

**BLANK INSTRUMENT FORM****POWER OF ATTORNEY**

(Note 1)

BY THIS POWER OF ATTORNEY created this                      day of                      2012  
CITY OF JOONDALUP of Boas Avenue, Joondalup, Western Australia.

**RECITALS:**

- A. The City of Joondalup (**City**) is registered as the proprietor of an estate in fee simple as to 2/12 undivided shares in land being:
- (a) Lot 9001 on Deposited Plan 73462 and being the whole of the land comprised in Certificate of Title Volume 2790 Folio 174;
  - (b) Lot 9510 on Deposited Plan 73462 and being the whole of the land comprised in Certificate of Title Volume 2790 Folio 175; and
  - (c) Lot 9511 on Deposited Plan 73462 and being the whole of the land comprised in Certificate of Title Volume 2790 Folio 176.
- (**Lots**)
- B. The Lots previously formed part of Lot 9504 being the whole of the land comprised in certificate of title Volume 2230 Folio 339 (**Lot 9504**).
- C. The City together with the Town of Cambridge, City of Perth, City of Vincent, City of Stirling, Town of Victoria Park and the City of Wanneroo (**local government participants**) agreed subject to the approval of the Minister for Local Government to establish a regional local government known as the Tamala Park Regional Council (**TPRC**) pursuant to section 3.61 of the *Local Government Act 1995* for the purpose of effecting the rezoning, subdivision, development, marketing and sale of that portion of Lot 9504 as is shown on the sketch annexed hereto as **Annexure "A" (Land)**.
- C. In accordance with section 3.61(2) of the *Local Government Act 1995* the City and the local government participants entered into an agreement to establish the TPRC and to set out the various matters as prescribed by section 3.64 of the *Local Government Act 1995* (**Establishment Agreement**), which agreement was signed by all of the parties to that document and approved by the Minister for Local Government on 24 January 2006.
- D. Pursuant to clause 4 of the Establishment Agreement the TPRC is permitted to undertake the rezoning, subdivision, development, marketing and sale of the Land in accordance with the objectives set out under the Establishment Agreement.
- E. The City wishes to enter into this power of attorney for the purpose of enabling the TPRC to carry out the marketing and sale of the Land on behalf of the City and to enable the TPRC to carry out and satisfy the obligations of the City in disposing of the Land or any part thereof under section 3.58(3) of the *Local Government Act 1995* and to do all such things and matters as are more particularly set out in the Schedule to this Power of Attorney to effect the transfer of any lots created from the subdivision of the Land.

## ***Appointment of Attorney.***

### **1. *Appointment of Attorney***

By this deed the City APPOINTS:

(1) JOHN ANTHONY ARIAS, Chief Executive Officer;

of the TAMALA PARK REGIONAL COUNCIL (**Attorney**) to be its attorney and in its name to exercise the powers granted by this Power of Attorney.

### **2. *Powers of Attorney***

The City grants to the Attorney the power to sell and deal with any part or parts of the Land which comprises or will comprise a lot or a strata lot under or by virtue of the *Transfer of Land Act 1893* and the *Strata Titles Act 1985* (**Acts**) of which the City is the proprietor under the Acts and for that purpose:

- (a) to undertake the matters specified in the Schedule to this Power of Attorney;
- (b) to execute a document specified in the Schedule to this Power of Attorney (**Document**); and
- (c) do all things necessary or expedient to give effect to a Document including, but not limited to, completing any blanks and making any amendments, alterations and additions which may be considered necessary by the Attorney.

### **3. *Extent of Powers***

Each power granted under this Power of Attorney includes the powers:

- (a) to execute that power:
  - (i) wholly or in part;
  - (ii) in any manner; and
  - (iii) on terms and subject to conditions approved by the Attorney;
- (b) to do, execute and perform all things necessary or desirable in connection with that power;
- (c) to exercise that power and to do, execute and perform anything in connection with that power; and
- (d) to vary, alter or annul anything done by the Attorney in connection with that power.

