

SCHEDULE E (ALTERNATIVE FUTURE ACTS REGIME)

1. PURPOSE OF THIS SCHEDULE

1.1 This Schedule E (Alternative Future Acts Regime) has been prepared in accordance with, and is intended to comply with the following provisions, among others:

- (a) section 24CB(a) of the *Native Title Act 1993* (Cth) – the doing of future acts, subject to conditions;
- (b) section 24CB(c) of the *Native Title Act 1993* (Cth) – the relationship between native title rights and interests and other rights and interests in relation to the area;
- (c) section 24CB(eaa) of the *Native Title Act 1993* (Cth) – providing a framework for the making of other agreements about matters relating to native title rights and interests;
- (d) section 24CB(ea) of the *Native Title Act 1993* (Cth) – compensation for future acts;
- (e) section 24CB(f) of the *Native Title Act 1993* (Cth) – any other matters concerning native title rights and interests in relation to the area; and
- (f) regulation 20 of the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth).

1.2 This Schedule is intended to provide clarity regarding the interaction of Future Acts with Native Title in the Native Title Area and to foster a positive relationship between the Native Title Holders and the State Agencies.

1.3 This Schedule provides for:

- (a) acknowledgement that after the Consent Determination Orders take effect, Subdivision L of Division 3 of Part 2 of the *Native Title Act 1993* (Cth) no longer applies to validate Future Acts done in relation to the Native Title Area. This Schedule sets out a procedure for the validation of certain Future Acts done in relation to the Native Title Area, which fall within the meaning of section 24LA(1)(b) of the *Native Title Act 1993* (Cth), as if that provision was not limited in its application to acts taking place before and not continuing after the making of the Consent Determination Orders;
- (b) the validation of certain Future Acts which otherwise would fall within Subdivisions I and J of Division 3 of Part 2 of the *Native Title Act 1993* (Cth);
- (c) the validation of other Future Acts covered by the Schedule;

- (d) compensation for the doing of certain Future Acts covered by the Schedule; and
- (e) the charging of fees for costs incurred by the RNTBC in providing services in performing certain functions.

1.4 The future act regime in Division 3 of Part 2 of the *Native Title Act 1993* (Cth) applies in respect of any Future Act not covered by this Schedule.

Note: Nothing in this Schedule affects the RNTBC's right to negotiate in Division 3 of Part 2 of the *Native Title Act 1993* (Cth).

1.5 The Parties acknowledge that:

- (a) the provisions of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), the *Native Title Act 1993* (Cth), the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth) and the *Corporations (Aboriginal and Torres Strait Islander) Regulations 2017* (Cth) apply to the operation of the RNTBC; and
- (b) the RNTBC may charge the State a fee for services provided in performing certain native title functions, including doing activities relating to the processing of Future Act related matters covered by this Schedule, under section 60AB of the *Native Title Act 1993* (Cth) and Part 4 of the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth).

1.6 This Schedule generally provides, among other things, that:

- (a) a Future Act will be valid if it is covered by the Schedule and the relevant State Agency has complied with its obligations under the Schedule in relation to the Future Act;
- (b) Future Acts covered by the Schedule are subject to the Non-Extinguishment Principle; and
- (c) the Native Title Holders are entitled to Compensation for certain Future Acts covered by the Schedule.

2. HIERARCHY

2.1 A Future Act will be valid to the extent covered by any of the following:

- (a) clause 3 (Emergency Acts);
- (b) clause 4 (Acts of Remediation);
- (c) clause 5 (Future Acts under a Reservation);
- (d) clause 6 (Permissible renewals);
- (e) clause 7 (Low Level Future Acts requiring Notice in writing and Consultation);

- (f) clause 8 (Low Level Future Acts requiring No Notice); and
- (g) clause 9 (Low Level Future Acts requiring Notice in writing).

2.2 To the extent that a Future Act is covered by a particular paragraph in the list in sub-clause 2.1, it is not covered by a paragraph that is lower in the list.

Note: For example, if a Future Act under a Reservation is also a Future Act requiring No Notice, there is no need for the relevant State Agency to comply with any requirements relating to Future Acts requiring No Notice.

2.3 When determining the application of this Schedule E (Alternative Future Acts Regime) in respect of a particular Future Act, the State shall act in good faith in determining which paragraph listed at sub-clause 2.1, if any, covers the Future Act.

3. EMERGENCY ACTS

3.1 An Emergency Act is a Future Act to the extent that it affects Native Title.

3.2 An Emergency Act is any of the following acts done in relation to land or waters in the Native Title Area after the Consent Determination Orders take effect:

- (a) fire suppression and fire prevention management activities, including hazard reduction burning and back-burning, and closure of any National Park Estate, Crown Land or State Forest for any such purpose, that is done by a State Agency for the objective of preventing, controlling or extinguishing a fire or protecting persons endangered by fire from injury or death or property endangered by fire from damage;
- (b) any Urgent Activity; and
- (c) the grant of an Interest by a State Agency to a Third Party for the purpose of Emergency Occupation.

3.3 The State Agency shall give Notice in writing to the RNTBC of any Emergency Act before doing the Emergency Act where reasonably practicable. However, when circumstances do not permit the provision of Notice in writing, the State Agency shall make all efforts to provide verbal notice to the RNTBC.

3.4 If the State Agency has given Notice in writing of an Emergency Act, where reasonably practicable the RNTBC shall be given an opportunity to comment on, or to discuss, the Emergency Act in accordance with the procedure set out in clause 15 (Notice in writing).

