
DEPARTMENT OF BIODIVERSITY, CONSERVATION AND ATTRACTIONS

*CONSERVATION AND LAND MANAGEMENT ACT 1984 (SECTION 101)***LICENCE TO ENTER UPON AND USE LAND**

FOR THE PURPOSE OF maintenance and use of an access road through Watkins Road Nature Reserve and mitigation of impacts to the surrounding nature reserve resulting from the use of the access road.

Licence Number	3082/101
Expiry Date	31/03/2034

PREAMBLE

The following preamble provides context for the licence.

The Licensee, the Shire of Serpentine-Jarrahdale (Shire), has an existing waste transfer station on land adjacent to the Watkins Road Nature Reserve managed by the Department of Biodiversity, Conservation and Attractions.

There are several locations in the Nature Reserve where federal and state listed rare flora and threatened ecological communities are present and the existing access road to the Shire's facility traverses the Nature Reserve in close proximity to these threatened species and communities.

The activities authorised under this license will facilitate the ongoing use of the access road by the Shire and patrons of its waste facility whilst managing and mitigating the impacts (such as weeds and rubbish) in the surrounding Nature Reserve.

DEFINITIONS

In this Schedule 2 Licence Conditions, unless the context otherwise requires:

Access Road means the road off Watkins Road through the Nature Reserve which leads to the Licensee's adjoining waste transfer station.

Authority means any Federal, State, Local Government Authority or utilities provider.

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

Commencement Date means the date the Licence is granted.

Department means the Department of Biodiversity, Conservation and Attractions.

Director General means the chief executive officer (CEO) of the Department of Biodiversity, Conservation and Attractions (the Department assisting the Minister in the administration of the Act), or a delegate of the CEO.

District Manager means the Department of Biodiversity, Conservation and Attractions Swan Coastal District Manager or his/her delegate.

EMP means environmental management plan (EMP).

Licence means a Licence granted by the Director General under the Act and which Licence incorporates the Conditions.

Licensed Activities means maintenance and use the Access Road and mitigation of impacts of use of access road on surrounding Nature reserve, including road maintenance, weed management and rubbish monitoring and pick up.

Licensed Area means the areas of the Nature Reserve to which the Licensee has access and use as shown in Schedule 3 of this Licence.

Licensee means a person (includes incorporated bodies) who holds the Licence.

Licensee's Property means any building, fence or equipment which the Licensee brings on to the Licensed Area during the Term.

Licensee's Visitors means each of the Licensee's employees, agents, contractors, service suppliers, sub-lessees, customers, invitees, guests, volunteers, licensees, sub-licensees and other visitors and any other person who at any time is on the Licensed Area with or without the express or implied consent of the Lessee.

Nature Reserve means Reserve No. 23012 being Watkins Road Nature Reserve.

Schedule 3 means the attached site plan(s) showing the areas that the Licensee may occupy.

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Surrounding Areas means any land or water adjacent to or in the vicinity of the Licensed Area and the air generally above the Licensed Area.

INTERPRETATION

- a. A reference to anything that the Licensee must or must not do includes, where the context permits, the Licensee's employees, agents, contractors and guests.
- b. The singular includes the plural and vice versa.
- c. A reference to any thing 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.
- d. If the Licensee consists of a partnership or joint venture, then:
 - i. an obligation imposed on the Licensee binds each person who comprises the Licensee jointly and severally;
 - ii. the act of one person who comprises the Licensee binds the other persons who comprise the Licensee; and
 - iii. a breach by one person who comprises the Licensee constitutes a breach by the Licensee.
- e. A reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- f. If a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning.
- g. If the word "including" or "includes" is used, the words "without limitation" are taken to immediately follow.

LICENCE CONDITIONS

1. The Licensee shall comply with all laws relating to the Licensed Area, including but not limited to the Act, the *Conservation and Land Management Regulations 2002* (Regulations), the *Biodiversity Conservation Act 2016*, the *Biodiversity Conservation Regulations 2018*, the *Bushfires Act 1954*, the *Litter Act 1979*, the *Aboriginal Heritage Act 1972* and any other Act, Regulation or By-laws.

CHARGES PAYABLE

2. In consideration of the Licence, the Licensee will pay to the Director General a Licence charge of \$785 (GST exempt) from the Commencement Date for the first year of the term of the Licence and the Licence charge will increase each calendar year on the anniversary of the Commencement Date in accordance with the last published Consumer Price Index (CPI) for Perth (September quarter).
3. The Licensee shall pay all charges within 30 days of the date of an invoice from the Department.

