

**PERFORMANCE AGREEMENT**

No. 2020/01

(Section 66 of the Waste Management and Pollution Control Act 1998)

**Northern Territory Environment Protection Authority**

**Katherine Town Council (ABN 47 836 889 865)**

# PERFORMANCE AGREEMENT

This Agreement is made this 20<sup>th</sup> day of August 2020.

## BETWEEN

**NORTHERN TERRITORY ENVIRONMENT PROTECTION AUTHORITY** of  
Floor 1, Arnhemica House, 16 Parap Road, Parap, NT  
("NT EPA")

**KATHERINE TOWN COUNCIL (ABN 47 836 889 865)** of Civic Centre, Lot  
1865 Stuart Highway, Katherine, NT  
("KTC")

## BACKGROUND

- A. The NT EPA is a statutory body created by the *Northern Territory Environment Protection Authority Act 2012* and has primary responsibility for the administration and enforcement of the *Waste Management and Pollution Control Act 1998*.
- B. KTC is the owner and/or occupier of Lot 3177, Town of Katherine, which was the location of a Fire commencing on 1 July 2019, and is currently contaminated, by reason of the presence of contaminated stockpiled soil.
- C. The NT EPA and KTC wish to enter into a performance agreement, pursuant to section 66 of the WMPC Act.
- D. This Agreement will result in:
  - (i) the purchase, installation and operation of an ongoing ambient air quality station by KTC to measure particulates and associated parameters in the Katherine region;
  - (ii) development of a waste management strategy for the Katherine region under control of the KTC that will outline clear actions, timelines and budget to address a range of waste management matters and challenges; and
  - (iii) implementation of the actions identified in the waste management strategy in a timely manner and reportable measurements of improvement against defined key performance objectives and action items.

## THE PARTIES AGREE:

### 1. DEFINITIONS

In this document these terms have the following meanings:

- 1.1 **"Agreement"** means this document labelled "Performance Agreement", entered between the Parties pursuant to section 66 of the WMPC Act.
- 1.2 **"Commencement Date"** means the date the Agreement is executed by all of the Parties.
- 1.3 **"Fire"** means the fire commencing on 1 July 2019 at the Premises, described in further detail at Schedule 1 to this Agreement.
- 1.4 **"NTFRS"** means the Northern Territory Fire and Rescue Service.
- 1.5 **"Parties"** means the Northern Territory Environment Protection Authority and the Katherine Town Council.
- 1.6 **"Premises"** means the KTC showgrounds, located at Lot 3177, Town of Katherine.
- 1.7 **"WMPC Act"** means the *Waste Management and Pollution Control Act 1998* (NT).

## 2. TERM

- 2.1 This Agreement will commence on the Commencement Date and continue for a period of 10 years.

## 3. ENVIRONMENTAL PROGRAMS TO BE UNDERTAKEN BY KTC

### Ambient Air Quality Monitoring Station

- 3.1 By no later than 30 September 2020 KTC shall purchase, install and operate an ambient air quality monitoring station.
- 3.2 The ambient air quality monitoring station shall be operated by KTC for a minimum period of 3 years.
- 3.3 At the end of the 3 year period KTC and the NT EPA shall conduct a joint review into the operation of the ambient air quality monitoring station with a view of extending its operation by KTC.
- 3.4 The ambient air quality monitoring station must be compliant with the *National Environment Protection (Ambient Air Quality) Measure*.
- 3.5 The ambient air quality monitoring station must monitor PM<sub>2.5</sub>, PM<sub>10</sub> and include monitoring of the following meteorological parameters:
  - (a) Wind speed
  - (b) Wind direction
  - (c) Air temperature
  - (d) Relative humidity

- 3.6 KTC shall integrate the ambient air quality monitoring station with the NT EPA ambient air quality monitoring network and make the monitoring data publicly available.
- 3.7 All costs associated with the operation and maintenance of the ambient air quality monitoring station shall be borne by KTC.

