DIVISION 4C - MACHINERY PROVISIONS FOR LAND RELATED BENEFITS

47. PROCESS FOR CHOOSING A PROPONENT

47.1 Application

(1) This clause 47 is intended to apply to each of the Farm Areas within the M2 Development Area, the Mantinea Development Area and the Ord West Bank Development Area by operation of clauses 31.3 (dealing with development of M2 Maximum Farm Area by Proponents), 32.4 (dealing with development of Mantinea Farm Area by Proponents) and 33.3 (dealing with development of Ord West Bank Farm Area by Proponents), respectively. Accordingly the reference to the term Farm Area, throughout this clause is a reference to all or part of:

(a) M2 Maximum Farm Area;

(b) Mantinea Farm Area; or

(c) Ord West Bank Farm Area.

47.2 Expression of interest

(1) The State must not transfer or grant a freehold or leasehold title in a Farm Area to a Proponent for all or a part of the Farm Area unless the State has released a document calling for expressions of interest, or otherwise as the State considers appropriate, seeking proposals from suitable Proponents, to develop all or part of the Farm Area.

(2) The expression of interest document or request for proposals must specify that:

(a) it is a mandatory requirement for any proposal to be accepted for consideration that the proposal include:

(i) a commitment to comply with the obligations on a Developing Party under clause 48 (5% of Serviced Farm Lots Provisions); and

(ii) a draft Aboriginal Development Package; and

(b) Proponents must make reasonable efforts to consult with the MG Corporation and to reach an agreement in principle with the MG Corporation about the content of the draft Aboriginal Development Package prior to submitting a proposal, to the extent reasonably permitted by probity requirements.

(3) For the avoidance of doubt, the obligation in clause 47.2(2)(b) does not include an obligation to pay the MG Corporation's costs of such consultations.

(4) If more than one Proponent submits a proposal to the State then, subject to clause 47.4 (dealing with the public interest exception), the State must:

(a) within 10 Business Days after the State has provided copies of the draft Aboriginal Development Package to the MG Corporation, invite the MG Corporation to provide written comments on the draft Aboriginal Development Package which forms part of each Proponent's proposal;

(b) assess the proposals according to the Weighting Criteria, and taking account of:

(i) any comments provided by the MG Corporation in accordance with clause 47.2(4)(a); and

(ii) the extent to which the MG Corporation and the Proponent have engaged with a view to reaching an agreement in principle with the MG Corporation about the content of the draft Aboriginal Development Package; and

(c) only offer to transfer or grant a freehold title or lease in the Farm Area to the Proponent (***"Preferred Proponent"***) whose proposal complies with the obligations in clause 47.2(2) and scores the highest score according to the Weighting Criteria.

(5) If the comments provided by the MG Corporation in accordance with clause 47.2(4)(a) include an assertion that a Proponent has failed to provide an adequate draft Aboriginal Development Package then:

(a) the State must:

(i) notify the MG Corporation in writing whether the State agrees or disagrees with the MG Corporation's assertion;

(ii) if the State disagrees, make reasonable efforts to consult with the MG Corporation with a view to resolving the disagreement; and

(iii) if the disagreement cannot be resolved within 10 Business Days of service of the notice referred to in clause 47.2(5)(a)(i), refer the disagreement to an Independent Expert in accordance with clause 53 to resolve the disagreement;

(b) subject to the Independent Expert giving the State and the MG Corporation a reasonable opportunity to make submissions and present information to the Independent Expert, the decision of the Independent Expert shall be final and binding on the State and the MG Corporation for the purposes of clause 47.2(4); and

(c) if the Independent Expert decides that the Proponent had provided an adequate draft Aboriginal Development Package then the MG Corporation must pay to the State a sum of money equivalent to the reasonable costs of the Independent Expert.

47.3 Absence of Preferred Proponent

(1) If for any reason the State does not transfer or grant a freehold title or a lease in the Farm Area to the Preferred Proponent (including because the Preferred Proponent does not accept the offer of a grant) then, subject to clause 47.4 (dealing with Public Interest Exception), the State must only offer to transfer or grant a freehold title or lease in the Farm Area to the Proponent whose proposal complies with the requirements in clause 47.2(2) and scores the next highest score according to the Weighting Criteria (which Proponent is then the Preferred Proponent for the purposes of this clause 47).

(2) If:

(a) the State does not receive any proposals within 12 months of the publication of the expression of interest document or within 12 months of the State otherwise seeking proposals; or

(b) the State determines that none of the proposals (or in a case where clause 47.3(1) applies, none of the remaining proposals) received are acceptable,

then the State may:

(c) amend any document calling for expressions of interest and may publish one or more further documents calling for expressions of interest in accordance with this clause 47; or

(d) with the agreement in writing of the MG Corporation (which agreement must not be unreasonably withheld) vary the process for choosing a Proponent under this clause 47.

47.4 Public interest exception

(1) The State may transfer or grant a freehold or leasehold title to a Proponent chosen otherwise than in accordance with the processes in this clause 47, if the State:

(a) gives written notice to the MG Corporation that it considers it is in the public interest to transfer or grant a freehold title or lease in the Farm Area to:

(i) a particular Proponent (regardless of how chosen);

(ii) a Proponent who has not complied with the requirement in clause 47.2(2)(b); or

(iii) a Proponent whose proposal did not score the highest score according to the Weighting Criteria; and

(b) gives the MG Corporation at least twenty (20) Business Days to make submissions and provide information to the State in response to such a notice;

(c) having regard to clause 49.2 (dealing with Aboriginal Development Package), is satisfied that the Proponent has made best endeavours to consult with the MG Corporation during the period of ten (10) Business Days commencing on receipt of the written notice referred to in clause 47.4(1)(b), about a draft Aboriginal Development Package; and

(d) having taken into account any such submissions and information referred to in clause 47.4(1)(b), still considers it is in the public interest to do one of the things specified in clause 47.4(1)(a).

47.5 Confidentiality

(1) Subject to clause 47.5(2), the MG Corporation must keep the following information confidential and not disclose it to any person (including Proponents other than the Proponent who has created or been privy to the information):

(a) the draft Aboriginal Development Package, and consultations about the draft Aboriginal Development Package, referred to in clause 47.2(2)(b);

(b) any comments provided by the MG Corporation in accordance with clause 47.2(4)(a);

(c) the State's notification and the consultations under clause 47.2(5)(a);

(d) the submissions and information provided to the Independent Expert, and the decision of the Independent Expert, under clause 47.2(5)(b);

(e) the identity of the Proponent referred to in clause 47.4(1)(a);

(f) the MG Corporation's submissions and information referred to in clause 47.4(1)(b); and

(g) the content of any consultations with the Proponent referred to in clause 47.4(1)(c).

(2) The MG Corporation may disclose confidential information referred to in clause 47.5(1):

(a) as required by law;

(b) to a bona fide expert or consultant providing advice to the MG Corporation, provided that expert or consultant agrees to keep the information confidential; and

(c) insofar as the information is in the public domain otherwise than as a result of a breach of clause 47.5(1) by the MG Corporation (or any of its officers, employees, agents or members).

48. 5% OF SERVICED FARM LOTS PROVISIONS

48.1 Application

(1) This clause 48 applies to the M2 Development Area, the Mantinea Development Area and the Ord West Bank Development Area by operation of the following clauses:

(a) clause 31.2 (dealing with Development of M2 Maximum Farm Area by the State or LandCorp);

(b) clause 31.3 (dealing with Development of M2 Maximum Farm Area by Proponent);

(c) clause 32.3 (dealing with Development of Mantinea Farm Area by the State or LandCorp);

(d) clause 32.4 (dealing with Development of Mantinea Farm Area by Proponent);

(e) clause 33.2 (dealing with Development of Ord West Bank Farm Area by the State or LandCorp); and

(f) clause 33.3 (dealing with Development of Ord West Bank Farm Area by Proponent).

