

I hereby certify that the within is a true and correct copy of Lease No. 2299/100.

*Keira McNamara*

Mr Keiran McNamara  
Director General - Department of Environment and Conservation

FORM APPROVAL B5886

WESTERN AUSTRALIA  
CONSERVATION AND LAND MANAGEMENT ACT 1984  
TRANSFER OF LAND ACT 1893 AS AMENDED

## LEASE OF CROWN LAND (L)

### DESCRIPTION OF LAND (NOTE 1)

Part Reserve 39897

EXTENT

Part

VOLUME

FOLIO

### ENCUMBRANCES (NOTE 2)

Nil

### LESSOR/S (NOTE 3)

THE CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY of Hackett Drive Crawley, Western Australian

### LESSEE/S (NOTE 4)

KIMBERLEY WILDERNESS ADVENTURES PTY LTD ACN 106 742 385 of PO Box 118, Hampton, Victoria

### TERM OF LEASE (NOTE 5)

TWENTY ONE (21) Years with a Commencement Date of the First of November 2010.

THE LESSOR LEASES TO THE LESSEE the land above described subject to the encumbrances shown hereon

RENTAL (note 7 & 8)

For each year of the above term in accordance with the provisions of clause 3 of the terms and conditions contained in the lease.

SUBJECT TO THE COVENANTS AND POWERS IMPLIED UNDER THE CONSERVATION AND LAND MANAGEMENT ACT 1984 & TRANSFER OF LAND ACT 1893 AS AMENDED (UNLESS HEREBY NEGATED OR MODIFIED) AND ALSO TO THE COVENANTS AND CONDITIONS CONTAINED HEREIN.

2010

THE CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY  
(Lessor)

AND

KIMBERLEY WILDERNESS ADVENTURES PTY LTD  
(Lessee)

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DEED OF LEASE  
LEASE NO.

2299/100

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THIS DEED OF LEASE is made the

day of

2010

## BETWEEN

The **CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY** of 17 Dick Perry Avenue, Kensington, Western Australia (in this lease called "the Lessor" which expression where the context so admits includes the person for the time being entitled to the reversion immediately expectant upon the termination of the term hereby created) of the first part

## AND

**KIMBERLEY WILDERNESS ADVENTURES PTY LTD ACN 106 742 385** of PO Box 118, Hampton, Victoria (in this lease called "the Lessee" which expression where the context so admits includes its successors and permitted assigns) of the other part.

## RECITALS

- A. The land in Reserve Number 39897 ("**the Land**") is vested in the Conservation Commission of Western Australia.
- B. Pursuant to Section 100 of the amended *Conservation and Land Management Act 1984* ("**the Act**"), the Chief Executive Officer (CEO) has power to lease the Land for the purpose of Recreation for a term not exceeding 21 years and to grant an option to renew the lease for a term not exceeding 21 years.
- C. Section 36 of the Act allows for the Conservation and Land Management Executive Body ("**Executive Body**") to be established and to be governed by the CEO.
- D. Section 37 of the Act allows for the Executive Body, as a body corporate, to perform functions of the CEO.
- D. The Lessee has applied to the Lessor for a lease of that portion of the Land above described together with all the Lessee's Property which will include buildings erections and other improvements now or hereafter erected thereon (collectively "**the Leased Premises**").
- E. The Lessor has agreed to lease the Leased Premises to the Lessee for the term and at the rental respectively set out hereto and upon and subject to all the covenants agreements and stipulations contained in this lease.

NOW THIS DEED witnesses as follows -

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this lease unless the contrary intention appears: -

"**Act**" means a *statute and includes subsidiary legislation made thereunder*,

"**Address for Payment**" means Department of Conservation and Land Management, 17 Dick Perry Avenue Kensington Western Australia 6152 or such other Place as the Lessor may from time to time nominate;

"**Approvals**" means the approval of the Lessor, of the Shire of Halls Creek by its health officer or inspector and by its building officer or inspector, of the Water

Corporation, of a licensing authority under the *Liquor Licensing Act 1988* and all other approvals consents permissions and licences of any local or other competent Authority which may from time to time be necessary for the Lessee to commence and to carry out any works, business or development;

**"Authority"** means any legal entity person or group of persons empowered by Statute, subsidiary legislation or otherwise to perform the regulatory administrative and/or executive functions of Commonwealth, State or Local Government;

**"Commencement Date"** means the first day of November 2010;

**"Commonwealth"** means Commonwealth of Australia;

**"Equipment"** means all fixtures, fittings (including mechanical, electrical and gas fixtures and fittings), floor coverings, plant, machinery, equipment, installations, furniture, furnishings and other chattels installed and provided within the Leased Premises (whether by or on behalf of the Lessor or the Lessee) and all items subsequently substituted therefor and all items subsequently added thereto;

**"Financial Reporting Year"** means each of:

- (a) the period from and including the Commencement Date to and including 31 March 2011;
- (b) each of the following period of 12 consecutive months ending on and including 31 March; and
- (c) if this lease does not end on any 31 March, the period from and including the last 1 April before this lease ends to and including the date this lease ends.

**"Goods and Services Tax"** means the tax system described in clause 3.5;

**"Leased Premises"** means the area of approximately 3.74 hectares situated within the Purnululu National Park which is delineated and shown hatched on Plan 1 annexed hereto together with all buildings, structures, installations, improvements, fixtures and fittings now and hereafter thereon and whether brought thereon by or on behalf of the Lessor or the Lessee, including (without limitation) accommodation, cabins, plant, equipment, electricity plant and water treatment plant;

**"Lessee's Covenants"** means the covenants contained or implied in this lease on the part of the Lessee to be observed and performed;

**"Lessor's Auditor"** means the Auditor General or other auditor appointed by the Lessor and engaged at the expense of the Lessor;

**"Monthly Statement"** means the monthly statement referred to at clause 3.1 which details the number of Overnight Visitors (of the) Lessee staying at the Leased Premises during each successive calendar month;

**"National Park"** means Reserve Number 39897 – Purnululu National Park;

**"Overnight Visitors"** means Visitors who arrive other than by air into the National Park and who stay at the Leased Premises overnight;

**"Overnight Visitor Records"** means the records referred to in clause 3.3;



**"Park Entry Fee"** means the entry fee payable to the Lessor by persons entering the National Park prescribed from time to time in the *Conservation and Land Management Regulations 2002*;

**"Quarter"** means a period of 3 calendar months commencing on the first day of January, April, July or October in any year within the Term and the first Quarter is that in which the Commencement Date falls;

**"Rate"** means that rate of interest which is 2% per annum higher than the loan reference rate published from time to time by the Commonwealth Bank of Australia, Perth or if that loan reference rate is no longer published, such rate of interest which is 2% per annum higher than the rate of interest which is in the opinion of the General Manager of the Perth Capital office of the Commonwealth Bank of Australia equivalent to that loan reference rate;

**"Rates and Taxes"** means any tax, levy or any other charge imposed at any time during the Term of the lease by any State, local or Commonwealth governmental body, authority, department or instrumentality or any other authority of any kind, in relation, to the supply or use of the Leased Premises or any thing under or in connection with the lease;

**"Rent"** means the rent calculated as provided in clause 3.2 and payable pursuant to the provisions of clause 3.1;

**"Sales Evidence"** means all supporting data for the Sales Records and includes amongst other things sales slips, sales records, credit and charge card slips, sales dockets, cash and bank or other financial institution deposit records;

**"Sales Records"** means books of account and manual and hard copy and electronic and other records and data (including computer tapes, discs, and other storage systems, cash register summary records, bank statements, and all records made and maintained by the Lessee pursuant to the *Liquor Licensing Act 1988*) relating to all transactions in the course of all businesses carried on in, at, from or on the Leased Premises;

**"Schedule"** means the Schedule to this lease;

**"Site Plan"** means the plan which is annexed hereto and marked "Site Plan" and varied from time to time with the approval of the Lessor;

**"State"** means Western Australia;

**"subsidiary legislation"** includes any proclamation, regulation, rule, by-law, local law, order, ordinance, notice, rule of court, town planning scheme, resolution, or other instrument, made under any Act or Subsidiary legislation for the time being in force and having legislative effect;

**"Sustainability Performance and Audit Schedule"** means the schedule developed jointly between the Lessor and the Lessee which sets out benchmarks for the Lessee as provided in clause 3.63 and comprises Annexure 1 to this lease;

**"Term"** means the period of twenty-one (21) years from and including the Commencement Date and, where the context admits, includes any extension or renewal of the Term;

"Visitor" means visitor, guest or customer of the Lessee staying at the Leased Premises;

## 1.2 Interpretation

In this lease unless the contrary intention appears:-

- (a) words importing one gender include all other genders;
- (b) words in the singular number include the plural and vice versa;
- (c) monetary references are references to Australian currency;
- (d) clause and subclause headings and the list of contents are inserted for ease of reference only and are to be disregarded in the interpretation or construction of this lease;
- (e) any agreement or obligation entered into or undertaken by more than one person binds those persons jointly and each of them severally;
- (f) a reference to a thing means a part of that thing;
- (g) reference to:-
  - (i) an Act by name is a reference to an Act of the Parliament of Western Australia;
  - (ii) an Act whether by name or otherwise includes the amendments to the Act for the time being in force and also any Act passed in substitution for it and all subsidiary legislation for the time being in force under it;
  - (iii) this lease includes the Schedules and Annexures to this lease;
  - (iv) a person includes a corporation and vice versa;
  - (v) a Schedule or Annexure means a Schedule or Annexure to this lease;
  - (vi) the Law Society, the Australian Institute of Valuers and Land Economists (Inc.) (Western Australian Division), the Institute of Chartered Accountants and any other authorities, associations and bodies whether statutory or otherwise, in the event of any such authority, association or body ceasing to exist or being re-constituted or re-named or replaced or the powers or functions thereof being transferred to any other authority, association or body established or constituted in lieu thereof or (as nearly as may be) succeeding to the powers or functions thereof; and
  - (vii) a provision of this lease prohibiting the Lessee from doing a thing shall require the Lessee to ensure compliance therewith by the Lessee's officers, employees, agents, contractors, sub-tenants, licensees and invitees.

## **2. GRANT OF LEASE**

### **2.1 Lease**

- (a) The Lessor hereby leases to the Lessee and the Lessee hereby takes on lease the Leased Premises for the Term subject to the payment of the Rent and the observance and performance by the Lessee of the Lessee's Covenants.
- (b) If for any reason by law this lease requires the consent of the Western Australian Planning Commission in respect to Part 10 of the *Planning and Development Act 2005* then this lease shall be expressly subject to and conditional upon the granting of such consent.

## **3. COVENANTS BY LESSEE**

The Lessee COVENANTS with the Lessor:-

### **3.1 To Pay Rent**

To pay rent monthly on receipt of a Lessor initiated invoice. The Lessee shall supply to the Lessor within 10 days after the end of each month of the Term a Monthly Statement, certified to be true and correct by the Lessee's Business Manager for that month (or part of a month if applicable). The Monthly Statement must be in such a form as approved by the Lessor and must contain such information, detail and breakdown as the Lessor reasonably requires.

### **3.2 Rent Payable**

- (a) The Rent from Commencement Date to the termination of the Term is the amount of:
  - \$16 per Overnight Visitor per night -16 years and over;
  - \$8 per Overnight Visitor per night - 5 to 15 years of age (inclusive); and
  - A Park Entry Fee for each Visitor as prescribed in the Conservation and Land Management Regulations 2002.
- (b) The Park Entry Fee from Commencement Date to the termination of the Term shall be varied in accordance with changes to the Park Entry Fee prescribed from time to time in the *Conservation and Land Management Regulations 2002*.
- (c) The fee charged per Visitor set out in paragraph (a) of this clause shall from Commencement Date to the termination of the Term be varied from time to time to an amount determined by the Lessor based on the changes to the camping fees for the National Park prescribed from time to time in the *Conservation and Land Management Regulations 2002*.
- (d) All Park Entry Fees must be paid except where fees are waived in accordance with DEC policy, as amended from time to time, or Visitors have prepaid their park entry fee.

- (e) The Lessee must ensure that Visitors have paid the Park Entry Fee with the exception of those Visitors who enter the National Park by aircraft.

### **3.3 Lessee to Keep Records**

The Lessee shall keep proper, complete and accurate records of the number of Overnight Visitors for a period of at least three (3) years from the end of each financial reporting year.

