



Consolidated Trust Deed

13.02.2012

2012

WORKING COPY OF TRUST DEED CONSOLIDATED AS AT
14 FEBRUARY 2012 (INCLUDING AMENDMENTS UP TO AND
INCLUDING THE VARIATION DEED WHICH AMEND THE
TRUST DEED WITH EFFECT FROM 13 FEBRUARY 2012)

General
Gumala
Foundation

1997

CLARIE BOYD
("The Founder")

AND

GUMALA ABORIGINAL CORPORATION
("The Manager")

GUMALA INVESTMENTS PTY LTD
("The Trustee")

GENERAL GUMALA FOUNDATION

CONSOLIDATED TRUST DEED

WORKING COPY OF TRUST DEED CONSOLIDATED AS AT 14 FEBRUARY 2012
(INCLUDING AMENDMENTS UP TO AND INCLUDING THE VARIATION DEED WHICH
AMEND THE TRUST DEED WITH EFFECT FROM 13 FEBRUARY 2012)

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THIS DEED is made on

day of

1997

B E T W E E N:

GUMALA ABORIGINAL CORPORATION, ICN 2744, of 1 Stadium Road, Tom Price, Western Australia 6722 ("The Manager")

AND

CLAIRE BOYD of 4 Minora Road, Dalkeith, Western Australia ("Founder")

GUMALA INVESTMENTS PTY LTD of C/- Edwards Robinson Lark, 23 Ventnor Avenue, West Perth ("The Trustee").

WHEREAS:

- A. The Manager is incorporated under the Aboriginal Councils and Association Act. [*Note to Consolidated Deed*: Now The Corporations (Aboriginal and Torres Strait Islander) Act 2006 (**CATSI Act**).
- B. Any of the Bunjima people, the Niapaili people and the Innawonga people are entitled to be members of the Manager.
- C. The Manager is negotiating an agreement with Hamersley Iron Pty Ltd regarding a proposed iron ore mine on the Traditional Lands.
- D. This Foundation has been created for the purposes of benefiting the Traditional Owners in the manner set out herein.
- E. The Foundation will be managed by the Manager under the supervision and direction of the Trustee.

NOW THIS DEED WITNESSETH AS FOLLOWS:

1. DEFINITIONS

In the interpretation of this Deed the following expressions shall unless the context otherwise requires have the meanings hereunder set out:

"Aboriginal Tradition" means the bodies of traditions, customs and beliefs of Aborigines or of a community of Aborigines and includes those traditions, observances, customs and beliefs as applied in relation to particular persons, sites, areas of land, things or relationships;

"Accounting Period" shall mean each period of twelve (12) months ending on the 30th day of June each year **PROVIDED** first that the period commencing on the date hereof and ending on the 30th day of June next shall be an Accounting Period and secondly that the period commencing on the first day of July prior to the Vesting Day and ending on the Vesting Day shall be an Accounting Period;

"Advisory Period" means the period of 10 years commencing on the date hereof as it may be extended by agreement between the Trustee and the Advisory Trustee;

“Advisory Trustee” means the advisory trustee referred to in clause 15;

“Appointing Committee” means a committee convened from time to time as required under this Deed comprising:-

- (1) two members nominated by the Manager;
- (2) one member nominated by the President for the time being of the Law Society of Western Australia Inc at the request of the Manager;
- (3) one member nominated by the President for the time being of the WA Chapter of the Institute of Chartered Accountants;

“Auditor” means the person appointed as auditor from time to time by the Trustee;

“Available Income” means the net income of the Foundation in any Financial Year after payment or provision for the costs of administering the Foundation and taxes and charges;

“Beneficiaries” shall mean the Traditional Owners;

“Bunjima” means the people who are from time to time members of the Aboriginal peoples known as the Bunjima being the persons who are by Aboriginal Tradition entitled to the use or occupation of part of the Claim Area irrespective of whether or not the traditional entitlement is qualified as to place, time, circumstance, purpose or permission and includes those persons, if any, having native title thereto under common law;

“Claim Area” means the area outlined in black in the annexed plan being the area in respect of which a native title claim has been lodged on behalf of the Bunjima, Innawonga and Niapaili peoples;

“Community Development” means the acquisition or construction of roads, buildings, power and water services and installations and other infrastructure to service the needs of any section of the Traditional Owners;

“Community Projects” means any projects for the benefit of the Traditional Owners or a section thereof including without limitation:

- (1) the construction, maintenance or modification or operation of houses, schools, hospitals, community centres, aid posts, communication centres, education facilities or the like;
- (2) the conduct of studies, inquiries, programs or the like to determine the needs, desires, aims and aspirations of the Traditional Owners;
- (3) the provision of financial assistance for scholarships or grants, in whole or in part, for the education, advancement or training of any member or members of the Traditional Owners;
- (4) the provisions of business management advice or other advice or assistance in connection with businesses run by members of the Traditional Owners or Eligible Entities or in connection with other activities or services for the benefit of the Traditional Owners;

- (5) the grant of moneys or the investment of equity funds or the making of loans to any Eligible Entity;

“Deemed Traditional Owners” means persons deemed in accordance with clause 12.4 to be Traditional Owners;

“Elderly Foundation” means a foundation for the benefit of elderly and infirm Beneficiaries created by Deed on or about the date of this Deed;

“Eligible Corporation” shall mean any corporation all the issued shares in which are beneficially owned or held by any Beneficiaries;

“Eligible Entities” means any Eligible Corporation or Eligible Trust;

“Eligible Trust” shall mean any trust or settlement under which only Beneficiaries or a group of Beneficiaries has any interest;

“Executive Officer” means a full time executive officer to be employed by the Manager;

“Financial Year” shall bear the same meaning as Accounting Period;

“Foundation” means the Trust created by this Deed;

“General Meetings” means general meetings of the Beneficiaries;

“General Meeting Directions” or **“General Meeting Directives”** means any directions, instructions, advices or the like given in writing to the Trustee and the Manager by the chairperson (or his delegate in writing) of any General Meeting in accordance with any valid resolution or decision made at that General Meeting under clause 16;

“Guiding Principles” means the guiding principles of the trust referred to in clause 5;

“Hamersley” means Hamersley Iron Pty Ltd;

“Hamersley Companies” means Hamersley Iron Pty Ltd, Hamersley Iron-Yandi Pty Ltd and any related body corporation in relation thereto;

“Identified Traditional Owners” shall bear the meaning ascribed in clause 5.1(2);

“Innawonga” means the people who are from time to time members of the Aboriginal peoples known as the Innawonga being the persons who are by Aboriginal Tradition entitled to the use or occupation of part of the Claim Area irrespective of whether or not the traditional entitlement is qualified as to place, time, circumstance, purpose or permission and includes those persons, if any, having native title thereto under common law;

“Insolvency Event” means in relation to a company or corporation any of the following events:-

- (1) it goes into liquidation; or
- (2) the appointment of a receiver to all or any of its assets; or
- (3) it ceases to carry on business; or

- (4) all or any of it is placed under official management; or
- (5) it enters into a compromise with its creditors;

"Investment Trust" means any trust of the kind referred to in clause 8.2 to be established by the Trustee;

"Liaison Committee" means the Committee to be formed by that name under the terms of the proposed Land Use Agreement between the Manager and Hamersley relating to the Project;

"Minimum Term" means 5 years;

"Niapaili" means the people who are from time to time members of the Aboriginal peoples known as the Niapaili being the persons who are by Aboriginal Tradition entitled to the use or occupation of part of the Claim Area irrespective of whether or not the traditional entitlement is qualified as to place, time, circumstance, purpose or permission and includes those persons, if any, having native title thereto under common law;

"Nominated Elders" means the persons who may be designated as such by resolutions in General Meeting;

"Objects" means the objects of the Foundation being those set out in clause 3.1;

"Perpetuity Period" shall mean the perpetuity period applicable to dispositions effected by this Deed under the rule known as the rule against perpetuities (as modified by statute) which rule as so modified is hereinafter in this Deed called "the Rule against Perpetuities") and that period shall be the period of eighty years commencing on the date of this Deed;

"Professional Trustee Company" means a company of good repute whose ordinary course of business is acting as trustee on a commercial basis such as for example, Perpetual Trustees Ltd;

"Project" means the Yandicoogina Iron Ore Mine and Railway Project proposed by Hamersley;

"Region" means the Pilbara region as shown on the attached map;

"Review" means a review under clause 33;

"Special Resolution" means a resolution conforming with clause 30;

"Trustee" shall mean the Trustee or other trustee or trustees for the time being of this Trust;

"Trust Fund" shall mean:

- (1) the initial fund of \$10.00 provided by the Founder;
- (2) any monies from time to time received from any Hamersley Companies pursuant to any agreement or agreements which may be reached between the Manager and any Hamersley Companies;

- (3) all moneys investments and property paid transferred to or accepted by the Trustee as additions to the Trust Fund held by them pursuant to this Deed;
- (4) the accumulations of income and all accretions and additions thereto from any source; and
- (5) the investments and property from time to time representing the said money, investments, property, accumulations, accretions and additions.