(2) A reference to the term Maximum Farm Area, throughout this clause 48 is a reference to either the M2 Maximum Farm Area, Mantinea Farm Area and Ord West Bank Farm Area.

48.2 Five Percent of Serviced Farm Lots Deed

In accordance with clause 31.3 (dealing with Development of M2 Maximum Farm Area by Proponent), clause 32.4 (dealing with Development of Mantinea Farm Area by Proponent) and clause 33.3 (dealing with Development of Ord West Bank Farm Area by Proponent) the Proponent must execute and deliver to the MG Corporation, a deed between the Proponent and the MG Corporation containing the following obligations (“***Five Percent of Serviced Farm Lots Deed***”):

(a) the Proponent undertakes to comply with clauses 48.3 (dealing with Transfer of Serviced Farm Lots) to 48.5 ~~(dealing with failure to make a nomination)~~ (dealing with ‘dealing with Serviced Farm Lots’), as if references in clauses 48.3 to 48.5 to:

(i) the “Maximum Farm Area” were references to the area of the Proponent’s lease or freehold title (as the case may be); and

(ii) the “Developing Party” are references to the Proponent for the relevant area; and

(b) the MG Corporation agrees to comply with this deed as if the Proponent were a Party to this deed; and

(c) the Proponent agrees that it will not assign or transfer its lease or freehold title (as the case may be) unless the assignee or transferee executed and delivers to the MG Corporation a deed (“***Assignment Deed***”) in which it undertakes to be bound by the Five Percent of Serviced Farm Lots Deed and the corresponding provisions of this deed as if it were the Proponent, and that on and from the date of delivery of the Assignment Deed the MG

Corporation releases the Proponent from any liability for anything done or not done under the Five Percent of Serviced Farm Lots Deed and the corresponding provisions of this deed.

48.3 Transfer of Serviced Farm Lots

MG Corporation shall have priority of selection up to 7.5% of the aggregate Market Value of all Serviced Farm Lots in the Farm Area ("Nominated MG Lots"). The MG Corporation, by virtue of this deed, is entitled to 5% of the aggregate Market Value of all Serviced Farm Lots in the Farm Area ("MG Lot Entitlement") without valuable consideration. However, Market Value must be paid for the difference between the Nominated MG Lots (up to 7.5%) and the Lot Entitlement (5%).

(1) A reference in this clause 48 to Market Value is a reference to the Market Value according to the valuation referred to in clause 48.3(3)(a).

(2) The Developing Party must transfer part of the Farm Area to the value of 5% of the aggregate Market Value of all Serviced Farm Lots in the Farm Area ("***MG Lot Entitlement***") in accordance with this clause 48 without valuable consideration passing to the Developing Party.

(3) Prior to the first sale or lease of any Serviced Farm Lot to the public within a Farm Area, or the Developing Party, any other purchaser or other lessee of a Serviced Farm Lot commencing farming operations within a Farm Area, the Developing Party must:

(a) obtain a valuation of the Market Value of each Serviced Farm Lot in accordance with clause 52 (dealing with Valuations); and

(b) at the same time as commencing to obtain the valuation in accordance with clause 48.3(3)(a), give a written notice to the MG Corporation containing:

(i) a plan clearly showing the boundaries of each of the Serviced Farm Lots;

(ii) a statement of the area (in hectares) of each of the Serviced Farm Lots;

(iii) a description of the infrastructure and services available or proposed to be available to each of the Serviced Farm Lots;

(iv) a licence to the MG Corporation by its employees, agents and contractors to enter the Farm Area to inspect the Serviced Farm Lots the subject of the notice; and

(v) any Encumbrances or conditions that any of the Serviced Farm Lots will be subject to on their transfer.

(4) Within twenty (20) Business Days of receiving the valuations referred to in clause 48.3(3)(a), the MG Corporation may nominate in writing to the Developing Party one or more Serviced Farm Lots within the Farm Area with an aggregate Market Value of up to 7.5% of the aggregate Market Value of all Serviced Farm Lots in the Farm Area ("***Nominated MG Lots***"), to be transferred to the MG Corporation or its nominee.

(5) If the MG Corporation gives notice in writing of the Nominated MG Lots then the MG Corporation and the Developing Party shall be deemed to have entered

into a sales contract in respect of the Serviced Farm Lots on the terms in this clause 48.

(6) Unless otherwise agreed in writing between the MG Corporation and the Developing Party, the terms and conditions of sale of Serviced Farm Lots to the MG Corporation under this deed will be those specified in the 2002 Joint Form of General Conditions for the Sale of Land, excluding clauses 1, 4.2, 5, 10, 11, 12, 13.3(a), 14, 15, 19 and 24.14 and as further varied to the extent necessary so that they are consistent with the terms of this deed.

(7) Settlement of the sale of the Serviced Farm Lots will occur within twenty (20) Business Days of the later of:

(a) the issue by the Department of Land Information of certificates of title for each of the Serviced Farm Lots; and

(b) service by the MG Corporation of the notice of the Nominated MG Lots.

(8) If the MG Nominated Lots have an aggregate Market Value greater than the MG Lot Entitlement, then at settlement the MG Corporation must pay to the Developing Party a sum of money being the Market Value of the Nominated MG Lots less the MG Lot Entitlement.

(9) Except in the circumstances referred to in clause ~~48.5 (dealing with failure to make a nomination)~~ 48.4 (dealing with payment in lieu of Serviced Farm Lots) if the Market Value of the Nominated MG Lots is less than the MG Lot Entitlement, then the Developing Party must pay to the MG Corporation a sum of money being the MG Lot Entitlement less the Market Value of the MG Nominated Lots at settlement.

(10) The MG Corporation shall be responsible for payment of all stamp duty and Transfer Costs in respect of transfers of Serviced Farm Lots under this clause 48.

48.4 Payment in lieu of Serviced Farm Lots

(1) The Developing Party must pay to the MG Corporation the MG Lot Entitlement if:

(a) there is no Serviced Farm Lot capable of being transferred to the MG Corporation or its nominee under this clause 48 (for example, because there is only one Serviced Farm Lot);

(b) there is no Serviced Farm Lot with a Market Value equal to or less than the MG Lot Entitlement and the MG Corporation does not wish to take a transfer of any of the Serviced Farm Lots with a Market Value greater than the MG Lot Entitlement and less than 7.5% of the aggregate Market Value of all Serviced Farm Lots; or

(c) where the MG Corporation does not give a notice to the Developing Party in accordance with 48.3(4).

(2) Any payment under clause 48.4 must be made:

(a) if the Serviced Farm Lots are to be made available for sale to the public, then either (at the election of the Developing Party):

(i) in instalments, each instalment being 5% of the Market Value of each Serviced Farm Lot, to be paid within twenty (20) Business Days of the transfer of the relevant Serviced Farm Lot; or

(ii) as a lump sum, within twenty (20) Business Days of the registration of the first transfer of a Serviced Farm Lot within the Maximum Farm Area; or

(b) in any other case, as a lump sum within twenty (20) Business Days of the notice referred to in clause 48.3(3)(b).

48.5 Dealing with Serviced Farm Lots

(1) If clause 48.4(1) applies then the Developing Party may proceed to sell or lease Serviced Farm Lots to the public, or to conduct farming operations on the Farm Area.

(2) If the MG Corporation has made a nomination in accordance with clause 48.3(4) then the Developing Party may sell or lease those Serviced Farm Lots within the Farm Area that are not Nominated MG Lots.

