

Dated **2001**

TOWN OF CAMBRIDGE
and
CITY OF JOONDALUP
and
CITY OF PERTH
and
CITY OF STIRLING
and
TOWN OF VICTORIA PARK
and
TOWN OF VINCENT
and
CITY OF WANNEROO

DRAFT
MEMORANDUM OF UNDERSTANDING
LOT 118 JOINT VENTURE

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DRAFT
MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding dated

2001

Parties: **TOWN OF CAMBRIDGE** of 1 Bold Park Drive, Floreat, Western Australia

and: **CITY OF JOONDALUP** of Boas Avenue, Joondalup, Western Australia

and: **CITY OF PERTH** of Council House, 27-29 St George's Terrace, Perth, Western Australia

and: **CITY OF STIRLING** of Civic Place, Stirling, Western Australia

and: **TOWN OF VICTORIA PARK** of 99 Shepperton Road, Victoria Park., Western Australia

and: **TOWN OF VINCENT** of 244 Vincent Street, Leederville, Western Australia

and: **CITY OF WANNEROO** of Dundobar Road, Wanneroo, Western Australia

BACKGROUND

- A. The Parties own the Project Land.
- B. The Parties desire to jointly:
- (a) sell the Project Land; or
 - (b) develop and sell the Project Land; or
 - (c) enter into agreements with a third party or parties for the development and sale of the Project Land; or
 - (d) do a combination of the activities mentioned in paragraphs (a), (b) and (c);
- and to do all things which may be necessary or incidental to those activities including carrying out feasibility and market assessments and obtaining all necessary approvals.
- C. The Parties wish to record some of the principal terms of the Lot 118 Joint Venture to be subsequently negotiated and executed.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 Definitions

In this Memorandum of Understanding, unless the context requires otherwise:

“Agreed Principles” means the principles set out in clause 3;

“Execution Date” means the date on which the last of the parties to execute this Memorandum of Understanding does so;

“Formal Joint Venture Documentation” means the formal joint venture documentation to be negotiated, agreed and executed by the Parties in respect of the Lot 118 Joint Venture;

“Negotiation Period” means the period commencing on the date of execution of this Memorandum of Understanding by all of the Parties and expiring on one year after the Execution Date;

“Parties” means the parties to this Memorandum of Understanding, and **“Party”** is a reference to any one of them;

“Project Land” means Portion of Swan Location 1370 and being Lot 118 on Deposited Plan 28300 and being the whole of the land comprised in Certificate of Title Volume 2213 Folios 691, 692, 693, 694, 695, 696 and 697;

“Lot 118 Joint Venture” means the proposed joint venture between the parties in respect of:

- (a) the sale of the Project Land; or
- (b) the development and sale of the Project Land; or
- (c) agreements with a third party or parties for the development and sale of the Project Land; or
- (d) a combination of the matters mentioned in paragraphs (a), (b) and (c),

and the doing of all things necessary or incidental to those matters including carrying out feasibility and market assessments and obtaining all necessary approvals.

1.2 Interpretation

In this Memorandum of Understanding, unless the context requires otherwise:

- (a) words suggesting the singular include the plural and vice versa;
- (b) references to clauses, paragraphs, subparagraphs and Schedules are to clauses, paragraphs, and subparagraphs of, and schedules to, this Memorandum of Understanding as amended from time to time in accordance with the terms of this Memorandum of Understanding;
- (c) headings used for clauses, paragraphs, subparagraphs, Schedules and the table of contents are for ease of reference only and will not affect the interpretation of this Memorandum of Understanding;
- (d) use of the words “includes” or “including” means without limitation, unless the contrary intention appears.

2. NEGOTIATION OF FORMAL JOINT VENTURE DOCUMENTATION

2.1 Negotiation Period

The Parties acknowledge that they intend that they will negotiate in good faith during the Negotiation Period to agree upon the terms of the Formal Joint Venture Documentation [*on or before the end of the Negotiation Period*].

2.2 Documentation to contain appropriate terms

The Parties agree that the Formal Joint Venture Documentation will contain terms appropriate for a joint venture of the nature and magnitude of the Lot 118 Joint Venture.

