

**THE PREMIER, FOR AND ON BEHALF OF THE STATE OF WESTERN  
AUSTRALIA**

**AND**

**THE WESTERN AUSTRALIAN LAND AUTHORITY**

**AND**

**THE CONTRACTING PARTIES**

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**BURRUP AND MAITLAND INDUSTRIAL ESTATES  
AGREEMENT**

**IMPLEMENTATION DEED**

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This document is a consolidation of:

- the Burrup and Maitland Industrial Estates Agreement Implementation Deed executed by the State, LandCorp, and the Ngarluma Yindjibarndi, Yaburara Mardudhunera and Wong-goo-tt-oo registered native title claimants; and
- the Burrup and Maitland Industrial Estates Agreement referred to in the Implementation Deed.

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**THIS DEED** is made on the                  day of                  2002

**BETWEEN**

**THE PREMIER, FOR AND ON BEHALF OF THE STATE OF WESTERN AUSTRALIA ("State")**

**AND**

**THE WESTERN AUSTRALIAN LAND AUTHORITY**, a body corporate established under the *Western Australian Land Authority Act 1992* (WA) ("LandCorp")

**AND**

**THE CONTRACTING PARTIES**, acting for and on behalf of themselves and, in the case of a Native Title Party, all persons included in their respective native title claim groups ("Contracting Parties")

**RECITALS**

- A. On 14 January 2000, pursuant to section 29 of the *Native Title Act* and section 170 of the *Land Administration Act* the State issued a notice of intention to take interests, including any native title rights and interests, in the Area.
- B. On 3 October 2000 and 30 August 2001, pursuant to sections 24MD(6A) and (6B) of the *Native Title Act* and section 170 of the *Land Administration Act* the State issued notices of intention to take interests, including any native title rights and interests, in the Karratha Land.
- C. On 27 March 2002, pursuant to section 29 of the *Native Title Act* and section 170 of the *Land Administration Act* the State issued notices of intention to take interests, including any native title rights and interests, in the Additional Land.
- D. On 15 January 2001, pursuant to sections 24MD(6A) of the *Native Title Act* and section 170 of the *Land Administration Act* the State issued a notice of intention to take interests, including any native title rights and interests, in the Hearson Cove Land.
- E. The compulsory acquisition of the interests in the Area, the Additional Land and the Karratha Land including any native title rights and interests, is authorised by relevant orders of the Minister under section 165 of the *Land Administration Act*.
- F. The Native Title Parties are taken to have made to the Federal Court their respective native title claims each of which are described in Schedule 1. Each of the Native Title Parties' native title claim includes land within the Area, the Additional Land, the Karratha Land, the Hearson Cove Land and the Burrup Non-Industrial Land.
- G. The respective native title claims have been entered on the Register of Native Title Claims and, consequently, the Native Title Parties have been registered as the native title claimants at the relevant times in relation to their respective claim areas.

- Who?*
- H. If the compulsory acquisition of the interests in the Area and the Additional Land, including any native title rights and interests, affects native title, it will be a future act which passes the freehold test in Part 2 Division 3 Subdivision M of the *Native Title Act* and the right to negotiate provisions in Subdivision P apply in accordance with section 26(1)(c)(iii) of the *Native Title Act*.
  - I. If the compulsory acquisition of the interests in the Karratha Land and the Hearson Cove Land, including any native title rights and interests, affects native title, it will be a future act which passes the freehold test in Part 2 Division 3 of Subdivision M of the *Native Title Act* to which sections 24MD(6) and (6A) apply, and in the case of the Karratha Land, to which section 24MD(6B) applies.
  - J. In accordance with Part 2 Division 3 Subdivision P of the *Native Title Act*, negotiations in good faith in respect of the compulsory acquisition of any native title rights and interests in the Area and the Additional Land have been conducted between the State, Methanex and the Native Title Parties.
  - K. In respect of the Burrup Fertiliser Land, the State and the Native Title Parties have entered into agreements under sections 28(1)(f) and 31(1)(b) of the *Native Title Act* in which the Native Title Parties consent to the compulsory acquisition of any and all native title interests in the Burrup Fertiliser Land upon Burrup Fertilisers Pty Ltd reaching Financial Close.
  - L. In accordance with section 24MD(6B)(d) of the *Native Title Act*, objections to the compulsory acquisition of native title rights and interests in some of the Karratha Land have been lodged. Consequently, the relevant parties for the purposes of section 24MD have consulted the objectors in accordance with section 24MD(6B)(e) of the *Native Title Act*.
  - M. Each Current Proponent is developing a proposed Industrial Project within the Industrial Estate, and in the case of Methanex also in De Witt Location 399, and for which the State may grant a Current Proponent Lease.
  - N. On or about 10 July 2002, at separate meetings of the Ngarluma Yindjibarndi peoples and the Yaburara Mardudhunera peoples, those persons present agreed to the terms upon which the State could compulsorily acquire any native title rights and interests in the Area, the Additional Land, the Karratha Land and the Hearson Cove Land and could confer rights and interests in relation to the Area, the Additional Land and the Karratha Land.
  - O. Those terms were contained in the deed described as the Burrup and Maitland Industrial Estates Agreement, a copy of which is Annexure 1 to this deed.
  - P. The Burrup and Maitland Industrial Estates Agreement has not been executed by the State, LandCorp, the YM or the WGT.
  - Q. The State, LandCorp and NY agree to the compulsory acquisition of any native title rights and interests in the Area, the Additional Land, the Karratha Land and the Hearson Cove Land and the conferring of rights and interests in relation to the Area, the Additional Land and the Karratha Land in accordance with the terms of the Burrup and Maitland Industrial Estates Agreement as varied by this deed.

- R. The State has agreed to provide the NY with benefits, including payments of money, freehold interest in the Burrup Non-Industrial Land, funding for education and land to the value of 5% of Developed Lots created in the Karratha Land, in accordance with the terms of the Burrup and Maitland Industrial Estates Agreement as varied by this deed.
- S. Some or all of the YM, YM Claimants and WGT may become parties to this deed, in accordance with the terms of this deed.
- T. ~~If the YM, YM Claimants or WGT become parties to this deed then they will thereby agree to the compulsory acquisition of any native title rights and interests in the Area, the Additional Land, the Karratha Land and the Hearson Cove Land and the conferring of rights and interests in relation to the Area, the Additional Land and the Karratha Land in accordance with the terms of the Burrup and Maitland Industrial Estates Agreement as varied by this deed, and will thereby share in the benefits, including payments of money, freehold interest in the Burrup Non-Industrial Land, funding for education and land to the value of 5% of Developed Lots created in the Karratha Land, in accordance with the terms of the Burrup and Maitland Industrial Estates Agreement as varied by this deed.~~

## **THE PARTIES AGREE AS FOLLOWS:**

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

In this deed unless the contrary intention appears:

**Aboriginal Contractors** means members of the Contracting Claim Groups or bodies corporate controlled by any of them.

**Acquisition Date** means:

- (a) the date of the first taking order for any part of the Industrial Estate, excluding the Burrup Fertiliser Land;
- (b) if the grant of any lease to a Proponent, excluding a lease of the Burrup Fertiliser Land, occurs before the date of any taking order for any part of the Industrial Estate, excluding the Burrup Fertiliser Land, then the date of the first grant of a lease in the Industrial Estate to a Proponent; or
- (c) if a transfer of freehold title to any land within the Industrial Estate, excluding the Burrup Fertiliser Land, is made to any Purchaser before the date of any taking order for any part of the Industrial Estate, excluding the Burrup Fertiliser Land, then the date of that transfer.

**Additional Land** means the land shown in the map set out in Schedule 2 and referred to in the notice set out in Schedule 6.

**Annual Payment** means the amount determined in accordance with clause 10.2.

**Approved Body Corporate** means an incorporated association:

- (a) established under:
  - (i) the *Aboriginal Councils and Associations Act 1976* (Cth) (or any other Commonwealth legislation that replaces that Act); or
  - (ii) any other legislation as agreed by the parties; and
- (b) established in accordance with clause 17; and
- (c) that is registered for the purposes of the GST Act,

and includes any successor, reconstituted, amalgamated, merged or reconstructed body approved by the State from time to time.

**approved determination of native title** has the meaning given to that term under the *Native Title Act*.

**arbitral body** has the meaning given to that term under the *Native Title Act*.

**Area** means so much of the land referred to in the relevant notice set out in Schedule 6 as is shown on the maps set out in Schedule 3.

**Australian Property Institute** means the Australian Property Institute and includes any body corporate established for the same or substantially similar purpose if the Australian Property Institute ceases to exist.

**Available Persons** means members of the Contracting Claim Groups.

**Burrup and Intercourse Islands Arbitration** means the inquiry conducted by the National Native Title Tribunal in respect of future act determination applications WF02/17 and WF02/18 lodged by the State on 23 July 2002, and in respect of any other future act determination applications lodged by the State in respect of the Additional Land, pursuant to section 35 of the *Native Title Act* for a determination under section 38 of the Act.

**Burrup and Intercourse Islands Arbitration Decision Date** means the date upon which a future act determination is made by the National Native Title Tribunal under section 38 of the *Native Title Act*, or the Commonwealth Minister (as defined in the *Native Title Act*) under section 36A of the *Native Title Act*, in respect of the Burrup and Intercourse Islands Arbitration.

**Burrup and Intercourse Islands Final Determination Date** means the date of the final future act determination in respect of the Burrup and Intercourse Islands Arbitration, which final future act determination shall be taken to have been made:

- (a) subject to paragraph (b) below, twenty nine (29) days after the Burrup and Intercourse Islands Arbitration Decision Date; or

- (b) if any appeal or other application is lodged in which orders are sought from a court of competent jurisdiction to set aside or vary the determination made by the National Native Title Tribunal under section 38 of the *Native Title Act*, or by the Commonwealth Minister (as defined in the *Native Title Act*) under section 36A of the *Native Title Act*, in respect of the Burrup and Intercourse Islands Arbitration, then twenty nine (29) days after orders are made in any such appeal or application (including any further or subsequent appeal).

**Burrup Fertiliser Land** means the land described as De Witt Lot 564 shown on the map set out in Schedule 4 and being land within the notice for the Area set out in Schedule 6.

**Burrup Non-Industrial Land** means the land shown on the map set out in Schedule 5.

**Burrup Non-Industrial Land Buildings** means a building or buildings and associated infrastructure constructed for:

- (a) office and other facilities for the management of the Burrup Non-Industrial Land; and
- (b) a visitors and cultural centre for the purposes of:
  - (i) facilitating and promoting the cultural activities of the Contracting Parties; and
  - (ii) promoting the commercial enterprises and tourism activities of the Contracting Parties relating to the Burrup Non-Industrial Land.

**Burrup Non-Industrial Land ILUA** means an indigenous land use agreement for the Burrup Non-Industrial Land, described in clause 4.1 and to be concluded in the manner described in clause 4.3.

**Burrup Non-Industrial Land Infrastructure** means roads, tracks, trails, services and other infrastructure proposed to be constructed within the Burrup Non-Industrial Land but not including the infrastructure forming part of the Burrup Non-Industrial Land Buildings.

**Business Day** means any day other than a Saturday, Sunday or public holiday observed in the State of Western Australia.

**Buy Local Policy** means the Buy Local Policy issued by the State, as amended by the State from time to time.

**CALM** means the Department of Conservation and Land Management or such other department responsible for the *Conservation and Land Management Act 1984* (WA).

**compulsory acquisition** means taking of interests under the *Native Title Act* and the *Land Administration Act*.

**Conservation Commission** means the Conservation Commission of Western Australia established by section 18 of the *Conservation and Land Management Act 1984* (WA).

**Contracting Claim Group** means the native title claim group of the Contracting Party.

**Contracting Party** means a Native Title Party, or the YM Claimants, who have entered into this deed as provided in clause 2 of this deed, and **Contracting Parties** means all of them.

**CPI** means the Consumer Price Index Number as published by the Australian Bureau of Statistics for Australia (All Groups).

**Current Proponents** means Australian Methanol Company Pty Ltd ACN 100 656 666, Dampier Nitrogen Pty Ltd ACN 100 366 865, Methanex Australia Pty Ltd ACN 092 470 105 and Japan DME Ltd and includes any lawful nominee or assignee of any of them.

**Current Proponent Annual Payment** means the payment determined in accordance with clause 9.3.

**Current Proponent Lease** means the lease or leases in respect of land within the Industrial Estate, and in the case of Methanex also on De Witt Location 399, which may be granted to the Current Proponent for the purposes of an Industrial Project.

**Deed of Covenant** means the proposed deed of covenant in respect of the Burrup Non-Industrial Land substantially in the form set out in Schedule 12.

**Determination Date** means:

- (a) subject to paragraph (b), the day which is 21 days after an approved determination of native title is made by a single Judge of the Federal Court in respect of the area of land the subject of the proceedings in the Federal Court of Australia matter WAG 6017 of 1996 and part WAG 127 of 1997 and part WAG 6256 of 1998; or
- (b) subject to paragraphs (c) and (d), if an appeal is lodged within the 21 days referred to in paragraph (a) above, then the day which is 28 days after judgment is delivered by the Full Federal Court; or
- (c) subject to paragraph (d), if an application for special leave to appeal to the High Court is lodged within the 28 days referred to in paragraph (b) above, the day the application for special leave to appeal is dismissed or the day judgment in the appeal is delivered by the High Court, whichever is the sooner; or
- (d) in the event that a judgement referred to in paragraphs (b) or (c) above results in the matter being remitted to a single Judge of the Federal Court or

to the Full Federal Court, as the case may be, then paragraphs (a), (b) or (c) above shall again apply.

**De Witt Location 399** means the area of land shown on the map in Schedule 13.

**Employment Funding** means the funding to be provided by the State under clause 15.4(a).

**Employment Service Provider** means the person appointed under clause 15.4.

**Employment Statement** means a statement provided to the Employment Service Provider and the State by a Proponent which contains the matters set out in clause 16.3(b).

**Employment Strategy** means a strategy for employment and training of local Aboriginal people developed by a Proponent in accordance with clause 16.2 and the objectives set out in Schedule 7.

**Employment Undertaking** means a promise contained in a deed of undertaking to which a Proponent and the State are parties:

- (a) which is expressed to be for the benefit of, and enforceable by:
  - (i) the Employment Service Provider;
  - (ii) the Contracting Parties for the period prior to the Ratification Date; and
  - (iii) the Approved Body Corporate for the period on and after the Ratification Date;
- (b) in which the Proponent agrees to comply with the terms of clause 16 of this deed; and
- (c) which requires the assumption of the obligations in the deed of undertaking by an assignee of the Proponent's lease.

**Executive Director** means the body corporate established under section 38 of the *Conservation and Land Management Act 1984* (WA).

**Financial Close** means the later of Financial Close as defined in the agreements:

- (a) between NY, the State and Burrup Fertilisers Pty Ltd; and
- (b) between WGT, the State and Burrup Fertilisers Pty Ltd

under section 31 of the *Native Title Act* in respect of the Burrup Fertiliser Land lodged with the National Native Title Tribunal on 27 May 2002.

**future act** has the meaning given to that term under the *Native Title Act*.

**Future Proponent** means a person, other than the Manager or a Current Proponent, who:

- (a) is granted a lease;
- (b) is assigned a lease from the Manager; or
- (c) is granted a sublease from the Manager,

of land within the Industrial Estate (and which land is not already the subject of an interest held by a Proponent) for the purposes of an Industrial Project.

**GST** has the meaning given to that term in the GST Act.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and includes all associated legislation and regulations and any legislation or regulations substituted for or amending any of the foregoing.

**Hearson Cove Land** means the land described as De Witt Location 479 shown on the map in Schedule 8 and referred to in the relevant notice set out in Schedule 6.

**Heritage Policies** means:

- (a) the policies and procedures determined by the Department responsible for the administration of the *Aboriginal Heritage Act 1972* (WA) from time to time in respect of Aboriginal heritage including, but not limited to:
  - (i) the Aboriginal Heritage Manual Version 1 (February 2002); and
  - (ii) Aboriginal Heritage and Development – Advice to Developers (April 1999); or
- (b) policies and procedures agreed between the State and the Contracting Parties in respect of Aboriginal heritage.

**Independent Valuer** means a person who:

- (a) is a member of the Australian Property Institute;
- (b) is licensed under the *Land Valuers Licensing Act 1978* (WA); and
- (c) has at least 5 years recent experience valuing the type of land use being valued in the Pilbara.

**indigenous land use agreement** has the meaning given to that term under the *Native Title Act*.

**Industrial Estate** means:

- (a) the Area and the Additional Land; but

- (b) does not include De Witt Location 399; and
- (c) if Burrup Fertilisers Pty Ltd does reach Financial Close, then, for the purposes of clauses 9, 10, 11, 15, 16 and 19 does not include the Burrup Fertiliser Land; and
- (d) does not include freehold land excluded under clause 11.2.

**Industrial Project** means a project for any of the following purposes (as the project may be varied, expanded or amended from time to time):

- (a) processing or refining or deriving products from minerals (minerals has the meaning given to that term under the *Mining Act 1978* (WA)) or petroleum (petroleum has the meaning given to that term under the *Petroleum Act 1967* (WA)) including, but not limited to, the production of methanol, ammonia, urea and dimethyl-ether and any downstream processing of derivatives of that processing or refining;
- (b) gas production or extraction including, but not limited to, production or extraction from the atmosphere for the purposes of on-sale;
- (c) water desalination, filtration or purification for the purposes of on-sale;
- (d) power generation for the purposes of on-sale; or
- (e) trade or commerce conducted on a lease which, or leases which in aggregate, exceed 10 hectares in area,

but does not include the mining or extraction of:

- (i) limestone, rock or gravel;
- (ii) shale;
- (iii) sand; and
- (iv) clay.

**Karratha Land** means the land shown on the maps in Schedule 9 and referred to in the relevant notices set out in Schedule 6.

**Land Administration Act** means the *Land Administration Act 1997* (WA), as amended from time to time.

**Lease** means the proposed lease in respect of the Burrup Non-Industrial Land substantially in the form set out in Schedule 10.

**Levy** means the amount calculated as follows:

$$\text{Levy} = (0.05 \times (\text{EW}/52) \times \$4,500) - (\text{AP} \times \$4,500)$$

Where:

**EW** means the aggregate number of weeks (or part thereof) worked by the full time equivalent employees employed on-site directly by the Proponent, any related company or its contractors or subcontractors for the operation of the Industrial Project in each Production Period but does not include any employees employed:

- (a) for the construction and commissioning of the Industrial Project;
- (b) for the construction and commissioning of any extension or addition to the Industrial Project; or
- (c) for major maintenance and repairs relating to the Industrial Project during a shutdown of the Industrial Project for a period of one (1) day or more.

**AP** means the aggregate number of local Aboriginal persons employed by the Proponent, any related company or its contractors or subcontractors for the Industrial Project in each Production Period.

**Listed Aboriginal Contractors** means Aboriginal Contractors who are identified on the list referred to in clause 15.1.

**Listed Available Persons** means Available Persons who are identified on the list referred to in clause 15.1.

**Lump Sum Amount** means the following sums specified for each Current Proponent:

- (a) for Methanex, \$500,000;
- (b) for Japan DME Ltd, \$650,000;
- (c) for Dampier Nitrogen Pty Ltd, \$650,000; and
- (d) for Australian Methanol Company Pty Ltd, \$500,000.

**Management Agreement** means the proposed agreement for the management of the Burrup Non-Industrial Land substantially in the form set out in Schedule 11.

**Manager** means LandCorp or any other person who is responsible for the management or administration of the Industrial Estate on behalf of the State or LandCorp.

**Market Rental** means the rental on the basis of the unimproved value of the relevant land within the Industrial Estate determined in accordance with clause 29.

**Methanex** means Methanex Australia Pty Ltd, ACN 092 470 105 of Level 8, QV1 Building, 250 St Georges Terrace, Perth, Western Australia.

**Minister for Environment and Heritage** means the Minister for the time being responsible for the administration of the *Conservation and Land Management Act 1984* (WA).

**Minister for Indigenous Affairs** means the Minister for the time being responsible for the administration of the *Aboriginal Heritage Act 1972* (WA).

**native title** has the meaning given to that term under the *Native Title Act*.

**Native Title Act** means the *Native Title Act 1993* (Cth).

**native title claim** means the relevant native title determination application taken to have been made by the relevant Native Title Party to the Federal Court under Part 3 of the *Native Title Act* described in Schedule 1.

**native title claim group** has the meaning given to that term under the *Native Title Act*.

**Native TitleParty** means each of NY, YM and WGT and **Native Title Parties** means all of them.

**non extinguishment principle** has the meaning given to that term under the *Native Title Act*.

// **NY** means the Registered Native Title Claimants in respect of the Ngarluma Yindjibarndi claim referred to in Item 1.1 of Schedule 1.

**party** means a party to this deed and **parties** means all of them.

**Payment Undertaking** means a promise contained in a deed of undertaking to which a Proponent and the State are parties:

- (a) which is expressed to be for the benefit of, and enforceable by:
  - (i) the Contracting Parties for the period prior to the Ratification Date; and
  - (ii) the Approved Body Corporate for the period on and after the Ratification Date;
- (b) in which the Proponent agrees to pay the Lump Sum Payment in accordance with clause 9.2, or the Current Proponent Annual Payment in accordance with clause 9.3, or the Annual Payment in accordance with clause 10.2, or any of them, as the case may be; and
- (c) which requires the assumption of the obligations in the deed of undertaking by an assignee of the Proponent's lease.

**Prescribed Body Corporate** has the meaning given to that term under the *Native Title Act*.

**Production Date** means, in relation to an Industrial Project, the date on which product is first shipped, transported or transferred from the area of the lease or leases for that Industrial Project.

**Production Period** means the twelve (12) month period commencing on the Production Date and thereafter, the twelve (12) month period commencing on each anniversary of the Production Date.

**Proponent** means a Current Proponent or a Future Proponent or any lawful assignee of either, as the context requires.

**Purchase Value** means the amount equal to the unimproved value for the relevant land within the Industrial Estate determined in accordance with clause 29.

**Purchaser** means any person acquiring a freehold title to land within the Industrial Estate other than the Manager.

**Ratification Date** means the date the Approved Body Corporate executes the Ratification Deed.

**Ratification Deed** means the deed to be entered into by the Approved Body Corporate and the State as provided in clause 17.7.

**Register of Native Title Claims** has the meaning given to that term under the *Native Title Act*.

**registered native title claimant** has the meaning given to that term under the *Native Title Act*.

**related company** has the meaning given to that term under the *Corporations Act 2001* (Cth).

**representative body** has the meaning given to that term under the *Native Title Act*.

**Satisfaction Date** means the earlier of:

- (a) the Burrup and Intercourse Islands Final Determination Date; or
- (b) the execution of this deed by the Premier, Landcorp and each of the Native Title Parties.

**Schedule** means a schedule to this deed.

**State** means the Crown in right of the State of Western Australia and for the purposes of this deed, references in this deed to the State do not include LandCorp.

**Undertaking** means a Payment Undertaking or an Employment Undertaking or both, as the case may be.

**Valuation Principles** means the principles of valuation set out in clause 29.6.

**WGT** means the Registered Native Title Claimants in respect of the Wong-Goo-tt-oo claim referred to in Item 1.3 of Schedule 1.

**written law** has the meaning given to that term under the *Interpretation Act 1984* (WA).

**YM** means the Registered Native Title Claimants in respect of the Yaburara Mardudhunera claim referred to in Item 1.2 of Schedule 1.

**YM Claimants** means the members of the native title claim group in respect of the Yaburara Mardudhunera claim referred to in Item 1.2 of Schedule 1.

## 1.2 Interpretation

In this deed, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) a reference to this deed include its recitals, schedules and annexures (if any);
- (c) headings are inserted for ease of reference only and are to be ignored in construing this deed;
- (d) the word person includes a firm, body corporate, statutory corporation, an unincorporated association or an authority or government department and a reference to a gender includes each other gender;
- (e) if a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (f) a reference to a person includes a reference to a person's executors, administrators, successors, substitutes (including but not limited to persons taking by novation), transferees and assigns;
- (g) an obligation, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;
- (h) a reference to any thing is a reference to the whole or any part of it and a reference to a group of persons is a reference to any one or more of them;
- (i) a reference to a grant of any right or interest includes the exercise of the rights or the discharge of obligations by the parties in respect of such grant;
- (j) no rule of construction applies to the disadvantage of a party on the basis that that party put forward this deed or any part of this deed;
- (k) a reference to a statute, ordinance, code, or other law includes regulations, by-laws, rules and other statutory instruments under it for the time being in force and consolidations, amendments, re-enactments, or replacements of

any of them (whether of the same or any other legislative authority having jurisdiction);

- (l) a reference to a person which has ceased to exist or has reconstituted, amalgamated, reconstructed or merged or the functions of which have become exercisable by another person, is a reference to the person established or constituted in its place or by which its functions have become exercisable;
- (m) a reference to any statutory authority, government body (corporate or unincorporate) or person established under any written law includes a reference to any person or body (corporate or unincorporate) established or continued to perform the same or substantially similar function;
- (n) references to time are to local time in Perth, Western Australia; and
- (o) where time is to be reckoned from a day or event, that day or the day of that event is excluded.

## **2. EXECUTION AND WHEN THIS DEED TAKES EFFECT**

### **2.1 Execution**

Other than clauses 2.2(a) and (b), this deed shall have no force or effect unless and until all of the following events have occurred:

- (a) the Premier has executed this deed for and on behalf of the State;
- (b) LandCorp has executed this deed; and
- (c) NY have executed this deed.

### **2.2 Eligibility to be Contracting Party**

- (a) Subject to clause 2.2(e), at any time prior to the Burrup and Intercourse Islands Arbitration Decision Date, the State may issue written offers to the YM or the WGT or both to enter into this deed and become a Contracting Party.
- (b) Subject to clause 2.2(e), at any time prior to the Burrup and Intercourse Islands Arbitration Decision Date, the State may issue written offers to one or more of the YM Claimants to enter into this deed and become a Contracting Party.
- (c) Subject to clauses 2.2(d) and 2.2(e), the YM, YM Claimants or WGT, as the case may be, may accept such offer by executing this deed, in which case they shall be a Contracting Party.
- (d) If the YM Claimants do not perform all or any of the conditions set out in the State's written offer to enter into this deed to the satisfaction of the State,

the State may give notice in writing that the YM Claimants are no longer a Contracting Party.

- (e) Any written offer made by the State pursuant to this clause 2.2 shall expire and shall have no further force and effect from 9.00am on the Burrup and Intercourse Islands Arbitration Decision Date, in the event that the State has not expressly revoked the offer in writing prior to that date. If the YM, YM Claimants or WGT, as the case may be, have not accepted a written offer made by the State by 9.00am on the Burrup and Intercourse Islands Arbitration Decision Date they will be deemed to have rejected the offer and will not be eligible to be a Contracting Party.

### 2.3 Survival of this Deed

- (a) The State and LandCorp acknowledge and agree that the Contracting Parties' promises under this deed constitute valuable consideration.
- (b) The Parties acknowledge and agree that, subject to clauses 2.4 and 28, this deed and the rights and obligations of the Parties under it will survive, to the fullest extent permitted by law,:
- (i) the Determination Date; and
  - (ii) any determination by an arbitral body under section 35 of the *Native Title Act* in relation to the Area and the Additional Land; and
  - (iii) any determination by an independent person or body under section 24MD(6B) of the *Native Title Act* in relation to the Karratha Land.

### 2.4 Termination

- (a) In this clause:

**Acceptable Current Proponent Conditions** means conditions which, in the State's reasonable opinion, do not materially detract from the financial viability of the Industrial Project to be conducted by a Current Proponent on a Current Proponent Lease.

**Acceptable Industrial Estate Conditions** means conditions which, in the State's reasonable opinion, do not materially detract from the economic or financial viability or efficient management of the Industrial Estate.

**Burrup and Intercourse Islands acts** means the compulsory acquisition of any native title rights and interests sufficient to enable the State to validly grant leases within the land the subject of the Burrup and Intercourse Islands Arbitration, and includes Current Proponent acts.

**Current Proponent acts** means the compulsory acquisition of any native title rights and interests sufficient to enable the State to validly grant Current Proponent Leases to each of the Current Proponents.

**Future Act Determination** means a determination under section 38 of the *Native Title Act* made by an arbitral body or any order of a court of competent jurisdiction varying or substituting such a determination. The determination shall be taken to have been made:

- (i) subject to paragraph (ii) below, 29 days after the date the arbitral body makes a determination; or
  - (ii) if any appeal or other application is lodged in which orders are sought from a court of competent jurisdiction to set aside or vary any determination, then 29 days after orders are made in any such appeal or other application (including any further or subsequent appeal).
- (b) If, after the Burrup and Intercourse Islands Final Determination Date:
- (i) any of YM or WGT have not entered into this deed or otherwise agreed to the compulsory acquisition of any native title rights and interests in accordance with sections 28(1)(f) and 31(1)(b) of the *Native Title Act* sufficient to enable the State to do the Burrup and Intercourse Islands acts; and
  - (ii) it is not the case that there is a Future Act Determination that the Burrup and Intercourse Islands acts may be done, or may be done subject to Acceptable Industrial Estate Conditions; and
  - (iii) it is not the case that the Determination Date has passed and there is an approved determination of native title that:
    - (A) native title does not exist; or
    - (B) native title exists and is held only by one or more of the Contracting Parties,in respect of the land the subject of the Burrup and Intercourse Islands Arbitration,
- then the State may, by notice to the Contracting Parties, terminate this deed.
- (c) If at any time after the Satisfaction Date:
- (i) the agreement of a Native Title Party for the purposes of sections 28(1)(f) and 31(1)(b) of the *Native Title Act* contained in clause 7 of this deed or contained in any other document, in relation to any part of the Industrial Estate, is declared by a court of competent jurisdiction to be void or voidable or otherwise unenforceable; or
  - (ii) a Future Act Determination that native title in respect of any part of the Industrial Estate may be compulsorily acquired ("the act") is set aside or varied such that there is no longer a determination that the

- act may be done or may be done subject to Acceptable Industrial Estate Conditions; or
- (iii) any taking order issued, or any lease or other interest granted, in accordance with this deed in respect of the Industrial Estate is invalid by reason of a failure to comply with the provisions of the *Native Title Act*,
- then the State may, by notice to the Contracting Parties, terminate this deed.
- (d) If this deed is terminated in accordance with paragraphs (b) or (c) of this clause then:
- (i) other than this clause 2.4, clauses 6.10, 14, 23.2 and 27, and to the extent provided in this clause 2.4, this deed ceases to have any force or effect on and from the date of termination;
- (ii) any compulsory acquisition of native title, and the grant of any interest in the Industrial Estate, Karratha Land or Hearson Cove Land is, to the extent permitted by law, valid;
- (iii) if the payment in clause 8.2 has been made and any interest in land transferred under this deed, then that payment and those interests in land may be retained by the payee or transferee, as the case may be;
- (iv) if a freehold title was validly transferred in respect of any land the subject of this deed before the termination of this deed, then any obligation under this deed which accrued before the date of termination in relation to that freehold title shall remain binding and enforceable. For the avoidance of any doubt, if the freehold title to the Burrup Non-Industrial Land is transferred under clause 4 of this deed, the State's financial obligations under clause 4 survive the termination of this deed;
- (v) subject to clause 2.4(d)(vi), if a lease was validly granted in respect of any land the subject of this deed before the termination of this deed, then any obligation under this deed or under any Undertaking in relation to that lease which accrued before the date of termination shall remain binding and enforceable;
- (vi) clause 2.4(d)(v) only applies if and for so long as, in the reasonable opinion of the State, the Proponent may use and enjoy the lease in a manner that does not materially detract from the financial viability of the Industrial Project to be conducted by the Proponent on the lease;
- (vii) subject to paragraphs (iii) to (vi) above, any monies paid to the Contracting Parties or the Approved Body Corporate shall become a debt immediately due and payable by the Contracting Parties or the Approved Body Corporate, as the case may be, to the person or persons who paid the monies, and any monies held on trust in

accordance with clause 21.1(a) shall be repaid to the person or persons who paid the monies and the Contracting Parties hereby so direct; and

- (viii) if monies are being held in trust in accordance with clause 21.1 and the Approved Body Corporate has not been formed at the date of termination, then clauses 17 (but not including clause 17.6(a)) and 21 shall continue to apply.
- (e) If, after the Burrup and Intercourse Islands Arbitration Decision Date:
- (i) any of YM or WGT have not entered into this deed or otherwise agreed to the compulsory acquisition of any native title rights and interests in accordance with sections 28(1)(f) and 31(1)(b) of the *Native Title Act* sufficient to enable the State to validly grant Current Proponent Leases to each of the Current Proponents; and
  - (ii) it is not the case that there is a Future Act Determination that each of the Current Proponent acts may be done, or may be done subject to Acceptable Current Proponent Conditions; and
  - (iii) it is not the case that the Determination Date has passed and there is an approved determination of native title that:
    - (A) native title does not exist; or
    - (B) native title exists and is held only by one or more of the Contracting Parties,
- in respect of the land over which the State wishes to grant Current Proponent Leases to the Current Proponents; and
- (iv) the State notifies the Contracting Parties in writing that it withdraws the notices of intention referred to in recitals A and C insofar as those notices of intention apply to the Industrial Estate (but not including the Burrup Fertilisers Land);
- then the State may, by notice to the Contracting Parties, terminate this deed and this deed shall on and from that date have no force or effect.

