

I certify that the within is a true and correct copy of Lease No. 1866/100.


Mark Webb
Director General

PART OF LEEUWIN-NATURALISTE NATIONAL PARK

CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY

(LESSOR)

NATIONAL TRUST OF WESTERN AUSTRALIA

(LESSEE)

LEASE NO. 1866/100

Schedule

1. Lessor
2. Lessee
3. Leased Area
4. Term
5. Option to Extend the Lease
6. Rent
7. Permitted Use of the Leased Area
8. Minimum Public Liability Insurance Cover

Terms and Conditions

1. Grant
2. Option to Extend
3. Rent
4. Outgoings
5. Building Work and Cleaning
6. Use of Leased Property
7. Fires and Environmental Protection
8. General Obligations and Restrictions
9. Indemnity and Insurance
10. Management of the Leased Area
11. Assignment and Subletting
12. Holding Over
13. Default
14. Lessee's Obligations on Termination
15. Costs and Expenses
16. Miscellaneous
17. Power of Attorney
18. Notices
19. Trustee Provisions
20. Guarantee and Indemnity
21. Asbestos
22. Definitions and Interpretation

Annexure 1

Lease Plan

1. The Lessor

THE CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY of LOCKED
BAG 104, BENTLEY DELIVERY CENTRE, WA 6983

2. Lessee

NATIONAL TRUST OF WESTERN AUSTRALIA of 4 HAVELOCK STREET, WEST
PERTH WA 6005

3. Leased Area

SEE AREA SHOWN HATCHED ON THE ATTACHED LEASE PLAN

4. Term

The period of Twenty One (21) years from the Commencement Date to the Expiry
Date:

4.1 **Commencement Date:** 1 October 2020

4.2 **Expiry Date:** 30 September 2041

5. Option to Extend the Lease

5.1 **Option Period:** 21 years

6. Rent

\$1.00 if and when demanded

7. Permitted Use of the Leased Area

CONSERVATION OF ELLENSBROOK'S ABORIGINAL, OTHER AUSTRALIAN
HERITAGE AND NATURAL VALUES; EDUCATION AND ENJOYMENT OF
VISITORS; AND NATIONAL TRUST OF WESTERN AUSTRALIA
ACCOMMODATION

8. Minimum Public Liability Insurance Cover

\$20,000,000

RECITALS

- A. Pursuant to Section 7(2) of the amended *Conservation and Land Management Act 1984* ("**the Act**") the Leeuwin-Naturaliste National Park ("**the land**") is vested in the Conservation and Parks Commission.
- B. Pursuant to Section 100 of the Act, the Chief Executive Officer (CEO) has power to lease the Land on such terms and conditions as the CEO thinks fit.
- 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.
- E. The Lessee has applied to the Lessor for a lease of that portion of the Land above described together with all buildings erections and other improvements now or hereafter erected thereon (collectively "**the Leased Area**").
- F. The Lessor has agreed to lease the Leased Area 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.
- G. The Ellensbrook homestead, is a State Registered Place on the Heritage Council of Western Australia Places Site.
- H. Pursuant to Section 100(3) of the Act, the lease shall be laid before each House of Parliament within 14 sitting days of its execution by all parties and will be incorporated into Hansard.

TERMS AND CONDITIONS

1. GRANT

1.1. *Grant of Lease*

Pursuant to Sections 36, 37 and 100 of the amended *Conservation and Land Management Act 1984*, the Lessor leases the Leased Area to the Lessee for the Term subject to the terms and conditions of this Lease.

1.2. *Quiet Enjoyment*

For as long as the Lessee complies with the Lessee's obligations under this Lease, the Lessee may occupy and use the Leased Area during the Term without disturbance or interference by the Lessor except as permitted by this Lease or by law.

1.3. *Termination by the Lessor or the Lessee by six (6) months' notice*

Despite any other provision of this Lease, the Lessor or the Lessee may at any time terminate this Lease by giving six (6) months written notice of termination.

2. OPTION TO EXTEND

2.1 Option Period

If a period is specified in item 5.1 of the Schedule, the Lessee has the option to extend this Lease for the Option Period, but only if:

- (1) the Lessee notifies the Lessor in writing that the Lessee wants to extend this Lease for that period at least 3 months before the Expiry Date (but not earlier than 6 months before that date); and
- (2) the Lessee is not in default under this Lease as extended when the option is exercised.

2.2 Terms and Conditions

If this Lease is extended under clause 2.1 all the provisions of this Lease continue to apply, except the option and agreed variation in clause 2.1.

2.3 Rent during Option Term

The rent payable by the Lessee from the beginning of any extended term of this Lease is to be the same rent payable immediately before the date of commencement of the extended term unless that date is a rent review date, in which case the rent is to be reviewed with effect from that date, and the rent is subject to further review during the extended term as provided in this Lease.

2.4 Default after exercise of Option

If the Lessee defaults under this Lease after exercising an option to extend the term of this Lease, the Lessor is not prevented from exercising any rights, including the right to terminate this Lease. If this Lease is terminated, the Lessor is not under any obligation to grant a lease of the Leased Area to the Lessee for any extended term.

2.5 Definitions

In this Lease:

Option Period means the period specified in item 5.1 of the Schedule.

3. RENT

3.1 Amount of the Rent

The annual rent payable under this Lease from the Commencement Date is the amount specified in item 6 of the Schedule.

3.2 Manner of Payment

The Lessee must pay the rent by equal annual instalments in advance. The first instalment is to be paid on the Commencement Date and subsequent instalments are to be paid on each anniversary of the Commencement Date. Rent payable for part of a year is to be proportionately adjusted on a daily basis.

4. OUTGOINGS

4.1 *Rates and Taxes*

The Lessee must pay the Rates and Taxes either to the relevant Authority before those Rates and Taxes become overdue or, in the case of any Rates and Taxes imposed on the Lessor, to the Lessor as required by the Lessor whenever the Rates and Taxes become payable.

4.2 *Goods and Services Tax*

(1) **Definition**

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 Commissioner of Taxation as a tax invoice or as a document entitling a recipient to an input tax credit.

(2) **Adjustment for GST**

(a) Unless expressly included, the consideration for any supply made by the Lessor under or in connection with this lease does not include GST.

(b) GST is payable on any supply of goods and services under this lease.

(3) **Tax Invoices**

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

(4) **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.

4.3 *Other property included*

If Rates and Taxes are not assessed separately on the Leased Area but also on other property which includes the Leased Area, the amount which the Lessor can require the Lessee to pay is the same proportion of those Rates and Taxes as the area of the Leased Area bears to the area of the property the subject of the assessment.

4.4 ***Energy Services***

The Lessee must pay the charges of any Energy Supplier and any other costs in respect of the supply of energy services to the Leased Area either to the Energy Supplier before those charges become overdue or, in the case of any such charges imposed on the Lessor, to the Lessor as required by the Lessor whenever the charges become payable.

4.5 ***Water***

If required, the Lessee must pay the charges imposed by the Water Supplier in connection with the water supplied to the Leased Area either to the Water Supplier before those charges become overdue or, in the case of any such charges imposed on the Lessor, to the Lessor as required by the Lessor whenever the charges become payable.

