

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

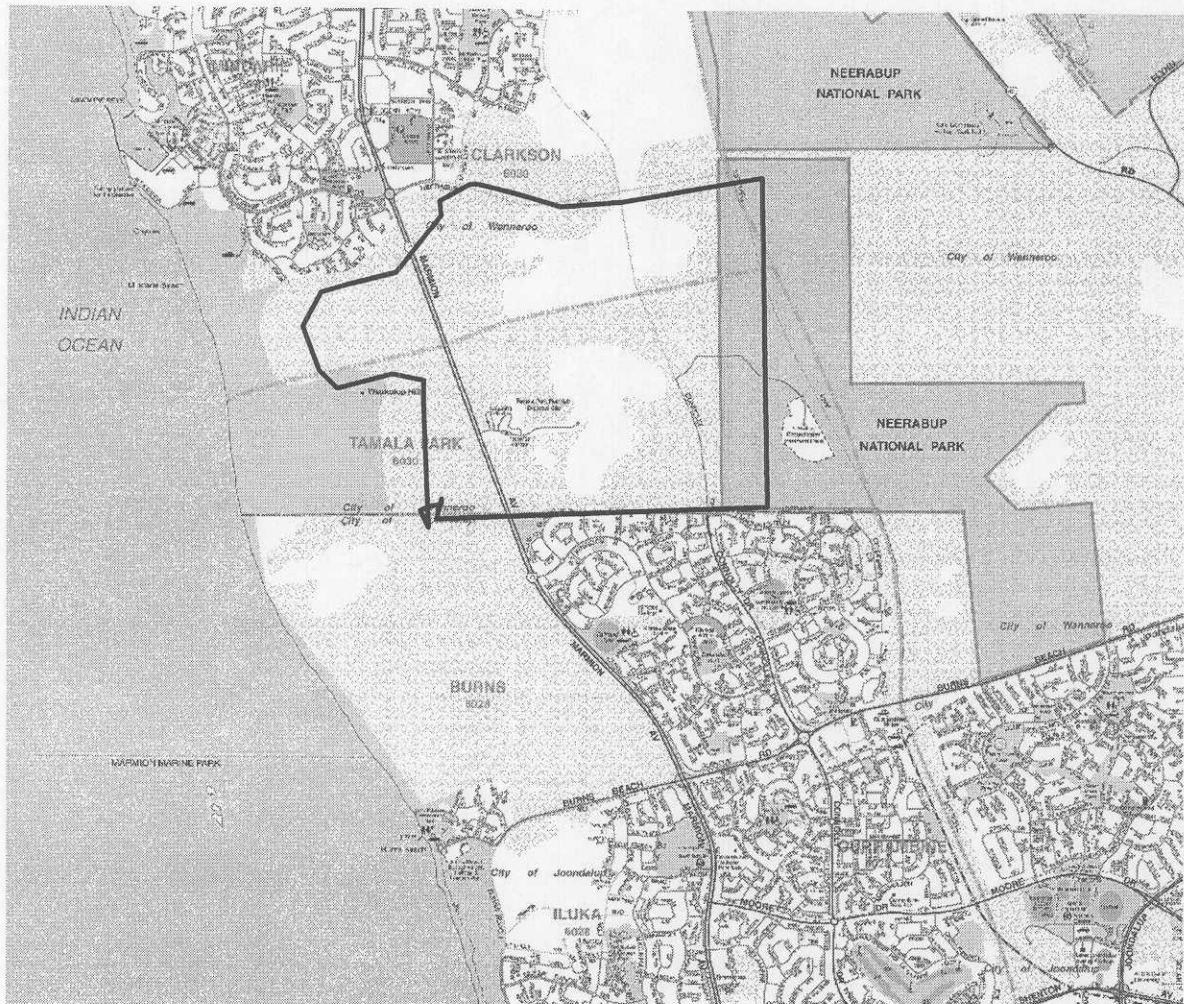
Location Map

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

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

(Participants)

AND

MINDARIE REGIONAL COUNCIL

(Mindarie)

DEED OF EXTENSION, VARIATION AND PARTIAL SURRENDER OF LEASE
RELATING TO
TAMALA PARK, MARMION AVENUE, MINDARIE

THIS DEED OF VARIATION OF LEASE is made 2005

B E T W E E N:

CITY OF PERTH of Westralia Square, 141 St. George's Terrace, Perth
and

TOWN OF CAMBRIDGE of 1 Bold Park Drive, Floreat
and

TOWN OF VICTORIA PARK of 99 Shepperton Road, Victoria Park
and

TOWN OF VINCENT of 244 Vincent Street, Leederville
and

CITY OF STIRLING of Civic Place, Stirling
and

CITY OF JOONDALUP of Boas Avenue, Joondalup
and

CITY OF WANNEROO of 23 Dundobar Road, Wanneroo

(Participants)

AND

MINDARIE REGIONAL COUNCIL of Tamala Park, Marmion Avenue, Mindarie
(Mindarie)

BACKGROUND:

- A. By the Lease the Participants leased to Mindarie the Leased Premises for the term 1 July 1990 to 30 June 2011 and granted an option to extend the term of the Lease from 1 July 2011 to 30 June 2032.
- B. The Participants are now the registered proprietors of the Leased Premises.
- C. Mindarie has agreed to give and the Participants have agreed to accept a partial surrender of the Lease in respect of the Surrendered Area.
- D. The Participants and Mindarie have agreed to extend the term of the Lease for the Further Term and to vary the Lease by this deed to better record the current and ongoing relationship between them.

AGREEMENT:

The parties agree as follows:

1. INTERPRETATION

4.1 Definitions

In this deed:

Further Term means a further term commencing on 1 July 2011 and expiring on 30 June 2032.

Lease means the lease of the Leased Premises by the Participants to Mindarie pursuant to the Original Lease Documents (as varied by this Deed).

Leased Premises means part of Lot 118 on Deposited Plan 28300 described as the Subject Area in Plan A annexed to the Lease referred to in paragraph (a) of the definition of 'Original Lease Documents' in this clause but excluding those areas surrendered from the Lease pursuant to the deeds referred to in paragraphs (c) and (e) of the definition of 'Original Lease Documents' in this clause.

New Lease Document means the form of lease the subject of Annexure B.

Original Lease Documents means:

- (a) a Lease dated 11 October 1990 made between City of Stirling, City of Wanneroo and City of Perth and Mindarie;
- (b) a Deed of Variation of Lease dated 25 November 1996 between City of Stirling, City of Wanneroo and City of Perth and Mindarie;
- (c) a Deed of Partial Surrender of Lease undated but stamped 8 October 1998 between City of Stirling, City of Joondalup and City of Perth and Mindarie;
- (d) a Deed of Variation of Lease undated but stamped 4 August 2000 made between City of Stirling, City of Joondalup, City of Wanneroo and City of Perth and Mindarie; and
- (e) a Deed of Partial Surrender of Lease undated but stamped 7 November 2002 made between the Participants and Mindarie.

Surrendered Area means the area shown hachured **red** on the Plan in Annexure A.

Term means the term granted pursuant to the provisions of the Lease (including, where relevant, any extension or renewal of that term).

Variation Date means 1 January 2005.