### **3. AUTHORITY TO ENTER INTO DEED**

#### **3.1 Warranties**

Each Contracting Party represents and warrants that:

- (a) all necessary authorisations have been obtained to enter into this deed; and
- (b) this deed is valid, binding and enforceable in accordance with its terms against each Contracting Party and, in the case of a Native Title Party, against all persons included in their respective native title claim group.

### **3.2 Reliance**

The Contracting Parties acknowledge and agree that, but for the representations and warranties in clause 3.1, neither the State nor LandCorp would have entered into this deed.

## **4. BURRUP NON-INDUSTRIAL LAND**

### **4.1 Acknowledgment of Proposed Effect of the Burrup Non-Industrial Land ILUA**

The State and the Contracting Parties acknowledge that the proposed effect of the Burrup Non-Industrial Land ILUA is to enable the transfer of freehold title to the Burrup Non-Industrial Land to the Transferee referred to in clause 4.4(a) under section 83 of the *Land Administration Act* and to give effect to the matters set out in this clause 4.

### **4.2 Intentions of State and Contracting Parties**

The State and the Contracting Parties agree that this clause 4 is intended to apply as follows:

- (a) a study will be conducted for the preparation of a draft management plan in accordance with clause 4.5;
- (b) a management plan will be agreed in accordance with clause 4.5;
- (c) the Burrup Non-Industrial Land ILUA will be entered into, unless native title has been determined not to exist in respect of all of the Burrup Non-Industrial Land, in accordance with clause 4.3;
- (d) the Management Agreement will be entered into in accordance with clause 4.4(b)(iv) or clause 4.4A(b)(iv), as the case may be;
- (e) the Lease will be entered into in accordance with clause 4.4(b)(iii) or clause 4.4A(b)(iii), as the case may be;
- (f) the Deed of Covenant will be entered into in accordance with clause 4.4(b)(ii) or will not be entered into, if clause 4.4A applies; and
- (g) freehold title to the Burrup Non-Industrial Land will be transferred in accordance with clause 4.4 or clause 4.4A.

### **4.3 Process for transfer of freehold title**

- (a) The State will provide to the Contracting Parties a draft Burrup Non-Industrial Land ILUA before the expiry of twelve (12) months after the Satisfaction Date. The draft Burrup Non-Industrial Land ILUA need only contain terms necessary to give effect to the transfer (subject to the non-extinguishment principle) of freehold title to, and the creation of public

roads identified in the management plan within, the Burrup Non-Industrial Land in accordance with clause 4.4.

- (b) The State and the Contracting Parties will negotiate in good faith the terms of the Burrup Non-Industrial Land ILUA from the date the draft Burrup Non-Industrial Land ILUA is provided under clause 4.3(a).
- (c) The Contracting Parties and the State acknowledge that no transfer of freehold title will be made under clause 4.4 or clause 4.4A, and clause 4.6 shall have no force or effect, unless and until one of the following events occur:
  - (i) prior to the Determination Date the State enters into the Burrup Non-Industrial Land ILUA with all of the Native Title Parties and the Burrup Non-Industrial Land ILUA is registered under the *Native Title Act*;
  - (ii) after the Determination Date and native title has been determined to exist in respect of any part of the Burrup Non-Industrial Land, the State enters into the Burrup Non-Industrial Land ILUA with the Prescribed Body Corporate and the Burrup Non-Industrial Land ILUA is registered under the *Native Title Act*; or
  - (iii) after the Determination Date, native title has been determined not to exist in respect of all of the Burrup Non-Industrial Land.
- (d) Nothing in this clause 4.3 requires the State to compulsorily acquire any native title rights and interests or any other interests in the Burrup Non-Industrial Land for the purposes of facilitating the transfer of the freehold title to the Burrup Non-Industrial Land.
- (e) Nothing in this clause 4.3 requires the State to pay consideration in addition to the State's financial obligations in this deed.
- (f) For the avoidance of doubt, if the event referred to in clause 4.3(c)(iii) occurs, then subject to clauses 4.3(g) to 4.3(j), clauses 4.4 to 4.7 apply.
- (g) If, after thirty six (36) months of the Determination Date or such other time as may be agreed in writing between the State and the Contracting Parties ("End Date"), the Burrup Non-Industrial Land has not been transferred to the Transferee under clause 4.4 or clause 4.4A and:
  - (i) the event in clause 4.3(c)(iii) has occurred; or
  - (ii) the event in clause 4.3(c)(iii) has not occurred, and
    - (A) the Burrup Non-Industrial Land ILUA has not been agreed because of an unreasonable act or omission by the State; or

- (B) the Burrup Non-Industrial Land ILUA has not been registered because of an unreasonable act or omission by the State,

then the Contracting Parties may elect by notice to the State that clause 4.3(h) applies.

- (h) If the State receives notice from the Contracting Parties under clause 4.3(g), then the State must (in the State's discretion) either:

- (i) transfer the freehold title to the Burrup Non-Industrial Land in accordance with clause 4.4 or clause 4.4A; or

- (ii) pay \$10,000,000 to the Contracting Parties,

within eighteen (18) months from the date of the receipt of the notice.

- (i) If the State makes the payment under clause 4.3(h) to the Contracting Parties, the parties agree that clauses 4.4 to 4.7 do not apply.

- (j) If on the End Date the Burrup Non-Industrial Land has not been transferred to the Transferee under clause 4.4 or clause 4.4A and clauses 4.3(g) or 4.3(h) do not apply, then:

- (A) the State will notify the Contracting Parties of the reasons why, in the State's opinion, the Burrup Non-Industrial Land has not been transferred (including, if appropriate, why the Burrup Non-Industrial Land ILUA has not been agreed or registered);

- (B) the Contracting Parties shall have two (2) months from the date of the State's notice referred to in clause 4.3(j)(A) to respond to the State in writing; and

- (C) if within nine (9) months after the State's notice referred to in clause 4.3(j)(A), the Burrup Non-Industrial Land has not been transferred to the Transferee under clause 4.4 or clause 4.4A, then clauses 4.4 to 4.7 do not apply and the State will pay the Contracting Parties the sum of \$3,400,000 as follows:

- (1) \$1,400,000 within thirty (30) days after the end of the nine (9) month period referred to in clause 4.3(j)(C); and

- (2) \$1,000,000 per annum for two (2) years, with the first payment on the first anniversary of the payment in clause 4.3(j)(C)(1) and the second payment on the second anniversary of the payment in clause 4.3(j)(C)(1).

#### **4.4 Freehold Title**

- (a) Subject to clause 4.3, the State will ensure that:

- (i) if the event in clause 4.3(c)(iii) occurs, the freehold title to the Burrup Non-Industrial Land is transferred to the Approved Body Corporate in accordance with this clause 4.4; or
- (ii) if the Burrup Non-Industrial Land ILUA is agreed under clause 4.3(c)(i) or 4.3(c)(ii), the freehold title to the Burrup Non-Industrial Land is transferred to:
  - (A) the Approved Body Corporate ; or
  - (B) another body corporate nominated under the Burrup Non Industrial Land ILUA,
 in accordance with this clause 4.4 and the Burrup Non-Industrial Land ILUA.

For the purposes of this clause 4, "Transferee" means the person to whom the freehold title is to be transferred under clause 4.4(a).

- (b) The State and the Contracting Parties agree that the obligation to transfer the freehold title to the Burrup Non-Industrial Land will be in respect of that area as defined by the cadastral survey referred to in clause 4.6(a) and will be subject to the following:
  - (i) the freehold title to the Burrup Non-Industrial Land will be subject to existing easements and other interests in respect of the Burrup Non-Industrial Land;
  - (ii) the freehold title to the Burrup Non-Industrial Land will be subject to the Deed of Covenant and the Transferee must execute the Deed of Covenant prior to the date of transfer of the freehold title to the Burrup Non-Industrial Land and such Deed of Covenant must be registered and take effect immediately on the date of transfer subject only to the interests referred to in clause 4.4(b)(i);
  - (iii) the Transferee must execute the Lease prior to the date of transfer of the freehold title to the Burrup Non-Industrial Land and such Lease must be registered and take effect immediately on the date of transfer subject only to the interests referred to in clauses 4.4(b)(i) and 4.4(b)(ii);
  - (iv) the management plan must be agreed or determined in accordance with clause 4.5;
  - (v) the Transferee must execute the Management Agreement prior to the date of transfer of the freehold title to the Burrup Non-Industrial Land to take effect on the date of the transfer of the Burrup Non-Industrial Land;
  - (vi) the Transferee agrees not to assign, transfer, mortgage, charge, lease, part with possession (except under the Lease or the

Management Agreement) or otherwise deal in any way with its interests in the Burrup Non-Industrial Land or any part of it, with any person (other than the State) ("Third Party") unless and until the Third Party executes such document or documents necessary in which the Third Party agrees to be bound by the terms of the Management Agreement; and

- (vii) in respect of any area within the Burrup Non-Industrial Land identified under the management plan under clause 4.5 for the reservation, dedication and use as a public road ("reserved area"), then:
    - (A) the reserved area will be excluded from the land to be transferred; and
    - (B) if the event in clause 4.3(c)(iii) has not occurred, the Contracting Parties or the Prescribed Body Corporate, as the case may be, and the State, will by way of an indigenous land use agreement, agree that the public roads in the reserved areas can be created notwithstanding any effect on the native title rights and interests, if any, and the non-extinguishment principle shall apply, or
  - (viii) if the management plan is amended after the date of transfer of the freehold to the Burrup Non-Industrial Land, then:
    - (A) the reserved area will be surrendered from the Lease and the freehold title; and
    - (B) if the event in clause 4.3(c)(iii) has not occurred, the Contracting Parties or the Prescribed Body Corporate, as the case may be, and the State, will by way of an indigenous land use agreement, agree that the public roads in the reserved areas can be created notwithstanding any effect on the native title rights and interests, if any, and the non-extinguishment principle shall apply; and
  - (ix) no compensation shall be payable by the State or any other person to the Contracting Parties, the Prescribed Body Corporate or the Transferee whatsoever in respect of clauses 4.4(b)(vii) and 4.4(b)(viii).
- (c) The State will pay all fees and any stamp duty associated with the transfer of the freehold title.

#### 4.4A State's Election

- (a) In the event that the State is required to transfer the freehold title to the Burrup Non-Industrial Land to the Contracting Parties under clause 4.4, the Contracting Parties and the State agree that the State may (in the State's

discretion) by notice to the Contracting Parties elect that this clause 4.4A shall apply.

- (b) If the State elects that this clause 4.4A shall apply then the State and the Contracting Parties agree that:
- (i) clauses 4.4(a) and 4.4(c) apply;
  - (ii) clauses 4.4(b)(iv) and 4.4(b)(vii) to(ix) apply but otherwise clause 4.4(b) does not apply;
  - (iii) the freehold title to the Burrup Non-Industrial Land will be subject to existing easements and other interests in respect of the Burrup Non-Industrial Land;
  - (iv) the Transferee must execute the Lease (except clause 13 of the Lease will not apply and reference to the Deed of Covenant in the Lease shall be amended to be a reference to the conditions in clause 4.4A(vi)) prior to the date of transfer of the freehold title to the Burrup Non-Industrial Land and such Lease must be registered and take effect immediately on the date of transfer subject only to the interests referred to in clause 4.4A(b)(iii);
  - (v) the Transferee must execute the Management Agreement (except that reference to the Deed of Covenant in the Management Agreement shall be amended to be a reference to the conditions in clause 4.4A(vi)) prior to the date of transfer of the freehold title to the Burrup Non-Industrial Land to take effect on the date of the transfer of the Burrup Non-Industrial Land; and
  - (vi) the State and the Contracting Parties agree that the obligation to transfer the freehold title to the Burrup Non-Industrial Land will be in respect of that area as defined by the cadastral survey referred to in clause 4.6(a) and the freehold title will be subject to, at the State's discretion, one or more of the following conditions:
    - (A) the Transferee must not assign, transfer, mortgage, charge, lease, part with possession or deal in any way with its interests in the Burrup Non-Industrial Land or any part of it (except under the Lease or the Management Agreement) without the prior written consent of the Minister for Lands which may be given or withheld in the Minister's discretion and if given, subject to any such conditions that the Minister determines;
    - (B) the Burrup Non-Industrial Land must be used, or permitted to be used, only in a manner that is not inconsistent with the management plan determined under clause 4.5, or as amended from time to time;

- (1) in accordance with the Management Agreement; or
- (2) if there is no Management Agreement, by agreement in writing between the Transferee and the Minister for Lands,

but the Transferee may take such steps as are reasonably necessary (for example, closing off the Burrup Non-Industrial Land or any part of it to the general public for one day a year) to ensure that the Burrup Non-Industrial Land, or any part of it, is not dedicated to the public use at common law, under any written law or in any other manner whatsoever;

- (C) the management plan referred to in paragraph (B) above, as amended from time to time, must be registered on the certificate of title to the Burrup Non-Industrial Land;
- (D) where a part of the boundary of the Burrup Non-Industrial Land is defined by the High Water Mark, no building may occur on the Burrup Non-Industrial Land between the High Water Mark and:
  - (1) where the coastline is rocky coastline – the line being 100 metres inland from the cliff line occurring nearest that boundary; or
  - (2) where the coastline is sandy coastline – the line being 150 metres inland from the High Water Mark nearest that boundary,

except for recreational purposes, which may include the construction, operation and maintenance of roads, carparks, and low impact public facilities such as showers, toilets, shaded picnic tables and boat ramps.

For the purposes of this clause 4.4A, **High Water Mark** has the same meaning as that term is defined in the *Land Administration Act*.

#### 4.5 Management Plan

- (a) The State will expend an amount of \$500,000 for the preparation of the draft management plan in accordance with this clause 4.5 (including the costs of the Consultant). The State and the Contracting Parties agree that Mr Stephen Szabo (or if Mr Szabo is unavailable, another person agreed between the State and the Contracting Parties) will be engaged by the State, as soon as practicable, in consultation with the Contracting Parties, as an independent consultant to prepare a draft management plan intended to be

the first management plan under the Management Agreement ("Consultant").

- (b) The State and the Contracting Parties agree that the Consultant will be required to:
  - (i) prepare a draft management plan in accordance with clause 4.5(c);
  - (ii) consult with the State, the Native Title Parties, the community, the relevant local government and any other relevant authorities including, but not limited to, the Conservation Commission;
  - (iii) provide an opportunity for the views of the State, the Native Title Parties, the community, the relevant local government and any other relevant authorities including, but not limited to, the Conservation Commission, to be formally submitted to the Consultant for his consideration;
  - (iv) in the preparation of the draft management plan, take into account the views of the State, the Native Title Parties, the community, the relevant local government and any other relevant authorities including, but not limited to, the Conservation Commission;
  - (v) have regard to the views of the members of the advisory committee established under clause 4.5(d); and
  - (vi) do all things reasonably necessary to allow the advisory committee established under clause 4.5(d) to perform its functions.
- (c) The State and the Contracting Parties agree that the draft management plan will provide for the following matters having regard to any national and international heritage and environmental agreements which bind the State, treaties which bind the State, all laws and Government policies, the terms of the Lease, and the Deed of Covenant or the conditions referred to in clause 4.4A(b)(vi), as the case may be:
  - (i) the preservation and promotion of the Aboriginal cultural and heritage values of the Burrup Non-Industrial Land;
  - (ii) the preservation and promotion of the natural and environmental values of the Burrup Non-Industrial Land, including indigenous flora and fauna;
  - (iii) the preservation and promotion of the archaeological values of the Burrup Non-Industrial Land;
  - (iv) the provision of public recreational facilities and the facilitation of recreational activities on the Burrup Non-Industrial Land, to fulfil so much of the demand for recreation by members of the public as is fitting taking account of the matters set out in clauses 4.5(c)(i), (ii), (iii) and (vi);

- (v) the regulation of public access having regard to the matters set out in clauses 4.5(c)(i), (ii), (iii) (iv) and (vi);
- (vi) the use of the Burrup Non-Industrial Land by the Approved Body Corporate and its members from time to time in accordance with traditional laws and customs acknowledged and observed by the members of the Approved Body Corporate;
- (vii) the use of the Burrup Non-Industrial Land by the Approved Body Corporate and its members from time to time consistent with the matters set out in clauses 4.5(c)(i) to (v);
- (viii) employment and training opportunities for the Approved Body Corporate and its members within and in relation to the Burrup Non-Industrial Land;
- (ix) commercial opportunities for the Approved Body Corporate and its members within the Burrup Non-Industrial Land;
- (x) the provision and construction of the Burrup Non-Industrial Land Buildings and the Burrup Non-Industrial Land Infrastructure;
- (xi) provision of fencing;
- (xii) creation of vehicular tracks and roads, and walking and cycling trails and pathways;
- (xiii) provision of firebreaks, fire control and carrying out of prescribed burning;
- (xiv) erection of signage;
- (xv) construction of public conveniences and other public facilities;
- (xvi) weed and feral animal control;
- (xvii) restriction or prohibition of access for protection of culturally significant sites, or for safety, cultural or conservation purposes;
- (xviii) the intended term of the management plan which may include provisions relating to the renewal or extension of the term;
- (xix) the periodical review of the management plan;
- (xx) the identification of management strategies relating to the use and management of the Burrup Non-Industrial Land;
- (xxi) the respective management roles of the Approved Body Corporate and CALM in relation to the Burrup Non-Industrial Land in

accordance with the principles of joint management as set out in the Management Agreement; and

- (xxii) such other matters as the Contracting Parties and CALM may agree.

- (d) The State must establish an advisory committee within forty-five (45) days after the engagement of the Consultant under clause 4.5(a), in accordance with this clause

- (i) the advisory committee will consist of members as agreed between the State and the Contracting Parties;
  - (ii) the members of the advisory committee will have the following functions:
    - (A) review all information provided by the Consultant in relation to the draft management plan;
    - (B) provide the advisory committee members' views to the Consultant in respect of the information provided by the Consultant and in respect of such other matters as the advisory committee members consider relevant; and
    - (C) assist the Consultant in the preparation of the draft management plan;
  - (iii) each member is entitled to provide his or her views to the Consultant and no consensus is required;
  - (iv) no quorum is required for any meeting of the members of the advisory committee; and
  - (v) the advisory committee must meet with the Consultant from time to time but not less than once every three (3) months.

- (e) Unless the State and the Contracting Parties otherwise agree, the draft management plan must be completed and provided to the State and the Contracting Parties within eighteen (18) months of the date of appointment of the Consultant.

- (f) The State and the Contracting Parties shall endeavour to agree the terms of a management plan based on the draft management plan prepared by the Consultant.

- (g) If the State and the Contracting Parties are unable to agree the terms of the management plan within three (3) months of the date the draft management plan is provided in accordance with clause 4.5(e), then the Minister for Environment and Heritage shall, in consultation with the Minister for Indigenous Affairs, determine the terms of the management plan.

#### **4.6 Financial Contribution by State**

- (a) The State will expend \$50,000 for a cadastral survey of the Burrup Non-Industrial Land for registration purposes. The State will provide a copy of the completed cadastral survey to the Contracting Parties.
- (b) The State has no obligation under clause 4.6(c) unless and until the transfer of freehold title has occurred in accordance with clause 4.4 or clause 4.4A.
- (c) The State will provide:
  - (i) \$450,000 per annum for five (5) years (with the first payment commencing on the date of the Management Agreement and thereafter on the first, second, third and fourth anniversaries of that date) for the management of the Burrup Non-Industrial Land in accordance with the terms of the Management Agreement;
  - (ii) \$5,500,000 within the five (5) year period commencing on the date of the transfer of freehold title, for the purposes of construction of the Burrup Non-Industrial Land Buildings; and
  - (iii) \$2,500,000 within the five (5) year period commencing on the date of the transfer of freehold title, for the purposes of construction of the Burrup Non-Industrial Land Infrastructure.

#### **4.7 Implementation of State's Financial Contribution for the Burrup Non-Industrial Land Infrastructure**

The State may satisfy its obligations under clauses 4.6(c)(ii) and (iii) by the engagement of the relevant contractor (as determined by the State and subject to clause 15.2) for the construction of the Burrup Non-Industrial Land Buildings and the Burrup Non-Industrial Land Infrastructure.

#### **4.8 No Objections**

On and from the Satisfaction Date, the Contracting Parties agree that the Contracting Parties will not, in their capacity as owners of the Burrup Non-Industrial Land, lodge or cause to be lodged any objection to development proposals intended to occur on land within the Industrial Estate.

### **5. COMPULSORY ACQUISITION OF HEARSON COVE LAND**

#### **5.1 Withdrawal of Objection**

Each Contracting Party hereby withdraws its objection made under section 24MD(6A) of the *Native Title Act* and any objection made by it under the *Land Administration Act* in respect of the Hearson Cove Land.

## **5.2 Consent to Compulsory Acquisition**

The Contracting Parties hereby agree to the compulsory acquisition and consequent extinguishment by the State of any and all native title rights and interests in the Hearson Cove Land in accordance with this deed.

## **5.3 Entitlement to Compulsorily Acquire**

The Contracting Parties hereby agree that, subject to this deed, the State is entitled to compulsorily acquire all native title and rights and interests in the Hearson Cove Land in accordance with the *Land Administration Act* and the *Native Title Act* and thereby extinguish all native title rights and interests in respect of the Hearson Cove Land.

# **6. COMPULSORY ACQUISITION OF KARRATHA LAND**

## **6.1 Withdrawal of Objection**

Each Contracting Party hereby withdraws its objection made under section 24MD(6A) and (6B) of the *Native Title Act* and any objection made under the *Land Administration Act* in respect of the Karratha Land.

## **6.2 Consent to Compulsory Acquisition**

The Contracting Parties hereby agree to the compulsory acquisition and consequent extinguishment by the State of any and all native title rights and interests in the Karratha Land in accordance with this deed.

## **6.3 Entitlement to Compulsorily Acquire**

The Contracting Parties hereby agree that, subject to this deed, the State is entitled to compulsorily acquire all native title and rights and interests in the Karratha Land in accordance with the *Land Administration Act* and the *Native Title Act* and thereby extinguish all native title rights and interests in respect of the Karratha Land.

## **6.4 Definitions for this Clause**

In this clause 6 and clause 29:

**Developed Lots** means all lots within a Parcel other than Public Purpose Lots or Temporary Workers' Accommodation Lots.

**lot** has the meaning given to that term under the *Town Planning and Development Act 1928 (WA)*.

**Lot Payment** means the amount that is equal to 5% of the Value of all Developed Lots within a Parcel.

**Parcel** means:

- (a) a lot or number of lots within the Karratha Land identified for the purpose (as determined by the State) of a subdivision development; or
- (b) a lot or lots the subject of a direct transfer by way of public sale or private treaty to the Registered Proprietor other than for the purpose of a subdivision development.

**Public Purpose Lot** means any lot in the Karratha Land which has been identified by the State or on an approved plan of subdivision to be required for a public work within the meaning of the *Public Works Act 1902* (WA).

**Registered Proprietor** means the registered proprietor of the Parcel.

**Staged Subdivision Development** means a subdivision development in respect of a Parcel which is conducted in Stages.

**Stages** means the stage or stages in which the subdivision development is conducted.

**Strata Lot** has the meaning given to that term in clause 29.

**Survey- Strata Lot** has the meaning given to that term in clause 29.

**subdivision development** means a subdivision development which is intended to create more than three (3) lots and which includes:

- (a) subdivision developments for residential, commercial and light industrial purposes; and
- (b) strata title developments.

**Temporary Workers' Accommodation Lot** means land used for the purposes of the construction and use of temporary dwellings for the accommodation of workers.

**transfer** means the transfer of the fee simple estate in land subject to encumbrances, if any.

**Transferable Lots** means Developed Lots within a Parcel other than:

- (a) a Developed Lot which has a Value greater than 5% of the Value of the total Developed Lots within the Parcel;
- (b) any Strata Lot or Survey Strata Lot;
- (c) any lot which is proposed to be transferred to a person for the purpose of the creation of Strata Lots;
- (d) any Developed Lot that the State is satisfied will be used by the Registered Proprietor in the bona fide operations of its business and who does not intend to directly transfer it by way of public sale or private treaty for a minimum period of three (3) years or until all of the other Developed Lots

have been sold, whichever occurs first (for example, a Developed Lot used for a display home or sales office); and

- (e) any Developed Lot required for one of the following purposes:
  - (i) caravan park;
  - (ii) park home; or
  - (iii) retirement village.

**Value** means the value determined for the relevant Developed Lot in the Karratha Land in accordance with clause 29.

#### **6.5 Lot Payment where no Transferable Lots or no Approved Body Corporate**

- (a) If there are no Transferable Lots available within a Parcel, then the State must pay the Lot Payment to the Contracting Parties within thirty (30) days after the first transfer of a Developed Lot within that Parcel by the Registered Proprietor.
- (b) If clause 6.6 or 6.7 would have applied if there was an Approved Body Corporate, but at the time a valuation is obtained for the Developed Lots within the Parcel no Approved Body Corporate exists or the Approved Body Corporate exists but it has not executed the Ratification Deed, then the State must pay the Lot Payment to the Contracting Parties within thirty (30) days after the first transfer of a Developed Lot within the Parcel by the Registered Proprietor. If this clause applies, then the State has no obligation to transfer Transferable Lots under clause 6.6 or 6.7, as the case may be, in respect of those Developed Lots.

#### **6.6 Principles for Transfer where there are Transferable Lots with an Aggregate Value of more than 5% of the Value of the Developed Lots within a Parcel**

- (a) This clause 6.6 applies if there are Transferable Lots within a Parcel with an aggregate Value of more than 5% of the Value of the Developed Lots within the Parcel.
- (b) Prior to the transfer of any Developed Lot within a Parcel by the Registered Proprietor to any person:
  - (i) The State must ensure that Transferable Lots as close as possible to 5% of the Value of the Developed Lots within the Parcel will be transferred to the Approved Body Corporate in accordance with this clause 6.6. The State may do so by procuring from a person to whom the State proposes to transfer a Parcel, a promise by deed that the person will transfer to the Approved Body Corporate Transferable Lots in accordance with this clause 6.

- (ii) When the Value of the Developed Lots has been determined, the State must notify the Approved Body Corporate and the Registered Proprietor of the following matters:
  - (A) the location and Value for each Developed Lot;
  - (B) the location and Value for each Transferable Lot; and
  - (C) the location of each PublicPurpose Lot and Temporary Workers' Accommodation Lot, and a description of the purpose for which that lot is to be used,

("Parcel Notice").
- (iiia) Any Developed Lot not identified in the Parcel Notice as a Transferable Lot may be transferred or otherwise dealt with by the Registered Proprietor.
- (iiib) Within thirty-five (35) days after receipt of the Parcel Notice, each of the Approved Body Corporate and the Registered Proprietor may by notice to each other and to the State, separately identify those Transferable Lots as close as possible to (but not exceeding) 5% of the Value of the Developed Lots within the Parcel ("Transferable Lot Nomination Notices") which each of the Approved Body Corporate and the Registered Proprietor nominate for transfer to the Approved Body Corporate under clause 6.6(b).
- (iiic) If both the Approved Body Corporate and the Registered Proprietor fail to give a Transferable Lot Nomination Notice, then the State must elect the Transferable Lots to be transferred to the Approved Body Corporate under clause 6.6(b)(i).
- (iid) If only the Approved Body Corporate or only the Registered Proprietor gives a Transferable Lot Nomination Notice, then the Transferable Lots identified in that Transferable Lot Nomination Notice will be transferred to the Approved Body Corporate. If the Transferable Lots identified in the Transferable Lot Nomination Notice are less than 5% of the Value of the Developed Lots within the Parcel, the State must ensure that an amount equal to the balance between the Value of the Transferable Lots to be transferred and 5% of the Value of the Developed Lots within the Parcel is paid to the Approved Body Corporate on the date of transfer.
- (iie) If both the Approved Body Corporate and the Registered Proprietor give a Transferable Lot Nomination Notice, and the State, the Approved Body Corporate and the Registered Proprietor are unable to reach agreement as to the Transferable Lots to be transferred under clause 6.6(b)(i) within sixty-five (65) days after receipt of the Parcel Notice, then:

- (A) those Transferable Lots which have been agreed between the Approved Body Corporate, the Registered Proprietor and the State will be transferred to the Approved Body Corporate;
- (B) those Transferable Lots not identified in the Transferable Lot Nomination Notices may be transferred or otherwise dealt with by the Registered Proprietor;
- (C) those Transferable Lots identified in the Transferable Lot Nomination Notices but not agreed under paragraph (A), will be placed in a ballot;
- (D) the ballot will be conducted within forty-five (45) days after the expiry of the sixty-five (65) day period referred to in clause 6.6(b)(vi) by a person authorised by the State;
- (E) Transferable Lots will be randomly drawn from the ballot until the aggregate Value of the Transferable Lots agreed under paragraph (A) above and those drawn from the ballot is at least 4.5% of the Value of the Developed Lots within the Parcel and, subject to paragraph (I) below, there will be no further draws from the ballot;
- (F) if on the last draw of the ballot, the aggregate Value of the Transferable Lots agreed under paragraph (A) above and those drawn from the ballot equals or exceeds 5.5% of the Value of the Developed Lots within the Parcel, then the Approved Body Corporate may elect:
  - (1) to accept a transfer of the Transferable Lots agreed under paragraph (A) above and those drawn from the ballot, and agree to pay to the Registered Proprietor the difference between:
    - (a) the aggregate Value of the Transferable Lots agreed under paragraph (A) above and those drawn from the ballot; and
    - (b) 5.5% of the Value of the Developed Lots within the Parcel,

("Excess Amount"), in which case paragraph (G) below will apply; or
  - (2) to accept a transfer of the Transferable Lots agreed under paragraph (A) above and those drawn from the ballot but not including the last draw of the ballot, and accept a payment equal to the difference between:

- (a) the aggregate Value of the Transferable Lots agreed under paragraph (A) above and those lots drawn from the ballot but not including the last draw of the ballot; and
  - (b) 5% of the Value of the Developed Lots within the Parcel,
- ("Deficit Amount"), in which case paragraph (H) below will apply; or
- (3) for a further draw from the ballot, in which case paragraph (I) will apply.

If the Approved Body Corporate does not make an election then it shall be deemed to have made an election in accordance with paragraph (F)(3) above;

- (G) if the Approved Body Corporate makes the election in paragraph (F)(1) above, then the State will ensure that all of the Transferable Lots drawn from the ballot will be transferred to the Approved Body Corporate, and the Approved Body Corporate must pay the Excess Amount to the Registered Proprietor on the date of the transfer of the Transferable Lots;
- (H) if the Approved Body Corporate makes the election in paragraph (F)(2) above then the State will ensure that all of the Transferable Lots drawn from the ballot but not including the last draw of the ballot are transferred to the Approved Body Corporate, and the State will ensure that the Deficit Amount is paid to the Approved Body Corporate on the date of the transfer of the Transferable Lots;
- (I) if the Approved Body Corporate makes, or is deemed to have made, the election in paragraph (F)(3) above then:
  - (1) the last draw of the ballot shall be disregarded and another draw shall be made from the ballot;
  - (2) if on the draw of the ballot referred to in paragraph (I)(1) above, the aggregate Value of the Transferable Lots agreed under paragraph (A) above and those drawn from the ballot, again exceeds 5.5% of the Value of the Developed Lots within the Parcel, then clause 6.6(b)(vi)(F) shall again apply; and

- (3) if there are no further Transferable Lots to be drawn from the ballot in accordance with paragraph (I)(1) above then paragraph (H) above shall apply as if the Approved Body Corporate so elected;
- (J) if on the last draw of the ballot, the aggregate Value of the Transferable Lots agreed under paragraph (A) above and those drawn from the ballot is less than 5% of the Value of the Developed Lots with in the Parcel, then the State will ensure that all of the Transferable Lots drawn from the ballot will be transferred to the Approved Body Corporate, without any amount payable by the Registered Proprietor or the State to the Approved Body Corporate whatsoever; and
- (K) the Transferable Lots drawn from the ballot, or in the case where paragraph (I) applies the Transferable Lots drawn from the ballot but not including the last draw from the ballot, must be transferred to the Approved Body Corporate.

**6.7 Principles for Transfer where there are Transferable Lots with an aggregate Value equal to or less than 5% of the Value of the Developed Lots within a Parcel**

If there are Transferable Lots within a Parcel with an aggregate Value equal to or less than 5% of the Value of the Developed Lots within the Parcel, then the State must ensure that prior to the transfer of any Developed Lot within the Parcel:

- (a) all the Transferable Lots are transferred to the Approved Body Corporate; and
- (b) an amount equal to the balance, if any, between the Value of the Transferable Lots to be transferred and 5% of the Value of the Developed Lots within the Parcel must be paid to the Approved Body Corporate on the date of the transfer of the Transferable Lots.

