

WE-ROC

WHEATBELT EAST REGIONAL ORGANISATION OF COUNCILS

SHIRE OF BRUCE ROCK

and

SHIRE OF KELLERBERRIN

and

SHIRE OF MERREDIN

and

SHIRE OF WESTONIA

and

SHIRE OF YILGARN

MEMORANDUM OF UNDERSTANDING

1 July 2018 to 30 June 2019



Shire of Bruce Rock



Shire of Kellerberrin



Shire of Merredin



Shire of Westonia



Shire of Yilgarn

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AGREEMENT

This Memorandum of Understanding (MOU) dated **22 August 2018** between

the **SHIRE OF BRUCE ROCK** of 54 Johnson Street, BRUCE ROCK, Western Australia, and

the **SHIRE OF KELLERBERRIN** of 110 Massingham Street, KELLERBERRIN, Western Australia,
and

the **SHIRE OF MERREDIN** of King/Barrack Street, MERREDIN, Western Australia, and

the **SHIRE OF WESTONIA** of Wolfram Street, WESTONIA, Western Australia, and

the **SHIRE OF YILGARN** of Antares Street, SOUTHERN CROSS, Western Australia.

("the Participants")

RECITALS

The Participants have resolved not to form a regional local government or regional subsidiary as defined under the *Local Government Act 1995* at this time, but alternatively enter into this Memorandum of Understanding to recognise the cooperation and shared goals of the member Councils.

OPERATIVE PART

1 NAME

The name of the regional organisation of councils is the Wheatbelt East Regional Organisation of Councils (WE-ROC).

2 REGIONAL PURPOSES

The regional purposes for which WE-ROC is established are to:

- a) Undertake the activities defined as projects and services in accordance with Clause 7:
- b) Provide a means for the Participants, through voluntary participation and the integration and sharing of resources, where requirements of clause 7.1 are met, to:
 - (i) Assess the possibilities and methodology of facilitating a range of services and facilities on a regional basis including, without limitation, the services and facilities described in Schedule 2;
 - (ii) Promote, initiate, undertake, manage and facilitate the services and facilities described in Schedule 2; and
 - (iii) Promote productive effectiveness and financial benefit to the Participants where there are common and shared community of interest linkages.

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. A proposal to undertake a Regional Purpose referred to in clause 2(b) is defined as a “Project” and may only be undertaken in accordance with clause 7.

3 OBJECTIVES

The objectives of WE-ROC shall be:

- a) To endeavour to carry out the Regional Purposes in a manner which enhances and assists in the advancement of the Region;
- b) To form a strategic alliance for the retention of infrastructure, community services and population, increased funding for development and maintenance/improvement of local road network, economic development initiatives, promotion and marketing initiatives, retention of health services, salinity and environment and general local government industry issues;
- c) To encourage cooperation and resource sharing on a regional basis; and
- d) Not to detract from the relationships an individual shire holds within its community, with the state and federal governments and other entities it interacts with in the course of usual business.

4 DEFINITIONS

In this Memorandum of Understanding unless the context requires otherwise;

“Act” means the *Local Government Act 1995*;

“CEO” means a Chief Executive Officer of a Participant

“Participant” means a signatory to the Wheatbelt Regional Organisation of Councils Memorandum of Understanding;

“Project” means the undertaking of any activity for a Regional Purpose described in clause 2(b);

“Proposal” means the proposal to undertake a Project;

“Region” means the districts of the Participants;

“Regional Purposes” means any regional purpose referred to in clause 2;

“WE-ROC” means the Wheatbelt East Regional Organisation of Councils.

5 THE ORGANISATION

5.1 Appointment of Members

- a) The President and Chief Executive Officer of a Participant are members of WE-ROC.
- b) A Participant may appoint one elected member and one employee as a deputy from the Council of the Participant who are able to attend the WE-ROC meetings and who may act temporarily in place of either member of the WE-ROC appointed by the Participant during any period in which the member of the WE-ROC is unable by reason of illness, temporary absence from State, conflict of interest or any other cause to perform the functions of the office.
- c) A Participant may appoint a nominee in lieu of the President or Chief Executive Officer under sub-clause 5.1(a).

