



ESTABLISHMENT AGREEMENT

OF THE

PILBARA REGIONAL COUNCIL

2000, Amended 2007

SHIRE OF ASHBURTON
and
SHIRE OF EAST PILBARA
and
SHIRE OF ROEBOURNE
and
TOWN OF PORT HEDLAND

(Amended December 2013)

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AGREEMENT

THIS ESTABLISHMENT AGREEMENT

Created 2000, revised 2007 and 2014

BETWEEN

SHIRE OF ASHBURTON of Poinciana Street, Tom Price, Western Australia; and

SHIRE OF EAST PILBARA of Kalgan drive, Newman, Western Australia; and

SHIRE OF ROEBOURNE of Welcome Road, Karratha, Western Australia; and

TOWN OF PORT HEDLAND of Civic Centre, Port Hedland, Western Australia

("the Participants")

RECITALS

- A. Pursuant to section 3.61 of the Act, two or more local governments may, with the Minister's approval, establish a regional local government.
- B. The Participants have resolved, on the dates referred to in Schedule 1, to amend the Establishment Agreement for the Pilbara Regional Council dated May 2007 via agreement to and adoption of this establishment Agreement for the Pilbara Regional Council and to submit it to the Minister for approval under section 3.65 of the Act.

OPERATIVE PART

1. NAME

The name of the regional local government is the "Pilbara Regional Council"; hereafter referred to as the PRC.

Footnote:

1. Section 3.62(1) of the Act provides that a regional local government is a body corporate with perpetual succession and a common seal.
2. Except as stated in section 3.66, the Local Government Act 1995 applies to a regional local government as if:
 - (a) The participants' districts together made up a single district and
 - (b) The regional local government was the local government established for that district.

2. REGION

The PRC is established for the Region.

3. REGIONAL PURPOSE

The regional purpose of the PRC is to provide the following services to and on behalf of the Participants:

- (a) in accordance with an approved Strategic Plan:
 - i. coordinate and conduct reviews and studies regarding matters of regional concern and interest;

- ii. coordinate and facilitate the implementations of recommendations arising from reviews and studies;
 - iii. coordinate and facilitate joint procurements;
 - iv. coordinate and facilitate resource sharing;
 - v. promote social and economic development from a regional perspective; and
 - vi. influence and liaise with local, State and Federal Governments in the development of policies and legislation which are of benefit to the Region;
- (b) assess the possibilities and methodology of facilitating, and to identify funding and revenue opportunities for those activities included in the approved Strategic Plan;
- (c) provide secretariat services in connection with the Participants' membership of the Western Australia Local Government Association (WALGA); and
- (d) provide administrative services to PRC Councilors in connection with any committee that they are a member of and representing the PRC.

Footnote:

1. In certain circumstances, a proposal to undertake a Regional Purpose may require the preparation of a business plan under the Act – see section 3.59.
2. The Participants are 4 of the 5 Councils belonging to the WALGA Pilbara Country Zone, the other Council is the Shire of Cocos and it is agreed that the PRC will provide secretariat services to this Shire free of fee and other charges for consistency reasons. Whilst the Shire of Cocos may be the recipient of services offered by the PRC, the Shire of Cocos is not defined as a Participant to this Agreement.

4. DEFINITIONS

In this Establishment Agreement unless the contrary intention appears:

"Act" means the Local Government Act 1995;

"Minister" means the Minister of the Crown to whom the administrations of the Act is for the time being committed by the Governor and includes a Minister of the Crown for the time being acting for or on behalf of the Minister;

"PRC" means the Pilbara Regional Council;

"Operative Date" means the date upon which the Minister approves this Establishment Agreement;

"Project" means the undertaking of work specified within the approved Strategic Plan;

"Region" means the districts of the Participants;

"Regional Purpose" means the regional purpose referred to in clause 3;

"Majority" means an absolute majority as defined within the Local Government Act 1995 (as amended) Sec 1.4(a);

5. STRUCTURE OF THE PRC

The PRC shall consist of:

- (a) The PRC Council;
- (b) A Chief Executive Officer (CEO)
- (c) Administrative Officers (as required); and

- (d) Project Officers (as required)

6. PRC COUNCIL

6.1 Appointment of member

- (1) A Participant is to appoint two member of the council of the Participant to be a member of the PRC Council.
- (2) A Participant may appoint other members of the council of the Participant who may act temporarily in place of the member of the PRC Council appointed by the Participant during any period in which the member of the PRC Council is unable by reason of illness, temporary absence from the State, conflict of interest or for any other cause to perform the functions of the office.

