



Department of Planning,
Lands and Heritage

Licence to Occupy Crown Land

Section 91 of the *Land Administration Act 1997* (WA)

Lic 00203/2019_A11291964

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THIS DEED OF LICENCE is made on the day of 2021.

BETWEEN

THE STATE OF WESTERN AUSTRALIA ACTING THROUGH THE MINISTER FOR LANDS,
a body corporate under the *Land Administration Act 1997*, care of Department of Planning,
Lands and Heritage, 140 William Street, Perth (**Licensor**)

AND

MARDIE MINERALS PTY LTD (ACN 152 574 457), Level 2, 1 Altona Street, West Perth
(**Licensee**)

BACKGROUND

- A. The Licence Area is a portion of Crown land. Crown land is administered by the Minister through the Department on behalf of the State of Western Australia.
- B. The Licensee wishes to have access to the Licence Area for the Permitted Use.
- C. The Minister on behalf of the State of Western Australia is authorised by section 91 of the LAA to grant a licence of Crown land for any purpose.
- D. Native title rights and interests have been determined to exist over part of the Licence Area.
- E. The Native Title Party and the Licensee have entered into an agreement which includes a heritage protocol on substantially the terms of the Heritage Protocol in Annexure C of this Licence, which sets out, amongst other things, when and how heritage surveys will be undertaken in respect of activities permitted by this Licence over the Licence Area.
- F. The Licensor has agreed to grant to the Licensee the Licence in respect of the Licence Area on the terms and conditions and for the Permitted Use set out in this Licence.

OPERATIVE PART

The Parties covenant and agree on the matters set out above and as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. DEFINITIONS

In this Licence the following terms shall have the following meaning:

Contamination is the state of being contaminated as that term is defined in the CSA.

CSA means the *Contaminated Sites Act 2003*.

Date of Commencement means the date of commencement specified in item 2(b) of the Schedule.

Date of Expiry means the date of expiry specified in item 2(c) of the Schedule.

Department means the department principally assisting the Minister in the administration of the LAA.

Environment has the meaning given by section 3 of the *Environmental Protection Act 1986*.

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

Environmental Law means all planning, environmental, contamination or pollution laws 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.

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

Heritage Protocol means the heritage protocol referred to in Recital E and references to “the Company” in the Heritage Protocol means the Licensee.

LAA means the *Land Administration Act 1997*.

Law includes any requirement of any statute, regulation, proclamation, ordinance or by-law present or future whether State, Federal or otherwise.

Licence means this deed including the contractual rights granted to the Licensee under clause 2 and the rights granted under this Licence necessary for the exercise of the rights granted under clause 2.

Licence Area means the licence area specified in item 1 of the Schedule.

Licence Fee means the licence fee specified in item 3(a) of the Schedule.

Licensee's Agent includes the employees, agents, contractors, consultants, invitees and any other person acting with the authority or permission of the Licensee.

Licensee's Property means all plant, equipment, materials, and other property brought or placed on the Licence Area by, on behalf of or with the authority of the Licensee.

Minister means the Minister for Lands, a body corporate under section 7(1) of the LAA.

Native Title Party means Wirrawandi Aboriginal Corporation RNTBC being the prescribed body corporate holding native title rights and interests on behalf of the Yaburara & Mardudhunera People (as provided for under the NTA) that have been determined to exist in the Licence Area under the decision of the Federal Court WAD 127/1997.

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

Parties mean the Licensors and the Licensee.

Party means the Licensor or the Licensee, as the case may be.

Permitted Use has the meaning given to that term in clause 2.1.

Pollution means any thing that is Pollution within the meaning of the *Environmental Protection Act 1986*, which is not authorised under any Law.

Schedule means the Schedule to this Licence.

Services includes water, gas and electricity supply, sewerage, waste disposal, drainage and telecommunications and all facilities pipes, cables, fixtures and fittings associated with those services.

Surrounding Area means any land or water adjacent to or in the vicinity of the Licence Area and the air generally above the Licence Area, and includes an affected site within the meaning of that term as defined in the CSA.

Term means the term specified in item 2(a) of the Schedule.

1.2. INTERPRETATION

In this Licence:

- (a) clause headings are for convenient reference only and shall have no effect in limiting or extending the language of the provisions to which they refer;
- (b) a reference to a clause, schedule or annexure is a reference to a clause of or schedule or annexure to the document in which the reference appears;
- (c) a reference to any Law includes consolidations, amendments, re-enactments or replacements of it;
- (d) the singular includes the plural, the plural includes the singular and any gender includes each other gender;
- (e) if a period of time is specified and runs from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (f) the word 'person' includes a reference to the person's personal representatives, executors, administrators, successors and assigns and a reference to a corporation includes a reference to the corporations successors and assigns;
- (g) covenants in this Licence by two or more persons shall be deemed joint and several;
- (h) a reference to the word "including" is deemed to be followed by the words "but not limited to".

2. GRANT OF LICENCE

2.1. GRANT OF LICENCE

In consideration of the matters set out in this Licence and the payment of the Licence Fee by the Licensee to the Licensor, the Licensor hereby GRANTS to the Licensee a non-exclusive right for the Term to enter upon and remain on and use the Licence Area, with such vehicles, machinery, plant or equipment as is reasonably necessary for the purpose of low impact ground disturbing activities and investigative works including geotechnical, geological and hydrogeological investigations required for the Mardie Project. These include general site inspections, geotechnical and geological investigations, ground water investigations, mesquite clearing, environmental and Aboriginal heritage surveys, vegetation clearing, use of temporary access tracks, temporary lay down and storage facilities as required and incidental works (**Permitted Use**) in accordance with the terms and conditions set out in this Licence.

2.2. NO ESTATE OR INTEREST IN LAND

The Licensee acknowledges and agrees that:

- (a) The rights conferred by this Licence rest in contract only and do not create in or confer upon the Licensee any tenancy or any estate or interest in or over the Licence Area and the rights of the Licensee will be those of a licensee only.
- (b) This Licence confers no right of exclusive occupation of the Licence Area upon the Licensee and the Licensor may at any time and at all times from time to time exercise all the Licensor's rights as licensor including (but without in any way limiting the generality of this provision) the Licensor's rights to use possess and enjoy the whole or any part of the same save only in so far as such rights shall not unreasonably:
 - (i) prevent the operation of the rights granted to the Licensee under this Licence; or

- (ii) be inconsistent with the express provisions of this Licence.
- (c) The rights granted to the Licensee under this Licence are only exercisable during the Term.
- (d) Nothing in the Licence affects or is intended to affect native title rights and interests where they have been determined to exist in the Licence Area.
- (e) If despite subclause (d) native title rights and interests are affected, the grant of this Licence is not to extinguish native title rights and interests.

