



Execution copy

Development Agreement

Ocean Reef Marina

Western Australian Land Authority trading as DevelopmentWA
(**DevelopmentWA**)

and

City of Joondalup (**City**)

Development Agreement

Ocean Reef Marina

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Details

Date

2023

Parties

| | |
|-----------------|--|
| Name | Western Australian Land Authority established by the <i>Western Australian Land Authority Act 1992</i> (WA) section 5, trading as DevelopmentWA |
| Short form name | DevelopmentWA |
| Address | Level 2, 40 The Esplanade PERTH WA 6000 |
| Notice details | Email: matt.read@developmentwa.com.au Attention: Manager Metro South |

| | |
|-----------------|--|
| Name | City of Joondalup continued under the <i>Local Government Act 1995</i> (WA) schedule 9.3 clause 5 |
| Short form name | City |
| Address | 90 Boas Avenue JOONDALUP WA 6027 |
| Notice details | Email: mat.humfrey@joondalup.wa.gov.au Attention: Director Corporate Services |

Background

- A The City owns the City Lots, and the State of Western Australia owns the City Crown Land, which lots are, at the Commencement Date, under the care, control, and management of the City.
- B Parts of the City Lots and the City Crown Land form part of the Marina Project Area.
- C Since circa 1980, the redevelopment of the Marina Project Area has been considered and discussed by a number of parties.
- D The City formally reinitiated the planning for the development in 2005 and in 2009 the City affirmed the Guiding Philosophies which continue to guide the implementation and requirements of the Project and DevelopmentWA supports the Guiding Philosophies.
- E As the City does not have the capacity or resources to deliver the Project, in October 2015, the City requested that the State Government become the proponent for the development of the Marina Project Area.
- F In July 2017 the State Government approved the State Business Case and on 3 September 2017 the State Government publicly announced the appointment of DevelopmentWA as the lead proponent of the Project. The State Government has also allocated the Project Grant to fund the delivery of the Project.
- G The MOU was entered into by the Parties to outline the vision of the Project and how the Project was to proceed.
- H In accordance with clause 6.2(d) of the MOU, DevelopmentWA has paid and the City has received an amount of \$500,000 as partial reimbursement to the City for certain costs incurred in connection with the Project.
- I The City has granted the Works Licences to DevelopmentWA over part of the City Lots, to enable DevelopmentWA to proceed with specified works, including early works, breakwater construction and super lot subdivision works.
- J The Parties have a shared Project Vision and are committed to enhanced co-ordination and collaboration in relation to the timing, planning and delivery of the Project.
- K The Project will be implemented as a 'whole of government' initiative, involving not just the cooperation of the Parties but also DoT, DPLH, Water Corporation and other Government Authorities. DevelopmentWA will facilitate and coordinate the involvement of those additional government stakeholders.
- L The City's objective is to receive and obtain the City Return in return for the City making available part of the:
 - (i) City Lots; and
 - (ii) City Crown Land.
- M The Parties wish to document their respective roles, responsibilities and contributions to the Project as well as agree to a clear process for the delivery of the Project and have entered into this Agreement to give effect to this objective.

Agreed terms

Part A – Definitions and principles

1. Definitions and interpretation

1.1 Definitions

In this Agreement, the following expressions have the following meanings:

Access Licence means an access licence in a form agreed by the Parties, both acting reasonably.

Access Licence Notice means a notice signed by DevelopmentWA (or DevelopmentWA's Chief Executive or Representative) which:

- (a) specifies the commencement date of an Access Licence (which date must be a date at least 30 calendar days after the date of the Access Licence Notice); and
- (b) attaches a sketch which indicates the part of the City Lots and/or City Crown Land that will comprise the licensed area for the purposes of the Access Licence.

Agreement means this agreement including all schedules, attachments, and annexures to the same.

Approvals means all approvals, consents, authorisations, permits and other permissions required from any Government Authority, or under any Written Law, for or in connection with the Project.

Boundary of Responsibility means the line of demarcation of management responsibilities, as indicated by a bold dashed red line shown on the plan annexed to this Agreement as Schedule 1 as clarified by this Agreement.

Business Day means any day other than a Saturday, Sunday or public holiday in Perth, Western Australia.

Chief Executive means the chief executive officer, director general or other most senior executive (howsoever called) responsible for the administration of the relevant Party.

City Crown Land means the following Crown land:

- (a) Crown Lot 555 (Reserve 45122) on Deposited Plan 402198 being the whole of the land comprised in Crown Land Title Volume LR3166 Folio 566; and
- (b) Crown Lot 15446.

City Lots means Lot 1029 and Lot 1032.

City Management Orders means the management orders currently registered against the certificates of Crown Land Title to the City Crown Land at the Commencement Date (being management order H352772 and management order K360388), and also includes any management order relating to land that currently comprises a portion of Lot 1029 and is subject to an Existing Lease and is placed with the City in accordance with clause 10 of the Transfer Deed.

City Return means:

- (a) the delivery and completion of the Project in a way that seeks to achieve LT Sustainability for the City;
- (b) the delivery and completion of the Project, which has been a long-term strategic objective of the City;
- (c) the commercial opportunities for the City within the Marina Project Area on land owned or managed by the City;

- (d) the transfer in freehold, vesting or placement (as applicable) of the Future City Areas to or with the City, including the Future Club Facilities Lot in accordance with the Transfer Deed;
- (e) the amenity and use of the public facilities within the Marina Project Area by the City of Joondalup community and general public;
- (f) the direct and indirect social, economic, community and other benefits derived from a combined investment by the State and DevelopmentWA of approximately \$250 million in the locality of the City of Joondalup;
- (g) State funding towards the costs of a new site and facilities for Ocean Reef SSC; and
- (h) rates revenue from the rateable land and boat pens in the Marina Project Area.

Commencement Date means the latest date of execution of this Agreement by DevelopmentWA and the City.

Completed Roads means the public roads to be constructed by DevelopmentWA for the purposes of the Project, which are, in accordance with a subdivision approval, to be dedicated as a road and vested with the City.

Concept Plan means the concept plan annexed to this Agreement as Schedule 2.

Contaminated Sites Act means the *Contaminated Sites Act 2003* (WA).

Contamination has the same meaning given to the term 'contaminated' under the Contaminated Sites Act.

Crown Lot 15446 means Crown Lot 15446 (Reserve 47831) on Deposited Plan 40340 being the whole of the land comprised in Crown Land Title Volume LR3133 Folio 571.

Defect means any defect in construction or design works procured by or on behalf of DevelopmentWA in relation to the Future City Areas and includes:

- (a) any defect or deficiency in design, materials or workmanship;
- (b) any defect, shrinkage or fault in works;
- (c) any aspect of the works which is not in accordance with the requirements of the applicable construction or services contract (including a breach of any express warranty or non-compliance with any performance level or performance requirement stated in that contract); and
- (d) any physical damage to works resulting from any such defect, deficiency, shrinkage, fault, omission or non-compliance.

Defects Liability Period means the defects liability period under the applicable third party contract for works relating to a Future City Area or part thereof.

Divestment Strategy is the means by which the Parties have agreed to effect the divestment of certain areas of land and public assets:

- (a) which are to be developed by DevelopmentWA as part of the Project;
- (b) some of which are to be transferred to the City in fee simple or reserved as Crown land and its care, control and management placed with the City;
- (c) which is to be determined in accordance with the terms of this Agreement and the Land Transfer Deed from time to time; and
- (d) a copy of the Divestment Strategy, also known as the Land and Asset Divestment Strategy which is current as at the Commencement Date, is annexed to this Agreement as Schedule 3.

DoT means the Western Australian Government Department of Transport, or any department which supersedes that department and is responsible for regulating marina facilities in Western Australia.

DPLH means the Western Australian Government Department of Planning, Lands and Heritage or any department which supersedes that department and is responsible for the administration of the *Land Administration Act 1997* (WA).

Draft Design Documents means the draft:

- (a) designs, architectural drawings, plans and specifications prepared by or on behalf of DevelopmentWA in relation to the development and fit out of any Future City Areas or components of the same; and
- (b) draft subdivision and development applications and other applications for Approvals prepared by or on behalf of DevelopmentWA in relation to the development of any Future City Areas or components of the same.

Early Works means:

- (a) the early works described in the Works Licences;
- (b) the construction of the Hodges Drive extension;
- (c) an access road leading into the southern portion of the Marina Project Area;
- (d) any land clearing and earthworks relating to the Project;
- (e) associated infrastructure and landscaping works; and
- (f) the early breakwater construction works.

Excised Marine Park Lot means Lot 500 on Deposited Plan 415585, excised from the Marmion Marine Park reserve, pursuant to the *Reserves (Marmion Marine Park) Act 2019* (WA), which is now Lots 501, 502 and 503 on Deposited Plan 415761.

Existing Leases means the following leases and licences, entered into by the City as landlord or licensor:

- (a) undated lease to the Marine Rescue Whitfords in relation to part of Crown Lot 15446;
- (b) undated lease to the Ocean Reef SSC in relation to part of Crown Lot 15446 and part of Lot 1029; and
- (c) access deed to Telstra Corporation Limited and dated 25 July 2016 in relation to Crown Lot 15446.

Existing Tenants means Marine Rescue Whitfords, Ocean Reef SSC and Telstra and **Existing Tenant** has a corresponding meaning.

Freehold Car Park means a freehold public parking site as shown on the Divestment Strategy to be constructed as a carpark by DevelopmentWA and to comprise at least 210 bays, being the 'Beach Parking Area' referred to, and which shall be subject to the restrictions specified, in the Transfer Deed.

Force Majeure Event means the existence or occurrence of damage or obstruction by lightning, fire, explosion, natural disasters (including flood, cyclone, landslide, earthquake or other seismic activity), war, terrorism and acts of terrorism, civil unrest, hostilities between nations, state wide or national industrial action, sabotage, malicious damage (not including graffiti), epidemic, pandemic, government mandated lockdown or declared state of emergency, or a combination of any of these, but only if and to the extent that:

- (a) despite the exercise of reasonable diligence, it cannot be (or be caused to be) reasonably prevented, avoided, or removed by the Party seeking to rely on the event or circumstance;
- (b) it adversely affects (including in cost or time (or both)) the ability of a Party to perform any or all of its obligations under this Agreement;
- (c) the Party wishing to rely on the event or circumstance has taken reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of that event or circumstance (or both) on its ability to perform its obligations under this Agreement (and to mitigate the consequences of it); and
- (d) such event is not substantially the direct or indirect result of the material failure of the Party wishing to rely on the event or circumstance to perform any of its obligations under this Agreement.

Future City Areas means public assets and areas specified in the Divestment Strategy as areas and assets that shall be owned, managed or maintained by the City, including:

- (a) Public Open Space;
- (b) Future City Lots;
- (c) Future Club Facilities Lot;
- (d) Public Parking Areas;
- (e) public improvements, fixtures, fittings, plant and equipment located or affixed upon the Public Open Space and Future City Lots, including the promenade abutting the waterfront within the Marina Project Area (but excluding the internal revetment walls); and
- (f) Completed Roads.

Future City Lots means the freehold lots or conditional freehold lots to be transferred in fee simple to the City, as identified in the Divestment Strategy or any other part of the Project agreed to be transferred to the City in freehold from time to time.

Future Club Facilities Lot means the site for the Ocean Reef SSC (including club house, open space, and some parking) and other uses by the City.

Future Club Facility Lot Works means the buildings, facilities, alterations and additions to the Future Club Facilities Lot to be made to accommodate Ocean Reef SSC.

Future Marina Areas means the area shaded pink on the plan attached in Schedule 1, being primarily the portion of the Marina Project Area located west of the Boundary of Responsibility, which will include the assets comprising the Marina Works once completed and the waterways and all assets deemed in this Agreement to be located to the west of the Boundary of Responsibility. which are further specified in Schedule 4.

Future Other Facilities Lot means the site(s) for the Marine Rescue Whitfords and potential Marina Manager offices, as identified on the Concept Plan and Divestment Strategy.

