

MEMORANDUM OF UNDERSTANDING

PARTIES

**DAVID G. STEAD MEMORIAL WILD LIFE RESEARCH FOUNDATION OF AUSTRALIA
(A.C.N 000 431 363)**

**AND
AUSTRALIAN NATIVE DOG CONSERVATION SOCIETY LTD
(A.C.N. 001 407 352)**

**DATED
30th September 2006**

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THIS DEED dated 30th September 2006

PARTIES:

- 1. DAVID G. STEAD MEMORIAL WILD LIFE RESEARCH FOUNDATION OF AUSTRALIA (A.C.N. 000 431 363)** of Wirrimbirra Sanctuary 3105, Remembrance Drive, Bargo NSW (hereafter called "Stead Foundation")
- 2. AUSTRALIAN NATIVE DOG CONSERVATION SOCIETY LTD (A.C.N. 001 407 352)** of Dingo Sanctuary 590 Arina Road, Bargo NSW (hereafter called "Native Dog Society")

INTRODUCTION

- A. The Stead Foundation is a public company limited by guarantee.
- B. The Stead Foundation's object is, among other things, the promotion and establishment of sanctuaries and the promotion of further research into the conservation of wildlife within Australia.
- C. The Native Dog Society is a public company limited by guarantee.
- D. The Native Dog Society's objects are, among other things, to initiate, promote and conserve the Australian native dog population.
- E. Both the Stead Foundation and the Native Dog Society wish to co-ordinate various administrative and other activities in a co-operative manner so as to benefit both organizations. Accordingly, the Native Dog Society and the Stead Foundation wish to confirm the nature of their joint association in accordance with the terms of this Memorandum of Understanding.

THE PARTIES AGREE TO THE FOLLOWING TERMS AND CONDITIONS

1. Definitions & Interpretation

1.1 Definitions

The following words have the following meaning:

"*Committee*" means the Management Committee empowered with the responsibility for the management of Wirrimbirra Sanctuary for and on behalf of the Stead Foundation and Native Dog Society in accordance with the provisions of this Deed.

"*Constitution*" refers to the Memorandum and Articles of Association of the David G. Stead Memorial Wild Life Research Foundation of Australia and Memorandum and Articles of Association of the Australian Native Dog Conservation Society Limited.

"*Dingo Sanctuary*" is defined as and means the conservation area as per attached plan to be located within Wirrimbirra Sanctuary in accordance with the terms of this Memorandum of Understanding.

"*Wirrimbirra Sanctuary*" is more formally described as the land leased to the Stead Foundation and from which the Stead Foundation currently undertakes its operations. To avoid doubt, Wirrimbirra Sanctuary leased to the Stead Foundation includes all the land contained in Folio Identifiers Portions 203, 33, 18 and 19 of the Parish of Bargo, being the whole of the lands referred to in the notification contained in Government Gazette dated 26.9.1975 and Lots 1 in Deposited Plan 789005 and Lot 32 in Deposited Plan 751250. To date, Wirrimbirra Sanctuary includes native gardens, nursery, café, budget accommodation facilities and native animals.

"*Joint Operation*" means the Stead Foundation and the Native Dog Society jointly operating and managing Wirrimbirra Sanctuary.

1.2 Interpretation

- (a) the singular includes the plural and vice versa;
- (b) a reference to one gender includes a reference to all other genders;
- (c) headings to clauses are included for the sake of convenience only and shall not affect the interpretation of the clauses to which they relate;
- (d) references to any statute or statutory provision include that statute or statutory provision as amended, extended, consolidated or replaced by subsequent legislation and any orders, regulations, instruments or other subordinate legislation made under the relevant statute;
- (e) the word *person* means and includes a natural person, a company, a firm or any other legal entity whether acting as a trustee or not;
- (f) this Deed shall bind each party's legal personal representatives, successors and assigns; and
- (g) when a party comprises two or more persons the rights and obligations of such persons pursuant to this Deed shall enure for the benefit of and bind all of them jointly and each of them severally.

