



**Technical Services Attachments  
ORDINARY COUNCIL MEETING  
Wednesday 20 March 2019**

| <b>REPORT NUMBER</b> | <b>REPORT TITLE AND ATTACHMENT DESCRIPTION</b>  | <b>PAGE NUMBER(S)</b> |
|----------------------|---|-----------------------|
| <b>9.2.1</b>         | <b>Deed Poll of Indemnity - Access to portion of Dampier to Bunbury National Gas Pipeline Corridor*</b><br>1. Deed Poll of Indemnity - Access to portion of Dampier to Bunbury National Gas Pipeline Corridor | 1 - 3                 |

THIS DEED POLL OF INDEMNITY is made the \_\_\_\_\_ day of \_\_\_\_\_

By the **Indemnifier**

## BACKGROUND

- A. The Indemnifier has sought the approval of the Minister under section 41(2)(b) of the DBP Act to use the Access Area for the purpose of the Works.
- B. The Indemnifier has agreed to enter into this deed for the purpose of granting an indemnity and release on the terms and conditions contained in this deed.

## OPERATIVE PART

### 1. INTERPRETATION

#### 1.1 Definitions

In this deed, unless the context otherwise requires:

**Access Area** means the land referred to in item 2 of the Schedule.

**Approval Letter** means the approval in writing given by the Minister to the Indemnifier under section 41(2)(b) of the DBP Act.

**DBNGP Corridor** has the same meaning as that contained in section 28 of the DBP Act.

**DBP Act** means the *Dampier to Bunbury Pipeline Act 1997*

**Indemnifier** means the person or persons specified in item 1 of the Schedule.

**Indemnifier's Agents** means the Indemnifier's employees, agents and contractors.

**Minister** means the DBNGP Land Access Minister as defined in the DBP Act.

**Schedule** means the schedule to this deed.

**State** means the State of Western Australia, any State Government department, agency or instrumentality and any body whether corporate or not that is established or continued for a public purpose by or under a written law and includes without limiting the foregoing, the Minister and the State of Western Australia acting through the DBNGP Land Access Minister and the Crown in right of the State of Western Australia, and includes any employee, servant, agent or contractor of any of these.

**Works** means the use of the Access Area permitted by the Approval Letter.

#### 1.2 General

In this deed, unless the context otherwise requires:

- (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) words expressed in the singular include the plural and vice versa;
- (c) words expressed in one gender include the other genders;
- (d) an expression importing a natural person includes a company, partnership, joint venture, association, corporation or other body corporate;
- (e) 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;
- (f) a reference to a party to this deed includes that party's successors and permitted assigns and in the case of a natural person also includes that person's personal representatives and administrators;
- (g) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (h) references to statutes, regulations, ordinances and by-laws when contained in this deed include amendments, re-enactments or consolidations of any of them, and a reference to a statute includes every regulation, proclamation, ordinance and by-law issued under that statute; and
- (i) where a party to this deed comprises two or more persons then the agreements and covenants on their part contained in this deed or implied under this deed binds, and is enforceable against, those persons jointly and each of them severally.

## 2. INDEMNITY AND RELEASE

### 2.1 Indemnity

- (a) The Indemnifier must indemnify and keep indemnified the Minister and the State from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, proceedings of any kind, costs, expenses or disbursements of any kind which may be imposed on, or incurred by the Minister or the State, relating to, or arising from:
- (i) any loss whatsoever (including loss of use);
  - (ii) injury or damage of, or to, any kind of property or thing (including the Access Area and the property of third parties); and
  - (iii) any death of, injury or illness sustained by, any person,
- caused by, contributed to or arising out of, or in connection with, whether directly or indirectly:
- (A) the use and occupation of the Access Area by the Indemnifier or the Indemnifier's Agents;
  - (B) the performance of the Works; and
  - (C) any negligent or other tortious act or omission of the Indemnifier or the Indemnifier's Agents.
- (b) The obligations of the Indemnifier under this clause are limited to twelve weeks hereof or such longer period as it takes to complete the Works.

### 2.2 Release

- (a) The Indemnifier:
- (i) agrees that its occupancy and use of the Access Area will be at its sole risk; and
  - (ii) releases to the full extent permitted by law the Minister and the State from any:
    - (A) liability which may arise in respect of any accident or damage to property or death or injury to, or illness of, any person, of any nature in or near the Access Area; and
    - (B) loss of, or damage to, fixtures or personal property of the Indemnifier or the Indemnifier's Agents.
- (b) The obligations of the Indemnifier under this clause are limited to twelve weeks hereof or such longer period as it takes to complete the Works.

### LAW

This deed is governed by the laws of Western Australia and the Indemnifier submits to the jurisdiction of the courts of Western Australia.

EXECUTED as a deed this ..... day of .....

**THE COMMON SEAL OF THE SHIRE of CHITTERING**

WAS HEREUNTO AFFIXED IN THE PRESENCE OF:

\_\_\_\_\_  
CHIEF EXECUTIVE OFFICER

\_\_\_\_\_  
MAYOR

**SCHEDULE S41\_1403**

**Item 1**

**INDEMNIFIER**

Shire of Chittering  
PO Box 70  
BINDOON WA 6502

**Item 2**

**ACCESS AREA**

Portion of DBNGP corridor identified as ACCESS AREA on S41\_1403 Conditional Approval Diagram being part of

Lot 13116 on Plan 215560  
Archibald St  
MUCHEA WA 6501