Interests to the extent of the inconsistency during the currency of the Other Interests; and otherwise,
  - (b) the existence and exercise of the native title rights and interests do not prevent the doing of any activity required or permitted to be done by or under the Other Interests, and the Other Interests, and the doing of any activity required or permitted to be done by or under the Other Interests, prevail over the native title rights and interests and any exercise of the native title rights and interests but do not extinguish them.

**Liberty to Apply**

- 9. The parties have liberty to apply to:
  - (a) establish the precise location and boundaries of the public works and adjacent land and waters identified in relation to any part or parts of the Determination Area referred to in clause 4 of Schedule Three of this determination; and
  - (b) clarify the relationship between the native title rights and interests set out in paragraph 4 and Easement F924685 referred to in clause 3(b) of Schedule Four of this determination if a court of competent jurisdiction should find that its creation did not affect native title.

## Definitions and Interpretation

10. In this determination, unless the contrary intention appears:

“**Determination Area**” means the land and waters described in Schedule One and depicted on the maps at Schedule Two;

“**land**” has the same meaning as in the *Native Title Act* and, for the avoidance of doubt, includes any natural collection of water found on the land which does not fall within the definition of “waters”;

“**Native Title Act**” means the *Native Title Act 1993* (Cth);

“**native title holders**” means the Puutu Kunti Kurrama and Pinikura People as described in Schedule Five and referred to in paragraph 3;

“**Other Interests**” means the legal or equitable estates or interests and other rights in relation to the Determination Area described in Schedule Four and referred to in paragraph 7;

“**resources**” means flora, fauna, and other natural resources such as charcoal, stone, soil, wood, resin, sand, clay, gravel and ochre (except, for the avoidance of doubt, ochres for use in the manufacture of porcelain, fine pottery or pigments which are minerals pursuant to the *Mining Act 1904* (WA) (repealed));

“**use**” includes by way of share and exchange, but does not include use by way of trade;

“**waters**” has the same meaning as in the *Native Title Act*.

11. In the event of any inconsistency between the written description of an area in Schedule One, Three or Four and the area as depicted on the maps at Schedule Two the written description prevails.

<b>SCHEDULE ONE</b>
---------------------

**DETERMINATION AREA**

The **Determination Area**, generally shown as bordered in blue and green on the maps at Schedule Two, comprises all land and waters bounded by the following descriptions:

**PKKP #1 Determination Area**

All those lands and waters commencing at Latitude 22.250819 South, Longitude 115.995908 East and extending generally southeasterly, generally easterly and generally northeasterly through the following coordinate positions:

<b>Latitude (South)</b>	<b>Longitude (East)</b>
22.255911	115.999506
22.259391	116.001383
22.260436	116.002459
22.263411	116.004305
22.269842	116.007265
22.278861	116.012262
22.287918	116.017687
22.295883	116.023211
22.301614	116.028459
22.307646	116.035494
22.311196	116.040133
22.313799	116.045016
22.314881	116.049266
22.314649	116.051188
22.314580	116.053262
22.314447	116.053782
22.314358	116.054026
22.313921	116.057963
22.312858	116.061594
22.312061	116.065958
22.311716	116.070376

22.310989	116.074304
22.309531	116.080103
22.307907	116.085207
22.306521	116.091081
22.304302	116.096338
22.302609	116.102335
22.301652	116.108972
22.301111	116.115663
22.300796	116.122698
22.300637	116.131762
22.300133	116.143899
22.297825	116.167353
22.294995	116.184701
22.292656	116.201181
22.289502	116.217493
22.287070	116.232202
22.284150	116.249026
22.281251	116.263063
22.279965	116.270364
22.278982	116.276781
22.276739	116.280352
22.276043	116.282281
22.276976	116.284753
22.277924	116.290902
22.278498	116.300157
22.278571	116.306650
22.279373	116.312799
22.279854	116.321839
22.279543	116.327341
22.278822	116.334397
22.278283	116.344147
22.277249	116.352166

22.275164	116.361466
22.273711	116.368714
22.272143	116.376977
22.271291	116.383073
22.270329	116.394074
22.269482	116.404244
22.269213	116.406639
22.268624	116.411889
22.266899	116.424668
22.266515	116.433579
22.265414	116.439179
22.265313	116.446488
22.264492	116.457512
22.264483	116.465660
22.264442	116.475213
22.264385	116.482941
22.263802	116.489800
22.263098	116.492981
22.262299	116.497414
22.261873	116.499986
22.261290	116.501259
22.261003	116.501954
22.261424	116.534539
22.260819	116.544243
22.261070	116.553261
22.260339	116.563782
22.259357	116.571359
22.259171	116.583214
22.258744	116.593041
22.257804	116.603852
22.256922	116.613039
22.257012	116.624596

22.258152	116.636864
22.258276	116.643929
22.259142	116.647691
22.264694	116.654343
22.266637	116.658562
22.267483	116.659947
22.274413	116.671286
22.274578	116.671556
22.279738	116.681367
22.284017	116.689072
22.287652	116.699974
22.291326	116.708168
22.297722	116.718041
22.303061	116.728424
22.307103	116.741814
22.311213	116.752900
22.312586	116.763666
22.315106	116.775187
22.321909	116.787959
22.327664	116.802532
22.334851	116.816103
22.341143	116.828874
22.345868	116.839288
22.351184	116.853210
22.353531	116.860504
22.358247	116.872742
22.359970	116.881539
22.361673	116.888237
22.363386	116.896912
22.363527	116.905961
22.362547	116.913689
22.359643	116.923768



22.357270	116.930664
22.353687	116.938751
22.349886	116.945678
22.344179	116.953156
22.338498	116.959022
22.333440	116.965363
22.327641	116.972687
22.320965	116.978813
22.316060	116.984192
22.309980	116.989189
22.304903	116.992982
22.299157	116.996568
22.292390	116.999208
22.286625	117.000376
22.281846	117.001184
22.280301	117.001878
22.279841	117.002267
22.277563	117.006814
22.275692	117.015924
22.274951	117.020929

Then easterly to Latitude 22.274940 South, Longitude 117.021666 East, being a point on the present boundary of Native Title Determination WAD6208/1998 Eastern Guruma (WC1997/089); Then generally southerly, generally easterly and generally southeasterly along the boundaries of that native title determination to its southernmost southwestern corner at Latitude 22.705647 South, Longitude 117.334829 East; Then generally westerly and generally southerly through the following coordinate positions:

<b>Latitude (South)</b>	<b>Longitude (East)</b>
22.706919	117.327239
22.707428	117.325137

22.709573	117.319565
22.711563	117.313051
22.713797	117.306718
22.717667	117.296915
22.719694	117.291347
22.722414	117.285374
22.724463	117.280374
22.726844	117.274794
22.728546	117.269995
22.730559	117.264049
22.732557	117.257724
22.732881	117.256954
22.735306	117.252509
22.737252	117.244860
22.738071	117.241609
22.738741	117.240637
22.739567	117.237576
22.739722	117.235486
22.741167	117.230129
22.744395	117.222055
22.746762	117.216096
22.748634	117.206555
22.749084	117.199908
22.749461	117.194400
22.749874	117.186807
22.750221	117.180542
22.751209	117.172549
22.750495	117.163293
22.748734	117.157484
22.747946	117.155429
22.746936	117.153761
22.745006	117.146632

22.744211	117.141356
22.743917	117.133789
22.742915	117.126247
22.742480	117.121148
22.742812	117.114506
22.742518	117.106938
22.742224	117.099371
22.742365	117.093872
22.742085	117.086683
22.741828	117.080062
22.741762	117.078359
22.742624	117.076244
22.742662	117.068096
22.742684	117.062601
22.742817	117.056913
22.743592	117.052528
22.743703	117.046272
22.743880	117.041719
22.744182	117.040381
22.744478	117.032792
22.745222	117.027650
22.746587	117.020212
22.747073	117.017542
22.747714	117.015814
22.748614	117.014644
22.749469	117.012339
22.749373	117.009880
22.746271	117.002984
22.745771	116.999213
22.745057	116.989956
22.745175	116.983889
22.746385	116.975510

22.746672	116.973794
22.748707	116.968416
22.750712	116.962280
22.751037	116.961510
22.752474	116.955964
22.753765	116.949665
22.755187	116.943740
22.757487	116.936078
22.760258	116.925368
22.761703	116.920011
22.763060	116.912383
22.763178	116.909348
22.764903	116.902086
22.766112	116.893706
22.767793	116.885309
22.770595	116.875356
22.772106	116.865638
22.773382	116.855930
22.775063	116.850564
22.779420	116.838091
22.780563	116.824977
22.780195	116.815518
22.780756	116.805646
22.781796	116.798977
22.782828	116.792119
22.783330	116.786796
22.784502	116.777471
22.784253	116.771039
22.784674	116.763635
22.784902	116.754343
22.786517	116.744244
22.786894	116.738736

22.787204	116.731525
22.786946	116.724904
22.786880	116.723201
22.787875	116.721460
22.788606	116.715939
22.789033	116.711756
22.790471	116.706209
22.792159	116.701033
22.794576	116.696398
22.796478	116.693676
22.798623	116.691135
22.799500	116.689398
22.803480	116.685464
22.806318	116.682519
22.810696	116.679707
22.813813	116.677888
22.815066	116.676705
22.820159	116.674057
22.827087	116.670015
22.829261	116.668231
22.830204	116.668196
22.833440	116.666373
22.834354	116.665582
22.838223	116.664872
22.845792	116.662133
22.848703	116.661080
22.854112	116.660504
22.859846	116.659158
22.870201	116.658212
22.876568	116.657980
22.883068	116.658121
22.889826	116.658822

22.895405	116.659566
22.901264	116.661436
22.906754	116.662941
22.915038	116.666427
22.917941	116.668216
22.922274	116.670331

Then southeasterly to the southern bank of the Hardy River at Longitude 116.670555 East;  
 Then extending generally northwesterly along that river bank to Longitude 116.123696 East;  
 Then southwesterly, generally northerly and generally northwesterly through the following coordinate positions:

<b>Latitude (South)</b>	<b>Longitude (East)</b>
22.740495	116.120168
22.733292	116.128912
22.726502	116.132951
22.716921	116.136393
22.710166	116.138257
22.697357	116.140368
22.686222	116.142873
22.675211	116.144656
22.663881	116.145346
22.647626	116.145759
22.631685	116.147447
22.617316	116.148984
22.607570	116.148798
22.594351	116.148544
22.573877	116.146520
22.557778	116.144218
22.543379	116.140679
22.534568	116.138154
22.529666	116.136428

22.517517	116.132389
22.501362	116.126641
22.489892	116.122252
22.477654	116.116760
22.467979	116.112224
22.457092	116.106396
22.447114	116.099860
22.437698	116.093154
22.429282	116.087011
22.417764	116.078633
22.409242	116.072125
22.398771	116.061411
22.391496	116.054021
22.382216	116.045867
22.376120	116.041762
22.370672	116.039120
22.356106	116.032134
22.344529	116.027380
22.332950	116.022807
22.323257	116.019359
22.317452	116.017979
22.311323	116.015867
22.300958	116.012406
22.287014	116.008513
22.280886	116.006401
22.272422	116.003157
22.261379	116.000046

Then northwesterly back to the commencement point.

**PKKP #2 Determination Area**

**PORTION 1**

All those lands and waters commencing at Latitude 22.139378 South, Longitude 115.673793 East, being a point on the present boundary of Native Title Determination WAD6113/1998 Thalanyji (WC1999/045); Then generally southeasterly and generally easterly through the following coordinate positions:

<b>Latitude (South)</b>	<b>Longitude (East)</b>
22.141283	115.675632
22.153039	115.683108
22.157942	115.684833
22.163728	115.687300
22.169173	115.690123
22.175517	115.692783
22.182300	115.695994
22.187972	115.698640
22.194392	115.703476
22.200356	115.708847
22.206950	115.716768
22.211683	115.728823
22.213654	115.738468
22.213456	115.750609
22.210584	115.761793
22.207654	115.769713
22.205071	115.776914
22.201518	115.788629
22.197957	115.800887
22.195689	115.809363
22.191788	115.821796
22.190430	115.829383
22.189963	115.844238
22.188744	115.857085
22.185824	115.871167
22.183208	115.880361



22.180554	115.891911
22.179454	115.904397
22.179368	115.909652

Then easterly to Latitude 22.179325 South, Longitude 115.912264 East, being a point on a western boundary of Native Title Application WAD6090/1998 Kuruma Marthudunera (Combined) (WC1999/012); Then generally southeasterly along boundaries of that native title application to the intersection with northernmost northwestern corner of Native Title Application WAD6007/2001 Puutu Kunti Kurrama and Pinikura (WC2001/005) at Latitude 22.250819 South, Longitude 115.995908 East; Then generally southerly along boundaries of that native title application to Latitude 22.740495 South, Longitude 116.120168 East; Then generally southwesterly through the following coordinate positions:

Latitude (South)	Longitude (East)
22.744626	116.114265
22.750818	116.105683
22.757343	116.097288
22.762093	116.087772
22.764988	116.082027
22.769732	116.072874
22.771280	116.069541

Then southwesterly to Latitude 22.774669 South, Longitude 116.062249 East, being a point on a eastern boundary of Native Title Determination WAD6212/1998 Thudgari People (WC1997/095); Then northerly and generally southwesterly along boundaries of that native title determination to the centreline of the Henry River at Latitude 22.904084 south; Then generally northerly along the centreline of that river to the intersection with the centreline of the Ashburton River, being a point on the present boundary of Native Title Determination WAD6113/1998 Thalanyji (WC1999/045); Then northerly along the boundary of that native title determination to Latitude 23.398692 South, Longitude 115.672633 East and then northerly back to the commencement point.

## **PORTION 2**

All those lands and waters commencing at Latitude 22.705647 South, Longitude 117.334829 East, being a point on the present boundary of Native Title Determination WAD6208/1998 Eastern Guruma (WC1997/089); Then southwesterly to the centreline of the Beasley River at Latitude 22.710860 South; Then generally southwesterly along the centreline of that river to Latitude 22.881360 South; Then generally southeasterly, generally westerly, generally southerly and again generally southeasterly through the following coordinate positions:

<b>Latitude (South)</b>	<b>Longitude (East)</b>
22.884053	117.101678
22.891610	117.117115
22.897399	117.127085
22.901901	117.136089
22.905761	117.142682
22.909620	117.150400
22.912514	117.155868
22.914926	117.161013
22.916534	117.163747
22.917981	117.167927
22.919267	117.170018
22.921358	117.174681
22.925217	117.180148
22.926503	117.184650
22.929237	117.190118
22.931810	117.194942
22.932774	117.199122
22.934383	117.203303
22.934543	117.206037
22.935805	117.208112
22.936142	117.207871
22.935516	117.206524
22.936431	117.204359
22.936430	117.202820
22.936473	117.201374

22.937277	117.193816
22.937152	117.191852
22.938018	117.190121
22.938355	117.189014
22.937920	117.187384
22.936743	117.185241
22.937325	117.183283
22.936002	117.181801
22.936849	117.180055
22.935026	117.179505
22.935738	117.177250
22.934362	117.179155
22.932669	117.179843
22.931330	117.174511
22.931769	117.169895
22.931822	117.164816
22.931488	117.161335
22.930552	117.154550
22.929812	117.147883
22.929559	117.143326
22.930202	117.139949
22.942854	117.151960
22.941931	117.143942
22.943806	117.139032
22.947555	117.137604
22.953625	117.138943
22.959348	117.140342
22.964327	117.144284
22.971796	117.148641
22.976924	117.155993
22.980048	117.158046
22.987547	117.159653

22.990986	117.161815
22.992903	117.164920
22.993341	117.168778
23.000851	117.160061
23.000449	117.158854
23.001120	117.156843
23.000315	117.155100
23.001656	117.154563
23.002729	117.154026
23.002729	117.151881
23.004204	117.150405
23.006216	117.150272
23.008362	117.150808
23.009971	117.152685
23.009971	117.148528
23.011849	117.148797
23.013324	117.148796
23.013324	117.147053
23.015605	117.147589
23.015067	117.143968
23.016945	117.142493
23.018957	117.142359
23.020298	117.143566
23.020834	117.142359
23.020968	117.140750
23.020968	117.140347
23.022175	117.140213
23.023248	117.141822
23.024187	117.141554
23.026199	117.141555
23.026601	117.140347
23.026601	117.139140

23.026735	117.137799
23.028076	117.137397
23.029015	117.138336
23.029820	117.140079
23.030356	117.139677
23.030356	117.138470
23.029820	117.137665
23.029552	117.137129
23.029954	117.136726
23.031698	117.138470
23.033843	117.137933
23.035587	117.137129
23.033977	117.135653
23.033307	117.134581
23.033575	117.133240
23.035587	117.135519
23.036794	117.133776
23.035587	117.133240
23.034514	117.131630
23.036794	117.130825
23.035721	117.130155
23.035319	117.128680
23.034246	117.129618
23.033843	117.127338
23.035319	117.127338
23.035319	117.125863
23.036660	117.125729
23.036392	117.124254
23.037330	117.123718
23.038403	117.126132
23.039744	117.127205
23.040415	117.128814

23.039878	117.131228
23.040683	117.132435
23.042158	117.131899
23.042963	117.131094
23.044438	117.132569
23.045243	117.131630
23.044572	117.127071
23.044572	117.125461
23.045243	117.124388
23.046584	117.125461
23.048194	117.127071
23.049266	117.128009
23.050607	117.129484
23.050473	117.132033
23.049132	117.133106
23.047657	117.132167
23.047121	117.134581
23.047657	117.136190
23.049266	117.137665
23.048998	117.139945
23.049400	117.142091
23.052083	117.140616
23.051144	117.143834
23.052753	117.144773
23.054363	117.142091
23.055570	117.138738
23.057715	117.140214
23.058654	117.142896
23.058922	117.144103
23.056106	117.146249
23.055435	117.148663
23.059191	117.145310

23.060398	117.147724
23.062677	117.150674
23.063225	117.152298
23.063482	117.153669
23.062455	117.155125
23.061684	117.155810
23.060313	117.156238
23.060056	117.159236
23.061341	117.160778
23.063996	117.161634

Then southerly to the northernmost northwestern corner of Native Title Application WAD6173/98 Gobawarra Minduarra Yinhawanga (WC1997/043) at Latitude 23.067401 South, Longitude 117.161884 East; Then southerly along a western boundary of that native title application to the intersection with the boundary of Native Title Application WAD6007/2000 Jurruru (WC2000/008) at Longitude 117.169463 East; Then generally northwesterly along the boundaries of that native title application to the intersection with a southeastern corner of Native Title Application WAD6007/2001 Puutu Kunti Kurrama and Pinikura (WC2001/005) at Longitude 116.670555 East; Then generally northerly, generally easterly and generally northeasterly along boundaries of that native title application back to the commencement point.

Note: Geographic Coordinates provided in Decimal Degrees.

Ashburton River, Beasley Creek and Henry River based on topographic 1:250 000 vector data is © Commonwealth of Australia and is from Geoscience Australia (2003).

For the avoidance of doubt the PKKP #2 Determination Area excludes any land and waters covered by:

Native Title Application WAD6173/1998 Gobawarra Minduarra Yinhawanga (WC1997/043) as accepted for registration on the 25<sup>th</sup> June 1997.

Native Title Application WAD6007/2000 Jurruru People (WC2000/008) as accepted for registration on the 1<sup>st</sup> March 2001.

Native Title Application WAD6090/1998 Kuruma Marthudunera (Combined Application) (WC1999/012) as accepted for registration on the 24<sup>th</sup> June 1999.

Native Title Application WAD6007/2001 Puutu Kunti Kurrama and Pinikura (WC2001/005) as accepted for registration on the 29<sup>th</sup> November 2001.

Native Title Determination WAD6113/1998 Thalanyji (WC1999/045) as determined in the Federal Court on the 18<sup>th</sup> September 2008.

Native Title Determination WAD6212/1998 Thudgari People (WC1997/095) as determined in the Federal Court on the 18<sup>th</sup> November 2009.

Native Title Application WAD340/2010 Yinhawangka Part A (WC2010/016) as accepted for registration on the 10<sup>th</sup> December 2010.

Datum: Geocentric Datum of Australia 1994 (GDA94)

Prepared By: Native Title Spatial Services (Landgate) 15<sup>th</sup> July 2015

#### Use of Coordinates:

Where coordinates are used within the description to represent cadastral or topographical boundaries or the intersection with such, they are intended as a guide only. As an outcome to the custodians of cadastral and topographic data continuously recalculating the geographic position of their data based on improved survey and data maintenance procedures, it is not possible to accurately define such a position other than by detailed ground survey.