2.3. EFFECT OF LICENCE

The Parties acknowledge and agree that this Licence is valid and the terms of this Licence apply for all other purposes, even if it is determined that this Licence is invalid to the extent that it affects native title pursuant to the NTA or otherwise.

3. CONDITIONS PRECEDENT

- (a) The grant of this Licence is subject to and conditional on the Licensee obtaining and maintaining the consents of the Native Title Party to the grant of this Licence and the use of the Licence Area for the Permitted Use.
- (b) The Licensee must provide a copy of all consents, the modification or the withdrawal of such consents referred to in subclause (a) to the Licensor as soon as possible after such consents are obtained, modified or withdrawn.
- (c) The Licensee must comply with all terms and conditions of the consents referred to in subclause (a) during the Term.

4. EXCLUSION OF WARRANTY

The Licensee acknowledges and agrees that the Licensor, makes no warranty or representation that this Licence is or will be validly granted for the purposes of the NTA, as native title rights and interests have been determined to exist over part of the Licence Area and any such warranty or representation is expressly excluded.

5. TERM AND LICENCE FEE

5.1. TERM

The Term shall commence on the Date of Commencement and shall expire at the Date of Expiry.

5.2. FURTHER TERM

Any application for a Further Term or extension of the rights granted to the Licensee under this Licence must be made to the Licensor, in writing no less than 30 days prior to the expiration of this Licence and may be granted or refused at the Licensor's absolute discretion.

5.3. LICENCE FEE

The Licensee must pay the Licence Fee to the Department, at the times and in the manner specified in item 3 of the Schedule.

6. LICENSEE'S COVENANTS

6.1. COVENANTS WITH LICENSOR

The Licensee covenants with the Licensor that the Licensee and the Licensee's Agents:

- (a) must not construct or erect or permit to be constructed or erected any permanent structure, improvement or other thing that is a fixture on the Licence Area;
- (b) must not cause or permit any damage to the Licence Area or to the Surrounding Area;
- (c) must not cause or permit any Contamination, Pollution or Environmental Harm to occur in, on or under the Licence Area or to the Surrounding Area, and if any Contamination, Pollution or Environmental Harm is caused by the Licensee or the Licensee's Agents, the Licensee must give notice of it to the Licensor and must minimise and remediate any resultant damage and harm to the reasonable satisfaction of the Licensor;
- (d) must keep the Licence Area in good and safe repair and condition, and must take all steps necessary to keep it safe and free from hazard to any property or person on or using the Licence Area or the Surrounding Area, and where required must keep secure the Licence Area;
- (e) must ensure that traffic on all adjoining and surrounding roads is not unduly disrupted due to vehicles entering or leaving the Licence Area;
- (f) must, while using the Licence Area:
 - (i) ensure the safe movement of pedestrians using the Licence Area or adjoining areas, including erecting signs to warn persons likely to be endangered by the Licensee's use of the Licence Area, and
 - (ii) ensure that pedestrians using the Licence Area or adjoining areas are not unduly disrupted;
- (g) must not dispose and not store on the Licence Area any rubbish or any poisonous, toxic or hazardous substance;
- (h) other than as permitted under clause 2.1, must not undertake nor allow to be undertaken any excavation or clearing of the Licence Area;
- (i) must pay all outgoings payable in respect of the use of the Licence Area under this Licence;
- (j) must punctually comply with and observe:
 - (i) all Laws; and
 - (ii) all notices received either by the Licensor or the Licensee from, and the requirements of, any relevant Governmental Agency;
- (k) must obtain, keep current and comply with all consents, approvals, permits, licences or other requirements under any Law, if any, to use the Licence Area for the purposes permitted under this Licence;
- (l) must repair or remedy any damage caused or permitted by the Licensee or the Licensee's Agents, to the Licence Area or the Surrounding Area or Services in, on, under or over the Licence Area, including remediating any Contamination, Pollution, Environmental Harm, and erosion or other form of degradation;
- (m) must reinstate the Licence Area on the expiration of the Term or other termination of this Licence, in accordance with clause 9;
- (n) must in relation to undertaking any activities pursuant to the Permitted Use within that portion of the Licence Area which is part of the lease area of pastoral lease N050076, known as Mardi Station (**Land**):

- (i) advise and discuss with Pastoral Management Pty Ltd (**PMPL**), the nature and timing of such activities including specific access timing, duration of access and arrangements to ensure the activities are minimised and not intrusive or disruptive to pastoral activities;
- (ii) give PMPL:
 - (A) not less than five (5) days' notice of the Licensee's intention to access the Land; and;
 - (B) not less than fourteen (14) days' notice before using helicopters, ground disturbing equipment or equipment that emits noise above 100 decibels, within 400 meters of a bore or watering point;
- (iii) wherever feasible, ensure vehicle movements are confined to existing roads and tracks to limit the creation of temporary access tracks;
- (iv) ensure all gates and access barriers are firmly secured and shut after use of alternatively, left as found, and that livestock are undisturbed and unharmed;
- (v) take all reasonable steps to minimise interference with PMPL's pastoral operations and prevent disturbance to livestock, vegetation, water sources, water courses and the Land;
- (vi) not use any water bores reserved for stock;
- (vii) take all reasonable steps to prevent the spread of mesquite weeds and seeds to and from the Land, including by inspecting, cleaning and removing all mesquite weeds and their seeds from any vehicles and machinery prior to entering and leaving the Land;
- (viii) take due care and exercise reasonable skill and judgement in accessing the Land in wet weather conditions;
- (ix) not enter the Land in the event of extended wet weather conditions resulting in impassibility within the Land;
- (x) not trespass into any other areas outside of the Land and will remain a reasonable distance from all private lands, easements and rights of way;
- (xi) report to PMPL as soon as practicable and in any event, within forty eight (48) hours of:
 - (A) any damage caused by the Licensee to any pastoral improvements on the Land;
 - (B) any incident that may cause harm, whether temporary or permanent, to the Land or the environment (except to the extent that the Licensee has appropriate permits, licences and other authority to do so); or
 - (C) any incident that would constitute a lost time injury under normal safety reporting protocols or would result in an injury to any person requiring medical treatment;

- (xii) not park or store equipment or vehicles within 400 metres of any bore or water point without the prior approval of PMPL; and
- (xiii) rectify or remedy to PMPL's reasonable satisfaction immediately, any damage caused or permitted by the Licensee on or to the Land, including damage caused by the removal of the Licensee's property on the expiry of the Licence;
- (o) must immediately rectify or remedy any breach of subclause (n), to the reasonable satisfaction or PMPL;
- (p) must undertake a Dial Before You Dig online enquiry prior to undertaking any activities in relation to the geotechnical drilling to prevent any damage and disruption to any infrastructure network; and
- (q) must ensure compliance with the obligations contained in the Heritage Protocol in relation to, and prior to undertaking, any activities on the Licence Area.