Footnote:

Section 3.62(b) of the Act provides that a regional local government is to have, as its governing body, a council established under the Establishment Agreement and consisting of members of the councils of the participants.

6.2 Tenure of members of the PRC Council

A member of the PRC Council is to hold office until:

- (a) the member ceases to be a member of the council of the Participant; or
 - (b) the member is removed by the Participant,
- whichever is the earlier.

Footnote:

Section 2.32 and 2.33 of the Act set out circumstances in which the office of a member of a councilor becomes vacant.

6.3 Election of chairman and deputy chairman

- (1) The members of the PRC Council must elect a chairman and deputy chairman:
 - (a) At the first meeting of the PRC Council following the Operative Date;
 - (b) at the first meeting of the PRC Council following the day on which polls for ordinary elections are usually held, biennially, for all local governments under the Act.
- (2) if the office of chairman or deputy becomes vacant then the members of the PRC must elect a new chairman or deputy chairman as the case requires.
- (3) The election of the chairman and deputy chairman is to be conducted by the CEO in accordance with the procedure prescribed under the Act for the election of a president or deputy resident, respectively, by a council.

6.4 Tenure of chairman and deputy chairman

The chairman and deputy chairman are to hold those offices until the election of a new chairman and deputy chairman pursuant to clause 6.3(1).

6.5 Role of chairman

The chairman:

- (a) presides at meetings of the PRC Council;

- (b) carries out civic and ceremonial duties on behalf of the PRC;
- (c) speaks on behalf of the PRC;
- (d) performs such other functions as are given to the chairman by the Act, any other written law or this Agreement; and
- (e) liaises with the CEO on the PRC'S affairs and the performance of its functions.

Footnotes:

- 1. The role of the PRC Council is set out in section 2.7 of the Act.
- 2. The functions of the CEO are set out in section 5.41 of the Act.
- 3. The Chairman may agree to the CEO speaking on behalf of the PRC – see section 5.41(f)

6.6 Role of deputy chairman

- (1) The deputy chairman performs the functions of the chairman when authorized to do so under this clause.
- (2) If:
 - (a) the office of chairman is vacant; or
 - (b) the chairman is not available or is unable or unwilling to perform the functions of chairman,then the deputy chairman may perform the functions of chairman.

6.7 Role of member of PRC Council

A member of the PRC Council:

- (a) represents the interests of the ratepayers and residents of the Region;
- (b) facilitates communication between the community of the Region and the PRC Council;
- (c) participates in the PRC's decision-making processes at meetings of the PRC Council and its committees; and
- (d) performs such other functions as are given to the member by the Act or any other written law.

7. PRC EMPLOYEES

7.1 Appointment of the CEO

- (a) The tenure of the CEO is to be three calendar years commencing from date of appointment.
- (b) The position of PRC Chief Executive Officer is senior employee in accordance with section 5.37 of the Act.
- (c) The appointment of the Chief Executive Officer is to be in accordance with the relevant provisions of the Act.
- (d) The Chief Executive Officer is also the Complaints Officer for the PRC in accordance with section 5.120.

- (e) The CEO is to exercise assigned functions and delegations in accordance with the Local Government Act 1995 sections 5.41 to 5.46 inclusive, and associated Regulations.

Footnotes:

- 1. Section 3.66(3) of the Act provides that some parts of the Act do not apply to a regional local government. This is proposed method of appointing the PRC CEO seeks the Minister's approval to invoke sub-section 3.66(3)(e) and waiver those provisions of the Act (Section 5.36) and Regulations regarding the appointment and advertising of the PRC CEO.
- 2. The PRC CEO has been appointed this way since inception and has proved to be an effective method for appointing the CEO and maintaining Participant commitment to the PRC.

7.2 Appointment of other Officers

Filing of positions for other Officers is the discretion of the CEO; always subject to participant funding of the positions(s).

8. FUNDING

8.1 Funding Defined

Funding equates to the money and other resources necessary to sustain the PRC as a permanent operational body corporate and includes the development and execution of Project Plans.

8.2 Annual contributions

Each Participant must make a contribution towards the amount necessary to meet the deficiency, if any, disclosed in the annual budget of the PRC with respect to the Funding, and the contribution is to be an equal proportion of that deficiency.

8.3 Capital contributions

Where the PRC Council determines that the Participants are to make a contribution towards the cost of the acquisition, for the purpose of the Funding, of any asset of a capital nature, then the Participants must make that contribution in equal proportions.

8.4 Manner of payment

The contributions referred to in clauses 10.2 and 10.3 are to be paid by each Participant to the PRC in the manner determined by the PRC Council.