“Traditional Lands” means those parts of the Claim Area which are affected by mining leases, special leases and other tenure granted to the Hamersley Companies for the purposes of siting and operating the Project;

“Traditional Owners” means the persons who are under Aboriginal Tradition the traditional owners or custodians of the Traditional Lands including future generations thereof, and any Deemed Traditional Owners;

“Traditional Owner Council” means each and every committee or group of Traditional Owners which may at any time or from time to time be bona fide formed (and notified to the Trustee and Manager in writing) in accordance with the traditions and customs of the Traditional Owners for the purposes of seeking consensus among and representing the interests of the Traditional Owners or a section thereof;

“Traditional Owner Register” means the register of Traditional Owners contemplated by clause 12;

“Trust” means the trust created by this Deed;

“Vesting Day” shall mean the day specified as “the Vesting Day” in the Schedule;

the singular shall mean and include the plural and vice versa and any gender shall mean and include all other genders;

references to any statutory enactment shall mean and be construed as references to that enactment as amended modified and re-enacted from time to time;

the index does not form part of this Deed and shall not affect the interpretation hereof.

2. DECLARATION OF TRUST AND CREATION OF FOUNDATION

The Founder has requested the Trustee to act as trustee of the Trust Fund and the Trustee has agreed to the request and the Founder **HEREBY DECLARES** that the Trustee shall and the Trustee **HEREBY DECLARES** that:-

- (1) it will henceforth stand possessed of the Trust Fund and of the income thereof upon the trusts for the benefit of the Traditional Owners and subject to the powers and provisions hereinafter expressed concerning the same to be dealt with only in accordance with the terms of this Deed;
- (2) the Trust created by this Deed is to be called the “Gumala Foundation” which shall be administered on the basis that the Manager will to the extent practicable and as required by the Trustee manage the Trust Fund under the direction, supervision and control of the Trustee.

3. OBJECTS OF FOUNDATION

- 3.1 The Foundation is established as a public benevolent institution for the objects of the relief of poverty, sickness, suffering, distress, misfortune or destitution of the Traditional Owners, particularly those Traditional Owners residing in the Region.
- 3.2 The Foundation is to be carried out without purpose of private gain.
- 3.3 The Foundation is established for the benefit of the Traditional Owners.
- 3.4 Without limiting the generality of the Objects referred to in clause 3.1, by way of illustration and example of those objects, it is recorded that the Foundation may pursue the following objectives provided they fall within the Objects:-
- (1) to seek to bring lasting and tangible benefits to the Traditional Owners;
 - (2) to improve the housing, living conditions, health and general standards of living of the Traditional Owners;
 - (3) to provide for or undertaking of training and education of Traditional Owners;
 - (4) to establish training centres to carry on the training and education of Traditional Owners;
 - (5) to assist the Traditional Owners in becoming economically independent whether by the acquisition or establishment of economic enterprises or interests therein or otherwise;
 - (6) to assist the Traditional Owners in the acquisition, development and establishment of homeland communities within the Claim Area;
 - (7) to fund, administer or otherwise assist in connection with the development and implementation of Community Projects;
 - (8) to invest portions of the Trust Fund for the long term benefit of the Traditional Owners; and
 - (9) to assist the Traditional Owners in asserting and maintaining their traditional rights to land and otherwise.

4. THE TRUSTEE AND THE MANAGER

- 4.1 The Trustee is hereby appointed Trustee of the Trust Fund.
- 4.2 The Manager is hereby appointed the manager of the Foundation and the Trust Fund subject to the supervision, direction and control of the Trustee.
- 4.3 The Trust Fund (including without limitation all property from time to time comprised in the Trust Fund) will be vested in the name of the Trustee upon the terms and conditions of this Deed.
- 4.4 The Manager will be responsible on a day-to-day basis for:-
- (1) consulting with the Traditional Owners;

- (2) developing, researching and preparing proposals for investments, Community Projects and other matters falling within the objects of the Foundation for the purpose of the application of the Trust Fund;
 - (3) submitting proposals to the Trustee in relation thereto; and
 - (4) where the Trustee considers it appropriate assisting or effecting the implementation of proposals approved by the Trustee.
- 4.5 The Trustee will be responsible for:-
 - (1) taking proper steps to ensure that the Manager acts in accordance with the terms of this Deed;
 - (2) reviewing proposals put by the Manager to:-
 - (a) determine whether such proposals are in accordance with the terms of this Deed; and
 - (b) ensure that the Manager in formulating those proposals, is acting prudently and carefully and in a workmanlike manner and with reasonable due diligence.
- 4.6 No proposal may be implemented by the Manager unless the Trustee has approved such proposal in writing.
- 4.7 The Trustee upon receipt of a proposal from the Manager will:-
 - (1) consider the proposal promptly; and
 - (2) either:-
 - (a) approve the proposal; or
 - (b) approve the proposal subject to compliance with conditions which may be imposed by the Trustee;
 - (c) defer consideration of the proposal pending receipt of further information, studies or other supporting documentation from the Manager; or
 - (d) reject the proposal in which case written reasons will be given to the Manager as to the reasons for rejection and, where appropriate, recommendations as to what aspects of the proposal might be varied or reconsidered by the Manager in order that the proposal may be resubmitted for further consideration by the Trustee.
- 4.8 The Trustee in performing its functions hereunder will at all times to the extent consistent with the Objects endeavour to:-
 - (1) have due and proper regard to the aims and aspirations of the Traditional Owners;
 - (2) supervise the Foundation and discharge each function hereunder in a manner which will assist the Manager in gaining increasing expertise in the management of the Foundation with the view to, over time, the management

input from the Trustee decreasing and the management input from the Manager increasing;

- (3) have due regard to the desire of the Manager and the Traditional Owners to work towards self-determination (being the control, protection and development of their own culture and lives) and in that regard, the Trustee will endeavour to ensure that the extent practicably possible, decision making in relation to the Foundation occurs only after proper consultation with the Manager or the Traditional Owners;
- (4) have due and proper regard to the Guiding Principles.

5. GUIDING PRINCIPLES

5.1 The Guiding Principles of the Foundation are, subject to the Objects and to the extent consistent with the Objects, as follows:

- (1) the Foundation's activities are to be primarily focussed on the Region and the majority of the benefits of the Foundation will be for the benefit of those Traditional Owners who reside in the Region;
- (2) certain people residing in the Region have as at the date hereof been recognised as having traditional ownership or custodianship of the Traditional Lands ("the Identified Traditional Owners"). The Identified Traditional Owners will have affiliations by kinship to a large number of people. It is intended that to the extent practicable the Identified Traditional Owners will through a process of consultation and discussion determine which other people are to be treated as Traditional Owners;
- (3) in determining how benefits are to be shared between the Beneficiaries due consideration will be had to any relevant General Meeting Directives including directives in relation to Guiding Principles (1) and (2);
- (4) except to the extent expressly contemplated Guiding Principles (1), (2) and (3), the Foundation will be impartial in sharing benefits between the Traditional Owners and will not favour any sections of the Traditional Owners. However, it is recognised that some sections of the Traditional Owners may receive some benefits before other sections because of the limited financial resources of the Foundation in any Financial Year. It is also recognised that different sections of the Traditional Owners may enjoy benefits of different kinds;
- (5) the views of the Traditional Owners as determined through General Meeting Directives and consultation will be considered in the administration of the Foundation;
- (6) the Trust Fund is for the benefit of the existing Traditional Owners and for future generations of the Traditional Owners;
- (7) in determining how to distribute, apply or invest the Trust Fund a balance must be sought between:-
 - (a) immediate application of the Trust Fund for Community Projects and other purposes consistent with the Objects of the Foundation; and

- (b) wise investment of the Trust Fund in income producing investments for the long term benefit of the Traditional Owners and future generations thereof.

6. TRUSTEE INDEPENDENCE

6.1 Notwithstanding any other provision herein, the Trustee in exercising its powers herein and in decision making in relation to the Foundation is not bound to implement:-

- (1) any General Meeting Directives; or
- (2) the strict terms of any Guiding Principles; or
- (3) any views expressed by Traditional Owners or the Manager in consultations; or
- (4) any advice or recommendation of any Advisory Trustee;

and the Trustee may ultimately after all such consultations and considering the matters the Trustee is required to consider, make such decisions and exercise its powers in such manner as the Trustee considers to be in the best interests of the Foundation and the Beneficiaries within the Objects of the Foundation.

6.2 The Trustee is intended to be independent of the Traditional Owners and the Manager in the performance of the Trustees' functions and the Trustee may regulate its affairs in such manner as it thinks fit to preserve its independence.

6.3 The Trustee has the ultimate decision making power in all matters relating to the Foundation.

7. CONSULTATION WITH TRADITIONAL OWNERS

7.1 Each of the Trustee and the Manager will in discharge of their respective duties hereunder consult regularly with the Traditional Owners, for the purposes of:-

- (1) informing the Traditional Owners as to the activities of the Foundation;
- (2) gathering information as to the aims and aspirations of the Traditional Owners;
- (3) seeking from the Traditional Owners proposals and ideas as to future activities of the Foundation;
- (4) seeking the views of the Traditional Owners as to present and proposed activities of the Foundation.

7.2 Each of the Trustee and the Manager will have power to convene and pay the reasonable expenses of meetings of the Traditional Owners or section thereof at such times and in such manner as they think fit (which expenses may include for example a reasonable mileage allowance for Traditional Owners who attend).