**6.8 Application of Clauses 6.4 to 6.7**

In respect of clauses 6.4 to 6.7 ("Transfer of 5% Clauses"):

- (a) the Transfer of 5% Clauses do not apply at the time land within the Karratha Land is transferred to a person for the purposes of undertaking a subdivision development;
- (b) in respect of a lot or number of lots within the Karratha Land provided for the purpose of a subdivision development (paragraph (a) of the definition of Parcel), the Transfer of 5% Clauses apply prior to the first sale of the Developed Lots within the Parcel;

- (c) in respect of a lot or lots the subject of a direct transfer by way of public sale or private treaty other than for the purpose of a subdivision development (paragraph (b) of the definition of Parcel), the Transfer of 5% Clauses apply prior to the transfer of each lot;
- (d) subject to clause 6.8(e), the obligation to transfer the Transferable Lots (and to pay an amount equal to the balance of the Value of 5% of the Developed Lots within the Parcel or the Deficit Amount) or to pay the Lot Payment can only occur once in respect of land within the Karratha Land;
- (e) if within 10 years of the creation of a Public Purpose Lot, any land within the Public Purpose Lot ceases to be for the original public purposes or for any other public purpose specified in the definition of Public Purpose Lot, then that land will be treated as a Parcel and the Transfer of 5% Clauses and this clause 6.8 (except for this paragraph (e)) will apply;
- (f) any land which ceases to be within a Temporary Workers' Accommodation Lot may be treated as a Parcel or a Developed Lot, as the case may be;
- (g) the Transfer of 5% Clauses apply separately and independently to each Parcel acquired by a person in different transactions;
- (h) any transfer to be made under the Transfer of 5% Clauses:
  - (i) may be made to the Approved Body Corporate or its nominee approved by State; and
  - (ii) must occur within thirty (30) days after:
    - (A) the time the obligation arises if there is a certificate of title for the relevant land to be transferred at the time the obligation arises; or
    - (B) the date the relevant certificate of title is issued if there is no certificate title for the relevant land to be transferred at the time the obligation arises; and
  - (i) if a Parcel is the subject of a Staged Subdivision Development, the Transfer of 5% Clauses apply to each Stage as though the land in each Stage was land within a separate Parcel.

#### **6.9 Contracting Out**

The State, the Registered Proprietor and the Approved Body Corporate may agree to vary or amend or not apply any of, or parts of, the Transfer of 5% Clauses ("variation") subject to the State being released by the Approved Body Corporate from any and all liability arising from any thing done or not done as a consequence of the variation.

#### **6.10 Failure to Comply**

- (a) The Contracting Parties acknowledge and agree that, for the purposes of paragraph (d) of the definition of Transferable Lot in clause 6.4, the State may rely on information provided by the Registered Proprietor and the State will not be liable whatsoever if a Developed Lot which has been excluded from the definition of Transferable Lot in paragraph (d) of the definition of Transferable Lot is transferred other than within either of the periods referred to in that definition.
- (b) The Contracting Parties acknowledge and agree that, notwithstanding any failure by the State or the Registered Proprietor to comply with the Transfer of 5% Clauses, the transfer or intended transfer of any freehold title in a Developed Lot to any person will be valid for all purposes and the Contracting Parties and the Approved Body Corporate will not bring any proceedings challenging any transfer or intended transfer whatsoever and this clause 6.10(b) may be pleaded by the State as a bar to any such proceedings.
- (c) The Contracting Parties acknowledge and agree that the only remedies available against the State for failing to comply with the Transfer of 5% Clauses are in damages and, where either the State or LandCorp is the Registered Proprietor, specific performance.
- (d) The Contracting Parties acknowledge and agree that the State may satisfy any liability the State may have for failing to comply with the Transfer of 5% Clauses by transferring other land to the Contracting Parties as reasonably agreed by the Contracting Parties.

## **7. COMPULSORY ACQUISITION OF INDUSTRIAL ESTATE**

### **7.1 Consent to Compulsory Acquisition**

The Contracting Parties hereby agree to the compulsory acquisition and consequent extinguishment by the State of any and all native title rights and interests in the Industrial Estate, in accordance with this deed.

### **7.2 Entitlement to Compulsorily Acquire**

The Contracting Parties hereby agree that, subject to this deed, the State is entitled to compulsorily acquire any and all native title rights and interests in the Industrial Estate in accordance with the *Land Administration Act* and the *Native Title Act* and thereby extinguish any and all native title rights and interests in respect of the Industrial Estate.

### **7.3 Specific Acknowledgments**

Without limiting the effect of clause 7.1, the Contracting Parties:

- (a) agree to the transfer of freehold title to the Industrial Estate by the State to the Manager or any other person;

- (b) agree to the grant of the Current Proponent Leases and leases to Future Proponents; and
- (c) agree to the creation and transfer of any interests in the Industrial Estate including, but not limited to, leases, easements, rights of access, encumbrances, licences, road reserves and restrictive covenants.

#### **7.4 Sections 28 and 31 of the *Native Title Act***

To the extent that this deed is signed by registered native title claimants, the Contracting Parties acknowledge that this deed is an agreement with each of them for the purposes of section 28(1)(f) and section 31(1)(b) of the *Native Title Act*.

#### **7.5 Withdrawal of objections under Land Administration Act**

Each Contracting Party hereby withdraws any objection made by it under the *Land Administration Act* in relation to the taking of land or interests in land within the Industrial Estate.

### **8. UP FRONT PAYMENT BY STATE**

#### **8.1 Payment on Satisfaction Date**

On the Satisfaction Date, the State must pay \$2,000,000 to the Contracting Parties.

#### **8.2 Payment on Acquisition Date**

On the Acquisition Date, the State must pay \$1,500,000 to the Contracting Parties.

### **9. CURRENT PROPOSER LEASES**

#### **9.1 Current Proposer Commitments**

- (a) Prior to the grant of each Current Proposer Lease, the State will procure the relevant Current Proposer to give an Employment Undertaking.
- (b) In respect of each Current Proposer, the State must pay the Lump Sum Payment and Current Proposer Annual Payment in clauses 9.2 and 9.3 except to the extent that the Current Proposer gives a Payment Undertaking that the Current Proposer will pay the Lump Sum Payment in accordance with clause 9.2 or Current Proposer Annual Payment in accordance with clause 9.3, or both, as the case may be.
- (c) If a Current Proposer gives the Payment Undertaking referred to in clause 9.1(b), then the Contracting Parties agree that the State is released from its obligation under clause 9.1(b) to pay the Lump Sum Payment in accordance with clause 9.2 or Current Proposer Annual Payment in accordance with clause 9.3, or both, as the case may be, in respect of that Current Proposer, on and from the date of the Payment Undertaking.

- (d) A Current Proponent may give the Payment Undertaking referred to in clause 9.1(b) prior to, or after the grant of the Current Proponent Lease.
- (e) The State must ensure that if a Current Proponent gives a Payment Undertaking or an Employment Undertaking under this clause 9, an original executed Payment Undertaking or Employment Undertaking, or both, as the case may be, is delivered to the Contracting Parties as soon as practicable after the date of the Payment Undertaking or Employment Undertaking.

## **9.2 Lump Sum Payments**

In respect of each Current Proponent, the Contracting Parties will be paid an amount equal to the Lump Sum Amount for the relevant Current Proponent, to be paid by way of two equal instalments as follows:

- (a) the first instalment - within 20 Business Days after the date of the commencement of the relevant Current Proponent Lease; and
- (b) the second instalment - within 20 Business Days after the relevant Production Date.

## **9.3 Payment of the Current Proponent Annual Payment**

For each Current Proponent, the Current Proponent Annual Payment will be paid to the Contracting Parties as follows:

- (a) subject to clause 9.3(c), \$700 per hectare or part thereof of land within the Industrial Estate the subject of the Current Proponent Lease per annum for each of the first five (5) years following the grant of the relevant Current Proponent Lease;
- (b) subject to clause 9.3(c), on and from the end of the 6<sup>th</sup> year, the Current Proponent Annual Payment will be determined as follows:

$$\text{Current Proponent Annual Payment} = (\text{AP} + (\text{AP} \times (\text{CPI} + 2\%))) \times \text{H}$$

**AP** means the amount per hectare paid in the previous year (and for the purposes of the 6<sup>th</sup> year, means \$700)

**CPI** means the percentage change of annual CPI for the previous twelve (12) month period calculated at the end of the quarter immediately preceding the date on which the calculation is to be made

**H** means the number of hectares or part thereof of land within the Industrial Estate the subject of the Current Proponent Lease; and

- (c) the Current Proponent Annual Payment must be paid:
  - (i) per annum for each year of the Current Proponent Lease, or pro rated for part thereof;

- (ii) in arrears on each anniversary of the commencement date of the relevant Current Proponent Lease; and
- (iii) for so long as the Current Proponent holds the Current Proponent Lease.

## **10. FUTURE PROONENTS**

### **10.1 Future Proponent Commitments**

- (a) Prior to the grant of each lease to a Future Proponent, the State will procure the relevant Future Proponent to give an Employment Undertaking.
- (b) In respect of each lease to a Future Proponent, the State must pay the Annual Payment in accordance with clause 10.2 unless the Future Proponent gives a Payment Undertaking that the Future Proponent will pay the Annual Payment in clause 10.2.
- (c) If a Future Proponent gives the Payment Undertaking referred to in clause 10.1(b), then the Contracting Parties agree that the State is released from its obligation under clause 10.1(b) to pay the Annual Payment in clause 10.2 in respect of that Future Proponent lease, on and from the date of the Payment Undertaking.
- (d) A Future Proponent may give the Payment Undertaking referred to in clause 10.1(b) prior to, or after the grant of the lease to the Future Proponent.
- (e) The State must ensure that if a Future Proponent gives a Payment Undertaking or an Employment Undertaking under this clause 10, an original executed Payment Undertaking or Employment Undertaking, or both, as the case may be, is delivered to the Contracting Parties as soon as practicable after the date of the Payment Undertaking or Employment Undertaking.

### **10.2 Annual Payment**

- (a) Following the grant of a lease to a Future Proponent, the Contracting Parties will be paid an Annual Payment being an amount equal to:

$$\text{\$Annual Payment} = (0.5 \times \text{MR}) \times H$$

Where:

**MR** means the Market Rental per hectare determined in accordance with clause 29 at the time of the grant of lease to the Future Proponent

**H** means the number of hectares or part thereof of land within the Industrial Estate the subject of the lease to the Future Proponent

- (b) The Annual Payment will be subject to the escalation and review in accordance with clauses 10.2(c) and 10.2(d) and must be paid:

- (i) per annum for each year of the lease to the Future Proponent, or pro rated for part thereof;
  - (ii) in arrears on each anniversary of the commencement date of the lease to the Future Proponent; and
  - (iii) for so long as the Future Proponent holds the relevant lease.
- (c) The Annual Payment will be escalated for each year a payment falls due other than a year in which a Review Date occurs, as follows:

$$\text{Annual Payment} = (\text{AP} + (\text{AP} \times \text{CPI})) \times H$$

**AP** means the amount per hectare payable in the previous year

**CPI** means the percentage change of annual CPI for the previous twelve (12) month period calculated at the end of the quarter immediately preceding the date on which the calculation is to be made

**H** means the number of hectares or part thereof of land within the Industrial Estate the subject of the lease to the Future Proponent

- (d) The Annual Payment will be reviewed on the 7<sup>th</sup> anniversary of the commencement date of the lease to the Future Proponent and every seven (7) years thereafter ("Review Date"), as follows:

$$\text{Annual Payment} = (0.5 \times \text{MR}) \times H$$

Where:

**MR** means the Market Rental per hectare determined in accordance with clause 29 at the time of the Review Date

**H** means the number of hectares or part thereof of land within the Industrial Estate the subject of the lease to the Future Proponent

## 11. FREEHOLD

### 11.1 Purchase Value to be paid by State

Prior to the first transfer of a freehold interest in land within the Industrial Estate to a Purchaser, the State must pay the Purchase Value to the Contracting Parties.

### 11.2 Obligations Cease

If a freehold interest in land within the Industrial Estate is transferred under clause 11.1 ("Freehold Land") then the Freehold Land ceases to be land within the Industrial Estate.

## 12. EXCLUSION AND VARIATION

## **12.1 Proponents May Exclude Prior to Grant**

- (a) Any obligation under clause 9.2, 9.3, 10.2 or 16, or under any Payment Undertaking or Employment Undertaking may be excluded or varied (in whole or in part) in respect of a particular Current Proponent Lease or a particular lease to a Future Proponent by agreement in writing between the Proponent, the State and the Contracting Parties, before the grant of lease to the Proponent, in accordance with this clause 12.
- (b) The Contracting Parties acknowledge that the State may require a Proponent to indemnify the State in respect for all losses and damages arising from any claim,action or proceeding by the Contracting Parties or the Approved Body Corporate, or both of them, in relation to, or arising from, any matter or thing done or not done by the State in reliance upon the agreement referred to in clause 12.1(a).

## **12.2 Proponents May Vary After Grant**

- (a) Any obligation under clause 9.2, 9.3, 10.2 or 16, or under any Payment Undertaking or Employment Undertaking may be varied (in whole or in part) in respect of a particular Current Proponent Lease or a particular lease to a Future Proponent by agreement in writing between the Proponent, the State and the Contracting Parties, after the grant of lease to the Proponent, in accordance with this clause 12.
- (b) The Contracting Parties acknowledge that the State may require a Proponent to indemnify the State in respect for all losses and damages arising from any claim,action or proceeding by the Contracting Parties or the Approved Body Corporate, or both of them, in relation to, or arising from, any matter or thing done or not done by the State in reliance upon the agreement referred to in clause 12.2(a).

## **12.3 Release by Contracting Parties**

The Contracting Parties hereby release the State in respect of all losses and damages arising from any claim, action or proceeding by the Contracting Parties or the Approved Body Corporate, or both of them, in relation to, or arising from, any matter or thing done or not done by the State in reliance upon any exclusion or variation under clause 12.1 or clause 12.2.

## **12.4 State may Exclude or Vary**

- (a) Subject to clause 12.4(b), the Contracting Parties and the State may agree in writing to vary or exclude any obligation under clauses 9.2, 9.3, 10.2 or 16 in respect of a particular Current Proponent lease or a particular lease to a Future proponent, and any such variation shall apply to any Employment Undertaking or Payment Undertaking entered into after the date of the exclusion or variation in respect of that lease.

- (b) If a Proponent has given an Employment Undertaking or a Payment Undertaking, or both, as the case may be, then this clause 12.4 does not apply.

### **13. LANDCORP MAY PERFORM STATE OBLIGATIONS**

The Contracting Parties agree that any obligation on the part of the State under this deed may be performed by LandCorp and such performance by LandCorp shall be deemed to have been performance by the State.

### **14. VALIDITY OF GRANTS**

- (a) The Contracting Parties acknowledge and agree that, notwithstanding any failure by the State or any Proponent to comply with the terms of this deed or any Undertaking, the grant or transfer of any interest in:
  - (i) land the subject of this deed; and
  - (ii) De Witt Location 399,will be valid for all purposes.
- (b) Subject to clause 14(a), in the event of any failure by the State or any Proponent to comply with the terms of this deed or any Undertaking, nothing in this deed prevents the Contracting Parties from enforcing their rights against the State or any Proponent including, but not limited to, any right to recover damages or to seek specific performance against the State or any Proponent.
- (c) The parties agree that this clause may be pleaded by the State as a bar to any proceedings by the Contracting Parties challenging the validity of any grant or the transfer of any interest in land the subject of this deed.

### **15. STATE'S OBLIGATIONS FOR ABORIGINAL EMPLOYMENT AND ENTERPRISE**

#### **15.1 List of Available Persons and Aboriginal Contractors**

The State and the Contracting Parties agree that the Employment Service Provider will be required to ensure that up to date lists are prepared, maintained and available containing details of:

- (a) Available Persons who have nominated themselves to the Employment Service Provider and their work experience and qualifications; and
- (b) Aboriginal Contractors who have nominated themselves to the Employment Service Provider and the services offered by, work experience of and qualifications of those Aboriginal Contractors.

#### **15.2 Buy Local**

The State must comply with the Buy Local Policy in respect of works conducted by or on behalf of the State in the Industrial Estate, the Karratha Land and the Burrup Non-Industrial Land. For the avoidance of any doubt, references to the State do not include government trading enterprises.

### **15.3 Government Trading Enterprises**

The State will use its reasonable endeavours to procure government trading enterprises (as they are defined in the Buy Local Policy) to comply with the Buy Local Policy in respect of works conducted by or on behalf of the government trading enterprises in the Industrial Estate, the Karratha Land and the Burrup Non-Industrial Land. For the avoidance of any doubt, the parties acknowledge that nothing in this clause 15.3:

- (a) requires the State to incur any financial obligation; or
- (b) fetters or purports to fetter the exercise of any discretion under any legislation relating to government trading enterprises.

### **15.4 Employment Service Provider**

- (a) As soon as practicable after the Satisfaction Date, the State and the Contracting Parties will agree to the appointment of the Employment Service Provider, who must operate or be based in Roebourne and must be registered for the purposes of the GST Act. If the State and the Contracting Parties are unable to reach agreement, then clause 15.4(f) applies. The State agrees to provide \$200,000 per annum for three (3) years to the Employment Service Provider to perform its functions in accordance with clause 15, with the first payment to be made on the date the Employment Service Provider enters into the agreement referred to in clause 15.4(b) and thereafter on the first and second anniversaries of that date.
- (b) The State and the Contracting Parties will, in good faith, negotiate a tripartite agreement between the State, the Contracting Parties and the person nominated to be the Employment Service Provider to:
  - (i) give effect to this clause 15.4 and clause 15.1;
  - (ii) determine the fees of the Employment Service Provider, if any, and the terms and conditions in respect of the financial administration of the Employment Funding and the Levy; and
  - (iii) determine the terms for the termination of the Employment Service Provider.
- (c) The Employment Service Provider must:
  - (i) conduct an audit of the skills of Available Persons and Aboriginal Contractors. This will require the Employment Service Provider to:

- (A) identify the Available Persons and Aboriginal Contractors who are seeking employment;
  - (B) conduct an appropriate analysis of the experience and qualification of the Available Persons and Aboriginal Contractors;
  - (C) prepare appropriate lists and documentation; and
  - (D) assist Available Persons to nominate themselves for the purposes of clause 15.1;
- (ii) conduct an analysis of the needs of the Available Persons and Aboriginal Contractors in respect of:
    - (A) desired employment outcomes; and
    - (B) desired enterprise outcomes;
  - (iii) conduct an analysis of the opportunities for employment and enterprise that exist within a 100 kilometre radius from Roebourne;
  - (iv) assist Available Persons and Aboriginal Contractors to achieve their desired employment and enterprise outcomes by:
    - (A) assisting Available Persons and Aboriginal Contractors to access appropriate resources;
    - (B) promoting employment and enterprise opportunities for Available Persons and Aboriginal Contractors; and
    - (C) assisting Available Persons and Aboriginal Contractors to access appropriate training;
  - (v) perform the functions of the Employment Service Provider described in clauses 16.1 and 16.2;
  - (vi) provide an annual written report to the State and the Contracting Parties regarding the performance of its functions under this clause 15.4(c) during the previous year;
  - (vii) provide the Contracting Parties with a copy of each Employment Statement within ten (10) Business Days after its receipt; and
  - (viii) provide the Contracting Parties with a copy of each report provided to it under clause 16.1(f).
- (d) The Employment Service Provider may provide assistance in the same manner as provided in clause 15.4(c), to local Aboriginal persons to achieve their desired employment and enterprise outcomes.

- (e) Subject to clause 15.4(f), the Employment Funding and the Levy will be paid by the State to the Employment Service Provider for the purposes of performing the functions in clauses 15.4(c) and (d).
- (f) The State will hold and apply the Employment Funding and Levy for the purposes of, and shall carry out the functions in place of, the Employment Service Provider if:
  - (i) the State and the Contracting Parties are unable to reach agreement under clause 15.4(a);
  - (ii) the State, the Contracting Parties and the nominated Employment Service Provider are unable to reach agreement under clause 15.4(b); or
  - (iii) the Employment Service Provider breaches the terms of the agreement under clause 15.4(b) or ceases to exist and a replacement Employment Service Provider is not appointed in the same manner under clause 15.4(a).

## **16. PROONENTS OBLIGATIONS FOR ABORIGINAL EMPLOYMENT AND ENTERPRISE**

### **16.1 Employment and Enterprise Obligations**

For so long as a Proponent holds a lease in land in the Industrial Estate the Proponent must use reasonable endeavours to promote direct or indirect employment of local Aboriginal persons in accordance with the following:

- (a) the Proponent must comply with the Employment Strategy developed by the Proponent and lodged with the Employment Service Provider under clause 16.2;
- (b) the Proponent will use reasonable endeavours to ensure that, where work is contracted by the Proponent to a contractor, the Proponent's contractor will comply with any relevant requirements of the Proponent's Employment Strategy;
- (c) the Proponent must give consideration to sponsoring employment opportunities for Available Persons not directly related to the Proponent's Industrial Project that are deemed important by the Contracting Parties and notified to the Proponent by the Employment Service Provider;
- (d) the Proponent must give consideration to sponsoring programs that have social and community outcomes that are considered a priority by the Contracting Parties and the Roebourne Aboriginal Community (for example recreation for youth, cultural exploration, oral history projects) and notified to the Proponent by the Employment Service Provider;

- (e) the Proponent must give consideration to providing employment based training opportunities to Available Persons that are notified to the Proponent by the Employment Service Provider;
- (f) the Proponent must provide a six (6) monthly report (with the first report to be provided six (6) months after the date of the Employment Strategy) to the Employment Service Provider in respect of the Proponent's obligations under this clause 16.1;
- (g) the Proponent must offer interviews to qualified local Aboriginal persons who have applied for an employment opportunity referred to in clause 16.1(h);
- (h) as soon as possible after the Proponent has provided the Employment Strategy to the Employment Service Provider, the Proponent must provide the Employment Service Provider with information in respect of potential tenders for goods and services, employment positions (including provisions of the description of employment positions, including tenure, status, selection criteria and required qualifications and experience as well as career progression opportunities) and contracting opportunities for local Aboriginal persons where it reasonably considers, based on information provided by the Employment Service Provider, that local Aboriginal persons may have the capacity to provide the goods or services, fulfil the employment position or to undertake the contracting opportunities, to the Proponent;
- (i) if there is any material change to the information provided by the Proponent under clause 16.1(h), the Proponent must provide the Employment Service Provider with that information; and
- (j) the Proponent must liaise with the Employment Service Provider in respect of the implementation of the Employment Strategy.

## **16.2 Employment Strategy**

Each Proponent must develop an Employment Strategy in consultation with the Employment Service Provider and in accordance with this clause:

- (a) within three (3) months of the commencement date of the relevant Proponent's lease or within three (3) months before the commencement of construction of the Proponent's Industrial Project, whichever is the earlier, the Proponent must prepare and provide a written Employment Strategy for available employment and training opportunities in relation to the construction and commissioning of the Proponent's Industrial Project, to the Employment Service Provider and the Contracting Parties;
- (b) at least six (6) months prior to the estimated Production Date of the Proponent's Industrial Project, the Proponent must prepare and provide Employment Strategy for available employment and training opportunities in relation to the operation of the Proponent's Industrial Project, to the Employment Service Provider and the Contracting Parties;

- (c) nothing in this clause 16.2 prevents the Proponent amending or varying the Proponent's Employment Strategy in consultation with the Employment Service Provider. If a Proponent amends or varies the Proponent's Employment Strategy, that Proponent must provide a copy of the amended or varied Proponent's Employment Strategy to the Employment Service Provider and the Contracting Parties within ten (10) Business Days after the amendment or variation;
- (d) for the purposes of clauses 16.2(a) and (b), the Proponent must notify the Employment Service Provider of the Proponent's estimated date of commencement of construction of the Proponent's Industrial Project and the estimated Production Date of the Proponent's Industrial Project as early as possible before those dates, and in any event, no later than six (6) months prior to those dates; and
- (e) nothing in clause 16.2(d) prevents the Proponent from changing the Proponent's estimated date of commencement of construction of the Proponent's Industrial Project or the estimated Production Date of the Proponent's Industrial Project, as the case may be. In such case, the Proponent must notify the Employment Service Provider of such change as soon as the Proponent becomes aware of such change.

### **16.3 Levy Payable after the Production Date**

- (a) On and from the Production Date, Proponents must pay the Levy:
  - (i) to the State;
  - (ii) at the same time the Proponent is required to provide the Employment Statement under clause 16.3(b); and
  - (iii) for so long as the Proponent holds the relevant lease,

provided that where the Levy calculated in accordance with this clause for a Proponent in any year would be a negative amount, that amount may be set off against the Levy that would otherwise be payable by that Proponent in any subsequent year.
- (b) Each Proponent must provide to the State and the Employment Service Provider, within twenty (20) Business Days after the Production Date and thereafter, after each anniversary of the Production Date, a statement certified by the Proponent setting out the following details for the preceding Production Period:
  - (i) the number of full time equivalent employees who have been employed on site directly by the Proponent, any related company or its contractors and subcontractors but not including any persons employed or engaged:
    - (A) for the construction and commissioning of the Industrial Project or the Proponent's business, as the case may be; or

- (B) for the construction and commissioning of any extension or addition to the Industrial Project or the Proponent's business, as the case may be; or
  - (C) for major maintenance and repairs relating to the Industrial Project during a shutdown of the Industrial Project for a period of one (1) day or more.
- (ii) the number of local Aboriginal persons who have been employed directly by the Proponent, any related company or its contractors and subcontractors; and
  - (iii) the Levy payable by the Proponent.

## **17. APPROVED BODY CORPORATE**

### **17.1 Establishment of Approved Body Corporate**

The Contracting Parties must incorporate the Approved Body Corporate in accordance with this clause 17 as soon as practicable after the execution of this deed in accordance with clause 2.1 and agree with each other to do so in accordance with the process set out in clauses 17.3(b) and 17.4.

### **17.2 Appointment of ABC Consultant**

- (a) The State will provide funding up to \$150,000 for the engagement of a consultant, nominated by the State after consultation with the Contracting Parties ("ABC Consultant").
- (b) The ABC Consultant will be engaged by the State:
  - (i) to establish and incorporate the Approved Body Corporate for and on behalf of the Contracting Parties in accordance with this clause 17; and
  - (ii) as soon as practicable after the execution of this deed in accordance with clause 2.1,

and the State will ensure that the terms of the appointment of the ABC Consultant require the ABC Consultant to comply with the process set out in clauses 17.3(b) and 17.4.

### **17.3 Membership of Approved Body Corporate**

- (a) Membership of the Approved Body Corporate must:
  - (i) be open to all Contracting Parties and members of the Contracting Claim Groups who are 18 years or over ("Eligible Persons"); and

- (ii) consist only of members who are Eligible Persons.
- (b) The ABC Consultant must, at the commencement of the consultancy:
  - (i) request from each Contracting Party a list of names, addresses and telephone numbers of all Eligible Persons belonging to the Contracting Claim Group of the Contracting Party;
  - (ii) establish a list of the Contracting Parties and Eligible Persons of each Contracting Claim Group and provide copies of that list to each Contracting Party; and
  - (iii) convene a meeting to be attended by as many Eligible Persons as possible to:
    - (A) resolve any dispute raised by a Contracting Party as to the entitlement of any person to be an Eligible Person; and
    - (B) determine whether future meetings to be convened for the purposes of establishing the Approved Body Corporate can be convened with representatives of the Eligible Persons.

#### **17.4 Process for Establishment of Approved Body Corporate**

- (a) The ABC Consultant shall be responsible for the establishment and incorporation of the Approved Body Corporate for and on behalf of the Contracting Claim Groups.
- (b) In incorporating the Approved Body Corporate, the ABC Consultant must consult with, and obtain the approval of, the Eligible Persons to establish the procedure for determining:
  - (i) the rules and objects of the Approved Body Corporate; and
  - (ii) the appointment of the first governing committee of the Approved Body Corporate.
- (c) If no procedure is established under clause 17.4(b), the matters in clauses 17.4(b)(i) and (ii) will be determined by the agreement of the simple majority of all Eligible Persons, or of their representatives, as the case may be.
- (d) Notice of all meetings must be in writing and received by the Eligible Persons, or their representatives, as the case may be, not less than ten (10) Business Days prior to the meeting or such other period as approved by a simple majority of the Eligible Persons.
- (e) All meetings will be conducted in Roebourne unless otherwise approved by a simple majority of the Eligible Persons.

#### **17.5 Rules and Objects**

The Approved Body Corporate must be established on such terms and conditions as first approved by the State, which approval must not be unreasonably withheld, and the rules and objects of the Approved Body Corporate must:

- (a) include a power to grant, and for the exercise of, a power of attorney for the completion, execution and registration of instruments and other documents against the certificate of title for land held by the Approved Body Corporate;
- (b) provide for the Approved Body Corporate to conduct an audit of its financial records at least once each year;
- (c) provide for the Approved Body Corporate to operate for purposes including the following:
  - (i) carrying out the rights and obligations of the Contracting Parties in accordance with the Ratification Deed;
  - (ii) taking the transfer of the freehold title to the Burrup Non-Industrial Land;
  - (iii) receiving, holding, managing, and investing on trust for the Contracting Claim Groups the moneys payable under this deed and any Undertakings and any income thereof;
  - (iv) at its discretion, allocating and distributing moneys for the general welfare of the Contracting Claim Groups for matters including:
    - (A) cultural development activities;
    - (B) education (including, bursaries, scholarships for secondary and tertiary studies);
    - (C) transportation, relief housing and resettlement of members of the Contracting Claim Groups in their traditional country;
    - (D) housing of members of the Contracting Claim Groups who are aged, sick or in need of special assistance;
    - (E) medical assistance and health related issues;
    - (F) sporting assistance;
    - (G) relief of poverty;
    - (H) child care and care for the aged and disabled;
    - (I) provision of community and social infrastructure;

- (J) business development or participation in local or regional contracting opportunities; and
  - (K) assisting the members of the Contracting Claim Groups to carry out their rights and responsibilities under this deed;
  - (v) encouraging the development of projects consistent with the purposes in clause 17.5(a)(iv) by members of the Contracting Claim Groups by providing, at its discretion and without limitation, loans, grants, goods or services; and
  - (vi) ensuring that the benefits arising from this deed are used and distributed equitably amongst the members of the Contracting Claim Groups having regard to the needs and priorities of those members both individually and collectively; and
- (d) not be amended in a manner inconsistent with this clause 17 without the prior approval of the State, which approval must not be unreasonably withheld.

## **17.6 Provision of Funding**

- (a) The State will provide, subject to the provision of a tax invoice that complies with the GST Act, \$100,000 per annum for four (4) years to the Approved Body Corporate for the operation of the corporation provided that such payment will only be due and payable:
  - (i) on the occurrence of both the Ratification Date and the earlier of the Acquisition Date or the Satisfaction Date; and
  - (ii) thereafter on the first, second and third anniversaries of the payment in paragraph (i) above.
- (b) Any unspent portion of the amount referred to in clause 17.2(a) shall be paid to the Approved Body Corporate on the first anniversary of the Ratification Date.

## **17.7 Ratification Deed**

- (a) As soon as possible after the Approved Body Corporate is established, the Contracting Parties shall procure the Approved Body Corporate to enter into a deed with the State in which:
  - (i) on and from the date of the deed, the Approved Body Corporate agrees to have the same rights, and owe the same obligations as the Contracting Parties as if references in this deed to the Contracting Parties were references to the Approved Body Corporate;
  - (ii) on and from the date of the deed, the State shall have the same rights, and owe the same obligations to, the Approved Body

Corporate as if references in this deed to the Contracting Parties were references to the Approved Body Corporate; and

- (iii) on and from the date of the deed, the Approved Body Corporate shall have the rights of and owe the obligations of the Approved Body Corporate in accordance with the terms of this deed.
- (b) The Contracting Parties agree that, on and from the Ratification Date:
- (i) the State, LandCorp, a Proponent or any other person referred to under this deed or under an Undertaking ceases to owe any obligation to the Contracting Parties; and
  - (ii) the Contracting Parties will not commence any proceedings against the State, LandCorp or a Proponent in respect of anything done or not done by the State, LandCorp or the Proponent, as the case may be, under this deed or under an Undertaking and this deed may be pleaded as a bar to any such proceedings.

## **17.8 GST**

The Approved Body Corporate must, prior to the Ratification Date, register for GST purposes and be capable of issuing tax invoices.

## **18. EDUCATION**

The State will pay \$75,000 per annum for two (2) years, with the first payment on the Ratification Date and the second payment on the first anniversary of the Ratification Date, to the Approved Body Corporate for the following purposes:

- (a) support of students to realise school, vocational education and training and tertiary education ambitions;
- (b) creation of a cohesive pathway between primary, secondary, vocational education and training and tertiary sectors; and
- (c) introduction of cultural matters as appropriate.

## **19. ABORIGINAL HERITAGE**

### **19.1 Notification**

Prior to:

- (a) the grant of a lease to a Proponent or the transfer of freehold title to a Purchaser within the Industrial Estate; or
- (b) the development of any Parcel (as defined under clause 6.4) or in respect of any development of a Public Purpose Lot (as defined under clause 6.4), within the Karratha Land by any person ("Developer"),

the State will, in respect of the land the subject of the lease, freehold or development, as the case may be:

- (i) advise the Proponent, Purchaser or the Developer in writing of the obligations under the *Aboriginal Heritage Act 1972* (WA);
- (ii) subject to confidentiality obligations and all laws, provide the Proponent, Purchaser or the Developer with copies of relevant reports of surveys in respect of Aboriginal sites within the Industrial Estate or the Karratha Land, as the case may be, performed after September 2001 and in the possession of the State; and
- (iii) refer the Proponent or the Developer to the Heritage Policies.

## **19.2 Ground Disturbing Activities by State**

If the State:

- (a) is planning a development in the Karratha Land; or
- (b) intends to conduct ground disturbing works in the Industrial Estate or the Karratha Land,

then the State must comply with the Heritage Policies.

## **20. CONDITIONS**

### **20.1 Section 41 Conditions**

Clauses 7, 14, 17.7, 21.2, 23, 24, 25, 26 and 27 of this deed constitute conditions for the purposes of sections 41(1) and 41(2) of the *Native Title Act*, and all persons in the native title claim group are taken to be parties in respect of those clauses.