### **4. *To market and sell the Land or any part thereof.***

The City grants the Attorney the right to do all such acts matters and things and to sign and execute all documents necessary to effect the marketing and sale of the Land or any part thereof and furthermore to accept and sign any contracts of sale for the Land or any part thereof subject to compliance with the provisions of section 3.58(3) of the *Local Government Act 1995*.

5. ***To carry out all actions necessary to satisfy section 3.58(3) of the Local Government Act 1995.***

The City grants the Attorney the power to do all such acts matters and things and to carry out the obligations of the City under section 3.58(3) of the *Local Government Act 1995* to enable the disposal of the Land or any part thereof from the City to a buyer(s) and for that purpose its attorney shall be permitted to:

- (a) advertise any proposed disposition of the Land or any part thereof in accordance with section 3.58(3) of the *Local Government Act 1995*;
- (b) consider any submissions made in response to the advertising of the proposed disposition and following consideration of those submissions make a decision as to whether to proceed with that disposal in accordance with the requirements of section 3.58(3)(b) of the *Local Government Act 1995*; and
- (c) following a decision being made by its attorney to dispose of the Land or any part thereof in accordance with section 3.58(3) of the *Local Government Act 1995*, sign any contract for the sale of the Land or any part thereof on behalf of the City and provide a copy of any signed contract to any buyer(s) and/or agent of any buyer(s).

6. ***To do other necessary acts.***

The Attorney agrees to do every other thing which may be deemed necessary, proper or expedient for fully and effectually marketing and selling the Land or any part thereof and to ensure that the City satisfies its obligations under section 3.58(3) of the *Local Government Act 1995* prior to disposing of the Land or any part thereof.

7. ***Reliance on Appointment***

Any person, including the Registrar of Titles of Western Australia, dealing with the Attorney under this Power of Attorney is:

- (a) entitled to rely on execution of any document by that person as conclusive evidence that:
  - (i) this Power of Attorney has come into effect;
  - (ii) this Power of Attorney has not been revoked; and
  - (iii) that the power being exercised or being purported to be exercised is properly exercised and that the circumstances have arisen to authorise the exercise of that power; and
- (b) not required to make any inquiries in respect of any of the above matters.

8. ***Declaration of validity.***

The City declares that all and each of the assurances and acts, contracts, matters and things which shall be given, made, executed or done by its attorney for the above-mentioned purposes shall be as good, valid and effectual to all intents and purposes as if the same had been signed, sealed, delivered, given or made or done by the City.

9. ***Ratification***

The City undertakes to ratify all that the Attorney lawfully does or causes to be done under this Power of Attorney.

10. ***Indemnity***

The City indemnifies the Attorney in respect of any loss arising from any act done under this Power of Attorney.

11. ***Revocation***

This Power of Attorney will remain in full force until the earlier of:

- (a) the date on which the whole of the Land is subdivided and all subdivided lots created from the subdivision of the Land have been transferred to a third party; or
- (b) the date on which notice of revocation of this Power of Attorney is received by the Attorney.

12. ***Interpretation***

In this Power of Attorney, unless the context otherwise requires:

- (a) headings, underlines and numbering do not affect the interpretation or construction of this Power of Attorney;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate;
- (e) a reference to any statute, regulation, proclamation or local law includes all statutes, regulations, proclamations or local law varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations and local laws issued under that statute; and
- (f) the Schedule and Annexures (if any) form part of this Power of Attorney.

## Schedule - Relevant Matters and Documents

(1) Any:

- (a) contract of sale (which includes without limitation the decision to sell, the selling price and the terms and conditions of sale);
- (b) transfer of land;
- (c) easement;
- (d) deed of surrender of easement;
- (e) application for surrender or extinguishment of easement;
- (f) caveat;
- (g) withdrawal of caveat;
- (h) application for new Certificates of Title for any subdivision of land;
- (i) application for subdivision;
- (j) deed of restrictive covenant;
- (k) surrender of restrictive covenant;
- (l) section 70A Notification;
- (m) section 165 Notification; and
- (n) deed of novation, deed of covenant or other deed

in respect of the Land or lots which are comprised of the Land.

