

16.1 NGARLUMA NGURRA/CITY OF KARRATHA RELATIONSHIP AGREEMENT

File No:	LP.228
Responsible Executive Officer:	Director Development Services
Reporting Author:	Manager Planning Services
Date of Report:	13 July 2016
Applicant/Proponent:	Nil
Disclosure of Interest:	Nil
Attachment(s)	<ol style="list-style-type: none">1. CONFIDENTIAL: Current version of draft Ngarluma Ngurra/City of Karratha Relationship Agreement (ex Annexures)2. Maps showing Existing Exempt Townsite Areas3. Working Group Terms of Reference4. CONFIDENTIAL: NAC's Latest Schedule of Rates

PURPOSE

To present for Council consideration a draft Ngarluma Ngurra/City of Karratha Relationship Agreement

BACKGROUNDCouncil Resolutions

At its 27 January 2016 Ordinary Meeting, Council resolved to:

1. Establish a Native Title Working Group;
2. Appoint Councillors to the Working Group;
3. Invite the Ngarluma Aboriginal Corporation (NAC) to appoint representatives; and
4. Request that terms of reference for the Working Group be brought back to Council for consideration.

At its 20 June 2016 Ordinary Meeting, Council resolved to:

1. NOTE the Working Group's progress with the proposed Aboriginal Heritage Agreement.
2. ADVISE NAC that the Council:
 - a) is pleased with progress made;
 - b) is keen to work with NAC to develop an agreement by 17 August 2016;
 - c) is willing to contribute 50% toward NAC's fair and reasonable agreement development costs;
 - d) is eager to ensure that systems and processes for managing heritage, planning and Ngarluma engagement post agreement signing should be reasonably simple, low-cost and in accordance with agreed best practice guidelines, recognising that Council is community focussed.

Working Group

The title of the Working Group has changed since Council's January 2016 meeting to Ngarluma Ngurra/City of Karratha Working Group to align with the name of the agreement that relies upon the Working Group.

The Working Group held its first meeting on 28 April 2016. Two primary issues were discussed:

- Developing a stronger working relationship between NAC and the City; and
- A proposal to develop a formal agreement between the parties setting out how the parties could work together on key issues of common interest, with the aim of having this agreement signed as part of the Roebourne 150 Celebration on 17 August 2016.

A second Working Group meeting was held on 10 June 2016. Attention at this meeting focussed on trying to get agreement between the parties on six substantive issues in relation to the draft agreement. An update on the current situation on each of the six substantive issues is included below.

The latest version of the Working Group Terms of Reference is attached as required by Council's January 2016 resolution for Council consideration (Attachment 3).

Agreement

In broad terms, the draft agreement covers:

- The proposed process for effectively and efficiently managing Aboriginal heritage matters on Ngarluma Country (as defined through Federal Court determination) in a meaningful and respectful manner;
- Engagement and consultation protocols with NAC on City planning related matters; and
- Processes for training Council staff and engaging Ngarluma people in Council related activities.

The attached version of the draft agreement (Attachment 1) is the latest version forwarded to the City by NAC. Sections that are recommended as still requiring some clarification and/or revision are highlighted, with associated comments included. It is hoped that this will help in not only becoming familiar with the contents of the agreement but also in quickly identifying the nature of matters that still require refinement. The text below summarises the current state of play.

Update on the six substantive issues:

1. Works: The definition of what constitutes 'works' that need to be reported to NAC for their consideration/consultation;
This issue has now been resolved between the parties. Maintenance of existing infrastructure and new infrastructure in areas that have already been developed are exempt works under the latest version of the agreement. Definition for Infrastructure includes roads, drains, pipelines, facilities, buildings, structures, parks and gardens, footpaths and car parks.
2. Works Notification: The process that the City will follow to notify NAC of 'works' and the subsequent action/s that will be undertaken by NAC;
Maps have been prepared showing proposed existing townsite areas proposed to be exempt from any Aboriginal heritage assessment (Attachment 2). Monthly officer meetings have been introduced to allow for presentation and consideration of upcoming proposed works, filter out Low risk works proposals not requiring further Aboriginal heritage consideration and identify works proposals requiring Aboriginal heritage risk assessment, in accordance with Department of Aboriginal Affairs due diligence guidelines. There are some matters in relation to the Works Notification Process that still require resolution between the parties. These matters are outlined in the Outstanding Issues section below.