7.3 The Trustee must consult with the Traditional Owners at a meeting thereof at least once in each Financial Year.

- 7.4 The Manager must consult with the Traditional Owners at a meeting thereof at least three times in each Financial Year.
- 7.5 The Manager or the Trustee may if they consider it appropriate consult with the Traditional Owners by convening separate meetings of different sections of the Traditional Owners.
- 7.6 In discharging its obligations to consult with various persons and bodies hereunder, the Trustee or the Manager (as the case may be) may, in addition to any other manner of consultation, advertise or give such notice to the relevant persons or bodies as is reasonably practicable of the time and place at which the Trustee or the Manager (as the case may be) will be available for consultation and the Trustee or the Manager (as the case may be) shall be deemed to have discharged its obligation to so consult if a representative of the Trustee or a representative of the Manager attends at such time and place notwithstanding that some or all of the persons or bodies to which they have given notice may fail to attend for the purposes of such consultation. Consultation on day to day issues may, when the Trustee considers appropriate, be effected by telephone or facsimile contact with the Manager or the responsible officer or employee of the Manager.

8. UTILISATION OF INCOME

Investments

- 8.1 Not less than 40% of the Available Income received by the Trustee in each Financial Year will be invested by the Trustee, after consultation with the Manager, in medium to long-term prudent investments ("Investments").
- 8.2 For the purposes of making the Investments the Trustee may establish one or more unit trusts with a corporate trustee all the units in which will be held by the Trustee under the terms of this Deed. The corporate trustee will in that instance be the legal owner of all investments.

Education and Training

- 8.3 Not less than 10% of the Available Income received by the Trustee in each Financial Year will be applied after consultation with the Manager or in accordance with proposals of the Manager approved by the Trustee in funding programmes for the education and training of Traditional Owners.
- 8.4 If in any Financial Year the Trustee determines that it would be in the best interests of the Foundation to spend less than 10% of Available Income in funding programmes for Traditional Owners, then the balance of the 10% will be invested in accordance with clause 8.1.

Business Development

- 8.5 Not less than 10% of the Available Income received by the Trustee in each Financial Year will be applied by the Trustee after consultation with the Manager or in accordance with proposals of the Manager approved by the Trustee in assisting the Manager, Eligible Entities or the Traditional Owners in acquiring, commencing, expanding, approving, upgrading or restructuring economic enterprises or interests in economic interests with a view to assisting Traditional Owners in becoming economically independent. By way of example, such funds may be applied by way of loans, grants, equity investments held by the Manager or the Trustee or by the

provision of funding for business or other advice in connection with such economic enterprises.

- 8.6 If in any Financial Year the Trustee determines that it would be in the best interests of the Foundation to spend less than 10% of the Available Income in accordance with clause 8.5 then the balance of the 10% of Available Income will be invested in accordance with clause 8.1 on the basis that in future Financial Years the Trustee may, if the Trustee considers it appropriate, utilise some or all of the amount so invested for the purposes specified in clause 8.5.

Community Development

- 8.7 Not less than 20% of the Available Income received by the Trustee in each Financial Year will be applied by the Trustee after consultations with the Manager or in accordance with proposals of the Manager approved by the Trustee in connection with Community Development programmes.
- 8.8 Any infrastructure built or acquired in the course of implementing Community Development programmes will be owned by the Trustee on behalf of the Foundation unless the terms on which the funding is provided stipulates clearly in writing to the contrary.

Health and Well-being

- 8.9A Not less than 10% of the Available Income received by the Trustee in any Financial Year will be applied by the Trustee after consultation with the Manager or in accordance with proposals of the Manager approved by the Trustee in funding programmes for the health and well-being of the Traditional Owners.

Cultural Purposes

- 8.9 Up to 5% of the Available Income received by the Trustee in each Financial Year will be utilised for maintaining, protecting and enhancing the cultural life of the Traditional Owners.

Other Income

- 8.10 The balance of the Available Income received by the Trustee in any Financial Year may be applied by the Trustee after consultation with the Manager or in accordance with proposals of the Manager approved by the Trustee in furtherance of any activities falling within the Objects of the Foundation.

Proviso

- 8.11 If in any Financial Year the Trustee determines after consultation with the Manager that it would not be in the best interests of the Foundation to apply any of the minimum levels of Available Income referred to above to any of the purposes referred to above then the Trustee may by instrument in writing setting out the reasons therefore determine that in that Financial Year any of the above minimums will not apply. A copy of the instrument will be provided to the Manager. Without limiting the generality of the foregoing, an example of the sorts of reasons which may cause the Trustee to decide to determine that any of the above minimum levels will not apply are:-

- (1) if insufficient appropriate proposals are received and approved for funding in respect of economic enterprises in that Financial Year;
- (2) in insufficient numbers of suitable Traditional Owners apply to participate in programmes for education and training for that Financial Year;
- (3) if programmes for Community Development are not sufficiently advanced, planned and researched to make funding those programmes appropriate in that Financial Year; or
- (4) if in the course of consultation other pressing needs of the Traditional Owners have been identified which are within the scope of the Objects and in more urgent need of funding and implementation than any of the activities in respect of which minimum funding is prescribed above;
- (5) if the Available Income in that Accounting Period is too low to enable the Available Income to be meaningfully and economically applied in accordance with the minimum levels.

9. CONSULTATION WITH LIAISON COMMITTEE

9.1 At regular intervals of not less than once in every year, the Trustee will meet with the Liaison Committee for the purpose of:-

- (1) consulting with the Liaison Committee in relation to those areas of the Foundations activities where activities may be undertaken in conjunction with or in partnership or with the assistance of Hamersley;
- (2) seeking the advice of the Liaison Committee as to potential areas of collaboration between Hamersley and the Foundation;
- (3) discuss other matters of mutual interest to the Foundation and Hamersley.

10. RESOURCING OF MANAGER

10.1 The Manager will need to be sufficiently resourced out of the Trust Fund to enable the Manager to effectively and efficiently perform its functions hereunder.

10.2 The Trustee will provide to the Manager funding to operate an appropriately sized and equipped office and funding to:-

- (1) employ a full time Executive Officer who will be engaged on merit and who must have appropriate qualifications and experience in business administration to be able to take responsibility for the day-to-day implementation of the Manager's duties hereunder;
- (2) employ a full time or part time chairperson to work with the Executive Office on day-to-day basis. The chairperson must be a Traditional Owner;
- (3) employ such secretarial support staff and other persons who may from time to time be agreed in writing between the Trustee and the Manager;
- (4) pay reasonable sitting fees and travel expenses to committee members for committee meetings.

- 10.3 The Trustee and the Manager will jointly use their best endeavours to identify and recruit an appropriate Executive Officer for the Manager. No person will be engaged by the Manager as Executive Officer unless the Manager and the Trustee both approve in writing the engagement of that person and the terms of the engagement.
- 10.4 The Executive Officer will primarily report to the Committee of the Manager. The Executive Officer will also be responsible for reporting to the Trustee on behalf of the Manager.
- 10.5 The Trustee will from time to time review the effectiveness and efficiency of the Manager and whenever possible will take proper and proactive steps to increase the effectiveness and efficiency of the Manager which steps may, where appropriate, include:-
- (1) identifying, recommending and funding appropriate qualified consultants to assist the Manager;
 - (2) providing management support directly to the Manager;
 - (3) assisting in the mediation of disputes involving the Manager;
 - (4) identifying, recommending and funding skills enhancement workshops or courses for employees or committee members of the Manager;
 - (5) providing assistance in formulating and implementing financial controls.

11. DISTRIBUTIONS

- 11.1 The Foundation will primarily endeavour to provide benefits to the Beneficiaries by way of the funding or implementation of Community Projects or the provision of other goods and services. It is not intended that significant amounts of cash will be distributed to the Beneficiaries.
- 11.2 Subject to clause 11.3 no cash may be distributed to the Beneficiaries unless there has first been consultation between the Trustee, the Manager and the Traditional Owners as to the proposal to distribute cash.
- 11.3 The Trustee may in its discretion at any time, after consultation with the Manager, make cash payments to Beneficiaries in cases of emergency or to alleviate unusual hardship or distress.
- 11.4 If the Trustee is required from time to time to distribute cash funds to any section of the Traditional Owners then the Trustee may in addition to any other methods of distribution:-
- (1) pay the funds to the Nominated Elders for that section of the Traditional Owners in which case receipt by the Nominated Elders will be good discharge of the Trustee's obligation to pay funds to that section of the Traditional Owners; or
 - (2) advise the Nominated Elders in writing that the Trustee has funds allocated for payment to that section of the Traditional Owners and convene a General Meeting of that section for the purposes of seeking direction from the General Meeting as to who and in what proportions or for what purpose the funds are to be applied by the Trustee. Payment by the Trustee in accordance with any

such direction will be good discharge of the Trustee's obligation to pay the funds to that section of the Traditional Owners.

12. TRADITIONAL OWNER REGISTER

12.1 The Trustee shall cause to be determined to the extent practicable which persons are from time to time members of the Traditional Owners on regular intervals not exceeding five years and in doing so the Trustee shall have regard to:

- (1) Aboriginal Tradition;
- (2) the findings of any bona fide genealogical studies, landownership studies or land boundary studies which may at any time or from time to time be carried out;
- (3) whether a person regards himself as a Traditional Owner and is accepted by other Traditional Owners as a Traditional Owner;
- (4) any relevant determination of any Court or tribunal;
- (5) the relationship of a person to the area of the Traditional Lands in terms of family, clan, kinship, traditional occupation rights by marriage or affiliation, usufructuary rights and all other connections to the land recognised by Aboriginal Tradition;
- (6) the views of any Traditional Owner Council.