### **20.2 Contractual Terms**

The terms of this deed are contractual terms between the parties and are not conditions precedent nor conditions subsequent to the agreement of the Contracting Parties to anything under clauses 5, 6.1, 6.2, 6.3 and 7.

## **21. MANNER OF PAYMENT**

### **21.1 To Whom Payment is Made**

Subject to clause 21.2, any payment under this deed expressed to be made or expressed to be payable by any person to the Contracting Parties or the Approved Body Corporate:

- (a) if the Approved Body Corporate has not been incorporated at the time the relevant payment is due or the Approved Body Corporate has been

incorporated and the Ratification Date has not occurred, must be held on trust:

- (i) for and on behalf of the Contracting Parties; and
- (ii) in an interest bearing trust account held by the Department of Treasury and Finance,

and the Contracting Parties hereby direct:

- (iii) where GST is or becomes payable by any or all of the Contracting Parties in relation to any supply made under or in connection with or resulting from this deed and each of the Contracting Parties with a GST liability provides to the Department of Treasury and Finance a copy of its completed Business Activity Statement in the form, and satisfying the requirements, as specified by the Commissioner of Taxation to establish the amount of GST liability, the Department of Treasury and Finance to pay that part of the funds equivalent to the GST liability as specified in the Business Activity Statements of the Contracting Parties directly to the Australian Taxation Office; and
  - (iv) the remaining funds to be paid to the Approved Body Corporate within twenty (20) Business Days after the Ratification Date;
- (b) if the Approved Body Corporate has been formed at the time the relevant payment is due and the Ratification Date has occurred, then subject to the provision of a tax invoice that complies with the GST Act, must be paid to the Approved Body Corporate; and
  - (c) if the Approved Body Corporate has been formed at the time the relevant payment is due and the Ratification Date has occurred, then payment need not be made until the person required to make the payment has been provided with a tax invoice that complies with the GST Act.

## **21.2 Ratification by Approved Body Corporate**

The State and the Contracting Parties agree that no payments are required to be made to the Approved Body Corporate under clause 21.1 unless and until the Approved Body Corporate has entered into the Ratification Deed.

## **21.3 Unspent Portions of Payments**

- (a) In respect of the State's financial obligations in relation to the Burrup Non-Industrial Land, if any maximum amounts specified in this deed have not been expended by the State within the periods specified, the unspent portions will be applied for the management of the Burrup Non-Industrial Land under the Management Agreement.
- (b) In respect of the State's financial obligations in relation to the Industrial Estate, if any maximum amounts specified in this deed have not been

expended by the State within the periods specified, the unspent or uncommitted portions will be paid to the Approved Body Corporate on the expiry of the relevant period.

## **22. NO ACKNOWLEDGMENT OF NATIVE TITLE**

By entering into this deed neither the State nor LandCorp acknowledge the existence of native title to the Area, the Additional Land, the Burrup Fertiliser Land, the Karratha Land, the Hearson Cove Land and the Burrup Non-Industrial Land.

## **23. NO FURTHER COMPENSATION**

### **23.1 Full and Final Settlement**

(a) The Contracting Parties agree that the monetary payments and other benefits provided by the State, Current Proponents or any Future Proponents under:

- (i) this deed;
- (ii) the ILUA referred to under clause 4;
- (iii) any Undertaking; and
- (iv) the agreements for the purposes of section 31 of the *Native Title Act* in relation to the Burrup Fertiliser Land,

constitute full and final settlement of any claim for compensation in respect of the extinguishment or impairment, as the case may be, of the Contracting Parties' native title rights or interests, and the native title rights or interests of all members of their respective native title claim groups, in the Area, the Additional Land, the Burrup Fertiliser Land, the Karratha Land, the Hearson Cove Land and the Burrup Non-Industrial Land.

(b) The NY, YM and YM Claimants, as the case may be, release the State from any liability for any compensation payable in respect of the extinguishment or impairment of those parties' native title rights and interests in De Witt Location 399.

(c) The WGT release the State and Methanex from any liability for any compensation payable in respect of the extinguishment or impairment of the WGT's native title rights and interests in De Witt Location 399 by reason of any act done by the State or Methanex under this deed. For the avoidance of doubt, this clause 23.1(c) does not derogate from or otherwise affect any rights the WGT may have in relation to any act done on or in relation to De Witt Location 399 prior to this deed.

### **23.2 Indemnity**

(a) If:

- (i) native title is determined to exist in any land within the Area, the Additional Land, the Burrup Fertiliser Land, the Karratha Land, the Hearson Cove Land or the Burrup Non-Industrial Land; and
- (ii) the native title holders are, or include, persons other than the Contracting Parties,

then subject to clauses 23.2(b) and 23.2(c), the Contracting Parties hereby indemnify the State and LandCorp ("Relevant Parties") in respect of any determination of compensation for loss or impairment of native title payable by the State, made by a court of competent jurisdiction or otherwise agreed with the consent of the Contracting Parties arising from any claim for compensation by the native title holders in respect of the Area, the Additional Land, the Burrup Fertiliser Land, the Karratha Land, the Hearson Cove Land or the Burrup Non-Industrial Land ("Indemnified Amount").

- (b) If any Relevant Party is entitled to any Indemnified Amount then upon notice by the Relevant Party to the Contracting Parties:
  - (i) the Contracting Parties hereby direct to the Relevant Party any payments to be made by any Proponent to the Contracting Parties or the Approved Body Corporate, as the case may be, and assign to the State the rights of the Contracting Parties or the Approved Body Corporate, as the case may be, in respect of the Karratha Land under this deed to the State, to the extent of the Indemnified Amount; and
  - (ii) the Contracting Parties, hereby agree that the Relevant Party may set off against the Indemnified Amount any amount payable by the State under clause 8.1 and any amounts payable in respect of Proponents and Purchasers.
- (c) To the extent to which the State has paid any monies under clause 8.1 or in respect of any Proponent or Purchaser, the State may recover the Indemnified Amount from the Contracting Parties as a debt owing from the Contracting Parties to the State.
- (d) The Relevant Parties agree that their rights in respect of the Indemnified Amount are limited to the rights specified under clauses 23.2(b) and 23.2(c).
- (e) The Contracting Parties hereby release the State in respect of any loss or damage suffered or incurred by the Contracting Parties or the Approved Body Corporate, or both of them, arising from any claim for compensation for loss or impairment of native title rights and interests by the native title holders in respect of the Area, the Additional Land, the Burrup Fertiliser Land, the Karratha Land, the Hearson Cove Land or the Burrup Non-Industrial Land.
- (f) The Contracting Parties agree that they will not, and will not authorise any person to, make a compensation application under the *Native Title Act*, or to make a claim for compensation under the *Land Administration Act*, in

respect of the loss or impairment of native title rights and interests in the Area, the Additional Land, the Burrup Fertilisers Land, the Karratha Land, the Hearson Cove Land or the Burrup Non-Industrial Land, and this clause may be pleaded as a bar to any such proceedings.

**24. STATE NOT LIABLE**

Each Contracting Party acknowledges and agrees that, except as provided in clauses 9 and 10, neither the State, LandCorp, nor their officers, employees or agents have any obligations or liability whatsoever in connection with the rights and obligations of the Contracting Parties or the Approved Body Corporate under:

- (a) any Undertaking; or
- (b) any agreement between a Contracting Party and a Proponent.

**25. VALIDITY OF NOTICES**

Each Contracting Party:

- (a) acknowledges that the notices issued under the *Native Title Act* and the *Land Administration Act* in relation to land including the Area, the Additional Land, the Burrup Fertiliser Land, the Karratha Land and the Hearson Cove Land are valid; and
- (b) agrees that this clause may be pleaded by the State as a bar to any proceedings by the Contracting Parties challenging the validity of the notices referred to in paragraph (a) above or the validity or enforceability of this deed in respect of those notices.

**26. INDEPENDENT ADVICE**

Each Contracting Party severally represents and warrants to the State:

- (a) that the Contracting Party has received independent legal advice in relation to the terms and conditions of this deed; and
- (b) that the Contracting Party has not, in entering his deed, relied on any statement made by the State, its officers, agents or employees in relation to any of the terms and conditions of this deed.

**27. PROCEEDINGS UNDER THE NATIVE TITLE ACT**

**27.1 Acknowledgment of Good Faith Negotiations for the Industrial Estate**

The Contracting Parties acknowledge and agree that, in accordance with Part 2 Division 3 Subdivision P of the *Native Title Act*, negotiations in good faith in respect of the compulsory acquisition of native title rights and interests in the Industrial Estate have been conducted between the State, LandCorp, Methanex and the Contracting Parties.

## **27.2 State May Apply under Section 35**

If this deed has not been entered into by each of the NY, the YM and the WGT, then the Contracting Parties acknowledge and agree that:

- (a) the State, in respect of the Industrial Estate, or either the State or Methanex, in respect of the Additional Land, may apply for a determination by the arbitral body under section 35 of the *Native Title Act* ("Section 35 Proceedings");
- (b) this deed and evidence of negotiations in respect of this deed and matters contemplated under this deed will be used in the Section 35 Proceedings;
- (c) the Contracting Parties will not allege in any Section 35 Proceedings that the State or Methanex have failed to negotiate in good faith in respect of the compulsory acquisition of any native title rights and interests in the Industrial Estate and that this deed can be pleaded as a bar to any such allegations;
- (d) the Contracting Parties will, in any Section 35 Proceedings, consent to the future act being done without any conditions; and
- (e) the Contracting Parties will (subject to payment by the State of their reasonable costs and expenses including legal costs) support the State or Methanex or both of them, as the case requires, in respect of any challenge in the Section 35 Proceedings brought on the grounds that the State or Methanex or both of them, have failed to negotiate in good faith.

## **27.3 Acknowledgment of Consultation in respect of Karratha Land**

The Contracting Parties acknowledge that, in accordance with section 24MD(6B)(e) of the *Native Title Act*, consultation required under that section has been conducted in respect of the Karratha Land.

## **27.4 Proceedings under Section 24MD(6B)**

If this deed has not been entered into by each of the NY, the YM and the WGT, then the Contracting Parties acknowledge and agree that:

- (a) on the request of the State, the Contracting Parties will refer the objections for hearing by the Independent Person under section 24MD(6B) ("Section 24MD Proceedings");
- (b) the State may refer the objections for hearing by the Independent Person under section 24MD(6B);
- (c) this deed and evidence of negotiations in respect of this deed and matters contemplated under this deed will be used in the Section 24MD Proceedings;

- (d) the Contracting Parties will not allege in any Section 24MD Proceedings that the relevant parties for the purposes of section 24MD have failed to consult and that this deed can be pleaded as a bar to any such allegations;
- (e) the Contracting Parties will, in any Section 24MD Proceedings, consent to the future act being done without any conditions; and
- (f) the Contracting Parties will (subject to payment by the State of their reasonable costs and expenses including legal costs) support the State in respect of any challenge in the Section 24MD Proceedings brought on the grounds that the relevant parties under section 24MD have failed to consult.

## **28. RULE AGAINST PERPETUITIES**

If any thing to be done under this deed offends the rule against perpetuities, then to the extent necessary so as to not offend that rule, the parties agree that the relevant provisions in this deed shall be deemed to expire eighty (80) years from the date this deed takes effect in accordance with clause 2.1.

## **29. VALUATIONS UNDER THIS DEED**

### **29.1 Application of this Clause**

This clause applies to all valuations required under this deed.

### **29.2 Principles for Obtaining Valuation**

Valuations under this deed will be:

- (a) subject to clause 29.2(b), the valuation determined by the Valuer General of Western Australia in accordance with the Valuation Principles and as notified by the State to the Contracting Parties; or
- (b) if within fifteen (15) Business Days after the receipt of the valuation referred to in clause 29.2(a), the Contracting Parties gives notice that they require clause 29.3 to apply, then subject to clause 29.2(c) and clause 29.3(b), the valuation will be the amount equivalent to the mean of the valuations of:
  - (i) the valuation determined by the Valuer General of Western Australia in accordance with clause 29.2(a); and
  - (ii) the valuation determined by an Independent Valuer appointed in accordance with clause 29.3(a),

in accordance with the relevant Valuation Principles; and

- (c) if the difference between the valuations referred to in clause 29.2(b) exceeds 10% of the valuation under clause 29.2(a), then the State or the Contracting Parties may give notice to the other, within fifteen (15) Business Days after

receipt of the valuation referred to in clause 29.2(b)(ii), that this clause 29.2(c) is to apply. If such notice is given then:

- (i) the party who gave the notice must request the President for the time being of the Australian Property Institute to nominate a second Independent Valuer;
- (ii) the party who gave the notice must appoint the second Independent Valuer so nominated within fifteen (15) Business Days of that party receiving the nomination;
- (iii) the valuation shall be the amount determined by the second Independent Valuer appointed in accordance with clause 29.2(c)(ii);
- (iv) the second Independent Valuer referred to in this clause 29.2(c) must determine the valuation in accordance with the Valuation Principles and take into account the valuations referred to in clause 29.2(b); and
- (v) the valuation by the second Independent Valuer shall be final; but
- (vi) if the second Independent Valuer is not appointed within the fifteen (15) Business Days referred to in clause 29.2(c)(ii), or if clause 29.4 is not satisfied, then the valuation shall be the valuation under clause 29.2(b).

### **29.3 Principles for Appointing Independent Valuer under clause 29.2(b)**

- (a) The Contracting Parties must appoint an Independent Valuer for the purposes of clause 29.2(b) and give notice to the State of that appointment within fifteen (15) Business Days after the Contracting Parties's notice referred to in clause 29.2(b).
- (b) If:
  - (i) the Contracting Parties fail to appoint and give the notice referred to in clause 29.3(a); or
  - (ii) clause 29.4 is not satisfied in respect of the valuation to be carried out under clause 29.2(b)(ii),

then the valuation will be the valuation determined under clause 29.2(a).

### **29.4 Conduct of Valuations**

All valuations conducted by an Independent Valuer under this clause must be concluded and a copy provided to the State and the Contracting Parties within thirty five (35) Business Days after the date of the Independent Valuer's appointment.

### **29.5 Costs of Valuations**

- (a) In respect of valuations conducted by an Independent Valuer for land within the Industrial Estate, the State shall bear the reasonable costs of the valuation.
- (b) In respect of the valuations conducted by an Independent Valuer for land within the Karratha Land:
  - (i) the Contracting Parties shall bear the costs of the first Independent Valuer, or indemnify the State in respect of such costs if the State elects to pay the costs of the Independent Valuer;
  - (ii) if the valuation conducted by the Valuer General of Western Australia is less than or greater than the valuation conducted by the second Independent Valuer by more than 10% of the valuation by the second Independent Valuer, the State shall bear the costs of the second Independent Valuer. If the Contracting Parties have paid the costs of the second Independent Valuer then the State indemnifies the Contracting Parties in respect of the reasonable costs of the second Independent Valuer;
  - (iii) if the valuation conducted by the first Independent Valuer appointed by the Approved Body Corporate is less than or greater than the valuation conducted by the second Independent Valuer by more than 10% of the valuation by the second Independent Valuer, the Contracting Parties shall bear the costs of the second Independent Valuer. If the State has paid the costs of the second Independent Valuer then the Contracting Parties indemnify the State in respect of the reasonable costs of the second Independent Valuer; and
  - (iv) if both the valuation by the Valuer General and the first Independent Valuer is less than or greater than the valuation conducted by the second Independent Valuer by more than 10% of the valuation by the second Independent Valuer, the State and the Contracting Parties shall share equally the costs of the second Independent Valuer, and the State and the Contracting Parties indemnify each other to the extent of an equal share of the reasonable costs of the second Independent Valuer.

## **29.6 Principles of Valuation**

- (a) In respect of valuations for the Industrial Estate, valuations will be the **unimproved value** of the land, determined in accordance with the following principles:
  - (i) it will be the unimproved market value of the land in its natural or virgin state but taking into account existing surrounding services, facilities off the land and amenities including any potential utility or detriments inherent with the location, but excluding any

- improvements to the land including existing facilities or clearing, levelling, drainage, contour or retaining walls;
- (ii) the market value will be determined by the amount for which the land would sell if it was unencumbered freehold land, sold at the specific date on the open market, where both buyer and seller were informed of all factors affecting the land value and negotiations were carried out at arms' length, in a prudent and business like manner and inclusive of GST;
  - (iii) taking into account the purpose for which the land is intended to be used; and
  - (iv) where valuation of the market rental is required, it will be capitalised at a rate to be determined by the valuer; but
  - (v) not taking into account the obligations under this deed or any Undertaking to pay the Contracting Parties or the Approved Body Corporate, as the case may be, in respect of leases granted to Proponents and freehold title transferred to Purchasers.
- (b) In respect of valuations for Developed Lots in the Karratha Land, valuations will be the **site value** of the land as an estate in fee simple, determined in accordance with the following principles:
- (i) assuming it is vacant, unencumbered and sold at the specific date on the open market, where both buyer and seller were informed of all factors affecting the land, and negotiations were carried out at arms' length, in a prudent and business like manner;
  - (ii) no improvements have been made to the Developed Lot, other than Merged Improvements. **Merged Improvements** means any works in the nature of draining, filling, excavation, grading or levelling of the land, retaining walls or other structures or works for that purpose, the removal of rocks, stone, soil and the clearing of timber, scrub or other vegetation;
  - (iii) assuming the Developed Lot may be used for the highest and best use for which it is permitted to be used under any relevant town planning scheme or other written law;
  - (iv) assuming the subdivision development of the Parcel or Stage, as the case may be, of which the Developed Lot forms part has been completed;
  - (v) taking into account the services (including roads, power, gas, telecommunications, water reticulation, sewerage and drainage) and other infrastructure on land adjoining or in the vicinity of the Developed Lot that are available for use by or for the benefit of the Developed Lot;

- (vi) where the Developed Lot is being developed for residential purposes, exclusive of GST; and
- (vii) where the Developed Lot is being developed for any purpose other than residential, inclusive of GST; but
- (viii) not taking into account the State's obligations under this deed for land in the Karratha Land to be transferred or to make payments in respect of the Karratha Land; and
- (ix) in respect of valuations for a Developed Lot that is further subdivided, by the same Registered Proprietor as part of the subdivision development under the *Strata Titles Act 1985* (WA) into:
  - (A) Strata Lots, then the land the subject of the strata plan will be valued as a whole according to its **site value**, as an estate in fee simple in the land in the manner provided for in paragraphs (i) to (viii) above but also:
    - (1) assuming the strata plan is registered; and
    - (2) taking into account any services and infrastructure on any common property in the strata scheme; and
  - (B) Survey-Strata Lots, each Survey-Strata Lot will be valued as a separate parcel according to the **site value** of that Survey-Strata Lot as an estate in fee simple in the land in the manner provided for in paragraphs (i) to (viii) above but also:
    - (1) assuming the survey-strata plan is registered; and
    - (2) taking into account any services and infrastructure on any Common Property Lot.

In this clause:

**Common Property Lot** means any lot shown as common property on a survey-strata plan or proposed survey-strata plan under the *Strata Titles Act 1985* (WA).

**Strata Lot** means a lot in relation to a strata scheme, as defined under the *Strata Titles Act 1985* (WA).

**Survey-Strata Lot** means a lot in relation to a survey-strata scheme, as defined under the *Strata Titles Act 1985* (WA), and any Common Property Lot.

## 30. GENERAL

### **30.1 Further Assurance**

- (a) Each party agrees at its own expense (except as otherwise provided under this deed) to do everything reasonably necessary to give effect to this deed and the matters contemplated by it.
- (b) Without limiting paragraph (a) above, the Contracting Parties agree to do all things reasonably necessary to ensure that all acquisitions made, and interests granted, by the State in reliance on the deed can promptly and validly occur, including:
  - (i) providing all necessary consents in relation to native title; and
  - (ii) directing any registered native title body corporate of which they are members to similarly do all things reasonably necessary to ensure that all acquisitions made and interests granted by the State in reliance on the deed can promptly and validly occur.

### **30.2 Notices**

- (a) A notice or other communication in connection with this deed:
  - (i) must be in writing;
  - (ii) in respect of notices by the State or LandCorp, may be given by an authorised officer on behalf of the State or LandCorp, as the case may be; and
  - (iii) must be:
    - (A) sent by prepaid ordinary post to, or left at the address of, the addressee at the address set out in Schedule 1, or such other address as varied by a party from time to time by notice to the other parties; or
    - (B) sent by facsimile to the facsimile number of the addressee set out in Schedule 1, or such other number as varied by a party from time to time by notice to the other parties.
- (b) A notice takes effect from the time it is received, unless a later time is specified in the notice. For the purposes of this clause a letter or facsimile is taken to be received:
  - (i) in the case of a letter sent by post, on the third Business Day after posting;
  - (ii) in the case of a facsimile, on the day the facsimile machine from which the notice was sent produces a transmission report which shows that the entire facsimile was sent to the facsimile number of the addressee set out in Schedule 1; and

- (iii) if received after 5.00 pm, is taken to be received on the next Business Day.
- (c) Any notice to be given by the Contracting Parties under this deed may only be given by their authorised representative set out in Schedule 1, or such other address as varied by notice to the other parties.

### **30.3 No Right to Terminate**

The parties agree that, subject to clause 2.4, no breach of the terms of this deed will give to any other party the right to terminate or rescind this deed, but that party may exercise any right or remedy otherwise available to it in respect of such breach.

### **30.4 Assignment**

Subject to clause 23.2(b)(i), the Contracting Parties may not assign any right, title or interest arising from any matter under this deed without the prior consent of the State.

### **30.5 Waiver**

- (a) No right under this deed shall be deemed to be waived except by notice in writing signed by the party waiving the right.
- (b) The waiver of a right by a party will not prejudice that party's other rights or future rights in respect of the right waived.
- (c) Subject to clause 30.5(a), any failure by a party to enforce any right under this deed, or any forbearance, delay or indulgence granted by one party to another party will not be construed as a waiver of rights under this deed.

### **30.6 Variation**

No modification, amendment or other variation of this deed shall be valid or binding on a party unless made in writing duly executed by that party.

### **30.7 Entire Agreement**

This deed contains the entire agreement between the parties relating to the matters contemplated under this deed, and supersedes any and all previous negotiations, representations, warranties, undertakings, proposals, understandings and agreements whether written or oral, and may only be added to, varied or amended by written agreement signed by the parties concerned.

### **30.8 Severability**

- (a) Subject to clauses 2.4 and 30.8(b), if any provision of this deed is void, voidable by any Party, unenforceable or illegal according to the law in force in the State of Western Australia, it shall be read down so as to be valid and enforceable or if it cannot be so read down, the provision (or where possible

the offending words), shall be severed from this deed without affecting the validity, legality or enforceability of the remaining provisions (or parts of those provisions) of this deed which will continue in full force and effect.

- (b) If for any reason clause 6.1 of this deed is void, voidable by any Party, unenforceable or illegal then the provisions of clause 6 shall be severed from this deed without affecting the validity, legality or enforceability of the remaining provisions (or parts of those provisions) of this deed which will continue in full force and effect.

### **30.9 Governing Law**

This deed is governed by the law in force in the State of Western Australia and the Parties submit to the non-exclusive jurisdiction of the courts of Western Australia and the appeal courts from those courts.

### **30.10 Counterparts**

This deed may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

## **31. GST**

### **31.1 Interpretation**

In this clause 31:

**Recipient** has the meaning in clause 31.3

**Supplier** has the meaning in clause 31.3

Any terms used in this clause 31 that are defined in the GST Act have their respective meanings given to each of those terms in Section 195 of the GST Act or elsewhere in the GST Act.

### **31.2 Amounts Exclusive of GST**

All prices or other amounts fixed or determined under, or referred to in, this deed are exclusive of GST, except where expressly provided to the contrary in a particular provision of this deed.

### **31.3 GST Payable**

If GST is or becomes payable by a supplier in relation to any supply that it makes under, in connection with or resulting from this deed, the parties agree that, in addition to any consideration provided by a party to this deed ("Recipient") for a supply from another party ("Supplier"), the Recipient must pay to the Supplier:

- (a) at the same time as the relevant consideration or any part of it is provided; or

- (b) if the Supplier is required under the GST Act to pay GST prior to receiving the relevant consideration for the supply, then within two (2) Business Days of the Supplier's due date for payment of the GST liability as notified by the Supplier to the Recipient in writing,

the amount of any GST for which the supplier is liable in relation to that supply ("**additional amount**"), subject to the following:

- (c) the obligation to pay the additional amount only arises once the Supplier has issued a tax invoice (or an adjustment note) to the Recipient in respect of that additional amount, subject to any agreement in writing between the Recipient and the Supplier for the Recipient to issue a recipient created tax invoice in accordance with the GST Act; and
- (d) if a Recipient is required under this deed to reimburse or pay to a Supplier an amount calculated by reference to a cost, expense or an amount paid or incurred by that Supplier, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which the Supplier is entitled in respect of any acquisition relating to that cost, expense or other amount.

#### **31.4 Supply of Land**

- (a) For the supply of land by the Supplier under, in connection with or resulting from this deed (including the Burrup Non-Industrial Land), the Supplier may in its absolute discretion elect to apply the margin scheme to that supply.
- (b) Where the Recipient of a supply of land requests that the supply be made under the margin scheme, the Supplier will consider the application of the margin scheme to the supply and advise the Recipient whether the margin scheme will be applied to the supply.

#### **31.5 Tax Applications**

If, at any time, a party ("**Applicant**") wishes to obtain a tax ruling or exemption from, or make any application to, the Commissioner of Taxation as to the application of any provision of the GST Act to a supply made under, in connection with or resulting from this deed, the Applicant may so apply and the following provisions apply:

- (a) the application will be made by the Applicant at its sole cost;
- (b) the other parties will provide such assistance as the Applicant reasonably requires:
- (i) subject to the Applicant paying the other parties' reasonable costs and expenses for providing that assistance (including legal costs and expenses); and
- (ii) provided that the other party is not of the opinion (reasonably formed) that the effect of the ruling, exemption or other application,

- if successful or granted, would have materially adverse GST consequences for the other party; and
- (c) the Applicant may or may not accept the tax ruling, or decision of the Commissioner of Taxation in relation to the application, or may appeal from it, as the Applicant decides in its absolute discretion.

### **31.6 Cooperation**

Each party agrees to use its best endeavours so that:

- (a) the other parties are not subject to disadvantage in respect of GST; and
- (b) GST is paid in a manner that is equitable to all parties,  
having regard to the GST Act.

**SCHEDULE 1**  
**PARTY DETAILS**

<b>1.1 Ngarluma Yindjibarndi - Native Title Party (Registered native title claimants)</b>	
Name:	David Daniel, Daisy Moses, David Walker, Roger Barker, Jill Churnside, Trevor Solomon and Les Hicks on behalf of the Ngaluma People; and Bruce Monadee, Woodley King, Kenny Jerrold, Mary Walker, Bruce Woodley, Michelle Adams, Jimmy Horace, Linda Ryder and Judy Albert on behalf of the Yindjibarndi People
For:	Ngarluma Yindjibarndi Native Title Claim Group
Address:	C/- Principal Legal Office, Yamatji Barna Baba Maaja Aboriginal Corporation Level 14, 256 Adelaide Terrace PERTH WA 6000 Facsimile: (08) 9225 4633
Native title determination application number:	National Native Title Tribunal Number WC99/14 Federal Court Action Number WAG 6017/96
Date entered on Register of Native Title Claims:	14 July 1999
<b>1.2 Yaburara Mardudhunera - Native Title Party (Registered native title claimants)</b>	
Name:	Valerie Holborow, Kevin Cosmos and Patricia Cooper
For:	Yaburara Mardudhunera Native Title Claim Group
Address:	C/- Williams & Co Level 1, 477 Hay Street SUBIACO WA 6008 Facsimile: (08) 9388 1352
Native title determination application number:	National Native Title Tribunal Number WC96/89 Federal Court Action Number WAG 127/97
Date entered on Register of Native Title Claims:	1 August 1996

**1.3 Wong-goo-tt-oo - Native Title Party (Registered native title claimants)**

Name:	Betty Dale, Tim Douglas, Wilfred Hicks, Ernie Ramirez and Cane Hicks
For:	Wong-goo-tt-oo Native Title Claim Group
Address:	PO Box 156, Roebourne WA 6718
Native title determination application number:	National Native Title Tribunal Number WC98/40 Federal Court Action Number WAG 6256/98
Date entered on Register of Native Title Claims:	9 April 1999

**1.4 State**

Authorised Representative:	Executive Director, Office of Native Title, Department of the Premier and Cabinet
Address:	197 St George's Terrace Perth WA 6000 Facsimile: (08) 9222 9877

**1.5 LandCorp**

Authorised Representative:	General Manager Finance and Corporate LandCorp
Address:	Level 3 Wesfarmers House 40 The Esplanade Perth WA 6000 Facsimile:

**1.6 Contracting Parties**

Authorised Representative:	
Address:	

**SCHEDULE 2**  
**ADDITIONAL LAND**

**See following**

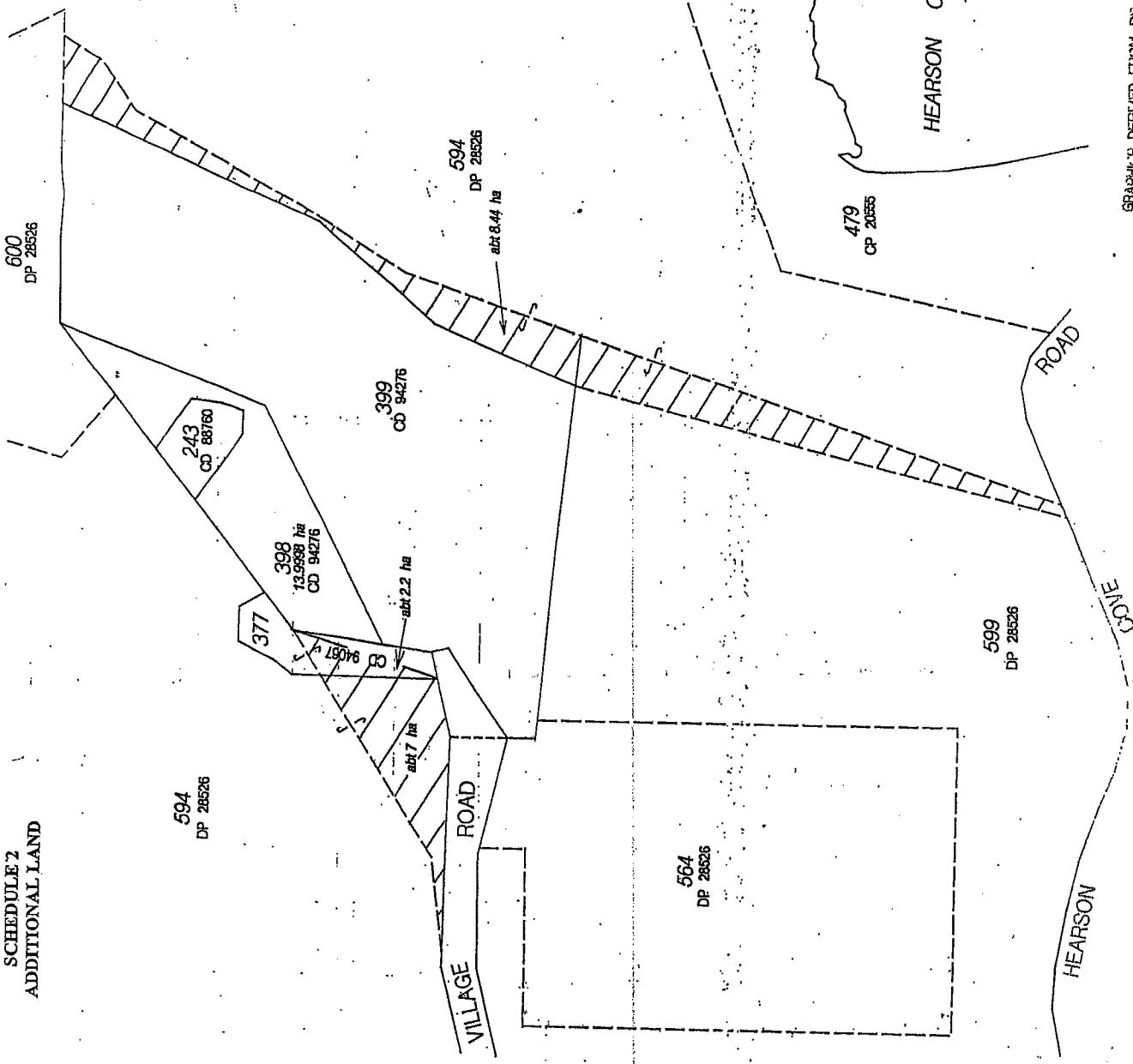
DP 30620



SCHEDULE 2 ADDITIONAL LAND	TYPE CROWN
PURPOSE PLAN OF	STATUTORY PLAN

**NOTICE OF INTENTION TO TAKE  
NATIVE TITLE ACT (COMMONWEALTH) 1993  
LAND ADMINISTRATION ACT 1997**

DISTRICT DE MITT TOWNSITE	DOLA FILE 2024/598 V7
LOCAL AUTHORITY SHIRE OF ROEBOURNE	REFERENCE
FORMER TENURE	ON BHES fol 5.8 PUBLIC BHES fol 5.8
SCALE ALL DISTANCES ARE IN METRES	INDEX BHES fol 5.8 PUBLIC BHES fol 5.8
1:10000	0 100 200 300 400 500
<b>SUBJECT TO SURVEY NOT FOR ALIENATION PURPOSES</b>	
LODGED DATE ..... FEE PAYABLE ASSESS. NO. ....	TYPE OF VALIDATION FEE AUDIT, ..... COMPONENT, ..... CERTIFIED CORRECT By [Signature] Surveyor Statutory Surveyor
SURVEY FIRM DOLA - A.S. Green - 02/2001	
LEGEND	
ADDITIONAL LAND	LAND
DOLA Department of LAND ADMINISTRATION	
DEPOSITED PLAN	



