

- 2016 -

**THE MANAGER PROPERTY SERVICES OF THE  
DEPARTMENT OF TRANSPORT**

Licensor

and

**CITY OF COCKBURN  
(ABN 27 471 341 209)**

Licensee

**JETTY AND MOORING LICENCE**

**JETTY COMPLEX NO: 4097**

**FILE REF: LM4097**

THIS AGREEMENT is made the

13<sup>th</sup> day of July

2016

BETWEEN:

**THE MANAGER PROPERTY SERVICES COASTAL FACILITIES MANAGEMENT** of the Department of Transport of the State of Western Australia as the delegate of the Chief Executive Officer of the Department of Transport pursuant to an instrument of delegation made pursuant to Section 7(2) of the *Jetties Act 1926* and an instrument of delegation made pursuant to section 116 of the *Western Australian Marine Act 1982* of 1 Essex Street, Fremantle, Western Australia ("Licensor")

AND

**CITY OF COCKBURN** (ABN 27 471 341 209) of 9 Coleville Crescent, Spearwood, Western Australia ("Licensee")

RECITALS:

- A. Under Section 7 of the *Jetties Act 1926*, the Licensor has the power to grant a licence in respect of jetties and under Section 116 of the *Western Australian Marine Act 1982*, the Licensor has the power to grant a licence in respect of mooring Vessels.
- B. The Licensee has requested and the Licensor has agreed to grant the Licensee a licence to use the Licensed Areas and the Fuel Facility on the terms and conditions of this Agreement.

The Parties COVENANT and AGREE:

## 1. DEFINITIONS

Unless otherwise required by the context or subject matter:

"Date of Commencement" means the date specified in Item 4 of the Schedule;

"Event of Default" means an event specified in clause 6.1;

"Fuel Facility" means the TWO (2) fuel dispensers and fuel pipeline situated on the Service Jetty as identified on the plan attached to this Agreement and marked Annexure "A";

"GST" means any goods and services tax, valued added tax, consumption tax or other similar levy, surcharge, tax, duty or impost;

"Initial Fee" means the initial fee specified in Item 5(a) of the Schedule.

"Insurable Risk" means an event which a prudent licensee would reasonably insure against including, but not limited to, fire, explosion, earthquake, impact by aircraft, riot, civil commotion, flood, lightning, storm, tempest, fusion, smoke, rainwater, water leakage, impact by vehicles, machinery breakdown, vandalism and malicious acts;

"Jetty" means the jetty specified in Item 1 of the Schedule;

"Licence Fee" means the licence fee specified in Item 5(b) of the Schedule as varied from time to time under this Agreement;

"Licensed Areas" means the Jetty and Mooring Area;

"Licensee's Covenants" means the covenants, agreements and obligations contained or implied in this Agreement or imposed by law to be observed and performed by any person other than the Licensor;

"Licensor's Covenants" means the covenants, agreements and obligations contained or implied in this Agreement or imposed by law to be observed and performed by the Licensor;

"Moneys Payable" means the Licence Fee and any other moneys payable by the Licensee under this Agreement;

"Mooring Area" means the mooring area specified in Item 2 of the Schedule and as described in Section 65 of the *WA Marine Act 1982*;

"Petroleum Fuel" means diesel fuel or unleaded petrol;

"Service Jetty" means the service jetty as shown identified on the attached plan and marked "Annexure A";

"Sullage Dump Point" a sullage dump point for the receiving and pumped transmission of vessel sullage to the sewer main.

"Term" means the term specified in Item 3 of the Schedule;

"Vessel" is ascribed the meaning of "vessel" in the *Jetties Act 1926*.

## **2. GRANT OF LICENCE**

The Licensor grants to the Licensee, during the Term:

- (a) An exclusive licence to use the Mooring Area for the purpose of mooring Vessels;
- (b) An exclusive licence to construct, use and maintain the Jetty for commercial purposes; and
- (c) An exclusive licence to install (if applicable) and use the Sullage Dump Point and Fuel Dispensers on the Service Jetty for the purpose of dispensing Petroleum Fuel to private and commercial vessels

on and subject to the terms and conditions of this Agreement.

### 3. LICENCE FEE AND OTHER MONEY PROVISIONS

#### 3.1 *Licence Fee*

- (a) The Licensee must pay to the Licensor the Initial Fee on the date and in the manner specified in Item 5(a) of the Schedule.
- (b) The Licensee must pay to the Licensor the Licence Fee annually in advance on the date and in the manner specified in Item 5(b) of the Schedule.