12.2 The Trustees shall cause to be compiled and maintained a register to be known as the Traditional Owner Register containing information as to:

- (1) names and addresses of the Traditional Owners of the Traditional Lands;
- (2) whether each individual is a member of the Bunjima people, the Niapaili people or the Innawonga people.

12.3 The Trustee may from time to time refer to the Identified Traditional Owners (or a representative committee thereof) for determination or advice questions as to whether particular peoples are Traditional Owners.

12.4 If the Identified Traditional Owners or a representative committee thereof (as the case may be) determine that particular peoples are to be considered as Traditional Owners then such person or persons will be deemed to be Traditional Owners irrespective of whether genealogical or landownership studies have identified such person or persons as Traditional Owners.

13. HOLDING OF THE TRUST FUND

13.1 Subject to clause 14 all monies from time to time forming part of the Trust Fund shall be held by the Trustee in the name of the Trustee who may deposit the same in such bank accounts opened in the name of the Trustee as the Trustee thinks fit.

13.2 Subject to clause 14, all other assets and property other than may from time to time form part of the Trust Fund will be held in the name of the Trustee (except where this

Deed specifically contemplates that such asset or property may be held in the name of any Investment Trust).

14. CUSTODIAN TRUSTEE

- 14.1 During such periods as the Trustee is not a Professional Trustee Company, the Trustee may, if the Trustee considers it in the best interests of the Foundation after consultation with the Manager appoint a Custodian Trustee for such period as the Trustee thinks fit.
- 14.2 The function of a Custodian Trustee so appointed is to hold legal title to all non-current assets of the Trust Fund and such other assets as the Trustee may determine. The Custodian Trustee will deal with those assets:-
- (1) only in accordance with written directions of the Trustee; and
 - (2) after taking reasonable steps to satisfy itself that the written direction of the Trustee conforms with this Deed.
- 14.3 A Custodian Trustee so appointed shall be paid for its services such reasonable remuneration as may be agreed in writing between the Trustee and the Custodian Trustee (after consultation between the Trustee and the Manager).

15. ADVISORY TRUSTEE

- 15.1 Throughout the Advisory Period there will be an Advisory Trustee whose functions will be as set out in this Part.
- 15.2 The Advisory Trustee will be a company nominated by Hamersley which complies with the following requirements:-
- (1) the company's sole activity must be to act as Advisory Trustee of the Foundation and the Elderly Foundation;
 - (2) the company's articles of association must provide for:-
 - (a) a board of directors of four people comprising:-
 - (i) two directors nominated by Hamersley. The directors so nominated must each be people of good reputation with appropriate professional or business qualifications to properly perform the functions of directors of the Advisory Trustee;
 - (ii) two representatives nominated by the Manager;
 - (b) all decisions of the directors must be made by majority vote at a duly convened meeting. The chairman will be one of the directors nominated by Hamersley and the chairman will have a second or casting vote in addition to his deliberative vote.
- 15.3 The function of the Advisory Trustee will be to provide advice to the Trustee on significant investment and other decisions by the Trustee and to make general policy recommendations regarding the administration of the Foundation.

- 15.4 The Trustee will provide to the Advisory Trustee on a quarterly basis:-
- (1) management accounts for the Foundation;
 - (2) details of investments by the Foundation;
 - (3) a summary review of the operations of the Foundation;
 - (4) an outline of the nature and scope of any major investments or projects or programs the Trustee is considering making, funding or implementing in forthcoming periods ("Proposals"); and
 - (5) such other information as the Advisory Trustee reasonably requires for the performance of its function.
- 15.5 As soon as practical after the completion of the audit in respect of each Accounting Period, the Trustee will provide to the Advisory Trustee a copy of the audited financial statements for the Foundation and such additional information relevant thereto as the Advisory Trustee reasonably requires for the performance of its function.
- 15.6 The Advisory Trustee will, at quarterly intervals, and on a timely basis analyse and review the performance of the Foundation and any Proposals and will provide to the Trustee on a timely basis a written report containing:-
- (1) a critical assessment of the merits or otherwise of the Proposals with advice where appropriate as to how the Proposal could be improved or implemented more efficiently or economically;
 - (2) a critical assessment of the investments of the Foundation;
 - (3) recommendations as to initiatives or measures which should be implemented to better achieve the Objectives and to run the Foundation in a more efficient and effective manner;
 - (4) recommendations as to financial control measures, if any, which the Advisory Trustee may consider appropriate including in the form of a budget if the Advisory Trustee considers it appropriate;
 - (5) any other advice the Advisory Trustee may consider to be appropriate having regard to the Objects.
- 15.7 The Trustee and the Manager are required to give serious consideration to the contents of any report of the kind referred to in clause 15.6 but are not bound to follow or implement the recommendations or advice in such report.
- 15.8 At least once in each Accounting Period there will be a joint meeting of the Trustee and the Advisory Trustee to discuss and review the administration and operation of the Foundation.
- 15.9 All information provided to the Advisory Trustee regarding the affairs of the Foundation by the Trustee, the Manager or any Beneficiary will be kept strictly confidential by the Advisory Trustee and the directors thereof and will not be disclosed to any third party without the prior written consent of the Trustee except where the Advisory Trustee or its directors are legally required to disclose such information.

15.10 Notwithstanding the provisions of clauses 15.4 and 15.5 the Trustee is not required to provide to the Advisory Trustee any information falling within the following categories:-

- (1) sensitive cultural information relating to the Beneficiaries or any of them;
- (2) information relating to the conduct of any native title claim by or on behalf of the Beneficiaries or any of them;
- (3) information relating to any negotiations, arrangements, agreements or disputes between the Beneficiaries or any of them and any competitor of Hamersley or any related body corporate;
- (4) information relating to internal deliberations by the Trustee, the Manager or any Beneficiaries relating to any negotiations, arrangements, agreements, disputes or otherwise with Hamersley or any related body corporate;
- (5) any other information which the Trustee reasonably determines is in the best interests of the Beneficiaries to withhold from the Advisory Trustee unless that other information is reasonably required by the Advisory Trustee for the performance of its functions hereunder.

15.11 If the Advisory Trustee at any time bona fide determines that the Foundation is failing efficiently to pursue the Objects of the Foundation in the best interests of the Foundation then the Advisory Trustee may:-

- (1) issue a written notice to the Trustee and the Manager setting out that the Advisory Trustee has so determined and the reasons why the Advisory Trustee has so determined and requiring the Trustee and the Manager to show cause within 15 days as to why the Advisory Trustee should not convene a Review;
- (2) If the Trustee and the Manager fail within the 15 days to satisfy the Advisory Trustee that a Review is unnecessary then the Advisory Trustee may by further notice to the Trustee and the Manager require a Review in which case within 30 days after receipt of such notice the Trustee will convene a Review.

15.12 The Advisory Trustee will have standing to enforce the terms of this Deed.

15.13 Except where otherwise agreed between the Trustee and the Manager, the Advisory Trustee is not entitled to be paid for its services or expenses out of the Trust Fund.

15.14 Subject to clause 15.13, the Advisory Trustee will be entitled to be indemnified out of the assets for the time being comprising the Trust Fund against liabilities incurred by it in the execution or attempted execution of its functions hereunder.

16. GENERAL MEETINGS

16.1 An annual general meeting of the Beneficiaries shall be held between 1st August and 31st December in each Accounting Period. All general meetings other than the annual general meeting shall be called extraordinary general meetings.

16.2 The Trustee or the Manager may, whenever they think fit, convene a general meeting, and the Trustee shall convene an extraordinary general meeting forthwith

on the requisition in writing of not less than 20 Beneficiaries. The requisition must state the agenda and objects for the meeting.

- 16.3 All business to be transacted at an extraordinary general meeting shall be deemed to be special business. All business to be transacted at an annual general meeting shall be deemed to be special business with the exception of the consideration of the accounts and balance sheets, the reports of any auditor, the nomination (if thought fit) of an auditor and the fixing of the remuneration of any auditor.
- 16.4 At least 14 days written notice or advertising of all general meetings specifying the place, day and hour of meeting and the general nature of any special business to be transacted will be given, which notice or advertising will be given in such manner as the Trustee may determine. Without limiting the foregoing, such notice may be given in any one or more of the following ways:-
- (1) where an adult Beneficiary's name and postal address appears in the Traditional Owner Register, by posting to that address; or
 - (2) where the Trustee has current fax numbers for adult Beneficiaries by faxing to those numbers; or
 - (3) by arranging for copies of the notice to be given to any Traditional Owner Council; or
 - (4) by using best endeavours to ensure that knowledge of the meeting is spread throughout the Traditional Owners, including without limitation, if the Trustee thinks fit, by arranging for copies of the notice to be delivered to any significant communities of Traditional Owners or, if the Trustee thinks fit, by displaying the notice in any public place or advertising the meeting in a local newspaper or by telephoning as many Beneficiaries as practicable.
- 16.5 There is no obligation or requirement to give notice to Beneficiaries who are not adults.
- 16.6 No business shall be transacted at any general meeting unless a quorum is present.
- 16.7 A quorum shall be not less than 10 adult Beneficiaries present in person or by proxy.
- 16.8 If within 15 minutes after the time appointed for the general meeting, a quorum is not present, then:
- (1) if the meeting was convened upon the requisition of Beneficiaries, the meeting shall be dissolved; and
 - (2) in any other case, the meeting shall stand adjourned to the same day in the next week at the same time and place, and if at the adjourned meeting a quorum is not present within 15 minutes after the time appointed for the meeting, the meeting shall be dissolved.
- 16.9 The Beneficiaries present at the general meeting will appoint a chairman of each General Meeting.

