

11.3 Infrastructure Services

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11.3 Infrastructure Services

11.3.1 AUTHORISATION TO EXECUTE A DOCUMENT BY COMMON SEAL – TURNER STREET JETTY LICENSE

Attachment 1 – Existing Jetty License

Attachment 2 – Updated Jetty License

WESTERN AUSTRALIA

HARBOUR AND LIGHT DEPARTMENT.



JETTY LICENCE

BETWEEN THE MINISTER OF THE CROWN to whom for the time being the administration of the Jetties Act 1926 is committed and shall extend to his successors in office (hereinafter called "the Minister") of the one part and

.....SHIRE OF AUGUSTA - MARGARET RIVER,.....

of TOWN VIEW TERRACE,.....

.....MARGARET RIVER, W.A......

(hereinafter called "the Licensee")

WHEREAS :

- (i) Section 7 of the Jetties Act authorises the Minister to grant a licence on such terms and conditions as he thinks fit for the erection or construction of a jetty or for the maintenance and use of any jetty;
- (ii) Upon the request of the Licensee the Minister has agreed to grant to the Licensee a licence to construct maintain and use a jetty on a site on the foreshore SEINE BAY - AUGUSTA.....

.....
which site is more particularly delineated and coloured green on the plan attached hereto (hereinafter called "the said Site") subject to and in accordance with the terms and conditions hereinafter contained.

NOW THEREFORE in consideration of the premises and also in consideration of the annual rental hereinafter reserved and on the part of the Licensee to be paid the Minister does by these presents grant to the Licensee:—

- (a) a license to construct a jetty in or approximately on the said site substantially in accordance with the plans and specifications presented to the Minister by the licensee and approved in writing by the Minister;
- (b) A license to use and to maintain the jetty commencing from the 1st day of JULY 19 77. PAYING THEREFORE IN ADVANCE THE annual rental of PEPPERCORN (\$ --) on the 1ST day of JULY in every year during the continuance of this licence, upon and subject to the terms and conditions contained in the covenants agreements and conditions hereinafter set out.

1. THE licensee to the intent that the obligations may continue throughout the continuance of this licence COVENANTS AND AGREES with the Minister as follows —

- (a) to punctually pay the rental in the manner aforesaid;
- (b) to permit the Minister by his agents and servants with or without appliances and equipment at all reasonable times to enter upon and to inspect the jetty for the purpose of ensuring that the licensee is observing performing and complying with the covenants conditions and obligations contained herein;
- (c) to make good and repair to the stipulations of the Minister any damage to the said site caused by the entrance upon the said site by the Licensee his agents or workmen;
- (d) to maintain and keep the jetty in good proper and safe condition to the Minister's satisfaction and in the event of the jetty not being in that good proper and safe condition the Minister may remove the same and any rights herein granted to the licensee shall thereupon cease and the Minister may recover from the licensee the total cost of such removal and any repair and incidental work thereof;
- (e) not to permit any advertisement to be exhibited on any portion of the said site or jetty;
- (f) to the satisfaction of the Minister display the licence number allocated for that purpose on such part or parts of the jetty as the Minister directs so as to be clearly visible from the shore and the water;

- (g) to comply in all respects with the requirements of the by-laws in carrying out all works required to be done and equipment required to be used in connection with the jetty;
- (h) not to assign or transfer the rights hereby conferred unless permission in writing is obtained from the Minister and in the case of the Minister so approving of the transfer or assignment the transferee or assignee shall enter into an agreement in accordance with this Agreement;
- (i) to indemnify and keep indemnified the Minister against any claim demand action suit or proceeding that may be brought against the Minister or any other agency of the Crown in respect of personal injury or the death of any person whomsoever or loss or damage to property whatsoever arising out of or as a consequence of the presence construction or maintenance or use of the jetty.