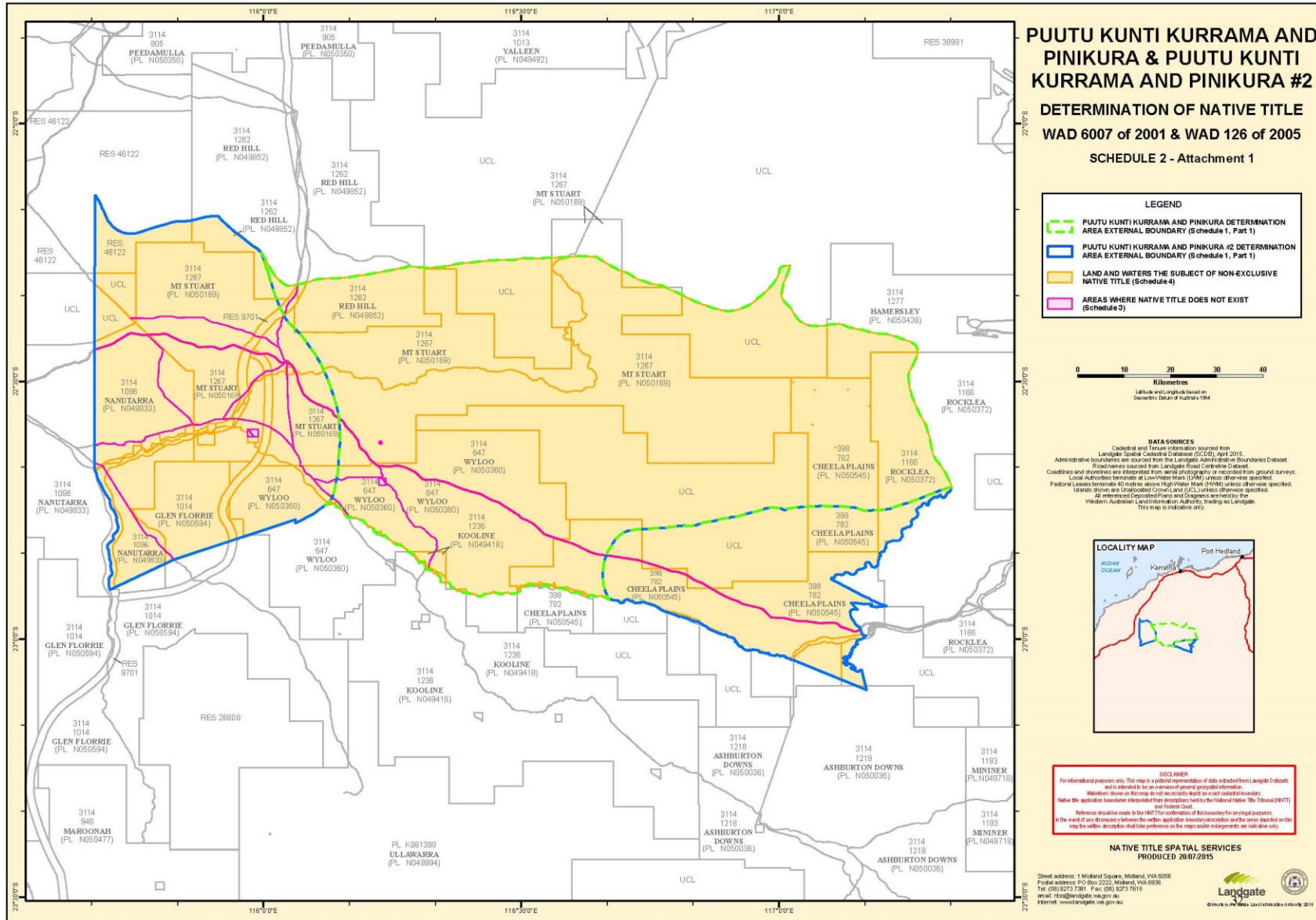


**SCHEDULE TWO**

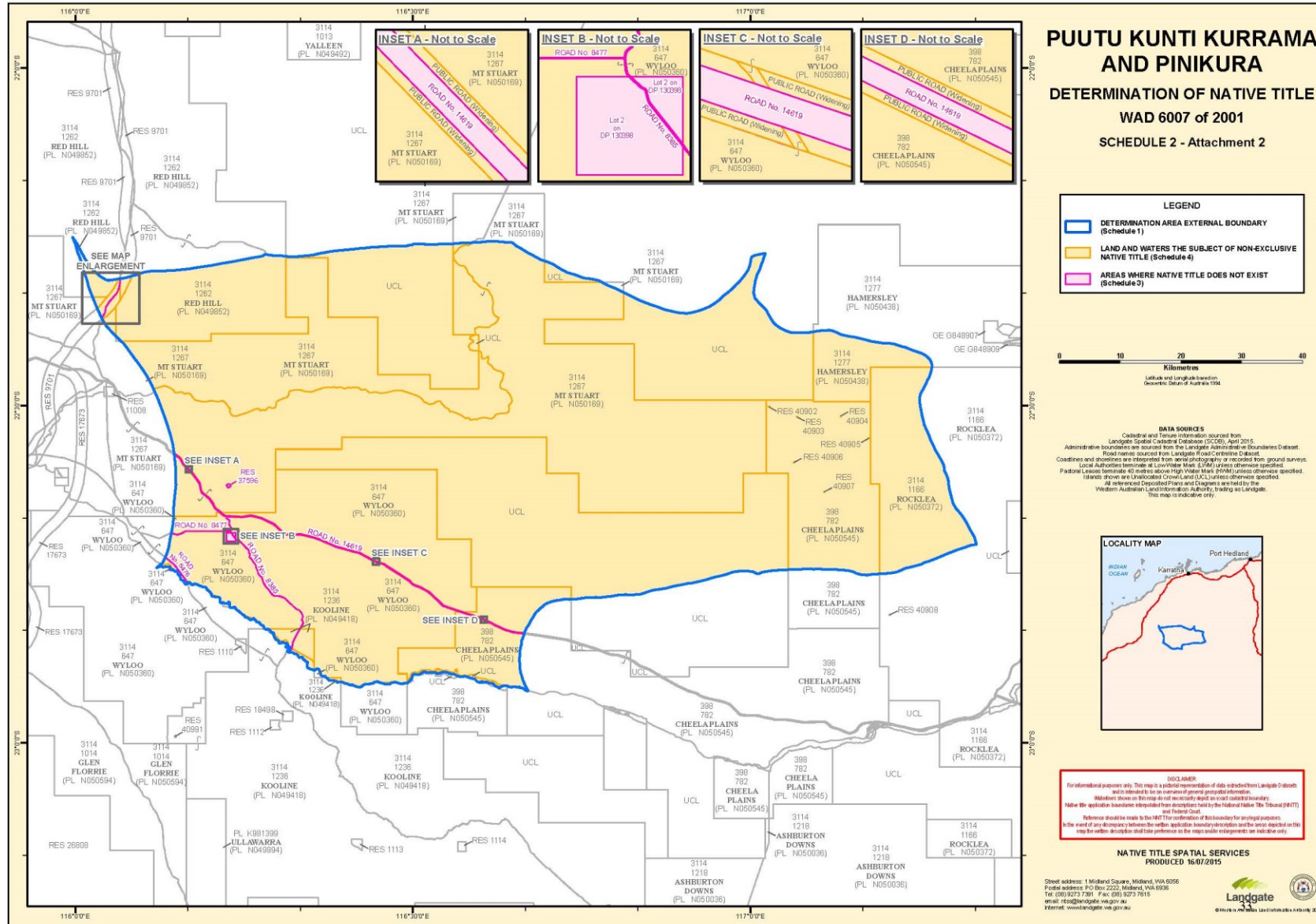
**MAPS OF THE DETERMINATION AREA**

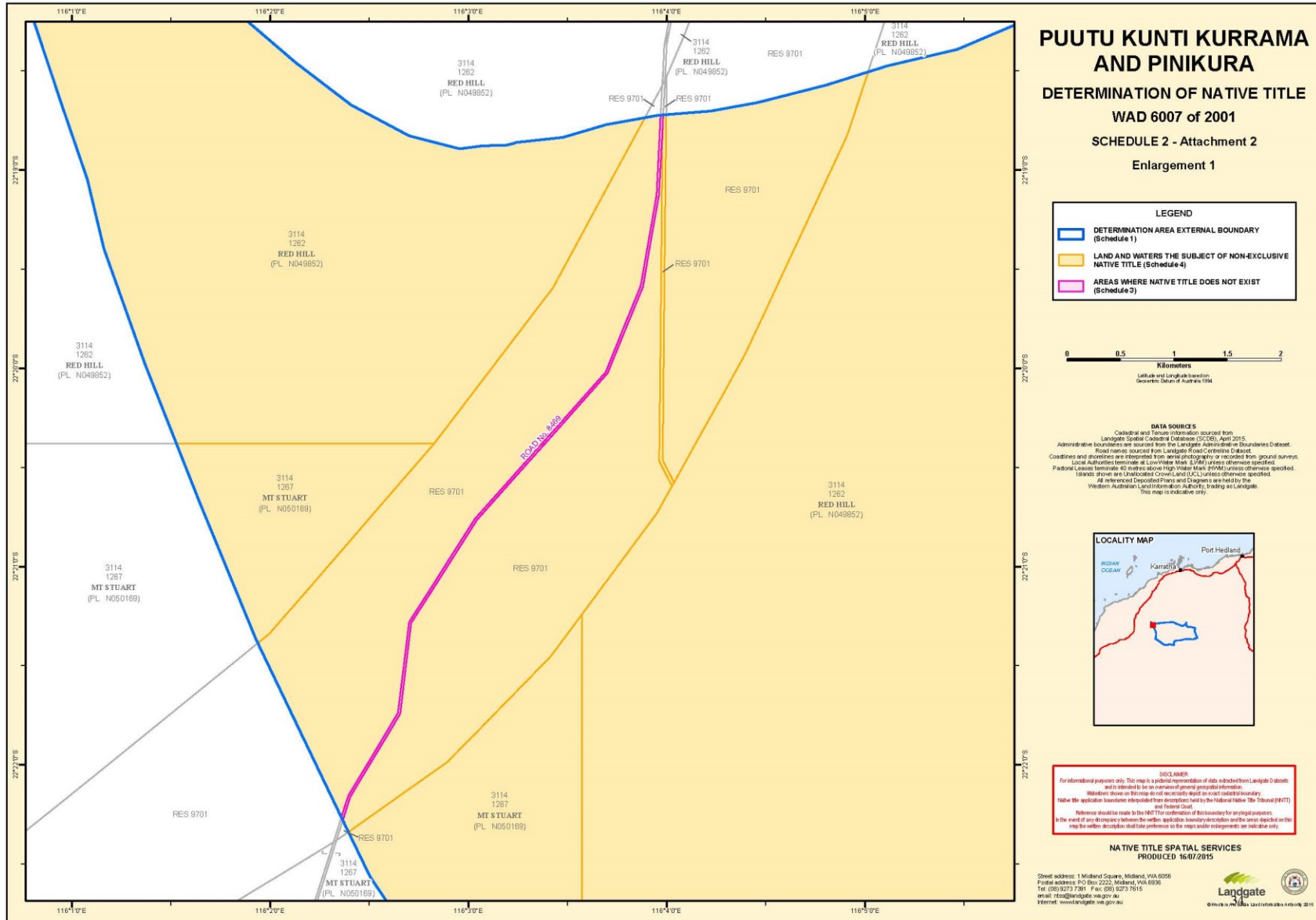
- |  |   |
|--|---|
| <b>1. Attachment 1</b>                 | <b>Overview of PKKP #1 &amp; PKKP #2 Determination Area</b> |
| <b>2. Attachment 2</b>                 | <b>PKKP #1 Determination Area</b>                           |
| <b>3. Attachment 2 – Enlargement 1</b> | <b>PKKP #1 Determination Area (northwestern portion)</b>    |
| <b>4. Attachment 3</b>                 | <b>PKKP #2 Determination Area</b>                           |
| <b>5. Attachment 3 – Enlargement 1</b> | <b>PKKP #2 Determination Area (western portion)</b>         |
| <b>6. Attachment 3 – Enlargement 2</b> | <b>PKKP #2 Determination Area (eastern portion)</b>         |

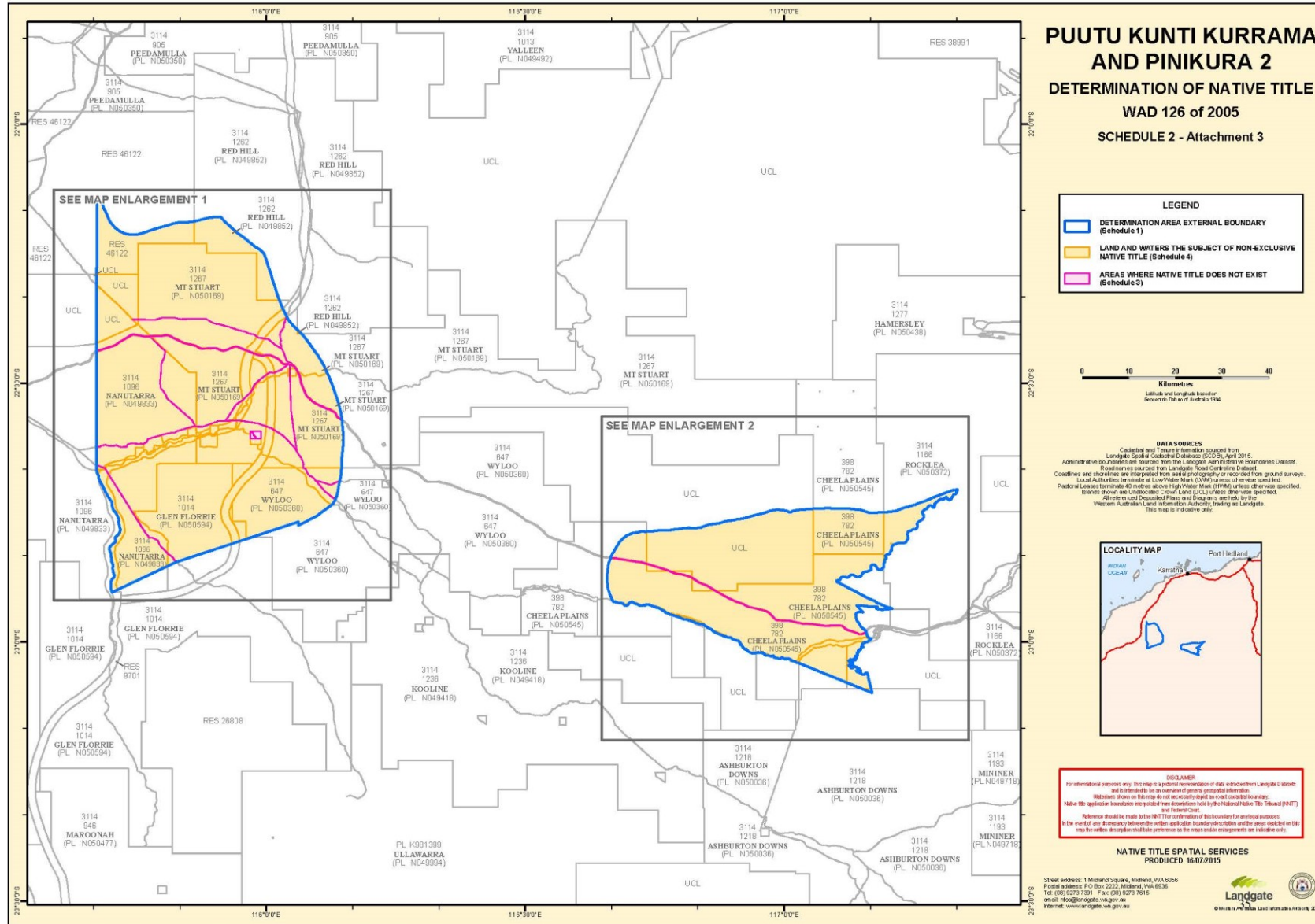
AustLII AustLII AustLII AustLII AustLII

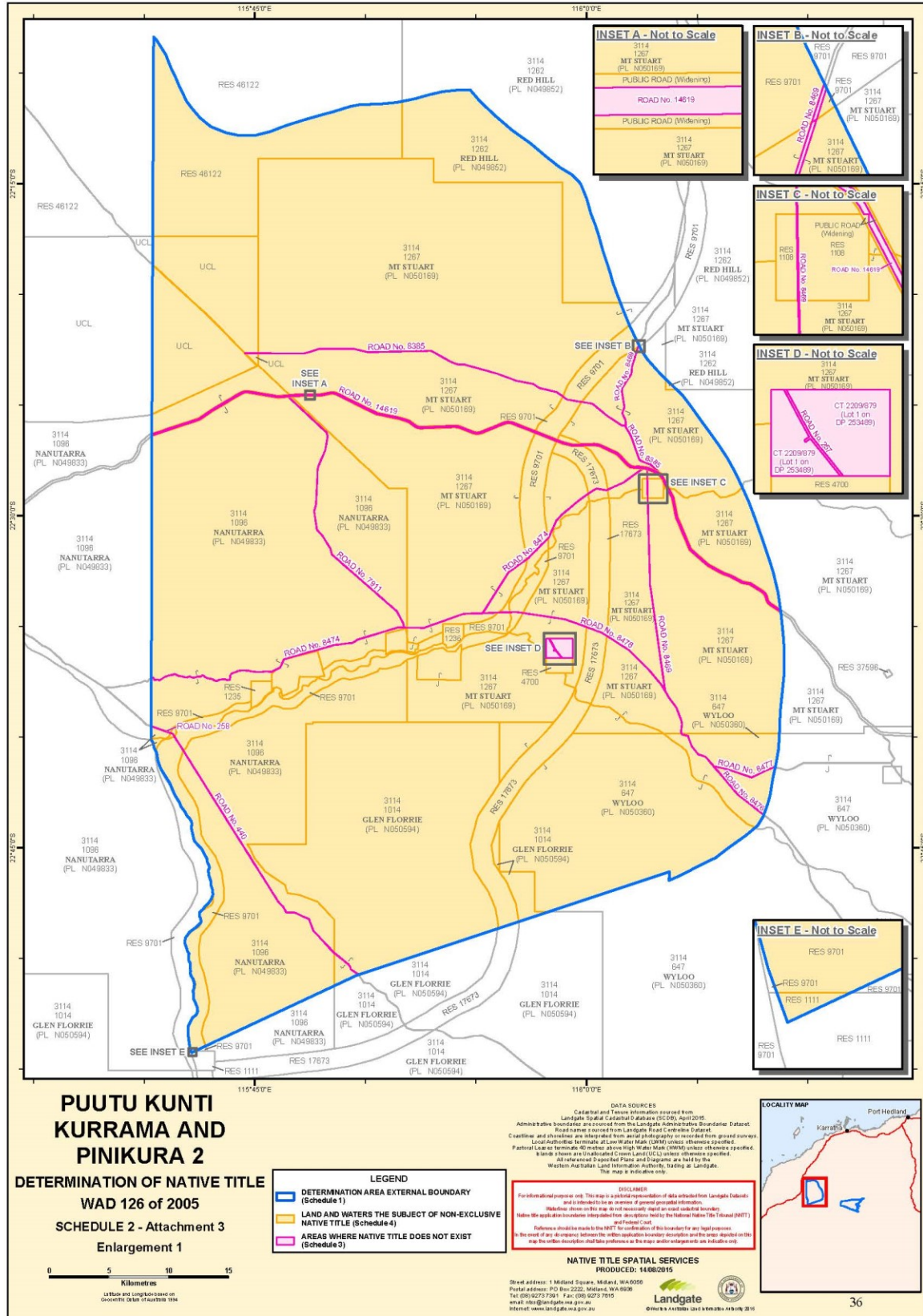


stL AustLII AustLII AustLII









stLIIA

stLII AustLII AustLII

stLII AustLII AustLII AustLII



**SCHEDULE THREE****AREAS WHERE NATIVE TITLE DOES NOT EXIST (Paragraph 2)**

Native title does not exist in relation to land and waters the subject of the following interests within the Determination Area which, with the exception of public works (as described in clause 4 of this Schedule), are generally shown as shaded in pink on the maps at Schedule Two:

**1. Freehold**

Lot 2 on Deposited Plan 130398 being the whole of the land currently the subject of certificate of title volume 959 folio 23.

Lot 1 on Deposited Plan 253489 being the whole of the land currently the subject of certificate of title volume 2209 folio 879.

**2. Dedicated roads and roads set aside, taken or resumed**

Dedicated roads, roads set aside, taken or resumed or roads which are to be considered public works (as that expression is defined in the *Native Title Act* and the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995 (WA)*), including the following:

Road No 14619 (Nanutarra-Wittenoom Road) dedicated by notice published in the *Government Gazette* on 3 March 1972;

Road No 8385 dedicated by notice published in the *Government Gazette* on 17 January 1930;

Road No 8477 dedicated by notice published in the *Government Gazette* on 4 April 1930;

Road No 8476 dedicated by notice published in the *Government Gazette* on 4 April 1930;



Road No 8474 dedicated by notice published in the *Government Gazette* on 4 April 1930;

Road No 8469 dedicated by notice published in the *Government Gazette* on 4 April 1930;

Road No 7911 dedicated by notice published in the *Government Gazette* on 17 January 14 September 1928;

Road No 440 dedicated by notice published in the *Government Gazette* on 7 September 1894;

Road No 258 dedicated by notice published in the *Government Gazette* on 8 September 1887; and

Road No 257 dedicated by notice published in the *Government Gazette* on 8 September 1887.