(2) Any other document:

- (a) dealing with the development or subdivision of the Land, including documents required by all relevant authorities, including without limitation the local government, Western Power, Telstra, AlintaGas and Water Corporation; and
- (b) in connection with the sale, transfer, subdivision or development,

of the Land or any part of the Land or lots which are comprised of the Land.

- (3) Any other document dealing with the management and allocation of proceeds of sale of the Land or lots which are comprised of the Land in accordance with the terms and conditions of the Establishment Agreement of the Tamala Park Regional Council, including without limitation the opening of accounts and depositing of monies in such accounts, and the withdrawal of such monies and the signing, acceptance or endorsement of all cheques in connection with the sale, transfer, subdivision or development of the Land or lots which are comprised of the Land

THE COMMON SEAL of the CITY OF )  
JOONDALUP was affixed by the )  
authority of a resolution of Council in the )  
presence of: )

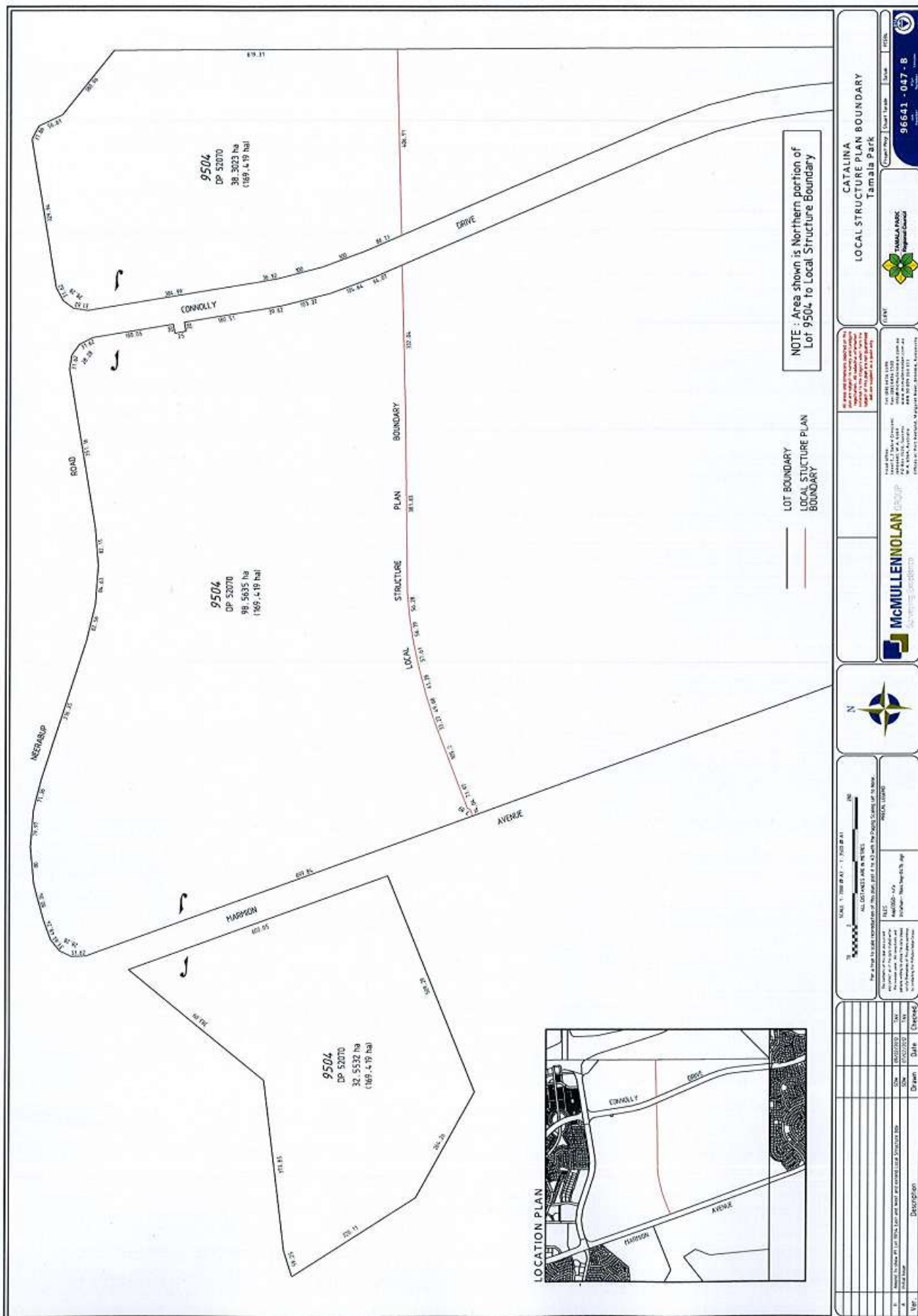
\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
(Print Full Name)