#### 3.2 *Application Fee*

The Licensee must pay to the Licensor an Application Fee of EIGHTY SEVEN DOLLARS (\$87.00) on or before the execution of this Agreement.

#### 3.3 *Outgoings*

The Licensee must pay all rates and taxes and any other outgoings or service charges which may from time to time be payable in respect of the Jetty.

#### 3.4 *GST Liability*

- (a) The Licensee must pay to the Licensor, in addition to and at the same time of payment of the Licence Fee and any other monies payable under this Agreement, the full amount of any GST which may be payable on or in respect of the Licence Fee or any other monies payable under this Agreement and the Licensee acknowledges that any additional amount payable on account of GST by the Licensee is to be calculated without any deduction or set-off of any other amount by multiplying the value of the Licence Fee or other monies payable under this Agreement by the prevailing GST rate.
- (b) In relation to all other amounts payable by the Licensee under this Agreement to persons other than the Licensor, in respect of or in the nature of outgoings, expenses or any other amount on account of or in connection with the Jetty, the Licensee must pay in addition to and at the same time for payment of those amounts any applicable GST.
- (c) Any benefit arising to the Licensor by way of credit, offset or otherwise arising from any payment made by it or the Licensee is to be disregarded in calculating the amount of any payment payable by the Licensee under this Agreement.
- (d) The Licensor must provide the Licensee with a tax invoice in respect of any GST paid by the Licensee to the Licensor under this clause.

## 4. LICENSEE'S COVENANTS

### 4.1 *Use of Licensed Areas*

The Licensee must not:

- (a) use the Jetty or permit the Jetty to be used for any purpose other than as a commercial jetty or for the purpose of gaining access to and from the Mooring Area;
- (b) use the Mooring Area for any purpose other than for mooring Vessels; or
- (c) moor or permit to be moored in the Mooring Area any Vessel which is not in good, tidy and seaworthy condition and repair.

### 4.2 *Use of Fuel Pipeline and Service Jetty*

Notwithstanding any other clause of this Agreement, the Licensee must not use the Fuel Pipeline or Service Jetty for any other purpose other than:

- (a) using and maintaining the Fuel Pipeline for the purpose of carrying and supplying Petroleum Fuel from the Service Jetty; and
- (b) dispensing Petroleum Fuel from the Fuel Dispensers and maintaining the Fuel Dispensers.
- (c) receiving sullage into the Sullage Dump Point

### 4.3 *Licensee to Maintain and Repair Jetty*

The Licensee must:

- (a) maintain the Jetty in a safe condition, and in good order and repair and free from excessive marine growth;
- (b) promptly, at the Licensee's expense, repair to the reasonable satisfaction of the Licensor any damage to the Jetty;
- (c) promptly, at the Licensee's expense, comply with all reasonable directions from the Licensor in relation to the maintenance and repair of the Jetty, Sullage Dump Point and Fuel Facility: and
- (d) maintain the Fuel Pipeline and Fuel dispensers in a safe condition and in good working order and repair,

and the Licensee acknowledges that if the Jetty and Fuel Facility is not maintained in a safe condition and in good order and repair the Licensor may terminate the licence granted by this Agreement and remove the Jetty and the

Licensee must on demand pay to the Licensor all costs incurred by the Licensor in removing the Jetty.

#### **4.4 Fender Units**

- (a) The Licensee must promptly replace any fender units attached to the Jetty which are damaged.
- (b) The Licensor must ensure that the fender units attached to the Jetty are at all times attached to ensure that the Jetty is protected from damage by Vessels.

#### **4.5 Keep Jetty, Mooring Area and Fuelling Facility Clean and free from Rubbish**

- (a) The Licensee must at all times keep the Jetty, the Mooring Area, the Fuelling Facility, the Sullage Dump Point and immediate surrounds clean and free from rubbish and waste.
- (b) The Licensee must use its best endeavours to, at its own cost, remove any graffiti from the Jetty within FORTY EIGHT (48) hours of that graffiti appearing on the Jetty.

#### **4.6 Moor Vessels Safely**

The Licensee must ensure that any Vessel moored in the Mooring Area is at all times safely moored.

#### **4.7 Advertisements, Signs or Notices**

The Licensee must not:

- (a) display from, or affix to, the Jetty any advertisement, sign or notice; or
- (b) at any time advertise, solicit or tout for business, or spruik, whether verbally or by use of any loud speakers, sound-producing equipment, hoarding, written materials or any other aid, on the Jetty;

without the Licensor's prior written approval, which approval may be withheld by the Licensor in its absolute discretion.

