



Department of **Biodiversity,
Conservation and Attractions**

SCHEDULE 2 – LICENCE CONDITIONS Wedge and Grey reserves



1 March 2023 to 28 February 2028

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DEFINITIONS

16 August 2016 – the reference date at which tracks, the built footprint and structural arrangements of buildings was set by DBCA for the Wedge and Grey reserves.

Aboriginal cultural heritage site – a place of significance for Aboriginal traditional owners that is protected by law.

accommodation unit – the one structure, referred to as a shack, that is used for accommodation under licence.

asbestos containing material – any material that contains asbestos.

Asbestos Management Plan – the plan entitled Asbestos Management Plan Wedge and Grey Reserves dated 4 November 2016 or as updated from time to time.

associated structure – means any man-made internally accessible construct existing at 16 August 2016, not used as an accommodation unit such as a shed, hut, platform and water storage stands.

audit - an aerial and on-ground inspection of shacks, associated structures, occupancy areas and surrounds undertaken by DBCA

authorised person – an individual deemed to be authorised under any State or Commonwealth legislation or a delegate of an individual deemed to be authorised under State or Commonwealth legislation.

beach berm – the area of beach above the water line, including the intertidal, that may slope upward toward the foredune.

Breach Notice – A notice signed by the District Manager or delegate stating that action is required by the licensee to resolve a breach of licence conditions by a specified date.

built footprint – the external built perimeter of a shack or associated structure recorded by DBCA as a fixture on 16 August 2016.

business or commercial purposes – the offering for sale or any other purpose that is directed to financial gain or reward.

CALM Act – *Conservation and Land Management Act 1984*

CALM Regs – *Conservation and Land Management Regulations 2002*

camping unit - a vehicle or temporary structure that provides accommodation including but not limited to a single car, truck, caravan, camper, camper trailer, tent, or up to six swags, or up to six hammocks.

commencement date – the date specified in a Schedule 1 Licence as the date the licence commences.

commercial operation – a business or commercial activity authorised by DBCA.

compound – a space enclosed by a fence or other barrier that does not have a permanent and unobstructed opening

contaminated – means having a substance present in or on that land, water or site at above background concentrations that presents, or has the potential to present, a risk of harm to human health, the environment, or any environmental value.

Crown Land - public land set aside for nature conservation and various government or public purposes.

dangerous state - in a state of collapse, or nearing collapse where the structure, utility or property cannot be repaired under licence conditions.

DBCA – Department of Biodiversity, Conservation and Attractions being the department assisting the Minister for Environment and the Director General in the administration of the *Conservation and Land Management Act 1984* (CALM Act) and *Conservation and Land Management Regulations 2002* (CALM Regs) and *Biodiversity Conservation Act 2016* and *Biodiversity Conservation Regulations 2018* and all associated policies. Any reference to DBCA includes its predecessors.

DBCA officer – the District Manager and any other officer employed by DBCA authorised to act on behalf of the Director General to administer this licence and the requirements of the CALM Act, CALM Regs, *Biodiversity Conservation Act 2016* and *Biodiversity Conservation Regulations 2018*.

DBCA managed track – a vehicle or pedestrian track that provides public access through the reserve, and which does not include the vehicle approach to an occupancy area beyond a distance of 15 metres from the built footprint of a shack, fisher shed or associated structure.

Deed – a legal instrument which passes, affirms or confirms an interest, right, or property and that is signed, sealed, and delivered.

delegate – the District Manager and any person, whether a DBCA officer or not, authorised to act on behalf of the Director General.

Director General – the Chief Officer of DBCA or a delegate of the Director General and all references to the Director General for operational purposes shall include actions of DBCA on the Director General's behalf.

District Manager – the manager in charge of the Turquoise Coast District office or the District Manager's delegate.

DPLH – Department of Planning, Lands and Heritage being the department assisting the Ministers for Planning, Lands, Heritage and Aboriginal Affairs, and the Director General of DPLH in the administration of the *Planning and Development Act 2005*, *Aboriginal Heritage Act 1972*, *Aboriginal Cultural Heritage Act 2021*, *Heritage Act 2018*, *Land Administration Act 1997* and all associated acts, regulations, and policies. Any reference to DPLH includes its predecessors.

expiry date - the date specified in a Schedule 1 Licence as the date the licence expires

fence - a barrier, railing, or other structure, typically of metal, wood, or wire, enclosing an area of ground to prevent or control access.

fisher shed – a shed used solely for professional fishing purposes that does not provide accommodation.

Fisher Shack Licensee – a person who is authorised under the *Fish Resources Management Act 1994* to operate a professional fishing business and moors and operates a licensed fishing boat in the water adjacent Wedge Reserve and who holds a licence under s 101 of the CALM Act to enter and use the Wedge reserve for professional fishing purposes, recreation and the keeping of a shack and other property.

Fisher Shed Licensee – a person who is authorised under the *Fish Resources Management Act 1994* to operate a professional fishing business and moors and operates a licensed fishing boat in the water adjacent Wedge Reserve and who holds a licence under s101 of the CALM Act to enter and use the Wedge reserve for professional fishing purposes and the keeping of a shed and other property for such purposes.

foredune ridge – the highest point of the first dune closest to the beach berm.

gate – a door-like structure that may be associated with a fence or other structure, but that is not considered part of the fence or other structure.

Grey reserve – Crown Land Reserve No. 43284 comprising Melbourne Location 4152 as depicted on Land Administration Reserve Diagram 1277 and within the Shire of Dandaragan Local Planning Scheme No. 7 referred to as Grey.

immediate family member – mother, father, sister, brother, son, daughter recognised under the Registry for Births, Deaths and Marriages.

indemnity - security or protection against a loss or other financial burden

in-the-moment-issue – an issue that is dealt with under a single representation that does not extend in time to other issues of a similar or different nature.

jinker - a trailer used by a professional fisher to transport licensed fishing boats to an alternative location for land-based maintenance.

June 2022 – a reference date in June 2022 specified by DBCA on which aerial photography was taken of the Wedge or Grey reserves for audit purposes, including the monitoring of vegetation change.

Kwelena Mambakort Aboriginal Corporation Licensee – an individual who is associated with the Kwelena Mambakort Aboriginal Corporation who holds a licence under s101 of the CALM Act to enter and use the Wedge Reserve.

licence – a document which is a legal contract between a licensor and licensee.

licence conditions - the contractual conditions that licensees agree to when accepting a licence.

licence cost – the annual fee paid by a licensee to hold a licence under the CALM Act.

licence term – the time for which DBCA is authorised to issue a licence under s101 of the CALM Act.

licensee – the person named on a Schedule 1 licence recognised by DBCA as the holder of a s101 licence under the CALM Act

licensee agent – a person of any description invited, engaged or hosted by a licensee.

licensor – the Director General of DBCA

native – a plant or animal naturally found in the reserves.

non-native – a plant or animal that is not naturally found in the reserves.

Notice of Cancellation – a notice signed by the Director General or delegate stating that the licence is cancelled or will be cancelled on a specified date.

Notice of Proposed Cancellation – A notice signed by the District Manager or delegate stating that action is required by the licensee to resolve a breach of licence conditions by a specified date or the licence may be cancelled.

obstruction – a thing that impedes or prevents passage or progress of a vehicle or person

permanent occupancy – where a licensee resides in a structure or its surround for more than 183 days in a calendar year without the approval of the Director General.

Power of Attorney – a legal document that gives a person, or trustee organisation the legal authority to act for a person to manage assets and make financial and legal decisions on their behalf.

professional fisher – a person who is authorised under the *Fish Resources Management Act 1994* to operate a Professional fishing business and moors and operates a licensed fishing boat in the waters adjacent Wedge Reserve.

recreational use – use of a shack and associated structures for the purpose of quiet enjoyment.

Recreational Licensee – a person who holds a licence under s101 of the CALM Act to enter and use the Wedge or Grey reserves for recreation and the keeping of a shack and other property.

retaining wall – a wall that holds back earth or water

shack – the one internally accessible structure associated with a licence used for accommodation as recorded by DBCA as a fixture on 16 August 2016.

structure – a construct that can be entered by at least one person while standing.

structural change – a change to any part of a shack, fisher shed or associated structure at Wedge and Grey that would require a building permit under the *Building Act 2011*

take - to injure, destroy or otherwise interfere with, or cause or permit the doing of any of those things (as defined in CALM Regs).

third party representation – a situation where a licensee has nominated a person to represent them for an in-the-moment issue

utility – means any extraneous man-made material and equipment including but not limited to fence, gate, post, well/bore, electrical connections, wind and solar generators and connections, hot water systems, gas connections and containers, water storage units, barriers, screens, flagpoles, windmills, cairns, and fire pits that is the property of a licensee.

vehicle approach – a track, that extends 15 metres from the built footprint of a shack or fisher shed, that provides a licensee entry to a shack, fisher shed, occupancy area or surround.

waste management area – an unlicensed waste receival space in which DBCA authorise rubbish receptacles to be placed and where bulk waste can be placed by licensees for disposal by DBCA, and from where putrescible and bulk waste is picked up and transferred to a licensed facility.

water storage unit – water tank or container used for the collection and storage of water but does not include integrated bulk storage containers (IBC) or ex-chemical and other similar vessels not certified as Australian Standard for drinking water.

water storage stand – a man-made construct that is supporting or has supported a water storage unit.