OPERATIONS

4. The Licensee shall not sell, transfer, assign, mortgage, charge or otherwise dispose of or deal with any of its rights or obligations under the Licence. If the Licensee is a corporation, the Licensee is taken to have transferred the Licence if anything occurs, the effect of which is to transfer, directly or indirectly, the management or control of the operator to another person or if there is a change of shareholding of the Licensee of more than 25 per cent of the issued shares of the Licensee.
5. The Licensee shall prepare and implement an environmental management plan (EMP) for the Licensed Activities within the Licensed and EMP area, to be approved by the District Manager. The EMP shall address (but not be limited to) the following issues:
 - Access
 - Disturbance to vegetation
 - Flora and fauna conservation

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- Weeds
 - Erosion and track maintenance
 - Drainage
 - Fire
 - Rehabilitation
 - Monitoring and reporting
 - Communications with DBCA
6. The Licensee shall conduct the Licensed Activities in accordance with the provisions of the approved EMP, which may be varied from time to time with the approval of the District Manager.
 7. The Licensee shall construct a fence along both sides of the Access Road to the specification and requirements of the District Manager.
 8. The Licensee shall not commence any construction or installation until all designs are approved in writing by the Department.
 9. The Licensee shall liaise with the District Manager prior to and during any construction to facilitate the attendance of a Departmental officer at the Licensed Area at all those times deemed reasonably necessary by the District Manager and then only in accordance with the plans and specifications approved by it.
 10. Upon completion of the fence installation, the Licensee will revegetate along the shoulder of the Access Road in accordance with the EMP and as required by the District Manager.
 11. The Licensee will implement a weed management program in accordance with the EMP to control and map weeds within 50m corridor along either side of the Access Road and facility. In doing so, the Licensee will ensure that Threatened flora requirements are met and relevant permits are obtained.
 12. The Licensee will ensure regular (at least monthly) monitoring and pick up of all rubbish within 50m corridor along either side of the Access Road and facility in accordance with the EMP.
 13. The Licensee shall ensure that the Licensee's Property is maintained to a good standard as determined by the Licensor.
 14. The Licensee shall permit the Licensor, or any Departmental officer, or any Departmental agents or contractors at all reasonable times, to enter upon the Licensed Area and all buildings (if any) and improvements in the Licensed Area to view the condition of the Licensed Area, or to respond to an emergency situation.
 15. The Licensee shall not construct or alter any structure, building, fence or installation without the prior written approval of the District Manager.
 16. The Licensee acknowledges and agrees that no provision of this Licence shall in any way prevent the Department or its officers from gaining access to all or any part of the Licensed Area.
 17. Should the Department, acting reasonably, need to inspect the Licensed Area at any time throughout the term of the Licence, the Licensee shall pay the Department reasonable costs associated with any inspection.
 18. The Licensee shall liaise with the District Manager before the Licence expires or is cancelled regarding the removal of any infrastructure, including the fence constructed as per Condition 7, and rehabilitation of the Licensed Area.
 19. The Licensee shall at the Licensee's expense rehabilitate all areas disturbed as a result of the removal and/or decommissioning of Lessee's Property. Rehabilitation will be undertaken in accordance with the approved EMP and as required by the District Manager.
 20. The Licensee shall not make, do or suffer upon the Licensed Area any act, matter or thing that may be or become a nuisance or annoyance to the Director General or his delegate or occupiers of other properties and visitors to the Surrounding Areas.

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21. The Licensee acknowledges and agrees that it shall be responsible for all its operating costs associated with the Licensed Area.
22. The Licensee acknowledges and agrees that this Licence is not issued as of right and upon expiry the Licensee acknowledges that the Licence renewal will be subject to the Department's renewal process.
23. The Licensee shall provide a copy of any notice issued by any Authority to the District Manager when received if in relation to the Licensed Area.
24. The Licensee shall not erect any signs or place advertisements on the Licensed Area unless provided for under this Licence or approved by the District Manager.