4.2 Interpretation rules

In this deed, unless the contrary intention appears:

- a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them occurring at any time before or after the date of this deed;
- the singular includes the plural and vice versa;
- the word "person" includes a firm, a body corporate, an unincorporated association or an authority;
- a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including without limitation, persons taking by novation) and assigns;
- an obligation, agreement, covenant, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- an obligation, agreement, covenant, representation or warranty on the part of two or more persons binds them jointly and severally;
- a reference to a clause or a Schedule is a reference to a clause or a Schedule in this deed;
- a reference to a month is a reference to a calendar month;
- use of the upper case will be deemed to be use of the lower case and vice versa; and
- the construction rule known as contra proferentum will not apply to this deed.

2. SURRENDER

- 2.1 From and including the Variation Date, Mindarie will surrender to the Participants the Surrendered Area (and the benefit of the option for renewal (if any) contained in the Lease) for all the residue of the unexpired Term to the intent that the same shall merge and be extinguished in the freehold reversion of the Participants.
- 2.2 Mindarie covenants and agrees that nothing contained in this deed shall prejudice or affect the liability of Mindarie to observe and perform all of the provisions of the Lease which relate to the Surrendered Area and are due to be performed before the Variation Date.
- 2.3 To avoid any doubt it is hereby agreed and declared that the Lease shall remain in full force and effect in relation to all those leased areas which are not surrendered pursuant to this Deed.

3. RELEASE

Each of the Participants and Mindarie hereby releases the other of them from all actions, suits, claims and demands whatsoever which but for the execution of this Deed such releasing party might have had against the other of them for or in respect of any future breach or non-observance of any covenant, agreement or condition on the part of such other party contained or implied in the Lease as it applies to the Surrendered Area but that release shall be without prejudice to all actions, suits, claims and demands whatsoever which the Participants may have had against Mindarie for or in respect of the outstanding breach or non-observance prior to the Surrendered Date of any covenant, agreement or condition on the part of Mindarie contained or implied in the Lease as it applies to the Surrendered Area.

4. EXTENSION AND VARIATION

4.1 Extension of lease

The Participants agree to grant and Mindarie agrees to accept a Lease of the Leased Premises for the Further Term subject to the Partial Surrender referred to in clause 2 and otherwise on the terms and conditions contained in the New Lease document in accordance with clauses 4.2 to 4.5 (inclusive).

4.2 Variation of lease provisions

The Participants and Mindarie agree to vary the Lease with effect from the Variation Date by substituting all of the provisions in the Original Lease Documents with the provisions in the New Lease Document to the intent that:

- (a) the provisions of the Original Lease Documents will apply to that part of the term up to and including 31 December 2004;
- (b) the provisions of the New Lease Document will apply to that part of the Term from and including 1 January 2005;
- (c) the demise effected by the Lease continues with only the terms and conditions of that demise varied from the Original Lease Documents to the New Lease Document.

4.3 Participants' covenants

The Participants covenant and agree with Mindarie to perform and observe all the terms, conditions, covenants and agreements in the New Lease Document which are expressly or by implication to be performed or observed by the Participants during the period in which the Lease continues.

4.4 Mindarie's covenants

Mindarie covenants and agrees with the Participants to perform and observe all the terms, conditions, covenants and agreements in the New Lease Document which are expressly or by implication to be performed or observed by Mindarie during the period in which the Lease continues.

4.5 Execution of New Lease Document

The Participants and Mindarie will duly execute the New Lease Documents so that as from the Variation Date they need only refer to:

- (a) the Original Lease Documents to determine their respective rights and obligations in respect of that part of the Term up to and including 31 December 2004; and
- (b) the New Lease Document to determine their respective rights and obligations in respect of that part of the Term from and including 1 January 2005.

5. FURTHER ASSURANCE

The Participants and Mindarie will at their own expense execute all documents and provide all assurances and do everything reasonably necessary to give effect to this deed.

6. SEVERANCE

If any provision or part provision of this deed is void or voidable or unenforceable then it shall be deemed to be expunged from this deed and the remaining provisions and part provisions shall continue to apply with full force and effect.

7. LEGAL COSTS

The Participants and Mindarie will each pay their own legal and other costs relating to this deed.

8. CONDITIONS

This deed is, if required, conditional upon the approval of the Western Australian Planning Commission and the Minister for Local Government and Regional Development.

EXECUTED as a deed.

The common seal of)
CITY OF PERTH is affixed)
to this document by authority of a)
resolution of the Council in the presence of)

Chief Executive Officer

Lord Mayor

The common seal of)
TOWN OF CAMBRIDGE)
was affixed to)
this document by authority of a resolution)
of the Council in the presence of:)

Chief Executive Officer

Mayor

The common seal of)
TOWN OF VICTORIA PARK)
was affixed to)
this document by authority of a resolution)
of the Council in the presence of:)

Chief Executive Officer

Mayor

The common seal of)
TOWN OF VINCENT)
was affixed to)
this document by authority of a resolution)
of the Council in the presence of:)

Chief Executive Officer

Mayor

The common seal of)

CITY OF STIRLING)
 was affixed to)
 this document by authority of a resolution)
 of the Council in the presence of:)

 Chief Executive Officer

 Mayor

The common seal of)
 CITY OF JOONDALUP)
 was affixed to)
 this document by authority of a resolution)
 of the Council in the presence of:)

 Chief Executive Officer

 Mayor

The common seal of)
 CITY OF WANNEROO)
 was affixed to)
 this document by authority of a resolution)
 of the Council in the presence of:)

 Chief Executive Officer

 Mayor

MINDARIE

The common seal of)
 MINDARIE REGIONAL COUNCIL)
 was affixed to this document in)
 accordance with its constitution in the)
 presence of:)

 Chief Executive Officer

 Chairman

ANNEXURE A

Surrendered Area (hachured) Orange



ANNEXURE B

New Lease Document
(Refer separate document on web page)

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

(Participants)

and

MINDARIE REGIONAL COUNCIL

(Mindarie)

LEASE OF TAMALA PARK, MARMION AVENUE, MINDARIE

HAYDN ROBINSON
BARRISTER & SOLICITOR
1/23 RHEOLA STREET
WEST PERTH WA 6005
TELEPHONE: 9322 5232
REFERENCE: BSD03_50.rtf
19/4/05

REFERENCE TABLE

PARTICIPANTS	CITY OF PERTH of Council House, 27 St George's Terrace, Perth and TOWN OF CAMBRIDGE of 1 Bold Park Drive, Floreat and TOWN OF VICTORIA PARK of 99 Shepperton Road, Victoria Park and TOWN OF VINCENT of 244 Vincent Street, Leederville and CITY OF STIRLING of Civic Place, Stirling and CITY OF JOONDALUP of Boas Avenue, Joondalup and CITY OF WANNEROO of 23 Dundobar Road, Wanneroo
MINDARIE	MINDARIE REGIONAL COUNCIL of Tamala Park, Marmion Avenue, Mindarie
PREMISES	That part of the Land which is shown hachured on the plan in Annexure A but excluding the areas shown hachured in the plans in Annexure B.
LAND	Lot 118 on Deposited Plan 28300 being the whole of the land in Certificates of Title: 2213/691 (the 1/12 th share of City of Perth); 2213/692 (the 1/12 th share of Town of Cambridge); 2213/693 (the 1/12 th share of Town of Victoria Park); 2213/694 (the 1/12 th share of Town of Vincent); 2213/695 (the 4/12 th shares of City of Stirling); 2213/696 (the 2/12 th shares of City of Joondalup); 2213/697 (the 2/12 th shares of City of Wanneroo).
COMMENCEMENT DATE	1 July 2005.
RENT COMMENCEMENT DATE	1 July 2005.
RENT	\$TBA per annum (subject to review in accordance with this Lease)
TERM	From the Commencement Date to 30 June 2032, subject to early termination as specified in this Lease.
PERMITTED USE	Subject to clause 5.2(d), the carrying on of Mindarie's Core Business.
MARKET RENT REVIEW DATES	Each 5 th anniversary of 1 July, the first review being on 1 July 2010.