Wedge Island Reserve – Crown Land Reserve No. 43283 comprising Melbourne Location 4153 as depicted on Land Administration Reserve Diagram 1283 and within the Shire of Dandaragan Local Planning Scheme No. 7 referred to as Wedge or Wedge reserve.

SCHEDULE 2 - LICENCE CONDITIONS - Wedge and Grey Reserves

A. Licence information

- A.1) This Deed of Licence is made on the **1 December 2022** between the State of Western Australia through the Minister for Environment under the care of the Director General of the Department of Biodiversity, Conservation and Attractions (DBCA) (the licensor) and the licensee.
- A.2) The Director General of DBCA, on behalf of the State of Western Australia, is authorised under s.101 of the *Conservation and Land Management Act 1984* (CALM Act) to grant a licence in writing to any person to enter and use any land to which Division 2 of the CALM Act applies.
- A.3) The licence area is a portion of Crown Land managed by DBCA. The licensee wishes to enter upon and use the Wedge or Grey reserve to keep and occupy a shack within a defined location and to pursue activities permitted under and otherwise subject to these licence conditions.
- A.4) The Director General has agreed to grant to the licensee the licence on the terms and conditions and for the permitted uses set out in this licence.
- A.5) The licence **Commencement Date** is **1 March 2023**.
- A.6) The licence **Expiry Date** is **28 February 2028**.
- A.7) Should the licence term be extended for three years beyond the expiry date these licence conditions will continue to apply unless varied by the Director General.
- A.8) **Schedule 1** is the licence document specifying the name of the licensee, the purpose of the licence and the term of the licence and is subject to compliance with Schedule 2 of the licence.
- A.9) **Schedule 2** of the licence presents conditions that all licensees agree to comply with by holding a Schedule 1 licence¹.

B. Yued Traditional Owners

- B.1) Noongar people are formally recognised, through the *Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future) Recognition Act 2016*, as the traditional owners of the south west region of Western Australia.
- B.2) Yued people are recognised as the traditional owners of the Yued Indigenous Land Use Agreement (Yued ILUA) area which encompasses approximately 29,253.825 square kilometres, inclusive of the Wedge and Grey reserves.
- B.3) The Yued Aboriginal Corporation is the regional corporation representing Yued Traditional Owners.
- B.4) The Yued ILUA allows for the establishment of co-operative and joint management arrangements with DBCA and for the creation of the Noongar Land Estate that will comprise of land within the Yued agreement area.

C. Aboriginal cultural heritage sites

- C.1) Wedge and Grey reserves form part of traditional Aboriginal song-lines referred to as *Ngumbling*, *Ngambany*, and *Namban* that extend from Cervantes to Yanchep. *Namban* is the place Yued people held lore business. Wedge is referred to as *Wetj Boya* and both Wedge and Grey reserves are well known to Yued people as having midden sites, freshwater wells and springs, and camp sites.

¹ CALM Act s.101(4) – Licences etc. for use etc. of land specifies that the holder of a licence shall not contravene or fail to comply with any condition endorsed upon or attached to the licence. Penalty of \$4,000 may apply.

C.2) Part of the shack area in Wedge reserve is included in Aboriginal cultural heritage site 20051 (known as *Kwelena Mambakort*). There are up to nine lodged Aboriginal heritage places that have yet to be assessed in Wedge reserve for inclusion in the Register of Aboriginal Sites.

C.3) The location of the boundaries of heritage sites is held by the Department of Planning, Lands and Heritage (DPLH) in the Register. Some of this information is culturally confidential and cannot be shared without the consent of Yued Traditional Owners. Further sites may be recognised over time.

C.4) It is likely that the *Aboriginal Heritage Act 1972* and *Aboriginal Heritage Regulations 1974* will be replaced by the *Aboriginal Cultural Heritage Act 2021* and the *Aboriginal Cultural Heritage Regulations 2022* during the licence term. These new laws present a new way for managing Aboriginal cultural heritage in Western Australia by giving Aboriginal people an improved role in the identification and management, protection, and preservation of cultural heritage. The *Aboriginal Cultural Heritage Act 2021* will allow for the gazettal of protected areas and sites that have State heritage significance. Penalties up to \$1M and 5 years imprisonment can result if an individual is convicted of causing serious harm to an Aboriginal cultural heritage site.

C.5) DBCA recognise that Yued people have a cultural responsibility to care for country and unique traditional knowledge and expertise that will assist in managing land and sea within the Yued ILUA area.

C.6) If an activity is to occur within an Aboriginal cultural heritage site, or it is unclear if it is to occur within an Aboriginal cultural heritage site, then a licensee should seek advice from DPLH via swsheritage@dplh.wa.gov.au as to whether an approval is required under the *Aboriginal Heritage Act 1972* or *Aboriginal Cultural Heritage Act 2021* before proceeding.

D. Aboriginal customary activities

D.1) The CALM Act provides for access to land and waters managed by DBCA for Aboriginal customary activities.

D.2) These licence conditions acknowledge that all Aboriginal people, including traditional owners associated with the Kwelena Mambakort Aboriginal Corporation entering and using Wedge under licence, may undertake customary activities on DBCA managed lands and waters under the CALM Act.

D.3) These licence conditions acknowledge that traditional owners associated with the Yued Aboriginal Corporation may undertake activities that provide for the protection of heritage sites within the reserves subject to DBCA and DPLH authorisations.

E. Professional fisher rights

E.1) A professional fisher is a person who holds an 'Unrestricted Western Australian Fishing Licence' and/or 'Managed Fishery Licence' under the *Fish Resources Management Act 1995*. To hold a CALM Act licence at Wedge Reserve, professional fishers must:

- be the registered holder of a current fishing boat licence granted under the *Fish Resources Management Act 1995* authorising a person to use a boat for commercial fishing purposes;
- be a licensed professional fisher for the fishing zone adjacent the Wedge reserve.
- have an existing mooring (at 1999) that is in use and adjacent the Wedge reserve.
- land catch on the shores of the Wedge reserve.

E.2) The Western Australian (WA) Government recognises² that professional fishers have an economic reliance on the Wedge Reserve that extends year round.

² Government Policy 12.8.1 – *Professional fisher shack tenure along the central coast of Western Australia 1999*.

F. Reserve management order

F.1) By order of the Governor of Western Australia, the management of reserve No. 43283 comprising Melbourne location 4153 as depicted on Land Administration Diagram 1283 – known as Wedge Island reserve and reserve No. 43284 comprising Melbourne Location 4152 as depicted on Land Administration Diagram 1277 – known as Grey reserve were placed under the management of the Department of Conservation and Land Management (now DBCA) on 14 February 1995. The reserves were allocated a purpose of *Parkland, recreation and the letting of cottages* and remained as Crown Land making them subject to considerations under the *Native Title Act 1993*. Native title has now been resolved across the Wedge and Grey reserves, such that the *Native Title Act 1993* no longer applies. However, the Wedge and Grey reserves are subject to the outcomes of the South West Native Title Settlement.

F.2) Shack owners were issued leases for their shacks and associated structures by DBCA between 1995 and 30 June 2014. Amendments to the CALM Act in 2012 led to DBCA being required to issue a licence under s.101³ to shack owners to enter and use a portion of the reserves. Licence conditions were developed, and licensees applied for a licence to enter and use the reserves beginning on 1 July 2014. Subsequent licence terms were offered with the current term ending on 30 November 2022.

F.3) Shacks and associated structures built at Wedge and Grey are unauthorised structures under s.270⁴ of the *Land Administration Act 1997*. A structure is considered unauthorised if it was not, at the time of its erection, authorised under any Act or other law, or has ceased, since the time of its erection, to be authorised by any Act or other law. Given that the Wedge and Grey reserves are Crown Land managed by DBCA under order of the Governor of Western Australia, the Director General of DBCA may, with the consent of the Minister for Environment, issue a licence to enter and use a portion of the reserves under s.101 of the CALM Act.

F.4.) Notwithstanding the licence issued under the CALM Act, licensees are not excluded from addressing the requirements of all Australian and Western Australian law and policy.

F.5) The licence, and DBCA management, do not exclude the reserves from land-use planning action required by the *Guilderton to Kalbarri Sub-Regional Planning Strategy*⁵ to:

- a) identify future recreational opportunities for Wedge and Grey based on further investigation, including heritage⁶ assessment;
- b) adopt a general presumption against new development within areas identified to be affected by coastal hazards;
- c) protect landscapes that are of high value and are viewed from the coastline, coastal bays, tourist routes and tourism activity sites.

F.6) The licence, and DBCA management, do not exclude the reserves from the Shire of Dandaragan Local Planning Strategy (Envision 2029) endorsed by the Western Australian Planning Commission which supports Government's response to the 2010 Legislative Council Standing Committee on Environment and Public Affairs Inquiry report into shack sites in Western Australia that recommends that:

- a) DBCA examine options for Wedge and Grey that meet the requirement for public recreation and tourism use in conjunction with a level of shack retention that contributes to the opportunities for public use. This consideration would be in consultation with the current shack leaseholders; and

³ CALM Act S101. - Licences etc. for use etc. of land

⁴ *Land Administration Act 1997* s.270 - Unauthorised structures on Crown land, Minister's powers as to etc.