2. Agreement to Joint Operation

- 2.1 The Stead Foundation and the Native Dog Society agree to jointly operate and manage Wirrimbirra Sanctuary. The Stead Foundation and the Native Dog Society agree to associate themselves as joint venturers upon the terms and conditions herein for the purpose of carrying out their respective responsibilities and obligations with respect to the Joint Operation.
- 2.2 The parties' relationship with respect to this Joint Operation is as joint venturers and as such the obligations of the joint venturers in relation to the Joint Operation and under this Agreement shall be several and not joint or joint and several. Other than as relates to the Joint Operation, both the Stead Foundation and the Native Dog Society remain separate and independent organizations.
- 2.3 The name of the Joint Operation will be "Wirrimbirra Sanctuary" and all signage, letterheads, etc will acknowledge both organizations.

3. Extent of the Joint Operation

3.1 Scope of the Joint Operation

The Joint Operation shall be primarily responsible for the operation of Wirrimbirra Sanctuary. To avoid doubt, the scope of the Joint Operation shall include:

- (a) administration and management of the captive native animals including the dingoes;
- (b) joint administration of Wirrimbirra Sanctuary.
- (c) the payment of costs associated with the operation of Wirrimbirra Sanctuary.

3.2 Property

All property and other assets of each of the Native Dog Society and the Stead Foundation remain and subsist solely with and for the purposes of that respective organisation. To avoid doubt, the dingoes, fences, buildings and kennels owned or supplied by the Native Dog Society remain the property of the Native Dog Society. In the event that any of the property of the Native Dog Society is removed from Wirrimbirra Sanctuary the affected area must be rehabilitated to native bushland with all costs borne by the Native Dog Society.

3.3 Income

Only income related to the Joint Operation shall be income of the Joint Operation. Income earned independent of the Joint Operation does not form part of the Joint Operation. To avoid doubt, it is anticipated that income of the Joint Operation shall include:

- (a) guided tour fees;
- (b) income generated from the operation or lease of the café;
- (c) income generated from the operation or lease of the nursery;
- (d) income generated from the operation or lease of the accommodation facilities;
- (e) any other income related to the operation of Wirrimbirra Sanctuary.

3.4 Sponsorship & Bequests

Any sponsorship, bequest, donations or other income of each of the Native Dog Society and the Stead Foundation shall remain the sole property of each respective organization.

3.5 Joint Operating Expenses

- (a) The Joint Operation shall be primarily responsible for the operation of Wirrimbirra Sanctuary.
- (b) The Committee shall be empowered to open Bank Accounts for the purposes of collecting all income associated with the Joint Operation. The Committee shall be empowered to pay for all expenses related to the Joint Operation.
- (c) No party may:
 - (i) incur expenses;
 - (ii) create liabilities or obligations;
 - (iii) lend any money or other assets of the Joint Operation;
 - (iv) postpone the payment of any debt or any part of a debt due to the parties or release or discharge any such debt without receiving the full amount;
 - (v) enter into any contract or debt on account of the Joint Operation; or
 - (vi) assign, mortgage or charge their interest in the Joint Operation.without a two thirds majority decision of the Committee.
- (d) Expenses related to each of the Stead Foundation and the Native Dog Society other than Joint Operating Expenses shall be the sole responsibility of the respective organization incurring such expense.

3.6 Maximum number of dingoes

The maximum number of captive adult dingoes within Wirrimbirra Sanctuary is to be thirty four (34).

4. Relocation of the dingoes

- 4.1 The Native Dog Society agrees to re-locate its dingoes to that part of Wirrimbirra Sanctuary as agreed between the parties and to pay all expenses associated with re-location. The Stead Foundation agrees to do all things necessary to permit the Native Dog Society to re-locate to Wirrimbirra Sanctuary.

