

Draft 5

Date: 15 March 2005

Time: 4:15 PM

Establishment Agreement

Tamala Park Regional Council

Town of Cambridge (**Town of Cambridge**)

City of Joondalup (**City of Joondalup**)

City of Perth (**City of Perth**)

City of Stirling (**City of Stirling**)

Town of Victoria Park (**Town of Victoria Park**)

Town of Vincent (**Town of Vincent**)

City of Wanneroo (**City of Wanneroo**)

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L A W Y E R S

Establishment Agreement

Tamala Park Regional Council

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Details

Date

Parties

Name	Town of Cambridge
Short form name	Town of Cambridge
Notice details	1 Bold Park Drive, Floreat, Western Australia 6014 Facsimile (08) 9347 6060 Attention: Graham Partridge
Name	City of Joondalup
Short form name	City of Joondalup
Notice details	Boas Avenue, Joondalup, Western Australia 6019 Facsimile (08) 9300 1383 Attention: Clayton Higham
Name	City of Perth
Short form name	City of Perth
Notice details	Council House, 27 St Georges Terrace, Perth, Western Australia 6000 Facsimile (08) 9461 3083 Attention: Frank Edwards
Name	City of Stirling
Short form name	City of Stirling
Notice details	Civic Place, Stirling, Western Australia 6021 Facsimile (08) 9345 8822 Attention: Lindsay Delahaunty
Name	Town of Victoria Park
Short form name	Town of Victoria Park
Notice details	99 Shepperton Road, Victoria Park, Western Australia 6100 Facsimile (08) 9311 8181 Attention: John Bonker
Name	Town of Vincent
Short form name	Town of Vincent
Notice details	244 Vincent Street, Leederville, Western Australia 6007 Facsimile (08) 9273 6099 Attention: John Giorgi JP

Name	City of Wanneroo
Short form name	City of Wanneroo
Notice details	23 Dundobar Road, Wanneroo, Western Australia 6065
	Facsimile (08) 9405 5499
	Attention: Charles Johnson

Background

- A The Participants are the owners of the Land, in the shares set out in Schedule 1.
- B The Participants wish to ensure that the Land is rezoned, subdivided, developed and sold and, for that purpose, have agreed to the establishment of the TPRC and the transfer of the Land to the TPRC.
- C Each of the Participants has resolved, on the dates referred to in Schedule 2, to enter into this Establishment Agreement and to submit it to the Minister for approval under section 3.61 of the Act.

draft

Agreed terms

1. Defined terms

In this Establishment Agreement:

Act means the *Local Government Act 1995* and includes the regulations made under that Act.

Budget Deficiency has the same meaning as the expression 'budget deficiency' is given in Part 6 of the Act.

Note: The expression "budget deficiency" is defined by section 6.1 of the Act to mean:

'in relation to a financial year, the amount referred to in section 6.2(2)(c)'

Section 6.2(2)(c) refers to:

'the amount required to make up the deficiency, if any, shown by comparing the estimated expenditure with the estimated revenue and income'

CEO means the chief executive officer of TPRC.

- (a) **Land** means so much of Part Lot 118 Mindarie [add title details relating to that part of Lot 118 proposed to be transferred to the TPRC for development and sale];
- (b) any other land between Lot 118 and the Michell Freeway Reserve that is transferred to the Participants or the TPRC as a result of the negotiations with the State under the Bush Forever Policy; and
- (c) any other land that may be acquired by the TPRC for the purpose of undertaking its obligations in relation to the land described in paragraphs (a) and (b) above,

as is owned, from time to time, by the Participants (jointly) or the TPRC.

Minister means the Minister of the Crown to whom the administration of the Act is for the time being committed by the Governor and includes a Minister of the Crown for the time being acting for or on behalf of the Minister.

Operative Date means the date on which the Minister declares, by notice in the Gazette under section 3.61(4) of the Act, that the TPRC is established.

Participants means the parties to this Establishment Agreement and **Participant** means any one of them.

Region means the districts of the Participants.

Regional Purpose means the purpose referred to in clause 4.

Surplus, for a financial year, means the amount, if any:

- (a) by which the revenue and income of the TPRC exceeds its expenditure; and
- (b) which is shown as a surplus in the annual financial report, for that year, prepared by the TPRC in accordance with the Act.

TPRC means the Tamala Park Regional Council.

TPRC Council means the council of the TPRC.

Withheld Sum means the sum reasonably necessary to be withheld from a Surplus distribution under clause 9.1 having regard to:

- (a) the TPRC's objectives, including its objective to maximise, within prudent risk parameters, the financial return to the Participants; and
- (b) the TPRC's need to maintain a positive cash flow balance for operational costs and approved development works.

2. Name

The name of the regional local government is the Tamala Park Regional Council.

Notes:

- 1 Section 3 62(1) of the Act provides that a regional local government is a body corporate with perpetual succession and a common seal.
- 2 A regional local government has the same general function of a local government, including its legislative and executive functions. See sections 3.61(1) and 3 66 of the Act.
- 3 Except as stated in section 3 66, the Act applies to a regional local government as if:
 - (a) the Participants' districts together made up a single district; and
 - (b) the regional local government were the local government established for that district.
- 4 Section 3 66(2) provides that a regional local government can only do things for the regional purpose (see clause 4 below).

3. Region

The TPRC is established for the Region.

4. Regional purpose

The regional purpose for which the TPRC is established is:

- (a) to undertake, in accordance with the objectives, the rezoning, subdivision, development, marketing and sale of the Land; and
- (b) to carry out and do all other acts and things which are reasonably necessary for the bringing into effect of the matters referred to in paragraph (a) of this clause.