⁵ Western Australian Planning Commission (2019) *Guilderton to Kalbarri Subregional Planning Strategy* Prepared by the Department of planning, Lands and Heritage.

⁶ Aboriginal cultural heritage and built and place heritage

- b) Any future development will be subject to State planning requirements and will address equity of access and use, building safety, health and amenity, coastal processes, and provide for environmentally sustainable public outcomes.

F.7) The licence, and DBCA management, do not exclude the licensees from the requirements of *Shire of Dandaragan Local Planning Scheme No. 7* endorsed by the Minister for Planning on behalf of the WA Government. The Scheme reserves Wedge and Grey for 'Parks and Recreation'. The building or keeping of a private structure in a public reserve is not permitted under the Scheme and as such the Shire as the established permit authority under the *Building Act 2011* cannot issue planning or building permits to licensees. The Shire's position is that the Wedge and Grey reserves are to be utilised for public recreation and tourism use and no permanent residential development at these locations is supported.

F.8) At the time of writing, the CALM Act is the only legal mechanism that can allow for the retention of private structures and property on the Wedge and Grey reserves.

G. Assumption of risks associated with licence to enter and use

G.1) In accepting this licence, the licensee acknowledges and agrees that there are inherent and well-known risks associated with the entry and use of the reserve and the structures located thereon.

G.2) Entry and use of the reserve by the licensee or any licensee agent is at the sole risk of the licensee.

G.3) These risks include but are not limited to:

- a) Unregulated construction of private structures owned by licensees.
- b) Historically dumped asbestos and degradation of asbestos containing material in licensee buildings and surrounds.
- c) Coastal processes that may exacerbate dune erosion and increase tidal reach.
- d) Bush fire and structural fire.
- e) Distance from emergency responders such as DBCA, WA Police, State Emergency Services, Marine Rescue, Fire and Emergency Services, Ambulance, and medical centres.
- f) Poor network communication links to and from the reserves.
- g) Unregulated septic systems, sumps, soak wells, electrical connections, solar and wind connections, gas connections and other utilities.
- h) Potentially contaminated groundwater from unregulated in-ground septic systems.

G.4) The licensee acknowledges that all property bought to the reserves for use associated with the licence is bought onto the reserves at the licensee's sole risk and responsibility.

G.5) The licensee acknowledges that the licensor accepts no responsibility or liability for entry and use of a structure or any other part of the reserve by the licensee or any licensee agent for any loss of damage to the licensee's property that is brought onto the reserves.

H. Legal interpretations

In the Licence Conditions, unless the context otherwise requires:

H.1) Headings are for convenient reference only and shall have no effect in limiting or extending the language of the provisions to which they refer.

H.2) A reference to a note, clause, schedule, addendum or appendix is a reference to a note, clause, schedule, addendum or appendix to the document in which the reference appears.

H.3) A reference to any law includes consolidations, amendments, re-enactments, or replacements of it.

H.4) A reference to anything that the licensee will or will not do includes, where the context permits, the licensee's guests, employees, agents, and contractors.

H.5) The singular includes the plural and vice versa, the plural includes the singular.

H.6) If a period of time is specified and runs from a given day or the day of an act or event, it is to be calculated exclusive of that day.

H.7) If the licence is held by two licensees, then:

- a) an obligation imposed on one licensee binds each person who comprises the licence jointly and severally,
- b) the act of one licensee who comprises the licence binds the other persons who comprise the licence, and
- c) a breach by one person who comprises the licence constitutes a breach by all licensees.

H.8) If a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning.

H.9) A reference to the word 'including' is deemed to be followed by the words 'but not limited to'.

H.10) A reference to the approval of the Director General means written approval.

H.11) The Director General may add to, cancel, suspend, or vary licence conditions and the licence term during the operation of the licence⁷.

I. Indemnity and rights (also refer to deed associated with licence renewal acceptance)

I.1) In accepting a licence to enter and use the Wedge Reserve or Grey Reserve under s.101 of the CALM Act, licensees are held to the following indemnity and rights and no other indemnity or rights shall exist.

- a) Licensees agree to release the State of Western Australia and all its officers, agents, emanations, and instrumentalities (collectively "the State"), through the signing, sealing, and delivering of a Deed, 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 reserve in relation to the activities the subject of this licence.
- b) Licensees agree to indemnify the State of Western Australia and all its officers, agents, emanations, and instrumentalities (collectively "the State"), through the signing, sealing and delivering of a Deed, from, against and in respect of all loss, claims, lawsuits, proceedings, causes of action, damage, liability, cost expenses, demands and the like, suffered or incurred by or brought, made, or alleged against the State to the extent caused or contributed by any tortious, civil, or actionable wrong by or on behalf of the licensee or any officer, employee, agent, contractor or their sub-contractor, or invitee of the licensee.
- c) If a licensee invites any other person to enter and use an occupancy area or surround, or the structures within it, the licensee must ensure the person is aware of and complies with licence conditions.
- d) The licensee remains responsible for the conduct of any person they have invited to use or gain access to an occupancy area and surround and the structures within it, and that person's conduct will be attributed to the licensee unless determined otherwise by the Director General.
- e) The indemnity in b) of this condition is entered into by the licensees on the basis that the risk, hazard or danger was of a kind that the licensees should have known of which caused or gave rise to or related to any such loss, claim, lawsuit, proceedings, cause of

⁷ CALM Act s101.(3)(b) - Licences etc. for use etc. of land

action, damage, liability, costs, expenses, demands or the like, and taking into account all relevant factors.

- f) The release in the above clause 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.
- g) The rights conferred by this licence rest in contract only and do not create in or confer upon the licensee any tenancy or any estate whatsoever or interest in or over an area occupied by a shack, fisher shed or associated structures, an occupancy area or a shack or fisher shed surround, and the rights of the licensee shall be those of a licensee only and shall be subject to the conditions set out herein.
- h) The rights granted to the licensee under this licence are only exercisable during the licence term.
- i) Nothing in this licence affects or is intended to affect native title rights and interests where they have been determined to exist in the licence area.
- j) All licensees shall be subject to consequences determined by DBCA if they do not comply with licence conditions or reasonable direction given by DBCA in relation to licence conditions [s.101(4) CALM Act].
- k) No compensation or consideration will be given for the cancellation of the licence should DBCA not be able to contact a licensee on the contact information provided within a reasonable time frame⁸.
- l) It is the responsibility of the licensees next of kin, Executor or Power of Attorney to notify DBCA of the death of a licensee within six calendar months of the death occurring. No compensation or consideration will be given for the cancellation of the licence for failure to notify DBCA.
- m) The licensee acknowledges and agrees that the provision of Part VII⁹ of the *Property Law Act 1969* does not apply to the licence.
- n) The licensees acknowledge and accept that no right arises on the part of the licensee under this licence to the provision of any services including rubbish collection, water, sewerage, and power supply to an occupancy area by the Director General, the Shire, the Crown in right of the State or Commonwealth or any statutory person or authority or their respective servants or agents.
- o) This licence confers no right of exclusive occupation of an occupancy area or surround upon the licensee, and the licensor including its officers, employees, contractors and agents may at any time and at all times from time to time exercise all the licensor's rights as licensor including the licensor's right to use, possess and enjoy the whole or any part of the same save only in so far as such rights not unreasonably prevent the operation of the rights granted to the licensee under this licence or be inconsistent with the express provisions of this licence.
- p) Recreational Licensees may enter and use an occupancy area and shack surround for recreational activities and are responsible for any structures and property within an occupancy area and surround in compliance with licence conditions.
- q) Fisher Shack and Fisher Shed licensees may enter and use an occupancy area and shack or fisher shed surround for professional fishing activities and are responsible for any structures and property within an occupancy area and surround in compliance with licence conditions.

⁸ Reasonable time frame for contact – 60 days

⁹ *Property Law 1969* Part VII – Leases and tenancies

- r) Kwelena Mambakort Aboriginal Corporation Licensees may enter and use an occupancy area and surround and are responsible for any structures and property within an occupancy area and surround in compliance with licence conditions.

LICENCE CONDITIONS 1. Compliance with all laws, regulations, policies, and directions

DBCA Explanatory Notes

- 1.1) DBCA describes the process for resolving a breach of licence conditions in Annexure 1.
- 1.2) Licensees are encouraged to seek DBCA advice if they are unsure of a licence condition or would like confirmation in writing that a proposed activity within an occupancy area or surround is permitted under licence conditions or law.
- 1.3) In complying with all laws, regulations, policies, and directions it is recognised by Government that shacks, sheds and associated structures cannot be made lawful under the *Planning and Development Act 2005* or *Building Act 2011*.
- 1.4) DBCA officers may enter an occupancy area and surround, and open air externally fixed and unfixed structure of a shack and associated structures, including screened¹⁰ verandahs, at any time to investigate whether the obligations of the licensee are being complied with, to assist in the identification of visitor risks that may exist and to enable timely response to licensee inquiries. Notice of entry will occur through DBCA officers verbally hailing to the licensee upon approach.
- 1.5) A DBCA authorised officer, who has the power of a police officer, may inspect the enclosed area of a shack or associated structure without consent if due cause exists.
- 1.6) For the purposes of this licence, a DBCA authorised officer, who has the power of a police officer, may enter the enclosed¹¹ spaces of a shack or associated structures by breaking locks to:
1. ensure the safety of the occupants or other reserve users if due cause exists; or
 2. assess the risk the structures may present to responders in an emergency situation (such as fire).