CPI REVIEW DATES	Each anniversary of 1 July (other than a Market Rent Review Date), the first CPI Review Date being 1 July 2006.
PUBLIC RISK AMOUNT	\$20,000,000
PRESCRIBED RATE	4% per annum more than the maximum overdraft rate (expressed as a rate per annum) from time to time applied by the Commonwealth Bank of Australia on overdrafts of less than \$100,000.
SPECIAL CONDITIONS	Nil

LEASE dated

2005

BETWEEN

THE PARTICIPANTS

and

MINDARIE

INTRODUCTION

- A. The Participants are the registered proprietors of the Land and are entitled to lease the Premises to Mindarie.
- B. The Participants have agreed to lease and Mindarie has agreed to accept the lease of the Premises for the Term from the Commencement Date on the terms and conditions in this Lease.
- C. In administering this Lease, the Participants and Mindarie have each agreed to act in good faith and to co-operate with each other with the aim of seeking to simultaneously achieve both:
 - (i) Mindarie's objective to conduct its Core Business from the Premises; and
 - (ii) the Participant's objective to develop the Urban Development Area in the manner contemplated by this Lease.

The Participants and Mindarie agree:

1. GRANT OF LEASE AND ACCESS TO PREMISES

1.2 Grant of Lease

The Participants lease and Mindarie takes the Premises for the Term at the Rent on the terms and conditions of this Lease.

1.3 Early Termination by Mindarie

- (a) At any time during the Term, Mindarie may give to the Participants 12 months notice in writing terminating this Lease.
- (b) At the expiration of that notice the Term will cease and determine without prejudice to the rights of the Participants contained or implied in this Lease in respect of any antecedent breach of Mindarie's Covenants.
- (c) On the expiration of that notice Mindarie must yield up the Premises to the Participants in accordance with Mindarie's Covenants.

2. RENT

2.1 Rent

Mindarie will pay the Rent (free of deductions) to the Participants from the Rent Commencement Date until the end of the Term.

2.2 Manner of Rent Payment

Mindarie will pay the Rent by equal monthly payments in advance on the Rent Commencement Date and then on the first day of each month during the Term. If necessary, the first and last payments will be proportionate.

2.3 Market Rent Review Dates

On each Market Rent Review Date the Rent is to be reviewed in the following manner:

- (a) The annual Rent payable from the Market Rent Review Date is to be the amount determined by the Valuer General at the request of either party (which request may not be made more than 3 months prior to the Market Rent Review Date), as the then current market rental value for the Premises which the parties agree in any event will not be less than the Rent payable immediately prior to the relevant Market Rent Review Date.
- (b) If for any reason the Valuer General declines an appointment to determine the current market rental value for the Premises, either party may request the President of the Australian Property Institute (Western Australian Division) to nominate a Valuer to determine the current market rental value and that Valuer shall determine the Rent in lieu of the Valuer General and the succeeding provisions shall apply to that Valuer as if a reference to Valuer General were a reference to the Valuer.
- (c) The Valuer General is deemed to be acting as an expert whose decision is final and binding on both parties.
- (d) Each party is entitled to make written submissions to the Valuer General but any failure to make or unreasonable delay in making submissions is not to delay, annul or otherwise affect the Valuer General's determination.
- (e) The Valuer General must give full written reasons for his or her decision specifying the matters taken into account the weight given to each matter and the matters disregarded.
- (f) The costs of the Valuer General's determination (if any) are to be borne equally by parties.
- (g) Until the annual Rent from a Market Rent Review Date is agreed or determined Mindarie must pay to the Participants a rent equivalent to the Rent payable immediately prior to the Market Rent Review Date.
- (h) If the annual Rent agreed or determined from a Market Rent Review Date is more than the Rent immediately prior to the Market Rent Review Date, Mindarie must pay to the Participants within 14 days of demand the difference between the rent paid in respect of the period from the Market Rent Review Date to the date of agreement or determination and the rent which should have been paid for that period.

2.4 CPI Review Date

On each CPI Review Date, the Rent payable immediately prior to the CPI Review Date shall be increased by a factor equal to the percentage increase in the Consumer Price

Index between the Consumer Price Index published for the quarter ending immediately preceding the Rent Review Date which occurred immediately prior to the CPI Review Date in question and the Consumer Price Index published for the quarter ending immediately preceding the relevant CPI Review Date (or in the case of the first rent review, between the Consumer Price Index published for the quarter ending immediately preceding the CPI Review Date in question and the Consumer Price Index published for the quarter ending immediately preceding the Commencement Date). The parties agree that in any event the Rent following a CPI Review Date shall never be less than the Rent payable immediately prior to the CPI Review Date.

3. **OTHER PAYMENTS**

3.1 **Statutory Outgoings**

Mindarie must pay or reimburse to the Participants, within 30 days of demand, all rates taxes and other statutory charges which are directly assessed or payable in respect of the Premises. The parties agree Mindarie is only liable for Land Tax and Metropolitan Region Improvement Tax on the basis the Premises is the only land of which the Participants is owner within the meaning of the *Land Tax Assessment Act 1976 (WA)* as amended. Subject to Mindarie meeting the Participant's reasonable costs of doing so, the Participants will cooperate with Mindarie to minimise or dispute statutory outgoings as may be reasonably required by Mindarie.

3.2 **Telephone, Electricity, Water Consumption Charges and other services**

Mindarie will duly and punctually pay all charges for the telephones, gas, electricity, water consumption and other services, utilities and facilities connected to the Premises.

3.3 **Apportionment of Statutory Outgoings and other Charges**

- (a) Subject to clause 3.3(b), if any of the outgoings referred to in clauses 3.1 and 3.2 are not separately assessed or payable in respect of the Premises, Mindarie must pay to the Participants within the time specified in this Lease an amount which bears the same proportion to the amount of the outgoing as the lettable area of the Premises bears to the lettable area of that part of the Land to which the relevant assessment applies.
- (b) Where Mindarie is the sole consumer of any of the items referred to in clause 3.2, Mindarie must pay all of the assessed costs without any apportionment referred to in clause 3.3(a).

3.4 **Costs**

- (a) The Participants and Mindarie will each pay their own legal and other costs relating to preparation and negotiation of this Lease.
- (b) A defaulting party must pay to the other all costs (calculated as between solicitor and client in the case of legal fees) charges and expenses incurred by the non-defaulting party:
 - (i) attributable to any default in observing or performing any of the covenants in or implied in this Lease;

- (ii) relating to the preparation and service of a notice under Section 81 of the *Property Law Act 1969* (WA);
 - (iii) in obtaining professional advice as to the non-defaulting party's rights remedies and obligations as a result of any default by the defaulting party.
- (c) Mindarie must pay to the Participants on demand interest at the Prescribed Rate on all Rent and other money payable by Mindarie under this Lease but unpaid for more than 7 days from the respective due date computed on daily rests on the amount from time to time remaining owing from and including the due date until the date of payment.

3.5 **Goods and Services Tax**

- (a) In this clause 'GST Act' means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and the meanings of words and phrases in the GST Act apply to this Lease.
- (b) If pursuant to the GST Act, the Participants are liable to pay GST on any supply made by the Participants under this Lease then Mindarie will pay that GST at the same time and in the same manner as the payment of consideration for the supply.
- (c) The Participants must give Mindarie a Tax Invoice on account of any GST payable by Mindarie under this Lease in accordance with the GST Act.