49. ABORIGINAL DEVELOPMENT PACKAGE

49.1 Application

(1) This clause 49 has application in relation to the M2 Development Area, the Mantinea Development Area and the Ord West Bank Development Area, if and in the circumstances it is stated to apply in clauses:

(a) 31.2 (dealing with development of M2 Maximum Farm Area by State or LandCorp);

(b) 31.3 (dealing with development of M2 Maximum Farm Area by Proponents);

(c) 32.3 (dealing with development of Mantinea Farm Area by State or LandCorp);

(d) 32 4 (dealing with development of Mantinea Farm Area by Proponents);

(e) 33.2 (dealing with development of Ord West Bank Farm Area by State or LandCorp); and

(f) 33 3 (dealing with development of Ord West Bank Farm Area by Proponents).

(2) <u>A reference to the term Maximum Farm Area, throughout this clause 49 is a reference to either the M2 Maximum Farm Area, Mantinea Farm Area and Ord West Bank Farm Area.</u>

49.2 State, LandCorp or Proponents other then Preferred Proponent as Developing Party

(1) This clause 49.2 applies if the Developing Party is:

(a) the State;

(b) LandCorp; or

(c) a Proponent, other than a Preferred Proponent whose proposal referred to in clause 47.2(4) includes a draft Aboriginal Development Package and who has complied with the requirement in clause 47.2(2)(b).

(2) The Developing Party must, prior to substantially commencing development of the Maximum Farm Area, provide the MG Corporation with a draft Aboriginal Development Package.

(3) If requested in writing to do so by the MG Corporation, the Developing Party must negotiate in good faith with the MG Corporation with a view to agreeing an Aboriginal Development Package.

(4) If the Developing Party and the MG Corporation cannot agree upon an Aboriginal Development Package within 3 months after the date the Developing Party provided the MG Corporation with the draft Aboriginal Development Package in accordance with clause 49.2(2), then the State must ensure that the Minister for Indigenous Affairs of the State and the Minister for State Development of the State determine an Aboriginal Development Package

taking into account any submissions from the Developing Party and the MG Corporation.

(5) The Developing Party must execute and deliver to the MG Corporation the Aboriginal Development Package agreed or determined in accordance with this clause 49.2.

Note: An agreed or determined Aboriginal Development Package will include a process for determining or verifying the Development Costs.

(6) The Developing Party must not substantially commence development of the Maximum Farm Area until it has executed and delivered to the MG Corporation the Aboriginal Development Package agreed or determined in accordance with this clause 49.2.

Note: If the MG Corporation does not then execute the Aboriginal Development Package then the Developing Party will not be obliged to comply with the Aboriginal Development Package.

(7) The Developing Party and the MG Corporation may at any time by agreement in writing vary any Aboriginal Development Package agreed or determined in accordance with this clause 49.2.

(8) Nothing in this clause 49.2 obliges a Developing Party to pay the costs of the MG Corporation to negotiate and agree an Aboriginal Development Package.

49.3 Preferred Proponents chosen through expression of interest as Developing Party

(1) This clause 49.3 applies to a Developing Party who is a Preferred Proponent whose proposal referred to in clause 47.2(4) includes a draft Aboriginal Development Package and who has complied with the requirement in clause 47.2(2)(b).

(2) The Developing Party must not substantially commence development of the Maximum Farm Area unless:

(a) the Developing Party and the MG Corporation have entered into an Aboriginal Development Package; or

(b) the Developing Party has complied with clause 49.3(4).

Note: An agreed or determined Aboriginal Development Package will include a process for determining or verifying the Development Costs.

(3) If the Developing Party and the MG Corporation have not agreed an Aboriginal Development Package within 3 months after the Final Approval Date then:

(a) the Developing Party may refer the matter to an Independent Expert chosen in accordance with clause 53 to determine the Aboriginal Development Package in accordance with this clause 49.3(3);

(b) in determining an Aboriginal Development Package, the Independent Expert must have regard to the Developing Party's draft Aboriginal Development Package referred to in clause 47.2(2)(a)(ii) and any agreement in principle with the MG Corporation in relation to the Aboriginal Development Package, and may only vary that draft Aboriginal Development Package or that agreement in principle:

(i) if and to the extent that the draft Aboriginal Development Package does not comply with Schedule 3; and

(ii) to take account of any changes to the Developing Party's Project which have occurred between the date the Developing Party submitted its proposal in accordance with clause 47.2 and the Final Approval Date;

(c) subject to the Independent Expert giving the Developing Party and the MG Corporation a reasonable opportunity to make submissions and present information to the Independent Expert, the determination of the Independent Expert shall be final and binding on the Developing Party and the MG Corporation for the purposes of this clause 49.3; and

(d) the MG Corporation must if so requested in writing by the Developing Party pay to the Developing Party a sum of money equivalent to half of the reasonable costs of the Independent Expert.

(4) The Developing Party must execute and deliver to the MG Corporation the Aboriginal Development Package determined in accordance with clause 49.3(3).

Note: If the MG Corporation does not then execute the Aboriginal Development Package then the Developing Party will not be obliged to comply with the Aboriginal Development Package.

(5) The Developing Party and the MG Corporation may at any time by agreement in writing vary the Aboriginal Development Package agreed or determined in accordance with this clause 49.3

(6) Nothing in this clause 49.3 obliges a Developing Party to pay the costs of the MG Corporation to negotiate and agree an Aboriginal Development Package.

50. BUFFER AREAS

Notes: This clause applies to each of the M2 Development Area, the Mantinea Development Area and the Ord West Bank Development Area as if the terms within this clause refer to the respective areas as follows.

Term in clause 50	*Meaning if dealing with M2 Development Area*	*Meaning if dealing with Mantinea Development Area*	*Meaning if dealing with Ord West Bank Development Area*
Farm Area	*M2 Maximum Farm Area*	*Mantinea Farm Area*	*Ord West Bank Farm Area*
Buffer Area	*M2 Minimum Buffer Area*	*Mantinea Buffer Area*	*Ord West Bank Buffer Area*
Buffer Reserve	*M2 Buffer Reserve*	*Mantinea Buffer Reserve*	*Ord West Bank Buffer Reserve*
Buffer Original Freehold Area	*M2 Buffer Original Freehold Area*	*Mantinea Buffer Original Freehold Area*	*Ord West Bank Buffer Original Freehold Area*
Buffer Additional Freehold Area	*M2 Buffer Additional Freehold Area*	*Mantinea Buffer Additional Freehold Area*	*Ord West Bank Buffer Additional Freehold Area*
EME	*M2 EME*	*Mantinea EME*	*Ord West Bank EME*
Raw Materials Area	*M2 Raw Materials Areas*	*Raw Materials Areas within the Mantinea Development Area*	*Raw Materials Areas within the Ord West Bank Area Development Area*
Additional Raw Materials Area	*Additional Raw Materials within the M2 Development Area*	*Additional Raw Materials within the Mantinea Area*	*Additional Raw Materials Areas within the Ord West Bank Development Area*

50.1 Application

(1) This clause 50 is intended to apply to each of the M2 Development Area, the Mantinea Development Area and the Ord West Bank Development Area by operation of clauses 31.7(1), 32.9(1) and 33.7(1) respectively. Accordingly the references to the terms Farm Area, Buffer Area, Buffer Reserve, Buffer Original Freehold Area, Buffer Additional Freehold Area, EME and Raw Materials Area and Additional Raw Materials Areas throughout this clause are references to either the:

(a) M2 Maximum Farm Area, M2 Minimum Buffer Area, M2 Buffer Reserve, M2 Buffer Original Freehold Area, M2 Buffer Additional Freehold Area, M2 EME and M2 Raw Materials Area and Additional Raw Materials Areas within the M2 Development Area respectively;

(b) Mantinea Farm Area, Mantinea Buffer Area, Mantinea Buffer Reserve, Mantinea Buffer Original Freehold Area, Mantinea Buffer Additional Freehold Area, Mantinea EME, any Raw Materials Areas and any Additional Raw Materials Areas within the Mantinea Development Area respectively; or

(c) Ord West Bank Farm Area, Ord West Bank Buffer Area, Ord West Bank Buffer Reserve, Ord West Bank Buffer Original Freehold Area, Ord West Bank Buffer Additional Freehold Area, any Raw Materials Areas and any Additional Raw Materials Areas within the Ord West Bank Development Area respectively.

