

Licence Agreement

Marri Planting Research Project

Murdoch University

WA Bluemetal

THIS LICENCE is made

day of

2014.

BETWEEN:

Murdoch University ABN 61 616 369 313 of)
90 South Street, Murdoch 6150, Western)
Australia (**Murdoch**))

AND

WA Bluemetal [Ransberg Pty Ltd)
ABN 32 094 536 764 of 401 Spearwood)
Avenue, Bibra Lake, Western Australia (**WA**)
Bluemetal))
)

BACKGROUND:

- A. Murdoch has been awarded a linkage grant from the Australian Research Council (“ARC”) to undertake research to understand the underlying causes and practical management solutions to marri (*Corymbia calophylla*) tree decline in the southwest of Western Australia (the “ARC Project”).
- B. WA Bluemetal owns land in Mundijong in the Shire of Serpentine-Jarrahdale, Western Australia and has agreed to provide a licence of approximately 4 hectares of land to Murdoch for the purposes of planting approximately 5,000 marri (*Corymbia calophylla*) trees (the “Trees”) for the purposes of the ARC Project.
- C. Murdoch has agreed to acknowledge WA Bluemetal contribution to the ARC Project and to provide WA Bluemetal with in-kind support in the form of advice on environmental matters.

OPERATIVE PART:

The Parties AGREE:

1 DEFINITIONS

In this Licence, unless otherwise required by the context or subject matter:

Agreement means this licence agreement.

Approved Purpose means the purpose set out in clause 3.1.

Authority includes a government, a local, statutory or public authority, and a person entitled to carry out a statutory function.

Authorised Person means:

- (a) an agent, employee, student, licensee, or invitee of Murdoch; and
- (b) any person visiting the Site with the express or implied consent of any person mentioned in paragraph (a).

Business Day means a day other than a Saturday, Sunday or public holiday in Western Australia.

Licence means this licence agreement as supplemented, amended or varied from time to time.

Site means the land shown in the plan in the Annexure.

Party means WA Bluemetal or Murdoch, according to the context, and **Parties** means both WA Bluemetal and Murdoch.

Schedule means the schedule to this Licence.

Term or Agreement Term means the term of this Agreement as specified in **Item 1** of the Schedule.

2 INTERPRETATION

In this Agreement, unless expressed to the contrary:

2.1 Words importing:

- (a) the singular include the plural;
- (b) the plural include the singular; and
- (c) any gender includes each gender;

2.2 A reference to:

- (a) a natural person includes a body corporate or local government;
- (b) a body corporate or local government includes a natural person;
- (c) a professional body includes a successor to or substitute for that body;
- (d) a Party includes its legal personal representatives, successors and assigns and if a Party comprises two or more persons, the legal personal representatives, successors and assigns of each of those persons;
- (e) a statute, includes an ordinance, code, regulation, award, town planning scheme, regulation, local law, by-law, requisition, order or other statutory instruments made under any of them and a reference to any of them, whether or not by name, includes any amendments to, re-enactments of or replacements of any of them from time to time in force;
- (f) a right includes a benefit, remedy, discretion, authority or power;
- (g) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
- (h) this Agreement or provisions of this Agreement or any other deed, agreement, instrument or contract includes a reference to:
 - i. both express and implied provisions; and
 - ii. that other deed, agreement, instrument or contract as varied, supplemented, replaced or amended;
- (i) writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;
- (j) anything (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them; and
- (k) a subparagraph, paragraph, subclause, clause, Item, Schedule or Annexure is a reference to, respectively, a subparagraph, paragraph, subclause, clause, Item, Schedule or Annexure of this Agreement;

- 2.3 The covenants and obligations on the part of Murdoch not to do or omit to do any act or thing include:
- (a) covenants not to permit that act or thing to be done or omitted to be done by an Authorised Person; and
 - (b) a covenant to take all reasonable steps to ensure that that act or thing is not done or omitted to be done;
- 2.4 Except in the Schedule, headings do not affect the interpretation of this Agreement; and
- 2.5 If a Party comprises two or more persons, the covenants and agreements on their part bind them and must be observed and performed by them jointly and each of them severally, and may be enforced against any one or more of them.
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3 GRANT OF LICENCE

- 3.1 Subject to the terms of this Agreement and in consideration for the covenants given by Murdoch in this Agreement, WA Bluemetal grants to Murdoch a fee free non-exclusive licence to access and use the Site during the Term for the following purposes ("**Approved Purpose**"):
- (a) planting and managing the Trees;
 - (b) fencing the Site;
 - (c) managing the Site for weeds, dieback and bushfire prevention;
 - (d) monitoring the Trees;
 - (e) conducting field research on the Site;
 - (f) developing the Site as required to facilitate research;
 - (g) showing the Trees and the Site to students and staff of Murdoch and interested third parties for teaching and research purposes; and
 - (h) any other activity ancillary to all of the above.
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4 MURDOCH'S OBLIGATIONS IN RELATION TO THE TREES