Government Authority means a government (Commonwealth, State or local) or a governmental, semi-governmental, judicial, statutory or public entity or authority, including any such entity or authority established under a Written Law.

Government Steering Committee means the government steering group established in relation to the Project, comprising members nominated by each Party and other relevant Government Authorities.

Guiding Philosophies means the guiding philosophies and parameters for the Project as affirmed by the City and set out in the document titled 'Ocean Reef Marina Philosophy and Parameters' and annexed to this Agreement as Schedule 5.

Handover means the handover of Upkeep Responsibility in relation to the Future City Areas to the City when all of the requirements for the Upkeep Responsibility Date to occur, have occurred or been achieved.

Handover Obligations means, in relation to a Future City Area, that:

- (a) all of the works that comprise that Future City Area have been completed;
- (b) the relevant works and improvements have been completed in accordance with all Approvals;
- (c) all requirements of the City in its statutory capacity or when performing a statutory function in relation to the relevant works have been completed or cleared by the City;
- (d) all Upkeep Responsibilities of DevelopmentWA have been completed;
- (e) all damage to the relevant works and improvements since Practical Completion of the same has been rectified, excluding fair wear and tear; and
- (f) all plans, specifications, certifications, agreements, Approvals and other documents reasonably requested by the City in relation to that Future City Area have been provided to the City.

Harbour Waters the current Ocean Reef boat harbour waterway, being Lot 504 on Deposited Plan 421397, comprising an area of approximately 5.1611 hectares.

HOA means the Heads of Agreement entered into by the City and DevelopmentWA in relation to the Project and dated 19 May 2021.

Improvement Scheme means the Ocean Reef Marina Improvement Scheme No.1 gazetted on 30 September 2020 and as may be updated from time to time.

Indicative Project Program means the program in Schedule 6, which program must be updated by DevelopmentWA from time to time.

Intellectual Property Rights means all intellectual property rights and interests (including common law rights and interests), including all:

- (a) patents, trademarks, service marks, copyrights, registered and unregistered designs, trade names, domain names, symbols and logos;
- (b) patent applications and applications to register trademarks, service marks and designs;
- (c) methods, plans, data, drawings, specifications, characteristics, inventions, improvements, know how, experience, trade secrets, confidential information or other information; and
- (d) licences or similar user rights in respect of any such rights and interests.

Land Assembly Process refers to the means by which the Parties and other relevant Government Authorities have agreed to affect the assembly of the land comprising the Marina Project Area (including the transfer of certain lots), as documented in the 'Land Assembly Tranche Plan' (as that term is defined in the Transfer Deed) and in order to facilitate the delivery of the Project in accordance with the terms of this Agreement.

Landscape Master Plan means the landscape master plan, annexed to this Agreement as Schedule 7.

Landside Works means all works required to complete the Project that are not Marina Works including:

- (a) the Future City Areas;
- (b) creation of the freehold lots and development sites for sale;
- (c) Public Parking Areas; and
- (d) roads, footpaths, cycleways, and all related landscaping (in accordance with the Landscape Master Plan).

Leased Facilities means the buildings and improvements leased to the tenants under the Existing Leases.

Leased Premises means the areas leased under each of the Existing Leases, including the Leased Facilities.

Limitations means the agreements, acknowledgements, qualification, warranties and representations in clauses 6.1 and 6.2.

LG Boundary Amendment means the amendment of the local government boundary of the City to include the marina and the Excised Marine Park Lot.

Local Government Act means the *Local Government Act 1995* (WA).

Lot 1029 means Lot 1029 on Diagram 57604 being the whole of the land comprised in Certificate of Title Volume 1957 Folio 865.

Lot 1032 means Lot 1032 on Plan 13198 being the whole of the land comprised in Certificate of Title Volume 1667 Folio 921.

LT Sustainability refers to the City's objective of ensuring that the financial impacts to the City of the Ocean Reef Marina are sustainable in the long term and specifically LT Sustainability means that:

- (a) in relation to the City's operating surplus / deficit: recurring impact including depreciation, should be no worse than zero once the Ocean Reef Marina is fully developed (this is measured by comparing the project impacts to the existing baseline deficit); and
- (b) in relation to the City's cashflow: The 50-year cashflow impacts are zero or positive (when compared to the baseline).

Marina Management Deed means an agreement pursuant to which DevelopmentWA, the City and any future Marina Manager agree:

- (a) that the responsibilities of the Marina Manager are in relation to the area west of the Boundary of Responsibility;
- (b) the obligations of the Marina Manager in relation to the management and operation of the Future Marina Areas;
- (c) the handover of responsibility for the management and maintenance of the Future Marina Areas from DevelopmentWA to the Marina Manager;
- (d) the co-ordination of management and maintenance responsibilities for the interface between the Future Marina Areas and the Future City Areas along the Boundary of Responsibility, as between the Marina Manager and the City;
- (e) the responsibility of the Marina Manager and DevelopmentWA for the rectification of Defects in the Future Marina Areas that impact upon the Future City Areas.

Marina Manager means any third party marina manager (including, for example, DoT) that may be appointed to manage and maintain the Future Marina Areas, in accordance with clause 25 and clause 23.10, but until such appointment is made means DevelopmentWA.

Marina Project Area means the area of land and water outlined in red as shown on the map annexed to this Agreement as Schedule 8, and as at the Commencement Date comprising portions of:

- (a) the City Lots;
- (b) the City Crown Land;
- (c) the Excised Marine Park Lot;
- (d) Lots 600 and 601 on Deposited Plan 418370;
- (e) the Ocean Reef Boat Harbour, comprising at the Commencement Date:
 - (i) Crown Lot 10098 on Deposited Plan 216098 and being the whole of the land comprised in Crown Land Title Volume LR3048 Folio 270;
 - (ii) Crown Lot 10518 on Deposited Plan 216098 and being the whole of the land comprised in Crown Land Title Volume LR3146 Folio 799;
 - (iii) Crown Lot 10519 on Deposited Plan 216098 and being the whole of the land comprised in Crown Land Title Volume LR3146 Folio 800; and
 - (iv) the Harbour Waters.

Marina Works means the marina infrastructure to be constructed as part of the Project, including:

- (a) two breakwaters;
- (b) jetties;
- (c) the coastal pool;
- (d) internal marina edge (revetment) wall (but excluding the promenade);
- (e) boat pens and boat stacker sites;
- (f) boat ramps and trailer parking bays;
- (g) any seabed works;
- (h) the marine enterprise precinct immediately south of the Boundary of Responsibility but excluding the Future Club Facilities Lot; and
- (i) any other infrastructure that will become the responsibility of the Marina Manager in accordance with the Divestment Strategy; and
- (j) ancillary facilities.

Marine Rescue Whitfords means Whitfords Volunteer Sea Rescue Group (Inc).

MOU means the Memorandum of Understanding between DevelopmentWA (formerly trading as LandCorp) and the City and dated 21 February 2018.

Ocean Reef SSC means the Ocean Reef Sea Sports Club (Inc).

ORM Documents means the Concept Plan, Landscape Master Plan and the Design Documents developed under clause 12.

Party means DevelopmentWA or the City and **Parties** means both of them.

Practical Completion means the completion of the Marina Works or Landside Works or separable portions thereof, subject to minor Defects, to the reasonable satisfaction of DevelopmentWA.

Project means the development of the Marina Project Area generally in accordance with the Project Vision, clause 5.1 and the requirements of this Agreement.

Project Completion means the completion of Handover of all of the Future City Areas to or with the City or such other date agreed by the Parties.

Project Documents means this Agreement, the Works Licences, the Transfer Deed and any other document which the Parties agree is a Project Document.

Project Grant means the State Government funding allocated to fund part of the costs to be incurred by DevelopmentWA in undertaking the Project, being at the Commencement Date an amount of \$192,000,000.

Project Timeline means the detailed timeline for the completion of the Project which includes:

- (a) a staging plan for the works; and
- (b) a plan for the timing of lot sales,

as prepared and updated by DevelopmentWA from time to time.

Project Vision is to establish a world class, vibrant marina precinct comprising of recreational, boating, tourism, residential, retail and commercial facilities, and more particularly, the delivery of the key infrastructure and development outcomes described in clause 5.

Proposed Variation means a material variation to a Design Document proposed by DevelopmentWA.

Public Open Space means public open space to be created within the Marina Project Area and placed or to be placed with the City for care, control and management.

Public Parking Areas means those parts of the Future City Areas to comprise publicly accessible parking areas, as indicated by the Divestment Strategy or otherwise agreed by the Parties, which will include the Freehold Car Park.

Representative means a person appointed to represent a Party from time to time under clause 9.1(a) and where the context permits, includes any alternative Representative to the extent of their authority.

Services means electricity, gas, telecommunication, water, sewerage, and other utilities or services.

Smart Infrastructure means smart infrastructure and technology that may be integrated as part of the Project works which may include:

- (a) communication or internet-connected infrastructure, including sensors, data collection, CCTV, smart lighting, irrigation and parking technology; or
- (b) technology that otherwise will provide improved public or commercial amenity.

Specified Area Rate has the meaning given to that term under section 6.37 of the Local Government Act.

Staging Plan means the plan showing the indicative order and staging of the Project as provided to the City by DevelopmentWA from time to time.

State means the State of Western Australia.

State Business Case means the public document titled 'Business Case: Ocean Reef Marina Development' dated and approved by the State Government in July 2017.

State Club Contribution means the amount of \$6,485,000.00 towards new facilities for the Ocean Reef SSC and Marine Rescue Whitfords.

Statutory Responsibility means that the City is required to perform functions in relation to a Future City Area under a Written Law.

Statutory Responsibility Date means the date on which the City has Statutory Responsibility for the management or control of the relevant Future City Area such as the date when the City becomes the management body for or freehold owner of a Future City Area.

Telstra means Telstra Corporation Limited.

Term means the term of this Agreement, commencing on the Commencement Date and expiring on the date specified in clause 4.

Transfer Deed means the Land Transfer Deed entered into by the Minister for Lands and the Parties which records the agreements by the Parties and the Minister for Lands to the actions required to (amongst other things) give effect to:

- (a) the Land Assembly Process;
- (b) relevant terms of the HOA not otherwise addressed or detailed in this Agreement; and
- (c) the Divestment Strategy.

Upkeep Area means an area of land that is all of, or a separate lot that is part of, a Future City Area.

Upkeep Area Handover Date means the date on which Handover is confirmed under clause 23.5(a)(ii)(A) in respect of the relevant Upkeep Area.

Upkeep Responsibility means responsibility and liability for ensuring that a Future City Area:

- (a) is clean, tidy, maintained, free of rubbish, repaired, safe and generally kept in a good condition; and
- (b) is free of damage and graffiti and that any damage or graffiti is rectified, subject to fair wear and tear in the case of damage.

Upkeep Responsibility Date means, in relation to an Upkeep Area, the date which is the last to occur of:

- (a) 2 years after construction and development of the Future City Area and all related alterations, additions and improvements have been Practically Completed; and
- (b) the Statutory Responsibility Date.

Vacant Leased Areas has the meaning in clause 20.6(b).

Vacation Date means the second to occur of:

- (a) 30 April 2024; and
- (b) two months after Practical Completion of the Future Club Facility Lot Works by DevelopmentWA,

or such other date as the Parties may agree.

WAPC means the Western Australian Planning Commission.

Works Licences means:

- (a) the document titled 'Access Licence' dated 13 February 2020 entered into between the City as licensor and DevelopmentWA as licensee, in relation to the City Lots, City Crown Land and a portion of Ocean Reef Road, as extended by letter from the City of Joondalup dated 27 August 2020, for the purposes of early works construction;
- (b) the breakwater construction access licence dated 23 December 2020, for the purpose of undertaking the breakwater construction associated with the Ocean Reef Marina Project; and

- (c) a superlot subdivision access licence, dated 19 March 2021, for the purpose of carrying out the works necessary to implement the superlot subdivision.

Written Law means any statute, regulation, ordinance, by-law or other subsidiary legislation and any lawful direction or notice by a Government Authority.