7. INDEMNITY, RELEASE AND INSURANCE

7.1. INDEMNITY AND RELEASE

- (a) The Licensee hereby releases and indemnifies and agrees to keep released and indemnified the Licensor, the State, the Crown, all Ministers of the Crown, and all officers, servants, agents, contractors, invitees and licensees of any of them (the **Indemnified Parties**) from and against all claims, demands, actions, suits, proceedings, judgments, damages, costs, charges, expenses (including legal costs of defending or settling any action, claim or proceeding) and losses of any nature whatsoever whether based in contract, tort or statute or any combination thereof which the Indemnified Parties (or any of them) may suffer or incur or which may at any time be brought maintained or made against them (or any of them) in respect of or in connection with:
 - (i) in respect of any destruction, loss (including loss of use), injury or damage of any nature or kind of or to property of any person whether or not on the Licence Area and including the property of:
 - (A) any of the Indemnified Parties; or
 - (B) the Licensee or the Licensee's Agents; and
 - (ii) in respect of any death of, or injury or illness sustained by, any person and including:
 - (A) the Indemnified Parties; or
 - (B) the Licensee or the Licensee's Agents, and
 - (iii) any effect on or impairment of native title rights and interests or effect on or impairment of the exercise of native title rights or interests of any person in relation to the Licence Area; and
 - (iv) any effect on the validity, or invalidity, of this Licence or the exercise by the Licensee or the Licensee's Agents or any rights conferred under this Licence;

directly or indirectly caused by arising out of or in connection with:

- (v) the Licensee's or Licensee's Agents use or enjoyment of the Licence Area or any part of the Licence Area pursuant to the terms of this Licence;
 - (vi) any works carried out by or on behalf of the Licensee under this Licence;
 - (vii) the exercise or enjoyment of any rights conferred upon the Licensee under this Licence;
 - (viii) any Contamination, Pollution or Environmental Harm of the Licence Area or the Surrounding Area caused or contributed to by the Licensee's or the Licensee's Agents use of the Licence Area;
 - (ix) any remediation required to be carried out by the Licensee under this Licence in respect of the Licence Area or the Surrounding Area or otherwise having to comply with any Environmental Notice or any other notice received from any Governmental Agency;
 - (x) any default by the Licensee in the due and punctual performance, observance and compliance with any of the Licensee's covenants or obligations under this Licence;
 - (xi) any other act, neglect, default or omission by the Licensee or the Licensee's Agents; or
 - (xii) any invalidity of the Licence for the purposes of the NTA or otherwise by reason of the existence of native title rights or interests.
- (b) The obligations of the Licensee under this clause:
- (i) are unaffected by the obligation of the Licensee to take out insurance and the obligations of the Licensee to indemnify are paramount; and
 - (ii) continue after the expiration or earlier determination of this Licence.

7.2. INSURANCE

- (a) The Licensee must during the Term effect, maintain and keep current with an insurer of good repute, a public liability insurance policy for the amount specified in item 6 of the Schedule for any one claim (or any other amount reasonably required by the Licenser from time to time consistent with usual prudent commercial practice) and which policy includes, but is not limited to, coverage in respect of:
- (i) any injury to, illness of, or death of, any person;
 - (ii) any loss, damage or destruction to any property including to the property of any of the Indemnified Parties;
 - (iii) the loss of use of any property, including the property of any of the Indemnified Parties;
 - (iv) and damages or compensation payable to the holders of or in respect of effects on or impairment of native title rights or interests; and
 - (v) liability arising out of any Contamination, Pollution or Environmental Harm of the Licence Area or the Surrounding Area caused or contributed to by the Licensee's or the Licensee's Agents use of the Licence Area,

and such insurance shall include the interests of the Licensor under this Licence.

- (b) The Licensee
 - (i) must give to the Licensor a copy of the certificate of currency of the policy of insurance referred to in subclause (a) at the Date of Commencement; and
 - (ii) must submit evidence to the Licensor on each anniversary of the Date of Commencement during the Term, or as otherwise requested by the Licensor, which shows that the insurance policy referred to is still current.
- (c) The Licensee shall effect and maintain all insurance required to be effected by it by law. Without limiting the generality hereof, the Licensee shall have all necessary insurance with respect to its employees under the relevant Laws and shall, if required by the Licensor, produce evidence of such insurance at any time.
- (d) The Licensee will not do or omit to do any act or thing or bring onto or keep anything on the Licence Area which might render the insurance on the Licence Area void or voidable.

8. TERMINATION OF LICENCE

8.1. DEFAULT

- (a) This Licence and the rights granted to the Licensee pursuant to it, may be terminated by the Licensor by notice in writing to the Licensee:
 - (i) if moneys payable under this Licence are in arrears and unpaid for 14 days after formal demand;
 - (ii) if the Licensee breaches or fails to observe any of the covenants, conditions or terms on the Licensee's part expressed or implied in this Licence, other than the obligation referred to in subclause (i) and the breach has not been remedied by the Licensee within 14 days after service of a notice from the Licensor requiring the Licensee to remedy the breach or non observance;
 - (iii) if the Licensee breaches or fails to observe any of the terms and conditions of the consents referred to in clause 3 during the Term;
 - (iv) within seven days of the Native Title Party giving written notice to the Licensor that it is withdrawing its consent to this Licence, or that there has been a breach by the Licensee or the Licensee's Agents of the Heritage Protocol;
 - (v) if the Licensee breaches or fails to observe any of the covenants, obligations, conditions or terms referred to in clause 6 during the Term;
 - (vi) if the Licensee:
 - (A) becomes bankrupt or enters into any form of arrangement (formal or informal) with any of its creditors, or an administrator or a receiver or a receiver and manager is appointed to any of its assets;

- (B) being a company or other body corporate, an order is made or a resolution is passed for its winding up except for the purpose of reconstruction or amalgamation;
- (C) being a company, or other body corporate ceases or threatens to cease to carry on business or goes into liquidation, whether voluntary or otherwise, or is wound up or if a liquidator or receiver (in both cases whether provisional or otherwise) is appointed; or
- (D) being a company, is placed under official management under the *Corporations Act 2001* (Cth) or enters into a composition or scheme of arrangement;

and without limiting the foregoing but for the avoidance of doubt, this subclause (a)(vi) applies to any such event that may occur in relation to the Licensee if it is an Aboriginal and Torres Strait Islander corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth);

- (vii) if the Licensee is an Aboriginal and Torres Strait Islander corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) and a determination is made by the Registrar under that Act that the Licensee is to be under special administration; or
- (viii) if the Licensee abandons or vacates the Licence Area;

and this Licence and rights granted pursuant to it will terminate on expiry of the notice period specified in the notice, which in relation to termination pursuant to subclause (iv) may be an immediate notice of termination.

