

2020

## A Conservation and Management Plan for the National Heritage Listed Fitzroy River Catchment Estate (No. 1)

Martuwarra RiverOfLife

Anne Poelina

*The University of Notre Dame Australia*, [anne.poelina1@nd.edu.au](mailto:anne.poelina1@nd.edu.au)

Jason Alexandra

Nadeem Samnakay

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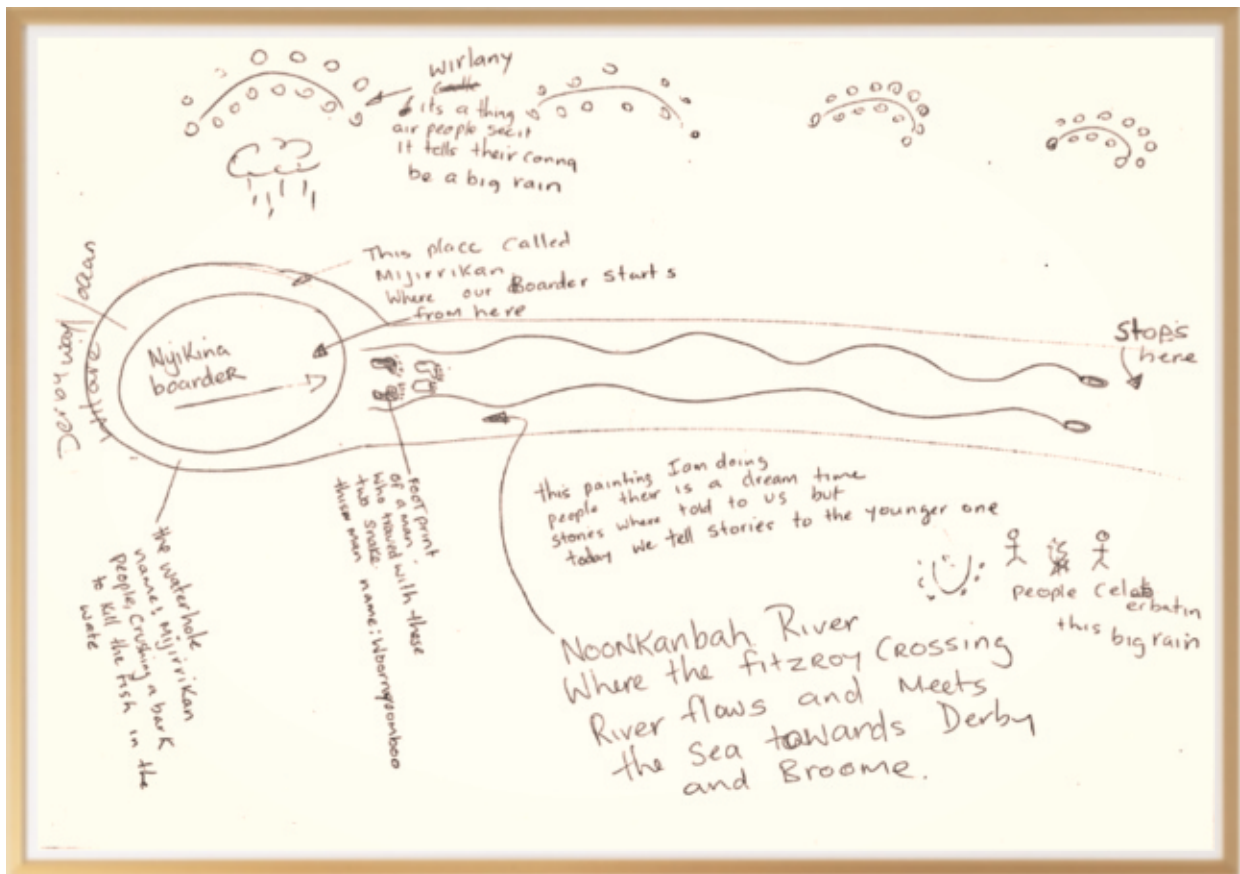
'Mijirrikan' by Grace Mulligan

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## A Conservation and Management Plan for the National Heritage Listed Fitzroy River Catchment Estate

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RiverOfLife Martuwarra



## 'MIJIRRIKAN'

Language - Nyikina & Walmajarri

Country - Noonkanbah

Bush Name - Kurlkarrara

"This painting represents my home land. My Mother's Stories tell me the same. Keep our Culture, strong and alive. Bush tucker, bush medicines. Sacred Country of our dreaming places all over."

Grace Mulligan, 2018.

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**A Report prepared for the  
Martuwarra Fitzroy River Council**



**Australian Government**

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**Department of the Environment and Energy**



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Lead Author Affiliation: Martuwarra Fitzroy River Council, PO Box 2747, Broome, Western Australia 6725.

Corresponding Author Affiliation: Nulungu Research Institute, UNDA, PO Box 2188 Broome WA 6725. Requests and inquiries about this publication should be addressed to [chair@martuwarrafitzroyriver.org](mailto:chair@martuwarrafitzroyriver.org)

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# A Conservation and Management Plan for the National Heritage Listed Fitzroy River Catchment Estate

July, 2020



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## Authorship

The Martuwarra Fitzroy River is the lead 'author-ity' of this Plan. This established precedent acknowledges our sacred ancestral living serpent being, present in all of our meetings, workshop and guiding the human authors as they shape and represent the Martuwarra in their writing. A collaborative co-authorial voice of the Martuwarra RiverOfLife frames this 'Plan'. Writing this Plan has been a collaborative and rich process. We also acknowledge that the system of hierarchical ordering of authorship is very 'Western' and leaves insufficient room for the essential contribution each author makes in a truly collaborative process. While we acknowledge the role of the 'lead' author Martuwarra RiverOfLife in bringing us together, de-colonisation of publication needs to include a re-framing of authorship that truly values and reflects the shared knowledge, contributions and learnings between all authors.

This document was produced through a consultative process that began in 2016. The Traditional Owner members of the Martuwarra Fitzroy River Council are Bunuba Dawangarri Aboriginal Corporation RNTBC, Walalakoo Aboriginal Corporation RNTBC, Yanunijarra Aboriginal Corporation RNTBC, the Warrwa Registered Native Title Claim Group, Wilinggin Aboriginal Corporation and the Yurriyangem Taam Native Title Claim Group as represented by the Applicant (Parties). Members of the Martuwarra Fitzroy River Council have given generously of their time to express their views, vision and aspirations and to explain the context of why they believe a heritage conservation Plan of this nature is required. The Plan was developed through facilitatory processes in workshops and background research and analysis, then compiled by Dr Anne Poelina along with Jason Alexandra and Nadeem Samnakay engaged as external consultants. However, the document represents the shared views of the Martuwarra Fitzroy River Council who owns the Intellectual Property.

## Acknowledgements

This project has received funding from the Commonwealth Heritage Grants administered by the Department of Agriculture, Water and Environment. The development of this Plan depended on the generous contributions from the Martuwarra Fitzroy River Council Members who formed the project 'Think Tank', gracefully and forthrightly contributing their ideas to developing the Plan in the workshops and through reviewing drafts of the issues paper, position paper and draft versions of the Plan. A final draft version also benefited from advice received by a cohort of independent peer reviewers whose generous efforts are graciously appreciated. This feedback is summarised in the Appendix of this report. Project reviewers and advisors included Kat Taylor, Judy Fisher and Ray de Silva who provided ongoing guidance and support through the development of this document, facilitatory workshops and consultations

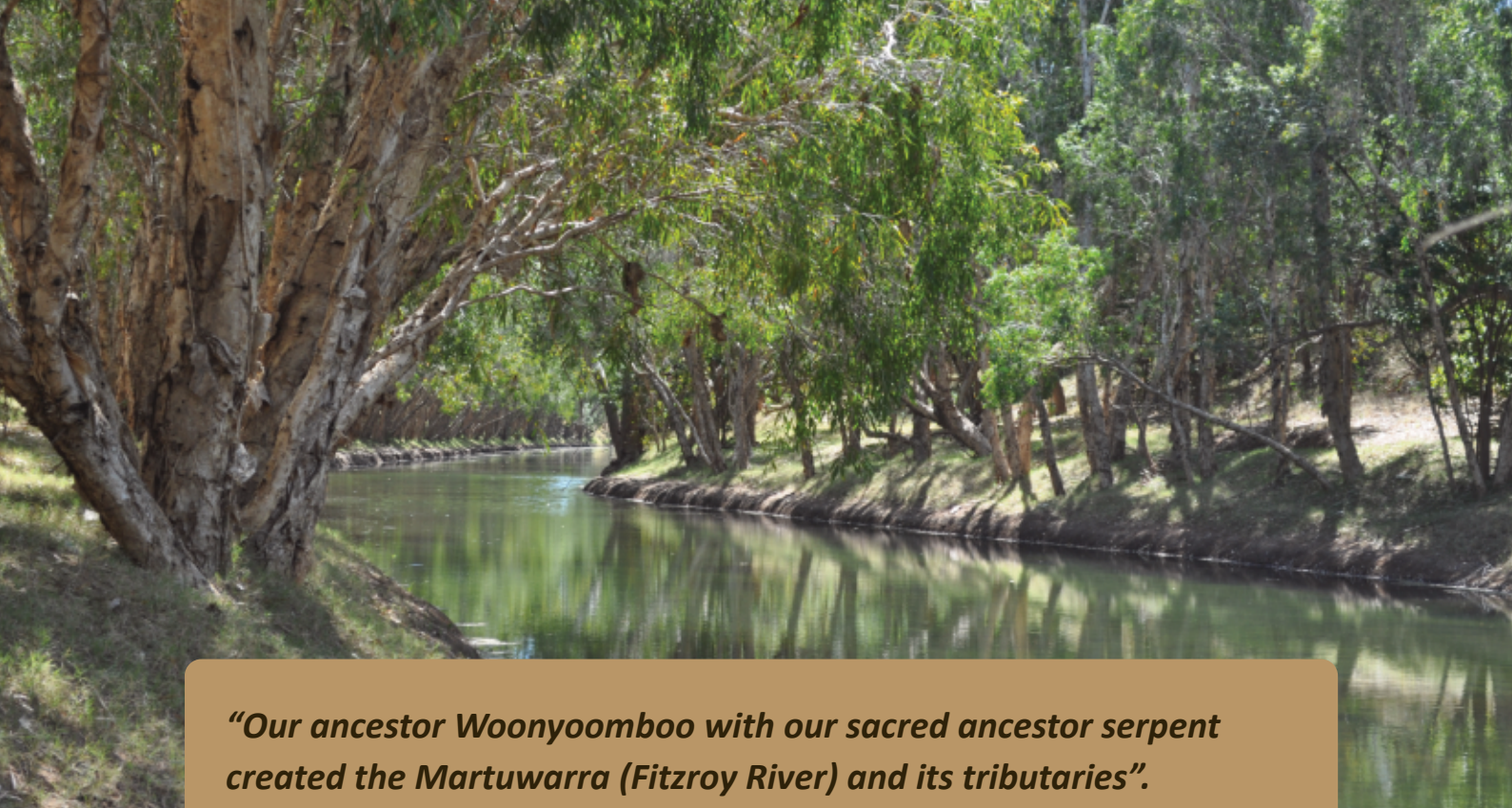




**Martuwarra, Fitzroy River**  
Liveringa, Western Australia

Photo: Magali McDuffie





***“Our ancestor Woonyoomboo with our sacred ancestor serpent created the Martuwarra (Fitzroy River) and its tributaries”.***

The Martuwarra is a gift to human and non-human beings, such as the birds, the fish, water creatures, animals and all the plants within this system... we advocate the protection of all river tributaries and wetlands which re-charge and connect the ancient aquifers underground to surface water systems.

These Living Water systems are connected to the Martuwarra. First Law and custom that govern the River include Warloongarriy and Wunan Law. Since Bookarrakarra (the beginning of time) this First Law ensured the health and wellbeing of the living system of the Martuwarra. The importance of these laws is the principles that the law is in the land and not in man. It is framed around values and ethics of co-management and co-existence which continue to facilitate inter-generational relationships between the shared boundaries of all the River nations through ancient songlines, contemporary customs and practices.

Under Warloongarriy Law, the Traditional Owners of the Martuwarra regard the River as a living [sacred] ancestral being (the Rainbow Serpent), from source to seas, with its own “life-force” and spiritual essence. It is the ‘River of Life’ and has a right to live and flow.

**Walalakoo Aboriginal Corporation, Research Committee**



**Annie Milgin**  
**Nyikina Traditional Custodian**

"The River is very important for us. River got the meaning, River got the story, River got the songs (...). We want to protect our River. Our River is like our Mother. (...) We got a rule that we do the right thing, what was given by Woonyoomboo - Law is still there standing".

(Martuwarra Fitzroy River Council Website, 2020)





## **Hanson Boxer**

**Walmajarri Elder**

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"Lots of blackfellas been born on that riverside, all along, many tribes and languages, but there is only one River - and all the people worry about that River not to be destroyed".

(Martuwarra Fitzroy River Council Website, 2020)



## **Anthony McLarty**

**Walmajarri Traditional Custodian**

Deputy Chair, Martuwarra Fitzroy River Council

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"I call for unity amongst us people... Us Aboriginal people here in the Fitzroy River. And with that unity comes responsibility. And our responsibility is to take care of the River and of our waterways. (...) What we are saying is that we want proper consideration to the land, to the water system, both in the river system, the underground water system, that really need protecting".

(Martuwarra Fitzroy River Council Website, 2020)





**Lucy Marshall AM**  
**Nyikina Traditional Custodian**

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“In our Country we are known as the River Side people; we live by the River our whole lives and Community evolves around the River. It is our life and our nature is the River (...) the land is part of us and we are part of the land. That is the whole basis of our culture”.

(Martuwarra Fitzroy River Council Website, 2020)

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## Preface

It is a special honour and a privilege for me to be invited to write a preface for this unique and important document.

This is a conservation management plan (hereafter the Plan) like no other that I have read in at least three key ways. First, it puts the Martuwarra, the “River of Life” and a “sacred living ancestral being”, and also its tributaries, front and centre in terms of how water should be understood, valued and managed. Second, it places First Law, the “system of governance and law that Indigenous Australians have developed over tens of thousands of years” as the foundation for caring for country and the Martuwarra. Importantly, “Traditional Aboriginal law focuses on maintaining the balance of the earth so that all things can prosper”.



Professor Quentin Grafton

Third, the Plan is guided and informed by Traditional Knowledge and insights from six independent Indigenous Nations which have, in partnership, developed a framework of guardianship with accompanying rights, responsibilities and obligations.

From my perspective, the Plan is much, much more than simply a plan. It is a vision statement with key principles or position statements. It is not a detailed set of management rules, nor is it intended to be. The 15 position statements provide the foundational framework for devising the subsequent detail that will, in time, be needed. The ‘who, what, when and how’ of water will require the Martuwarra Council to “build effective alliances and strategic partnerships to implement its vision and objectives.”

Whichever partnerships the Martuwarra Council develops, the partners must respect the following statement:

“All the water that make up these flow regimes is already allocated to Traditional and environmental uses and values – it sustains people and places, plant, animal and fish populations and customary harvestable production, and community and spiritual connections” (Position Statement 6).



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This is a statement of rights and it is a statement of life that must underpin any allocation rules around how water is extracted and used. The proposed model of co-governance of the Martuwarra is equally clear, namely, to have “... equitable and continuing models of governance that recognise cultural knowledge and build-on customary law” (Position Statement 10).