Note:

In certain circumstances, a proposal to undertake a Regional Purpose may require the preparation of a business plan under the Act – see section 3 59 of the Act

5. Objectives

- (a) The objectives of the TPRC are:
 - (i) to develop and improve the value of the Land;
 - (ii) to maximise, within prudent risk parameters, the financial return to the Participants;

- (iii) to balance economic, social and environmental issues; and
 - (iv) to produce a quality development demonstrating the best urban design and development practice.
- (b) A failure or alleged failure of the TPRC to meet any of the objectives set out in this clause:
- (i) is not to affect the obligations of a Participant to comply with this Establishment Agreement; and
 - (ii) is not to give rise to any claim or entitlement to damages on the part of a Participant.

Note:

Administrative law remedies may be available to a Participant in relation to the TPRC's observance of the objectives set out in this clause.

6. The Council

6.1 Appointment of members

- (a) Each Participant is to appoint a member or members of the council of the Participant to be a member or members of the TPRC Council:
 - (i) from the Operative Date – in the numbers set out in Schedule 3; and
 - (ii) from any change to the Participants – in the numbers agreed under clause 11.5(c).
- (b) A Participant may appoint a member or members of the council of the Participant as an alternate member or members for the member or members appointed by that Participant under paragraph (a) of this clause.
- (c) An alternate member may act temporarily in place of the member, for whom he or she was appointed an alternate member, during any period in which the latter is unable, by reason of illness, temporary absence from the State, conflict of interest or for any other cause, to perform the functions of the office.

Note: section 3 62(b) of the Act provides that a regional local government is to have, as its governing body, a council established under the establishment agreement and consisting of members of the councils of the Participants

6.2 Tenure of members of the TPRC Council

A member of the TPRC Council is to hold office until:

- (a) the Friday before the general local government elections, currently held every 2 years in May (**local government elections**), after the Operative Date;
- (b) the member's office, as a member of the council of the Participant, becomes vacant; or
- (c) the member's appointment is terminated by the Participant,

whichever occurs first.

Note: sections 2.32 and 2.33 of the Act set out circumstances in which the office of a member of a council becomes vacant

6.3 Election of chairman and deputy chairman

- (a) The members of the TPRC Council are to elect a chairman and a deputy chairman:

- (i) at the first meeting of the TPRC Council following the Operative Date;
- (ii) at the first meeting of the TPRC Council following the first Saturday:
 - (A) after the local government elections following the Operative Date; and
 - (B) after the local government elections every 2 years after the Operative Date.
- (b) If the office of chairman or deputy chairman becomes vacant then the members of the TPRC Council are to elect a new chairman or deputy chairman, as the case requires.
- (c) The election referred to in subclause (b) is to take place at a meeting held at least 4 weeks after the date on which the office became vacant.

6.4 Tenure of chairman and deputy chairman

A chairman or deputy chairman is to hold that office from the date of election under clause 6.3 until:

- (a) he or she ceases to be a member of the TPRC Council, otherwise than under clause 6.2(a);
- (b) the election of a new chairman or deputy chairman, as the case may be; or
- (c) the expiry of the period of 2 years from the date of the last local government elections, whichever occurs first.

6.5 Role of chairman

The chairman:

- (a) presides at meetings of the TPRC Council;
- (b) carries out civic and ceremonial duties on behalf of the TPRC;
- (c) speaks on behalf of the TPRC;
- (d) performs such other functions as are given to the chairman by the Act, any other written law or this Agreement; and
- (e) liaises with the CEO on the TPRC's affairs and the performance of its functions.

Notes:

1. The role of the TPRC Council is set out in section 27 of the Act and is identical to the role of the council of a local government.
2. The functions of the CEO are set out in section 5.41 of the Act.
3. The chairman may agree to the CEO speaking on behalf of the TPRC - see section 5.41(f) of the Act.

6.6 Role of deputy chairman

- (a) The deputy chairman performs the functions of the chairman when authorised to do so under this clause.
- (b) If:
 - (i) the office of chairman is vacant; or
 - (ii) the chairman is not available or is unable or unwilling to perform the functions of chairman,
 then the deputy chairman may perform the functions of chairman.

6.7 Role of members of TPRC Council

A member of the TPRC Council:

- (a) represents the interests of the ratepayers and residents of the Region;
- (b) facilitates communication between the community of the Region and the TPRC Council;
- (c) participates in the TPRC's decision-making processes at meetings of the TPRC Council and its committees; and
- (d) performs such other functions as are given to the member by the Act or any other written law.

7. The Land

7.1 Transfer

When requested by the TPRC Council, the Participants are to transfer to the TPRC that part of the Land that is owned by the Participants.

7.2 Documentation

The Participants are to execute whatever documentation relating to the Land – such as the transfer of, or other dealings with, the Land – as the TPRC requires to enable it to undertake its Regional Purpose.

8. Financial contributions

8.1 Bush Forever compensation payments

Each Participant is to ensure that the amount of the State's payment or payments of compensation to that Participant under the Bush Forever Policy in respect of the Land:

- (a) is paid to the TPRC directly by the State; or
- (b) is paid by the Participant to the TPRC within 14 days of:
 - (i) the payment being received from the State by the Participant; or
 - (ii) the Operative Date,whichever occurs later.

8.2 Annual contributions

If a Budget Deficiency is shown in the annual budget of the TPRC, and if the Land has not been transferred to the TPRC:

- (a) the TPRC Council may request the Participants to make a contribution; and
- (b) the Participants are to make the contribution, as requested by the TPRC Council, in the proportions set out in Schedule 1.

8.3 Other contributions

If the Land has not been transferred to the TPRC:

- (a) the TPRC Council may request the Participants to make a contribution for the regional purpose (other than an annual contribution referred to in clause 8.2), including a contribution towards acquisition of any asset of capital nature; and

- (b) the Participants are to make the contribution, as requested by the TPRC Council, in the proportion set out in Schedule 1.