### **3. Reserves**

Reserve 37596 (Quarry) vested under section 33 of the *Land Act 1933* (WA) (repealed).

### **4. Public Works**

Any other public works as that expression is defined in the *Native Title Act* and the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* (WA) (including the land and waters on which a public work is constructed, established or situated as described in section 251D of the *Native Title Act*) and to which section 12J of the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* (WA) or section 23C(2) of the *Native Title Act* applies.

<b>SCHEDULE FOUR</b>
----------------------

**OTHER INTERESTS (Paragraph 7)**

The nature and extent of the Other Interests in relation to the Determination Area as at the date of this determination are:

**1. Reserves**

(a) The following reserves:

<b>Reserve No.</b>	<b>Current Purpose</b>
1108	Watering Place
1111	Watering Place
1235	Watering Place for Travellers & Stock
1236	Watering Place for Travellers & Stock
4700	Water
9701	De Grey Mullewa Stock Route
17673	Addition to De Grey Mullewa Stock Route
40902	Geodetic Station
40903	Geodetic Station
40904	Geodetic Station
40905	Geodetic Station
40906	Geodetic Station
40907	Geodetic Station
40908	Geodetic Station
46122	Conservation Park

- (b) The rights and interests of persons who have the care, control and management of the reserves identified in subclause (a) above;
- (c) The rights and interests of persons entitled to access and use the reserves identified in subclause (a) above for the respective purposes for which they are reserved, subject to any statutory limitations upon those rights; and

- (d) The rights and interests of persons holding leases over areas of the reserves identified in subclause (a) above.

## 2. Pastoral Leases

The following pastoral leases and the rights and interests of the holders from time to time of those pastoral leases:

Pastoral Lease	Station Name
3114/0647 (PL N050360)	Wyloo
3114/1014 (PL N050594)	Glenflorrie
3114/1096 (PL N049833)	Nanutarra
3114/1166 (PL N050372)	Rocklea
3114/1218 (PL N050036)	Ashburton Downs
3114/1236 (PL N049418)	Kooline
3114/1262 (PL N049852)	Red Hill
3114/1267 (PL N050169)	Mount Stuart
3114/1277 (PL N050438)	Hamersley
398/782 (PL N050545)	Cheela Plains

## 3. Mining Tenements and Petroleum Interests

- (a) The following mining tenements under the *Mining Act 1904* (WA) (repealed) and the *Mining Act 1978* (WA) and the rights and interests of the holders from time to time of those mining tenements:

### (i) Mining Leases

Tenement ID	Tenement ID	Tenement ID
M 08/7	M 08/315	M 08/477
M 08/99	M 08/455	M 08/495
M 08/149	M 08/456	M 47/1430
M 08/196	M 08/468	M 47/1488
M 08/222	M 08/469	M 47/1489

## (ii) Exploration Licences

Tenement ID	Tenement ID	Tenement ID	Tenement ID
E 08/691	E 08/2131	E 47/468	E 47/1783
E 08/1166	E 08/2132	E 47/469	E 47/1784
E 08/1187	E 08/2145	E 47/470	E 47/1785
E 08/1189	E 08/2146	E 47/472	E 47/1786
E 08/1283	E 08/2157	E 47/662	E 47/1787
E 08/1292	E 08/2199	E 47/778	E 47/1788
E 08/1330	E 08/2200	E 47/780	E 47/1832
E 08/1393	E 08/2251	E 47/781	E 47/1846
E 08/1408	E 08/2252	E 47/783	E 47/1850
E 08/1516	E 08/2258	E 47/892	E 47/1861
E 08/1627	E 08/2271	E 47/942	E 47/1863
E 08/1628	E 08/2293	E 47/1038	E 47/1869
E 08/1629	E 08/2294	E 47/1134	E 47/1879
E 08/1631	E 08/2295	E 47/1141	E 47/1914
E 08/1649	E 08/2296	E 47/1154	E 47/1988
E 08/1650	E 08/2332	E 47/1194	E 47/2035
E 08/1712	E 08/2364	E 47/1195	E 47/2037
E 08/1741	E 08/2393	E 47/1196	E 47/2143
E 08/1744	E 08/2395	E 47/1218	E 47/2160
E 08/1745	E 08/2416	E 47/1277	E 47/2171
E 08/1763	E 08/2418	E 47/1299	E 47/2215
E 08/1842	E 08/2420	E 47/1300	E 47/2236
E 08/1843	E 08/2482	E 47/1301	E 47/2268
E 08/1844	E 08/2485	E 47/1302	E 47/2292
E 08/1845	E 08/2490	E 47/1351	E 47/2327
E 08/1878	E 08/2496	E 47/1373	E 47/2333
E 08/1915	E 08/2498	E 47/1395	E 47/2378
E 08/1916	E 08/2499	E 47/1396	E 47/2442
E 08/1933	E 08/2512	E 47/1415	E 47/2587
E 08/1949	E 08/2542	E 47/1448	E 47/2636

E 08/1950	E 08/2555	E 47/1500	E 47/2729
E 08/1961	E 08/2556	E 47/1533	E 47/2759
E 08/1964	E 08/2558	E 47/1535	E 47/2834
E 08/1985	E 08/2559	E 47/1549	E 47/2909
E 08/1986	E 08/2560	E 47/1553	E 47/2910
E 08/1997	E 08/2565	E 47/1649	E 47/2911
E 08/2000	E 08/2566	E 47/1650	E 47/2912
E 08/2003	E 08/2567	E 47/1677	E 47/2987
E 08/2034	E 08/2568	E 47/1679	E 47/3057
E 08/2040	E 08/2570	E 47/1682	E 47/3080
E 08/2055	E 08/2627	E 47/1693	E 47/3081
E 08/2056	E 08/2652	E 47/1703	E 47/3117
E 08/2065	E 08/2653	E 47/1725	E 47/3133
E 08/2067	E 08/2658	E 47/1728	E 47/3150
E 08/2114	E 47/16	E 47/1773	E 47/3151
E 08/2130	E 47/45	E 47/1779	E 47/3152

## (iii) Prospecting Licences

Tenement ID	Tenement ID	Tenement ID
P 08/516	P 47/1340	P 47/1639
P 08/531	P 47/1342	P 47/1645
P 08/532	P 47/1390	P 47/1647
P 08/543	P 47/1391	P 47/1649
P 08/546	P 47/1392	P 47/1650
P 08/556	P 47/1393	P 47/1663
P 08/565	P 47/1394	P 47/1664
P 08/646	P 47/1395	P 47/1665
P 08/653	P 47/1396	P 47/1666
P 47/1237	P 47/1397	P 47/1667
P 47/1270	P 47/1398	P 47/1668
P 47/1278	P 47/1399	P 47/1669
P 47/1313	P 47/1400	P 47/1670

P 47/1316	P 47/1401	P 47/1671
P 47/1317	P 47/1402	P 47/1672
P 47/1318	P 47/1403	P 47/1673
P 47/1328	P 47/1404	P 47/1674
P 47/1330	P 47/1423	P 47/1675
P 47/1332	P 47/1427	P 47/1693
P 47/1333	P 47/1474	P 47/1694
P 47/1334	P 47/1545	
P 47/1336	P 47/1554	
P 47/1338	P 47/1637	
P 47/1339	P 47/1638	

**(iv) Miscellaneous Licences**

Tenement ID	Tenement ID	Tenement ID
L 08/12	L 08/56	L 08/107
L 08/13	L 08/63	L 08/113
L 08/14	L 08/69	L 08/124
L 08/15	L 08/81	L 47/141
L 08/26	L 08/85	L 47/153
L 08/31	L 08/91	L 47/184
L 08/44	L 08/92	L 47/185
L 08/46	L 08/103	L 47/232

**(v) Retention Licences**

Tenement ID
R 47/7

**(vi) General Purpose Lease**

Tenement ID
G 47/1227

- (b) The agreement as amended and ratified by the *Goldfields Gas Pipeline Agreement Act 1994* (WA) and rights and interests comprised in, conferred under or in accordance with, or pursuant to that agreement, including the following interests:

Tenement ID	Tenement Type
PL24	Pipeline Licence
F924685	Easement

- (c) The agreement as amended and ratified by the *Iron Ore (Hamersley Range) Agreement Act 1963* (WA) and rights and interests comprised in, conferred under or in accordance with, or pursuant to that agreement, including the following mining tenement:

Tenement ID	Tenement Type
AML 7000004	Mining lease

**4. Access to Mining and Petroleum Areas**

- (a) Without limiting the operation of any other clause in Schedule Four, but subject to clause 4(b) below, any rights of the holders from time to time of a mining tenement or petroleum interest including those referred to in clause 3 of Schedule Four to use (including by servants, agents and contractors) such portions of existing roads and tracks in the Determination Area as necessary to have access to the area the subject of the mining tenement or petroleum interest for the purposes of exercising the rights granted by that tenement or interest.

- (b) Nothing in clause 4(a) above allows any upgrade, extension, widening or other improvement to the road or track other than work done to maintain it in reasonable repair and in order to leave it in substantially the same condition as it was prior to its use pursuant to clause 4(a).
- (c) Nothing in Schedule Four will limit the rights of the holders from time to time of mining tenements or petroleum interests, including those referred to in clause 3 of Schedule Four, including, without limitation, any right to exclude members of the public from entering onto the land and waters the subject of any mining tenement or petroleum interest.

## 5. Indigenous Land Use Agreements

- (a) The *RTIO and PKKP People Indigenous Land Use Agreement (Area Agreement)* dated 15 November 2012, and registered on the Register of Indigenous Land Use Agreements on 24 April 2013 (Tribunal No. WI2012/011), and the rights and interests comprised in, conferred under, or in accordance with, or pursuant to, that ILUA.

## 6. Other

The following rights and interests:

- (a) Rights and interests, including licences and permits, granted by the Crown in right of the State or of the Commonwealth pursuant to statute or otherwise in the exercise of its executive power and any regulations made pursuant to such legislation;
- (b) Rights and interests held by reason of the force and operation of the laws of the State or of the Commonwealth, including but not limited to, the force and operation of the *Rights in Water and Irrigation Act 1914* (WA);



- (c) Rights and interests of members of the public arising under the common law, including but not limited to:
- (i) the public right to fish;
  - (ii) the public right to navigate; and
  - (iii) the right of any person to use and enjoy any roads in the Determination Area (subject to the laws of the State) over which, as at the date of this determination, members of the public have a right of access under the common law;
- (d) The right to access the Determination Area by:
- (i) an employee, agent or instrumentality of the State;
  - (ii) an employee, agent or instrumentality of the Commonwealth; and
  - (iii) an employee, agent or instrumentality of any local government authority,
- as required in the performance of his or her statutory or common law duty;
- (e) So far as confirmed pursuant to section 212(2) of the *Native Title Act* and section 14 of the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995 (WA)* as at the date of this Determination, any existing public access to, and enjoyment of, the following places in the Determination Area:
- (i) waterways;
  - (ii) beds and banks or foreshores of waterways;
  - (iii) coastal waters;
  - (iv) beaches;
  - (v) stock routes; and
  - (vi) areas that were public places at the end of 31 December 1993;
- (f) Any other:
- (i) legal or equitable estate or interest in the land or waters; or
  - (ii) right (including a right under an option and a right of redemption), charge, power or privilege over, or in connection with:
    - (A) the land or waters; or
    - (B) an estate or interest in the land or waters; or

- (iii) restriction on the use of the land or waters, whether or not annexed to other land or waters.

**SCHEDULE FIVE****NATIVE TITLE HOLDERS (Paragraph 3)**

The Puutu Kunti Kurrama and Pinikura People means the Puutu Kunti Kurrama people and the Pinikura people as described below.

The Puutu Kunti Kurrama people are those persons who:

- (a) descended from one or more of the following ancestors:  
Ngarupunga [Ngarupungu], Kitty, Jukaan Tommy Ashburton, Ina Winnie Ashburton, Punch Ashburton, Katarra Dick Ashburton, and Kalkardi Dinah;  
and
- (b) identify themselves as Puutu Kunti Kurrama in accordance with the traditional laws acknowledged and the traditional customs observed by Puutu Kunti Kurrama people; and
- (c) are accepted in accordance with the traditional laws acknowledged and the traditional customs observed as Puutu Kunti Kurrama people.

The Pinikura people are those persons who:

- (a) descended from one or more of the following ancestors:  
Kaita, Markakurru Topsy Williams, Bonnie, Winnie Hayes (Hicks) and Punch Hughes [Kalpanthalu];
- (b) identify themselves as Pinikura in accordance with the traditional laws acknowledged and the traditional customs observed by Pinikura people; and
- (c) are accepted in accordance with the traditional laws acknowledged and the traditional customs observed as Pinikura people.

**ATTACHMENT B**  
**PRESCRIBED BODY CORPORATE RULE BOOK**

THE RULE BOOK OF  
**The PKKP Aboriginal Corporation**  
**Prescribed Body Corporate**

**DRAFT ONLY**

**CONTENTS**

---

CONTENTS.....2

1. NAME AND NATURE OF THE CORPORATION .....5

2. DEFINITIONS AND INTERPRETATION.....6

3. OBJECTIVES OF THE CORPORATION .....6

4. POWERS OF THE CORPORATION .....6

5. MEMBERSHIP OF THE CORPORATION.....7

    5.1 Membership Groups .....7

    5.2 Members by application after registration.....7

    5.3 Member’s rights and obligations .....9

    5.4 How a person stops being a Member (applies to Associate Members) ..... 11

    5.5 Resignation of a Member (applies to Associate Members)..... 11

    5.6 Process for cancelling membership (applies to Members and Associate Members) ..... 11

6. REGISTERS OF MEMBERS, ASSOCIATE MEMBERS AND FORMER MEMBERS .....13

    6.1 Corporation to maintain a Register of Members..... 13

    6.2 Information on the Register of Members and Register of Associate Members..... 13

7. ANNUAL GENERAL MEETINGS (AGMS) AND GENERAL MEETINGS .....14

    7.1 AGMS .....14

    7.2 General Meetings.....14

    7.3 Calling General meetings .....14

    7.4 Requirement for notice of General Meeting .....15

    7.5 Failure to give notice.....16

    7.6 Members’ Resolutions .....16

    7.7 Quorum for General meeting .....17

    7.8 Chairing a General Meeting .....18

    7.9 Using technology to hold a General Meeting .....18

    7.10 Auditor’s right to be heard at General Meetings.....18

    7.11 Voting at General Meetings.....18

    7.12 Proxies.....20

8. LANGUAGE GROUP COUNTRY AND SHARED COUNTRY .....21

	3
8.1 Language Group Country .....	21
8.2 Formation and responsibilities of Land Committees.....	21
8.3 Appointment of Land Committee members.....	21
8.4 Formation of Heritage Committees.....	22
8.5 Language Group Meetings.....	22
8.6 Land Committee administration .....	23
<b>9. DIRECTORS OF THE CORPORATION .....</b>	<b>23</b>
9.1 Number of Directors .....	23
9.2 Composition of Board of Directors .....	23
9.3 Eligibility to be a Director.....	23
9.4 Appointment of Directors.....	23
9.5 Process for removing a Director .....	25
<b>10. CODE OF CONDUCT AND CORPORATE GOVERNANCE TRAINING .....</b>	<b>26</b>
<b>11. POWERS AND DUTIES OF DIRECTORS, LAND COMMITTEES AND HERITAGE COMMITTEES.....</b>	<b>27</b>
11.1 Powers of Directors.....	27
11.2 Duty of Director to disclose Material Personal Interests.....	27
11.3 Remuneration .....	27
11.4 Delegation.....	27
11.5 Delegation to Land Committees over Language Group Country .....	28
11.6 Powers of Land Committees over Language Group Country.....	28
11.7 Other Powers of Land Committees.....	29
11.8 Powers and duties over Shared Country .....	29
11.9 Powers and duties over mixed areas.....	29
11.10 Powers of Heritage Committees in Language Group Country.....	29
<b>12. NATIVE TITLE DECISION-MAKING PROCESS .....</b>	<b>29</b>
12.1 Native Title Decision Processes.....	29
12.2 Alternative Consultation Processes .....	30
12.3 Default Process for Consultation and Consents to Native Title Decisions that are not Alternative Consultation Process Decisions.....	31
12.4 Simpler agreed and adopted processes chosen for consents to various kinds of Native Title Decisions .....	32

	4
13. DIRECTORS MEETINGS .....	33
13.1 Frequency of Directors meetings.....	33
13.2 Calling and giving notice of Directors' meetings.....	33
13.3 Quorum at Directors meetings .....	33
13.4 Chairing Directors meetings.....	33
13.5 Resolutions at Directors meetings .....	33
13.6 Circulating resolutions of Directors .....	34
14. SECRETARY AND CONTACT PERSON .....	34
14.1 Who may be a Secretary or contact person .....	34
14.2 Consent to act as Secretary or contact person.....	34
14.3 How a Secretary or contact person is appointed after Registration .....	34
14.4 Terms and conditions of office .....	34
14.5 Duties of Secretary and contact person.....	34
15. CHIEF EXECUTIVE OFFICER .....	35
15.1 Appointment.....	35
15.2 Functions.....	35
16. LAND COMMITTEE MEETINGS .....	35
17. ANNUAL PLAN.....	36
17.1 Requirement for Annual Plan .....	36
17.2 Reviewing the Annual Plan .....	36
18. STRATEGIC PLAN .....	37
18.1 Purpose of the Strategic Plan.....	37
18.2 Amending the Strategic Plan.....	37
18.3 Implementation of the Strategic Plan.....	37
18.4 Publication of the Strategic Plan.....	37
19. FINANCES AND RECORD KEEPING.....	37
19.1 Minutes of meetings .....	37
19.2 Rule Book and records about officers etc.....	38
19.3 Financial records .....	38
19.4 Corporation to provide Member with rules, if requested.....	38
19.5 Land Committee accounts .....	38
20. AUDITOR.....	38



	5
21. DISPUTE RESOLUTION PROCESS.....	39
21.1 Dispute .....	39
21.2 Corporation Operations to Continue .....	39
21.3 Informal Dispute Resolution .....	39
21.4 Formal Dispute Resolution.....	39
21.5 Legal Proceedings .....	39
22. NOTICES.....	39
22.1 General .....	39
22.2 How a notice to a Member may be given.....	40
22.3 When notice is taken as being given.....	40
23. CONFIDENTIAL INFORMATION .....	40
24. AMENDMENT OF THE RULE BOOK.....	40
24.1 Corporation wants to change the Rule Book.....	40
24.2 Date of effect of change.....	41
24.3 Review.....	41
25. VOLUNTARY WINDING UP.....	41
SCHEDULE 1 – INTERPRETATION AND DEFINITIONS .....	43
S1.1 Interpretation.....	43
S1.2 Definitions.....	44
SCHEDULE 2 – APPOINTMENT OF A SERVICE PROVIDER .....	50
SCHEDULE 3 – MAP OF PKKP COUNTRY WITH INTERNAL BOUNDARY AND SHARED COUNTRY .....	53

## **1. NAME AND NATURE OF THE CORPORATION**

---

- (a) The name of the Corporation is the PKKP Aboriginal Corporation.
- (b) The Corporation is an Aboriginal Corporation registered with ORIC under the CATSI Act.

## **2. DEFINITIONS AND INTERPRETATION**

---

The definitions and interpretation provisions of the Rule Book are contained in Schedule 1 – Interpretation and Definitions.

## **3. OBJECTIVES OF THE CORPORATION**

---

The Objectives of the Corporation are to:

- (a) be and perform the functions of a Prescribed Body Corporate under the Native Title Act 1993 (Cth);
- (b) hold Native Title on trust for the benefit of the PKKP People or act as agent or representative of the PKKP People- instructions to be obtained as to which] and to manage the Native Title rights and interests of the PKKP People;
- (c) implement the Participation Agreement and perform the role of the LAC on behalf of the PKKP People;
- (d) implement other agreements as the PKKP People may request from time to time;
- (e) provide direct relief from poverty, sickness, suffering, misfortune, disability, destitution, and disadvantage to the PKKP People;
- (f) maintain, protect, promote and advance the traditional law, culture, native title, traditions and customs of the PKKP People;
- (g) promote, develop, improve and advance the skills, capabilities, knowledge, and commercial achievements of the PKKP People;
- (h) promote, develop, improve and advance the education, health and wellbeing of the PKKP People;
- (i) act in the best interests of the PKKP People;
- (j) hold title to any Vested Land; and
- (k) apply for trust funds or other funds to fulfil these Objectives.