- 4.1 Murdoch agrees to:
- (a) provide the Trees;

- (b) plant the Trees;
 - (c) fence the Site; and
 - (d) carry out all activities within the site to be in accordance with WA Bluemetal's environmental and occupational health and safety policies and procedures as provided to Murdoch at the commencement of this Agreement, and abide by the direction of the quarry manager (or authorised delegate) at all times.
 - (e) Provide weed control on the Site prior to the planting of the Trees and during the management of the Term of this Agreement
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5 WA BLUEMETAL'S OBLIGATIONS IN RELATION TO THE TREES

5.1 WA Bluemetal agrees to:

- (a) prepare the Site for the planting of the Trees, which involves: forming and shaping the clay stockpile (weather permitting for machine access); Rip ground at a maximum depth of 500m with a Dozer on location at the time ; and
 - (b) if necessary, when the onsite dust suppressant water truck is available along with an operator, occasional watering of the Trees during the first summer period from planting
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6 OWNERSHIP OF TREES

- 6.1 During the Term, Murdoch will own the Trees and WA Bluemetal shall not have the right to remove the Trees from the Site or harvest the timber from the Trees.
 - 6.2 Subject to the terms of this Licence, WA Bluemetal will own the Trees at the termination of this Agreement.
 - 6.3 Murdoch does not provide any guarantee or warranty to WA Bluemetal as to the number of Trees that will be actually planted, the survival rate of the Trees or the growth rate of the Trees.
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7 APPROVALS

- 7.1 WA Bluemetal will do all things reasonably necessary to obtain the necessary approvals to grant the Licence and plant the Trees as may be required:
 - (a) at law;
 - (b) of the local government; and

(c) of any other party whose consent or approval is required.

8. MURDOCH'S OBLIGATIONS TO WA BLUEMETAL

8.1 Murdoch agrees to:

- (a) acknowledge WA Bluemetal's contribution to the Project in any publications relating to the research outcomes from the Project; and
 - (b) provide WA Bluemetal with in-kind support in the form of advice on environmental matters, to a maximum of 40 hours per year for the term of the agreement.
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9 NO OBLIGATION TO MAKE GOOD

9.1 Murdoch will not have any obligation to reinstate or otherwise make good the Site at the end of the Term.

10 INSURANCE

10.1 Murdoch must effect and maintain the following insurance policies throughout the Term of this Agreement:

- (a) adequate property insurance to cover Murdoch's property;
- (b) adequate insurance to cover legal liability to workers under the Workers Compensation and Injury Management Act 1981 (WA) ("Act") and at common law (provided compensation is payable under the Act)); and
- (c) cover for Murdoch's employees, contractors and students at the Site.

10.2 Murdoch must give WA Bluemetal a copy of any policy, certificate of currency or receipt WA Bluemetal asks for in relation to insurance Murdoch is required to arrange and maintain.

11 TERMINATION

11.1 This Agreement will terminate:

- (a) if all the required approvals are not obtained in accordance with clause 7 by 31 December 2018;
- (b) at the end of the Term or earlier of mutually agreed by the Parties; and
- (c) if any statutory enforcement notice is served on WA Bluemetal or Murdoch in respect of Murdoch's use of the Site.

11.2 A Party may terminate this Agreement if the other Party breaches any provision of this Agreement, which breach is in the reasonable opinion of first Party a significant breach and is either incapable of being remedied or is not remedied with a reasonable period of time.

12 SCHEDULE AND ANNEXURE

The Schedule and Annexure form a part of this Agreement and has effect according to its terms.

13 GOVERNING LAW

This Agreement is governed by and is to be interpreted in accordance with the laws of Western Australia and, where applicable, the laws of the Commonwealth of Australia.

14 ASSIGNMENT

Murdoch must not do any of the following without WA Bluemetal's prior written consent (which may be given or withheld at WA Bluemetal's absolute discretion):

- (a) assign or sublet this Agreement; or
- (b) create in favour of any person an interest in this Agreement or the Site.

15 NOTICES

15.1 A notice, consent, information or request that must or may be given or made to a party under this document is only given or made if it is signed by or on behalf of the party giving or making it and is:

- (a) delivered or posted to the party to whom it is directed at the address stated in item 10 of the Schedule; or
- (b) faxed or send via electronic communication to that party at the fax or email address stated in item 10 of Schedule 1,

or at such other address, email or fax number as may have been notified by that party to each other party, from time to time.

