



Independent Director Package

For Kuruma Marthudunera Aboriginal Corporation in the Pilbara

Dated February 2014

CONTENTS

Executive summary 2

Overview: Kuruma and marthudunera People 3

KMAC: the process to date 5

Independent Director Requirements: 7

Engagement process and requirements..... 8

Appointment of independent directors 11

EXECUTIVE SUMMARY

Thank you for expressing your interest in the position of independent director on the Kuruma Marthudunera Aboriginal Corporation (ICN 7612) (KMAC) in the Pilbara.

This information package is confidential and for your review only.

The package consists of two sections:

KMAC Overview

Overview of KMAC, KM peoples native title claim and other KM entities.

Independent Director Requirements

Contains the independent director engagement process, qualifications required, commitments, remuneration, appointment and next steps for candidates.

CONTACT DETAILS

For further information please contact Franklin Gaffney, CEO, Kuruma Marthudunera Aboriginal Corporation on 0400 972 615.

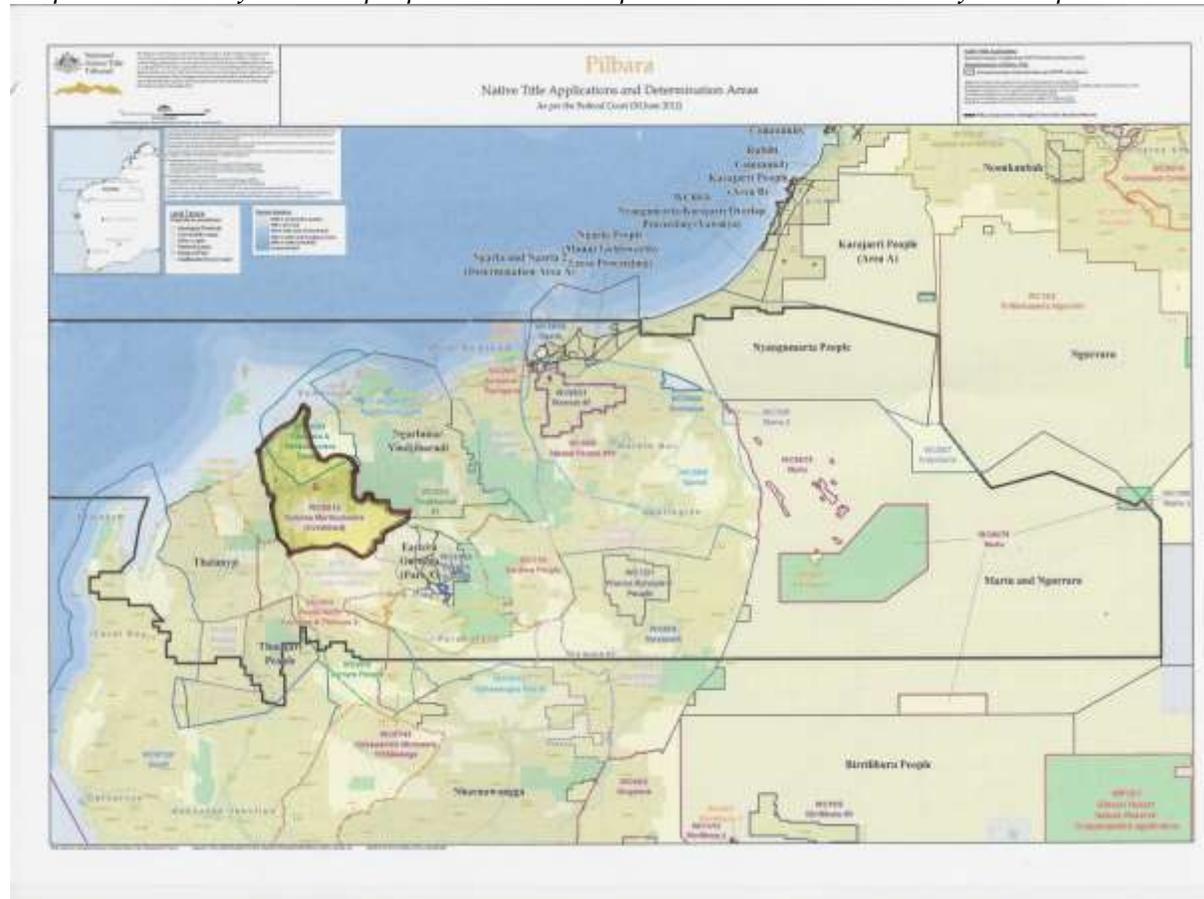
OVERVIEW: KURUMA AND MARTHUDUNERA PEOPLE

The Kuruma and Marthudunera (K&M) people have traditional rights to an area covering about 15,759 square kilometres in the Pilbara region of Western Australia.

The K&M traditional lands lie within the Shire of Ashburton and comprise part of the Fortescue River and the complete river system of the Robe River, in the most westerly part of the Hamersley Range.

K&M people lodged their native title application in the Federal Court in 1999. While K&M's native title determination application is still on foot in the Federal Court, all the necessary preparatory work in relation to claim boundaries, resolving matters relating to overlaps with other groups and genealogy have been finalised.

