



## **Licence**

Portions of Lot 2642 Balmoral Road, Karratha

The Owners of Strata Plan 30042  
City of Karratha

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## Parties

**City of Karratha** of Lot 1083 Welcome Road, Karratha, Western Australia (**City**).

**The Owners of Strata Plan 30042** of care of Lot 2642 Balmoral Road, Pegs Creek, Western Australia (**Strata Company**).

## Background

- A The Strata Company is the registered proprietor of the Strata Scheme.
- B LandCorp and the Strata Company have entered into a Deed of Agreement to give effect to (among other things) the excision of the Road Reserve CP and the Parking & Drainage CP (**Licence Area**) from the common property of the Strata Scheme and effect the Dedication and the Vesting.
- C The Strata Company has agreed to grant the City a licence in respect of the Licence Area for the period following completion of the Relevant Deliverables until such time as the Dedication and the Vesting takes place on the terms set out in this document.

## Operative provisions

### 1 Definitions and interpretation

#### Definitions

##### 1.1 In this document:

**Claim** includes any claim, demand, remedy, suit injury, damage, loss, cost liability, action, proceeding, right of action or claim for compensation.

**Dedication** means the dedication of the Road Reserve CP as road pursuant to s168 of the *Planning and Development Act 2005* (WA).

**Deed of Agreement** means the deed of agreement in respect of the common property of the Strata Scheme between LandCorp and the Strata Company dated [insert].

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

**Licence Area** means the Road Reserve CP and the Parking & Drainage CP shaded in brown and pink respectively on the plan in Schedule 1.

**Licence Fee** means \$1.00.

**Parking & Drainage CP** means the 63sqm of the common property of the Strata Scheme and is shaded in pink on the plan in Schedule 1.



**Relevant Deliverables** means the deliverables itemed 1 to 6 in Schedule 3 of the Deed of Agreement to be provided by LandCorp pursuant to the Deed of Agreement, and which are:

- (a) creation of 5 new asphalted car bays at the front of the Strata Scheme (numbered 29 to 33);
- (b) installation of new concrete kerbing where required, to reflect the amended car park layout;
- (c) line marking all bays within the Strata Scheme;  
installation of a new cross over on the southern boundary of the Strata Scheme to provide additional access to the existing parking area;
- (d) removal of existing redundant portion of rear boundary fencing and replacement with a new boundary fence along the new boundary alignment.

**Road Reserve CP** means the 44sqm of the common property of the Strata Scheme and is shaded in brown on the plan in Schedule 1.

**Strata Scheme** means the land the subject of Strata Plan 30042.

**Term** means the period commencing on the date LandCorp has achieved the Relevant Deliverables and expiring on the later of:

- (a) the date on which the Dedication and Vesting takes place; or
- (b) the date the Licence Area is otherwise vested by the Crown.

**Vesting** means the vesting of ownership of the Parking & Drainage CP in the Crown.

## Interpretation

1.2 In this document, unless the context otherwise requires:

- 1.2.1 a reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- 1.2.2 a reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time;
- 1.2.3 a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this document unless otherwise stated;

- 1.2.4 an expression importing a natural person includes any company, trust, partnership, joint venture, association, corporation, body corporate or governmental agency;
- 1.2.5 the day on which any act, matter or thing is to be done under this document is not a Business Day, that act, matter or thing may be done on the next Business Day;
- 1.2.6 an agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and severally;
- 1.2.7 a reference to any thing or any amount is a reference to the whole and each part of it. A reference to a group of persons is a reference to all of them collectively, 2 or more them collectively and to each of them individually;
- 1.2.8 references to time are to time in Perth, Western Australia;
- 1.2.9 references to money and the sign '\$' are references to the currency of Australia; and
- 1.2.10 the schedules and attachments form part of this document.

## **2 Consideration**

- 2.1 The parties enter into this document for valuable consideration.

## **3 Licence**

- 3.1 Subject to the conditions in clause 3.2 and the City paying the Strata Company the Licence Fee, the Strata Company provides the City and its employees, agents, consultants, contractors and invitees an exclusive licence to enter the Licence Area as necessary to give effect to the Karratha City of the North Plan during the Term.
- 3.2 In exercising the City's rights under the licence granted in clause 3.1:
  - 3.2.1 the City must ensure that at all times whilst it is on the Licence Area:
    - (a) it and its officers, employees, agents, consultants, contractors and invitees comply with all applicable laws and regulations relating to the environment and workplace health and safety; and
    - (b) ensure the City has public liability insurance of at least \$20 million in respect of any one Claim;
  - 3.2.2 the City indemnifies the Strata Company in respect of any Claim in respect of the Licence Area to the extent not attributable to the Strata Company.