4.6 ***Service Charges***

The Lessee must pay all charges for all other Services which are imposed in respect of the Leased Area either to the supplier before those charges become overdue or, in the case of any such charges imposed on the Lessor, to the Lessor as required by the Lessor whenever the charges become payable.

5. **BUILDING WORK AND CLEANING**

5.1 ***General Obligations***

The Lessee must:

- (1) maintain the Leased Area in the condition as required by the Lessor (except for fair wear and tear); and
- (2) promptly repair any damage to the Leased Area; and
- (3) maintain the Lessee's Property (including signs) located on the Leased Area in good condition.

5.2 ***Building Work***

If the Lessee constructs anything on the Leased Area or carries out any other work on the Leased Area, including work relating to Services or work required by any Authority or any law, the Lessee must:

- (1) before carrying out the work, obtain the Lessor's written approval to the carrying out of the work, including if relevant, written approval of the plans and specifications for the work; and
- (2) comply with all relevant requirements of each Authority and all laws, including the provisions of the *Heritage of Western Australia Act 1990*, *Western Australia Building Act 2011* and *Building Regulations 2012* and applicable standards in relation to the work;
- (3) carry out the work in a safe and proper manner; and

- (4) use only good quality materials; and
- (5) employ only qualified and competent persons; and
- (6) pay to the Lessor when the Lessor requests any expenses incurred by the Lessor in approving the work, including fees paid to architects, engineers, contractors or other advisors.

5.3 ***Cleaning***

The Lessee must:

- (1) keep the Leased Area clean and tidy and free of vermin; and
- (2) properly store all rubbish in fly and rodent proof containers; and
- (3) ensure rubbish is stored in such a way that no leachates enter the ground; and
- (4) regularly remove all rubbish accumulating on the Leased Area to an appropriate rubbish disposal site outside the Leased Area; and
- (5) comply with the Lessor's reasonable directions in connection with cleaning and the disposal of rubbish in relation to the Leased Area.

5.4 ***Specific obligations***

Without limiting the preceding clause, the Lessee must:

- (1) keep the surrounds of the Leased Area for a distance of 10 metres from the boundary clean and tidy and free of vermin as if the surrounds form part of the Leased Area;
- (2) not cause or allow any pollutant or contaminant material or substance over which the Lessee has control to be released into or affect the Leased Area; and
- (3) not dispose of rubbish from the Leased Area in any bins provided by the Lessor for public use in Leeuwin Naturaliste National Park.

6. **USE OF LEASED AREA**

6.1 ***Permitted Use***

The Lessee may only use the Leased Area for the Permitted Use unless the Lessor consents to another use.

6.2 ***Lessee's Own Enquiries***

The Lessee has relied on the Lessee's own enquiries about how the Leased Area may be used and not on any representation from the Lessor. The Lessee has made the Lessee's own enquiries about:

- (1) the suitability of the Leased Area for any use to which it is to be put; and

- (2) all planning and any other requirements prohibitions or restrictions applying to the Leased Area under any law or as a result of the requirements or orders of any Authority.

6.3 ***No Warranty by Lessor***

The Lessor does not give any warranty of any kind that the Leased Area is suitable for any purpose for which the Lessee intends to use it. Any warranty in relation to the Leased Area which is implied by law is excluded to the extent that the law permits the warranty to be excluded.

6.4 ***The Lessor Not Liable***

The Lessor is not liable to the Lessee and the Lessee will not make a claim against the Lessor in respect of any Liability resulting from any accident, death, injury, damage (including water damage), malfunction or other event in or affecting the Leased Area unless caused by the negligence of the Lessor or any employee, contractor or agent of the Lessor.

7. **FIRES AND ENVIRONMENTAL PROTECTION**

7.1 ***Fire Prevention***

Without limiting any other provision of this Lease, the Lessee must in relation to the Leased Area promptly comply with:

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

7.2 ***Fire Control***

The Lessee must immediately:

- (1) Call the 000 emergency number and the Blackwood District Office (08) 9752 5555 and report fire as soon as any fire is detected within the Leased Area or surrounding areas; and
- (2) take all reasonable and safe action which the Lessee is able to take to try to extinguish any unauthorised or uncontrolled fire on the Leased Area.

7.3 ***Authorised Fires***

The Lessee must not do anything which causes or may cause a fire on the Leased Area without the written permission of the District Manager and the lessee must ensure any such fire is not dangerous and is properly controlled so that it cannot become dangerous.

7.4 *Liability for Fires*

The Lessee is responsible for and must pay or reimburse the Lessor for all Liabilities as a result of any fire which starts on the Leased Area unless the Lessee can prove to the reasonable satisfaction of the Lessor that the fire:

- (1) was not caused by the Lessee's negligent or unlawful act or omission or the Lessee's default under this Lease; or
- (2) was started by a cause beyond the Lessee's reasonable control.

7.5 *Timber*

- (1) This lease does not grant to the Lessee any rights to forest produce as defined in the Act and the provisions of Section 99(6) of the CALM Act are hereby expressly excluded.

7.6 *Trees and Vegetation*

The Lessee must take all reasonable actions necessary to protect the trees and other vegetation growing on the Leased Area and take reasonable actions necessary to prevent, rectify or ameliorate any erosion, drift or movement of sand or soil from the Leased Area. Without limitation, unless required by clause 7.7, the Lessee may not cut down or damage or otherwise interfere with anything growing on the Leased Area without the 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 Area, as required by that Act.

7.7 *Dangers or Threats to the Public*

The Lessee must:

- (1) regularly check the condition of trees and other vegetation on the Leased Area;
- (2) subject to consultation with the Lessor prune or remove any tree or other vegetation which is in a dangerous condition or which may threaten the safety of any person;
- (3) take adequate action to warn the public of any danger or threat constituted by any tree or other vegetation;
- (4) generally take any measures necessary to prevent accidents and to protect the safety of the public on the Leased Area.

7.8 *Prevention of Disease*

The Lessee must comply with the Lessor's reasonable directions relating to the prevention of the spread of disease, particularly *Phytophthora Cinnamomi* (dieback) in connection with the Leased Area, including arranging for the washing of vehicles and equipment and other similar measures.

7.9 No Interference with Land

The Lessee acknowledges that the Leased Area is environmentally and culturally sensitive and that the Lessor has a general duty to protect the environmental and cultural values of the land. Accordingly, the Lessee must not, without first obtaining the consent of the Lessor, do anything to damage or otherwise interfere with the land, including:

- (1) removing rocks, earth, soil or other material from the Leased Area; or
- (2) clearing or removing trees or other vegetation from the Leased Area by any means; or
- (3) altering the contours of the surface of the Leased Area; or
- (4) depositing any earth fill or other similar materials on the Leased Area; or
- (5) altering the natural drainage on the Leased Area; or
- (6) taking water from the local environment; or
- (7) introducing any new flora or fauna to the Leased Area; or
- (8) harming or endangering any flora or fauna on the Leased Area; or
- (9) anything else which in connection with the Leased Area may be harmful to the environment.