\_\_\_\_\_  
CHIEF EXECUTIVE OFFICER

\_\_\_\_\_  
(Print Full Name)

## Annexure A



### **INSTRUCTIONS**

1. This form may be used only when a "Box Type" form is not provided or is unsuitable. It may be completed in narrative style.
2. If insufficient space hereon Additional Sheet Form B1 should be used.
3. Additional Sheets shall be numbered consecutively and bound to this document by staples along the left margin prior to execution by the parties.
4. No alteration should be made by erasure. The words rejected should be scored through and those substituted typed or written above them, the alteration being initialled by the persons signing this document and their witnesses.

### **NOTES**

1. Insert document type.
2. A separate attestation is required for every person signing this document. Each signature should be separately witnessed by an Adult Person. The address and occupation of the witness must be stated.

### **OFFICE USE ONLY**

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### **TITLES, LEASES, DECLARATIONS ETC. LODGED HEREWITH**

1. _____	Received Items
2. _____	Nos.
3. _____	
4. _____	
5. _____	
6. _____	Receiving Clerk

Registered pursuant to the provisions of the TRANSFER OF LAND ACT 1893 as amended on the day and time shown above and particulars entered in the Register.

EXAMINED



# Establishment Agreement Amendment 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**)

City of Vincent (**City of Vincent**)

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



**McLEODS**

Barristers & Solicitors

Stirling Law Chambers | 220-222 Stirling Highway | CLAREMONT WA 6010

Tel: (08) 9383 3133 | Fax: (08) 9383 4935

Email: [mcleods@mcleods.com.au](mailto:mcleods@mcleods.com.au)

Ref: TAM-29441

# Copyright notice

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# Details

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## Parties

### **Town of Cambridge**

of 1 Bold Park Drive, Floreat, Western Australia, 6014  
(**Town of Cambridge**)

### **City of Joondalup**

of 90 Boas Avenue, Joondalup, Western Australia, 6019  
(**City of Joondalup**)

### **City of Perth**

of Council House, 27 St Georges Terrace, Perth, Western Australia, 6000  
(**City of Perth**)

### **City of Stirling**

of 25 Cedric Street, Stirling, Western Australia, 6021  
(**City of Stirling**)

### **Town of Victoria Park**

of 99 Shepperton Road, Victoria Park, Western Australia, 6100  
(**Town of Victoria Park**)

### **City of Vincent**

of 244 Vincent Street, Leederville, Western Australia, 6007  
(**City of Vincent**)

### **City of Wanneroo**

of 23 Dundobar Road, Wanneroo, Western Australia, 6065  
(**City of Wanneroo**)

## Background

- A The Participants are the parties to the Principal Establishment Agreement.
- B Each of the Participants has resolved, on the dates referred to in Schedule 1, to amend the Principal Establishment Agreement on the terms set out in this Amendment Agreement, and to submit it to the Minister for approval under section 5.65 of the Act.