### **3.4 Records and Examination**

The Lessee shall enter and keep in suitable books and records during the Term at a suitable location on the Leased Premises or such other place as the Lessor may approve true particulars and complete records of all Overnight Visitors and such records shall at all times be open to inspection by the Lessor or the Lessor's Auditor upon the Lessor giving reasonable notice to the Lessee and such inspection shall take place during the usual business hours of the Lessee's business. The Lessor or the Lessor's Auditor may take copies and extracts therefrom and the Lessee will at all times render to the Lessor and the Lessor's Auditor all and every assistance and explanation in making such inspection and taking such copies and extracts and will verify and prove to the satisfaction of the Lessor or the Lessor's Auditor such entries in any book, record, document, computer record and any other form of electronic or any other form of electronic or data recordings as shall be agreed between the parties, from time to time, which shall record the number of Overnight Visitors to the Leased Premises and for such purposes will furnish the Lessor or the Lessor's Auditor with all such information as the Lessor or the Lessor's Auditor shall demand.

### **3.5 Goods and Services Tax**

#### **(a) Definitions**

"GST" means a goods and services tax or similar value added tax levied or imposed in Australia pursuant to the *GST Act* or otherwise on a supply.

"GST Act" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"New Tax System changes" has the same meaning as in section 75AT of the *Trade Practices Act 1974* (Cth).

"Tax Invoice" includes any document or record treated by the Commonwealth Commissioner of Taxation as a tax invoice or as a document entitling a recipient to an input tax credit

#### **(b) Adjustment for GST**

- (i) Unless expressly included, the consideration for any supply made by the Lessor under or in connection with this lease does not include GST.
- (ii) GST is payable on any supply of goods and services under this lease.

(c) **Tax Invoices**

The Lessor must issue a Tax invoice to the Lessee in respect of any supply of goods and services under the lease.

(d) **Reimbursements**

If the Lessor is entitled under the lease to be reimbursed or indemnified by the Lessee for a cost or expense incurred in connection with the lease, the reimbursement or indemnity payment must not include any GST component of the cost or expense for which an input tax credit may be claimed by the Lessor.

### **3.6 Processes and Audit**

- (a) That the Lessee shall carry out all processes procedures and practices and shall install and operate all systems and additional systems which shall be specified by the Lessor's Auditor in his professional judgement as being appropriate for the purpose of achieving accuracy, permanency and control in the creation, formation and maintenance of the records of all Overnight Visitors.
- (b) That at its option the Lessor may cause at any reasonable time upon giving seven (7) days written notice to the Lessee, a complete audit to be made of records relating to the period covered by any statement furnished pursuant to clause 3.1. If such audit discloses that the Lessee's record of Overnight Visitors is understated by more than 2% in any Monthly Statement given pursuant to clause 3.1, the Lessee must promptly pay to the Lessor the cost of the audit, but otherwise the audit shall be completed at the expense of the Lessor.
- (c) Should any discrepancy be established by an audit under subclause 3.6(b) the Lessee shall pay to the Lessor on demand all Rent properly due together with interest calculated on such Rent at the Rate and computed from the date on which such Rent became due and payable in accordance with the provisions hereof until the date on which all such monies are paid.

### **3.7 To pay outgoings**

To pay and discharge on or before the due date for payment all present and future rates, taxes, charges, assessments, fees, duties, impositions, penalties and other outgoings whatever which now or at any time during the Term are assessed and charged upon or in respect of the Leased Premises or the use or occupation of the Leased Premises or any part of the Leased Premises or any business conducted at or from the Leased Premises, and all accounts for water, electricity, gas or telecommunications services consumed on or provided to the Leased Premises and all meter rentals (whether assessed in the name of the Lessor or of the Lessee) but if the Lessee's obligation to pay land tax under this provision arises due to a change in the law whereby the Lessor is assessed to pay land tax in respect of the Leased Premises, (instead of the Lessee being assessed to pay land tax in respect of the Leased Premises, which will be the case immediately following the Commencement Date) then the Lessee will only be obliged to pay land tax on the basis that the Leased Premises are the only land of which the Lessor is the owner (within the meaning of that term in the *Land Tax Assessment Act 2002*), and the Lessor agrees to pay or discharge the balance (if any) of any land tax imposed upon the Lessor.

### **3.8 Interest on Overdue Money**

Without limiting any right, power, or remedy of the Lessor, to pay to the Lessor on demand interest at the Rate on any money due, owing, payable and unpaid for 14 days after the due date for payment, computed from the due date for payment until the date of receipt by the Lessor.

### **3.9 Alterations and Improvements**

Not to construct, erect or build or permit or cause to be constructed, erected or built on the Leased Premises any buildings, structures or improvements or to make any alteration or additions to the buildings, structures and other improvements from time to time on the Leased Premises without the prior written approval of the Lessor and then only in strict accordance with plans and specifications first approved in writing by the Lessor.

### **3.10 Comply with Acts**

At all times during the Term to duly and punctually comply with, observe, carry out and conform to the provisions of all laws, Acts and statutes (State, Commonwealth or local) and all subsidiary legislation now or hereafter in force and all requirements and orders of any authority (statutory or otherwise) which affect the Leased Premises or the use of the Leased Premises or which impose any duty or obligation upon the owner or occupier of the Leased Premises;

### **3.11 Compliance with Local Government Act**

Notwithstanding that the *Local Government Act 1995* and the subsidiary legislation made under it, including the *Building Regulations 1989* made under the *Local Government (Miscellaneous Provisions) Act 1960*, may not govern activities and building operations within the Leased Premises, to ensure that any development works and all activities and operations of the Lessee within the Leased Premises pursuant to this lease meet the requirements of the *Local Government Act 1995* and the subsidiary legislation in force under it which the Lessee would have to meet if that Act and subsidiary legislation did have full force and effect within the Leased Premises, except for any such requirement which is waived in writing by the Lessor. The Lessor may engage any local government, consultant, or expert to advise it whether or not the Works to be carried out by the Lessee pursuant to this lease meet those requirements;

### **3.12 Comply with Orders, Regulations**

To perform, discharge and execute all requisitions and works and do and perform all such acts and things upon, to and in respect of and the Leased Premises or any part of the Leased Premises as are or may be legally required or directed to be performed, discharged, executed or done (whether by the Lessor or Lessee) by any local government, the Department of Health Western Australia, any Health Commissioner or by the Water Corporation or, by any other local or public Authority or by order or in pursuance of any statute or subordinate or subsidiary legislation (State, local or Commonwealth) now or hereafter in force including (without limitation) all structural, electrical, telecommunications and plumbing works, alterations and improvements;

### **3.13 To Transmit Notices**

To furnish within seven days of the receipt of the same a copy of all notices received by the Lessee (whether from any licensing, local or other competent Authority) which relate to the Leased Premises or any part of any development works, non compliance with which would or may adversely affect the Lessor's interest in the Leased Premises or which relate to any breach of duty or obligation of the Lessee or of the Lessor.

### **3.14 Visitors' Statutory Duty**

At all times during the Term to use its best endeavours to procure the performance and observance by the employees agents and contractors of the Lessee and by the public of the provisions of all statutes (State or Commonwealth) and all subsidiary legislation now or hereafter in force and all requirements and orders of any Authority (statutory or otherwise) which relate to the duty of any person entering or who has entered the Leased Premises;

### **3.15 Exclusion of Persons**

To exclude from the Leased Premises any person who does not comply with the provisions of any statute, subsidiary legislation requirement or order referred to in the preceding subclause and immediately inform the Lessor of any such exclusion and of any other non-compliance within the National Park of which the Lessee is aware, to give the Lessor the opportunity to respond thereto as the Lessor in its discretion sees fit.

### **3.16 Maintenance of Leased Premises**

At the Lessee's own expense to keep and maintain the Leased Premises and every part thereof and all buildings structures pavements improvements fixtures and fittings (both internal and external) comprised and situated therein and any addition thereto in good, safe and substantial repair order and condition as they were at the commencement of the lease, including the maintenance of mechanical electrical and electronic fixtures and fittings within the Leased Premises in good repair and operating condition AND to promptly replace all broken and faulty electric light globes and tubes and all cracked and broken glass AND to keep all grounds forming part of the Leased Premises well tended, neat, safe, in good order and condition and in accordance with the landscape design approved in writing by the Lessor;

### **3.17 Provide fixtures fittings and chattels**

At all times during the Term to provide and install fixtures, fittings, mechanical, electrical and gas fixtures and fittings, floor coverings, plant, machinery, equipment, furniture, and other chattels within and to the Leased Premises which are safe and of good quality and standard consistent with the standard expected of a good quality facility which is open to the public, to enable the business of the Lessee to be conducted throughout the Term in accordance with standards principles and methods applicable from time to time;

### **3.18 Maintain and replace**

To keep and maintain all the items provided and installed pursuant to the preceding subclause 3.17 and all parts thereof (including fixtures and fittings within the Leased

Premises) and all replacements in good, safe and substantial repair order and condition and (where applicable) in good working order and condition, properly oiled, adjusted, serviced, covered, protected, painted and in a fully operating and functioning condition; AND to replace with articles of the same nature, of equal value and in good, safe condition all items and parts thereof which during the Term of this lease shall have been lost damaged or destroyed or in any way rendered unserviceable or useless or which shall have ceased to be in good, safe and sound repair, working order and condition AND at all times to keep the walls and ceilings clean and washed to the satisfaction of the health authorities and the local government;

### **3.19 To Refit and Refurbish**

Notwithstanding the provisions of clause 3.18 during each ninth year of the Term and of any renewed term calculated from the Commencement Date of the initial Term at the direction of the Lessor with the Lessor acting reasonably to refurbish the Leased Premises, which refurbishment (without limiting the generality of the foregoing) shall include removal, repair and replacement (as appropriate) of corroded, worn, weathered building fabric, materials and surfaces including structural fabric and materials removal and repairs of electrical wiring and electrical fixtures and fittings repainting replacement of signs and refurbishing of the fixtures and fittings within the Leased Premises, replacement of floor coverings and window treatments, furniture, furnishings, painting, colouring, varnishing and papering all parts which have previously been painted, coloured, varnished or papered to ensure that the Leased Premises including ceilings, walls, floors, fixtures, fittings and signs maintain a high standard of presentation, appearance and design, unless otherwise approved by the Lessor;

### **3.20 Rebuilding on Destruction or Damage**

If the buildings and improvements upon or within the Leased Premises or any parts of those buildings and improvements, or any replacements of them are destroyed or damaged, by any cause whatsoever (including flooding), the Lessee shall promptly and diligently rebuild, replace or repair, as the case requires, those buildings and improvements in order to maintain continuity of the Lessee's business of a camping facility at the Leased Premises.

### **3.21 Lessor's right of entry upon Leased Premises**

- (a) To permit the Lessor to enter the Leased Premises at any time in order to exercise any right, power or authority which the Lessor has under this lease or under any law including the *Conservation and Land Management Act 1984*. The Lessee is not entitled to any compensation or damages or to take or make any other action, suit, demand or claim against the Lessor for anything done or omitted by the Lessor on the Leased Premises in the exercise of any right or authority under this lease or any Act.
- (b) The Lessor may after giving reasonable notice to the Lessee (or in an emergency, without notice) enter the Leased Premises to do any one or more of the following things:
  - (i) inspect the state of repair and condition of the Leased Premises;
  - (ii) maintain or repair the Leased Premises and equipment or facilities in or on the Leased Premises;



- (iii) maintain, repair, alter or remove any electricity, gas, water, sewerage, drainage or telecommunications services ("the Services");
- (iv) carry out structural work to the Leased Premises or any other work required by an Authority;
- (v) remove anything which is unsafe, harmful or dangerous;
- (vi) anything which should have been done by the Lessee but which has not been done or has not been done properly;
- (vii) anything else which the Lessor is required to do by law or is permitted or obliged to do under this lease;

without affecting the Lessee's obligations under this lease

- (c) If the Lessor does anything permitted by the preceding clause the Lessor must:
  - (i) give the Lessee reasonable notice of the intended action before it is taken (except in an emergency); and
  - (ii) use all reasonable endeavour to minimise disruption to the Lessee's business; and
  - (iii) make good any damage to the Lessee's property (other than minor damage) caused by the Lessor.

### **3.22 Use of Leased Premises**

To actively and continuously use the Leased Premises for the purpose of carrying on in a proper, efficient, prudent and businesslike manner in accordance with any bona fide representation or proposal put forward by or on behalf of the Lessee (in connection with this lease) and this lease the business of a commercial public camping facility and for such other purposes as are incidental to the carrying on of that business and not to use the Leased Premises for any other purpose without the prior written consent of the Lessor;

### **3.23 Standard of Service**

At all times during the Term, with respect to the use of which each of the individual parts of the Leased Premises must be put in accordance with the Lessee's Covenants:-

- (a) to manage, conduct and control at all times in good faith and to a prompt, efficient and high standard and in an orderly and reputable manner, each business and activity thereon and each provision of service to the public, limited in some cases to specific hours of operation;
- (b) not in any way to damage or cause a detraction from the reputation of the National Park or its facilities;
- (c) to meet the realistic and reasonable expectations of the public.