7.10 Not to Pollute

The Lessee agrees 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 Area by garbage, refuse, waste matter, noise, sewage or other pollutants or by stormwater or other run-off or arising from the use of the Leased Area 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 Area at a place and in a manner required or approved by the Lessor or by the authorities (State, Federal 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 Area at regular intervals by means of the service provided by the relevant Government Agency or a contractor engaged and paid for by the Lessee.

7.11 Notify the Lessor of Threats

The Lessee must immediately notify the Lessor if the Lessee becomes aware of anything which causes or could cause pollution (as defined in the *Environmental Protection Act 1986*) on or affecting the Leased Area.

7.12 Environmental Protection Laws

Unless otherwise stated, this Lease is not to be taken as exempting the Lessee from or limiting the obligation of the Lessee to comply with any law relating to the protection of the environment.

8. GENERAL OBLIGATIONS AND RESTRICTIONS

8.1 *Obligations*

The Lessee must:

- (1) conduct the Lessee's business or activities in the Leased Area in a proper manner;
- (2) comply with all relevant requirements of any Authority and every law in connection with the Leased Area and the Lessee's Property except where such requirements relate to work of a structural nature, unless rendered necessary by the nature of the Lessee's business or activities in the Leased Area;
- (3) withdraw any 'subject to claim' caveat lodged to protect the Lessee's interest under this Lease at the termination, or on an assignment, of this Lease;
- (4) promptly give the Lessor a copy of every notice from any Authority received by the Lessee relating to the Leased Area;
- (5) immediately notify the Lessor if the Lessee becomes aware of anything which is a threat to the Leased Area and comply with the Lessor's directions for the purpose of protecting property or persons in the Leased Area;
- (6) promptly inform the Lessor after becoming aware of any damage to the Leased Area or of the faulty operation of any Services;
- (8) 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 Area or the use of the Leased Area or which impose any duty or obligation upon the owner or Lessee of the Leased Premises.

8.2 *Restrictions*

In connection with the Leased Area, the Lessee must not (and may not permit anyone else to) except with the Lessor's consent:

- (1) modify or interfere with the facilities for the provisions of Services to the Leased Area or any equipment connected to those facilities; or
- (2) interfere with or obstruct the operation of or access to the Services; or
- (3) cause damage to the Leased Area; or
- (4) store or use inflammable or explosive substances, including fuels, paint, solvents and pesticides in the Leased Area except those normally used for any activity included in the Permitted Use but then only if they are stored in proper containers with impermeable bunding where required and used only in accordance with all relevant laws and the requirements of any Authority; or
- (5) conduct activities that may release chemicals onto the ground (including application of fertilisers); or

- (6) use any facilities in or near the Leased Area, including the toilets and drains; or
- (7) put any signs or advertisements outside the Leased Area or within the Leased Area, except as required by this Lease; or
- (8) permit any other person to carry on business on or from the Leased Area; or
- (9) use the Leased Area as a residence, other than for an approved warden's residence (in the area defined for this purpose on the plan), or for any activity which is dangerous, offensive, illegal or immoral or which is or may become a nuisance or annoyance to anyone; or
- (10) create any noise or other disturbance which interferes with the use by any other person of land which adjoins or is near to the leased Area; or
- (11) abandon the Leased Area; or
- (12) create a security interest over this Lease in favour of any person or give another person any right to occupy or use the Leased Area; or
- (13) lodge an absolute caveat to protect the Lessee's interest under this Lease.

8.3 ***Local Government Act 1995 Requirements***

Even though the *Local Government Act 1995* and subsidiary legislation, including any building regulations, may not apply in respect of the Leased Area, the Lessee must comply with that Act and subsidiary legislation as if it did apply, except to the extent that the Lessor waives any requirement. The Lessee must pay to the Lessor on request the fees or other costs charged to the Lessor by any consultant or other competent person who provides advice to the Lessor in relation to the Lessee's compliance with the *Local Government Act 1995* and any subsidiary legislation.

9. **INDEMNITY AND INSURANCE**

9.1 ***Indemnity***

- (1) Subject to subclause 9.1(3) below, the Lessee agrees to release the Lessor and the State of Western Australia and all its officers, agents, emanations and instrumentalities (collectively, "the State") from and in respect of any liability (in negligence or howsoever) the State would incur or would otherwise incur directly on account of being the owner of, or having the possession or control of, the Leased Area or in relation to the activities the subject of this Lease.
- (2) Subject to subclause 9.1(3), the Lessee agrees to indemnify the State from, against and in respect of all loss, claims, lawsuits, proceedings, causes of action, damage, liability, costs, expenses, demands and the like suffered or incurred by or brought, made or alleged against the State to the extent caused or contributed by –
 - i any contractual breach, by or on behalf of the Lessee; or

- ii any tortious, civil or actionable wrong by or on behalf of the Lessee or any officer, employee, agent, contractor or their sub-contractor, or licensee or invitee of the Lessee; or
 - iii the conduct of the Lessee or any of its employees, agents, contractors or their sub-contractors in relation to the activities the subject of the Lease, but only to the extent that the relevant risk, hazard or danger (which caused or gave rise to, or related to, any such loss, claim, lawsuit, proceedings, cause of action, damage, liability, costs, expenses, demands or the like) was or should have been known by the Lessee taking into account all relevant factors including, to the extent such matters are relevant, the location, nature and physical characteristics of the area the subject of the Lease.
- (3) The release in subclause 9.1(1) and indemnity in subclause 9.1(2) above will not apply to the extent that any claims, actions demands, suits, proceedings, damages, liabilities, losses or costs made or brought against, suffered or incurred by the State are caused or contributed to by the State's own negligence, act, default or omission.
- (4) The Lessee agrees that the Lessee's public liability insurer is aware of the conditions that apply to this lease and the indemnity granted above and that the Lessee's public liability policy covers the activities that are specified in this Lease.

9.2 ***Insurance***

The Lessee must maintain with a reputable insurer:

- (1) public liability insurance of at least the amount specified in item 8 of the Schedule for each accident or event in the Leased Area;
- (2) insurance for the Lessee's Property and any insurance required by law as a result of the Lessee's use of the Leased Area.

9.3 ***Variation of Insurance amount***

The Lessor may by notice to the Lessee at any time require the Lessee to increase the minimum cover for the Lessee's public liability insurance if in the circumstances it is reasonable for the cover to be increased.

9.4 ***Insurance obligations***

The Lessee must also:

- (1) pay each premium due under the insurance policies taken out by the Lessee before the due date and, when reasonably requested by the Lessor, provide evidence of payment;
- (2) when reasonably requested by the Lessor, provide evidence of currency for each insurance policy certified by the insurer;

- (3) immediately notify the Lessor if an event occurs which may give rise to a claim under any insurance or which could adversely affect it or if an insurance policy is cancelled; and
- (4) if required by the Lessor, ensure that the Lessor's interests are noted on the policy of public liability insurance.