- (b) This Licence and the rights granted to the Licensee pursuant to it, may be terminated by the Licensor by notice in writing to the Licensee.
- (c) No compensation or money is payable to, or recoverable by, the Licensee from the Licensor for termination of the Licence under this clause.
- (d) Any termination of the Licence under this clause:
 - (i) does not affect any rights and obligations that are expressed in this Licence to survive expiry or earlier termination of this Licence; and
 - (ii) is without prejudice to the rights of the Licensor in respect of any antecedent breach of the terms, covenants or conditions contained or implied in this Licence by the Licensee.

8.2. LICENSOR'S RIGHT TO ENTER AND TO REMEDY

- (a) If the Licensee has breached or failed to observe any of the terms of this Licence on its part contained or implied in this Licence, and that breach or non-performance has continued for at least 14 days after the service of a written notice on the Licensee requiring it to remedy the same, without affecting its other rights under this Licence, the Licensor may (but is not obliged to) remedy the breach, including the payment of monies.
- (b) For this purpose, the Licensee acknowledges and agrees that:
 - (i) the Licensor, its servants, agents and contractors may enter the Licence Area at any time with all necessary materials and equipment to execute all or any required works as the Licensor thinks fit; and

- (ii) all debts costs and expenses incurred by the Licensor, including legal costs and expenses, in remedying a default is a debt due to the Licensor, and must be paid by the Licensee to the Licensor on demand.

9. REMOVAL OF PROPERTY ON EXPIRY OR TERMINATION

9.1. OBLIGATION TO REMOVE PROPERTY AND RESTORE

- (a) The Licensee must upon the expiration of the Term or earlier termination of this Licence yield and deliver up possession of the Licence Area to the Licensor and in doing so must by the end of the Term or within 21 days after the earlier termination of this Licence:
 - (i) remove all of the Licensee's Property from the Licence Area, to the Licensor's absolute satisfaction;
 - (ii) reinstate the Licence Area to the state and condition in which it was at the Date of Commencement;
 - (iii) promptly make good to the satisfaction of the Licensor any damage caused by the removal of the Licensee's Property referred to in subclause (a)(i), including filling in, consolidating and levelling off any holes or trenches on the Licence Area; and
 - (iv) remediate any Contamination, Pollution or Environmental Harm to the Licence Area or the Surrounding Area caused by the Licensee or the Licensee's Agents or arising out of the Permitted Use.
- (b) The Licensee's obligations under subclause (a) will survive the expiration of the Term or other termination of this Licence.

9.2. FAILURE TO REMOVE

If the Licensee's Property is not removed in accordance with clause 9.1, its presence on the Licence Area after the expiry of the relevant period referred to in clause 9.1(a) shall no longer be authorised by this Licence and:

- (a) the Minister may treat any structure forming part of the Licensee's Property as an alleged unauthorised structure under section 270 of the LAA;
- (b) sections 270, 271 and 272 of the LAA apply with respect to the removal of any such alleged unauthorised structure;
- (c) the Minister may, but is not obliged to, remove the Licensee's Property from the Licence Area, may store it at the Licensee's expense, and may make good any damage caused by that removal, and may reinstate the Licence Area to the condition provided for in clause 9.1(a)(ii); and
- (d) any costs incurred by the Minister in doing any matter under subclause (c) or section 270(6) of the LAA, are a debt due by the Licensee to the Licensor and may be recovered in a Court of competent jurisdiction.

10. NO ASSIGNMENT

- (a) The rights granted by this Licence are for the benefit of the party named as "Licensee" in this Licence.
- (b) The Licensee must not:
 - (i) assign or transfer its rights under this Licence, or grant any sublicence or part with the possession, of the Licence Area, to any person; or

- (ii) mortgage, charge or encumber its rights under this Licence.
- (c) To the extent that sections 80 and 82 of the *Property Law Act 1969* may be applicable, they are expressly excluded.
- (d) For the purposes of subclause (b), where the Licensee is a corporation (not being a corporation where shares are listed on any Stock Exchange in Australia) any intended change in the beneficial ownership or control of the Licensee which will have the consequence of altering the effective control of the Licensee is deemed to be an assignment of the Licensee's rights under this Licence.

11. GENERAL PROVISIONS

11.1. DUTY

The Licensee will pay duty (if any) payable under the *Duties Act 2008* in respect of any dutiable transaction arising under or in respect of this Licence.

11.2. FEES AND CHARGES

The Licensee will pay all statutory and other fees and charges (if any) relating to this Licence within 30 days of the due date.

11.3. NOTICES

- (a) Any notice that must or may be served under or pursuant to this Licence:
 - (i) must be signed by the Party giving the notice or by any solicitor or duly appointed representative of the Party giving the notice; and
 - (ii) will be sufficiently served on:
 - (A) the Licensor, if addressed to the Licensor and left at, or sent by prepaid post to the Minister for Lands c/o Director General of the Department at the address set out at item 4 of the Schedule or such other address as is notified by the Licensor to the Licensee; and
 - (B) the Licensee, if addressed to the Licensee and left at, or sent by prepaid post to the address set out at item 5 of the Schedule or such other address as is notified by the Licensee to the Licensor;
- (b) A notice sent by post will be deemed to be given at the time when it ought to be delivered in the ordinary course of a post whether the contrary is shown or not.
- (c) A notice given by facsimile transmission will be deemed to have been given on the date on which the facsimile transmission report of the machine from which it was sent, shows that it was successfully transmitted in its entirety.

11.4. EFFECT OF WAIVER

No consent or waiver express or implied by the Licensor or its officers, servants, agents, contractors or any of them, to or of any breach of any covenants conditions or stipulations of the Licensee will be construed as a consent or waiver to or of any other breach of the same or any other covenants conditions or stipulations contained or implied in this Licence.

11.5. GOVERNING LAW

- (a) This Licence shall be construed and interpreted in accordance with the laws in force in the State of Western Australia.
- (b) The Parties submit to the non-exclusive jurisdiction of the Courts of Western Australia.

11.6. VARIATION

This Licence cannot be altered or varied by the Parties except by deed.

12. GOODS AND SERVICES TAX**12.1. DEFINITIONS**

In this clause 12 the following terms have the following meanings:

- (a) **GST** Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any legislation substituted for or amending that Act;
- (b) The terms **GST**, **GST law**, **Tax Invoice** and **Taxable Supply** have the meaning given in section 195-1 of the GST Act.