### **3.24 Inadequacy of Service**

If the standard of service provided by the Lessee, is in the reasonable opinion of the Lessor, not of a standard which meets the requirements of the immediately preceding subclause, the Lessor may give written notice to the Lessee ("the Notice of Inadequacy") requiring the Lessee to provide a service that meets the required standard and giving particulars of the way in which the services provided is inadequate to meet the said standard. The Lessee shall promptly and properly comply with the Notice of Inadequacy.

### **3.25 Furnish Equipment and Staff**

To keep the Leased Premises properly furnished equipped and staffed for the said use to the reasonable satisfaction of the Lessor.

### **3.26 Not to Pollute**

To do all things necessary to prevent, and not to do or permit or suffer to be done anything likely to cause, pollution, degradation or contamination of the Leased Premises by garbage, refuse, waste matter, oil, liquid fuels, noise, sewage or other pollutants or by stormwater or other run-off or arising from use of the Leased Premises and in particular but without limiting the generality of the Lessee's obligations under this clause, to regularly collect and dispose of all garbage refuse waste (solid and liquid) oil and other pollutants from the Leased Premises at a place and in a manner required or approved by the Lessor or by the authorities (State Commonwealth and local) having control over the disposal of waste matter and the protection of the environment from time to time, and to remove all garbage refuse and waste from the Leased Premises at regular intervals by means of the service provided by the local government or a contractor engaged and paid for by the Lessee.

### **3.27 Ground Water**

To take all necessary measures and precautions to prevent the pollution of the ground water whether caused by sewage leaching or from any other substance or source;

### **3.28 Introduced Material and Plants**

Not to introduce or bring into the National Park any soil, either for garden or building purposes, or any mulch or other material for the garden purposes or any plants or any vegetable material unless prior to the introduction of soil, mulch, plants, vegetable or any other material a certificate of a qualified person approved by the Lessor has first been obtained from the supplier of the same or from a qualified person approved by the Lessor and engaged by the Lessee for the purpose that the substance, plant or material to be introduced is free from any pollutant or contaminant and free from any plant disease or fungus;

### **3.29 Handling of Pollutants**

To use care in the handling of fuels, oils and other pollutants, to limit spillage, to safely store minimum quantities only of fuels oils and other pollutants and to dispose of unwanted residues outside the National Park.

### **3.30 Not to Overload**

Not to do or permit or suffer to be done upon the Leased Premises anything which might result in excessive stress, strain, or floor loading to any building on the Leased Premises.

### **3.31 Chemicals**

Not to use, permit or suffer to be used any chemical, inflammable gas or fluid, or other liquid fuels or other dangerous substance, in or upon the Leased Premises except in a normal appliance ordinarily used in connection with a business or use authorised by the Lessor to be carried on upon the Leased Premises.

### **3.32 Not to obstruct or cause nuisance**

Not to do or leave undone any act matter or thing whereby a nuisance or anything in the nature of, or which may be determined to be, a nuisance by any local or public authority, body or person or within the meaning of any law, statute or subordinate or subsidiary legislation (local, State or Commonwealth) now or hereafter in force, may exist arise or continue upon or in connection with the Leased Premises or any business carried on upon the Leased Premises or the use or occupancy of the Leased Premises AND forthwith to abate any such nuisance and to carry out and comply with all the provisions of all such laws, statutes and subordinate or subsidiary legislation and of every requisition and order of any local or other public authority relating to such nuisance.

### **3.33 Not to cause or permit nuisance**

Not to leave, do, exercise or carry on or permit or suffer any other person or persons to leave, do, exercise or carry on in the Leased Premises or any part thereof, any noxious, noisome or offensive art, trade, business, occupation or calling or any act, matter or thing whatsoever which by sight, sound or smell shall or may be or become or cause annoyance, nuisance, grievance, damage or disturbance to any person within or beyond the Leased Premises.

### **3.34 Not to permit violent behaviour**

Not to encourage, permit or suffer any violence abuse or offensive behaviour by any person to arise or continue within the Leased Premises and to promptly advise DEC's Ranger-in-Charge to enable the removal from the National Park of any violent, abusive or offensive person.

### **3.35 Pay Lessor's expenses in relation to Lessee's Covenants**

To pay to the Lessor on demand all sums of money which the Lessor may at any time and from time to time hereafter pay or expend or be called upon to pay in or about or in connection with performing discharging or executing any requisition or works or abating any nuisance or rectifying any pollution or contamination referred to in the preceding provisions of this lease and which contrary to the agreement therein contained the Lessee neglects or fails to perform discharge execute abate or rectify and to pay those sums of money to the Lessor notwithstanding that by any statute by-law or regulation the Lessor is liable alone or jointly with others or jointly with the Lessee and others to perform discharge execute abate rectify or pay for the same or any part thereof.

### 3.36 Assignment and Mortgage

Not to assign, sub-let, license, sublicense, mortgage, charge or otherwise encumber or part with the possession of or dispose of the Leased Premises or any part of the Leased Premises or the benefit at law or in equity of this lease without the prior written consent of the Lessor which the Lessor must not unreasonably withhold or delay:-

- (a) if the Lessee wishes to mortgage charge or encumber the whole of this lease and the Leased Premises on condition that there must be no further assignment, licence, sublicense, sublease, mortgage, charge or other encumbrance or parting with possession or disposition other than in terms of this clause 3.36 and subject to any reasonable undertakings required by the Lessor being given by the Lessee or any other person;
- (b) if the Lessee wishes to assign the whole of the Leased Premises and the benefit of this lease or if the Lessee wishes to sublease, licence or sublicense the whole of the Leased Premises and in either of those cases if:-
  - (i) the proposed assignee, sublessee, licensee or sublicensee is a respectable, responsible and solvent person and the Lessor is satisfied as a result of perusing evidence data and particulars provided by the Lessee at the expense of the Lessee (and as a result of the Lessor's own enquiries should the Lessor in its absolute discretion choose to make separate enquiries) that the proposed assignee, sublessee, licensee or sublicensee has suitable skills and expertise to conduct the commercial public camping facility business on the Leased Premises in accordance with this lease and has adequate capital backing in the opinion of the Lessor in its absolute discretion;
  - (ii) the Lessee procures at the cost of the Lessee or the assignee, sublessee, licensee or sublicense (as the case may be) in all respects the execution by the proposed assignee, sublessee, licensee or sublicensee of a Deed of Assignment of this lease, a Deed of Sublease, a Licence or Sublicense to which the Lessor is a party and which is in a form approved by the Lessor's solicitors;
  - (iii) all Rent then due and payable for the period up to the date on which the assignment, sublease, licence, or sublicense takes effect been paid and there is no existing or unremedied breach of any of the Lessee's Covenants in respect of which the Lessor has previously given notice;
  - (iv) the assignment, sublease, licence or sublicense contains a covenant by the proposed assignee, sublessee, licensee or sublicensee with the Lessor whereby the proposed assignee sublessee, licensee or sublicensee undertakes at all times during the continuance of the Term to duly observe perform and comply with all the Lessee's Covenants; and
  - (v) the Lessee first pays to the Lessor all proper and reasonable costs, charges and expenses incurred by the Lessor of and incidental to any enquiries which may be made by or on behalf of

the Lessor as to the respectability, responsibility, suitability and solvency of any proposed assignee, sublessee, licensee or sublicensee;

- (c) if the proposed assignee, sub-lessee, licensee or sublicensee is a company not listed on any Australian Stock Exchange and the Directors of that company guarantee to the Lessor:
  - (i) in the case of an assignment, the due and punctual observance and performance by the proposed assignee of the Lessee's Covenants and the due and punctual payment by the proposed assignee of any Rent and other moneys payable by the Lessee arising from this lease; or
  - (ii) in the case of a sub-lease, licence or sublicense (the form of which shall be subject to the prior written approval of the Lessor, which approval must not be unreasonably withheld or delayed) the observance and performance by the sub-lessee, licensee or sublicensee of the Lessee's Covenants other than the covenants to pay the Rent; and
- (d) if the covenants and agreements on the part of any proposed assignee, sub-lessee, licensee or sublicensee, are expressed to be supplementary to the Lessee's Covenants and not in any way to relieve or be deemed to relieve the Lessee from any of the Lessee's Covenants,

### **3.37 Lessee Remains Liable**

The Lessee shall remain fully liable under this lease notwithstanding that the Lessee may have assigned this lease or granted an interest in the Leased Premises, or any part of it or in this lease to any person whether or not with the Lessor's consent.

### **3.38 Change in Shareholding or Unitholding**

If the Lessee is a company, any change at any time or times after the Commencement Date (whether by transfer, allotment or otherwise and whether as the result of one or more transactions) in the beneficial ownership of 20% or more of the issued shares from time to time of the Lessee, or if the Lessee is the trustee of a unit trust, any change at any time or times after the Commencement Date (whether by transfer, allotment or otherwise and whether as the result of one or more transactions) in the beneficial ownership of 20% or more of the issued units from time to time in that unit trust, other than for the purpose of a reconstruction to which the Lessor has given its prior written consent (which must not be unreasonably withheld or delayed), or if the beneficial owner of any units in such a unit trust is a company, any change whatever at any time after the Commencement Date (whether by transfer, allotment or otherwise and whether as the result of one or more transactions) in the beneficial ownership of any of the issued shares from time to time of that company, is deemed to be an assignment of the Lessee's interest in this lease for the purposes of this clause.

### **3.39 Property Law Act 1969**

The provisions of sections 80 and 82 of the *Property Law Act 1969* are excluded from and do not apply to this lease.

### **3.40 Standing of Trust**

That if the Lessee enters into this lease as, or hereafter holds this lease as, trustee of any trust:-

- (a) except with the prior written consent of the Lessor (which consent the Lessor may not unreasonably withhold):-
  - (i) the Lessee will not be removed from nor retire as a trustee of the trust and no new or additional trustee of the trust shall be appointed;
  - (ii) the vesting date under the provisions of the trust deed has not and will not be determined;
  - (iii) no restrictions on the rights of subrogation of the trustee of the trust will be created;
- (b) the Lessee is presently the only trustee of the trust;
- (c) no vesting date has been appointed under the provisions of the trust deed;
- (d) there are no restrictions on the right of the trustee to be indemnified out of the trust assets of the trust;
- (e) the trustee of the trust is not in default with respect to the trust fund of the trust;
- (f) no notice under section 63 of the *Trustees Act 1962* or any equivalent provision has been published in connection with the trust.

### **3.41 Pay Lessor's Costs**

To pay on demand the Lessor's solicitors costs of and incidental to the preparation execution and stamping of this lease and all copies of it (including all proper instruction fees, drafts, amendments and redrafts) and to pay to the Lessor on demand by it all costs (including legal costs), charges and expenses for which the Lessor becomes liable in consequence of or in connection with any default by the Lessee in performing or observing any covenants conditions or stipulations contained or implied in this lease and on the part of the Lessee to be performed or observed including (but without limiting the generality of the foregoing) architect's fees and all costs charges expenses solicitors costs and surveyors fees incurred by the Lessor for the purposes of and incidental to the preparation and service of a notice under section 81 of the *Property Law Act 1969* requiring the Lessee to remedy a breach of the covenants conditions or stipulations contained or implied in this lease notwithstanding that forfeiture for such breach is avoided otherwise than by relief granted by a court of competent jurisdiction.

### **3.42 Signs and notices**

Not to affix or exhibit or cause or permit to be affixed or exhibited on any part of the Leased Premises any poster signboard neon sign or other advertisement except as has been first approved in writing by the Lessor, which approval may be withheld in the absolute discretion of the Lessor with respect to any proposed neon sign but which approval must not otherwise be unreasonably withheld, and the Lessor

acknowledges that the business of the Lessee is of a commercial nature and will entail the affixing or display of signs and notices of a reasonable and appropriate nature.

### **3.43 Indemnities**

#### **(a) By the Lessee**

The Lessee shall indemnify and keep indemnified the Lessor from and against any liability, damage or loss arising from, and any costs charges and expenses incurred in connection with any damage to the Leased Premises or any loss or destruction of or damage to anything in upon or near the Leased Premises, or any injury to, illness or death of any person in upon or near the Leased Premises to the extent that such liability loss damage illness or injury is caused or contributed to by:

- (i) the act, negligence, omission or default of the Lessee or a Lessee's Agent; or
- (ii) some risk danger or hazard created, assumed or accepted by the Lessee or a Lessee's Agent, whether or not the existence of that risk, danger or hazard was or ought to have been known to the Lessee.