## **4. POWERS OF THE CORPORATION**

---

Subject to the CATSI Act and the Rule Book, the Corporation has the power to do anything lawful to carry out the Objectives, except:

- (a) The Corporation shall not exercise a power unless it is to carry out at least one of the Objectives, and shall not exercise a power that is contrary to any of the Objectives.

- (b) In carrying out its Objectives, the Corporation shall not pay any portion of its funds or property directly or indirectly by way of dividends, bonus or otherwise to any Member; except for the payment in good faith of reasonable and proper remuneration for, or in return for, services actually rendered to the Corporation by that Member.
- (c) Any appointment of a Service Provider must comply with the provisions of Schedule 2 – Appointment of Service Provider.
- (d) The Corporation cannot charge application fees for membership or membership fees of any kind.

## **5. MEMBERSHIP OF THE CORPORATION**

---

### **5.1 Membership Groups**

- (a) The Corporation has four groups of Members:
  - (i) Puutu Kunti Kurrama Members;
  - (ii) Puutu Kunti Kurrama Associate Members;
  - (iii) Pinikura Members; and
  - (iv) Pinikura Associate Members.
- (b) A Member may be a Member of one Language Group and an Associate Member of the alternate Language Group, but not a Member of both Language Groups.

### **5.2 Members by application after registration**

#### **5.2.1 How to become a Member after registration**

A person becomes a Member after the Corporation has been registered if:

- (a) the person is eligible to be a Member;
- (b) the person applies in writing to the Corporation to become a Member, nominating which Membership Group he or she is applying for, using a form prescribed by the Directors;
- (c) the Directors accept the application; and
- (d) the person's name is entered on the Register of Members.

#### **5.2.2 Eligibility for Membership Group (Who can apply)**

A person is eligible to apply to be a Member of the Corporation if the person:

- (a) is 18 years of age or over; and
- (b) is a member of the PKKP People; and
- (c) has executed and delivered to the Corporation a PKKP People Community Ratification Deed.

### 5.2.3 Deciding Membership applications

- (a) The Directors shall determine applications for membership of the Corporation in the manner outlined below.
- (b) The Directors must not consider or accept a membership application that is not compliant with the Rule Book.
- (c) All applications that are compliant with the Rule Book will be referred to the relevant Land Committee for the Membership Group applied for.
- (d) At the next meeting of a Land Committee following receipt of an application for membership that complies with the Rule Book, the Land Committee must consider the application and decide on a recommendation to be made to the Directors as to whether to accept or reject the application and the reasons for this and shall provide the said recommendation and reasons to the Directors as soon as practicable after the said Land Committee meeting.
- (e) Membership applications must be considered and decided in the order in which they are received by each Land Committee.
- (f) In considering whether an Applicant is eligible for membership under rule 5.2.2, the Land Committee for that Applicant's Membership Group must confirm that he or she is a member of the relevant Language Group.
- (g) The Land Committees may recommend that the Directors refuse to accept a membership application even if the Applicant has applied in writing and complies with all the eligibility requirements.
- (h) The Directors must determine the membership applications consistently with the advice from the relevant Land Committee unless the Directors believe, on reasonable grounds, that they will be in breach of these Rules or the CATSI Act by doing so.
- (i) The Directors must determine the applications in the order in which they were originally received.
- (j) If an application for membership is accepted, the Directors must notify the Applicant in writing and add the Applicant's name to the Register of Members within 14 days of the decision.
- (k) If an application for membership is rejected, the Directors must notify the Applicant and provide in writing:
  - (i) reasons for the rejection; and
  - (ii) a copy of the clause in this Rule Book detailing the Dispute Resolution process within 14 days of the decision.

### 5.2.4 Entry on the Register of Members.

If a membership application is accepted, the Applicant's name and Membership Group must be entered on the Register of Members within 14 days.

However, if:

- (a) the Applicant applies for membership after a notice has been given for the holding of a General Meeting or AGM; and
- (b) the meeting has not been held when the Land Committee considers the application,

then the Corporation must not enter the person on the Register of Members until after the General Meeting or AGM has been held.

### 5.3 Member's rights and obligations

#### 5.3.1 Puutu Kunti Kurrama Members and Pinikura Members rights

- (a) Each Puutu Kunti Kurrama Member and Pinikura Member has rights under the CATSI Act and the Rule Book including the rights set out below. A Member:
  - (i) can attend, speak and vote at a General Meeting of the Corporation;
  - (ii) can be elected or appointed as a member of a Land Committee Member for the relevant Membership Group and a TO Director (subject to eligibility);
  - (iii) cannot be removed as a Member unless the Land Committee for the relevant Membership Group and the Corporation have complied with the procedure outlined in the Rule Book;
  - (iv) can put forward Resolutions to be voted on at a General Meeting of the Corporation in accordance with the procedure outlined in the Rule Book;
  - (v) can ask the Directors to call a General Meeting in accordance with the procedure outlined in the Rule Book;
  - (vi) can access the following books and records of the Corporation:
    - (a) the Register of Members in accordance with the procedure outlined in the Rule Book;
    - (b) the minute Books in accordance with the procedure outlined in the Rule Book;
    - (c) the Rule Book; and
    - (d) certain reports prepared by or for the Directors and the Corporation, in accordance with the CATSI Act.

- (vii) can ask the Directors to provide access to any other records or Books of the Corporation in accordance the Rule Book; and
  - (viii) can have any appropriate dispute with another Member, a Land Committee or the Directors dealt with under the Dispute Resolution Process outlined in the Rule Book.
- (b) Members do not have the right to share in the profits of the Corporation or take part in the distribution of the Corporation's assets if it is wound up.

### **5.3.2 Puutu Kunti Kurrama Associate Members and Pinikura Associate Members rights**

- (a) Each Puutu Kunti Kurrama Associate Member and Pinikura Associate Member has the following limited rights. An Associate Member:
- (i) can attend and speak at a General Meeting of the Corporation but cannot call a meeting, propose resolutions, stand for election to any position or vote;
  - (ii) can have any appropriate dispute with another Member, a Land Committee or the Directors dealt with under the Dispute Resolution Process outlined in the Rule Book; and
  - (iii) cannot be removed as an Associate Member unless the Land Committee for the relevant Membership Group and the Corporation have complied with the procedure outlined in the Rule Book.
- (b) Puutu Kunti Kurrama Associate Members and Pinikura Associate Members:
- (i) cannot be a Land Committee member;
  - (ii) cannot be a Director of the Corporation;
  - (iii) is not to be counted for the purposes of making up a quorum or membership numbers at a meeting;
  - (iv) do not have the right to share in the profits of the Corporation or take part in the distribution of the Corporation's assets if it is wound up.

All other rights that exist as a a member of the Corporation apply to Associate Members of both Language Groups.

### **5.3.3 Members' responsibilities (applies to Associate Members)**

Each Member has the following responsibilities:

- (a) to comply with the CATSI Act and the Rule Book;
- (b) to notify the Corporation of any change of address within 28 days;

- (c) to comply with any code of conduct adopted by the Corporation;
- (d) to treat other Members, the Land Committees, and the Directors with respect and dignity;
- (e) to not behave in a way that significantly interferes with the operation of the Corporation or of Corporation meetings;
- (f) not to make improper use of information or opportunities received because of their position as Members, Land Committees or Directors; and
- (g) not to make any public statement on behalf of the Corporation unless authorised by the Directors.

#### **5.3.4 Liability of Members and Associate Members:**

The Members and Associate Members are not liable to contribute to the property of the Corporation on winding up.

#### **5.4 How a person stops being a Member (applies to Associate Members)**

##### **5.4.1 A person will stop being a Member if:**

- (a) the person resigns as a Member in accordance with the procedure outlined in the Rule Book; or
- (b) the person dies; or
- (c) the person's membership of the Corporation is cancelled in accordance with the procedure outlined in the Rule Book.

##### **5.4.2 When a person ceases to be a Member (applies to Associate Members)**

A person ceases to be a Member when the Member's name is removed from the Register of Members as a current Member of the Corporation.

#### **5.5 Resignation of a Member (applies to Associate Members)**

- (a) A Member may resign by giving a resignation notice to the Corporation.
- (b) A resignation notice must be in writing using a form prescribed by the Directors.
- (c) The Corporation must move the Member's name from the register of current Members of the Corporation to the Register of Former Members within 14 days after receiving the resignation notice.

#### **5.6 Process for cancelling membership (applies to Members and Associate Members)**

##### **5.6.1 Cancelling membership if Member is not or ceases to be eligible**

- (a) The Directors must, by Resolution, cancel the membership of that Member if the Member:
  - (i) is not eligible for membership; or
  - (ii) has ceased to be eligible for membership.
- (b) Before cancelling the membership, the Directors must give the Member notice in writing stating that:
  - (i) the Directors intends to cancel the membership for the reasons specified in the notice;
  - (ii) the Member has 14 days to object to the cancellation of the membership; and
  - (iii) the objection must be in writing.
- (c) If the Member does not object, the Directors must cancel the membership.
- (d) If the Member does object:
  - (i) the Directors must not cancel the membership; and
  - (ii) only the Corporation by Resolution in a General Meeting may cancel the membership.
- (e) If a membership is cancelled, the Directors must give the Member a copy of the Resolution (being either the resolution of the Directors or the Resolution of the General Meeting) as soon as possible after it has been passed.

#### **5.6.2 Cancelling membership if Member cannot be contacted**

- (a) The membership of a Member may be cancelled by Special Resolution in a General Meeting if the Corporation:
  - (i) has not been able to contact that Member at their address entered on the Register of Members for a continuous period of 2 years before the meeting; and
  - (ii) has made 2 or more reasonable attempts to contact the Member during that 2 year period but has been unable to.
- (b) If the Corporation cancels the membership, the Land Committee for the person's Membership Group must send that person a copy of the Resolution at their last known address, as soon as possible after the Resolution has been passed.

#### **5.6.3 Cancelling membership if a Member misbehaves**

- (a) The Corporation may cancel the membership of a Member by Special Resolution in a General Meeting if the General Meeting is satisfied



that the Member has behaved in a way that significantly interfered with the operation of the Corporation or of Corporation meetings.

- (b) If the Corporation cancels a membership under this rule, the Directors must give that person a copy of the Resolution as soon as possible after it has been passed.

#### **5.6.4 Amending Register of Members after a membership is cancelled**

Within 14 days of a Member's membership being cancelled, the Corporation must remove their name as a current Member from the Register of Members of the Corporation and include it on the Register of Former Members.

## **6. REGISTERS OF MEMBERS, ASSOCIATE MEMBERS AND FORMER MEMBERS**

---

### **6.1 Corporation to maintain a Register of Members**

- (a) The Corporation must set up and maintain a Register of Members, Register of Associate Members and a Register of Former Members.
- (b) The Corporation may choose to maintain the Register of Members, Register of Associate Members and Register of Former Members in the same document.
- (c) The Corporation must allow:
- (i) Members to inspect the Register of Members, Register of Associate Members and the Register of Former Members, free of charge; and
  - (ii) Non-Members to inspect the Register of Members, Register of Associate Members and the Register of Former Members, upon payment of any fee prescribed by the Corporation.
- (d) The Corporation must provide a copy of the Register of Members, Register of Associate Members and the Register of Former Members to any person who requests a copy, upon payment of any fee prescribed by the Corporation.
- (e) The Corporation must make a copy of the Register of Members, Register of Associate Members and the Register of Former Members available for inspection at every General Meeting.

### **6.2 Information on the Register of Members and Register of Associate Members**

- (a) The Register of Members and Register of Associate Members must state the Membership Group to which each Member belongs.
- (b) If a Member is a Member of one Language Group and Associate Member of the alternate Language Group, this will be indicated on each of the registers on which that person appears.

## **7. ANNUAL GENERAL MEETINGS (AGMS) AND GENERAL MEETINGS**

---

### **7.1 AGMS**

#### **7.1.1 Holding AGMs**

The Corporation must hold an AGM within 5 months after the end of the Financial Year at a reasonable time and place.

#### **7.1.2 Business of AGM**

The business of an AGM may include any of the following, even if not referred to in the notice of meeting:

- (a) confirmation of the minutes of the previous General Meeting, except at the first AGM;
- (b) the consideration of the reports under Chapter 7 of the CATSI Act that are required to be presented at the AGM;
- (c) the election of Land Committee members;
- (d) the appointment and remuneration of the Auditor (if any);
- (e) checking of details on the Register of Members; and
- (f) asking questions about management of the Corporation and asking questions of the Corporation's Auditor (if any).

### **7.2 General Meetings**

A General Meeting must be held at a reasonable time and place and for a proper purpose.

#### **7.2.1 Requests by the Land Committee**

If requested within a reasonable time by a Land Committee, a General Meeting must include the following:

- (a) Requested agenda items;
- (b) Presentations by external parties (but not involvement in meeting discussions unless agreed by the AGM by a Resolution);
- (c) Suitable time and space for separate discussions of the Membership Groups; and
- (d) The attendance of the Auditor or his/her representative to answer questions.

### **7.3 Calling General meetings**

#### **7.3.1 Director may call meetings**

- (a) A Director may call a General Meeting of the Corporation.

**7.3.2 Members may ask Directors to call General meetings**

- (b) The Directors must call and arrange to hold a General Meeting within 21 days of the request of at least a minimum number of Members:

Number of Members in corporation	Number of Members needed to ask for a General Meeting
2 to 10 Members	= 1 Member
11-20 Members	= 3 Members
21-50 Members	= 5 Members
51 Members or more	= 10 per cent of Members

- (c) A request by Members to hold a General Meeting must:
- (i) be in writing;
  - (ii) state any Resolution to be proposed at the General Meeting;
  - (iii) be signed by the Members making the request, either on one document or on separate identical copies;
  - (iv) nominate a Member to be the contact Member on behalf of the Members making the request; and
  - (v) be given to the Corporation.

**7.3.3 Directors may apply to deny a Member's request to call a General Meeting**

- (a) If the Directors resolve that a request to hold a General Meeting is frivolous or unreasonable, or that it is not in the best interests of the Members as a whole, the Directors can apply to the Registrar for permission to refuse the request.
- (b) The Directors must, as soon as possible after making an application to the Registrar under this rule, give the contact Member of the Members requesting a General Meeting notice that an application to the Registrar has been made.

**7.3.4** A General Meeting shall not be called nor shall a General Meeting make decisions on matters which have been delegated to Land Committees under Rule 11.6, unless requested by the Land Committee.

**7.4 Requirement for notice of General Meeting****7.4.1 Notice for General Meetings**

- (a) At least 21 days' notice must be given of a General Meeting to all Directors, Members and the Auditor (if any).
- (b) The Corporation must give written notice (by hand, post, fax or email) of a General meeting to:
  - (i) each Member;
  - (ii) each Associate Member;
  - (iii) each Director;
  - (iv) each Land Committee member;
  - (v) the Secretary / contact person; and
  - (vi) the Auditor.

#### 7.4.2 Contents of notice of General Meeting

- (a) A notice of a General Meeting must:
  - (i) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to do this);
  - (ii) state the general nature of the meeting's business;
  - (iii) if a Special Resolution is to be proposed at the meeting, set out an intention to propose it and state what it is; and
  - (iv) if a Member is entitled to appoint a Proxy, contain a statement to this effect.
- (b) The information included in a notice of a General Meeting must be worded and presented clearly and concisely.

#### 7.5 Failure to give notice

A General Meeting will not be invalid just because the notice of the meeting was accidentally not sent to a person or a person has not received the notice.

#### 7.6 Members' Resolutions

##### 7.6.1 Notice of Members' Resolutions

- (a) Members can propose a Resolution for a General Meeting if a minimum number of Members give notice of it to the Corporation.

Number of Members in corporation	Number of Members needed to propose a resolution
2 to 10 Members	= 1 Member

11-20 Members	= 3 Members
21-50 Members	= 5 Members
51 Members or more	= 10 per cent of Members

- (b) The notice must set out the Resolution in writing and must be signed by the Members proposing it (signed either on one document or on separate identical copies).
- (c) The Corporation must give notice of the Resolution to all people entitled to it.

#### 7.6.2 Consideration of Members' resolutions

- (a) If the Corporation has been given notice of a Member's Resolution it must be considered at the next General Meeting that occurs more than 28 days after the notice is given.
- (b) The Corporation must give all its Members, the Trust and the Auditor (if any) notice of that Resolution at the same time, or as soon as possible afterwards, and in the same way as it gives notice of a General Meeting.
- (c) The Corporation does not have to give notice of a Resolution or consider the Resolution at a General Meeting if the Directors consider the Resolution is defamatory.

#### 7.6.3 Members' statements to be distributed

- (a) Members may ask the Corporation to give all its Members a statement about:
  - (i) a Resolution that is proposed to be moved at the General Meeting; or
  - (ii) any other matter that may be considered at that General Meeting.
- (b) This request to give the Members a statement must follow the same procedures as a request to propose a Resolution.

### 7.7 Quorum for General meeting

#### 7.7.1 Quorum

- (a) The quorum for a meeting of the Corporation Members is the lesser of:
  - (i) 20 people who are able to vote at that meeting; or
  - (ii) 10% of the Members (but not Associate Members) of the Corporation at the date of the meeting.

This quorum may be present regardless of the number of members present from each Membership group.

- (b) Native Title Decisions are not made by general meetings of the Corporation but by different processes set out under Rules 11 and 12. The quorum for meetings for Native Title Decisions are set out in those Rules.
- (c) The quorum for (a) and (b) above must be present at all times during the meeting.

#### **7.7.2 Adjourned meeting where no quorum**

A meeting of the Corporation Members that does not have a quorum present within 3 hours after the commencement time set out in the meeting notice is adjourned to the same time on the next day, and to the same place, unless the Chairperson specifies that the meeting should be dissolved and rescheduled.

#### **7.8 Chairing a General Meeting**

- (a) The Directors may elect an individual to chair a General Meeting.
- (b) The Members at a General Meeting must elect a Member to chair the meeting (or part of it) if:
  - (i) the Directors have not already elected a Chairperson; or
  - (ii) a previously elected Chairperson is not available or does not want to chair the meeting.
- (c) The ruling of the Chairperson on all matters relating to the order of business, procedure and conduct of the meeting is final.
- (d) The Chairperson may expel any Member or Director from the meeting if the Chairperson reasonably believes that the Member or Director's conduct is inappropriate.
- (e) The Chairperson must adjourn a General Meeting if the majority of Members present agree or direct that the Chairperson do so.

#### **7.9 Using technology to hold a General Meeting**

The Corporation may hold a General Meeting at 2 or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

#### **7.10 Auditor's right to be heard at General Meetings**

The Auditor is entitled to attend any General Meeting of the Corporation, and to be heard on any of the business of the meeting that concerns the Auditor in professional capacity.

#### **7.11 Voting at General Meetings**

##### **7.11.1 Entitlement to vote**

- (a) Subject to this Rule, at a General Meeting, each Member (but not Associate Member) has one vote, whether by a show of hands or a Poll.
- (b) An Ordinary Resolution, other than a Native Title Decision or Heritage Decision, is passed by a General Meeting if it receives:
  - (i) More than 50% of the votes cast by Pinikura Members present; and
  - (ii) More than 50% of the votes cast by Puutu Kunti Kurrama Members present.
- (c) For Native Title Decisions, Rules 11 and 12 of this Rule Book applies.
- (d) A Special Resolution is passed by a General Meeting if it receives:
  - (i) More than 75% of the votes cast by the Members present;
  - (ii) More than 50% of the votes cast by the Pinikura Members present; and
  - (iii) More than 50% of the votes cast by the Puutu Kunti Kurrama Members present.

#### **7.11.2 How voting is carried out by show of hands**

- (a) A Resolution put to the vote at a General Meeting must be decided on a show of hands unless a Poll is demanded.
- (b) Before a vote is taken the Chairperson must inform the meeting whether any Proxy votes have been received and how the Proxy votes are to be cast.
- (c) On a show of hands, a declaration by the Chairperson is conclusive evidence of the result, provided that the declaration reflects the show of hands and the votes of the Proxies received. Neither the Chairperson nor the minutes need to state the number or proportion of the votes recorded for or against.

#### **7.11.3 How voting is carried out by a Poll**

- (a) A Poll is a secret ballot as opposed to a show of hands and is conducted by Members submitting a paper marked "for" or "against" a Resolution as the case may be.
- (b) A Poll is decided according to the majority requirements set out in this Rule Book, as determined by the Chairperson.

#### **7.11.4 When Members can demand a Poll**

- (a) At a General Meeting, a Poll may be demanded by:
  - (i) at least 5 Members entitled to vote on the Resolution;

- (ii) the Chairperson.
- (b) The Poll may be demanded:
  - (i) before a vote is taken;
  - (ii) before the voting results on a show of hands are declared; or
  - (iii) immediately after the voting results on a show of hands are declared.
- (c) A demand for a Poll may be withdrawn.

## 7.12 Proxies

### 7.12.1 Who may appoint a Proxy

A Member who is entitled to attend and cast a vote at a General Meeting may appoint a Member as Proxy to attend and vote for them at the meeting.