This is an invitation and a generous offer to others, including the Western Australian government, to “walk together into a better future” (Dr Anne Poelina and Chair of the Martuwarra Council).

These profound words capture the spirit of the 26 May 2017 *Statement from the Heart*, itself a generous invitation from all First Peoples to “a fair and truthful relationship with the people of Australia and a better future for our children based on justice and self-determination”.

Australia, and indeed the world, has a unique opportunity to conserve the sacred and to truly recognise the authority of the River of Life and the Traditional Owners. In my view, The Plan is a historic document that offers a just future for all who want to share with the Martuwarra in the region’s sustainable future. Let all who read it, act on it.

**Professor R. Quentin Grafton,  
Australian Laureate Fellow,  
Water Justice Hub, Australian National University.**

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Quentin Grafton is Professor of Economics and Chairholder UNESCO Chair in Water Economics and Transboundary Water Governance. He is an Australian Laureate Fellow (2020-25), convenes the Water Justice Hub and is the Executive Editor of the Global Water Forum. His collaborative research, as part of the Australian National University’s Institute for Water Futures (IWF), is focused on water valuation and water planning in the Northern Murray-Darling Basin.

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## Foreword

We invite you - the reader - to a new way of governing land, Living Waters and people. A world different to the one we have just come from. We are a united group of Traditional Owners in the Kimberley region of Western Australia who now speak with a united voice to chart an alternative course of development. Our unity comes from the River – the Martuwarra.

We are an alliance of Traditional Owners from six independent Indigenous Nations who have come together to stand with **One Mind and One Voice**. As an alliance of Traditional Owners from the King Sound, Fitzroy River, and its Catchment, which we call the Martuwarra, our being is grounded in First Law and the guardianship system of rights, responsibility, and obligations.

As the Martuwarra Fitzroy River Council we maintain and share sophisticated cultural knowledge and practices which empower us as guardians to be the voice of the Living Waters of the Martuwarra Fitzroy River and its inalienable right to live and flow.

### **We invite you to read this Plan carefully.**

Our vision and our aspirations are articulated in this heritage conservation Plan. Through this Plan we seek to build coalitions amongst national and global partners who want to share in new ways of governing. Our vision is for a society which sees economy not as the generation of financial wealth for the benefit of a few, but one where ‘economic development’ is rooted in connection to Country and is inseparable from culture, knowledge, relationships, nature and wellbeing.

Our vision is not only for Aboriginal people, rather it is a vision where 60,000 years of learning, knowledge and history teaches us that wealth accumulation, gross national product and profit maximisation for a few, at the expense of the many, is unsustainable and unjust. We do not oppose economic development, rather we have a different understanding of what economic development should be. The Kimberley region, and the Martuwarra catchment, is under pressure from development interests that will perpetuate conventional paradigms of economic development.

Our economic model is based on micro-industries in remote communities, non-intensive pastoralism, cultural tourism, promoting cultural centres, education of youth on Country, publishing of art and literature, respecting traditional knowledge of sustainable land and water management and sustaining language programs. These “life projects” strengthen relationships within community and promote increased engagement with employment, education, and research services.

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In this new way of seeing, we begin exploring governance models which question:

- Who and what counts and is counted?
- How are values assigned?
- How do relationships between people and the 'natural' world produce value?
- How are existing values of the riverine system understood and measured?
- Whose laws and values matter?
- What impacts and risks are accurately predicted and deemed acceptable?
- Who gets to decide? And what kind of 'evidence' is weighed up in the decision-making process?
- How and where are decisions made?
- Whose visions of the future are being pursued?

In gaining answers to these questions, the Martuwarra Council recognises, as the United Nations Decade of Biodiversity (2020) comes to a close, the need for a Universal Declaration on the Rights of Nature<sup>1</sup> in the protection of the Commons of the Martuwarra for the Greater Good.

So, our friends, the time has come for structural reform and systemic change in the way development strategies are devised and implemented. Economic development in the West Kimberley region, particularly regarding 'water resource' development of the Martuwarra catchment, must involve hearing the voices of Traditional Owners who are legitimate resource owners.

### **We seek genuine partnerships.**

We invite government, industry, conservationists, private investors, and philanthropists to join with us to advance the governance of cultural heritage and to ensure the sustainable management of water resources. We call on governments to hear our voices, to dedicate resources and to work with us in governing the region into the future. Together we can ensure protection of natural and cultural heritage and the equitable distribution of wealth creation from diverse 'new and forever' industries and economies.

Through working together in partnerships, we can demonstrate just forms of development that can be considered a form of moral progress.

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<sup>1</sup> See <https://medium.com/@pella.thiel/time-for-a-universal-declaration-on-the-rights-of-nature-ad97263a39f4>

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We are embarking on an important journey with the creation of this Plan. We have worked hard to clearly state our goals which we want to make real.

**We invite you to read this Plan and to support us.**

We want you to join in our journey. Turning this vision into reality will require your support, your knowledge, connections, strength, resources, and your friendship.

We want to work with you. Let us walk together into a better future.

Respect and Goodwill,

**Dr. Anne Poelina**  
**Nyikina Warrwa Traditional Owner**  
**Chair, Martuwarra Fitzroy River Council.**



**Dr. Anne Poelina**  
**Nyikina Warrwa Traditional Owner**  
Chair, Martuwarra Fitzroy River Council

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“Traditional Owners of the Fitzroy River are in talks with the WA State Government regarding the future of the River. Responsible environmental management and economic development ensures local prosperity that benefits local people whilst ensuring the River is protected”.

(Martuwarra Fitzroy River Council Website, 2020)

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## Summary

The Martuwarra Fitzroy River Council (Martuwarra Council) has prepared this document to engage widely and to articulate its ambitions and obligations to First Law, customary law and their guardianship authority and fiduciary duty to protect the Martuwarra's natural and cultural heritage.

This document outlines a strategic approach to Heritage Conservation and Management Planning, communicating to a wide audience, the planning principles, key initiatives, and aspirations of the Martuwarra Traditional Owners to protect their culture, identity and deep connection to living waters and land. Finer granularity of action items required to give effect to this Conservation and Management Plan for the National Heritage Listed Fitzroy River Catchment Estate are outlined in section 7 and which will be more fully explored by the Martuwarra Council in the coming months and years.

Through the work of the Council in preparing this Plan, Native Title Holders in the Fitzroy River catchment, have agreed to 'Position Statements' as outlined below. When acted upon, these will begin the journey to maintaining First Law, customs and practices in order to achieve the cultural and heritage conservation objectives outlined in the body of this report.



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## Martuwarra Council Position Statements

These position statements summarise the Martuwarra Council's positions and intended actions that will be implemented over time and as resources permit. They also articulate the Martuwarra Council's intent to enter into partnerships and co-governance arrangements with a broad spectrum of interested and committed parties who are willing to engage with and assist in delivery of the Council's aims and vision.



Photo: Martuwarra Fitzroy River Council, 2020

### **POSITION STATEMENT 1: THE CONCEPT OF LIVING WATERS IS CENTRAL TO SUSTAINING HERITAGE VALUES**

The conventional approaches to cultural heritage conservation need to be broadened so that waters' place in First Law, sociality, sacredness, identity and life giving are better recognised. The Martuwarra Council seeks greater recognition of the centrality of Living Waters – *which link material and spiritual connections* - as being important to cultural and natural heritage in the region.

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## **POSITION STATEMENT 2: NATURAL AND CULTURAL CARE ARE INTERLINKED**

The Plan is based on the underpinning position that First Law (customary law), knowledge, culture, language and the ecosystems are intricately connected. Further, the health and vitality of these connections and relationships are critical to environmental, social, physical and spiritual wellbeing and therefore, to the capabilities for cultural-natural heritage restoration and conservation. The Plan recognises the integrated and intricate connections between natural-cultural management (ethics of care), governance models and traditional knowledge systems. These are critical to the Traditional Owners spiritual, physical, and social health and wellbeing reflected through environmental health, and that the relationships between First Law, Living Waters, land and people are intrinsically intertwined.

## **POSITION STATEMENT 3: FORMALISE THE MARTUWARRA COUNCIL STRUCTURE AND ESTABLISH A LEGAL ENTITY**

The Martuwarra Council plans to form an incorporated body (a legal entity) with functions that include policy development, education, research and advocacy in order to advance capabilities and to develop and represent the interests of its members. It will also explore options to establish an enduring statutory river and catchment authority and a non-profit Think-Tank or Institute to undertake strategic research, policy development, and advance education opportunities and training and workforce development that gives effect to the aspirations of Traditional Owners.

## **POSITION STATEMENT 4: FORM PARTNERSHIPS AND STRATEGIC ALLIANCES**

The Martuwarra Council seeks to build effective alliances and strategic partnerships to implement its vision and achieve its objectives. The Martuwarra Council welcomes discussions and dialogues with interested parties who wish to join in a journey of delivering regional co-governance and heritage conservation and restoration. The Plan serves as a document to invite interested parties to negotiate on these prospects.

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### **POSITION STATEMENT 5: DEVELOP OPERATIONAL POLICIES ON INTERSECTING PLANS**

To remain effective the Martuwarra Council must engage with, intersect and impact other policy and planning processes that influence natural and cultural heritage conservation outcomes. Policy positions need to be developed on a range of intersecting plans and legislation. Currently several planning processes are underway which the Martuwarra Council needs to develop policy positions on as a matter of priority.

### **POSITION STATEMENT 6: MARTUWARRA FLOWS ARE INTRINSIC TO TRADITIONAL AND ENVIRONMENTAL USES AND VALUES**

The Martuwarra Council seeks formal recognition that the River's variable flow regimes are an important feature of the cultural-natural heritage of the region. Therefore, any disturbance resulting from large scale irrigation extractions or other consumptive purposes is a threat to these nationally recognised heritage values and the Martuwarra's right to flow as a living entity.

All the water that makes up these flow regimes is already allocated to traditional and environmental uses and values, sustaining people and places, plant, animal and fish populations and customary harvestable production as well as community and spiritual connections.

### **POSITION STATEMENT 7: ADVOCATE FOR A RIPARIAN BUFFER ZONE**

The Martuwarra Council proposes to formalise a buffer zone that delineates a spatial boundary, which protects the River and its floodplains and identifies their high cultural and social-ecological significance. The rationale for the buffer is to ensure that management and any proposed development strengthens cultural or ecological values. There is also a need to ensure any development does not impact on the shared, custodianship, guardianship and authority responsibilities of Traditional Owners to protect the standing of the cultural and natural values of the *Barringtonia acutangula* (Majala/Madjulla Fresh Water Mangrove).

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**POSITION STATEMENT 8: PREPARE AND ENFORCE GUIDELINES FOR STRENGTHENING EXISTING HERITAGE PROTECTIONS**

The Martuwarra Council will prepare guidelines and establish mechanisms including developing and promoting policies and protocols that advise third parties to better understand and comply with the aims and aspirations of Traditional Owners, including requiring mandatory consultation on cultural and natural heritage values.

**POSITION STATEMENT 9: DEVELOP MEASURES OF SUCCESS ON MARTUWARRA COUNCIL FUNCTIONS**

The Martuwarra Council will develop operational policies and use performance measures through the implementation phases. These will assist in an iterative process of monitoring progress and steering implementation. Overall, the success measures will be defined around core concepts like healthy cultures, healthy river systems, healthy people with a focus on healthy relationships.

**POSITION STATEMENT 10: ESTABLISH EQUITABLE MODELS OF CO-GOVERNANCE**

The Martuwarra Council recognises that heritage protection relies on having equitable and continuing models of governance that recognise cultural knowledge and build on customary law. The Council's proposed models of co-governance would formalise the respect and application of these peaceful and respectful systems of co-governing.

The Martuwarra Council has invited the Western Australian Government into negotiations on a co-governance model, offering an invitation to the Western Australian government to become a formal partner in one of the world's longest standing systems of social-ecological management.

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**POSITION STATEMENT 11: ESTABLISH A CATCHMENT AUTHORITY  
COMPLEMENTED BY AN INDIGENOUS PROTECTED AREA**

The Martuwarra Council is advocating for the establishment of a Martuwarra Fitzroy River catchment authority as a statutory body based on principles of co-governance and giving primacy to Indigenous knowledge, law and practice across the whole of the Martuwarra catchment including the King Sound. This should be complemented by gazettal of the catchment as an Indigenous Protected Area in accordance to the Fitzroy River Declaration.

**POSITION STATEMENT 12: COMMISSION LEGAL RESEARCH TO ENTRENCH  
HERITAGE BASED CO-GOVERNANCE MODELS**

To work towards achieving formal co-governance agreements, the Martuwarra Council is seeking:

- additional research on appropriate institutional arrangements and legal instruments to support co-governance; and
- establishing clear protocols for consultation and development with appropriately qualified persons, noting that these protocols will apply to all landowners including Indigenous communities proposing developments that may negatively impact or degrade heritage values.

**POSITION STATEMENT 13: CONVEY A TRANSFORMATIVE VISION  
FOR DEVELOPMENT**

The Martuwarra Council seeks to implement appropriate economic development strategies that offer alternatives to the current exploitative mainstream vision for resource intensive, large-scale irrigation and mineral and energy resources development. The Martuwarra Council is critical of the development discourse that overstates the expected gains from such development. Rather it advocates a development discourse that supports or strengthens culture and ecosystem values and provides livelihood outcomes for Aboriginal people.

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**POSITION STATEMENT 14: DEVELOP A RESEARCH COMPENDIUM TO PROMOTE SUSTAINABLE AND REGENERATIVE ECONOMIES**

The Martuwarra Council will develop a compendium of research needs that will assist its vision of sustainable, restorative and regenerative development, building critical capabilities and strategic alliances for heritage conservation and fostering models of co-governance.

**POSITION STATEMENT 15: DEVELOP A PROSPECTUS OF COMMERCIAL OPPORTUNITIES ON ECOLOGICAL CONSERVATION AND CULTURAL ECONOMIES**

The Martuwarra Council seeks appropriate economic planning that:

- Sustains livelihoods while conserving the spiritual, cultural and environmental health and wellbeing of the Martuwarra Fitzroy River and its people;
- Promotes the significance of the region's cultural and natural values;
- Encourages ethical public and private investment in socially and ecologically appropriate economic development;
- Develops local Indigenous workforce for the new and emerging regional industries that conform to the values clarified in this document;
- Achieve higher employment and greater prosperity to the community through business and employment activities that are sympathetic to and consistent with heritage, cultural and ecological conservation.





## **Marlikka Perdrisat**

**Nyikina Traditional Custodian**

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“Aboriginal First Law Stories can build the legal pluralism we need to Respect, Protect and maintain our Love for the Martuwarra’s right to life as a living ancestral being”.

(Martuwarra Fitzroy River Council Website, 2020)

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## 1.0 Context to Heritage Conservation Planning

### 1.1 Introduction

In 2011 a large portion of the West Kimberley region of Western Australia was National Heritage Listed (NHL) (Australian Heritage Commission, 2011) under the Commonwealth Environment Protection and Biodiversity Conservation (EPBC) Act (Commonwealth of Australia, 1999). Amongst its natural and geo-physical heritage values, the Listing recognises the rich and unique cultural history of Aboriginal people who have been Traditional Owners of the land for at least 40,000 years (Commonwealth of Australia, 2011).

