

Appendix 4 Templates for partnership agreements.

The approaches to partnership agreements outlined below are not presented as tried and true templates. The 'Triple line' Tender section presents concepts and examples of possibilities – the approach needs to be tested before being defined and refined further. In our 'progression towards partnership', it is one step up from the competitive tender, which does not really qualify as 'partnership'. The approaches to partnership formation in section 4.2 have been widely used and our effort has been merely to place them in context and to draw together typical content headings based on examination of several documents of each type from the natural resource management arena. These include Memoranda of Understanding, Service Level Agreements, Statements of Joint Intent and Heads of Agreement.

4.1 The 'Triple line' Tender

The 'triple line' tender concept espoused in the report means a tender in which a certain amount of social capacity development and enhancement of local economic sustainability are required to meet an environmental management target. This can be balanced with cost efficiencies. In this context, social capacity refers to social capital (partnerships, networks, community trust) and human capital (knowledge and skills within communities).

The concept is here applied to natural resource management tenders, where the required outcome is an improvement in natural capital. A complementary process could probably be developed for tenders where built assets or development for financial gain are the goals. In these cases more focus would be given to how environmental values could be improved.

Although the concept of maximising social and economic capacity gain from a project to achieve a given environmental outcome has appeal, the range of natural resource management actions that permit this may prove to be fairly narrow and its practicality is yet to be tested. Some works tenders such as hauling rocks or professional service tenders such as upgrading IT hardware or software are probably best left as they are. Some landholder incentive programs that involve competitive tender could perhaps lack social capital development, but sufficient knowledge build-up may be associated with carrying out the work to meet requirements for social capacity improvement.

The focus here is on projects that could improve long-term sustainability if community participation and related benefits are built-in as an identifiable component. This could be through acceptance of tender by a community-based organisation (or alliance of organisations) or by deliberately building social and/or human capital development into the implementation process.

It is useful to work with a case example to illustrate the steps in the proposed process. A 2006 call for tenders by Burdekin Dry Tropics region for a fish barrier identification program will be used. Objectives of this project are to:

- identify, map and collate relevant information on all ecologically significant fish barriers in the Burdekin Region;
- examine the feasibility and risks associated with a removal or modification program for priority fish barriers;
- determine the efficacy of barrier removal or modification in the protection of native fish species; and
- prioritise fish barriers for removal or modification and to establish planning level cost estimates.

A five step process to set up the triple line criteria is suggested.

Step 1. Determine whether to apply social capacity assessment criteria to tenders

Here the regional body (or other tendering body) decides whether to use the project for social capacity enhancement and if so, what weight should be given to it (e.g. 10%, 20% or 30%, indicating the percentage allowance for inputs to social capacity with expectation of commensurate social capacity outcomes).

In the case example, the regional body might decide that a consultancy that provides a completely objective scientific assessment is needed to avoid local bias affecting the determinations, in which case social capacity criteria would not be added to the current tender document. Alternatively the body might decide that the project provides good opportunity for capacity development, or even that prioritising fish barriers for removal needs to take full account of social and economic considerations, which will require community inputs of knowledge and values through a very participative process, including action learning through assisting the assessment. This might require a 20 or 30% additional budget allowance to meet possibly greater expenses involved in a participatory process.

Step 2. Prescribe the desired social capacity outcomes

This could be done by

- a) adding a general statement of a requirement to involve community so as to develop community capacity in certain directions, leaving it to the tenderer to explain what they would do and what this would achieve; or
- b) specifying attributes to be developed, leaving it to the tenderer to explain how they would deliver those social capacity attributes;
- c) specifying the attributes and the methods to employ.

If a) is adopted, the regional body might merely add capacity building Management Actions to the current Management Action that precipitated this tender. For instance, the case example tender information cites:

Management Action Target SWW2.2.1 of the BDT regional NRM plan which states:

“By 2010, identify all fish passage barriers and prioritise which should be removed/improved and undertake work.”, And the following Management Action: *“Identify all fish passage barriers and prioritise which should be removed/improved and undertake to gain agreement from the necessary parties involved to have them removed or where practical redesigned.”*

To include social capacity, the region might draw on statements from the Engagement and Knowledge section of its Regional Investment Strategy, stating a requirement to develop one or more of

- Skills in working together and with others, and skill development through education and training;
 - Appropriate levels of information and knowledge.
 - Gaining a greater understanding of monitoring and evaluation
- (Burdekin Dry Tropics Board Regional Investment Strategy, May 2005).