### 7.12.2 Rights of Proxies

- (a) Subject to this rule, a Proxy appointed to attend and vote for a Member has the same rights as if the Member had attended in person.
- (b) A Proxy's authority to speak and vote for a Member at a meeting is suspended if the Member is present at the meeting.
- (c) A person must not exercise Proxies for more than 3 Members. (However, a contravention of this rule does not affect the validity of the votes cast.)

### 7.12.3 Appointing a Proxy

- (a) An appointment or revocation of a Proxy is valid if it is signed (or otherwise authenticated as prescribed by the Directors) by the Member making the appointment and contains the following information:
  - (i) the Member's name and address;
  - (ii) the Corporation's name;
  - (iii) the Proxy's name or the name of the office held by the Proxy; and
  - (iv) the meeting(s) at which the appointment may be used.
- (b) An undated appointment is taken to have been dated on the day it is given to the Corporation.



- (c) An appointment may specify the way the Proxy is to vote on a particular Resolution and a Proxy is obliged to follow those instructions.
- (d) This rule does not affect how the person casts any votes they hold as a Member.
- (e) An appointment of a Proxy does not have to be witnessed.
- (f) A later appointment of a Proxy revokes an earlier one if both appointments could not be validly exercised at the meeting.
- (g) An appointment or revocation can be made prior to a meeting or by handing the appointment or revocation to the Chairperson upon the Proxy's arrival at the meeting.

#### 7.12.4 Questions at AGMS

The Chairperson of a General Meeting must give Members a reasonable opportunity to ask questions about or make comments on the management of the Corporation.

### **8. LANGUAGE GROUP COUNTRY AND SHARED COUNTRY**

---

#### **8.1 Language Group Country**

- (a) Language Group Country means the respective areas of the Country to which either Puutu Kunti Kurrama People or Pinikura People are traditionally connected, as shown on the map in Schedule 3, and excludes the Shared Country.
- (b) Shared Country means the area of the Country to which both Language Groups have traditional connection and share continuing responsibilities equally, as shown on the Map in Schedule 3.

#### **8.2 Formation and responsibilities of Land Committees**

There must be two Land Committees:

- (a) A Pinikura Land Committee, appointed in accordance with Rule 8.3, responsible for the delegated powers in Rule 11.6 in relation to Pinikura Language Group Country and any other powers or functions outlined in these Rules; and
- (b) A Puutu Kunti Kurrama Land Committee, appointed in accordance with Rule 8.3, responsible for the delegated powers in Rule 11.6 in relation to Puutu Kunti Kurrama Language Group Country and any other powers or functions outlined in these Rules.

#### **8.3 Appointment of Land Committee members**

- (a) Land Committee members must be Members of the Corporation.

- (b) Each Land Committee will have between 4 to 8 members, with both to have 8 members unless otherwise agreed by an ordinary resolution of a General Meeting.
- (c) Land Committee appointments can only be made if the intention to take a vote has been notified on the meeting notice in reasonable time.
- (d) Candidates can be nominated before or at the Annual General Meeting, and must accept their nomination before the appointment is made, which can be in writing, in attendance at the meeting, or by a message relayed to the meeting.
- (e) The members of a Land Committee will be elected by members of its respective Membership Group only.
- (f) Each member of the relevant Membership Group will be entitled to vote for the full number of Land Committee members (that is, if there are 8 Land Committee members, they may vote for 8 individuals), and the individuals with the highest number of votes overall will form the Land Committee.
- (g) Except for the initial Land Committee members, Land Committee members will be appointed for 2 years, subject to an extension until the next Annual General Meeting after the expiration of the 2 years,, and are eligible for reappointment.
- (h) The initial members of each Land Committee were appointed by the PKKP People prior to registration of this Rule Book by ORIC for the following terms:
  - (i) 4 Land Committee members for 2 years; and
  - (ii) 4 Land Committee members for 1 years;and will be eligible for reappointment.
- (i) Casual vacancies may be filled by a resolution of the remaining members of a Land Committee, but must be formally filled by the next Annual General Meeting.

#### **8.4 Formation of Heritage Committees**

There must be two Heritage Committees, a Pinikura Heritage Committee and a Puutu Kunti Kurrama Heritage Committee which shall be appointed at an Annual General Meeting in the same manner as the Land Committees under Rule 8.3 as if the references to Land Committees were references to Heritage Committees.

#### **8.5 Language Group Meetings**

- (a) A Land Committee may call a meeting of the members of the relevant Language Group.

- (b) Where the meeting called by a Land Committee relates to Native Title Decisions, the provisions of Rule 12 shall apply.

#### **8.6 Land Committee administration**

Land Committees shall appoint a member or members of the Land Committee to be responsible for correspondence and other communications, notices and minute-taking or other administrative tasks of the Land Committee and shall notify the CEO and Secretary or contact person of the members appointed. Land Committees may also, with the approval of the Directors, seek and obtain the assistance of the Secretary or contact person and the CEO or other Corporation staff in these tasks.

### **9. DIRECTORS OF THE CORPORATION**

---

#### **9.1 Number of Directors**

- (a) The Corporation must not have more than 8 TO Directors.
- (b) If the Corporation elects to have Independent Directors, it may have no more than 2 Independent Directors.

#### **9.2 Composition of Board of Directors**

The Board of Directors will at all times include an equal number of Members appointed from each Land Committee, subject to casual vacancies.

#### **9.3 Eligibility to be a Director**

- (a) A person is only eligible for appointment as a TO Director if they satisfy the TO Director Criteria and is also a member of a Land Committee.
- (b) A person is only eligible for appointment as an Independent Director if they satisfy the Independent Director Criteria.

#### **9.4 Appointment of Directors**

##### **9.4.1 Appointment of Directors**

- (a) An equal number of TO Directors, being 4 each (unless otherwise agreed between the Land Committees), will be chosen by each Land Committee from their Land Committee members.
- (b) The said TO Directors chosen by the Land Committee will be appointed at the Annual General Meeting after the expiry of the previous TO Directors term of appointment.
- (c) Independent Directors may only be nominated by Resolution of the TO Directors.
- (d) Potential candidates for nomination as Independent Directors must provide written evidence of their qualifications, experience and

suitability to the role and participate in interviews conducted by the Corporation;

- (e) These candidates for Independent Director are evaluated using criteria adopted by the Corporation to determine their suitability based on the information supplied by the candidates and information obtained from other sources.
- (f) Independent Directors nominated by the TO Directors will be appointed at the Annual General Meeting after the expiry of the previous Independent Directors term of appointment.
- (g) An Independent Director's term is for two years and they are eligible for reappointment.

#### **9.4.2 Compliance with Participation Agreement**

In appointing a Director the Members must have regard to the current composition of the Directors and must ensure that at least one Director is and continues to be a member of the LIC.

#### **9.4.3 Term of appointment.**

- (a) A Director must not be appointed for more than 2 years, subject to an extension until the next General Meeting after the expiration of the 2 years.
- (b) A Director is eligible for reappointment.

#### **9.4.4 Casual vacancies**

Casual vacancies may be temporarily filled by a resolution of the remaining Directors but must be formally filled by the next General Meeting.

#### **9.4.5 How a person ceases to be a Director**

A person ceases to be a Director if:

- (a) the person dies;
- (b) the person resigns as a Director by giving written notice to the Corporation;
- (c) the term of the person's appointment as a Director expires;
- (d) the person is no longer a member of a Land Committee;
- (e) the person is removed as a Director by the Members using the procedure outlined in the Rule Book;
- (f) the person is removed as a Director by the other Directors using the procedure outlined in the Rule Book; or
- (g) the person becomes disqualified from managing Aboriginal and Torres Strait Islander Corporations under Part 6-5 of the CATSI Act.

## 9.5 Process for removing a Director

### 9.5.1 Removal by Members

- (a) The Corporation may, by Resolution in a General Meeting, remove a Director from office despite anything in:
  - (i) the Rule Book;
  - (ii) an agreement between the Corporation and the Director concerned; or
  - (iii) an agreement between any or all Members of the Corporation and the Director concerned.
- (b) A notice of intention to move a Resolution to remove a Director must be given to the Corporation at least 21 days before the meeting is to be held. However, if the Corporation calls a meeting after the notice of intention is given, the meeting may pass the Resolution even though the meeting is held less than 21 days after the notice is given.
- (c) The Corporation must give the Director concerned a copy of the notice as soon as possible after it is received.
- (d) The Director concerned is entitled to put his or her case to the Members by:
  - (i) giving the Corporation a written statement for circulation to Members using the procedure outlined in the Rule Book; or
  - (ii) speaking to the motion at the meeting (whether or not the Director concerned is a Member).
- (e) If a person is appointed to replace a Director removed under this rule, the time at which:
  - (i) the replacement Director; or
  - (ii) any other Director,

is to retire is to be worked out as if the replacement Director had become a Director on the day on which the replaced Director was last appointed a Director.

### 9.5.2 Removal by other Directors

- (a) The only ground on which the Directors may remove a Director from office is that they fail without reasonable excuse to attend 3 or more consecutive Directors' meetings. The Directors may remove a Director by Resolution.
- (b) This rule operates despite anything in:

- (i) the Rule Book; or
  - (ii) an agreement between the Corporation and the Director concerned; or
  - (iii) an agreement between any or all Members and the Director concerned.
- (c) Before removing the Director concerned, the Directors must give the Director concerned notice in writing stating that:
- (i) the Directors intend to remove the Director concerned from office because that Director failed without reasonable excuse to attend 3 or more consecutive Directors' meetings.
  - (ii) the Director concerned has 14 days in which to object in writing to the removal.
- (d) If the Director concerned does not object within 14 day, the Directors must remove the Director concerned.
- (e) If the Director concerned does object within 14 days:
- (i) the Directors cannot remove the Director concerned; and
  - (ii) the Corporation, by Resolution in a General Meeting, may remove the Director in accordance with the procedure outlined in the Rule Book.
- (f) If the Director concerned is removed, the Corporation must give them a copy of the Resolution as soon as possible after the Resolution has been passed.
- (g) If a person is appointed to replace a Director removed under this rule, the time at which:
- (i) the replacement Director; or
  - (ii) any other Director is to retire is to be worked out as if the replacement Director had become Director on the day when the replaced Director was last appointed a Director.

#### **10. CODE OF CONDUCT AND CORPORATE GOVERNANCE TRAINING**

- (a) The Directors must, during the first year after incorporation, develop a Code of Conduct that must be complied with by all Directors and employees of the Corporation.
- (b) The Directors must ensure that each TO Director undertakes ongoing corporate governance and director duties and responsibilities training, and begins such training within 6 months of that TO Director's appointment.

- (c) The Directors may require any Independent Directors to undertake appropriate cross-cultural training.

## **11. POWERS AND DUTIES OF DIRECTORS, LAND COMMITTEES AND HERITAGE COMMITTEES**

---

### **11.1 Powers of Directors**

- (a) The business of the Corporation is to be managed by or under the direction of the Directors.
- (b) The Directors may exercise all of the powers of the Corporation except any that the CATSI Act or the Rule Book requires the Corporation to exercise in a General meeting or AGM, or are delegated to the Land Committees in accordance with this Rule Book.

### **11.2 Duty of Director to disclose Material Personal Interests**

A Director who has a Material Personal Interest in a matter that relates to the affairs of the Corporation must give the other Directors notice of the interest unless a valid exception applies.

### **11.3 Remuneration**

- (a) The Directors may be paid such reasonable remuneration as the Members in a General Meeting decide.
- (b) The Corporation may pay the Directors' travelling and other reasonable out of pocket expenses that the Directors incur as a result of their responsibilities as a Director.

### **11.4 Delegation**

- (a) Apart from any powers that must be exercised by the Directors as outlined in these Rules or in the CATSI Act, the Directors may by Resolution delegate any of their powers to:
  - (i) a Land Committee;
  - (ii) a committee of Directors;
  - (iii) a Director;
  - (iv) an employee of the Corporation;
  - (v) the Heritage sub-committees or other sub-committee of Directors and/or Members; or
  - (vi) any other person.
- (b) A delegate must exercise the powers delegated in accordance with any directions of the Directors and provisions of the Rule Book.

- (c) The exercise of a power by a delegate is as effective as if the Directors had exercised it.

#### **11.5 Delegation to Land Committees over Language Group Country**

- (a) Subject to Rules 11.5(b), 11.7 to 11.10, the powers described in Rules 11.6 to 11.7 inclusive are delegated to the Land Committees in relation to their respective Language Group Country.
- (b) This delegation does not apply to the powers referred to in Rules 11.8 and 11.9.
- (c) The CEO, the Secretary or contact person for the Corporation shall refer any notifications and documents relating to the powers delegated to the Land Committees as soon as practicable.
- (d) The Land Committee will inform the CEO of decisions made by the Land Committee pursuant to any powers delegated.
- (e) The Directors will support and execute documents required for decisions validly made by the Land Committees under this Rule Book unless the Directors believe, on reasonable grounds, that they would be in breach of these Rules, the CATSI Act, native title legislation, PBC regulations or common law if they were to support and execute the said documents.

#### **11.6 Powers of Land Committees over Language Group Country**

Pursuant to the delegation made in Rule 11.5 and subject to Rules 11.8 to 11.10 inclusive, the following powers in relation to Language Group Country must only be exercised by the relevant Land Committee:

- (a) Appointing TO Directors;
- (b) Making Native Title Decisions in accordance the PBC Regulations and this Rule Book and carrying out the functions, duties and powers required to be carried out by a prescribed body corporate in the PBC Regulations or this Rule Book for the making of such Native Title Decisions;
- (c) Making other decisions about future acts and other procedural rights under the Native Title Act;
- (d) Implementing future act agreements (unless otherwise provided for by that future act agreement, including the Participation Agreement);
- (e) Calling consultation meetings of members of the Language Group; and
- (f) Referring or delegating all heritage matters or Heritage Decisions to the relevant Language Group Heritage Committees for advice or decision.



### 11.7 Other Powers of Land Committees

The following powers may be exercised by a Land Committee subject to the approval of the Directors (which approval will not be unreasonably withheld):

- (a) Retaining advisers or agents or engaging employees;
- (b) Applying for funds from any trust or other funding source for any of its functions; and
- (c) Engaging in projects or enterprises that support the Objectives of the corporation.

### 11.8 Powers and duties over Shared Country

Subject to Rule 11.9, the powers described in rule 11.6 are retained by, and will be exercised by, the Directors in relation to matters that affect Shared Country, unless the Directors resolve to delegate any of those functions to both Land Committees.

### 11.9 Powers and duties over mixed areas

The powers described in rule 11.6 are retained by, and will be exercised by, the Directors in relation to matters that affect both Language Group Country areas, or a combination of a Language Group Country and Shared Country, unless the Directors resolve to delegate any of those functions the relevant Land Committee or both Land Committees.

### 11.10 Powers of Heritage Committees in Language Group Country

- (a) Where a Heritage Decision in relation to a Language Group Country does not also involve a Native Title Decision or a decision that falls within Rule 11.6, the powers to make such a Heritage Decision are delegated to and must be exercised by the relevant Heritage Committee.
- (b) Where a decision to be made by a Land Committee or the Directors includes a Heritage Decision, the Land Committee or Directors will not make such a decision without first consulting and obtaining an opinion or comment on the decision from the relevant Heritage Committee for the relevant Language Group Country or if the matter concerns both Language Group areas or a combination of a Language Group Country and Shared Country, then both the Heritage Committees, and taking such opinion or comment into account.

## 12. NATIVE TITLE DECISION-MAKING PROCESS

---

### 12.1 Native Title Decision Processes

- (a) Native Title Decisions shall be dealt with in one of the ways set out below.
- (b) Where Native Title Decisions are allowed by the PBC Regulations to be made by way of alternative consultation processes, then such decisions will be made in the way set out under Rule 12.2. The Rule 12.2 processes shall constitute an alternative consultation process for the purposes of Regulation

8A of the PBC Regulations or any other equivalent regulation. Native Title Decisions that are permitted to be dealt with under the alternative consultation processes shall be called Alternative Consultation Process Decisions.

- (c) For Native Title Decisions where alternative consultation processes are not permitted under the PBC Regulations, such as for:
  - (i) Indigenous Land Use Agreements or
  - (ii) future act decisions under Subdivision P of Division 3 of Part 2 of the Native Title Act or
  - (iii) decisions to agree and adopt a process for decision-making,then these Native Title Decisions must be made in accordance with Rule 12.3, unless the PKKP People or a Language Group have agreed and adopted different processes for making certain Native Title Decisions under Rule 12.4 in which case those agreed and adopted processes shall apply.
- (d) Rule 12.4 allows the PKKP People or a Language Group, where there is no particular process of decision-making that under traditional laws and customs must be followed for the giving of consent to the proposed decision, to agree and adopt a process of decision-making for consultation and consent to some or all kinds of Native Title Decisions without needing a meeting of all the common law holders.
- (e) The Directors or the relevant Land Committee for the Native Title Decision shall be responsible for ensuring compliance with the PBC Regulations and any other relevant laws, including organising any evidence of consultation or consent or any access to documents required under the PBC Regulations or other relevant laws.
- (f) The Directors or the relevant Land Committee for the Native Title Decision shall inform the CEO of the Native Title Decision made as soon as practicable.

## 12.2 Alternative Consultation Processes

- (a) Where an Alternative Consultation Process Decision to be made is wholly in relation to land or waters within one Language Group Country only, then the Alternative Consultation Process Decision will be made by the relevant Land Committee who may consult the relevant Language Group or others if they believe this is appropriate.
- (b) Where an Alternative Consultation Process Decision to be made is in relation to the Shared Country or both Language Group Country areas, or a combination of Language Group Country and Shared Country, then the alternative consultation process decision will be made by Directors who may consult the PKKP people or others if they believe this is appropriate.

**12.3 Default Process for Consultation and Consents to Native Title Decisions that are not Alternative Consultation Process Decisions**

- (a) Where there is a particular process that under traditional laws and customs must be followed for the common law holders to give consent to Native Title Decisions that are not Alternative Consultation Process Decisions, then that process under traditional laws and customs must be followed.
- (b) Where there is no particular process of decision-making that under traditional laws and customs must be followed for the giving of consent to the proposed decision and no other agreed and adopted process has been made under Rule 12.4, then the PKKP People agree and adopt the process set out in Rule 12.3(f) below as the process to consult and obtain the consent of the PKKP People to a Native Title Decision.
- (c) Where the Native Title Decision to be made is in relation to the Shared Country or both Language Group Country areas, or a combination of Language Group Country and Shared Country, then the decision will be made by the Directors who will consult with and obtain the consent of the PKKP People in the manner set out in Rules 12.3(g) to (i) below.
- (d) Where the Native Title Decision to be made is wholly in relation to one Language Group Country, then the decision will be made by the relevant Land Committee and the Land Committee will consult with and obtain the consent of the members of the Language Group in the manner set out in Rules 12.3(g) to (i) below.
- (e) The Directors shall use reasonable efforts to keep and update a record of addresses of PKKP People who are not Members and the Land Committees shall do the same for members of their relevant Language Groups.
- (f) Notices and processes for meetings concerning Native Title Decisions in relation to the Shared Country or both Language Group Country areas, or a combination of Language Group Country and Shared Country shall be the same as for General Meetings and the provisions of Rules 7.4, 7.5, 7.7 to 7.13 shall apply as if the meeting were a General Meeting, save that:
  - (i) only 14 days' notice of the meeting shall be required;
  - (ii) reasonable steps shall be taken to give notice of the meeting to as many PKKP People for the area to be affected by the Native Title Decision who are not Members as practicable. Such reasonable steps may include sending information to people whose addresses are recorded, or by placing notices in public places in the region or in newspapers;
  - (iii) the quorum shall be the 20 people, with at least 10 people from each Language Group; and
  - (iv) a decision to a consent to a Native Title Decision is made by way of resolution passed by:

- (i) More than 50% of the votes cast by Pinikura Members present; and
  - (ii) More than 50% of the votes cast by Puutu Kunti Kurrama Members present.
- (g) Subject to Rule 12.3(h) to (i) below, notices and processes for meetings concerning Native Title Decisions in relation to one Language Group Country only shall be given in the same manner as set out in Rule 12.3(f) save that notice need only be given to members of the relevant Language Group and shall be given by or on behalf of the relevant Land Committee.
- (h) The quorum for a meeting of a Language Group only shall be 15 people from that Language Group.
- (i) A decision is made by a Language Group concerning Native Title Decisions to be made wholly in relation to land or waters within one Language Group Country only if it receives more than 50% of the votes cast by the members of that Language Group present at the meeting.
- (j) The Directors or the relevant Land Committee must ensure that the members of the PKKP People or Language Group at the meeting understand the purpose and nature of a proposed Native Title Decision and options available, including by consulting and considering the views of the representative body for the area relevant to the Native Title Decision and, they consider it appropriate and practicable, to give notice of those views to the PKKP People or the Language Group.