Under the EPBC Act (1999), the Heritage Listing offers protections to the cultural heritage of Traditional Owners, with the Commonwealth Government noting that:

*“Indigenous people are the primary source of information on the value of their heritage and should be consulted on a proposed action likely to significantly impact on the listed Indigenous heritage values of the place and/or on a protected matter that has Indigenous heritage values (like listed threatened species)”*  
(Commonwealth of Australia, 2004).

This acknowledgement places Indigenous people and their culture at the centre of decisions that impact on the National Heritage Values of the region. This Conservation and Management Plan for the National Heritage Listed Fitzroy River Catchment Estate (Plan) is an important step to ensuring Traditional Owners in the Fitzroy region of the West Kimberley have a stronger role in conserving heritage and in the determination of development issues in this region.

The Fitzroy region more broadly is facing significant development pressures from large-scale industries including extractive (mining and gas) industries, intensive agriculture and irrigation development proposals, which threaten to undermine the cultural heritage values, life-ways and aspirations of Traditional Owners (Poelina, Taylor, & Perdrisat, 2019). These threats are of deep concern to Traditional Owners and serve as one reason to come together as a united voice.

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<sup>2</sup> The Martuwarra is used as a collective term for ease of reference. We recognise that under different language groups, the river is known along its length by traditional names including - Nykina and Mangala, Bunuba, Bandralngadu, Gooniyandi, Walabirridi, Birr-Mardoo-Warra, Mangala / Walmajarri, Yimartuwarra, Warrwa and Ngarinyin

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The Fitzroy River catchment (hereafter referred primarily as the Martuwarra<sup>2</sup>) is only partially included in the broader West Kimberley Heritage Listed region (see Figure 1).

The EPBC Act's (1999) Heritage protections alone are not sufficient to protect the interests of Traditional Owners, and they have come together to develop a series of position statements that communicate broadly their aims and aspirations. These are expressed and recorded in this strategic planning document.

In terms of offering protections to Indigenous heritage values, the EPBC Act (1999) and the National Heritage Listing recognises that:

“Prior to undertaking any action that may degrade heritage values, proponents should contact the appropriate Aboriginal Traditional Owners and custodians of the land on which the action will occur that has listed values that may be significantly impacted, as well as the Aboriginal Traditional Owners and custodians of adjoining lands that may be significantly impacted by the action”

(Commonwealth of Australia, 2004).

The NHL Engage Early Guidelines of the Commonwealth of Australia (2016) clearly states, that in addition to meeting, “all the statutory public comment periods for projects assessed under the EPBC Act, there are other state and Commonwealth land rights and native title legislation that requires proponents to consult with, and in some cases, gain the consent of, traditional owners in relation to a proposed action” (Commonwealth of Australia, 2016).

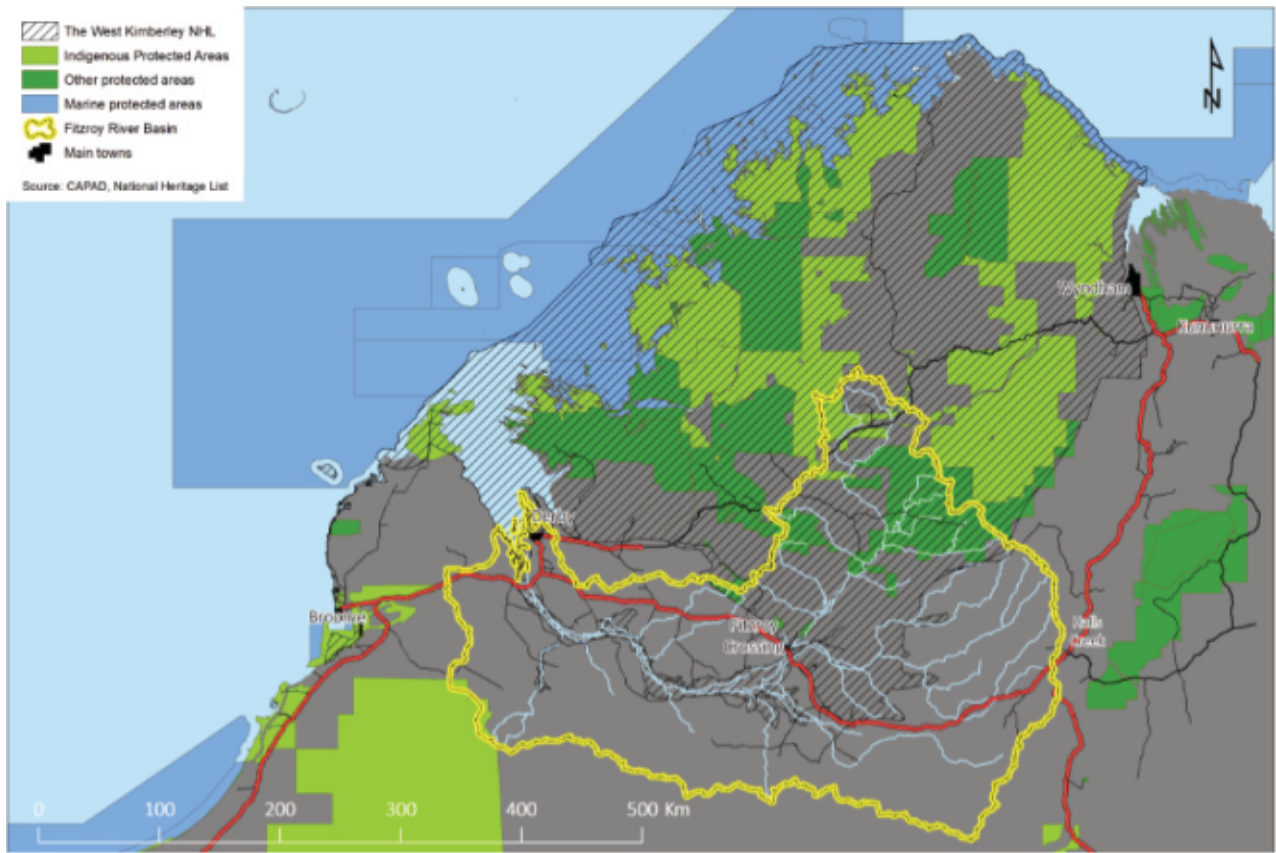
Furthermore:

“Proponents should identify and engage as appropriate with the relevant native title group, land council(s) and/or other Indigenous landholding group(s) as early as possible in the planning process” (Commonwealth of Australia, 1999).

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<sup>2</sup> The Martuwarra is used as a collective term for ease of reference. We recognise that under different language groups, the river is known along its length by traditional names including - Nykina and Mangala, Bunuba, Bandralngadu, Gooniyandi, Walabirridi, Birr-Mardoo-Warra, Mangala / Walmajarri, Yi-martuwarta, Warrwa and Ngarinyin

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**Figure 1.** Map of the West Kimberley national heritage boundary (hashed area), and the overlap with the Fitzroy River catchment (yellow outline), and other conservation zones.







## Mervyn Street

Gooniyandi Traditional Custodian

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“I'm a TO (Traditional Owner). I don't think about the money. I think about the right of my Country you know. This River Martuwarra Council is there to protect the river. We have the Martuwarra Council because that's the only way we can be one big voice, you know. That's really good to have a thing like this”.

(Martuwarra Fitzroy River Council Website, 2020)

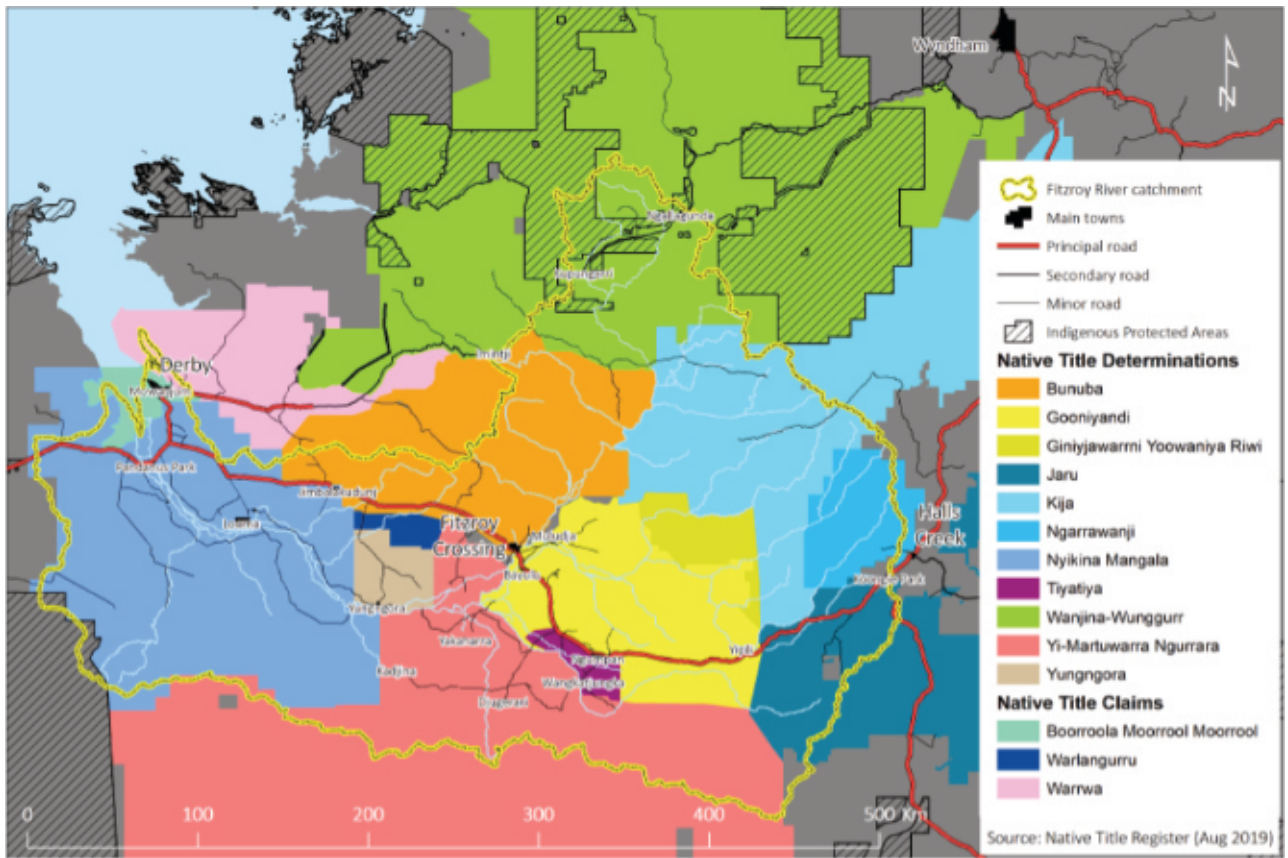
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Recognising the intensive economic development pressures in the region, Traditional Owners from the Fitzroy River catchment area met in November, 2016 to collectively voice their concerns with the extensive development proposals that stand to cumulatively impact on their cultural and natural heritage values of the catchment.

Their concerns are expressed and openly presented in the [Fitzroy River Declaration](#) - an agreement by Traditional Owners to:

1. Action a process for joint [Prescribed Body Corporates](#) (PBCs) decision-making on activities in the Fitzroy catchment;
2. Reach a joint position on fracking in the Fitzroy catchment;
3. Create a buffer zone for no mining, oil, gas, irrigation and dams in the Fitzroy catchment;
4. Develop and agree a Management Plan for the entire Fitzroy Catchment, based on traditional and environmental values;
5. Develop a Fitzroy River Management Body for the Fitzroy Catchment, founded on cultural governance;
6. Complement these with a joint Indigenous Protected Area over the Fitzroy River;
7. Engage with shire and state government to communicate concerns and ensure they follow the agreed joint process;
8. Investigate legal options to support the above, including:
  - Strengthen protections under the EPBC Act (1999) National Heritage Listing;
  - Strengthen protections under the Aboriginal Heritage Act (1972); and
  - Legislation to protect the Fitzroy catchment and its unique cultural and natural values.

The process for joint decision-making (Item 1. in the above list) has been effected through the formation of the Martuwarra Fitzroy River Council (Martuwarra Council) who prepared this document. Currently, the Martuwarra Council is an affiliation of six Native Title PBCs and registered claimants that span the entire Martuwarra catchment and its near shore estuarine environments, represented in Figure 2 showing *Native Title Determinations and Claims*.



**Figure 2.** Map of Native Title determinations and claims over the Martuwarra – Fitzroy River catchment.





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The Martuwarra Council recognises that the region is subject to a range of statutory and regulatory regimes, and that it is subject to significant resource and economic development interest. The Martuwarra Council has been formed by Traditional Owner groups in recognition of the complexity inherent in this contested space.

The Martuwarra Council is entrusted by Traditional Owner groups as an independent forum to discuss catchment matters and make recommendations that will ultimately be decided by Prescribed Body Corporates and other authorised organisations. The Martuwarra Council provides coordination and consultation functions and is intended to be the first point of contact on behalf of Traditional Owners for the major state government initiatives, especially the Fitzroy River Management Plan and the Fitzroy River Water Allocation Plan.

In preparing this Heritage Conservation and Management Plan (Plan), the Martuwarra Council is beginning a process to implement Items 4, 5 and 6 of the Fitzroy River Declaration in the above list. This process includes considering how the Martuwarra Council can become an incorporated organisation, to further develop its roles. These roles include representing Traditional Owner's interests and acting as a forum for deliberation and working as a Think Tank. The Martuwarra Council is working on becoming formally established as an Institute and 'Think Tank' under its constitution and formally recognised as a representative organisation in collaboration with the PBCs. This option is discussed further in section 2.0.

This document represents a strategic approach to Heritage Conservation and Management Planning. Its intention is not to present a detailed activity statement, budgets or to apportion responsibility. These operational elements of planning will be implemented over the coming decades, some of which are identified in section 7.0. Rather, the strategic intention is to communicate to a wide audience, the planning principles, key initiatives, and aspirations of the Traditional Owners in their desire to protect their culture, identity, and their deep connection to land and water.

Through this document, the Martuwarra Council aims to signal its intent to engage and partner with a broad coalition of parties interested in heritage conservation and management through the co-governance of the land, living waters and natural assets of the region.



## Marmingee Hand

Walmajarri Elder

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"The River to me, it holds a lot of meaning. Living by it, around it, being raised at Old Cherabun Station, I was taught a lot about the River, respecting the River for what it is. It is Living Water: the River itself speaks to us at different times, and it sustains us (...) It brings a great lot of life to us. That's why the River, to me, is really important (...). For all of us, we need to really look after it."

(Martuwarra Fitzroy River Council Website, 2020)

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## ***1.2 First Law as a uniting principle for heritage planning***

Traditional Owners have a living culture – it is not static. They retain strong connections to living waters, land and nature, which in turn impacts on community health and wellbeing through the provision of food, medicines and spiritual and cultural belonging, which in turn provides self-worth and identity (Jackson, 2015; Kinnane & Griffiths, 2011). There is no separation between what might be termed ‘environmental or catchment health and social wellbeing’ – these are intricately connected.

The social and economic aspirations of Traditional Owners are deeply entrenched in preserving the values that resulted in National Heritage Listing of the region. Their aspirations for economic development are respectful of their sense of identity through ties to Country which are highlighted later in this document (Hill et al., 2006).

Consequently, the Martuwarra and the life-giving effects of water serve as the unifying basis for strategic planning underpinned by First Law. First Law is the system of governance and law that Indigenous Australians have developed over tens of thousands of years. Under First Law, the Martuwarra continues to be a sacred living ancestral being. Traditional Aboriginal law focuses on maintaining the balance of the earth so that all things can prosper. This sustainable model, known as Earth-centred Law, is the basis for the Fitzroy River Declaration (Poelina et al., 2019).