8.4 Manner of payment

The contributions referred to in clauses 8.2 and 8.3 are to be paid by each Participant to the TPRC in the manner and at the times requested by the TPRC Council.

8.5 Late payment

Unless otherwise agreed, if a Participant fails to pay to the TPRC a sum of money owing under this clause on or before the due date for payment, that Participant is to pay to the TPRC, in addition to the sum of money due and payable, interest at the overdraft rate charged by the TPRC's bank on amounts of the same size as the unpaid sum, calculated from and including the due date of payment to but excluding the actual date of payment.

8.6 Annual financial statements

The TPRC is to give to each Participant a copy of the TPRC's annual financial statements, including details of all assets and liabilities, at the same time as these are submitted each year to the TPRC's auditors.

9. Financial distributions

9.1 Surplus

Where there is a Surplus, the TPRC:

- (a) is to distribute to the Participants the amount by which the surplus exceeds the Withheld Sum;
- (b) may distribute to the Participants all or part of the Withheld Sum; and
- (c) is to pay the distribution to the Participants in the proportions set out in Schedule 1.

9.2 Other distributions

On the basis of:

- (a) a quarterly financial report, prepared in accordance with the Act, in respect of a financial year; and
- (b) current budgeted projections for that financial year,

the TPRC Council may determine that an amount not exceeding the TPRC's excess funds should be distributed to the Participants.

9.3 Manner of distribution

The payment of any amount under clause 9.1 or 9.2 is to be in the manner and at the time determined by the TPRC Council, having regard to the prudent management of its cashflow and financial requirements.

10. Borrowings

10.1 Act to apply

Part 6, Division 5, Subdivision 3 of the Act is to apply.

Note:

1. Section 3.66(4) of the Act provides that Part 6, Division 5, Subdivision 3 does not apply in relation to a regional local government unless the Establishment Agreement provides that it does
2. Part 6, Division 5 Subdivision 3 of the Act deals with borrowings and includes the power to borrow and restrictions on borrowings

10.2 Security

If the Land has not been transferred to the TPRC, the TPRC may give security over any of the financial contributions of the Participants to the TPRC's funds as agreed from time to time by the Participants.

11. Withdrawal of a Participant

11.1 Withdrawal conditions

A Participant may withdraw from the TPRC only:

- (a) after divesting itself of its interest (if any) in the Land under clause 12; and
- (b) in accordance with an agreement in writing between the Participants under this clause.

11.2 Notice

A Participant who wishes to withdraw from the TPRC is to give to each of the other Participants and to the TPRC, in accordance with clause 11.3, notice in writing of its wish to do so.

11.3 Permitted notice periods

A notice under clause 11.2, or under clause 12.3, must be given within 28 days of any of the following events:

- (a) the date on which the State Government provides written acknowledgment of the amount that it has agreed, with the Participants or the TPRC, to pay under its 'Bush Forever' policy;
- (b) the date of final adoption by the Western Australian Planning Commission of a structure plan for the development of the Land;
- (c) the date of adoption by the TPRC of a detailed implementation plan for the Land; and
- (d) the date of completion of the audit of each annual financial report for the TPRC for the preceding financial year, or 30 September, whichever occurs first.

11.4 Negotiations in good faith

The Participants are to negotiate:

- (a) in good faith with a view to reaching agreement; and
- (b) as soon as practicable following receipt of a notice under clause 11.2.

11.5 Requirements of agreement

An agreement under this clause:

- (a) is to specify the date on which the withdrawal is to take effect;
- (b) is to specify either:
 - (i) the amount to be paid to or by the withdrawing Participant; or
 - (ii) the methodology for determining the amount to be paid to or by the withdrawing Participant; and

- (c) is not to take effect unless the other Participants have agreed in writing to vary this Establishment Agreement so as to provide for:
 - (i) the determination of the contributions to be made by those Participants to the funds of the TPRC;
 - (ii) the alteration of either or both of:
 - (A) the number of members of the TPRC Council; and
 - (B) the number of members of the TPRC Council to be appointed by one or more of those Participants; and
 - (iii) following the divestment under clause 12:
 - (A) the proportions in which the remaining Participants hold the Land; and
 - (B) the payments to be made under clause 12.

11.6 Matters relevant to negotiations

When negotiating under this clause, the Participants are to have regard to:

- (a) the following principles:
 - (i) if the TPRC has an excess of assets over liabilities as shown in the financial statements of the TPRC, then:
 - (A) firstly, to the extent that the withdrawing Participant's proportionate entitlement to the excess is sufficient to do so, the withdrawing Participant is to be given credit for its capital contributions as shown in the accounting records of the TPRC; and
 - (B) secondly, the withdrawing Participant is to be given credit for any balance remaining of that proportionate entitlement to the excess; or
 - (ii) if the TPRC has an excess of liabilities over assets as shown in the financial statements of the TPRC, then the withdrawing Participant is to meet its proportionate liability of the excess; and
- (b) any factor or circumstances considered relevant by the Participants including any financial consequences for the TPRC and the Participants other than the withdrawing Participant, associated with any contractual obligations of the TPRC, by reason of the proposed withdrawal.

11.7 Failure to reach agreement

Any failure by the Participants to reach agreement under this clause is not to be treated as a dispute for the purpose of clause 14.

12. Divestment of ownership interests

12.1 Definitions

In this clause:

- (a) 'Divesting Participant' means a Participant who has an ownership interest in the Land and wishes to divest itself of that interest; and
- (b) 'Remaining Participant' means each other Participant.

12.2 Divestment only under this clause

A Participant is not to divest itself of its ownership interest in the Land otherwise than in accordance with this clause.