## **4 Warranties and Indemnity**

### **4.1 The Strata Company warrants to the City that:**

- 4.1.1 The execution and delivery of this document has been properly authorised by all necessary corporate action of the Strata Company.
- 4.1.2 The Strata Company has full corporate power and lawful authority to execute and deliver this document and to consummate and perform, or cause to be performed, all of its obligations under this document.
- 4.1.3 This document constitutes a legal, valid and binding obligation of the Strata Company enforceable in accordance with its terms by appropriate legal remedy.
- 4.1.4 This document, and the completion of the subject matter of this document, does not conflict with, or result in a breach of or default under, any provision of the Strata Company's constitution or any material term or provision of any agreement, deed, writ, order, injunction, judgment, law, rule or regulation to which the Strata Company is a party, are subject to, or by which it is bound.

### **4.2 The Strata Company indemnifies the City in respect of any Claim arising as a result of the breach of a warranty in clause 4.1.**

## **5 General**

### **Assignment**

- 5.1 A party must not assign any of its rights under this document without the other party's consent (which must not be unreasonably withheld).

### **Variation**

- 5.2 This document, including the schedules, can only be varied by the parties in writing, signed by all of the parties.

### **Waiver**

- 5.3 The fact that a party fails to do, or delays in doing, something that party is entitled to do under this document does not amount to a waiver of that party's right to do it. A waiver by a party is only effective if it is in writing.
- 5.4 A written waiver by a party is only effective in relation to a particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach, or as an implied waiver of that obligation or breach in relation to any other occasion.

### **Entire agreement**

- 5.5 This document contains everything that the parties have agreed on in relation to the matters it deals with. No party can rely on an earlier document, or anything said or

done by another party (or a director, officer, agent or employee of that party), before this document was executed.

### **Severability**

- 5.6 If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this document, but the rest of this document is not affected.
- 5.7 If the removal of a clause or part of a clause under clause 5.6 materially alters the commercial allocation of benefit and risk (or management of risk) under this document, the parties agree to negotiate in good faith to amend or modify the terms of the document as may be necessary or desirable having regard to the original terms of the bargain and the prevailing circumstances.

### **Further cooperation**

- 5.8 Each party must do anything (including executing an agreement) another party reasonably requires in writing to give full effect to this document.

### **Relationship of the parties**

- 5.9 This document does not create a partnership, agency, fiduciary or any other relationship, except the relationship of contracting parties, between the parties. No party is liable for an act or omission of another party, except to the extent set out in this document.

### **Governing law and jurisdiction**

- 5.10 This document is governed by the Law of the State of Western Australia. The parties submit to the non-exclusive jurisdiction of its courts. The parties will not object to the exercise of jurisdiction by those courts on any basis.

### **Execution of separate documents**

- 5.11 This document is properly executed if each party executes this document or an identical document. In the former case, this document takes effect when the last party executes this document. In the latter case, this document takes effect when the last of the identical documents is executed.

### **Duty**

- 5.12 The City must pay:
- 5.12.1 all duty payable under the *Duties Act 2008* (WA) in respect of the subject matter that this document effects or records; and
  - 5.12.2 any penalty or interest payable in respect of any duty the subject of clause 5.12.1 to the extent that it is responsible for such penalty or interest.

**Costs**

- 5.13 Each party must pay all of their own costs associated with obtaining advice in relation to this document.



## Execution

### Executed as a deed

Date: 2014

The Common Seal of the )  
**City of Karratha** )  
was hereunto affixed by authority )  
of a resolution of the Council in )  
the presence of : )

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Chief Executive Officer

The Common Seal of )  
**The Owners of** )  
**Strata Plan 30024** )  
is affixed in the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print name

Date:

## **Schedule 1**

### **Plan of Licence Area**



# LAND TABLE

EXISTING	LOT 2642	AREA (m <sup>2</sup> )
	TOTAL	3,884
PROPOSED	LOT 7037	AREA (m <sup>2</sup> )
	PT 2642	3,762
	TOTAL	3,762
	PROPOSED PUBLIC CAR PARK RESERVE	
	PT 2642	63
	TOTAL	63
	PROPOSED KARRATHA TERRACE ROAD RESERVE	
	PT 2642	44
	TOTAL	44
	PROPOSED BALMORAL ROAD ROAD RESERVE	
	PT 2642	15
	TOTAL	15
	PROPOSED CARPARK LICENCE	
	PT BALMORAL ROAD	49
	TOTAL	49

**PRELIMINARY PLAN ONLY**  
 ALL DIMENSIONS AND AREAS ARE SUBJECT TO  
 SURVEY AND PLANNING APPROVAL  
 THIS PLAN HAS BEEN PRODUCED BY WHELANS USING  
 UPDATED CADASTRAL DATA BASED ON  
 LANDGATE SCOB (FEB 2011)

REV	DATE	DESCRIPTION

REV  
 PLAN  
 14020-174  
 1:1

DATE: 14/02/2014  
 BY: [Signature]  
 CHECKED: [Signature]  
 APPROVED: [Signature]  
 PROJECT: KARRATHA CITY CENTRE INFRASTRUCTURE WORKS  
 DRAWING: LOT 7037 - KARRATHA TERRACE EXTENSION  
 SCALE: 1:1000



KARRATHA CITY CENTRE INFRASTRUCTURE WORKS  
 LOT 7037 - KARRATHA TERRACE EXTENSION  
 LAND RATIONALISATION PLAN  
 1:1000