Two traditional First Laws, Warloongarriy (for the River) and Wunan (for the entire Kimberley region), are ancient laws for a holistic approach to regional governance that continues to be shared and respected by the Indigenous nations. These First Laws ensured the health of the Martuwarra and its Traditional Owners (Poelina et al., 2019). This Plan seeks to build on, support and sustain these approaches.

These laws are founded on the principle that the priority of law is to protect and manage the sustainable harmony of the land over the self-interests of humans. First Laws are framed around values and ethics of co-management and co-existence, which continue to facilitate inter-generational relationships between the shared boundaries of the River nations through ancient Songlines, and contemporary customs and practices. Under First law, the Traditional Owners of the Martuwarra regard the River as a living [sacred] ancestral being (the Rainbow Serpent), from source to seas, with its own “life-force” and “spiritual essence”.

It is “the ‘River of Life’ and has a right to live and flow” (Poelina et al., 2019).

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This Plan therefore gives primacy to Traditional Owners’ interconnected material, cultural and spiritual values and to the centrality to the concept of ‘Living Waters’ wherein water is considered in a broad context of First Law, life, culture, nature and language rather than as an extractable resource and narrow biophysical construct typified in western laws and water resource plans (Douglas et al., 2019; Jackson, 2015). The Martuwarra Council considers the Martuwarra to be communal Living Waters of immeasurable value, and as recognised national heritage as property that belongs to all of us, that should be protected for the benefit of present and future generations.

This strategic Plan however is not a plan to manage water resources, rather, that water serves as the sustaining element to the regions heritage values, and therefore, policies about its management are central to conserving these values into the future.

### **POSITION STATEMENT 1: THE CONCEPT OF LIVING WATERS IS CENTRAL TO SUSTAINING HERITAGE VALUES**

The conventional approaches to cultural heritage conservation need to be broadened so that waters’ place in First Law, sociality, sacredness, identity and life giving are better recognised. The Martuwarra Council seeks greater recognition of the centrality of Living Waters – *which link material and spiritual connections* - as being important to cultural and natural heritage in the region.

### **POSITION STATEMENT 2: NATURAL AND CULTURAL CARE ARE INTERLINKED**

The Plan is based on the underpinning position that First Law (customary law), knowledge, culture, language and the ecosystems are intricately connected. Further, the health and vitality of these connections and relationships are critical to environmental, social, physical and spiritual wellbeing and therefore, to the capabilities for cultural-natural heritage restoration and conservation. The Plan recognises the integrated and intricate connections between natural-cultural management (ethics of care), governance models and traditional knowledge systems. These are critical to the Traditional Owners spiritual, physical, and social health and wellbeing reflected through environmental health, and that the relationships between First Law, Living Waters, land and people are intrinsically intertwined.





## **Selina Middleton**

**Bunuba Traditional Custodian**

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“It is important for us to have a plan, because the government needs to listen to how our ancestral people looked after the Country and how we are looking after it now. It's not a resource there just to build the economy of this whole nation. It's about respecting our culture, it's about respecting our land. We need to preserve that for our younger kids. And the Council is doing a really fantastic job in looking after the River and we have to support it”

(Martuwarra Fitzroy River Council Website, 2020)

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## 2.0 Governance and Planning Objectives

### *2.1 Process of developing the Martuwarra Council Plan*

This Plan has been developed over a twelve-month period in a project supported financially by the Commonwealth Heritage Grants administered by the Department of Agriculture, Water and the Environment.

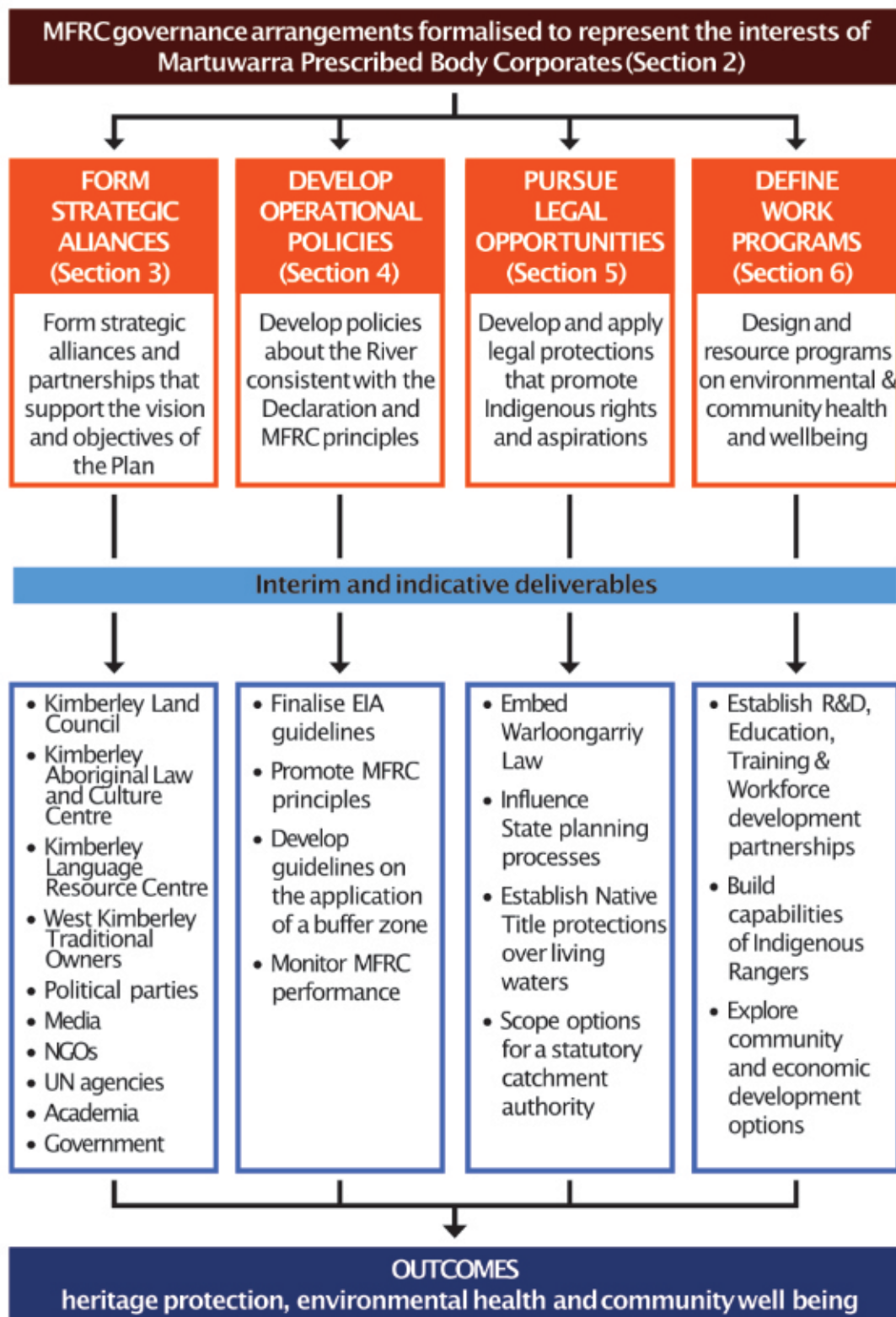
The project plan was divided into three stages – (1) planning, (2) consolidation and (3) completion – with steps that included synthesising existing policies, conducting background research and identifying how to combine feasible, practical and effective actions for conservation and cultural heritage protection with appropriate forms of social and economic development which enhance community wellbeing.

The planning approach used for developing the Plan was designed so that it articulates the Martuwarra Council's, and therefore Native Title holder's, aspirations and strengthens their capacity for protection of heritage values, whilst also meeting their goals for social and economic development. Consultants have supported the Martuwarra Council to function as a planning Think-Tank, with opportunities to investigate and deliberate on issues and to develop strategies and positions that are articulated in this Plan.

The process has included two workshops. The first (November 2019) reviewed a wide range of issues outlined in an issues paper prepared by the consultants. The second workshop (December 2019) reviewed draft positions based on the discussions and positions proposed in November. These positions were circulated and agreed to before being used to frame this draft Plan.

Despite the challenges of COVID-19, the Council conducted meetings in July 2020, during which a review of the Plan was conducted. As the plan details, 'Position Statements' help to frame the conceptual underpinnings of heritage conservation planning efforts so that the Plan and the planning process gives primacy to Traditional Owners' cultural and spiritual values and to their aspirations.

The strategic conceptualisation of this Plan is summarised in Figure 3 showing the core components of this document and which are presented in subsequent chapters. Section 7 introduces an indicative schedule of action items which the Martuwarra Council can pursue, dependent on resources, emerging priorities, its final organisational structure and its remit under its chosen constitution.



**Figure 3:** Strategic components of the Conservation & Management Plan





## Edwin Mulligan

Nyikina Walmajarri Traditional Custodian

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"I go out to the River not only for hunting and camping and for bush walks. There is also another thing there. But you can only feel it within your spirit. It actually talks to you in a way that doesn't judge you too much, like human beings tend to judge things and have moral judgement (...) going out to the Fitzroy River gives you the sense that there is actually someone there to talk to. Your ancestral spiritual being. That's the way I see it."

(Martuwarra Fitzroy River Council Website, 2020)

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## ***2.2 Martuwarra Council Governance and Operations***

The Martuwarra Council, as a collective of Native Title Prescribed Body Corporates (PBCs) is unique and deserves recognition as an innovative model that builds on traditional governance and self-determination.

In developing this Plan, the Martuwarra Council has drawn upon the diverse expertise of its members and external advice. The workshop participants and its invited experts and reviewers functioned as the project Think-Tank to define the vision for the Martuwarra Council, prepare objectives, define operating principles and conceive actions and positions to protect heritage values of the Martuwarra. This was an effective method for bringing diverse experience and expertise together to explore the needs and opportunities for greater Indigenous involvement in heritage conservation with the following high-level aims and objectives.

In recognising and respecting other West Kimberley Traditional Owners with Native Title rights, interests and connection to the Martuwarra, the Council will provide them with a copy of the Plan and Plain Language Statement to ground collaboration.

### ***(A) Vision***

This Plan will ensure that Traditional Owners, united by the Martuwarra Fitzroy River, as a sacred ancestral serpent being with its own rights and spiritual identity, have sustainable livelihoods, improved health and wellbeing through greater prosperity and increased capacity to protect their spiritual, cultural, family, community kinship relationships and material connections to Country.

### ***(B) Scope of the Strategic Planning Framework***

The proposed Heritage and Conservation Management Plan extends over the entire catchment including groundwater, rivers, floodplains, wetlands, aquifers, soaks and tributaries and the connected coastal and marine environments of King Sound. In doing so it links the saltwater people, the river people, the ranges people and the desert people.

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### ***(C) Planning Objectives***

The Martuwarra Council has defined eight (8) objectives for this Plan as follows:

1. Recognition of First Law, customary law and the guardianship and authority of Martuwarra Traditional Owner's fiduciary duty to protect the Martuwarra's right to flow as a living entity;
2. Gain greater recognition of the Martuwarra Fitzroy's heritage values, including through achieving World Heritage Listing and recognition as a UNESCO Biosphere Reserve or other national and international conservation models as determined appropriate by Martuwarra Traditional Owners;
3. Articulate Traditional Owners' interests, values and aspirations for the conservation and management of the River and Catchment Estate;
4. Enable the Martuwarra Traditional Owners to have stronger roles in determining decisions, participating in governance and ensuring greater influence on regional, state and federal planning processes;
5. Promote and strengthen the legal protections of Indigenous interests;
6. Articulate ambitions of Traditional Owners, including for sustainable economic and social development that protects cultural and natural values;
7. Serve as a framework to form alliances, partnerships and programs;
8. Investigate co-governance models.

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## **(D) Martuwarra Council Guiding Principles**

The Martuwarra Council's operations will be guided by the following ethical principles:

- Recognise that traditional Indigenous law, custom, culture, natural and spiritual values are interrelated and that land and water are not separate resources but operate as a system critical for sustaining human wellbeing and environmental health;
- Adopt principles of Sustainable Development, including due application of the precautionary principle;
- Adopt and apply a *Do No Harm* principle that takes precedence, with the burden of proof to rest on developers;
- Implementation consistent with the aims and objectives of the [Sustainable Development Goals](#);
- Respective UN treaties will be respected including recognising that Free, Prior and Informed Consent<sup>3</sup> is a specific right of Indigenous people (United Nations, 2007);
- Give weight to suitable negotiated Treaties with Indigenous People, recognising past injustices and promoting the intent of the [Uluru Statement from the Heart](#) and related priority areas that serve to achieve equity for Aboriginal people such as [Closing the Gap](#);
- The legal rights and protections to Indigenous interests afforded under relevant legislation must be adhered to, including obligations on developers under the Natural Heritage Listing as per the EPBC Act (1999).

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<sup>3</sup> Free, Prior and Informed Consent (FPIC) is a specific right that pertains to Indigenous peoples recognised in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). It allows them to give or withhold consent to any project or component of a project that may affect them or their territories. FPIC enables Aboriginal people to negotiate the conditions under which the project will be designed, implemented, monitored and evaluated.





## Linda Nardea

Nyikina Traditional Custodian

“It's very important for us to look after the River, how it was before. Not only that, you know, we've got connection to the River. We've got stories, songs, and animals and plants that live everywhere around. That's where we, you know, want to take our kids to be part of the River, because they are connected to the River. And it's very healing for not only big people, but for all of us”.

(Martuwarra Fitzroy River Council Website, 2020)



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## 2.3 Martuwarra Council's Operating Structure

The Martuwarra Council intends to form an incorporated not-for-profit entity to formulate and advocate on behalf of its members. The Martuwarra Council has also committed to developing a constitution to guide its formation and operation. This would most likely be an alliance of the PBCs recognising the Martuwarra as a living spiritual entity.

It is intended that Martuwarra Council will become a Think Tank and a forum for open and respectful debate, discussion and decision-making on matters that span the Traditional Owners territories, cultural ambitions, livelihood needs and spiritual connections associated with the River.

Further, by establishing the Martuwarra Fitzroy River Council, as a legal entity the Council will have the capacity to undertake effective and targeted fundraising, enter into contracts and apply for grants that will ensure the Martuwarra Council is financially sustainable to deliver services to all stakeholders in both the short and long-term. This will include developing and implementation of the Fitzroy River Catchment authority.

The formalised structure would ensure that the Martuwarra Council can represent the PBCs' and the Native Title holders' interests in establishing and advocating positions that have collective heritage interest. Where PBCs interests do not require collaborative arrangements, these will be handled independently by the respective PBC.

Preliminary legal advice has stated that the Martuwarra Council could form as a legal entity, to formulate and advocate on behalf of the PBCs (its members), so long as it ensures:

1. Establishment of a constitution with rules that ensures it can't make decisions that impinge on Native Title rights and interests, without the proper PBC decision processes that provide their members informed consent; that is the Martuwarra Council cannot make decisions, which diminish the native title rights and interests of its members;
2. Any decision that may impact on Native Title rights and interests would need to be decided and ratified by the affected PBCs, using proper processes.
3. Constraint on the affairs of the Martuwarra Council that protects members' Native Title rights and interests.