#### **4.8 Other Restrictions on Use of Licensed Areas**

The Licensee must not:

- (a) do or carry on or permit to be done or carried on or in the Licensed Areas any harmful, offensive or illegal act, matter or thing;

- (b) do or carry on or permit to be done or carried on or in the Licensed Areas any act or thing which causes nuisance, damage or disturbance to the Licensor or any owner or occupier of nearby properties or premises;
- (c) store or permit to be stored any items of property and equipment on the Jetty;
- (d) do or permit to be done any act or thing which might result in excessive stress or floor loading on any part of the Jetty;
- (e) dispense fuel from or over the Boat Pens;
- (f) except for reasonable quantities for normal applications in connection with the cleaning of the Licensed Areas or the use of the Licensed Areas permitted by the Licensor, use or store any chemical or inflammable substance within the Licensed Areas;
- (g) carry out any major repairs or maintenance to any Vessel in the Mooring Area;
- (h) moor any Vessel or permit any Vessel to be moored other than completely within the Mooring Area;
- (i) display, hang or drape any towel, wearing apparel or similar article from the Licensed Areas or from any Vessel in the Mooring Area; or
- (j) park or drive or permit to be parked or driven any motor vehicle on the Jetty without the Licensor's prior written consent which consent may be withheld by the Licensor in its absolute discretion.

#### **4.9 *No Alterations to Jetty***

The Licensee must not make any alteration or addition to or demolish any part of the Jetty without the Licensor's prior written consent, which consent may not be unreasonably be withheld or may be granted subject to any reasonable condition.

#### **4.10 *Light Jetty***

The Licensee must, at the Licensee's expense, ensure that the Jetty is at all times lit in accordance with the Licensor's directions from time to time to the Licensor's complete satisfaction.

#### **4.11 *Display Jetty Licence Number***

The Licensee must at all times display the licence number allocated to the Jetty from a part of the Jetty which is acceptable to the Licensor in the Licensor's absolute discretion and so that that number is at all times clearly visible from the shore and the water.

**4.12 No Pollution**

The Licensee must do all things necessary to prevent and must not do or permit or suffer to be done anything likely to cause pollution or contamination of the waters of the Cockburn Sound by garbage, refuse, waste material, oil and other pollutants whether by storm water or other run off or arising from the use of the Jetty.

**4.13 Not Obstruct Waterways**

The Licensee must not obstruct or permit the waters of the Cockburn Sound within FIVE HUNDRED (500) metres of the Jetty to be obstructed by any Vessel, craft or object of the Licensee or any shareholder of the Licensee or in any other way whatsoever.

**4.14 Not Interfere with Access**

The Licensee must not at any time interfere with the free and unrestricted access to and across the Jetty by members of the public and other persons having a licence or other right to use the Jetty.

**4.15 No Property or Equipment to be Left**

The Licensee must not leave or permit to be left any property or equipment on the Jetty and then only for the purpose of promptly loading or unloading that property or equipment to or from a Vessel moored in the Mooring Area.

**4.16 Comply with Statutes**

The Licensee must promptly comply with all statutes from time to time in force relating to the Licensed Areas or the use of the Licensed Areas and the use of Vessels.

**4.17 Permit Entry by Licensor**

The Licensee must at all reasonable times permit entry to the Licensed Areas by the Licensor with or without workmen and any other person and with or without plant, equipment and materials for the purpose of:

- (a) inspecting the state of repair of the Jetty and Fuelling Facility and to ensure compliance with the Licensee's Covenants;
- (b) remedying any breach of the Licensee's Covenants;
- (c) to tow away any Vessel from the Mooring Area which is not authorised under this Agreement to be moored in the Mooring Area; and



executing any structural repairs which the Licensor may wish to make.

#### **4.18 Effect Public Liability Insurance**

The Licensee must effect and maintain with an insurance company approved by the Licensor in respect of the Jetty public liability insurance in the names of the Licensor and the Licensee for their respective rights and interests for the time being for TWENTY MILLION DOLLARS (\$20,000,000.00) in respect of any one claim or any higher amount required by the Licensor from time to time.

#### **4.19 Insurance of Jetty**

The Licensee must insure and keep insured to the full insurable value on a replacement or reinstatement basis the Jetty in the names of the Licensor and the Licensee for their respective rights and interests for the time being and against fire, explosion, earthquake, water leakage, impact by vehicles and vessels, machinery breakdown, malicious acts or omissions and such other risks as the Licensor may reasonably require.