50.2 Reserve over Buffer Area

(1) If, by operation of clause 31.7, clause 32.9 or clause 33.7 of this deed, this clause 50 applies in respect of the M2 Development Area, the Ord West Bank Development Area or the Mantinea Development Area (as the case may be) then, subject to clause 50.2(4) and 50.2(5), the State must create a reserve over the relevant Buffer Area for the purposes of buffer and infrastructure ("***Buffer Reserve***") and notify the MG Corporation of the creation of the Buffer Reserve.

(2) As soon as practicable after:

(a) the establishment of the relevant EME; and

(b) the creation of the Buffer Reserve,

the State must place the care, control and management of the Buffer Reserve with the EME.

(3) If any part of the Buffer Reserve is not required as buffer for the time being under any Environmental Approval in respect of the Farm Area then the State or the relevant EME may grant a lease, licence or other authority to CPC or its nominee for grazing over that part of the Buffer Reserve.

(4) The State may create reserves over the Raw Materials Areas or Additional Raw Materials Areas within the Buffer Area and may place the care, control and management of those reserves with any person

(5) At any time prior to notifying the MG Corporation of the Buffer Area in accordance with clause 50.3, the State may excise areas of the Buffer Reserve in order to create reserves for the purposes of extracting raw materials, as provided for in clause 14.6 (dealing with Non-Extinguishing Acts - Raw Material Areas).

50.3 Freehold title to Buffer Original Freehold Area

(1) As soon as practicable after the State has notified the MG Corporation of the Buffer Area in accordance with clause 31.4 (dealing with Nomination of final M2 Buffer Area and M2 Farm Area), 32.6 (dealing with Nomination of Mantinea Buffer Area and Mantinea Farm Area), and 33.4 (dealing with Nomination of Ord West Bank Buffer Area and Ord West Bank Farm Area) the State must:

(a) notify the MG Corporation in writing as to:

(i) any parts of the Buffer Area which are the subject of Existing Mining Tenements; and

(ii) any parts of the Buffer Area which the State reasonably considers should not be granted in freehold to the MG Corporation because they are required for infrastructure purposes associated with the development or operation of the Farm Area; and

(iii) any parts of the Raw Materials Areas and Additional Raw Materials Areas within the Buffer Area which the State reasonably considers are still required for the extraction of raw materials (whether or not related to the development or operation of the Farm Area); and

(b) at its own cost, undertake the preparation of suitable deposited plans (and surveys if required) of the boundaries of the Buffer Area, but not including the areas notified under clause 50.3(1)(a) ("***Buffer Original Freehold Area***").

(2) As soon as practicable after the completion of the deposited plans (and surveys if required) of the Buffer Original Freehold Area in accordance with clause 50.3(1) the State must, subject to clause 50.3(4):

(a) ensure that the relevant part of the Buffer Reserve, and any reserves over the Raw Materials Areas and Additional Raw Materials Areas within the Buffer Original Freehold Area are cancelled; and

(b) transfer freehold title to the MG Corporation or its nominee, under section 74 or 75 of the LAA in the State's absolute discretion and:

(i) in the case of a grant under section 74 of the LAA, subject to a covenant under section 15 of the LAA in, or substantially in, the form in Schedule 12; or

(ii) in the case of a grant under section 75 of the LAA, subject to a memorial under section 16 of the LAA to ensure due performance of conditions consistent with the covenant referred to in clause 50.3(2)(b)(i).

(3) The MG Corporation must pay the stamp duty and Transfer Costs in respect of such transfer.

(4) The obligation to transfer the freehold title under clause 50.3(2) is conditional upon the MG Corporation granting, immediately upon the transfer of the freehold title:

(a) one or more easements to provide access to the Raw Materials Areas which are not part of the Buffer Original Freehold Area; and

(b) if there is an EME - a lease of the Buffer Original Freehold Area in or substantially in the form in Schedule 11 to the EME.

(5) Notwithstanding clause 50.3(4), the State and the MG Corporation may agree to transfer freehold title under clause 50.3(2) subject to some other arrangement in respect of the Buffer Area, in order to comply with the Environmental Approval for the relevant Development Area or for some other reason.

(6) The State must notify the relevant EME and the MG Corporation if at any time after the grant of a lease in accordance with clause 50.3(4)(b), in the State's opinion the Buffer Area will not be required for the purposes of buffer

associated with the Farm Area or any other necessary purpose associated with the Farm Area.

Note: The lease of the Buffer Area to the EME may then be terminated - see Schedule 11 clause 9.

(7) The reference in Schedule 11 to the Management Plan is a reference to the buffer management plan, any cultural heritage management plan and any other relevant management plans applicable to the Buffer Area as at the date the lease is entered into, which management plans are requirements under the Environmental Approval in relation to the relevant Development Area.

50.4 Buffer Additional Freehold Area

(1) If:

(a) part of the Buffer Area was excluded from the Buffer Original Freehold Area because:

(i) it was the subject of an Existing Mining Tenement;

(ii) it was required for infrastructure purposes; or

(iii) it was a Raw Material Area which was still required for the extraction of raw materials; and

(b) at any time after the grant of freehold title to the Buffer Original Freehold Area that part:

(i) of an Existing Mining Tenement is expired, surrendered or withdrawn, except when surrendered or withdrawn in pursuance of a right to the grant of another mining tenement over the area of the Existing Mining Tenement;

(ii) will not be required for the extraction of raw materials; or

(iii) is not in the State's opinion required for infrastructure purposes associated with the development or operation of the relevant Farm Area,

then the State must give written notice to the MG Corporation identifying the part of the Buffer Area over which freehold title may then be granted and giving the MG Corporation at least four (4) months in which to request a transfer of freehold title to that part of the Buffer Area.

(2) As soon as practicable after the State receives a request in writing from the MG Corporation in accordance with clause 50.4(1), the State must transfer freehold title pursuant to section 74 or 75 of the LAA, in the State's absolute discretion, and subject to the same conditions, covenants or memorials provided in clause 50.3(2)(b) to that part of the Buffer Area identified in the State's notice under clause 50.4(1) ("***Buffer Additional Freehold Area***") to the MG Corporation or its nominee on the same terms as set out in clause 50.3 save that the term of any lease of the Buffer Additional Freehold Area will expire on the same date as the term of the lease already granted in respect of the Buffer Original Freehold Area.

(3) Clause 50.4(1) may apply more than once, in respect of different parts of the Buffer Area.

50.5 Future alternative buffer arrangements

(1) If in the future there is applicable legislation allowing the grant of inalienable freehold title to the Buffer Area then the State and the MG Corporation may by deed executed by those two Parties:

(a) agree to the surrender of the existing freehold title or titles held by the MG Corporation or its nominee in respect of the Buffer Original Freehold Area and any Buffer Additional Freehold Area and the granting of an inalienable freehold title in its place; and

(b) vary the terms of this deed insofar as it relates to the transfer of freehold title to the Buffer Freehold Area to the MG Corporation and insofar as it relates to the leasing of the Buffer Freehold Area.

51. 5% OF TOWN LAND PROVISIONS

Notes:

(1) The general purpose of this clause is to provide 5% of the value of the subdivision and development of the Mantinea Other Area, the Ord East Bank Acquisition Area and the Kununurra Additional Acquisition Area to the MG Corporation where the land is being transferred to a Third Party.

(2) Either the State or LandCorp will implement the subdivision and development of the Mantinea Other Area, the Ord East Bank Acquisition Area and the Kununurra Additional Acquisition Area. Any transfers from the State to LandCorp for this purpose will <u>not</u> attract a 5% MG Corporation entitlement, however, the subsequent dealing with the land will attract the 5% MG Corporation entitlement.