9.5 ***Lessor's insurance***

Unless the Lessor consents, the Lessee must not:

- (1) do or allow anything to be done which could adversely affect any insurance taken out by the Lessor in connection with the Leased Area or which could increase the cost of obtaining that insurance; or
- (2) settle, compromise or waive any claim under any policy of insurance relating to the Leased Area.

10. **MANAGEMENT OF THE LEASED AREA**

10.1 ***Managing Agent***

The Lessor may appoint a managing agent to manage the Leased Area and represent the Lessor in relation to this Lease. If the Lessor appoints a managing agent, the managing agent may exercise the rights and powers of the Lessor under this lease. The Lessor may at any time vary or terminate the authority of the managing agent. Decisions of the Lessor override those of the managing agent if there is any inconsistency between them.

10.2 ***Exercise of Rights under the CALM Act***

The Lessor reserves the right to enter the Leased Area at any time in order to exercise any right, power or authority which the Lessor has under the CALM Act. The Lessee is not entitled to any compensation or to make any other claim against the Lessor for anything done by the Lessor on the Leased Area in the exercise of any right or authority under that Act.

10.3 ***Right to Enter***

The Lessor may after giving reasonable notice to the Lessee (or in an emergency, without notice) enter the Leased Area to do any one or more of the following things:

- (1) inspect the state of repair and condition of the Leased Area;
- (2) maintain or repair the Leased Area and equipment or facilities in the Leased Area;
- (3) maintain, repair, alter or remove the Services;
- (4) carry out structural work to the Leased Area or any other work required by an Authority;

- (5) remove anything which is harmful or dangerous;
- (6) anything which should have been done by the Lessee but which has not been done properly;
- (7) anything else which the Lessor is required to do by law or is permitted to do under this Lease;

without affecting the Lessee's obligations under this Lease.

10.4 ***Minimise disruption***

If the Lessor does anything permitted by the preceding clause the Lessor must:

- (1) give the Lessee reasonable notice of the intended action before it is taken (except in an emergency); and
- (2) use its best endeavours to minimise disruption to the Lessee's business; and
- (3) make good any damage to the Lessee's Property (other than minor damage) caused by the Lessor.

10.5 ***Dealing with the Leased Area***

The Lessor reserves the right to deal with the Leased Area by granting easements, licences or other rights or interests of any kind to any person over it at any time so long as this does not unreasonably interfere with the Lessee's use of the Leased Area for the Permitted Use. The rights which the Lessor may grant include the right to cut down and remove timber or other vegetation from the Leased Area, the right to draw water or the right to excavate and remove rocks, earth, soil or other materials from the Leased Area. The Lessee is not entitled to any compensation or to make any other claim against the Lessor in relation to the proper exercise of any right given to another person by the Lessor. The Lessee is responsible for and indemnifies the Lessor against any Liability resulting from any claim made by a person to whom a right or interest has been granted by the Lessor in connection with any negligent act or omission of the Lessee or any default by the Lessee under this Lease.

11. **ASSIGNMENT AND SUBLETTING**

11.1 ***Consent Required***

Unless the Lessor consents under the next clause, the Lessee may not assign this Lease or sublet the Leased Area.

11.2 ***Requirements for Consent***

The Lessee may assign this Lease or sublet the Leased Area if the Lessor consents and if the Lessee:

- (1) complies with the next clause; and

- (2) supplies to the Lessor evidence acceptable to the Lessor that the proposed assignee or sublessee is able and qualified to use the Leased Area for the Permitted Use, is financially sound and has a good reputation; and
- (3) remedies any default under this Lease unless it has been waived by the Lessor; and
- (4) if requested by the Lessor, arranges for the proposed assignee or sublessee to obtain from one or more persons, as reasonably nominated by the Lessor, a guarantee of the obligations under this Lease to be assumed by the proposed assignee or sublessee in a form prepared or approved by the Lessor's solicitors.

11.3 *Obligations on assignment or sublease*

If the Lessee assigns this Lease or sublets the Leased Area, the Lessee must:

- (1) deliver to the Lessor, before the date that the proposed assignment or sublease is to take effect, a completed agreement in the form of a deed prepared or approved by the Lessor's solicitors, by which the proposed assignee or sublessee agrees with the Lessor to be bound by this Lease as from the date the assignment or sublease takes effect; and
- (2) pay to the Lessor on request the Lessor's expenses, including legal costs:
 - (a) incurred in making reasonable enquiries about the proposed assignee or sublessee; and
 - (b) in connection with the preparation, completion and stamping of the assignment or sublease documents and any other related documents, (including the stamp duty on those documents).

11.4 *Lessee Remains Liable*

The Lessee remains fully liable under this Lease even if the Lessee assigns this Lease or sublets the Leased Area or gives any right in relation to this Lease or the Leased Area to any other person.

11.5 *Change in Control*

If the Lessee is a company, and there is a change in control of the Lessee the Lessor may require the Lessee to obtain from the persons who have acquired control, as reasonably nominated by the Lessor, a guarantee of the Lessee's obligations under this Lease in a form prepared or approved by the Lessor's solicitors. If the Lessee is a subsidiary company a change in control includes a change in control of its holding company.

In this clause:

- (1) **company** does not include a company which is listed on the Australian Stock Exchange or is wholly owned by such a company; and
- (2) **control** means control of the composition of the board of directors or control of more than 20% of the shares with the right to vote at general meetings; and

- (3) words defined in the Corporations Law have the meanings given to them by that Law.

11.6 ***Exclusion of Statutory Provisions***

The provisions of sections 80 and 82 of the *Property Law Act 1969* do not apply to this Lease.

11.7 ***Fees***

The Lessee must reimburse the Lessor on request for all fees paid by the Lessor to any agent or consultant engaged by the Lessor in connection with a proposed assignment or sub-letting by the Lessee.

12. **HOLDING OVER**

If the Lessor consents to the Lessee continuing to occupy the Leased Area after the Expiry Date or after the end of any extended term, the Lessee is a monthly Lessee of the Leased Area and:

- (1) the monthly tenancy may be terminated by either party giving to the other at least one month's notice which may expire on any day; and
- (2) the rent is the same rent payable immediately before the Expiry Date or after the end of any extended term; and
- (3) all the other provisions of this Lease apply to the monthly tenancy except any option to extend this Lease.

13. **DEFAULT**

13.1 ***Re-entry***

The Lessor may terminate this Lease by notice to the Lessee or by re-entering the Leased Area if:

- (1) the Lessee repudiates this Lease; or
- (2) the Lessee abandons the Leased Area; or
- (3) the Lessee ceases to use the Leased Area for the Permitted Use other than for a temporary period; or
- (4) the rent or any other money payable by the Lessee is unpaid for longer than 3 months after it is due to be paid; or
- (5) the Lessee is in default under this Lease and, if the default can be remedied, the Lessee has not remedied the default within 3 months after receiving a notice from the Lessor specifying the default and requiring it to be remedied; or
- (6) an Insolvency Event occurs; or

Except for the notice given under subclause (5) and except for any notice otherwise required by law the Lessor does not need to give notice to the Lessee before re-entering the Leased Area.