- 16.10 The chairman may, with the consent of any general meeting at which a quorum is present, and shall, if so desired by the meeting, adjourn the meeting from time to time and from place to place, but so that:
- (1) no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place;
 - (2) when a meeting is adjourned for eight days or more at any one time, notice of the adjourned meeting shall be given as in the case of an original meeting; and
 - (3) except as provided in the sub-clause above, it shall be not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
- 16.11 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the general meeting at which the show of hands takes place or at which the poll is demanded shall not be entitled to a second or casting vote.
- 16.12 An adult Beneficiary may appoint a proxy to attend a General Meeting on his or her behalf. The instrument appointing a proxy shall be in writing in any usual form prescribed by the Trustee under the hand of the appointer or of its attorney duly authorised in writing.
- 16.13 An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy shall not be entitled to vote on the resolution except as specified in the instrument.
- 16.14 An instrument appointing a proxy shall not be treated as valid unless the instrument appointing the proxy and the power of attorney or other authority (if any) under which it is signed is deposited at the office of the Manager or with the chairman or secretary of the Meeting at or before the commencement of the Meeting.

17. GENERAL MEETING RESOLUTIONS

- 17.1 In relation to matters before the General Meeting for consideration, including proposed resolutions, the Beneficiaries at the meeting will endeavour to reach consensus.
- 17.2 If, in relation to any matter before the General Meeting for consideration, no consensus or substantial consensus is reached within a reasonable time, then the Chairperson or any five Beneficiaries may call for the matter to be determined by vote in which case the matter will be put to the vote. A proposed resolution will be deemed to be passed by the General Meeting if not less than 50% of the adult Beneficiaries present and voting in person or by proxy vote in favour of the proposed resolution.
- 17.3 The Chairperson may if he considers there are special reasons to do so, and if not less than 10 Beneficiaries support the Chairperson's view, direct that the proposed resolution be determined by separate vote of the adult Bunjima, Innawonga and Niapaili Beneficiaries in which case:-
- (1) a separate vote will be held for the Bunjima Beneficiaries;

- (2) a separate vote will be held for the Niapaili Beneficiaries;
- (3) a separate vote will be held for the Innawonga Beneficiaries

on the basis that:-

- (a) A proposed resolution will be deemed to be passed by the Bunjima Beneficiaries if not less than 50% of the adult Bunjima Beneficiaries present and voting in person or by proxy vote in favour of the proposed resolution.
- (b) A proposed resolution will be deemed to be passed by the Niapaili Beneficiaries if not less than 50% of the adult Niapaili Beneficiaries present and voting in person or by proxy vote in favour of the proposed resolution.
- (c) A proposed resolution will be deemed to be passed by the Innawonga Beneficiaries if not less than 50% of the adult Innawonga Beneficiaries present and voting in person or by proxy vote in favour of the proposed resolution.

17.4 A proposed resolution will be deemed to be passed by the General Meeting only:-

- (1) if the chairman of the meeting determines that there is consensus or substantial consensus between all adult Beneficiaries at the Meeting in favour of the proposed resolution; or
- (2) if the proposed resolution is passed by a vote of the adult Beneficiaries in accordance with clause 17.2; or
- (3) if the proposed resolution is passed by separate votes by the Bunjima, Niapaili and Innawonga adult Beneficiaries in accordance with clause 17.3.

18. INVESTMENT AND OTHER POWERS OF THE TRUSTEES

18.1 The Trustee shall, in addition to the powers otherwise conferred upon trustees by law, have the following powers which may only be used consistently with the objects of the Foundation:

- (1) in dealing with the Trust Fund the Trustee has every power as if the Trustee were a natural person of full age and capacity and the absolute owner of the Trust Fund provided that:-
 - (a) the intention of the investment power is to permit the Trustee to be able to invest the funds of the Foundation wisely. Rather than prescribe the powers of the Trustee on the basis of present knowledge and present investment opportunities, it is considered more appropriate to permit the Trustee to have all the powers of a natural person of full capacity. This way, the Trustee will be able to deal with investment opportunities in the context in which they arise without being fettered by archaic ideas. Nevertheless, because of the intention that the Foundation should endure for the benefit of future generations, it is not appropriate that the Trustee indulge in

speculative investment, and accordingly the Trustee shall not pursuant to clause 8.1 make speculative investments;

- (b) in determining whether or not an investment is a “speculative investment” the Trustee may, if it considers it appropriate, obtain and rely upon the opinion of the President of the Western Australian Chapter of the Securities Institute of Australia or his nominee.
- (2) to make or purchase any such investments for cash or in consideration of any annuity or otherwise and upon such terms and conditions as the Trustee shall in its absolute discretion think fit and to make or purchase any such investment for a sum greater than the amount of the Trust Fund for the time being and to agree to pay for any such investment wholly or in part from any future moneys which may come into their hands including dividends profits or other income paid or payable in respect of any such investments;
- (3) to advance and lend moneys to and to borrow and raise moneys from and to secure by mortgage or otherwise howsoever the payment of money to any person (including any beneficiary) and upon such terms with or without security or interest as they shall deem fit and to join with any person in executing any mortgage or other document for the purpose of securing the payment of money to any persons;
- (4) to give any guarantee and indemnity for payment of money or the performance of any contract obligation or undertaking by any person or accounts;
- (5) to open any account or accounts with any bank or banks and to operate by and in all usual ways any such account or accounts;
- (6) to give effectual receipts and discharges for any moneys received by or on behalf of the Trustee or otherwise relating to any of the acts matters and things provided for in this Deed;
- (7) to draw make issue accept endorse discount buy sell execute and deal in bills or exchange, promissory notes and other negotiable instruments and securities of any kind whatsoever;
- (8) to purchase or acquire any reversionary or deferred property or rights of any description or any life or life endowment sinking fund or term or other policy or policies of insurance of whatsoever nature and at or subject to any premium or premiums whether single or payable periodically and with or subject to any options rights benefits conditions or provisions whatsoever and to pay out of the income or capital of the Trust Fund as they shall think fit all sums payable from time to time for premiums or otherwise for the effecting or maintenance of any policy or policies of insurance (whether owned by the Trustees or otherwise) or for the exercise or enjoyment of any option right or benefit thereunder and any surrender of any such policy or policies shall for all the purchases of this Deed be deemed to be a sale thereof;
- (9) to pay out of the Trust Fund or the income thereof all costs charges and expenses incidental to the management of the Trust Fund or to the exercise of any power authority or discretion herein contained or in carrying out or performing the trusts hereof which the Trustee may at any time incur including all income tax or other taxes payable in respect of the Trust Fund costs in any

way connected with the preparation and execution of these presents and all moneys which the Trustee may be required to pay as settlement gift stamp or revenue duties in respect of the Trust Fund or on these presents;

- (10) to exercise rights and privileges and perform all duties and to do all such acts matters and things appertaining to any shares stock or debentures in any corporation for the time being subject to the trusts hereof as the Trustee could do if it was the beneficial owners of the shares stock or debentures or were personally interested or concerned in the corporation and without diminishing the generality of the foregoing with liberty to assent to any arrangements modifying such rights privileges or duties and to agree to any scheme or arrangement for the reconstruction or the increase or reduction of the capital of any corporation of the winding up of any company and for any such purpose to deposit surrender or exchange any of the said shares stock or debentures or the title thereto and to pay any calls or contributions or other necessary expenses in connection with any such shares stock or debenture or any title thereto;
- (11) to carry on anywhere in the world and either alone or in partnership any trade or business whatsoever and to discontinue the same from time to time;
- (12) to employ or engage the services of any person (including any director of a company being Trustee) in connection with any trade or business carried on by the Trustees or in connection with anything required to be done pursuant to the provisions hereof including the receipt and payment of money and to decide the remuneration to be allowed and paid and the amount of all charges and expense and to create or arrange any scheme of superannuation retirement benefit or pension for the benefit of any person so employed;
- (13) to partition or agree to the partition of or to subdivide or agree to the subdivision of any land or other property which or any interest in which may for the time being be subject to the trusts hereof;
- (14) to establish promote or acquire any company or companies or join in the promotion establishment or acquisition of any company or companies;
- (15) to appropriate any part or parts of the Trust Fund in the actual condition or state of investment thereof in or towards the satisfaction of the interest of any person in the Trust Fund or in or towards the satisfaction of any sum which the Trustee may determine to pay or apply to or for the benefit of any Beneficiary and in making such appropriation to estimate the value of the component parts of the Trust Fund or to employ such persons or make such valuation as in the circumstances the Trustees deem proper without obtaining any consents otherwise required by law and so that every appropriation so made shall bind all persons interested in the Trust Fund notwithstanding that they may not yet be in existence or be under a legal disability;
- (16) to determine whether any real or personal property or any increase or decrease in amount number or value of any property or holdings or property or any receipt or payments from for or in connection with any real or personal property shall be treated as and credited or debited to capital or to income and generally to determine all matters as to which any doubt difficulty or question may arise under or in relation to the execution of the Trusts and powers contained in this Deed and every determination of the Trusts and powers contained in this Deed and every determination of the Trustees in

relation to the execution of the Trusts and powers contained in this Deed and every determination by the Trustee in relation to any of the matters aforesaid whether made upon a question formally or actually raised or implied in any of the acts or proceedings of the Trustee in relation to the Trust Fund shall bind all parties interested therein and shall not be objected to or questioned on any ground whatsoever;