3.5 Where circumstances relating to the Emergency Act do not permit the State Agency to give any Notice of the Act in writing to the RNTBC, the State Agency shall where possible give verbal notice followed by written information to the RNTBC about the Emergency Act as soon as reasonably practicable after the doing of the Emergency Act.

3.6 If this clause 3 applies in relation to an Emergency Act and the relevant State Agency has complied with its obligations under sub-clause 3.3 to 3.5, that Emergency Act is valid pursuant to section 24EB(2) of the *Native Title Act 1993* (Cth).

3.7 The Non-Extinguishment Principle applies to Emergency Acts.

3.8 The Native Title Holders are not entitled to Compensation for an Emergency Act.

Note 1: The purpose of sub-clauses 3.3, 3.4 and 3.5 is to ensure that the RNTBC is provided with as much notice of Emergency Acts as is reasonable in the circumstances, and in a form and manner appropriate to the emergency situation.

Note 2: Where the circumstances permit, such notice to the RNTBC shall be in writing in advance in accordance with clause 15 (Notice in writing).

Note 3: Where circumstances do not permit, the State Agency shall make all reasonable efforts to provide notice to the RNTBC verbally (such as by telephone).

4. ACTS OF REMEDIATION

4.1 An Act of Remediation is a Future Act to the extent that it affects Native Title.

4.2 If an Act of Remediation is done under Compulsion, the State Agency shall give Notice in writing to the RNTBC of the Act of Remediation before doing the Act of Remediation, where reasonably practicable.

4.3 Where, due to urgency and the nature of the Compulsion, it is not possible for the State Agency to provide Notice in writing of an Act of Remediation to the RNTBC before doing the act, the State Agency shall, given the circumstances, make all reasonable efforts to provide verbal notice to the RNTBC.

4.4 If an Act of Remediation is not done under Compulsion, the State Agency shall provide Notice in writing of the act to and shall consult with the RNTBC at a Consultation Meeting arranged in accordance with Schedule D (Consultation Protocol), with the aim of reaching an agreement in writing that sets out:

- (a) the nature and extent of the Act of Remediation;
- (b) the method or methods to be employed to carry out the Act of Remediation;
- (c) the consent of the Parties to the Act of Remediation and whether the Act of Remediation may be done;
- (d) that the Non-Extinguishment Principle applies; and
- (e) the signatures of authorised representatives of the RNTBC and the State Agency.

- 4.5 If this clause 4 applies in relation to an Act of Remediation and the relevant State Agency has complied with its obligations under sub-clause 4.2 to 4.4, that Act of Remediation is valid pursuant to section 24EB(2) of the *Native Title Act 1993* (Cth).
- 4.6 The Non-Extinguishment Principle applies to Acts of Remediation.
- 4.7 The Native Title Holders are not entitled to Compensation for an Act of Remediation.

Note 1: The purpose of sub-clauses 4.2 to 4.4 is to ensure that the RNTBC is provided with as much notice of Acts of Remediation as is reasonable in the circumstances, and in a form and manner appropriate to the situation.

Note 2: Where the circumstances permit, such notice to the RNTBC shall be in writing in advance in accordance with clause 15 (Notice in writing).

Note 3: Where circumstances do not permit, the State Agency shall make all reasonable efforts to provide notice to the RNTBC verbally (such as by telephone).

5. FUTURE ACTS UNDER A RESERVATION

- 5.1 To the extent that this clause 5 does not apply to a Future Act, Subdivision J of Division 3, Part 2 of the *Native Title Act 1993* (Cth) continues to apply.
- 5.2 This clause 5 applies to a Future Act ("Act under a Reservation") done in the Native Title Area if:
- (a) an act contained, made or conferred a reservation, proclamation, dedication, condition, permission or authority ("reservation") under which the whole or part of the Native Title Area was to be used for a particular purpose ("earlier act");
 - (b) the earlier act was valid;
 - (c) the earlier act was done by the Crown in right of the State of New South Wales before 19 December 2011; and
 - (d) the Act under a Reservation is done in good faith under or in accordance with the reservation.
- 5.3 If the Act under a Reservation consists of:
- (a) the construction or establishment of a Public Work; or
 - (b) the creation of a Plan of Management;

before the act is done, the relevant State Agency shall give Notice in writing to the RNTBC.

- 5.4 When the State Agency has given Notice in writing of an Act under a Reservation that is referred to in sub-clause 5.3, the RNTBC has an opportunity to comment

on, or to discuss, the Act under a Reservation in accordance with the procedure set out in clause 15.

Note: For Plans of Management see clause 11 (Plans of Management) of Schedule D (Consultation Protocol).

5.5 This sub-clause 5.5 applies to an Act under a Reservation in relation to the Native Title Area if:

- (a) the Act under a Reservation forms part of a Forward Program of Work; and
- (b) the Act under a Reservation consists of, authorises or involves:
 - (i) environmental and assessment activities including research, survey and monitoring of species, regeneration and rehabilitation;
 - (ii) the control of noxious or introduced species;
 - (iii) pest Animal control;
 - (iv) Consultation Level Clearing and Low Level Clearing, but not Minor Clearing;
 - (v) Consultation Level Excavation and Low Level Excavation, but not Minor Excavation; or
 - (vi) the erection of signage pertaining to Aboriginal Cultural Heritage.