1.2 Interpretation

The following rules also apply in interpreting this Agreement, unless inconsistent with the context:

- (a) headings are for convenience only, and do not affect interpretation;
- (b) a reference to legislation (including subordinate legislation) is to that legislation as amended, consolidated, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Agreement, and a reference to this Agreement includes any schedule or annexure;
- (d) a reference to an agreement or instrument includes the agreement or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to anything includes each part of it;
- (f) a reference to a Party is a reference to that Party as may be reconstituted or substituted under any Written Law from time to time;
- (g) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (h) a reference to time is to Australian Western Standard time;
- (i) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (j) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (k) another grammatical form of a defined word or expression has a corresponding meaning;
- (l) a singular word includes the plural, and vice versa;
- (m) a word which suggests one gender includes the other genders;
- (n) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (o) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it; and
- (p) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed, or the event must occur on or by the next Business Day.

1.3 Agreement is legally binding

The Parties agree that this Agreement and the obligations contained herein are legally binding.

1.4 Collaboration

In performing their respective obligations under this Agreement, each Party commits to work with the other Party in a co-ordinated, co-operative and collaborative way.

1.5 Heads of Agreement superseding

Without limiting clause 1.3 and for the avoidance of doubt, this Agreement and the Transfer Deed supersedes the HOA and MOU.

Part B – Project outline

2. Purpose

The purpose of this Agreement is to:

- (a) set out the roles, rights and obligations of each Party in relation to the delivery of the Project by DevelopmentWA; and
- (b) ensure the implementation and completion of the Project by DevelopmentWA in an orderly and timely manner.

3. Interdependency with Transfer Deed

3.1 Timing of Transfer Deed

- (a) The Parties must enter into the Transfer Deed on the same date as this Agreement.
- (b) Either Party may terminate this Agreement if the other Party or the State fails to enter into the Transfer Deed.

3.2 Interdependency with Transfer Deed

- (a) The Parties acknowledge that the Transfer Deed is interdependent with this Agreement.
- (b) The Parties agree to execute the Transfer Deed and do all other things reasonably necessary to give effect to the Land Assembly Process in a timely manner.
- (c) In the event of an inconsistency between this Agreement and the Transfer Deed, the Transfer Deed prevails.
- (d) The City agrees with DevelopmentWA to comply with its obligations in the Transfer Deed.
- (e) DevelopmentWA agrees with the City to comply with its obligations in the Transfer Deed.

4. Term

Except where otherwise agreed by the Parties, this Agreement will terminate upon:

- (a) the last to occur of:
 - (i) the date of Project Completion; and
 - (ii) the last to occur of:
 - (A) the expiration of all Defects Liability Periods in respect of the Future City Areas; and
 - (B) the completion of the rectification of Defects in the Future City Areas in accordance with clause 23.9; and
 - (C) the City or DevelopmentWA ceasing to have any remaining rights against DevelopmentWA's builders and consultants pursuant to clause 23.9; or
- (b) the earlier termination of this Agreement in accordance with its terms.

5. Project Components

5.1 Key elements of the Project

The Parties agree that the Project is anticipated to include:

- (a) a marina, inclusive of eight boat launching ramps and trailer parking bays, which is to have a capacity for approximately:
 - (i) 550 boat pens; and

- (ii) 200 boat stacker bays;
- (b) an internal beach within the protection of the marina and a coastal pool;
- (c) approximately 12,000 square metres of retail and commercial floor space;
- (d) over 5 hectares of community spaces;
- (e) approximately 1,000 dwellings, comprising of single residential homes, apartments, grouped dwellings;
- (f) mixed-use developments;
- (g) short stay and hotel rooms;
- (h) a waterfront promenade;
- (i) public parking (including car bays and boat trailer parking areas);
- (j) new sites and facilities for Marine Rescue Whitfords, Ocean Reef SSC and a telecommunications provider;
- (k) commercial opportunities for the City including commercial agreements with third parties;
- (l) public infrastructure to support the Project such as street lighting, road and path networks and drainage;
- (m) community spaces such as playgrounds, gazebos, BBQs and public artwork; and
- (n) public equity, to ensure that there is unrestricted community access to the public waterfront areas (but excluding the secure marine enterprise area) as each stage is completed, especially in relation to those waterfront areas in front of the residential components of the marina.

5.2 Changes to certain matters

- (a) DevelopmentWA will use reasonable endeavours not to do any of the following without the prior agreement of the City, not to be unreasonably withheld, conditioned or delayed:
 - (i) materially change or apply to materially change the Improvement Scheme;
 - (ii) make any change to the location of the Future Club Facilities Lot;
 - (iii) materially change the size or scale of any Future City Area from the description of that Future City Area in the Divestment Strategy; and
 - (iv) reduce public access to the waterfront areas from that shown on the Divestment Strategy.
- (b) The City acknowledges that given the scale and duration of the Project it may be necessary for DevelopmentWA to do any of the things described in clause 5.2(a). The City must act promptly and reasonably when requested by DevelopmentWA to agree to any of the things described in clause 5.2(a).

5.3 Third Party Developers

- (a) DevelopmentWA may:
 - (i) sell or transfer 50% or less of land that is suitable for development or subdivision into lots for residential or commercial purposes in the Marina Project Area (**developable land**) to; or
 - (ii) enter into a joint venture, development management, project delivery or other similar arrangement in relation to 50% or less of developable land with, one person or group.
- (b) DevelopmentWA may:
 - (i) sell or transfer more than 50% of the developable land to; or
 - (ii) enter into a joint venture, development management, project delivery or other similar arrangement in relation to more than 50% of the developable land with,

one person or group (**Third Party Developer**), provided DevelopmentWA does so substantially in accordance with DevelopmentWA's standard conditions, policies and limitations, subject to:

- (iii) conditions relating to the specific project deliverable requirements imposed on the Third Party Developer by DevelopmentWA;
 - (iv) an option to repurchase the relevant land in the event of the Third Party Developer's default, exercisable by DevelopmentWA;
 - (v) any transfer of the land occurring within a reasonable period, having regard to the nature of the arrangement; and
 - (vi) DevelopmentWA providing the City with notice and reasonable details of the actions taken under this clause 5.3(b).
- (c) If clause 5.3(b) does not apply, DevelopmentWA may:
- (i) sell or transfer more than 50% of the developable land to; or
 - (ii) enter into a joint venture, development management, project delivery or other similar arrangement in relation to more than 50% of the developable land with,
- one person or group with the prior agreement of the City, which agreement will not be unreasonably withheld, conditioned or delayed.

Part C – Project governance, powers and representatives

6. Parties powers

6.1 No fetter of statutory powers

Nothing in this Agreement fetters, replaces or alters, or is to be taken as fettering, replacing or altering:

- (a) the statutory powers, functions, obligations and discretions of the Parties or a Party's Representative or other officers (including but not limited to the City's statutory planning and building functions); or
- (b) any Ministerial discretion exercisable in respect of the Project.

6.2 Acknowledgement of statutory and policy limitations

- (a) It is acknowledged by the Parties that:
 - (i) the City must undertake its obligations under this Agreement in a way that is in compliance with the Local Government Act; and
 - (ii) DevelopmentWA must undertake its obligations under this Agreement and otherwise act in compliance with the *Western Australian Land Authority Act 1992* (WA).
- (b) The Parties warrant that they each have the powers to enter into this Agreement and that its terms are binding upon and enforceable against them and:
 - (i) for its part, the City specifically warrants that, if and to the extent applicable in relation to the Project, it has complied with the requirements of sections 3.58 and 3.59 of the Local Government Act prior to entering into this Agreement; and
 - (ii) each Party warrants that all consents and approvals required to enter into this Agreement have been obtained.
- (c) The following qualifications and limitations apply to this Agreement:
 - (i) nothing done by or on behalf of a Party fetters, replaces or alters, or is to be taken as fettering, replacing or altering the statutory powers, functions, obligations and discretions of that Party; and

- (ii) unless a Party has advised otherwise in writing, there is no delegation of that Party's powers, functions or rights in favour of any person.

7. Role of the City

The City agrees that its roles and responsibilities in relation to the Project are generally described as follows:

- (a) to provide an ongoing commitment to the delivery of the Project, and assist DevelopmentWA to ensure that the Project is achieved;
 - (b) to participate in meetings of the Government Steering Committee;
 - (c) to provide DevelopmentWA with access to the City Crown Land and City Lots in accordance with clause 16.1;
 - (d) to contribute and relinquish its title to the City Lots and to agree to the revocation of the City Management Orders, in accordance with this Agreement, the Land Assembly Process and the Transfer Deed;
 - (e) to accept title and control over, and responsibility for, Future City Areas to be transferred to, placed with or vested in the City in accordance with the terms of the Divestment Strategy and the Transfer Deed and at the time and in accordance with the requirements of this Agreement;
 - (f) to provide all reasonably requested support to DevelopmentWA to enable it to undertake and complete the Project, including cooperating, collaborating and engaging with other Government Authorities and stakeholders relevant to the Project; and
 - (g) to perform its obligations in this Agreement in good faith and in a timely manner, and, where applicable, as are more particularly described in this Agreement provided that the City is under no obligation to:
 - (h) provide any funding in relation to the Project; or
 - (i) assume any development risk in relation to the Project;
- except as expressly provided for in this Agreement or as otherwise agreed by the Parties.

8. Role of DevelopmentWA

The Parties acknowledge and agree that DevelopmentWA's roles and responsibilities are generally described as follows:

- (a) to deliver the Project in accordance with the Project Vision, the State Business Case and this Agreement;
- (b) to keep the City reasonably informed in relation to the Project;
- (c) to provide the City with a Project Timeline and a Staging Plan from time to time and keep these documents up to date;
- (d) to have regard to feedback from the City in relation to the Project;
- (e) to manage the Project Grant to finance DevelopmentWA's costs in undertaking the Project;
- (f) to fund the costs of undertaking and delivering the Landside Works;
- (g) to liaise with relevant Government Authorities for the purpose of securing their Approval, cooperation and agreement, where required, to deliver the Project;
- (h) to have regard to the Project Vision and the Guiding Philosophies when exercising the functions and discretions vested in it by operation of this Agreement;
- (i) to work to ensure that the Project is implemented as a 'whole of government' initiative, involving not just the cooperation of the Parties but also DoT, DPLH, Water Corporation and other Government Authorities;

- (j) to facilitate and coordinate the involvement of those additional government stakeholders;
- (k) to actively undertake and facilitate appropriate community and stakeholder consultation;
- (l) reporting, recording, monitoring, managing and rectifying of Defects during applicable Defects Liability Periods and generally assisting the City to enforce its rights against DevelopmentWA's contractors and consultants in relation to the rectification of Defects;
- (m) to perform its obligations in this Agreement in good faith and in a timely manner; and where applicable, as are more particularly described in this Agreement.

9. Representatives

9.1 Parties' Representatives

- (a) Each Party must, at all times, appoint and retain a natural person to be the Party's representative for all purposes under this Agreement.
- (b) On and from the Commencement Date:
 - (i) DevelopmentWA's Representative shall be Matt Read, Manager Metro South; and
 - (ii) the City's Representative shall be Mat Humfrey, Director of Corporate Services.
- (c) Each Party may at any time, by notice from its Chief Executive to the Chief Executive of the other Party:
 - (i) appoint an alternative Representative, who may act in the absence of the first appointed Representative; or
 - (ii) replace a Representative with another Representative.

9.2 Role of Representatives

Each Party's Representative has the following roles and functions:

- (a) to be the primary point of contact for the Representative and other officers, employees, and agents of the other Party for the purposes of this Agreement;
- (b) to prepare for, attend, meaningfully participate in and, as much as is permissible, provide and share information at meetings between the Parties held in relation to the Project; and
- (c) to contribute towards the achievement of the Project, by assisting in the co-ordination of and collaboration in the timing, planning and delivery of the Project.

9.3 Representative does not bind Party

A Representative does not, in that capacity, have power to bind a Party in respect of any matter relating to the Project or arising under this Agreement.