#### **(b) Lessor not liable**

The Lessor shall not be liable for or in respect of any liability, loss, cost, expense, illness, injury or damage resulting from or for:

- (i) any act neglect default or omission of any person upon or near the Leased Premises (whether there lawfully or not);
- (ii) damage to or loss or destruction of any thing or injury to, illness or death of any person in upon or near the Leased Premises;

due to any cause other than the negligence or default of the Lessor or any employee of the Lessor;

#### **(c) Release**

Subject to clause 3.43(a) and (b) the Lessee releases the Lessor from all liability (in negligence or howsoever) to the Lessee and from all actions, suits, claims, demands and proceedings for loss costs charges and expenses in connection with the damage to or loss or destruction of any thing or injury to, illness or death of any person occurring in upon or near the Leased Premises which the Lessee now has or may at any time hereafter have or but for this clause 3.43(c) might have had against the Lessor.

#### **(d) Interpretation**

For the purposes of this clause 3.43 the expression "in upon or near the Leased Premises" shall be deemed to include (without limitation) the area of National Park surrounding the Leased Premises; and "Lessee's Agent"

includes any officer, employee, agent, contractor, invitee or licensee of the Lessee.

### **3.44 Insurance**

To insure and keep insured in the name of the Lessee under a policy of insurance on which the interest of the Lessor is noted the erections buildings structures and improvements now or at any time during the Term on the Leased Premises against loss destruction or damage by fire flood earthquake lightning storm and tempest and such other risks as the Lessor may from time to time reasonably require including but not limited to damage to or destruction of the plate glass windows screens mirrors doors advertisements and other parts of such erections buildings structures and improvements to their full reinstatement and replacement (new for old) value with a reputable and substantial insurance office and to pay the premiums necessary for the above purposes on or before the days on which the same respectively become due and whenever so requested to produce to the Lessor or its agents the policy or several policies of such insurance and the receipts for the current year's premiums AND to cause all moneys received by virtue of such insurance to be laid out in repairing rebuilding or reinstating the Leased Premises so lost damaged or destroyed and to make up any deficiency out of the Lessee's own money PROVIDED ALWAYS that if the Lessee fails to effect and maintain any such insurance the Lessor may from time to time at its discretion effect and keep on foot such insurance and the Lessee must on demand repay to the Lessor all sums of money expended by the Lessor for that purpose.

### **3.45 Not to Invalidate Insurances**

Not to do or permit or suffer to be done anywhere any act omission neglect or thing whereby any policy of insurance which the Lessor has effected or the Lessee is required by law or this lease to effect may become void or voidable or the premiums payable thereunder may be increased or the coverage thereunder may be reduced.

### **3.46 Public Risk Insurance**

To effect and keep effected in respect of the Leased Premises adequate public risk insurance in the names of the Lessor and the Lessee for their respective rights and interests in an amount not less than \$10,000,000 in respect of any one claim (or such higher amount in substitution for the first mentioned amount as set by the Lessor and determined from time to time under this provision) with an insurance company approved by the Lessor (which approval must not be unreasonably withheld) and to notify the Lessor of the details of that public risk insurance and to ensure that such insurance conforms to the reasonable requirements from time to time of the Lessor of which the Lessee is given notice and:-

- (a) if required by the Lessor to produce the policy of insurance to the Lessor;
- (b) to deliver to the Lessor on or before the expiration of each year of the Term and at any other time upon the request of the Lessor a valid certificate of currency in respect of such insurance policy issued by the insurance company with which the policy has been effected; and
- (c) not to alter the terms or conditions of such policy without the prior written approval of the Lessor and to forthwith deliver to the Lessor particulars of any change or variation of the terms and conditions or any other matter in



respect of any insurance policy effected by the Lessee pursuant to this clause,

PROVIDED ALWAYS that on and from the 1st day of July in every third year of the Term the amount of public risk insurance cover specified above in this clause (as increased from time to time in accordance with this clause) shall be increased to such other amount as the parties agree upon, or failing agreement by 31 August in that year, to such reasonable amount as is determined by arbitration under clause 5.7.

### **3.47 To yield up**

At the expiration or sooner termination of the Term to yield up the Leased Premises to the Lessor in such state of repair and condition as is consistent with the proper performance by the Lessee of the Lessee's Covenants contained in this lease and in accordance with clause 3.48(b).

### **3.48 To Remove Moveable Property on request**

- (a) At or prior to the expiration of the Term or forthwith upon the earlier termination of the Term to take remove and carry away from the Leased Premises such of the goods, chattels and other items of moveable property brought into or onto the Leased Premises by or on behalf of the Lessee as the Lessor shall in writing require the Lessee to remove;
- (b) The Lessee must on such removal forthwith rehabilitate those areas of the Leased Premises to the condition prior to commencement of the existing development occurring to the reasonable satisfaction of the Lessor;
- (c) Not at any time to remove any plant, equipment, installations, fixtures or fittings or articles in the nature of trade or tenant's fixtures including mechanical, electrical, water and gas plant, equipment, installations, fixtures and fittings and the tent accommodation, without the prior written consent of the Lessor, EXCEPT for the purpose of repair, maintenance or replacement thereof.
- (d) SUBJECT to the provisions of paragraphs (a) and (b) of this clause 3.48, all property brought onto the Leased Premises by or on behalf of the Lessee and not removed by the Lessee in accordance with those paragraphs shall be and remain the absolute property of the Lessor.

### **3.49 Lessor's Alterations and Improvements**

To permit the Lessor and the agents of the Lessor at any time during the Term to carry out such alterations and improvements to the Leased Premises or any part of the Leased Premises the Lessor reasonably requires (without abatement of rent or liability for compensation) and for that purpose and after communication with the Lessee for the purpose of minimising inconvenience, to enter with or without contractors, agents, workmen, servants and others into and upon such parts of the Leased Premises as are necessary or convenient for the purpose of executing and completing such alterations and improvements PROVIDED that the Lessor in exercising this power must use reasonable endeavours to ensure that the Lessee does not suffer any undue inconvenience.

### **3.50 Not to hold Auctions**

Not to hold on the Leased Premises nor advertise as being held on the Leased Premises nor permit or suffer any person to hold or advertise as being held on the Leased Premises any sale by auction (public or private) of any, real or personal property whatsoever.

### **3.51 Fire Prevention**

Without limiting any other provision of this lease, in relation to the Leased Premises to promptly comply with:

- (a) the *Bush Fires Act 1954* and any other laws relating to the prevention, control and management of fires; and
- (b) all proper directions concerning fire prevention and control given to the Lessee by the Lessor or by any Authority.

### **3.52 Fire Control**

To immediately:

- (a) notify the Lessor as soon as a fire is detected on the Leased Premises; and
- (b) use all appropriate and safe endeavours to extinguish any unauthorised or uncontrolled fire on the Leased Area.

### **3.53 Prohibited Fires**

Not to do anything which causes or may cause a fire on the Leased Premises which is prohibited by law or by a direction of the Lessor or of an Authority or which is dangerous or not properly controlled or is likely to become dangerous.

### **3.54 Liability for Fires**

To indemnify and keep indemnified the Lessor against all loss, injury, damage or destruction of property of the Lessor and all actions, suits, claims, demands and proceedings of third parties for loss, injury, damage or destruction of property or personal injury or loss of life in consequence of, arising out of or as a result of any fire occurring on the Leased Premises unless the Lessee can prove to the reasonable satisfaction of the Lessor that the fire:

- (a) was not caused by the Lessee's negligent or unlawful act or omission or the Lessee's breach or default under this lease; or
- (b) was started by a cause beyond the Lessee's control.

### **3.55 Timber**

This lease does not grant to the Lessee any rights to forest produce as defined in the *Conservation and Land Management Act 1984* and the provisions of Section 96(4) of the *Conservation and Land Management Act 1984* are hereby expressly excluded.

### **3.56 Trees and Vegetation**

SUBJECT as hereinafter provided, to take all reasonable actions measures and precautions necessary to protect the trees and other vegetation growing on the Leased Premises from and against all loss, injury, damage, harm or destruction and to take reasonable actions, measures and precautions necessary to prevent, rectify or ameliorate any erosion, drift or movement of sand or soil from the Leased Premises. Without limitation, unless required by clause 3.57(b) the Lessee must not cut down, injure, damage, destroy, remove or otherwise interfere with or harm anything growing on the Leased Premises without the prior written consent of the Lessor. The Lessee must also control declared plants and declared animals as defined in the *Agriculture and Related Resources Protection Act 1976*, in relation to the Leased Premises, as required by that Act.

### **3.57 Dangers or Threats to the Public**

- (a) To regularly check the condition of trees and other, vegetation on the Leased Premises;
- (b) To prune, lop or remove any tree or other vegetation which is in a dangerous condition or which may threaten the safety of any person;
- (c) To take adequate action to warn the public of any danger or threat constituted by any tree or other vegetation; and
- (d) To generally take any measures necessary to prevent accidents and to protect the safety of the public on the Leased Premises.

### **3.58 Prevention of Weed Introduction**

To comply with the Lessor's reasonable directions relating to the prevention of the spread of weeds on, onto and from the Leased Premises, including the washing of vehicles and equipment and other similar measures. The Lessee must not bring onto the Leased Premises any fill soil sand or other material from outside the Leased Premises without the prior written approval of the Lessor.

### **3.59 No Interference with Environment**

The Lessee acknowledges that the Leased Premises are an environmentally and ecologically sensitive national park and that the Lessor has a general duty to protect the environment. Accordingly, the Lessee must not, without first obtaining the written consent of the Lessor, do anything to damage, alter, affect or otherwise interfere with the natural environment and ecology of the Leased Premises and the National Park, including:

- (a) removing rocks; earth, soil or other materials from the Leased Premises; or
- (b) clearing or removing trees or other vegetation from the Leased Premises by any means; or
- (c) altering the contours of the surface of the Leased Premises; or
- (d) depositing any earth, fill or other similar materials on the Leased Premises; or

- (e) altering the natural drainage onto, on or from the Leased Premises; or
- (f) introducing any new flora or fauna to the Leased Premises; or
- (g) harming or endangering any flora or fauna on the Leased Premises; or
- (h) anything else in connection with the Leased Premises which may be harmful to the environment or the ecology thereof.

### **3.60 Notify the Lessor of Threats**

To immediately notify the Lessor if the Lessee becomes aware of anything which causes or could cause pollution (as defined in any State environmental protection legislation) on or affecting the Leased Premises;

### **3.61 Environmental Protection Laws**

Nothing contained or implied in this Lease is to be taken as exempting relieving or releasing the Lessee from or limiting the obligation of the Lessee to comply with any law relating to the protection of the environment. Without limiting the generality of the foregoing, the Lessee must comply with the applicable provisions of the *Environmental Protection Act 1986*, the *Conservation and Land Management Act 1984*, the *Wildlife Conservation Act 1950* and all Rules, Regulations, Notices and Orders thereunder.

### **3.62 Specific obligations**

Without limiting the preceding clause, the Lessee must:

- (a) keep the area of the National Park surrounding the Leased Premises for a distance of 10 metres measured away from the boundary clean and tidy and free of vermin as if the area formed part of the Leased Premises; and
- (b) not cause or allow any pollutant or contaminant material or substance over which the Lessee has control to be released upon the Leased Premises or to affect the Leased Premises; and
- (c) not dispose of rubbish from the Leased Premises in any bins provided by the Lessor for public use in the National Park.

### **3.63 Environmental/ecological Benchmarks**

- (a) During the Term of this lease the Lessee must achieve the benchmarks for the sustainability of the lease and the continued use by the Lessee of the Leased Premises which are itemised in Annexure 1 of the Sustainability Performance and Audit Schedule attached to and forming part of this lease.
- (b) The Lessor shall have the right to monitor and audit the Lessee's performance, attainment and achievement of the requirements, obligations and standards specified in the Sustainability Performance and Audit Schedule at the times and in the manner specified in paragraph (c) of this clause.
- (c) During the Term, the Lessee may be audited annually or at the discretion of the Lessor against sustainability benchmarks in Annexure 1. The

mechanism for auditing will be reviewed in consultation with the Lessee by December of each year of the Term.