3. Duration: The duration of the agreement and the agreement review/termination mechanisms;
This issue has now been resolved between the parties. The latest version of the agreement provides for review either by mutual consent or written notice, which can trigger dispute resolution. The agreement provides for termination by agreement, where there is a breach of a material term or if the dispute resolution process is unsuccessful.
4. Planning: The process and protocols around appropriate engagement of NAC on Strategic and Statutory land use planning matters;
Current and future plans and strategies would be discussed at monthly officer meetings. The City has offered to refer development applications outside exempt areas to NAC. In NAC's latest version of the agreement, a requirement has been introduced to undertake a study to clear exempt areas of the need for any Aboriginal heritage assessment. There are some matters in relation to the exempt areas and the related study that still require resolution between the parties. These matters are outlined in the Outstanding Issues section below.
5. Engagement: Agreeing on systems and processes for engaging Ngarluma people and Ngarluma related companies in City related projects, works and services;
This issue has now been resolved between the parties. The agreement does not contravene any local government procurement requirements that apply to the City.
6. Fee Schedule: Proposed Schedule of Rates for engaging NAC (and their related consultants) on heritage and cultural related matters.
NAC's latest proposed Schedule of Rates includes the City paying for NAC officer time in administering the agreement. It is recommended that NAC be advised that the City will not enter an agreement if the NAC intends to charge the City for officer time in administering the agreement.

Outstanding Issues

1. Maps Showing Proposed Exempt Areas
These maps have been introduced to designate areas where Aboriginal heritage review is not required. NAC is concerned that there is land within these proposed exempt areas where some review of Aboriginal heritage may still be required. The latest NAC version of the agreement includes a requirement for a study of these proposed exempt areas. There is no objection to such a study being undertaken. There is a concern, however, with requirements for all works within proposed exempt areas to be subject to heritage assessment pending completion of the study and for all land within exempt areas to be subject to heritage inspection as part of the study. The extent of this concern can be reduced by eliminating portions of exempt areas from further heritage assessment. This can be largely and fairly easily achieved via desktop review and spatial data analysis. This work should be prioritised.
2. Monthly Officer Meetings, Low Risk Works Proposals and Risk Assessments
NAC's latest version of the agreement indicates risk assessments will be undertaken by both parties and that risk assessments will still be undertaken for Low risk works. For the process to work efficiently, the agreement must be clear that:
 - Officer meetings will be used to filter out Low risk works;
 - agreed Low risk works do not require further Aboriginal heritage consideration; and
 - Aboriginal heritage risk assessments must be first undertaken by the City and then reviewed by the NAC.

The City may still rate proposed works requiring risk assessment as having Low risk. The reasons for NAC wanting to be given the opportunity to review the City's recommended actions for those works (if any) are understood and it is recommended that the inclusion of such a requirement under the agreement is acceptable.

3. Referral of Development Applications

NAC is keen to be referred development applications received by the City. The City has questioned the need to refer all development applications to NAC but has offered as a compromise, to refer to NAC any development application lodged over land outside exempt areas. The latest NAC version of the agreement requires the City to refer all development applications within and outside exempt areas. The City's offer is considered reasonable and it is recommended that Council refuse to accept NAC's request.

4. Dispute Resolution on Recommended Actions

NAC's latest version of the agreement would require dispute resolution where NAC does not agree with the City's recommended actions following the City's risk assessment. It is recommended that these matters go back to an officer meeting to see whether they can be resolved at officer level before a formal dispute resolution process is initiated. The dispute resolution clauses in the current version of the agreement hand the decision regarding costs to an independent mediator. This approach should apply to all disputes, including the referred disputes regarding recommended actions.

LEVEL OF SIGNIFICANCE

In accordance with Council Policy CG-8 Significant Decision Making Policy, this matter is considered to be of high significance in terms of social, economic and cultural issues and its effect on Council's ability to perform its role.