Notice of entry will occur through DBCA officers verbally hailing and advising the occupants of the due cause for entry before entering the shack or associated structures.

DBCA will cover the opening made in the structure during entry and advise the licensee of the entry as soon as possible to enable the licensee to secure the structure as they see fit within licence conditions. The security of the licensee's property remains the responsibility of the licensee.

This clause does not negate the rights of the Department of Fire and Emergency Services, Western Australian or Federal Police or other qualified emergency responder, to enter a structure for due cause. These responders will have their own protocols in regard to closure of a point of entry.

1.8) For the purposes of this licence, DBCA may request to inspect the enclosed area of a shack or associated structure from an open doorway to ensure the use of the structures is occurring as permitted under licence conditions. For example, if there is suspicion of an associated structure being used for accommodation.

1.9) A DBCA authorised officer, who has the power of a police officer, may inspect the enclosed area of a shack or associated structure if that request is made in writing by email or postal mail giving due cause and reasonable notice¹² of the inspection.

1.7) For the purposes of this licence, DBCA reserves the right to remove extraneous structures including fences, gates, walls, ropes, locks, fasteners, and ties without notice to allow for emergency response and is not required to restore or pay compensation for loss or damage.

1.10) DBCA undertakes annual aerial photography of the Wedge and Grey reserves for management and compliance purposes.

¹⁰ Screened – walls covered with shade cloth, flyscreen or other soft material.

¹¹ Enclosed with hard materials such as sheet metal or other hard wall cladding.

¹² Reasonable notice – at least 21 days

1.11) No more than two people can hold a licence issued under s.101 of the CALM Act at Wedge and Grey reserve.

1.12) A licence will automatically cancel if an occupancy area no longer includes a shack unless deemed otherwise by the Director General.

1.13) A licence to enter and use issued under s.101 of the CALM Act is not property and cannot be sold.

Licence conditions 1. Compliance with all laws, regulations, policies, and directions

1.A. Licensees shall duly and punctually comply with, observe, carry out, and conform to the provision of all Commonwealth, State and local laws, regulations, policies, and directions now and hereafter in force and all requirements and orders of any authority (statutory or otherwise) in addition to licence conditions.

1.B. Licensees shall not give false or misleading information to a DBCA officer.

1.C. Licensees will action all requirements within a Breach Notice, Notice of Proposed Cancellation, or Notice of Cancellation by a due date specified by DBCA.

1.D. Licensees shall not interfere with, or obstruct a DBCA officer, or a delegate or agent of DBCA.

1.E. Licensees shall not sell a licence or the shack or associated structure it applies to or pass or otherwise purport to transfer an interest in a licence or a shack or associated structure to a third party or gain financially by holding a licence without DBCA approval.

1.F. Licensees (except for Fisher Shack Licensees) shall not use any part of an occupancy area or any other area of the reserves for permanent occupation, unless approved by the Director General.

1.G. Licensees shall not interfere with or limit public access to any part of the reserves, except within shacks, fisher sheds and associated structures.

LICENCE CONDITIONS 2. Licensees and contact information

DBCA Explanatory Notes

2.1) DBCA is required to keep proper and accountable licence holder information to ensure licences are lawful, and to ensure the issue of licence information and accounts to licensees in a timely manner.

2.2) DBCA will issue all accounts and correspondence relating to a licence to both licensees (where there are two) to ensure equitable access to information, including where one licensee has contact with DBCA with or without the knowledge of the other.

Licence conditions 2. Licensees and contact information

2.A. Licensees must be over the age of 18 years to legally hold a licence.

2.B. Licensees shall provide proof of address to DBCA in the form of a Department of Transport identification card or drivers licence, or a government issued utility account to facilitate a change of residential or postal address on a licence and the customer account record.

2.C. Licensees may nominate a third party over the age of 18 years to act as their representative in relation to an in-the-moment-issue by submitting a certified and signed statement to DBCA stating the in-the-moment-issue that the representative is authorised to discuss and on the understanding that the representation will end at the resolution of that in-the-moment-issue and that the representative cannot be a permanent contact within DBCA records for the purpose of licence management and communications.

2.D. Licensees may exercise a Power of Attorney to appoint a legally recognised representative to act on their behalf in matters relating to the licence by submitting a copy of the Power of Attorney authorisation to DBCA on the understanding that the Power of Attorney will end upon the withdrawal of the authorisation by the licensee, the death of the licensee or the surrender, expiry or cancellation of the licence.

LICENCE CONDITIONS 3. Licence payments and debt recovery

DBCA Explanatory Notes

3.1) Licence costs represent the licensees proportionate share of the management costs associated with the licensee's entry and use of the reserves, and the management costs associated with the established and ongoing public access that has resulted from the unregulated development of the reserves by shack owners.

3.2) State Government reviews licence costs periodically to ensure the cost recovery model in place for the management of the Wedge and Grey reserves is fully funded, as such licence cost may vary from time to time.

3.3) Licence costs are the same for all persons referred to as Recreational Licensees, Kwelena Mambakort Aboriginal Corporation Licensees and Fisher Shack Licensees who hold a licence under s.101 of the CALM Act to enter and use the Wedge or Grey reserve in association with a shack and may only vary at the Director General's discretion.

3.4) Licence costs are the same for all persons referred to as Fisher Shed Licensees who hold a licence under s.101 of the CALM Act to enter and use the Wedge reserve in association with a shed used for professional fishing purposes and may only vary at the Director General's discretion.

3.5) Licensees will be required to pay annual licence costs in two instalments.

Licence conditions 3. Licence payments and debt recovery

3.A Licensees will pay all amounts owing on a DBCA invoice by the due date.

LICENCE CONDITIONS 4. Certificate of Insurance for public liability

DBCA Explanatory Notes

4.1) The keeping of a current Certificate of Insurance for public liability provides persons, that may be injured or affected by a licensee's use of the reserve, with an ability to make reasonable claim for injury or damage against the licensee through insurance. It is in the licensees' best interests that they do not do, or omit to do, any act or thing or bring or keep anything on the reserves which might render the insurance void.

4.2) DBCA encourage licensees to seek legal advice in relation to the responsibilities and liabilities associated with the acceptance of an insurance policy.

Licence conditions 4. Certificate of insurance for public liability

- 4.A.** Licensees must maintain and keep in force during the term of this licence a suitable public liability insurance policy with an insurer of good repute, noting the licence number and the name(s) of the licensees for not less than \$10,000,000 (ten Million Dollars):
- i. for any one accident or event.
 - ii. any loss, damage, or destruction to any property.
 - iii. liability arising out of any contamination, pollution or environmental harm of the occupancy area or surrounding areas of a sudden or accidental nature during the term caused or contributed to by the licensees.
- 4.B.** Licensees must provide DBCA a copy of a current certificate of insurance or certificate of currency for public liability prior to, or within 30 days of the commencement date of the licence term and on each anniversary of the commencement date of the licence term and as otherwise requested by DBCA.

LICENCE CONDITIONS 5. Protection of Aboriginal cultural heritage

DBCA Explanatory Notes

- 5.1) DBCA acknowledge Yued Traditional Owners and their continuing connection to the land and waters of the Yued region.
- 5.2) DBCA will work with Yued Traditional Owners to manage the Wedge and Grey reserves consistent with the requirements of laws protecting Aboriginal cultural heritage and the Yued Land Use Agreement.
- 5.3) Licensees should assume that all land within the reserves constitutes an Aboriginal cultural heritage site or is otherwise land to which laws protecting Aboriginal cultural heritage apply unless advised otherwise by DPLH.

Licence conditions 5. Protection of Aboriginal cultural heritage

- 5.A.** Licensees shall refer all proposed activities that will involve physical modifications or impacts to any area of the reserves to DPLH to ascertain whether the proposal constitutes an activity within an Aboriginal cultural heritage site, and if so, to obtain written advice from DPLH, and provide a copy of that advice to DBCA upon request.

Note: Contact DPLH via swsheritage@dplh.wa.gov.au.

LICENCE CONDITIONS 6.A to 6M Use, entry, and occupation of the reserves

DBCA Explanatory Notes

Shack use and identification

- 6.1) **Shack Occupancy Area** extends five metres from the built footprint of a shack licensed to a Recreational Licensee, Fisher Shack Licensee, or Kwelena Mambakort Aboriginal Corporation Licensee as recorded by DBCA as a fixture on 16 August 2016, where that space is available to allow for conditional use.

6.2) **Associated Structure Occupancy Area** extends two metres from the built footprint of an associated structure as recorded by DBCA as a fixture on 16 August 2016 where that space is available to allow for conditional use.

6.3) **Fisher Shed Occupancy Area** extends five metres from the built footprint of the shed licensed to a Fisher Shed Licensee recorded by DBCA as a fixture on 16 August 2016 where that space is available to allow for conditional use.