4. **MAINTENANCE AND INSPECTION OF PREMISES**

4.1 **Act as Required by Law**

- (a) Mindarie must at its own expense duly and punctually observe and comply and indemnify the Participants in all respects of all Acts, orders, rules, requirements and notices of any Government Agency which relate or apply in any way to the Premises or their use or occupation. For the avoidance of doubt, Mindarie acknowledges this clause imposes on it an obligation to carry out or effect any structural or capital works.
- (b) Mindarie is responsible for satisfying all Environmental Liabilities whether existing before the Commencement Date (or after termination of this Lease) in respect of Mindarie's use and maintenance of the Premises and conducting all Remediation or other rehabilitation in accordance with:
 - (i) Best Practice Environmental Management;
 - (ii) the provisions of this Lease;
 - (iii) the Statutory Licences and subject to any variations required under the Statutory Licences;
 - (iv) Environmental Law;
 - (v) Planning Law; and

(vi) the Authorisations.

4.2 **Participants' Right to Inspect**

The Participants may at reasonable times and on reasonable notice inspect the Premises but will do all things reasonably necessary to minimise any disruption to the use of the Premises by Mindarie caused by inspection.

5. **USE OF PREMISES**

5.1 **Permitted Use of Premises**

Mindarie must use the Premises for the Permitted Use only and design, operate, use, maintain and rehabilitate the Premises in accordance with:

- (a) Best Practice Environmental Management;
- (b) the provisions of this Lease;
- (c) the Statutory Licences and subject to any variations required under the Statutory Licences;
- (d) Environmental Law;
- (e) Planning Law; and
- (f) the Authorisations.

5.2 **Current and Future Use**

- (a) That part of the Premises identified as area 1 on the plan in Annexure A has been used as a Landfill.
- (b) Those parts of the Premises identified as areas 2A and 2B on the plan in Annexure A are currently progressively being used as Landfills.
- (c) Subject to clause 5.1, Mindarie must fill the Landfills identified as areas 2A and 2B on the plan in Annexure A working from the northern to the southern parts of those Landfills.
- (d) Without limiting the above, Mindarie acknowledges that its future use of the Premises for the Permitted Use will be subject to Planning Law and may be constrained by existing and proposed special land use controls relating to, but not necessarily limited to, the conservation of urban bush as proposed in Bush Forever and the Proposed Metropolitan Region Scheme Amendment 1082/33.
- (e) Mindarie may for its own benefit dispose of minerals, sand, rock, gravel and other materials excavated from the Premises to create Landfills subject to compliance with the requirements of all relevant Government Agencies including without limitation the requirements of the Mines Department pursuant to the *Mining Act 1975* (WA).
- (f) Mindarie must obtain at its own expense all Authorisations required to conduct Mindarie's business and use of the Premises.

- (g) Subject to clause 5.7, Mindarie must use reasonable endeavours to ensure its use of the Premises will not prejudice the use of the balance of the Land by the Participants.
- (h) The Participants and Mindarie will in good faith regularly consult with each other about the use of the Premises. If any changes to the use or the extent or intensity of the use of the Premises is likely to affect the public interest, the parties will engage in community consultation.
- (i) Whenever reasonably required during the Term, the Participants and Mindarie will in good faith negotiate variations to this Lease to take into account any legislative changes, any changes to the use or the extent or intensity of use of the Premises pursuant to clause 5.2(h) and the Authorisations and Statutory Licences applicable to the Premises from time to time.

5.3 Alterations

- (a) The Participants acknowledge that Mindarie has installed Mindarie's Improvements.
- (b) Mindarie may make any alterations or additions to the construction or arrangement of the Premises or any of Mindarie's Improvements without the consent of the Participants if:
 - (i) the proposed alterations or additions are reasonably necessary in order for Mindarie to carry on its Core Business;
 - (ii) the alterations or additions do not involve the whole or any part of the Relevant Bush Forever Area; and
 - (iii) (except in respect of alterations or additions which may reasonably be regarded as minor or trivial), prior to carrying out the alterations or additions Mindarie gives notice to the Participants of the nature and location of the proposed alterations or additions and provides reasonable proof that the criteria referred to in clauses 5.3(b)(i) and 5.3(b)(ii) are satisfied.
- (c) In respect of any alterations or additions to the construction or arrangement of the Premises or any of Mindarie's Improvements other than those permitted pursuant to clause 5.3(b), Mindarie must not make those alterations or additions without the Consent of the Participants.

5.4 Keep Premises Secure

Mindarie must keep all gates and other openings closed and securely fastened when the Premises are not being used.

5.5 Nuisance

If in the opinion of the Participants (which opinion must be reasonably held) in the course of its use and occupation of the Premises, Mindarie:

- (a) causes a nuisance (including, without limitation, a visual nuisance), grievance, disturbance or annoyance to the Participants, or any other person; or

- (b) injuriously affects any other premises in the vicinity of the Premises,

then on receipt of a written notice from the Participants containing reasonable detail of the nuisance or injurious affection Mindarie must do all things reasonably necessary to cease that nuisance or injurious affection.

5.6 Termination obligations

- (a) Immediately before the expiration of the Term or within 5 Business Days after the earlier termination of the Term) Mindarie must:
- (i) remove Mindarie's Improvements (except for those of them which the Participants by written notice to Mindarie (given 18 months before the expiration of the Term or within 2 Business Days after the earlier termination of the Term) have requested remain on the Premises); and
 - (ii) make good to the satisfaction of the Participants any damage caused to the Land by any removal referred to in clause 5.6(a)(i) and shall fill in and consolidate and level off all excavations in the Land to contours existing prior to the construction and installation of Mindarie's Improvements or to contours otherwise approved by the Participants and shall deliver up possession of the Premises to the Participants clean, tidy and free of rubbish, in good substantial and tenantable repair and condition in accordance with Mindarie's Covenants.
- (b) The Participants may treat Mindarie's Improvements not removed by Mindarie when required to be as abandoned and deal with them in any manner they see fit. Mindarie must pay to the Participants on demand the costs and expenses incurred by the Participants in removing or dealing with Mindarie's Improvements which were not removed by Mindarie when required to do so.
- (c) To the extent Mindarie is requested to leave Mindarie's Improvements on the Premises the Participants will pay to Mindarie the value of those Mindarie Improvements as agreed between the Participants and Mindarie and failing agreement within 3 months of the date of service of the notice referred to in clause 5.6(a), the value will be that determined by the Valuer General at the request of either party. If for any reason the Valuer General declines an appointment to make that determination, the determination will be made by a quantity surveyor appointed by the President of the Australian Institute of Quantity Surveyors Western Australian Division at the request of either party. The value determined must not exceed the written down value of any item. The determination made will be final and binding on the parties. The parties will pay the Valuer General's costs (or the quantity surveyor's costs) in equal shares.
- (d) The Participants will pay the price agreed or determined under clause 5.6(c) within 60 days of the price being agreed or determined.
- (e) As soon as practicable after the expiration or earlier termination of the Term, Mindarie must undertake rehabilitation and Remediation of the Premises as required by the Department of Environment and reasonably required by the Participants and in accordance with:
- (i) Best Practice Environmental Management;