COUNCILLOR/OFFICER CONSULTATION

Councillors Bailey, Long, Smeathers and White-Hartig are Council nominated members of the Working Group. Council was verbally briefed on the status of negotiations with NAC at the 13 June 2016 Briefing Session.

COMMUNITY CONSULTATION

This agreement is not an agreement prepared under the Native Title Act 1993. Accordingly, the agreement does not need to be presented to a full meeting of the Ngarluma Native Title claimant group. The aim has been to have the agreement signed as part of the Roebourne 150 Celebrations on 17 August 2016.

STATUTORY IMPLICATIONS

Native Title Act 1993 and Land Administration Act 1997

Council is not obliged to develop an agreement with NAC as other legislative processes exist that cover matters proposed in the agreement. Having said that, the agreement would foster the relationship between NAC and the City and would assist in streamlining systems and processes between the parties.

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Entering the proposed agreement should yield broader benefits for the City's working relationship with NAC but would have financial implications. The agreement has been drafted to provide best practice procedures for addressing matters considered important to NAC (as determined Native Title holders) to the extent that the City (as a local government) could only

reasonably be expected to undertake. Measures such as staff training, including exempt works and exempt areas and filtering via officer meetings would allow resources to be targeted and focused towards agreed priorities.

To date, the City's direct costs in the development of the proposed agreement have involved City staff time and a 50% contribution towards NAC's 2015/16 legal costs in preparing the draft agreement. Through discussions with NAC, and through the City assuming more responsibility for administering the Working Group and preparing the agreement, the City contribution to NAC's legal costs has been kept within the City's 2015/16 budget allocation for this purpose.

NAC's latest Schedule of Rates (Attachment 4) reflects the negotiation that has taken place between the parties. While there has been a convergence on rates for many items, the main point of contention in the latest version is the inclusion of officer time for consultation and meetings. If NAC intends to charge the City for officer time in administering the agreement, then it is recommended that the City not enter the agreement.

STRATEGIC IMPLICATIONS

This item is relevant to the Council's approved Strategic Community Plan 2012-2022 and Corporate Business Plan 2012-2016. In particular the Operational Plan 2015-2016 provided for this activity:

Our Program:	1.d.2.2	Develop and implement strategic partnerships that assist in the provision of community infrastructure and service delivery.
	1.f.4.4	Strengthen relationships with indigenous groups, promoting culture, history and achievements.
Our Services:	1.d.2.2.2	Source new partnership agreements.
	1.f.4.4.2	Demonstrate a commitment to building respectful relationships with indigenous groups within the City.

RISK MANAGEMENT CONSIDERATIONS

The proposed agreement aims to streamline systems and processes for the City and NAC in dealing with Aboriginal Heritage issues. In the absence of an agreement, there is potential for project uncertainty and delays.

IMPACT ON CAPACITY

Staff from the City's Planning and Corporate Compliance team have been closely involved in preparing and reviewing the proposed agreement, with support from the City's Executive Team. As a new procedure, implementing the agreement would have an impact on Development Services in administering the process. It would also require any City officer undertaking works to notify Planning Services of those works with sufficient lead time prior to commencement to allow for Aboriginal heritage review. The actual extent of this impact would need to be monitored if the agreement is adopted.

Much of the administration of the Ngarluma Ngurra/City of Karratha Working Group will be undertaken 'in-house' by City staff.

RELEVANT PRECEDENTS

There are no relevant precedents related to this matter.

VOTING REQUIREMENTS

Simple Majority.

OPTIONS:Option 1

As per Officer's recommendation.

Option 2 – Withdraw from agreement process

That Council by SIMPLE Majority pursuant to Section 3.18 of the *Local Government Act 1995* RESOLVES to ADVISE the Ngarluma Aboriginal Corporation that it is not prepared to enter an agreement with the Ngarluma Aboriginal Corporation at this time.

Option 3 – Further work required before Council would be prepared to adopt

That Council by SIMPLE Majority pursuant to Section 3.18 of the *Local Government Act 1995* RESOLVES to REQUEST the Working Group continue to refine the agreement so that a final version agreed by the parties can be adopted by Council.