**12.4 Simpler agreed and adopted processes chosen for consents to various kinds of Native Title Decisions**

- (a) Subject to 12.3(a) and where permitted under the PBC Regulations or any other law, a Language Group may decide at a meeting under Rule 12.3 to agree and adopt a process where consultation and consents by the Language Group to some or all kinds of Native Title Decisions that are not Alternative Consultation Process Decisions may be made by the Land Committee or some other body without further meetings, consultations and consents of the relevant Language Group.
- (b) Subject to 12.3(a) and where permitted under the PBC Regulations or any other law, the PKKP People may decide at a meeting under Rule 12.3 to agree and adopt a process where consultation and consents by the Language Group to some or all kinds of Native Title Decisions that are not Alternative Consultation Process Decisions may be made by the Directors or some other body without further meetings, consultations and consents of the PKKP People.
- (c) The PKKP People or the Language Groups, using Rule 12.3 processes, may revoke any such agreed and adopted processes made under this Rule 12.4 from time to time and agree and adopt processes alternative processes under Rule 12.4.

## **13. DIRECTORS MEETINGS**

---

### **13.1 Frequency of Directors meetings**

The Directors will meet as often as the Directors consider necessary for the good functioning of the Corporation, but must meet at least once every 6 months.

### **13.2 Calling and giving notice of Directors' meetings**

- (a) The Directors will normally determine the date, time and place of each Directors' meeting at the previous meeting.
- (b) A Directors' meeting may also be called by a Director giving reasonable notice to each of the other Directors.
- (c) The date, time and place for a Directors' meeting must not unreasonably prevent a Director attending.
- (d) Reasonable notice of each Directors' meeting must be given to each Director. The notice must state:
  - (i) the date, time and place of the meeting;
  - (ii) the general nature of the business to be conducted at the meeting; and
  - (iii) any proposed Resolutions.
- (e) A Resolution passed at a Directors' meeting will not be invalid only because of an unintentional omission or mistake in giving notice of the Directors' meeting, or in giving notice of any changes to the item, date or place of the Directors' meeting.
- (f) The Directors must make best efforts to keep the costs of Directors' meetings within reasonable limits.

### **13.3 Quorum at Directors meetings**

The quorum for a Directors' meeting is a majority of the Directors, and the quorum must be present at all times during the meeting.

### **13.4 Chairing Directors meetings**

The Directors must elect a Director to chair each of their meetings. The Directors may determine the period for which that Director is to be chair.

### **13.5 Resolutions at Directors meetings**

#### **13.5.1 Passing of Directors resolutions**

- (a) A Resolution of the Directors must be passed by a majority of the votes cast by Directors entitled to vote on the Resolution.
- (b) In the event of a deadlock, the chair has the casting vote.

**13.6 Circulating resolutions of Directors**

- (a) The Directors may pass an ordinary resolution outside of a Directors' meeting if all Directors entitled to vote on the motion sign a statement that they are in favour of the motion, which may be done in counterpart.
- (b) A resolution by circulated statement is passed when the last Director signs.

**14. SECRETARY AND CONTACT PERSON**

---

**14.1 Who may be a Secretary or contact person**

- (a) Only an individual who is at least 18 years of age may be appointed as a Secretary or contact person of the Corporation.
- (b) A person who is disqualified from managing an Aboriginal and Torres Strait Islander Corporation under Part 6-5 of the CATSI Act may only be appointed as a Secretary if the appointment is made with:
  - (i) the Registrar's permission; or
  - (ii) the leave of the court under the CATSI Act.

**14.2 Consent to act as Secretary or contact person**

- (a) The Corporation must receive a signed consent from a person to act as Secretary or contact person of the Corporation, before that person is appointed.
- (b) The Corporation must keep each consent received under this rule.

**14.3 How a Secretary or contact person is appointed after Registration**

The Directors appoint a Secretary or contact person.

**14.4 Terms and conditions of office**

- (a) A Secretary holds office on the terms and conditions (including remuneration) that the Directors determine.
- (b) A contact person's appointment is subject to the terms and conditions (including remuneration) that the Directors determine.

**14.5 Duties of Secretary and contact person**

A person appointed with their consent to be the Secretary or contact person and registered with ORIC as such, must pass on any communications received relevant to the Corporation to at least 1 of the Directors within 14 days of receiving it, and in relation to any communications relating to powers delegated to the Land Committees, to the Land Committee within 14 days of receiving it.

**15. CHIEF EXECUTIVE OFFICER**

---

**15.1 Appointment**

- (a) The Directors shall appoint and remove the CEO of the Corporation by Resolution on such terms and conditions (including remuneration) as the Directors determine.
- (b) The CEO shall not be eligible to be a Director of the Company during the term of his or her appointment as CEO.
- (c) Eligibility for appointment as the CEO must be based on merit and not on any affiliations.
- (d) The CEO must satisfy the CEO Eligibility Criteria.

**15.2 Functions**

- (a) The CEO will be responsible for the day-to-day management, administration and legal compliance of the Corporation in accordance with the Strategic Plan, the Annual Plan, the Rule Book and otherwise at the specific direction of the Directors.
- (b) The CEO must keep the Directors informed at a level of detail as specified by the Directors and provide all information to the Directors as is requested from time to time. The CEO must also keep the Land Committees informed at a level of detail specified by each Land Committee of matters relevant to their Language Group Country or their Land Committee as requested from time to time.
- (c) The CEO must deliver a written report to the Directors on a quarterly basis regarding the following matters:
  - (i) the activities of the CEO and Corporation;
  - (ii) specific projects that have been undertaken by the Corporation in the previous quarter;
  - (iii) the financial position of the Corporation; and
  - (iv) any other matters as determined by the Directors from time to time.

**16. LAND COMMITTEE MEETINGS**

---

The provisions of Rule 13 in relation to Directors meetings shall apply for Land Committee meetings as if the Directors referred to in that Rule were Land Committee members.

## **17. ANNUAL PLAN**

---

### **17.1 Requirement for Annual Plan**

- (a) Prior to 30 June in any year, the Directors must formulate an Annual Plan for the next Financial Year in consultation with the Land Committees and in accordance with the provisions of this rule.
- (b) The Directors and CEO (if any) will carry out the Corporation's activities during the Financial Year in accordance with the Annual Plan.
- (c) The Corporation must make the Annual Plan available to any Member who requests a copy.
- (d) The Annual Plan will outline the proposed activities of the Corporation for the next Financial Year having regard to:
  - (i) the anticipated budgets of the Corporation;
  - (ii) the anticipated Corporation income and expenditure;
  - (iii) any proposed priorities and programs of the Corporation;
  - (iv) the Annual Plan Report, accounts and financial position of the Corporation from the previous Financial Year;
  - (v) the composition of the Directors, proposed governance training and meeting schedule;
  - (vi) the proposed meeting and consultation schedule for the Members and Representative Council (if any); and
  - (vii) the Objectives of the Corporation.

### **17.2 Reviewing the Annual Plan**

- (a) Within 2 months after the end of a Financial Year, the Directors will conduct a review of the Corporation's activities for that Financial Year and compile an Annual Plan Report.
- (b) The Annual Plan Report will include:
  - (i) a review of the quarterly reports prepared by the CEO (if any);
  - (ii) a summary of the Corporation's activities for the previous Financial Year;
  - (iii) the financial position of the Corporation;
  - (iv) details of the expenses for the previous Financial Year and the projects and programs to which the expenses relate;
  - (v) how the Objectives of the Corporation were advanced; and



- (vi) an evaluation of how successfully the Corporation fulfilled the goals established in the Annual Plan.
- (c) A copy of the Annual Plan Report must be provided to the Representative Council (if any) and the Members prior to the AGM of the Corporation.

## **18. STRATEGIC PLAN**

---

Every 3 years at the beginning of the relevant Financial Year, the Directors must formulate a Strategic Plan in consultation with the Land Committees and in accordance with the provisions of this rule.

### **18.1 Purpose of the Strategic Plan**

The purpose of the Strategic Plan is to:

- (a) set out the long term Objectives of the Corporation and to facilitate advancement of the Corporation and the Objectives;
- (b) provide recommendations for the better administration of the Corporation having regard to the review of the previous Strategic Plan; and
- (c) where appropriate, provide recommendations regarding amendments to the Rule Book which the Directors may consider appropriate having regard to the review of the Strategic Plan.

### **18.2 Amending the Strategic Plan**

The Directors may amend the Strategic Plan during the Financial Years to which the Strategic Plan relates.

### **18.3 Implementation of the Strategic Plan**

The Directors and CEO (if any) will operate the Corporation in accordance with the Strategic Plan as far as reasonably possible.

### **18.4 Publication of the Strategic Plan**

A copy of the Strategic Plan must be provided to the Land Committees and the Members prior to the AGM of the Corporation.

## **19. FINANCES AND RECORD KEEPING**

---

### **19.1 Minutes of meetings**

The Corporation must keep minute Books in which it records within 1 month:

- (a) proceedings and Resolutions of General Meetings;
- (b) proceedings and Resolutions of Directors' meetings;
- (c) Resolutions passed by Members without a meeting;
- (d) Resolutions passed by Directors without a meeting.

**19.2 Rule Book and records about officers etc**

The Corporation must keep:

- (a) an up-to-date copy of the Rule Book (incorporating any valid amendments to the Rule Book over time);
- (b) written records relating to:
  - (i) the names and addresses to the Corporation's current officers and Secretary; and
  - (ii) the Corporation's Registered Office (if any); or
  - (iii) the Corporation's document access address (if any).

**19.3 Financial records**

- (a) The Corporation must keep written financial records that:
  - (i) correctly record and explain its transactions and financial position and performance; and
  - (ii) would enable true and fair financial reports to be prepared and audited. This obligation extends to transactions undertaken as trustee.
- (b) The financial records must be retained for 7 years after the transactions covered by the records are completed.

**19.4 Corporation to provide Member with rules, if requested.**

If a Member asks for a copy of the Rule Book, the Corporation must provide it within 7 days and free of charge.

**19.5 Land Committee accounts**

- (a) The Corporation must keep separate bank accounts and financial records for each Land Committee if a Land Committee requests, or if the Directors resolve.
- (b) Directors will continue to have access to all financial records of the Corporation.

**20. AUDITOR**

---

- (a) The Corporation must appoint a qualified Auditor and instruct them to compile an Auditor's report to be presented at each AGM.
- (b) The Corporation must provide the Auditor with all records, accounts and other documents required by the Auditor to comply with this rule.

## **21. DISPUTE RESOLUTION PROCESS**

---

### **21.1 Dispute**

The Dispute Resolution Procedure in this rule applies to disputes in relation to the operation of the Corporation and between any of the Directors, Members, Land Committees, or any one or more of them, but does not apply to a dispute between Traditional Owners ('Dispute').

### **21.2 Corporation Operations to Continue**

Despite the existence of a Dispute, the Corporation must continue to operate and any person with powers and functions under the Rule Book must, to the extent possible, continue to fulfill those obligations.

### **21.3 Informal Dispute Resolution**

If a Dispute arises, the parties to the Dispute must first try to resolve it themselves on an informal basis, in good faith, having regard to the spirit and intent of the Corporation.

### **21.4 Formal Dispute Resolution**

- (a) If the Dispute cannot be resolved informally within one calendar month, any party to the Dispute may give the Directors written notice identifying the particulars of the Dispute ('Dispute Notice').
- (b) If the Directors are unable to resolve the Dispute to the mutual satisfaction of the parties within 30 days of the matter being referred to them, then the matter must be referred to the next General Meeting.
- (c) If the Dispute cannot be resolved at a General Meeting, then the Dispute must be referred to ORIC as an independent adjudicator. The recommendations of ORIC are binding on all parties.

### **21.5 Legal Proceedings**

No Members are entitled to commence or maintain legal proceedings relating to any Dispute until the processes outlined in the Rule Book have been followed, except where those Members seek urgent interlocutory or other urgent relief.

## **22. NOTICES**

---

### **22.1 General**

- (a) Unless the Act or these rules otherwise require, notices must be given in writing.
- (b) Notices of Directors' meetings and Land Committee meetings can be given in writing, by email, by telephone or orally, if, in the case of Directors' meetings, all the Directors, and in the case of Land Committee meetings, all members of the particular Land Committee, agree to notice being given in that way.

**22.2 How a notice to a Member may be given**

- (a) Unless the CATSI Act or these Rules require otherwise, a notice or communication may be given:
- (i) personally;
  - (ii) left at a Member's address as recorded in the Register of Members;
  - (iii) sent by pre-paid ordinary mail to the Member's address as recorded in the Register of Members;
  - (iv) sent by fax to the Member's current fax number for notices (if the Member has nominated one); or
  - (v) sent by email to the member's current email address (if the member has nominated one).

**22.3 When notice is taken as being given**

Unless the Act or these rules require otherwise, if a notice or communication:

- (a) is given by post, it is taken to have been given 3 days after posting;
- (b) is given by fax, it is taken to have been given on the business day after it is sent;
- (c) is given:
  - (i) after 5:00 pm in the place of receipt or
  - (ii) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9:00 am on the next day which is not a Saturday, Sunday or public holiday in that place.

**23. CONFIDENTIAL INFORMATION**

---

Except as otherwise required by the Rule Book, the Corporation and its Members shall keep confidential any information which may come into their possession in the course of the exercise of the powers of the Corporation that is confidential according to the law and custom of the PKK People.

**24. AMENDMENT OF THE RULE BOOK**

---

**24.1 Corporation wants to change the Rule Book**

For the Corporation to change the Rule Book, the following steps must be complied with:

- (a) the Corporation must pass a Special Resolution effecting the change;

- (b) if, under the Rule Book, there are further steps that must also be complied with to make a change, those steps must be complied with;
- (c) the Corporation must lodge certain documents with ORIC;

#### **24.2 Date of effect of change**

A change to the Rule Book under this rule takes effect on the day the change is registered with ORIC.

#### **24.3 Review**

This Rule Book must be reviewed by the Directors, in consultation with the Land Committees and with advice from an Independent person with relevant experience and qualifications, three years after the date of registration of the Corporation under the CATSI Act.

### **25. VOLUNTARY WINDING UP**

---

- (a) While the Corporation is a PBC, the voluntary winding up of the Corporation must be in accordance with provision 526 of the CATSI Act, the Native Title Act and the PBC Regulations.
- (b) The Corporation may be voluntarily wound up if the Corporation so resolves by a Special Resolution of a General Meeting, and if the Members were given at least 21 days' notice of the intention to propose winding up as by Special Resolution.
- (c) The Special Resolution must specify:
  - Another corporation to:
    - (i) Replace the Corporation as authorised PBC;
    - (ii) Hold the Native Title in trust for the PKKP People; and
    - (iii) Carry out the functions of the PBC, as prescribed by the PBC Regulations; and
    - (iv) A new corporation or fund established for the benefit of Aboriginal People to which the surplus funds and assets of the Corporation will be paid or transferred, provided that the new corporation or fund:
      - (a) is incorporated in Australia;
      - (b) is charitable at law;
      - (c) has objects similar to this Corporation's objects; and
      - (d) is approved by the Commissioner of Taxation as a public benevolent institution to which income tax deductible gifts can be made.

- (d) After payment of all of the Corporation's debts, liabilities and costs of winding up, any surplus funds and assets must be paid or transferred to the new corporation or fund specified in the Special Resolution.
- (e) No payment or transfer of any surplus funds or assets of the corporation will be made to any Member, or held on trust for any Member, other than payments or transfers allowed by this Rule Book.
- (f) The Registrar, National Native Title Tribunal and Commissioner of Taxation will be notified in the event of winding up.

**SCHEDULE 1 – INTERPRETATION AND DEFINITIONS****S1.1 Interpretation**

---

In the Rule Book:

- (i) words in the singular include the plural and vice versa;
- (ii) any gender includes the other genders;
- (iii) the words 'including', 'include' and 'includes' are to be read without limitation;
- (iv) a reference to:
  - (a) legislation is to be read as a reference to that legislation, any subordinate legislation under it, and that legislation and subordinate legislation as amended, re-enacted or replaced for the time being;
  - (b) writing includes any mode or representing or reproducing words in tangible and permanently visible form, and includes fax transmissions;
  - (c) a rule or schedule is a reference to a rule or schedule, as the case may be, of this document;
- (v) headings and notes are used for convenience only and are not intended to affect the interpretation of the Rule Book;
- (vi) a word or expression defined in the CATSI Act and used, but not defined, in these rules has the same meaning given to it in the CATSI Act when used in the Rule Book;
- (vii) if a word or phrase is defined its other grammatical forms have corresponding meanings; and
- (viii) where time is to be calculated be reference to a day or event, that day or the day of the event is excluded.
- (ix) The Replaceable Rules set out in the CATSI Act apply to the Corporation only to the extent that they are not inconsistent with the Rule Book, the Native Title Act and the PBC Regulations.

## S1.2 Definitions

---

**AGM** means an annual general meeting of the Members under the provisions of the Rule Book.

**Annual Plan** Means a plan for the activities of the Corporation during a Financial Year prepared in accordance with the provisions of the Rule Book.

**Annual Plan Report** means a report on the Annual Plan prepared by the Directors under the provisions of the Rule Book.

**Applicant** means a person applying to be a Member.

**Associate Member** means either a Puutu Kunti Kurrama Associate Member or Pinikura Associate Member

**Auditor** means an auditor appointed under the provisions of the Rule Book.

**Auditor's Annual Report** means an annual report prepared by the Auditor under the provisions of the Rule Book.

**Books** means the minute books of the Corporation for any General Meeting, but does not include Directors meetings or financial records.

**CATSU Act** means the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth) as amended from time to time and any regulations made under it.

### CEO Eligibility Criteria

The CEO must demonstrate proven management capabilities and results and:

- (a) an understanding of and previous experience working with Indigenous communities;
- (b) previous management experience;
- (c) tertiary education in a relevant field, with a minimum university degree of 3 years or a similar level of experience in lieu of such degree;
- (d) acceptable police clearance certificate; and
- (e) effective strategies to promote training and development within the PKKP People to allow for and encourage capacity building and executive independence.

**Chairperson** means a person elected as Chairperson of a General Meeting, AGM or Directors meeting in accordance with the provisions of the Rule Book.

**Code of Conduct** means the list of rules of conduct prepared under the provisions of the Rule Book.

**Community Ratification Deed** means the Community Ratification Deed under the Participation Agreement.

**Corporation** means the Aboriginal Corporation registered with ORIC to which the Rule Book applies.

**Country** means the lands and waters of the Native Title Claims, bordered in dark blue and green on the map which is Schedule 3, including its heritage, cultural, spiritual, archaeological, social, historical, linguistic and environmental value to PKKP People.

**Director** means a person appointed to perform the duties of a director of the Corporation, and includes both an Independent Director and a TO Director.

**Directors** means the Corporation's board of Directors.



**Dispute** means disputes as set out in Rule 20.1 of this Rule Book.

**Dispute Resolution Process** means the procedure outlined in the Rule Book for resolving a Dispute.

**Financial Year** means the 12 month period ending on 30 June each year.

**General Meeting** means a meeting of the Members under the provisions of the Rule Book, and includes an Annual General Meeting.

**Heritage Decision** means a decision about the disturbance of Country in a way that actually or potentially affects any area of significance to PKKP People, and includes decisions about surveying, recording or managing such places to avoid or limit disturbance.

**Independent** means that the person, and any person who is a relative of that first person, so far as the first person is, or ought to be, reasonably aware:

- (a) is not and has not been a member of the PKKP People;
- (b) is not and has not been a relative or spouse of a member of the PKKP People;
- (c) does not have a membership interest (in accordance with section 960-135 of the Tax Law) in a related entity;
- (d) is not and has not within a period of 3 years prior to their appointment as a Director been:
  - (a) an employee of, officer of, consultant to, advisor to, auditor of or other service provider to the PKKP People or a related entity;
  - (b) an employee or officer of a related entity, a partner in a partnership, or a direct or indirect associate of a related entity or partnership, which is, or has been within that 3 year time period, consultant to, advisor to, auditor of or other service provider to the PKKP People or a related entity.
- (e) has no material contractual relationship with a related entity or the PKKP People, other than as a Director;
- (f) has not served as a Director for a period which could, or could be perceived to, materially interfere with the person's ability to impartially and objectively discharge their duties as a Director; and
- (g) has no material interest in, business affiliation with or other relationship with any Member or related entity which would hinder the person in the impartial and objective discharge of their duties.

**Independent Director** means a person appointed to perform the duties of a Director of the Corporation and is Independent.