### POSITION STATEMENT 3: FORMALISE THE MARTUWARRA COUNCIL STRUCTURE AND ESTABLISH A LEGAL ENTITY

The Martuwarra Council plans to form an incorporated body (a legal entity) with functions that include policy development, education, research and advocacy in order to advance capabilities and to develop and represent the interests of its members.

It will also explore options to establish an enduring statutory river and catchment authority and a non-profit Think-Tank or Institute to undertake strategic research, policy development, and advance education opportunities and training and workforce development that gives effect to the aspirations of Traditional Owners.

#### Martuwarra Fitzroy River Council - An incorporated body with a Constitution

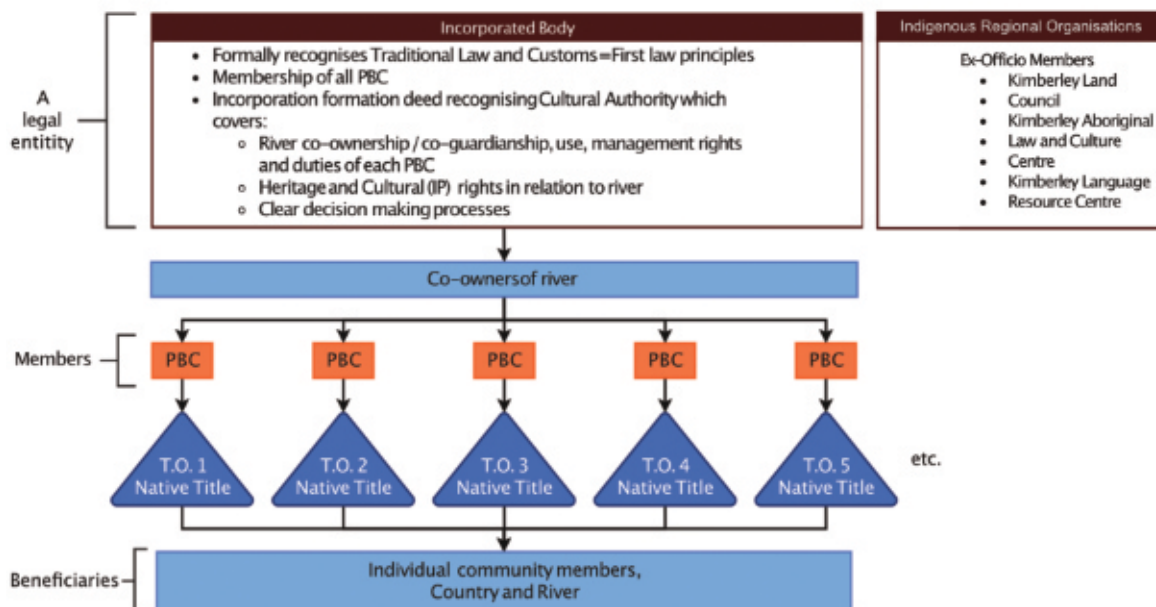


Figure 4. Martuwarra Council as an incorporated organisation



## Hozaus Claire

Gooniyandi Bunuba Traditional Custodian

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" [The Council] looks after everything we've been growing up with and learning, and everything that we believe in and connect to... Country owns us".

(Martuwarra Fitzroy River Council Website, 2020)

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### 3.0 Forming alliances and collaborations

This Plan provides guidance on the actions and programs the Martuwarra Council will deliver to achieve its vision and objectives. To do this, the Martuwarra Council welcomes a collaborative approach of co-governance and wishes to form alliances and partnerships.

Examples of strategic partnerships include the Kimberley Land Council, Kimberley Aboriginal Law and Culture Centre, Kimberley Language and Resource Centre, political parties; environmental, health and education NGOs; education and research agencies; government agencies; the tourism sector; philanthropists and ethical investors interested in alternative economies; and the media.

The Martuwarra Council seeks to partner with:

- Research agencies to develop joint Research and Development (R&D) programs on adaptive co-management; development of cultural - conservation economies; ecological jurisprudence models and legal scholarship; and cultural governance models that support environmental and heritage conservation. It also seeks to enhance health outcomes through research into the health benefits of cultural and environmental connections to the River and how these sustain the connections between people and their cultural heritage;
- Governments and NGOs to deliver education and training programs on: remote area health and environmental relationships; education that integrates art, culture, nature and science; remote area technologies, including housing, health, energy and food systems; and sustainable tourism;
- Business, governments and investors to achieve higher employment and greater prosperity to the community through business and employment activities that are sympathetic to and consistent with heritage conservation. This includes building on existing initiatives in tourism, the arts and education.

The Martuwarra Council also supports further investment in land management and biodiversity conservation programs that achieve catchment scale outcomes and that contribute to heritage conservation. Importantly, the Martuwarra Council does NOT seek to duplicate the work of the PBCs such as in delivering the Healthy Country Plans or in the work of the ranger groups. Instead, the Council seeks to increase the resources available and to build the capabilities for achieving catchment scale heritage conservation goals from a range of programs and initiatives.





## Kimberley Watson

Nyikina Traditional Custodian

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“All the cultural values that are still there (...) To those who don't see it, it's a lie, but to us, it's a different story. Until you come out and experience it, I think, you probably get that feeling - you know then what we feel. Now we're looking for the whole of Australia to come and join us, and support this. Not only Australia you know ... Overseas, many other Indigenous people who lost their River, come and support us”.

(Martuwarra Fitzroy River Council Website, 2020)

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## POSITION STATEMENT 4: FORM PARTNERSHIPS AND STRATEGIC ALLIANCES

The Martuwarra Council seeks to build effective alliances and strategic partnerships to implement its vision and achieve its objectives. The Martuwarra Council welcomes discussions and dialogues with interested parties who wish to join in a journey of delivering regional co-governance and heritage conservation and restoration. The Plan serves as a document to invite interested parties to negotiate on these prospects.

### 4.0 Operational Policies

To remain effective the Martuwarra Council must engage with, intersect with and influence other planning processes that influence natural and cultural heritage conservation outcomes. The Martuwarra Council represents the interests of the natural resource custodians and Native Title holders and are not simply another interested party. In order to represent these interests there must be recognition of the significance and primacy of these relationships within the numerous overlapping planning processes for the region for which the Martuwarra Council must develop policy positions on these, as represented in *Figure 5*.



**Figure 5:** Planning processes that intersect with functions of the Martuwarra Council which require policy positions.

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Currently, several planning processes are underway which the Martuwarra Council needs to develop policy positions on as a matter of priority. These include, but are not limited to:

- Review of the Commonwealth Native Title Act (Commonwealth of Australia, 1993);
- Review of the Western Australian Aboriginal Heritage Act (Government of Western Australia, 1972);
- Review of the Western Australian Native Vegetation Policy (Government of Western Australia, 2019a);
- Natural and cultural heritage management plans (see for example the [Wilinggin Healthy Country Plan](#)) (Wilinggin Aboriginal Corporation, 2012);
- Landscape and biodiversity conservation plans (e.g. [Fitzroy River National Park amendments](#))
- Integrated catchment planning (e.g. [Fitzroy River Catchment Management Plan](#));
- Water resources planning (e.g. development of the [Fitzroy Water Allocation Plan](#));
- Regional economic planning (e.g. development of the [Fitzroy River Management Plan](#));
- Land governance policies (e.g. [Pastoral land reforms](#)) (Government of Western Australia, 2019b).

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#### **4.1 Principles for water resources and heritage conservation**

The Martuwarra Council proposes that decisions about water resources and heritage conservation need to be guided by the following principles:

1. There are legal and cultural obligations to care for the River, its catchment, people and related creatures (biota, non-human, and spirit creatures);
2. The ecological, material and cultural uses and values of the riverine systems (including its catchment, estuary and groundwater aquifers) are inseparably intertwined with the People, the biota, the actual places and River's flows. People's mental, spiritual and physical health and wellbeing is reliant on these connections and their part in sustaining them;
3. These connections, uses and values are recognised in the West Kimberley National Heritage Listing documented in general terms in the Place Description (Australian Heritage Commission, 2011). However there is recognition that more detailed and nuanced understanding of these connections is required.
4. Indigenous science about the distribution of organisms, underlying processes and ecological connections needs to be recognised and used in policy and planning (see Ens et al., 2015);
5. The River's different flow regimes are key determinants of the ecological and cultural dynamics. All the water that makes up these flow phases is already fully 'allocated' to traditional and environmental uses and values – in that it sustains people and places, plant, animal and fish populations and harvestable production, and community and spiritual connections. These flow driven processes are valued for their intrinsic existence and for their material and cultural production and connections.
6. These connections, uses and values are held within and relate to existing Native Title rights, many of which are dependent on the River and the Water, as an active material and spiritual element;
7. Therefore, these existing traditional and customary connections and uses of the water and their ecological and social co-production (that maybe defined as Native Title rights) need to be formally recognised as central in conserving and managing the cultural-natural values;
8. These positions are adopted by the Martuwarra Council on behalf of the network of Native Title-holders for whom the River and its unobstructed flows is a defining part of their country and is made based on the moral authority and obligations granted by customary law.





## **Dianne Rivers**

**Kija & Walmajarri Traditional Owner**

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"Part of being Kija, we know the Fitzroy starts in Kija Country. That's where my grandmother is from. A lot of places around there are very sacred. (...) It's about our future, our children, and the Law and the Culture, and what the River gives us".

(Martuwarra Fitzroy River Council Website, 2020)

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## **POSITION STATEMENT 5: DEVELOP OPERATIONAL POLICIES ON INTERSECTING PLANS**

To remain effective the Martuwarra Council and the Plan must engage with, intersect and impact other policy and planning processes that influence natural and cultural heritage conservation outcomes.

Policy positions need to be developed on a range of intersecting plans and legislation. Currently, several planning processes are underway which the Martuwarra Council needs to develop policy positions on as a matter of priority.

## **POSITION STATEMENT 6: MARTUWARRA FLOWS ARE INTRINSIC TO TRADITIONAL AND ENVIRONMENTAL USES AND VALUES**

The Martuwarra Council seeks formal recognition that the River's variable flow regimes are an important feature of the cultural-natural heritage of the region. Therefore, any disturbance resulting from large scale irrigation extractions or other consumptive purposes is a threat to these nationally recognised heritage values and the Martuwarra's right to flow, as a living entity. All the water that makes up these flow regimes is already allocated to traditional and environmental uses and values – it sustains people and places, plant, animal and fish populations and customary harvestable production, and community and spiritual connections.

### ***4.2 Strengthened protections of riparian buffer zone***

The Martuwarra Council has proposed an interim buffer zone over the National Heritage Listed tributaries and floodplains of the River - see Figure 6. This spatial designation is considered important as a planning instrument to draw attention to the need for greater care, respect and diligence in protecting the linked cultural, material and conservation values of the riverine systems and its floodplains.

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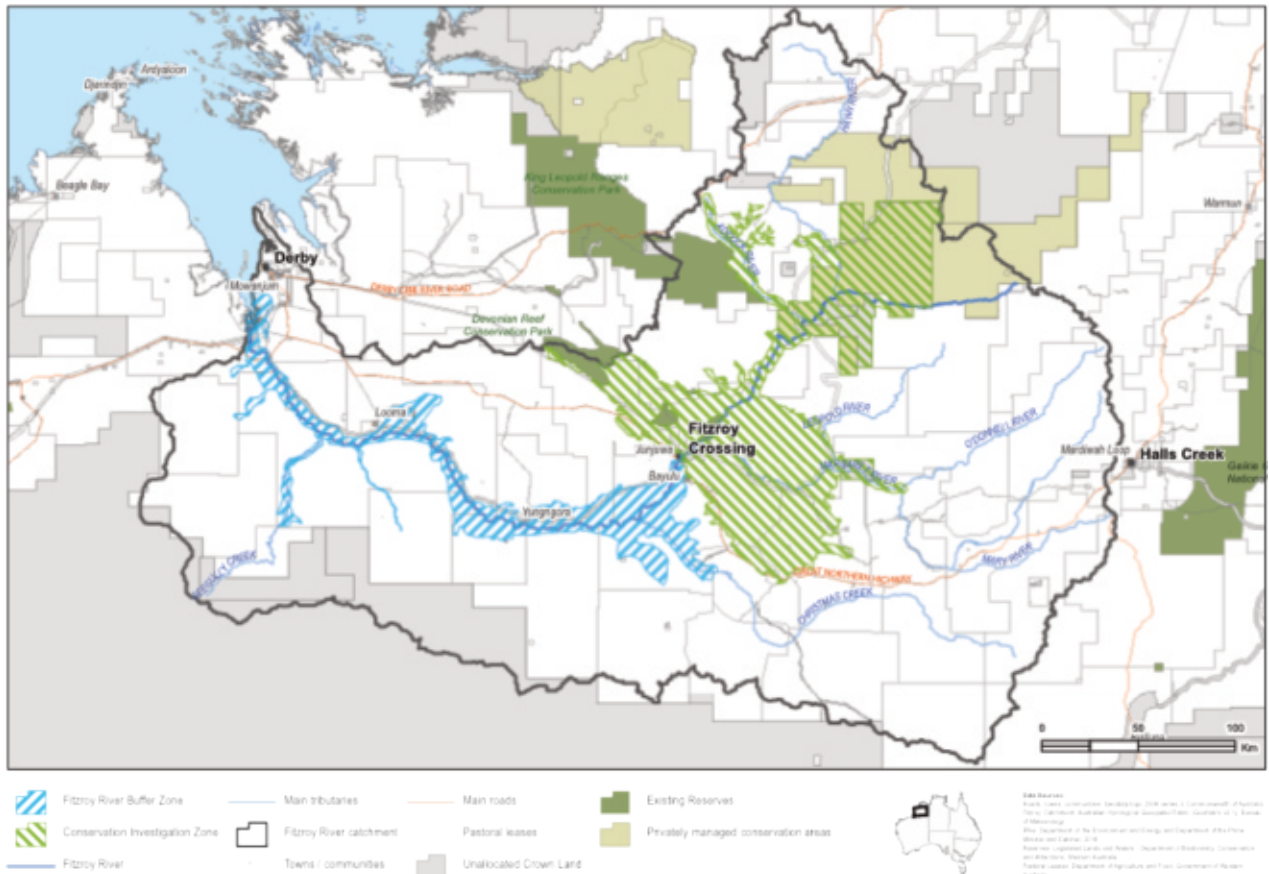
The proposed buffer (or Science based variations of it, as data and information become available) would:

- Ensure that sensitive riverine-cultural values are spatially designated and respected;
- Ensure any development does not impact on the shared and guardianship responsibilities of Traditional Owners to protect the standing of the cultural and natural values of the *Barringtonia acutangula* (Majala/Madjulla Fresh Water Mangrove);
- Ensure any activities do not impact on the water quality of the River;
- Strengthen, in the various planning framework's, representation of the links between the floodplain's and river's values and cultural significance;
- Ensure any development proposals within the zone meets the strictest NHL standards, triggering comprehensive impact assessments;
- Provide a higher 'hurdle' and burden of proof upon developers that proposed developments should not negatively impact on cultural and heritage values.

Additionally the riparian buffer zone:

- Acknowledges the coupling of water's life-giving properties to human-nature interactions;
- Establishes a spatial benchmark where attention is drawn to risks from modification of land use, river flows or water quality impacts;
- Serves to inform an understanding of the significance of any development proposal.