(3) Undeveloped Land

Where Undeveloped Land is transferred to a Third Party Purchaser the MG Corporation will receive a monetary payment of 5% of the Estimated Developed Value of the Undeveloped Land from the State or LandCorp (whomever arranges the sale to the Third Party).

(4) Developed Land

Developed land is generally land to which access to utilities have been provided

(a) Town Lots - Multiple Lots Released

Where a release of Developed Land by a Developing Party is over 20 Town Lots, the MG Corporation shall also have the option of purchasing up to 10% of the Town Lots. The 5% MG Corporation entitlement will then be set off against the purchase price.

(b) Town Lots- Other- 5% payment

Where a release is less than 20 lots or the MG Corporation do not elect to purchase any Town Lots the MG Corporation shall receive a monetary payment of 5% of the value of the Town lots sold to a Third Party.

(5) Disputes as to the value of Town Lots- Multiple Lots Released

Once the Developing Party issues a Development Notice the MG Corporation has at least 20 business days to respond.

If the MG Corporation disputes the value of the Town Lots (by giving an Election and Valuation Notice) the Developing Party has 10 business days to respond.

If the parties do not agree the value of the Town Lots the Developing Party must get a valuation of the Town Lots within 20 business days of the Election and Valuation Notice.

Within 10 business days of receipt of the valuation, the MG Corporation can either:

(a) accept the price and continue with the purchase (by giving a Further Election Notice); or

(b) receive 5% of the value of the Town Land given in a monetary payment.

If the MG Corporation gives a Further Election Notice then settlement will generally occur in 20 business of the Further Election Notice

(6) Disputes as to the value of Town Lots-5% payment

If the Developing Party sells a Town Lot where the 5% monetary payment process applies, then within 20 Business Days the Developing Party must give the MG Corporation details about the sale and pay the MG Corporation 5% of the Sale Price (or market value where the Developing Party provides an estimated Market Value).

If the MG Corporation disputes the Sale Price then it must respond in 10 business days by giving the Developing Party an Undervalue Notice.

If the Developing Party disputes the Undervalue Notice, then it must give a notice disputing the payment within 10 Business Days.

If the parties can't agree, then within 20 Business Days from receipt of the Undervalue Notice, the Developing Party must get a valuation.

If the valuation is higher than the Sale Price then the Developing Party must pay the MG Corporation the amount owed (being 5% of the valuation value less the money originally paid to MG Corporation) within 20 Business Days.

51.1 Application of 5% of Town Land Provisions

(1) Subject to clauses 51.1(5) and 51.2(4), clause 51 applies to the:

(a) Mantinea Other Area by operation of clause 32.13 (dealing with Mantinea Other Area);

(b) Ord East Bank Acquisition Area by operation of clause 34.2 (dealing with Ord East Bank Acquisition Area); and

(c) the Kununurra Additional Acquisition Area by operation of clause 35 (dealing with ~~or~~ Kununurra Additional Acquisition Area).

(2) A reference to "Town Land" in this clause 51 is a reference to that part of the land within the Mantinea Other Area, the Ord East Bank Acquisition Area or the Kununurra Additional Acquisition Area (whichever applies) as determined by the Developing Party from time to time which is to be released for sale to the public as a stage or part of the overall subdivision and development of the Mantinea Other Area, the Ord East Bank Acquisition Area or the Kununurra Additional Acquisition Area (whichever applies).

(3) A reference to "Town Lot" in this clause 51 is a reference to one of the following (whichever context applies):

(a) in relation to the Mantinea Other Area or Kununurra Additional Acquisition Area, it is a reference to a Developed Lot within the respective areas; and

(b) in relation to Ord East Bank Acquisition Area, it is a reference to a Serviced Farm Lot within the Ord East Bank Acquisition Area.

(4) A reference to "Developing Party" in this clause 51 is a reference to:

(a) the State, if the State develops any Town Land for the sale of Town Lots to the public;

(b) the Commonwealth, a Commonwealth or State agency or statutory authority, or local Government body, including LandCorp ("***Government Entity***"), if the State transfers Town Land which is undeveloped land to the Government Entity and the Government Entity develops such Town Land for the sale of Town Lots to the public; or

(c) LandCorp, if the State transfers Town Land containing Town Lots to LandCorp for the sale of Town Lots by LandCorp to the public.

(5) This clause 51 shall apply only once in respect of a Town Lot.

51.2 Sale of Undeveloped Town Land by the State or LandCorp

(1) An ***Undeveloped Town Land Transferor*** under this clause 51.2 is:

(a) the State, if the State transfers land within the Mantinea Other Area, the Ord East Bank Acquisition Area or the Kununurra Additional Acquisition Area, which is undeveloped land ("***Undeveloped Town Land***") to a Third Party Purchaser for the development of that Undeveloped Town Land by the Third Party Purchaser, whether for their own purposes or for the purposes of sale to the public; or

(b) a Government Entity, if the State transfers Undeveloped Town Land to a Government Entity and the Government Entity transfers some or all of such Undeveloped Town Land to a Third Party Purchaser for the development of that land by a Third Party Purchaser, whether for their own purposes or for the purposes of sale to the public.

(2) As soon as practicable after an Undeveloped Town Land Transferor enters into a legally binding agreement with the Third Party Purchaser for the sale of the Undeveloped Town Land to which this clause 51.2 applies, the Town Land Transferor must obtain a valuation of the Estimated Developed Value of the Undeveloped Town Land from an Independent Valuer in accordance with clause 52 (dealing with Valuation).

(3) The Undeveloped Town Land Transferor must pay to the MG Corporation a sum of money equal to 5% of the Estimated Developed Value of the Undeveloped Town Land as determined pursuant to clause 51.2(2) within twenty (20) Business Days of the later of:

(a) the first transfer of the Undeveloped Town Land from the Undeveloped Town Land Transferor to a Third Party Purchaser; and

(b) the Undeveloped Town Land Transferor receiving from an Independent Valuer the valuation of the Estimated Developed Value of the Undeveloped Town Land pursuant to clause 51.2(2)

(4) If this clause 51.2 applies in respect of Undeveloped Town Land then the other subclauses within this clause 51 do not apply in respect of any Town Lot within that Undeveloped Town Land which is subsequently developed or transferred.

51.3 Development Notice by the State or LandCorp

(1) Prior to the transfer to the public, by the Developing Party, of any Town Lot within the Town Land, the Developing Party must give written notice ("***Development Notice***") to the MG Corporation containing:

(a) a plan of the Town Land and other necessary documents identifying:

(i) the boundaries and area (in hectares or square metres) of the Town Land;

(ii) the boundaries, area (in hectares or square metres) and List Price of each Town Lot within the Town Land;

(iii) the purpose of each Town Lot;

(iv) the intended uses of other land within the Town Land; and

(v) any Encumbrances or conditions that any of the Town Lots will be subject to on their transfer;

(b) a licence to the MG Corporation by its employees, agents and contractors to enter the Town Land to inspect the Town Lots the subject of the notice; and

(c) either:

(i) if the Town Land contains less than 20 lots, a statement that the 5% Payment Procedure set out in clause ~~51.8~~ 51.7 (dealing with 5% Payment Procedure) shall apply; or

(ii) if the Town Land contains not less than 20 lots, an option for the MG Corporation to purchase Town Lots within the Town Land being:

(I) up to but not exceeding 10% of the Town Lots within the Town Land; and

(II) up to but not exceeding 10% of the aggregate List Price of all the Town Lots within the Town Land.

(2) To exercise the option within the Development Notice the MG Corporation must provide on or before a date specified in the Development Notice (being a date not less than twenty (20) Business Days after receipt of the Development Notice):

(a) an Election Notice (where the MG Corporation accepts the List Price); or

(b) an Election and Valuation Notice (where the MG Corporation does not agree that the List Price of one or more of the Town Lots in the Development Notice equals the Market Value of the Town Lots ("***Disputed Town Lots***")).