8.5 Late payment

Unless otherwise agreed, if a Participant fails to pay to the PRC a sum of money owing under this clause on or before the due date for payment, that Participant must, in addition to the sum of money due and payable, pay to the PRC, interest at the overdraft rate charged by the PRC's bank on amounts of the same size as the unpaid sum, calculated from and including the due date of payment to but excluding the actual date of payment.

8.6 Annual financial statements

When submitting the same to the PRC's auditor each year, the PRC is to give to each Participant a copy of the PRC's annual financial statements including details of all assets and liabilities and the respective equities of the Participants in those assets.

9. PROJECTS

9.1 Requirements

- (1) A 'Project' is the undertaking of a specified item of work listed within the PRC Council approved Strategic Community Plan or Corporate Business Plan for the PRC.
- (2) Each item of work specified in the Strategic Plan has two phases:
 - (a) Project planning and approval that clauses 9.2 to 9.9 refer to; and
 - (b) Project delivery that clause 9.10 to 9.9 refers to.
- (3) The Participants agree that the PRC is to undertake a Project only in accordance with this clause 9.

Footnotes:

1. In certain circumstances, a proposal to undertake a Project may require the preparation of a business plan under the Act. See section 3.59.
2. Section 3.18(3) of the Act provides as follows:

“(3) A local government is to satisfy itself that services and facilities that it provides:

 - (a) integrate and coordinate, so far as practicable, with any provided by the Commonwealth, the State or any public body;
 - (b) do not duplicate, to an extent that the local government considers inappropriate, services or facilities provided by the Commonwealth, the State or any other body or person, whether public or private; and
 - (c) are managed efficiently and effectively.

9.2 Project Plan to be prepared and adopted

Where the PRC is considering a proposed Project the PRC is to prepare and adopt a Project Plan

9.3 Majority to implement a Project Plan

The PRC is to implement a Project Plan only when authorized to do so by a majority of the PRC Council members

9.4 Contents of Project Plan

A Project Plan is to include, as appropriate:

- (a) a clear definition of the proposed Project;
- (b) details of the expected costs and benefits for the Participants including the expected revenue, if any, from the Project;
- (c) the proportion (and the basis of its calculation) in which the Participants will:
 - (i) make contributions towards:
 - (A) the deficiency, if any, disclosed in the annual budget of the PRC with respect to the Project; and
 - (B) the acquisition of any asset of a capital nature required for the Project; and
- (d) the manner of payment of the contributions referred to in paragraph (c);

- (e) the proportional entitlement or liability, as the case may be (and the bases of its calculation) of the Project Participants in the event that the Project is would up;
- (f) the manner of payment of the entitlement or liability referred to in paragraph (e);
- (g) the procedure for the giving of notice by a Project Participant wishing to withdraw from the Project including the period of notice;
- (h) the proportional entitlement or liability, as the case may be (and the basis of its calculation), of a Project Participant when the withdrawal of that Project Participant from the Project takes effect; and
- (i) the manner of payment of the entitlement or liability referred to in paragraph (h);
- (j) the amount, if any, of interest payable where contributions are not made on the due date for payment;
- (k) the entitlement, if any, of a Participant which is not a Project Participant to join the Project and the procedure to be followed including the period of notice to be given by that Participant.

9.5 Participants to be given Project Plan

Upon completion of the development of a Project Plan the PRC is to give a copy of the Project Plan to each of the Participants.

9.6 Election to Participate in Project

Each Participant must, within a reasonable period determined by the PRC, elect whether to participate in the Project by giving notice of its election to the PRC.

9.7 Project Participants

The Participants that elect to participate in a Project are the Project Participants in respect of that Project.

9.8 Review of Project Plan

- (1) As soon as practicable after the period referred to in clause 9.6, the PRC is to:
 - (a) Review the Project Plan and its viability having regard to the number of Participants who have elected to participate;
 - (b) decide whether to proceed with the Project; and
 - (c) give notice to each of the Project Participants of its decision.
- (2) Where the number of Participants which have elected to participate is less than the number, if any, specified in the Project Plan or less than all of the Participants where no number is specified, then the PRC is to give the Participants an opportunity to withdraw their election before the PRC decides to proceed under clause 9.8(1)(b).

9.9 Project Status

The PRC Strategic Plan is to be updated to reflect project approval status.

9.10 Project Delivery

The PRC will generally be responsible for the facilitating the delivery of Projects.