If b) or c) are adopted, specific criteria are needed.

For capacity enhancement, criteria may be drawn from the capacity assessment tool (Cavaye 2005), to provide specific guidelines such as:

- Increase in collaboration and cooperation between affected stakeholders
- Increase in active learning and knowledge sharing by stakeholders regarding ...
- Increase in community awareness about ...

Other indicators have been developed as part of a collaborative Community Strategies project by several Victorian CMAs. Suggested indicators include

- Stakeholder satisfaction with NRM Planning and implementation
- Increased activity by community NRM groups
- Stronger networks within the NRM community.

(Hall, P [Project Manager, Corangamite CME] 2006, pers. Comm., 15 March).

Having set these criteria, the regional body might specify some processes and stakeholder groups that should be included (option (c) above).

Step 3 Prescribe any social impact limitations or community health improvements required.

Without going into a full social impact assessment for a project, it needs to be acknowledged that actions for the environment can be advantageous or disadvantageous to indicators of social well-being or community health. The regional body may indicate in the tender document some factors that might influence assessment of alternatives and setting priorities. Rockloff et al. (2006) provide a wide range of possible indicators for social and community health (pressure, state and response), with emphasis on coastal management. These can easily be adapted to other resource management issues. In the case example, these might include:

- Reduction in disease outbreaks from exposure to polluted water.
- Maintenance or improvement of recreational fishing opportunities.
- Maintenance of quality of life and sense of place.

Step 4 Prescribe any economic sustainability requirements:

Environmental actions can adversely affect economic performance; although this is often a short term rather than long-term adverse outcome. When priorities are to be nominated or alternative implementation mechanisms are available, ones that achieve the environmental goal with minimum economic disturbance might be required by the regional body. This can be taken into account either by prescribing certain strategies or by favouring tenders that show initiative in balancing the environmental, social and economic demands.

Step 5 Add these criteria to the remainder of a standard tender document without making it look forbiddingly complex.

Once the criteria are set, the tenderer will need to identify appropriate processes, highlighting how each set of criteria can be met, and cost the proposal accordingly. Tender assessors will need to balance costs against social and economic benefits, assuming the environmental outcomes are achieved.

4.2 Partnership agreements

Each of the following documents would be preceded by substantial familiarisation between the partnering bodies – sometimes by way of previous short-term projects, sometimes through workshops or meetings over an extended period. They are documents that encapsulate the relationships, knowledge about each other, and confidence in working together built up over this period. The Service Level Agreement differs from the others in that it is a legally binding document, whereas the others are non-binding statements of how organisations work together or in complementary manner.

A. The Memorandum of Understanding (MOU).

A memorandum of understanding (MOU) is a document describing an agreement between parties. It expresses a convergence of will between the parties, indicating an intended common line of action, rather than a legal commitment. It is a more formal alternative to a gentlemen's agreement, but generally lacks the binding power of a contract (Wikipedia, the free encyclopedia <http://en.wikipedia.org/wiki>)

Review of several MOUs from various levels of involvement in natural resource management show there is no fixed format, but some elements appear important in a useful MOU: statements about the status or legality of the document, the nature of the relationship or guiding principles

behind the understanding and the tenure and review provisions, as well as the actual substance of the agreement. By way of a template, the following set of headings is suggested, but note that this is done without reference to legal opinion about its completeness.

Headings for a typical MOU

Background

Purpose

Status

Explanation of Terms used

Guiding principles (alternatively 'working in partnership', or 'nature of relationship')

The agreement, including

- roles and responsibilities
- commitments (or obligations)
- financial arrangements

Conflict resolution

Review and termination

Other headings used by some:

Capabilities

Organisation and Management of the Agreement.

Partnership values

Resources and facilities

Quality assurance

Communication and exchange of information

Intellectual property

Marketing and publicity

Audit.

Some extracts to illustrate wording of certain sections.