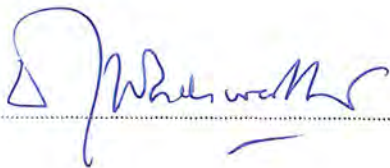
2. PROVIDED ALWAYS AND IT IS HEREBY EXPRESSLY AGREED AND DECLARED by and between the Minister and the Licensee as follows:—


- (1) UPON the termination of this licence by either party to this Agreement the licensee shall if requested by the Minister within one month thereafter remove from the site the jetty including all piles and other parts of the jetty that are below the water level and fill in all holes and level off and consolidate the ground and leave the said site clean and free from rubbish and in default it shall be lawful for the Minister to cause the same to be removed at the cost of the Licensee and such cost shall be a debt due and owing to the Minister and shall be recoverable in a court of competent jurisdiction.
- (2) THAT either party hereto may cancel these presents by either giving to the other at any time one month's notice in writing and at the expiry of that notice the licence hereby granted shall cease and determine but without prejudice to the remedies of the Minister against the licensee in respect of any antecedent claim or breach of covenant. Such a notice shall be sufficient if signed by the Minister or the Manager of the Harbour and Light Department and shall be held to be sufficiently given made or served if posted to the licensee at the address first hereinbefore appearing or at the address as last known to the Minister or if served personally and shall be deemed to be received by the licensee on the date such letter would in the ordinary course of post reach such address or on the date such notice is served personally on the licensee.

IN WITNESS whereof the parties hereto have hereunto set their hands
the day and year hereinafter written:

DATED the 1st day of August 1977

SIGNED BY THE SAID
MINISTER in the
presence of:


.....