12.3 Notice

A Divesting Participant is to give to each Remaining Participant and to the TPRC, in accordance with clause 11.3, notice in writing of its proposed divestment.

12.4 Offer to Remaining Participants

A notice given under clause 12.3 is taken to be an offer, by the Divesting Participant to the Remaining Participants, to sell its interest in the Land as identified in the notice:

- (a) to the Remaining Participants in the proportion that each of the Remaining Participants' shares bears to the whole of the Remaining Participants' shares; and
- (b) in accordance with the most recent valuation that is required to be carried out under clause 12.7.

12.5 Acceptance among Remaining Participants

If a Remaining Participant does not accept the offer under clause 12.4 within 30 days of the notice being given to it, the interest in the Land that could have been accepted by that Remaining Participant:

- (a) is taken to have been made to the other Remaining Participants;
- (b) may be accepted by the other Remaining Participants; and
- (c) is to be accepted by such of the other Remaining Participants who wish to accept the offer, in the proportion that each of the other Remaining Participants' shares bears to the whole of the other Remaining Participants' shares.

12.6 Payment

The acceptance of an offer made by a Divesting Participant is to be subject to terms that:

- (a) interest is to be payable on any part of the accepted price not paid to the Divesting Participant within 60 days after the date on which the offer is taken to have been made;
- (b) if payment of the full amount due to the Divesting Participant has not been made by a Remaining Participant within 90 days after the date on which the offer is taken to have been made, then the Divesting Participant may, at its option, give notice to that Remaining Participant that the sale to that Remaining Participant is terminated; and
- (c) if the sale is terminated under paragraph (b), the relevant interest in the Land:
 - (i) is taken to have been offered to the other Remaining Participants;
 - (ii) may be accepted by the other Remaining Participants; and
 - (iii) is to be accepted by such of the other Remaining Participants who wish to accept the offer, in the proportion that each of the other Remaining Participants' shares bears to the whole of the other Remaining Participants' shares.

12.7 Valuation

- (a) A Participant who wishes to consider withdrawing from the TPRC may ask the TPRC to arrange, at its cost, for the Land to be valued by a licensed valuer within 14 days of any of the dates specified in clause 11.3.
- (b) The TPRC is to comply with a request made under paragraph (a).

12.8 Requirements of the Act

Each Participant is to comply with the requirements of the Act that affect the sale and purchase of an interest in the Land, such as the current requirements relating to a major land transaction.

13. Winding up

13.1 Winding up by agreement

The Participants may, by agreement, wind up the TPRC.

13.2 Division of assets

- (a) If the TPRC is to be wound up and there remains, after satisfaction of all its debts and liabilities, any property and assets of the TPRC then the property and assets are to be realised and:
 - (i) the proceeds, along with any surplus funds, are to be used to repay to the Participants their respective capital contributions as shown in the accounting records of the TPRC; and
 - (ii) the balance, if any, is to be divided among the Participants in the proportions set out in Schedule 1.
- (b) For the avoidance of doubt, for the purposes of subclause (a), any capital contributions of the Participants do not accrue interest.

13.3 Division of liabilities

If the TPRC is to be wound up and there remains any liability or debt in excess of the realised property and assets of the TPRC, then the liability or debt is to be met by each of the Participants in the proportions set out in Schedule 1.

14. Dispute resolution

14.1 No proceedings

A Participant must not start arbitration proceedings in respect of a dispute arising out of this Agreement (**Dispute**) unless it has complied with this clause.

14.2 Notification of dispute

A Participant claiming that a Dispute has arisen must notify the other Participants to the Dispute giving details of the Dispute.

14.3 Reasonable efforts to resolve Dispute

- (a) During the 14 day period after notification is given under clause 14.2 (or longer period agreed in writing by the Participants) (**Negotiation Period**), the Participants must use their reasonable efforts to resolve the Dispute.
- (b) Within the first 7 days of the Negotiation Period, if the Dispute continues, the chief executive officers of the Participants and the CEO of the TPRC must meet, and use their reasonable endeavours to resolve the Dispute.

14.4 Dispute resolution process

If the Dispute is not resolved within the Negotiation Period, the Participants shall meet and endeavour to agree on:

- (a) a process for resolving the Dispute other than by litigation or arbitration (such as by further negotiations, mediation, conciliation or expert determination);
- (b) the procedure and timetable for any exchange of documents and other information relating to the Dispute;
- (c) the procedural rules and timetable for the conduct of the selected mode of proceeding;
- (d) a procedure for the selection and compensation of any independent persons engaged by the Participants to assist in resolution of the Dispute; and
- (e) whether or not the Participants should seek the assistance of a dispute resolution organisation.

14.5 Arbitration

If the Participants are unable to agree on a process for resolving the Dispute in accordance with clause 14.4 within 21 days after the Negotiation Period then:

- (a) any Participant may notify the others in writing (**Arbitration Notice**) that it requires the dispute to be referred to arbitration; and
- (b) the dispute (unless meanwhile settled), on receipt of the Arbitration Notice by the recipients, is taken to be referred to arbitration under and in accordance with the provisions of the *Commercial Arbitration Act 1985*.

14.6 Legal representation

For the purposes of the *Commercial Arbitration Act 1985*, the Participants consent to each other and to the TPRC being legally represented at any such arbitration.