The following extracts from documents studied towards this project illustrate the approaches some partners have taken. Note that in 'Status', all examples emphasise the non-binding nature of the agreement, but that in the 'Review and Termination' section, two examples show conditions on withdrawal, primarily because of the adverse effects that unanticipated withdrawal might have on other parties.

Status

Agencies/CMA Victoria

This memorandum is not intended to be legally binding on any of the parties, rather, it is intended to provide a basis for the cooperative implementation of the relevant legislation and government policy to the parties to the memorandum.

Qld Regional Groups Collective (RGC)

The parties do not intend that this memorandum of understanding will be in any way binding or legally enforceable. This MOU serves only as a record of good faith of the parties separate intentions pending the development and execution of specific project agreements.

Local Govt Association and Aboriginal Land Council (WA)

This MOU is not legally binding and is not intended to define, create, recognise, affirm, deny or amend any rights or obligations of the parties or any other individual or group. In particular, it is not intended by the parties that this MOU will be relied

on in support of any native title claim, or that it creates an expectation or for any other purpose unrelated to the objectives set out in the MOU.

Guiding principles:

Government with Industry organisation Qld

The parties have mutually supportive roles and responsibilities in the achievement of a sustainable intensive agricultural sector.

Effective communication and working arrangements between the parties is imperative to success of the Memorandum particularly in relation to emerging issues.

Regional Groups Collective (RGC) Queensland

Operate collaboratively for mutual benefit.

Abide by fairness and good faith in sharing roles.

Act in professional and ethical manner with due regard to reputation and compliance.

Signing is evidence of non binding intentions. Binding obligations are only intended to arise upon the approval and signing by the parties of a contract.

USDA Forestry

Any information furnished to the federal agencies under this instrument is subject to the Freedom of Information Act.

This instrument in no way restricts the parties from participating in similar activities with other public or private agencies, organizations, and individuals. Modifications within the scope of the instrument shall be made by mutual consent of the parties, by the issuance of a written modification, signed, and dated by all parties, prior to any changes being performed.

Conflict resolution

RGC

Every effort will be made to resolve conflicts between parties by continuing to seek consensus. In the event of an ongoing conflict, a party may seek the services of an independent facilitator to assist with resolution, the appointment of which will be made by the executive in consultation with the relevant party.

Agencies/CMA Victoria

Any disputes between the parties should be approached and resolved in a cooperative, consultative manner in a spirit of good will. Major issues requiring resolution may necessitate the convening of special meetings. Where resolution cannot be achieved within 30 days a party not involved may be asked to convene and facilitate a dispute resolution meeting. If all parties are involved, an independent facilitator must be engaged.

Review and termination

USDA

Either party can terminate this Memorandum of Understanding by providing a 30-day notice to the other party. This MOU shall terminate June 30, 2003 at which time it may be renewed by the State for consecutive terms, which are coterminous with the fiscal biennium.

Agencies/CMA Victoria

This memorandum may be terminated at any time by obtaining the written agreement of all parties. No party may withdraw from the memorandum or its associated obligations before 1 January 2009. After 1 January 2009, withdrawal can only take place providing four weeks written notification to all other parties is given.

RGC

Each party has the right to terminate the MOU at any time by giving the other parties written notice to that effect three months prior to the effective date of termination. In the event that a party wishes to enter into memoranda or other similar agreements with another party that may have an

adverse impact on this memorandum, the party is required to give the other parties to this memorandum written notice to that effect one month prior to signing of the new memorandum.

Government with Industry organisation Qld

This Memorandum is intended to outline and formalise a partnership between the two parties for the next five years, unless revised by mutual agreement The Implementation Working Group will monitor progress towards implementation of the Memorandum on an on-going basis. Prior to expiry of the Memorandum the Implementation Working Group will report on the outcomes and may make recommendations on changes or improvements to commitments and the working of the partnership.

An MOU that includes guiding principles, delineation of roles and responsibilities and provides for review and non-punitive exit fits the philosophy of a long-term partnership based on shared understanding.

It is most usefully applied when parties are ready for long-term collaborative partnership. The following extract from a community support program in New Zealand, expresses in plain terms the ethos of the collaborative partnership MOU.

