

DEED

LandCorp

and

Shire of Broome

DEED

PARTIES:

Name: SHIRE OF BROOME
(Shire)
Address: 27 Weld Street
Broome
Western Australia

Name: WESTERN AUSTRALIAN LAND AUTHORITY trading as LandCorp
(LandCorp)
Address: Level 6, 40 The Esplanade
Perth
Western Australia

BACKGROUND

- A. The Shire has been granted a Management Order by the State over the Land.
- B. The Management Order permits the use of the land for "Sanitary Site and Disposal of Greenwaste "
- C. The Shire wishes to seek from the State a variation to the Management Order to also allow the Land to be used for the storage of car bodies.
- D. The Management Order will expire on 31 March 2022 but the Shire will seek from the State an extension of the term of the Management Order until 31 March 2025 (which application is supported by LandCorp) Upon the termination or surrender of the Management Order it is intended that the Land will be transferred to LandCorp by the State for future development by LandCorp for residential use.
- E. LandCorp wishes to ensure that upon transfer of the Land to LandCorp the Land is not Contaminated as a result of its prior use for the storage of car bodies.
- F. The Shire and LandCorp have agreed to enter into this Deed to record the terms upon which the Management Order may be varied and the use of the Land by the Shire in order to mitigate any potential Contamination of the Land

OPERATIVE PART

The parties agree in consideration of, among other things, the mutual promises contained in this Deed

1 DEFINITIONS

1.1 In this Agreement unless the contrary intention appear

"Contamination" has the meaning given in section 4 of the *Contaminated Sites Act 2003* (WA)

"DWER" means the Department of Water and Environmental Regulation

"Management Order" means Management Order M724606

“Land” means the land being Reserve 51151 being Lot 400 on Deposited Plan 72930 the whole of the land in Crown Land Title Volume 3162 Folio 32 and known as lot 400 Buckleys Road Broome

“Remediate and Remediation” has the meaning given in Section 3 of the *Contaminated Sites Act 2003* (WA)

“State” means the State of Western Australia acting through the Department of Lands.

INTERPRETATION

1.2 Unless the contrary intention appears:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include the other genders;
- (c) other grammatical forms of defined words and expressions have corresponding meanings;
- (d) references to persons include corporations and bodies politic;
- (e) references to a person include the legal personal representatives successors and assigns of that person;
- (f) a reference to a Statute Ordinance Code or other Law includes regulations and other statutory instruments under it and consolidations amendments re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- (g) references to this or any other document include the document as varied or replaced and notwithstanding any change in the identity of the parties;
- (h) references to writing include any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;
- (i) an obligation of two or more parties binds them jointly and severally;
- (j) if a word or expression is defined cognate words and expressions have corresponding definitions;
- (k) references to an association body or authority which is reconstituted amalgamated reconstructed or merged or the functions of which have become exercisable by any other person association body or authority in its place shall be taken to refer to the person association body or authority established or constituted in its place or by which its functions have become exercisable;
- (l) reference to any thing (including without limitation any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (m) reference to a month and cognate terms means a period commencing on any day of a calendar month and ending on the corresponding day in the next succeeding calendar month but if a corresponding day does not occur in the next succeeding calendar month the period shall end on the first day of the next succeeding calendar month;
- (n) references to this Deed includes any schedules and annexures;
- (o) headings are inserted for ease of reference only and shall be ignored in construing this Deed;

- (p) references to time are to local time in Perth Western Australia;
- (q) where time is to be reckoned from a day or event that day or the day of that event shall be excluded;
- (r) a reference to a business day is a reference to a day other than a Saturday Sunday or gazetted public holiday in Western Australia;
- (s) the word "include" used when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind; and
- (t) a provision of this Deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Deed or the inclusion of the provision in this Deed

2. MITIGATION UNDERTAKINGS

2.1 The Shire agrees with LandCorp that if the Management Order is varied to allow the storage of car bodies, the Shire shall undertake mitigation measures to reduce the potential of Contamination of the Land by the storage of the car bodies as follows :-