**Independent Director Criteria** a person satisfies the Independent Director Criteria if they satisfy the following:

- (a) **Board Experience:** demonstrates at least 3 years recent experience as a director of an Australian company governed by the Corporations Act and can demonstrate a preparedness to question, challenge and critique and a willingness to understand and to commit to the highest standards of governance;
- (b) **Board Education:** has, or within the first year of the Independent Director's term will have, completed a director's course approved by the Australian Institute of Directors or a suitable successor to the Australian Institute of Company Directors;
- (c) **Financial Literacy:** is 'financially literate'
- (d) **Leadership Experience:** possesses leadership experience, and shall possess qualities reflecting a proven record of accomplishment and ability to work with others;

- (e) **Absence of Conflicting Commitments:** does not have commitments that would conflict with the commitments of a Director of the Corporation;
- (f) **Reputation and Integrity:** is of high repute and recognised integrity and:
  1. is not a person who is not permitted by the Corporations Act (or an order made under the Corporations Act) or the CATSI Act to be a director;
  2. has not been disqualified (either automatically or by Court order) from managing a corporation under:
    - a. Part 2D.6 of the Corporations Act, without permission or leave to manage a company being granted; or
    - b. Part 6-5 of the CATSI Act, without permission or leave to manage a company being granted; and
  3. has not been disqualified (either automatically or by Court Order) from managing corporations, or from doing anything else contemplated by the role of the Independent Director, under any other applicable law;
  4. is not a person who has been convicted of an offence other than a traffic infringement or other minor offence;
- (g) they are Independent
- (h) they are not a PKKP Person.

An Independent Director need not be an Aboriginal or Torres Strait Islander person.

**LAC** means the eligible organisation nominated under the Participation Agreement as the Local Aboriginal Corporation.

**Land Committee** means a committee established by Rule 8.2.

**Language Group** means either the Pinikura People or the Puutu Kuntj Kurrama People.

**Language Group Country** has the meaning given to it in Rule 8.1(a).

**LIC** means the Local Implementation Committee established under the Participation Agreement.

**Material Personal Interest** means any direct or indirect benefit that a Director may receive that has the capacity, or would reasonably be perceived to have the capacity, to materially influence that Director when casting their vote at Directors meetings or General Meetings; subject to the exclusions detailed in the Rule Book.

**Member** means a person whose name appears on the Register of Members.

**Membership Group** means the separate categories of Membership described in Rule 5.1

**Native Title** has the meaning given to that phrase in the Native Title Act 1993 (Cth)

**Native Title Claim** means the Native Title claims (including as amended from time to time) lodged with the Federal Court and allocated number/s WC01/05 & 05/04 and WAD 6007 of 2001 & 126 of 2005, and any application made in addition to, substitution for or in replacement of (either or both/all of) the original application (including as amended from time to time.)

**Native Title Claim Group** has the meaning given to that phrase in the Native Title Act 1993 (Cth).

**Native Title Decision** – has the same meaning as that contained in the Regulation 3 of the PBC Regulations and means a decision:

- (a) to surrender Native Title rights and interests in relation to land or waters; or
- (b) to do, or agree to, any other act that would affect the Native Title rights or interests of the common law holders.

**Native Title Holders** means the people determined to hold Native Title under the Native Title Act 1993 (Cth) and are otherwise referred to in the Native Title (Prescribed Bodies Corporate) Regulations 1999 as 'common law holders.'

**ORIC** means the Officer of the Registrar of Indigenous Corporations.

**Participation Agreement** means the Claim Wide Participation Agreement made between RTIO and the PKKP People dated 18 March 2011.

**PBC Regulations** means the Native Title (Prescribed Bodies Corporate) Regulations 1999 as amended from time to time.

**Pinikura Associate Member** means the Pinikura people who are:

- (i) descended from one or more of the following ancestors:  
Kaita, Markakurru Topsy Williams, Bonnie, Winnie Hayes (Hicks) and Punch Hughes [Kalpanthalu]; and
- (ii) are accepted in accordance with traditional laws and customs as Pinikura People.

**Pinikura Members** means the Pinikura People who have nominated and been accepted in accordance with clause 5 as Pinikura Members.

**Pinikura People** means the people who are:

- (i) descended from one or more of the following ancestors:  
Kaita, Markakurru Topsy Williams, Bonnie, Winnie Hayes (Hicks) and Punch Hughes [Kalpanthalu];
- (ii) identify as Pinikura People; and
- (iii) are accepted in accordance with traditional laws and customs as Pinikura People.

**PKKP People** means the combined Pinikura People and Puutu Kunti Kurrama People.

**Prescribed Body Corporate** has the meaning described in the PBC Regulations.

**Proxy** means a person who has been appointed to attend, speak and vote at a General Meeting on behalf of a Member according to the provisions of the Rule Book.

**Puutu Kunti Kurrama Associate Members** means the Puutu Kunti Kurrama people who are:

- (i) descended from one or more of the following ancestors:  
Ngarupunga [Ngarupungu], Kitty; Jukaan Tommy Ashburton, Ina Winnie Ashburton, Punch Ashburton, Katarra Dick Ashburton, and Kalkardi Dinah;
- (ii) are accepted in accordance with traditional laws and customs as Puutu Kunti Kurrama People.

**Puutu Kunti Kurrama Members** means the Puutu Kunti Kurrama People who have nominated and been accepted in accordance with clause 5 as Puutu Kunti Kurrama Members.

**Puutu Kunti Kurrama People** means the Puutu Kunti Kurrama people who are:

- (i) descended from one or more of the following ancestors:

- Ngarupunga [Ngarupungu], Kitty; Jukaan Tommy Ashburton, Ina Winnie Ashburton, Punch Ashburton, Katarra Dick Ashburton, and Kalkardi Dinah;
- (ii) identify as Puutu Kunti Kurrama People; and
  - (iii) are accepted in accordance with traditional laws and customs as Puutu Kunti Kurrama People.

**Register of Former Members** means the Register of Former Members kept in accordance with the provisions of the Rule Book.

**Register of Members** means the Register of Members kept in accordance with the provisions of the Rule Book

**Resolution** means a Resolution that must be passed according to this Rule Book.

**Rule Book** means this Rule Book and any amendments or substitutions thereto.

**Secretary** means a person elected or appointed from time to time to the role of Company Secretary under the provisions of the Rule Book.

**Service Provider** means any external consultant or expert that may assist the Corporation with the management and administration of the Corporation, including providers of the following services: investment advisor, executive office, Director, Auditor, heritage, and any other service provider specified by the Corporation.

**Shared Country** has the meaning given to it in Rule 8.1(b).

**Special Resolution** means a Resolution that must be passed by the process contained in Error! Reference source not found..

**Strategic Plan** means a 3 year strategic plan for the activities of the Corporation prepared in accordance with the provisions of the Rule Book.

**TO** means Traditional Owner.

**TO Director** means a TO appointed to perform the duties of a Director of the Corporation and is a member of the PKKP People.

#### **TO Director Criteria**

- (a) A person satisfies the TO Director Criteria if the Member is able to demonstrate the following qualifications:
  - i. financial literacy;
  - ii. leadership experience;
  - iii. experience with directorships and boards;
  - iv. commitment to uphold all the legal duties, responsibilities and obligations of a Director;
  - v. absence of conflicting commitments;
  - vi. standing and respect within the PKKP People; and
  - vii. reputation and integrity is of high repute and recognised integrity and:
    - 1. is not a person who is not permitted by the Corporations Act (or an order made under the Corporations Act) or the CATSI Act to be a director;

2. has not been disqualified (either automatically or by a Court order) from managing a corporation under:
    - a. Part 2D.6 of the Corporations Act, without permission or leave to manage a company being granted; or
    - b. Part 6-5 of the CATSI Act, without permission or leave to manage a company being granted; and
  3. has not been disqualified (either automatically or by Court order) from managing corporations, or from doing anything else contemplated by the role of TO Director, under any other applicable law;
  4. is not a person who has been convicted of an offence against or arising out of a law of the Commonwealth, a State, a Territory or a foreign country, being an offence in respect of dishonest conduct (including fraud), other than where:
    - a. 20 years has passed from the time of conviction; or
    - b. 10 years has passed from the time of conviction and:
      - i. the conduct resulted in a term of actual imprisonment of less than 3 months; or
      - ii. the conduct resulted in a fine of less than \$5,000.
- (b) If a Member who is eligible to be appointed TO Director is not able to demonstrate every qualification but expresses a willingness to learn and attain that qualification, the Members in their discretion may accept the person's nomination for Director subject to the following conditions:
- i. the person must undertake appropriate training to attain that qualification and the Corporation will meet the expense of the training and otherwise provide full support and encouragement of the person and his or her efforts to achieve the requisite qualifications;
  - ii. the person may act as Director for 12 months while undertaking the training; and
  - iii. the Members may terminate the appointment after 12 months if the Members determine that satisfactory progress was not made by the person towards achieving the requisite qualifications.
- (c) If a nominee for TO Director is not willing or able to learn or attain the qualifications in accordance with (b) above, the Members in their discretion may accept the person's nomination for Director if there remain, at all times, at least 2 TO Directors that satisfy (a) above.
- (d) Regardless of the above, all TO Directors must undertake ongoing and appropriate governance training under the provisions of the Rule Book.

**Vested Land** means any land:

- (a) vested in;
- (b) granted or given to; or
- (c) purchased by the Corporation.

**SCHEDULE 2 – APPOINTMENT OF A SERVICE PROVIDER**

---

**S2.1 INITIAL SERVICE PROVIDER APPOINTMENTS**

- (a) In order for the Directors to commence the operations of the Corporation, the Directors will need to appoint initial Service Providers, and to ensure that the commencement of operations of the Corporation is not unnecessarily delayed; these appointments must take place on or shortly after the establishment of the Corporation.
- (b) For practical purposes where appointing an initial Service Provider, item S2.3 of this Schedule 2 shall not apply, provided that any such appointment is limited to a term of 12 months from the date of establishment of the Corporation (and the Service Provider shall be eligible for reappointment).

**S2.2 URGENT OR EMERGENCY APPOINTMENTS**

- (a) In order to ensure that the Corporation can operate and the Directors can comply with the requirements of the Rule Book it may be necessary from time to time to make urgent or emergency appointments of Service Providers.
- (b) In the case of urgent or emergency appointments of a Service Provider, the Directors must comply with S2.3 and S2.4 of this Schedule 2 only to the extent reasonably practical in the circumstances, having regard to the nature and duration of the appointment provided that any such appointment is limited to a term of 12 months.

**S2.3 EXPRESSIONS OF INTEREST**

- (a) Before appointing a Service Provider, the Directors must call for expressions of interest from potential Service Providers ('Candidates').
- (b) Having regard to the nature of the service required, the Directors may advertise for expressions of interest by:
  - i. advertising in local newspapers;
  - ii. advertising on a website;
  - iii. targeted requests in writing to at least 3 Candidates; or
  - iv. all or some of the above.
- (c) The advertisement will:
  - i. describe the nature of the services required by the Corporation;
  - ii. prescribe the time limits within which a Candidate must respond to the advertisement, which must be at least 14 days;
  - iii. request that the Candidate provide a written summary of their skills and experience to enable the Directors to evaluate the Candidate's qualifications including:
    - 1. the Candidate's rates of pay and any other expenses that the Corporation is likely to incur;
    - 2. capacity available to perform the services;
    - 3. details or recommendations for the performance of the service; and

4. any other details that illustrate that the Candidate will act in good faith and in the best interests of the Corporation and the Members.
- (d) If appropriate, the Directors will request the Candidate to provide proof of:
    - i. current membership of relevant industry regulatory bodies; and
    - ii. current insurance policies.

#### **S2.4 SELECTION PROCEDURE**

- (a) The Directors may only consider applications from Candidates that comply with any:
  - i. qualification requirements stated in the Rule Book; and
  - ii. requirements stated in any advertisement for expressions of interest.
- (b) The Directors must consider the application having regard to the reputation, experience and skills of the Candidate and the value and other contributions that the Candidate could potentially make to the Corporation and the Members.
- (c) In selecting the Service Provider, the Directors must assess the merits of the Candidate versus the cost of the Candidate, having regard to the responsibilities of the Service Provider, the expectations of the Directors and the current level of expertise of the Directors and other Service Providers of the Corporation.
- (d) If the Candidate has an interest in the Corporation or is otherwise related to the Members, the Directors must seek the consent of the Representative Council prior to accepting the Candidate as a Service Provider.

#### **S2.5 CONTRACT FOR SERVICES**

Upon selecting a Candidate to be the Service Provider of the Corporation, the Corporation shall not engage a Service Provider until it has first executed a written contract for services ('Service Contract') with the proposed Service Provider which includes the following:

- (a) the services to be provided ('Service') that include the functions relevant to the Service Provider as set out in the Rule Book;
- (b) the agreed remuneration of the Service Provider, in clear and unambiguous terms;
- (c) the duration of the Service Contract is not to exceed 3 years;
- (d) a transparent mechanism for accountability of the Service Provider including a regular review of the cost and outcomes of the Service Provider;
- (e) that the Service Provider agrees to keep confidential all confidential information relating to the Corporation and the Members;
- (f) that the Service Provider agrees to make available to the Directors any materials, advice or reports provided or prepared by the Service Provider for use by the Directors, provided the use is in accordance with the purpose for which the materials, advice or reports were provided;
- (g) that, for the duration of the Service Contract, the Service Provider maintains their qualifications, and relevant registrations and insurances;

- (h) any request for the reimbursement of costs and expenses must be calculated on a cost recovery basis reflecting the actual, bona fide, arms length cost incurred by the Service Provider in supplying the Services provided that such costs or expenses are reasonable in the circumstances;
- (i) the Directors' rights to terminate the services of the Service Provider at any time and for any reason on not more than 30 days notice;
- (j) that the Service Provider is required to provide culturally appropriate and regular reporting and information and attend Directors' Meetings if requested by the Directors; and
- (k) the Service Provider agrees that all information provided to them regarding the affairs of the Corporation will be kept confidential and will not be disclosed to any third party without prior written consent of the Directors except where the Service Provider is legally required to disclose the information.

**S2.6 REVIEW**

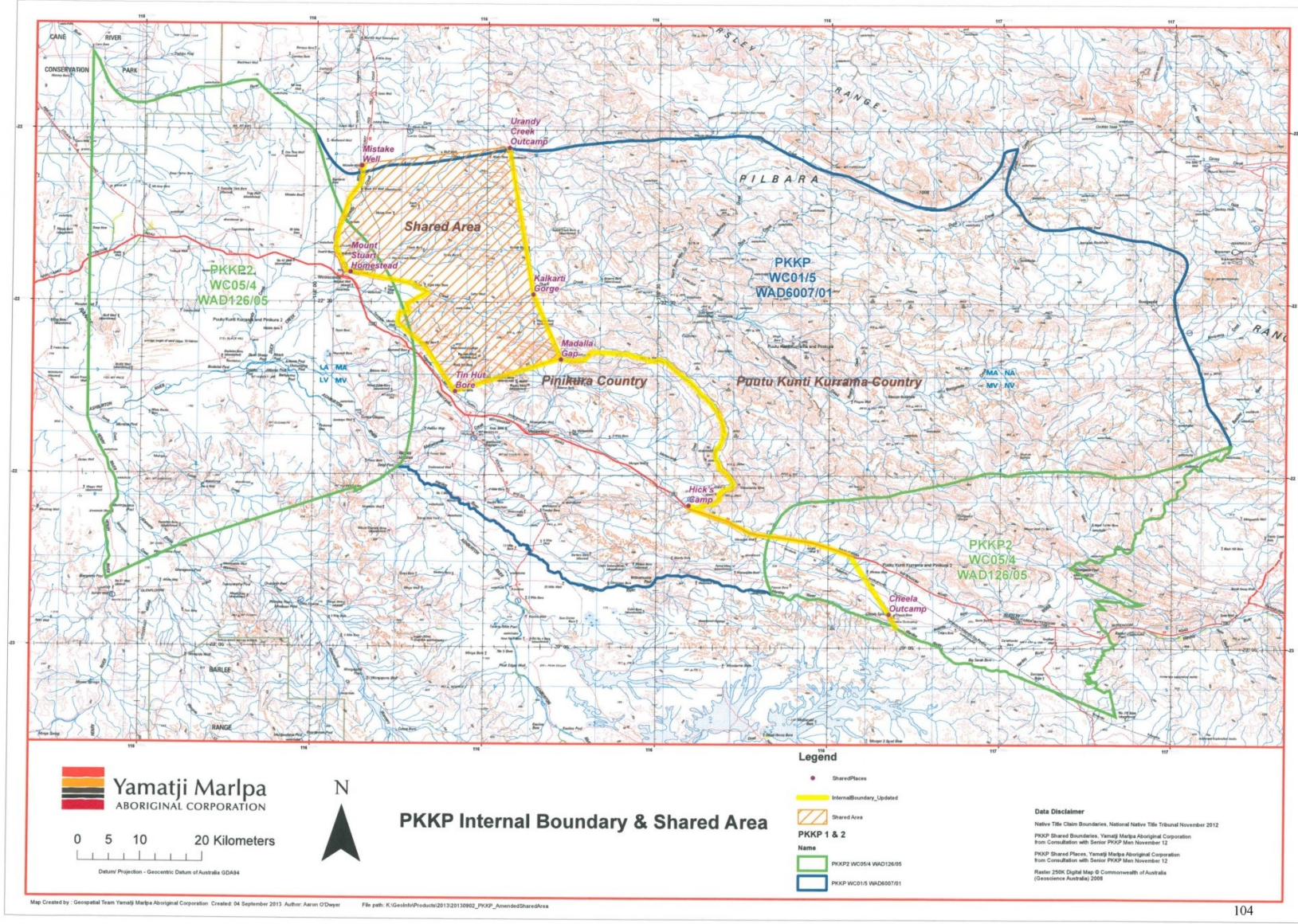
- (a) Each year, the Directors must conduct a review, in a manner determined by the Directors as appropriate in the circumstances, of the Service Provider;
- (b) The aim of the review is to ensure that the costs of the Service Provider are reasonable considering:
- (c) Factors taken into account in the review will include style, resources, organisational strength, performance relative to the Objectives, and any other factors considered relevant to the Service Providers continuing ability to meet the Corporation's Objectives.



**SCHEDULE 3 – MAP OF PKKP COUNTRY WITH INTERNAL BOUNDARY AND SHARED COUNTRY**

---

AustLII AustLII AustLII AustLII AustLII



stL AustLII AustLII AustLII

**IN THE FEDERAL COURT OF AUSTRALIA  
WESTERN AUSTRALIA DISTRICT REGISTRY  
GENERAL DIVISION**

**WAD 6007 of 2001**

**BETWEEN:**            **JOHN ASHBURTON, DIANNE CHUBBY, MAURICE  
DAUBLIN, SUZETTE JILBA, ROBERT MCKAY AND  
DONNA MEYER**  
**Applicants**

**AND:**                 **STATE OF WESTERN AUSTRALIA**  
**First Respondent**

**SHIRE OF ASHBURTON**  
**Third Respondent**

**YAMATJI MARLPA ABORIGINAL CORPORATION**  
**Fourth Respondent**

**HAMERSLEY IRON PTY LTD and ROBE RIVER MINING  
CO PTY LTD**  
**Fifth Respondents**

**MARTIN LAWRENCE AVERY, CHEELA PLAINS  
PASTORAL CO PTY LTD, JOHN DIGBY CORKER,  
ROCKLEA STATION PTY LTD and SAMCO BEEF PTY LTD**  
**Sixth Respondents**

**IN THE FEDERAL COURT OF AUSTRALIA  
WESTERN AUSTRALIA DISTRICT REGISTRY  
GENERAL DIVISION**

**WAD 126 of 2005**

**BETWEEN:**            **JOHN ASHBURTON, DIANNE CHUBBY, MAURICE  
DAUBLIN, SUZETTE JILBA, ROBERT MCKAY and DONNA  
MEYER**  
**Applicants**

**AND:**                 **STATE OF WESTERN AUSTRALIA**  
**First Respondent**

**API MANAGEMENT PTY LTD**  
**Second Respondent**

**DEBORAH ALICE AVERY, MARTIN LAWRENCE AVERY,  
BAMBI PTY LTD, CHEELA PLAINS PASTORAL CO PTY**

**LTD, JOHN DIGBY CORKER, LEANNE MARGARET CORKER, ANDREW NICHOLAS GLENN, JANETTE ANN GLENN, PETER ROBERT GREY, SUSAN JEAN GREY and RED SKY STATIONS PTY LTD**  
**Third Respondents**

**JUDGE: MCKERRACHER J**  
**DATE: 2 SEPTEMBER 2015**  
**PLACE: HOUSE CREEK, WESTERN AUSTRALIA**

### **REASONS FOR JUDGMENT**

#### **INTRODUCTION**

1 The Puutu Kunti Kurrama and Pinikura #1 (**PKKP 1**) and Puutu Kunti Kurrama and Pinikura # 2 (**PKKP 2**) applications are before the Court for determination pursuant to s 225 of the *Native Title Act 1993* (Cth) (**Native Title Act**). The applications cover an area of approximately 10,888 square kilometres of land and waters which lie between Exmouth and Tom Price in the Pilbara region of Western Australia.

2 The PKKP 1 application was filed on 30 October 2001 and the PKKP 2 application was filed on 1 June 2005. The PKKP 1 application has not been amended since it was filed. The PKKP 2 application was amended twice pursuant to orders of the Court on 28 September 2005 and 10 November 2005.