15.2 A notice, consent, information or request is to be treated as given or made in accordance with the following rules:

- (a) if it is delivered, when it is left at the relevant address;
- (b) if it is sent by post, 3 Business Days after being posted; or
- (c) if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

15.3 If:

- (a) a notice, consent, information or request is delivered; or
- (b) an error free transmission report in relation to a fax of a notice, consent, information or request is received,

after the normal business hours of the party to whom it is delivered or sent, it is to be treated as having been given or made at the beginning of the next Business Day.

16 ENTIRE AGREEMENT

This Agreement contains everything that the parties have agreed on in relation to the matters it deals with. No party can rely on an earlier document or anything said or done by another party (or a director, officer, agent or employee of that party) before this Agreement was executed.

17 RELATIONSHIP OF THE PARTIES

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

18 NO LEASE

This agreement does not constitute a lease.

Signed for and on behalf of **WA Bluemetal**



Signed for and on behalf of **Murdoch University**



SCHEDULE

ITEM 1: TERM

Commencing on the date both parties have signed this Agreement and ending 15 (fifteen) years later, unless otherwise agreed by the Parties.

ITEM 2 NOTICE AND ADDRESS DETAILS

WA Bluemetal

Contact name: Steven Della Bona
Address: 401 Spearwood Avenue, Bibra Lake WA 6163
Telephone: 0894347777
Fax: 0894341513

University

Contact name: Naomi Arbon, Grants and Contracts Officer
Address: Murdoch University of 90 South Street Murdoch 6150 WA
Telephone: 08 9360 6761
Fax: 08 9360 6686
Email: n.arbon@murdoch.edu.au

ANNEXURE

Site details

Lot 3, South Western Highway, Whitby, as indicated on this photo:

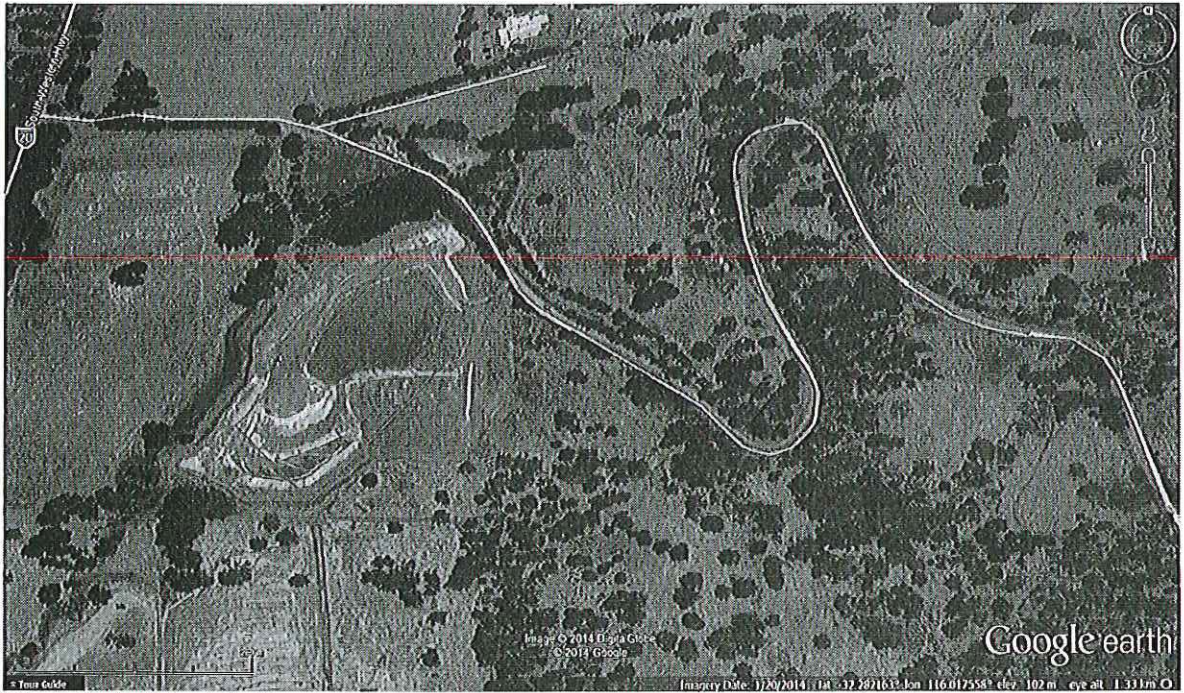


Figure 1: Anticipated alignment of planting area