### **Waste Management Strategy**

- 3.8 By no later than 30 September 2020, KTC shall submit a waste management strategy scope which includes the details of a waste management strategy for the Katherine region to the NT EPA for its approval.
- 3.9 Within 3 months of the NT EPA approving the scope referred to in clause 3.8 above, KTC shall submit a waste management strategy for the Katherine Region to the NT EPA for its approval.
- 3.10 The waste management strategy referred to in clause 3.9 above must include, but is not limited to action items addressing the objectives listed under each of the following themes:
  - (a) **Waste reduction, avoidance and re-use** such as increasing waste avoidance and recycling, integrating waste reduction and avoidance in KTC's procurement process, promoting re-use.
  - (b) **Resource recovery and recycling** such as improving source separation, rationalising the management and use of existing waste facilities, implementing use of kerbside recycling, increasing diversion of food and garden organics, sourcing alternate waste treatment opportunities, reviewing efficiency improvements to KTC recycling and waste arrangement services, influencing waste behaviour of commercial enterprises.
  - (c) **Best practice landfill management** such as implementing best practice siting, design, operation, rehabilitation and aftercare management of existing and proposed new landfills. This shall include appropriate training such as environmental authorisation compliance requirements and fire training for all KTC officers involved in the management and operation of landfill/waste management facilities.
  - (d) **Governance and policy** such as improving data collection and evidence, monitoring and evaluation of services and strategy, integration of waste management into planning.
  - (e) **Environment and public amenity** such as achieving carbon neutrality, reducing litter, reducing illegal dumping, maintaining social licence, supporting sustainable practices within local businesses, develop open communication and planning with NTFRS.
  - (f) **Engagement** such as measuring and improving the community's satisfaction, measuring and influencing community recycling attitudes

and behaviours, maintaining transparency and confidence in the recycling system, engage and participate in environmental education activities.

- 3.11 KTC shall provide an annual financial year report to the NT EPA on the progress of action items contained in the waste management strategy, to be submitted to the NT EPA by 31 July of every year for the life of the waste management strategy.
- 3.12 The waste management strategy must be developed by a suitably qualified environmental consultant specialising in waste management strategies/plans.
- 3.13 Within 1 month of the NT EPA approving the waste management strategy KTC must commence implementation of the action items contained within it, and ensure the strategy is publicly available on KTC's website.

### **Publication**

- 3.14 Within 1 month of the purchase, installation and commencement of the operation of the ambient air quality monitoring station, and the approval by the NT EPA of the waste management strategy, whichever is the later, KTC will issue a print media notice in the NT News and the Katherine Times, substantially in the following terms:

*Katherine Town Council has agreed to fund programs aimed at delivering improved environmental outcomes for the Katherine Region, following its involvement in a significant fire at the Katherine showgrounds in 2019.*

*Katherine Town Council has purchased, installed and commenced operating an ambient air quality monitoring station, the data from which is publicly available, and integrated into the NT EPA's air quality monitoring network.*

*Further, Katherine Town Council has agreed to and commenced implementing a waste management strategy, the objectives of which include waste reduction, avoidance and re-use, resource recovery and recycling, governance and policy, environment and public amenity, and engagement. The waste management strategy is also publicly available.*

*Katherine Town Council is committed to improving environmental outcomes for the region, going forward.*

- 3.15 KTC will also publish a statement, substantially in the terms as the print media notice set out in clause 3.12 above, on its website, for a period of not less than six months.
- 3.16 KTC will notify the NT EPA in writing of the publication of the print media notice, and the statement of its website, and provide the NT EPA with a copy of each, within 7 days of publication.

### **Review**

- 3.17 KTC will fully participate in any reasonable request by the NT EPA for a review of its compliance with the terms of this Agreement, and otherwise after five years of the operation of the Agreement, on 15 June 2025, including by providing appropriate documentation to the NT EPA.

#### **4. ACKNOWLEDGEMENTS**

- 4.1 KTC acknowledges that the 15 July 2019 authorised officer direction relating to the management and remediation of the Premises is not altered by this Agreement and remains in force.
- 4.2 KTC acknowledges that it will continue to progress the remediation of the Premises, including the removal from the Premises of the contaminated soil stockpile.
- 4.3 KTC acknowledges that this Agreement is not confidential, and the EPA may, from time to time, issue media releases regarding the Agreement.
- 4.4 The Parties acknowledge that this Agreement is entered pursuant to section 66 of the WMPC Act.

#### **5. COVENANT NOT TO SUE**

- 5.1 In consideration of the terms of this Agreement, and KTC undertaking the environmental programs set out at clause 3 above, the NT EPA agrees not to prosecute KTC for any general environmental offences committed by KTC, and KTC's past and current Elected Members, associated with the Fire, pursuant to section 83 of the WMPC Act.
- 5.2 For the avoidance of any doubt, this Agreement does not prevent the NT EPA from taking other steps under the WMPC Act in connection with the Fire and the Premises, including, for example, issuing a pollution abatement notice, as appropriate.
- 5.3 Further, this Agreement does not affect the NT EPA's power to investigate a contravention arising from the future conduct of KTC and its Elected Members, or to pursue criminal prosecution or civil remedies or use other regulatory powers under the WMPC Act or other environmental legislation, in relation to that future conduct.