CONCLUSION

The current version of the agreement has not been finalised but most of the issues have either been resolved between the parties or such a resolution appears simple to achieve. The extent to which the City should pay for NAC to prepare and implement the agreement has always been an issue on which the parties have been coming from different perspectives. Having said that, the parties are a lot closer now on this issue than they have been previously.

A shared aim since the first Working Group meeting has been to have an agreement ready for signing as part of the Roebourne 150 celebrations, as conveyed in Council's 20 June 2016 resolution. The current version of the agreement is presented to the July OCM in its current form because this gives Council the opportunity to authorise agreement signing as part of the Roebourne 150 celebrations on 17 August 2016, being the last scheduled Council meeting before that date. It would be understandable if Council would prefer to have final outstanding issues resolved via the Working Group and for a final agreed version of the agreement to be presented back to Council for adoption. The implications of such a decision could be either a Special Council Meeting if Council still wishes for the agreement to be signed as part of the Roebourne 150 celebrations or that the agreement would only be able to be signed after the Roebourne 150 celebrations.

It is considered that the current draft version of the agreement is sufficiently advanced for Council to give conditional support. To build additional security into such a decision, it is recommended that the agreement go back to the Working Group (which includes a number of Councillors) and that several matters (NAC's Schedule of Rates, in particular) be addressed to the Chief Executive Officer's satisfaction before the agreement can be signed. It will be up to both parties to agree acceptable resolution of outstanding issues if the agreement is to be signed as part of the Roebourne 150 celebrations.

OFFICER'S RECOMMENDATION

That Council by SIMPLE Majority pursuant to Section 3.18 of the *Local Government Act 1995* RESOLVES to:

- 1. ADVISE the Ngarluma Aboriginal Corporation that it is generally accepting of the current version of the Ngarluma Ngurra/City of Karratha Relationship Agreement in its current format;**
- 2. REQUIRE the Ngarluma Ngurra/City of Karratha Relationship Agreement to be further considered by the Working Group prior to signing and for the following**

- concerns with the current version of the agreement to be addressed to the satisfaction of the Chief Executive Officer:
- a) The Schedule of Rates being revised to (amongst other things) reflect the fact that unless specific heritage work is required, consultation and negotiations between officers representing each party will be undertaken in good faith and at no cost to the other party;
 - b) The agreement placing priority on the parties working together via desktop review and spatial data analysis to reduce the extent to which heritage assessment and heritage inspection is required within Towns Areas under Clause 10.3 rather than on undertaking heritage assessment and heritage inspections in Towns Areas;
 - c) The agreement being clear under Clause 4 that:
 - i. Officer meetings will be used to filter out Low risk works;
 - ii. agreed Low risk works do not require further Aboriginal heritage consideration; and
 - iii. Aboriginal heritage risk assessments must be first undertaken by the City and then reviewed by NAC;
 - d) The agreement not requiring the City to refer to NAC all development application inside Towns Areas;
 - e) In situations where NAC does not agree with the City's recommended actions following the City's risk assessment under clause 6.3, these matters being considered at an officer meeting to see whether they can be resolved at officer level before a formal dispute resolution process is initiated;
 - f) The decision regarding costs in all dispute resolution processes being made by an independent mediator, including disputes regarding recommended actions under clause 4.8;
3. **ADVISE** the Ngarluma Aboriginal Corporation:
 - a) In relation to 2.a) above, particular concern has been raised about the request for the City to pay for NAC officer time in administering the agreement;
 - b) In relation to 2.b) above, the City acknowledges that it may still rate proposed works requiring risk assessment as having Low risk. The reasons for NAC wanting to be given the opportunity to review the City's recommended actions for those works (if any) are understood and the inclusion of such a requirement under the agreement is acceptable.
 4. **AUTHORISE** the Chief Executive Officer to agree final revisions to the agreement to address the above matters and any other incidental matters;
 5. **AUTHORISE** the Mayor and Chief Executive Officer to sign the revised agreement as part of the Roebourne 150 celebrations on 17 August 2016 subject to the above points being satisfied; and
 6. **ADOPT** the Ngarluma Ngurra/City of Karratha Working Group Terms of Reference.