3 I heard preservation evidence on 12 and 13 August 2008 at various on-country locations in the claim area from the following witnesses: Chloe Hayes, Maudie Downton and Maggie Drage.

#### **Agreement to resolve the application**

4 The parties have reached an agreement as to the terms of the determination of native title pursuant to s 87 and s 94A of the *Native Title Act* in relation to the land and waters covered by the PKKP 1 and PKKP 2 applications (**proposed Determination Area**).

5 The PKKP applications are made on behalf of two separate but related language groups (Puutu Kunti Kurrama People and Pinikura People) who together claim rights and interests within the claim area. The applications are made on the basis that within the application area, as between the Puutu Kunti Kurrama People and Pinikura People, the Puutu

Kunti Kurrama People speak for Puutu Kunti Kurrama country, Pinikura People speak for Pinikura country, and together they both speak for a shared area of country. While this delineation is not apparent in the terms of the determination, it is reflected in the membership and decision making structure of the prescribed body corporate to be nominated by the applicants to hold the determined native title on trust for the native title holders. On that basis, the parties have agreed that a single determination in favour of the Puutu Kunti Kurrama Pinikura People is appropriate in the circumstances.

6 The pastoral respondents Cheela Plains Pastoral Co Pty Ltd, A N & J A Glenn, P R & S J Grey, Stamco Beef Pty Ltd and Red Sky Stations Pty Ltd have agreed to the terms of the determination on the basis of having reached agreements with the applicants in relation to those portions of their respective pastoral leases that are situated within the Determination Area. Following the determination taking effect, those agreements will be executed and an application will be made for the agreements to be registered as Indigenous Land Use Agreements on the Register of Indigenous Land Use Agreements as body corporate agreements pursuant to s 24BG of the Native Title Act.

7 In support of the agreement reached, the State of Western Australia has filed a Minute of Proposed Consent Determination of Native Title (**Minute**) which has been signed by each of the parties.

8 The applicants have filed two affidavits of Mr Graham O'Dell affirmed 7 August 2015 and 14 August 2015. The affidavits set out the process undertaken by the applicants to authorise the agreement reached and the status of the nomination of a prescribed body corporate, and the description of the proposed native title holding group, respectively.

9 In addition the applicants and the State have filed joint submissions in support of the Minute (**joint submissions**).

10 The parties agree that the Puutu Kunti Kurrama and Pinikura people means the Puutu Kunti Kurrama people and the Pinikura people as described below:

The Puutu Kunti Kurrama people are those persons who:

(a) descended from one or more of the following ancestors:

Ngarupunga [Ngarupungu], Kitty, Jukaan Tommy Ashburton, Ina Winnie

Ashburton, Punch Ashburton, Katarra Dick Ashburton, and Kalkardi Dinah;  
and

- (b) identify themselves as Puutu Kunti Kurrama in accordance with the traditional laws acknowledged and the traditional customs observed by Puutu Kunti Kurrama people; and
- (c) are accepted in accordance with the traditional laws acknowledged and the traditional customs observed as Puutu Kunti Kurrama people.

The Pinikura people are those persons who:

- (a) descended from one or more of the following ancestors:  
Kaia, Markakurru Topsy Williams, Bonnie, Winnie Hayes (Hicks) and  
Punch Hughes [Kalpanthalu];
- (b) identify themselves as Pinikura in accordance with the traditional laws acknowledged and the traditional customs observed by Pinikura people; and
- (c) are accepted in accordance with the traditional laws acknowledged and the traditional customs observed as Pinikura people.

11 The external boundaries of the proposed Determination Area are described in Schedule One to the Minute and shown on the maps in Schedule 2 (being within the areas delineated in blue (PKKP 1 application) and green (PKKP 2 application)).

12 The internal boundaries of the proposed PKKP Determination Area are those areas described in Schedule Two of the Minute (being areas where native title does not exist) and shown as shaded pink on the maps in Schedule 2.

13 Regarding determination of a prescribed body corporate pursuant to ss 55, 56 and 57 of the Native Title Act, the Minute includes agreement that within six months of the date the determination is made, the common law holders of the native title rights and interests will nominate a prescribed body corporate pursuant to s 56 of the Native Title Act on the terms provided in the Minute. Until the nomination is made the determination of native title will not take effect and in the event that no nomination is made within six months of the date the determination is made, or such time as the Court may order, the matter is to be listed for further directions.

### Assessment of connection material

14 It is apparent from the joint submissions, that the PKKP applicants provided the State with various written material (**connection material**) in support of the PKKP People's connection with the claim areas:

- (a) an anthropological report by Dr Pamela McGrath titled 'Puutu Kunti Kurrama and Pinikura Peoples Native Title Claims No.1 (WAD 6007/01) and No.2 (WAD 126/05) Connection Report (August 2009)';
- (b) a supplementary document authored by Dr McGrath titled 'Clarification of Issues Arising from State Review of Connection Evidence for Puutu Kunti Kurrama Pinikura #1 and #2 (WAD 6007/01 and 125/05)' and dated May 2010;
- (c) a further supplementary document authored by Dr McGrath titled 'Further Material Addressing State Review of Connection Evidence for Puutu Kunti Kurrama Pinikura #1 and #2 (WAD 6007/01 and 125/05)' and dated July 2010; and
- (d) an historical report by Dr Neville Green titled 'History Connection Report on behalf of WC01/5 Puutu Kunti Kurrama and Pinikura; WC05/4 Puutu Kunti Kurrama and Pinikura 2' (14 July 2007).

15 The connection material, and the transcript of preservation evidence of Maggie Drage, Maudie Downton and Chloe Hayes, referred to above, was assessed by the State in accordance with its *Guidelines for the Provision of Information in Support of Applications for a Determination of Native Title* dated October 2004. The State's response to the material was informed by independent anthropological advice from Dr Michael Robinson and legal advice from the State Solicitor's Office.

### Connection to Country

16 The joint submissions provide the following information regarding the Puutu Kunti Kurrama and Pinikura People's connection to country:

- (a) The PKKP People comprise two socio-territorial language groups who have come together for the purpose of jointly pursuing recognition of their native title rights and interests. The two groups share many laws and customs in common but are two separate peoples who hold discrete rights and interests in

different areas of country within the one native title claim, as well as a shared area of country. The PKKP claim area includes the country of the Pinikura, and part of the country of the Kurrama historically occupied by the Puutu Kunti Kurrama.

- (b) The PKKP applications straddle two distinct geographic areas of the Pilbara commonly referred to as the 'Ashburton Plains' and the 'Hamersley Plateau'. The broader region in which the claim is located is often referred to as the 'West Pilbara'. The western boundary of the claim is approximately 120 km east of the town of Onslow; the eastern boundary is approximately 90 km from Paraburdoo.
- (c) Membership of the Pinikura and the Puutu Kunti Kurrama groups is determined via serial parental filiation from known ancestors associated with their respective languages, and the country of these languages. The groups' ancestors and their descendants are considered to have maintained a common spiritual affiliation with, and share primary spiritual responsibility for, ancestral country since time immemorial 'when the land was soft'.
- (d) Over time since colonisation there has been considerable attenuation of some elements of the structure and function of social organisation for both the Pinikura and Kurrama peoples, such as the existence of residential local groups and totemic clans. These changes have not, however, resulted in the extinction of the native title rights and interests traditionally derived through these smaller groups' relationships to land. Both Kurrama and Pinikura remain viable socio-territorial language groups whose unique identity and territorial associations are recognised by other such groups throughout the region.
- (e) Pinikura is a unique socio-territorial language identity that is consistently located in the ethno-historical record, and which demonstratively existed prior to European settlement of the Ashburton Plains region.
- (f) Puutu Kunti Kurrama is a unique socio-territorial identity within a broader Kurrama society, being one of three sub-groups associated with the Kurrama language and Kurrama law and custom.
- (g) Land-related laws and customs of the Pinikura and Kurrama people are many, and instances of their practice innumerable. Pinikura and Kurrama people



observe many common laws and customs both with each other and with neighbouring groups.

- (h) This body of interconnected laws and customs facilitates ongoing spiritual connection to country and allows for the use, protection and sharing of the resources of country. These laws and customs have been normatively acknowledged and observed through time, albeit with attenuation or alteration where traditional practices are technologically redundant or no longer socially feasible.
- (i) Both Kurrama and Pinikura people refer to their traditional lands as their 'country', or ngurrara. At its broadest the term 'country' describes the entire area associated with the socio-territorial language group of an individual. The term is sometimes used more narrowly to refer to the area of an individual's birth. Importantly, it is the broadest definition of the term 'country' that applies when core native title rights and interests are conceptualised.
- (j) Pinikura and Puutu Kunti Kurrama country is believed to have retained an active spiritual potency despite the many social and economic upheavals that resulted from non-Aboriginal occupation of the area.
- (k) In contemporary Pinikura and Kurrama society, core rights and interests in land are determined by serial parental filiation from known ancestors associated with each socio-territorial group. These core rights and interests are inalienably tied to an individual's primary language group identity. As well as descent, membership of both the Pinikura and Kurrama language groups requires self-identification with the language group, and acceptance of that identity by other members of the group.
- (l) Core rights and interests can be exercised without discussion or permission from other members of the group. Any act or event that will significantly impact on the landscape or its resources, or on the core rights of others, involves a process of collective consultation and decision making.
- (m) The histories of both Pinikura and Puutu Kunti Kurrama people demonstrate the ongoing occupation and use of their traditional country, with occupation of country by known ancestors evidenced in oral history as far back as circa 1885. Documentary evidence of occupation of country by known ancestors can be dated back to 1903 (in the case of Pinikura ancestor Topsy Ashburton)

and the 1920s (in the case of her husband Tommy Ashburton, who was born before circa 1900 but whom does not appear in documentary sources until the birth of his children).

- (n) The significant social and economic impacts of European settlement in other areas of the Pilbara were not fully felt by the Aboriginal occupants of the Ashburton Plains and Hamersley Plateau until circa 1880s when the first pastoral stations were established. In 1893 most Aboriginal residents on pastoral stations in the area of the PKKP applications can confidently be said to have been living on or close to their ancestral country or that of their spouse. At this time many Aboriginal people still lived independent, mobile lives on country.

### **Description of the proposed native title holders**

17 An issue identified in the joint submissions is that the description of the proposed native title holding group in Schedule Five of the Minute differs slightly from the description of the native title claim groups in the PKKP applications.

18 Mr Graham O'Dell in his affidavit of 14 August 2015 affirms that the ancestors in both native title applications and the consent determination description of native title holders are the same.

19 The consent determination description of native title holders only adds two additional qualifiers in requiring someone to 'identify' as being part of a particular language group and that they are 'accepted' by others as being part of that particular language group.

20 The additional qualifiers provide a more accurate way of describing claim group membership and are consistent with the traditional laws and customs of the PKKP People and the anthropological evidence outlined in the Connection Report.

21 Further, as indicated above the PKKP 1 application has never been amended and the PKKP 2 application has not been amended since 2005. The applicants have provided evidence that an authorisation meeting was held on 11 June 2015 in Karratha for the purpose of authorising the agreement reached including the terms of the Minute. The authorisation decision was made by the claim group in accordance with the decision-making process agreed and adopted by the PKKP People who resolved:

To authorise the PKKP native title consent determination as outlined at today's

meeting by YMAC lawyers and authorise YMAC to negotiate any minor or technical changes that ensure consent of all parties.

22 The affidavit of Mr Graham O'Dell affirmed 7 August 2015 states that the meeting on 11 June 2015 was a properly notified and convened meeting of the PKKP People and that the PKKP People who attended the meeting were broadly representative of the Kurrama and Pinikura language groups of the PKKP People. The attendees were also representative of the broader Kurrama and Pinikura language groups within the PKKP community in a manner consistent with those who regularly participate in community meetings concerning the PKKP Claims and related matters.

23 The joint submission in respect of the proposed native title holders in Schedule Five of the Minute confirms that during the course of negotiations, the parties settled on that description having satisfied themselves that:

- (a) the description accurately reflects the position as described in the connection materials; and
- (b) captures all native title holders.

24 The Court is not limited to making a determination in the form sought in the application and may proceed to make a determination in such form as it sees fit based on the evidence, provided the application is valid: *Billy Patch and Others on behalf of the Birriliburu People v State of Western Australia* [2008] FCA 944 (at [18]). Having considered the material it appears appropriate for the Court to make the determination sought in the Minute for the following reasons:

- (a) the group of proposed native title holders is, in substance, the same group as the native title claimant group described in the PKKP applications and the ancestors in both native title applications and the consent determination description of native title holders are the same;
- (b) the description accurately reflects the position as described in the connection materials;
- (c) the description captures all proposed native title holders;
- (d) the claimant group authorised the terms of the Minute including the proposed native title holders in Schedule Five at an authorisation meeting which was sufficiently notified and representative of the PKKP People; and

- (e) the State is satisfied that the proposed native title holders are the persons described in Schedule Five of the Minute.

### **Nomination of Prescribed Body Corporate**

25 The joint submissions indicate that despite their best efforts, the PKKP applicants are not in a position to seek a determination that their native title be held in trust by a prescribed body corporate when the determination of native title is made. Accordingly, the Court is not requested to make a determination in accordance with ss 55, 56 and 57 of the Native Title Act at this time. Rather, the Minute provides that the determination of native title will not take effect until a prescribed body corporate is nominated under s 56 of the Native Title Act on the terms provided in the Minute. The PKKP applicants expect to be able to make that determination within 6 months of the determination of native title.

26 The Minute recites that the parties have agreed to the orders sought on the basis that the native title will be held in trust by a prescribed body corporate which is known to the parties and which has an approved rule book. This reflects that part of the negotiation of the agreement the subject of the PKKP Determination involved the PKKP applicants engaging with the State on the provisions of a prescribed body corporate rule book which, ultimately, was approved by the PKKP native title claim groups and endorsed by the State. That rule book is annexed to the Minute at Attachment B. Those parties are satisfied that the rule book reflects the PKKP People's connection to country and provides a sound basis for the native title rights and interests to be held and managed.

27 The PKKP applicants will remain as registered native title claimants in advance of the determination taking effect.

28 As observed in *WF (Deceased) on behalf of the Wiluna People v State of Western Australia* [2013] FCA 755 (at [20]), the delay in giving effect to a determination of native title because of the delay in determining the prescribed body corporate is not an ideal situation. Notwithstanding this, based on the agreement reached as reflected in the Minute and the joint submissions, the Court will make the orders accordingly.

### **Requirements pursuant to s 87 Native Title Act**

29 The joint submissions seek that a determination of native title should be made pursuant to s 87 of the Native Title Act. Section 87 of the Native Title Act provides, in

effect, that the Court may make a determination of native title by consent over an area covered by a native title application without holding a hearing where:

- (a) the period specified in the notice given under s 66 of the Native Title Act has ended and an agreement has been reached regarding the proceeding or part of the proceeding (s 87(1)(a));
- (b) the terms of an agreement, in writing signed by or on behalf of the parties, are filed with the Court (s 87(1)(b));
- (c) the Court is satisfied that an order in, or consistent with, those terms would be within the power of the Court (s 87(1)(c)); and
- (d) it appears appropriate to the Court to make the orders sought (s 87(1A) and s 87(2)).

30 Regarding these requirements, pursuant to s 87(1) of the Native Title Act, the notification period for the PKKP 1 application ended on 14 August 2002 and for the PKKP 2 application on 12 December 2006.

31 The Minute reflecting the agreement reached for the proposed determination has been filed in the Court, is in writing and is signed on behalf of all the parties to the applications (s 87(1)(b) of the Native Title Act). The agreement for a proposed determination is in relation to the land and waters claimed in the PKKP 1 and PKKP 2 applications (s 87(1)(a)).

32 The orders sought in the Minute are consistent with the terms of the agreement pursuant to s 87(1)(c) of the Native Title Act for the following reasons:

- (a) the form of the proposed determination complies with s 94A and s 225 of the Native Title Act;
- (b) the PKKP applications are validly made, having been authorised by the claim group members according to an agreed and adopted decision-making process that authorised the applicants to make the native title determination applications (as required by s 251B of the Native Title Act);
- (c) the PKKP People have authorised the form of the proposed determination according to an agreed and adopted decision making process;
- (d) the PKKP applications are for a determination of native title in relation to an area for which there is no approved determination of native title (s 13(1)(a) of the Native Title Act) and there remains no approved determination in relation

to the area the subject of the proposed determination (s 68 of the Native Title Act).

33 The focus of the Court in considering whether the orders sought are appropriate is on the making of the agreement by the parties: *Lander v State of South Australia* [2012] FCA 427 (at [11]).

34 As to the principles governing the exercise of the Court's discretion pursuant to s 87 of the Native Title Act, Bennett J noted in *Brown (on behalf of the Ngarla People) v State of Western Australia* [2007] FCA 1025 (at [22])

[t]he discretion conferred by s 87A and by s 87 must be exercised judicially and within the broad boundaries ascertained by reference to the subject matter, scope and purpose of the Act.

This includes the resolution of native title disputes by mediation and agreement: see *Hughes (on behalf of the Eastern Guruma People) v Western Australia* [2007] FCA 365 (at [8]) and Black CJ in *Lota Warria (on behalf of the Poruma and Masig Peoples) v Queensland* (2005) 223 ALR 62 (both cited by Bennett J in *Brown* (at [22])).

35 As the terms of s 87(2) of the Native Title Act suggest, this does not necessarily require the Court to receive evidence, make findings, embark on its own inquiry on the merits of the claim made in the application or even to form a concluded view as to whether the legal requirements for proving native title have been met. Indeed, it may be appropriate to make orders under s 87 where the Court has received no evidence of the primary facts substantiating native title where the Court is satisfied that the parties have freely and on an informed basis come to an agreement: see *Hughes* per Bennett J (at [9]) and *Ward v State of Western Australia* [2006] FCA 1848 per North J (at [8]) in respect of s 87 (and, similarly, *Brown* per Bennett J (at [23]–[24]) in respect of s 87A).

36 The requirements of s 87(2) may, and will likely, be met where the Court is satisfied that a government respondent (here the State), through competent legal representation, is satisfied as to the cogency of the evidence upon which the applicants rely. Generally this will not involve the Court making findings on the evidence on which the government respondent relies, but it might consider that evidence for the limited purpose of being satisfied that the government party is acting in good faith and rationally: see *Munn for and on behalf of the Gunggari People v State of Queensland* (2001) 115 FCR 109 per Emmett J (at [29]–[30]) and

*Lovett on behalf of the Gunditjmara People v State of Victoria* [2007] FCA 474 per North J (at [37]).

37 In relation to this proceeding, the PKKP applicants and the State have been legally represented throughout the negotiation process. All other respondent parties have also had the benefit of legal representation.

38 Further, the State has played an active role in the negotiation of the proposed consent determination (*Watson v State of Western Australia (No 3)* [2013] FCA 127 (at [54] and [60]), an important factor referred to by Emmett J in *Munn* (at [29])). In doing so, the State (acting on behalf of the community generally), having regard to the requirements of the Native Title Act and through a rigorous and detailed assessment process, has satisfied itself that the determination is justified in all the circumstances.

39 The connection material assessed by the State together with the preservation evidence of three of the PKKP claimants demonstrates that the PKKP applications have a credible basis and that the PKKP People have maintained some physical presence in the PKKP Determination Area since the acquisition of British sovereignty. In addition, it appears that evidence of their continuing physical or spiritual involvement in the PKKP Determination Area was sufficient to enable the State to conclude that this connection had not been severed. Taken together, the State was satisfied that the material presented was sufficient to evidence the maintenance of connection according to traditional laws and customs in the PKKP Determination Area.

40 The State has also conducted searches of land tenure, mining and petroleum registries to determine the extent of 'other interests' within the PKKP Determination Area, and those interests are included in the proposed determination, as outlined in Schedule Four to the Minute.

41 Finally, there are no other proceedings before the Court relating to native title determination applications that cover any part of the PKKP Determination Area which would otherwise require orders to be made under s 67(1) of the Native Title Act.

42 The Court is satisfied that pursuant to s 87 of the Native Title Act, it is appropriate to make the orders sought by the parties in the Minute. The Court is satisfied that the agreement reached by the parties as reflected in the Minute has been freely entered into on an informed basis.

## CONCLUSION

43 By signing the Minute all of the parties to the proceeding have indicated their agreement and the applicant, the State, the non-State respondent parties, the legal representatives and all those involved are to be congratulated.

44 There are two important points to make before concluding. The first is that in making a determination of native title, the Court is not creating it as such but rather recognising what has always existed. Secondly, the nature of the determination recognises not just the rights of the applicants but also how the applicant's rights operate in relation to other interests, including those of the respondents.

45 In the circumstances the Court considers it appropriate to make the determination of native title in the terms proposed.

46 For these reasons I make the orders in the terms of the Minute submitted to the Court being satisfied that the proposed determination is both within power and appropriate.

I certify that the preceding forty-six (46) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice McKerracher.

Associate:

Dated: 2 September 2015