- (d) The Lessee shall pay to the Lessor on demand the total cost of the annual audit (including auditor travel costs) charged to the Lessor by the auditor.
- (e) The Lessee must co-operate fully with the Lessor and the Lessor's personnel and auditors and assist them in and about the exercise of the Lessor's rights under the Sustainability Performance and Audit Schedule.
- (f) The Lessee acknowledges and agrees that the Lessor, the State and the Minister responsible for the *Conservation and Land Management Act 1984* are responsible for the administration of legislation with respect to conservation, the environment, land management, wildlife, flora and fauna.
- (g) The Lessor shall be entitled to amend, vary, modify, alter, add to or replace the whole or any part, item or provision of the Sustainability Performance and Audit Schedule, including by the addition of new items or benchmarks, at any time and from time to time by notice in writing to the Lessee in such manner and to such extent as the Lessor considers reasonably necessary or appropriate for the proper performance and observance of, and compliance with, its responsibilities under the legislation referred to in paragraph (f) above.
- (h) The Lessee shall observe, perform and comply with all the terms, conditions, provisions, items and benchmarks contained in the Sustainability Performance and Audit Schedule, as amended, varied, modified, altered, added to or replaced by the Lessor for the time being and from time to time, as if they were set out in full as covenants by the Lessee in the body of this Lease.
- (i) The provisions of the Sustainability Performance and Audit Schedule contained in Annexure 1 apply to and bind the Lessee on and from the Commencement Date. Each amendment, variation, modification, alteration, addition, replacement or new item (as the case may be) shall apply to and bind the Lessee on and from the date of service of notice thereof under paragraph (g) above.
- (j) In the event of any conflict or any inconsistency between a provision of this Lease and a provision of the Sustainability Performance and Audit Schedule (as amended, varied, modified or replaced from time to time) the provision of the Sustainability Performance and Audit Schedule shall be paramount and prevail to the extent of the conflict or inconsistency.

### **3.64 Care of the National Park**

#### **(a) Flora and Fauna**

To protect and not cause damage to flora, fauna and improvements and natural features within the National Park.

**(b) Trees**

Not to, and to ensure that its officers, employees, contractors, agents, visitors and licensees do not, cut-down, fell, injure, top, lop or destroy any living or dead trees standing or growing within the National Park without the prior consent in writing of the Lessor (SUBJECT always to clause 3.56).

**(c) Only Indigenous Plants**

Not to plant on nor bring onto the Leased Premises or National Park any plants or seeds which are not indigenous to the locality, except where such plants or seeds may be specified by the Lessor.

**(d) Comply with Directions**

Within the Leased Premises to take active and appropriate steps and to comply with the directions of the Lessor to assist the proper growth, development and welfare of all natural flora and fauna, the prevention of erosion and to cooperate in implementing control measures with regard thereto.

**(e) Notify Risk**

To immediately notify the Lessor of any environmental or pollution accident or risk of which the Lessee is aware.

**3.65 Danger and First Aid**

**(a) Eliminate Danger**

The Lessee shall take preventative measures to eliminate danger and hazard to the public within the Leased Premises.

**(b) First Aid Equipment**

The Lessee shall provide adequate first aid equipment and shall ensure trained staff are available for rendering first aid to sick and injured persons.

**3.66 Fire Control and Emergency Procedures**

**(a) Fire Control**

To undertake all appropriate fire control measures within the Leased Premises, including the provision of fire hydrants, fire extinguishers, fire alarms, appointment of a fire warden, establishment and supervision of evacuation procedure, notices to the public and to the Lessor, communication with the Lessor and compliance with requirements of the Lessor's fire warden in carrying out procedures for fire prevention fire control and evacuation.

**(b) Preventative Procedures**

To provide and implement work procedures to minimise risk of fire to bush, due to use of machinery and other causes and risk of fire due to any other

activities of the Lessee pursuant to this lease and to immediately report situations of fire risk and identified fire sources to the Lessor's fire warden.

**(c) Emergency Procedures**

To comply with the Lessor's directions and to initiate procedures subject to the Lessor's directions for control and evacuation and to fully inform all the public within the Leased Premises in the event of a fire or any other emergency.

**3.67 Animals**

**(a) Unwanted Animals**

Not to permit any domestic, exotic and feral animals (including birds and fish) onto the Leased Premises or the National Park and to endeavour to capture any such animal which is within the National Park and to permanently remove it from the National Park.

**(b) Report**

To report to the Lessor the presence of any domestic, exotic or feral animal (including birds and fish) within the National Park which has been observed by the Lessee or its employees, contractors, or agents and whether or not removed from the National Park pursuant to the preceding subclause.

**(c) Exclusion**

To co-operate with the Lessor to exclude from the Leased Premises any person who is accompanied by an animal (provided that guide dogs for the blind and animals engaged in search and rescue may be admitted when under active supervision).

**4. COVENANTS BY LESSOR**

The Lessor COVENANTS with the Lessee

**(a) Quiet Enjoyment**

That the Lessee paying the Rent reserved by this lease and observing and performing the Lessee's Covenants may peaceably hold and enjoy the Leased Premises during the Term without any interruption or disturbance by the Lessor or any person rightfully claiming under or in trust for the Lessor.

**(b) Confidential**

The Lessor and its auditor must keep the Sales Records and the Sales Evidence confidential, and must not disclose any part of the Sales Records or the Sales Evidence to any third person without the Lessee's prior written consent.

**(c) Exceptions**

The disclosure of any information -

- (i) which is now or hereafter comes into the public domain or which is properly obtainable with reasonable diligence from sources other than the parties;
- (ii) which is required by law to be disclosed to any person who is authorised by law to receive it;
- (iii) by the Minister of the Crown charged with the administration of the *Conservation and Land Management Act 1984* or of the Lessor to the Parliament of Western Australia, or by any employee of the Lessor or of the State of Western Australia to any other employee of the Lessor or of the State of Western Australia for the purposes of and pursuant to their employment;
- (iv) to a court, arbitrator or administrative tribunal in the course of proceedings before it to which the Lessor is a party;
- (v) to any lawyers, accountants, consultants or advisers to the Lessor who have in writing agreed for the benefit of the Lessee to be bound by this clause as though they were a party to this lease; or
- (vi) for the purpose of enforcing the Lessor's rights and remedies under this lease;

is not subject to the restriction imposed by subclause (b) of this clause 4.

## 5. MUTUAL COVENANTS

The Lessor and the Lessee MUTUALLY COVENANT AGREE AND DECLARE

### 5.1 (a) Termination

That if during the Term the Rent payable or any part of it is at any time unpaid for 60 days after becoming due whether formally demanded or not; or if the Lessee makes default which the Lessor reasonably considers material in the due performance or observance of any of the Lessee's Covenants and such default is incapable of remedy; or if the Lessee makes default in the due performance or observance of any of the Lessee's Covenants and such default is capable of being remedied but is not remedied within 14 days after a default notice as provided in subclause (b) of this clause is given by the Lessor; or if the Lessee goes into liquidation (other than a voluntary for the purpose of reconstruction with the prior written consent of the Lessor); or if this lease or any material aspect or provision of this lease is or is held to be or is claimed to be void, voidable, invalid or unenforceable; THEN and in any of such events the Lessor may by notice to the Lessee terminate this lease and the rights of the Lessee under this lease PROVIDED THAT if the default is capable of remedy and has not been remedied after such default notice and the default (not being a failure to pay Rent or other money payable to the Lessor under this lease) is capable of being remedied by the Lessor; then the Lessor may elect not to terminate this lease because of the default but may itself remedy the default or cause it to be remedied (for which purpose the Lessor by agents workmen or otherwise has full power to enter upon the Leased Premises) and the costs and expenses incurred by the Lessor in remedying the default or causing it to be remedied are a debt payable by



the Lessee to the Lessor on demand and the Lessee must pay interest to the Lessor on those costs and expenses at the Rate from the date they were incurred by the Lessor to the date they are paid by the Lessee to the Lessor; and

**(b) Content of Notice**

The Lessor must specify in the default notice to be given by the Lessor pursuant to subclause (a) of this clause the nature of the default or other ground entitling the Lessor to exercise the right of termination.

**5.2 Lessor May Act by Agent**

Each act or thing which the Lessor is required or empowered to do under this lease may be done by the Lessor or the duly authorised representative, solicitor, agent, contractor, or employee, of the Lessor.

**5.3 No waiver**

- (a) The acceptance of Rent or other money by the Lessor or a payment by the Lessor of money or the performance by the Lessor of an obligation, direction, or order; which should be paid, performed, or observed by the Lessee is not a waiver by the Lessor of a default or breach of the Lessee and does not prevent the Lessor from exercising the Lessor's rights and powers notwithstanding any prior waiver, delay, or neglect, in exercising the Lessor's rights and powers AND no demand or notice made or given will be waived by a subsequent acceptance payment, performance, or observance.
- (b) A waiver by either Party in respect of a breach of a provision of this lease by the other Party shall not be deemed to be a waiver in respect of any other breach and the failure of either Party to enforce at any time a provision of this lease shall in no way be interpreted as a waiver of such provision.

**5.4 Holding Over**

That if the Lessee remains in possession of the Leased Premises with the express or implied permission of the Lessor after the expiration or sooner termination of the Term the Lessee will hold the Leased Premises as a monthly tenant at a rent equal to the Rent calculated as prescribed in clause 3.2 and subject to all the covenants and conditions contained in this lease so far as they are applicable to a monthly tenancy and the tenancy so constituted may be terminated by one month's notice given by either party which notice may be given so as to expire at any time.

**5.5 Lessor may Remedy Lessee's Default**

That if the Lessee omits or neglects to pay any money or to do or effect anything which the Lessee has expressly or impliedly in this lease covenanted to pay do or effect then on each and every such occasion and without prejudice to any rights or powers arising from such default, the Lessor may (but is not obliged to) pay such money or do or effect such thing by itself, its employees, agents or contractors as if it were the Lessee and for that purpose the Lessor may enter upon and remain on the Leased Premises for the purpose of doing or effecting any such thing and the Lessee must pay the Lessor any money so expended by the Lessor upon demand.

## 5.6 Expert Adjustment of Overnight Visitor Records

(a) If either the Lessor or the Lessee considers that:-

- (i) the records referred to in clause 3.3 or as disclosed by the results of an audit pursuant to clause 3.4 (in this subclause referred to as "the relevant Overnight Visitor Records") are more than or less than they should be, taking into account the volume of sales and other business which were transacted during the period to which the audit relates; and
- (ii) the amount of the excess or deficiency in the relevant Overnight Visitor Records is due to any factor (in this subclause referred to as a "distorting factor") affecting the relevant Overnight Visitor Records in a manner or to an extent not foreseeable or contemplated by the Lessor or the Lessee, including but not limited to increases or decreases in tax rates, the imposition of new taxes, or the removal of any existing tax, but excluding any normal movements in wholesale prices,

THEN either the Lessor or the Lessee may refer the relevant Overnight Visitor Records to an independent chartered accountant (in this subclause referred to as "the expert") nominated, if the parties do not agree upon one, by the Chief Executive Officer for the time being of the Western Australian Division of the Institute of Chartered Accountants in Australia at the request of the Lessor or the Lessee, for the determination by that expert (acting as an expert and not as an arbitrator) of whether or not the relevant Overnight Visitor Records have been, and if so to what extent, affected by any such distorting factors;

### (b) Expert's Function

The expert must hear submissions from the Lessor and the Lessee or either of them if they wish to make submissions. The expert may also institute and make enquiries which the expert considers necessary for determination of the question referred to the expert;

### (c) Expert's Determination

The expert must give a written determination within 6 weeks after the question has been referred to the expert. If the expert's determination is that the relevant Overnight Visitor Records are affected by any distorting factor, the determination must specify the distorting factor or factors and include an amount which represents the expert's considered opinion of what the relevant Overnight Visitor Records would have been if they had not been so affected, and this amount (in this subclause referred to as "Adjusted Overnight Visitor Records") thereupon becomes the amount of the Overnight Visitor Records for all purposes of this lease for the period to which the certificate or audit referred to in subclause (a) of this clause relates, in substitution for the amount of the relevant Overnight Visitor Records;

(d) **Determination Final**

Except as provided in subclause (e) of this clause, the parties agree to abide by the expert's determination, and the parties agree to pay and discharge the expert's costs and fees equally;

(e) **Expert's Determination – Amendments to Lease**

If the expert's determination includes an amount of Adjusted Overnight Visitor Records, the expert may also include in the determination suggested amendments to this lease to take account of the distorting factor or factors in future, and, unless either party refers those suggested amendments to arbitration under clause 5.7 within 3 months following the expert giving the determination to the parties, the parties agree to execute a deed of variation of this lease to implement the expert's suggested amendments to this lease. The said deed of variation shall be prepared by the solicitors for the Lessor at the joint cost of the Lessor and the Lessee. If the expert's suggested amendments are referred to arbitration, the parties agree to abide by the arbitrator's award in respect of those suggested amendments, and to duly execute any deed of variation of this lease which the arbitrator's award directs the parties to execute, any such deed being prepared by the solicitors for the Lessor at the joint cost of the Lessor and the Lessee.

## **5.7 Arbitration**

- (a) Any dispute or difference arising between the parties in respect of any of the matters referred to in this lease, or any matter relating to the Leased Premises, or any matter (relating to the Leased Premises or this lease) on which either party seeks the agreement of the other, or in respect of the meaning or construction of any of the provisions contained in this lease, shall in default of agreement between the parties and in the absence of any provision in this lease to the contrary be referred to and settled by the arbitration of a single arbitrator under the provisions of the *Commercial Arbitration Act 1985* and either party may if it so desires and at its own cost be represented by a qualified legal practitioner or other, representative;

(b) **Lessor's Discretion**

Except where otherwise provided in this lease the provisions of this clause shall not apply to any case where the Lessor is by this lease given either expressly or impliedly a discretionary power.