6.4) Where an **occupancy area (of any kind)** overlaps with a neighbour's occupancy area (of any kind), it will be deemed to be equidistant from the built footprint of the nearest structures. An occupancy area does not overlay or extend beyond a DBCA managed track and other management infrastructure under any circumstances, does not extend seaward of a foredune ridge or within six metres of a limestone edge regardless of changes that may occur in relation to the position of a DBCA managed track and other management infrastructure, foredune ridge or limestone edge.

6.5) **Shack Surround** is the area beyond the Shack Occupancy Area where conditional use by the licensee is allowed, and which only encompasses the ground where the licensee maintains grass or low weed cover to the extent recorded by DBCA in June 2022 and as confirmed by DBCA during the licence term, without further impact to native vegetation.

6.6) **Fisher Shed Surround** is the area beyond the Fisher Shed Occupancy Area where conditional use by the licensee is allowed, and which only encompasses the ground where the licensee maintains grass or low weed cover to the extent recorded by DBCA in June 2022 and as confirmed by DBCA during the licence term without further impact to native vegetation.

6.7) Where a **surround (of any kind)** overlaps with a neighbour's surround, it will be deemed to be equidistant from the built footprint of the nearest structures. A surround may include the primary vehicle approach to a shack or fisher shed within 15 metres of the built footprint of the shack or fisher shed. The vehicle approach outside 15 metres of these structures is deemed to be a DBCA managed track. A surround does not overlay or extend beyond a DBCA managed track and other management infrastructure under any circumstances, does not extend seaward of a foredune ridge or within six metres of a limestone edge regardless of changes that may occur in relation to the position of a DBCA managed track and other management infrastructure, foredune ridge or limestone edge.

Conservation and environmental management of DBCA managed land

6.8) All land within the Wedge and Grey reserves remains DBCA managed land, without exception, unless the management order is altered by Government processes or decision making, including native title outcomes.

6.9) Licensees may make application to DBCA for a permit to use a ride-on mower on a case-by-case basis. Approval will be subject to the licensee providing justifiable reasons for the use of this type of machinery.

Waste management, asbestos and contaminating substance disposal

6.10) Wedge and Grey reserves are registered under the *Contamination Sites Act 2003* as 'Possibly contaminated (Asbestos)-Investigation required'. The reserves remain potentially contaminated only because a thorough investigation of asbestos presence has not been completed. A preliminary asbestos in soil assessment was conducted in 2016 that revealed approximately 360 locations as potentially having asbestos containing debris. The asbestos assessment resulted in the preparation of the *Asbestos Management Plan for Wedge and Grey* in 2016.

6.11) Licensees are responsible for the safe removal, handling, and proper disposal of asbestos to a licensed facility where that asbestos is located within a shack, associated structure, occupancy area or surround.

6.12) Upon request, DBCA will remove materials and other property at no cost to the licensees that is located outside an occupancy area where the licensee has submitted written confirmation, inclusive of photographs, that the materials and property do not belong to them.

Water storage

6.13) All licensees are responsible for the quality of the water they collect, import, pump, store and use while in the Wedge or Grey reserve.

6.14) DBCA encourage licensees to have water storage units that meet Australian Standard AN/NZS 4020 Testing of products for use in contact with drinking water.

Bores, wells, windmills, and in-ground sewage systems

6.15) DBCA encourage licensees to transition to a disposable chemical toilet system or a vaulted/sealed toilet system to reduce potential contamination of groundwater.

6.16) It is an offence to commence construction of a wastewater system without an approval. An application for approval to construct a septic system must be made to either the local government or the Executive Director, Public Health.

6.17) The *Health (Treatment of Sewage and Disposal of Effluent and Liquid Waste) Regulation 1974* requires leach drains to be approved by the Chief Health Officer.

IMPORTANT NOTE: If vegetation management or ground disturbance is to occur within an Aboriginal cultural heritage site, or it is unclear if it is to occur within an Aboriginal cultural heritage site, then licensees should seek advice from DPLH via swsheritage@dplh.wa.gov.au before proceeding.

Licence conditions 6.A. Shack use and shack identification

1. Licensees shall use one structure as an accommodation unit per licence, namely a shack, unless approved otherwise by DBCA.

2. Licensees shall display a licence number plate issued in 2019 by DBCA on the shack, shed and associated structure, if that structure has a number, so that it is clearly visible from the direct vehicle approach to the structure to provide a reference for management and emergency response.

Note: Fisher Shack licensees, Fisher Shed licensees and Kwelena Mambakort Aboriginal Corporation Licensees will be issued with licence number plates at the commencement of this licence.

Licence conditions 6.B Conservation management of DBCA managed land

1. Licensees shall not take, prune, poison, or remove any native flora without lawful authority from DBCA, except within two metres of the built footprint of a shack, fisher shed or associated structure.

2. Licensees may maintain an existing (recorded by DBCA at June 2022 and confirmed by DBCA within the licence term) grassed or low weed covered area within a shack or fisher shed occupancy area and surround with the use of handheld equipment such as domestic push along mowers, whipper snippers, shears, or secateurs where that maintenance does not have an impact upon native vegetation.

3. Licensees shall not plant, cultivate or abandon any non-native plant in the reserves without DBCA approval.

4. Licensees shall not bring onto or keep non-native animals (except domestic dogs under control¹³) in the reserves.
5. Licensees shall not construct a new vehicle approach, pedestrian access, road, track, firebreak, or parking area without lawful authority from DBCA.
6. Licensees may prune vegetation on a vehicle approach to a shack or fisher shed occupancy area to the existing width¹⁴ or a maximum of 3000mm (whichever is the lesser) and only with the use of handheld equipment such as domestic push along mowers, whipper snippers, shears, or secateurs.
7. Licensees shall seek DBCA advice and written approval prior to pruning vegetation on a vehicle approach beyond 15 metres of the built footprint of a shack or fisher shed.
8. Licensees shall not place paving and other outdoor ground materials such as shade cloth and artificial turf designed for outdoor use, soil, rocks, sand, or rubble on the ground anywhere in the reserves except within an occupancy area and then only to two metres from the built footprint recorded by DBCA as a fixture on 16 August 2016.
9. Licensees shall not replace or re-lay paving and other ground materials outside two metres from the built footprint of an occupancy area when existing materials deteriorate.
10. Licensees shall not introduce formed concrete within the reserves.
11. Licensees shall not change the natural contours of the land surface without DBCA approval.
12. Licensees will not take, possess, or disturb native flora or fauna listed as threatened¹⁵ under the *Biodiversity Conservation Act 2016*.
13. Licensees shall not remove, interfere with or damage DBCA management infrastructure or plantings placed by DBCA for environmental management and control of vehicle and pedestrian access or the protection of natural features of the reserves.
14. Licensees shall not construct, install, place, or keep hard materials including but not limited to rocks, bricks, cement, or sandbags to revet against coastal erosion without DBCA approval.
15. Licensees shall not bring, keep, or use any earthmoving machinery, including but not limited to dingo machinery, bobcats, excavators, and tipper truck within the reserves.

¹³Dog Act 1976 s31. Control of dogs in certain public places (1) A dog shall not be in a public place unless it is — (a) held by a person capable of controlling the dog; or (b) securely tethered for a temporary purpose, by means of a chain, cord, leash, or harness of sufficient strength and not exceeding a length of two metres.

¹⁴ Existing width at a reference date specified by DBCA in June 2022

¹⁵ Threatened flora and fauna are the species listed as critically endangered, endangered, or vulnerable threatened species.

Licence conditions 6.C. Waste management, asbestos and contamination

1. Licensees shall not dump putrescible, bulk, or waste materials of any kind within the Wedge and Grey reserves except within a lidded or other skip bin or waste management area in a designated space or receptacle.
2. Licensees who spill a hazardous substance or material shall arrange for the clean-up of that spillage at their own cost to DBCA satisfaction.
3. Licensees shall not dump asbestos containing material of any quantity anywhere in the reserves, including skip bin receptacles and waste management areas.
4. Licensees shall remove and dispose of asbestos containing material at their own cost from a shack, fisher shed or associated structure, utility or any part of an occupancy area or surround where a health risk is identified by a certified asbestos inspector.
5. Licensees shall not introduce, store, or reuse asbestos containing material anywhere on the reserves.

Licence conditions 6.D. Vehicle and traffic management

1. Licensees shall not abandon any vehicle, vessel, machinery or any part of a vehicle, vessel, or machinery, within the reserves.
2. Licensees may temporarily park vehicles, including trailers and boats within the occupancy area and surround where space is available and only when the shack or fisher shed is in use.
3. Licensees may store licensed beach retrieval vehicles and licensed boat trailers within an occupancy area and surround where space is available.
4. Licensees shall not drive vehicles in the reserve except on designated DBCA managed tracks and on the beach in areas where vehicle access is permitted.
5. Licensees shall not operate an unlicensed vehicle, or a vehicle not designed or licensed for on-road use within the reserves without DBCA approval.