5.6 If sub-clause 5.5 applies to an Act under a Reservation, the State Agency shall comply with the requirements set out in sub-clauses 7.2 – 7.7 (Low Level Future Acts requiring Notice in writing and Consultation), as if references to a “Notice and Consultation Act” in those paragraphs were references to an “Act under a Reservation” within the meaning of this clause.

5.7 If this clause 5 applies to a Future Act and the relevant State Agency has complied with its obligations under this clause 5, that Future Act is valid pursuant to section 24EB(2) of the *Native Title Act 1993* (Cth).

5.8 The Non-Extinguishment Principle applies to Future Acts covered by this clause 5.

5.9 The Native Title Holders are entitled to Compensation for Future Acts covered by this clause 5 in accordance with clause 14 (Compensation).

6. PERMISSIBLE RENEWALS

6.1 To the extent that this clause 6 does not apply to a Future Act, section 24IC of the *Native Title Act 1993* (Cth) continues to apply.

6.2 This clause 6 applies to a Future Act if the act is a Permissible Renewal. A Future Act is a Permissible Renewal if:

- (a) it is the renewal, the re-grant or re-making, or the extension of the term of a lease, licence, permit or authority (the "original authority") that is valid (including because of this Schedule or because of Division 2 or 2A of Part 2 of the *Native Title Act 1993* (Cth));
- (b) the original authority was granted on or before 23 December 1996;
- (c) it takes place within 12 months after the termination or expiry of the original authority;
- (d) if the original authority contained, or was subject to, a reservation or condition for the benefit of Aboriginal peoples or Torres Strait Islanders, the renewed, re-granted, re-made or extended lease, licence, permit or authority contains, or is subject to, the same reservation or condition; and
- (e) the Future Act does not:
 - (i) confer a right of exclusive possession over any of the land or waters covered by the original authority; or
 - (ii) otherwise create a larger proprietary interest in the land or waters than was created by the original authority; or
 - (iii) create a proprietary interest over any of the land or waters covered by the original authority, where the original authority created only a non-proprietary interest; or
 - (iv) permit mining or exploration.

6.3 If two or more leases, licences, permits or authorities are granted in place of, respectively, a single lease, licence, permit or authority, then, for the purposes of sub-clause 6.2, each of the two or more grants is taken to be a renewal of the single lease, licence, permit or authority so long as the total area of the land or waters subject to the prior single lease, licence, permit or authority is not increased.

6.4 If a single lease, licence, permit or authority is granted in place of, respectively, two or more leases, licences, permits or authorities (the "original authorities"), then:

- (a) for the purpose of sub-clause 6.2, the single grant is taken to be a renewal of the original authorities; and
- (b) paragraphs 6.2(b) – 6.2(e) apply as if a reference in those paragraphs to the original authority were a reference to the original authorities.

6.5 The features listed in sub-clause 6.6 do not prevent:

- (a) an act from being the renewal, re-grant, re-making, or extension of the term of the original authority for the purposes of sub-clause 6.2; or

- (b) two or more leases, licences, permits or authorities (each of which is a “new authority”) from being granted in place of the original authority for the purposes of sub-clause 6.3.

6.6 The features are as follows:

- (a) the new lease, licence, permit or authority (“new authority”), or the new authorities together, cover a smaller area than the old authority;
- (b) the term of the new authority, or of any of the new authorities, is longer than the term of the original authority or the longest term of any of the original authorities; or
- (c) the new authority, or any of the new authorities, is a perpetual lease.

6.7 If this clause 6 applies to a Permissible Renewal, the relevant State Agency shall give Notice in writing to the RNTBC before the Permissible Renewal is done.

6.8 When the State Agency has given Notice in writing of a Permissible Renewal, the RNTBC has an opportunity to comment on, or to discuss, the Permissible Renewal in accordance with the procedure set out in clause 15.

6.9 If this clause 6 applies in relation to a Permissible Renewal and the relevant State Agency has complied with its obligations under sub-clause 6.7, that Permissible Renewal is valid pursuant to section 24EB(2) of the *Native Title Act 1993*(Cth).

6.10 The Non-Extinguishment Principle applies to Permissible Renewals covered by this clause 6.

6.11 The Native Title Holders are entitled to Compensation for Permissible Renewals covered by this clause 6 in accordance with clause 14 (Compensation).

7. LOW LEVEL FUTURE ACTS REQUIRING NOTICE IN WRITING AND CONSULTATION

7.1 This clause 7 applies to a Low Level Future Act done by, or on behalf of, a State Agency in relation to land or waters in the Native Title Area if:

- (a) the act forms part of a Forward Program of Work; and
- (b) the act consists of, authorises or involves:
 - (i) regeneration or environmental assessment or protection activities;
 - (ii) the control of noxious or introduced species;
 - (iii) pest Animal control;
 - (iv) Consultation Level Clearing; or
 - (v) Consultation Level Excavation.