Many organisations in Waitakere are now working in a collaborative or “partnering way”. At the heart of partnerships and partnering are relationships which are underpinned by a range of values and processes such as trust, respect and honest, open communication. Working in partnership requires a significant investment (both financial and non-financial). It also involves power sharing and in many cases, working towards goals that may be wider than your own. Co funding is also common, with various partners often bringing quite different (ie. not equal) contributions to the table. Risks must be protected and shared values, visions and processes for working together established.

Some sort of documentation about how things will work will likely be necessary. It may be as simple as a one-page statement of what people are trying to do together, or it may be a longer Terms of Reference or a Memorandum of Understanding or a Partnership/Partnering Agreement. So where do you start?? How do you put relationships on paper? How do you avoid 1000 pages of legalistic old style contracting?? How do you ensure that what goes on paper is owned by all the partners and helps set the scene for successful collaborative working?

When you prepare a REAL agreement you need to make sure that:

- everyone has the chance to talk about what’s important to them and what they want to see in an agreement
- you take time to get wording and meanings/intentions right
- everything is negotiable yet everyone is willing to compromise if things get tricky
- the needs of both the partnership collective and individual partners are addressed
- that everyone feels comfortable with the agreement before anything is signed.

(Waitakere City Council <http://www.waitakere.govt.nz/OurPar/strengthcomm.asp>)

B. Service Level Agreements

A Service Level Agreement (SLA) is often a companion to a memorandum of understanding in a long-term partnership relationship, providing the tighter contractual arrangements for the ongoing contribution of an organisation towards the Management Action Targets of an NRM Plan. (Sometimes the Action Targets will be products to be delivered in discrete and timely bundles; these would be best negotiated through an alternative agreement document). The following two statements help define the SLA.

An SLA defines the support relationship between a service provider and its customer. The agreement describes the products and/or services the customer receives, each party's responsibilities, the financial agreement (if any) and how the service provider measures and reports services. The objective of the SLA is to present a clear, concise and measurable description of what the service provider does for the customer.

(Duke University, Office of Information Technology, <http://www.oit.duke.edu/oit/sla/index.html>)
The purpose of a Service Level Agreement is to describe and define the following:

- What service(s) are being made available to what customers.
- What levels of service or quality of service the customer should expect.
- What period of time the SLA will cover.
- What the costs are to provide those levels of service.
- How the service will be delivered.
- How the service provider will monitor or track and report on performance. (For example, if using surveys to gauge performance, tie surveys to the elements in the SLAs.)
- When the SLA will be reviewed and how to make changes to the SLA.

(George Mason Univ. Information Technology Unit www.gmu.edu)

The collaboration needed between ‘customer’ and ‘provider’ to develop an effective service level agreement is emphasised in the following two statements.

Remember that SLAs are a negotiable agreement between you (the service provider) and the customer (or other internal group). Any SLA that is drafted needs to be agreed to by both parties. Your SLA will only be effective if a collaborative approach to writing the agreement is taken (George Mason Univ. Information Technology Unit).

The very essence of an SLA is that both parties have a say. In practice, it is rarely practical or feasible for both parties to be involved in every step of creating the agreement. However, a successful SLA is one in which the two parties collaborate. When the process is truly collaborative, the resulting document can be filed away and largely ignored because the two parties have already succeeded in learning how to work together (Naomi Karten <http://www.nkarten.com/sla.html>).

In spite of her comment that the document can be filed away (because of the communications set up in the SLA development process), Karten also points out that it should be a living document, with review at pre-determined frequencies. She also notes that it is a conflict prevention tool. ‘An agreement helps to avoid or alleviate disputes by providing a shared understanding of needs and priorities. And if conflicts do occur, they tend to be resolved more readily and with less gnashing of teeth.’ (Naomi Karten <http://www.nkarten.com/sla.html>)

As well as detailing the services, the agreement needs to include management matters such as monitoring and reporting, disagreement resolution, and review processes.