- (17) to vary or transpose any investments into or for any other or others of any nature whatsoever and to vary the terms of or property comprised in any security;
- (18) to hold use purchase construct demolish maintain repair renovate reconstruct develop improve sell transfer convey surrender let lease exchange take and grant options or rights inalienate mortgage charge pledge reconvey release or discharge or otherwise deal with any real or personal property and in particular with shares debentures or securities of any company and with or without deferred restricted qualified or special rights relating thereto;
- (19) to grant options in respect of any assets held subject to the trusts in this Deed to any person firm or company;
- (20) to nominate a person to become a director of any company in which moneys forming part of the Trust Fund are invested and to receive the remuneration attached to such office without accounting to the Trust therefor;
- (21) to take such action as they shall think fit for the adequate protection of any part or parts of the Trust Fund and to do all such other things as may be incidental to the exercise of the powers and authorities conferred on the Trustees by this Deed;
- (22) to take and act upon the writing opinion of any solicitor, attorney-at-law or Counsel practising in any country where the Trust Fund or any part thereof may for the time being be invested in relation to the interpretation or effect of this Deed or any other document or statute or as to the administration of the trusts hereof without being liable to any of the persons beneficially interested in respect of any act done by the Trustee in accordance with such opinion provided that nothing in this provision shall prohibit or impede the Trustee from applying to any Court if they shall think fit;
- (23) in any conditions or circumstances which the Trustee think expedient to appoint either in respect of the whole of the Trust Fund or any part thereof the investments for the time being representing the Trust Fund or any part thereof the investment for the time being representing the Trust Fund or any part thereof to any such new Trustee upon similar trusts and subject to terms and conditions similar to those declared by this Deed and either subject to the control of the Trustee of this Deed or to the exclusion of such control and the Trustee of this Deed shall be indemnified and held harmless against any loss which may arise from the exercise of this power;
- (24) to remunerate any Beneficiary who is at any time in the employ of the Trustee to the same extent and in the same manner as if the Beneficiary so employed were not a Beneficiary hereunder and all bona fide payments made by the Trustees to any such Beneficiary in the form of remuneration for services rendered or to be rendered or on account of expenses in connection with such

employment shall not be or be deemed to be payment to the Beneficiary of or on account of his or her share in the Trust Fund or the income thereof;

- (25) to permit any asset of the Trust to be held or registered in the name of any nominee of the Trustee and to deposit securities to the deed and other documents belonging or related to the Trust Fund with any bank;
- (26) to receive property by gift inter vivos or by will or under any agreement under the provisions of any other trust or trusts or otherwise and either from the Settlor or from any other person or persons as additions to the Trust Fund and to hold the same upon the trusts herein set forth and to administer such additions under the provisions hereof;
- (27) to grant an annuity to any person and to cancel or redeem the same on such terms as they shall think fit;
- (28) to sell transfer hire lease or dispose of any real or personal property of the Trust Fund or to lend or advance any moneys to the Trustees in their personal capacity or in their capacity as trustees of other trust funds or otherwise howsoever or to any company or partnership whatsoever notwithstanding that the trustees or any of them is a shareholder or director or member of partners of such company or partnership or to any wife husband child or children of any Trustee;
- (29) to buy transfer acquire hire or lease any real or personal property or to borrow any moneys from the Trustee or any of them in their personal capacity or in the capacity of the Trustee or any of them as trustee or trustees of other trust funds or otherwise howsoever notwithstanding that the Trustee or any of them is a shareholder or director member or partner of such company or partnership or from the husband wife child or children of any Trustee;
- (30) to retain and remunerate out of the Trust fund liaison officers or other employees or consultants for the purposes of assisting the Trustee in the exercise and discharge of their powers and duties hereunder;
- (31) generally to exercise or concur in exercising all the foregoing powers and discretions contained in this Deed or otherwise by law conferred notwithstanding that the Trustee or any person being a Trustee or any person being a director or committee member or shareholder of the Trustee hereof (being a company) has or may have a direct or personal interest (whether a trustee of any other settlement or in his personal capacity or as a shareholder or director or member or partner of any company or partnership or otherwise) in the mode or result of exercising such power of discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee.

- 18.2 In addition to the above powers, the Trustee has, after consultation with the Manager the power to apply for the benefit of any individual Beneficiary, funds from the Trust Fund where the Trustee considers there to be special need. By way of example where an individual Beneficiary or his family is in crisis caused by ill health or otherwise, the Trustee may render special and immediate assistance.

19. TRUST FUND TO BE KEPT DISTINCT

- 19.1 The Trustee shall keep the Trust Fund entirely separate and distinct from any other trust fund and nothing shall require or cause the Trustee to join the Trust Fund the subject matter of this Deed with any other trust fund referred to in any other deed of settlement (whether created by the Settlor or any other person) so as to cause any two or more trust funds to become one trust fund.

20. REMUNERATION OF TRUSTEE BOARD OF TRUSTEES

- 20.1 Any Trustee which is a Professional Trustee Company or Custodian Trustee will be entitled to be paid for its services such reasonable remuneration for its services as may be agreed from time between:
- (a) in the case of a Trustee, the Manager and the Trustee;
 - (b) in the case of a Custodian Trustee, the Manager, the Trustee and the Custodian Trustee.
- 20.2 Where the Trustee is not a Professional Trustee Company, each member of the Board of Directors of the Trustee will be paid such reasonable remuneration for his or her services as may be agreed from time to time between the Trustee and that member of the Board of Directors after consultation with the Manager and the Trustee will be entitled to apply or be reimbursed from the Trust Fund for all reasonable expenses of and incidental to the performance of the Trustees duties.

21. TRUSTEES' EXPENSES

- 21.1 The Trustee may from time to time charge and retain out of the Trust Fund such reasonable expenses incurred in performing its duty hereunder.

22. TRUSTEE NOT BOUND TO ACT PERSONALLY

- 22.1 The Trustee shall not be bound in any case to act personally but shall be at full liberty to act as managers or to employ any contractors managers solicitors accountants clerks workmen employees or servants or any agents to transact all or any business of whatsoever nature require to be done in the premises including the receipt and payment of money and the Trustee shall decide the remuneration to be allowed and paid and all charges and expenses so incurred.

23. INDEMNITY FOR THE TRUSTEE

- 23.1 The Trustee shall be entitled to be indemnified out of the assets for the time being comprising the Trust Fund against liabilities incurred by it in the execution or attempted execution or as a consequence of the failure to exercise any of the trusts authorities powers and discretions hereof or by virtue of being the Trustee hereof.

24. ACCOUNTS, RECORDS AND REPORTING

- 24.1 The Trustee shall keep complete and accurate books of account and records of all receipts and expenditures on account of the Trust Fund. Promptly after the close of each Accounting Period the Trustee shall prepare a written accounting report (prepared in accordance with normally accepted accounting procedures) for such

period consisting of a balance sheet a statement of income and expenditure and a list of assets held at the close of such year.

- 24.2 From time to time the Trustee shall direct the Manager in writing as to the reporting requirements the Manager is to comply with in reporting to the Trustee. The Manager will comply with such requirements on a timely basis.

25. APPOINTMENT OF AUDITOR

- 25.1 The Trustee will appoint an Auditor to audit at least once in every Accounting Period the financial affairs of the Trustee, the Manager and the Foundation.

26. VARIATION OF TRUST

- 26.1 The Beneficiaries may with the prior written consent of the Manager and the Trustee by Special Resolution at any time or from time to time, resolve to revoke, add to or vary all or any of the trusts terms and conditions set out in this Deed provided such amendment is still consistent with the Objects. The Manager and the Trustee will not give their written consent under this clause unless they are satisfied that the proposed revocation, addition or variation is:-

- (1) within the Objects;
- (2) will assist in the provision of long term benefits in a tangible manner to the Traditional Owners; and
- (3) incorporates sufficient controls and safeguards to adequately protect the Beneficiaries.

- 26.2 Upon such a Special Resolution being passed, the chairman off the General Meeting at which it is passed shall forthwith give notice in writing to the Trustee of the Special Resolution so passed.

- 26.3 No proposed resolution to revoke, add to or vary all or any of the trusts terms and conditions set out in this Deed may be put to the General Meeting if the proposed resolution would be likely to adversely affect the tax exempt status of the Foundation.