- 7.2 If this clause 7 applies to a Low Level Future Act (“Notice and Consultation Act”), the State Agency shall provide Notice in writing to and consult with the RNTBC in accordance with this clause before doing the act.
- 7.3 Consultation in relation to a Notice and Consultation Act shall occur, where possible, at the next Consultation Meeting arranged in accordance with Schedule D (Consultation Protocol) or Consultation Meetings in Part C (Consultation) of Schedule N (State Forests) .
- 7.4 If the RNTBC does not respond with 28 days of receiving a notice or the RNTBC responds that no Consultation Meeting is required, the act is valid.
- 7.5 If it is not possible for the State Agency to consult the RNTBC in relation to a Notice and Consultation Act at the next Consultation Meeting, it shall provide Notice in writing to the RNTBC before doing the act, and the RNTBC shall have an opportunity to comment on, or to discuss, the act in accordance with the procedure set out in clause 15.
- 7.6 If, following the provision of the Notice in writing referred to in sub-clause 7.2 but before the date referred to in paragraph 15.2(c), the RNTBC requests a meeting with the State Agency to discuss the proposed Notice and Consultation Act, the State Agency must meet with the RNTBC before it does the Notice and Consultation Act (“Extraordinary Consultation Meeting”).
- 7.7 The Parties shall:
- (a) ensure that an Extraordinary Consultation Meeting is held promptly;
 - (b) negotiate about the arrangements for an Extraordinary Consultation Meeting, including with regard to the Consultation Protocol at Schedule D (Consultation Protocol) or Consultation Meetings in Part C (Consultation) of Schedule N (State Forests), as appropriate;
 - (c) generally, each bear the costs of an Extraordinary Consultation Meeting; and
 - (d) where possible, hold an Extraordinary Consultation Meeting at a venue within the Agreement Area, or at Grafton or Casino.

8. LOW LEVEL FUTURE ACTS REQUIRING NO NOTICE

- 8.1 This clause 8 applies to a Low Level Future Act done by, or on behalf of, a State Agency in relation to land or waters in the Native Title Area if the act consists of, authorises or involves:
- (a) an event or activity that endures for a period of less than one (24-hour) day;
 - (b) the maintenance or repair of tracks, boardwalks, platforms, bridges, fire trails, fences and gates (“Infrastructure”), so long as the maintenance or repair does not take place outside the area on which the Infrastructure is constructed, established or situated;

- (c) the maintenance or repair of a Public Work, so long as the maintenance or repair does not take place outside the area on which the Public Work is constructed, established or situated, including by operation of section 251D of the *Native Title Act 1993* (Cth);
- (d) Minor Excavation;
- (e) Minor Clearing; or
- (f) the maintenance and repair of facilities for service to the public, so long as the maintenance or repair does not take place outside the area on which the facilities are constructed, established or situated.

8.2 If this clause 8 applies to a Low Level Future Act, the State Agency:

- (a) may do the act without providing Notice of the act to the RNTBC; and
- (b) shall provide the RNTBC with a written list of all such acts done between any two Consultation Meetings referred to in Schedule D (Consultation Protocol) and in Part C (Consultation) of Schedule N (State Forests), at least 28 days before the next Consultation Meeting.

9. LOW LEVEL FUTURE ACTS REQUIRING NOTICE IN WRITING

9.1 This clause 9 applies to a Low Level Future Act done by, or on behalf of, a State Agency in relation to land or waters in the Native Title Area if the act consists of, authorises or involves:

- (a) works which require Low Level Excavation and/or Low Level Clearing;
- (b) river reclamation works that are reasonably necessary for the protection of public health or public safety;
- (c) the grant of a licence or permit to hold a cultural, sporting, recreational, educational or civic event that endures for a period of more than one day and less than seven days;

Note: This paragraph 9.1(c) does not apply in relation to cultural events held by one or more of the Native Title Parties.

- (d) the grant of a bee keeping interest; or
- (e) tree lopping and other Low Level Clearing.

9.2 If this clause applies to a Low Level Future Act, the State Agency shall provide Notice in writing to the RNTBC before doing that act, and the RNTBC shall have an opportunity to comment on, or to discuss, the act in accordance with the procedure set out in clause 15 (Notice in writing).

10. CONTINUING LOW IMPACT FUTURE ACTS – VALIDATION

10.1 Once this Agreement is Registered, Low Impact Future Acts that were done in relation to the Part A Area before and that continued after 12 July 2018 are valid pursuant to section 24EBA(3) of the *Native Title Act 1993* (Cth).

Note: Low Impact Future Acts that were done in relation to the Part A Area before and that continued after 12 July 2018 were validated under the Western Bundjalung Settlement Indigenous Land Use Agreement pursuant to section 24EB(2) of the *Native Title Act 1993* (Cth). This provision is intended to continue that validation after the Western Bundjalung Settlement Indigenous Land Use Agreement is removed from the ILUA Register.

10.2 Once this Agreement is Registered, Low Impact Future Acts that are done in relation to the Part B Area before and continue after the Registration Date are valid pursuant to section 24EB(2) of the *Native Title Act 1993* (Cth).

10.3 The Non-Extinguishment Principle applies to Low Impact Future Acts covered by this clause.

11. VALIDATION OF LOW LEVEL FUTURE ACTS

11.1 If clause:

- (a) 7 (Low Level Future Acts requiring Notice in writing and Consultation);
- (b) 8 (Low Level Future Acts requiring No Notice); or
- (c) 9 (Low Level Future Acts requiring Notice in writing);

applies in relation to a Low Level Future Act and the relevant State Agency has complied with its obligations under the relevant clause, that Low Level Future Act is valid pursuant to section 24EB(2) of the *Native Title Act 1993* (Cth).

11.2 The Non-Extinguishment Principle applies to Low Level Future Acts covered by clauses:

- (a) 7 (Low Level Future Acts requiring Notice in writing and Consultation);
- (b) 8 (Low Level Future Acts requiring No Notice); or
- (c) 9 (Low Level Future Acts requiring Notice in writing).