13.2 *Essential Terms and Damages*

Every obligation of the Lessee under this Lease:

- (1) to pay money; or
- (2) not to do something without the Lessor's consent; or
- (3) relating to damage to the Leased Area or to the state of repair or condition of the Leased Area,

is an essential term of this Lease. (This clause does not prevent other obligations being essential terms).

If the Lessee defaults by not performing or complying with any obligation which is an essential term, The Lessor is entitled to recover damages for losses over the whole Term, including losses caused by the non-payment of money by the Lessee over that period, even if this Lease is terminated by the Lessor as a result of the Lessee's default before the Expiry Date.

This clause is not to be taken as relieving the Lessor of any duty to mitigate losses which is imposed by law.

13.3 *Right to Damages not Affected*

The Lessor's right to recover damages is not affected if:

- (1) the Lessor accepts the Lessee's repudiation of this Lease; or
- (2) the Lessor terminates this Lease by notice or re-entry; or
- (3) the Lessee has abandoned the Leased Area; or
- (4) there is a surrender of this Lease by law.

13.4 *Interest on Overdue Money*

The Lessee must pay interest on any money which is not paid by the due date. Interest is to be the higher of:

- (1) 15%; or
- (2) the current reference rate or other base rate charged by the Commonwealth Bank on overdraft loans of less than \$100,000 plus 2%,

and is to be calculated on a daily basis from the due date until the money is paid. The interest is to be paid when requested by the Lessor.

13.5 *Acceptance of Rent or Mitigation*

The acceptance of rent or other money owing under this Lease or an attempt by the Lessor to mitigate losses is not to be taken as a waiver of a default by the Lessee under this Lease or a surrender by law.

14. LESSEE'S OBLIGATIONS ON TERMINATION

14.1 *Lessee to Move Out*

The Lessee must move out of the Leased Area and remove all the Lessee's Property from the Leased Area by the end of the Term except that if this Lease is terminated before that date, the Lessee must move out and remove the Lessee's Property as soon as reasonably possible after this Lease is terminated.

14.2 *Abandonment of Lessee's Property*

- (1) If the Lessee does not remove the Lessee's Property when the Lessee has to move out of the Leased Area the Lessee is deemed to have abandoned the Lessee's Property remaining in the Leased Area and the Lessee's Property will become the property of the Lessor.
- (2) If the Lessee's Property is found to contain asbestos or is of no value to the Lessor, then the Lessee shall be responsible for all costs incurred by the Lessor to remove the Lessee's Property and rehabilitate the Leased Area; or
- (3) If the Lessee's Property remaining in the Leased Area is of value to the Lessor and does not contain asbestos, the Lessee's Property will become the property of the Lessor.

14.3 *Risk*

The Lessee's Property is at the Lessee's risk at all times before and after the termination of this Lease.

14.4 *Damage Caused by Moving Out*

The Lessee must repair any damage to the Leased Area caused by moving out of the Leased Area or removing the Lessee's Property.

14.5 *Reinstatement*

If the Lessee has made any improvements or alterations to the Leased Area or carried out any work on the Leased Area or done anything else to change the Leased Area if the Lessor requires, the Lessee must reinstate the Leased Area before the end of the Term so that the Leased Area is returned to the condition it was in before the improvements or alterations were made, or the work carried out or the other changes were made. The Lessee's obligations under this clause include removing any building or other structure erected in the Leased Area by the Lessee unless the Lessor agrees otherwise or unless this Lease provides otherwise.

15. COSTS AND EXPENSES

15.1 *Costs and Expenses*

The Lessee must pay or reimburse the Lessor on request for all the Lessor's costs and expenses (including legal costs and expenses) in relation to:

- (1) arranging for any survey or demarcation drawing necessary to identify the Leased Area; and
- (2) negotiating, preparing, signing and stamping of this Lease and any document assigning, varying or surrendering this Lease; and
- (3) any proposed or actual assignment or subletting by the Lessee including the engagement by the Lessor of any agent or consultant in connection with the proposed or actual assignment or subletting; and
- (4) enforcing any right under this Lease including giving a notice of default under section 81 of the *Property Law Act 1969*; and
- (5) any default by the Lessee which causes loss to the Lessor; and
- (6) giving any consent or approval under this Lease.

15.2 *Duties and Fees*

The Lessee must pay or reimburse the Lessor on request for all stamp duty and fees (including fines and penalties attributable to the Lessee) payable in connection with this Lease.

16. MISCELLANEOUS

16.1 *Remedies Cumulative*

The rights, powers and remedies in this Lease are in addition to the rights, powers and remedies provided by law independently of this Lease.

16.2 *Accrued Rights*

The termination of this Lease for any reason does not affect the rights of the Lessor in relation to a default by the Lessee before termination.

16.3 *Severance*

If any part of this Lease or the application of that part to any person or circumstance is or becomes unenforceable, the other provisions of this Lease are not affected but continue to be enforceable.

16.4 ***Payments***

The Lessee must make all payments under this Lease without set-off, counterclaim or deduction. Payments by the Lessee under this Lease are to be made to the Lessor or any other person nominated by the Lessor. The Lessor need not make a demand for payment of any amount required to be paid by the Lessee under this Lease unless required by law. If this Lease does not specify when a payment is due, it is due within 14 days after the Lessor requests payment.

16.5 ***Transfer of Land Act 1983***

The covenants and powers implied in every lease made under the *Transfer of Land Act 1983* are implied in this Lease, whether registered under that Act or not, except:

- (1) to the extent that they are modified by this Lease; and
- (2) the implied covenant set out in section 92(ii), which is excluded.

16.6 ***Lessee's Environmental Obligations***

- (1) The Lessee:
 - (i) must obtain any authorisation required, for any conduct, activity or use undertaken by the Lessee on the Leased Area, including the Permitted Use before that conduct, activity or use is undertaken and to keep all such Authorisations in full force and effect throughout the term; and
 - (ii) must use the Leased Area in a manner which complies with each Environmental Law and each Authorisation held by the Lessee in accordance with sub-clause 16.6(1)(i); and
 - (iii) must not do or omit to do any act which might directly or indirectly result in the revocation, suspension or modification of an Authorisation in relation to the Leased Area or any conduct or activity relating to the use of the Leased Area; and
 - (iv) must notify the Lessor immediately on becoming aware of:
 - (A) an Environmental Notice being served on the Lessee or any other person which relates to or arises from the Lessee's use of the Leased Area; or
 - (B) the making of a complaint to any person, including but not limited to, the Lessee or the commencement of proceedings against the Lessee relating to an alleged failure by the Lessee to observe or perform an obligation under an Environmental Law or Authorisation;
 - (vi) must at the Lessee's cost, comply with every Environmental Notice issued in respect of, arising from or relating to, the Lessee's use of the Leased Area, whether the notice is served on Lessor or the Lessee.

(2) Without affecting:

- (i) the obligations of the Lessee in this clause; or
- (ii) limiting any right of, or indemnity in favour of, the Lessor,

if any Contamination, Pollution or Environmental Harm occurs in breach of sub-clause 16.6(1), the Lessee must do everything necessary to minimise the effect of the Contamination, Pollution or Environmental Harm as soon as reasonably practicable and must remediate any resultant damage and harm, to the absolute satisfaction of the Lessor and in compliance with any Environmental Notice or Environmental Law.