## Map of Interim Riparian Buffer Zone



**Figure 6:** Map of interim riparian buffer zone and other conservation boundaries in the Fitzroy catchment.





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## **POSITION STATEMENT 7: ADVOCATE FOR A RIPARIAN BUFFER ZONE**

The Martuwarra Council proposes to formalise a buffer zone that delineates a spatial boundary, which protects the River and its floodplains and identifies their high cultural and social-ecological significance. The rationale for the buffer is to ensure that management and any proposed development strengthens cultural or ecological values.

### ***4.3 Strengthened guidelines to support existing heritage protections***

The Martuwarra Council sees value in preparing and promoting NHL guidelines and having mechanisms that ensure their application. Examples include preparing, promoting and finalising guides for developers and providing detail on how Martuwarra Council principles can be applied in planning and development processes that determine how land and water are managed. Working with the PBCs and other partners, the Martuwarra Council will prepare policies, protocols and guidelines that ensure appropriate consultation with Indigenous peoples on heritage conservation and protection.

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## **POSITION STATEMENT 8: PREPARE AND ENFORCE GUIDELINES FOR STRENGTHENING EXISTING HERITAGE PROTECTIONS**

The Martuwarra Council will prepare guidelines and establish mechanisms including developing and promoting policies and protocols that advise third parties to better understand and comply with the aims and aspirations of Traditional Owners, including requiring mandatory consultation on cultural and natural heritage values.

### ***4.4 Policy Ideas for further consideration***

A range of policies and procedures will be developed by the Martuwarra Council as implementation of this Plan progresses over time. Possible examples include:

- First Law stories which uphold the balance and harmony of life between people and nature and frame this relationship as one of interdependence and co-existence;
- Clear articulation of the role that the Living Waters of the Martuwarra play in sustaining all life, culture and social wellbeing, and the risks to these from development;
- Improving information of the catchment, its resources and values such as through better spatial information and planning frameworks such as progressing the concept of a buffer zone (see below);
- Increasing awareness of the responsibilities of businesses, agencies and other developers;
- Articulating ways to secure greater resources and enhancing human and institutional capabilities for conservation and integrated development.

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## POSITION STATEMENT 9: DEVELOP MEASURES OF SUCCESS ON MARTUWARRA COUNCIL FUNCTIONS

The Martuwarra Council will develop operational policies and use performance measures through the implementation phases. These will assist in an iterative process of monitoring progress and steering implementation. Overall, the success measures will be defined around core concepts like healthy cultures, healthy river systems, healthy people with a focus on healthy relationships.

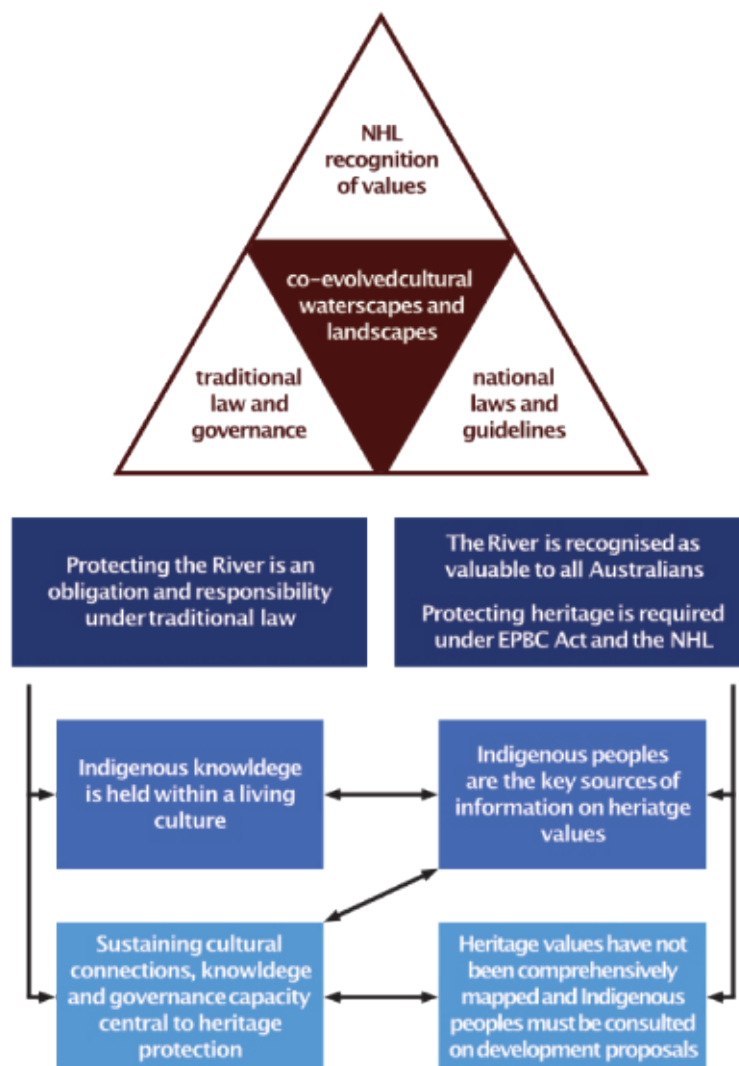
### 5.0 Legal Opportunities

This Plan recognises that there are three forms of law and governance that need to be considered and navigated, illustrated in the following ways.

1. Traditional Owners are strongly bound by First Law but these have few statutory rights or protections. Recognition of these legal and governance models could be strengthened through;
  - the efforts of the Martuwarra Council;
  - recognition and legal precedence under Native Title legislation (Commonwealth of Australia, 1993);
  - recognition under National Heritage legislation (Commonwealth of Australia, 1999);
  - strengthening the WA Aboriginal Heritage Act (Government of Western Australia, 1972);
  - stricter enforcement of EPBC Act (1999) guidelines, procedures and protocols
2. Western Australian State law provides for Indigenous heritage protections through the Aboriginal Heritage Act (1972). State laws are also the basis of Water Allocation Plans and other planning and resource entitlement frameworks – like mining and pastoral rights - that have significant influence in determining how land and water are used. These have strong statutory rights and protections.
3. Commonwealth law, including the EPBC Act (1999) provides some protection to Indigenous cultural and related natural values, requiring impact assessments for proposed developments on heritage listed sites.

4. Similarly, the Native Title Act (1993) gives protections to Indigenous use of land and water, but the adequate protection of interests in water are yet to be fully realised by Native Title holders and is an area of law that requires clarification as a matter of urgency. This may occur through the setting of precedents by the courts or in other ways.

The Martuwarra Council seeks greater recognition of this history of governance and its heritage, inviting the West Australian government into co-governance arrangements recognising the government’s responsibilities under the West Australian Aboriginal Heritage Act (1972) and other related legislation, agreements and plans. It sees itself as a modern living incarnation of this lineage and seeks to formalise pre-colonial modes of negotiated and collaborative governance. The influences of the three overlapping laws and intersection with co-governance opportunities are summarised in Figure 7.



**Figure 7:** Opportunities for co-governance of the Martuwarra recognising three forms of law.



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## **POSITION STATEMENT 10: ESTABLISH EQUITABLE MODELS OF CO-GOVERNANCE**

The Martuwarra Council recognises that heritage protection relies on having equitable and continuing models of governance that recognise cultural knowledge and build on customary law. The Council's proposed models of co-governance would formalise the respect and application of these peaceful and respectful systems of co-governing.

The Martuwarra Council has invited the Western Australian Government into negotiations on a co-governance model, offering an invitation to the Western Australian government to become a formal partner in one of the world's longest standing systems of social-ecological management.

Recognising First Law and governance is significant for the protection and conservation of the region's heritage values and has heritage value in itself. The Martuwarra Council argues that through their law and cultural governance, Traditional Owners have been involved in the co-management of the rivers and their catchments for thousands of generations.

One way to entrench this is to establish a permanent catchment authority that recognises the interests and aspirations of Traditional Owners and utilises their knowledge in the sustainable management of water resources.

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## **POSITION STATEMENT 11: ESTABLISH A CATCHMENT AUTHORITY COMPLEMENTED BY AN INDIGENOUS PROTECTED AREA**

The Martuwarra Council is advocating for the establishment of a Martuwarra Fitzroy River catchment authority as a statutory body based on principles of co-governance and giving primacy to Indigenous knowledge, law and practice across the whole of the Martuwarra catchment including the King Sound. This should be complemented by gazettal of the catchment as an Indigenous Protected Area in accordance to the Fitzroy River Declaration.

The Martuwarra Council aims to strengthen the NHL requirements for referrals and consultation about natural and cultural heritage values in the catchment. The heritage values are afforded some level of protection through the environmental impact assessment (EIA) process but this does not limit development per se.

Further, the NHL area does not cover the entire Fitzroy catchment as shown in Figure 1. For assurances of adequate protection, the Martuwarra Council seeks to complement NHL legal and procedural protection with other ways to secure protections for heritage values. Examples include changes to land zoning, expansion of alternative conservation models to manage diverse estates and resource use rights to Indigenous people; training and capacity building programs that empower Indigenous people to participate in government processes, stricter guidelines on resource use, use of complementary laws etc.

The Martuwarra Council and the PBCs will actively explore opportunities for ensuring cultural and natural heritage values are protected and will investigate the legal instruments, mechanisms and capabilities needed to achieve this. This involves further legal scholarship exploring questions of customary law, established obligations to collective and common property management and the details of decision-making powers. These matters have implications for justice, socio-economic policies and respect for cultural knowledge in assessing risks from specific development proposals.

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## **POSITION STATEMENT 12: COMMISSION LEGAL RESEARCH TO ENTRENCH HERITAGE BASED CO-GOVERNANCE MODELS**

To work towards achieving formal co-governance agreements, the Martuwarra Council is seeking:

- additional research on appropriate institutional arrangements and legal instruments to support co-governance; and
- establishing clear protocols for consultation and development with appropriately qualified persons, noting that these protocols will apply to all landowners including Indigenous communities proposing developments that may negatively impact or degrade heritage values.

### **6.0 Programs to Strengthen Heritage Protections**

To achieve greater capabilities in protecting and sustaining heritage values requires engaging and partnering with multiple communities, businesses and government agencies, and implementing an ongoing program of activities that give effect to the objectives of this Plan. Some indicative examples of these are provided below noting that once the Martuwarra Council constitution is finalised, the exact nature of these programs can be better informed.

#### ***6.1 Enabling transformational change and appropriate development models***

The Martuwarra Council is deeply concerned about the propagation of the myth of vast amounts of land and untapped water for irrigation in Australia's North, and the vague promises of jobs and growth based on grand plans for further agricultural intensification (Australian Broadcasting Commission, 2019; Connor, 2019; Davidson, 1966).

Proposed large-scale irrigation developments in the Fitzroy region have the potential to degrade cultural and natural heritage values. Martuwarra Council is concerned that through the proposed Fitzroy Water Allocation Plan, or in other ways, the Western Australian Government will authorise a substantial increase in large-scale irrigation development from the Martuwarra Fitzroy River and its related aquifers.

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The Martuwarra Council seeks to offer an alternative discourse for development, based on traditional knowledge and Traditional Owner aspirations (Connor, 2019). The approach will be one of enabling transformational change – and alternative economic development trajectories that do not rely on exploiting and degrading the region’s people or natural resources (Hill et al., 2006).

The Martuwarra Council advocates for economic development that:

- Builds an iconic brand and preconceives remoteness as an opportunity (e.g. for tourism)
- Expands the successful cultural economy (Hill et al., 2007);
- Develops remote area expertise in social and infrastructure services;
- Delivers integrated health, education, resource management, employment and economic wellbeing outcomes centred around the values sustained by the Martuwarra.

### **POSITION STATEMENT 13: CONVEY A TRANSFORMATIVE VISION FOR DEVELOPMENT**

The Martuwarra Council seeks to implement appropriate economic development strategies that offer alternatives to the current exploitative mainstream vision for resource intensive, large-scale irrigation and mineral and energy resources development.

The Martuwarra Council is critical of the development discourse that overstates the expected gains from such development. Rather it advocates a development discourse that supports or strengthens culture and ecosystem values and provides livelihood outcomes for Aboriginal people.



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## **6.2 Research & development into economic development options and strategies**

The Martuwarra Council recognises that any form of economic development is not an end in itself but a means to an end - that is, it is about enhancing individual and community wellbeing. In alignment with its commitment to enabling transformational change and developing appropriate development models, the Council seeks support from researchers to more clearly develop regional economic development strategies that will sustain the wellbeing of the River, its catchment and its people.

It seeks to work with researchers to develop a better understanding of existing values and the processes of risk assessment that could be used to protect these. The Martuwarra Council seeks to partner on Research and Development (R&D) programs that expand opportunities and capacities for remote area tourism, food, health, science, education, landscape management and water systems. These will comprise action research opportunities involving Traditional Owners that would accelerate alternative trajectories for development.

Indicative examples for inclusion in a research compendium include:

- An action-research program for transformative economic development;
- First Laws and ecological jurisprudence models and legal scholarship on models of co-governance of catchments held under native titles;
- Developing the scientific and cultural parameters for the delineation of a buffer zone which protects the River and its floodplains and identifies their high cultural and social-ecological significance.
- The legal and policy implications of adopting different models of cultural governance for river management;
- How Indigenous cultural governance could support environmental and heritage protection;
- Indigenous communities participation in developing social, cultural, ecological, environmental, and technological innovations;
- Incorporating Indigenous law, water rights and management approaches into new legal regimes for the Martuwarra Fitzroy River;
- Trans-contextual and trans-disciplinary research collaborations on enhancing Aboriginal health and wellbeing.



## Jean Malay

Kija Traditional Custodian

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"My totem was from the water from the river. I was caught as a rock cod. (...) That's why it's important to me. I hardly fish, I really like to protect the fish, the water, and everything that's in the water".

(Martuwarra Fitzroy River Council Website, 2020)

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## POSITION STATEMENT 14: DEVELOP A RESEARCH COMPENDIUM TO PROMOTE SUSTAINABLE AND REGENERATIVE ECONOMIES

The Martuwarra Council will develop a compendium of research needs that will assist its vision of sustainable, restorative and regenerative development, building critical capabilities and strategic alliances for heritage conservation and fostering models of co-governance.

### ***6.3 Valuation and the community uses and the economic benefits of market and non-market uses***

In line with its ambitions for transformational change, the Council seeks to better understand the options and opportunities for culturally appropriate development models. To this end it wants better valuation of current market and non-market uses of the River and related catchment systems. The purpose of such valuation is to provide a benchmark, against which the costs and consequences (risks) of any specific development proposal can be assessed.

The Martuwarra Council recognises that community wellbeing is determined by many interrelated factors, including some activity in the monetary and non-monetary economy and that great non-monetary value is generated by the health of the River and by healthy relationships with the River. The Council wants to better understand the economic, ecological, cultural and material values generated by relationships with the River, including the values generated by existing uses (e.g. fisheries, recreation, tourism) and cultural values (Indigenous and non-Indigenous), and the positive physical and social health and wellbeing impacts of fishing, recreation and educational activities undertaken.

The Martuwarra Council would like to see detailed analysis of the economic, ecological and health benefits of living on Country that is fine grained, for example looking at the nutritional profiles (e.g. protein, fat, cholesterol etc) of traditional bush foods compared to diets sourced from conventional supermarket food items. These types of studies could be extrapolated to look at the costs that would be saved to government expenses in various program interventions, e.g. evaluating expenditures on healthcare, crime and detention versus investing in Aboriginal land and sea management programs. The Martuwarra Council seeks to develop business and community development partnerships on a conservation and cultural economy.