## **5.8 Force Majeure**

This lease is made subject to any delays in the performance of the obligations hereunder and to the temporary suspension of continuing obligations hereunder that may be caused by or arise from circumstances beyond the power or control of the party responsible for the performance of those obligations (unless caused in whole or in part by the fault or privity of the party responsible for such performance) including, without limiting the generality of the foregoing, delays or any such temporary suspensions caused by or arising from acts of God, earthquakes, floods, storms, tempest, washaways, fire, act of war, act of public enemies, riots, civil commotions, strikes, lockouts, stoppages, restraint of labour or other similar acts (whether partial or general), acts or omissions of the Commonwealth, shortages of

labour or essential materials, reasonable failure to secure contractors, factors due to action taken by or on behalf of any government or governmental authority (other than the Lessor) or events that could not reasonably have been foreseen but excluding inability to obtain finance or financial assistance PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the abovementioned events must promptly give written notice to the other party of the event and must use all reasonable endeavours to minimise the effects of such event as soon as possible after the occurrence.

#### **5.9 Extension**

If a party gives a notice under the preceding subclause 5.8 and that party's performance of obligations is affected by any of the events mentioned in that subclause, any period specified in this lease for the performance of obligations by that party and any date specified in this lease by which that party is to perform any obligation is automatically extended by the same period as the period during which that party's performance of obligations is so affected.

#### **5.10 Notices**

That any notice to be served by the Lessor on the Lessee under this lease is duly served by or on behalf of the Lessor if sent in a prepaid letter forwarded by security post addressed to the Lessee at the address of the Lessee appearing on page one or at its registered office for the time being and any notice served by the Lessee on the Lessor under this lease is duly served if sent in a prepaid letter forwarded by security post addressed to the Lessor at the Address for Payment. A notice sent by post is deemed to have been given at the time when in due course of post it would be delivered at the address to which it is sent.

#### **5.11 Variation of Lease**

The provisions of this lease shall not be varied either in law or in equity except by agreement in writing signed by the Lessor and the Lessee.

#### **5.12 Entire Agreement**

This lease constitutes the entire agreement between the parties and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing.

#### **5.13 Condition as to Disclosure by Lessee**

It is a condition of this lease that the Lessee has disclosed in writing to the Lessor prior to this lease:

- (a) any litigation or proceeding whatsoever, actual or threatened, against the Lessee;
- (b) the existence of any breach or default or alleged breach or default of any agreement, order or award binding upon the lessee; and
- (c) matters relating to the legal, commercial, technical or financial capacity of the Lessee or of any contractor or agent proposed to be engaged in respect of this Lease;

being matters materially affecting the Lessee's ability to perform any of its obligations under this lease, and the Lessee shall promptly notify and fully disclose to the Lessor in writing any event or occurrence actual or threatened during the Term of this lease which would materially affect the Lessee's ability to perform any of its obligations under this lease.

#### **5.14 Applicable Law**

This lease shall be governed by, and construed in accordance with, the laws of the State of Western Australia, and the parties agree that the courts of that State shall have jurisdiction to entertain any action in respect of, arising out of, this lease and hereby submit themselves to the jurisdiction of those courts.

#### **5.15 Headings**

Headings and sub-headings have been included for ease of reference and none of the terms, covenants, conditions or restrictions within those headings or sub-headings appearing are to be construed or interpreted by reference to such headings or sub-headings.

#### **5.16 Index**

The index at the beginning of the lease is not to be read as part of this document and none of the terms, covenants, conditions and restrictions with lease appearing are to be construed or interpreted by reference to such index.

#### **5.17 Business Days**

Where pursuant to this lease the day on or by which any act, matter or thing is to be done is a Saturday or a Sunday or a public holiday, such act, matter or thing may be done on the next succeeding day which is not a Saturday, Sunday or public holiday.

#### **5.18 Performance of Functions by Lessor**

All acts and things which the Lessor is required or empowered to do under this lease may be done by the Lessor or the Lessor's delegate.

#### **5.19 Approval by the Lessor**

- (a) In any case where under this lease the doing or executing of any act matter or thing by the Lessee is dependent on the approval or consent of the Lessor, such approval or consent will not be effective unless it is given in writing and may be given or withheld by the Lessor in the Lessor's absolute discretion and may be given subject to such conditions as the Lessor may determine unless otherwise provided in this lease or by statute.
- (b) The Lessee agrees that any failure by the Lessee to comply with or perform a condition imposed under paragraph (a) of this clause will constitute a breach of a condition or covenant under this lease.

#### **5.20 Special Conditions**

Any term, condition, warranty, representation, promise, right or obligation (in each case, "provision") expressly or impliedly set out in any Schedule or an Annexure

shall be deemed to be incorporated into this lease as if fully set out in the body of this lease and, in the event of there being any inconsistency with the terms, covenants and conditions contained in the body of this lease, then the provisions, set out in the Schedule or Annexure shall prevail to the extent of such inconsistency.

## ANNEXURE 1

### SUSTAINABILITY PERFORMANCE AND AUDIT

#### DEFINITIONS

In this Annexure, unless the context otherwise requires:

**Act** means the *Conservation and Land Management Act 1984*.

**BEC** means Build Environment Criteria.

**DEC** means the Department of Environment and Conservation.

**KWA** means the Lessee.

**Lessor** means any senior employee of DEC.

**NEC** means Natural Environment Criteria.

**Park** means Purnululu National Park.

**Park Management Committee** means any park management committee as determined from time to time by the CEO of DEC.

**Regulations** means the *Conservation and Land Management Regulations 2002*.

**SEC** means Social Environment Criteria.

**Visitor** means guest or customer of the Lessee staying at the Leased Premises;

#### SITE DESIGN AND LAYOUT (BEC)

1. The Lessee will ensure any development, improvements, additions, modifications, alterations or changes to the facilities and structures on the Leased Premises:
  - i. Comply with and are maintained according to these Lease conditions; and
  - ii. Comply with and are maintained to the Shire of Halls Creek health standards and receive the approval of the Shire of Halls Creek.

#### MAINTENANCE OF NATURAL ECOLOGY (NEC)

2. For the duration of the Term, the Lessee will continue to develop and implement a weed management program to include:
  - i. Introduction and monitoring compliance with protocols for the prevention of the introduction of non-endemic plant species;
  - ii. Education of employees, agents and contractors in the inspection for and disposal of weed seeds;
  - iii. Annual weed monitoring (including formal assessment of weed status) of area; and
  - iv. Weed eradication using DEC approved methods.
3. The Lessee will:
  - i. Develop and implement protocols for the prevention of the introduction of non-endemic species of all types;
  - ii. Develop and implement protocols to minimise damage to native vegetation, soil loss and compaction during construction;
  - iii. Implement benchmarking mechanisms (including a vegetation and photographic survey) to assess construction impact;
  - iv. Plant only indigenous vegetation in or around the area after consultation and approval of the Lessor prior to planting any vegetation;
  - v. In consultation with the Lessor, rehabilitate areas within and adjacent to the area and revegetate areas not utilised for structures, services and facilities or access areas;
  - vi. Assist DEC in its programs of weed eradication and land rehabilitation of the area (planting and maintenance of endemic species) at the request of the Lessor;
  - vii. Not allow its own pets or those of its employees, agents, contractors or Visitors into the National Park and include this on verbal and written promotional material; and
  - viii. Not feed or allow any employee, agent, contractor or Visitors to feed animals in the National Park and encourage the disposal of rubbish and food scraps in sealed bins.

#### EROSION, SOIL LOSS, COMPACTION AND VEGETATION DAMAGE (NEC)

4. The Lessee will ensure that the accommodation component of the Lease is limited to the footprint only and that no disturbance to vegetation or landforms outside the designated area occurs through the provision of sensitive design, education or signage. The Lessee will control grass growth within the area to the satisfaction of the Lessor.
5. The Lessee will monitor and manage (including to take actions to prevent, limit and remedy) soil loss, compaction and erosion in the area. The Lessee will ensure that:

- i. Site design and layout controls pedestrian impact and avoids compaction under trees;
- ii. All structures have concrete or raised timber foundations;
- iii. Vehicles remain in the designated vehicle areas and access to the area is restricted to the designated road;
- iv. There is no soil movement around the area after the construction phase as it applies to each stage;
- v. Minimal loss and clearing of understorey vegetation occurs and that revegetation and rehabilitation of the site occurs, and in consultation with the Lessor;
- vi. Dust generating activities are avoided and dust suppression procedures are in place;
- vii. All pedestrian paths and vehicle areas are defined with stable materials;
- viii. In the event of any soil loss, compaction or erosion of the area, remedial action is undertaken immediately with the approval of the Lessor;
- ix. Co-locate water and electricity pipes under paths where possible; and
- x. Ensure the site layout accommodates the natural drainage lines of the site.

#### **MAXIMUM CAPACITY (SEC and BEC)**

- 6. The Lessee shall ensure that, without receiving prior written approval from the Lessor, on any given day or night, the maximum number of:
  - i. Visitors accommodated at the Leased Premises is sixty (60) except between 15 June and 31 July of each year when the maximum Visitors is sixty-nine (69);
  - ii. Staff members accommodated at the Leased Premises is fourteen (14) and further accommodation for trainees when they are appointed and with the approval of the Lessor;
  - iii. Vehicles at the Leased Premises is fifteen (15);
  - iv. Semi-permanent structures (tented cabins) to accommodate the Visitors at the Leased Premises is thirty (30) with a further thirteen (13) for staff;
  - v. Staff vehicles in the area known as the 'Old KWA camp' is eight (8) with only staff vehicles permitted to park in this area.

#### **WATER USE (NEC) & WASTE WATER (BEC)**

- 7. The Lessee will:
  - i. Acknowledge that DEC does not guarantee the quality and supply of water that may be provided in the National Park;
  - ii. Ensure effluent and waste water is treated to best possible standards before leaching occurs in accordance with the Shire of Halls Creek requirements and approvals;
  - iii. Monitor and record water consumption on a per customer basis by installing and using water usage meters on main pipe line (for the duration of the Term) and routinely checking services for leaks and faults.
  - iv. For the duration of the Lease, ensure water consumption does not exceed the daily target of 285 litres per Visitor (to a maximum of 60 visitors per day) and 95 litres per Day Visitor and will endeavour to ensure the water use targets are not exceeded and endeavour to minimise future usage;
  - v. Only use environmentally sensitive detergents and soaps in the Leased Area and ensure their use is minimised;
  - vi. Implement water saving food handling and cooking methods;
  - vii. Ensure that only sub surface disposal of treated waste water occurs; and
  - viii. Ensure all possible waste water is cycled through the waste water treatment system.
- 8. For the duration of the Lease, the Lessee will:
  - i. Continue to develop and implement a water conservation policy to identify and implement opportunities for reducing waste water and water use, and maximising waste water treatment and reuse (for example through new technology) where possible;
  - ii. Maintain the approved waste water treatment system according to the requirements and approval of the Shire of Halls Creek and DEC and develop and implement a maintenance routine;
  - iii. Install and use:
    - a. Flow regulator valves for a flow of 9-12 litre per minute in the ablution areas and 15 litre per minute flow regulator valves in the kitchen;
    - b. Thermostat igniton mixing valve to showers;
    - c. Only low water use appliances (AAA rated, aerator fitted) and low flow/time flow taps (aerator fitted) in all ablution areas.. When the current appliances are replaced, the Lessee may only replace appliances with the most highly rated commercially available appliances at the time of purchase;
  - iv. Install signage at water points to indicate potable/non potable water to DEC standard and to the satisfaction of the Lessor.



### **SOLID WASTE (NEC) & WASTE STORAGE AND DISPOSAL (BEC)**

9. The Lessee will:
- i. For the duration of the Lease, continue to develop and implement a policy to minimise solid waste production by preferential purchase (where possible) of:
    - a. bulk goods;
    - b. dry goods;
    - c. goods with soft packaging and aluminium rather than glass packaging; and
    - d. recycled goods.
  - ii. For the duration of the Lease, ensure grease traps fitted to all kitchens are in accordance with Shire of Halls Creek Health Department requirements;
  - iii. For the duration of the Lease, ensure a suitable collection point for Visitors to deposit recyclable materials is in place;
  - iv. Separate wastes, and sort and crush recyclable containers and cans;
  - v. Store and transport waste in a manner that prevents vermin, odour and spillage; and
  - vi. Ensure that all (human and non human) organic waste is composted and that the compost and all composted organic and inorganic solid waste is transported out of the National Park as required or as directed by the Lessor. Waste must be disposed of at a licensed facility and where possible at a recycling facility.