(3) The obligations of the Lessee under this clause continue after the expiry or earlier determination of this Lease.

16.7 *Cost of Complying with Obligations*

Unless otherwise stated in this Lease, the Lessee must pay the cost of performing or complying with every obligation of the Lessee under this Lease.

16.8 *The Lessor Can Comply*

If the Lessee does not perform or comply with an obligation under this Lease the Lessor may do what is necessary for the obligation to be performed or complied with. The Lessee must reimburse the Lessor for any reasonable costs or expenses incurred in ensuring the Lessee's obligations are performed or complied with.

16.9 *Contamination, Pollution or Environmental Harm*

- (1) The Lessee relies on its own investigations concerning the existence, non-existence, level or quantity of Contamination, Pollution or Environmental Harm on the Relevant Land.
- (2) The Lessor does not make any representation or warranty concerning the existence, non-existence, level or quantity of Contamination, Pollution or Environmental Harm on the Relevant Land.

17. POWER OF ATTORNEY

The Lessee for valuable consideration irrevocably appoints the Lessor and every senior officer of the Lessor (jointly and severally) the Lessee's attorney for the purpose of:

- (1) withdrawing any caveat which the Lessee is obliged to withdraw but does not; and
- (2) doing anything else the Lessee is obliged to do but does not do.

In this clause "**senior officer**" means every person designated by the Lessor as a senior officer.

18. NOTICES

18.1 *Form and Address*

A notice or other communication in connection with this Lease must be in writing and may be signed by the relevant party or its solicitors or agents.

The notice or other communication may be:

- (1) left at or posted to the address of the addressee as set out in the Schedule or any other address notified to the sender as an address for the giving of notices; or
- (2) sent by facsimile transmission to any facsimile number used by the addressee.
- (3) sent by email to a relevant email address provided by a relevant party.

18.2 *Receipt*

Unless a later time is specified in it, a notice or other communication takes effect from the time it is taken to be received, which is:

- (1) if left at the address of the addressee, the next Business Day after the day it is left;
- (2) if posted, on the third Business Day after posting; and
- (3) if sent by facsimile transmission or email, on the next Business Day after the facsimile was sent.

19. TRUSTEE PROVISIONS

If the Lessee has entered into this Lease in the capacity of trustee whether or not the Lessor has any notice of the trust, the Lessee:

- (1) is taken to enter into this Lease both as trustee and in the Lessee's personal capacity and acknowledges that the Lessee is personally liable for the performance of the Lessee's obligations under this Lease; and
- (2) will take any action necessary to ensure the assets of the trust are available to satisfy any claim by the Lessor for any default by the Lessee; and
- (3) will assign to the Lessor any right of indemnity the Lessee has against the assets of the trust to the extent of the liability of the Lessee under this Lease; and
- (4) warrants that the Lessee has the power and authority under the terms of the trust to enter into this Lease.

20. GUARANTEE AND INDEMNITY

20.1 Application

This clause applies if any Guarantor is a party to the Lease.

20.2 Guarantor's Obligations

In consideration of the Lessor entering into the Lease at the Guarantor's request, the Guarantor:

- (a) unconditionally and irrevocably guarantees to the Lessor the due and punctual payment by the Lessee to the Lessor of all amounts payable by the Lessee under the Lease and the due compliance by the Lessee with all the Lessee's other obligations under the Lease; and
- (b) as separate undertakings:
 - (i) unconditionally and irrevocably indemnifies the Lessor against all Loss, liability, cost or expense incurred or suffered by the Lessor arising from, or in connection with, any Event of Default or as a consequence of a disclaimer of the Lease by a liquidator or trustee of the Lessee; and
 - (ii) as principal debtor agrees to pay to the Lessor on demand a sum equal to the amount of any Loss, liability, cost or expense described in subparagraph (i).
 - (iii)

20.3 Duration and Application

This guarantee and indemnity:

- (a) continues in full force and effect while the Lessee:
 - (i) occupies or is entitled to occupy the Premises under the Lease or any other form of tenancy or right of occupation or as a trespasser or other unauthorised occupier; or
 - (ii) holds an equitable interest in the Premises under an agreement for Lease or as a periodical lessee; oruntil the Lessee complies with all its obligations under the Lease;
- (b) extends to all extensions of the Lease and any new Lease of the Premises; and
- (c) extends to claims by the Lessor for Loss arising from the repudiation of the Lease or breaches of the terms of the Lease by the Lessee, including the Lessor re-entering or terminating the Lease.

20.4 Waiver

The Guarantor waives:

- (a) all the Guarantor's rights as a surety in respect of this guarantee and indemnity; and

- (b) any right the Guarantor may have of first requiring the Lessor to commence proceedings or enforce rights against the Lessee before claiming under this guarantee and indemnity.

20.5 No Prejudice to Rights

The liability of the Guarantor and the rights of the Lessor under this clause are not prejudiced or otherwise affected by anything which might otherwise affect them in law or in equity, including one or more of the following:

- (a) the Lessor granting time or other concession to, or compromising with, or partially releasing in any way, the Lessee or the Guarantor;
- (b) acquiescence, delay, acts or omissions by the Lessor;
- (c) a variation of the Lease with or without the consent of the Guarantor;
- (d) the death, dissolution or other incapacity of the Lessee or a Guarantor;
- (e) an Insolvency Event occurs in respect of the Lessee or a Guarantor;
- (f) the fact that a Guarantor may never execute the Lease or that the execution of the Lease by a Guarantor is void or voidable;
- (g) the invalidity or unenforceability of an obligation or liability of the Lessee under the Lease;
- (h) the disclaimer of the Lease by a liquidator or trustee of the Lessee; or
- (i) the Lessor releasing, disposing of, or dealing in any other way with, any other Security Interest it may hold given by the Lessee or any other guarantor.

20.6 Restriction on Guarantor's Claims

The Guarantor may not, without the prior written consent of the Lessor:

- (a) raise a set-off or counterclaim against the Lessee in reduction of the Guarantor's liability under this clause;
- (b) prove or claim in any bankruptcy, liquidation, composition, arrangement or assignment of, or in relation to, the Lessee until the Lessor has received 100 cents in the dollar in respect of the money owing by the Lessee under the Lease; and the Guarantor holds in trust for the Lessor any proof or claim and any dividend received by it; or
- (c) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any other Security Interest held by the Lessor in connection with the Lease.

20.7 Lessor's Rights

If a claim that a payment to the Lessor in connection with the Lease is void or voidable under laws relating to insolvency or protection of creditors is upheld, conceded or compromised, the Lessor is immediately entitled as against the Guarantor to the rights

to which it would have been entitled under this clause if all or part of the payment had not been made.

20.8 **Costs and Expenses**

The Guarantor agrees to pay to the Lessor on demand the Lessor's costs and expenses, including legal costs and expenses relating to any action in connection with this guarantee and indemnity, including its enforcement.