.....
B.R.S. Benson Secretary

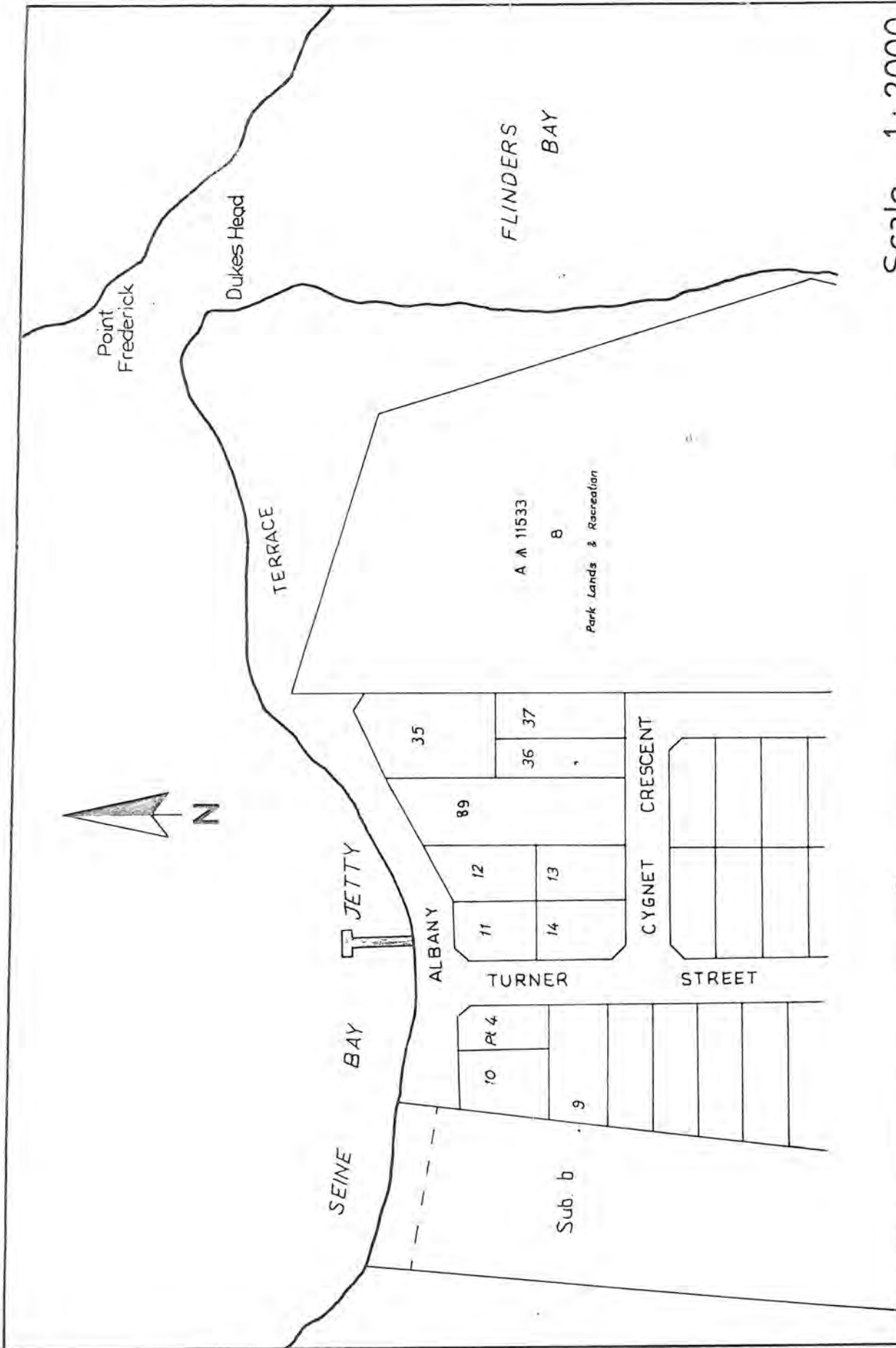
SIGNED BY THE SAID

SHIRE OF AUGUSTA - MARGARET RIVER

in the presence of:


.....
Shire President

.....
Mrs. Europe
Shire Clerk



Scale 1 : 2000

SHIRE OF AUGUSTA -
MARGARET RIVER

Public Jetty
Turner Street - Augusta



Government of **Western Australia**
Department of **Transport**



Doc No: 1357470
File: TPT/9
Date: 04 DEC 2019

Maritime Business Unit

Ref: LM0620
Enquiries: Carole Ziegler
Phone: 9435 7760

26 November 2019

Mr David Nicholson
Shire of Augusta- Margaret River
PO Box 61
MARGARET RIVER WA 6285

Dear Mr Nicholson

Jetty Licence LM0620, Cnr Turner Street & Albany Terrace, Augusta

It has come to my attention the Jetty Licence dated 1 July 1977 between the Westralian Harbour and Light Department and the Shire of Augusta – Margaret River is outdated.

To update the licence it would be appreciated if the two enclosed copies of the jetty licence be signed by the Shire's Executive Officer/s in the presence of an independent witness (that is, a person who is not party to this agreement) where indicated and return both complete bounded documents for execution by the CEO's delegate, after which one copy will be returned to you for your retention.

In addition, due to an oversight the Department of Transport has not been invoicing the Shire the nominal annual licence fee applicable for this community jetty. However, so as not to penalise the Shire, invoicing of the licence fee will not commence 1 July 2020.

If you have any queries regarding this matter, please don't hesitate to contact me.

Yours sincerely

Carole Ziegler
Senior Property Officer
Coastal Facilities Management

**PROPERTY SERVICES MANAGER
OF
DEPARTMENT OF TRANSPORT
AND
SHIRE OF AUGUSTA MARGARET RIVER
JETTY NO: 0620**

**File Ref: LM0620
Prepared By: YN**

**WESTERN AUSTRALIA
DEPARTMENT OF TRANSPORT
JETTY LICENCE**

THIS Licence Agreement is made the day of 2019

BETWEEN

PROPERTY SERVICES MANAGER of Department of Transport of the State of Western Australia acting as the delegate of the Chief Executive Officer (CEO) of Department of Transport pursuant to an instrument of delegation made under section 7(2) of the *Jetties Act 1926* ("Licensor")

AND

SHIRE OF AUGUSTA MARGARET RIVER of **41 WALLCLIFFE ROAD, MARGARET RIVER** in the said State ("Licensee").

WHEREAS:-

- (i) Pursuant to section 7 of the *Jetties Act 1926* ("Act") the CEO is empowered to grant a licence on such terms and conditions as the CEO thinks fit for the erection or construction of a jetty or for the maintenance and use of any jetty;
- (ii) The CEO has delegated to the Licensor the power to grant a licence as aforesaid; and
- (iii) Upon the request of the Licensee the Licensor has agreed to grant to the Licensee a licence to continue to use and maintain **A JETTY STRUCTURE** (hereinafter referred to as "the Jetty") on a site within the **SEINE BAY ADJACENT TO CNR TURNER STREET & ALBANY TERRACE, AUGUSTA** which site is more particularly delineated and coloured green on the plan annexed hereto as Annexure "A" (hereinafter called "the said site") subject to and in accordance with the terms and conditions hereinafter contained.