# Agreed terms

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## 1. Defined terms

In this Amendment Agreement:

**Amendment Agreement** means Establishment Agreement Amendment Agreement; and

**Principal Establishment Agreement** means the Establishment Agreement, executed by each of the Participants, that was approved by the Minister on 24 January 2006.

## 2. Interpretation

The terms used in this Amendment Agreement:

- (a) have the same meaning as those that are given in the Principal Establishment Agreement; and
- (b) are to be interpreted as if those terms were included in the Principal Establishment Agreement.

## 3. Amendment

The Principal Establishment Agreement is amended in clause 7.1 by:

- (a) adding ‘(a)’ before ‘When requested by the TPRC Council,’; and
- (b) adding after clause 7.1(a):
  - ‘(b) To avoid doubt:
    - (i) the TPRC Council is not required to make a request under clause 7.1(a); and
    - (ii) if no request is made by the TPRC Council under clause 7.1(a) in relation to any part of the Land that is owned by the Participants, the TPRC may arrange for that part of the Land to be transferred directly from the Participants to a third party’.

## Schedule 1 – Resolution dates

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Participant	Date of resolution to enter into this Amendment Agreement
Town of Cambridge	[ <i>add day and month</i> ] 2012
City of Joondalup	[ <i>add day and month</i> ] 2012
City of Perth	[ <i>add day and month</i> ] 2012
City of Stirling	[ <i>add day and month</i> ] 2012
Town of Victoria Park	[ <i>add day and month</i> ] 2012
City of Vincent	[ <i>add day and month</i> ] 2012
City of Wanneroo	[ <i>add day and month</i> ] 2012

# Signing page

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EXECUTED [**add day and month**] 2012

**THE COMMON SEAL** of the **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 the **City of Joondalup** was affixed by the authority of a resolution of Council in the presence of:

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
(Print Full Name)

\_\_\_\_\_  
CHIEF EXECUTIVE OFFICER

\_\_\_\_\_  
(Print Full Name)

**THE COMMON SEAL** of the **City of Perth** is affixed in the presence of -

\_\_\_\_\_  
Signature of Lord Mayor

\_\_\_\_\_  
Signature of Chief Executive Officer

\_\_\_\_\_  
Name of Lord Mayor (print)

\_\_\_\_\_  
Name of Chief Executive Officer (print)

**THE COMMON SEAL** of the **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 the **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 the **City 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 the **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)

**Approved**

**Hon. Giovanni (John) Mario Castrilli MLA**

**Minister for Local Government; Heritage; Citizenship and Multicultural Interests**

**[add day and month] 2012**



# 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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# 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: Garry Hunt

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 25 Cedric Street, 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.

# Agreed terms

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## 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.

**Land** means so much of:

- (a) the land, being part of Lot 118 Mindarie, that is comprised within Areas 3, 7 and 10 on the plan in Schedule 4;
- (b) any other land, being part of Lot 118 Mindarie, comprising or within Areas 5 and 16 on the plan in Schedule 4:
  - (i) that is rezoned 'Urban' under the *Metropolitan Region Scheme*; and
  - (ii) in respect of which any lease to the Mindarie Regional Council has been surrendered;
- (c) any other land between Lot 118 and the Mitchell Freeway Reserve that is transferred to the Participants or the TPRC as a result of negotiations with the State under the Bush Forever Policy;
- (d) any other land, adjacent to the land described in paragraphs (a)-(c) above, that may be acquired by the TPRC for the purpose of undertaking its obligations in relation to the land described in paragraphs (a)-(c) above; and
- (e) any other land, in the near vicinity of the land described in paragraphs (a)-(c) above, that may be acquired by the TPRC in exchange for any other land owned by the TPRC for the purpose of undertaking its obligations in relation to the land described in paragraphs (a)-(c) above,

