



Northern Land Council

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TOURISM DEVELOPMENT AND OPERATIONS ON ABORIGINAL LAND – GUIDELINES FOR PROPONENTS

The purpose of these guidelines is to assist proponents prepare proposals for tourist activities on Aboriginal land in the area of the Northern Land Council's statutory responsibility (refer to map attached at page 10). The guidelines apply to both those proposals that a proponent may wish to develop and operate in their own right as well as those proposals involving a joint venture arrangement with Aboriginal people.

These guidelines form part of the administrative procedures implemented by the Northern Land Council (NLC) to more efficiently deal with development applications involving Aboriginal land. The intention is to establish a bench-mark against which proposals can be objectively assessed ie. all proponents are required to submit a proposal addressing the matters raised in these guidelines.

For a number of reasons, conducting commercial operations on Aboriginal land brings with it a set of specific challenges. These challenges are in addition to those faced in the normal course of conducting a tourist operation. A reasonable expectation would be that those seeking commercial returns from Aboriginal land have already achieved business success in the commercial mainstream and are not approaching Aboriginal land because it is believed the standards required are lower; in fact the standards expected are higher.

The NLC will be able to conduct consultations and process proposals more quickly if a proponent supplies all the information requested that is of relevance to their proposal. Additional details supplied at the proponent's discretion are welcomed. Material supplied as commercial-in-confidence will be respected as such.

Agreements under the *Aboriginal Land Rights (Northern Territory) Act 1976*

Under the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA), people or companies conducting commercial activity on Aboriginal land are required to hold a contract issued through the relevant Land Council. This contract may be either a licence or a lease (under the ALRA both a licence and a lease are considered an interest in land). A licence generally only allows specified activities to be conducted on Aboriginal land while a lease, although only issued for a specific purpose, still provides for exclusive possession. A lease can also be registered on the Land Trust title deed.

To accommodate interim arrangements where consultations have been held with the traditional owners and consent given, but the contract has not been executed, an access permit under the *Aboriginal Land Act* may be issued. The permit would be issued on the basis of the proponent having signed the permit conditions. The permit conditions would contain the core provisions of the licence or lease.

Under the ALRA it is a requirement that all moneys paid under agreements are made to the NLC who then distributes according to the instructions of the traditional owners as a group. It is therefore the NLC's responsibility to mediate any disputes that may arise amongst the traditional owners over money. The NLC would also mediate between the proponent and the traditional owners where a disagreement may have arisen concerning the operation of the venture. Without an agreement under the ALRA the proponent must deal with all disputes personally.

Holding an agreement under the ALRA would also enable a proponent to advertise their product as been conducted in accordance with all required legislation and consequently satisfy any best practice accreditation.

Private commercial agreements with individual Aboriginal landowners or community groups

Private commercial agreements with individual Aboriginal landowners or community groups that require the use of Aboriginal land provide no security to the proponent, and may be unlawful pursuant to the ALRA. There is therefore no legally enforceable right for the proponent in the event of a dispute with landowners. In such circumstances the operation could be closed down and operators and guests removed from the land at any time on the proper instruction of traditional owners.

Such informal arrangements are also unlikely to have taken the complexity of Aboriginal land ownership into account. This can lead to misunderstandings and disputes, which may cause interruptions to business activities, or create the impression to tourists that they are not welcome. It should be noted that the tourism business is particularly sensitive to interruptions and loss of goodwill.

For these reasons, the Land Council, in its desire to promote a high quality, stable and sustainable tourism market on Aboriginal land will use its best endeavours to discourage informal and ad hoc arrangements with individual traditional owners and community groups.

Advertisement and Promotion

Care is required when using Aboriginal imagery in promotion. Traditional owners may require that all promotional material which contains an Aboriginal reference should be cleared prior to use. It is accepted practice that images of recently deceased people are not used. If a proponent has used the image of a senior person in their promotional material and that person dies it may be a requirement that all the promotional material is withdrawn. This care also extends to descriptions of land ownership and the naming of individual people or a collective group, particularly when a connection is being made between a named person and/or collective group and their relationship with an identified portion of land.