15. Interpretation

15.1 Interpretation

In this Establishment Agreement, unless the context requires otherwise:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include the other genders;
- (c) references to persons include corporations and bodies politic;
- (d) references to a person include the legal personal representatives, successors and assigns of that person;
- (e) a reference to a statute, planning scheme, or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- (f) references to this or any other document include the document as varied or replaced, and notwithstanding any change in the identity of the parties;
- (g) references to writing include any mode of representing or reproducing words in tangible and permanently visible form;
- (h) an obligation of two or more parties is to bind them jointly and severally;
- (i) if a word or phrase is defined other parts of speech and grammatical forms of that word or phrase have corresponding definitions;

- (j) references to a person or body which has ceased to exist or has been reconstituted, amalgamated, reconstructed or merged, or the functions of which have become exercisable by any other person or body in its place, are to be taken to refer to the person or body established or constituted in its place or by which its functions have become exercisable;
- (k) an obligation incurred in favour of two or more parties is to be enforceable by them jointly and severally;
- (l) reference to any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (m) reference to a month and cognate terms means a period commencing on any day of a calendar month and ending on the corresponding day in the next succeeding calendar month but if a corresponding day does not occur in the next succeeding calendar month the period shall end on the last day of the next succeeding calendar month;
- (n) includes means includes without limitation;
- (o) references to this Establishment Agreement include its schedules.

15.2 Headings and footnotes

Headings and footnotes are to be ignored in construing this Establishment Agreement.

15.3 Time

- (a) References to time are to local time in Perth, Western Australia; and
- (b) unless otherwise specified, where time is to be reckoned from a day or event, that day or the day of that event is to be excluded.

Note:

Amendment of Establishment Agreement

1. The Participants may amend this Establishment Agreement by agreement made with the Minister's approval - see section 3.65(1) of the Act

Admission of Other Local Governments

2. This Establishment Agreement can be amended to include another local government as a party to the amending agreement - see section 3.65(2) of the Act

Schedule 1- Ownership shares

Participant	Share/proportion
Town of Cambridge	$\frac{1}{12}$
City of Joondalup	$\frac{1}{6}$
City of Perth	$\frac{1}{12}$
City of Stirling	$\frac{1}{3}$
Town of Victoria Park	$\frac{1}{12}$
Town of Vincent	$\frac{1}{12}$
City of Wanneroo	$\frac{1}{6}$

Schedule 2 – Resolution dates

Participant	Date of resolution to enter into this Establishment Agreement
Town of Cambridge	
City of Joondalup	
City of Perth	
City of Stirling	
Town of Victoria Park	
Town of Vincent	
City of Wanneroo	

Schedule 3- Number of members

Participant	Number of members
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

Signing page

EXECUTED as an agreement

The common seal of **Town of Cambridge** is affixed in the presence of

Signature of Mayor

Signature of Chief Executive Officer

Name of Mayor (print)

Name of Chief Executive Officer (print)

The common seal of **City of Joondalup** is affixed in the presence of

Signature of Mayor

Signature of Chief Executive Officer

Name of Mayor (print)

Name of Chief Executive Officer (print)

The common seal of **City of Perth** is affixed in the presence of

Signature of Mayor

Signature of Chief Executive Officer

Name of Mayor (print)

Name of Chief Executive Officer (print)

The common seal of **City of Stirling** is affixed in the presence of

Signature of Mayor

Signature of Chief Executive Officer

Name of Mayor (print)

Name of Chief Executive Officer (print)

**The common seal of Town of Victoria Park is
affixed in the presence of**

Signature of Mayor

Signature of Chief Executive Officer

Name of Mayor (print)

Name of Chief Executive Officer (print)

**The common seal of Town of Vincent is
affixed in the presence of**

Signature of Mayor

Signature of Chief Executive Officer

Name of Mayor (print)

Name of Chief Executive Officer (print)

**The common seal of City of Wanneroo is
affixed in the presence of**

Signature of Mayor

Signature of Chief Executive Officer

Name of Mayor (print)

Name of Chief Executive Officer (print)

Business Plan for a Major Land Transaction Lot 118 Mindarie

Section 3.58 Local Government Act.

Business Plan Coverage

This Business Plan is in respect of agreements and land transactions affecting Lot 118 Mindarie which is jointly owned by 7 Local Governments.

The Business plan covers the following:

- a) an amendment to the lease of 252 hectares of land to the MRC;
- b) a Bush Forever NPS involving transfer of land to the WAPC and payment by the Commission of compensation to the owners;
- c) establishment of a Regional Council to develop about 165 hectares of Lot 118 and potentially receive a transfer of that land from the owners; and
- d) development of part of Lot 118 with the eventual sale of residential land.

This plan is advertised for public comment 42 days – February 2005 – March 2005.

Late submissions not accepted.

Submissions to a joint owner Local Authority listed – Page 12.

Lot 118 Mindarie – Ownership

Lot 118 Mindarie is owned by the 7 Local Governments listed in the shares stated:

Owner	Share/Proportion
Town of Cambridge	1/12
City of Joondalup	1/6
City of Perth	1/12
City of Stirling	1/3
Town of Victoria Park	1/12
Town of Vincent	1/12
City of Wanneroo	1/6

The land was acquired in 1982 by the then Cities of Perth, Stirling and Wanneroo. In equal 1/3 shares. Restructure of the City of Perth into 4 separate Local Governments and of the old City of Wanneroo into 2 separate Local Governments has resulted in the ownership and shares stated in the Table above

A fuller description of the land and title details is shown in Annexure A.