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The Martuwarra Council seeks to achieve higher employment and greater prosperity to the community through business and employment activities that are consistent with heritage conservation. This includes building on existing initiatives in tourism, health/wellbeing, the arts and education. The Martuwarra Council also seeks an investigation into the potential for Indigenous rangers to be contracted to undertake Commonwealth functions, like quarantine and biosecurity programs etc.

The Martuwarra Council has previously explored issues of social licence and how water stewardship (a branding and certification scheme - a 'social licence to operate') could help create a regional identity that is water sound (Alexandra, Spencer, & Poelina, 2015).

The water stewardship approach establishes networks of water stewards in business and communities, enhancing local, regional and international linkages and networks and strengthening transparency, accountability and the transfer of better practice models. Tourism and other cultural and environment based businesses could formally become branded as Water Stewards.

#### ***6.4 Healthy Country Programs - Improving Cultural and Conservation Management***

The Healthy Country and Indigenous Ranger programs provide a unique opportunity for combining Traditional Owners' aspiration to "care for their Country" with the broader conservation efforts - such as those intended to assist in preserving biodiversity (Moritz, Ens, Potter, & Catullo, 2013).

Healthy country plans for much of the catchment identify priorities for improved land, water, biodiversity and heritage conservation. For example, the [Walalakoo Healthy Country Plan](#) (Walalakoo Aboriginal Corporation RNTBC, 2016) outlines the important things Nyikina and Mangala people want to look after, including:

- Nyikina and Mangala Law and Culture;
- Cultural and heritage sites;
- Freshwater places;
- Native animals;
- Bush tucker and bush medicine plants;
- Right way fire management;
- Being strong on Country.



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The plans establish targets for looking after native title lands, many of which relate to cultural heritage values and biodiversity conservation goals. The Martuwarra Council and the Cultural Management and Heritage Plan do NOT assume responsibilities for the PBCs.

They will continue to develop and implement plans that relate to their areas but the Plan will support their efforts through the provision of additional resources.

**POSITION STATEMENT 15: DEVELOP A PROSPECTUS OF COMMERCIAL OPPORTUNITIES ON ECOLOGICAL CONSERVATION AND CULTURAL ECONOMIES**

The Martuwarra Council seeks appropriate economic planning that:

- Sustains livelihoods while conserving the spiritual, cultural and environmental health and wellbeing of the Martuwarra Fitzroy River and its people;
- Promotes the significance of the region's cultural and natural values;
- Encourages ethical public and private investment in socially and ecologically appropriate economic development;
- Develops local Indigenous workforce for the new and emerging regional industries that conform to the values clarified in this document;
- Achieve higher employment and greater prosperity to the community through business and employment activities that are sympathetic to and consistent with heritage, cultural and ecological conservation.



## Gordon Smith Jr.

Ngarinyin Traditional Custodian

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“The reason why the Fitzroy and the catchment areas are so important is that it has a close bond with its people and its surroundings. It has always been connected to its traditional owners. We have to stand up and be strong to protect the river from all sorts of destruction.(...) We need to have some sort of a protection plan, and that's what the Martuwarra Council brings to the table.”

(Martuwarra Fitzroy River Council Website, 2020)

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## 7.0 Indicative Implementation Schedule






















This section provides an indicative action plan and implementation schedule for the Martuwarra Council. This schedule takes the Martuwarra Council's 'Position Statements' and converts these to intended actions. This provisional, three-year rolling 'Action Plan' will be updated as required. The specifics of any of the proposed actions will be implemented over time and as resources permit.

To achieve many of its goals the Martuwarra Council intends to enter into partnerships and co-governance arrangements with a broad spectrum of parties. It is anticipated that respective partnerships and projects will require tightly specified project plans and partnership agreements to be developed in due course. Therefore, this implementation schedule should be understood to be an outline of the priorities for implementing the Plan.

The way these will eventually unfold will depend on the decisions the Martuwarra Council makes as the responsible decision-making entity and the degree of support it gets. Nonetheless, the indicative tasks and timelines, outlined below, are intended to complement the broad strategic directions expressed in the Plan.

**ACTION 1.0: PROMOTE LIVING WATERS CONCEPTS AS CENTRAL AND INTERLINKED TO SUSTAINING HERITAGE, NATURAL AND CULTURAL CARE**

The Plan is based on the underpinning position that First Law (customary law), knowledge, culture, language and ecosystems are intricately connected and vital to sustaining capabilities for cultural-natural heritage restoration and conservation (Douglas et al., 2019; Harrison, 2015; Jackson, 2015).

Indicative Program Outline	2020	2021	2022	2023
(A) Scope and develop Living Waters case study projects and partnership proposals				
(B) Seek partners and implement projects				
(C) Investigate feasibility of establishing a Living Waters' network to facilitate exchange throughout and beyond the Kimberley that promotes alternative frameworks of conceiving of waters' place in landscapes and cultures				
(D) Promote greater recognition of the central importance of Living Waters to cultural and natural heritage conservation and seek formal recognition from Governments and national and international heritage organisations				
(E) Promote greater recognition of the relevance and legitimacy of First Law in contributing to contemporary water governance and cultural heritage conservation				
(F) Promote greater recognition of the Martuwarra Fitzroy's heritage values, including through advocating for World Heritage Listing and/or recognition as a UNESCO Biosphere Reserve				
(G) Investigate and promote options to strengthen heritage protections under the EPBC Act (1999) and the Aboriginal Heritage Act (1972)				
(H) Commission legal scholarship to develop and promote model legislation designed to protect the Martuwarra Fitzroy catchment and its unique cultural and natural values				
(I) Document and report outcomes				
 <i>Indicates activity schedule</i>				



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The Martuwarra Council seeks partnerships with agencies (including international agencies involved in heritage conservation), NGOs and philanthropic organisations to promote greater recognition of the Living Waters concept and its roles in cultural and natural heritage conservation.

The Martuwarra Council is offering to coordinate and implement projects documenting the Martuwarra as a nationally and internationally relevant case study.

## ACTION 2.0: FORMALISE THE MARTUWARRA COUNCIL STRUCTURE, FUNCTION AND RESPONSIBILITIES

As a matter of priority the Martuwarra Council will form an incorporated not-for-profit entity to formulate and advocate on behalf of its members. In cooperation with its members, the Martuwarra Council will develop a constitution that will guide its formation and operation as an alliance of PBCs and other parties.

By establishing the Martuwarra Council as a legal entity, it will have the capacity to undertake effective and targeted fundraising, enter into contracts and apply for grants that will ensure the Martuwarra Council is financially sustainable, enabling it to represent the PBCs' and the Native Title holders' interests.

Indicative Program Outline	2020	2021	2022	2023
(A) Martuwarra Council develops and gains members agreement to a constitution that guides its structure, functions and capacity to evolve as required for future activities. It aims to become an incorporated body before December 2020				
(B) Implement Martuwarra Council strategic communications and engagement plan, launch and curate website, in line with agreed communication protocols				
(C) Develop agreed protocols on Martuwarra Council policy development, including on responding to relevant plans and strategies				
(D) Celebrate formalisation of the Martuwarra Council with a major cultural 'paint the catchment' initiative where traditional Elders from all groups collaborate on a major symbolic project that accommodates a touring exhibition of the Martuwarra painting				
(E) Gain sufficient funding to engage an Executive Officer and ensure effective administration, coordination and funds to enable continued consultations throughout the catchment				
(F) Meet all legal compliance requirements including annual reports, audited financials etc.				
 <i>Indicates activity scheduled</i>				

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## **ACTION 3.0: FORM PARTNERSHIPS AND STRATEGIC ALLIANCES**

The Martuwarra Council seeks to build effective alliances and strategic partnerships to implement its programs and to achieve its objectives. The Plan serves as a prospectus document and invites interested parties to negotiate on these prospects. The Martuwarra Council welcomes negotiations with interested parties. The Martuwarra Council intends to issue annual statements of research and program partnership priorities, and hold workshops, or other appropriate ways of consulting with prospective partners.

The Martuwarra Council seeks to build effective alliances and strategic partnerships to implement its programs and to achieve its objectives. The Plan serves as a prospectus document and invites interested parties to negotiate on these prospects. The Martuwarra Council welcomes negotiations with interested parties. The Martuwarra Council intends to issue annual statements of research and program partnership priorities, and hold workshops, or other appropriate ways of consulting with prospective partners.

### 3.1 Form Partnerships & Strategic Alliances

Indicative Program Outline	2020	2021	2022	2023
(A) Strategically position the Martuwarra Council as a model for engaging in high level research and sustainable capacity building		☀	☀	☀
(B) Develop and communicate an 'annual prospectus' – a statement of R&D and program partnership priorities	☀	☀	☀	☀
(C) Develop and adopt agreed principles for R&D and program partnerships that codify respect for Indigenous knowledge and build capacity		☀		
(D) Seek business, government and investor support to develop and implement partnership programs focused on integrated approaches to natural and cultural heritage conservation		☀	☀	☀
(E) Seek investments in land and biodiversity conservation and assessment programs that achieve catchment, heritage conservation and health outcomes		☀	☀	☀
(F) Annual show case (or webinars) of partnership programs		☀	☀	☀
(G) Investigate feasibility, merits and options for forming a philanthropic and NGO partners' roundtable		☀	☀	
(H) Review and report annually on partnerships programs and showcase partnership achievements on the Martuwarra Council website	☀	☀	☀	☀
☀ <i>Indicates activity scheduled</i>				



### 3.2 Strategic Communications

Indicative Program Outline	2020	2021	2022	2023
(A) Identify and build capacity through up-skilling and sustainable career pathways of Community Storytellers and Community Researchers within each PBC	☀	☀	☀	☀
(B) Engage process impact and outcome evaluation in order to reflect on the implementation of research and development projects	☀	☀	☀	☀
(C) Develop Martuwarra Council policy, protocols (internal and external), based on identified Plan priorities by engaging with community networks, partnerships and experts	☀	☀		
(D) Apply cultural authority to water planning for sustainable management that reinforce an Aboriginal spiritual and natural values governance model	☀	☀	☀	☀
(E) Design and implement a permissions oriented Production, Publication and Internet Communications protocol, mediated by the Chair of the Martuwarra Council	☀			
(F) Establish, articulate and apply a <i>Cultural Rights Charter</i> , conducting workshops to develop guidelines for Copyright, Intellectual Property and Attribution based on Free Prior and Informed Consent	☀	☀		
(G) Connect with key Stakeholders using the <i>Partnership Prospectus</i> and the <i>Communications Brief</i> , adhering to standardised Council web and print protocols		☀	☀	☀
(H) Identify and engage target audiences through digital media and creative works (Newsletter, Website, Social Media services) showcasing stories from Community Storytellers, Researchers, Artists, Scientists, Cultural Leaders	☀	☀	☀	☀
(I) Initiate and manage campaigns and promotions to create community awareness of risks to wellbeing of the Martuwarra		☀	☀	☀
(J) Conduct regular Webinars and publish Podcasts with national and international target audiences (scientists, educators, NGOs, researchers, legal professionals) in addition to inclusions in popular press		☀	☀	☀
(K) Host Think-Tanks, Workshops and context specific Symposiums involving local, state, national and international guests	☀	☀	☀	☀
☀ Indicates activity scheduled				










### 3.3 Data Management

Indicative Program Outline	2020	2021	2022	2023
(A) Consult with leading data management and information workflow experts to inform the development and implementation of the Martuwarra Council <i>Data Management Policy</i>	☀	☀		
(B) Develop strategic communications (internal and external contacts) with intelligence drawn from a centralised <i>Client Relationship Management (CRM)</i> database and <i>Content Management System (CMS)</i> (project management)	☀	☀	☀	☀
(C) Design and develop a permissions oriented <i>Martuwarra Council Cultural Database (MCCD)</i> informed from leading case studies and detailed scenarios of data management		☀	☀	☀
(D) Select and maintain a <i>Reference Management System (RMS)</i> to ensure quality of information formatting and to maintain consistent citation standards across publications	☀	☀	☀	☀
(E) Develop policy, which guides continued assessment and informs regulation and retention of data created by Contractors ie. Copyright, Intellectual Property, data reuse and standards of service delivery	☀	☀	☀	☀
(F) Maintain secure administration and confidentiality of information for Martuwarra Council services ie. Website, domains, software licences & Social Media	☀	☀	☀	☀
(G) Analyse website statistics, conduct surveys and focus groups and compile feedback from documentary (film) data		☀	☀	☀
(H) Engage key stakeholders continuously to conduct an assessment of data sciences and services (Zenodo, Figshare) which best leverage data awareness and citation of publicly accessible Martuwarra Council data.		☀	☀	☀
☀ Indicates activity scheduled				

## ACTION 4.0: FORMALISE RECOGNITION THAT THE MARTUWARRA'S FLOWS ARE INTRINSIC TO TRADITIONAL AND ENVIRONMENTAL USE AND VALUES

The Martuwarra Council seeks formal recognition that the Martuwarra Fitzroy River's flows are already fully allocated to traditional and environmental uses and values. Yet, there is currently poor statutory recognition of this position. While there is legal recognition of native title to land, and procedures for determining native title rights, there is a major disjuncture with respect to Indigenous People's claims to custodianship of waters and rivers which requires validation and clarification.

The Martuwarra Council intends to issue annual statements of research and program partnership priorities, and hold workshops, or other appropriate ways of consulting with prospective partners. This has resulted in them often being excluded from having a direct influence over decisions about statutory rights to water resources. In Australia (and internationally), there has been increasing conflict around competing rights to water, and many complex issues with respect to how decisions are made and who has legitimate rights to be involved in water governance processes.

Indicative Program Outline	2020	2021	2022	2023
(A) Seek agreement with WA government on a moratorium on issuing extractive water licences for at least five years				
(B) Continue to document the ways in which traditional and customary connections and uses of water (and their ecological and social co-production are central in conserving and managing cultural-natural values)				
(C) Develop, and test proposals for formal recognition that the Martuwarra's flows are intrinsic to traditional and environmental uses and values				
(D) Draft and gazette legislation to ensure protection of flows against extractions				
(E) Document and report on case studies and legal reviews				
 <i>Indicates activity scheduled</i>				

Rather than attempting to stop proposed large-scale irrigation and mineral resources developments, on a case-by-case basis, the Martuwarra Council seeks to determine better, more respectful and more inclusive processes of water governance. To this end, it has been working with the WA Government on water and catchment planning processes that are inclusive of Indigenous perspectives and positions.

## ACTION 5.0: CREATE RIPARIAN BUFFER ZONE











The Martuwarra Council proposes a buffer zone to protect the Martuwarra and its floodplains from all forms of inappropriate development.

The zone will define and protect the Martuwarra and floodplain zones of high cultural and social-ecological significance to ensure any development does not impact on the shared and guardianship responsibilities of Traditional Owners to protect the standing of the cultural and natural values of the *Barringtonia acutangular* (Majala/Madjulla Fresh Water Mangrove).

Indicative Program Outline	2020	2021	2022	2023
(A) Formal delineation of preferred buffer zone and its rationale	☀			
(B) Seek endorsement and support from external parties		☀		
(C) Seek funds to investigate and trial conservation-centric land management practices (e.g. cattle exclusion areas for priority floodplain wetlands)		☀	☀	☀
(D) Martuwarra Council proposes WA legislation giving effect to the buffer zone proposal		☀		
(E) Martuwarra Council seeks resources to develop and implement a management plan and management actions for the buffer zone		☀	☀	☀
(F) Review of buffer zone implementation				☀
 <i>Indicates activity scheduled</i>				

## ACTION 6.0: PREPARE AND ENFORCE GUIDELINES FOR STRENGTHENING HERITAGE PROTECTIONS

The Martuwarra Council will prepare guidelines and develop and promote policies and protocols for third parties to better understand and comply with the aims and aspirations of Traditional Owners, including requiring mandatory consultation on cultural and natural heritage values that engage with appropriately qualified persons.