12.2. LICENCE FEE EXCLUSIVE OF GST

The Licence Fee and any other amounts payable by the Licensee to the Licensor, under this Licence, are exclusive of GST.

12.3. LICENSEE TO PAY GST

The Licensee must pay additional to the Licence Fee and any other amounts payable by the Licensee, any GST payable by the Licensor in respect of a Taxable Supply made under this Licence.

12.4. VARIATION OF GST

Where GST is payable, the amount payable will be the amount specified in the Schedule to this Licence, until varied from time to time consequent upon each review of Licence Fee in accordance with this Licence.

12.5. TAX INVOICE

Where GST is payable, the Licensor will provide to the Licensee, a Tax Invoice in the format and form required as set out in the GST law.

12.6. NOTIFICATION IS CONCLUSIVE

A written notification given to the Licensee by the Licensor of the amount of GST that the Licensor is liable to pay on a Taxable Supply made or to be made under this Licence is conclusive between the Parties except in the case of an obvious error.

12.7. TIME FOR PAYMENT

The Licensee must pay to the Licensor the amount of the GST that the Licensee is liable to pay under this Licence:

- (a) at the same time; and
- (b) in the same manner,

as the Licensee is obliged to pay for the Taxable Supply.

12.8. APPORTIONMENT OF GST

Where a Taxable Supply is not separately supplied to the Licensee, the liability of the Licensee for any amount for GST, in relation to that Taxable Supply, is determined on the same basis as the Licensee's proportion of that Taxable Supply is determined

SCHEDULE

| ITEM | TERM | DEFINITION |
|-------------|--|---|
| 1. | Licence Area | See Annexure B for the land descriptions of the Licence Area, as shown on the Annexure A Plan. |
| 2. | (a) Term | 24 months |
| | (b) Date of Commencement | The date of this Deed |
| | (c) Date of Expiry | 24 months from the Date of Commencement |
| 3. | (a) Licence Fee | \$2,000.00 plus GST |
| | (b) GST Amount | \$200.00 |
| | (c) Payment Date | Within 30 days from the date of this Deed |
| 4. | Licensor's Address Service of Notices | for Minister for Lands C/- Department of Planning, Lands and Heritage 140 William Street PERTH WA 6000 Attention: Manager, Land Management North - Pilbara Facsimile No: (08) 6552 4417 |
| 5. | Licensee's Address Service of Notices | for Mardie Minerals Pty Ltd Level 2, 1 Alton St WEST PERTH WA 6005 Attention: Angela Glover, Head of Corporate Affairs Telephone: (08) 6311 3470 Fax: (08) 6311 3449 |
| 6. | Insurance Amount | \$20 million |

EXECUTED AS A DEED on the date set out on page 1 at the commencement of this Licence.

SIGNED FOR AND ON BEHALF OF THE)
STATE OF WESTERN AUSTRALIA by)
 an authorised officer for and on behalf of the)
 Minister for Lands by delegation under)
 section 9 of the *Land Administration Act 1997*)
 in the presence of:)

.....
 (Signature)

.....
 (Print full name)

.....
 (Classification level, position title)
 Land Use Management
 Department of Planning, Lands and Heritage

.....
 Signature of Witness

.....
 Name of Witness

.....
 (Classification level, position title)
 Land Use Management
 Department of Planning, Lands and Heritage

SIGNED for and on behalf of)
MARDIE MINERALS PTY LTD ACN)
152 574 457 in accordance with)
 section 127 of the *Corporation Act*)
 2001 (Cth):)

 Director

 Director/Company Secretary

 Name of Director
 (BLOCK LETTERS)

 Name of Director/Company Secretary
 (BLOCK LETTERS)

ANNEXURE A – PLAN



Legend

□ Cadastre (View 3)

Land Tenure Small Scale ALL

■ Crown Allotment (Type 2)

■ Lot on Survey (Type 1)

■ Unallocated Crown Land

/// Lease

■ Reserve

Land Tenure Small Scale 256K

■ Crown Allotment (Type 2)

■ Water Isolation

■ Public Road

■ Unallocated Crown Land

■ Reserve

□ Easement

Land Tenure Small Scale 64K

■ Closed Road

■ Crown Allotment (Type 2)

■ Lot on Survey (Type 1)