- (a) The Shire must obtain and maintain throughout the term of the Management Order the relevant licence or authorisation from DWER to use the Land for the storage of car bodies and comply with the licence or authorisation in all respects;
- (b) The Shire must promptly provide to LandCorp a copy of all annual reports lodged with DWER pursuant to the licence;
- (c) If the Shire suspects that the Land is Contaminated, the Shire must report this matter to DWER under section 11 of the Contaminated Sites Act 2003 (WA) and immediately provide a copy of the report to LandCorp;
- (d) The Shire shall surrender the Management Order in accordance with this clause within 3 months of the Shire opening a new resource recovery facility that is able to accommodate recycling of green waste and storage of car bodies.
- (e) Not more than 3 months prior to the date of expiration or surrender of the Management Order the Shire must undertake a contamination investigation in accordance with DWER guidelines, including the collection and analysis of soil samples. If that investigation indicates the Land may be Contaminated and requires Remediation then the Shire must Remediate the Land to a residential standard to the satisfaction of DWER prior to the Management Order expiring ; and
- (f) The Shire must remove all car bodies and other material on the Land prior to the date of expiration or surrender of the Management Order.

3. OTHER OBLIGATIONS

- 3.1 The Shire hereby warrants to LandCorp that as at the date of this Deed the Land is not Contaminated.
- 3.2 The Shire shall use its best endeavours to seek a variation to the Management Order from the Department of Lands to include the obligations required under this Deed. The Shire agrees not to accept the variation to the Management Order until LandCorp has given its written consent to the variation which consent will not be unreasonably withheld.

4. NOTICES

Any notice given or required to be given under this Agreement:

- (a) must be in writing addressed to LandCorp or to the Shire , (as the case may be), to LandCorp's or the Shire's 's address shown in this Agreement (or to any other address specified by LandCorp to the Shire or by the Shire to LandCorp by notice);
- (b) must be signed by the sender or an officer of, or under the common seal of the sender or by the sender's lawyer or other authorised representative (as the case may be);
- (c) is to be regarded as being given by the sender and received by the addressee:
 - (i) if by delivery in person, when delivered to the addressee;
 - (ii) if by post (which posting must be by pre paid registered post), 3 business days from and including the date of posting to the addressee; and
 - (iii) if by email on the earlier of :-
 - (A) the business day after the date on which the email is sent provided that the sender does not receive any system message indicating that the transmission of the notice has been delayed or has failed. For the purpose of this clause, an "out of office" message of a recipient will be deemed to be a message indicating delay of the notice;
 - (B) the day on which the recipient of the email responds to the email but where the response is on a day not being a business day ,the next business day; and
 - (C) the day on which an automatic "read receipt" is received by the sender provided that the "read receipt" is received prior to 5-00pm on a business day otherwise the notice is deemed to be received on the following business day.
- (d) can be relied upon by the addressee, and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.

5. MISCELLANEOUS

- 5.1 This Deed constitutes the entire agreement between the Parties with respect to its subject matter and contains all of the representations warranties covenants and agreements of such Parties and there are no oral statements representations undertakings covenants or agreements between the Parties expressed or implied except contained in this Deed
- 5.2 This Deed shall be binding upon and inure to the benefit of the Parties and (unless such interpretation shall be repugnant to the sense or context) their permitted successors and assigns.
- 5.3 This Deed may be amended or varied only by agreement in writing signed by the Parties.
- 5.4 All remedies rights undertakings, obligations or agreements of the Parties arising by local law disagreement or otherwise shall be cumulative and none thereof shall be in limitation of any other right remedy undertaking obligation or agreement of such Party. Each Party may follow any remedies to which such Party is entitled by law this agreement or otherwise concurrently or successively at that Party's option.
- 5.5 This Deed may be executed in counterparts.

- 5.6 The Parties shall execute and do all such acts and things as shall be necessary or desirable in order to implement and give full effect to the provisions and purposes of this Deed.
- 5.7 For all purposes this Deed shall be governed by and construed in accordance with the laws of Western Australia and where applicable the laws of Australia.
- 5.8 Each of the parties shall bear their own costs in relation to the preparation and execution of this Deed.

Executed as a deed on _____ 2018.

SIGNED on behalf of the **WESTERN AUSTRALIAN LAND AUTHORITY** by person(s) authorised by its Board in accordance with Section 45(2)(b) of the Western Australian Land Authority Act 1992.



Authorised Officer



Authorised Officer

26-11-18

Date

The Common Seal of the SHIRE OF BROOME was hereunto affixed by authority of a resolution of the Council in presence of:

President

Chief Executive Officer