- (ii) the provisions of this Lease;
 - (iii) the Statutory Licences and subject to any variations required under the Statutory Licences;
 - (iv) Environmental Law;
 - (v) Planning Law; and
 - (vi) the Authorisations.
- (f) The rehabilitation and Remediation of the Premises must make the Premises useable for recreation (both passive and active) and conservation.
- (g) The Participants will permit Mindarie to continue to have access to the Premises as a licensee after termination of this Lease as may be reasonably required to enable Mindarie to comply with its obligations to rehabilitate and Remediate including monitoring the Premises as may be required by Government Agencies and the Participants. The indemnity given by Mindarie in clause 8 of this Lease shall continue to apply during any licence period and Mindarie must continue to maintain the public liability policy of insurance referred to in clause 7.1(a)(iii) during that licence period (and the provisions of clause 7 will continue to apply in respect of that policy).
- (h) Not later than twelve (12) months before the expiration of the Term by effluxion of time (or the termination of the term pursuant to clause 1.3) Mindarie must:
- (i) prepare a programme and a timetable for vacating the Premises and providing vacant possession to the Participants and for the removal of all Mindarie's Improvements in or about the Premises in order to ensure that vacant possession of the Premises in good order and repair shall be available to the Participants not later than the date of termination of the Term; and
 - (ii) prepare a detailed plan of Remediation of the Premises in accordance with Mindarie's obligations pursuant to clause 5.6(e).
- (i) If the Term is terminated by the Participants prior to its expiry, Mindarie must observe and perform its obligations under clauses 5.6(h) as soon as reasonably practicable after the date of termination.
- (j) Mindarie must provide to the Participants a detailed report not less than once every month between the period being twelve (12) months prior to the expiration of the Term and the date of expiration of the Term (and more frequently if requested by the Participants) indicating all steps taken by Mindarie to meet the proposed programme and timetable and generally to enable the Participants to monitor whether or not Mindarie will comply with its obligations to rehabilitate, Remediate and vacate the Premises.

5.7 **Buffer Distance Requirements**

- (a) Mindarie acknowledges that the Urban Development Area is not part of the Premises.

- (b) The Participants acknowledge that Mindarie must maintain an Internal Buffer Distance in accordance with the requirements of the Statutory Licence and that the Government Agency responsible for environmental protection recommends a 500m buffer distance from the active Landfill face to sensitive land uses (**Recommended Buffer Distance**).
- (c) The Participants agree to use reasonable endeavours to set aside the Temporary Buffer to assist Mindarie to satisfy the Recommended Buffer Distance.
- (d) Mindarie must use its reasonable endeavours to ensure that Mindarie's reliance on the Temporary Buffer is reduced and eliminated as soon as reasonably practicable.
- (e) Mindarie acknowledges and agrees that consistent with Mindarie's observance of its obligations pursuant to clauses 5.2(c) and 5.7(d), the size of the Temporary Buffer will be permanently reduced as the Landfills are filled in a southerly direction and Mindarie becomes capable of providing more of the Recommended Buffer Distance from areas within the Premises which may be taken into account in assessing the provision of the Recommended Buffer Distance.
- (f) Subject to clause 5.7(g) (and without limiting the meaning and effect of clause 5.7(d)), Mindarie must completely cease to rely on the Temporary Buffer to satisfy the whole or any part of the Recommended Buffer Distance on 31 December 2010.
- (g) At any time not later than 1 January 2009 Mindarie may apply to the Participants approval for the date referred to in clause 5.7(f) to be extended from 31 December 2010 to a later specified date. The Participants may grant their approval (with or without conditions) or may refuse to grant the approval under this clause in each case in the Participant's absolute discretion.
- (h) From 1 January 2011 (or such later date (if any) approved by the Participants pursuant to clause 5.7(g)), the Participants may use the Temporary Buffer or any part of it as it sees fit without:
 - (i) the Participants being liable to Mindarie in any way for compensation or damages;
 - (ii) the Participants being liable to provide alternative land as a buffer; and
 - (iii) Mindarie being entitled to terminate this Lease or claim any abatement of Rent.
- (i) If the Participants develop the Urban Development Area prior to 1 January 2011 (or such later date (if any) approved by the Participants pursuant to clause 5.7(g)), the Participants will use their reasonable endeavours to ensure that, to the extent reasonably practicable, the Urban Development Area is developed in a manner which defers the development of the area the subject of the Temporary Buffer until after the development of the balance of the Urban Development Area.

5.8 **Urban Development Area**

- (a) Mindarie must use and maintain the Premises in such a manner so as to not interfere, prevent or otherwise hinder the Participants' use and enjoyment of the Urban Development Area, including subdivision and development of the Urban Development Area for Urban Development.
- (b) If the Urban Development of the Urban Development Area cannot proceed due to Mindarie's use of the Premises, the Participants may serve notice on Mindarie specifying the nature of the Improvement Works it requires Mindarie to carry out at its own expense.
- (c) Mindarie must complete or must cause the Improvement Works referred to in the Participants notice to be completed as soon as practicable but in any event not later than 12 months after the date of receipt of the Participants notice referred to in clause 5.8(b).
- (d) Mindarie acknowledges that the Participants intend to subdivide and develop the Urban Development Area in the future as an Urban Development.

6. **ASSIGNMENT, SUBLETTING AND LICENSING**

6.1 **Assignment and grant of security**

Mindarie must not without the consent of the Participants:

- (a) assign, transfer or part with possession of the whole or part of the Premises or the benefit of this Lease or any estate or interest in the Premises or this Lease; or
- (b) mortgage charge or otherwise encumber the interest of Mindarie under this Lease.

6.2 **Exclusion of statutory provisions**

The provisions of Sections 80 and 82 of the *Property Law Act 1969* do not apply to this Lease.

6.3 **Subleasing and Licensing without the Participants' consent**

Mindarie may sublease or grant a licence in respect of the whole or any part of the Premises without the consent of the Participants if:

- (a) the permitted use referred to in the sublease or licence is the same as the Permitted Use specified in the Reference Table of this Lease;
- (b) the area the subject of the proposed sublease or licence is not part of the Relevant Bush Forever Area;
- (c) the terms and conditions contained in the sublease or licence and on the part of the sublessee or licensee to be observed and performed are no less onerous than the terms and conditions contained in this Lease and on the part of Mindarie to be observed and performed;

- (d) prior to granting the sublease or licence Mindarie gives written notice to the Participants of the identity of the proposed sublessee or licensee and the area proposed to be the subject of the proposed sublease or licence and provides reasonable proof that the criteria referred to in clauses 6.3(a), 6.3(b) and 6.3(c) are satisfied; and
- (e) contemporaneously with the grant of the sublease or licence, Mindarie provides the Participants with a fully executed copy of the sublease or licence.

6.4 Subleasing and Licensing with the Participants' consent

Wherever Mindarie proposes to sublease or grant a licence in respect of the whole or any part of the Premises and Mindarie has not complied with the provisions of clause 6.3 or is not capable of complying with the provisions of that clause, Mindarie must obtain the consent of the Participants to the proposed sublease or licence prior to that sublease or licence being granted.

6.5 Mindarie's liabilities to continue

The covenants and agreements on the part of any assignee or sublessee expressed or implied in any deed of assignment or sublease and in favour of the Participants are supplementary to those contained in this Lease and do not in any way relieve Mindarie from Mindarie's Covenants. Despite any assignment by Mindarie of the benefit of this Lease Mindarie will remain liable to observe and perform all of Mindarie's Covenants throughout the balance of the Term current at the date of assignment or the date of the sublease.