5.2 Tenure of Members of WE-ROC

A member of WE-ROC shall hold office until either:

- a) The member ceases to be a member of the Council or CEO of the Participant or
- b) The member is removed by the Participant

5.3 Election of Chairman and Deputy Chairman

- (1) The members of the WE-ROC shall elect a President from a Participant as Chairman and a President from another Participant as Deputy Chairman following the biennial local government election, with each appointment being on a rotational alphabetical basis.
- (2) If the office of Chairman or Deputy Chairman becomes vacant then the members of WE-ROC shall elect a new Chairman or Deputy Chairman, as the case requires.

5.4 Tenure of Chairman and Deputy Chairman

- (1) The Chairman and Deputy Chairman should hold those offices until the election of a new Chairman and Deputy Chairman pursuant to clause 5.3 (1).
- (2) The Chairman and Deputy Chairman in office at time of extension or renewal of this MOU shall continue in office until an election is held as required by clause 5.3 (1)

5.5 Role of Chairman

The Chairman:

- a) Presides at meetings of WE-ROC;
- b) Carries out civic and ceremonial duties on behalf of WE-ROC;
- c) Speaks on behalf of WE-ROC; and
- d) Liaises with the Executive Officer on WE-ROC’s affairs and the performance of its functions.

5.6 Role of Deputy Chairman

- (1) The Deputy Chairman performs the functions of the Chairman, when authorised to do so, under this clause.
- (2) The Deputy Chairman may perform the functions of Chairman 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.

Footnote:

For the avoidance of doubt where the Chairman is unavailable to perform the functions of the role the Deputy Chairman shall assume the role. A deputy for the Chairman from a Participant shall not assume the role and functions of the Chair.

5.7 Role of Members of Wheatbelt East Regional Organisation of Council

A member of WE-ROC:

- a) Represents the interests of the electors and residents of the Region;
- b) Facilitates communication between the community of the Region and WE-ROC;
- c) Participates in the WE-ROC's decision-making processes at meetings of the WE-ROC and its committees; and
- d) Performs such other functions as are given to the member.

6 FINANCIAL CONTRIBUTIONS

6.1 Annual or Capital contributions

Participants are required to make an annual financial contribution towards the operations of WE-ROC as determined by WE-ROC, the contributions to be in equal shares, and may also be requested to contribute towards specific projects or initiatives of WE-ROC.

6.2 Manner of Payment

The contributions referred to in clauses 6.1 shall be paid by each Participant to WE-ROC in the manner determined by WE-ROC.

7 PROJECTS OR SERVICES

7.1 Requirements

WE-ROC shall only undertake a Project or Service in accordance with this clause and provided that:

- a) WE-ROC is satisfied that any services and facilities that it will provide:
 - i) Integrate and coordinate, so far as practical, with any provided by the Commonwealth, State or any public body;
 - ii) Within the district of a Participant, do not duplicate, to an extent that the Participant consider inappropriate, services or facilities provided by the Commonwealth, the State or any body or person, whether public or private; and
 - iii) Are managed efficiently and effectively; and
- b) The requirements for the preparation of a business plan under section 3.59 of the Act, if applicable, are complied with.

Footnote:

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.

7.2 Project Plan to be Prepared

Where WE-ROC is considering a proposed Project or Service it shall prepare a Project Plan.

7.3 Contents of a Project Plan

A Project Plan should include:

- a) A clear definition of the proposed Project or Service;
- b) Details of the expected cost and benefits for the Participants;
- c) A project time-line with performance milestones clearly outlined;
- d) The proportion (and the basis of its calculation) in which the Project Participants will make contributions towards:
 - i) The acquisition of any asset of a capital nature required for the Project or Service;
 - ii) The operating expenditure, including administrative expenses, relating to the Project or Service.
- (e) The manner of payment of the contributions referred to in paragraph (d);
- (f) The proportion entitlement or liability, as the case may be (and the basis of its calculation) of the Project Participants in the event that the Project or Service is wound up;
- (g) The manner of payment of the entitlement or liability referred to in paragraph (i);
- h) The procedure for the giving of notice by a Project Participant wishing to withdraw from the Project or Service including the period of notice;
- i) The proportional entitlement or liability, as the case may be (and the basis of its calculation), of a Project Participant when withdrawal of that Project Participant from the Project or Service takes effect;
- j) The amount, if any, of interest payable where contributions are not made on the due date for payment; and
- k) The entitlement, if any, of a participant which is not a Project Participant to join a Project or Service and the procedure to be followed including the period of notice given by that Participant.