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

**Lot 118 Mindarie** means Lot 118 on Deposited Plan 28300 being the whole of the land in Certificates of Title:

- (a) 2213/691 (the 1/12<sup>th</sup> share of City of Perth);
- (b) 2213/692 (the 1/12<sup>th</sup> share of Town of Cambridge);
- (c) 2213/693 (the 1/12<sup>th</sup> share of Town of Victoria Park);

- (d) 2213/694 (the 1/12<sup>th</sup> share of Town of Vincent);
- (e) 2213/695 (the 4/12<sup>th</sup> shares of City of Stirling);
- (f) 2213/696 (the 2/12<sup>th</sup> shares of City of Joondalup); and
- (g) 2213/697 (the 2/12<sup>th</sup> shares of City of Wanneroo).

**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 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 ordinary local government elections, currently held every 2 years in May, or at such other time as may be prescribed for the ordinary local government elections by the Act (**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 and section 4.4 of the Act deals with ordinary elections for local governments.

## 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:
  - (i) in the case of the office of chairman – in accordance with the provisions of Division 1 of Schedule 2.3 of the Act applying to the election of mayors and presidents; and
  - (ii) in the case of the office of deputy chairman – in accordance with the provisions of Division 2 of Schedule 2.3 of the Act applying to the election of deputy mayors and deputy presidents.

## 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 2.7 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.

## 7.3 Rates equivalent payment

From the date of the transfer of the Land to the TPRC, and for so long as the Land, or part of the Land, is owned by the TPRC and is not rateable land under Part 6 of the *Local Government Act 1995*, the TPRC is to pay to the City of Wanneroo a rates equivalent payment in respect of the Land, or that part of the Land, calculated:

- (a) on the gross rental value – in respect of the Land or that part of the Land, that has been subdivided for the purposes of the sale of lots to the public, from the date that the approved plan or diagram of survey is marked by the Department of Land Information as being in order for dealing;
- (b) on the unimproved value – in respect of the balance of the Land; and
- (c) in respect of (a) and (b), by applying the minimum rate or the general rate in the dollar for unimproved values or gross rental values, as the case requires, but so as not to include any administrative fees or penalties or any specified area rate or differential general rate which is intended to apply only to the Land and to no other land.

## 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 TPRC and the other Participants 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 TPRC and the Participants must use their reasonable efforts to resolve the Dispute.
- (b) Although the TPRC and the Participants are responsible for the resolution of the Dispute, 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