6.6 Costs payable in any event

Mindarie must pay to the Participants on demand all costs and expenses incurred by the Participants in considering any submissions or applications made pursuant to clause 6.3(d) or clause 6.4 even if:

- (a) the Participants refuse to consent to the proposed sublease (where that consent is required pursuant to clause 6.4); and
- (b) the proposed sublease is not completed for any reason (other than the default of the Participants).

7. INSURANCE

7.1 Types of Insurance

- (a) Throughout the Term Mindarie must effect and keep current with a public insurance office approved by the Participants, in the name of the Participants and Mindarie for their respective rights and interests:
 - (i) a policy to cover Mindarie's Improvements to their full insurable value against all usual risks against which in the opinion of the Participants from time to time a tenant should ordinarily insure;
 - (ii) workers' compensation and employer's indemnity insurance in respect of Mindarie's employees;

- (iii) a public liability policy with a cover of not less than the amount specified in the Reference Table (or such greater sum as the Participants may from time to time reasonably specify) in respect of any one occurrence; and
 - (iv) any other policy of insurance which the Participants acting reasonably may from time to time require Mindarie to effect and maintain with an amount of cover and on terms as the Participants may reasonably specify.
- (b) Mindarie must:
 - (i) subject to clause 7.1(c), immediately expend all money recovered in respect of any insurance under clause 7.1(a) in the satisfaction of the payment of damages or the reinstatement or replacement of the items for which that money is received to the extent that that money is sufficient for that purpose; and
 - (ii) on demand make up from Mindarie's own money any insufficiency of money for that purpose.
- (c) If Mindarie wishes to expend any insurance proceeds other than in accordance with clause 7.1(b), it may do so if that proposed expenditure is first approved by the Participants (which approval must not be unreasonably withheld where the proposed expenditure is consistent with the prudent operation of Mindarie's Core Business).

7.2 **Evidence of insurance and renewal**

Mindarie must:

- (a) pay all insurance premiums on any policies referred to in this clause 7 not later than the due date for payment specified in the first premium notice or demand for payment; and
- (b) on demand produce to the Participants proper evidence of the policies and their renewal.

7.3 **Mindarie's insurance policies**

Mindarie may not vary, surrender or cancel any of the policies referred to in clause 7.1(a) without the Participants' Consent.

7.4 **Voiding insurance policies**

- (a) Except with the Participants' Consent Mindarie must not do or allow to be done any thing in or near the Premises as a result of which any insurances in respect of the Premises taken out by the Participants or Mindarie may be invalidated or avoided or the rate of premium on any insurance may be liable to be increased or any claim under that insurance may be lawfully refused in whole or in part.
- (b) If Mindarie or Mindarie's Employees and Visitors do or permit to be done anything which has the effect of invalidating or avoiding any policy of insurance taken out by the Participants or Mindarie or by virtue of which the insurer may

lawfully refuse a claim in whole or in part, then Mindarie is responsible for and must pay on demand any resulting damage or loss which the Participants suffer or incur and (without limiting any other rights of the Participants) must pay to the Participants on demand any increased amount of premium over the existing premium which may be charged on any such insurance.

8. **INDEMNITIES**

8.1 **Mindarie's Indemnity**

- (a) Mindarie occupies the Premises at its own risk in all respects.
- (b) Except to the extent caused or contributed by the Participants, Mindarie indemnifies the Participants and agrees to keep the Participants indemnified against all Claims and Liabilities including any relating to loss of life of or personal injury to any person or damage to any property (wherever occurring) resulting from or attributable to anything occurring on or in the vicinity of the Premises by any act, neglect, default or omission by Mindarie or any of Mindarie's Employees and Visitors.
- (c) Without limitation, Mindarie indemnifies and releases the Participants from all Claims and Liabilities relating to any Environmental Liability (directly or indirectly) in respect of Mindarie's use of the Premises and any activity carried out on the Premises.

8.2 **Participants' Indemnity**

The Participants indemnify Mindarie and agrees to keep Mindarie indemnified against all loss or damage which Mindarie suffers to the extent to which it is caused directly by:

- (a) any default by the Participants under this Lease; or
- (b) the wilful misconduct or the negligence of the Participants or any of the Participants' officers, employees, agents or contractors.

9. **PARTICIPANT'S COVENANTS**

9.1 **Quiet Enjoyment**

Subject to Mindarie duly paying the Rent and other money payable under this Lease and observing and performing Mindarie's Covenants, Mindarie may possess and use the Premises during the period of this Lease without interruption by the Participants, except as provided for in this Lease.

10. **DEFAULT**

10.1 **Mindarie's Default**

If:

- (a) the Rent or any part the Rent is at any time unpaid for 7 days after becoming due (whether formally demanded or not);

- (b) Mindarie breaches or fails to observe or perform any other of Mindarie's Covenants and that breach or failure continues after the expiration of 90 days (or any further time as the Participants may specify) of notice to Mindarie to remedy it or where that breach or failure is incapable of being remedied, Mindarie has failed to pay adequate monetary compensation to the Participants by the expiration of that period;
- (c) Mindarie goes into liquidation or becomes bankrupt or enters into any composition arrangement with or assignment for the benefit of Mindarie's creditors;
- (d) a manager, an administrator, a trustee, a receiver, a receiver and manager or liquidator is appointed under any Act or instrument or by order of any court in relation to any part of Mindarie's undertakings assets or property;
- (e) any execution is issued against any assets or property of Mindarie; or
- (f) the Premises are abandoned or otherwise left vacant by Mindarie,

then in any such case (but subject to the *Bankruptcy Act 1966*) the Participants may at their option re-enter occupy and resume possession of the Premises or any part of the Premises in the name of the whole.

10.2 **Effect of termination and re-entry**

- (a) In exercising its right of re-entry the Participants or any person authorised by the Participants may by any means open any door or lock and may remove all persons, and all fixtures, fittings and other property of Mindarie from the Premises without being liable for any action in trespass, assault, detainment or otherwise.
- (b) On exercising the right of re-entry (other than the provisions of this Lease which apply for the benefit of the Participants after the expiration or earlier termination of the Term) this Lease and the Term ceases and determines.
- (c) Despite this Lease and the Term having ceased and determined Mindarie remains liable to pay the Rent and other money accrued, due and payable up to the time of the re-entry.
- (d) Any re-entry of the Premises does not prejudice any other rights of the Participants in respect of any breach of or failure to comply with Mindarie's Covenants.

10.3 **Participants right to remedy defaults**

- (a) The Participants may but are not obliged to remedy at any time without notice any default by Mindarie under this Lease and whenever the Participants so elect any or all of the Participants and any person authorised by the Participants may enter and remain upon the Premises together with all necessary plant equipment and materials for the purpose of remedying that default.
- (b) Mindarie must pay on demand to the Participants all costs and expenses incurred by Mindarie (including legal costs and expenses calculated as between solicitor and client) in remedying that default.

10.4 **Essential terms**

- (a) Each of the covenants by Mindarie:
 - (i) to pay the Rent and other money;
 - (ii) under clauses 4.1, 5, 7 and 8; and
 - (iii) not to assign, sublet transfer or part with possession of the whole or any part of the Premises or of the benefit of this Lease other than on the terms and conditions contained in this Lease,

is an essential term of this Lease but nothing expressed or implied in this clause is to be construed to mean that other of Mindarie's Covenants may not also be essential terms of this Lease.

- (b) Any breach of an essential term will be regarded by the Participants and Mindarie as a fundamental breach by Mindarie of this Lease.