Licence conditions 6.E. Fire Management

1. Licensees shall not light an open fire, wood fire barbecue or solid fuel cooker beyond the shack or fisher shed surround at any time.
2. Licensees shall not light an open fire, wood fired barbecue or a solid fuel cooker anywhere in the reserves if the fire danger rating on the day is 'high', 'extreme' or 'catastrophic' or a total fire ban has been declared.
3. Licensees shall not light or maintain an open fire when the fire danger rating is 'high', 'extreme' or 'catastrophic' or a total fire ban has been declared.

4. All licensees are required to comply with the requirements of the Shire of Dandaragan Camping and Cooking Fires Policy and Prohibited and Restricted Burning times and the requirements of the *Bush Fire Act 1954*.
5. Licensees shall not collect firewood (dead wood lying on the ground) or living native vegetation from the reserves for use in fires of any type.

Licence conditions 6.F. Storage of materials and other property

1. Licensees shall store materials and other property entirely within two metres of the built footprint of a shack or fisher shed.
2. Licensees shall not introduce materials or property to any part of the reserves that may become a hazard to any person on or using the reserves.
3. Fisher Shed Licensees may store up to 10,000 litres of fuel for professional fishing purposes inside an existing fisher shed in accordance with the *Occupational Safety and Health Regulations 1996* and all relevant Australian Standards and Codes of Practice.
4. Fisher Shed Licensees shall advise DBCA of the location of fuel storage within the Wedge reserve that exceeds 200 litres.
5. Fisher Shed Licensees shall display a sign on all shed doors with the words 'DANGER Flammable Materials' where fuel is stored inside the shed.
6. Licensees shall not store petrol, diesel or oil within the reserves exceeding 200 litres (in combined total), except where the excess is contained within a vehicle or boat fuel tank.
NOTE: This licence condition does not apply to Professional Fisher Shed licensees.
7. Licensees, including Fisher Shed Licensees, shall ensure fuel storage containers are marked with the fuel type for easy reference by emergency responders.

Licence conditions 6.G. Firearms

1. Licensees shall not bring or allow any person to bring a firearm onto the reserves.

Licence conditions 6.H. Camping

1. Licensees may host one camping unit and an associated vehicle at any one time, consisting of no more than six persons, and for not more than 14 consecutive days, within an occupancy area or surround if space allows, until such time that DBCA establishes managed camp sites.
2. Licensees shall ensure that a camping unit and vehicle do not impinge on a neighbouring occupancy area or surround, impede reasonable access to a neighbouring occupancy area or surround, passage along a DBCA managed track or adversely impact native vegetation.
3. Licensees shall always provide campers access to an unlocked shack to indicate to DBCA that campers are hosted guests of the licensees.

4. Licensees shall not store an unused camping unit within the reserves that was not recorded by DBCA as a fixture on 16 August 2016, except where the licensee is transiting in or with the camping unit from their shack to a further destination within 14 days.

Licence conditions 6.I. Commercial operations, events, advertising, and signage

1. Licensees shall not operate a business or commercial enterprise within the reserves without DBCA approval.
2. Licensees shall not sell goods or services within the reserve without DBCA approval.
3. Licensees shall not place or display any form of advertising material within the reserves without DBCA approval.
4. Licensees shall not, without lawful authority, organise, advertise, or hold a meeting, function or event within the reserves which is likely to involve or involves the attendance of more than 100 persons.
5. Licensees shall not install or erect a sign within the reserve without lawful authority.
6. Licensees shall not remove or interfere with any part of a building, fence, facility, sign, notice, device, machinery that is DBCA property.

Licence conditions 6.J. Electrical and gas

1. Licensees shall operate portable power boxes and generators within an occupancy area except where it impacts the quiet enjoyment of other licensees or visitors to the reserves.
2. Licensees shall not use commercial or industrial scale generators (>6KVA) without DBCA approval.
3. Licensees may not install or replace solar panels in the reserve, other than directly on the roof of a shack, fisher shed or associated structure where that roof can carry that load.
4. Licensees may not install or replace wind generators, inclusive of support cables, in the reserve other than directly on the roof of a shack, shed or associated structure where that roof can carry that load.
5. Licensees shall submit a copy of an Electrical Compliance (Safety) Certificate to DBCA after installing a new solar panel or wind generator on a roof if certification is required under the *Electricity (Licensing) Regulations 1991* **OR** submit a certified statutory declaration stating that “An Electrical Compliance (Safety) Certificate for my newly installed [solar panel or wind generator] is not required under the *Electricity (Licensing) Regulations 1991*”.
6. Licensees may not share or distribute gas or electrical connections of any kind for a distance greater than 20 metres and only then above the ground.
7. Licensees may not extend electrical or gas connections of any kind, above or below ground, across a vehicle approach, a DBCA managed track or within or across a neighbouring occupancy area or surround.

8. Licensees shall not install or maintain underground electrical and gas connections outside an occupancy area without DBCA approval.
9. Licensees shall not install or maintain overhead electrical wiring, cables, cords or similar, including string lighting outside an occupancy area.
10. Licensees shall not place or keep gas cylinders outside an occupancy area except when attached to a barbecue that is in use.

Licence conditions 6.K. Water storage

1. Licensees may have unlimited water storage capacity within two metres of the built footprint of a shack or fisher shed. *Note: Where the diameter of a water storage unit extends beyond the two metre limit, more than 50 per cent of the water storage unit diameter must lie within the two metre limit.*
2. Licensees shall not introduce a new water storage unit or replace or relocate an existing water storage unit beyond two metres of the built footprint of a shack or fisher shed.
3. Licensees shall not install or replace above or below ground water storage unit pipework where the pipework is located outside the shack or fisher shed surround, and associated structure occupancy area.
4. Licensees shall install a new or relocated water storage unit directly on natural ground without causing ground disturbance.
5. Licensees shall not clear native vegetation to make way for a new or relocated water storage unit, plumbing or any other utility except within two metres of a shack or fisher shed.

Licence conditions 6.L. Bores, wells, windmills, and in-ground sewage systems

1. Licensees shall not install new bores, wells, windmills, or in-ground sewage systems at any location within the reserves without DBCA approval.
2. Licensees shall ensure existing sewage treatment systems (including septic tanks and leach drains) are maintained in accordance with the requirements of the *Health (Treatment of Sewage and Disposal of Effluent and Liquid Waste) Regulations 1974* including the requirements associated with the pump out of waste by a licensed contractor.
Note: Licensees are encouraged to contact the Department of Health for advice and may be required to present that advice to DBCA upon demand.
3. Licensees shall not restore or replace a failed borehole or windmill without DBCA approval.
4. Licensees shall ensure existing in-ground sewage tanks are properly lidded to support a vehicle passing over the tank, or with a concrete cover not less than 65 mm thick and reinforced with F.41 steel mesh as required by the *Health (Treatment of Sewage and Disposal of Effluent and Liquid Waste) Regulations 1974*.

5. Licensees shall not install or keep an open-air urinal anywhere in the reserves whether connected to an in-ground sewage system or not where it can be viewed by other reserve users.
6. Licensees shall not install or replace a long-drop toilet anywhere in the reserves.

Licence conditions 6.M Fences, gates and posts

1. Licensees shall remove all or part of a fence, gate and/or post where deemed structurally unsafe by DBCA or where DBCA agree that these elements present a risk to other licensees or reserve visitors, and the licensees may replace the removed fence, gate and/or post with a fence, gate or post of the same materials (except asbestos) and construct to a built height of no greater than 1200mm.
2. Licensees shall not install, keep or maintain an obstruction of any kind on or across a DBCA managed track or on or across a vehicle approach beyond the edge of an occupancy area or surround, whichever is the greater.
3. Licensees shall remove any barbed wire associated with their occupancy of the reserve.

LICENCE CONDITIONS 7. Building repair and maintenance

DBCA Explanatory Notes

- 7.1) Licensees are responsible for the safety and use of their shack, fisher shed, associated structures and utilities. Minor maintenance may be required to address immediate safety issues however, maintenance work must be in keeping with licence conditions.
- 7.2) Licensees shall make application to DBCA for approval to undertake maintenance or repair works not described in these licence conditions and are advised not to proceed until a written response is received.

Legal constraints

- 7.3 Private structures at Wedge and Grey were built without planning approval under the *Town Planning and Development Act 1928* and *Land Act 1933* (now replaced by the *Planning and Development Act 2005* and *Land Administration Act 1997*) or approvals under the *Builders Registration Act 1938* (now replaced by the *Building Act 2011*).
- 7.4) The Shire of Dandaragan *Local Planning Scheme No. 7* (the Scheme) reserves Wedge and Grey for '*Parks and Recreation*'. The presence of private structures is inconsistent with this reservation and as such the Shire of Dandaragan as the planning and building approval authority for Wedge and Grey cannot issue retrospective or contemporary planning approval for private structures, consider building applications for the introduction of private structures or the structural repair of existing structures where a building permit is required.
- 7.5) *Building Act 2011* exemptions do not apply at Wedge and Grey as all structures were built without planning and building approval from a permit authority and cannot address the requirements of the National Construction Code of Australia including requirements relating to fire.
- 7.6) Building and maintenance work that would require planning and development approval under the *Shire of Dandaragan Local Planning Scheme No. 7* and the *Planning and Development Act 2005*, and a building permit from the Shire of Dandaragan as the established Permit Authority under the *Building Act 2011* is not allowed.