(3) The Developing Party may, at its absolute discretion, sell or transfer each Town Lot that is not specified as being a Town Lot to be transferred to the MG Corporation under either an:

(a) Election Notice; or

(b) Election and Valuation Notice.

51.4 Process to apply where Election Notice is given by MG Corporation

If an option is given in a Development Notice by a Developing Party and the MG Corporation gives the Developing Party an Election Notice within the specified time in the Development Notice, then a sale contract shall be deemed to be entered into between the MG Corporation and the Developing Party on the terms in clause 51.5 (dealing with Process to apply to Transfer of Town Lots to MG Corporation).

51.5 Process to apply to Transfer of Town Lots to MG Corporation

(1) Unless otherwise agreed in writing between the MG Corporation and the Developing Party, the terms and conditions of sale shall be those specified in the 2002 Joint Form of General Conditions for the Sale of Land, excluding clauses 1, 4.2, 5, 10, 11, 12, 13.3(a), 14, 15, 19 and 24.14 and as further varied to the extent necessary so they are consistent with the terms of this deed.

(2) Unless otherwise agreed, settlement of the sale of the Town Lots the subject of the Election Notice must occur within 20 Business Days of the later of:

(a) the issue by the Department of Land Information of certificates of title for each of the Town Lots; and

(b) the date of service of the Election Notice under clause 51.3(2) or the Further Election Notice under clause 51.6(4).

(3) Subject to compliance by the MG Corporation with the obligations in clauses 51.5(4) and 51.5(5), at settlement the Developing Party must transfer the Town Lots the subject of the Election Notice to the MG Corporation, free from Encumbrances and conditions except those identified in the Development Notice in relation to the transferred Town Lots.

(4) The MG Corporation shall be responsible for payment of all stamp duty and Transfer Costs in respect of the transfer of Town Lots in accordance with this clause 51.5.

(5) If the aggregate List Price of the Town Lots the subject of the Election Notice to be transferred in accordance with this clause 51.5 is:

(a) greater than the Town Lot Entitlement then, at settlement, the MG Corporation must pay to the Developing Party a sum of money equal to the aggregate List Price of the Town Lots the subject of the Election Notice less the Town Lot Entitlement; or

(b) less than the Town Lot Entitlement then, at settlement, the Developing Party must pay to the MG Corporation a sum of money equal to the Town Lot Entitlement less the aggregate List Price of the Town Lots the subject of the Election Notice.

(6) The sum of money payable in accordance with clause 51.5(5)(b) shall, at the election of the Developing Party, be payable:

(a) in instalments, each instalment being the Lot Payment payable within 20 Business Days of the completion of each sale to the public of a Town Lot the subject of the Development Notice, up to an aggregate amount being the sum of money payable in accordance with clause 51.5(5)(b); or

(b) as a lump sum, to be paid within twenty (20) Business Days of the registration of the first transfer of a Town Lot the subject of the Development Notice to a Third Party Purchaser.

51.6 Process to apply where Election and Valuation Notice given by MG Corporation

(1) If the Development Notice is given by the Developing Party and the MG Corporation provides an Election and Valuation Notice within the time specified in a Development Notice then, within ten (10) Business Days of service of the Election and Valuation Notice, the Developing Party must notify the MG Corporation either:

(a) that it agrees with the MG Corporation's estimate of the Market Value of the Disputed Town Lots; or

(b) that it does not agree with the MG Corporation's estimate of the Market Value of one or more of the Disputed Town Lots, in which case it must also, in respect of those Town Lots:

(i) give reasons why it does not agree; and

(ii) give a revised estimate (if any) of the Market Value of those Town Lots.

(2) The List Price of the Disputed Town Lots shall be deemed to be the MG Corporation's estimated Market Value specified in the Election and Valuation Notice (*"**Revised List Price**"*) if:

(a) the Developing Party gives notice under clause 51.6(1)(a) (that it agrees with the MG Corporation's estimate); or

(b) it does not give a notice in accordance with clause 51.6(1)(b) (that it does not agree with the MG Corporation's estimate).

(3) If:

(a) the Developing Party gives notice in accordance with clause 51.6(1)(b) (that it does not agree with the MG Corporation's estimate); and

(b) the Developing Party and the MG Corporation cannot agree the value of the Disputed Town Lots within twenty (20) Business Days of service of the Election and Valuation Notice,

then:

(c) the Developing Party must obtain a valuation of the Market Value of each of the Disputed Town Lots within the Town Land in accordance with clause 52 (dealing with Valuation) in respect of which the value is not agreed, and promptly provide a copy of the valuation to the MG Corporation; and

(d) the valuation of the Town Lots determined in accordance with clause 51.6(3)(c) shall be deemed to be the List Price of those Town Lots (*"**Revised List Price**"*).

(4) Within ten (10) Business Days of service on the MG Corporation of the valuation referred to in clause 51.6(3)(c) by the Developing Party, the MG Corporation may give a further written notice ~~consistent with clause 51.3(1)(c)(i)~~ confirming that the MG Corporation wants to proceed with the

transfer of all or some of the Town Lots specified in the Election and Valuation Notice ("***Further Election Notice***").

(5) If the MG Corporation is served with a valuation in accordance with clause 51.6(3)(c) and the MG Corporation does not give a Further Election Notice then:

(a) the MG Corporation shall be deemed not to have given an Election and Valuation Notice; and

(b) clause 51.7 (dealing with 5% Payment Procedure) shall apply.

(6) If and when:

(a) the Market Values of all Town Lots in the Election and Valuation Notice are determined, agreed or deemed to be agreed under this clause 51.6; and

(b) the MG Corporation gives the Developing Party a Further Election Notice,

then a sale contract shall be deemed to be entered into between the MG Corporation and the Developing Party on the terms in clause 51.5 (dealing with Process to apply to transfer of Town Lots to MG Corporation)

51.7 5% Payment Procedure

(1) This clause 51.7 applies where:

(a) the Town Land the subject of a Development Notice contains less than 20 Town Lots;

(b) a Development Notice has been given by a Developing Party and an Election Notice or Election and Valuation Notice is not given by the MG Corporation within the time specified in the Development Notice;

(c) a Further Election Notice is not given and therefore this clause 51.7 is deemed to apply; or

(d) in any other circumstance where clause 51.5 (dealing with Process to apply to transfer of Town Lots to MG Corporation) or clause 51.6 (dealing with Process to apply Election and Valuation Notice by MG Corporation) does not apply

(2) The obligations under this clause 51.7 apply respectively to each Town Lot to which this clause 51.7 applies.

(3) Within twenty (20) Business Days of the registration of the first transfer of a Town Lot from a Developing Party to a Third Party Purchaser, the Developing Party must:

(a) provide the MG Corporation with a Lot Payment Advice; and

(b) pay the Lot Payment to the MG Corporation.

(4) If the MG Corporation disputes the Lot Payment Advice then, provided the Market Value of the Town Lot has not been determined by valuation under clause 51.6(3) in the 12 month period preceding the provision of the Lot Payment Advice, the MG Corporation may give notice to the Developing Party ("***Undervalue Notice***") within 10 days of receipt of the Lot Payment Advice containing:

(a) the reasons for the MG Corporation's opinion that the Sale Price or the Developing Party's estimate of the Market Value for the Town Lot does not equal the Market Value of the Town Lot; and

(b) the MG Corporation's estimation of the Market Value of the Town Lot and of the amount of the Undervalue Payment.