7.4 Participants to be given Project Plan

Upon completion of the Project Plan WE-ROC shall give a copy of the Project Plan to each of the Participants.

7.5 Election to Participate in Project

Each Participant shall, within a reasonable period determined by WE-ROC, elect whether to participate in the New Project or Service by giving notice of its election to WE-ROC.

For the purposes of this clause a Participant can also include any other local government that is not a member of WE-ROC that may wish to participate in a specific project. Such participation will be on the invitation of WE-ROC on a project by project basis with arrangements for the costs associated with the project being mutually agreed between the parties.

7.6 Project Participants

The Participants, which elect to participate in a Project or Service, are the Project Participants in respect of that Project or Service.

7.7 Review of Project Plan

- (1) As soon as practicable after the period referred to in clause 7.5, WE-ROC shall:
 - 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 or Service; and
 - c) Give notice to each of the Project Participant 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 WE-ROC will give the Participants an opportunity to withdraw their election before the WE-ROC decides to proceed under clause 7.7(b).

7.8 Project Participants to be Bound

Where WE-ROC decides to proceed with a Project or Service and gives notice of its decision to each of the Project Participants in accordance with clause 7.7, then each of the Project Participants shall be bound by the terms of the Project Plan as if those terms were set out in this Agreement.

7.9 Winding Up of Project or Service

The WE-ROC Council may resolve to wind up a Project or Service. An absolute majority vote will be required by the WE-ROC Council to resolve to wind up any Project or Service.

7.10 Division of Assets

- (1) Subject to sub-clause (2), if a Project or Service is to be wound up and there remains, after satisfaction of all its debts and liabilities, any property and assets of the Project or Service then the property and assets shall be realised and the proceeds along with any surplus funds shall be divided among the Project Participants in the proportions referred to in the Project Plan.
- (2) Sub-clause (1) shall not apply where the Project Participants advise WE-ROC that a realisation of the property and assets is not necessary.

7.11 Division of Liabilities

If a Project or Service is to be wound up and there remains any liability or debt in excess of the realised property and assets of the Project or Service then the liability or debt is to be met by the Project Participants in the proportions referred to in the Project Plan.

7.12 Indemnification by Project Participants of the WE-ROC

If a Project or Service is wound up then the Project Participants shall indemnify WE-ROC (in the proportions referred to in the Project Plan) with respect to that liability or debt.

8 TERM AND TERMINATION

8.1 Term of Agreement

Unless otherwise wound up or extended, this Agreement will terminate on 30 June 2019.

8.2 Winding up by Agreement

The Participants may, by agreement, wind up WE-ROC.

8.3 Division of assets

If the WE-ROC is to be wound up and there remains, after satisfaction of all its debts and liabilities, any property and assets of WE-ROC then the property and assets shall be realised and the Proceeds along with any surplus funds shall be divided among each of the Participants in the same proportions as the contributions of a particular Participant.

8.4 Division of liabilities

If WE-ROC is to be wound up and there remains any liability or debt in excess of the realised property and assets of WE-ROC 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 WE-ROC bear to the total of such contributions by all Participants.

9 WITHDRAWAL OF A PARTICIPANT

9.1 Withdrawal

A participant may, at any time between 1 July and 31 December in any year, give to WE-ROC notice of its intention to withdraw from WE-ROC.

9.2 When Withdrawal to Take Effect

The withdrawal of a Participant shall take effect from the end of the financial year in which notice of withdrawal under clause 9.1 is given.

9.3 Entitlement or Liability of Withdrawing Participant

As soon as practicable following the withdrawal of a Participant, WE-ROC shall:

- a) Distribute to the Participant an amount equal to the proceeds and any surplus funds which would have been payable if WE-ROC was wound up; or
- b) Be entitled to recover from the Participant an amount equal to the liability or debt which would be payable by the Participant if the WE-ROC was wound up, as the case may be.

9.4 Participants May be Required to Pay Distribution

If the WE-ROC is unable to meet the distribution referred to in clause 9.3(a) from funds on hand then, unless the WE-ROC decides otherwise, the Participants (other than the Participant that has withdrawn) shall pay the distribution in the proportions equal to their respective equities in the WE-ROC.