10. Government Steering Committee

10.1 Acknowledgement of Government Steering Committee role

The Parties acknowledge the existence and continuing role of the Government Steering Committee, which comprises members nominated by:

- (a) each Party;
- (b) DoT;
- (c) DPLH; and
- (d) any other Government Authorities that the Government Steering Committee agree should be invited to participate from time to time.

10.2 Continued participation in Government Steering Committee

The Parties agree to continue to participate in the Government Steering Committee in an open, transparent, and cooperative manner during the Term.

Part D – Project delivery, approvals, and design

11. Project funding

11.1 Management of Project Grant and other contributions

- (a) DevelopmentWA shall in accordance with its legislative and governance requirements:
 - (i) subject to clause 11.2, manage the expenditure of the Project Grant, which shall (subject to the conditions attaching to the Project Grant) primarily be allocated to funding the Marina Works in accordance with the State Business Case; and
 - (ii) contribute funding in the amount required to deliver Landside Works forming part of the Project.
- (b) The City acknowledges receipt prior to the Commencement Date of DevelopmentWA's payment(s) in the amount of \$500,000 exclusive of GST by way of the agreed contribution towards the costs the City has incurred in relation to progressing the necessary Metropolitan Region Scheme amendments and the public environmental review, in full and final performance and discharge of its commitment under paragraph 6.2(g) of the MOU.

11.2 City acknowledgements in relation to Project Grant and other funding

The City acknowledges that:

- (a) the provision of the Project Grant is subject to State Government policy outside of DevelopmentWA's control, and therefore the provision of the Project Grant and the amount of the Project Grant may be subject to change;
- (b) DevelopmentWA makes no representations and gives no warranties that:
 - (i) the total amount of the Project Grant will be made available by the State Government for allocation to the Project; and
 - (ii) it will provide a particular level of funding towards the delivery of the Project from its own resources; and
- (c) by reason of the provision of the Project Grant, DevelopmentWA controls funding and delivery decisions in relation to the Project in accordance with the terms of this Agreement and to the extent permitted by Written Law.

11.3 DevelopmentWA warranties and representations

- (a) DevelopmentWA warrants and represents to the City that as at the Commencement Date DevelopmentWA has not received notice of and DevelopmentWA is not aware of any reduction to, or need to reduce, the amount of the Project Grant.
- (b) DevelopmentWA agrees to promptly notify the City of:
 - (i) any plans to reduce or reduction to the total amount of the Project Grant; or
 - (ii) any significant reduction to the level of funding that DevelopmentWA intends to contribute to the delivery of the Project from its own resources.

11.4 City's commitments during Project delivery phase

- (a) The City agrees to:
 - (i) establish a team of experienced officers who will be dedicated to ensuring the City's compliance with its obligations under this Agreement; and

- (ii) without limiting clause 11.4(a)(i), ensure adequate resources are available and included in the City's budgeting processes to enable the City to perform its obligations in this Agreement and participate in the Project.
- (b) The City may consider contributing to the development of any additional public or commercial infrastructure it proposes that is not already envisaged in the Concept Plan or Divestment Strategy, however the City is under no obligation to provide such further contributions.

12. Design of Future City Areas

12.1 Not part of any statutory process

- (a) Clauses 12.2 to 12.5 inclusive set out a process that the Parties have, in their capacity as Parties to this Agreement agreed to undertake.
- (b) Clauses 12.2 to 12.5 inclusive are not part of and do not modify, inform or replace any statutory process, duty, discretion or function of the City in its capacity as a local government.

12.2 Preparation of Draft Design Documents

- (a) DevelopmentWA must prepare Draft Design Documents for the Future City Areas (or separable portions thereof) that are consistent with the requirements of this Agreement in relation to the Future City Areas and must use reasonable endeavours to ensure that the Draft Design Documents:
 - (i) are based upon, and not inconsistent with:
 - (A) the Concept Plan;
 - (B) the Project Vision;
 - (C) the Boundary of Responsibility;
 - (D) the Improvement Scheme;
 - (E) the Land Assembly Process;
 - (F) the Divestment Strategy; and
 - (G) the Staging Plan;
 - (ii) have due regard to any minimum standards or specifications of the City which would usually apply to similar developments and infrastructure; and
 - (iii) subject to the Limitations, are prepared having regard to feedback and preferences communicated between the Parties, acting reasonably.
- (b) Once prepared, DevelopmentWA must provide the Draft Design Documents to the City for consultation, feedback and discussion purposes with the intention of:
 - (i) streamlining and improving the timelines for approval processes; and
 - (ii) providing a forum for the City, acting reasonably, to confirm that the Project or the relevant stage to be implemented remains consistent with the City's vision, including the Project Vision.
- (c) DevelopmentWA must use reasonable endeavours to:
 - (i) respond to questions from the City; and
 - (ii) provide supporting information and detail as is reasonably requested, in relation to the Draft Design Documents.
- (d) Where a meeting is requested by either Party in relation to the Draft Design Documents, the Parties shall endeavour to meet as soon as is reasonably practicable.

12.3 Feedback on Design Documents

Where Draft Design Documents are provided to the City:

- (a) the City will provide feedback (if any) to DevelopmentWA in a reasonable time; and
- (b) DevelopmentWA must give reasonable consideration to that feedback.

12.4 Variations to Draft Design Documents

- (a) If there is a Proposed Variation then DevelopmentWA must provide the Proposed Variation to the City for consultation, feedback and discussion purposes with the intention of:
 - (i) streamlining and improving the timelines for approval processes; and
 - (ii) providing a forum for the City, acting reasonably, to confirm that the Project or the relevant stage to be implemented remains consistent with the City's vision, including the Project Vision.
- (b) DevelopmentWA must use reasonable endeavours to:
 - (i) respond to questions from the City; and
 - (ii) provide supporting information and detail as is reasonably requested, in relation to the Proposed Variation.
- (c) Where a meeting is requested by either Party in relation to the Proposed Variation, the Parties shall endeavour to meet as soon as is reasonably practicable.
- (d) Where Proposed Variations are provided to the City:
 - (i) the City will provide feedback (if any) to DevelopmentWA in a reasonable time; and
 - (ii) DevelopmentWA must give reasonable consideration to that feedback.

12.5 Design Documents or Proposed Variation

Any feedback provided in relation to a Draft Design Document or a Proposed Variation by the City is expressly subject to the Limitations.

12.6 Smart Infrastructure and microgrid

- (a) The City acknowledges that DevelopmentWA will explore and promote opportunities for Smart Infrastructure and a renewable energy microgrid to be designed and developed as part of the Project.
- (b) The City will cooperate with DevelopmentWA to explore and act reasonably to agree the terms on which Smart Infrastructure and a renewable energy microgrid can be implemented as part of the Project and the City acknowledges that this may include:
 - (i) the grant of appropriate tenure to a third party owner and operator of any renewable energy microgrid (including granting easements over road reserves for underground cables, conduits, pipes and wires);
 - (ii) service agreements with the third party operator in relation to the maintenance and operation of relevant aspects of the Smart Infrastructure; and
 - (iii) the grant of a lease, easement or other right over the roof top of a building on land that the City will own, have vested in it or of which it will have the care control and management, in favour of the operator of a microgrid developed as part of the Project.
- (c) Subject to clause 12.6(d), DevelopmentWA agrees that if any Smart Infrastructure is intended to be owned by or become the responsibility of the City, it can only be included in the Project if the City, acting reasonably, has agreed to the terms on which it will own and be responsible for that Smart Infrastructure.
- (d) DevelopmentWA acknowledges that the City does not have capacity to, and will not, assume any obligations in connection with any microgrid.

13. Planning and other approvals

13.1 Improvement Scheme

The City acknowledges the existence of the Improvement Scheme and is aware that the WAPC exercises statutory planning functions in relation to the Marina Project Area.

13.2 City assistance with Approvals

Subject to the Limitations the City agrees to provide all reasonably requested support to DevelopmentWA to enable it to undertake and complete the Project.

13.3 Normalisation

- (a) The City acknowledges that following the repeal of the Improvement Scheme, the City will resume its statutory planning functions in relation to the Marina Project Area.
- (b) DevelopmentWA at its discretion may request, and support the applicable process for, the repeal of the Improvement Scheme, but shall not do so prior to the Handover of all the Future City Areas to the City.

13.4 Local government boundary amendment and rateability of boat pens

- (a) DevelopmentWA acknowledges that the City may apply to amend its local government boundary to include the area the subject of the LG Boundary Amendment.
- (b) DevelopmentWA agrees to provide all applicable and reasonable support and assistance to the City to enable the City to proceed with the City's actions set out in clause 13.4(a).
- (c) DevelopmentWA acknowledges that, if entitled to do so under the Local Government Act and any other relevant legislation, the City may levy rates on the boat pens or the seabed created as part of the Project, provided that while both of the following apply:
 - (i) DevelopmentWA is the Marina Manager; and
 - (ii) DevelopmentWA has acquired the boat pens or the boat pens are vested in DevelopmentWA,rates will not be levied against a boat pen or seabed lease until it is leased or licensed to or used by someone other than DevelopmentWA.
- (d) The City acknowledges section 32 of the *Western Australia Land Authority Act 1992* (WA).

14. Project delivery

14.1 DevelopmentWA will undertake the Project

- (a) DevelopmentWA will use the Project Grant and State funds to undertake and complete the Project in accordance with the State Business Case.
- (b) DevelopmentWA will use its reasonable endeavours to:
 - (i) undertake and complete the Project, including the Early Works, Landside Works, and the Marina Works, in accordance with:
 - (A) DevelopmentWA's standard processes and operating procedures;
 - (B) the ORM Documents;
 - (C) the Project Documents;
 - (D) the Project Vision;
 - (E) the Boundary of Responsibility;
 - (F) the Improvement Scheme;
 - (G) the Land Assembly Process;
 - (H) the Divestment Strategy; and
 - (I) the Staging Plan;

- (ii) engage all relevant consultants, private developers, contractors and subcontractors as necessary to undertake the Project from time to time; and
 - (iii) be in alignment, at a minimum, with the standards or specifications of the City which would usually apply to similar developments and infrastructure.
- (c) DevelopmentWA must:
 - (i) procure and comply with all necessary Approvals required for the Project in accordance with the Improvement Scheme and the relevant Written Laws; and
 - (ii) otherwise undertake and complete the Project in a manner that complies with all Written Laws, good industry practices and all applicable industry codes.

Part E – Land access, tenure and asset transfer

15. Early Works Licences

The Parties acknowledge and agree that:

- (a) the Works Licences have been granted prior to the Commencement Date for the purposes of enabling DevelopmentWA to commence the Early Works;
- (b) the roads to be constructed as part of the Early Works will be dedicated as public roads in accordance with the terms of the relevant Works Licence;
- (c) the care, control and management of those roads will be placed with the City upon dedication;
- (d) the City shall execute any applications and documents, and provide all necessary documents and assistance, to effect the dedication of the roads constructed in accordance with the relevant Works Licence; and
- (e) DevelopmentWA shall provide to the City all relevant information and documents in relation to the construction of the roads constituting the Early Works.

16. Land Access

16.1 Grant of further Access Licences on provision of notice by DevelopmentWA

- (a) The City acknowledges that DevelopmentWA will require, and the City must in accordance with this clause 16 grant to DevelopmentWA, further access to the City Lots and City Crown Land as and when required by DevelopmentWA to progress the development of the Project.
- (b) DevelopmentWA may, at any time until the drawdown of the relevant lot in accordance with the Land Assembly Process and the Transfer Deed, give an Access Licence Notice to the City.
- (c) DevelopmentWA may give an Access Licence Notice to the City more than once and in respect of different parts of the City Lots and City Crown Land at different times.
- (d) On receipt of an Access Licence Notice, the City must grant an Access Licence to DevelopmentWA in relation to the area of land specified in the Access Licence Notice, in accordance with clause 16.2.
- (e) Without limitation to clause 20, DevelopmentWA must not give an Access Licence Notice to the City that would cause the City to breach the Existing Leases.