Place heritage

- 7.7) The Heritage Council of Western Australia's assessment notes that the shack settlements at Wedge and Grey are significant as a rare example of squatter shack settlements associated with post-war recreation. The shack represents a distinctive aesthetic.
- 7.8) Wedge and Grey have not been entered into the Register of State Heritage but are considered heritage protected places under the *Planning and Development Act 2005* because it is on the Heritage Council's assessment program.
- 7.9) There are no formal referral requirements in place. Should requirements change, licence conditions will be amended, and licensees will be informed

Building maintenance – ALLOWED

- 7.9) The following building maintenance work is allowed on a shack, fisher shed or associated structure if the work does not adversely affect structural soundness and **subject to no structural change or repair occurring that is likely to require a building permit:**
- a) Maintenance and replacement of the internal fixtures of a shack, Fisher Shed or associated structure such a kitchen and bathroom fixtures.
 - b) Replacement of internal wall and ceiling cladding.
 - c) Installation of insulation to wall and roof cavities.
 - d) Replacement and introduction of guttering and down pipes.
 - e) Painting of internal and external surfaces.
 - f) Replacement of external roof and wall cladding with the same material, such as sheet metal for sheet metal.
 - g) Replacement of asbestos roof and wall cladding with cement board or sheet metal subject to WorkSafe regulations being complied with.
 - h) Construction of a retaining wall less than 500mm in built height within an occupancy area where it does not impact a neighbouring occupancy area.
 - i) Pump-out of in-ground sewage except where digging machinery is required that must be approved by DBCA.
 - j) Removal or in-fill of an in-ground septic system except where digging machinery is required that must be approved by DBCA.
 - k) Removal of fences, posts and gates from an occupancy area or surround
 - l) Removal of fences and gates consisting of asbestos containing material.
 - m) Screening or rescreening the roof or walls of a patio, verandah or other similar structure with shade cloth, flyscreen or a see-through blind and only if the screening allows unobstructed access at all times to DBCA for management and emergency purposes.
 - n) Replacement of floorboards on a deck or other platform using the same material subject to no change occurring to the foundations, supports/stumps/posts, sub floor structure, balustrade, access ramp, steps, or ladder.
 - o) Installation of a vaulted or sealed chemical toilet.
 - p) Installation of new doors and windows without increasing the size or location of existing door jambs and window openings.
 - q) Affixing electrical equipment to a roof where that roof can carry that load.

Licence conditions 7. Building repair and maintenance

7.A. Licensees shall not construct or install a new or replacement structure or water storage stand of any dimension or construct in the reserves.

7.B. Licensees shall not undertake building repair work that will require a building permit under the *Building Act 2011*.

- 7.C.** Licensees shall inform DBCA of risks that may affect the safety of other reserve users upon discovery, such as storm damage to a structure.

[Consequence for non-compliance – Breach Notice requiring the removal or reversal of structural change subject to DBCA discretion, or advice from a building inspector authorised under the Building Act 2011 if the reversal of the structural change may require a building permit. CALM Reg 34 penalty up to \$2,000 may apply if a new structure is built within the reserves].

LICENCE CONDITIONS 8. Time-bound requirements

DBCA explanatory notes

8.1 If the required work is to occur within an Aboriginal cultural heritage site, or it is unclear if it is to occur within an Aboriginal cultural heritage site, then licensees should seek advice from DPLH via swsheritage@dplh.wa.gov.au as to whether an approval is required under the *Aboriginal Heritage Act 1972* or *Aboriginal Cultural Heritage Act 2021* before proceeding.

Licence conditions 8. Time-bound requirements

- 8.A** **By 31 May 2023**, licensees shall remove integrated bulk containers (IBC) and ex-chemical storage containers and similar vessels not certified as Australian Standard for drinking water associated with their shack, shed, and associated structures from the reserve.
- 8.B** **By 31 May 2023**, licensees shall remove synthetic materials including but not limited to carpet, shade cloth, and artificial turf from the ground on all vehicle approaches to the edge of the shack, fisher shed or associated structure occupancy area and anywhere beyond the shack or fisher surround or associated structure occupancy area to reduce the impact of plastic contamination in the reserves. *NOTE: Licensees who can provide evidence of hardship such as a vehicle bogging or sand inundation of a structure due to the removal of synthetic materials may seek advice from DBCA regarding sand stabilisation methods.*
- 8.C.** **By 31 May 2024**, licensees shall provide to DBCA, as a risk management precaution:
- a) an electrical compliance (safety) certificate from a licensed electrician, stating that all electrical connections associated with the shack, all associated structures, occupancy area and surround comply with the requirements of the *Electricity (Licensing) Regulations 1991*.
- OR**
- b) a certified statutory declaration stating that “I declare that there are no electrical connections associated with my occupancy of the reserve under licence [number] require electrical safety certification under the *Electricity (Licensing) Regulations 1991*”.
- OR**
- c) a certified statutory declaration stating that “I declare that there have been no changes to the electrical connections associated with my occupancy under licence [number] since I submitted an electrical compliance (safety) certificate in the 2019-2022 licence term, that included all electrical connections associated with my occupancy of the reserve”.
- 8.D.** **By 31 May 2024**, licensees shall provide to DBCA, as a risk management precaution:
- a gas compliance (safety) certificate from a licensed gas fitter, stating that all gas connections associated with the shack, all associated structures, occupancy area and surround comply with the requirements of the *Gas Standards (Gasfitting and Consumer Gas Installations) Regulations 1999*.
- OR**

a certified statutory declaration stating that “no structure, gas connection or gas appliance associated with my occupancy under licence [number] requires a gas compliance (safety) certification under the *Gas Standards (Gasfitting and Consumer Gas Installations) Regulations 1999*”.

OR

a certified statutory declaration stating that “I declare that there have been no changes to the gas connections associated with my occupancy under licence [number] since I voluntarily submitted a gas compliance (safety) certificate in the 2019-2022 licence term, that included all gas connections associated with my occupancy of the reserve”.

NOTE: DBCA encourage licensees to seek the advice of a licensed gas fitter.

8.E. By 31 May 2024, licensees shall present to DBCA, as a risk management precaution, a qualified structural engineer certified scaled structural diagram of all water storage stands greater than 1000mm in built height associated with their licence whether in use or not, inclusive of an assessment of materials used, footings and maximum load capacity **OR** remove uncertified water tank stands whether in use or not that are greater than 1000mm in built height. *NOTE: Licensees who provided structural engineering certification in the 2019-2022 licence term that satisfies this licence condition are not required to provide any further information unless they have made structural changes to the water storage stand after the date of that certification.*

8.F. By 31 May 2025, licensees shall advise DBCA of their preferred primary vehicle approach to a shack or fisher shed occupancy area as a required contribution to the preparation (by DBCA) of a track rationalisation plan for the Wedge and Grey reserves.

8.G. By 31 May 2026, licensees shall remove all solar panels and wind generators, including support cables and footings, installed on the ground.

LICENCE CONDITIONS 9. Licence expiry or cessation

DBCA Explanatory Notes

9.1) A licence will automatically expire if the shack associated with the licence has been removed in part or as a whole and whether intentionally or unintentionally.

9.2) The licence term set out in Schedule 1 reflects the circumstance that if DBCA ceases to manage the reserve or a relevant part thereof prior to the expiration of the licence term, the licence will automatically expire at which time the removal of all structures and property and remediation of an occupancy area, surround and beyond is to occur at the licensee’s cost and to DBCA’s satisfaction by a due date specified by the Director General in the advice of early expiry, and DBCA will endeavour to provide not less than 12 weeks notice of such expiry.

9.3) Upon a Notice of Cancellation coming into effect, and notwithstanding section 108A of the CALM Act and r.77, 80 and 85 to 88 of the CALM Regs, the Director General reserves the right to waive the requirement for the removal of the shack, fisher shed, associated structures and other property on the basis that the structures and all related property have become the property of the Crown that may be disposed of as the Director General may direct.

9.4) Upon a Notice of Cancellation coming into effect, and notwithstanding section 108A of the CALM Act and r.77, 80 and 85 to 88 of the CALM Regs, the Director General has the right to remove structures and property from a former occupancy area and surround without notice to the former licensees on the basis that the property has become the property of the Crown to be disposed of as the Director General may direct if the former licensees do not remove the structures and property by the due date specified in a Notice of Cancellation.

9.5) The cost to DBCA of removing structures and property and remediating a former occupancy area and surrounds in the event licensees do not remove the structures and property as required by the Director General in a Notice of Cancellation will be a debt payable by the former licensee on demand and in default of compliance will be recoverable in a court of competent jurisdiction together with the costs of recovery.

9.6) No compensation or other consideration shall be payable to or claimable by the licensees from the Director General for or arising out of the expiry or sooner determination or cessation of a licence.

9.7) If the removal of property is to occur within an Aboriginal cultural heritage site, or it is unclear if the property to be removed lies within an Aboriginal cultural heritage site, then licensees should seek advice from DPLH via swsheritage@dplh.wa.gov.au as to whether an approval is required under the *Aboriginal Heritage Act 1972* or *Aboriginal Cultural Heritage Act 2021* before proceeding.