Archaic references or stereotypes are to be avoided. It is also accepted practice that anonymous photos of Aboriginal people or country are not used. If a photo of an Aboriginal person is to be used in promotion the expectation would be that that person has consented to the use and can therefore be named. Likewise if a photo of country is to be used there may be a name for that country. The NLC would seek to assist the proponent in ensuring clearance of promotional material and therefore requests that all promotional material is sent to the NLC for comment prior to final copies been made. Ultimately though the responsibility and onus is on the proponent to ensure the accuracy of statements and imagery used in all advertisement and promotional material.

In northwest Arnhem Land it is usual for the main access road to be closed for up to a week each year during ceremony. At other times, on the death of a senior person, an area may be closed for a period of time. These are matters that should be made clear in the proponent's advertisement material.

PROCEDURES

1. When information outlined in these guidelines is received the NLC will assess the proposal. Assessment will include the extent of the consultation required and the costs of such consultation. It is a requirement of the ALRA that landowning groups, rather than individuals, give informed consent and thus the consultation may require contact with a considerable number of people, not all of whom may live in the same place. It is a requirement of the NLC that the proponent makes a reasonable contribution to the cost of the consultation, which contribution can be in-kind (ie. transportation, catering, logistic support). The consultation with traditional owners will not take place until agreement has been reached with the proponent as to their contribution towards the costs of consultation.
2. The NLC may at any time seek further information from the proponent and the proponent may clarify the proposal.
3. The NLC may at any time submit the proposal to consultants for financial, environmental or other advice (on the basis of assurances concerning commercial-in-confidence provisions).
4. The NLC has developed a number of standard agreements for various tourist operations. Prior to consultation the proponent may request that they be provided with a draft agreement. Such a draft can only be prepared if the proponent has provided the core details of their proposal. A complete proposal based on those matters identified in these guidelines is still required and consultation will not take place until the NLC is satisfied that the traditional owners and any affected Aboriginal groups are in a position to make an informed decision. The consultation process can be expedited if prior to the consultation with traditional owners consensus has been reached between the proponent and the NLC on the baseline principles upon which the agreement would be constituted.
5. The NLC will advise the proponent when consultation with the landowners is to be undertaken, the timing being largely dependant on consultation programming in the particular region and the NLC's existing data as to the identity of the relevant landowners. The financial and/or social benefits to be acquired by the traditional owners would also influence the priority given to the project. Unless otherwise requested by the traditional owners it is the practice to invite the proponent to the consultation. Information about who are the owners of particular areas of land is held in confidence by the NLC and is not made freely available unless the individuals concerned have instructed the NLC to do so. The NLC requests that proponents respect the confidentiality of information they may obtain about land ownership in the course of consultations.
6. Where necessary the NLC will undertake the appropriate investigations, including fieldwork, to identify the relevant landowners in the area of the proposed activities. The NLC may also make recommendations that the area of the proposal be varied to better accommodate land ownership and/or regional priorities. For example if a proponent suggests an area which is generally on one clan estate and marginally extends onto another it may make matters much less complicated to reduce the area proposed to that of the main group concerned.
7. Following consultations the Land Council will formally advise the applicant:
 - (a) that the landowners consent to the proposal and wish the NLC to negotiate with the proponent for a suitable agreement;
 - (b) that the proposal is rejected; or
 - (c) that the landowners want additional information.

8. Where a proposal is rejected the NLC may advise the proponent that the landowners have directed the Land Council not to consider a new or revised proposal.
9. Where the NLC is directed to negotiate with the proponent, the proponent is required to meet reasonable administrative costs incurred by the Land Council in preparing and arranging for the execution of the agreement. These costs are separate from and in addition to the consultation costs referred to at point 1 above. For less complex licence agreements these costs are currently around \$500. An estimate or quotation of these costs may be obtained in advance.

ASSESSMENT OF PROPOSALS

In assessing a proposal the Land Council will be particularly concerned with:

- (a) the protection of sites of significance to Aboriginal traditional owners and custodians;
- (b) the environmental impact of the proposal including the extent of rehabilitation or preventive land management action that may be required to ensure natural qualities of the land are not degraded;
- (c) the track record of the proponent and their ability to deliver the product offered in a professional and efficient manner and to meet their financial commitments;
- (d) the willingness of the proponent to allow for and cooperate in enabling greater participation of either individual traditional owners or their representative community group in the project;
- (e) the financial return to Aboriginal interests and the ability of the proposal to benefit the long term economic value of Aboriginal land;
- (f) the extent to which the proposal may complement regional strategic aims and in particular key management issues such as fire, weeds, feral animals and erosion;
- (g) the effect of the proposal on Aboriginal people other than the landowners of the area of operation (ie. road access through neighbouring estates);
- (h) the potential for Aboriginal employment, training and business development;
- (i) the area involved, the extent of the consultation therefore required with traditional owners, and the commitment of the proponent to make a reasonable contribution towards the cost of consultation;
- (j) the degree and way in which Aboriginal interest in the area and project will be promoted in the proponent's marketing strategy;
- (k) the protection of Aboriginal people's privacy.