11.3 The Native Title Parties are not entitled to Compensation for Low Level Future Acts covered by clauses:

- (a) 7 (Low Level Future Acts requiring Notice in writing and Consultation);
- (b) 8 (Low Level Future Acts requiring No Notice); or
- (c) 9 (Low Level Future Acts requiring Notice in writing).

12. ACTS THAT ARE NOT FUTURE ACTS

12.1 For the sake of clarity, each of the following acts does not affect native title, is not a Future Act and does not require Notice in writing to be given to the RNTBC:

- (a) use of existing roads and tracks by vehicles or other means of transport;
- (b) maintenance and repair of existing road safety signage and plaques, not relating to Aboriginal culture and heritage;
- (c) operation of existing Public Works;
- (d) operation of existing facilities for service to the public;
- (e) operation of existing State Agency facilities;
- (f) use of existing public buildings; and
- (g) pedestrian access.

13. AMENDING THIS ALTERNATIVE FUTURE ACTS REGIME SCHEDULE

13.1 Subject to sub-clause 13.2, the Parties may agree to amend or vary this Schedule by:

- (a) amending clauses:
 - (i) 2 (Hierarchy);
 - (ii) 3 (Emergency Acts);
 - (iii) 4 (Acts of Remediation);
 - (iv) 5 (Future Acts under a Reservation);
 - (v) 6 (Permissible renewals);
 - (vi) 7 (Low Level Future Acts requiring Notice in writing and Consultation);
 - (vii) 8 (Low Level Future Acts requiring No Notice); or
 - (viii) 9 (Low Level Future Acts requiring Notice in writing);

by adding any other act or class of acts which the Parties agree should be included as an act under clauses:

- (ix) 2 (Hierarchy);
- (x) 3 (Emergency Acts);
- (xi) 4 (Acts of Remediation);

- (xii) 5 (Future Acts under a Reservation);
 - (xiii) 6 (Permissible renewals);
 - (xiv) 7 (Low Level Future Acts requiring Notice in writing and Consultation);
 - (xv) 8 (Low Level Future Acts requiring No Notice); or
 - (xvi) 9 (Low Level Future Acts requiring Notice in writing);
- of this Schedule; or

(b) removing from clauses:

- (i) 2 (Hierarchy);
- (ii) 3 (Emergency Acts);
- (iii) 4 (Acts of Remediation);
- (iv) 5 (Future Acts under a Reservation);
- (v) 6 (Permissible renewals);
- (vi) 7 (Low Level Future Acts requiring Notice in writing and Consultation);
- (vii) 8 (Low Level Future Acts requiring No Notice); or
- (viii) 9 (Low Level Future Acts requiring Notice in writing);

any act or class of acts which the Parties agree should not be included as an act under clauses:

- (ix) 2 (Hierarchy);
- (x) 3 (Emergency Acts);
- (xi) 4 (Acts of Remediation);
- (xii) 5 (Future Acts under a Reservation);
- (xiii) 6 (Permissible renewals);
- (xiv) 7 (Low Level Future Acts requiring Notice in writing and Consultation);
- (xv) 8 (Low Level Future Acts requiring No Notice); or
- (xvi) 9 (Low Level Future Acts requiring Notice in writing);

of this Schedule.

13.2 Any agreement to amend or vary this Schedule shall be in writing and executed by each of the Parties and shall include:

- (a) the terms of the amendment or variation;
- (b) the conditions on which the Compensation requirements set out in Division 5 of Part 2 of the *Native Title Act 1993* (Cth) are satisfied;
- (c) the timeframe for the provision of Compensation to the Native Title Holders; and
- (d) a statement that the Non-Extinguishment Principle applies to the acts covered by the Schedule as amended or varied.

13.3 In the event that an agreement is made to amend or vary the Schedule in accordance with this clause:

- (a) the Parties shall promptly produce an amended Indigenous Land Use Agreement that incorporates the matters the subject of the agreement to amend or vary this Schedule and referred to in sub-clause 13.2;
- (b) each Party must promptly do all further acts required by law or reasonably requested by another Party to enable an application to be made to the Registrar for the amended Indigenous Land Use Agreement to be registered on the ILUA Register; and
- (c) the agreement shall not have the effects provided in Subdivision E of Division 3 of Part 2 of the *Native Title Act 1993* (Cth) until such time as the amended Indigenous Land Use Agreement is Registered.

14. [TEXT REMOVED]

15. NOTICE IN WRITING

- 15.1 Where this Schedule requires that Notice in writing be given by a Party, such Notice shall be given by post, email or by other means agreed between the Parties.
- 15.2 Notice in writing must include:
- (a) a clear description of the area to which the act or class of acts mentioned in the Notice relates;
 - (b) a description of the general nature of the act or class of acts;
 - (c) a statement that the person to be notified has an opportunity to comment on the act or class of acts within the timeframe set out in the Notice, which must be at least 28 days, unless otherwise agreed by the RNTBC in writing, which agreement shall not unreasonably be withheld; and
 - (d) the name and postal address of the person to whom any comments must be given.
- 15.3 For the purposes of paragraph 15.2(a), “clear description” means a description of the relevant area that contains enough information, whether by a diagram drawn to scale or description by other means, to work out:
- (a) the general location of the area; and
 - (b) the boundaries of the area;
- including, where possible, a map of the area.
- 15.4 When a Notice in writing of a Future Act covered by this Schedule is given, the person notified may provide comments in writing to the person identified in the Notice as the person to whom any comments must be given, regarding the act or class of acts described in the Notice, within the period specified in the Notice, which must be at least 28 days, unless otherwise agreed by the RNTBC in writing, which agreement shall not unreasonably be withheld.
- Note:** The relevant State Agency shall take any comments made by the RNTBC into account (whether received in response to Notice in writing, at a Consultation Meeting or an Extraordinary Consultation Meeting), and may

choose to rely on those comments in the terms in any interest granted or refusing an application, nothing in this Agreement obliges the relevant State Agency to adopt any recommendation made in those comments.