16.2 Preparation and signing of Access Licence

- (a) If the form of the Access Licence is not agreed by the Parties prior to the date of an Access Licence Notice:

- (i) the Parties will use reasonable endeavours to negotiate and agree the terms of the Access Licence within 20 Business Days of the City's receipt of the Access Licence Notice; and
 - (ii) if the Parties are unable to agree the terms of the Access Licence within the time specified in clause 16.2(a)(i), either Party may refer the negotiation of any outstanding issues for resolution in accordance with the process specified in clause 34.
- (b) Within 15 Business Days of receipt of an Access Licence Notice or 5 Business Days of the date that the form of the Access Licence is agreed in accordance with clause 16.2(a) (whichever is the latter), the City must:
 - (i) sign the Access Licence (in duplicate); and
 - (ii) deliver the Access Licence to DevelopmentWA.
- (c) DevelopmentWA must then hold the Access Licence in escrow pending its completion under this clause.
- (d) The City irrevocably authorises DevelopmentWA or DevelopmentWA's lawyer or conveyancer to complete the Access Licence by inserting:
 - (i) the date of the Access Licence, which will be the date of the Access Licence Notice;
 - (ii) the date which is the commencement date, and the date the Access Licence expires as specified in the Access Licence Notice (to the extent that those dates are consistent with the terms of this Agreement);
 - (iii) a more appropriate description of the area the subject of the Access Licence (if required); and
 - (iv) all other details necessary to complete the Access Licence.
- (e) After DevelopmentWA receives the Access Licence signed by the City and completes it in accordance with clause 16.2(d), DevelopmentWA must:
 - (i) sign it (in duplicate);
 - (ii) if duty is payable on the Access Licence, pay the duty, at DevelopmentWA's cost; and
 - (iii) return one original counterpart of the Access Licence to the City for its records.

16.3 Parties bound by Access Licence

- (a) DevelopmentWA and the City are both bound by an Access Licence from the commencement date specified in the Access Licence Notice, as if the Access Licence were completed, signed, delivered and stamped.
- (b) Clause 16.3(a) applies whether or not DevelopmentWA or the City have signed the Access Licence.
- (c) If any provision of the Access Licence cannot be given effect until a detail referred to in clause 16.2(d) is determined, the provision becomes effective retrospectively when the detail is determined.
- (d) Each party agrees to do all things and sign all documents necessary or desirable to give full effect to the provisions of this document and the transactions contemplated by this document.

17. Implementation of Land Assembly

17.1 Land Assembly Process

The Parties acknowledge that the Land Assembly Process, Divestment Strategy and Transfer Deed outlines, amongst other things, the agreed:

- (a) staging of the Project and the estimated timing of the drawdown of City Lots and City Crown Land;
- (b) process for the subdivision of the City Lots and the transfer and timing of the transfer of the subdivided portions of those lots that fall within the Marina Project Area;
- (c) process for the subdivision of the City Crown Land, following which the City will agree to the revocation of the City Management Orders in respect of the relevant portions of that land; and
- (d) balance Crown land and balance freehold lots (if applicable) that are to be retained by, placed with, vested in or transferred back to the City, as required to enable DevelopmentWA to undertake the Project.

17.2 Power to Lease

Without limitation to the Transfer Deed and subject to any approval or decision of DPLH or the Minister for Lands:

- (a) DevelopmentWA acknowledges that in relation to each Future City Area that is Crown land, the City requires that area to be subject to:
 - (i) a reserve purpose or purposes acceptable to the City acting reasonably; and
 - (ii) a management order that grants to the City the power to lease, grant or consent to a sublease and grant or consent to a licence of all or part of that Future City Area for up to 42 years (including options).
- (b) DevelopmentWA agrees to support the City's efforts to secure:
 - (i) a reserve purpose or purposes acceptable to the City acting reasonably; and
 - (ii) management orders for the Future City Areas that are Crown land that include the power to lease, grant or consent to a sublease and grant or consent to a licence of all or part of that Future City Area for up to 42 years (including options), but acknowledging that the Minister for Lands has agreed to lesser terms in clause 14.1(e) of the Transfer Deed.

17.3 Encumbrances and the Future City Areas

Except to the extent provided for in the Transfer Deed, the Project Documents or as agreed by the City otherwise, DevelopmentWA must:

- (a) ensure that the Future City Areas are transferred to the City or placed under the management of the City free of any obligation for the City to enter into an agreement or arrangement with any person in relation to:
 - (i) that Future City Area; or
 - (ii) the repair, maintenance, upgrade, operation, control or management of that Future City Area; and
- (b) not enter into any agreements on behalf of the City or any arrangements that will need to be assumed by the City.

17.4 Freehold Land

DevelopmentWA must ensure that the Freehold Car Park is transferred to the City in freehold for no consideration and is transferred free of all encumbrances, interests, limitations and notifications except:

- (a) that there may be a positive or restrictive covenant or other form of encumbrance, condition or restriction on the title which provides that:
 - (i) without limiting how the land may be otherwise developed and used, the land in the lot comprising the Freehold Car Park must be used for the provision of a minimum number of public car parking bays (which will not be less than 210 bays) other than during periods of repair and maintenance, replacement or refurbishment; and

- (ii) until completion of the Project, that the parking fees charged by the City will be set and maintained at a rate so as not to inhibit public visitation to, and the activation of, the Project and thereafter the City may determine the parking fees in its discretion; and
- (b) for the Specified Encumbrances (as that term is defined in the Transfer Deed).

18. Contamination and site risk

18.1 DevelopmentWA liability for site risks

Subject to clause 18.2 and clauses 16.1 and 17.2 of the Transfer Deed, as between the City and DevelopmentWA, DevelopmentWA accepts the land comprising the City Lots and the City Crown Land on and from the date of the transfer of that land or of the placing of the care, control and management of that land with DevelopmentWA:

- (a) in an as is where is condition;
- (b) with all Contamination;
- (c) with all defects whether apparent or not; and
- (d) with such encumbrances and interests as provided for in the Transfer Deed

18.2 Existing tenancies and third party responsibility

The Parties agree that clause 18.1 of this Agreement and clause 17.2 of the Transfer Deed shall not affect or limit the liability or obligations of the tenants under the Existing Leases or any other third parties, including in relation to any Contamination, and the City agrees to enforce or assist DevelopmentWA with the enforcement of any right the City has or may have against the tenant or any other person under an Existing Lease or any other third party.

18.3 Provision of studies and information

- (a) Subject to any confidentiality obligations, upon request, the City will provide to DevelopmentWA copies of all:
 - (i) current leases, licences or other agreements relating to the City Lots or City Crown Land;
 - (ii) environmental and contamination studies and reports relating to the Marina Project Area; and
 - (iii) other similar documents and data relevant to the material risks pertaining to the Marina Project Area or the Project generally within the possession or control of the City.
- (b) Subject to any confidentiality obligations, upon request, DevelopmentWA will provide to the City copies of all:
 - (i) environmental and contamination studies and reports relating to the Marina Project Area; and
 - (ii) other similar documents and data relevant to the material risks pertaining to the Marina Project Area or the Project generally within the possession or control of DevelopmentWA which relate to the Future City Areas.

19. City's financial considerations

- (a) DevelopmentWA acknowledges:
 - (i) the City's stated objective of achieving the City Return; and
 - (ii) that subject to the terms of this Agreement, the City may have regard to the achievement of the City Return, to the extent applicable when performing its obligations and exercising its rights under this Agreement, but nothing in this

clause fetters, impacts or limits the City in its exercise of its statutory rights, powers and functions.

- (b) The City may, but is not obliged to, contribute additional funding to the Project.

20. Existing Leases

20.1 Allocation of responsibilities

- (a) In relation to the obligations of the City and DevelopmentWA relating to the Existing Leases, the following overarching agreements apply:
 - (i) the City is responsible for:
 - (A) terminating or procuring the termination of the lease to Ocean Reef SSC;
 - (B) procuring that Ocean Reef SSC vacate their current Leased Premises by the Vacation Date; and
 - (C) the relocation costs (if any) of Ocean Reef SSC that the Ocean Reef SSC is entitled to claim; and
 - (ii) subject to clause 20.1(b) the City is not responsible for:
 - (A) procuring the termination of the lease to Marine Rescue Whitfords and Telstra;
 - (B) procuring that Marine Rescue Whitfords and Telstra vacate their current Leased Premises by the Vacation Date; and
 - (C) the relocation costs (if any) of Marine Rescue Whitfords and Telstra that Marine Rescue Whitfords and Telstra may be entitled to claim,but will provide assistance in accordance with the requirements of clauses 20.6 and 20.7.
- (b) The City will sign all documents as reasonably requested by DevelopmentWA to enable the termination or surrender of the Existing Leases and the delivery of vacant possession of the Existing Leased Premises to the extent that outcome is otherwise achieved under this clause 20, such as by agreement of an Existing Tenant.
- (c) In the event of an inconsistency between clause 20.1(a) and any other part of this clause 20, clause 20.1(a) prevails.

20.2 Management of leases and tenant interests

The City agrees to maintain and manage the Existing Leases and the Leased Facilities until the relevant freehold title is transferred or the City Management Order over the portion(s) of land encumbered by the Existing Leases is revoked (as the case may be) in accordance with the terms of the Transfer Deed, with a view to:

- (a) maintaining an ongoing relationship with and facilitating the ongoing contribution to the local community by Marine Rescue Whitfords and the Ocean Reef SSC as long term tenants of the relevant Leased Facilities and the proposed future alternative premises; and
- (b) maintaining the rental income associated with the Existing Leases for as long as reasonably practicable.

20.3 Maintenance of access

DevelopmentWA agrees to work collaboratively with the City and the Marine Rescue Whitfords and the Ocean Reef SSC to ensure that access is maintained to the Leased Facilities for the benefit of Marine Rescue Whitfords and the Ocean Reef SSC prior to the Vacation Date, unless Marine Rescue Whitfords and the Ocean Reef SSC agree otherwise or have vacated their sites prior the Vacation Date.

20.4 New site for existing tenants

- (a) DevelopmentWA has identified on the Concept Plan two separate future sites, being the Future Club Facility Lot and the Future Other Facilities Lot.
- (b) The City will offer a lease to Ocean Reef SSC in relation to the relevant portion of the Future Club Facilities Lot for a term acceptable to the parties to that lease.
- (c) DevelopmentWA will offer or cause the Marina Manager to offer Marine Rescue Whitfords a lease of the site shown on the Concept Plan for a term acceptable to the parties to that lease.
- (d) DevelopmentWA will offer or cause the Marina Manager or the Water Corporation to offer Telstra (or other telecommunications provider) a lease or licence of the site shown on the Concept Plan for a term acceptable to the parties to that lease.

20.5 Engagement with stakeholders

The Parties:

- (a) acknowledge that Marine Rescue Whitfords provides an essential service;
- (b) agree that DevelopmentWA:
 - (i) may engage with Marine Rescue Whitfords directly in relation to the termination of its existing lease; and
 - (ii) shall engage in a collaborative manner with Marine Rescue Whitfords, the Department of Fire and Emergency Services, DoT and other applicable entities in developing the Draft Design Documents applicable to the portions of the Future Other Facilities Lot that will be tenanted or utilised by Marine Rescue Whitfords;
- (c) agree to engage in a collaborative manner with Ocean Reef SSC and related stakeholders in developing the Draft Design Documents applicable to the portions of the Future Club Facilities Lot that will be tenanted or utilised by the Ocean Reef SSC;
- (d) agree that the City is responsible for entering into the new lease arrangements with Ocean Reef SSC and DevelopmentWA is responsible for entering into the new lease arrangements with Marine Rescue Whitfords and Telstra (or other telecommunications provider) or for causing the Marina Manager or the Water Corporation to do so; and
- (e) agree that of the State Club Contribution, an amount of \$4,800,000 plus GST has been allocated to the construction by DevelopmentWA of the new building for the City to lease to Ocean Reef SSC.