INFORMATION REQUIRED

The Northern Land Council acknowledges that material provided by a proponent of a commercial-in-confidence nature will be respected as such.

1. The Proponent

1. Who is the proponent? In whose name is the contract to be held? Is the proponent a company, sole trader or partnership? Is there an associated business name?

Information on the following should be provided:

- (a) if the proponent is a company, a company profile including the registered name, ACN number, address, all the principal shareholders, and other business interests in the Northern Territory, and, where appropriate, interstate and overseas interests of the proponent;
 - (b) any other company names registered by the proponent and a brief outline of their operations;
 - (c) a copy of the companies last annual return;
 - (d) if the proponent is a sole trader or partnership the names and all contact details (postal address, trading address, business and mobile phone, fax and e-mail numbers);
 - (e) a brief resume of current and previous business experience for the last 10 years and details of any management or other experience of relevance to the current proposal;
 - (f) an official extract providing details of any current or previous (10 yrs) registered business names associated with the proponent (including affiliated companies and interests);
 - (g) the proposed trading name of the operation;
 - (h) details of any contractual or service arrangements that the proponent may be a party to which ties or enables a third party access to the proponent's activities on Aboriginal land;
 - (i) membership of and any official positions held with a regional tourism authority or representative industry group;
 - (j) membership of any NT or Commonwealth government committee or industry group;
 - (k) a copy of all licences required by legislation for the operation of the proposal and details of any accreditation held which is supported by an industry group;
 - (l) proof of public liability and indemnity cover for not less than \$5 million for any one single accident or event;
 - (m) details of any litigation or current claims involving the proponent;
 - (n) is this business the full time occupation of the proponent;
 - (o) copies of both current and previous promotional material including any published articles concerning the proponent and their product;
 - (p) two written references that are relevant to assessing the proposal which includes the name, organisation, business title and telephone contact of the referee;
 - (q) address of any Internet site relating to the proponent and/or their product including the advertising of the proponent's product by an agent of the proponent.
2. Has the proponent been employed by or been in a business relationship with an Aboriginal organisation, including the provision of a service under a management contract or consultant's brief? Provide details. In the case of a company, details should be provided on both the company's relationship and those of its directors.
 3. The proponent should also disclose if they have ever been in conflict with Aboriginal landowners, their representatives or representative bodies.

4. Has the proponent already commenced discussions with traditional owners and/or community groups concerning their proposal? With whom have these discussions taken place and what was the response?

2. Term and Area of Operation

1. What is the period of time sought for the agreement?
2. Is exclusive use of the area sought? If so, what degree of exclusivity is sought and how will continuing use by the landowners be accommodated?
3. A map marking the area covered by the proposal must be provided. If the proposal requires infrastructure development, including establishing a campsite, the nature of the infrastructure and its preferred location must be detailed. A site plan and drawings for the campsite structures must be provided. It should be noted that any permanent fixtures become the property of the Land Trust.
4. Has the proponent operated in the area previously or do they know the traditional owners involved? If so, provide details of previous operations and/or names of traditional owners.
5. Has the proponent ever carried out tourist or other activities on Aboriginal land, either in their own name or in association with other persons? If so provide details.
6. If a lease is the preferred option is registration of the lease required and is any sub-division approval required? For a grant of a lease where the term (including any enforceable option to renew) is more than 12 years the *Planning Act (NT)* requires development consent and sub-division approval. Sub-division approval requires the preparation of a formal survey plan.