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CITY OF KARRATHA

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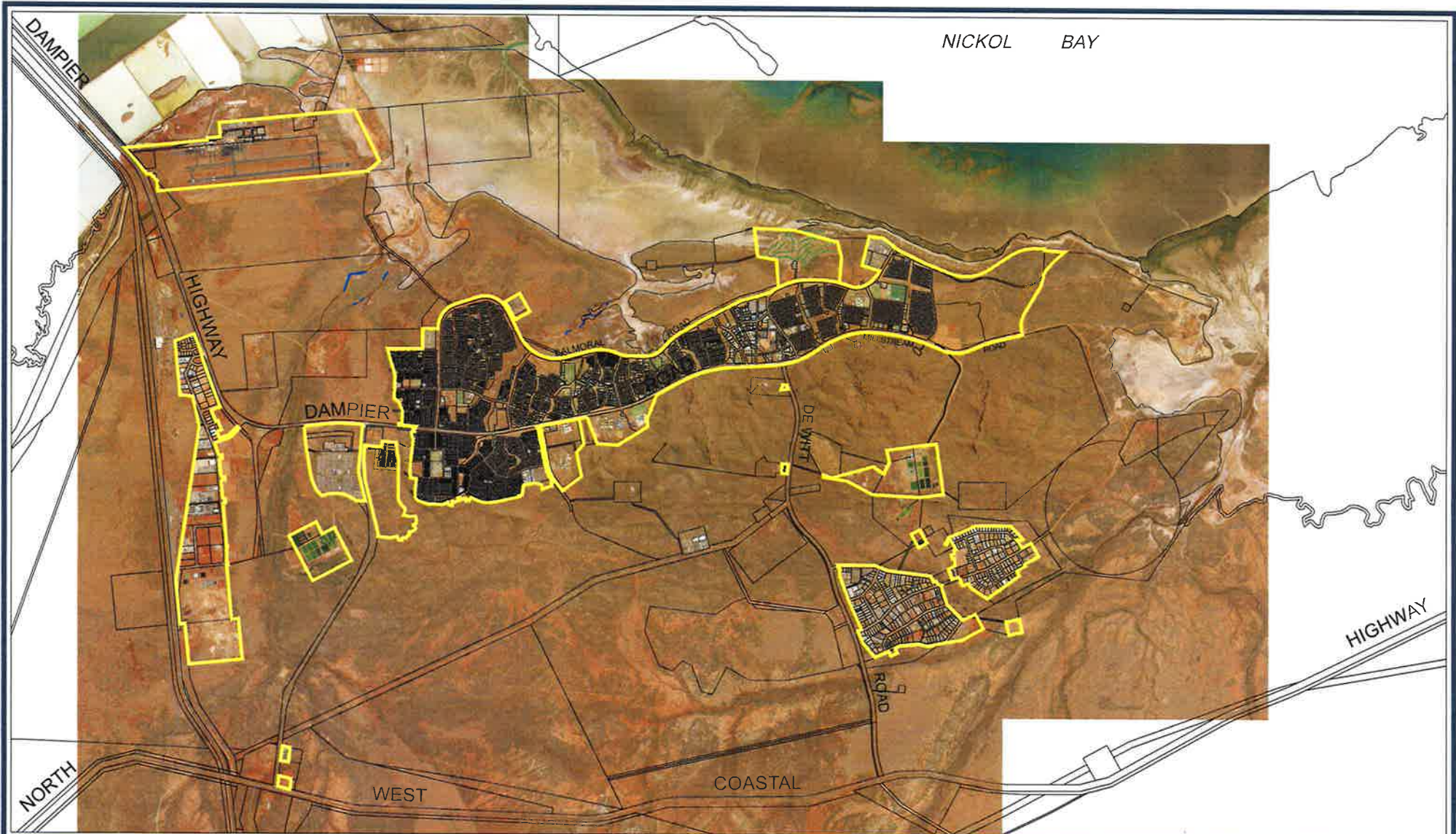
WORKS EXEMPT FROM NAC NOTIFICATION APART FROM WHERE NATIVE TITLE EXISTS.