- 26.4 Upon the Trustee receiving notice from the chairman of a General Meeting that such a Special Resolution has been passed, the Trustee and the Manager will as soon as practicable but in any event within fourteen days, seal a deed recording the revocation, addition to or variation of this Trust in the terms resolved by the Special Resolution and upon that deed being sealed, such revocation, addition or variation will take effect.

27. APPOINTMENT AND REMOVAL OF TRUSTEE

- 27.1 Subject to clauses 27.6 and 27.7 the appointment of the Trustee will be for the Minimum Term. At the expiration of the Minimum Term or within 90 days thereafter the General Meeting may by Special Resolution remove the Trustee and appoint a new Trustee selected by the Appointing Committee in its place in which case the new Trustee will be appointed for the Minimum Term. The incumbent Trustee will continue in the office of the Trustee until so removed.

- 27.2 If the Trustee is not removed within 90 days of the expiry of the Minimum Term, the Trustee will be deemed to have been reappointed for a further Minimum Term commencing at the expiry of the previous Minimum Term.
- 27.3 Upon the Trustee being removed or resigning, the Trustee will forthwith provide all books and records and other information in its possession to the new Trustee and will do all things necessary for the purposes of vesting ownership and control of the Trust Fund in the new Trustee.
- 27.4 The Trustee must be given at least 10 days advance notice of any intention to move a resolution to remove the Trustee as trustee. The Trustee will be entitled to attend the General Meeting and must be given reasonable opportunity to address the General Meeting before the resolution is moved.
- 27.5 The Trustee may at any time resign as Trustee by giving not less than 90 days written notice to the Manager of its intention to resign. Upon receipt of such a notice the Appointing Committee will begin deliberations with a view to appointing a new Trustee as Trustee before the resignation of the resigning Trustee takes effect. The new Trustee will be appointed for the Minimum Term commencing on the date of appointment.
- 27.6 The Appointing Committee will endeavour to make its decision by consensus, but in the event that consensus cannot be reached, the Appointing Committee will make its decision by majority vote on the basis that the member appointed by the President of the Law Society will be the Chairman and will have a casting vote in the event of an even number of votes being cast for and against a given proposal.
- 27.7 The General Meeting may at any time by Special Resolution remove the Trustee if the Trustee is subject to an Insolvency Event in which case the Appointing Committee will as soon as practicable appoint a new Trustee for the Minimum Term commencing on the date of appointment.
- 27.8 In the event that the Trustee breaches any material provision of this Deed, then the Manager may give written notice to the Trustee specifying the breach and calling upon the Trustee to remedy the breach. In the event that the Trustee does not remedy such breach within 60 days of receipt of such notice then the Manager may, with the sanction of the General Meeting, remove the Trustee in which case the Appointing Committee will as soon as practicable appoint a new Trustee for the Minimum Term commencing on the date of appointment.
- 27.9 In the event that at any time any of the offices referred to in sub-paragraphs (2) or (3) of the definition of "Appointing Committee" cease to exist then the Manager acting reasonably will by written declaration specify in replacement of such office such alternative office which as closely as practicable approximates the office which has so ceased to exist.

28. ELIGIBLE TRUSTEES

- 28.1 The following corporations will be eligible to act as Trustee of the Foundation:

- (1) a Professional Trustee Company; or
- (2) a company which complies with the following requirements:

- (a) the company's sole activity must be to act as trustee of the Foundation and the Elderly Foundation;
- (b) the company's articles of association must provide for:-
 - (i) a board of directors of six people comprising:
 - (A) three independent directors with:-
 - no family affiliation with any Traditional Owners; and
 - no material business affiliation with any Traditional Owners of a nature which would prevent or hinder that person in the impartial and objective discharge of his other duties as independent director.

The independent directors must each be people of good reputation with appropriate professional or business qualifications to properly perform the functions of independent directors of the Trustee;
 - (B) three representatives nominated by the Manager of which one must be a Bunjima, one must be Innawonga and one must be a Niapaili. The representatives must not be on the Committee of the Manager or be involved in the day-to-day management of the Manager;
 - (ii) all decisions of the directors must be made by majority vote at a duly convened meeting. The chairman will be one of the independent directors and the chairman will have a second or casting vote in addition to his deliberative vote.
 - (iii) prohibit the shareholders from removing any independent director from office during the currency of any Minimum Term for which the company is appointed as Trustee unless that independent director becomes bankrupt, commits an act of dishonesty in the discharge of his duties or is guilty of gross dereliction of duties. The shareholder may remove any independent directors during the period of 90 days after the expiry of any Minimum Term in which case the independent director or directors so removed will be replaced by a person or persons selected by the Appointing Committee.
 - (iv) if at any time or from time to time a vacancy occurs in the office of independent director, the vacancy will be filled by the unanimous decision of the remaining directors (provided there are at least 2 independent directors remaining) but if there are not 2 independent directors remaining or if the directors are unable to reach a unanimous decision to appoint a replacement within 60 days of the vacancy arising, the shareholders will appoint such person as the Appointing Committee selects as a replacement independent director.

29. TRUSTEES RESERVE POWERS

29.1 In the event that:-

- (1) the Manager fails in a material respect to properly perform its duties hereunder and the Manager does not remedy the failure within 60 days of receipt of written notice from the Trustee specifying the failure; or
- (2) the Manager is subject to an Insolvency Event;

the trustee may by notice in writing to the Manager suspend the Manager from exercising any powers as Manager in which case:-

- (a) the Trustee may thereafter whilst the suspension is in force perform all functions and exercise all powers of the Manager in lieu of the Manager;
- (b) the Trustee may if it considers it appropriate facilitate the appointment of a committee ("Committee") comprising representatives of the Traditional Owners in which case in situations where the Trustee would otherwise have been obliged to consult with the Manager, the Trustee will consult with that Committee;
- (c) the Trustee will consult with the Manager or the Committee (if any) as the Trustee may consider appropriate with a view to taking whatever steps are appropriate to either lift the suspension or appoint a new manager; and
- (d) the Trustee may by notice in writing to the Manager lift the suspension either unconditionally or subject to such conditions as the Trustee may consider appropriate.

30. SPECIAL RESOLUTION

30.1 For the purposes of this Deed a Special Resolution is a resolution passed in a General Meeting in accordance with the following:-

- (1) at least 21 days notice must be given of a General Meeting at which it is proposed that a Special Resolution will be passed;
- (2) the notice of meeting must set out the precise terms and conditions of the Special Resolution proposed to be put at that meeting;
- (3) at the General Meeting a separate vote must be held for the Bunjima Beneficiaries, a separate vote must be held for the Niapaili Beneficiaries and a separate vote must be held for the Innawonga Beneficiaries, in which case:-
 - (a) a proposed Special Resolution will be deemed to be passed by the Bunjima Beneficiaries if not less than 75% of the Bunjima Beneficiaries present and voting in person or by proxy voting in favour of the Special Resolution;

- (b) a proposed Special Resolution will be deemed to be passed by the Niapaili people if not less than 75% of the Niapaili peoples present and voting in person or by proxy voting in favour of the Special Resolution;
 - (c) a proposed Special Resolution will be deemed to be passed by the Innawonga people if not less than 75% of the Innawonga peoples present and voting in persons or by proxy voting in favour of the Special Resolution;
- (4) a proposed Special Resolution will be deemed to be passed by the General Meeting only if:-
- (a) the chairman of the meeting determines that there is a consensus or substantial consensus in favour of the proposed Special Resolution; or
 - (b) not less than 75% of the Beneficiaries present and voting in person or by proxy vote in favour of the Special Resolution; or
 - (c) it is passed by each of the Bunjima, Niapaili and Innawonga Beneficiaries in accordance with (3) above.

31. DISCRETIONARY NATURE OF TRUST

- 31.1 The Trust created by this Deed is discretionary in nature and except to the extent that the Trustee may otherwise specifically determine and declare in writing in accordance with this Deed, no Beneficiary has a vested interest in any portion of the Trust Fund and no Beneficiary is entitled to call for the Trust Fund or any part thereof.

32. WINDING UP

- 32.1 If, on the winding up or dissolution of the Gumala Foundation, or revocation of the Gumala Foundation's status as a deductible gift recipient, any property remains after satisfaction of all its debts and liabilities, this property must only be given or transferred:
- 32.2 During the period of 10 years prior to the Vesting Date, the Trustee may after consultation with the Traditional Owners vest by irrevocable Deed the Trust Fund or any part thereof at any time prior to the Vesting Date in one or more Eligible Entities and upon such Deed becoming effective, the Trust Fund or part thereof (as the case may be) will cease to be subject to the trusts of this Deed.
- (1) to a fund, authority or institution to which income tax deductible gifts can be made where this property represents:
 - (a) gifts of money or property for the principle purpose of the Gumala Foundation;
 - (b) contributions made in relation to an eligible fundraising event held for the principle purpose of the Gumala Foundation; and
 - (c) money received by the Gumala Foundation because of such gifts and contributions;

- (2) with respect to all other property remaining, to a fund, authority or institution:
 - (a) which is charitable at law; and
 - (b) whose constitution prohibits distributions or payments to its members and directors (if any) to an extent at least as great as is outlined in clause 11.
- 32.3 The identity of the fund, authority or institution referred to in clause 31.1 must be determined by the Beneficiaries by Special Resolution with the prior written consent of the Trustee ("Determination") PROVIDED THAT if, despite the Trustee's reasonable endeavours, the determination has not been made within sixty (60) days of the winding up or dissolution of the Gumala Foundation, then the Trustee may make the Determination with the prior written agreement of the Advisory Trustee.
- 33. REVIEW**
- 33.1 Within 18 months from the expiry of each Minimum Term for which a Trustee is appointed or deemed reappointed (or at such other times as may be required under clause 15.11), the Trustee will convene and hold a Review of the operation of the Foundation and this Deed. The Review will include meetings and consultations between the Trustee and:-
- (5) the Beneficiaries;
 - (6) the Manager; and
 - (7) during the Advisory Period, the Advisory Trustee.
- 33.2 At the completion of the Review, the Trustee will prepare and provide to the Manager (and the Advisory Trustee during the Advisory Period) a report setting out:-
- (8) the results of the Review;
 - (9) recommendations for the better administration of the Foundation having regard to the results of the Review; and
 - (10) where appropriate, recommendations regarding amendments to this Deed which the Trustee may consider appropriate having regard to the results of the Review.
- 33.3 The Trustee will following provision of the report consult with the Manager (and the Advisory Trustee during the Advisory Period) regarding the report and will, following such consultation, proceed to take such steps as the Trustee may consider appropriate to act on such report.