3. Operations

1. What activities does the operation involve eg. provision of accommodation and ancillary activities, sightseeing, fishing, hunting, photography, 4WD operations, bushwalking, interest in Aboriginal culture/artefacts etc.?
2. Will use be required of community infrastructure (ie. barge landings, airstrips, roads, shops, accommodation facilities, storage, fuel, art and craft centre) and essential services (ie. water, power, sewage) and if so what arrangements are proposed to accommodate such usage?
3. Information on the following should also be provided:
 - (a) the location and nature of each activity;
 - (b) power, water, waste disposal or similar requirements;
 - (c) staff requirements;
 - (d) the number of clients involved;
 - (e) the duration of each trip (where appropriate);
 - (f) vehicles or other equipment to be used;
 - (g) access roads used or other access methods;
 - (h) any proposed off-road requirements.

4. Construction Activities

1. Does the proposal involve any form of construction work or similar environmental disturbance? If so provide information on the following both during and after construction:
 - (a) how many staff will be employed;
 - (b) where will they be resident;
 - (c) will there be employment for Aboriginal people? Provide details;
 - (d) what equipment will be utilised and is any heavy machinery required;
 - (e) what is the land area that would be disturbed during construction and what is the nature of that disturbance;
 - (f) are there other requirements (eg. camps, water requirements, waste disposal);
 - (g) is it contemplated that any exotic plants or animals would be introduced into the area of operation (ie. planting a lawn, landscaping with introduced plants);
 - (h) what is the duration of the construction phase and over what period will this take place;
 - (i) what are the access requirements and methods (eg. road, air, barge landings and whether new access tracks or airstrips are required);
 - (j) are there any indirect requirements and is any payment on offer for acquisition of those requirements (eg. gravel, timber, water, etc.).
2. All necessary charts, diagrams, plans and maps should be provided.

5. Financial Considerations

1. What sources of finance are to be used? What is the timetable for such expenditure and when is the venture planned to be operational? Details of the proponent's financial ability to fund the proposal must be provided.
2. Has a feasibility study, business plan or market research study been carried out? If so provide details including expected operation costs, profits and breakeven points (eg. occupancy rates/booking levels). If no studies or plans have been carried out an explanation as to why this was considered unnecessary should be provided.
3. Provide details of proposed participation or financial remuneration to be offered to the landowners. This could include:
 - (a) *Upfront Payment*

A single payment for the whole contract period could be negotiated.
 - (b) *Annual Payment*

An annual fee calculated as a percentage of the total gross revenue or profit for each year could be negotiated.
 - (c) *Equity*

Traditional owners may consider being offered an equity position in the operation as consideration for consent, becoming joint venturers on the project. This may be

particularly appropriate in cases where local people can play a positive role in the management or operation of the project.

(d) *Benefits in Kind*

In addition to, or as an alternative to other consideration, an appropriate form of consideration may be bores, roads, buildings, airstrips, vehicles or equipment, feral animal control, weed control.

(e) *Royalty Fee*

A royalty fee per client per day may be considered. Depending on the nature of the operation these fees currently range from \$20 per person for a half-day tour to \$60 per person for a 24 hour period. In the case of safari hunting a fee per trophy has been the practice to date. The trophy fees currently applying are as follows:

Water buffalo	\$1,000 - \$1,500
Scrub bulls	\$500 - \$1,000
Goats	\$350 for the first goat and \$150 for each goat thereafter
Wild boar	\$50 - \$200

A fee for each non-hunter client also applies. This fee is currently around \$50 per person per day.

(f) *Access Fee*

An access fee in addition to a royalty fee may also be levied. Current charges range from \$10 - \$15 per person. The access fee is paid when other people's country is used to access the tourist operation. In the northwest Arnhem area the access fee is applied to a road maintenance and development program.

(g) *Guide Fees*

These fees are paid directly to any Aboriginal person engaged as a guide on a tour. If required by traditional owners the fee would be stated in the agreement. Alternatively the fee can be as agreed between the proponent and the guide. Reference should be made to industry standards.

6. Impacts

1. An assessment of the likely and possible impact of the proposal on the environment arising either directly or indirectly from the proposed activities. Such impacts could include:
 - (a) use of resources (eg. water, gravel, timber);
 - (b) noise;
 - (c) impacts on native flora and fauna;
 - (d) the introduction or carrying of weeds (eg. mimosa) or plant pathogens;
 - (e) pollution (eg. litter, human wastes, smoke or other emissions, fuel spills etc.);
 - (f) erosion;
 - (g) fire;
 - (h) impact on wilderness areas;

- (i) indirect land use conflicts (eg. National Park proximity).
2. The proponent should provide a description of the likely economic and social impacts on Aboriginal people, communities, culture and lifestyle of their proposal.