20.9 **Assignment of Benefit of Lease**

If the benefit of the Lease is transferred or assigned by the Lessor to any person, the benefit of this guarantee and indemnity extends to, and is to be taken to be assigned to, the transferee or assignee.

21. **ASBESTOS**

The Lessee shall at all times throughout the Term, ensure that it complies with all relevant Australian standards and legal requirements which apply in relation to the management and removal of asbestos (if any) at or from the Premises at the Lessee's cost.

22. **DEFINITIONS AND INTERPRETATION**

22.1 **Definitions**

In this Lease:

Authority means any governmental or public authority of any kind.

Business Day means a day on which banks are open for business in Perth other than a Saturday or a Sunday.

CALM Act means the *Conservation and Land Management Act 1984* and any subsidiary legislation.

Commencement Date means the date in item 4.1 of the Schedule.

Contamination is the state of being contaminated as that term is defined in the *Contaminated Sites Act 2003 (WA)*.

Energy Supplier means any Authority, company or other body which supplies, at the Lessor's request, gas, electricity or other sources of energy to the Leased Area.

Environmental Harm has the same meaning as that term is defined in the *Environmental Protection Act 1986 (WA)*.

Environmental Law means all planning, environmental, Contamination or Pollution Statutes and any regulations, orders, directions, ordinances or all requirements, permission, permits or licences issued thereunder.

Environmental Notice means any notice, direction, order demand or other requirement to take any action or refrain from taking any action from any Governmental Agency, whether written or oral and in connection with any Environmental Law.

Environmental Sustainability means maintaining the factors and practices that contribute to the quality of environment on a long-term basis.

Expiry Date means the date in item 4.2 of the Schedule.

Government Agency means any government or any governmental, semi-government, administrative fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

Insolvency Event means the happening of any of the following events in relation to the Lessee:

- (1) the Lessee is unable to pay all the Lessee's debts as and when they become due and payable or the Lessee has failed to comply with a statutory demand as provided in section 459F of the Corporations Law, or the Lessee is deemed to be unable to pay the Lessee's debts under section 585 of the Corporations Law;
- (2) a meeting is convened to place the Lessee in voluntary liquidation or to appoint an administrator.
- (3) an application is made to a court for the Lessee to be wound up;
- (4) the appointment of a controller (as defined in section 9 of the Corporations Law) of any of the Lessee's assets;
- (5) the Lessee proposes to enter into or enters into any form of arrangement (formal or informal) with the Lessee's creditors or any of them, including a deed of company arrangement; or
- (6) the Lessee becomes an insolvent under administration, as defined in section 9 of the Corporations Law.

Leased Area means the area of land described in item 3 of the Schedule.

Lessee means the party named in item 2 of the Schedule and includes the Lessee's successors and an assignee, a sublessee or any other person having a right to possess, use or occupy the Leased Area.

Lessee's Property means any buildings, fences, plant or equipment or other property which the Lessee constructs or has constructed on or brings in to the Leased Area.

Lessor means the statutory body described in item 1 of the Schedule and includes the Lessor's successors and an assignee of the reversion and, where the context permits, any person authorised by the Lessor to do any act on behalf of the Lessor for the purposes of this Lease, including a managing agent.

Liability includes any obligation to pay money or other loss, cost or expense of any kind.

Permitted Use means the use described in item 7 of the Schedule.

Pollution has the meaning given to it in the *Environmental Protection Act 1986* (WA).

Premises means the area of land described in item 3 of the Schedule.

Rates and Taxes means any rate, tax, levy or any other charge imposed at any time during the Term of the Lease by any State, local or Federal governmental body, authority, department or instrumentality or any other authority of any kind, in relation to the supply or use of the Leased Area or anything under or in connection with the Lease.

Relevant Land means the Premises and Surrounding Area.

Services means all services to the Leased Area or parts of the Leased Area including air conditioning, electric power, gas, water, sewerage, and telecommunications.

Supplementary Agreement means the 'Contract for Works Agreement – Public Toilet Facilities Cleaning – Ellensbrook' entered into by the Lessor and the Lessee for the cleaning and checking of the public toilet facilities within the Lessee's Leased Area.

Sustainability Performance and Audit Schedule means a schedule developed jointly between the Lessor and the Lessee which sets out benchmarks for the Lessee to achieve environmental and ecological goals during the Term of this Lease.

Term means the period referred to in item 4 of the Schedule.

Water Supplier means any Authority, company or other body which supplies, at the Lessor's request, water or sewerage services to the Leased Area.

22.2 **Interpretation**

In this Lease, unless the contrary intention appears:

- (1) a reference to the Lessee includes the Lessee's employees, agents, contractors, sublessees, licensees, customers and any other person who is in the Leased Area with the Lessee's permission (direct or implied);
- (2) a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them occurring at any time before or after the Commencement Date;
- (3) the singular includes the plural and vice versa;
- (4) the word "person" includes a firm, a body corporate, an unincorporated association or an Authority;
- (5) an obligation, representation or warranty:
- (6) in favour of two (2) or more persons is for the benefit of them jointly and severally; and
- (7) on the part of two (2) or more persons binds them jointly and severally;

- (8) each obligation of a party to this Lease has effect as a covenant given in favour of the party who may enforce the obligation;
- (9) if a period of time is expressed to be calculated from or after a specified day, that day is not included in the period;
- (10) a reference to a day is a reference to the 24-hour period commencing at midnight;
- (11) a reference to a month is to a calendar month and a reference to a year is a calendar year;
- (12) if the word 'including' or 'includes' is used, the words: "without limitation" are deemed to immediately follow;
- (13) a reference to the termination of this Lease includes the expiry of the Term; and
- (14) a reference to the Term in relation to any obligation of the Lessee is to be taken as including a reference to any period during which the Lessee occupies or uses the Leased Area with the Lessor's consent.

22.3 ***Schedule***

All the provisions in the Schedule at the front of this Lease are incorporated in and form part of this Lease.

22.4 ***This Lease***

A reference to this Lease includes:

- (1) everything forming part of this document; and
- (2) any agreed changes to this document which are recorded in a separate document.

ANNEXURE 1

SUSTAINABILITY PERFORMANCE AND AUDIT

DEFINITIONS

In this Annexure, unless the context otherwise requires:

BEC means Build Environment Criteria.

NEC means Natural Environment Criteria.

SEC means Social Environment Criteria.

LESSEE SPECIFIC SUSTAINABILITY PERFORMANCE

SITE DESIGN AND LAYOUT (BEC)

1. In consultation with and approval of the Lessor's District Manager, the Lessee will develop the area accurately and in accordance with any approved development plan/s as approved by the Lessor.
2. The Lessee will ensure the Works in any approved development plan and any improvements, additions, modifications, alterations or changes to the Works on the area:
 - i. comply with and are maintained according to these Lease conditions; and
 - ii. comply with and are maintained to the Shire of Augusta-Margaret River's health standards and receive the approval of the Shire of Augusta-Margaret River.