■ Water Isolation

■ Public Road

■ Unallocated Crown Land

■ Reserve

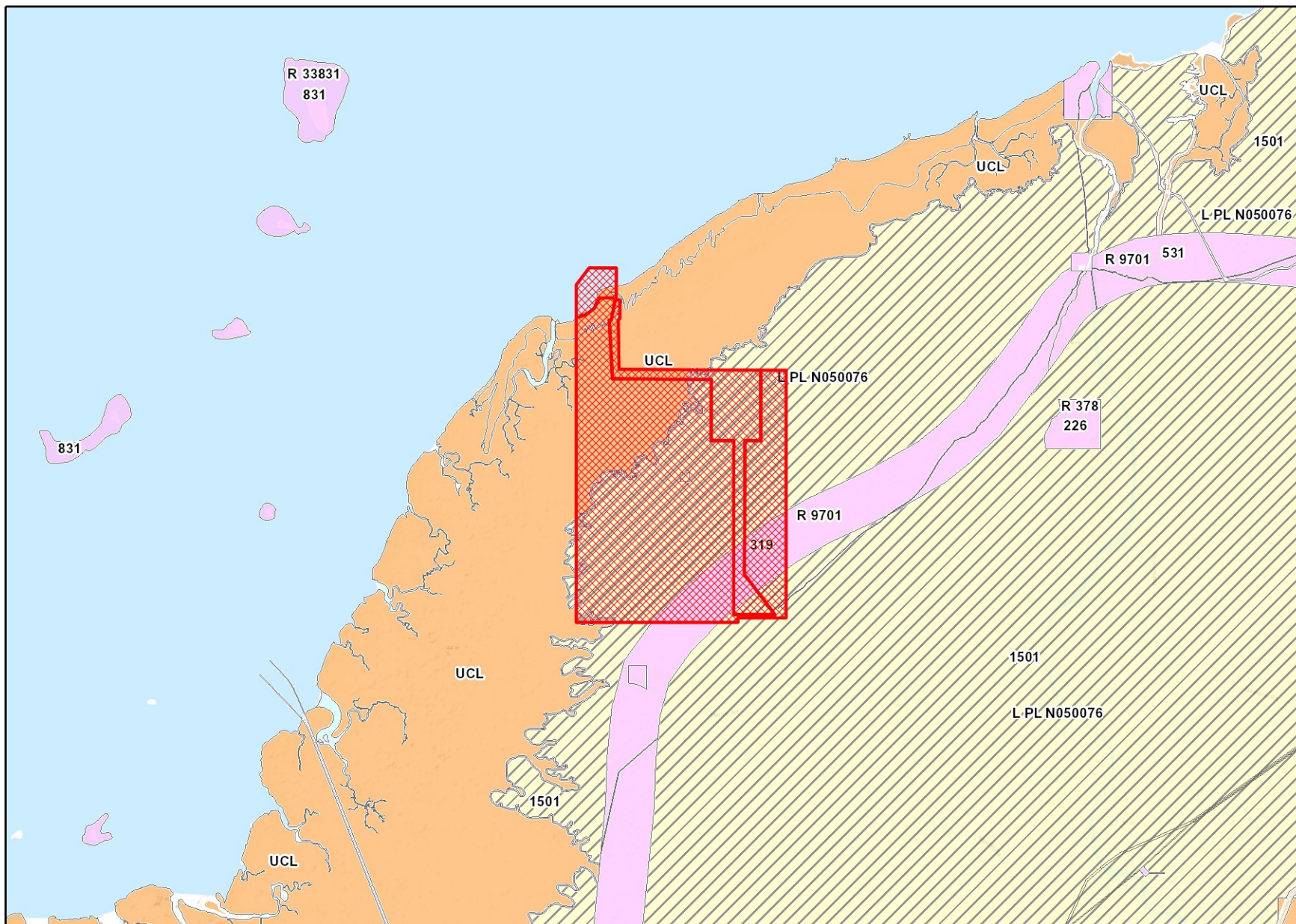
□ Easement

Notes:

* The data that appears on the map may be out of date, not intended to be used at the scale displayed, or subject to license agreements. The map should only be used in matters related to Department of Planning, Lands and Heritage business.

* This map is not intended for measurement purposes.

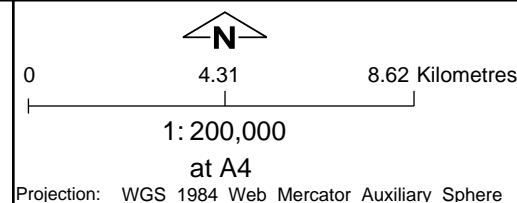
Map was produced using DPLH's InQuiry.



Tenure Map - Proposed Section 91 LAA Licence Area (Hachured Red)

DPLH BUSINESS USE ONLY

Internal Spatial Viewer



Date produced: 28-Apr-2021

ANNEXURE B – LEGAL DESCRIPTION LICENCE AREA

| | Land description of Licence Area | Extent | Volume | Folio |
|----|---|---------------|---------------|--------------|
| 1. | Unnumbered unallocated Crown land (coastal waters) | Part | N/A | N/A |
| 2. | Portion of unnumbered unallocated Crown land (PIN: 11942957) | Part | N/A | N/A |
| 3. | Portion of unnumbered unallocated Crown land (PIN: 1380154) | Part | N/A | N/A |
| 4. | Portion of unnumbered unallocated Crown land (PIN: 11942948) | Part | N/A | N/A |
| 5. | Portion of unnumbered unallocated Crown land (PIN: 11926376) | Part | N/A | N/A |
| 6. | Portion of Lot 1501 on Deposited Plan 74341, subject to Lease N050076 | Part | 3165 | 182 |
| 7. | Portion of Lot 319 on Deposited Plan 63521, being a portion of unmanaged Reserve 9701 | Part | 3156 | 972 |
| 8. | Portion of Lot 4999 on Deposited Plan, subject to Lease N050076 | Part | 3165 | 181 |
| 9. | Portion of unnamed dedicated Road (PIN: 11733284) | Part | N/A | N/A |

ANNEXURE C – HERITAGE PROTOCOL

Heritage Protocol

1 LOW IMPACT PROJECT OPERATIONS

Notice

- 1.1 Prior to conducting any Low Impact Project Operations, the Company must give the YM People written notice setting out the nature and location of the proposed Low Impact Project Operations.

Response

- 1.2 Within ten Business Days of receipt of a notice given pursuant to clause 1.1 (or such longer period as may be agreed between the Parties), the YM People must give the Company a written notice setting out whether any, and if so which, of the proposed Low Impact Project Operations will impact on one or more Aboriginal Sites.
- 1.3 If the YM People do not give written notice to the Company within ten Business Days of receipt of a notice given pursuant to clause 1.1 (or such longer period as may be agreed between the Parties), the YM People will be deemed to have given notice to the effect that the proposed Low Impact Project Operations referred to in the relevant notice will not impact on any Aboriginal Sites.

2 GROUND DISTURBING PROJECT OPERATIONS

Activity Notice

- 2.1 Prior to conducting any Ground Disturbing Project Operations, the Company must give the YM People a written notice (**Activity Notice**):
- 2.1.1 accompanied by at least one topographic map, of a scale sufficient for the conduct of fieldwork, showing the land the subject of the proposed Ground Disturbing Project Operations; and
- 2.1.2 setting out:
- (a) the nature and type of Ground Disturbing Project Operations proposed to be undertaken in the Activity Area;
 - (b) a statement of whether or not the Company considers that a heritage survey is required and, if the Company considers that a heritage survey is required, a statement of:
 - (i) the Methodology that the Company wishes to apply to the heritage survey;
 - (ii) at the Company's discretion, the heritage professionals that the Company proposes conduct the heritage survey and

whether or not the Company wishes to engage those heritage professionals; and

- (iii) the date on which the Company proposes that the heritage survey commences.

Activity Response

- 2.2 If the YM People agree with a statement in an Activity Notice that a heritage survey is required the YM People must, within ten Business Days of receipt of the Activity Notice (or such longer period as may be agreed between the Parties), give the Company a written notice setting out:

- 2.2.1 the names of up to 6 Aboriginal Consultants proposed to participate in the heritage survey;
- 2.2.2 the heritage professionals the YM People propose conduct the heritage survey and whether or not the YM People wish to engage those heritage professionals;
- 2.2.3 the date on which the YM People propose that any fieldwork for the heritage survey commences (but only if the YM People disagree with the date proposed by the Company) and which must not be later than 20 Business Days after receipt of the Activity Notice; and
- 2.2.4 an estimate of the reasonable fees and expenses, calculated in accordance with the rates set out in clause 3.3, expected to be incurred in connection with the conduct of the heritage survey.

- 2.3 If the YM People disagree with a statement in an Activity Notice that a heritage survey is not required, the YM People must, within ten Business Days of receipt of the Activity Notice (or such longer period as may be agreed between the Parties), give the Company a written notice setting out:

- 2.3.1 the reasons that the YM People consider a heritage survey is required; and
- 2.3.2 the matters set out in clauses 2.2.1 to 2.2.4.

- 2.4 If the Company and the YM People reach agreement regarding the conduct of a heritage survey, the Parties must implement that agreement in accordance with clauses 3 and 4.