#### **4.20 Assignment**

- (a) Subject to Clause 4.19(b), the Licensee must not assign, transfer, mortgage, charge, sub-licence or otherwise part with the benefit of the licence granted to the Licensee under this Agreement without the Licensor's prior written consent, which consent shall not be unreasonably withheld by the Licensor in the Licensor's absolute discretion.
- (b) The Licensee may, without the Licensor's prior written consent, grant sub-licences to third parties to use part of the Jetty and Mooring Area provided that the term of the sub-licence does not extend beyond the term of this Licence and the sub-licence is in a form previously approved by the Licensor.

### **5. INDEMNITY AND LIMIT OF LICENSOR'S LIABILITY**

#### **5.1 Indemnity**

The Licensee indemnifies the Licensor against all claims, demands, losses, damages, costs and expenses for which the Licensor becomes liable in respect of loss or damage to property or death or injury of any nature or kind and however or wherever sustained resulting from an act or omission of the Licensee or caused or contributed to by the use or occupancy of the Licensed Areas, except to the extent caused or contributed to by any act, omission, neglect or default of the Licensor.

#### **5.2 Limit of Licensor's Liability**

- (a) The Licensor will not be liable for any loss, damage or injury to any person or property on, in or about the Licensed Areas howsoever occurring unless caused or contributed to by any act, omission, neglect or default of the Licensor or its employees, agents, workers, contractors or invitees.

- (b) Except to the extent that any loss or damage is caused or contributed to by any act, omission, neglect or default of the Licensor or its employees, agents, workers, contractors or invitees, the Licensee acknowledges that all the Vessels moored in the Mooring Area are entirely at the risk of the Licensee and the Licensor will not in any way be liable or responsible for any damage from any cause whatsoever regardless of who caused that damage, that any Vessel may at any time sustain while in the Mooring Area, nor will the Licensor be responsible for any loss or damage resulting from the theft of any Vessel or any part, equipment or content of any such Vessel while in the Mooring Area and the Licensee further acknowledges that the Licensee is responsible for its own security for any Vessel moored in the Mooring Area.
- (c) The Licensor will not in any way be liable or responsible to the Licensee for any loss or damage caused to any Vessel as a consequence of the Licensor evicting or causing any Vessel to be towed from the Mooring Area in accordance with this Agreement.
- (d) The Licensee acknowledges that the Licensee is, at its cost, solely responsible for ensuring that it has exclusive use of the Mooring Area during the Term.

## 6. TERMINATION

### 6.1 *Terminate Licence*

If:

- (a) any Licence Fee or other monies payable under this Agreement is unpaid for FOURTEEN (14) days after becoming due and a demand for payment has been made;
- (b) the Licensee is in breach of any of the Licensee's Covenants other than covenants to pay the Licence Fee or other monies payable under this Agreement for FOURTEEN (14) days after notice has been given to the Licensee;
- (c) the Licensee is placed in liquidation (other than for the purpose of reconstruction with the approval of the Licensor) or an application is made for the winding up of the Licensee;
- (d) a receiver or receiver and manager, controller or other similar external administrator of any property of the Licensee is appointed; or
- (e) anything analogous, or having substantially similar affect, to anything referred to in paragraphs (c) or (d) occurs with respect to the Licensee;

then provided that the Licensor has given Notice in accordance with clause 11, and the Event of Default has not been remedied within fourteen days of receipt of that Notice, the Licensor may, in its absolute discretion, terminate this Licence but without prejudice to the rights, remedies and powers of the Licensor

in respect of any antecedent breach by the Licensee of the Licensee's Covenants.

## **6.2 Evict or Tow Away Vessel**

Without limiting or affecting the Licensor's rights, remedies or powers under Clause 6.1, if the Licensee is in breach of any of the Licensee's Covenants relating to any Vessel using or moored in the Mooring Area for SEVEN (7) days after notice has been given, the Licensor may evict or cause the Vessel which is causing the Licensee to be in breach of the Licensee's Covenants to be towed away from the Mooring Area and stored and the Licensee must pay to the Licensor on demand all costs and expenses incurred by the Licensor in evicting, towing and storing that Vessel.

## **7. YIELD UP AND PEACEABLY SURRENDER**

On the expiry or sooner determination of the Term, the Licensee must peaceably surrender and yield up to the Licensor the Licensed Areas and remove from the Licensed Areas all property of the Licensee which is not a fixture and must at the Licensor's option and at the Licensee's expense within ONE (1) month of that date:

- (a) restore the Licensed Areas to a condition consistent with the observance and performance by the Licensee of the Licensee's Covenants; or
- (b) remove the Jetty from the Licensed Areas and all other fixtures and fittings, including but without limitation all piles and other parts of the Jetty which are below water level and fill in all holes and level off and consolidate the ground and leave the area on which the Jetty was constructed clean and free from rubbish and otherwise make good to the satisfaction of the Licensor any other damage caused by the removal of the Jetty to the whole of the Licensed Areas.