Map 1: Location of the KM peoples' native title prior to recent resolution of overlap boundaries



There are approximately 250 adult members in the K&M community. The total population including spouses and family members likely to benefit from KMAC programs is in the vicinity of 600 people.

Most of the K&M people reside in Roebourne, Karratha and Wickham with smaller numbers in Onslow.

A recent KM survey of their people found that:

- almost 50% of their families live below the poverty line (in a region where the cost of living is 37.1% higher than in Perth);
- over 50% of their families have at least one person with diabetes;
- over 25% of their population suffer from asthma, heart problems or obesity; and
- almost 75% of KM people have only completed primary or Year 10 schooling.

Following the successful negotiation of the claim-wide Participation Agreement with Rio Tinto Iron Ore in 2011, KMAC was established as a corporate entity for the K& M people. It is responsible for the monitoring of RTIO's obligations and implementation of KM peoples' obligations under the Participation Agreement.

The K&M people have a number of other agreements with mining companies and KMAC has assumed responsibility to monitor those agreements.

K&M's agreements with mining companies remain valid irrespective of the outcome of the native title determination as long as no other group is found to be the native title holders for the affected areas.

The KM corporate structure

K&M peoples' corporate structure attempts to incorporate 'customary' or 'adopted' decision-making processes. Their governance systems are therefore based on carefully validated cultural and family structures. The guidance of K&M people, particularly the Traditional Owner Council (TOC) has considerable cultural authority within the group.

The three key KM decision-making bodies are:

- KM Limited – a company limited by guarantee receives, holds and disperses mining benefits and other income and holds those receiving funds accountable. It manages a Charitable Trust and a Direct Benefit’s Trust. KML has six Traditional Owner directors and two independent directors.
- KMAC – an Aboriginal Corporation which is the active, operative entity entering into contracts and undertaking initiatives. KMAC is the sole member of KM Limited and receives funding from it, and reports to its members in accordance with its Rule Book and *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) (CATSI Act). KMAC has seven Traditional Owner directors and is seeking to appoint two independent directors.
- The TOC – an unincorporated entity consisting of representatives from the six apical ancestors.

The corporate entities have aligned strategic and annual plans approved by the membership and are required to annually provide members with an audited report on outcomes and financial performance.

KMAC: THE PROCESS TO DATE

After the establishment of KMAC–MLCS—a South Australian consultancy firm was engaged to provide management services and identify an appropriate structure for KMAC ongoing operations. In March 2013, Franklin Gaffney was appointed as KMAC’s inaugural Chief Executive Officer.

Currently, there are five KM directors on the KMAC Board:

- Josie Alec
- Kristie Hughes
- Annalee Lockyer
- Cyril Lockyer
- Deanna McGowan (Chairperson)

Since the appointment of the Chief Executive Officer, implementation of KMAC's corporate structure has commenced with the:

- Endorsement of Strategic Plan and Annual Plan for 2013-14
- Governance training for the KMAC directors delivered by Australian Institute Company Directors
- Approval of Rule Book by the Office of the Register of Indigenous Corporations (ORIC)
- Endorsement by the Australian Charities and Not-for-Profit Commission (ACNC) as a charitable entity
- Endorsement as a Public Benevolent Institution by the Australian Taxation Office
- Endorsement of a suite of corporate policies and procedures by the KMAC Board
- Purchase of the new administrative premises in Karratha (the old Commonwealth Bank offices). The refurbishment of the premises is currently underway.
- Commencement of recruitment for key positions in line with Annual Plan 2013-14;
- Establishment of KMAC's cultural heritage business; and
- Recruitment of professional and administrative staff.

Independent Director Requirements:

- *Engagement process and requirements*
- *Appointment of independent directors*
- *Next steps for candidates*

ENGAGEMENT PROCESS AND REQUIREMENTS

The following outlines the independent director engagement process:

Feb 14	KMAC circulate the Expressions of Interest for independent directors.
Mar 14	Expressions of interest lodged with KMAC together with short form curriculum vitae. List of candidates circulated to KMAC Board for review and feedback.
April 14	Short list candidates are notified. Candidates may be contacted to provide further information and obtain WA Police - National Police Clearance Certificate.
April 14	KMAC Board selects candidates for telephone interviews at April Board meeting.
May 14	KMAC Board conduct interviews and selects at least two candidates to invite to the Pilbara to 'meet and greet' TO directors.
June 14	KMAC Board passes resolution to appoint two independent directors.
June 14	Successful candidates notified, subject to members endorsement. Balance of candidates remains on register.
July 14	Independent director attends the first board meeting.
Prior to Nov 14	Appointments confirmed at the Annual General Meeting of members.

INDEPENDENT DIRECTOR REQUIREMENTS

You will only be eligible for the appointment of independent director of KMAC if you meet the criteria identified below.

Board Experience: two years recent experience as a director of an Australian company governed by the Corporations Act; can demonstrate a preparedness to question, challenge and critique, and a willingness to understand and to commit to the highest standards of governance.

Financial Literacy: is 'financially literate' as such qualification is interpreted by the board in its judgment.