- 4.2 It is a condition of this Agreement that the Native Dog Society enter a Licence or Lease (or sub lease) arrangement with the Stead Foundation and/or the National Trust of Australia so as to confirm their entitlement to maintain their presence at Wirrimbirra Sanctuary.
- 4.3 It is also a condition of this agreement that any such Lease or Licence contain a condition entitling the Native Dog Society to no less than two (2) years notice if the Native Dog Society is required to vacate the land. In this event, the Stead foundation shall take over management of all areas of Wirrimbirra Sanctuary except the Dingo Sanctuary unless there is unanimous agreement from the Management Committee that Wirrimbirra Sanctuary be managed by the Joint Operation during this period. This clause does not prejudice the rights of the Lessor or the Stead Foundation in the event that the Native Dog Society has breached any of its obligations with respect to the terms of such Lease or Licence of the Native Dog Society.
- 4.4 Further, it is also a condition of this agreement and any conditions attached to the Lease or Licence, that the Native Dog Society will not be required to vacate Wirrimbirra Sanctuary unless both the lease/licence requires that the Native Dog Society vacate the land and the National Trust or its successors approve such vacating of the Native Dog Society.

5. Management Committee

- 5.1 Wirrimbirra Sanctuary shall be managed by the Committee.
- 5.2 The Committee must comprise six (6) members at all times. The Committee must have equal membership from the Stead Foundation and the Native Dog Society at all times. The Board of each organization shall nominate its representatives on the Committee.
- 5.3 The term for each Committee member shall be three (3) years, with one (1) member from each organization retiring each year. The retiring Committee members may offer themselves for re-nomination.
- 5.4 A member of the Management Committee can be removed from their role only as follows:-
- (a) by voluntary resignation;
 - (b) by a simple majority of an ordinary resolution of that member's respective organization.
- 5.5 In the event of a member of the Committee resigning, that member must be replaced as soon as is practicable by another member of that person's respective organization.
- 5.6 The committee shall hold meetings at such times as may be necessary from time to time for the administration of the Joint Operation, with a minimum of nine (9) meetings per year. A meeting of the committee may be called at any time by any of the Committee members upon giving three (3) days written notice to the other Committee members.
- 5.7 A Quorum of the Committee shall be two (2) members from each organization, with resolutions to be carried by a two thirds majority.
- 5.8 Before any Notice of breach of Agreement is issued, any disputes between the parties shall be referred to the National Trust for mediation. The parties agree to abide by the outcomes determined through the mediation process.

6. Powers of Management

- 6.1 The Committee shall, subject to the conditions contained in this Deed, have all powers necessary for the management and operation of Wirrimbirra Sanctuary. To avoid doubt, the Committee shall not be empowered nor authorized to manage its responsibilities in a way which would be inconsistent with the powers and authorities contained in the Constitution of both the Stead Foundation and the Native Dog Society.
- 6.2 The Committee has the power to delegate to sub-committees of the Joint Operation.

- 6.3 To avoid doubt, the Committee shall, subject to the restrictions contained in the relevant Constitution, and the terms of this Deed, have the powers which shall include:-
- (i) to carry out all or any of the objects of either the Stead Foundation and/or Native Dog Society ;
 - (ii) to purchase, take on, lease or exchange, hire or otherwise acquire any lands, buildings, easements or property, real and personal and any rights or privileges which may be requisite for the purposes of, or capable of being conveniently used in connection with any of the management responsibilities of the Committee.
 - (iii) to enter into any arrangement with any third party (including any government or government institution, municipal or local or any other authority), that may seem conducive to enable the joint operation to carry out its objectives or any of them and to obtain from any such third party any rights, privileges and concessions which the joint operation may think it desirable to obtain and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions.
 - (iv) to appoint, suspend or remove such professional, managerial, technical, secretarial, clerical and other staff as may be necessary or convenient for the management of the Joint Operation.
 - (v) to make, draw, accept, endorse, discount, execute and issue cheques, promissory notes, bills of exchange, bills of lading, warrants, debentures and other negotiable or transferable interests subject to the mandate that any such drawing of cheques shall be signed by no less than two (2) signatories, one of each being from the Native Dog Society and the Stead Foundation.
 - (vi) to construct, improve, maintain, develop, work, manage, carry out, alter or control any premises, storage rooms, workshops, sheds, laboratories, plant and offices, nurseries, houses, buildings, grounds, works or conveniences which may seem calculated directly or indirectly to advance the objectives of the Joint Operation or of the Stead Foundation or Native Dog Society individually.