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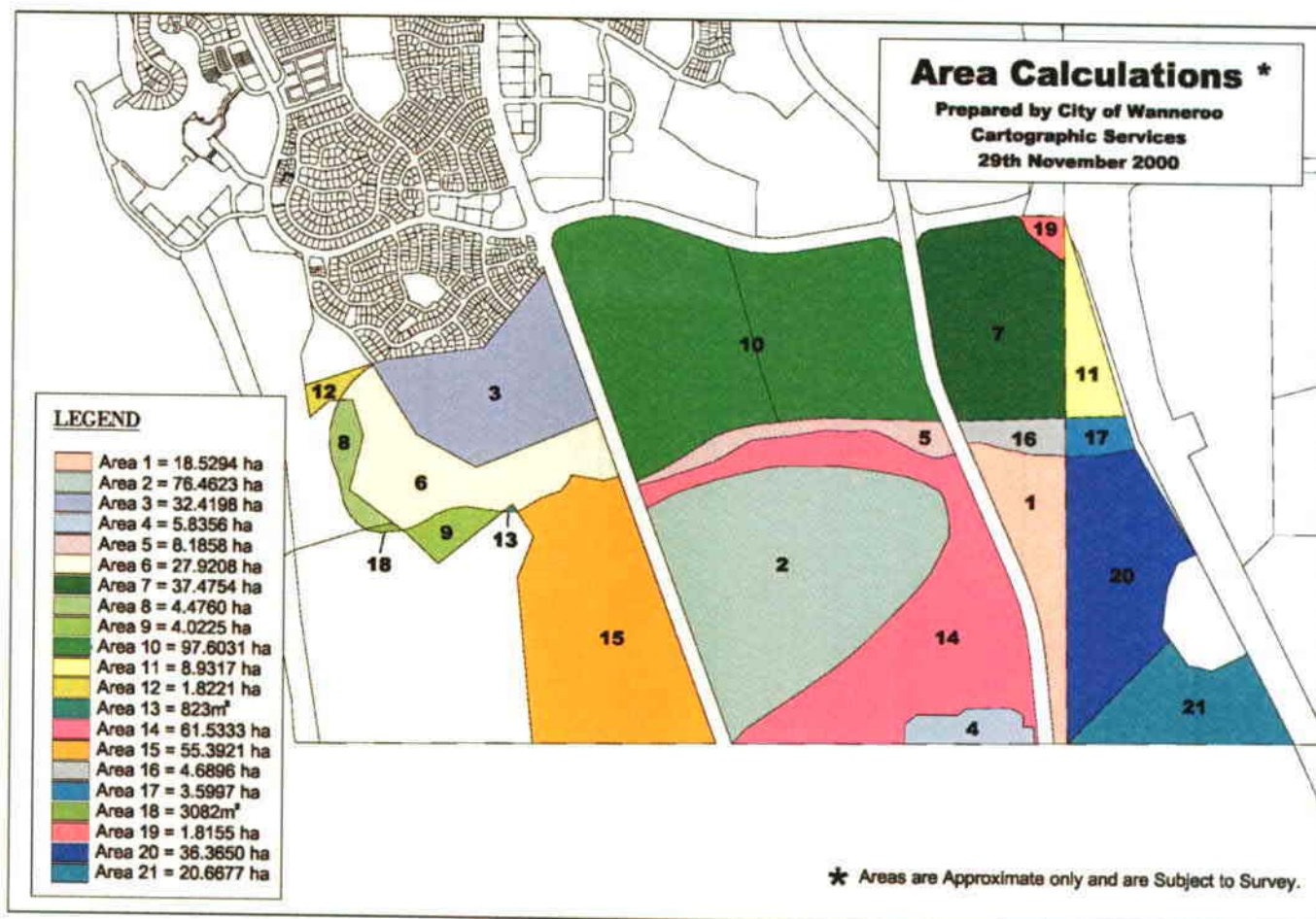
<b>Participant</b>	<b>Date of resolution to enter into this Establishment Agreement</b>
<b>Town of Cambridge</b>	<b>20 December 2005</b>
<b>City of Joondalup</b>	<b>13 December 2005</b>
<b>City of Perth</b>	<b>13 December 2005</b>
<b>City of Stirling</b>	<b>13 December 2005</b>
<b>Town of Victoria Park</b>	<b>13 December 2005</b>
<b>Town of Vincent</b>	<b>6 December 2005</b>
<b>City of Wanneroo</b>	<b>13 December 2005</b>

## 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

# Schedule 4 – Map of the Land



# Signing page

**EXECUTED** as an agreement

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

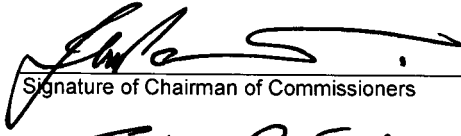
  
 Signature of Mayor **Marlene Anderton**  
 Mayor, Town of Cambridge

Name of Mayor (print)

  
 Signature of Chief Executive Officer

**GRAHAM D. PARTRIDGE**  
 CHIEF EXECUTIVE OFFICER  
 Name of Chief Executive Officer (print)

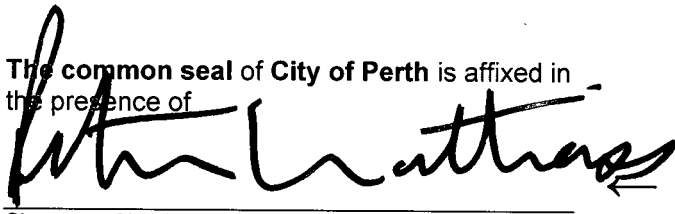
The common seal of City of Joondalup is affixed in the presence of