CITY WORKS OUTSIDE EXEMPT AREAS WILL BE SUBJECT TO DUE DILIGENCE RISK ASSESSMENT.

DEVELOPMENT APPLICATIONS OUTSIDE EXEMPT AREAS WILL BE REFERRED TO NAC FOR COMMENT.

DAMPIER NAC NOTIFICATION EXEMPTIONS

CITY OF KARRATHA



CITY OF KARRATHA

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WORKS EXEMPT FROM NAC NOTIFICATION APART
FROM WHERE NATIVE TITLE EXISTS.

CITY WORKS OUTSIDE EXEMPT AREAS WILL BE
SUBJECT TO DUE DILIGENCE RISK ASSESSMENT.

DEVELOPMENT APPLICATIONS OUTSIDE EXEMPT
AREAS WILL BE REFERRED TO NAC FOR COMMENT.

KARRATHA NAC NOTIFICATION EXEMPTIONS

CITY OF KARRATHA



CITY OF KARRATHA

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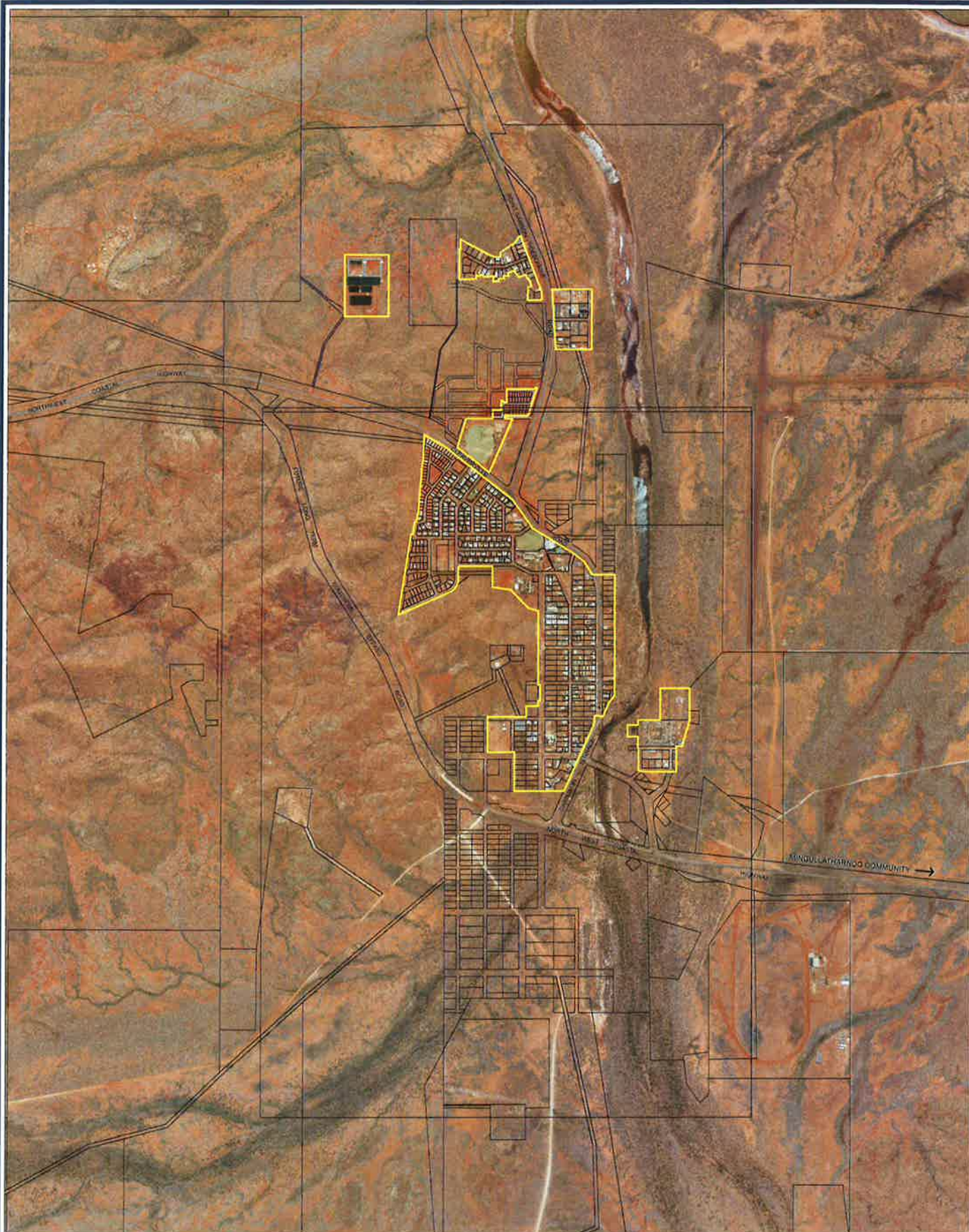
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CITY WORKS OUTSIDE EXEMPT AREAS WILL BE SUBJECT TO DUE DILIGENCE RISK ASSESSMENT.