15.5 Despite anything in sub-clauses 15.1 – 15.4, a requirement that Notice in writing be given or comments provided in relation to a Future Act subject to this Schedule may be satisfied by:

- (a) the provision of a Notice in writing at least 28 days before a Consultation Meeting, or such shorter period agreed in writing by the RNTBC; and
- (b) the RNTBC and the relevant State Agency discussing the act during the Consultation Meeting, if the results of that discussion are recorded in the outcomes of the meeting.

15.6 Nothing in this clause obliges the RNTBC to provide a comment in response to a Notice in writing.

15.7 The RNTBC shall notify each State Agency of any change to its:

- (a) postal or street address or any other contact details; or
- (b) contact person or persons.

15.8 If:

- (a) the RNTBC is wound up or otherwise goes into administration and is not replaced under the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth); and
- (b) the Native Title Holders do not make alternate arrangements that are acceptable to the State Agencies for holding Consultation Meetings or Extraordinary Consultation Meetings;

the notification provisions of sub-clause 5.6 (Future Acts under a Reservation) and clause 7 (Low Level Future Acts requiring Notice in writing and Consultation) may be satisfied by serving Notices in writing in accordance with this clause on the Representative Body, which may then perform the functions accorded to the RNTBC under those sub-clauses as if it were the RNTBC.

16. RNTBC TO CHARGE FEES FOR FUTURE ACT WORK

16.1 This clause provides for the RNTBC to charges fees for services provided in performing certain functions in addition to the fees it is permitted to charge for carrying out functions in accordance with regulation 20 of the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth).

16.2 The RNTBC may charge the relevant State Agency a fee for reasonable costs it incurs in responding to a Future Act Notice given by the State Agency pursuant to:

- (a) sub-clause 5.3 (certain Future Acts under a Reservation);

- (b) clause 6 (Permissible renewals);
- (c) clause 7 (Low Level Future Acts requiring Notice in writing and Consultation); and
- (d) clause 9 (Low Level Future Acts requiring Notice in writing);

in relation to the Native Title Area, but not including any costs incurred:

- (e) by or behalf of the Native Title Holders in attending or travelling to meetings of all the Native Title Holders;
- (f) by the RNTBC in organising, travelling to or attending meetings where external venue hire is required;
- (g) by the RNTBC in preparing for and attending Consultation Meetings, in so far as those costs relate to Future Acts covered by this Schedule.

Note 1: By way of example the RNTBC may charge fees for contacting affected Native Title Holders and responding to notices under clause 15 (Notice in writing).

Note 2: This clause does not apply to Future Acts done under clauses 3 (Emergency Acts) and 4 (Acts of Remediation) and sub-clause 5.5 (Future Acts under a Reservation).

Note 3: For the sake of clarity, the RNTBC may charge fees for costs incurred by the RNTBC in preparing for and attending Consultation Meetings in so far as those costs relate to Future Acts not covered by this Schedule and covered by section 60AB of the *Native Title Act 1993* (Cth) and the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth).

- 16.3 The RNTBC shall issue an invoice to the State for the fees payable under this Schedule, less any amount paid upfront by the State Agency.
- 16.4 The RNTBC may not charge the relevant State Agency a fee for any costs it incurs:
- (a) in relation to any action or proceedings undertaken by or on behalf of the Native Title Holders to prevent, or stop the doing of a Future Act by the State Agency where the State Agency has acted in compliance with the *Native Title Act 1993* (Cth) and this Schedule;
 - (b) in resolving any dispute in relation to fees charged or proposed to be charged under this Schedule; or
 - (c) any matters listed in section 60AB(5) of the *Native Title Act 1993* (Cth).
- 16.5 Where the RNTBC considers that a meeting with the relevant State Agency is necessary in order to meet its requirements under this clause in addition to a scheduled Consultation Meeting, the reasonable costs of the meeting shall only be paid by the State Agency if:

- (a) the RNTBC has advised the State Agency before the meeting of the number of persons it proposes should attend the meeting and the proposed location and duration of the meeting;
 - (b) such costs do not include sitting fees; and
 - (c) the State Agency agrees in writing before the meeting, to meet the costs.
- 16.6 Any fee the RNTBC proposes to charge for its costs of obtaining professional advice in relation to a Future Act Notice shall only be payable if the relevant State Agency has agreed in writing in advance to pay the costs of that professional advice.
- 16.7 Any fee charged by the RNTBC may include a component for its reasonable administrative costs and expenses, which may not comprise more than 20% of the aggregate of all net costs and expenses (excluding GST) included in the total fee charged in respect of a particular Future Act Notice.
- 16.8 The relevant State Agency shall pay the fee within 21 days of receiving a detailed written invoice from the RNTBC (a tax invoice if GST is included), setting out the services provided, a description of those services and the costs incurred, and attaching copies of any receipts or records of expenditure.
- 16.9 The RNTBC and the relevant State Agency must resolve any dispute about the amount of the fee that the RNTBC proposes to charge a State Agency in accordance with clause 32 (Dispute resolution procedure) of this Agreement.
- 16.10 Despite sub-clauses 16.2 and 16.3, the RNTBC and one or more State Agencies may agree in writing to an alternative fee structure.
- Note 1:** An example of an alternative fee structure is the payment of a fixed amount for the reasonable costs the RNTBC may incur in responding to Future Act Notices given by the State Agency over a 12 month period.
- Note 2:** Any agreement under sub-clause 16.10 would not cover fees for costs that the RNTBC incurs under section 60AB of the *Native Title Act 1993* (Cth) or the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth).