Failure to give Activity Response

- 2.5 If the YM People do not give a written notice to the Company within ten Business Days of receipt of the Activity Notice (or such longer period as may be agreed between the Parties), the YM People will be deemed to have given notice to the Company to the effect that either:

- 2.5.1 the YM People agree with the Company that a heritage survey is not required; or
- 2.5.2 the YM People disagree with the Company that a heritage survey is required.

and neither party will have any further obligation pursuant to clauses 3 and 4 in relation to the Ground Disturbing Project Operations specified in the relevant Activity Notice but the Company must nevertheless comply with the Aboriginal Heritage Act.

Failure to reach agreement regarding heritage survey

2.6 If, within ten Business Days of receipt of an Activity Response, the Company and the YM People disagree in relation to whether or not a heritage survey is required or any of the matters set out in clauses 2.2.2 to 2.2.4, the following negotiation procedure will be followed:

2.6.1 the parties must procure that the duly authorised representatives of the company and the Implementation Committee meet in the manner set out in clause 2.6.3 and use best endeavours to resolve the dispute specified in the dispute notice through negotiation.

2.6.2 the meeting for the purposes of clause 2.6.2 must, unless otherwise agreed, be held:

- (a) in Karratha or Roebourne;
- (b) within twenty (20) business days after the day on which the Activity Response was given; and
- (c) on the basis that:
 - (i) the company will pay the reasonable cost of venue hire and catering;
 - (ii) the parties will otherwise bear their own costs; and
 - (iii) the company will not be liable to pay any attendance or sitting fee to any of the representatives of the working group

2.7 If, after the application of the processes referred to in clause 2.6, the Company and the YM People have not reached agreement in relation to the matters referred to in that clause, neither party will have any further obligation pursuant to clauses 3 and 4 in relation to the Ground Disturbing Project Operations specified in the relevant Activity Notice but the Company must nevertheless comply with the Aboriginal Heritage Act.

3 CONDUCT OF HERITAGE SURVEYS

Time

3.1 The Parties must co-operate to complete the processes contemplated by this Heritage Protocol expeditiously.

3.2 Unless otherwise agreed, the duration of any heritage survey must not exceed ten consecutive days.

Costs

- 3.3 The Parties acknowledge and agree that the rates set out in the following table are reasonable:

| Cost/expense | Rate |
|------------------------------------|--------------------------|
| Heritage professionals | [REDACTED] |
| Aboriginal Consultants | [REDACTED] [REDACTED] |
| Meals/accommodation | [REDACTED] |
| Airfares | [REDACTED] |
| Hire vehicles | [REDACTED] [REDACTED] |
| Personal vehicles (including fuel) | [REDACTED] |
| Incidentals | [REDACTED] |
| Administration fee | [REDACTED] |

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Indexation

- 3.5 The Company must, prior to making any payments required to be adjusted for inflation pursuant to this clause, adjust the amount of the payment by the percentage change in the Consumer Price Index (All Groups) Perth published for the Quarter immediately preceding the Quarter in which relevant payment falls due as compared to the Quarter ending immediately preceding the Commencement Date.

- 3.1 The Parties acknowledge and agree that, as at the Commencement Date, the adjustment required to be made pursuant to clause 3.5 may be calculated in accordance with the following formula:

$$[\text{Adjusted amount}] = [\text{Specified amount}] * [1 + ((\text{CPI Qx} - \text{CPI QRef})/\text{CPI QRef})]$$

Logistical support

- 3.2 Unless otherwise agreed, the Company must arrange logistical support for the heritage survey, including by arranging for:
- 3.2.1 transportation;
 - 3.2.2 communication equipment (which must include a satellite phone if the heritage survey is being conducted in a remote location); and
 - 3.2.3 accommodation and food.
- 3.3 The Company must arrange for a person with appropriate authority to attend the heritage survey on its behalf. The Company acknowledges that the Aboriginal Consultants may request that that person temporarily withdraw from the heritage survey to allow the Aboriginal Consultants to speak privately with the heritage professional(s).

Safety and site-specific policies

- 3.4 The Company must provide the YM People with a copy of any safety, site-specific and fitness for work policies.
- 3.5 The YM People must procure that the Aboriginal Consultants comply with the policies referred to in clause 3.4.

Terms of engagement

- 3.6 The Parties acknowledge and agree that any Aboriginal Consultants are not employees of or contractors to the Company.

Insurances

- 3.7 The YM People must effect and maintain, or procure that a third party effect and maintain on their behalf, at their own expense, the following insurances:
- 3.7.1 comprehensive general liability/public liability insurance covering liabilities in respect of any injury to, or death of, any person or loss, damage or destruction to any property in respect of each and every claim to an amount of not less than \$10,000,000;
 - 3.7.2 workers' compensation insurance covering liabilities, whether arising under statute or common law in relation to the death of any persons engaged as an employee (including a person who is a worker of the YM People for the purposes of the *Workers' Compensation and Injury Management Act 1981* (WA), including all Aboriginal Consultants);
 - 3.7.3 motor vehicle/third party insurance covering all liabilities in respect of any injury to, or death of, any person or loss, damage or destruction to any property arising from the use of such motor vehicles; and

- 3.7.4 professional indemnity insurance in respect of any negligent acts, errors or omissions in the advice or services provided by the YM People in respect of each and every claim to an amount of not less than \$1,000,000.

Reporting

- 3.8 The Party who engages the heritage professionals must procure that the heritage professionals provide to both the Company and the YM People:

- 3.8.1 within ten Business Days of completion of the relevant fieldwork, a preliminary statement of the results of any heritage survey (**Preliminary Advice**), including:

- (a) a brief description of the relevant Ground Disturbing Project Operations and the Activity Area;
- (b) a statement of the Methodology of the heritage survey;
- (c) if the Methodology of the heritage survey was 'site identification', a brief description of any Aboriginal Sites located within the Activity Area; and
- (d) if the Methodology of the heritage survey was not 'site identification', a brief description of any of the relevant Ground Disturbing Project Operations that cannot be carried out without disturbing, interfering with or damaging any Aboriginal Site.

- 3.8.2 within 20 Business Days of completion of the relevant fieldwork, a full report of the results of any heritage survey (**Final Report**), including:

- (a) a detailed description of the relevant Ground Disturbing Project Operations and the Activity Area;
- (b) a statement of the Methodology of the heritage survey;
- (c) the names of the Aboriginal Consultants who participated in the fieldwork;
- (d) the date(s) of the fieldwork;
- (e) a detailed description of the matters specified in clause 3.8.1(c) or 3.8.1(d) (as the case may be); and
- (f) if the Survey Methodology is 'site identification', any other information necessary to enable the Company to give a Section 18 Notice in relation to the Activity Area (including a statement of the scientific significance of any Aboriginal site).