Lot 118 Mindarie – Location

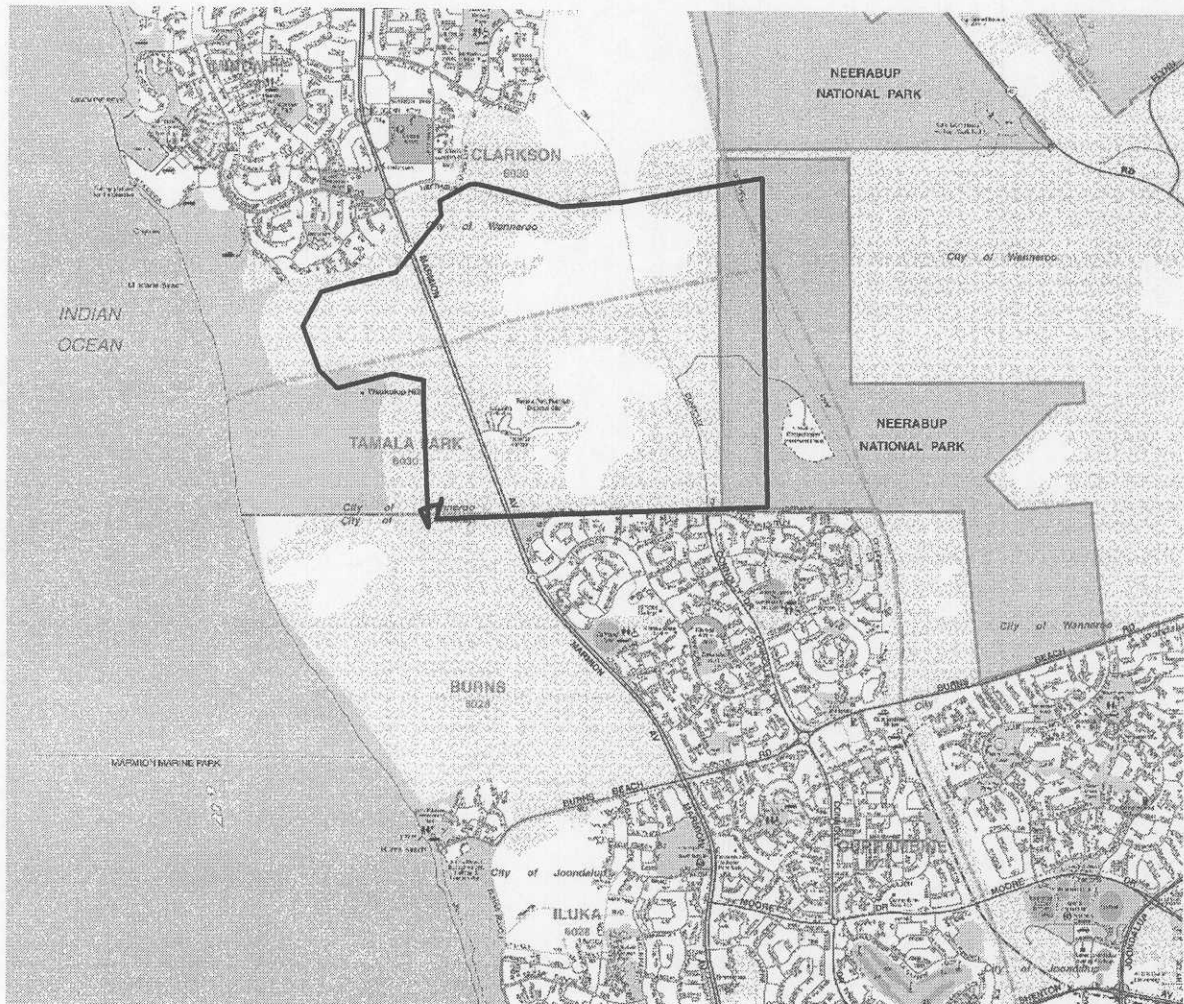
Location Map

NW Corridor

The land comprises 432.0977 Hectares

The Subject Land is north of the suburb of Kinross and south of Mindarie Keys. It is bordered on the east by Neerabup National Park and on the West by a coastal conservation reserve

The land is located in the Local Authority District – City of Wanneroo



Background

Lot 118 Mindarie was acquired for use as a refuse landfill site and for future urban development.

At the time of acquisition part of the land had been designated possible future open space.

In 1984 the then Cities of Perth, Wanneroo and Stirling owned the land and made strategic decisions to:

- Utilise part of the designated future POS land for a landfill for refuse.
- Invest in Road and other infrastructure to and in the site.
- Plan future use of approximately 210 hectares of the site for future Urban Development in keeping with the strategic plan for Perth development as set out in the Metropolitan Region Scheme.

Subsequently the Mindarie Regional Council was established to conduct the landfill for disposal of Refuse. An area of 252 Hectares of land was leased to the Mindarie Regional Council and the Mindarie Regional Council has conducted an environmentally sensitive, well managed refuse landfill on approximately 22 hectares of the land since 1991. The Tamala Park landfill site currently services the needs of all seven owner Local Authorities covering a community of 450,000 persons.

Mindarie Regional Council has now adopted plans to progressively move processing of all domestic putrescible waste off site to secondary waste treatment and recycling plants. Mindarie regional Council has acquired a 20 hectare industrial site at Neerabup and is currently tendering for the first secondary waste treatment plant which will have a capacity of approximately 100,000 tonnes throughput per annum.

Completed sections of the Tamala Park Landfill are now being remediated for possible future Recreational Uses and as a Bush Forever conservation site.

Processing of putrescible waste at Tamala Park will be phased out over time as Mindarie Regional Council implements its strategic planning for provision of off site secondary waste treatment plants to process all household waste from all 7 owner Local Governments. Tamala Park will continue to be used as an inert landfill site within a limited area of 22 hectares of already disturbed Land with the remaining part of the Mindarie Regional Council lease being used as a buffer to surrounding developments and being conserved and remediated under Bush Forever and site remediation plans developed in support of Bush Forever policies and as a condition of operating licenses.

The Tamala park landfill operations require a 500-metre buffer from any surrounding Development. As the nature of site use changes to phase out landfill of putrescible household waste the buffer requirement may reduce, however this will be controlled by licenses issued by the EPA and other Regulatory bodies.