Two alternative sample SLA template headings:

Duke University, Office of Information Technology	Internet Research Taskforce Research Group
General Overview Terms and Conditions Agreement review Incident management service goals Supported services and charges Services provided Charges Party responsibilities Customer responsibilities Service Provider responsibilities Service measures and reporting Customer requests for service enhancement Financial impact Customer incidents Service provider change management Signatures of approval.	General Clauses Goals of agreement Parties involved Duration and validity Responsibilities of parties Guarantees, warranties and dispute handling Maintenance of agreement Costs involved Services and Service levels Service description Entities involved Service levels (e.g. performance, availability, incident handling, continuity). Specific clauses Financial handling Reporting Points of contact Activities

Variations used by two natural resource related bodies in Australia show opportunities to customise the template.

Land and Water Australia	A Victorian CMA
Context	Recitals
Timeframe	Interpretation
Services provided	Inconsistency
Points of contact	Commencement and completion
Standards	Cooperation between parties
Service review	The project services
Conflict resolution	Fee for project services
Costings	Invoicing and payment
Endorsement	Contractor's warranties
	Records
	Contractor's staff
	Confidentiality and security
	Conflict of interest
	Waiver
	Intellectual property (warranty; background technology; project technology)
	Termination
	Force majeure
	Nature of engagement
	Risk management
	Insurance
	Severability
	Variation of agreement
	Disputes
	Employment policy
	Communications
	Compliance
	Service of documents

C. Statement of Joint Intent

The Statement of Joint Intent (or Joint Statement of Intent) is sometimes used as an alternative to a memorandum of understanding (perhaps signifying an intent for each party to do something whereas the MOU could conceivably be agreement about one party doing something for another or agreement about a relationship rather than action).

Two examples give some context to its use.

a) In 2001, the NSW Government issued a Statement of Joint Intent (SOJI) for sustainable management of the Hawkesbury Nepean River System. The SOJI represents a binding commitment by State agencies and authorities (including 26 councils) to adopt an integrated management approach to information sharing and specific action on the approved management strategies. The SOJI does not bind the councils directly, but council actions are independently audited by the Healthy Rivers Commission. The SOJI provides a means for State agencies and councils to better coordinate their strategies and programs for a cost effective, integrated response to the river management problems.

<http://www.dlg.nsw.gov.au/DLG/DLGHome/documents/Circulars/01-72.pdf>

b) Also in 2001, The Department of Energy of The United States of America and The Ministry of Energy and Mines of The Republic Of Peru signed a Joint Statement of Intent:

Recognizing their mutual interest in creating an attractive climate for domestic and foreign private capital investment in the energy sector, and in establishing an efficient and environmentally sound energy infrastructure; Hereby declare their intentions as follows:

1. The Participants intend to take the actions necessary in their respective countries to conclude an agreement between the Participants related to the development, application and sustainable use of conventional energy, energy efficiency and renewable energy.

2. Pending conclusion of that agreement, the Participants intend to initiate collaboration in the following areas:

-Energy policy planning and analysis;

-Use of natural gas for transportation and the development of the Clean Cities Program for Peru;

-Natural gas markets, gas prices and deregulation; and

-Distributed generation technologies using natural gas (such as fuel cells) as well as renewable energy technologies appropriate for rural electrification.

...

This Joint Statement is not intended to create legally binding obligations between the Participants. It is understood that the Participants' ability to undertake the activities contemplated by this Joint Statement is subject to the availability of appropriated funds. The Participants intend that the collaboration contemplated by this Joint Statement may commence upon signature. The terms of the Joint Statement may be altered at any time in writing. If either Participant desires to terminate its activities under this Joint Statement, it will give 90 days' written notice to the other Participant.

D. Heads of Agreement

This term is sometimes used for a non-binding document outlining the main issues relevant to a tentative partnership agreement.

The "Heads of Agreement" is the formal precursor to a contract and is a summary of that agreement usually drawn up in the first instance. It is almost always drawn up by a lawyer and can be signed by the parties (www.filminfo.com.au/filminfo/film/glossary.asp).

Heads of Agreement are sometimes used during the process of negotiating a contract where some specific items have been discussed and agreed, subject to the agreement of further terms in the future. Neither an MOU nor an HOA is binding on either party, and is therefore not enforceable as a contract by one party against the other.