10 OBLIGATIONS OF PROJECT PARTICIPANTS

10.1 Project Participants to enter into agreement

Where the PRC decides to proceed with a Project and gives notice of its decision to each of the Project Participants in accordance with clause 11.8, then each of the Project Participants agree to be bound by the conditions of the Project Plan as if those terms were set out in this Agreement.

10.2 Annual contributions

In the case of Project, each Project Participant must make a contribution towards the amount necessary to meet the deficiency in accordance with the Project Plan.

10.3 Indemnification by Project Participants of the PRC for annual deficiency

The Project Participants must indemnify the Sponsoring Participant with respect to the deficiency, if any, disclosed in the Project Plan.

10.4 Withdrawal from Project

A Project Participant may, at any time, give to the PRC and the other Participants written notice of its intention to withdraw from a Project.

10.5 When withdrawal to take effect

The withdrawal of a Project Participant takes effect:

- (a) from the end of the period of notice or other period specified in the Project Plan; or
- (b) on any earlier date agreed by the Project Participants.

10.6 Winding up of a Project

Clauses 10.7, 10.8 and 10.9 apply where the PRC Council resolves to wind up a Project.

10.7 Division of assets

- (1) Subject to subclause (2), if a Project is to be wound up and there remains, after satisfaction of all its debts and liabilities, any property and assets of the Project then the property and assets are to be realized and the proceeds along with any surplus funds are to be divided among the Project Participants in the proportions referred to in the Project Plan.
- (2) subclause (1) does not apply where the Project Participants advise the PRC that a realization of the property and assets is not necessary.

10.8 Division of Liabilities

If a Project is to be wound up and there remains any liability or debt in excess of the realized property and assets of the Project then the Project Participants must meet the liability or debt in the proportions referred to in the Project Plan.

10.9 Indemnification by Project Participants of the PRC on winding up a Project

If a Project is wound up then the Project Participants must indemnify the PRC (in the proportions referred to in the Project Plan) with respect to any liability or debt.

11 REFERENCES TO THE PRC

The Participants acknowledge that the PRC is not a party to this Agreement and the Participants agree that no failure or alleged failure by the PRC to observe the provisions of

clause 8, 9 or 10 precludes any of the Participants from meeting its obligations under this Agreement or otherwise gives rise to any claim or entitlement on its part.

12 WINDING UP

12.1 Winding up by agreement

The Participants may, by agreement, wind up the PRC.

Footnote:

Section 3.63(1) of the Act provides as follows:

“(1) A regional local government is to be wound up –

(a) at the direction of the Minister; or

(b) in accordance with the establishment agreement.”

12.2 Division of assets

If the PRC is to be wound up and there remains, after satisfaction of all its debts and liabilities, any property and assets of the PRC then the property and assets are to be realized and the proceeds along with any surplus funds are to be divided among each of the Participants in the same proportions as the contributions of a particular Participant to the assets of the PRC bear to the total of such contributions by all Participants.

12.3 Division of liabilities

If the PRC is to be wound up and there remains any liability or debt in excess of the realized property and assets of the PRC then the liability or debt is to be met by each of the Participants in the same proportions as the contributions of a particular Participant to the assets of the PRC bear to the total of such contributions by all Participants.

13 WITHDRAWAL OF A PARTICIPANT

13.1 Withdrawal

A Participant may, at any time between 1 July and 31 December in any year give to the PRC and to the other Participants notice of its intention to withdraw from the PRC.

13.2 When withdrawal to take effect

Subject to clause 15.3, the withdrawal of a Participant is to take effect from the end of the financial year after the financial year in which notice of withdrawal under clause 13.1 is given.

Entitlement or liability of withdrawing Participant

When the withdrawal of a Participant takes effect:

(a) the Participant is entitled to be paid an amount equal to the Proceeds and any surplus funds which would have been payable if the PRC was wound up; or

(b) the Participant must pay to the PRC an amount equal to the liability or debt which would be payable by the Participant if the PRC was wound up,

as the case may be.

13.3 Participants may be required to make payment

If the PRC is unable to make the payment referred to in clause 14.4(a) from funds on hand then, unless the PRC Council decides otherwise, the Participants (other than the Participant which has withdrawn) must pay the amount in the proportions equal to their respective equities in the PRC.

14 BORROWINGS

Part 6, Division 5, Subdivision 3 of the Act is to apply.

Footnote:

1. Section 3.66(4) of the Act provides that Part 6, Division 5, subdivision 3 does not apply in relation to a regional local government unless the Establishment Agreement provides that it does.
2. Part 6, Division 5, subdivision 3 of the Act deals with borrowings and includes the power to borrow and restrictions on borrowings.