7. Accounting & Audit

- 7.1 The Committee shall ensure that proper books of account of the Joint Operation shall be kept and may be examined by either party at any time with reasonable notice. Each party shall be at liberty to make such extracts therefrom as it may think fit by itself or its agents.
- 7.2 The Joint Operation shall operate accounts with such financial institutions as the committee shall from time to time nominate. The accounts shall be opened in the name of the Joint Operation or such business or firm name as the Joint Operation shall agree and all cheques shall be signed by a representative nominated by each party. All the Joint Operation monies shall as and when received be paid into or deposited with such financial institution to the credit of the Joint Operation and all agreed costs of the Joint Operation shall be paid from such accounts.
- 7.3 Each party may, upon reasonable notice, examine the books of account as they relate to the activities of the Joint Operation.
- 7.4 The Committee shall report to both the Stead Foundation and the Native Dog Society in January and July of each year.

8. Termination

- 8.1 The terms of the Joint Operation shall continue until such time as the Joint Operation is terminated in accordance with the provisions of this Clause 8.
- 8.2 No breach of this Agreement is a material breach giving the other party the right to terminate, unless:
 - (a) the party allegedly in breach is given written notice specifying the nature of the breach (this notice must be clearly headed "Breach of Agreement – Notice to Cure"); and

- (b) the party receiving the notice fails to rectify the breach within 30 days of receipt of such notice.
- 8.3 In the event that this Agreement is terminated pursuant to Clause 8.2, the parties will promptly account to each other in good faith for amounts owed to each other at that time.
- 8.4 Either the Native Dog Society or the Stead Foundation is permitted to withdraw from the Joint Operation arrangements in the event that their respective organization passes a resolution requiring the respective Native Dog Society or Stead Foundation to withdraw from the terms of the Joint Operation. Both organizations can ask the National Trust to arbitrate and both organizations agree to abide by the decision made by the National Trust. If a party wishes to terminate the agreement in accordance with this clause, then a party must, as soon as is practicable after the passing of a resolution, notify the other party, and the parties must then act reasonably and expeditiously to do all things necessary to bring an end to the arrangements with respect to the Joint Operation.
- 8.5 The respective members of the Committee agree to consult with and inform the other members of the Committee (i.e. respective members of the other organization) in the event that it is proposed by the relevant party for a resolution to be put to its members concerning the termination of its arrangements with respect to the Joint Operation

9. Binding Effect

- 9.1 This deed binds the parties and their executors, administrators, transferees, assignees, liquidators and trustees in bankruptcy.

10. Jurisdiction

- 10.1 This Deed is governed by and will be construed in accordance with the Laws of New South Wales and the parties submit to the exclusive jurisdiction of the Courts of New South Wales.

11. Variations

- 11.1 Any variation or amendment to this Memorandum of Understanding must be approved by both the Stead Foundation and the Native Dog Society and must be evidenced in writing.

EXECUTED as a Deed.

SIGNED SEALED & DELIVERED by The)
DAVID G. STEAD MEMORIAL WILD LIFE)
RESEARCH FOUNDATION OF AUSTRALIA)
(A.C.N. 000 431 363) pursuant to Section 127
of the Corporations Act, 2001

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SIGNED SEALED & DELIVERED by The)
AUSTRALIAN NATIVE DOG)
CONSERVATION SOCIETY LIMITED (A.C.N.)
001 407 352) pursuant to Section 127 of the
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