(5) Within ten (10) Business Days of receipt of an Undervalue Notice, the Developing Party must notify the MG Corporation:

(a) that it agrees to pay the Undervalue Payment specified in the Undervalue Notice; or

(b) that it does not agree with the MG Corporation's estimate of the Market Value of the Town Lot or of the Undervalue Payment in respect of the Town Lot, in which case it must also:

(i) give reasons why it does not agree; and

(ii) give its revised estimate (if any) of the Market Value of the Town Lot and its estimate of the Undervalue Payment (if any) in respect of the Town Lot.

(6) If the Developing Party gives notice in accordance with clause 51.7(5)(a) (that it agrees to pay the Undervalue Payment), or if it does not otherwise notify the MG Corporation in accordance with clause 51.7(5), then the Developing Party must pay the Undervalue Payment specified in the Undervalue Notice within twenty (20) Business Days of receipt of the Undervalue Notice, and clause 51 has no further operation in relation to that Town Lot

(7) If the Developing Party gives notice in accordance with clause 51.7(5)(b) (that it does not agree with the MG Corporation's estimate) and the Developing Party and the MG Corporation subsequently agree upon an Undervalue Payment, then the Developing Party must promptly pay the agreed Undervalue Payment in accordance with that agreement and clause 51 has no further operation in relation to that Town Lot.

(8) If the Developing Party gives notice in accordance with clause 51.7(5)(b) (that it does not agree with the MG Corporation's estimate) and the Developing Party and the MG Corporation cannot agree upon an Undervalue Payment within twenty (20) Business Days of receipt of the Undervalue Notice, then the Developing Party must, as soon as reasonably practicable, obtain a valuation of the Market Value of the Town Lot from an Independent Valuer in accordance with clause 52 (dealing with Valuation).

(9) If within 3 months of the date it was required to obtain a valuation under clause 51.7(8), the Developing Party does not obtain, and provide to the MG Corporation, such a valuation, then the Developing Party is deemed to have agreed the Undervalue Payment specified in the Undervalue Notice and clause 51.7(6) shall apply.

(10) If the valuation obtained in accordance with clause 51.7(8) is greater than the Sale Price or estimated value in the Lot Payment Advice (as the case may be), then the Developing Party must pay the Undervalue Payment in accordance with that valuation to the MG Corporation within 20 Business Days of receipt of the valuation.

(11) If the valuation obtained in accordance with clause 51.7(8) is the same as or less than the Sale Price or estimated value in the Lot Payment Advice (as the case may be) then the Developing Party is not liable to make an Undervalue Payment.

51.8 No interest in Town Lands or Town Lots

Except in relation to those Town Lots which are the subject of a sale contract under clause 51.4 (dealing with Process to apply where Election Notice is given by MG Corporation) or clause 51.6(6) (dealing with where a Further Election Notice has been given), nothing in this clause 51 gives any person other than the Developing Party and the Third Party Purchaser any interest in any Town Land or any Town Lot or in any agreement for the sale of a Town Land or a Town Lot, or otherwise derogates from the Developing Party's discretion to develop, market and sell Town Land or a Town Lot on such terms and conditions and at such price as it sees fit.

51.9 Other dealings with the Town Land

(1) If the State or LandCorp lease to a Third Party Purchaser a Town Lot to which this clause 51 has not already applied then the State or LandCorp (as the case may be) must:

(a) obtain a valuation of the Market Value of the Town Lot in accordance with clause 52 (dealing with Valuation); and

(b) within twenty (20) Business Days of service of the valuation on the MG Corporation, pay to the MG Corporation a sum of money equal to 5% of the Market Value of the Town Lot as determined by that valuation.

(2) If the State or LandCorp leases Undeveloped Town Land to a Third Party Purchaser, then:

(a) clause 51.2 (Sale of Undeveloped Town Land by the State or LandCorp) applies as if a reference in those clauses to a sale or transfer of the Undeveloped Town Land to a Third Party Purchaser is a reference to the first lease of the Undeveloped Town Land; and

(b) this clause 51 has no further application in respect of that Undeveloped Town Land.

(3) Except as provided in this clause 51, nothing in this deed prevents the State or any other person from dealing with the Kununurra Additional Acquisition Area or the Mantinea Other Area or the Ord East Bank Acquisition Area in any manner permitted by law.

51.10 Where Public Purpose Lot is developed as a Town Lot

(1) For the purpose of this clause 51.10 Public Purpose Lot means any lot which has been identified by the Developing Party or on an approved plan of subdivision to be required for a public work within the meaning of the *Public Works Act 1902* (WA) or a purpose other than residential, commercial or industrial purposes or agriculture.

(2) If, subsequent to a lot within Town Land being developed or transferred as a Public Purpose Lot, it is sold to the public as a Town Lot then, subject to clause 51.1(5), this clause 51 applies in respect of that lot.

52. VALUATIONS

52.1 Application of this clause

(1) This clause 52 applies to all valuations required under this deed.

52.2 Appointment of Independent Valuer

(1) As soon as practicable after the need for a valuation arises under this deed, the Developing Party must appoint:

(a) an agreed Independent Valuer in accordance with clause 52.2(2); or

(b) if an Independent Valuer has not been agreed in accordance with clause 52.2(2), an Independent Valuer chosen by the President for the time being of the Australian Property Institute in accordance with clause 52.2(3),

to conduct the valuation in accordance with the Valuation Principles.

(2) The process for agreeing an Independent Valuer is as follows:

(a) the Developing Party must nominate in writing to the MG Corporation at least two (2) Independent Valuers;

(b) within ten (10) Business Days of such nomination, the MG Corporation must either:

(i) notify the Developing Party in writing that it agrees with one or more of the Independent Valuers. If the MG Corporation agrees with more than one, the Developing Party may choose which of those persons is to be the Independent Valuer; or

(ii) nominate in writing to the Developing Party one or more alternative Independent Valuers;

(c) if the MG Corporation does not respond to the Developing Party with a notice or nomination in accordance with clause 52.2(2)(b) within ten (10) Business Days then the Developing Party may choose one of the Independent Valuers nominated in accordance with clause 52.2(2)(a) and that person shall be taken to be agreed by the MG Corporation;

(d) if the MG Corporation nominates one or more alternative Independent Valuers in accordance with clause 52.2(2)(b)(ii) then within ten (10) Business Days of such nomination, the Developing Party must notify the MG Corporation in writing that it:

(i) agrees with one or more of the Independent Valuers. If the Developing Party agrees with more than one, the Developing Party may choose which of those persons is to be the Independent Valuer and must notify the MG Corporation of that choice; or

(ii) that an Independent Valuer is not agreed; and

(e) if the Developing Party does not respond to the MG Corporation with a notice or nomination in accordance with clause 52.2(2)(d) within ten (10) Business Days then the Developing Party must appoint one of the Independent Valuers nominated in accordance with clause 52.2(2)(b)(ii) and that person shall be taken to be agreed by the Developing Party.

(3) The process for the appointment of an Independent Valuer by the President for the time being of the Australian Property Institute is as follows:

(a) the Developing Party must provide the President for the time being of the Australian Property Institute with its nominated Independent Valuers referred to in clause 52.2(2)(a) and with the Independent Valuers nominated by the MG Corporation referred to in clause 52.2(2)(b)(ii), and must request the President to choose one of those Independent Valuers; and

(b) if the President for the time being of the Australian Property Institute considers that none of the nominated Independent Valuers is appropriate then the President may nominate another Independent Valuer and:

(i) the Developing Party must notify the MG Corporation of the President's nomination; and

(ii) if the MG Corporation and the Developing Party do not agree with the President's nomination then the Developing Party and the MG Corporation may agree another Independent Valuer, failing which the President's nomination stands.

52.3 Conduct of Valuations

(1) The Developing Party must ensure that it is a term of the contract with the Independent Valuer for the conduct of a valuation that the valuation be concluded and a copy provided to the Developing Party and the MG Corporation within thirty five (35) Business Days after the date of the Independent Valuer's appointment.