MAINTENANCE OF NATURAL ECOLOGY

25. The Licensee acknowledges that the Licensed Area may be environmentally sensitive and shall not interfere with the built or natural environment without written permission from the District Manager. This includes, but is not limited to:
 - i. Removing rocks, earth, soil or other material from the Licensed Area; or
 - ii. Clearing or removing trees or other vegetation from the Licensed Area by any means; or
 - iii. Altering the contours of the surface of the Licensed Area; or
 - iv. Depositing any earth, fill or other similar materials on the Licensed Area; or
 - v. Altering the natural drainage on the Licensed Area; or
 - vi. Introducing any new flora or fauna to the Licensed Area; or
 - vii. Harming or endangering any flora or fauna on the Licensed Area; or
 - viii. Anything else which in connection with the Licensed Area may be harmful to heritage values and/or the environment.
26. The Licensee agrees and acknowledges that it shall be responsible for the clean-up of any contamination, spill or other environmental incident that occurs as a result of negligence of the Licensee or the Licensee's Visitors to the satisfaction of the District Manager.
27. The Licensee shall notify the Department as soon as possible should any contamination, spill or other environmental incident occur.
28. The Licensee shall take necessary actions to protect vegetation on the Licensed Area and shall take all reasonable actions to prevent, rectify or ameliorate any erosion, drift or movement of sand or soil from the Licensed Area.
29. The Licensee shall not allow vegetation or existing structures on the Licensed Area to be cut down, destroyed or otherwise affected without the written consent of the District Manager.
30. The Licensee shall keep the Licensed Area clean and tidy and free of vermin and rubbish.
31. The Licensee shall 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 said Licensed Area by garbage, refuse, waste matter, oil, liquid fuels, noise or other pollutants.
32. The Licensee shall not store rubbish on the Licensed Area or Surrounding Areas managed by the the Department.
33. The Licensee shall take any measures necessary to prevent the spread of disease, declared pest, plants or animals in connection with the Licensed Area.
34. The Licensee shall not bring or allow any person to bring a domestic animal onto the Licensed Area or the Surrounding Areas unless secured within a vehicle.

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FIRE AND SAFETY

35. The Licensee shall notify the District Fire/Duty Officer (Ph: 9303 7700) as soon as possible if a fire is detected on the Licensed Area or Surrounding Areas.
36. The Licensee shall not light or cause to be lighted or permit any other person to light any fire on the Licensed Area. The Licensee shall take all reasonable and safe actions to prevent and extinguish any unauthorised or uncontrolled fire on the Licensed Area.
37. The Licensee shall notify the District Manager as soon as possible if any vegetation on the Licensed Area is found to be in a dangerous condition or which may threaten the safety of any person, to enable the Department to take any necessary precautions. The Licensee shall take any measure necessary to prevent accidents and to protect the safety of the public on the Licensed Area.
38. The Licensee shall not bring or allow any person to bring a firearm onto the Licensed Area or the Surrounding Areas unless it is completely stowed within a vehicle or vessel and unloaded and disassembled.

INDEMNITY AND INSURANCE

39. Subject to clause 40, agrees to release the State of Western Australia and all of 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 area the subject of the Occupation Rights or in relation to the activities the subject of this licence.
40. Subject to clause 40, the Licensee 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 Licensee; or
 - ii. any tortious, civil or actionable wrong by or on behalf of the Licensee or any officer, employee, agent, contractor or their sub-contractor, or licensee or invitee of the Licensee; or
 - iii. the conduct of the Licensee or any of its employees, agents, contractors or their sub-contractors in relation to the activities the subject of this Licence, 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 Licensee 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 Occupation Rights.
41. The release in clause 38 and indemnity in clause 39, 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.
42. The Licensee will certify that the Licensee's public liability insurer will be made aware of the conditions that apply to this Licence and the indemnity granted above and confirm that the Licensee's public liability policy also covers the Licensed Area and Licensed Activities for at least \$20,000,000 for each accident or event (unlimited in the aggregate) in respect of the Licensed Area and Licensed Activities and whenever so requested in writing produce to the Director General a certificate or currency for such insurance.

NOTICE OF DEFAULT AND RIGHTS RESERVED

43. Without limiting the rights of the Director General, the Director General has the right to suspend or cancel the Licence in accord with Regulations 85 and 86.

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44. The expiry, cancellation or termination of the Licence (whether under the Regulations or arising from a breach by the Licensee) does not affect any rights the Director General may have in relation to the Licensee as a result of anything occurred prior to the expiry, cancellation or termination of the Licence.
45. In accepting the Licence, the Licensee agrees that a breach by any employee, agent, contractor of the Licensee of any of these conditions shall constitute a breach by the Licensee and that the Licensee shall be vicariously liable for such breaches.

TERMINATION OF LICENCE

46. Unless otherwise determined by the Licensor, the Licensee is responsible for the removal of all of the Licensee's Property and the area made good when the Licence expires, to the satisfaction of the District Manager, and at the Licensee's expense. The Licensee acknowledges that if it does not remove all of the Licensee's Property and the area is not made good within twelve (12) months of the Licence ceasing, that the Department will do so at the cost of the Licensee.

End Conditions