Urban Development options for up to 200 hectares of the Northern section of Lot 118 have been subject of research since 1984. Kinross has been developed up to the southern boundary of lot 118. Mindarie has been developed West of Marmion Avenue down to the Northern Boundary of Lot 118. Development of Somerley is now occurring along the Northern Boundary of lot 118 East of Marmion Avenue across to the new Clarkson Rail Station.

Demand for residential land in the Northern Corridor is increasing. Lot 118 will be one of the last lots to be developed in accordance with the Metropolitan Region Planning Scheme.

The City of Wanneroo is projecting population growth of 120,000 by 2021 in the Coastal strip which includes Lot 118. The Western Australian Planning Commission is supporting and projecting development of at least 250 new residential lots per annum from 2006. Most regional infrastructure to service the land is now planned or provided including North South Regional Roads – Marmion Avenue, Connolly Drive and the Mitchell Freeway; East West Road Neerabup Drive and Clarkson Rail Station at the North East corner of the Lot.

A Structure plan for Urban Development of approximately 200 hectares was produced in 2002 formally submitted to the City of Wanneroo, the WAPC and advertising for Public Submissions. The plan suggested the development of 2,608 lots with associated school, POS and other amenities. The plan was withdrawn with the advent of Bush Forever policies being implemented by the State Government to cover part of the land subject of the draft structure plan.

Bush Forever is a State Government policy aimed at conserving significant areas of typical Bushland under conservation policies that will preserve the Bush areas for future generations. Bush Forever and Public open space and public utility reservations are proposed to cover 267 hectares of the 432 hectares of Lot 118 Mindarie.

A Negotiated Planning Solution is nearing completion with the Western Australian Planning Commission under which arrangements will be made for transfer of Bush Forever land from the current Local Authority owners to the State to be incorporated as part of a coastal conservation reserve and as an addition to Neerabup National Park. The Land transferred will come under management of the department of Conservation and Land Management. Part of the transfers proposed will include existing zoned Residential land for which the owners will receive some compensation from the State Government.

The Negotiated Planning solution will also specify the land, which will remain for urban development. This will comprise 30.48 hectares West of Marmion Avenue as an extension of the existing suburb of Mindarie and a further 95 Hectares of land North of the Tamala Park Landfill along the Southern boundary of Neerabup Road and the Area known as Somerley. The WAPC and the Local Government propose completion of the NPS by 30 June 2005.

The Local Authority owners are now proposing the establishment of a Regional Council to manage the urban development of the available land over a period of approximately 12 years. Subject to detailed planning it is expected that the developable land could produce approximately 2000 residential lots in an environmentally sensitive design with associated support infrastructure for a modern urban development.

The Regional Council would be established under the Local Government Act as a body corporate. Representation on the Council from owner (participant) local Governments would be proportionate to ownership shares as would sharing of costs and revenue from development of the land.

It is proposed to establish the Regional Council on 1 July 2005 subject to obtaining necessary approvals and completion of formalities.

Business Plan 1 - Amendment to Lease - Mindarie Regional Council

It is proposed to amend the existing lease to the Mindarie Regional Council to have the following effect:

1. Reduce the lease area from 252 hectares to 153 hectares.
2. Confirm the lease expiry date as 2011 and the lease extension period of 21 years.
3. Adjust rental provisions from a formula to a commercial rent provision that will provide a market assessed valuation every 5 years with CPI adjustments each year.
4. Add provisions to the effect that the owners recognise the need for the MRC to maintain a buffer to its refuse disposal operations, which need will be recognised by the owners, to the extent possible, by scheduling development of adjacent land in conjunction with excavation plans of MRC.
5. Require MRC to recognise the owners plans for development of land to the north of the MRC lease and for co-operation by MRC in moving excavation and landfill operations in a southward direction away from the developable land.

The reduction in lease area will not impede the operation of the MRC. The land excised from the lease will be transferred to the crown to become part of public open space and Bush Forever protection areas. The land will still serve the purpose of buffer requirements for MRC operations.

It is expected that the excision of land from the existing lease will occur contemporaneous with the completion of a NPS with the WAPC as the land to be excised is part of land identified for transfer to the WAPC as an integral part of the NPS.

A copy of the proposed lease can be viewed at the website address:

xxxxxxx

Business Plan 2 - Bush Forever Negotiated Planning Solution (NPS) with WAPC

Lot 118 is subject to Bush Forever protection areas 322 and 323 (see attached plans).

Bush Forever policy can be viewed at the following website address;:

xxxxxxxxx

A NPS with the WAPC will provide the following:

- Ceding of 29.6 hectares of residential zoned land west of Marmion Avenue to Bush Forever. 18.03 hectares will be ceded free of cost. The WAPC will pay landowners compensation for the remaining 11.6 hectares.
- Transfer of 61.23 hectares of rural land west of Marmion Avenue to Bush Forever. Compensation will be paid by the WAPC at rural valuation rates.
- Transfer of 18.5 hectares of rural land east of Marmion Avenue to Bush Forever. Compensation will be paid by the WAPC at rural valuation rates.

- An agreement to consider excision of 16.8 hectares of land from existing POS and Bush Forever reservations if structure planning for development within Lot 118 demonstrates a planning logic for the excision based upon geology, topography and engineering design.
- The NPS will provide that in the event the land is no longer required for Bush Forever, it will be made available to the current owners on the same valuation basis that applied for acquisition.
- An undertaking by the WAPC to have the land dedicated as part of a coastal conservation reserve and an extension to Neerabup National Park with the overarching application of Bush Forever conservation principles.

Overall, the Bush Forever settlement will require immediate transfer of 109 hectares from Lot 118 to the WAPC. The compensation payment for this land will be subject to agreed valuations, but will be in the order of \$13-15.3M.

The local authority landowners currently propose the compensation received for land will be used to provide seed funding for development of the residual land available for residential development.

It is currently planned by the landowners and WAPC to complete the NPS by 30 June 2005.