(2) If the Independent Valuer does not provide the Developing Party and the MG Corporation with the valuation within thirty five (35) Business Days after the date of the Independent Valuer's appointment, and if the Developing Party reasonably considers that the valuation will not be provided within a reasonable time, then the Developing Party may appoint an alternative Independent Valuer in accordance with the processes in clause 52.2.

(3) The Developing Party and the MG Corporation may provide the Independent Valuer with such information as they wish and the Independent Valuer may take such information into account in conducting the valuation in accordance with the Valuation Principles.

52.4 Costs of Valuations - Agricultural areas

(1) In the case of valuations conducted in relation to Serviced Farm Lots within the M2 Maximum Farm Area, the Mantinea Farm Area or the Ord West Bank Farm Area, the Developing Party must pay the cost of the valuation conducted by an Independent Valuer and the MG Corporation must pay to the Developing Party half of that cost, such payment to be made within twenty (20) Business Days of receiving an invoice from the Developing Party.

52.5 Costs of Valuations - Town Land

(1) This clause 52.5 applies to valuations conducted in relation to Town Lots.

(2) In this clause 52.5:

(a) ***Developing Party's Estimate for Sale to MG Corporation*** means:

(i) the Developing Party's revised estimate of the Market Value of the Town Lots specified in the Election and Valuation Notice as having a Market Value different from the List Price, referred to in clause 51.6(1)(b)(ii); or

(ii) if there is no such revised estimate - the List Price of the Town Lots specified in the Election and Valuation Notice as having a Market Value different from the List Price;

(b) ***Developing Party's Estimate for Payment to MG Corporation*** means:

(i) the Developing Party's revised estimate of the Market Value of the Town Lot referred to in clause 51.7(5)(b)(ii);

(ii) if there is no such revised estimate - the Developing Party's estimate of the Market Value of the Town Lot as stated in the Lot Payment Advice; or

(iii) if there is no such estimate - the Sale Price.

(3) The Developing Party must pay the costs of the valuation.

(4) If the valuation of an Independent Valuer obtained pursuant to clause 51.6(3)(c) is:

(a) greater than the Developing Party's Estimate for Sale to MG Corporation; or

(b) within 7.5% below the Developing Party's Estimate for Sale to MG Corporation,

then the MG Corporation must pay to the Developing Party a sum of money equal to the costs of the valuation paid by the Developing Party, such payment to be made within twenty (20) Business Days of receiving an invoice from the Developing Party.

(5) If the valuation of an Independent Valuer obtained pursuant to clause 51.7(8) is:

(a) less than the Developing Party's Estimate for Payment to MG Corporation; or

(b) is less than 7.5% above the Developing Party's Estimate for Payment to MG Corporation,

then the MG Corporation must pay to the Developing Party a sum of money equal to the costs of the valuation paid by the Developing Party, such payment to be made within twenty (20) Business Days of receiving an invoice from the Developing Party.

52.6 Valuation Principles

(1) The Market Value of Serviced Farm Lots in the M2 Maximum Farm Area, the Mantinea Farm Area, the Ord West Bank Farm Area or the Ord East Bank Acquisition Area, is to be determined in accordance with the following principles:

(a) it will be the unimproved market value of the land in its natural or virgin state but taking into account existing surrounding services to the farm boundary, facilities off the land and amenities including any potential utility or detriments inherent with the location, and including any improvements to the land such as clearing, levelling, drainage, contour or retaining walls;

(b) the market value will be determined by the amount for which the land would sell if it was unencumbered freehold land, sold at the specific date on the open market, where both buyer and seller were informed of all factors affecting the land value and negotiations were carried out at arms' length, in a prudent and business like manner and inclusive of GST;

(c) taking into account the purpose for which the land is intended to be used; but

(d) not taking into account the obligations under this deed or any Aboriginal Development Package.

(2) The Market Value of Developed Lots in the Kununurra Additional Acquisition Area or the Mantinea Other Area will be the site value of the land as an estate in fee simple, determined in accordance with the following principles:

(a) assuming it is vacant, unencumbered and sold at the specific date on the open market, where both buyer and seller were informed of all factors affecting the land, and negotiations were carried out at arms' length, in a prudent and business like manner;

(b) no improvements have been made to the Developed Lot, other than Merged Improvements;

(c) assuming the Developed Lot may be used for the highest and best use for which it is permitted to be used under any relevant town planning scheme or other written law;

(d) assuming the subdivision development of the Town Land of which the Developed Lot forms part has been completed;

(e) taking into account the services (including roads, power, gas, telecommunications, water reticulation, sewerage and drainage) and other infrastructure on land adjoining or in the vicinity of the Developed Lot that are available for use by or for the benefit of the Developed Lot; and

(f) inclusive of GST; but

(g) not taking into account the State's obligations under this deed for land in the Kununurra Additional Acquisition Area or the Mantinea Other Area (as the case may be) to be transferred or to make payments in respect of the Kununurra Additional Acquisition Area or the Mantinea Other Area (as the case may be); and

(h) in respect of valuations for a Developed Lot that is further subdivided, by the same Registered Proprietor as part of the subdivision development under the *Strata Titles Act 1985* (WA) into:

(i) Strata Lots, then the land the subject of the strata plan will be valued as a whole according to its site value, as an estate in fee

simple in the land in the manner provided for in clauses 52.6(2)(a) to 52.6(2)(g) above but also:

(I) assuming the strata plan is registered; and

(II) taking into account any services and infrastructure on any common property in the strata scheme; and

(ii) Survey-Strata Lots, each Survey-Strata Lot will be valued as a separate parcel according to the site value of that Survey-Strata Lot as an estate in fee simple in the land in the manner provided for in clauses 52.6(2)(a) to 52.6(2)(g) above but also:

(I) assuming the survey-strata plan is registered; and

(II) taking into account any services and infrastructure on any Common Property Lot.

(3) The Estimated Developed Value of Undeveloped Town Land within the Kununurra Additional Acquisition Area or the Mantinea Other Area is to be determined in accordance with the following principles:

(a) it will be the present value (at the date of the agreement for the sale of the Undeveloped Land) of the estimated gross realisable proceeds of sale (excluding GST) of Developed Lots within the Undeveloped Town Land assuming the Undeveloped Town Land was developed in accordance with relevant zonings and other statutory requirements and constraints and Developed Lots were sold at Market Value;

(b) if the Undeveloped Town Land is to be or could only be used for residential purposes or commercial purposes or industrial purposes (but not two or more of such purposes) then it shall be assumed that the Undeveloped Town Land was developed for that purpose; and

(c) if the Undeveloped Town Land is to be or could be used for any two or more of residential purposes or commercial purposes or industrial purposes then it shall be assumed that the Undeveloped Town Land was developed for the purpose or purposes which would give the highest return.

(4) The Estimated Developed Value of Undeveloped Town Land within the Ord East Bank Acquisition Area is to be determined as the present value (at the date of the agreement for the sale of the Undeveloped Land) of the estimated gross realisable proceeds of sale (excluding GST) of Serviced Farm Lots within the Undeveloped Town Land assuming the Undeveloped Town Land was developed in accordance with relevant zonings and other statutory requirements and constraints and Serviced Farm Lots were sold at Market Value.

53. INDEPENDENT EXPERT

(1) If this deed provides that a matter is to be referred to an Independent Expert then that Independent Expert must be chosen in accordance with this clause 53.

(2) The Developing Party must give the MG Corporation a list of three (3) Independent Experts, including details of the qualifications, experience and fees of each Independent Expert.

(3) The MG Corporation may choose one of the Independent Experts referred to in clause 53(2) by notice in writing to the Developing Party within 5 Business Days of receipt of the list referred to in clause 53(2), and the Independent Expert shall be the person so chosen.

(4) If the MG Corporation does not give notice in accordance with clause 53(3) then the Developing Party may choose any one of the Independent Experts referred to in clause 53(2), and the Independent Expert shall be the person so chosen.