GRAPHICS DERIVED FROM DP 28526 AND  
IF PERTINENT, APPLIED BY DP 30620

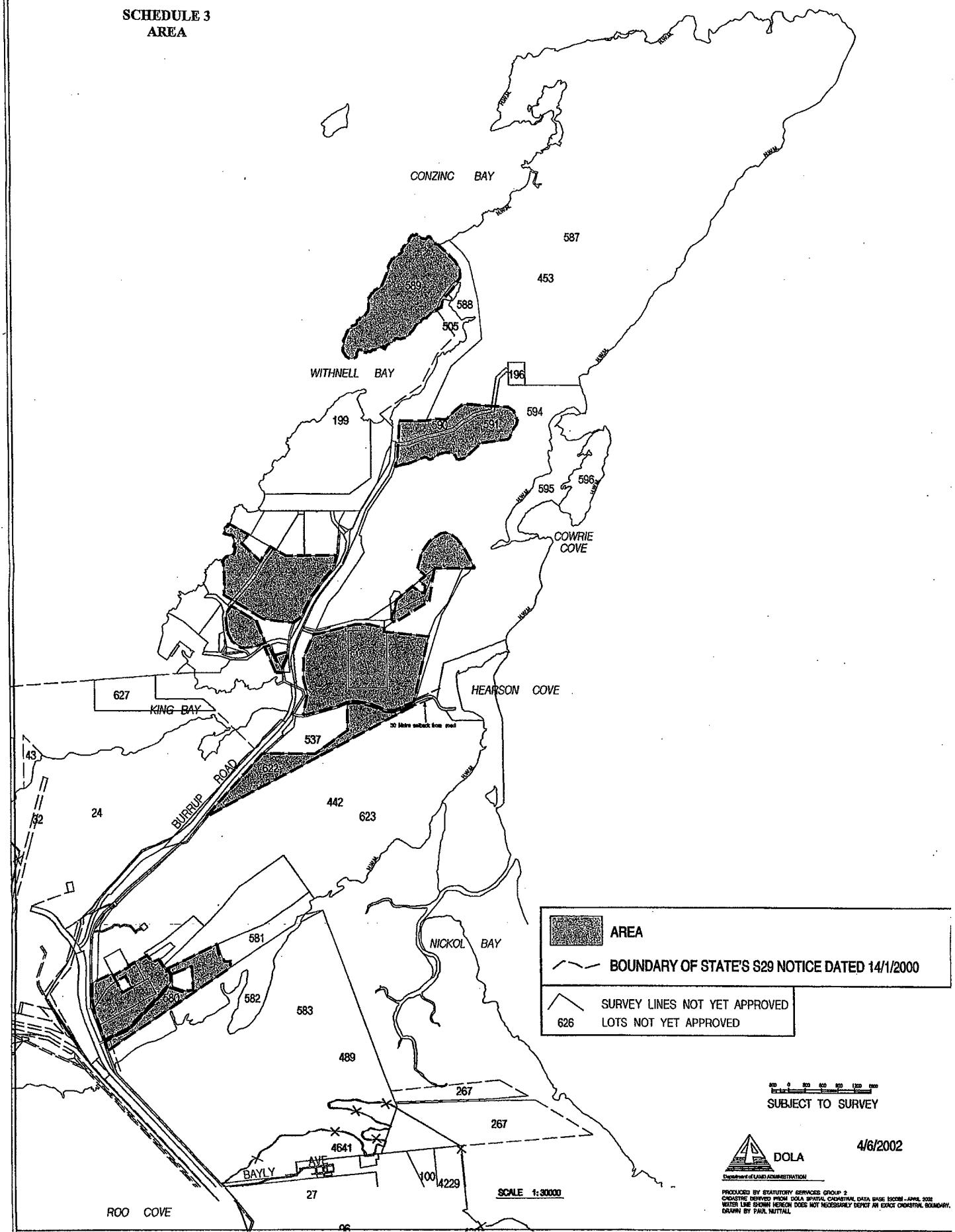
SHEET 1 OF 1  
EDITION 2 VERSION 1

**SCHEDULE 3  
AREA**

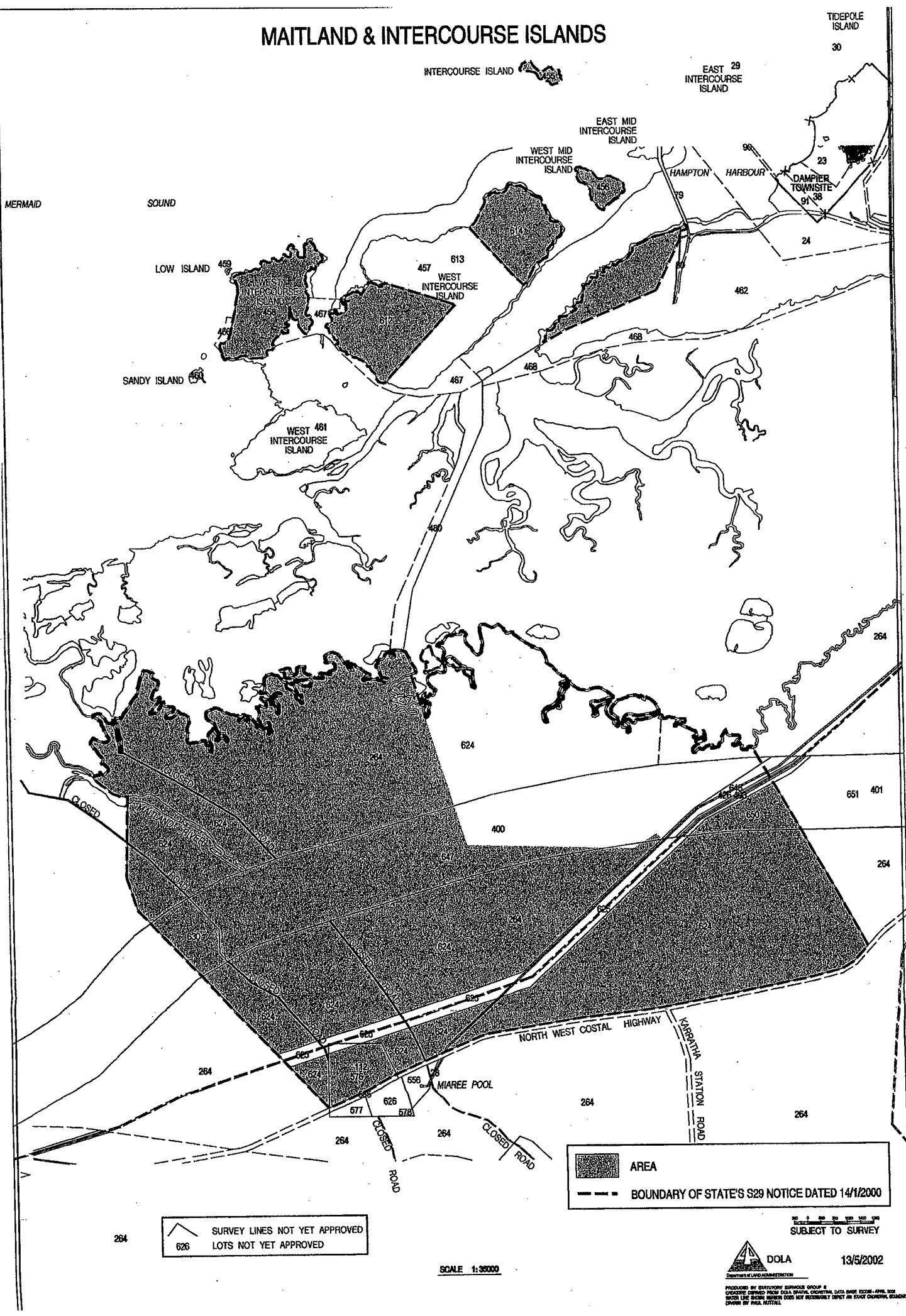
**See following**

# BURRUP PENINSULA

## SCHEDULE 3 AREA



# MAITLAND & INTERCOURSE ISLANDS



**SCHEDULE 4  
BURRUP FERTILISER LAND**

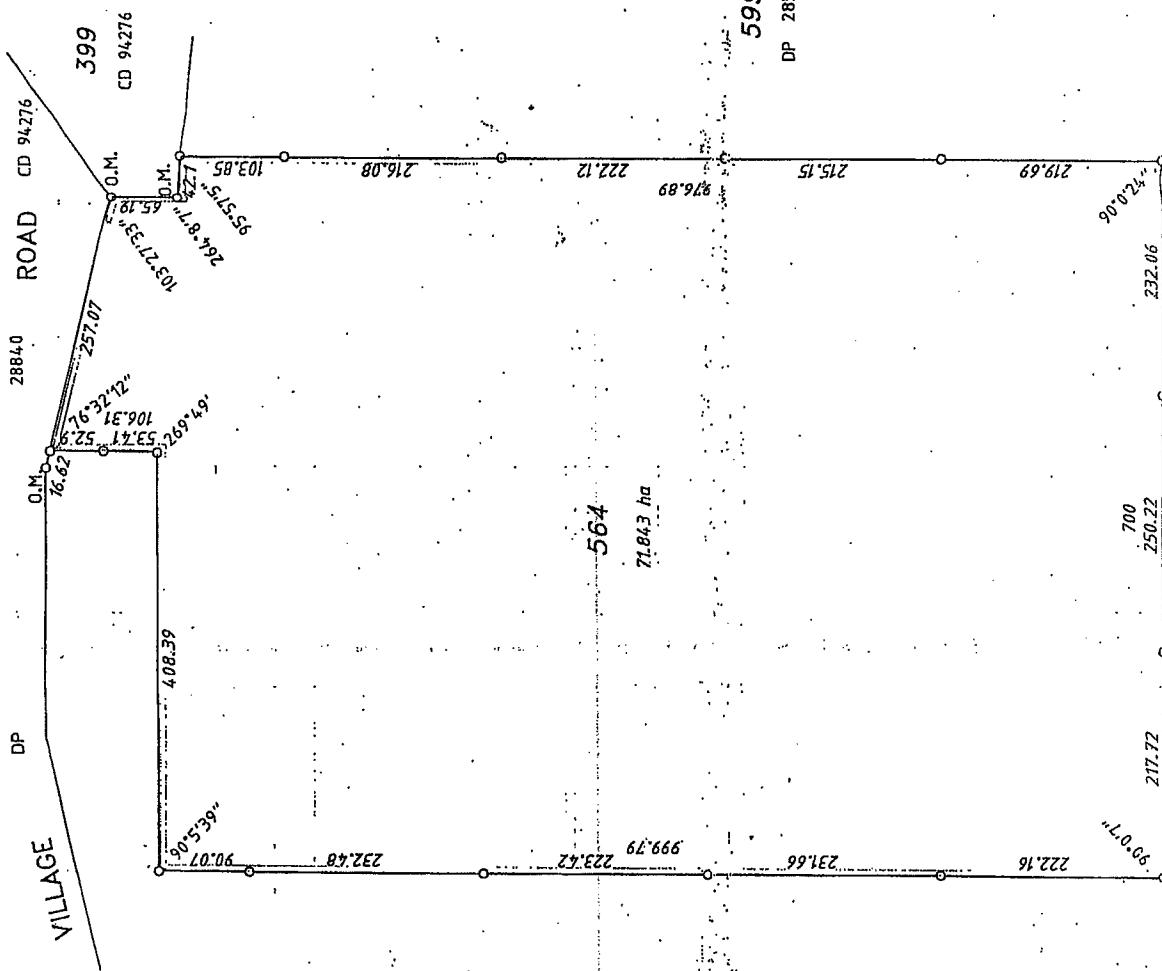
**See following**

DP 31023

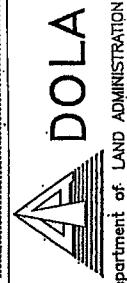


ED./VER.	AMENDMENT	BY	DATE
PURPOSE SUBDIVISION			
PLAN OF			

SCHEDULE 4  
BURRUP FERTILISER LAND



LOT 564			
DISTRICT DE WITT TOWNSITE LOCAL AUTHORITY SHIRE OF ROEBOURNE			
FORMER TENURE ON CP 20557 LR 3115/B9D	INDEX ... BH65(10) 5.B	ON PUBLIC	FIELD BOOK 86652
SCALE: 1:5000 ALL DISTANCES ARE IN METRES			
0 50 100 150 200 250m			
SURVEYOR'S CERTIFICATE - Reg 54 I, Keith J. Dyer, hereby certify that this completed plan correctly depicts the survey and/or measurements recorded in the field book, and is a true and accurate representation of the subject land; and is in accordance with the relevant law(s) in relation to which it is lodged.			
25-2-2002			
Licensed Surveyor Keith J. Dyer	Date	LICENCED SURVEYOR	
LOADED 12.3.2002	TYPE OF VALIDATION FOLIO NUMBER	FUGRO SPATIAL SOLUTIONS 18 PROSPECT STREET WEST PERTH, WA 6005 (08) 9322 4955 (08) 9322 1775 FAX. PLAN NO. LS/18860-4 RevD APPROVED BY WESTERN AUSTRALIAN PLANNING AUTHORITY FILE ... DEPARTMENT OF LAND ADMINISTRATION DATE ...	
ASSESS No. N/A	PERIOD F.S.C.		
IN ORDER FOR DEALINGS SUBJECT TO			



DEPOSITED PLAN  
Department of LAND ADMINISTRATION

31023

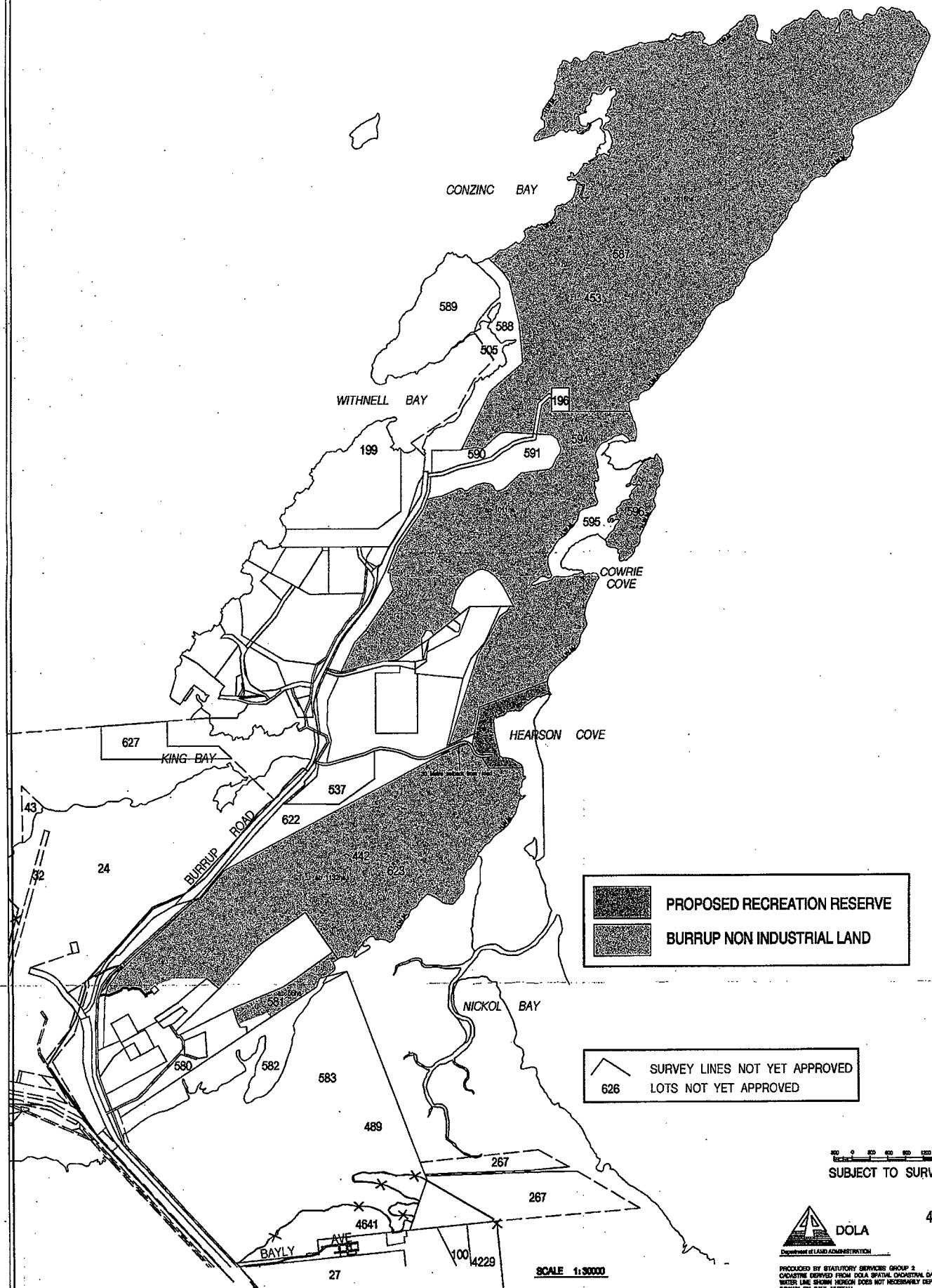
SHEET 1 OF 1  
EDITION 1 VERSION 1  
DATE 23.02.06

INSPECTOR OF PLANS & SURVEYS  
FOR INSPECTOR OF PLANS & SURVEYS  
AUTHORISED LAND OFFICER  
APPROVED

**SCHEDULE 5**  
**BURRUP NON-INDUSTRIAL LAND**

**See following**

## SCHEDULE 5 BURRUP NON INDUSTRIAL LAND



**SCHEDULE 6**  
**NOTICES**

**See following**

SCHEDULE 6 - AREA NOTICE

(104)

NOTICE OF INTENTION

TO TAKE INTERESTS IN LAND TO CONFER INTERESTS UNDER WRITTEN LAW  
*LAND ADMINISTRATION ACT 1997 (WA) SECTION 170*  
AND TO COMPULSORILY ACQUIRE NATIVE TITLE RIGHTS AND INTERESTS  
*NATIVE TITLE ACT 1993 (CTH) SECTION 29*

I Murray Criddle, MLC, Acting Minister for Lands, HEREBY GIVE NOTICE in accordance with Section 170 of the *Land Administration Act (LAA)* 1997 that it is proposed to take those interests in the land described in the Schedule for the purposes specified.

AND for and on behalf of the State of Western Australia HEREBY GIVE NOTICE in accordance with Section 29 of the *Native Title Act 1993 (as amended) (NTA)*, that any native title rights and interests in the land described in the Schedule are to be compulsorily acquired for the purposes specified.

It is proposed to grant the estates, interests and rights specified in the Schedule in respect of the land described in the Schedule as authorised by orders issued under Section 165 of the LAA.

SCHEDULE

**PARCEL OF LAND NO 1**

1. Portion Forrest Location 3 11 on Miscellaneous Diagram 94620 Volume 3116 Folio 230 Area: about 180.7 hectares. 2. Portion Forrest Location 203 on Miscellaneous Plan 20594 Volume 3061 Folio 45 Area: about 12364 hectares. 3 Forrest Location 283 on Miscellaneous Diagram 93735 Volume 3109 Folio 951 Area: 14.4304 hectares. 4. Port Hedland Lot 6035 on Miscellaneous Diagram 93735 Volume 3112 Folio 180 Area: 8.1060 hectares. 5. Forrest Location 265 on Miscellaneous Diagram 93736 Volume 3106 Folio 96 Area: 818.3255 hectares. 6. Forrest Location 116 on Diagram 76233 Volume 3013 Folio 804 Area: 202.992s hectares. 7. Forrest Location 266 on Diagram 92684 Volume 3106 Folio 205 Area: 31.6357 hectares. 8. Forrest Location 279 on Miscellaneous Diagram 93734 Volume 3109 Folio 947 Area: 221.9612 hectares. 9. Forrest Location 280 on Miscellaneous Diagram 93734 Volume 3 109 Folio 948 Area: 409.0041 hectares. 10. Forrest Location 281 on **Miscellaneous** Diagram 93734 Volume 3109 Folio 949 Area: 28.0177 hectares. 11. Forrest Location 282 on **Miscellaneous** Diagram 93734 Volume 3109 Folio 950 Area: 29.0958 hectares. 12. Forrest Location 322 on Diagram 92067 Volume 3116 Folio 932 Area: 2.8923 hectares. 13. Portion Forrest Location 323 on Miscellaneous Plan 20768 Volume 3116 Folio 933 Area: about 24.5 hectares. 14. Portion Forrest Location 324 on **Miscellaneous Plan** 20768 Volume 3 116 Folio 934 Area: about 13.3 hectares. 15. Portion Forrest Location 325 on Miscellaneous Plan 20768 Volume 3116 Folio 935 Area: about 6.76 hectares.

**PLAN/DIAGRAM:** Statutory Services Plan 20789.

**LAND SITUATED IN:** Town of Port Hedland.

**NATURE OF INTERESTS TO BE TAKEN:** The land excluding all rights created by the grant of mining tenements under Mining Acts 1978 and 1904, excluding all rights created by the grant of easements under the LAA and the Land Act 1933 and the Petroleum Pipeline Act 1969, excluding all rights created by the existing Dampier to Bunbury Natural Gas Pipeline easement and the Dampier to Bunbury Pipeline Act 1997, and excluding all rights created by Government agreements as defined in the Government Agreements Act 1979.



Murray Criddle MLC  
ACTING MINISTER FOR LANDS

**PURPOSE OF PROPOSED GRANT FOR WHICH LAND IS PROPOSED TO BE DESIGNATED:**  
~~Development~~ for industrial purposes and associated and ancillary purposes and including stock yard and buffer.“

**PROPOSED DISPOSITION/GRANT:** Land for industrial purposes will be subdivided for sale and transfer in fee simple to the Western Australian Land Authority (LandCorp) for further disposition for industrial purposes. An area for stockyard will be reserved under the LAA and placed in the care, control and management of the Town of Port Hedland with power to lease.

Buffer areas will be reserved under the LAA. Under that reservation, leases/licences for ancillary purposes will be granted under the LAA or under the power of management orders.

**REASON WHY THE LAND IS SUITABLE FOR, OR IS NEEDED FOR, THE PROPOSED GRANT:** The State has over a number of years investigated the suitability of land for industrial development and this included the completion of a number of studies to identify the area the subject of this notice.

**DATE FROM WHICH LAND IS LIKELY TO BE REQUIRED:** 1 July 2000.

DOLA FILE: 879/1993 DOLA REF: 940742

**PARCEL OF LAND NO 2**

1. De Witt Location 116 on Land Administration Plan 14417 Volume 3062 Folio 626 Area: about 10.9 hectares. 2. De Witt Location 176 on Diagram 85971 Volume 3062 Folio 921 Area: 41.9911 hectares. 3. Portion De Witt Location 194 on Land Administration Plan 16682 Volume 3063 Folio 10 Area: about 11.7 hectares. 4. Portion De Witt Location 198 on Land Administration Plan 16681 Volume 3063 Folio 26 Area: about 6.94 hectares. 5. De Witt Location 314 on Land Administration Plan 18195 Volume 3100 Folio 715 Area: 3.2395 hectares. 6. De Witt Location 382 on Land Administration Plan 20146 Volume 3 112 Folio 595 Area: about 136 hectares. 7. De Witt Location 383 on Land Administration Plan 20146 Volume 3 112 Folio 596 Area: about 46.3 hectares. 8. De Witt Location 398 on Diagram 94276 Volume 3038 Folio 250 Area: 13.9998 hectares. 9. Portion De Witt Location 442 on Miscellaneous Plan 20555 Volume 3 115 Folio 829 Area: about 159.5 hectares. 10. Portion De Witt Location 445 on Miscellaneous Plan 20555 Volume 3115 Folio 832 Area: about 69.4 hectares. 11. Portion De Witt Location 453 on Miscellaneous Plan 20557 Volume 3 115 Folio 890 Area: about 694 hectares. 12. De Witt Location 475 on Diagram 94622 Volume 3 116 Folio 287 Area: 5.1250 hectares.

**PLAN/DIAGRAM:** Statutory Services Diagram 94758.

**LAND SITUATED, IN:** Shire of Roebourne.

**NATURE OF INTERESTS TO BE TAKEN:** The land excluding all rights created by the grant of mining tenements under Mining Acts 1978 and 1904, excluding all rights created by the grant of easements under the LAA and the Land Act 1933 and the Petroleum Pipeline Act 1969, excluding all rights created by the existing Dampier to Bunbury Natural Gas Pipeline easement and the Dampier to Bunbury Pipeline Act 1997, and excluding all rights created by Government agreements as defined in the Government Agreements Act 1979.

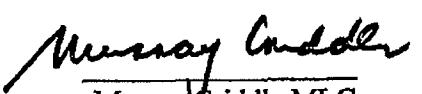
**PURPOSE OF PROPOSED GRANT FOR WHICH LAND IS PROPOSED TO BE DESIGNATED:** Development for industrial and associated and ancillary purposes.

**PROPOSED DISPOSITION/GRANT:** Land for industrial purposes will be subdivided for sale and transfer in fee simple to the Western Australian Land Authority (LandCorp) for further disposition for industrial purposes.

**REASON WHY THE LAND IS SUITABLE FOR, OR IS NEEDED FOR, THE PROPOSED GRANT:** The State has over a number of years investigated the suitability of land for industrial development and this included the completion of a number of studies to identify the area the subject of this notice.

**DATE FROM WHICH LAND IS LIKELY TO BE REQUIRED:** 1 July 2000

DOLA FILE: 202411998 DOLA REF: 991023.

  
Murray Criddle MLC  
ACTING MINISTER. FOR LANDS

### **PARCEL OF LAND NO 3**

1. Portion De Witt Location 28 on Land Administration Plan 19363, Miscellaneous Plan 353 & Diagram 92898 Volume 3062 Folio 351 Area: about 5.2 hectares. 2. Portion De Witt Location 112 on Land Administration Plan 14329 Volume 3062 Folio 604 Area: about 142 hectares. 3. Portion De Witt Location 264 on Miscellaneous Plan 20364 Volume 3046 Folio 478 Area: about 8035 hectares. 4. Portion De Witt Location 400 on Miscellaneous Plan 20805 Volume 3 114 Folio 342 Area: about 1876 hectares. 5. Portion De Witt Location 401 on Miscellaneous Plan 20805 Volume 3114 Folio 343 Area: about 138 hectares. 6. De Witt Location 455 on Miscellaneous Plan 20574 Volume 3 115 Folio 908 Area: about 18.8 hectares. 7. De Witt Location 456 on Miscellaneous Plan 20574 Volume 3115 Folio 909 Area: about 49.8 hectares. 8. Portion De Witt Location 457 on Miscellaneous Plan 20574 Volume 3 115 Folio 910 Area: about 602 hectares. 9. De Witt Location 458 on Miscellaneous Plan 20574 Volume 3 115 Folio 911 Area: about 3 18 hectares. 10. Portion De Witt Location 462 on Miscellaneous Plan 20575 Volume 3115 Folio 915 Area: about 230 hectares. 11. De Witt Location 469 on Miscellaneous Diagram 94619 Volume 3116 Folio 223 Area: about 148.7 hectares. 12. Portion De Witt Location 482 on Miscellaneous Plan 20676 Volume 3 116 Folio 610 Area: about 18.08 hectares. 13. De Witt Location 483 on Miscellaneous Plan 20678 Volume 3116 Folio 678 Area: about 112.7 hectares. 14. Portion De Witt Location 484 on Miscellaneous Plan 20677 Volume 3 116 Folio 679 Area: about 115 hectares. 15. De Witt Location 485 on Miscellaneous Plan 20676 Volume 3116 Folio 703 Area: about 13.9 hectares. 16. De Witt Location 486 on Miscellaneous Plan 20676 Volume 3116 Folio 704 Area: about 5.14 hectares. 17. De Witt Location 487 on Miscellaneous Plan 20676 Volume 3 116 Folio 705 Area: about 1 1.96 hectares:

**PLAN/DIAGRAM:** Statutory Services Diagrams 94759 & 94760.

**LAND SITUATED IN:** Shire of Roebourne.

**NATURE OF INTERESTS TO BE TAKEN:** The land excluding all rights created by the grant of mining tenements under Mining Acts 1978 and 1904,

**PURPOSE OF PROPOSED GRANT FOR WHICH LAND IS PROPOSED TO BE DESIGNATED:** Development for industrial and associated and ancillary purposes including buffer.

**PROPOSED DISPOSITION/GRANT:** Land for industrial purposes will be subdivided for sale and transfer in fee simple to the Western Australian Land Authority (**LandCorp**) for further disposition for industrial purposes.

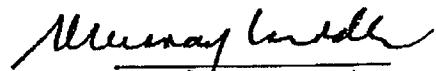
Buffer areas will be reserved under the LAA. Under that reservation, leases/licences for ancillary purposes will be granted under the LAA or under the power of management orders.

**REASON WHY THE LAND IS SUITABLE FOR, OR IS NEEDED FOR, THE PROPOSED GRANT:**

The State has over a number of years investigated the suitability of land for industrial development and this included the completion of a number of studies to identify the area the subject of this notice.

**DATE FROM WHICH LAND IS LIKELY TO BE REQUIRED:** 1 July 2000.

**DOLA FILE:** 2024/1998      **DOLA REF:** 991023



Murray Criddle MLC

ACTING MINISTER FOR LANDS

PLA' OF LAND TO BE TAKEN MAY BE INSPECTED AT: Department of Land Administration (DOLA), 1 Midland Square, Midland, WA or Department of Resources Development (DRD), 7th Floor, 170 St Georges Terrace, Perth, WA.

FOR FURTHER INFORMATION CONTACT: Mr Steve Burgess, DOLA, telephone (08) 9273 7259 or Mr Paul Platt, DRD, telephone (08) 9327 5555.

OBJECTIONS IN WRITING MAY BE LODGED: Persons having or claiming any interests in any parcel of land specified above may, under Section 175 of the LAA, lodge an objection in writing to the proposed taking with DOLA, PO Box 2222, Midland, WA 6936 OR 1 Midland Square, Midland, WA 6056 no later than 9 May 2000.

**MINISTER'S CONSENT TO TRANSACTIONS AFFECTING, AND IMPROVEMENTS TO, THE LAND:** A person may not enter into a transaction in relation to the above land without obtaining the prior consent in writing of the Minister for Lands, except as provided in Section 172(7) of the LAA. Any transaction entered into without prior consent is void in accordance with Section 172(3) of the LAA. An application for consent must be in accordance with Section 172(5) of the LAA.

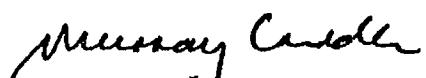
Under Section 173 of the LAA, a person must not cause the building or making of any improvement to the land to be commenced or continued except with the approval in writing of the Minister for Lands.

**NATURE OF THE ACT:** In respect of the land described in the Schedule, is the compulsory acquisition of the interests in the land including any native title rights and interests to grant estates, interests, rights, powers or privileges in, over, or in relation to that land under written law for the purpose specified and ancillary and incidental purposes

**NOTIFICATION DAY:** The notification day 9 February 2000.

**NATIVE TITLE PARTIES:** Under Section 30 of the NTA, persons have until 3 months after the notification day to take certain steps to become native title parties in relation to the notice. The 3 month period closes on 9 May 2000. Any person who is or becomes a native title party is entitled to the negotiation and procedural rights provided in Part 2 Division 3 Subdivision P of the NTA. Enquiries regarding becoming a native title party should be directed to the National Native Title Tribunal, 1 Victoria Avenue, Perth, WA 6000 or GPO Box 9973, Perth, WA 6001 telephone (08) 9268 7272.

Dated this 14<sup>th</sup> Day of January 2000



Murray Criddle MLC  
ACTING MINISTER FOR LANDS

**SCHEDULE 6 - HEARSON COVE LAND NOTICE**

**NOTICE OF INTENTION  
 To Take Interests In Land for a Public Work  
 LAND ADMINISTRATION ACT 1997  
 NATIVE TITLE ACT 1993 (CTH)**

I Douglas James Shave, MLA, Minister for Lands, hereby give notice in accordance with section 170 of the **Land Administration Act 1997 (LAA)** and Section 24MD(6A) and (7) of the Native **Title Act 1993** (as amended) (NTA) that it is proposed to take those interests specified in respect of each parcel of land described in the Schedule for the purposes specified in respect of that land.

**SCHEDULE**

**LAND DESCRIPTION:**

Whole De Witt Location 479 on Land Administration Miscellaneous Plan 20555, being unallocated Crown land Volume 3116 Folio 607 Area: 59.9538 hectares

**PLAN/DIAGRAM:** Land Administration Miscellaneous Plan 20555

**LAND SITUATED IN:** Shire of Roebourne

**NATURE OF INTERESTS TO BE TAKEN:** All registered and unregistered interests (including any native title 'rights and interests) in the land under the heading "LAND DESCRIPTION" other than interests of the Crown.

**PURPOSE OF PUBLIC WORK FOR WHICH THE LAND IS PROPOSED TO BE DESIGNATED:** Park and Recreation.

**REASON WHY THE LAND IS SUITABLE FOR, OR IS NEEDED FOR, THE PUBLIC WORK:** To ensure public access to Hearson Cove and maintain and enhance the facilities.