15 DISPUTE RESOLUTION

15.1 No proceedings

A party must not start arbitration proceedings in respect of a dispute arising out of this Agreement ("Dispute") unless it has complied with this clause.

15.2 Notification of dispute

A party claiming that a Dispute has arisen must notify the other parties to the Dispute giving details of the Dispute.

15.3 Reasonable efforts to resolve dispute

- (1) During the 14 day period after a notice is given under clause 17.2 (or longer period agreed in writing by the parties) ("Negotiation Period"), the parties must use their reasonable efforts to resolve the Dispute.
- (2) Within the first 7 days of the Negotiation Period, if the Dispute continues, the chief executive officers of the parties and the chief executive officer of the PRC, must meet, and use their reasonable endeavours to resolve the Dispute.

15.4 Dispute resolution process

If the Dispute is not resolved within the Negotiation, the parties must meet and endeavor to agree on:

- (a) a process for resolving the Dispute other than by litigation or arbitration (such as by further negotiations, mediation, conciliation or expert determination);
- (b) the procedure and timetable for any exchange of documents and other information relating to the Dispute;
- (c) the procedure and timetable for the conduct of the selected mode of proceeding;
- (d) a procedure for the selection and compensation of any independent person engaged by the parties to assist in resolution of the Dispute; and
- (e) whether or not the parties should seek the assistance of a dispute resolution organization.

15.5 Arbitration

If the parties are unable to agree on a process for resolving the Dispute in accordance with clause 17.4 within 21 days after the Negotiation period then any party may notify the others in writing ("arbitration notice") that it requires the dispute to be referred to arbitration and, upon receipt of the arbitration notice by the recipients, the dispute is to be referred to

arbitration under and in accordance with the provision of the Commercial Arbitration Act 1985.

15.6 Legal Representation

For the purposes of the Commercial Arbitration Act 1985, the Participants consent to each other and to the PRC being legally represented at any such arbitration.

16 INTERPRETATION

16.1 Interpretation

In this Establishment Agreement unless a contrary intention appears:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include the other genders;
- (c) references to persons include corporations and bodies politic;
- (d) references to a person include the legal personal representatives, successors and assigns of that person;
- (e) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- (f) references to this or any other document include the document as varied or replaced, and notwithstanding any change in the identity of the parties;
- (g) references to writing include any mode of representing or reproducing words in tangible and permanently visible form, and includes telex and facsimile transmission;
- (h) if a word or phrase is defined cognate words and phrases have corresponding definitions;
- (i) references to a person which has ceased to exist or has been reconstituted, amalgamated, reconstructed or merged, or the functions of which have become exercisable by any other person or body in its place, shall be taken to refer to the person or body established or constituted in its place or by which its functions have become exercisable;
- (j) reference to any thing (including, any amount) is a reference to the whole or any part of it and reference to a group of things or persons is a reference to any one or more of them;
- (k) reference to a month and cognate terms means a period commencing on any day of a calendar month and ending on the corresponding day in the next succeeding calendar month but if a corresponding day does not occur in the next succeeding calendar month the period shall end on the last day of the next succeeding calendar month;
- (l) references to this Establishment Agreement include its schedules.

16.2 Headings and footnotes

Headings and footnotes are to be ignored in construing this Establishment Agreement.

16.3 Time

- (a) References to time are to local time in Perth, Western Australia;
- (b) where time is to be reckoned from a day or event, the day or the day of the event is to be excluded.

Footnotes:

Amendment of Establishment Agreement

- 1. The Participants may amend this Establishment Agreement by agreement made with the Minister's approval – see section 3.65(1) of the Act.

Admission of Other Local Governments

- 2. This Establishment Agreement can be amended to include another local government as a party to the amending agreement – see section 3.65(2) of the Act.

17 EXECUTION

PARTICIPANT	DATE OF RESOLUTION TO REVISE THIS ESTABLISHMENT AGREEMENT
Shire of Ashburton	
Shire of East Pilbara	
Shire of Roebourne	
Town of Port Hedland	

EXECUTED by the Parties

THE COMMON SEAL of **SHIRE OF ASHBURTON** was)
hereunto affixed in the presence of:)

Shire President

Chief Executive Officer

THE COMMON SEAL of **SHIRE OF EAST PILBARA** was)
hereunto affixed in the presence of:)

Shire President

Chief Executive Officer

THE COMMON SEAL of **SHIRE OF ROEBOURNE** was)
hereunto affixed in the presence of:)

Shire President

Chief Executive Officer

THE COMMON SEAL of the **TOWN OF PORT HEDLAND**)
was hereunto affixed in the presence of:)

Shire President

Chief Executive Officer