20.6 Actions to procure Vacant Leased Areas

- (a) The Parties will have regard to the proposed timing and staging of the Project discussed by the Parties from time to time.
- (b) The Parties must work together collaboratively and cooperatively to facilitate the termination or surrender of the Existing Leases and the delivery of vacant possession of the Existing Leased Premises (**Vacant Leased Areas**) by the Vacation Date.
- (c) For the purposes of achieving Vacant Leased Areas by the Vacation Date, the Parties acknowledge this may involve consideration of some or all of the following issues in discussions with each of the Existing Tenants:
 - (i) the terms on which the Existing Lease may be surrendered or terminated;
 - (ii) the terms of the new lease with the Existing Tenant; and
 - (iii) the timing or terms of relocation of the Existing Tenant, including staged relocations,and the Parties agree to participate in discussions on those issues to the extent reasonably applicable to each of them.

20.7 Costs of procuring the Vacant Leased Areas

- (a) Each Party will bear its own costs, liabilities or expenses in order to achieve the Vacant Leased Areas by the Vacation Date but without liability on either Party to incur any costs,

liabilities or expenses to the Existing Tenants including in respect of any of the matters listed in clause 20.6(c), unless expressly provided for elsewhere in this Agreement.

- (b) The City:
 - (i) is not required to cause the tenants of the Existing Tenants to comply with any obligation to make good the Leased Facilities nor any other provision of the Existing Lease that apply upon the Existing Leases coming to an end except as provided for in clause 20.7(b)(ii); and
 - (ii) must not waive any right of the kind referred to in clause 18.2 without DevelopmentWA's agreement which will not be unreasonably withheld.
- (c) DevelopmentWA will assume liability and responsibility for the former Leased Premises on the earlier of the following to occur:
 - (i) the date on which DevelopmentWA takes possession of the relevant Vacant Leased Area; or
 - (ii) the date on which the City Management Order is revoked in respect of the relevant Vacant Leased Area, which the Parties will seek to occur as soon as possible after the Existing Lease comes to an end.

21. Services and Roads

21.1 Services

DevelopmentWA shall be responsible for:

- (a) the relocation of Services provided to the premises under the Existing Leases, and associated infrastructure, from the Leased Facilities to the new site for those tenancies nominated by DevelopmentWA in accordance with clause 20.4;
- (b) the relocation of any Services provided to infrastructure existing within the Marina Project Area as at the Commencement Date, to the extent required during the construction of the Project;
- (c) management of Service providers during the construction of the Project; and
- (d) providing notice to the City of any anticipated Services closures or interruptions.

21.2 Roads

Subject to the Limitations and the terms of this Agreement, including the agreements in relation to Handover:

- (a) DevelopmentWA shall be responsible for the design and construction of the roads, and associated drainage, required as part of the Project;
- (b) roads will be created by plan and upon subdivision of land affected by the Completed Roads, dedicated as a road and the care, control and management placed with the City in accordance with the Transfer Deed; and
- (c) the City must provide all reasonable assistance to DevelopmentWA in relation to the planning, approval and dedication of the roads required as part of the Project.

22. Existing infrastructure

22.1 Existing jetties

The Parties acknowledge and agree that:

- (a) there are existing jetty structures within the existing marina that are owned by the City (**Existing Jetties**);
- (b) DevelopmentWA may elect to acquire or use the Existing Jetties within the Marina Project Area or elsewhere, by notice in writing to the City (**Jetty Call Notice**);

- (c) upon receipt of the Jetty Call Notice of DevelopmentWA's election, the City will contribute the Existing Jetties in accordance with clause 15.3(j)(iii) of the Transfer Deed;
- (d) if DevelopmentWA gives notice that it does not intend to issue the Jetty Call Notice, or otherwise if the Parties are unable to reach agreement in relation to the acquisition or use of the Existing Jetties by DevelopmentWA within 3 months of service of a Jetty Call Notice, DevelopmentWA:
 - (i) may remove the Existing Jetties and store them landside within the Marina Project Area; and
 - (ii) will provide to the City at least 20 Business Days' prior notice of such removal, following which the City must remove the Existing Jetties at its cost within a reasonable time after they are stored landside by DevelopmentWA.

22.2 Existing public assets

- (a) For so long as all of the following apply:
 - (i) both Parties are satisfied that it is safe for the public to access the area in question;
 - (ii) the City wishes to keep the area in question open to the public; and
 - (iii) the area in question is either freehold land owned by the City or Crown land the subject of a management order in favour of the City,

the City will be responsible for the maintenance and management of the existing car parking area (including the collection of fees), public toilets and beach area within the Marina Project Area in accordance with its Statutory Responsibilities.
- (b) If the public assets referred to in this clause can remain open and accessible to the public after the transfer of the relevant areas to the State or DevelopmentWA in accordance with the Transfer Deed, the City may in its discretion take a licence of those areas from the State or DevelopmentWA on terms reasonably acceptable to both Parties.

22.3 Relocation of other infrastructure

Without limiting the obligations of DevelopmentWA, the Marina Manager shall be responsible for arranging the relocation of the following existing infrastructure:

- (a) the infrastructure owned by DoT, including navigational aids within the waterways or located on Lot 1029, which shall be relocated in consultation with DoT; and
- (b) the infrastructure owned by the Bureau of Meteorology, which may be relocated to Lot 1029, which will be in consultation with the City if the infrastructure is to be relocated on land that is being retained by the City.

Part F – Future management and handover

23. Divestment Strategy, Construction and Handover of Future City Areas

23.1 Divestment Strategy

The Parties acknowledge that the Divestment Strategy outlines or must outline, amongst other things, the agreed:

- (a) layout and location of the Future City Areas to be transferred to, placed with or vested in the City following the completion of the Project or a particular stage of the Project by DevelopmentWA;
- (b) purpose of the reserves to be placed with the City for its care, control and management; and

- (c) powers for the City to lease and licence the reserves (subject to the prior consent of the Minister for Lands) to be placed with the City.

23.2 Construction of Future City Areas

- (a) The Future City Areas must:
 - (i) be developed by DevelopmentWA as a component of the Project;
 - (ii) be located within the Marina Project Area; and
 - (iii) be to the east of the Boundary of Responsibility.
- (b) In relation to achievement of Practical Completion of the Future City Areas the following applies:
 - (i) before DevelopmentWA awards, or allows a contractor to award, Practical Completion, DevelopmentWA must:
 - (A) give the City notice of its intention to do so, which notice must include details of Defects (if any);
 - (B) inspect the works in question with the City and the contractor;
 - (C) provide the City with information and documentation in relation to the works as the City reasonably requests; and
 - (D) have due regard to any feedback from the City in relation to whether or not there are Defects in the Future City Area and whether or not Practical Completion should or should not be awarded; and
 - (ii) DevelopmentWA must keep the City informed of the rectification of Defects in accordance with clause 23.9; and
 - (iii) to enable the time period in paragraph (a) of the definition of Upkeep Responsibility Date to be calculated, DevelopmentWA will give a notice to the City of the date on which Practical Completion has occurred.

23.3 Handover of Future City Areas

- (a) Subject in all respects to this clause 23, the City accepts Statutory Responsibility for the Future City Areas on the applicable Statutory Responsibility Date.
- (b) The Parties agree that the standards and requirements applicable to DevelopmentWA's liability for Upkeep Responsibility of a Future City Area in accordance with this clause 23, will be the higher of:
 - (i) the standards and requirements described in the definition of 'Upkeep Responsibility' in this Agreement; or
 - (ii) the standards and requirements imposed in any condition of the subdivision approval under the *Planning and Development Act 2005* for the Future City Area.
- (c) Irrespective of whether or not the Statutory Responsibility Date has occurred and despite the fact that Statutory Responsibility may have occurred, until the Upkeep Area Handover Date DevelopmentWA is liable for and must pay for Upkeep Responsibility of the Future City Areas.
- (d) The City is liable for and must pay for Upkeep Responsibility for the Future City Areas on and from the applicable Upkeep Area Handover Date.
- (e) If a Party (**First Party**) incurs a cost or expense in relation to a Future City Area that in accordance with clause 23.3(c) or clause 23.3(d) was the responsibility of the other Party (**Second Party**) then the Second Party must reimburse the First Party, the amount of the cost or expense.
- (f) Where a Future City Area spans more than one Upkeep Area then the Parties must make a fair and reasonable apportionment of Upkeep Responsibility between the Upkeep Areas and clause 23.3(c) and clause 23.3(d) will apply in relation to the portion allocated to each Upkeep Area.

23.4 Timing of Handover of an Upkeep Area

- (a) DevelopmentWA will nominate the proposed date on which Handover of an Upkeep Area is anticipated to occur being the proposed Upkeep Area Handover Date, by providing 30 days' prior written notice to the City of the anticipated handover date, with such date being no earlier than in relation to:
 - (i) the Future Club Facilities Lot, the date that is 60 days after Practical Completion of the Future Club Facility Lot Works; and
 - (ii) each other Future City Area, the respective Upkeep Responsibility Date for that Upkeep Area.
- (b) The written notice nominating the Handover must, as the case may be, either:
 - (i) confirm compliance with all of the obligations that apply on Handover; or
 - (ii) describe those obligations that are yet to be completed but will be completed by the Upkeep Area Handover Date.
- (c) DevelopmentWA will provide at least 14 days' prior written notice to the City nominating a date or dates prior to the proposed Upkeep Area Handover Date on which DevelopmentWA and City officers can meet to inspect the Future City Areas with relevant contractors (**Inspection Date**).
- (d) Handover of Upkeep Responsibility and the Upkeep Area Handover Date cannot occur unless and until:
 - (i) all of the obligations in relation to the Upkeep Responsibility that apply on the Upkeep Responsibility Date have been completed; and
 - (ii) Statutory Responsibility for that Upkeep Area is with the City.
- (e) The City may give DevelopmentWA notice of outstanding obligations in relation to the Upkeep Responsibility that apply on the Upkeep Responsibility Date.
- (f) Upon request DevelopmentWA must provide the City with:
 - (i) details of all contractors and service providers relating to the Upkeep Responsibilities including copies of the applicable agreements;
 - (ii) details of the insurances held by those contractors and service providers;
 - (iii) full plans and specifications for the Future City Area and all plant, equipment and improvements;
 - (iv) details of DevelopmentWA's compliance with the Handover Obligations;
 - (v) registers of repairs and maintenance; and
 - (vi) details of all Defects, Defect liability periods and actions to rectify Defects.

23.5 Inspection

- (a) The Parties must each ensure that relevant officers attend onsite on the nominated Inspection Date, or another inspection date agreed by the Parties, to:
 - (i) inspect the Upkeep Area subject to the respective Handover; and
 - (ii) confirm either:
 - (A) Handover; or
 - (B) the outstanding obligations that need to be completed in order to achieve Handover.
- (b) Where there are outstanding obligations that need to be completed DevelopmentWA will complete those outstanding Handover Obligations and provide notice of a revised Upkeep Area Handover Date and an inspection will occur again.
- (c) The process will continue until all Handover occurs.

23.6 Portion Handover

The Parties must work together collaboratively and cooperatively to effect the Handover of the relevant portion of Future City Areas to the City, subject to DevelopmentWA complying with the obligations that apply on Handover in accordance with this clause 23, provided it is agreed that:

- (a) Upkeep Responsibility will transfer from DevelopmentWA to the City on a staged basis; and
- (b) unless the City agrees otherwise, there can only be one Handover for each Upkeep Area.

23.7 Assumption of costs on Handover

For the avoidance of doubt and without limitation to any other provision in this Agreement or the Project Documents, on and from Handover in relation to any portion of the Future City Areas until the date that the final subdivision proposed by DevelopmentWA has been completed and the certificate of titles issued in respect of it the City must maintain at its cost that portion of the Future City Area transferred to or placed with the City pursuant to the Divestment Strategy and the Transfer Deed, in accordance with best practice asset management and otherwise to a standard and condition:

- (a) commensurate with the standard and condition of the Future City Areas as at Handover, subject to fair wear and tear; and
- (b) consistent with the Project Vision.