## **8. LICENSOR MAY REMEDY LICENSEE'S DEFAULT**

If the Licensee does or fails to do anything which constitutes a breach of the Licensee's Covenants the Licensor may, without affecting any other right, remedy or power of the Licensor arising from the Licensee's breach, remedy that breach and the Licensee must pay to the Licensor on demand the Licensor's cost of remedying any breach by the Licensee.

## **9. DESTRUCTION OR DAMAGE TO JETTY**

If the Jetty or any part of the Jetty is so destroyed or damaged so as to require major rebuilding, the Licensee must apply the proceeds received by the Licensee from the Licensee's insurance policy for the Jetty to rebuilding the Jetty and the Licensee must give notice to the Licensor advising how long that rebuilding is estimated to take and if payment of insurance money under the Licensee's insurance policy in respect of the destruction or damage is refused or reduced by reason of an act or omission of the Licensee, the Licensee must in respect of that destruction or damage rebuild the Jetty to the extent that the insurance money is refused or reduced.

## **10. CONSENTS NOT UNREASONABLY WITHHELD**

Unless this Agreement otherwise expressly provides, the Licensor shall not unreasonably withhold its consent to any matter requiring consent and must specify a reason for withholding consent. The Licensor shall notify the Licensee in writing, within a reasonable time, of its decision with regards to a request for consent.

## **11. NOTICES**

- (a) Any notice given in connection with this Agreement must be in writing and must be left at, sent by facsimile, or sent by pre-paid security post addressed:
  - (i) in the case of the Licensee, to the Licensee's address specified in this Agreement or to its registered office or principal place of residence or business for the time being or at such other address as may be notified by the Licensee for the purpose of the service of notices; or
  - (ii) in the case of the Licensor to the Director, Coastal Facilities Management, Department of Transport, 1 Essex Street, Fremantle, Western Australia or to such other address as may be notified by the Licensor for the purpose of the service of notices.
- (b) A notice is deemed to have been given on the date on which it is left, in the case of a notice being sent by facsimile is deemed to have been given at the time of despatch, and in the case of a notice being sent by post it is deemed to have been given TWO (2) days after the date of posting.

## **12. COSTS AND STAMP DUTY**

- (a) The Licensee must pay the costs of and incidental to the instructions for and the preparation, execution and stamping of this Agreement and all duties payable on this Agreement.
- (b) A party in default must pay on a full indemnity basis all costs incurred by any other party in respect of their default and any notice relating to that default.

**13. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, representations, proposals, undertakings and agreements, whether written or oral, relating to the subject matter of this Agreement.

**14. GOVERNING LAW AND JURISDICTION**

This Agreement is to be governed by, take effect and be construed in accordance with the laws in force in Western Australia and all parties submit to the jurisdiction of the Courts of Western Australia.

**15. INTERPRETATION**

- (a) A reference to a person includes a reference to the person's executors, administrators, successors, substitutes, including but without limitation persons taking by novation, and assigns.
- (b) An agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally and an agreement, representation or warranty on the part of two or more persons binds them jointly and severally.

## SCHEDULE

**Item 1 - Jetty:**

Multiple jetty structures situated on a site within Cockburn Sound adjacent to Lot 790, Lot 794 and Lot 795 Pantheon Ave, North Coogee, Western Australia as shown for the purpose of identification only as the area coloured red on the plans attached to this Agreement and marked "Annexure A".

**Item 2 - Service Jetty, Sullage Dump Point and Fuelling Facility:**

That part of the Jetty Complex situated on a site within Cockburn Sound adjacent to Lot 8021 Chieftain Esplanade, North Coogee, Western Australia as shown for the purpose of identification only as the area identified on the attached plan and marked Annexure "A".

**Item 3 - Mooring Area:**

That part of the waters of Cockburn Sound as shown for the purpose of identification only as the area hatched on the plan attached to this Agreement and marked "Annexure A".

**Item 4 - Term:**

TWENTY (20) YEARS commencing on the Date of Commencement and expiring on 23 July 2036.