Reliance on Preliminary Advice

- 3.9 The Parties agree that the Company may rely on the statements in the Preliminary Advice in relation to the conduct of the Ground Disturbing Project Operations specified in the relevant Activity Notice.

4 MANAGEMENT OF ABORIGINAL SITES

Excavation

- 4.1 The Parties acknowledge and agree that the Company, its agents or contractors may seek Section 16 Consent in relation to any Aboriginal Sites within the Claim Area.
- 4.2 The Company must give the YM People written notice of the Company's, or its agents' and contractors' intention to apply for a Section 16 Consent no less than 20 Business Days prior to making such an application, which notice must include details of the Aboriginal Sites the Company, its agents or contractors propose to excavate.
- 4.3 If any Section 16 Consent requires that the Company salvage and/or relocate any material excavated from an Aboriginal Site, the Company must consult with the YM People in relation to the manner of that salvage and/or relocation with a view to reaching agreement regarding:
- 4.3.1 the manner of that salvage and relocation, including the manner of transport and any temporary storage; and
 - 4.3.2 the manner of any permanent storage of the relevant material.

Disturbance

- 4.4 The parties acknowledge and agree that the Company, its agents or contractors may give a Section 18 Notice in relation to any land within the Claim Area.
- 4.5 The Company must give the YM People notice of any intention to give a Section 18 Notice in relation to any land within the Claim Area at least 20 Business Days prior to giving that Section 18 Notice to the ACMC, which notice must include a copy of the proposed Section 18 Notice.
- 4.6 The YM People must procure that the Working Group meets with the Company within 20 Business Days of issue of the Section 18 Notice (or such longer period as may be agreed between the Parties) for the purpose of consulting in relation to the Section 18 Notice, including any measures that may be taken to avoid, minimise and mitigate damage to any Aboriginal Sites or salvage any material from an Aboriginal Site (save that the YM People will not seek to procure that the Company salvages any material from any Aboriginal Site assessed by the heritage professionals to have low scientific significance) within the land the subject of the Section 18 Notice.
- 4.7 The Company must include the details of any consultation conducted pursuant to clause 4.6 in any Section 18 Notice and give a copy of that Section 18 Notice to the YM People within five Business Days of giving that Section 18 Notice to the ACMC.

- 4.8 The Company must pay the reasonable fees and expenses (including sitting fees for the members of the Working Group) of any meeting held pursuant to clause 4.6.
- 4.9 Subject to clause 4.10, nothing in this schedule prevents the YM People from making submissions to the ACMC or the Minister in relation to a Section 18 Notice lodged by the Company .
- 4.10 The YM People must give the Company:
- 4.10.1 written notice of any intention to make submissions to the ACMC or the Minister in relation to a Section 18 Notice lodged by the Company no less than 5 Business Days prior to making any such submissions; and
- 4.10.2 a copy of any submissions lodged with the ACMC or the Minister in relation to a Section 18 Notice lodged by the Company as soon as reasonably practicable after lodgement.

5 DEFINITIONS AND INTERPRETATION

Definitions

- 5.1 In this schedule the following definitions apply:

Aboriginal Consultants means members of the YM People who, either individually or jointly, have knowledge of the traditional and current Aboriginal laws and cultural practices relating to the following (as applicable):

- (a) an Activity Area;
- (b) sites proposed to be the subject of a Section 16 Consent; or
- (c) land proposed to be the subject of a Section 18 Notice.

ABS means the bureau established pursuant to section 5 of the *Australian Bureau of Statistics Act 1975* (Cth).

ACMC means the Aboriginal Cultural Material Committee established under section 28 of the *Aboriginal Heritage Act*.

Activity Area means the land specified in an Activity Notice as the subject of the proposed Ground Disturbing Project Operations.

Activity Notice means a notice given pursuant to clause 2.1.

Activity Response means a notice given pursuant to clause 2.2 or 2.3.

ATO Mileage Rates means the 'cents per kilometre' rates set out schedule 1 of the *Income Tax Assessment Regulations 1997* (Cth) pursuant to regulation 28-25.01 of the *Income Tax Assessment Regulations 1997* (Cth) from time to time being, as at the

Commencement Date, 63 cents per kilometre (ordinary engine $\leq 1,600$ cc), 74 cents per kilometre (ordinary engine $1,600 \text{ cc} \leq 2,600 \text{ cc}$) and 75 cents per kilometre (ordinary engine $\geq 2,601 \text{ cc}$).

Consumer Price Index (All Groups) Perth means the price index published Quarterly by the ABS and referred to as the 'Consumer Price Index (All Groups)' in relation to Perth or, if that index is discontinued, any replacement index published by the ABS measuring price inflation for households in metropolitan Western Australia.

CPI Qx means the Consumer Price Index (All Groups) Perth published in relation to the Quarter immediately preceding the date at which the relevant payment falls due.

CPI QRef means the Consumer Price Index (All Groups) for Perth published by the ABS in relation to the Quarter immediately preceding the Commencement Date.

Cultural Obligations means an obligation arising pursuant to the traditional laws and customs of the YM People.

Final Report means the full report of the results of any heritage survey as described in clause 3.8.2.

Ground Disturbing Project Operations means Project Operations that are not Low Impact Project Operations and which require machinery, earth moving and construction equipment, including track clearance, trenching, drilling, bulk sampling or construction works.

Low Impact Project Operations includes aerial surveys, geological mapping, metal detecting, rock chip, hand specimen and soil and drainage sampling, only using hand-held tools and non-ground disturbing environmental, topographical, geophysical (including electrical and magnetic) and other surveys and anything necessary or incidental thereto.

Methodology means any of the following (including any combination thereof):

- (a) a method of working which seeks to identify and record relevant details of all Aboriginal Sites in a relevant area, known generally as 'site identification';
- (b) a method of working which seeks only to identify the external boundaries and general nature of all Aboriginal Sites in a relevant area, known generally as 'site avoidance'; and
- (c) a method of working which seeks only to identify which aspects of an activity may be carried out without disturbing any Aboriginal Sites and which cannot, known generally as 'work program clearance'.

Minister means the Minister referred to in section 11 of the Aboriginal Heritage Act.

Preliminary Advice means the preliminary statement of the results of any heritage survey as described in clause 3.8.1.

Section 16 Consent means the consent of the Registrar pursuant to section 16 of the Aboriginal Heritage Act.

Section 18 Notice means a notice pursuant to section 18 of the Aboriginal Heritage Act.

Interpretation

- 5.2 In this schedule, unless otherwise specified, a reference to a clause is a reference to a clause of this schedule.