23.8 Statutory Responsibility

The Parties agree to ensure the Future City Areas are transferred to, placed with or vested in the City (as applicable) on or about the Statutory Responsibility Date, in accordance with the terms of the Transfer Deed and notwithstanding clauses 23.3 to 23.7 inclusive of this Agreement, including by:

- (a) as appropriate, DevelopmentWA consenting to the revocation of any management orders affecting the relevant portion of Public Open Space in respect of which it is the management body;
- (b) the City accepting the vesting or grant of management orders placing with it the care, control and management of the relevant portion of Public Open Space;
- (c) DevelopmentWA transferring, and the City accepting the transfer of, any Future City Areas in fee simple; and
- (d) do all other things necessary to transfer ownership and control of the Future City Areas to the City.

23.9 Defects

- (a) In relation to the Future City Areas, the Parties must establish procedures for the proactive identification, reporting, recording, monitoring, managing of Defects and Defects Liability Periods.
- (b) DevelopmentWA must provide the City with all information held by DevelopmentWA in relation to the identification, reporting, recording, monitoring, managing of Defects and Defects Liability Periods.
- (c) In relation to any Defects in the Future City Areas (including any alterations, additions or improvements to those Future City Areas) that arise or are identified (whether by DevelopmentWA, the City or otherwise) before the expiry of the Defects Liability Period, DevelopmentWA must cause the contractor or subcontractor who undertook the works to rectify, remedy and make good the Defect in accordance with the terms of the relevant contract.
- (d) DevelopmentWA must enter into agreements with its consultants and contractors that are consistent with clause 23.9(a) but which are not required to impose any representations or warranties as to Defects, or a Defects Liability Period, in excess of those which are usually imposed in accordance with good industry practices and all industry codes applicable to the relevant industry (**Third Party Contract**).

- (e) Subject to the City notifying DevelopmentWA of any Defect and DevelopmentWA agreeing (acting reasonably) that it constitutes a Defect, DevelopmentWA must as and when requested by the City to do so during an applicable Defects Liability Period or statutory limitation period:
 - (i) exercise and enforce all then existing rights against its contractors under the applicable Third Party Contract or at law in relation to the rectification, remedying and making good that Defect, if DevelopmentWA considers (acting reasonably) that there is a reasonable probability of success of taking such action; or
 - (ii) use reasonable endeavours to procure the benefit of then existing rights against its contractors under the applicable Third Party Contract or at law in relation to the rectification, remedying and making good that Defect to be exercisable by the City including by an assignment or transfer of those rights to the City.
- (f) DevelopmentWA will ensure that the Third Party Contract it enters into with the builder appointed to construct the building on the Future Club Facility Lot contains:
 - (i) a requirement that the City has, pursuant to section 11 of the *Property Law Act 1969* (WA), the benefit of any warranties or representations given by the builder in favour of DevelopmentWA, with respect to the builder's works and services; and
 - (ii) the requirement that the builder ensure that its subcontracts contain the requirement that the City has, pursuant to section 11 of the *Property Law Act 1969* (WA), the benefit of any warranties or representations given by the subcontractor in favour of DevelopmentWA with respect to that subcontractor's works and services.
- (g) DevelopmentWA will:
 - (i) provide the City with a copy of the builder's Third Party Contract the subject of clause 23.9(f), when requested by the City;
 - (ii) provide all reasonable assistance to the City to enable it to enforce and enjoy the benefit of the warranties and representations given in favour of the City under clause 23.9(f) in respect of the builder's Third Party Contract.

23.10 Management and control of Future Marina Areas

For the avoidance of doubt and subject to clause 25:

- (a) as at the Commencement Date, it is intended that DevelopmentWA will retain control and responsibility for the Future Marina Areas after Practical Completion on an interim basis; and
- (b) if required by DevelopmentWA, the Parties agree to negotiate in good faith a further agreement to document any interface between the City and DevelopmentWA's responsibilities along the Boundary of Responsibility, amongst other things that may elaborate upon but not increase the liability of the City in relation to the area in proximity to the Boundary of Responsibility.

23.11 No fetter

Nothing in this clause 23 fetters, impacts or limits the Parties respective statutory rights, powers and functions in relation to the Future City Areas.

24. Boundary of Responsibility

24.1 Limits of Boundary

- (a) The Boundary of Responsibility is:
 - (i) fixed and cannot be varied without the written agreement of the City; and
 - (ii) subject to clause 24.1(c), is a vertical plane along the boundary.
- (b) Unless the City agrees otherwise in writing, DevelopmentWA must:

- (i) not do anything that imposes responsibilities or obligations on the City in relation to the area to the west of the Boundary of Responsibility; and
- (ii) not agree to any management orders in favour of the City that impose any obligations or responsibilities in relation to the area to the west of the Boundary of Responsibility,

subject to clause 24.2.

- (c) For the avoidance of doubt it is agreed that the following are located or are deemed to be located to the west of the Boundary of Responsibility and as such are the responsibility of DevelopmentWA and any future Marina Manager:
 - (i) jetties;
 - (ii) internal revetment walls;
 - (iii) breakwaters and seawalls;
 - (iv) boat trailer car park;
 - (v) boat ramps; and
 - (vi) any structures to prevent shoreline erosion,
 and all additions and improvements that form part of or support these items.

24.2 Marina management access

The City agrees to grant or consent to the grant of appropriate access rights (including in an easement or easements) on terms and conditions acceptable to the Parties (acting reasonably) to DevelopmentWA and any appointed Marina Manager (and their successors in title) for the purposes of carrying out obligated functions within the Marina Project Area, including the maintenance, repair or replacement of any of the infrastructure specified in clause 24.1(c) or to carry out any coastal management processes.

25. Marina Management

25.1 Application of clause

This clause 25 will only apply in the circumstance that a Marina Manager is appointed, or is proposed to be appointed, by DevelopmentWA.

25.2 Responsibility of a Marina Manager

- (a) The Parties agree that a Marina Manager may be appointed generally in relation to the long-term management and/or maintenance of the relevant portions of the Future Marina Areas.
- (b) The Marina Manager's roles and functions may include, specifically:
 - (i) the management of:
 - (A) the marina waterway including breakwaters and internal revetment walls;
 - (B) mooring pens within the marina and boat stackers;
 - (C) boat ramps;
 - (D) boat trailer parking; and
 - (E) hardstand and associated improvements and buildings; and
 - (ii) safety, maintenance, repair, upgrade and replacement of the Future Marina Areas.
- (c) DevelopmentWA shall determine the requirement for a Marina Manager, and if required, the scope of the role, functions and responsibilities to be performed by any Marina Manager, having regard to:
 - (i) consultation with DoT;
 - (ii) consultation with the City;

- (iii) consultation with DPLH (as required); and
- (iv) any interface with the services that will be provided by the City along the Boundary of Responsibility, in the ordinary course of it performing its functions as local government authority.

25.3 Appointment of Marina Manager

- (a) DevelopmentWA shall determine the process for the procurement of any Marina Manager and the terms on which the Marina Manager will be appointed, pursuant to the Marina Management Deed, in consultation with DPLH, DoT and the City, which for the avoidance of doubt may include the appointment of DoT which is, at the Commencement Date, the preferred future Marina Manager.
- (b) Any decision by DevelopmentWA in relation to the procurement and appointment of a Marina Manager will be final and binding, provided that DevelopmentWA can demonstrate to the City that DevelopmentWA is satisfied that the Marina Manager is a person capable of performing that role.
- (c) DevelopmentWA must ensure that the Marina Manager enters into the Marina Management Deed with the City in relation to those aspects of the Project where the City and the Marina Manager will need to engage with each other, including the matters referred to in the definition of Marina Management Deed and clauses 24 and 25.2.
- (d) Without limiting clause 25.3(a), the Parties acknowledge that the Marina Manager shall not be a party related to the Ocean Reef SSC or Marine Rescue Whitfords.
- (e) To the extent that DevelopmentWA elects to retain any role in relation to the management of the Future Marina Areas other than on an interim basis, the Parties agree to negotiate in good faith such further agreement as may be required to document the Parties' respective rights and responsibilities in relation to the same.
- (f) It is the desire of the City that the Future Marina Area remains Crown Land and if ever freeholded then the freehold ownership of the Future Marina Area remains with the State.

25.4 City not obliged to be the Marina Manager

For the avoidance of doubt, DevelopmentWA acknowledges that the City will not be the Marina Manager.

26. Further Project revenue and asset opportunities

26.1 Parking revenue

The Parties agree that following the Handover of the Public Parking Areas:

- (a) the City may charge parking fees for the use of the Public Parking Areas; and
- (b) any parking fees charged by the City will be initially set at a rate that does not inhibit public visitation to, and the activation of, the Marina Project Area but does provide a return to the City.

26.2 City Specified Area Rates

- (a) DevelopmentWA acknowledges that the City will seek to apply a Specified Area Rate in accordance with the Local Government Act in relation to all or some parts of the Marina Project Area.
- (b) The City acknowledges section 32 of the *Western Australian Land Authority Act 1992* (WA).
- (c) In developing any proposals or applications for a Specified Area Rate that is proposed to apply to some or all of the Marina Project Area, the City agrees to use reasonable endeavours to:
 - (i) provide prior notice to and consult with DevelopmentWA in relation to the proposed rates; and

- (ii) have regard to any reasonable suggestions or concerns raised by DevelopmentWA in relation to the Specified Area Rate.

26.3 No warranty

Notwithstanding anything in this Agreement, the City acknowledges and agrees that DevelopmentWA provides no representation, warranty or guarantee:

- (a) in relation to the City securing any particular amount, source of income or commercial opportunity referred to in this Agreement; and
- (b) that the City can or will achieve all components of the City Return (including the components referred to in paragraph (a), (b), (c), (f), (g) and (h) of the definition of City Return).

Part G – General provisions

27. Exclusion of liability

The City agrees that DevelopmentWA shall not be liable for, and the City releases DevelopmentWA from, all liability, loss, damages, or claims arising from, and costs and expenses incurred in connection with:

- (a) City Lots and City Crown Land (or portions of the same), when and for as long as they are owned by, vested in or placed with the City during the Term; and
- (b) Future City Areas on and from the date on which they are transferred to, placed with or vested in the City but subject to any outstanding Handover Obligations and DevelopmentWA's obligations under clauses 23.9(e) to 23.9(g) (inclusive),

except to the extent caused or contributed by:

- (c) a breach by DevelopmentWA of this Agreement or any other agreement between the City and DevelopmentWA relating to the Project; or
- (d) the negligence, misconduct, breach or default of DevelopmentWA or its consultants, contractors, employees, agents and invitees.

28. Publicity and community announcements

Subject to the Limitations, the Parties shall work collaboratively to prepare and agree on the contents of, and make, any public announcements in connection with this Agreement or the Project, in accordance with any communications protocol agreed by the Parties, unless such announcement is required by Written Law, planning regulation or Ministerial direction, in which case the Party required to make an announcement must, to the extent practicable, first consult with and take into account the reasonable requirements of the other Party.

29. Insurance

DevelopmentWA must:

- (a) maintain appropriate insurance cover with RiskCover in relation to risks that a reputable developer would normally insure for projects of a nature and size similar to the Project; and
- (b) ensure that its contractors and service providers likewise maintain appropriate insurance cover in relation to risks that a reputable contractor or service provider would normally insure for projects of a nature and size similar to the Project.

30. Information

30.1 Exchange

Further to the intent of co-operation and collaboration contemplated by this Agreement, each Party will promptly share or supply relevant data, information and knowledge and provide updated data, information and knowledge as may be relevant to the Project and requested by the other Party, subject to:

- (a) the exception contained in clause 30.2;
- (b) the requirements of any Written Law, government policy or policy of the Party; and
- (c) any terms and conditions imposed by the disclosing Party in relation to any confidential information that is disclosed.