10 ADMITTING NEW MEMBERS

- (1) Prospective new members may be admitted by a decision of the WE-ROC Council and shall be required to contribute to WE-ROC a sum determined by the WE-ROC Council that is described as "the entry sum" and in addition a sum equal to the current year's contribution schedule as described in clause 6.1 or a discretionary sum agreed to by the WE-ROC Council.

Footnote:

1. Part 3 Division 4 Section 3.65 (2) of the *Local Government Act 1995* describes the process of amending the Establishment Agreement.

11 DISPUTE RESOLUTION

11.1 Dispute

In the event of any dispute or difference ('dispute') arising between the Participants and WE-ROC or any of them at any time as to any matter or thing of whatsoever nature arising under or in connection with this Memorandum of Understanding, then a Participant or WE-ROC or the Participants (as the case may be) may give to the other Participants and WE-ROC (as the case may be) notice in writing ('dispute notice') adequately identifying the matters, the subject of the dispute and the giving of the dispute notice shall be a condition precedent to the commencement by any Participant or WE-ROC of proceedings (whether by way of litigation or arbitration) with regard to the dispute as identified in the dispute notice.

11.2 Arbitration

At the expiration of 35 days from the date of receipt of the dispute notice by the persons to whom it was sent, the person giving the dispute notice may notify the others in writing ('arbitration notice') that it requires the dispute to be referred to arbitration and the dispute (unless meanwhile settled) shall upon receipt of the arbitration notice by the recipients then be and is hereby referred to arbitration under and in accordance with the provisions of the *Commercial Arbitration Act 2012*.

11.3 Legal Representation

For the purposes of the *Commercial Arbitration Act 2012*, the Participants consent to each other and to WE-ROC being legally represented at any such arbitration.

12 INTERPRETATION

12.1 Interpretation

In this Memorandum of Understanding unless the context requires otherwise:

- 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 not withstanding 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) An obligation of two or more parties shall bind them jointly and severally;
- i) If a word or phrase is defined cognate words and phrases have corresponding definitions;
- j) 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;
- k) An obligation incurred in favour of two or more parties shall be enforceable by them jointly and severally;
- l) Reference to any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- m) 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;
- n) References to this Memorandum of Understanding include its schedules.

12.2 Headings and footnotes

Headings and footnotes shall be ignored in construing this Memorandum of Understanding.

12.3 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, such day or the day of such event shall be excluded.

13 AMENDMENT OF MEMORANDUM OF UNDERSTANDING

- (1) The Participants may amend this Memorandum of Understanding by unanimous agreement of the Participants.
- (2) This Memorandum of Understanding can be amended to include another local government as a party to the amending agreement.

Schedule 1 – Execution

EXECUTED by the Parties

THE COMMON SEAL of SHIRE OF BRUCE ROCK)
was hereunto affixed in the presence of:)

President

Chief Executive Officer

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

President

Chief Executive Officer

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

President

Chief Executive Officer

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

President

Chief Executive Officer

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

President

Chief Executive Officer

Schedule 2 – Regional Purposes

The Regional Purposes of the Wheatbelt East Regional Organisation of Councils (WE-ROC) is to provide a strong and cohesive regional group that has the capacity to provide leadership and advocate for issues of local importance, together with the development of practical projects that will enhance the region. The Regional Purposes may include but not limited to the following:

1 Tourism & Event Coordination

- To maximise the potential of tourism and community events in the region through the coordination of tourism and marketing activities, individual events, staging of major events and promotions.

2.. Resource Sharing

- To promote inter-council cooperation and resource sharing opportunities where these add value and do not diminish the way individual councils provide services to their communities.

3. Economic and Community Building

- To implement strategies relating to issues of regional significance that foster and promote development opportunities that benefit the region.

4. Health and Community Services

- To act as a catalyst to promote healthy regional communities.

5. Environment

- To provide leadership, coordination and information on regional natural resource management practices and undertake activities.

6. Recreation

- To provide planning and leadership in the coordination and development of recreational facilities in the region.

7. Transport

- To provide representation, planning and input into the coordination and development of all transport networks in the region.