**DATE FROM WHICH LAND IS LIKELY TO BE REQUIRED:** 1st December 2000.

**STATEMENT IN ACCORDANCE WITH NTA SECTION 26(1)(c)(iii)(A):** The purpose of the taking is to place the land under the care, control and management of the Shire of Roebourne under Section 46 of the LAA, the Shire of Roebourne being a "Government Party" for the purposes of the NTA. Care, control and management will transfer to the National Parks and Nature Conservation Authority in the event that the surrounding areas are vested in the NPNCA, and NPCA agrees to maintain public access to Hearson Cove and the level of facilities is maintained or enhanced.

**DOLA FILE:** 01194-1977-01RO **DOLA REF:** 941428

**MINISTER'S CONSENT TO TRANSACTIONS AFFECTING AND IMPROVEMENTS TO THE LAND:** A

person may not enter into a transaction in relation to the above land without obtaining the prior consent in writing of the Minister for Lands, except as provided in Section 172(7) of the LAA. Any transaction entered into without prior consent is void in accordance with Section 172(3) of the LAA. An application for consent must be in accordance with Section 172(5) of the LAA.

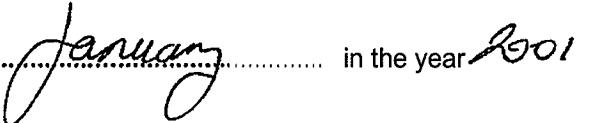
Under Section 173 of the LAA, a person must not cause the building or making of any improvements to the land to be commenced or continued except with the approval in writing of the Minister for Lands.

**OBJECTIONS AND COMMENTS IN WRITING MAY BE LODGED:** Persons having or claiming any interests in any parcel of land specified above may, under Section 175 of the LAA, lodge an objection or comments in writing regarding the proposed taking with the Department of Land Administration (DOLA), PO Box 2222, Midland OR 1 Midland Square, Midland no later than 30 March 2001.

**PLAN OF LAND TO BE TAKEN MAY BE INSPECTED AT:** DOLA, 1 Midland Square, Midland, 6056 between the hours of 8am and 5pm Monday to Friday.

**FOR FURTHER INFORMATION CONTACT:** June Winsome-Fox, NU6,DOLA, PO Box 2222, Midland or by telephone (08) 9273 7345.

Dated this .. . . . . 15th Day of January in the year 2001



Douglas James Shave MLA  
MINISTER FOR LANDS

## SCHEDULE 6 - KARRATHA LAND NOTICE

189

### NOTICE OF INTENTION

To Take Interests in Land to Confer Interests under Written Law  
LAND ADMINISTRATION ACT 1997  
NATIVE TITLE ACT 1993 (CTH)  
(Section 24MD(6A) & (6B))

I Alannah Joan Geraldine MacTiernan, MLA, Minister for Lands, HEREBY GIVE NOTICE in accordance with Section 170 of the *Land Administration Act 1997* (LAA) and Section 24MD(6A) of the *Native Title Act 1993* (as amended) (NTA) that it is proposed to take those interests specified in respect of each parcel of land described under each heading of PARCEL OF LAND for the purposes specified in respect of that land.

AND for and on behalf of the State of Western Australia HEREBY GIVE NOTICE in accordance with Section 24MD(6B) of the NTA that any native title rights and interests in respect of each parcel of land described under each heading PARCEL OF LAND are to be compulsorily acquired for the purposes specified in respect of that land.

It is proposed to grant the estates, interests and rights specified below in respect of each parcel of land as authorised by Order(s) issued under Section 165 of the LAA.

### PARCEL OF LAND NO 1

#### LAND DESCRIPTION:

1. Karratha Lot 2537, Volume 3018 Folio 131 Area: 1.0032 hectares; 2. Karratha Lot 2538, Volume 3018 Folio 133 Area: 1.0715 hectares; 3. Karratha Lot 2539, Volume 3018 Folio 136 Area: 7788 square metres; 4. Karratha Lot 2540, Volume 3018 Folio 137 Area: 7009 square metres; 5. Karratha Lot 2546, Volume 3018 Folio 142 Area: 5523 square metres; 6. Karratha Lot 2547, Volume 3018 Folio 143 Area: 3127 square metres; 7. Karratha Lot 2548, Volume 3018 Folio 145 Area: 6286 square metres; 8. Karratha Lot 2552, Volume 3018 Folio 149 Area: 1.2165 square metres; 9. Karratha Lot 2553, Volume 3018 Folio 150 Area: 9299 square metres; 10. Karratha Lot 2554, Volume 3018 Folio 152 Area: 6326 square metres; 11. Karratha Lot 2555, Volume 3018 Folio 154 Area: 6687 square metres; 12. Karratha Lot 2556, Volume 3018 Folio 156 Area: 5423 square metres; 13. Karratha Lot 2557, Volume 3018 Folio 157 Area: 4302 square metres; 14. Karratha Lot 2558, Volume 3018 Folio 159 Area: 3756 square metres; 15. Karratha Lot 2559, Volume 3018 Folio 161 Area: 1.0736 hectares; 16. Karratha Lot 2567, Volume 3018 Folio 174 Area: 3.0066 hectares; 17. Karratha Lot 2572, Volume 3018 Folio 177 Area: 2547 square metres; 18. Karratha Lot 2573, Volume 3018 Folio 180 Area: 2652 square metres; 19. Karratha Lot 2574, Volume 3018 Folio 183 Area: 2756 square metres; 20. Karratha Lot 2575, Volume 3018 Folio 187 Area: 2860 square metres; 21. Karratha Lot 2576, Volume 3018 Folio 192 Area: 2527 square metres; 22. Karratha Lot 2577, Volume 3018 Folio 195 Area: 2400 square metres; 23. Karratha Lot 2578, Volume 3018 Folio 197 Area: 3000 square metres; 24. Karratha Lot 2579, Volume 3018 Folio 199 Area: 2400 square metres; 25. Karratha Lot 2580, Volume 3018 Folio 200 Area: 2400 square metres; 26. Karratha Lot 2581, Volume 3018 Folio 202 Area: 2400 square metres; 27. Karratha Lot 2582, being Volume 3018 Folio 203 Area: 2400 square metres; 28. Karratha Lot 2583, Volume 3018 Folio 205 Area: 2400 square metres; 29. Karratha Lot 2584, land Volume 3018 Folio 206 Area: 2400 square metres; 30. Karratha Lot 2585, Volume 3018 Folio 208 Area: 2400 square metres; 31. Karratha Lot 2586, Volume 3018 Folio 209 Area: 2400 square metres; 32. Karratha Lot 2587, Volume 3018 Folio 211 Area: 4050 square metres; 33. Karratha Lot 2568, Volume 3018 Folio 212 Area: 3600 square metres; 34. Karratha Lot 2589, Volume 3018 Folio 214 Area: 3600 square metres. All being unallocated Crown land.

PLAN/DIAGRAM: Land Administration Plan 14664. LAND SITUATED IN: Shire of Roebourne

NATURE OF INTERESTS TO BE TAKEN: All registered and unregistered interests (including any native title rights and interests) in the land under the heading "LAND DESCRIPTION" other than interests of the Crown.

PURPOSE OF PROPOSED GRANT FOR WHICH THE LAND IS PROPOSED TO BE DESIGNATED:

(1). Karratha Lots 2567 and 2547 for drainage. (2). Remainder of lots for Light Industrial.

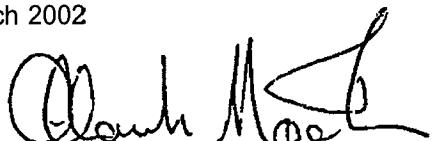
PROPOSED DISPOSITION/GRANT: (1). Lots 2567 and 2547 for reservation with care, control and management placed in the Shire of Roebourne. (2). Remainder of lots to be sold.

REASON WHY THE LAND IS SUITABLE FOR, OR IS NEEDED FOR, THE PROPOSED GRANT:

The land is required to help satisfy the demand for light industrial lots in Karratha caused by current and future resource developments in the region.

DATE FROM WHICH LAND IS LIKELY TO BE REQUIRED: 1 March 2002

DOLA FILE: 01570-1998-01RO DOLA REF: 983240



ALANNAH MACTIERNAN, MLA  
MINISTER FOR LANDS

## PARCEL OF LAND NO 2

### LAND DESCRIPTION:

1. Part Karratha Lot 4664 on Land Administration Plan 26339 shown pink on Land Administration Deposited Plan 28085, Volume 3124 Folio 313 Area: 75.884 hectares;
2. De Witt Location 52 on Land Administration Diagram 74220, Volume 3062 Folio 503 Area: 6.0703 hectares; 3. Part Karratha lot 4663 on Land Administration Plan 26338 shown pink on Land Administration Deposited Plan 28085, Volume 3124 Folio 312 Area: 161.3225 hectares; 4. Part Karratha lot 4665 on Land Administration Plan 26340 shown pink on Land Administration Deposited Plan 28085, Volume 3124 Folio 314 Area: 45.98 hectares. All being unallocated Crown land.

PLAN/DIAGRAM: Deposited Plan 28085. LAND SITUATED IN: Shire of Roebourne

NATURE OF INTERESTS TO BE TAKEN: All registered and unregistered interests (including any native title rights and interests) in the land under the heading "LAND DESCRIPTION" other than interests of the Crown

PURPOSE 0; PROPOSED GRANT FOR WHICH THE LAND IS PROPOSED TO BE DESIGNATED: Subdivisional development including the provision of services (such as water, power, sewerage, roads) for residential purposes.

PROPOSED DISPOSITION/GRANT: Sale of lots

REASON WHY THE LAND IS SUITABLE FOR, OR IS NEEDED FOR, THE PROPOSED GRANT:

The land is required to help satisfy the demand for residential lots in Karratha caused by current and future resource developments in the region.

DATE FROM WHICH LAND Is LIKELY TO BE REQUIRED: 1 March 2902

DOLA FILE: 02227-1997-01RO DOLA REF: 002530

## PARCEL OF LAND NO 3

### LAND DESCRIPTION:

1. Karratha Lot 2560, Volume 3018 Folio 162 Area: 5713 square metres; 2. Karratha Lot 2561, Volume 3018 Folio 164 Area: 4406 square metres; 3. Karratha Lot 2562, Volume 3018 Folio 166 Area: 4719 square metres; 4. Karratha Lot 2563, Volume 3018 Folio 167 Area: 6075 square metres; 5. Karratha Lot 2564, Volume 3018 Folio 169 Area: 5860 square metres; 6. Karratha Lot 2565, Volume 3018 Folio 171 Area: 7064 square metres; 7. Karratha Lot 2566, Volume 3018 Folio 173 Area: 1.0912 hectares. All being unallocated Crown land.

PLAN/DIAGRAM: Land Administration Plan 14664. LAND SITUATED IN: Shire of Roebourne

NATURE OF INTERESTS TO BE TAKEN: All registered and unregistered interests (including any native title rights and interests) in the land under the heading "LAND DESCRIPTION" other than interests Of the Crown."

PURPOSE OF PROPOSED GRANT FOR WHICH THE LAND IS PROPOSED TO BE DESIGNATED:

Light industrial

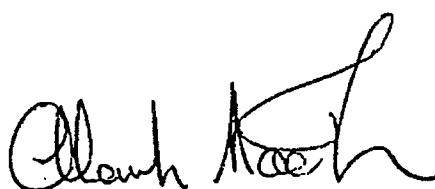
PROPOSED DISPOSITION/GRANT: Sale of lots

REASON WHY THE LAND IS SUITABLE FOR, OR IS NEEDED FOR, THE PROPOSED GRANT:

The land is required to help satisfy the demand for light industrial lots in Karratha caused by current and future resource developments in the region.

DATE FROM WHICH LAND IS LIKELY TO BE REQUIRED: 1 March 2002

DOLA FILE: 01570-I 998-01 RO DOLA REF: 983240



ALANNAH MacTIERNAN, MLA  
MINISTER FOR LANDS

## PARCEL OF LAND NO 4

### LAND DESCRIPTION:

1. Karratha Lot 4661 on Land Administration Plan 26336 shown pink on Land Administration Deposited Plan 28085, being unallocated Crown land Volume 3124 Folio 310 Area: 4.965 hectares; 2. Part De Witt Location 137 on Land Administration Reserve Plan 166 as shown green on Land Administration Deposited Plan 28085, being part Reserve 36708 "Parklands and Recreation". Volume 3062 Folio 865 Area: 2193 square metres; 3. Part Karratha lot 1972 on Land Administration Diagram 82528 shown green on Land Administration Deposited Plan 28085, being part Reserve 34922 "Parklands". Volume 3017 Folio 223 Area: 4.4185 hectares; 4. Karratha Lot 4638 on Land Administration Plan 21032 shown pink on Land Administration Deposited Plan 28085, being unallocated Crown land. Volume 3116 Folio 896 Area: 29.4762 hectares; 5. Karratha Lot 4639 on Land Administration Plan 21033 shown pink on Land Administration Deposited Plan 28085, being unallocated Crown land. Volume 3116 Folio 897 Area: 126.7202 hectares

PLAN/DIAGRAM: Deposited Plan 28085

LAND SITUATED IN: Shire of Roebourne

NATURE OF INTERESTS TO BE TAKEN: All registered and unregistered interests (including any native title rights and 'interests) in the land under the heading "LAND DESCRIPTION" other than interests of the Crown

PURPOSE OF PROPOSED GRANT FOR WHICH THE LAND IS PROPOSED TO BEDESIGNATED:

For Karratha Lots 4661, 4638, 4639 subdivisional development including the provision of services (such as water, power, sewerage, roads) for residential purposes.

The area from Reserves 36708 and 34922 will be used for transient workforce accommodation on an as needs basis, with the long term intention of developing the land for residential purposes.

PROPOSED DISPOSITION/GRANT: Sale or lease of lots

REASON WHY THE LAND IS SUITABLE FOR, OR IS NEEDED FOR, THE PROPOSED GRANT:

The land is required to help satisfy the demand for residential lots in Karratha caused by current and future resource developments in the region.

DATE FROM WHICH LAND IS LIKELY TO BE REQUIRED: 1 March 2002

DOLA FILE: 02227-1997-01RO DOLA REF: 002530

## PARCEL OF LAND NO 5

### LAND DESCRIPTION:

1. Part Karratha Lot 4662 on Land Administration Plan 26337 shown cream on Land Administration Deposited Plan 28085, Volume 3124 Folio 311 Area: 24.2865 hectares; 2. Whole De Witt Location 211 on Land Administration Diagram 87506 as shown cream on Land Administration Deposited Plan 28085, Volume 3062 Folio 20 Area: 10.3709 hectares; 3. Part Karratha lot 4666 on Land Administration Plan 26337 shown cream on Land Administration Deposited Plan 28085, Volume 3124 Folio 395 Area: 160.4259 hectares. All unallocated Crown land.

PLAN/DIAGRAM: Deposited Plan 28085. LAND SITUATED IN: Shire of Roebourne

NATURE OF INTERESTS TO BE TAKEN: All registered and unregistered interests (including any native title rights and interests) in the land under the heading "LAND DESCRIPTION" other than interests of the Crown

PURPOSE OF PROPOSED GRANT FOR WHICH THE LAND IS PROPOSED TO BE DESIGNATED:

Subdivisional development including the provision of services (such as water, power, roads, sewerage) for rural residential purposes.

PROPOSED DISPOSITION/GRANT: Sale of lots

REASON WHY THE LAND IS SUITABLE FOR, OR IS NEEDED FOR, THE PROPOSED GRANT:

The land is required to help satisfy the demand for rural residential lots in Karratha caused by current and future resource developments in the region.

DATE FROM WHICH LAND IS LIKELY TO BE REQUIRED: 1 March 2002

DOLA FILE: 02227-1997-01RO DOLA REF: 002530



ALANNAH MACTIERNAN, MLA  
MINISTER FOR LANDS

## PARCEL OF LAND NO 6

### LAND DESCRIPTION:

1. Karratha Lot 4226 on Land Administration Plan 16828 (as amended) being Reserve 40379 "Recreation". Volume 3017 Folio 892 Area: 4.216 hectares;
2. Karratha lot 4535 on Land Administration Diagram 88885, being Reserve 40848 "Drainage". Volume 3017 Folio 973 Area: 7577 square metres.
3. Karratha Lot 4636 on Land Administration Plan 20761, Volume 3116 Folio 737 Area: 4.1187 hectares; 4.
4. Karratha lot 4660 on Land Administration Plan 20761, Volume 3125 Folio 351 Area: 5.641 hectares; 5. Karratha lot 4635 on Land Administration Plan 20761, Volume 3116 Folio 736 Area: 9.2545 hectares; 6. Karratha lot 3860 on Land Administration Plan 15374, Volume 3019 Folio 162 Area: 9670 square metres; 7. Karratha lot 3862 on Land Administration Plan 15374, Volume 3019 Folio 163 Area: 7366 square metres; 8. Karratha lot 3863 on Land Administration Plan 15374, Volume 3019 Folio 164 Area: 1.8162 hectares; 9. Karratha lot 3864 on Land Administration Plan 15374, Volume 3019 Folio 166 Area: 8266 square metres; 10. Karratha lot 3865 on Land Administration Plan 15374, Volume 3019 Folio 168 Area: 5391 square metres. Items (3) to (10) being unallocated Crown land.

PLAN/DIAGRAM: Deposited Plan 28085. LAND SITUATED IN: Shire of Roebourne

NATURE OF INTERESTS TO BE TAKEN: All registered and unregistered interests (including any native title rights and interests) in the land under the heading "LAND DESCRIPTION" other than interests of the Crown

PURPOSE OF PROPOSED GRANT FOR WHICH THE LAND IS PROPOSED TO BE DESIGNATED:

Subdivisional development including the provision of services (such as water, power, roads, sewerage) for residential purposes.

PROPOSED DISPOSITION/GRANT: Sale of lots

REASON WHY THE LAND IS SUITABLE FOR, OR IS NEEDED FOR, THE PROPOSED GRANT:

The land is required to help satisfy the demand for residential lots in Karratha caused by current and future resource developments in the region.

DATE FROM WHICH LAND IS LIKELY TO BE REQUIRED: 1 March 2002

DOLA FILE: 02227-1997-01RO DOLA REF: 002530

### FOR ALL PARCELS OF LAND:

PLAN OF LAND TO BE TAKEN MAY BE INSPECTED AT: DOLA, Midland Square, Midland, 6056.

FOR FURTHER INFORMATION CONTACT: Iain Adam, Project Officer, Regional Services, DOLA, PO Box 2222, Midland or by telephone (08) 9273-7296.

OBJECTIONS IN WRITING MAY BE LODGED: Persons having or claiming any interests in any parcel of land specified above may, under Section 175 of the LAA, lodge an objection in writing to the proposed taking with the Department of Land Administration (DOLA), PO Box 2222, Midland or 1 Midland Square, Midland no later than 12 November 2001.

Native title parties: Any registered native title claimant or registered native title body corporate may object in accordance with Section 24MD(6B)(d) of the NTA to the doing of the act, within 2 months after the notification, so far as it affects their registered native title rights and interests. The 2 month period closes on 12 November 2001. Under Section 175 of the LAA, an objection in writing is to be lodged with the Department of Land Administration (DOLA), PO Box 2222, Midland or 1 Midland Square, Midland.

MINISTER'S CONSENT TO TRANSACTIONS AFFECTING AND IMPROVEMENTS TO THE LAND: A person may not enter into a transaction in relation to the above land without obtaining the prior consent in writing of the Minister for Lands, except as provided in Section 172(7) of the LAA. Any transaction entered into without prior consent is void in accordance with Section 172(3) of the LAA. An application for consent must be in accordance with Section 172(5) of the LAA.

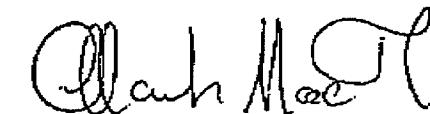
Under Section 173 of the LAA, a person must not cause the building or making of any improvement to the land to be commenced or continued except with the approval in writing of the Minister for Lands.



ALANNAH MACTIERNAN, MLA  
MINISTER FOR LANDS

NATURE OF THE ACT: In respect of each parcel of land described, is the compulsory acquisition of the interests in the land including any native title rights and interests to grant estates, interests, rights, powers or privileges in, over, or in relation to that land under written law for the purpose specified and ancillary and incidental purposes.

Dated this ..... 30th ..... day of ..... August ..... 2001



ALANNAH MacTIERNAN, MLA  
MINISTER FOR LANDS

NOTICE OF INTENTION  
To Take Interests in Land to Confer Interests under Written Law  
LAND ADMINISTRATION ACT 1997  
NATIVE TITLE ACT 1993 (CTH)  
(section 24MD (6A) & (6B))

I Douglas James Shave, MLA, Minister for Lands, HEREBY GIVE NOTICE in accordance with Section 170 of the *Land Administration Act 1997* (LAA) and Section 24MD(6A) of the Native *Title* Act 7993 (as amended) (NTA) that it is proposed to take those interests specified in respect of each parcel of land described under each heading of PARCEL OF LAND for the purposes specified in respect of that land. AND for and on behalf of the State of Western Australia HEREBY GIVE NOTICE in accordance with Section 24MD(6B) of the NTA that any native title rights and interests in respect of each parcel of land described under each heading PARCEL OF LAND are to be **compulsorily** acquired for the purposes specified in respect of that land.

It is proposed to grant the estates, interests and **rights** specified below in respect of each parcel of land as authorised by Orders issued under Section 165 of the LAA.

**PARCEL OF LAND NO 1:**

**LAND DESCRIPTION:** 1. Portion of Karratha Lot 4633 on Land Administration Miscellaneous Diagram 94629, more particularly described on Statutory Services Diagram 94628 being unallocated Crown land. Volume 3116 Folio 295 Area: 4.1629 hectares; 2. Portion of Karratha Lot 1121 on Land Administration Diagram 75620 more particularly described on Statutory Services Diagram 94628 being unallocated Crown land. Volume 3018 Folio 52 Area: 7.8893 hectares

**PLAN/DIAGRAM:** Statutory Services Diagram 94628

**LAND SITUATED IN:** Shire of Roebourne

**NATURE OF INTERESTS TO BE TAKEN:** All registered and unregistered interests (including any native title rights and interests) in the land under the heading "LAND DESCRIPTION" other than interests of the Crown.

**PURPOSE OF PROPOSED GRANT FOR WHICH THE LAND IS PROPOSED TO BE DESIGNATED:**  
Commercial.

**PROPOSED DISPOSITION/GRANT:** Subdivisional **development** for commercial purposes including the provision of **services** (such as water, power, roads and sewerage) and sale of lots.

**REASON WHY THE LAND IS SUITABLE FOR, OR IS NEEDED FOR, THE PROPOSED GRANT:** All available commercial **land** has been purchased and developed. The subject land has been identified as being suitable for expansion of the commercial sector within the Karratha Town Centre.

**DATE FROM WHICH LAND IS LIKELY TO BE REQUIRED:** 1 January 2001

**DOLA FILE:** 00972-I 995-01 RO **DOLA REF:** 951801

**PARCEL OF LAND NO 2:**

**LAND DESCRIPTION:** Whole Point Samson Lot 263 on Land Administration Plan 20141 being unallocated Crown land. Volume 3114 Folio 205 Area: 7757 square metres

**PLAN/DIAGRAM:** Land Administration Plan 20141

**LAND SITUATED IN:** Shire of Roebourne

**NATURE OF INTERESTS TO BE TAKEN:** All registered and unregistered interests (including any native title rights and interests) in the land under the heading "LAND DESCRIPTION" other than interests of the Crown.

**PURPOSE OF PROPOSED GRANT FOR WHICH THE LAND IS PROPOSED TO BE DESIGNATED:**  
Inclusion into Reserve 39027 "Harbour Purposes" to facilitate development for industrial purposes associated with the harbour.

**PROPOSED DISPOSITION/GRANT:** Inclusion of Point Samson Lot 283 into Reserve 39027.

**REASON WHY THE LAND IS SUITABLE FOR, OR IS NEEDED FOR, THE PROPOSED GRANT:** The land adjoins existing Reserve 39027. The amalgamation will facilitate the development of the area for industrial purposes associated with the harbour.

**DATE FROM WHICH LAND IS LIKELY TO BE REQUIRED:** 1 January 2001

**DOLA FILE:** 02804-1982-01RO **DOLA REF:** 983936

  
Douglas James Shave MLA  
MINISTER FOR LANDS

**PARCEL OF LAND NO 3:**

**LAND DESCRIPTION:** Whole Onslow Lot 974 on Land Administration Diagram 94493 being unallocated Crown land. Volume 3033 Folio 614 Area: 4723 square metres

**PLAN/DIAGRAM:** Land Administration Diagram 94493

**LAND SITUATED IN:** Shire of Ashburton

**NATURE OF INTERESTS TO BE TAKEN:** All registered and unregistered interests (including any native title rights and interests) in the land under the heading "LAND DESCRIPTION" other than interests of the Crown.

**PURPOSE OF PROPOSED GRANT FOR WHICH THE LAND IS PROPOSED TO BE DESIGNATED:** Sale of land

**PROPOSED DISPOSITION/GRANT:** Sale to Mr L C Fogarty for inclusion into portion Onslow Lot 385.

**REASON WHY THE LAND IS SUITABLE FOR, OR IS NEEDED FOR, THE PROPOSED GRANT:** This land is required to provide the registered proprietors of portion Onslow Lot 385 with suitable access.

**DATE FROM WHICH LAND IS LIKELY TO BE REQUIRED:** December 2000

**DOLA FILE:** 02737-I 994-01 RO **DOLA REF:** 942015

**IPARCEL OF LAND NO 4:**

**LAND DESCRIPTION:** 1. Whole Exmouth Lot 1029 on Land Administration Diagram 88376, being unallocated Crown land. Volume 3010 Folio 183 Area: 84 square metres; 2. Whole Exmouth Lot 1440 on Land Administration Diagram 94617, being unallocated Crown land. Volume 3115 Folio 719 Area: 332 square metres

**PLAN/DIAGRAM:** Land Administration Diagram 94617, Land Administration Diagram 88376

**LAND SITUATED IN:** Shire of Exmouth

**NATURE OF INTERESTS TO BE TAKEN:** All registered and unregistered interests (including any native title rights and interests) in the land under the heading "LAND DESCRIPTION" other than interests of the Crown.

**PURPOSE OF PROPOSED GRANT FOR WHICH THE LAND IS PROPOSED TO BE DESIGNATED:** Residential.

**PROPOSED DISPOSITION/GRANT:** Sale to Leonie, Martin and Murray Horak for amalgamation into adjoining Exmouth Lot 1009.

**REASON WHY THE LAND IS SUITABLE FOR, OR IS NEEDED FOR, THE PROPOSED GRANT:** The owners of Exmouth Lot 1009 wish to extend their existing lot.

**DATE FROM WHICH LAND IS LIKELY TO BE REQUIRED:** 1 January 2001

**DOLA FILE:** 02666-1987-01RO **DOLA REF:** 991082

**PARCEL OF LAND NO 5:**

**LAND DESCRIPTION:** Part Wickham Lot 97 on Land Administration Plan 11961 shown as Wickham Lot 766 on Land Administration Statutory Services Diagram 94671 being unallocated Crown land. Volume 3076 Folio 565 Area: 4571 square metres

**PLAN/DIAGRAM:** Statutory Services Diagram 94671

**LANDSITUATED IN:** Shire of Roebourne

**NATURE OF INTERESTS TO BE TAKEN:** All registered and unregistered interests (including any native title rights and interests) in the land under the heading "LAND DESCRIPTION" other than interests of the Crown.

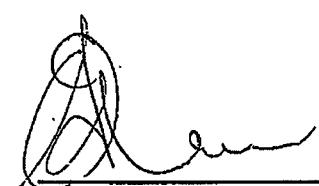
**PURPOSE OF PROPOSED GRANT FOR WHICH THE LAND IS PROPOSED TO BE DESIGNATED:** Sale of lots

**PROPOSED DISPOSITION/GRANT:** Sale to K Goodin for amalgamation with Wickham Lot 760.

**REASON WHY THE LAND IS SUITABLE FOR, OR IS NEEDED FOR, THE PROPOSED GRANT:** To extend the storage area of the existing earthmoving business.

**DATE FROM WHICH LAND IS LIKELY TO BE REQUIRED:** 1 January 2001

**DOLA FILE:** 00484-1993-01 RO **DOLA REF:** 964728



Douglas James Shave MLA  
MINISTER FOR LANDS

**PARCEL OF LAND NO 6:**

LAND DESCRIPTION: Whole Port Hedland Lot 6069 on Land Administration Miscellaneous Diagram 94339, being unallocated Crown land. Volume 3114 Folio 779 Area: 88.8888 hectares

PLAN/DIAGRAM: Land Administration Miscellaneous Diagram 94330

LAND SITUATED IN: Town of Port Hedland

NATURE OF INTERESTS TO BE TAKEN: All registered and unregistered interests (including any native title rights and interests) in the land under the heading "Land Description" other than interests of the Crown.

PURPOSE OF PROPOSED GRANT FOR WHICH THE LAND IS PROPOSED TO BE DESIGNATED: Light Industrial.

PROPOSED DISPOSITION/GRANT: Subdivisional development including the provision of services (such as power, water, roads, sewerage) and sale of land for light industrial purposes.

REASON WHY THE LAND IS SUITABLE FOR, OR IS NEEDED FOR, THE PROPOSED GRANT: The current increased activity in industrial/resource development has revealed a severe shortage of industrial lots available.

DATE FROM WHICH LAND IS LIKELY TO BE REQUIRED: 1 January 2001

DOLA FILE: 00545-1980-02RO DOLA REF: 993763

**PARCEL OF LAND NO 7:**

LAND DESCRIPTION: Whole Port Hedland Lot 6041 on Land Administration Diagram 94207 being unallocated Crown land. Volume 3113 Folio 392 Area: 1.8917 hectares

PLAN/DIAGRAM: Land Administration Diagram 94207

LAND SITUATED IN: Town of Port Hedland

NATURE OF INTERESTS TO BE TAKEN: All registered and unregistered interests (including any native title rights and interests) in the land under the heading "LAND DESCRIPTION" other than interests of the Crown.

PURPOSE OF PROPOSED GRANT FOR WHICH THE LAND IS PROPOSED TO BE DESIGNATED:

Residential

PROPOSED DISPOSITION/GRANT: Sale to the Ministry of Housing for future development

REASON WHY THE LAND IS SUITABLE FOR, OR IS NEEDED FOR, THE PROPOSED GRANT: The subject land forms a significant portion of the South Hedland Enhancement Scheme.

DATE FROM WHICH LAND IS LIKELY TO BE REQUIRED: 1 January 2001

DOLA FILE: 00728-1975-04RO DOLA REF: 980445

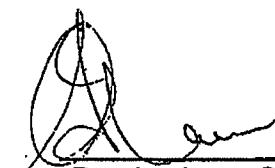
**FOR ALL PARCELS OF LAND:**

**PLAN OF LAND TO BE TAKEN MAY BE INSPECTED AT: DOLA**, Midland Square, Midland, 6056.

**FOR FURTHER INFORMATION CONTACT:** Dave. Foster, Assistant Project Officer, Native Title Unit, DOLA, PO Box 2222, Midland or by telephone (08) 9273 7459.

**OBJECTIONS IN WRITING MAY BE LODGED:** Persons having or claiming any interests in any parcel of land specified above may, under Section 175 of the LAA, lodge an objection in writing to the proposed taking with the Department of Land Administration (DOLA), PO Box 2222, Midland or 1 Midland Square, Midland no later than **11 December 2000**.

**Native title parties:** Any registered native title claimant or registered native title body corporate may object in accordance with Section 24MD(6B)(d) of the NTA to the doing of the act, within 2 months after the notification, so far as it affects their registered native title rights and interests. The 2 month period closes on **11 December 2000**. Under Section 175 of the LAA, an objection in writing is to be lodged with the Department of Land Administration (DOLA), PO Box 2222, Midland or 1 Midland Square, Midland.



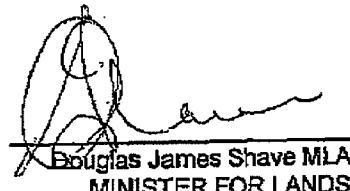
Douglas James Shave MLA  
MINISTER FOR LANDS

**MINISTER'S CONSENT TO TRANSACTIONS AFFECTING AND IMPROVEMENTS TO THE LAND:** A person may not enter into a transaction in relation to the above land without obtaining the prior consent in writing of the Minister for Lands, except as provided in Section 172(7) of the LAA. Any transaction entered into without prior consent is void in accordance with Section 172(3) of the LAA. An application for consent must be in accordance with Section 172(5) of the LAA.

Under Section 173 of the LAA, a person must not cause the building or making of any improvement to the land to be commenced or continued except with the approval in writing of the Minister for Lands.

**NATURE OF THE ACT:** In respect of each parcel of land described, is the compulsory acquisition of the interests in the land including any native title rights and interests to grant estates, interests, rights, powers or privileges in, over, or in relation to that land under written law for the purpose specified and ancillary and incidental purposes.

Dated this 3RD day of OCTOBER, 2000.