DEVELOPMENT APPLICATIONS OUTSIDE EXEMPT AREAS WILL BE REFERRED TO NAC FOR COMMENT.

POINT SAMSON NAC NOTIFICATION EXEMPTIONS

CITY OF KARRATHA



CITY OF KARRATHA

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WORKS EXEMPT FROM NAC NOTIFICATION APART FROM WHERE NATIVE TITLE EXISTS.

CITY WORKS OUTSIDE EXEMPT AREAS WILL BE SUBJECT TO DUE DILIGENCE RISK ASSESSMENT.

DEVELOPMENT APPLICATIONS OUTSIDE EXEMPT AREAS WILL BE REFERRED TO NAC FOR COMMENT.

ROEBOURNE NAC NOTIFICATION EXEMPTIONS

CITY OF KARRATHA



CITY OF KARRATHA

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DATE: JUNE 2016



NORTH



WORKS EXEMPT FROM NAC NOTIFICATION APART
FROM WHERE NATIVE TITLE EXISTS.

CITY WORKS OUTSIDE EXEMPT AREAS WILL BE
SUBJECT TO DUE DILIGENCE RISK ASSESSMENT.

DEVELOPMENT APPLICATIONS OUTSIDE EXEMPT
AREAS WILL BE REFERRED TO NAC FOR COMMENT.

WICKHAM NAC NOTIFICATION EXEMPTIONS

CITY OF KARRATHA

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City of Karratha and Ngarluma Aboriginal Corporation RNTBC

Ngarluma Ngurra/City of Karratha

Working Group

Terms of Reference

Version 4

1. Background/Context

- a. The Ngarluma Aboriginal Corporation (NAC) is the Native Title Prescribed Body Corporate that has authority and responsibility to manage and protect Ngarluma native title rights and interests and Aboriginal Sites on Ngarluma Country. Ngarluma Country and the determined native title rights and interests of the Ngarluma people fall within the municipal boundaries of the City of Karratha.
- b. Through planning future land use and management, providing community services and extending and expanding community infrastructure, the City of Karratha (City) can affect Ngarluma native title rights and interests and Aboriginal Sites on Ngarluma Country.
- c. The NAC has its own plans for Ngarluma Country and has an interest in plans and works proposed by the City and others.
- d. It is important that the NAC and the City have a good working relationship and that the parties can work together to achieve the best possible balance of sensitive development and cultural recognition.
- e. The NAC and the City have agreed to create the Ngarluma Ngurra/City of Karratha Working Group to assist with the preparation, implementation and review of an Agreement between the NAC and the City, and to assist in building and maintaining a positive working relationship between the two Parties.