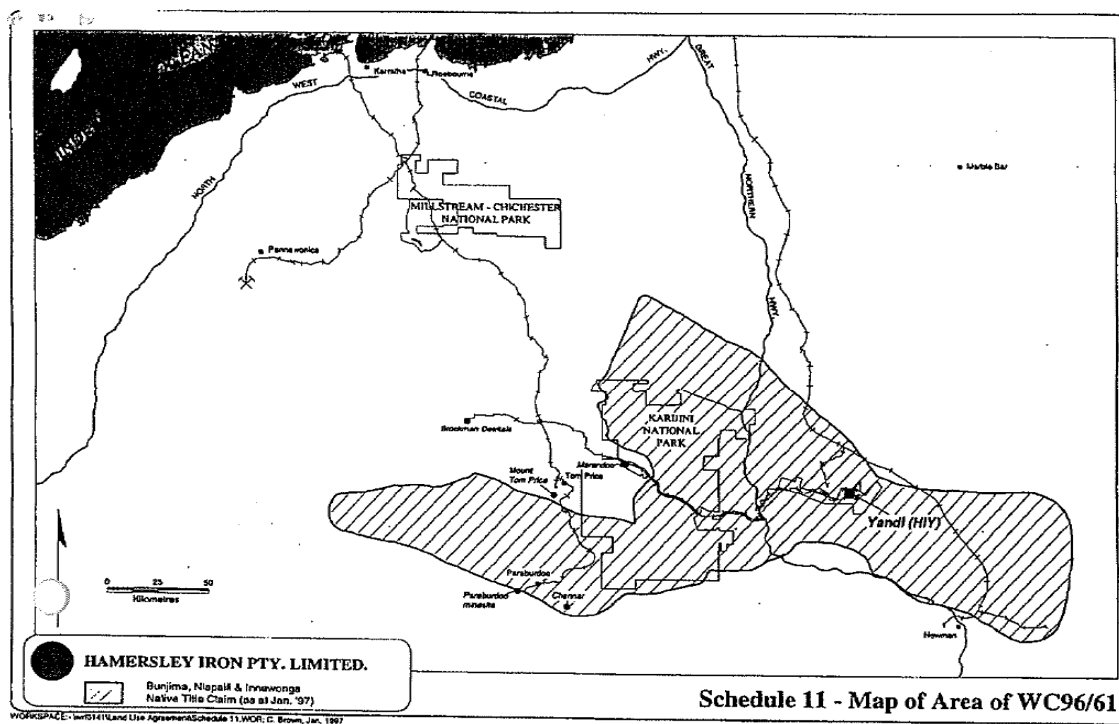
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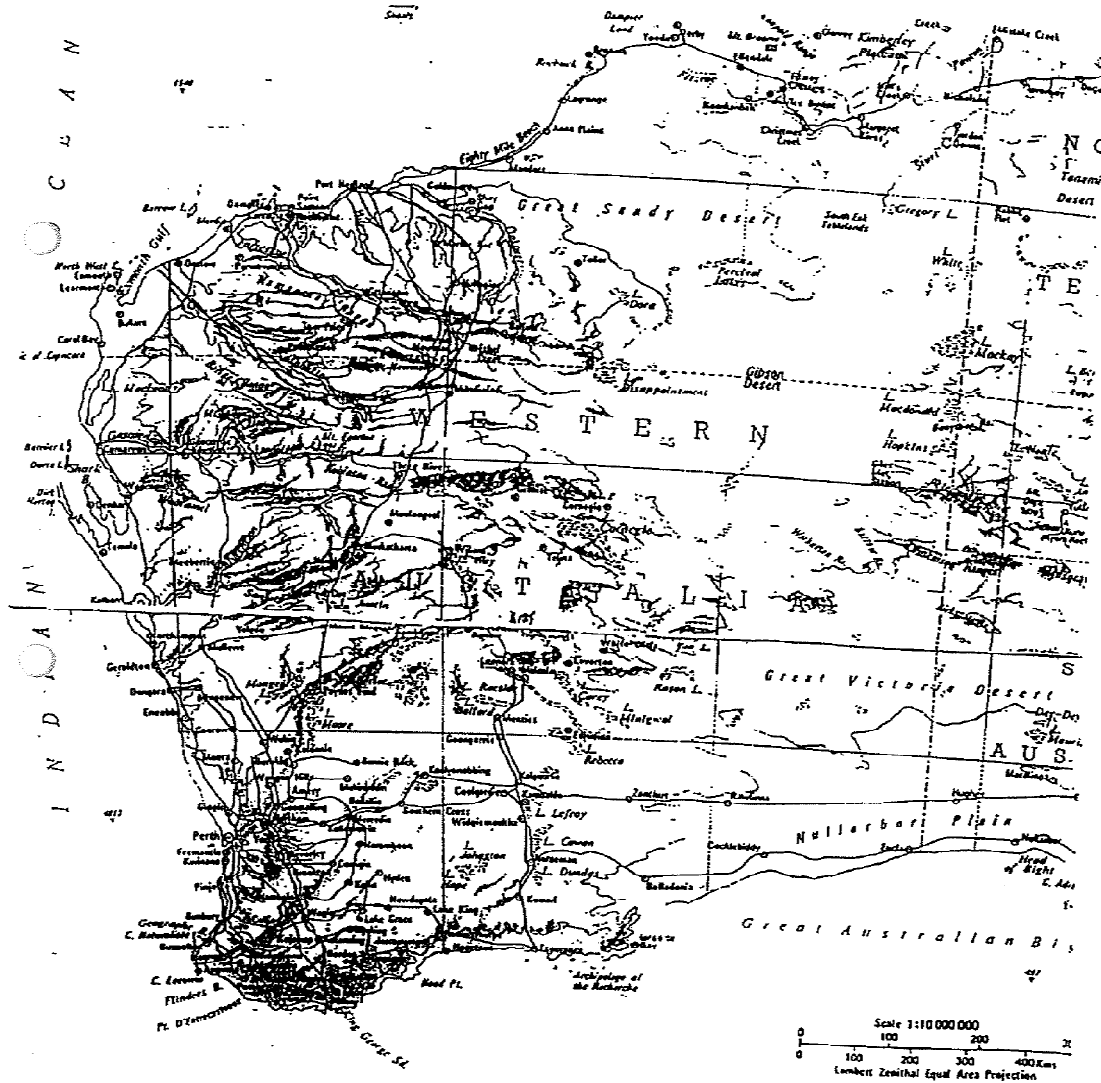
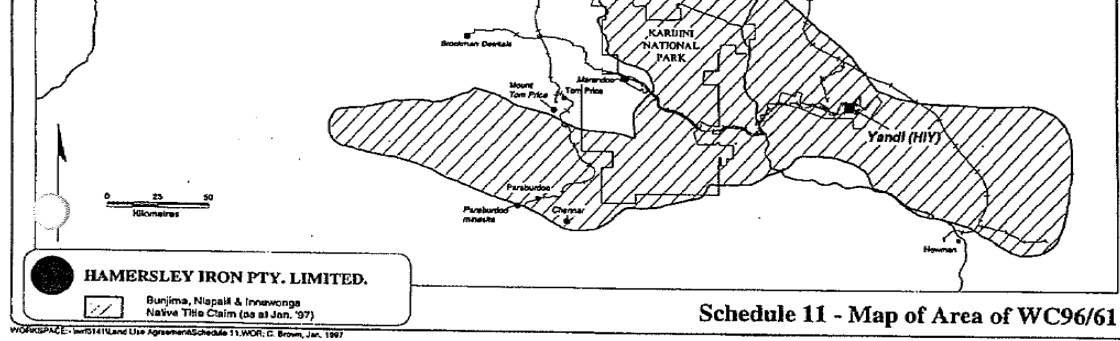
1. Vesting Date

The date 80 years from and including the date hereof.

EXECUTION PAGE

LEFT BLANK IN WORKING COPY OF TRUST DEED AS CONSOLIDATED







GUMALA INVESTMENTS (Trustee)

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