Leadership Experience: possesses leadership experience, and shall possess qualities reflecting a proven record of accomplishment and ability to work with others.

Absence of Conflicting Commitments: does not have commitments that would conflict with the commitments of a director of the company.

Reputation and Integrity: is of high repute and recognised integrity and has not been convicted in a criminal proceeding or named a subject of a pending criminal proceeding (excluding traffic violations and other minor offences). Such person shall not have been found in a civil proceeding to have violated any federal or state securities or commodities law, and shall not be subject to any Court or regulatory order or decree limiting his or her business activity, including in connection with the purchase or sale of any security or commodity.

Is a Responsible Person, meaning an individual who:

- Performs a significant public function; or
- Is a member of a professional body having a code of ethics or rules of conduct; or
- Is officially charged with spiritual functions by a religious institution; or
- Is a director of a company whose shares are listed on the Australian Stock Exchange; or
- Has received formal recognition from government for services to the community; or

- Is a responsible person as described by the Commissioner of Taxation in Taxation Ruling TR 95/27 or otherwise determined by the Commissioner of Taxation.

An Independent Person is not (and a member of the person's immediate family is not):

- One of the traditional owner group;
- A lineal descendant of, or first cousin of, one of the traditional owner group;
- Married to or in a de facto relationship with one of the traditional owner group; nor
- A parent or sibling of a person who is married to or in a de facto relationship with one of the traditional owner group;
- Have, or within the first year of the independent director's term, complete, a director's course approved by the Australian Institute of Company Directors (AICD) or a suitable successor to the AICD; and
- Have no previous convictions in relation to a fraud offence.

A person is preferred to be appointed as an independent director if they:

- Have experience working with indigenous communities;
- Have experience or knowledge of native title processes and/or Aboriginal heritage matters; and
- Have – as a minimum – two years financial or business management experience; and experience dealing with similar Aboriginal organisations.

COMMITMENTS AND REMUNERATION

The KMAC Rule Book requires that the KMAC Board meet a minimum of four times a year. The KMAC board is resolved that they meet on a monthly basis, normally for two days. The independent director will be expected to provide some level of engagement between meetings. The KM directors may request further active mentorship and involvement by the independent directors in the development and operation of projects and commercial business opportunities.

Directors' remuneration is approved by a resolution of the members. Currently, remuneration is set at \$36,000 for directors and \$52,000 for the chairperson.

Travel and related costs will be paid for by KMAC.

It is acknowledged that the remuneration will not be commensurate with the time requirements and skills the independent director will be providing.

COMMUNICATION AWARENESS

If you are selected as a potential independent director by the KMAC Board, you will be invited to spend a few days in the Pilbara to meet and greet the KM directors and KM people. During this period of approximately three days, you will be accompanied at all times by the KM Project Officer. Should you have any queries about communication protocols and tips please direct these to the KM Project Officer. It is anticipated that any appointed independent director will carry out a recognised cross cultural course as soon as practical after your appointment.

APPOINTMENT OF INDEPENDENT DIRECTORS

NOMINATION

- The board will review its composition to ensure it has the appropriate mix of expertise and experience. The board will nominate appropriate candidates with the relevant qualifications, skills and experience.
- Where a vacancy exists, the board may only nominate a person who fulfils all of the requirements in the Rule Book for the number of and qualifications of directors.
- Candidates are evaluated using criteria adopted by the board to determine their suitability based on the information supplied by the candidates and information obtained from other sources.

APPOINTMENT

The board may, by resolution, appoint the most suitable nominee subject to a special

resolution of the members.

COMMUNITY ENDORSEMENT

The appointment of an independent director is subject to the consent of KMAC members.

TERM

- An independent director will continue to be a member of the board for the earlier of a period of up to two years, the independent director retires or is removed or the office becomes vacant by virtue of such other rule of the Rule Book.
- Probationary period of 6 months with option to an additional three months will apply to the appointment. During the probationary period the independent director will act in an advisory capacity and have no voting entitlement.
- In most cases, an independent director may attend and speak (but not vote) at general meetings of the members of the traditional owner group.

VACATION OF OFFICE

In addition to the circumstances in which the office of a director becomes vacant by virtue CATSI Act or another provision of the Rule Book, the office of director becomes vacant if the director:

- Resigns or retires from office by written notice to the corporation;
- Becomes bankrupt;
- Becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- Is absent without the consent of the directors from three consecutive meetings of the directors and the board resolves that the office of that director be vacated;
- Is convicted on indictment of an offence and the directors do not within one month after that conviction resolve to confirm the director's appointment or election (as applicable) to the office of director; or
- Becomes prohibited from being a director by reason of an order made under the

CATSI Act.

DIRECTOR'S FEES

- Subject to this rule, each director is entitled to such reasonable remuneration as the ordinary members in a general meeting decide. If the Commissioner of Taxation (in relation to charitable trusts) or the members have fixed a limit on the amount of remuneration payable to the directors, the total remuneration of the directors under this rule must not exceed that limit.
- The remuneration for each Traditional Owner director must be approved by members and it is currently \$36,000 per annum.