17. CONFIDENTIALITY

- 17.1 Subject to this clause, the content of any term of this Schedule that contains Confidential Information shall not be disclosed to any Third Party without the prior written consent of the Parties.
- 17.2 Sub-clause 17.1 does not apply to the Native Title Holders who shall each hold such information confidentially.
- 17.3 Sub-clause 17.1 does not apply:
- (a) the members of the RNTBC, who shall each hold such information confidentially, for the purpose of assisting the effective operation, implementation and/or enforcement of this Schedule;

- (b) to the employees, directors, servants and agents of the Parties, who shall each hold such information confidentially, for the purpose of assisting the effective operation, implementation and/or enforcement of this Schedule;
- (c) to Crown land Managers appointed under Division 3.2 of Part 3 of the *Crown Land Management Act 2016* (NSW) in relation to Schedule G (Crown Land) which shall each hold such information confidentially, for the purpose of assisting the effective operation, implementation and/or enforcement of this Schedule;
- (d) to the relevant Ministers and their advisors, who shall each hold such information confidentially, for the purpose of assisting the effective operation, implementation and/or enforcement of this Schedule;
- (e) to the Parties' accountants, legal advisers, auditors or other professional advisers who shall hold such information confidentially;
- (f) to the extent necessary to comply with the requirements of any statute or regulation, or an order of a court or tribunal;
- (g) where disclosure is necessary in performing obligations or enforcing rights under this Agreement;
- (h) to the extent that such information is already lawfully part of the public domain otherwise than by breach of this clause 17; and
- (i) where information is received from a Third Party and where the information is already known otherwise than by breach of this clause 17;

on their written undertaking to keep the information confidential in accordance with this Schedule.

18. DEFINITIONS AND INTERPRETATION

18.1 Words and expressions used in this Schedule have the same meaning as in the Dictionary in this Agreement, unless the context or subject matter otherwise requires or they are defined in this Schedule.

18.2 In this Schedule unless the context or subject matter otherwise indicates or requires:

"Acts of Remediation" means activities to reverse, stop or prevent environmental damage.

Note: Examples include removal of abandoned cars, illegal garbage dumping and the removal of asbestos.

"Act under a Reservation" has the meaning stated in clause 5 (Future Acts under a Reservation).

“Agent of the State” means a person authorised to carry out an activity comprising, or authorised by, a Future Act covered by this Schedule, including but not limited to a local government authority and a statutory corporation.

“Compulsion” means a court order or a compulsory statutory or regulatory requirement that compulsorily requires a State Agency or an Agent of the State to carry out Urgent Activities in relation to land or waters in the Agreement Area.

“Confidential Information” has the meaning given to ‘Confidential Information’ in the Dictionary to this Agreement, and, for the purposes of this Schedule includes clause 14 (Compensation) and Annexure A (List of parcels comprising compensation).

“Consultation Level Clearing” means clearing of land or waters, other than Low Level Clearing or Minor Clearing, which:

- (a) is reasonably necessary for the protection of public health or public safety (other than an Emergency Act or an Act of Remediation); or
- (b) involves clearing of noxious or introduced Animal or plant species.

“Consultation Level Excavation” means excavation of land or waters, other than Low Level Excavation or Minor Excavation, which:

- (a) is reasonably necessary for the protection of public health or public safety (other than an Emergency Act or an Act of Remediation);
- (b) involves the removal or disturbance of soil below the level of the topsoil other than by using hand held implements; and
- (c) is not mining within the meaning of ‘mine’ in section 253 of the *Native Title Act 1993* (Cth) (other than fossicking by using hand-held implements).

“Emergency Act” has the meaning given in sub-clause 3.2 (Emergency Acts).

“Emergency Occupation” includes occupation of land in response to bushfire, flood or other major natural disaster or emergency, including, but not limited to, a storm event; search and rescue operations; response to a siege and biosecurity risks.

“Forward Program of Work” means a formalised plan of work that a State Agency makes in advance, and includes a program of annual works that a State Agency intends to tender, seek expressions of interest or advertise for, or engage a non-Government body to perform (other than under contracts in force at the Registration Date), but does not include routine, day-to-day activities or acts that are impromptu or ad hoc.

“Future Act Notice” means any notice provided to the RNTBC in accordance with:

- (a) Division 3 of Part 2 of the *Native Title Act 1993* (Cth);

- (b) the *Native Title (Notices) Determination 2011 (No 1)* (Cth); and
- (c) a provision in this Schedule which requires Notice to be given in writing.

“**Interest**” includes any licence, permit, agreement or other authority granted by the State, but does not include the following:

- (a) any Interest granted under the *Mining Act 1992* (NSW);
- (b) any Interest granted under the *Petroleum (Onshore) Act 1991* (NSW);
- (c) a lease; and
- (d) an estate in freehold.

“**Low Impact Future Act**” has the same meaning as in section 24LA of the *Native Title Act 1993* (Cth).