NOW THEREFORE in consideration of the annual licence fee hereinafter reserved and on the part of the Licensee to be paid the Licensor grants to the Licensee a licence to construct and use for non-commercial purposes the Jetty in or approximately on the said site substantially in accordance with the plans and specifications presented to the Licensor by the Licensee and approved in writing by the Licensor commencing from the **1ST DAY OF JULY 1977** for a period of one (1) year renewable on an annual basis by the Licensee paying to the Licensor the annual licence fee as advised by the Licensor prior to the date of commencement of the next period of one (1) year and subject to the Licensee not being in breach of any of its covenants, agreements and conditions under this licence agreement and upon and subject to the terms and conditions contained in the covenants, agreements and conditions hereinafter set out and the Licensee **PAYING THEREFOR:-**

- (i) **FORTY-ONE DOLLARS AND FORTYD CENTS (\$41.40)** or such other amount as may from time to time be notified to the Licensee by or on behalf of the Licensor in respect of each succeeding year during the continuance of this licence.

1. **THE** Licensee to the intent that the obligations may continue throughout the continuance of this licence **COVENANTS AND AGREES** with the Licensor as follows:-

- (a) to punctually pay the licence fee in the manner aforesaid;
- (b) to permit the Licensor by its agents and servants with or without appliances and equipment at all reasonable times to enter upon and to inspect the Jetty for the purpose of ensuring that the Licensee is observing, performing and complying with the covenants, conditions and obligations contained herein;
- (c) to make good and repair to the stipulation of the Licensor any damage to the said site caused by the entrance upon the said site by the Licensee, its agents or workers;
- (d) to maintain and keep the Jetty in good, proper and safe condition to the Licensor's satisfaction and in the event of the Jetty not being in that good, proper and safe condition the Licensor may remove the same and any right herein granted to the Licensee shall thereupon cease and the Licensor may recover from the Licensee the total cost of such removal and any repair and incidental work thereto;
- (e) not to permit any advertisement to be exhibited on any portion of the said site or the Jetty;
- (f) in using and maintaining the Jetty not to cause unnecessary interference or nuisance to the use of adjacent jetties, waterways or property;
- (g) to display to the satisfaction of the Licensor the licence number allocated for that purpose on such part or parts of the Jetty as the Licensor directs so as to be clearly visible from the shore and the water;
- (h) to comply in all respects with the requirements of all laws in carrying out all works required to be done and equipment required to be used in connection with the Jetty;
- (i) to comply with all statutes from time to time in force relating to the Jetty;
- (j) not to assign or transfer the rights hereby conferred unless permission in writing is obtained from the Licensor and in the case of the Licensor so approving of the transfer or assignment the transferee or assignee shall enter into an agreement in accordance with this Agreement;

- (k) at all times during the period of this licence or any renewal thereof to indemnify and keep indemnified:-
- (i) the CEO, the Licensor, any relevant local government, the Crown in right of the State of Western Australia and all instrumentalities of the Crown and all officers, servants and agents of each of them from and against all destruction, loss, injury or damage of or to any person (including death) or any property of the CEO, the Licensor or of the Crown or of any instrumentality of the Crown or of anyone else caused by or arising out of or in relation to or incidental to in whole or in part any act, neglect or default of the Licensee, its servants, agents workers, contractors, invitees, licensees or sub-licensees or the erection, construction, maintenance or use by the Licensee or by any of its servants, agents, workers, contractors, invitees, licensees or sub-licensees of the mooring area or the Jetty; and
 - (ii) the CEO, the Licensor, any relevant local government, the Crown in right of the State of Western Australia and all instrumentalities of the Crown and all officers, servants and agents of each of them from and against all actions, suits, proceedings, claims, costs, expenses and demands caused by or arising out of or in relation to or incidental to in whole or in part any act neglect or default of the Licensee, its servants, agents, workers, contractors, invitees, licensees or sub-licensees or the erection, construction, maintenance or use by the Licensee or by any of its servants, agents, workers, contractors, invitees, licensees or sub-licensees of the mooring area or the Jetty;
- (l) not to without the prior written consent and approval of the Licensor:-
- (i) make any alteration, addition or extension to the Jetty or any part thereof;
 - (ii) remove, demolish or take away any part of the Jetty;
 - (iii) carry out any works which may have the effect of altering the character, nature or purpose of the Jetty originally approved by the Licensor; or
 - (iv) lay, install, construct, release or place in or upon or below the surface of the water surrounding the Jetty any material, article, structure, pile, buoy or equipment;
- (m) that in the event that any of the covenants of the licence are breached it may be cancelled in the sole discretion of the Licensor by written notice to that effect to the Licensee;

