



MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is between the following parties:

SHIRE OF DOWERIN of Cottrell Street, DOWERIN, Western Australia
AND SHIRE OF KOORDA of Allenby Street, KOORDA, Western Australia
AND SHIRE OF MT MARSHALL of Monger Street, BENCUBBIN, Western Australia
AND SHIRE OF MUKINBUDIN of Maddock Street, MUKINBUDIN, Western Australia
AND SHIRE OF NUNGARIN of Railway Avenue, NUNGARIN, Western Australia
AND SHIRE OF TRAYNING of Railway Street, TRAYNING, Western Australia
AND SHIRE OF WYALKATCHEM of Corner Honour Avenue and Flint Street,
WYALKATCHEM, Western Australia

Term of Agreement 1 July 2020 – 30 June 2023

1. DEFINITIONS

In this Memorandum of Understanding unless the context requires otherwise;

“Act” means the Local Government Act 1995;

“NEWROC” means the North Eastern Wheatbelt Regional Organisation of Councils;

“Operative Date” means 1 July 2020

“Participant” means the Shires of Dowerin, Koorda, Mt Marshall, Mukinbudin, Nungarin, Trayning, or Wyalkatchem, either jointly or individually, as the context requires;

“Project” means the undertaking of any activity on behalf of the NEWROC;

“Proposal” means the proposal to undertake a Project;

“Region” means the communities of the Participants

2. NAME

The name of the regional organisation of councils is the North Eastern Wheatbelt Regional Organisation of Councils (NEWROC).

Notes:

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. A regional local government has the same general function of a local government including its legislative and executive functions. See part 3 and section 3.66 of the Act.
3. 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 were the local government established for that district.

3. PURPOSE

The purpose of this memorandum of understanding is to affirm the partnership and collaboration of the seven local governments (Participants) and to further the shared aims as below.

The purpose for which NEWROC is established is to:

Provide a means for the Participants, through voluntary participation and the integration and sharing of resources to:

- a. Assess the possibilities and methodology of facilitating a range of projects, services and facilities on a regional basis under the themes of advocacy, community, economic, environment and governance

- b. Promote, initiate, undertake, manage and facilitate under the themes of advocacy, community, economic, environment and governance;
- c. Promote productive effectiveness and financial benefit to the Participants where there are common and shared community of interest linkages;
- d. To take an active interest in all matters affecting the communities of the Participants with the view to improving, promoting and protecting them
- e. Recognition as representing the view of community and business in the Participants

Notes:

- f. In certain circumstances, a proposal may require the preparation of a business plan under the Act – see section 3.59
- g. A proposal to undertake a “Project” and may only be undertaken in accordance with clause 8.

4. OBJECTIVES

The objectives of NEWROC shall be:

- a. To endeavour to enhance and assist in the advancement of the Region
- b. To encourage cooperation and resource sharing on a regional basis
- c. Not to detract from the relationships a Participant holds within its community, with the state and federal governments and other entities it interacts with in the course of usual business.

5. THE COUNCIL

Appointment of members

- a. A Participant is to appoint one member (delegate) of the Council of the Participant to be a member of the NEWROC Council.
- b. A Participant may appoint a first and a second delegate from the Council of the Participant who are able to attend the NEWROC meetings and who may act temporarily in place of either delegate of the NEWROC appointed by the Participant during any period in which the member of the NEWROC is unable by reason of illness, temporary absence from State, conflict of interest or for any other cause to perform the functions of the office.
- c. The Participant has one vote

Note:

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 Memorandum of Understanding and consisting of members of the Councils of the Participants.

5.1 Tenure of members of NEWROC

A member of the NEWROC Council shall be appointed annually and shall hold office until either:

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

Note:

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

5.2 Election of Chair and Deputy Chair

The members of the NEWROC Council shall elect a Chair and a Deputy Chair at the first meeting of NEWROC Council following each local government election. The election of the Chair and Deputy Chair will be flexible to accommodate new Presidents or CEO's and structured accordingly e.g. term. The Chair and Deputy Chair shall be rotated accordingly:

Shire of Mt Marshall
Shire of Nungarin
Shire of Wyalkatchem
Shire of Koorda
Shire of Mukinbudin
Shire of Trayning
Shire of Dowerin

If the office of Chair and a Deputy Chair becomes vacant then the members of the NEWROC Council shall elect a new Chair and Deputy Chair, as the case requires.

5.3 Tenure of Chair and Deputy Chair

The Chair and Deputy Chair hold office until:

- a. no longer eligible to be a member pursuant to clause 6.2
- b. the election of a new Chair and a Deputy Chair pursuant to clause 6.3 or
- c. the incoming Chair and/or Deputy Chair are new members to NEWROC and do not wish to take on the role immediately

5.4 Role of Chair

The Chair:

- a. Presides at meetings of the NEWROC Council;
- b. Carries out civic and ceremonial duties on behalf of NEWROC;
- c. Speaks on behalf of NEWROC to media;
- d. Advocates for the NEWROC on issues and projects of significance;
- e. Meets with stakeholders on behalf of the NEWROC, together with the NEWROC CEO and EO;
- f. Performs such other functions as are given to the Chair by the Act, any other written law or this Agreement; and
- g. Liaises with the CEO on NEWROC affairs and the performance of its functions.