2. Roles and functions of the Working Group

The role of the Working Group is to:

- a. oversee and guide the proper implementation and review of the Ngarluma Ngurra/City of Karratha Relationship Agreement;
- b. meet at least twice a year during the term of the Agreement or more frequently as required to discuss aspects of the Agreement and any other matters;
- c. contribute to resolving matters subject of dispute in accordance with the terms of the Agreement;
- d. maintain dialogue and contribute to a positive working relationship between the parties;
- e. be a forum for the City and the NAC to present ideas and information on projects and initiatives;

- f. assist in improving the understanding and knowledge of Ngarluma cultural heritage values and the role of local government and ways to engage in local government processes;
- g. support the advancement of Ngarluma employment, training, skills development and business opportunities;
- h. establish a strategic framework and an efficient way to work through native title to progress future development in a culturally sensitive way and under agreed terms; and
- i. represent and report to the City Council and the NAC Board.

In addition to the above roles, the Working Group will also carry out the following functions:

- a. Oversee negotiation, settlement, implementation and review of agreements between the Parties (including the Agreement);
- b. Guide and oversee the work of the NAC and City officers responsible for implementing recommendations of the Working Group and any agreement or other proposals prepared under the guidance of the Working Group;
- c. Build and maintain a strong and effective working relationship between the NAC and the City;
- d. Exchange information relating to current projects, initiatives, ideas and issues;
- e. Assist in guiding the resolution of issues presented;
- f. Improve processes to streamline the way the Parties work through relevant matters;
- g. Identify opportunities for the Parties to work together on matters of common interest; and
- h. Without pre-empting decisions, represent the views of the NAC Board and the City Council in considering matters presented.

3. Role of individual group members

The role of the individual members of the Working Group includes:

- a. attending meetings as required and actively participating in the Working Group;

- b. contributing meaningfully and productively to Working Group meetings in terms of working towards resolving issues and setting direction;
- c. maintaining a genuine interest and commitment to initiatives and outcomes being pursued by the Working Group;
- d. being an advocate for the aims of the Working Group and the outcomes being pursued;
- e. being open to sharing, and being respectful and considerate to views and perspectives expressed by Working Group members.

4. General

4.1. Membership

The Working Group shall be comprised of the following Standing Members:

Member	Position	Proxy
NAC Chairman	Chair	NAC Board Member
City Mayor	Deputy Chair	Alternative Councillor
Councillor Garry Bailey		
Councillor Fiona White-Hartig		
Councillor Evette Smeathers		
NAC Executive Officer		NAC staff member nominee
NAC Heritage Manager		NAC staff member nominee
City Chief Executive Officer		Director Development Services
City Manager Planning Services		Director Development Services
City Development Services DAO	Secretary	City Executive Assistant

Other NAC and City representatives including consultants may attend Working Group meetings as required.

4.2. Chair/Convenor

The Working Group will be chaired by the NAC Chairman. Meetings will be convened at least twice a year during the term of the Agreement or more frequently as required by the NAC Chairman.

4.3. Agenda items

Where possible, all agenda items will be forwarded to the Secretary by close of business ten (10) Business Days prior to the next scheduled meeting.

The aim is for the agenda, with attached meeting papers, to be distributed at least five (5) Business Days prior to the next scheduled meeting.

4.4. Minutes and meeting papers

The minutes of each Working Group meeting will be prepared by the Secretary.

Full copies of the minutes, including attachments, will be provided to all Working Group members no later than five (5) working days following each meeting.

Where it is not possible to arrange a Working Group meeting to consider priority matters that requires Working Group consideration, such matters may be considered out-of-session by agreement of the Working Group. Any out-of-session consideration to matters shall be recorded in the minutes of the next scheduled meeting.

4.5. Frequency of meetings

The Working Group will meet at least twice a year during the term of the Agreement or more frequently as required.

4.6. Proxies to meetings

The Proxy for the Chairman is an alternative NAC Board member.

As there are four City Councillors on the Working Group (including the Mayor), there are no nominated proxies.

4.7. Quorum requirements

A quorum will be the Chairman (or proxy) and at least two City Councillors. In situations where the Chairman is not available for a Working Group meeting, the Deputy Chairman will assume the position of Chairman for that meeting.

The Secretary will ensure there is a quorum for each Working Group meeting. If a quorum cannot be achieved at a scheduled meeting, then the meeting will be rescheduled to the next available date when a quorum can be achieved.