Douglas James Shave MLA  
MINISTER FOR LANDS

## SCHEDULE 6 - ADDITIONAL LAND NOTICES



Department of Land Administration  
Government of Western Australia

### Notice of Intention

TO TAKE INTERESTS IN LAND TO CONFER INTERESTS UNDER WHI TEN I AW

LAND ADMINISTRATION ACT 1997 (WA) SECTION 170  
AND TO COMPULSORILY ACQUIRE NATIVE TITLE RIGHTS AND INTERESTS

NATIVE TITLE ACT 1993 (CTH) SECTION 29

I, Alannah Jean McTiernan, MLA, Minister for Lands, HEREBY GIVE NOTICE in accordance with Section 170 of the Land Administration Act (LAA) 1997 that it is proposed to take those interests in the land described in the Schedule for the purposes specified.

AND for and on behalf of the State of Western Australia HEREBY GIVE NOTICE in accordance with Section 29 of the Native Title Act 1993 (as amended) (NTA), that any native title rights and interests in the land described in the Schedule are to be compulsorily acquired for the purposes specified.

It is proposed to grant the estates, interests and rights specified in the Schedule in respect of the land described in the Schedule as authorised by Order(s) lodged under Section 185 of the LAA.

#### SCHEQUE

##### PARCEL OF LAND:

LAND DESCRIPTION: The land shown green on Deposited Plan 30420, comprising: 1. Part Du Will Location 804 on Deposited Plan 38020, being unallocated Crown land, Volume 2112, Folio 418. Area: about 15.44 hectares (made up of areas 5.44 and 7 hectares). 2. Part Du Will Location 377 on Land Administration Diagram 91067, being unallocated Crown land, Volume 3112 Folio 21. Area: about 2.2 hectares. 3. Du Will Location 808 on Land Administration Diagram 91276, being unallocated Crown land, Volume 2112 Folio 250. Area: 13.5900 hectares.

The land is situated on the Karrup Peninsula north of the Hearson Cove Road.

PLAN/DEPOSITED Deposited Plan 30420.

LAND SITUATED IN: Shire of Roebourne

NATURE OF INTERESTS TO BE TAKEN: All registered and unregistered interests (including any native title rights and interests) in the land under the heading "LAND DESCRIPTION" other than interests of the Crown.

PURPOSE OF PROPOSED GRANT FOR WHICH THE LAND IS PROPOSED TO BE DESIGNATED:  
Development for industrial and associated and ancillary purposes.

PROPOSED DISPOSITION/GRANT: The land will be sold and transferred in fee simple to the Wyndham Aboriginal Land Authority (WALA) or other authorised State entity for further disposition to Methanex Australia Pty Ltd for industrial purposes.

REASON WHY THE LAND IS SUITABLE FOR, OR IS NEEDED FOR, THE PROPOSED GRANT: The State has over a number of years investigated the suitability of land for industrial development and this included the compilation of a number of studies to identify suitable areas. The land the subject of this notice is required to be added to that industrial development, which is the subject of a previous notice of intention dated 14 January 2000.

DATE FROM WHICH LAND IS LIKELY TO BE REQUIRED: 21 July 2002

POLY FILE: 01810-2001-01RD DOLA REF: U20448

PLAN FOR LAND TO BE TAKEN MAY BE INSPECTED AT: DOLA, Midland Square, Midland, 6056.

FOR FURTHER INFORMATION CONTACT: Gwenneth Quinn, Native Title Unit, DOLA, PO Box 2222, Midland or by telephone (08) 9470 7018.

OBJECTIONS IN WHICH MAY BE LODGED: Persons having or claiming any interests in any parcel of land specified above may, under Section 176 of the LAA, lodge an objection in writing to the proposed taking with the Department of Land Administration (DLA), PO Box 2222, Midland or Midland Square, Midland WA 6056, 17 July 2002.

MINISTER'S CONSENT TO TRANSACTIONS AFFECTING, AND IMPROVEMENTS TO, THE LAND: persons may not enter into a transaction in relation to the above land without obtaining the prior consent in writing of the Minister for Lands, except as provided in Section 172(7) of the LAA. Any transaction entered into without prior consent is void in accordance with Section 172(8) of the LAA. An application for consent must be in accordance with Section 172(7) of the LAA.

Under Section 173 of the LAA, a person must not cause the building or making of any improvement to the land to be commenced or continued except with the approval in writing of the Minister for Lands.

NATURE OF THE ACT: In respect of the land described in the Schedule, is the compulsorily acquisition of the interests in the land including any native title rights and interests to grant estates, interests, rights, powers or privileges in, over, or in relation to that land under written law for the purpose specified and ancillary and incidental purposes.

NOTIFICATION DAY: The notification day is 17 April 2002.

NATIVE TITLE PARTIES: Under Section 30 of the NTA, persons have until 3 months after the notification day to take certain steps to become native title parties in relation to the native title rights period closing on 17 July 2002. Any person who is or becomes a native title party is entitled to the negotiation and procedural rights provided in Part 2 Division 3 Subdivision P of the NTA. Enquiries regarding becoming a native title party, could be directed to the National Native Title Tribunal, 1 Victoria Avenue Perth or GPO Box 8877 Perth WA 6001 telephone (08) 8202 7372.

Dated this 27th Day of March of the year 2002

ALANNAH MACTIERNAN, MLA  
MINISTER FOR LANDS



Department of Land Administration  
Government of Western Australia

## Notice of Intention

TO TAKE INTERESTS IN LAND TO CONFER INTERESTS UNDER WRITTEN LAW

LAND ADMINISTRATION ACT 1987 (WA) SECTION 170

AND TO COMPULSORILY ACQUIRE NATIVE TITLE RIGHTS AND INTERESTS

NATIVE TITLE ACT 1993 (C/IH) SECTION 29

I, Alannah Joan Gardiner MacTiernan, MLA, Minister for Lands, HEREBY GIVE NOTICE in accordance with Section 170 of the Land Administration Act (LAA) 1987 that it is proposed to take those interests in the land described in the Schedule for the purposes specified.

AND for and on behalf of the State of Western Australia HEREBY GIVE NOTICE in accordance with Section 29 of the Native Title Act 1993 (as amended) (NTA), that any native title rights and interests in the land described in the Schedule are to be compulsorily acquired for the purposes specified.

It is proposed to grant the interests, interests and rights specified in the Schedule in respect of the land described in the Schedule as authorised by Order(s) issued under Section 100 of the LAA.

### SCHEDULE

#### PARCEL OF LAND:

LAND DESCRIPTION: The land shown green on Deposited Plan 31131, comprising: 1, Part On Witt Location 684 on Deposited Plan 21528, being Unallocated Crown land, Volume 3127 Folio 419, Area about 21.65 hectares; 2, Part On Witt Location 377 on Land Administration Diagram 84087, being unallocated Crown land, Volume 3112 Folio 21, Area about 2.2 hectares.

The land is situated on the Bunup Peninsula north of the Leaven Coom Road.

PLAN/DIAGRAM: Deposited Plan 31131.

#### LAND SITUATED IN: Shire of Kalgan

NATURE OF INTERESTS TO BE TAKEN: All registered and unregistered interests (including any native title rights and interests) in the land under the heading "LAND DESCRIPTION" other than interests of the Crown.

PURPOSE OF PROPOSED GRANT FOR WHICH THE LAND IS PROPOSED TO BE DESIGNATED:  
Development for industrial and associated and ancillary purposes.

PROPOSED DISPOSITION/GRANT: The land will be sold and transferred in its entirety to the Western Australian Land Authority (and/or) other authorised State entity for further disposition for industrial purposes. In particular, LandCorp may grant a lease of part of the land to Methaneex Australia Pty Ltd in accordance with a Notice of Intention of the same date as this notice.

REASON WHY THE LAND IS SUITABLE FOR, OR IS NEEDED FOR, THE PROPOSED GRANT: The State has over a number of years investigated the suitability of land for industrial development and this included the compilation of a number of studies to identify suitable areas. The land the subject of this notice is well suited to that industrial development, which is the subject of a previous notice of intention dated 14 January 2000.

DATE FROM WHICH LAND IS LIKELY TO BE REQUIRED: 31 July 2002.

DOE A FILE: 01870-2001-0100 DOLA RCR-02044R

PLAN OF LAND TO BE TAKEN MAY BE INSPECTED AT: DOLA, Midland Square, Midland, WA 6009.

FOR FURTHER INFORMATION CONTACT: Crown Grants Native Title Unit, DOLA, PO Box 2222, Midland or by telephoning (08) 9275 7002.

OBJECTIONS IN WRITING MAY BE LODGED: Persons having or claiming any interest in any parcel of land specified above may, under Section 176 of the LAA, lodge an objection in writing to the proposed taking with the Department of Land Administration (DOLA), PO Box 2222, Midland 6009 Midland Square, Midland no later than 17 July 2002.

MINISTER'S CONSENT TO TRANSACTIONS AFFECTING AND IMPROVEMENTS TO, THE LAND: The Minister may not enter into a transaction in relation to the above land without obtaining the prior consent in writing from the Minister for Lands, except as provided in Section 172(7) of the LAA. Any transaction entered into without prior consent is void in accordance with Section 172(8) of the LAA. An application for consent must be in accordance with Section 172(6) of the LAA.

Under Section 173 of the LAA, a person must not cause the building or making of any improvement to the land to be commenced or continued except with the approval in writing of the Minister for Lands.

NATURE OF THE ACT: In respect of the land described in the Schedule, is the compulsory acquisition of the interests in the land (including any native title rights and interests) to grant estates, interests in fee, powers or privileges in, over, or in relation to that land under written law for the purpose specified and ancillary and incidental purposes.

NOTIFICATION DAY: The notification day is 17 April 2002.

NATIVE TITLE PARTIES: Under Section 30 of the NTA, persons have until 8 months after the notification day to take certain steps to become native title parties in relation to the notice. The 8-month period closes on 17 July 2002. Any person who is or becomes a native title party is entitled to the negotiation and agreement rights provided in Part 2 Division 3 Subdivision P of the NTA. Enquiries regarding becoming a native title party should be directed to the National Native Title Tribunal, 1 Victoria Avenue Perth or GPO Box 8975 Perth WA 6835 telephone (08) 9258 7273.

Dated this 27th Day of March in the year 2002

ALANNAH MACTIERNAN, MLA

MINISTER FOR LANDS

## **SCHEDULE 7** **EMPLOYMENT STRATEGY**

Without limiting a Proponent's entitlement to put in place special measures for persons of a particular race as permitted under applicable law, the Proponent's Employment Strategy must be in accordance with the following objectives:

- (a) promotion of workplace culture that provides a workplace free of discrimination, harassment and abuse;
- (b) provision of equal access to employment opportunities within the workplace to all employees;
- (c) treatment of all employees fairly and with respect;
- (d) facilitation of the employment and promotion of Available Persons;
- (e) provision of opportunities for employment based training for Available Persons; and
- (f) ensuring that the Proponent's employment practices are flexible to reasonably accommodate the changing needs of employees and recognising and respecting the different background beliefs and experiences of all employees.

**SCHEDULE 8  
HEARSON COVE LAND**

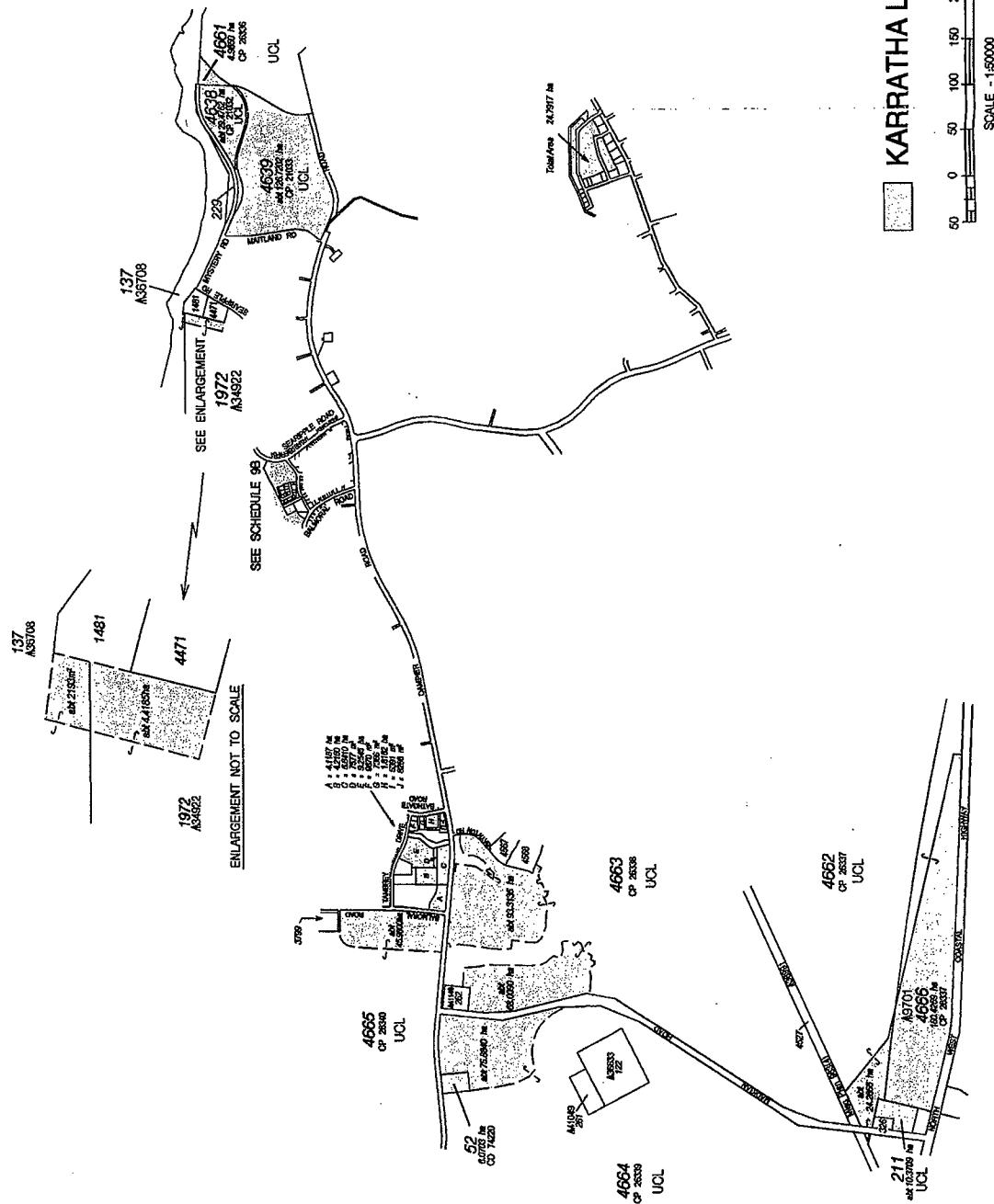
**See following**



**SCHEDULE 9  
KARRATHA LAND**

**See following**

**SCHEDULE 9A  
KARRATHA LAND**





**SCHEDULE 10  
LEASE**

**See following**

FORM L1

WESTERN AUSTRALIA  
TRANSFER OF LAND ACT 1893 AS AMENDED

**LEASE**

DESCRIPTION OF LAND (Note 1)	EXTENT	VOLUME	FOLIO
[Land Description for Burrup Non-Industrial Land as surveyed under clause 4.4(b) of the Section 31 Agreement.]	Whole		
ENCUMBRANCES (Note 2)			
Conditions as set out in Transfer. [Other encumbrances as referred to in Section 31 Agreement]			
ESTATE AND INTEREST	1		
Fee Simple			
LESSOR (Note 3)			
LESSEE (Note 4)			
STATE OF WESTERN AUSTRALIA			
TERM OF LEASE (Note 5)			
Ninety-nine (99) years together with an option to renew for a further ninety-nine (99) years			
Commencing from the	day of	Year	
THE LESSOR HEREBY LEASES TO THE LESSEE the land above described subject to the encumbrances as shown hereon (Note 6)			
for the above term for the clear total rental of (Note 7) one peppercorn payable (Note 8) on demand			

subject to the covenants and powers implied under the Transfer of Land Act 1893 as amended (unless hereby negatived or modified) and also to the covenants and conditions contained herein.

The following covenants by the lessee are to be construed according to section ninety-four of the Transfer of Land Act 1893 as  
amended (Note 9)

## ATTESTATION SHEET

Dated this _____	day of _____	Year _____
------------------	--------------	------------

**LESSOR/S SIGN HERE (Note 10)**

The COMMON SEAL of \_\_\_\_\_  
was hereunto affixed in the presence of \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
**Director**

\_\_\_\_\_  
**Director (print)**

\_\_\_\_\_  
**Director/Secretary**

\_\_\_\_\_  
**Director/Secretary (print)**

**ESSEE/S SIGN HERE (Note 10)**

¶ WITNESS Whereof We have caused Our Trusty and well beloved HIS EXCELLENCY the Lieutenant General John Murray Anderson, Companion of the Order of Australia, Governor of the State of Western Australia to affix to these Presents the Public Seal of the said State.

Sealed this \_\_\_\_\_ day of \_\_\_\_\_ two thousand and two \_\_\_\_\_

\_\_\_\_\_  
**Governor**

\_\_\_\_\_  
**Minister for Lands**

### INSTRUCTIONS

1. If insufficient space in any section, Additional Sheet Form B1 should be used with appropriate headings. The boxed sections should only contain the words "see page..."
2. Additional Sheets shall be numbered consecutively and bound to this document by staples along the left margin prior to execution by the parties.
3. No alteration should be made by erasure. The word rejected should be scored through and those substituted typed or written above them, the alteration being initialled by the persons signing this document and their witnesses.
4. Where issued, the Duplicate Certificate of Title is required to be produced or if held by another party the arrangements must be made for its production.

### NOTES

#### 1. DESCRIPTION OF LAND

Lot and Diagram/Plan/Strata/Survey-Strata Plan number or Location name and number to be stated.  
Extent - Whole, part or balance of the land comprised in the Certificate of Title to be stated. If part, define by recital and/or sketch.  
The Volume and Folio number to be stated.

#### ENCUMBRANCES

To be identified by nature and number, if none show NIL.

#### LESSOR

State full name of the Lessor/Lessors (REGISTERED PROPRIETOR) as shown in certificate of title and the address/addreses to which future notices can be sent.

#### LESSEE

State full name of the Lessee/Lessees and the address/addresses to which future notices can be sent. If two or more state tenancy eg Joint Tenants, Tenants in Common. If Tenants in Common specify shares.

#### TERM OF LEASE

Must exceed 3 years.

Term to be stated in years, months and days or as the case may be. Commencement date to be stated.  
Options to renew to be shown.

#### RECITE ANY EASEMENTS TO BE CREATED

Here set forth any Easements to be created as appurtenant to the lease commencing with the words "together with" and/or any Reservations hereby created encumbering the lease commencing with the words "reserving to".

State amount in words.

State term of payment.

Insert any Covenants required.

#### 2. LESSOR/LESSEE EXECUTION

A separate attestation is required for every person signing this document. Each signature should be separately witnessed by an Adult Person. The address and occupation of the witness must be stated.

Lodged pursuant to the provisions of the TRANSFER OF LAND ACT 1893 as amended on the day and time shown above and particulars entered into the Register

4. \_\_\_\_\_

5. \_\_\_\_\_

Receiving Clerk

Lodged pursuant to the provisions of the TRANSFER OF LAND ACT 1893 as amended on the day and time shown above and particulars entered into the Register

EXAMINED

**THE LESSOR HEREBY LEASES TO THE LESSEE** the Land subject to the Encumbrances for the Term for the clear total rental of one peppercorn payable on demand, and otherwise on and subject to the terms covenants and conditions contained in this Lease and for that purpose the Lessor and the Lessee **Covenant and Agree** as follows:

## **1. DEFINITIONS AND INTERPRETATIONS**

### **1.1 Definitions**

In this Lease, unless the context requires otherwise:

**Authority** means Federal, State or local government, government department, instrumentality or authority, statutory body or agency, Court, tribunal, official acting under any written law, or other public body or authority of any kind.

**Covenants** means the Deed of Covenant and any other restrictive or positive covenants registered on the certificate of title to the Land from time to time that are consented to by the Lessee.

**Deed of Covenant** means the Deed of Covenant between the Lessor as registered proprietor of the Land and the Minister for Lands dated on or about the date of this Lease and which is to be registered on the certificate of title to the Land before the registration of this Lease.

**Encumbrance** means the encumbrances shown in the encumbrances panel on the front page to this Lease.

**Further Term** means the period of ninety-nine (99) years commencing immediately after the expiry of the initial Term of ninety-nine (99) years.

**Improvements** means all buildings erections and improvements from time to time erected, constructed or placed on the Land.

**Land** means the land as described on the front page of this Lease, together with all Improvements.

**Lessee** means the State described as such in the lessee panel on the front page of this Lease, and its successors in title and permitted assigns.

**Lessor** means the person described as such in the lessor panel on the front page of this Lease, and the registered proprietor of the Land from time to time.

**Management Agreement** means the management agreement entered into or established under the *Conservation and Land Management Act 1984* (WA) or any other applicable written law, that applies to the management and use of the Land, as amended, varied or substituted from time to time.

**Management Plan** means the management plan set out in Schedule 1 to this Lease.

**Permitted Use** means any or all of the purposes referred to in clause 3.1.

**State** means the Crown in the right of the State of Western Australia.

**Term** means the term shown on the front page of this Lease and, when the context so requires, includes any period of holdingover, the Further Term, and any other additional renewed or extended term.

**TLA** means the *Transfer of Land Act 1893* (WA).

**written law** has the same meaning as in the *Interpretation Act 1984* (WA).

## 1.2 Interpretation

In this Lease, unless the context requires otherwise:

- (a) a reference to a clause, schedule or annexure is a reference to a clause of or schedule or annexure to this document and references to this document or this Lease include the front page and other parts on the form necessary for registration of this Lease under the TLA and any schedule or annexure;
- (b) a reference to this or any other document includes any variation or replacement of either of them;
- (c) a reference to a written law includes consolidations, amendments, re-enactments or replacements of that written law;
- (d) the singular includes the plural, the plural includes the singular and any gender includes each other gender;
- (e) the word person includes a firm, a body corporate, an unincorporated association or an authority;
- (f) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (g) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (h) a reference to a person which has ceased to exist or has reconstituted, amalgamated, reconstructed or merged or the functions of which have become exercisable by another person, is a reference to the person established or constituted in its place or by which its functions have become exercisable;
- (i) a reference to a thing includes a reference to the whole or any part of that thing;
- (j) if a word or phrase is defined, cognate words and phrases have a corresponding meaning;
- (k) headings (except in a schedule) are for convenience only and do not affect

the interpretation of this document;

- (l) where a period of time is to be reckoned from a day or act or event, that or the day of that act or event, is excluded;
- (m) a month means a calendar month;
- (n) including is deemed to be followed by the words, but not limited to; and
- (o) party means a party to this Lease.

## **2. RENT AND OTHER PAYMENTS**

### **2.1 Rent**

The clear total rent payable for the grant of this Lease is one peppercorn, which is payable on demand.

### **2.2 Other Payments**

The Lessee is not liable to make any other payments under this Lease or in respect of its use and occupation of the Land under this Lease whatsoever, except as provided elsewhere in this Lease (including clauses 2.3 and 7.2).

### **2.3 GST**

- (a) In this clause 2.3 the following terms have the following meanings:

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any legislation substituted for or amending that Act.

the terms **GST**, **GST law**, **Tax Invoice** and **Taxable Supply** have the respective meanings given to each of those terms in section 195-1 of the GST Act.

- (b) Any amounts payable by the Lessee to the Lessor, under this Lease, are exclusive of GST.
- (c) The Lessee must pay additional to any amounts payable by the Lessee under this Lease, any GST payable by the Lessor in respect of a Taxable Supply made under this Lease, subject to and within thirty (30) days of the provision by the Lessor to the Lessee of a Tax Invoice in the format and form required as set out in the GST law.
- (d) If the Lessor is entitled to any refund or credit for GST paid in respect of a Taxable Supply made under this Lease, and the Lessee paid that GST to the Lessor in the first instance, the Lessor shall pay forthwith to the Lessee an amount equivalent to the GST so refunded or credited.

## **3. USE OF LAND**

### **3.1 Permitted Use**

Subject to clause 3.3, the Lessee may occupy and use the Land for any lawful purpose (including for recreational purposes) that is not inconsistent with the Covenants and the Management Plan, and any other purpose that is incidental, ancillary or beneficial to that purpose.

### **3.2 Improvements**

- (a) The Lessee may construct, erect, demolish, reconstruct, improve or alter Improvements on the Land for or relating to a Permitted Use.
- (b) The Lessee will keep any Improvements on the Land from time to time, in a good and safe state of repair and condition.

### **3.3 No Dedication to Public Use**

The Lessee must take all steps necessary (including closing off the Land or any part of it to the general public at least once a year or by any other means) to ensure that the Land, or any part of it, is not dedicated to the public use at common law, under any written law or in any other manner whatsoever.

### **3.4 Covenants**

In exercising its rights under this Lease, the Lessee must comply with and not breach the Covenants.

## **4. MANAGEMENT AGREEMENT AND MANAGEMENT PLAN**

### **4.1 Rights under Lease**

- (a) The rights and powers of the Lessor and the Lessee under this Lease must be exercised in accordance with the Management Agreement and Management Plan.
- (b) All rights, powers, covenants, obligations and liabilities under this Lease continue even if there is no Management Agreement, Management Plan or both.
- (c) For the avoidance of any doubt, the Management Plan shall still apply, notwithstanding that there may be no Management Agreement.

### **4.2 Amendment of Management Plan**

- (a) The parties agree that the Management Plan may be amended from time to time in accordance with the terms of the Management Agreement, or if there is no Management Agreement then by agreement between the parties.
- (b) If the Management Plan is amended in accordance with the terms of the Management Agreement, or by agreement between the parties in a case where there is no Management Agreement, then the parties agree that:

- (i) the parties will execute a deed of variation to this Lease, which deed will provide that:
    - (A) the term of this Lease is extended by one day;
    - (B) the amended Management Plan in the schedule to the deed of variation shall replace the Management Plan in Schedule 1 to this Lease; and
    - (C) the deed of variation shall be registered against the certificate of title for the Land under the TLA; and
  - (iii) the parties must do all things reasonably necessary to execute the deed of variation and to give effect to all things contemplated under it.
- (c) For the purposes of this clause 4.2, the Lessor irrevocably appoints, jointly and severally, the Lessee and each person authorised by the Governor of the State from time to time, to be the Lessor's duly appointed agent and attorney to prepare and execute all documents and do all things necessary to give effect to clause 4.2(b) and agrees to ratify and confirm and hereby ratifies and confirms anything done pursuant to this appointment.

## **5. ASSIGNMENT AND SUBLetting**

### **5.1 Not without Consent**

The Lessee may not assign any of its right, title or interest in the Lease or the Land and may not sublet or part with possession of or the right to possess the whole or any part of the Land, without the Lessor's consent. The Lessor's consent may be given, withheld or given subject to such conditions as the Lessor thinks fit, in the Lessor's absolute discretion.

## **6. APPOINTMENT OF LESSEE'S REPRESENTATIVE**

### **6.1 Application**

This clause 6 only applies while the State is the Lessee.

### **6.2 Governor may Appoint**

- (a) The Governor of the State may, from time to time, nominate, cancel a nomination and make a further nomination of a department of the Government of the State (**Department**) or any other appropriate State Authority (**State Authority**) to be responsible for the administration of this Lease on behalf of the Lessee.
- (b) The Lessor is entitled to rely on all acts, matters and things bona fide done by any officer of or in the name of the Department or State Authority so nominated, in relation to the administration of this Lease, until the Lessor is

notified that the nomination has been cancelled. This paragraph (b) includes notification by the Department or State Authority of its nomination or cancellation of its nomination.

- (c) This Lease may only be varied or extended by a document executed under the Public Seal of the State, and not by any authority given under this clause 6.2.

## 7. INDEMNITY

### 7.1 Assumption of Responsibility

The Lessee agrees to take and be subject to the same responsibilities to which it would be subject in respect of persons and property if, during the Term, it were the owner and occupier of the Land as though the Lessee were the holder of an estate in fee simple absolute of the Land.

### 7.2 Lessee's Indemnity

- (a) For the purposes of this clause 7.2, the term Lessor includes any director, officer, member and the agents, servants, employees, contractors, licensees and invitees of the Lessor.
- (b) The Lessee must indemnify and keep indemnified the Lessor from and against all actions, claims, costs, proceedings, suits and demands whatsoever which may at any time be brought, maintained or made against the Lessor:
- (i) in respect of any loss, injury or damage of or to any kind of property (including the Land and the property of third parties); and
  - (ii) in respect of any death of or injury or illness sustained by any person,

that is directly or indirectly during the Term caused by, arising out of, or in connection with:

- (A) the use or occupation of the Land by the Lessee or any person;
- (B) any work carried out by or on behalf of the Lessee under this Lease;
- (C) the Lessee's activities, operations or other use of the Land of any kind under this Lease;
- (D) any default by the Lessee in the due and punctual performance, observance and compliance with any of the Lessee's covenants, obligations or liabilities under this Lease; or
- (E) any negligent or other tortious act or omission of the

Lessee or any of its officers, agents, servants, employees, contractors, licensees and invitees.

- (c) The obligations of the Lessee under this clause 7.2 continue after the expiration of the Term in respect of any act, deed, matter or thing occurring before the expiration of the Term.
- (d) The Lessee's liability to indemnify the Lessor under this clause 7.2 does not arise or apply to the extent that the loss, injury, damage or to property or death of or injury or illness of any person is caused or contributed to by the negligent or other tortious act or omission of the Lessor.

## **8. TRANSFER OF LAND ACT**

### **8.1 Registration**

This Lease shall be registered under the TLA on the certificate of title to the Land, and the parties will do all things necessary to give effect to this provision.

### **8.2 Exclusion of Implied Provisions**

Such of the implied covenants and powers as might otherwise be implied in this Lease by the TLA do not apply to this Lease and are not implied in this Lease.

## **9. QUIET ENJOYMENT**

### **9.1 Lessee's Right**

Subject to clause 9.2, if the Lessee does not breach the conditions of this Lease, the Lessee may peaceably possess use and occupy the Land during the Term without any interruption or disturbance from or by the Lessor or any person or persons lawfully claiming through under or in trust for the Lessor.

### **9.2 Lessor's Right**

- (a) To the extent to which this clause does not derogate from the grant of lease by the Lessor to the Lessee, the Lessor has the right (for itself and its members from time to time) to go onto and use the Land at any time during the Term in accordance with traditional laws and customs acknowledged and observed by the members of the Lessor, in a manner not inconsistent with the Management Plan.
- (b) In the event that clause 9.2(a) derogates from the grant of lease by the Lessor to the Lessee, or is void, voidable by either the Lessor or the Lessee, unenforceable or illegal in accordance with the laws of the State of Western Australia, it shall be read down so as to be valid and enforceable or if it cannot be so read down, the provision shall be severed from this Lease without affecting the validity, legality or enforceability of the remaining provisions of this Lease which will continue in full force and effect.

## **10. LESSOR'S COVENANTS**

#### **10.1 No Right to Terminate**

In consideration of the Lessee accepting the grant of this Lease, the Lessor hereby absolutely and unconditionally waives any right of forfeiture, re-entry or determination of this Lease which but for this clause the Lessor has or may in the future have had under or by virtue of this Lease against the Lessee.

### **11. EXPIRY OF LEASE**

#### **11.1 Notice to Vacate**

Unless the Lessor has given the Lessee a notice to vacate at least 12 months prior to the expiry of the Term, the Lessee shall be entitled to continue in occupation of the Land after the expiry of the Term until the expiry of a period of 12 months after the giving of a notice to vacate by the Lessor, such occupation to be free of rent and upon and subject to the same terms, covenants and conditions as are contained in this Lease or such of them as shall then be applicable.

#### **11.2 Holding Over**

If the Lessee shall with the express or implied consent of the Lessor continue in occupation of the Land after the expiry of the Term other than pursuant to clause 11.1, or after any period of occupancy pursuant to clause 11.1, the Lessee shall be deemed to be a monthly tenant only free of rent and such tenancy may be determined by one (1) months notice in writing by either party to the other, which may be given at any time, and otherwise shall be subject to the same terms, covenants and conditions as are contained in this Lease or such of them as shall then be applicable.

#### **11.3 Yielding Up**

At the expiration of the Term, the Lessee must peaceably surrender and yield up the Land to the Lessor in such state of repair and condition as is consistent with the due performance by the Lessee of its obligations under this Lease, and deliver all keys and other similar locking devices to or for any Improvements to the Lessor.

#### **11.4 Property in Improvements**

At the expiration of the Term, all right title and property in the Improvements vests in the Lessor absolutely without any compensation to the Lessee, and the Lessee shall have no right to remove them from the Land on the expiration of the Term.

### **12. OPTION TO RENEW**

#### **12.1 Further Term**

If:

- (a) at any time in the ten (10) year period prior to the expiry of the initial Term of ninety-nine (99) years of this Lease, the Lessee gives notice to the Lessor that it wishes to extend the Term of this Lease for the Further Term; and

- (b) at the date of giving the notice under paragraph (a), the Lessee is not in breach of a condition of this Lease, where notice of that breach has been given by the Lessor and has not been remedied or waived,

then the Term of this Lease shall be extended for the Further Term on the same terms, covenants and conditions as are contained in this Lease or such of them as shall then be applicable, except for this clause 12.

### **13. OPTION TO PURCHASE**

In this clause 13:

**Option** means the option described in clause 13.1.

**Lessee's Notice** means the notice in clause 13.2(b).

**Lessor's Notice** means the notice in clause 13.2(a).

**Purchase Price** means the market value for the Land, as determined by the Valuer General of Western Australia on or around the time of the Lessee's Notice.