7. Remedies

Proponents should indicate ways in which impacts could be avoided or reduced:

- (a) by indicating ways of avoiding environmental impacts or safeguarding against them;
- (b) by relevant educational or awareness programs for staff, contractors and short term employees. An outline of the type of information that will be or might be provided to employees should be provided, as well as proposed methods for controlling employee excesses;
- (c) by suggesting appropriate methods for liaison with Aboriginal landowners, and for the protection of Aboriginal privacy and sites of significance.

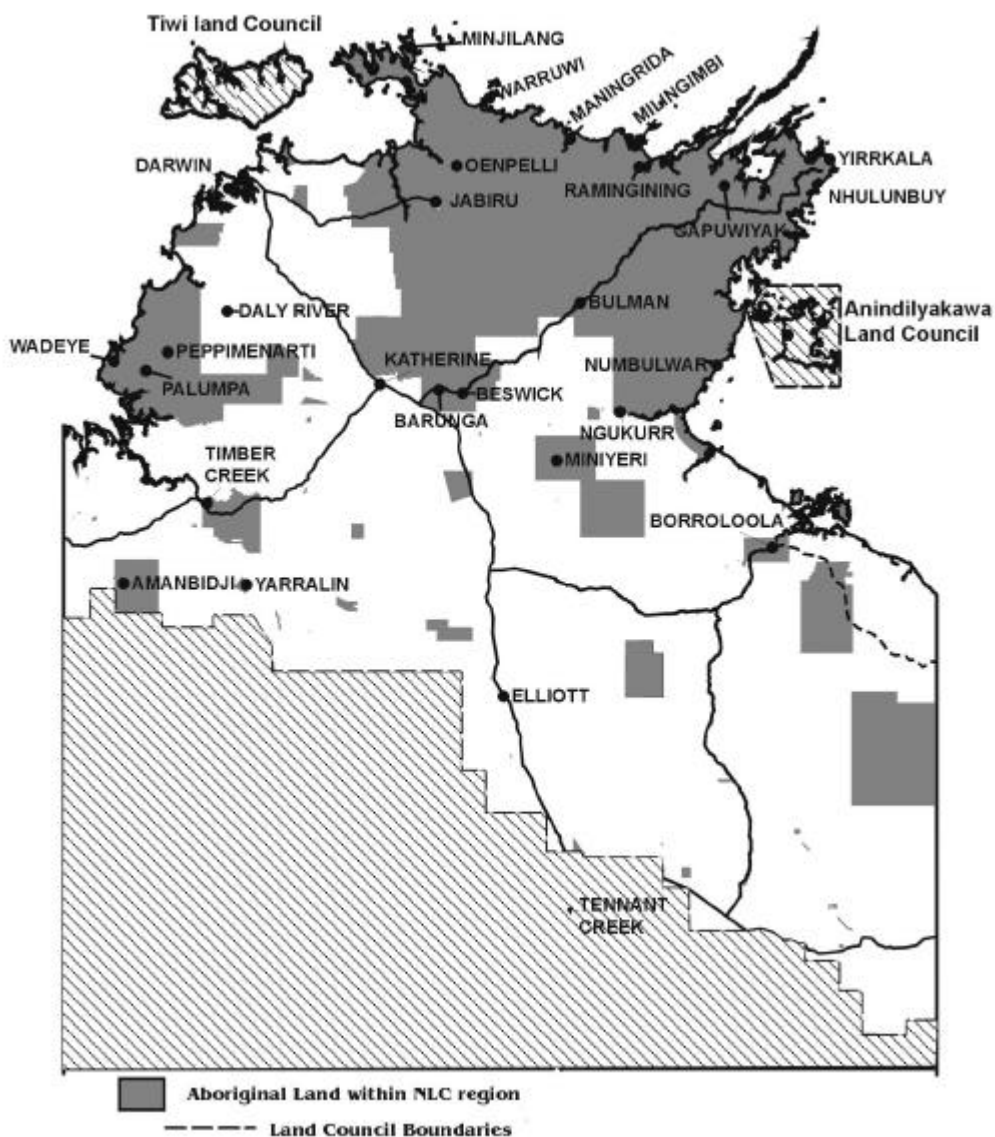
8. Employment, Training and Business Development

1. Identify any opportunities that may be provided for the training and employment of Aboriginal people, including arrangements that could be entered into with community groups (ie. resource centres, community councils, arts and craft centres) and education bodies to facilitate training and employment.
2. Are there any business opportunities that could be contracted to local Aboriginal businesses or groups (ie. contracting site development works, provision of fuel needs)?
3. Any other forms of Aboriginal participation and the arrangements required for the delivery of that participation should be identified (ie. management participation, cultural activities, sale of artefacts, etc.).