10.5 **Effect of breach of an essential term**

- (a) If the Participants determine this Lease following a breach of an essential term then (without prejudicing or limiting any other right or remedy of the Participants under this Lease) the Participants are entitled to recover from Mindarie as liquidated damages for the breach the difference between:
 - (i) the aggregate of the Rent and any other money which would have been payable by Mindarie for the unexpired residue of the Term remaining after the determination; and
 - (ii) the rent and other money which the Participants by taking reasonable steps to relet the Premises obtain or could reasonably be expected to obtain by reletting the Premises for the unexpired residue of the Term on reasonable terms as to rent and otherwise.
- (b) The Participants are not obliged to effect any reletting referred to in clause 10.5(a) on the same or similar terms as are expressed and implied in this Lease.
- (c) The Participant's acceptance of arrears or any late payment of any of the Rent or other money due under this Lease does not constitute a waiver of the essentiality of Mindarie's obligations to make those payments.
- (d) The Participant's entitlement to recover damages under this clause is not prejudiced or limited if:
 - (i) Mindarie abandons or vacates the Premises;
 - (ii) the Participants elect to re-enter the Premises or to determine this Lease;
 - (iii) the Participants accept Mindarie's repudiation of this Lease; or
 - (iv) any conduct constitutes a surrender by operation of law.

- (e) The Participants are entitled to institute proceedings to recover damages under this clause either before or after any of the events or matters referred to in clause 10.5(d).
- (f) Any conduct by the Participants to mitigate damages does not of itself constitute acceptance of Mindarie's breach or repudiation or a surrender by operation of law.

11. **HOLDING OVER**

11.1 **Holding Over**

If Mindarie continues to occupy the Premises after the end of this Lease with the consent of the Participants, Mindarie is a monthly tenant upon the same terms and conditions of this Lease as far as they can be applied to a monthly tenancy.

12. **GENERAL**

12.1 **Notices**

(a) **Method of Giving Notices**

A notice required or permitted to be given by one party to another under this Lease will be in writing addressed to the other party and:

- (i) delivered to that party's address;
- (ii) sent by Express Post to that party's address; or
- (iii) transmitted by facsimile to that party's address.

(b) **Time of Receipt**

A notice given to a party in accordance with this clause is treated as having been given and received:

- (i) if delivered to a party's address, on the day of delivery;
- (ii) if sent by Express Post, on the day after posting; and
- (iii) if transmitted by facsimile on the day of transmission to a party's address and a correct and complete transmittal report is received,

but if the delivery receipt or transmission is not on a Business Day or is after 5.00 pm on a Business Day, the notice is taken to be received at 9.00 am on the next Business Day.

(c) **Address of Parties**

- (i) The address of the Participants is unless otherwise specified is City of Stirling, Civic Place, Stirling, 6021.

Postal address: City Administrative Centre, Civic Place, Stirling, WA, 6021.

Facsimile: (08) 9345 8822

Attention: Chief Executive Officer

- (ii) The address of Mindarie is unless otherwise specified is Lot 17 Marmion Avenue, Mindarie, 6030.

Postal address: PO Box 538, Joondalup, 6919.

Facsimile: (08) 9305 6795

12.2 **Reading Down**

Any provision in this Lease which is invalid or unenforceable is to be read down, if possible.

12.3 **Application for Consent**

Wherever in this Lease the doing or executing of any act matter or thing by Mindarie is dependent upon the consent or approval of the Participants, the Participants will promptly consider Mindarie's request and provide reasons for their decision.

12.4 **Joint and Several Liability**

An agreement or covenant on the part of two or more persons under this Lease binds them jointly and each of them severally.

12.5 **No Warranty by Participants**

Mindarie acknowledges and declares that in entering into this Lease Mindarie has inspected the Premises and that it has not relied on any promise representation warranty or undertaking given by or on behalf of the Participants in respect to the suitability of the Premises for any business to be carried on from it and all warranties (if any) implied by law are hereby so far as legally possible expressly negated.

12.6 **Whole Agreement**

This Lease contains the entire agreement between the parties and supersedes any earlier agreement or understanding on the subject matter of this Lease.

12.7 **Special Conditions**

The Special Conditions in the Reference Table (if any) form part of this Lease and prevail to the extent of any inconsistency with any other provision of this Lease.

13. **INTERPRETATION AND DEFINITIONS**

13.1 **Interpretation**

In this Lease unless the context otherwise requires:

- words indicating the singular include the plural and vice versa;
- words indicating a gender include any gender;
- reference to a person includes reference to a natural person, firm, any company, partnership, joint venture, association, corporation or other body corporate and

any Government Agency and reference to the successors and permitted assigns of any of the entities mentioned in this sub-paragraph;

- reference to a body (other than a party to this Lease) which ceases to exist or whose powers or functions are transferred to any other body, refers to the body which replaces it or which substantially succeeds to its powers or functions;
- headings and marginal notes are incorporated for convenience only and do not affect interpretation of this Lease;
- reference to a statute includes any statute varying, consolidating or replacing it;
- where the context so requires reference to the upper case includes the lower case and vice versa;
- other terms not defined but commencing in upper case have their apparent meanings;
- names, words and phrases in bold in the Reference Table and in this Lease have the meanings there specified;
- the Reference Table is part of this Lease; and
- the rule of construction known as contra proferentem will not apply to this Lease.

13.2 Definitions

- **Act** means a statute (State or Federal) including amendments, re-enactments and any by-laws or regulations made pursuant to it.
- **Authorisations** includes:
 - (a) any consent, registration, filing, agreement, notice of non-objection, notarisation, certificate, licence, approval, permit, authority or exemption from, by or with a Government Agency; and
 - (b) in relation to anything which a Government Agency may prohibit or restrict within a specific period, the expiry of that period without intervention or action or notice of intended intervention or action.
- **Best Practice Environmental Management** means the siting, design, operation and rehabilitation of the Landfill in accordance with Environmental Law and Planning Law, as amended from time to time.
- **Bush Forever** means the State Government Policy from time to time which identifies regionally significant bushland in the metropolitan region.
- **Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Western Australia.
- **Claim** means any claim or cause of action including (but not limited to):
 - (a) in contract (including breach of warranty);
 - (b) in tort (including, but not limited to misrepresentation or negligence); or

- (c) under statute (including Part V or VI of the *Trade Practices Act 1974*) (Cth),

in respect of this Lease, the Premises and Mindarie's business conducted on and from the Premises.

- **Commencement Date** means the commencement date specified in the Reference Table.
- **Consent** means prior written consent.
- **Consumer Price Index** means the Consumer Price Index All Groups Index Numbers for Perth the subject of Catalogue No. 6401.0 provided by the Australian Bureau of Statistics or if the basis upon which it is substantially altered then such basis as the Participants may reasonably determine to be as near to the Consumer Price Index previously referred to as is reasonably possible.
- **Contamination** means the presence of Pollutants:
 - (a) in, on, or under the Premises; or
 - (b) in the ambient air and emanating from the Premises.
- **Core Business** means the primary function of Mindarie being:
 - (a) administrative operations associated with conduct of a refuse disposal function;
 - (b) operation of a Landfill for disposal of refuse;
 - (c) operation of a transfer station for movement of refuse to other locations;
 - (d) operation of a refuse recycling activity dealing predominantly with second-hand household items and building materials, scrap metals and glass;
 - (e) extraction and elimination of gas from Landfills within the Premises including the elimination of gas through conversion to electricity;
 - (f) crushing of limestone for sale; and
 - (g) green waste reduction through chipping and grinding processes.
- **CPI Review Date** means each CPI Review Date specified in the Reference Table.
- **Disposal** means the final stage in the management of the waste stream.
- **Environmental Law** means any legislation, policy, guideline or standard, applying in Western Australia regulating Pollutants and Waste or in connection with the protection of the environment or health and safety.