Business Plan 3 – Establishment Agreement setting up a Regional Council for Development of 165 Hectares (or thereabouts) of Lot 118 Mindarie

The 7 owner local authorities propose to use the vehicle of a Regional Council to manage development of portion of Lot 118.

A Regional Council will provide legal status for commercial activity conducted on behalf of the participant Councils.

Each of the participant Councils will provide elected personnel to be part of the Regional Council. The number of elected members from each participant Council will follow ownership shares in Lot 118 land.

The Regional Council will receive an injection of funds from compensation payments received for land transferred to the WAPC and a NPS. The Regional Council will be empowered to require further contributions from participant Councils, but it is expected that there will be no requirement for further funding as the development of urban land is expected to proceed with cashflow from sales revenue covering all development expenses.

The Establishment Agreement will provide for owners to transfer their land interest to the new Regional Council as an administrative necessity for efficient management of the development project. The Establishment Agreement will also provide that owners may divest themselves of their interest in the development project at periodic intervals on the basis that value to be paid for that interest will be at current market rates established for land remaining in the project.

It is expected that the development of the urban land will continue over a period of 10-12 years. Upon completion of the project, the participant Councils will have the option of dissolving the Regional Council.

The objectives set for the Council are as follows:

Regional Purpose

The regional purpose for which the TPRC is established is:

- (a) to undertake, in accordance with the objectives, the rezoning, subdivision, development, marketing and sale of the Land; and
- (b) to carry out and do all other acts and things which are reasonably necessary for the bringing into effect of the matters referred to in paragraph (a) of this clause.

Note: In certain circumstances, a proposal to undertake a Regional Purpose may require the preparation of a business plan under the Act - see section 3.59 of the Act.

Objectives

- (a) The objectives of the TPRC are:
 - (i) to develop and improve the value of the Land;
 - (ii) to maximise, within prudent risk parameters, the financial return to the Participants;
 - (iii) To balance economic, social and environmental issues; and
 - (iv) to produce a quality development demonstrating the best urban design and development practice.
- (b) A failure or alleged failure of the TPRC to meet any of the objectives set out in this clause:
 - (i) is not to affect the obligations of a Participant to comply with this Establishment Agreement; and
 - (ii) is not to give rise to any claim or entitlement to damages on the part of a Participant.

Note: Administrative law remedies may be available to a Participant in relation to the TPRC's observance of the objectives set out in this clause.

During the life of the project, it is expected that there will be an excess of revenue over expenditure exceeding \$100M, which sum will be distributed to participants according to their ownership shares.

The Establishment Agreement may be viewed at the following web address:

xxxxxxxxxx

Business Plan 4 - Agreement to Transfer Land Interests in Developable Land in Lot 118 Mindarie to the Regional Council set up for the Purpose of Managing Development of the Land

The Regional Council established for development of Lot 118 land will require ownership of the subject land of developing the land and for subsequent transfer after sale.

The Establishment Agreement referred to in the previous section provides for transfer to occur at a time convenient to the Regional Council.

It is anticipated that transfer of land will not occur until such time as the following actions have been completed:

- The NPS with the WAPC.
- Formal establishment of the new Regional Council.
- Completion of a Structure Plan for the urban development.
- Completion of development of land in preparation for land sales.

The Establishment Agreement for the new Regional Council will protect owners' interest in the land. The Establishment Agreement will ensure that owners are able to realise net sale benefits from developed land or, alternatively, the current market value of the project for their ownership share.

Effect on the Provision of Facilities and Services

It is expected that there will be no net draw on local authority funds from undertaking the activities covered by this Business Plan.

The net total effect on provision on facilities and services will be to augment local authority funds with sale proceeds from sale of land. The facilities and services provided by the urban development will service the community in the areas of Mindarie and Clarkson directly and will also provide services for other communities within the northern development corridor.

The structure of the arrangements covered by the Business Plan are designed to protect the environment, preserve ongoing operations for the Mindarie Regional Council and provide for future communities needs under Bush Forever policies.

Effect on Other Persons Providing Facilities and Services in the District

The development of the northern section of Lot 118 will add to the efficient use of public infrastructure and will add a significant additional population that will form part of the catchment area to commercial and industrial service industries in the region.

Expected Financial Effect on Local Governments

Development of 165 hectares of Lot 118 Mindarie for urban purposes will augment rate revenue for City of Wanneroo and will impose obligations upon City of Wanneroo for provision of normal land and people services consistent with the responsibility of local governments.

Sale proceeds from land development will contribute to municipal funds for all of the landowner Councils. Over a period of 10 years the total net sales revenue is expected to exceed \$100M (2005 values).

Ability of the Owner Local Governments to Manage the Undertaking or the Performance of the Transaction

The owner local governments will establish a separate Regional Council with a Chief Executive Officer and appropriate staff. The Regional Council will be represented by elected members from the 7 local government owner participants.

The Regional Council will be a corporate body with capacity to raise revenue from constituent Councils. The Establishment Agreement will provide the Regional Council with sufficient funds to generate a cashflow that should obviate the need for any continuing draw on constituent Council funds.

The Regional Council will have the ability to contract for the employment of consultants, and other personnel, needed to perform necessary activities.

The Regional Council will have the ability to let contracts to develop plans, for construction works, marketing and land sales.

The Regional Council will be required to have its activities audited annually and to report annually to participant Councils. The Regional Council will be subject to relevant local government law.

The Regional Council will be able to access advice and expertise from participant Councils.

Attachments

- Plan showing Existing and proposed lease area, MRC
- Plans of Bush Forever Protection Areas 322 and 323
- Plan showing net development area of Lot 118 - 165 hectares
- Plan showing components of NPS with WAPC

TPRC - Summary Timelines