“**Low Level Clearing**” means clearing of land or waters, other than Minor Clearing, which is reasonably necessary for the carrying out of a Low Level Future Act and that does not cover land or waters more than four metres from the location of the Low Level Future Act. Low Level Clearing includes tree lopping, and environmental assessment, regeneration and protection activities.

“**Low Level Excavation**” means excavation of land or waters, other than Minor Excavation, which is reasonably necessary for the carrying out of a Low Level Future Act, and that involves the removal or disturbance of soil below the level of the topsoil.

“**Low Level Future Act**”, except where used in paragraphs 8.1(a) and 9.1(c), has the same meaning that Low Impact Future Act would have if section 24LA of the *Native Title Act 1993* (Cth) were not limited in its application to acts taking place before and not continuing after the making of the Consent Determination Orders.

Note: For the sake of clarity, a Low Level Future Act does not consist of, authorise or otherwise involve:

- (a) the grant of a freehold estate in any of the land or waters;
- (b) the grant of a lease over any of the land or waters;
- (c) the conferral of a right of exclusive possession over any of the land or waters;
- (d) the excavation or clearing of any of the land or waters;
- (e) mining (other than fossicking by using hand-held implements);
- (f) the construction or placing on the land, or in the waters, of any building, structure, or other thing (other than fencing or a gate), that is a fixture; or

- (g) the disposal or storing, on the land or in the waters, of any garbage or any poisonous, toxic or hazardous substance.

For the purpose of this definition, 'the excavation or clearing or any of the land or waters' does not include:

- (h) excavation or clearing that is reasonably necessary for the protection of public health or public safety; or
- (i) tree lopping, clearing of noxious or introduced Animal or plant species, foreshore reclamation, regeneration or environmental assessment or protection activities.

“Minor Clearing” means clearing of land or waters by the minor removal or disturbance of vegetation, and includes lawn maintenance, mowing and slashing.

“Minor Excavation” means excavation of land or waters, by the minor removal or disturbance of topsoil using hand held implements only, and includes inserting tent pegs. Minor Excavation does not include excavation for the maintenance of roads.

Note: Examples of Minor Excavation include inserting tent pegs, (e.g. as a part of informal camping), planting trees for bush regeneration and shallow boat anchoring on the riverbank.

“Permissible Renewal” has the meaning given in sub-clause 6.2 (Permissible renewals);

“Public Work” has the same meaning as in section 253 of the *Native Title Act 1993* (Cth).

“Registration Date” means the date this Agreement is registered on the ILUA Register.

“Third Party” means a person or legal entity that is not a Party to this Agreement.

“Topsoil” means the upper, outermost layer of soil or surface soil of land in its natural state that is less than 50 cm in depth.

“Urgent Activity” means an act required to be carried out urgently for public health or public safety whether done by a State Agency or its agent, or by an Agent of the State authorised under legislation, in response to a bushfire, flood or other major natural disaster or emergency including, but not limited to, a storm event, a search and rescue operation, a response to a siege, the protection of human life, property and highly valued assets from bushfire, a biosecurity risk a chemical or oil spill, protection of wildlife, and any urgent action required for public health and safety.

- 18.3 In this Schedule, unless the context or subject matter otherwise indicates or requires:

- (a) persons shall be taken to include any natural or legal person and includes a firm, body corporate, partnership, joint venture or unincorporated association;
- (b) a reference to anything is a reference to the whole or any part of it and a reference to a group of persons is a reference to all of them collectively and to any two or more of them collectively and to each of them individually;
- (c) a reference to a person or party includes a reference to the person's executors, administrators, successors, substitutes (including but not limited to persons taking by novation), and assigns;
- (d) a reference to a person, statutory authority or government body (corporate or unincorporated) established under any written law includes a reference to any person (corporate or unincorporated) established or continuing to perform the same or a substantially similar function;
- (e) a reference to a Minister, authority, body or person includes the Minister, authority, body (including departments) or person for the time being performing the functions performed by that Minister, authority, body or person at the Execution Date.
- (f) words denoting the singular number shall include the plural and vice versa;
- (g) the words 'include' or 'including' or similar expressions do not limit what else might be included;
- (h) if a word is defined, its cognate meanings and other grammatical forms have a corresponding definition;
- (i) a reference to a statute, regulation, ordinance or by-law ("Law") will be deemed to extend to include a reference to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing that Law from time to time

Note: An example is the repeal of the *Crown Lands Act 1989* (NSW) by the *Crown Land Management Act 2016* (NSW). This paragraph has the effect that a provision under the *Crown Lands Act 1989* (NSW) will be read as the equivalent provision under the *Crown Land Management Act 2016* (NSW).
- (j) a reference to a recital, clause, schedule or annexure is a reference to a recital, clause, schedule or annexure of this Agreement and a reference to an agreement, unless the context implies otherwise, is a reference to this Agreement (and, where applicable, any of its provisions) as amended, notated, supplemented or replaced from time to time;
- (k) a recital, clause, schedule or annexure or a description of the Parties to this Agreement forms part of this Agreement;

- (l) the contents and headings of this Agreement are for convenience only and do not affect the interpretation of this Agreement;
- (m) no rule of construction operates to the detriment of a party only because that party was responsible for the preparation of this Agreement or any part of it;
- (n) where any time limit pursuant to this Schedule falls on a non-business day, that time limit shall be deemed to have expired on the next business day; and
- (o) a reference to dollars or \$ is to Australian currency.