  
 Signature of Chairman of Commissioners  
**JOHN PATERSON**  
 Name of Chairman of Commissioners (print)

  
 Signature of Chief Executive Officer

**GARY HUNT**  
 Name of Chief Executive Officer (print)

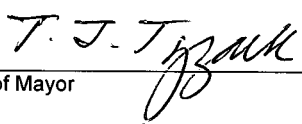
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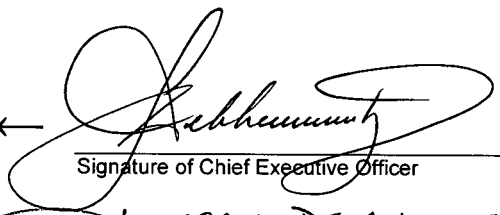
  
 Signature of Lord Mayor  
**PETER NATTALL**  
 Name of Lord Mayor (print)

  
 Signature of Chief Executive Officer

**FRANK EDWARDS**  
 Name of Chief Executive Officer (print)

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

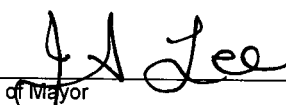
  
 Signature of Mayor  
**TERENCE JOHN TYACK**  
 Name of Mayor (print)


  
 Signature of Chief Executive Officer

**LINDSAY DEAHANTY**  
 Name of Chief Executive Officer (print)

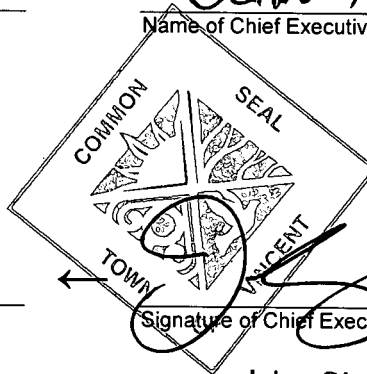
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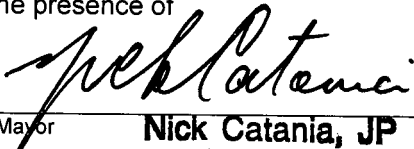



  
 Signature of Mayor  
**JOHN A.M. LEE**  
 Name of Mayor (print)

  
 Signature of Chief Executive Officer  
**JOHN M. BONKER**  
 Name of Chief Executive Officer (print)

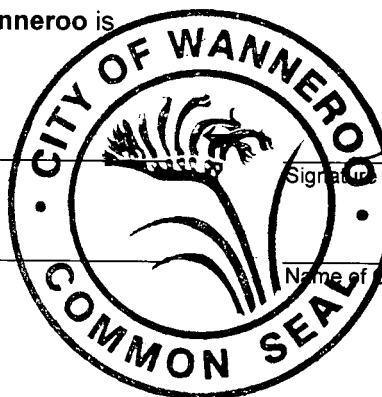
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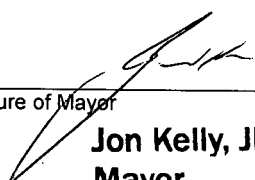



  
 Signature of Mayor  
**Nick Catania, JP  
 MAYOR**  
 Name of Mayor (print)

  
 Signature of Chief Executive Officer  
**John Giorgi, JP**  
 Name of Chief Executive Officer (print)

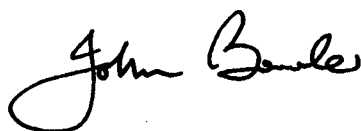
The common seal of City of Wanneroo is affixed in the presence of



  
 Signature of Mayor  
**Jon Kelly, JP  
 Mayor**  
 Name of Mayor (print)

  
 Signature of Chief Executive Officer  
**Charles Johnson**  
 Name of Chief Executive Officer (print)

Approved



**John Bowler JP MLA  
 Minister for Local Government and Regional Development**

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