#### **6. ADVICE**

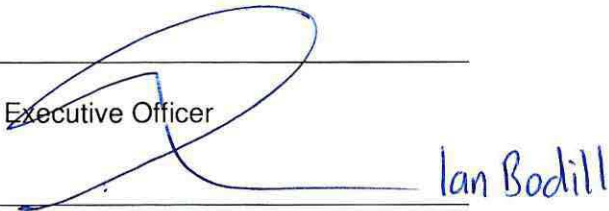
- 6.1 In consideration of the terms of this Agreement, and KTC undertaking the environmental programs set out at clause 3 above, the NT EPA agrees to provide advice concerning the operation of the ambient air quality monitoring station, and the implementation of the waste management strategy, as reasonably requested by KTC.

#### **7. GENERAL**

- 7.1 The Parties agree to bearing their own costs and expenses associated with the execution of this Agreement.
- 7.2 This Agreement may only be varied or replaced by a document executed by the Parties.
- 7.3 This Agreement is governed by and is to be construed in accordance with the laws of the Northern Territory and the Commonwealth of Australia, which are in force in the Northern Territory.
- 7.4 The Parties must not assign or deal with any right under this Agreement without the prior written consent of the other party.
- 7.5 This Agreement may be executed in any number of counterparts and if so, the counterparts taken together constitute one document.
- 7.6 If a provision of this Agreement is void or unenforceable it must be severed from this Agreement and the provisions that are not void or unenforceable are unaffected by the severance.

**EXECUTED AS AN AGREEMENT**

EXECUTED by Katherine Town Council

\_\_\_\_\_  
Chief Executive Officer  
 Ian Bodill

in the presence of:


  
\_\_\_\_\_

(Signature of witness)

BRENDAN PEARLE  
\_\_\_\_\_

(Name of witness)

EXECUTED by the Northern Territory Environment Protection Authority

  
\_\_\_\_\_

Paul Vogel  
Chairperson  
Northern Territory Environment  
Protection Authority

in the presence of:

  
\_\_\_\_\_

(Signature of witness)

Ashlee Pope  
\_\_\_\_\_

(Name of Witness)



## SCHEDULE 1 – THE FIRE

- On 1 July 2019, a grass fire started along the roadside of Bicentennial Road, Katherine. The fire burnt north through scrubland on Lot 3042, Town of Katherine, which is Crown Lease in Perpetuity under the control of Katherine Motor Sports Club.
- The NT Fire and Rescue Service attended the grass fire at the Katherine Speedway, on 1 July 2019 at 11:25 AM. The NT Fire and Rescue Service did not regard the fire as a serious threat and attempted to contain it and let it burn itself out. This was expected to happen quickly.
- The fire travelled towards the southern boundary of Katherine Town Council (KTC) showgrounds, located at Lot 3177, Town of Katherine (the Premises), where a tyre bale wall had been constructed as a boundary fence line. A firebreak was constructed on either side of the tyre wall.
- The tyre bale wall comprised of approximately 190 bales of tyres and was approximately 300m long (Figure 1). It is understood that each bale of tyre weighed approximately 1 to 1.5 tonnes and comprised approximately 125 to 187 equivalent passenger units (EPU)<sup>1</sup> for each bale. Based on a total of 285 tonnes of tyres this equates to a maximum of 36,625 EPU being consumed by the fire.
- After approximately an hour, the nature of the fire changed and it jumped the fire break and lit the tyres. The NT Fire and Rescue Service then called the KTC to attend and assist in dealing with the fire. Emergency protocols led by the police were followed to deal with the fire and the community were alerted to the dangers.
- The Northern Territory Fire and Rescue Service completed back burns of vegetation in surrounding areas to ensure that the fire did not spread any further.
- Water trucks were brought in and used to control hotspot areas of the fire.
- Virgin materials were applied using bulldozers to smother the burning materials in as short time frame as possible.
- A media release warned the public about the incident and advised on how to avoid contact with the smoke.
- An event to be held at the showgrounds that night was moved to another venue.
- KTC has been guided by the NT EPA and Department of Health in assessing the safety of the site and to undertake appropriate clean up and remediation of the areas affected.
- The fire was finally extinguished following remediation activities in mid-December 2019. A video on the ABC Facebook page shows the intensity and extent of the fire:  
<https://www.facebook.com/ABCDarwin/videos/902736096728150/>
- KTC subsequently engaged Agon Environmental Pty Ltd (Agon) to provide advice and to manage the remediation and validation of the affected area of the Premises. KTC, with support from Agon, has been progressing the remediation.

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<sup>1</sup> An equivalent passenger unit (EPU) is a standard passenger car tyre. The weight of an EPU for a new standard passenger car tyre is standardised as 9.5kg, and the weight of an EPU for an end-of-life standard passenger car tyre is standardised as 8 kg.

Figure 1 – Locality Map illustrating tyre bale wall