### **TOILET FACILITY STANDARDS (BEC)**

10. The Lessee will:
- i. For the duration of the Lease within the area, maintain a toilet sewage system as approved by DEC;
  - ii. Treat all laundry water through the closed toilet sewage system; and
  - iii. Be responsible for cleaning and maintaining toilets and associated equipment in good working order.

### **ENERGY CONSUMPTION (NEC) & METHOD OF ENERGY CONSUMPTION (BEC)**

11. The Lessee will:
- i. For the duration of the Lease, continue to develop and implement a policy to minimise and annually reduce non-renewable energy consumption, maximise use of renewable energy sources;
  - ii. Ensure building design minimises energy requirements (solar passive where possible);
  - iii. Only use energy efficient appliances and lighting equipment and minimise the use of high energy use appliances;
  - iv. For the duration of the Lease, continue to maintain and use a hybrid solar/battery/generator power generation system (a minimum 18 module solar array, 16.5kVa diesel generator, battery capacity of 24V3200Ah at C100, battery charger and inverter, high efficiency refrigeration appliances or as approved by the Lessor), where the solar power will trickle feed the batteries and the generator would only be used for topping up.
  - v. Ensure the generator is used for no longer than seven (7) hours per day between the hours of 0700 and 2100 (except in an emergency) and maintain a fuel log and generator time log; and
  - vi. For the duration of the Lease, maintain and use solar hot water heaters with gas boosters used only in back up situations.

### **ENVIRONMENTAL STEWARDSHIP (NEC)**

12. The Lessee will:
- i. For the duration of the Lease, continue to develop and implement a policy to manage and enhance environmental performance. This policy must include:
    - a. Minimising, managing and monitoring the use of the Leased Premises' environmental impact;
    - b. Collaborating with government, community and Indigenous groups to enhance sustainable tourism development in the Kimberley; and
    - c. Ensuring that KWA clients leave with an enhanced understanding and commitment to environmental issues and principles.
  - ii. Attain Eco Certification administered by Ecotourism Australia;
  - iii. Support local annual environmental events;
  - iv. Commit a minimum of five dollars (\$5.00) per Overnight and Day Visitor towards collaborative projects between KWA, the Park Management Committee and/or Traditional owners;
  - v. Keep records and supply information to DEC on any matter it requests;
  - vi. Report incidence of damage or risk within the National Park;
  - vii. Pay fees and charges promptly;

- viii. Actively and cooperatively participate in any research associated with the Operation or the National Park;
- ix. Support and assist DEC with the rehabilitation and repair of roads and parking infrastructure within the area; and
- x. Support DEC in emergency situations with the provision of resources at the request of the Lessor.

#### REDUCED VEHICLE USE (NEC)

13. The Lessee will:
- i. Develop and implement a policy on introducing vehicles that run on renewable energy as a major form of transport in the National Park, dependent upon availability, reliability and affordability;
  - ii. Minimise use of vehicles in the National Park by using group transport and maximising guest numbers on vehicles on tours;
  - iii. Use a trolley to transport goods within the site;
  - iv. Use vehicles with a maximum capacity of 20 seats except where the vehicles are used for day tours within the park where the maximum capacity can be increased to 28 Visitors or with the approval of the Senior Operations Officer at DEC Kununurra;
  - v. Collaborate with other Lessees to reduce the frequency of service trips to the National Park;
  - vi. Monitor and record vehicle costs and outputs and actively investigate means to reduce vehicle use; and
  - vii. Supervise visits to sensitive areas..

#### LIGHT SPILL (NEC)

14. The Lessee will:
- i. Except in an emergency or with the approval of the Lessor, not use floodlights in the Leased Area;
  - ii. Provide a lighting plan for approval by the DEC Kununurra Operations Co-ordinator to be included in the Development Plans to ensure natural ambient light conditions prevail 50 metres outside the Leased Area;
  - iii. Minimise outdoor light provision, whilst still ensuring safe Operations, by:
    - a. Using bright lights only within closed structures;
    - b. Using lighting under roofing or encased within a spill mantle in the dining room;
    - c. Using path lighting low to the ground and within a spill mantle; and
    - d. Ensuring that all vehicle lights are dipped within 500 metres of the campsite; and
  - iv. Employ a 'lights out' policy at 2200.

#### NOISE LEVELS (NEC)

15. The Lessee will:
- i. For the duration of the Lease, continue to develop and implement a policy to minimise noise;
  - ii. For the duration of the Lease, continue to implement noise reduction measures on generators;
  - iii. Mute telephone rings to a level satisfactory to the Lessor and minimise vehicle noise where possible; and
  - iv. Not play loud music or use loud speakers to broadcast 2-way radio transmissions during Operation.

#### CHEMICAL/FUEL STORAGE AND HANDLING (BEC)

16. The Lessee will:
- i. Display a commitment to using environmentally sensitive products wherever possible;
  - ii. At all times, store chemicals in a designated locked structure and store fuel in a designated signed location in the service area;
  - iii. Maintain a register of chemicals and fuels on site (quantity, use and storage), management requirements and any spill events;
  - iv. Ensure signage and storage complies with Australian Standards and the *Dangerous Goods Safety (Storage and Handling of Non-explosives) Regulations 2007* and the Worksafe Guidance Note;
  - v. At all times, ensure all designated chemical and fuel storage structures have impermeable bund;
  - vi. At all times, have spill response equipment and spillage recovery equipment in place in accordance with the *Dangerous Goods Safety (Storage and Handling of Non-explosives) Regulations 2007*;
  - vii. Not conduct vehicle maintenance within the National Park, except in emergency situations and with the approval of the Lessor;
  - viii. Dispose of chemicals outside the National Park in an environmentally appropriate manner and as required by law; and
  - ix. Monitor soils, ground and surface water.

#### LEVEL OF INDIGENOUS OWNERSHIP/EMPLOYMENT (SEC)

17. The Lessee will:
  - i. Provide employment and training opportunities to local Indigenous people, and provide accommodation for trainees during on-site and off-site training;
  - ii. For the duration of the Lease, participate and support any hospitality Level 2 traineeship programme being offered by educational institutions.
  - iii. Encourage employment of local Indigenous people and subject to all selection criteria being met, prioritise local Indigenous people when job opportunities arise;
  - iv. Provide annual pre-season cultural training sessions for all staff with the assistance of appropriate Indigenous people if available.
18. The Lessee will develop a close working relationship with the Park Management Committee by:
  - i. Inviting the Committee to visit the site annually.

#### CULTURALLY SENSITIVE BEHAVIOUR (SEC)

19. The Lessee will:
  - i. Acknowledge the importance of Indigenous people, culture and heritage to the National Park in all verbal and written interpretive and promotional material;
  - ii. Adhere to sacred site restrictions and obtain the appropriate permission from the Traditional Owners;
  - iii. Conduct only passive recreation at sacred sites, and where required, pay the appropriate site visitation fees;
  - iv. Ensure that appropriate permission is sought from the Traditional Owners for the use of images and other cultural material used in the Operation;
  - v. Ensure active involvement (consultation, endorsement and/or presentation) by the Traditional Owners in indigenous interpretation and tour products so that social and financial benefits are provided; and
  - vi. Assist the Department of Indigenous Affairs in the development of site management and protection strategies to address sustainability issues arising from tourism.

#### PROVISION OF INTERPRETIVE MATERIALS (NEC, BEC & SEC)

20. The Lessee will:
  - i. Provide on site interpretation on the local environment (including a self guided flora walk and audio visual interpretation) and local indigenous culture;
  - ii. Provide annual cross cultural training sessions for all staff and supportive detailed commentary manual that highlight the importance of sensitivity, respect and accuracy when providing commentary;
  - iii. Develop signage of native vegetation in the Leased Area in consultation with and approval of the Lessor;
  - iv. Provide at the campsite reference books and interpretative information on the Purnululu environment, geology, flora and fauna and park management, conservation and recreation values for Visitors; and
  - v. Encourage Visitors to be involved in conservation activities around the area.
21. For the duration of the Lease, the Lessee will develop and deliver educational and interpretation materials (where appropriate) for the Lessee's employees, agents, contractors and Visitors on the following matters (including on-site verbal and written communications and signage) and incorporate these into a staff manual:
  - i. Major environmental issues at the area and those affecting the National Park (erosion, soil loss, compaction and vegetation damage);
  - ii. Local ecological conditions, Indigenous culture and low impact nature based tourism principles developed in consultation with local Indigenous people;
  - iii. Responsible behaviour in the natural environment developed in consultation with DEC Kununurra;
  - iv. Water conservation principles in consultation with DEC, the Shire of Halls Creek and local Indigenous people;
  - v. Waste management, minimising packaging in the National Park and solid waste reduction issues, initiatives and methods;
  - vi. Energy conservation initiatives and methods;
  - vii. Reducing vehicle use initiatives and methods;
  - viii. KWA's policy on low level lighting and natural light preference;
  - ix. KWA's policy on natural ambient sounds;
  - x. Waste water minimisation and reuse;

- xi. Fuel and chemical risk management behaviour and handling, storage and emergency response training in accord with the *Dangerous Goods Safety* and the *Worksafe Guidance Note*;
- xii. Recycling initiatives and appropriate use of toilets and ablution facilities to minimise water use;
- xiii. Culturally sensitive behaviour; and
- xiv. Any risks in the National Park and all safety rules.

#### **SAFETY EQUIPMENT AND PROCEDURES (SEC)**

- 22. The Lessee will have, at all times:
  - i. Fully functioning emergency communication equipment;
  - ii. An up to date KWA Critical Incident Plan (CIP) to be delivered in annual training. The CIP must contain a basic search and rescue, incident and emergency protocols, contingency plans for emergency situations, a strategy for dealing with disruptive or violent visitors and a management plan for high risk activities;
  - iii. An up to date KWA Fire Risk Management Plan;
  - iv. Ensure that at there is on duty at the Leased Area, a minimum of one employee who holds a current Level 2 Senior First Aid Certificate;
  - v. First aid equipment on site;
  - vi. A copy of the DEC Emergency Response Plan on site; and
  - vii. Visible signage indicating the location of fire extinguishers, fire blanket and first aid kit.
- 23. The Lessee will:
  - i. Observe KWA health and hygiene protocols are adhered to by all employees, contractors and agents;
  - ii. Provide training to employees on the DEC Emergency Response Plan.

#### **VISITOR FEEDBACK (SEC)**

- 24. The Lessee will:
  - i. Survey Visitors to assess visitor satisfaction in at least the areas of perceived value for money, standard of cleanliness, level of cleanliness, level of comfort, staff competency and manner, accuracy of marketing, natural focus of operation, provision of conservation initiatives (group transport, renewable energy, water conservation, recycling etc), level of educational opportunities and level of cultural sensitivity;
  - ii. Provide international best practice standard of service and value for money;
  - iii. Demonstrate a commitment to visitor satisfaction and customer service through the provision of value adding initiatives to benefit customers and by implementing a policy of continual improvement by obtaining customer feedback; and
  - iv. Internally audit services and facilities through quality management tools.

#### **PERCENTAGE OF VISITORS INDUCTED (SEC)**

- 25. The Lessee will:
  - i. Provide all itineraries, safety, risk and emergency procedural information and rules in written format and made available to Visitors;
  - ii. Provide detailed pre-arrival information to Visitors (maps, campsite rules and requirements);
  - iii. Ensure daily records are maintained of all Visitors;
  - iv. Provide all employees with ongoing product training; and
  - v. Develop a full induction package to educate visitors regarding environmental, cultural and sustainability best practice principles.

#### **CONTENT OF MARKETING MATERIAL (SEC)**

- 26. On all promotional material the Lessee will provide background information on sustainability principles in natural areas, and will provide accurate descriptions of all features of the tour, park fees payable to DEC, facilities and level of service, park features and activities available.