Notes:

The role of the NEWROC Council is set out in section 2.7 of the Act.

The functions of the CEO are set out in section 5.41 of the Act.

The Chair may agree to the CEO speaking on behalf of the NEWROC – see section 5.41(f) of the Act.

5.5 Role of Deputy Chair

The Deputy Chair performs the functions of the Chair, when authorised to do so, under this clause.

- a. The Deputy Chair may perform the functions of Chair if;
- b. The office of Chair is vacant; or
- c. The Chair is not available or is unable or unwilling to perform the functions of Chair,

5.6 Role of members of NEWROC Council

- a. Achievement of the NEWROC purpose
- b. Strategic direction of the NEWROC and its management;
- c. Oversee the delivery of the annual implementation plan;
- d. Work cooperatively with other members
- e. Support the involvement of CEO's and senior staff in the NEWROC
- f. Promote the NEWROC
- g. Represents the interests of the electors and residents of the Region;
- h. Facilitates communication between the community of the Region and NEWROC;
- i. Participates in NEWROC's decision-making processes at meetings of the NEWROC and its committees;
- j. Represents and undertakes actions on behalf of NEWROC as authorised by the NEWROC Council;
- k. Form sub committees of the NEWROC and
- l. Performs such other functions as are given to the member by the Act or any other written law.

5.7 Role of the NEWROC Executive

The role of the Executive is to:

- a. Assist in the achievement of the NEWROC purpose
- b. Assist in the strategic direction of the NEWROC and its management;
- c. Identify opportunities and advocacy for the NEWROC Council;
- d. Participates in NEWROC's decision-making processes at Executive meetings of the NEWROC;
- e. Represents and undertakes actions as directed by the NEWROC Council;
- f. Assists to ensure the advice and information is available to the NEWROC Council so that informed decisions can be made;
- g. Performs such other functions as are given by the NEWROC Council.

5.8 Role of CEO of NEWROC

The NEWROC CEO is to be from the Council that holds the Chair role and shall be rotated accordingly:

Shire of Mt Marshall
Shire of Nungarin
Shire of Wyalkatchem
Shire of Koorda
Shire of Mukinbudin
Shire of Trayning
Shire of Dowerin

If the NEWROC CEO position becomes vacant then the members of the NEWROC Council shall elect a new NEWROC CEO, as the case requires.

The role of the CEO is to:

- a. Advise the council in relation to functions of the NEWROC Council;
- b. Ensure the advice and information is available to the NEWROC Council so that informed decisions can be made;
- c. Cause the NEWROC Council decisions to be implemented;

- d. Together with the NEWROC Chair, meets with stakeholders on behalf of the NEWROC;
- e. Liaise with the NEWROC Chair and NEWROC Executive Officer on the affairs of the NEWROC;
- f. Manages the NEWROC Executive Officer;
- g. Ensure that records and documents of the NEWROC are properly kept (delegated to the Executive Officer);
- h. Signatory to NEWROC bank accounts and oversees finances; and
- i. Perform any other function specified or delegated by the NEWROC Council.

5.9 Role of the Executive Officer of the NEWROC

The role of the Executive Officer is to:

- a. Action NEWROC Council and NEWROC Executive decisions
- b. Keep the accounts of the NEWROC in order and receive all monies
- c. Adhere to all financial and legal responsibilities
- d. Custody of all books, documents, records and registers of the NEWROC
- e. Assist in implementing the Strategic Plan
- f. Compile agendas, minutes, grant applications, discussion papers, project plans (including implementation)
- g. Foster partnerships
- h. Regular communication within the NEWROC and to key stakeholders
- i. Any other function as specified or directed by the NEWROC Council, Chair or CEO

6. FINANCIAL CONTRIBUTIONS

6.1 Financial Year

The financial year of the NEWROC is 12 months from July 1

6.2 Annual membership

Each Participant shall make an annual contribution towards the amount necessary to meet the deficiency, if any, disclosed in the annual budget of NEWROC, which contribution shall be in the following proportions:

Shire of Koorda	-	1/7th
Shire of Mt Marshall	-	1/7th
Shire of Mukinbudin	-	1/7th
Shire of Nungarin	-	1/7th
Shire of Trayning	-	1/7th
Shire of Wyalkatchem-		1/7th
Shire of Dowerin -		1/7th

6.3 Additional contributions

Where the NEWROC Council determines that the Participants will make any contribution (other than the annual contribution) including, without limitation, any contribution towards the acquisition of any asset of a capital nature, then the Participants will make those contributions in the same proportions as set out in clause 6. The contributions so determined shall be as disclosed in the budget of NEWROC for each financial year

6.4 Manner of Payment

The contributions shall be paid by each Participant to NEWROC in the manner determined by the NEWROC Council.

6.5 Late Payment

Unless otherwise agreed, if a Participant fails to pay to NEWROC 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 NEWROC, interest at the overdraft rate charged by NEWROC'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.