2.3 Documentation to reflect Agreed Principles

The Parties agree that the Formal Joint Venture Documentation will reflect the Agreed Principles set out in clause 3.

3. AGREED PRINCIPLES

3.1 Joint venture shares

The joint venture shares of the Parties will be:

Town of Cambridge	One twelfth
City of Joondalup	Two twelfths
City of Perth	One twelfth
City of Stirling	Four twelfths
Town of Victoria Park	One twelfth
Town of Vincent	One twelfth
City of Wanneroo	Two twelfths.

3.2 Separate liability

The liability of each of the Parties for the liabilities arising under or from the Lot 118 Joint Venture or the Lot 118 Joint Venture property will be several and not joint, so that, as between themselves, each is liable only for its Joint Venture Share of those liabilities.

3.3 Composition of management committee

The management committee will consist of one representative appointed by each of the Parties.

3.4 Authorities and discretions of management committee

- (1) Subject to any direction of the Parties, the management committee shall have the following authorities and discretions:
 - (a) generally to undertake the Project in accordance with approved operating programmes and approved budgets without further reference to the Parties;
 - (b) to engage a project manager to be responsible for the implementation of the approved operating programme and who will report to and take instructions from the management committee;

- (c) to take out and maintain appropriate insurance cover in relation to the Project and the risks associated with the Project and the Joint Venture; and
 - (d) such other authorities and discretions as may be agreed between the Parties.
- (2) For the avoidance of doubt, the Parties agree that the authorities and discretions referred to in subclause (1), include the authority to sell that part of the Project Land leased to the Mindarie Regional Council but that the authority is subject to any direction of the Parties.

3.5 Voting

On a vote, each Party will have a number of votes equal to that Party's Joint Venture Share expressed as a whole number as follows:

Party	Number of votes
Town of Cambridge	1
City of Joondalup	2
City of Perth	1
City of Stirling	4
Town of Victoria Park	1
Town of Vincent	1
City of Wanneroo	2
Total	12

3.6 Voting - two-thirds majority required

All decisions will be made by a two-thirds majority of votes.

4. MISCELLANEOUS

4.1 No assignment without consent

- (1) A Party may not assign, novate or otherwise deal with any of its rights or obligations under this Memorandum of Understanding without the consent in writing of all other Parties.
- (2) A Party may grant or withhold its consent under this clause in its absolute discretion.

4.2 Subject to Formal Joint Venture Documentation

The Parties acknowledge that clauses 2 and 3 of this Memorandum of Understanding are not intended to create binding legal obligations between them, it being their intention that such obligations will not arise unless and until the Formal Joint Venture Documentation is executed by the Parties.

4.3 Costs

The Parties agree to bear the legal costs of and incidental to the preparation, execution and stamping of this Memorandum of Understanding in the same proportions as the joint venture shares referred to in clause 3.1.

EXECUTED by the parties

THE COMMON SEAL of **TOWN OF**)
CAMBRIDGE was hereunto affixed pursuant to a)
resolution of the Council in the presence of:)

Mayor

Chief Executive Officer

THE COMMON SEAL of **CITY OF**)
JOONDALUP was hereunto affixed pursuant to a)
resolution of the Council in the presence of:)

Mayor

Chief Executive Officer

THE COMMON SEAL of **CITY OF PERTH** was)
hereunto affixed pursuant to a resolution of the Council)
in the presence of:)

Lord Mayor

Chief Executive Officer

THE COMMON SEAL of **CITY OF STIRLING**)
was hereunto affixed pursuant to a resolution of the)
Council in the presence of:)

Mayor

Chief Executive Officer

THE COMMON SEAL of TOWN OF VICTORIA)
PARK was hereunto affixed pursuant to a resolution of)
the Council in the presence of:)

Mayor

Chief Executive Officer

THE COMMON SEAL of TOWN OF VINCENT)
was hereunto affixed pursuant to a resolution of the)
Council in the presence of:)

Mayor

Chief Executive Officer

THE COMMON SEAL of CITY OF WANNEROO)
was hereunto affixed pursuant to a resolution of the)
Council in the presence of:)

Mayor

Chief Executive Officer