(n) that covenants herein by the Licensee (where there are more than one party comprising the Licensee) shall bind those parties jointly and each of them severally; and

(o) that:-

(i) **the Licensor** gives no warranty and the Licensee hereby acknowledges that no promise, representation, warranty, assurance or undertaking has been given by or on behalf of the CEO as to the use to which the licensed area or the Jetty may be put or in respect of the suitability or fitness of the licensed area or the Jetty for any purpose or use or for any proposed development or business to be made or carried on thereon or in respect of the grant or refusal by any competent authority of approval to any development or business to be made or carried on thereon or in respect of the grant or refusal by any competent authority of approval to any development of the licensed area or the Jetty proposed by the Licensee or in respect of the time within which any such development approval may be granted or refused or in respect of the fixtures, fittings, furnishings, finish, plant, machinery and equipment of in or upon the licensed area or the Jetty; and

(ii) **the Licensee** accepts the licensed area and the Jetty for the said period with full knowledge of and subject to the state and condition thereof and any prohibition or restriction on the use or development thereof under or pursuant to any act statute or other legislation and if the development use or business proposed to be carried out made or conducted by the Licensee upon the licensed area or the Jetty is permissible only with consent pursuant to any act statute or other legislation. The Licensee shall obtain that consent at its own expense and shall have or make no action, suit, claim or demand against the Licensor in respect of the need for or refusal of such consent or any delay in or conditions attached to the grant of such consent.

2. PROVIDED ALWAYS AND IT IS HEREBY EXPRESSLY AGREED AND DECLARED by and between the Licensor and the Licensee as follows:-

(1) **UPON** the termination of this licence by the Licensee or the Licensor the Licensee shall if requested by the Licensor within one month thereafter remove from the site the Jetty including all piles and other parts of the Jetty that are below the water level and fill in all holes and level off and consolidate the ground and leave the said site clean and free from rubbish and in default it shall be lawful for the Licensor to cause the same to be removed at the cost of the Licensee and such cost shall be a debt due and owing to the Licensor and shall be recoverable in a court of competent jurisdiction.

(2) **THAT** the Licensee or the Licensor may cancel these presents by either giving to the other at any time one month's notice in writing and at the expiry of that notice the licence hereby granted shall cease and determine but without prejudice to the remedies of the Licensor against the Licensee in respect of any antecedent claim or breach of covenant. Such a notice shall be sufficient if signed by the Licensor and shall be held to be sufficiently given, made or served if posted to the Licensee at the address first hereinbefore appearing or at the address as last known to the Licensor or if served personally and shall be deemed to be received by the Licensee on the date such letter would in the ordinary course of post reach such address or on the date such notice is served personally on the Licensee.

IN WITNESS whereof the parties hereto have executed these presents the day and year hereinbefore written.

SIGNED BY THE SAID LICENSOR) _____
in the presence of:-) **RONALD JOSEPH ZAPPARA**
(Property Services Manager)

Signature of Witness

Name of Witness (please print)

Address

Occupation

THE COMMON SEAL OF THE SAID) _____
LICENSEE was hereunto affixed in the) SHIRE OF AUGUSTA MARGARET
presence of:) RIVER
)

X _____
President

X _____
Chief Executive Officer