Licence conditions 9. Licence expiry or cessation

- 9.A.** Licensees shall otherwise remove all structures and property within an occupancy area and shack or fisher shed surround:
- i. within 12 weeks of expiration or cessation of the licence where there will be no renewal or grant of a new licence term, **OR**
 - ii. within 12 weeks of being advised that a licence has been cancelled for any reason, at their own cost within the specifications imposed by the Director General in any Notice of Proposed Cancellation, unless the Director General has:
 - i. given notice that the requirement for removal is waived prior to the date of expiry or termination: **OR**
 - ii. reached agreement with the licensee that DBCA will facilitate the removal at the licensees cost with such costs being recoverable as a debt due and payable on presentation of a DBCA tax invoice.

LICENCE CONDITIONS 10. Licence surrender

DBCA Explanatory Notes

10.1) A licensee may surrender a licence by advising DBCA in writing and stating the date of surrender¹⁶.

10.2) Where a licensee surrenders a licence within the first calendar year of the licence term the licensee will not be held responsible for the costs associated with the removal of structures and property from an occupancy area or surround or remediation of those areas. After this time, DBCA will announce whether a periodic surrender amnesty¹⁷ will be available to licensees.

10.3) DBCA reserves the right to keep a structure and any remaining property where the licence has been surrendered on the basis that the structure and property has become the property of the Crown to be disposed of as the Director General may direct.

10.4) No compensation or other consideration shall be payable to or claimable by the licensees from the Director General for or arising out of the surrender of a licence.

10.5) A person noted on the Deed in place on 31 October 2019 may make representation to the Director General to replace a licensee who has surrendered an interest in the licence.

10.6) DBCA will refund licence costs from the date of surrender to the end of the invoiced period.

¹⁶ The date of licence surrender is the date at which the licensee will no longer enter the structures associated with the licence and will no longer have claim to the structures and any property associated with the structures.

¹⁷ Surrender amnesty – a period of time announced by DBCA where licensees may surrender a licence with no costs attributed to them for the removal of structures and property and remediation of a site.

Licence conditions 10. Licence surrender

- 10.A.** Licensees may surrender a licence at any time during the licence term subject to all licensees and interested parties of a Deed dated 31 October 2019 supporting the surrender. *[DBCA will notify all licensees and interested parties noted on a Deed of the proposed surrender prior to cancellation of the licence].*
- 10.B.** A licensee may surrender their interest in a licence, where a remaining licensee wishes to continue to hold that licence.

LICENCE CONDITIONS 11. Replacement licence¹⁸

DBCA explanatory notes

- 11.1) The issuing of a replacement licence is subject to Director General discretion and is not an entitlement of the applicant.
- 11.2) Potential applicants of a replacement licence may seek advice from DBCA on the availability of Crown owned structures (being vacant unlicensed structures).
- 11.3) All documents requested by DBCA must be submitted by the due date specified by DBCA.
- 11.4) The Director General will not issue a replacement licence to a former licensee, where a Notice of Cancellation of a licence for any shack within the Wedge and Grey reserves was issued by the Director General because of a failure to comply with licence conditions or other DBCA directions.

Licence conditions 11. Replacement licence

- 11.A.** Licensees may make representation to the Director General requesting a replacement licence to be issued in their names for a Crown owned structure that has been deemed adequate for further use without any structural repair requiring a building permit by a qualified building inspector under the *Building Act 2011* engaged by DBCA where that licensee has experienced an unintended loss of a shack, such that their licence has expired.
- 11.B** Licensees may provide a statutory declaration to immediate family members that they support a named adult immediate family member applying to the Director General within six calendar months of the death of the licensee, for a replacement licence for the shack and associated structures formerly held by the deceased licensee where all such structures associated with the licence have been deemed adequate for further use without any structural repair requiring a building permit by a qualified building inspector under the *Building Act 2011* engaged by the nominated immediate family member.
- 11.C.** Licensees seeking a replacement licence shall pay a \$250 non-refundable administration fee to DBCA upon application for a replacement licence.

¹⁸ Replacement licence – a licence to replace a licence that automatically expired due the unintended loss of a shack [formerly referred to as a licence transfer].

LICENCE CONDITIONS 12. Dangerous structures, utilities, and property

DBCA Explanatory Notes

12.1) DBCA has the right to inspect structures, utilities and property within an occupancy area and surround to identify dangers that may present a risk of injury or death to licensees, visitors to the reserves and DBCA officers.

12.2) DBCA may seek the services of an authorised person under the *Building Act 2011* or *Work Health and Safety Act 2020* to determine the level of risk associated with a structure, utility or other property identified as being in a potentially dangerous state and will take the advice of the authorised person in relation to the management of the potential danger.

12.3) In the event of DBCA declaring a shack or fisher shed to be in a dangerous state after taking advice from an authorised person under the *Building Act 2011* or *Work Health and Safety Act 2020*, a Notice of Proposed Cancellation will be issued with an intent to cancel the licence.

12.4) In the event of DBCA declaring an associated structure, utility, or other property to be in a dangerous state after taking advice from an authorised person under the *Building Act 2011* or *Work Health and Safety Act 2020*, a Notice of Proposed Cancellation will be issued requiring the removal of the affected property at the licensees cost by a due date specified by DBCA. Upon removal of the property declared to be in a dangerous state, the matter will be resolved except where all requirements of a Notice of Proposed Cancellation have not been met by the due date.

12.5) Notwithstanding section 108A of the CALM Act and regulations 77, 80 and 85 to 88 of the CALM Regs, the Director General reserves the right to remove a shack, fisher shed, associated structure, utility or other property from an occupancy area and surround that is the subject of a Notice of Cancellation if the former licensee does not remove the structures, utilities and other property by the due date set in the Notice of Cancellation on the basis that the property becomes the property of the Crown and may be disposed of as the Director General may direct.

12.6) The cost to DBCA of removing structures and property and remediating a former occupancy area and surrounds in the event licensees do not remove the structures and property as required by the Director General in a Notice of Cancellation may be regarded as a debt payable by the former licensee on demand and in default of compliance will be recoverable in a court of competent jurisdiction together with the costs of recovery.

12.7) If the removal is to occur within an Aboriginal cultural heritage site, or it is unclear if it is to occur within an Aboriginal cultural heritage site, then licensees should seek advice from DPLH via swsheritage@dplh.wa.gov.au as to whether an approval is required under the *Aboriginal Heritage Act 1972* or *Aboriginal Cultural Heritage Act 2021* before proceeding.

12.8) No compensation or other consideration shall be payable to or claimable by the licensees from the Director General for or arising out of the expiry or sooner determination or cessation of a licence.

Licence conditions 12. Dangerous structures, utilities, and property

12.A. Licensees shall remove shacks, sheds, associated structures, utilities, debris, and any asbestos contaminated soil that has been identified by DBCA, or a qualified building inspector under the *Building Act 2011*, as being in a dangerous state at their cost and subject to DBCA conditions.

ANNEXURE 1: PROCESS for licence condition breach resolution

DBCA issue licensees a Schedule 1 licence in good faith and through the legal mechanism of s101 of the *Conservation and Land Management Act 1984* to enter upon and use the reserves to conduct activities described in Schedule 2. In accepting a licence, a licensee accepts that all licence conditions must be complied with.

If a licensee does not comply with a licence condition, DBCA will implement the breach process described below unless other consequences are described or deemed appropriate by the Director General. All notices served shall have a resolution date of at least 30 days from the date of issue.

If a licensee does not agree that a breach of licence conditions has occurred, the licensee may make written representation to the Turquoise Coast District Manager in the first instance by emailing wedgeandgrey@dbca.wa.gov.au (Subject - Attention District Manager). If the licensee is not satisfied with the District Manager's response, a written representation may be made directly to the Director General by emailing wedgeandgrey@dbca.wa.gov.au (Subject - Attention Director General). All representations must cite a licence number.

Licensees are encouraged to seek advice from the Senior Project Officer for Wedge and Grey at 9688 6000 or wedgeandgrey@dbca.wa.gov.au before submitting a written representation to the District Manager or Director General.

STEP 1.

DBCA will issue a written **Breach Notice** to both licensees (where there are two) signed by the District Manager. The Breach Notice will identify the licence condition that has been breached and describe what action is required to resolve the matter and by what date. The District Manager will monitor the situation and determine if requirements within the Breach Notice are actioned by the due date.

STEP 2.

If the licensees do not resolve the matter by the due date set in STEP 1, DBCA will issue a **Notice of Proposed Cancellation** to both licensees (where there are two) signed by the District Manager on behalf of the Director General. The District Manager informs the Director General of the issue of this notice prior to it being sent.

The Notice of Proposed Cancellation will identify the licence condition that has been breached and describe what action is required to resolve the matter and by what date. The District Manager will monitor the situation and determine if requirements within the Notice of Proposed Cancellation are actioned by the due date.

STEP 3.

If the licensees do not resolve the matter by the due date set in STEP 2, DBCA will issue a **Notice of Cancellation** to both licensees (where there are two) signed by the Director General or a nominated delegate. Any conditions or time frames attached to a Notice of Cancellation are made at the Director General's discretion. The District Manager will monitor the situation and determine if requirements within the Notice of Cancellation are actioned by the due date.