**Item 5 - Date of Commencement:**

24 July 2016

**Item 6 - Licence Fee:**

- (a) The Initial Fee is EIGHT HUNDRED AND FORTY DOLLARS AND SIXTY CENTS (\$840.60) payable on or before the date of this Agreement which includes the Licence Fee payable for the first year of the Term.
- (b) The Licence Fee is the licence fee prescribed from time to time under the *Jetties Act 1926* as the annual fee for a licence to maintain and use a Jetty for commercial purposes payable annually in advance on each anniversary of the Date of Commencement which licence fee as at the date of this Agreement is ONE THOUSAND THREE HUNDRED AND SIXTY DOLLARS AND SEVENTY CENTS (\$1,360.70) per annum.

EXECUTED AS AN AGREEMENT.

**SIGNED BY THE LICENSOR**

In the presence of;

*P Manyam*  
Signature of witness

**PATRICIA MANYAM**  
**1 ESSEX STREET**

Name of witness in full (print)  
**MARSHALLE, W.A. 6160**

**MARITIME LICENSING OFFICER**

Address

Occupation

*Ronald Joseph Zappara*  
Ronald Joseph Zappara

THE COMMON SEAL of the CITY OF COCKBURN  
was hereunto affixed in the presence of:



*A. Gault*  
(Signed)

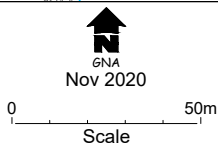
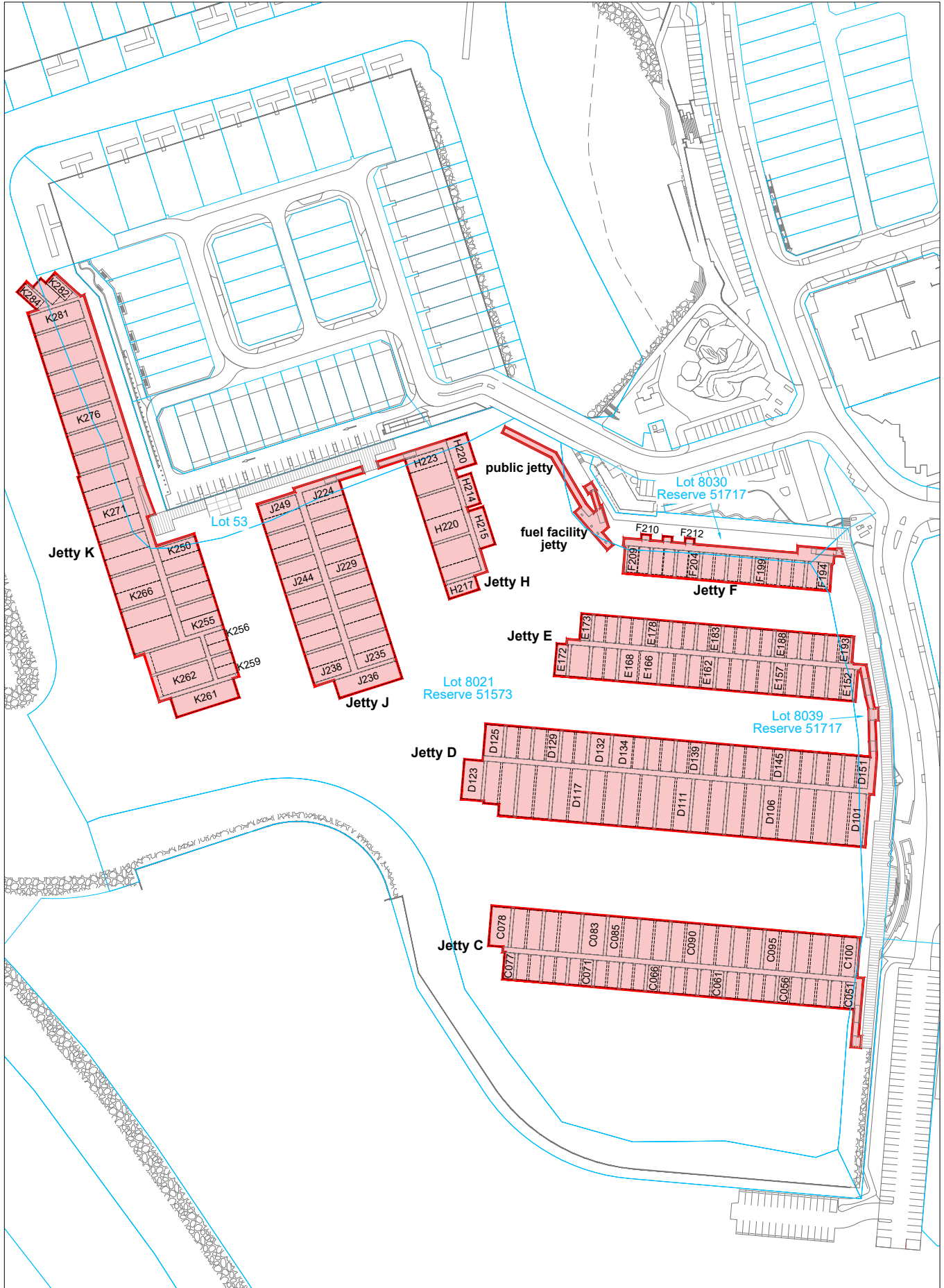
Property Lands Officer  
(Position)