MAINTENANCE OF NATURAL ECOLOGY (NEC)

3. The Lessee will:
 - ii. develop and implement protocols for the prevention of the further introduction of non-endemic species of all types; -
 - iii. develop and implement protocols to minimise damage to native vegetation, soil loss and compaction during any construction;
 - iv. implement benchmarking mechanisms (including a vegetation and photographic survey) to assess any construction impact;
 - v. plant only indigenous vegetation in or around the area after consultation and approval of the Lessor's District Manager prior to planting any vegetation;
 - vi. assist the Lessor in its programs of weed eradication and land rehabilitation of the area (planting and maintenance of endemic species) at the request of the Lessor's District Manager;
 - vii. not allow its own pets or those of its employees (with the exception of the warden with written approval of the District Manager), agents, contractors or guests into the Leased area and include this on verbal and written promotional material; and
 - viii. not feed or allow any employee, agent, contractor or guests to feed animals in the Leased Area.

- ix. will encourage the disposal of rubbish and food scraps in sealed bins.

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

- 4. 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. all structures have concrete or raised timber foundations;
 - ii. there is no soil movement around the area after any construction;
 - iii. all pedestrian paths and vehicle areas are defined with stable materials; and
 - iv. in the event of any soil loss, compaction or erosion of the area, remedial action is undertaken immediately with the approval of the Lessor's District Manager

WATER USE (NEC) & WASTE WATER (BEC)

- 5. The Lessee will:
 - i. acknowledge that the Lessor does not guarantee the quality and supply of water from within the Leased Area;
 - ii. ensure effluent and waste water disposal is conducted in accordance with the Shire of Augusta-Margaret River and Department of Water and Environmental Regulation requirements;
 - iii. only use environmentally sensitive detergents and soaps in the Leased Area and ensure their use is minimised; and
 - iv. implement water saving methods.

TOILET FACILITIES (BEC)

- 6. The Lessor will:
 - i. manage ongoing checking and cleaning of the public toilets within the Leased Area for the term of the Supplementary Agreement. Cleaning and ongoing maintenance of the toilets thereafter will be the responsibility of the Lessee for the remainder of the Term.

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

- 7. The Lessee will where possible:
 - i. develop and implement a policy to minimise and annually reduce non-renewable energy consumption, maximise use of renewable energy sources;
 - ii. ensure any new 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 where possible.

ENVIRONMENTAL STEWARDSHIP (NEC)

- 8. The Lessee will:
 - i. minimise, manage and monitor the Operation's environmental impact;
 - ii. keep records and supply information to the Lessor on any matter it requests;

- iii. report incidence of damage or risk within the Leased Area;
- iv. pay fees and charges promptly;
- v. actively and cooperatively participate in any research associated with the Operation; and
- vi. where possible, support the Lessor in emergency situations with the provision of resources at the request of the Lessor's District Manager.

CHEMICAL/FUEL STORAGE AND HANDLING (BEC)

9. 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 Leased Area;
 - iii. maintain a register of any 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 *Explosives and Dangerous Goods (Dangerous Goods Handling and Storage) Regulations 1992* and the Worksafe Guidance Note;
 - v. at all times, ensure all designated chemical and fuel storage structures have impermeable bunding;
 - vi. at all times, have spill response equipment and spillage recovery equipment in place in accord with the *Explosives and Dangerous Goods (Dangerous Goods Handling and Storage) Regulations 1992*;
 - vii. not conduct vehicle maintenance within the Leased Area, except in emergency situations and with the approval of the Lessor's District Manager; and
 - viii. dispose of chemicals outside the Leased Area in an environmentally appropriate manner and as required by law;

LEVEL OF ABORIGINAL COMMUNITY INVOLVEMENT (SEC)

10. The Lessee will continue to develop a close working relationship with the local Aboriginal community by through ongoing engagement and consultation with the community.
11. In the event that the Leeuwin-Naturaliste National Park becomes jointly managed under section 56A of the CALM Act, the parties agree that the lease terms will be reviewed by the Lessor, Lessee and the joint management body within 6 months of the joint management body being established in order to make recommendations on any variations to this Lease.

CULTURALLY SENSITIVE BEHAVIOUR (SEC)

12. The Lessee will:
- i. continue to acknowledge the importance of Aboriginal people, culture and heritage to the leased Area in all verbal and written interpretive and promotional material; and
 - ii. adhere to sacred site restrictions and obtain the appropriate permission from the local Aboriginal community.

SAFETY EQUIPMENT AND PROCEDURES (SEC)

13. The Lessee will have within the first 12 months of the commencement of the lease:
- i. fully functioning emergency communication equipment;
 - ii. basic contingency plans for emergency situations;
 - iii. an operations strategy for dealing with disruptive or violent visitors;

- iv. an employee/ warden on duty with current Senior First Aid Certificate first aid training, when the homestead is open to the public or public events are taking place;
- v. first aid equipment on site; and
- vi. visible signage indicating the location of fire extinguishers, fire blankets and first aid kits.

EXPENDITURE FROM LOCAL BUSINESS (SEC)

- 14. The Lessee will develop and implement a policy to commit to local expenditure wherever possible and demonstrate support of local wholesale outlets and service providers.

Leeuwin-Naturaliste National Park
R 8428

E: 314299.9
N: 6246135.8

Managers
Residence

E: 314304.8
N: 6246080.5

E: 314244.2
N: 6246062.4

E: 314327.6
N: 6246007.5

Leeuwin-Naturaliste National Park
R 8428

LEASE No. 1866/100 ELLENSBROOK

LEASE PLAN APPROVAL

LESSEE

WITNESS

LESSEE

WITNESS



SCALE: 1:1,250



Department of
Biodiversity, Conservation
and Attractions

LESSEE

National Trust of Australia (WA)

DBCA REGION

SOUTH WEST

AREA

Abt 1.6ha

DBCA DISTRICT

BLACKWOOD

DRAWN

CJLB 22/01/2019

LGA

SHIRE OF AUGUSTA - MARGARET RIVER

CHECKED

PLAN REF.

DBCA COG PLAN: 1830-2 & 3 (GD.03)

FILE No.

2018/000398-1

ORTHO PHOTO

n/a

DATUM

GDA94, MGA Zone 50

Executed by the parties as a Deed on the 14th day of December in the year 2020.

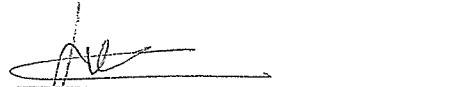
THE COMMON SEAL of the **CONSERVATION**)
AND LAND MANAGEMENT EXECUTIVE BODY)
was hereunto affixed by:)



12 Chief Executive Officer

in the presence of:

Witness: Signature



Name (Please print)

Vesna Mills

Occupation (Please print)

Executive Officer

Address (Please print)

17 Dick Perry Ave, Kensington

THE COMMON SEAL of the
NATIONAL TRUST OF
WESTERN AUSTRALIA
was hereunto affixed by:



Aileen Donohue
Chief Executive Officer

In the presence of:

Helen Cogan
Witness's Signature
SECRETARY

HELEN COGAN
Full Name of Witness

Occupation of Witness

Ken Michael
PRESIDENT

Address of Witness

KENNETH MICHAEL