Indicative Program Outline	2020	2021	2022	2023
(A) Develop draft heritage conservation guidelines				
(B) Develop, and test consultation protocols				
(C) Widely communicate guidelines and protocols				
(D) Implement and evaluate guidelines and protocols				
(E) Review and report on guideline use and effectiveness				
 <i>Indicates activity scheduled</i>				



## ACTION 7.0: DEVELOP MEASURES OF SUCCESS ON MARTUWARRA COUNCIL FUNCTIONS

On completion of the Plan, the Martuwarra Council will develop an evaluation strategy. It will use evaluation metrics and performance measures through the implementation phases.














These will assist in the iterative process of monitoring progress and steering implementation. Success measures will be defined around core concepts like healthy cultures, healthy river systems, healthy people and healthy relationships.

Indicative Program Outline	2020	2021	2022	2023
(A) Finalise the Plan				
(B) Develop an evaluation strategy for the effectiveness of the Plan				
(C) Apply and refine evaluation metrics and performance measures				
(D) Report annually on progress and adjust action plan as required				
(E) Evaluate Plan and its performance				
(F) Prepare revised Plan				
 <i>Indicates activity scheduled</i>				

## ACTION 8.0: DESIGN AND ESTABLISH EQUITABLE MODELS OF CO-GOVERNANCE & ESTABLISH A CATCHMENT AUTHORITY COMPLEMENTED BY AN INDIGENOUS PROTECTED AREA

Heritage protection in the Martuwarra relies on continuing models of governance that recognise cultural knowledge and builds on customary law. The Martuwarra Council’s proposed models of co-governance formalises respectful systems of co-governing.

The Martuwarra Council has invited the Western Australian Government into negotiations on a co-governance model, offering an invitation to become a formal partner in one of the world’s longest standing systems of social-ecological management at the Martuwarra basin scale.

Indicative Program Outline	2020	2021	2022	2023
(A) Seek philanthropic support to undertake legal research into preferred options for designing and establishing a co-governance model for the Martuwarra				
(B) Propose initial governance model for consultation				
(C) Invite the WA state, local and Commonwealth governments to partner in the co-governance model				
(D) Develop and promote proposals for a gazettal of an Indigenous Protected Area				
(E) In conjunction with Governments develop model legislation				
(F) Review and refine governance model(s) based on feedback and feasibility				
(G) Establish new co-governance entity - the Fitzroy Martuwarra Fitzroy River catchment authority - a statutory body based on principles of co-governance and giving primacy to Indigenous knowledge, law and practice across the whole of the Martuwarra River catchment including the King Sound				
 <i>Indicates activity scheduled</i>				

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The Martuwarra Council is advocating for the establishment of a Fitzroy Martuwarra River Catchment Authority as a statutory body based on principles of co-governance and giving primacy to Indigenous knowledge, law and practice across the whole of the Martuwarra catchment including the King Sound. This model should be complemented by gazettal of the catchment as an Indigenous Protected Area in accordance with the Fitzroy River Declaration.

To work towards achieving formal co-governance agreements, the Martuwarra Council is seeking funds to commission additional research on appropriate institutional arrangements and legal instruments that will enable co-governance (Ryan et al., 2010).

## ACTION 9.0: A TRANSFORMATIVE VISION FOR CONSERVATION AND CULTURAL ECONOMIES & RESEARCH TO PROMOTE SUSTAINABLE REGENERATIVE ECONOMIES

The Martuwarra Council seeks support to implement appropriate economic development strategies that provide alternatives to resource intensive, large-scale irrigation, mineral and energy resources development. The Martuwarra Council advocates an alternative cultural and conservation economy model, which sustains culture and ecosystem values and provides improved livelihood outcomes for Aboriginal people. The Martuwarra Council will develop a statement of policy and research needed to realise its vision of sustainable, restorative and regenerative development.

It seeks to attract public and private investment in socially and ecologically appropriate economic development that will develop new and emerging industries and achieve higher employment and greater prosperity to the community through business and employment activities that are sympathetic to and consistent with heritage, cultural and ecological conservation.

Indicative Program Outline	2020	2021	2022	2023
(A) Develop an annual statement of policy and economic research needed to realise the Martuwarra Council vision of sustainable, restorative and regenerative development				
(B) Seek financial resources and professional support to undertake economic development research into preferred futures for the Martuwarra				
(C) Articulate and test concepts (quantitative and qualitative assessments) of alternative cultural and conservation economy models, which aim to sustain the culture and ecosystem values and provides improved livelihood outcomes for Aboriginal people.				
(D) Quantify and communicate employment, education and health outcomes				
(E) Develop and implement training and education models suited to remote communities				
(F) Investigate and undertake a feasibility study for the establishment of the Martuwarra Institute as an education, research and training provider				
 <i>Indicates activity scheduled</i>				

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## Appendix A - Peer Review Summation of Draft Plan

This document benefitted from advice provided by independent external peer reviewers for which we are very grateful. In April 2020, a final draft version of this report was provided to a network of specialists ranging in expertise such as cultural development and learning, ecology and conservation planning, law and legal reform, natural resource economics and evaluation, community development and water reform policy. Reviewers spanned the academic, public administration, consulting, NGO and philanthropic sectors.

The Plan's focus is on the core strategic elements of heritage conservation as expressed by the Martuwarra Council. Some reviewers expressed a wish to see more fulsome articulation of policies and programs such as the rationale and conditions that underpin a riparian buffer zone. Details of this nature are considered necessary and important but such advice has not been incorporated in the Plan given its strategic intent. Matters of detailed policy and program development will form operational functions of the Martuwarra Council as it begins its journey as an enduring organisation to represent the heritage interests of Martuwarra peoples. Examples of such functions and responsibilities are identified in section 7 of the Plan.

Matters of a strategic nature which have been incorporated in this final version follow. A number of reviewers stressed the importance of recognising Traditional Owners as legitimate resource owners in their own right. First Law gives primacy to Traditional Owners to determine their future through how resources are used beyond a Western concept of economic development. Reviewers emphasised the need to clearly state that Aboriginal peoples pursuit for economic development are not an end in itself, but a means to ensure their livelihoods can be sustained and the quality of their lives enhanced given past injustices and current social and economic disadvantage.

A number of reviewers had emphasised that there is a disjoint between Native Title Law and rights to water which need to be addressed and be central to the ambitions of the Martuwarra Council. The need for applying Native Title protections over water in the context of protecting Traditional Owner's heritage interest have been abundantly clear in the Darling (Bakka) River. The injustices of improper consideration of Native title rights over water have been brought into sharp focus during the 2018 – 2019 drought in the Bakka, where many Indigenous communities along the river system were left without access to clean water and disconnected from their cultural and heritage ties to the River and the benefits that riverine flows bring to their livelihoods.

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(Cont.)

In this regard, it was also noted that Aboriginal peoples aspirations and wishes are inadequately considered in the development of water resource and water sharing plans. Reviewers noted that the Council provides an important opportunity to prevent such injustices in the Martuwarra against the backdrop of significant pressures for large-scale extractive resource development.

Some reviewers were uncertain as to what the Martuwarra Council was calling for in relation to institutional and water reforms. The Martuwarra Council position is that past practices, norms and legal framings should not constrain the vision of the Martuwarra Council in its pursuits to protect heritage values. In some cases new institutional settings will be advocated for. Over time, the Martuwarra Council will make clear what its positioning is on a suite of matters that intersect Traditional Owner aspirations and interests.

Reviewers also made clear that while the Plan was important in terms of articulating strategic intent and inviting partnerships, it is also important in terms of providing clear statements of value-based positions and aspirations. Several reviewers suggested that readers of the document, whether specialists, or the interested public, need to be made aware of the highly politicised context in which resource development decisions are made and that such decisions always involve issues of justice and questions about resource ownership. These are central to the way decisions about water and natural resources are made.

The idea that the Plan identifies the need, and some options for, establishing (meta)governance arrangements was identified. This takes us to the idea that it is not simply a matter of identifying the kinds of issues for which decisions need to be made, but more importantly, who gets to make the decisions and what processes and principles guide them.

Most reviewers offered their encouragement on the significance of the Martuwarra Council's attempts to frame a Plan which spans the conservation and management of cultural and natural heritage, complemented by appropriate and evolving governance models.

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## Appendix B - An open letter to potential partners of the Plan

As the consultants who have been involved in the preparation of this document, we write this open letter to acknowledge the efforts of the Martuwarra Fitzroy River Council and to show our respect to its members with whom we are privileged to have worked.

We have valued the honesty, graciousness and frankness by which Members expressed both their concerns and aspirations for their Country and entrusted us in assisting in the task of communicating these more widely. It has been an honour to work with the Martuwarra Council in this attempt to translate their concerns and aspirations into this document, which we see as an 'artefact' that sets out a trajectory for change.

We have been honoured to be part of a process and have learnt much from being invited into the trust of the Martuwarra Council. Throughout the process we have insisted that the document created should be judged by its effects, the results it helps engender, because there is so much that needs to be done to reform aspects of how Aboriginal Heritage is protected and valued in the Martuwarra, and beyond. In practice, there is still a long way to go for Indigenous people to have a strong voice at the decision-making forums in this country, despite the notional protections that various State and Federal laws proclaim to offer in protecting heritage and culture. The Martuwarra Council's proposals for new governance models provide a glimpse of what needs to change and the potential for meaningful reforms.

This Plan unites the Traditional Owners of the Martuwarra catchment through articulating their common goals. It amplifies the voices of Traditional Owners and asserts their rights as resource owners and guardians to be actively involved in the key policy decisions. The River, First Law and the right of a river to flow freely offers them a chance to have their voice and interest heard by focusing on water as a symbol of connectivity – not just hydrological, but spiritual, cultural and also to land and nature.

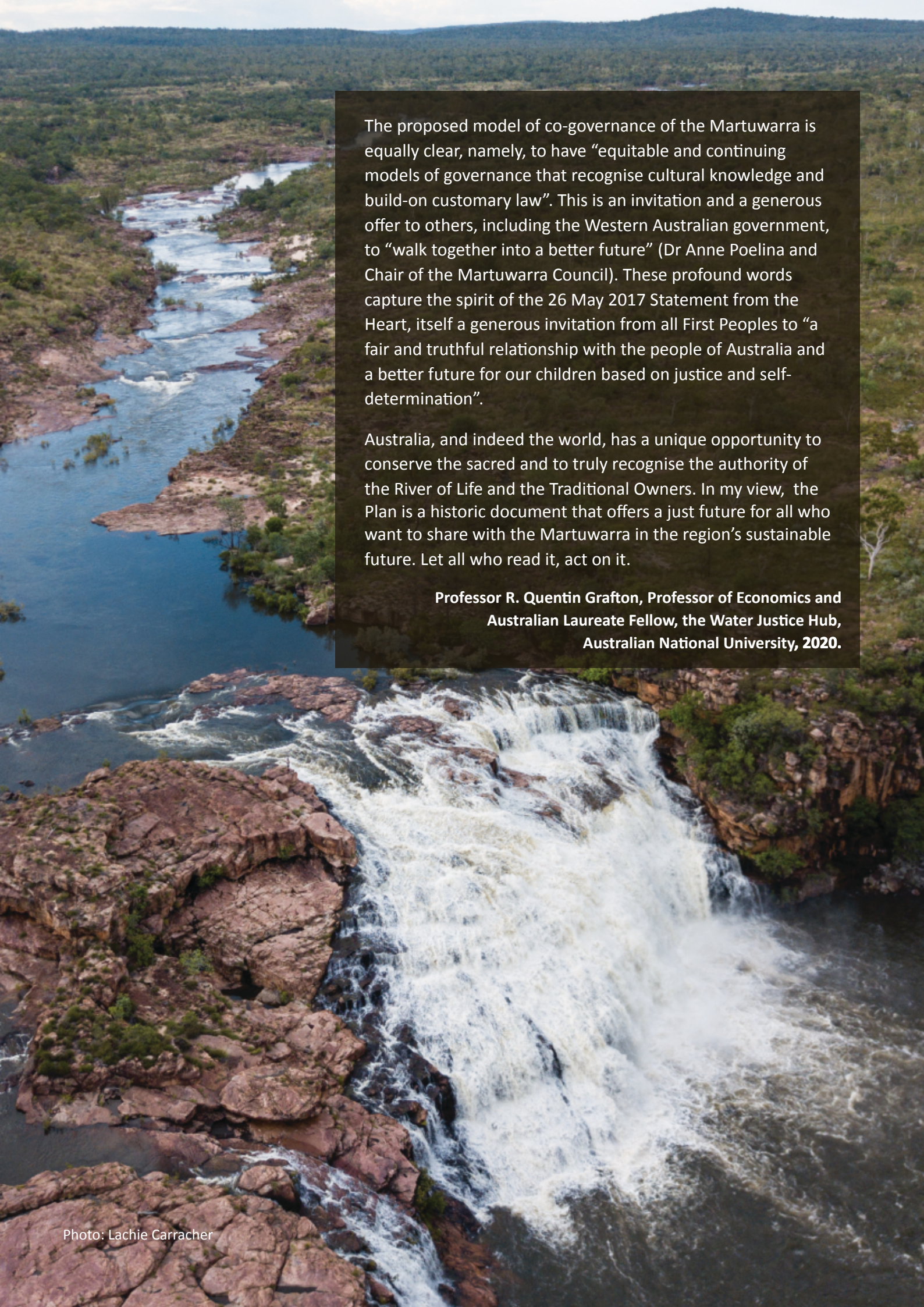
We thank the Members of the Martuwarra Council, and especially Dr. Anne Poelina, who has been generous with her time and her big-picture ambitions. Anne and other Martuwarra Council members have been gracious in working with us as part of the team, rather than simply as a business transaction.

This exemplifies what the Martuwarra Council is asking for in this Plan – an invitation to build coalitions such that the whole is greater than the sum of the parts. We encourage all those who share in the vision that this document seeks to promote, to partner with the Martuwarra Council and join with it in this remarkable journey, because it is one of great consequence not just for the people of the Kimberley, but also for all Australians.

Yours sincerely,

**Jason Alexandra, Nadeem Samnakay.**





The proposed model of co-governance of the Martuwarra is equally clear, namely, to have “equitable and continuing models of governance that recognise cultural knowledge and build-on customary law”. This is an invitation and a generous offer to others, including the Western Australian government, to “walk together into a better future” (Dr Anne Poelina and Chair of the Martuwarra Council). These profound words capture the spirit of the 26 May 2017 Statement from the Heart, itself a generous invitation from all First Peoples to “a fair and truthful relationship with the people of Australia and a better future for our children based on justice and self-determination”.

Australia, and indeed the world, has a unique opportunity to conserve the sacred and to truly recognise the authority of the River of Life and the Traditional Owners. In my view, the Plan is a historic document that offers a just future for all who want to share with the Martuwarra in the region’s sustainable future. Let all who read it, act on it.

**Professor R. Quentin Grafton, Professor of Economics and  
Australian Laureate Fellow, the Water Justice Hub,  
Australian National University, 2020.**