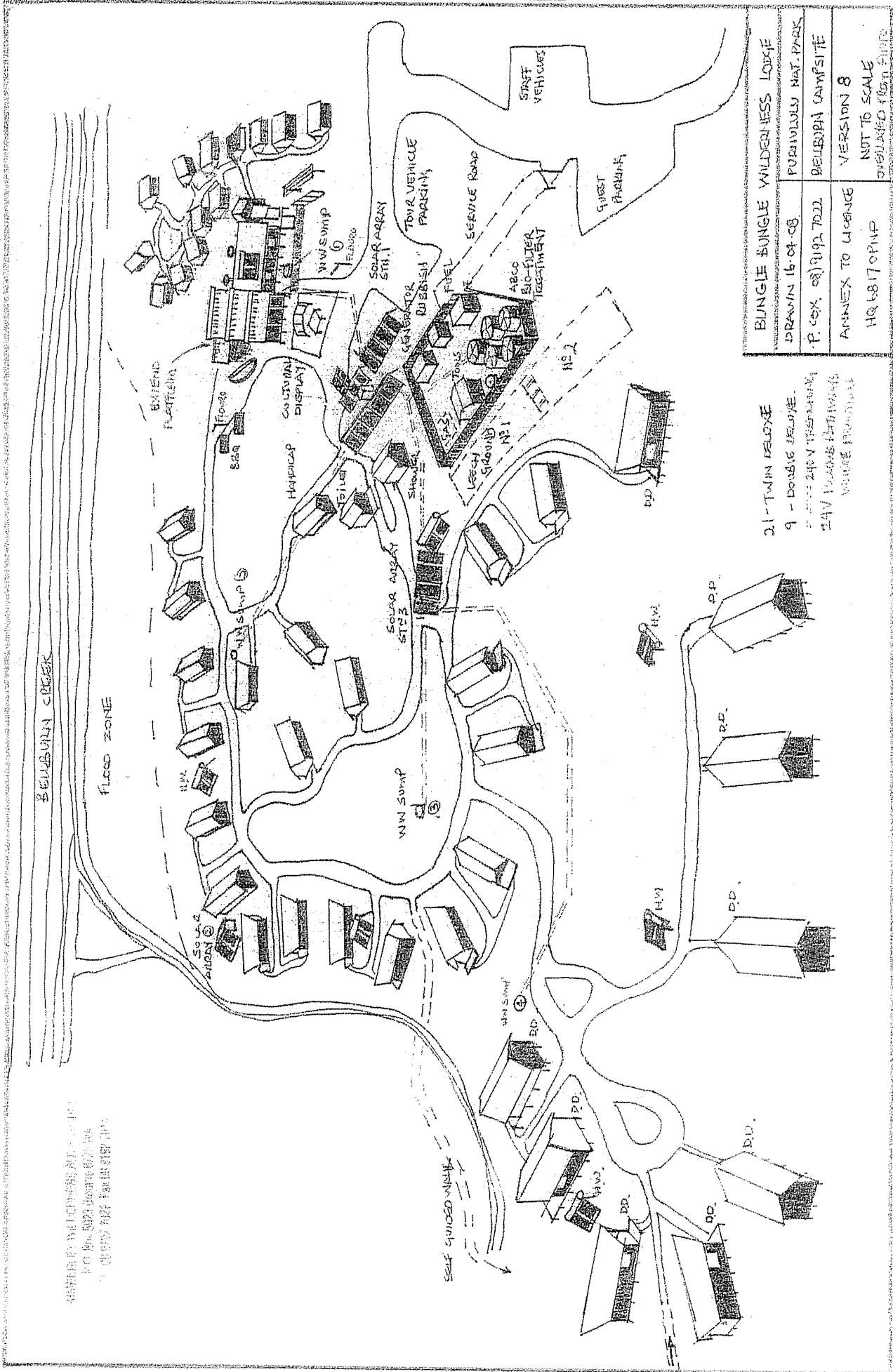
#### **EXPENDITURE FROM LOCAL BUSINESS (SEC)**

- 27. The Lessee will develop and implement a policy to commit to local expenditure wherever possible during the building and operation of the Operation and demonstrate support of local wholesale outlets, service providers, and local art and craft outlets.

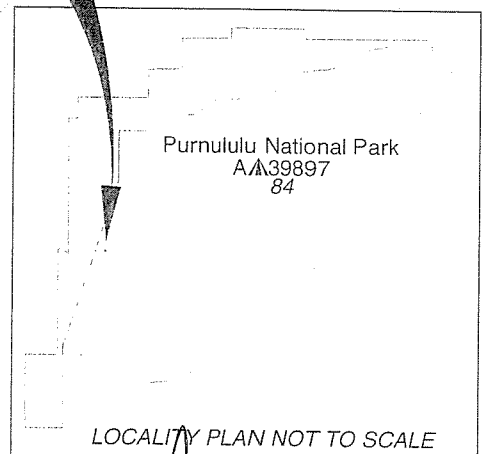
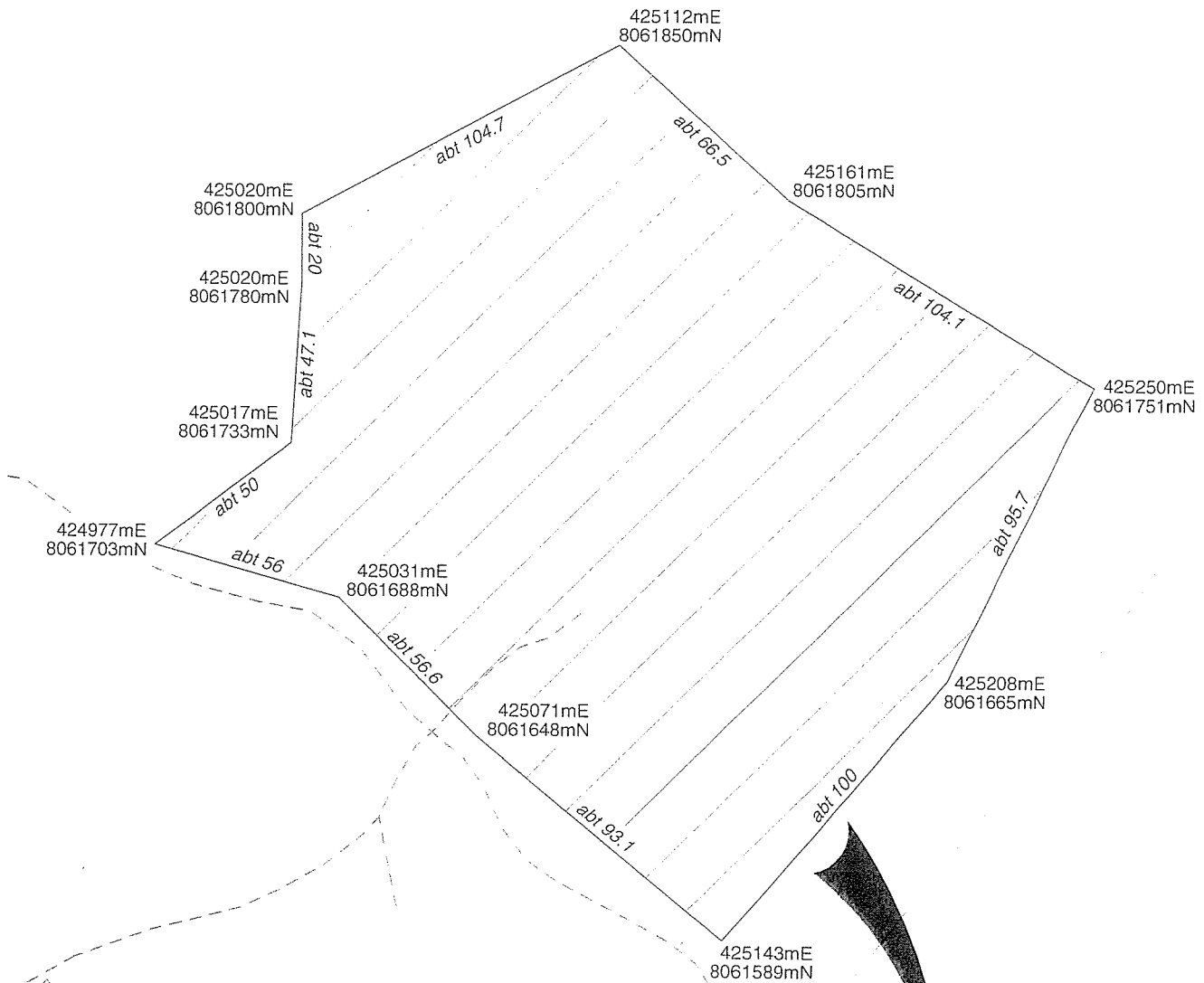
#### MEMBERSHIP OF LOCAL ASSOCIATIONS (SEC)

28. The Lessee will, throughout the Lease period, maintain membership with the local regional tourism organisation and the local visitor centre or similar.

## SITE PLAN



Purnululu National Park  
AA39897  
84




Lease boundary derived from latest aerial photography (Dixon 2004) and field capture of points by DEC officers.  
Coordinate Datum: GDA94, MGA Zone 52.

Subject to Survey

<b>LEASE No. 2299/100</b>				<b>LEASE PLAN APPROVAL</b>	
<b>Purnululu National Park Tour Camp (Bellburn)</b>				LESSEE <i>[Signature]</i>	
				WITNESS <i>[Signature]</i>	
LESSEE <b>KIMBERLEY WILDERNESS ADVENTURES PTY LTD</b>				LESSOR <i>[Signature]</i>	
				WITNESS <i>[Signature]</i>	
LGA	<b>SHIRE OF HALLS CREEK</b>		AREA	<b>Abt 3.74ha</b>	
LAND DISTRICT	<b>LUMAN</b>		DRAWN	<i>SLF 26.8.10</i>	
DEC REGION	<b>KIMBERLEY</b>		CHECKED	<i>RD 26.8.10</i>	
PLAN REF.	<b>Purnululu National Park (Dixon Range 1:250 000)</b>		FILE No.	<b>2010/002000</b>	

SCALE 1 : 2 000



Department of  
Environment and  
Conservation

*Our environment. our future*

ATTESTATION SHEET

Executed by the parties as a Deed on the

26th

day of

November

in the year

2010

LESSOR/LESSORS SIGN HERE (NOTE 9)

The Common Seal of the CONSERVATION  
AND LAND MANAGEMENT EXECUTIVE  
BODY was hereunto affixed by:



K. J. McNamee

CHIEF EXECUTIVE OFFICER

in the presence of:

CAMPBELL YOUNGSON

Witness

PUBLIC SERVANT

Occupation of Witness

168 ST GEORGES TCE PERTH WA

Address of Witness

LESSEE/LESSEES SIGN HERE (NOTE 9)

SIGNED FOR )  
KIMBERLEY WILDERNESS )  
ADVENTURES PTY LTD (ACN 106 742 385))  
by the authority of its Directors in the )  
presence of: )

[Signature]

Director

AMANDA DARTNIS

Witness

CHIEF EXECUTIVE OFFICER

Occupation of Witness

108 CASUARINA WAY KUNUNURRA

Address of Witness

[Signature]

Director/Secretary

[Signature]

Witness

BA REP

Occupation of Witness

CH. ADAMSON

Address of Witness



## 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 Annexure".
2. Additional Sheets shall be numbered consecutively and bound to this document by staples along the left margin prior to execution by parties.
3. No alteration should be made by erasure. The words rejected should be scored through and those substituted typed or written above them, the alteration being initialled by the person signing this document and their witnesses.
4. Duplicates are not issued for Crown Land Titles.

## NOTES

### 1. DESCRIPTION OF LAND

Lot and Diagram/Plan number or Location name and number to be stated.  
Extent – Whole, part or balance of the land comprised in the Certificate of Crown Land Title to be stated.  
The Certificate of Crown Land Title Volume and Folio number to be stated.

### 2. ENCUMBRANCES

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

### 3. LESSOR

State full name and address of Lessor(s) and the address(es) to which future notices can be sent.

### 4. LESSEE

State full name and address of Lessee(s) and the address(es) to which future notices can be sent.

### 5. TERM OF LEASE

Term to be stated in years, months and days.  
Commencement date to be date, month and year. Options to renew to be shown.

### 6. RECITE ANY EASEMENTS TO BE CREATED

Here set forth 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".

### 7. RENTAL

State amount in words.

### 8. PAYMENT TERMS

State terms of payment. Eg, by instalments of \$..... payable on the .... day of each month/the months of ..... in each year, commencing with a payment of \$..... on or before the day of ...../execution of this lease by the Lessee.

### 9. 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 witnesses must be stated.

EXAMINED

Office Use Only

## LEASE OF CROWN LAND (L)

LODGED BY

ADDRESS

PHONE No.

FAX No.

REFERENCE No.

ISSUING BOX No.

PREPARED BY Department of Environment and Conservation

ADDRESS 17 Dick Perry Avenue  
KENSINGTON WA 6152

PHONE No. 9334 0333

FAX No. 9334 0253

INSTRUCT IF ANY DOCUMENTS ARE TO ISSUE TO OTHER THAN LODGING PARTY

TITLES, LEASES, DECLARATIONS ETC LODGED HERewith

- |    |       |                 |
|----|-------|-----------------|
| 1. | _____ | Received Items  |
| 2. | _____ | Nos.            |
| 3. | _____ |                 |
| 4. | _____ | Receiving Clerk |
| 5. | _____ |                 |
| 6. | _____ |                 |

7.

8.

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