#### **13.1 Grant of Option**

The Lessor, in consideration of ONE DOLLAR (\$1.00) (payment of which is acknowledged by the Lessor by its signature to this Lease), hereby grants to the Lessee an option to purchase all right, title, estate and interest in the Land (including all improvements on the Land) on the terms and conditions set out in this clause 13.

#### **13.2 Condition of Exercise**

- (a) The Lessor must, as soon as possible, give notice to the Lessee that the Lessor desires or intends to sell, assign, transfer, part with possession or otherwise deal with any or all of its rights, title, estate and interests in the Land.
- (b) If the Lessor gives the Lessor's Notice, the Lessee may exercise the Option by giving notice to the Lessor within ninety (90) days after receipt of the Lessor's Notice.
- (c) The Lessee agrees not to exercise the Option except as provided in this clause 13.2.

#### **13.3 Sale and Transfer of Land**

If the Lessee exercises the Option, the Lessor must, in consideration of the Lessee paying to the Lessor the Purchase Price, sell and transfer to the Lessee all right, title estate and interest in the Land (including all improvements on the Land) absolutely free of all encumbrances other than the Covenants and any other encumbrances agreed in writing by the Lessee.

#### **13.4 Settlement**

- (a) Settlement of the sale and transfer of the Land under clause 13.3 shall occur at the place nominated by the Lessee, on or before ninety (90) days after the date of the receipt by the Lessor of the Lessee's Notice.
- (b) At settlement:
  - (i) the Lessee must pay the Purchase Price to the Lessor; and
  - (ii) the Lessor must deliver to the Lessee a duly executed transfer in a form that will allow registration of it under the *Transfer of Land Act 1893* and all such other deeds, instruments and documents as the Lessee reasonably requires to complete and fully effect the transfer and conveyance of the Land to the Lessee in accordance with this clause 13.

#### **13.5 Costs and Stamp Duty**

Each party shall pay its own legal and other costs incurred in respect of any matter under this clause 13, but the Lessee must pay all stamp duty, if any, payable in respect of the sale and transfer of the Land.

#### **13.6 Option Applies**

For the avoidance of any doubt:

- (a) the Lessor's obligation to give the Lessor's Notice; and
- (b) if the Lessor's Notice is given, the Lessee's right to exercise the Option, arises on each and every occasion that the Lessor desires or intends to sell, assign, transfer, part with possession or otherwise deal with any or all of its rights, title, estate and interests in the Land during the Term.

### **14. NOTICES**

14.1 Notices under this Lease shall be in writing and may be delivered by hand delivery, pre-paid post or facsimile transmission.

14.2 Notice shall be deemed to be received:

- (a) in the case of hand delivery, on delivery to the address of the Party set out below or as otherwise notified from time to time;
- (b) in the case of pre-paid post, three (3) Business Days after posting; and
- (c) in the case of facsimile transmission, upon receipt by the sender of a transmission form indicating successful transmission of the entire facsimile.

14.3 Notices to be given to:

(a) the Lessor shall be addressed to:

Facsimile No:

(b) the Lessee shall be addressed to:

Facsimile No:

**15. GOVERNING LAW**

This Lease is governed by the law in force in the State of Western Australia and the parties agree to submit to the non-exclusive jurisdiction of the Courts of Western Australia and the appeal Courts from those Courts.

**SCHEDULE 11**  
**MANAGEMENT AGREEMENT**

**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_ 2002

BETWEEN

## **THE STATE OF WESTERN AUSTRALIA (State)**

**AND**

## **THE APPROVED BODY CORPORATE (ABC)**

**AND**

**THE EXECUTIVE DIRECTOR of the DEPARTMENT OF CONSERVATION AND  
LAND MANAGEMENT (Executive Director)**

## RECITALS

- A. The ABC is the registered proprietor of the Land and lessor of the Land under the Lease.
  - B. The State is the lessee of the Land under the Lease.
  - C. Under section 16 of the *Conservation and Land Management Act 1984* (WA), the Executive Director may enter into agreements with the owner, lessee or licensee of any land for the management of that land by the Department of Conservation and Land Management as a State forest, timber reserve, national park, conservation park or a nature reserve or as part of a marine reserve, or for some other public purpose.
  - D. The ABC and the State have agreed by the Lease for the Land to be leased by the ABC to the State, and for the Land to be managed jointly by the ABC and the Department of Conservation and Land Management on the terms and conditions contained in this Agreement.
  - E. The members of the ABC aspire to assume sole responsibility for management of the Land in the long term for the Executive Director. The State supports and encourages that aspiration through the management capabilities and experience that will be acquired by the ABC under this Agreement.

**THIS AGREEMENT WITNESSES**

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Agreement unless the contrary intention appears:

**Agreement** means this Agreement as may be varied or replaced from time to time.

**Authority** means Federal, State or local government, government department, instrumentality or authority, statutory body or agency, Court, tribunal, official acting under any written law, or other public body or authority of any kind.

**Burrup Non-Industrial Land** has the meaning as that term is defined under the Section 31 Agreement.

**Business Day** means any day not being a Saturday, Sunday or public holiday in Western Australia.

**CALM Act** means the *Conservation and Land Management Act 1984* (WA).

**Conservation Commission** has the same meaning as in the CALM Act.

**Contracting Parties** means the persons who are defined as such in the Section 31 Agreement.

**Council members** means the members of the Management Council from time to time.

**Covenants** means the Deed of Covenant and any other restrictive or positive covenants registered on the certificate of title to the Land from time to time that are consented to by the State as lessee of the Land.

**Deed of Covenant** means the Deed of Covenant between the Lessor as registered proprietor of the Land and the Minister for Lands dated on or about the date of this Lease and which is to be registered on the certificate of title to the Land before the registration of this Lease.

**Department** has the same meaning as in the CALM Act.

**Industrial Estate** has the meaning given to that term under the Section 31 Agreement.

**Land** means the Burrup Non-Industrial Land.

**Lease** means the lease of the Land by the ABC as lessor to the State as lessee made on or about the same date as this Agreement.

**local government** has the same meaning as in the *Interpretation Act 1984* (WA).

**Management Council** means the Management Council comprised from time to time under clause 6.

**Management Plan** means the Management Plan current from time to time in respect of the Land under clause 5.

**Minister for Environment and Heritage** means the Minister for the time being responsible for the administration of the *Conservation and Land Management Act 1984* (WA).

**Minister for Indigenous Affairs** means the Minister for the time being responsible for the administration of the *Aboriginal Heritage Act 1972* (WA).

**Party** means a party to this Agreement and **Parties** means all of them.

**Section 31 Agreement** means a deed entitled Burrup and Maitland Industrial Estates Agreement dated [XX] 2002, entered into by the State of Western Australia, the Contracting Parties and others, which has been adopted by the ABC by deed dated [XX].

**Term** means the term of this Agreement specified in clause 3.1, as may be extended or renewed from time to time, under clause 3.2.

## 1.2 Interpretation

In this Agreement, unless the contrary intention appears -

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include the other genders;
- (c) references to persons include corporations;
- (d) references to a person include the legal personal representatives, successors and assigns of that person;
- (e) a reference to a statute, ordinance, code, or other law includes regulations, by-laws, rules and other statutory instruments under it for the time being in force and consolidations, amendments, re-enactments, or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- (f) references to this Agreement or any other instrument include this Agreement or other instrument as varied or replaced, and notwithstanding any change in the identity of the parties;
- (g) references to writing include any mode of representing or reproducing words in tangible and permanently visible form, and include e-mail and facsimile transmissions;
- (h) an obligation of two or more persons binds them jointly and severally;
- (i) an obligation incurred in favour of two or more persons is enforceable by them jointly and severally;
- (j) if a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;

- (k) references to a person or body which has been reconstituted, amalgamated, reconstructed or merged, or which has ceased to exist and the functions of which have become exercisable by any other person or body in its place, are deemed to refer to the person or body as so reconstituted, amalgamated, reconstructed or merged, or the person or body by which its functions have become exercisable;
- (l) references to this Agreement include its recitals, schedules and annexures (if any);
- (m) headings are inserted for ease of reference only and are to be ignored in construing this Agreement;
- (n) references to time are to local time in Perth, Western Australia;
- (o) where time is to be reckoned from a day or event, that day or the day of that event is to be excluded;
- (p) references to currency are to Australian currency unless stated otherwise;
- (q) no rule of construction applies to the disadvantage of a party on the basis that that party put forward this Agreement or any part of this Agreement;
- (r) a reference to any thing (including, without limitation, any amount) is a reference to the whole and each part of it, and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually; and
- (s) when the day or last day for doing an act is not a Business Day in the place where that act is to be done, then the day or last day for doing the act will be the next following Business Day in the place where that act is to be done.

## **2. MANAGEMENT OF THE LAND**

- 2.1 The ABC and the State agree with the Executive Director that the Land shall be jointly managed by the Department and the ABC via the Management Council established in accordance with this Agreement, but at all times subject to the Covenants, in accordance with this Agreement and the Management Plan.
- 2.2 Throughout the Term the Parties may, by agreement, add to or subtract from the land the subject of this Agreement, provided that at all times the land the subject of this Agreement includes all Land the subject of the Lease.
- 2.3 Throughout the Term the Parties may, by agreement in writing, revise, amend or vary this Agreement or replace this Agreement with a substitute agreement from time to time.
- 2.4 The State, as lessee of the Land, agrees that the Lease and the right to use and occupy the Land and the other rights granted under it may be relied on by any party to this Agreement if and to the extent necessary to give effect to this Agreement and the

Management Plan.

- 2.5 The State, as lessee of the Land, agrees that the ABC and its members have the right to go on to and use the Land in accordance with traditional laws and customs acknowledged and observed by the members of the Approved Body Corporate, in a manner not inconsistent with the Management Plan.
- 2.6 The State, as lessee of the Land, the ABC and the Executive Director will not do anything under this Agreement that would prevent development and use of the land within the Industrial Estate.

### **3. TERM AND TERMINATION**

- 3.1 The Term of this Agreement is the period of ninety nine years (99) years, commencing on the date of commencement of the Lease.
- 3.2 If the Lease is renewed, this Agreement shall be automatically renewed for a further period of ninety-nine (99) years, commencing immediately after the expiry of the initial Term of ninety-nine (99) years.
- 3.3 Where an area of the Land is removed from the operation of this Agreement, this Agreement shall cease to apply in respect of that area of the Land but shall continue to apply in respect of the whole of the remaining area of the Land.
- 3.4 This Agreement may only be terminated by the agreement in writing of the Parties.
- 3.5 The Parties agree that no breach of the terms of this Agreement will give to any other Party the right to terminate or rescind this Agreement, but that Party may exercise any right or remedy otherwise available to it in respect of such breach.

### **4. MANAGEMENT PRINCIPLES**

- 4.1 The ABC and the Executive Director shall jointly manage the Land via the Management Council established for the public purposes set out in the following objectives:
  - (a) the preservation and promotion of the Aboriginal cultural and heritage values of the Land;
  - (b) the preservation and promotion of the natural and environmental values of the Land, including indigenous flora and fauna;
  - (c) the preservation and promotion of the archaeological values of the Land;
  - (d) the provision of recreational facilities and facilitation of recreational activities on the Land, including the regulation of public access to the Land to fulfil so much of the demand for recreation by members of the public as is fitting having regard to the matters set out in clauses 4.1(a), (b), (c) and (e);
  - (e) the use of the Land by the ABC and its members from time to time in accordance with traditional laws and customs acknowledged and observed

by the members of the Approved Body Corporate;

- (f) the use of the Land by the ABC and its members from time to time consistent with the matters set out in clauses 4.1(a) to (e);
  - (g) employment and training opportunities for the members of the ABC within the Land;
  - (h) commercial opportunities for the ABC within the Land;
  - (i) the implementation, monitoring, assessment and audit of the effectiveness of the Management Plan; and
  - (j) the provision, construction, repair, maintenance and replacement of buildings and infrastructure on the Land for any of the foregoing purposes.
- 4.2 In managing the Land, the ABC and the Department will consider the need for any or all of the following:
- (a) provision of fencing;
  - (b) creation of vehicular tracks and roads, and walking and cycling trails and pathways;
  - (c) provision of firebreaks, fire control and carrying out of prescribed burning;
  - (d) erection of signage;
  - (e) construction of public conveniences and other public facilities;
  - (f) weed and feral animal control; and
  - (g) restriction or prohibition of access for protection of culturally significant sites, or for safety, cultural or conservation purposes.

## 5. MANAGEMENT PLAN

- 5.1 The Parties will use their best endeavours to ensure a Management Plan is current in respect of the Land at all times during the Term.
- 5.2 The Management Plan must set out how the Land is to be managed for the period of that Management Plan by the ABC and the Department. Without limiting the foregoing, the Management Plan is to deal with the following matters, having regard to any national and international heritage and environmental agreements which bind the State, treaties which bind the State, all laws and Government policies:
- (a) the matters listed in clause 4.1;
  - (b) the term of the Management Plan, which may include provisions relating to the renewal or extension of the term;

- (c) the periodical review of the Management Plan;
  - (d) the identification of management strategies relating to the use and management of the Land;
  - (e) the respective management roles of the ABC and the Department in relation to the Land; and
  - (f) such other matters as the ABC and the Executive Director may agree.
- 5.3 The Management Plan must be prepared in consultation with the community, the relevant local government, the Conservation Commission and any other relevant Authorities in a manner similar to that which applies under the CALM Act in respect of management plans prepared under that Act, as determined by the Management Council.
- 5.4 The Management Plan as prepared, completed, finalised and agreed or determined in accordance with the Section 31 Agreement, is the first Management Plan for the purposes of this Agreement.
- 5.5 The Management Plan must be reviewed in accordance with clause 5.6 by the Parties, with the review being initiated before the expiry of ten (10) years from the commencement date of this Agreement or completion of the last review, as the case requires. Until the revised Management Plan or replacement Management Plan is registered on the certificate of title under clause 4.2 of the Lease, the last current Management Plan shall continue to apply.
- 5.6 The Management Plan will be reviewed, and if necessary a revised or a replacement Management Plan will be prepared, in the following manner:
- (a) the Management Council will determine the manner in which the Management Plan will be reviewed, which must include taking into account the views of the relevant local government, the Conservation Commission and any other relevant Authorities as to the manner of the review (including whether or not a formal review should be undertaken); and
  - (b) if the Management Council determines that a formal review of Management Plan is to be undertaken with a view to a revision or replacement of the current Management Plan (**Review**), it will also determine:
    - (i) the appointment of a person to undertake the Review and the terms of that person's appointment;
    - (ii) the terms of reference of the Review;
    - (iii) the period for completion of the Review;
    - (iv) the procedure for the Parties, the relevant local government, relevant Authorities and the community to make submissions on the Review; and

- (v) the procedure for the Parties and any other persons to comment on a draft of the proposed revised or replacement Management Plan.

5.7 The reviewed, revised or replacement Management Plan must be:

- (a) agreed by the Management Council or determined in accordance with clause 6; and
- (b) registered on the certificate of title to the Land pursuant to the Lease.

## 6. MANAGEMENT COUNCIL

6.1 The management of the Land under this Agreement will be administered by a Management Council, which will comprise:

- (a) three (3) representatives of the Department nominated from time to time by the Executive Director and advised in writing to the ABC (CALM representatives);
- (b) four (4) representatives of the ABC nominated from time to time by the ABC and advised in writing to the Executive Director (ABC representatives);
- (c) one (1) person appointed from time to time by the Minister for Indigenous Affairs; and
- (d) any other persons agreed to be appointed by the ABC and the Executive Director.

6.2 The Management Council shall conduct its business in the following manner:

- (a) the Council members shall elect a chairman from among their number on each anniversary of the commencement date of this Agreement;
- (b) the quorum for a meeting of the Management Council shall be at least two (2) CALM representatives and two (2) ABC representatives;
- (c) each Council member (including any person not a CALM representative nor an ABC representative) shall have one vote and may vote at a meeting of the Management Council in person or by proxy given in writing to the Chairman or any other Council member who is present in person at the meeting;
- (d) if a motion of the Council is circulated in writing to all Council members and all of them agree in writing to that motion, then that is deemed to be a resolution of the Council duly made on the day that the last Council member indicates his or her agreement in writing;
- (e) if, on a vote on a motion, there is one dissenting vote then the motion is lost, subject to clause 6.4(b);

- (f) the Management Council shall meet regularly at such intervals as it considers necessary, but in any event at least three (3) times per year;
  - (g) the Council members shall be given at least twenty-one (21) days notice in writing of meetings of the Management Council;
  - (h) the Executive Director must convene a meeting of the Management Council within forty-five (45) days after a meeting being called by notice in writing signed by:
    - (i) the Chairman; or
    - (ii) at least three (3) Council members,

being given to the Executive Director, to consider the business specified in the notice calling the meeting;
  - (i) the Management Council shall adopt such rules and procedures as it considers necessary to enable it to carry out its functions under this Agreement, but subject to the provisions of this Agreement;
  - (j) the Management Council may invite other persons (not being a Council member) to attend at meetings of the Management Council or to advise it on any matter it thinks fit; and
  - (k) the Management Council may appoint committees (comprising Council members and other persons) to investigate, consider, and advise or recommend such matters to the Management Council as it thinks fit.
- 6.3 The Management Council shall make decisions, in accordance with clause 6.2, that are consistent with the provisions of this Agreement and the Management Plan.
- 6.4 If:
- (a) there are less than two (2) ABC representatives present at two (2) consecutive meetings of the Management Council, then clause 6.5 applies;
  - (b) a motion is lost at three (3) consecutive meetings of the Management Council, but at the last meeting the motion was voted in favour by at least two (2) CALM representatives and three (3) ABC representatives, then the motion is deemed to be carried and to be a resolution of the Management Council duly made; and
  - (c) a motion is lost at three (3) consecutive meetings of the Management Council and paragraph (b) does not apply, then clause 6.5 applies.
- 6.5 If clause 6.4(a) or (c) applies then:
- (a) the business which was proposed to be discussed at the meeting for which there were less than two (2) ABC representatives present; or

- (b) the business which was the subject of the motion which has been lost at the three (3) consecutive meetings,

as the case requires (**Undetermined Business**), shall be referred to the Minister for Environment and Heritage, by either the Executive Director or the ABC.

The Minister for Environment and Heritage shall, in consultation with the Minister for Indigenous Affairs, in respect of the Undetermined Business:

- (c) decide as to how the Undetermined Business is to be determined;
- (d) make a determination on the Undetermined Business; or
- (e) a combination of both paragraphs (c) and (d).

A determination of the Undetermined Business by the Minister for the Environment and Heritage shall be final and binding on the Management Council and the Parties.

- 6.6 The Management Council will inspect the accounts relating to the expenditure of funds provided under the Section 31 Agreement and thereafter.
- 6.7 The Department shall provide administrative and secretarial support for the Management Council.
- 6.8 For the period covered by the Section 31 Agreement, fundings upport shall be provided by the State, through the Department or any other relevant department, under the Section 31 Agreement, for:
- (a) the joint management of the Land under this Agreement (including by implementation of the Management Plan);
  - (b) the provision of resources, including suitably qualified Departmental staff and trainees;
  - (c) the provision of the Burrup Non-Industrial Land Buildings and Burrup Non-Industrial Land Infrastructure, as those terms are defined in the Section 31 Agreement;
  - (d) the administration and operation of the Management Council; and
  - (e) the costs of Council members attending meetings of the Management Council and meeting attendance fees for the Council members as determined by the Minister for Environment and Heritage.

The Parties will review the administrative and funding arrangements at five (5) yearly intervals or at such other times agreed by the Parties.

- 6.9 If the first Management Plan has not been completed, finalised and agreed or determined in accordance with the Section 31 Agreement before the commencement of this Agreement, the Management Council will manage the Land in accordance with the other applicable provisions of this Agreement (including clause 4.1) and any

interim management guidelines determined by the Management Council.

## **7. INDEMNITY**

- 7.1 The State agrees to indemnify and keep indemnified the ABC against all proceedings actions suits claims demands costs and losses (**Losses**) suffered or incurred by the ABC to the extent such Losses are incurred by the ABC or any of its employees, agents or contractors, as a result of the negligent or other tortious act or omission of the State, the Executive Director or any of either of their officers, employees, agents, or contractors in the purported exercise of its or their rights or obligations under this Management Agreement or the Management Plan.
- 7.2 The ABC agrees to indemnify and keep indemnified the State and the Executive Director against all proceedings actions suits claims demands costs and losses (**Losses**) suffered or incurred by the State or the Executive Director or both of them to the extent such Losses are incurred by the State or the Executive Director or both of them or any of either of their employees, agents or contractors, as a result of the negligent or other tortious act or omission of the ABC or any of its officers, employees, agents, or contractors in the purported exercise of its or their rights or obligations under this Management Agreement or the Management Plan.

## **8. NOTICES**

- 8.1 Notices under this Agreement shall be in writing and may be delivered by hand delivery, pre-paid post or facsimile transmission.
- 8.2 Notice shall be deemed to be received:
- (a) in the case of hand delivery, on delivery to the address of the Party set out below or as otherwise notified from time to time;
  - (b) in the case of pre-paid post, three (3) Business Days after posting; and
  - (c) in the case of facsimile transmission, upon receipt by the sender of a transmission form indicating successful transmission of the entire facsimile.
- 8.3 Notices to be given to:
- (a) the State shall be addressed to:  
Facsimile No:
  - (b) the ABC shall be addressed to:  
Facsimile No:
  - (c) the Executive Director shall be addressed to:  
Facsimile No:

## **9. NO PARTNERSHIP ETC**

Nothing in this Agreement shall be taken to constitute a partnership, agency, joint venture or any other form of legal relationship between the Parties by which the ABC may bind the other Parties or the ABC may be bound by the other Parties to contracts, agreements, deeds or any other document creating binding legal obligations. Without limiting the foregoing, neither the ABC nor the other Parties may enter into any employment contract or contract for the provision of works, materials or services on or in respect of the Land purporting to bind the other Parties or the ABC respectively.

#### **10. GOVERNING LAW**

This Agreement is governed by the law in force in the State of Western Australia and the Parties agree to submit to the non-exclusive jurisdiction of the Courts of Western Australia and the appeal Courts from those Courts.

This Agreement was executed by the parties on the date first hereinbefore appearing.

Signed for and on behalf of the                )  
STATE OF WESTERN AUSTRALIA                )  
by    )  
    )

---

THE COMMON SEAL of                        )  
[THE ABC] was                              )  
hereunto affixed by                        )  
in the presence of :                        )

---

THE COMMON SEAL of                        )  
THE EXECUTIVE DIRECTOR of the          )  
DEPARTMENT of CONSERVATION            )  
AND LAND MANAGEMENT was                )  
hereunto affixed by                        )  
in the presence of :                        )

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**SCHEDULE 12**  
**DEED OF COVENANT FOR**  
**BURRUP NON-INDUSTRIAL LAND UNDER SECTION 15 OF**  
**THE LAND ADMINISTRATION ACT**

## BETWEEN

**APPROVED BODY CORPORATE of ..... (Covenantor)**

**AND**

**THE MINISTER FOR LANDS**, a body corporate under the *Land Administration Act 1997* (WA) of care of the Department of Land Administration, 1 Midland Square, Midland, Western Australia (**Covenantee**)

## RECITALS

- A. The Covenantor is or is entitled to be the registered proprietor of the Land.
  - B. While the Land was Crown land, the Covenantor entered into or adopted the Section 31 Agreement with the Covenantee for the use of the Land, which was an agreement and the Land is "agreement land" for the purposes of section 15 of the LAA.
  - C. This deed gives effect to the provisions of the Section 31 Agreement and the Conditions, by creating restrictive and positive covenants under section 15 of the LAA which are to be registered on the title to the Land.

## **OPERATIVE PART WHEREBY THE PARTIES AGREE AS FOLLOWS**

## **1. Definitions and Interpretation**

### 1.1 Definitions

In this deed, unless the context requires otherwise:

**Contracting Parties** means the persons who are defined as such in the Section 31 Agreement.

**Covenantee** means the Minister for Lands and its successors in title to the benefit of these Covenants under section 15 of the LAA.

**Covenantor** means the **(Approved Body Corporate)** being the registered proprietor of the Land, and its successors in title and the registered proprietor of the Land from

time to time.

**Covenant** means the covenant set out in clause 2 of this deed, as amended, varied or supplemented by amendment registered on the certificate of title from time to time.

**LAA** means the *Land Administration Act 1997* (WA), as amended from time to time.

**Land** means the [XXX insert technical land description for Burrup Non-Industrial Land].

**Section 31 Agreement** means a deed entitled Burrup and Maitland Industrial Estates Agreement dated [XX] 2002, entered into by the State of Western Australia, the Contracting Parties and others, which has been adopted by the Transferee by deed dated [XX].

**written law** has the same meaning as that term is defined in the *Interpretation Act 1984* (WA).

## 1.2 Interpretation

In this deed, unless the context requires otherwise:

- (a) a reference to a clause is a reference to a clause of this deed;
- (b) a reference to a written law includes consolidations, amendments, re-enactments or replacements of that written law;
- (c) the singular includes the plural, the plural includes the singular and any gender includes each other gender;
- (d) the word person includes a firm, a body corporate, an unincorporated association or an authority;
- (e) a reference to a person which has ceased to exist or has reconstituted, amalgamated, reconstructed or merged or the functions of which have become exercisable by another person, is a reference to the person established or constituted in its place or by which its functions have become exercisable;
- (f) a reference to a thing includes a reference to the whole or any part of that thing;
- (g) if a word or phrase is defined, cognate words and phrases have a corresponding meaning;
- (h) headings are for convenience only and do not affect the interpretation of this deed;
- (i) the word **including** is deemed to be followed by the words, **but not limited to**.

## **2. No Building on Coastal Strip Covenant**

Pursuant to section 15 of the LAA, the Covenantor covenants, in favour of the Covenantee, that where a part of the boundary of the Land is defined by the High Water Mark, no building may occur on the Land between the High Water Mark and:

- (a) where the coastline is rocky coastline – the line being 100 metres inland from the cliff line occurring nearest that boundary; or
- (b) where the coastline is sandy coastline – the line being 150 metres inland from the High Water Mark nearest that boundary,

except for recreational purposes, which may include the construction, operation and maintenance of roads, carparks, and low impact public facilities such as showers, toilets, shaded picnic tables and boat ramps.

For the purposes of this clause 2, **High Water Mark** has the same meaning as that term is defined in the LAA.

## **3. Registration of this Deed**

- (a) This deed must be registered against the certificate of title for the Land, and the Covenantor consents to that registration.
- (b) The Covenantor acknowledges and agrees that the Covenant runs with and bind the Land pursuant to section 15(6)(c) of the LAA.
- (c) The Covenantor acknowledges and agrees that the Covenant is enforceable against the Covenantor and its successors in title.

## **4. Notices**

[XXX]

## **5. General Provisions**

- (a) If a Court determines that a word, phrase, sentence, paragraph or clause in this deed is unenforceable, illegal or void, then it shall be severed and the other provisions of this deed shall remain operative.
- (b) This deed shall be construed and interpreted in accordance with the laws of Western Australia. The parties submit to the non-exclusive jurisdiction of the Courts of Western Australia and appeal Courts from those Courts.

## **6. Further Assurances**

The parties will do all things and execute all further documents necessary to enable this deed and any modifications of it to be registered on the certificate of title to the Land, and to give full effect to this deed and all transactions contemplated under it.

Executed by the parties as a Deed.

The COMMON SEAL of [THE ABC] )  
was hereto affixed by )  
in the presence of: )  
                            )

---

Director

---

Director/Secretary

---

Name of Director (print)

---

Name of Director/Secretary (print)

The COMMON SEAL of the Minister for )  
Lands was hereto affixed by )  
in the presence of: )  
                            )

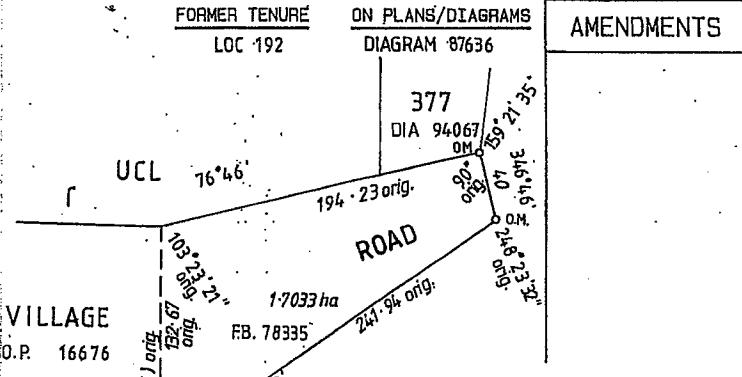
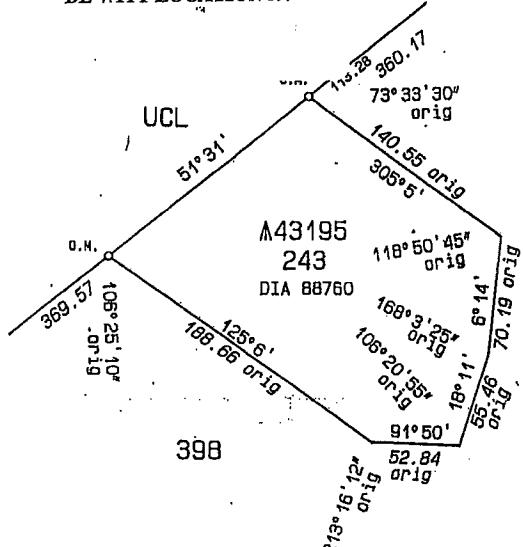
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Witness

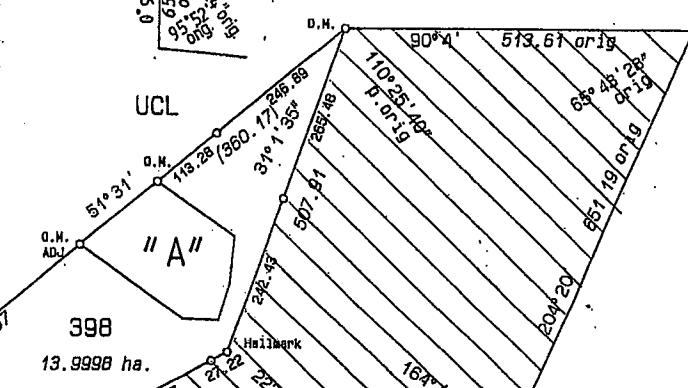
**SCHEDEULE 13  
DE WITT LOCATION 399**

**See following**

SCHEDULE 13  
DE WITT LOCATION 399



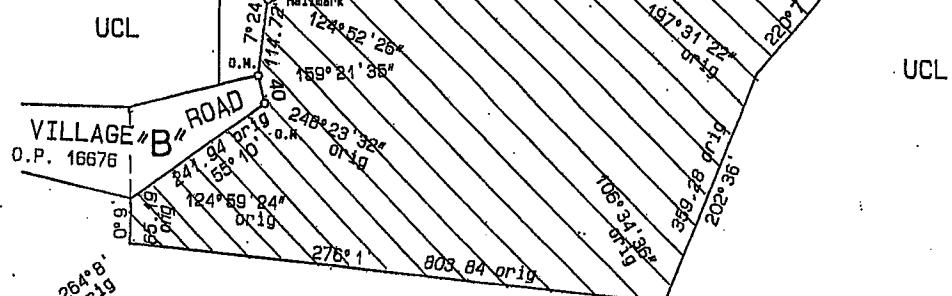
399  
Enlargement at "B"  
Scale 1:3000



377  
DIA 94067  
O.H.

STAGED APPROVAL ONLY  
This plan /diagram is suitable for supporting the registration of Crown Titles and associated interests.  
Refer to "In Order for Dealings" section below for conditions of full approval.

M. J. Edwards 11.2.00  
AUTHORIZED LAND OFFICER DATE



DE WITT LOCATION  
399



Dept of Land Administration

UO 246090

100 0 100 200

INTERMEDIATE MARKING OVER 250 METRES

DISTRICT TOWNSITE	LOCATIONS 398,399 & ROAD	FILE 1680/997 V3	
SURVEYOR'S CERTIFICATE - (REG 54) <u>H.R. MULHOLLAND</u> hereby certify that this plan is a correct representation of the survey and/or calculations from measurements recorded in the field book lodged for the purposes of this plan and that it complies with the relevant written law(s) in relation to which it is lodged. <u>H.R. Mulholland</u> 5/5/99 Licensed Surveyor Date	LOCAL AUTHORITY SHIRE OF ROEBOURNE LOCALITY BURRUP PENINSULA PUBLIC PLAN(S) BH85 (10) 5.8 SURVEY INDEX PLAN(S) BH85 (10) 5.8 FIELD BOOK 79217 PAGE 1-2 AZIMUTH FROM DIAGRAM 94066	APPROVED BY WESTERN AUSTRALIAN PLANNING COMMISSION FILE EXEMPT 1680/997 V3 LAA. 1997 FOR CHAIRMAN DATE TYPE OF VALIDATION FULL AUDIT DATE LEGAL COMPONENT NB DATE 1-6-99 CERTIFIED CORRECT <u>as.</u> DATE 5-6-99 EARLY ISSUE <input type="checkbox"/> F.S.C. No. LODED DATE 14-5-99	IN ORDER FOR DEALINGS SUBJECT TO <u>Taking</u> <u>Higham</u> 3-6-99 FOR AUTHORIZED LAND OFFICER DATE APPROVED (REG 26A) AUTHORIZED LAND OFFICER DATE LAND ADMINISTRATION ACT DIAGRAM 94276