9. Promotion and Marketing

1. Does the proponent have a strategy in place for the marketing and promotion of the product? What is this strategy?
2. What is the market to be targeted by the product and what is considered to be the best way to attract those clients?
3. Will promotion and advertisement involve famils and what arrangements would be sought (ie. non-payment of royalties for famils)? Is it proposed that there be a limit on the number of “free of charge” famils in any one year?
4. How will the proponent ensure that cultural material is accurate and has the approval of the traditional owners? Cultural material includes that which is written, audio and visual. What arrangements are proposed to ensure that the proponent keeps a record of all advertisement concerning the product?
5. How will the proponent deal with closures of the land or access roads if required by Aboriginal traditional?
6. Does the proponent want to promote the product as being accredited through the provisions of the ALRA and is that perceived as a positive marketing tool?

Map identifying the area of land in the Northern Territory for which the Northern Land Council has the responsibility for carrying out statutory functions



Statement concerning the Financial Background of the Proponent

The following statement concerning the financial background of the Proponent is made as part of the application by [name of the proponent] dated and submitted to the Northern Land Council for consideration by the traditional Aboriginal owners in accordance with the provisions of the *Aboriginal Land Rights (Northern Territory) Act 1976*. It is acknowledged by the Proponent that until this statement has been signed and returned to the Northern Land Council the proposal remains incomplete.

1. The Northern Land Council reserves the right, at its discretion, to carry out financial checks on proponents.
2. If the Applicant is a Sole Proprietor or Partnership:-

Are you or your partner(s) an undischarged bankrupt or have you assigned your estate for the benefit of creditors?

.....
.....

3. If the Applicant is a Company:-

Within the last five years have any of the following events occurred in respect of the Applicant company, any holding company, subsidiary company, or related company within the meaning of section 50 of the *Corporations Law*:

- | | | |
|--------|--|--------|
| (i) | An official Manager or Inspector been appointed? | Yes/No |
| (ii) | A petition filed or application made for or an order been made for the deregistration or winding up or dissolution of the Company? | Yes/No |
| (iii) | A meeting called to pass a resolution for the winding up of the company? | Yes/No |
| (iv) | The members resolved or purported to resolve to wind up the company? | Yes/No |
| (v) | An application been made to a Court under section 315(1) of the <i>Companies Code</i> of any Australian jurisdiction or section 411(1) of the <i>Corporations Law</i> of any Australian jurisdiction? | Yes/No |
| (vi) | An arrangement of compromise been entered into between the Company and its unsecured Creditors? | Yes/No |
| (vii) | A receiver of any of the real or personal property of the company being appointed by any of its secured creditors? | Yes/No |
| (viii) | A judgement been obtained against the company or execution or other process of any Court or other authority or distress been used out against or levied or enforced against the assets of the Company? | Yes/No |

(ix) Any director of the company been a director of or otherwise associated with the management of another company in respect of which any of the above events have occurred? Yes/No

(x) Any director of the company been prosecuted for an offence against any relevant companies legislation? Yes/No

OR

(xi) Any director, secretary, shareholder or manager or any of their spouses been or being bankrupt, entered into an arrangement with his or her creditors or otherwise committed an act or been the subject of an act which disqualified him or her from holding office in a company? Yes/No

SIGNATURE OF PROPONENT

The Proponent warrants that the answers given above are true and correct in every particular to the best of their knowledge and belief.

If the proponent is a Sole Proprietor signed by the Proprietor or if the Proponent is a Partnership signed for and on behalf of all Partners in the Partnership:-

BY (FULL NAME):

SIGNATURE:

TITLE:

DATE:

OR

If the Proponent is a Company:-

The COMMON SEAL of

COMPANY NAME:

A.C.N Number:

Was hereunto affixed by a resolution of the Board of Directors dated