<http://www.deakin.edu.au/executive/vpa/solicitorsoffice/mous.php>

The relevance to this study and to NRM partnerships is demonstrated in the following HOA (quoted at length) signed off by several organisations that were able to achieve common ground on some issues, even though their values, goals and operating structures are vastly different – the situation that occurs in some of the stakeholder relationships in this study, where a 'Negotiation space' approach to reaching some consensus was recommended.

Cape York Heads of Agreement

THIS AGREEMENT is made on the fifth day of February 1996 Between

- the Cape York Land Council (CYLC) and the Peninsula Regional Council of the Aboriginal and Torres Strait Islander Commission (ATSIC), representing traditional Aboriginal owners on Cape York Peninsula, and
- the Cattlemen's Union of Australia Inc (CU), representing pastoralists on Cape York Peninsula, and
- the Australian Conservation Foundation (ACF) and The Wilderness Society (TWS), representing environmental interests in land use on Cape York Peninsula.

1. The CU, ACF and TWS acknowledge and affirm that the Aboriginal people, represented by the CYLC, and the Peninsula Regional Council of ATSIC, are the original inhabitants of Cape York Peninsula who are entitled by their traditional law to their traditional customs and culture, including access to areas of traditional significance.
2. The Aboriginal people of Cape York Peninsula, the ACF and TWS acknowledge and affirm that pastoralists of Cape York Peninsula (including non CU members) are significant landholders who have existing legal right and concerns related to their industry and lifestyle.
3. The parties acknowledge that there exist on Cape York Peninsula areas of significant conservation and heritage value encompassing environmental, historical and cultural features, the protection of which is the responsibility of State and Federal Governments in conjunction with the parties.

Regional Partnership Agreements Burnett Mary, July 2006

4. The parties maintain their respective positions on the East Coast Wilderness Zone but shall encourage negotiations between pastoralists in the Zone and the State Government on its creation. If the negotiations prove unsuccessful, the parties undertake to meet again to discuss the matter.
5. All parties are committed to work together to develop a management regime for ecologically, economically, socially and culturally sustainable land use on Cape York Peninsula, and to develop harmonious relationships amongst all interest in the area.
6. Subject to clause 5, all parties are committed to the development of a sustainable cattle industry on Cape York Peninsula.
7. The parties are committed to jointly approach the State Government to secure upgraded lease tenure for pastoral properties and restructure lease boundaries under the existing provision of the Queensland Land Act.
8. The CU and CYLC agree to make joint approaches to secure investment for development of the cattle industry through the Indigenous Land Corporation, The Rural Adjustment Scheme, and other sources.
9. The Aboriginal people agree to exercise any native title rights in a way that will not interfere with the rights of pastoralists.
10. Pastoralists agree to continuing rights of access for traditional owners to pastoral properties for traditional purposes. These rights are:
 - o right to hunt, fish and camp;
 - o access to sites of significance;
 - o access for ceremonies under traditional law;
 - o protection and conservation of cultural heritage.
11. These rights shall be attached to the lease title and shall be consistent with a detailed code of conduct to be developed between pastoralists and traditional owners. The code of conduct shall ensure leaseholders are protected from public liability claims arising from the exercise of access rights.
12. The code of conduct for access shall be a minimum to apply to the region, but there shall also be provision for additional features to be negotiated between traditional owners and individual landholders.
13. The parties agree that areas of high conservation and cultural value shall be identified by a regional assessment process according to objective national and international criteria. There shall be an independent review acceptable to all parties in the case of dispute as to whether the values are consistent with the criteria. Where such areas are identified, the landholder shall enter into appropriate agreements to protect the area under State or Commonwealth provision which may include World Heritage listing. As part of such agreements, funds shall be provided for management of the area, monitoring of agreements and equitable economic and social adjustment.
14. There shall be no compulsory acquisition of private leasehold or freehold land, without prior negotiation with the landowner, and unless all reasonable avenues of negotiation, including the agreements detailed in clause are exhausted.
15. The purchase of land for the protection and management of cultural and environmental values shall only take place as land becomes available commercially.
16. The parties support the establishment of a fund for the purpose of purchasing land with identified high environmental and cultural values by the Commonwealth Government. The fund also shall contain funds for effective management of land purchased by the fund.

Wilderness Society <http://www.wilderness.org.au/campaigns/northernaustralia/capeyork/agreement>