6.6 Winding Up of NEWROC Project

The NEWROC Council may resolve to wind up a Project. An absolute majority vote will be required by the NEWROC Council to resolve to wind up any Project.

6.7 Division of Assets

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 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.

Clause 6.6 shall not apply where the Project Participants advise NEWROC that a realisation of the property and assets is not necessary.

6.8 Division of Liabilities

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

6.9 Indemnification by Project Participants of NEWROC

If a Project is wound up then the Project Participants shall indemnify NEWROC (in the proportions referred to in the original plan) with respect to that liability or debt.

7. TERM AND TERMINATION

7.1 Winding up by Agreement

The Participants may, by agreement, wind up NEWROC.

7.2 Extension of Agreement

The Participants may, by agreement, extend the term of NEWROC.

7.3 Term of Agreement

Unless otherwise wound up or extended, this Agreement will terminate on 30 June 2023

7.4 Division of assets

If NEWROC is to be wound up and there remains, after satisfaction of all its debts and liabilities, any property and assets of NEWROC 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 to the assets of NEWROC bear to the total of such contributions by all Participants. Division of assets to be realised at the end of the financial year plus any other project commitments.

7.5 Division of liabilities

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

8. WITHDRAWAL OF A PARTICIPANT

8.1 Withdrawal

The minimum term of membership is three years – aligned to the NEWROC MoU signing date. No withdrawal can take place during this period. If a Participant intends to withdraw at the end of the three year MoU they must give notice advising the NEWROC of their intent to withdraw from the NEWROC.

8.2 When Withdrawal to Take Effect

Withdrawal will take effect as from 30 June next following.
The NEWROC Council may reinstate by absolute majority the membership of a former Participant once they have cleared all debts owed to the NEWROC

8.3 Entitlement or Liability of Withdrawing Participant

As soon as practicable following withdrawal taking effect on 30 June NEWROC shall distribute to the Participant an amount equal to the proceeds and any surplus funds which would have been payable if NEWROC was wound up; or

Be entitled to recover from the Participant an amount equal to the liability or debt which would be payable by the Participant if the NEWROC was wound up, as the case may be.

8.4 Participants May be Required to Pay Distribution

If the NEWROC is unable to meet the distribution from funds on hand then, unless the NEWROC 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 NEWROC.

9. ADMITTING NEW MEMBERS

Section 3.65 of the Local Government Act 1995 is to apply.

Prospective new members may be admitted by a decision of the NEWROC Council and shall be required to contribute to NEWROC a sum determined by the NEWROC Council that is described as "the entry sum" and in addition a sum equal to the current year's contribution schedule or such other sum agreed to by the NEWROC Council.

Note:

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

10. BORROWINGS

NEWROC is not permitted to borrow funds.

Notes:

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 Memorandum of Understanding provides that it does.

Part 6, Division 5, subdivision 3 of the Act deals with borrowings and includes the power to borrow and restrictions on borrowings.

11. DISPUTE RESOLUTION

11.1 Dispute

In the event of any dispute or difference ('dispute') arising between the Participants and NEWROC or any of them at any time as to any matter or thing arising under or in connection with this Memorandum of Understanding, then a Participant or NEWROC may give to the other Participants and NEWROC (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 NEWROC 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 25 business days from the date of sending the dispute notice, the Participant or NEWROC 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 1985.

11.3 Legal Representation

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

12. INTERPRETATION

In this Memorandum of Understanding unless the context requires otherwise:

Words importing the singular include the plural and vice versa;

Words importing any gender include the other gender;

References to persons include corporations and bodies politic;

References to a person include the legal personal representatives, successors and assigns of that person;

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);

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;

References to writing include any mode of representing or reproducing words in tangible and permanently visible form, including confirmed facsimile transmission and email with receipt confirmation;

An obligation of two or more parties shall bind them jointly and severally;

If a word or phrase is defined cognate words and phrases have corresponding definitions;

An obligation incurred in favour of two or more parties shall be enforceable by them jointly and severally;

Reference to anything (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;

12.1 Headings and footnotes

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

Time - References to time are to local time in Perth, Western Australia;

Where time is to be reckoned from a day or event, such day or the day of such event shall be excluded.

13. AMENDMENT TO MEMORANDUM OF AGREEMENT

The Participants may amend this Memorandum of Understanding by unanimous consent,

Note:

1. Refer section 3.65(1) of the Act.

EXECUTED by the Parties

PARTICIPANT	Date of resolution to enter this Memorandum of Understanding
Shire of Dowerin	
Shire of Koorda	
Shire of Mt Marshall	
Shire of Mukinbudin	
Shire of Nungarin	
Shire of Trayning	
Shire of Wyalkatchem	

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

President

Chief Executive Officer

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

President

Chief Executive Officer

THE COMMON SEAL of SHIRE OF MT MARSHALL was hereunto affixed in the presence of:

President

Chief Executive Officer

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

President

Chief Executive Officer

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

President

Chief Executive Officer

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

President

Chief Executive Officer

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

President

Chief Executive Officer