*Lee Helen Groat*  
(Print Full Name)

*K. Groat*  
(Signed)

Property Lands Officer  
(Position)

*Kevin John Sim*  
(Print Full Name)

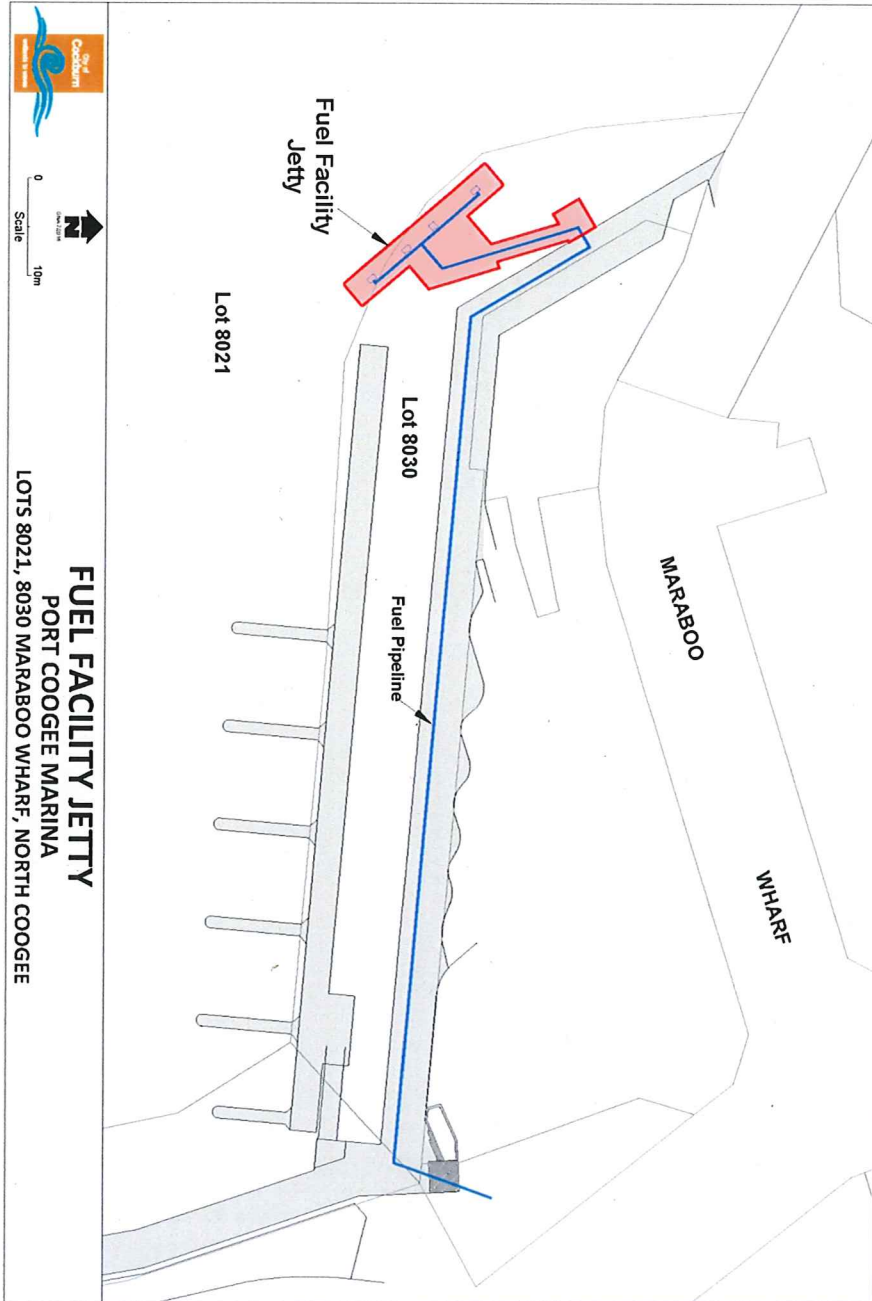


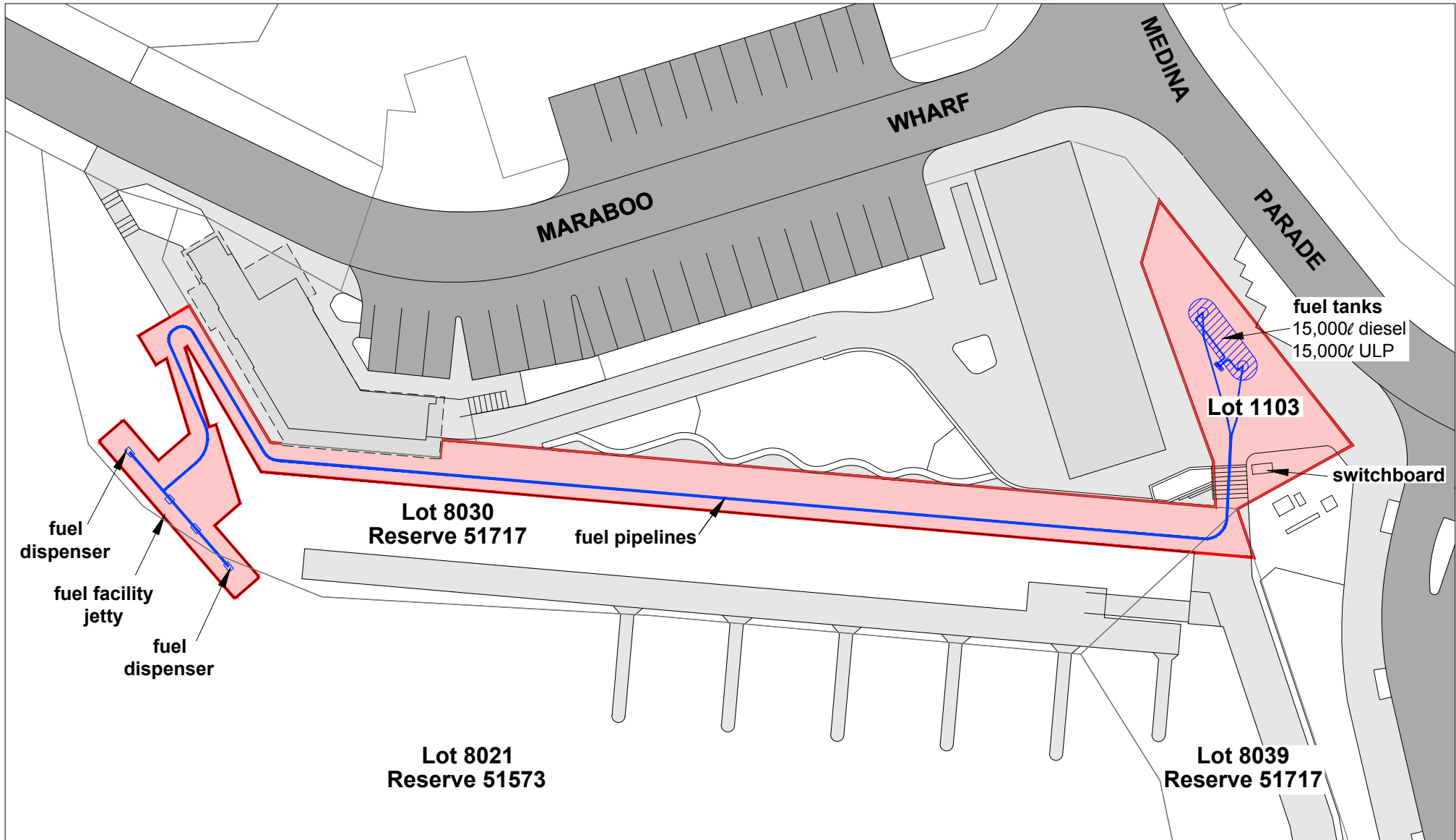
# Jetty Licence 4097 Sketch

## Port Coogee Marina



ANNEXURE A PLANS continued





# Fuel Facility Access Licence

## Port Coogee Marina

Lot 1103, ptn. Lot 8030 (Reserve 51717), ptn. Lot 8039 (Reserve 51717),  
 ptn. Lot 8021 (Reserve 51573) Maraboo Wharf, North Coogee