- **Environmental Liability** means any actual or potential loss, cost, liability, penalty, expense or damage incurred in connection with:
 - (a) the investigation from Remediation;
 - (b) a claim by any third party;
 - (c) any action, order, declaration or notice by a Government Agency under any Environmental Law; or
 - (d) any agreement between Mindarie and:
 - (i) any occupier of the Premises; and
 - (ii) any Government Agency;

of or in respect of Contamination of the Premises or properties adjoining the Premises, where the Pollutants emanated from the Premises.
- **Government Agency** means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, Department, Commission, Authority, Tribunal, Agency or entity in any part of the world.
- **Improvement Works** means all works necessary to facilitate the Urban Development of the Urban Development Area including but not limited to undertaking all necessary assessments, monitoring and modelling of any Pollutants emanating from the Premises, Remediation, rehabilitation, relocation of Mindarie's Improvements and obtaining all necessary Authorisations for undertaking the Improvement Works.
- **Internal Buffer Distance** means a distance of 50m from the boundary of the Premises to any area within the Premises used for Landfill.
- **Land** means the land described in the Reference Table.
- **Landfill** means a site used for Disposal of Waste by burial in the ground that is licensed as a landfill under the *Environmental Protection Act 1986* (WA).
- **Lease** means the lease evidenced by this document, the Reference Table and each annexure whether or not the lease or any of Mindarie's Covenants are enforceable at law or in equity or otherwise and includes any express or implied lease tenancy or other right of occupancy of or interest in the Premises granted by or derived from the Participants under this document.
- **Liabilities** means all liabilities, losses, damages, outgoings, costs and expenses of whichever description whether actual, prospective, contingent or otherwise present or future quantified or unquantified and liability shall have a corresponding meaning.
- **Market Rent Review Date** means the market rent review dates specified in the Reference Table.

- **Metropolitan Region Scheme** is a town planning scheme for land use in the Perth metropolitan area adopted under the *Metropolitan Region Town Planning Scheme Act 1959*.
- **Mindarie** where not inconsistent with the context includes Mindarie's Employees and Visitors.
- **Mindarie's Covenants** means the terms, covenants and conditions expressed or implied in this Lease and on the part of Mindarie to be observed and performed.
- **Mindarie's Employees and Visitors** means:
 - (a) any person at any time upon the Premises other than the Participants and their respective employees, agents and contractors; and
 - (b) Mindarie's employees, agents, customers, clients, visitors and contractors at any time upon the Land (whether within the Premises or not).
- **Mindarie's Improvements** means any fixtures, fittings, plant and equipment installed by or belonging to Mindarie on or in the Premises and includes without limitation offices, workshops, sheds, transfer station and the Landfills.
- **Perth Metropolitan Area** means the area referred to in the Third Schedule to the *Metropolitan Region Town Planning Scheme Act 1959* (WA).
- **Planning Law** means any legislation policy, guideline or standard applying in Western Australia regulating or in connection with the use and development of land and buildings.
- **Pollutant** means a pollutant, contaminant, dangerous, toxic or hazardous substance, petroleum or petroleum product, chemical, solid, special liquid, industrial, other waste or emission regulated under Environmental Law.
- **Premises** means the premises specified in the Reference Table.
- **Prescribed Rate** means the Prescribed Rate specified in the Reference Table.
- **Proposed Metropolitan Region Scheme Amendment 1082/33** provides for proposed special land use controls relating to Bush Forever.
- **Reference Table** means the part of this document described as Reference Table.
- **Relevant Bush Forever Area** means that part of the Premises which from time to time is the subject of Bush Forever. At the Commencement Date the Relevant Bush Forever Area is shown hachured on the plan in Annexure C.
- **Remediation** has the meaning given to the term in the *Contaminated Sites Act 2003* (WA).
- **Rent** means initially the rent specified in the Reference Table and then that rent as subsequently reviewed and varied pursuant to this Lease.

- **Rent Commencement Date** means the rent commencement date specified in the Reference Table.
- **Rent Review Date** means each Rent Review Date specified in the Reference Table whether a Market Rent Review Date or CPI Review Date.
- **Statutory Licences** means all licences, consents, rights, permits and certificates relating to any aspect of Mindarie's operations issued by any Government Agency in relation to Mindarie's operations on and from the Premises.
- **Temporary Buffer** means initially that portion of the Urban Development Area which is shown hachured on the plan in Annexure D which area is to reduce in size in accordance with the provisions of clauses 5.7(d) and 5.7(e).
- **Term** means the term of this Lease specified in the Reference Table commencing on the Commencement Date and expiring on the expiration date.
- **Urban Development** means the subdivision and development of the Urban Development Area for residential purposes.
- **Urban Development Area** means the land north of the Premises shown for identification purposes as cross hachured black on the plan in Annexure A and marked 'Urban Development Area'.
- **Valuer** means a valuer who is a member of the Australian Property Institute (Inc) Western Australian Division practising within the Perth Metropolitan Area and having at least 5 years experience of assessing the rental value of commercial and industrial premises in the Perth Metropolitan Area.
- **Waste** means one or more of the following:
 - (a) any substance that is discarded, emitted or deposited in the environment in such volume, constituency or manner as to cause an alteration in the environment;
 - (b) any discarded, rejected, unwanted, surplus or abandoned substance;
 - (c) any otherwise discarded, rejected, unwanted, surplus or abandoned substance intended for sale or for recycling, reprocessing, recovery or purification by a separate operation from that which produced the substance; and
 - (d) any substance described in regulations under *the Environmental Protection Act 1986* (WA) as waste.

14. **CONDITIONS PRECEDENT**

This deed is, if required, conditional upon the approval of the Western Australian Planning Commission and the Minister for Local Government and Regional Development.

Executed as a deed

PARTICIPANTS

The common seal of)
CITY OF PERTH is affixed)
to this document by authority of a)
resolution of the Council in the presence of)

Chief Executive Officer

Lord Mayor

The common seal of)
TOWN OF CAMBRIDGE)
was affixed to)
this document by authority of a resolution)
of the Council in the presence of:)

Chief Executive Officer

Mayor

The common seal of)
TOWN OF VICTORIA PARK)
was affixed to)
this document by authority of a resolution)
of the Council in the presence of:)

Chief Executive Officer

Mayor

The common seal of)
TOWN OF VINCENT)
was affixed to)
this document by authority of a resolution)
of the Council in the presence of:)

Chief Executive Officer

Mayor

The common seal of)
 CITY OF STIRLING)
 was affixed to)
 this document by authority of a resolution)
 of the Council in the presence of:)

 Chief Executive Officer

 Mayor

The common seal of)
 CITY OF JOONDALUP)
 was affixed to)
 this document by authority of a resolution)
 of the Council in the presence of:)

 Chief Executive Officer

 Chairman of Commissioners

The common seal of)
 CITY OF WANNEROO)
 was affixed to)
 this document by authority of a resolution)
 of the Council in the presence of:)

 Chief Executive Officer

 Mayor

MINDARIE

The common seal of)
 MINDARIE REGIONAL COUNCIL)
 was affixed to this document in)
 accordance with its constitution in the)
 presence of:)

 Chief Executive Officer

 Chairman