30.2 Confidentiality

- (a) Subject to any Written Law, each Party may withhold confidential or commercially sensitive information from the other Party at its discretion.
- (b) Each Party and its Representative receiving confidential or commercially sensitive information from another Party under this Agreement will keep it confidential except:
 - (i) as required by any Written Law or order of any court or other tribunal having jurisdiction to order its production;
 - (ii) where the information is public knowledge (but not because of a breach of this Agreement) or the party has independently created the information; or
 - (iii) where disclosure is made to a person who must know for the purposes of this Agreement or to make decisions in relation to this Agreement on the basis that the person keeps the information confidential or is otherwise subject to an obligation to keep the information confidential.

30.3 Intellectual Property Rights

Any Intellectual Property Rights held in any information or other thing shared under this Agreement will remain the property of the relevant Party or other person, and the sharing of the information or other thing under this Agreement will not entitle any other Party to use or exploit it.

31. Goods and services tax

31.1 Interpretation

Words or expressions used in this clause 31, which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or, if not so defined, then which are defined in the *Trade Practices Act 1974* (Cth), have the same meaning in this clause.

31.2 Gross up of consideration

Despite any other provision in this Agreement, if a Party (**Supplier**) makes a supply under or in connection with this Agreement on which GST is imposed (not being a supply the consideration for which is specifically described in this Agreement as **GST inclusive**):

- (a) the consideration payable or to be provided for that supply under this Agreement but for the application of this clause (**GST exclusive consideration**) is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that supply; and
- (b) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

31.3 Reimbursements (net down)

If a payment to a Party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that Party, then the payment will be reduced by the amount of any input tax credit to which that Party is entitled for that loss, cost or expense.

31.4 Tax invoices

The Supplier will provide a tax invoice.

32. Notices

- (a) A notice or other communication under this Agreement is only effective if it is:
 - (i) in writing, signed (and in the case of email, includes the sender's full signature block, being the sender's name, title and organisation, but does not require an electronic signature); and
 - (ii) either left at the addressee's address or sent to the addressee by post or email.
- (b) If the notice or communication is sent by:
 - (i) mail, it is taken to have been received 3 Business Days after it is posted;
 - (ii) email, it is taken to have been received when the sender of the email receives a confirmation of delivery message generated by the sender's system.
- (c) Each Party's mail and email address for the service of notices, at the Commencement Date, is set out in the Details at the front of this Agreement.

33. Force Majeure

33.1 Notice of Force Majeure Event

If a Force Majeure Event occurs and the affected Party wants to rely on the Force Majeure Event, then it must notify the other Party in writing of the occurrence of the Force Majeure Event and the circumstances resulting or arising from it. The notice must give:

- (a) details of the Force Majeure Event;
- (b) details of the obligations under this Agreement which are affected by the Force Majeure Event;
- (c) details of the action that the Party affected by the Force Majeure Event has taken and proposes to take to remedy the circumstances or situation arising or resulting from the Force Majeure Event; and
- (d) an estimate of the time during which the Party was or will be unable to carry out the affected obligations due to the Force Majeure Event.

33.2 Information

A Party affected by a Force Majeure Event must keep the other Party reasonably informed of the steps being taken to mitigate the effect of the Force Majeure Event upon the performance of that Party's obligations under this Agreement and of an estimate of the duration of any delays.

33.3 Rights after Force Majeure Event

During and after a Force Majeure Event, a Party's obligations under this Agreement which are affected by the Force Majeure Event will be suspended, but only to the extent, and for so long as, such obligations are genuinely affected by the Force Majeure Event.

33.4 No default

A Party will not be deemed to be in default of its obligations under this Agreement in so far as failure or delay in the observance or performance of those obligations by that Party is caused by a Force Majeure Event. Each Party must act reasonably to remedy and overcome the effects of a Force Majeure Event without unreasonable delay.

33.5 Cessation of Force Majeure Event

When the period for which a Party's obligations are affected by a Force Majeure Event ceases, that Party must, within a reasonable time, recommence performance of all obligations under this Agreement which are affected by the Force Majeure Event.

34. Disputes

- (a) Each Party must use their reasonable endeavours to avoid any form of dispute under this Agreement.
- (b) Should a dispute arise between the Parties:
 - (i) the Representative of either Party shall provide notice to the other of the dispute (**Dispute Notice**);
 - (ii) the Parties must nominate a representative to meet to in good faith attempt to resolve the dispute within 10 Business Days of service of the Dispute Notice (**Initial Meeting**); and
 - (iii) if the Parties cannot resolve the dispute the Chief Executives of each Party must meet within 20 Business Days of the Initial Meeting to meet to resolve the dispute in good faith.
- (c) If no outcome to a dispute is reached within 20 Business Days of a meeting of the Chief Executives in accordance with this clause, and if the dispute is of a complex technical nature, then:
 - (i) the Parties shall jointly appoint an appropriate independent expert to resolve the dispute as an expert;
 - (ii) such expert's determination shall be binding;
 - (iii) each Party shall bear the costs of the appointment of the expert equally;
 - (iv) if the Parties cannot agree on an appropriate expert to be appointed, the Parties shall request that the appropriate body noted below nominates an expert to determine the dispute:
 - (A) for financial disputes, the President (WA Branch) of Chartered Accountants Australia and New Zealand is to be requested to nominate a registered accountant with at least 10 years' experience for the Parties to appoint;
 - (B) a dispute relating to a land valuation, the Australian Property Institute or the Valuer-General's office (as applicable) is to be requested to nominate a valuer with at least 10 years' experience for the Parties to appoint;
 - (C) for a construction dispute, the General Manager of Engineers Australia (WA Division) is to be requested to nominate a construction engineer with at least 10 years' experience for the Parties to appoint; and
 - (D) for legal or other disputes, the President of the Law Society of WA is to be requested to nominate a lawyer with at least 10 years' experience for the Parties to appoint.
- (d) Neither Party shall commence court proceedings without having first exhausted the processes outlined in this clause.
- (e) This clause is expressly subject to the Limitations and does not apply to a dispute in relation to the Limitations.

35. General

35.1 Costs

Each Party must pay its own costs of negotiating, preparing and executing this Agreement.

35.2 Alterations

This Agreement may be altered only in writing signed by each Party.

35.3 Assignment

- (a) A Party may only assign a right under this Agreement with the prior written consent of the other Party.
- (b) DevelopmentWA must not assign, transfer or sell land in the Marina Project Area owned by DevelopmentWA unless:
 - (i) the assignee, transferee or buyer enters into a deed of covenant with the City agreeing to observe and perform DevelopmentWA's covenants, agreements and obligations in this Agreement in relation to the relevant land; or
 - (ii) clause 35.3(c) applies.
- (c) Clause 35.3(b)(ii) applies to the assignment, transfer or sale of land in the Marina Project Area:
 - (i) in accordance with clause 5.3(a), clause 5.3(b) or clause 5.3(c); or
 - (ii) in accordance with the Divestment Strategy, Transfer Deed or another provision of this Agreement; or
 - (iii) that is land subdivided into residential or commercial lots to buyers in the ordinary course of undertaking the Project.

35.4 Survival

Any indemnity or any obligation of confidence under this Agreement is independent and survives termination of this Agreement. Any other term by its nature intended to survive termination of this Agreement survives termination of this Agreement.

35.5 No merger

The rights and obligations of the Parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

35.6 Entire agreement

Unless otherwise provided, the Project Documents constitute the entire agreement between the Parties in connection with its subject matter and supersedes all previous agreements or understandings between the Parties in connection with its subject matter.

35.7 Further action and documents

- (a) Each Party must do, at its own expense, everything reasonably necessary (including executing deeds) to give full effect to this Agreement and any transaction contemplated by it.
- (b) The Parties agree to enter into any further agreements and documents on reasonable terms to give effect to the transactions contemplated by this Agreement.

35.8 Severability

A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement continue in force.

35.9 Waiver

A Party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the Party giving the waiver.

35.10 Relationship

Except where this Agreement expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the Parties.

35.11 Governing law and jurisdiction

This Agreement is governed by the law of Western Australia and each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State of Western Australia.

35.12 Counterparts

This Agreement may be executed in counterparts. All executed counterparts constitute one Agreement.

Signing page

The Common Seal of **WESTERN
AUSTRALIAN LAND AUTHORITY**
was hereunto affixed with the authority
of its Board in the presence of:

Chief Executive Officer

Board Member

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

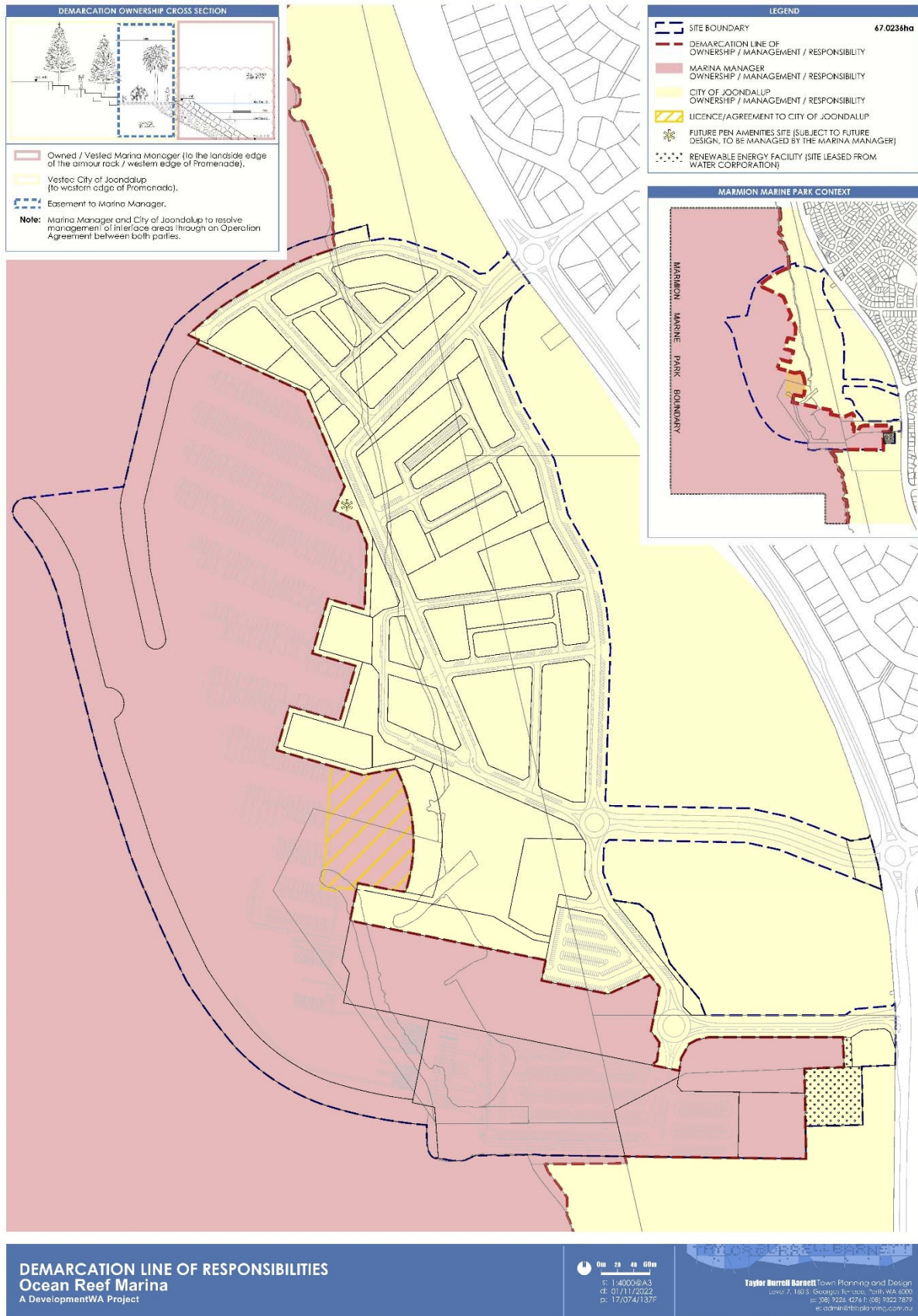
Signature of Mayor

Signature of Chief Executive Officer

Name of Mayor (print)

Name of Chief Executive Officer (print)

Schedule 1 – Boundary of Responsibility



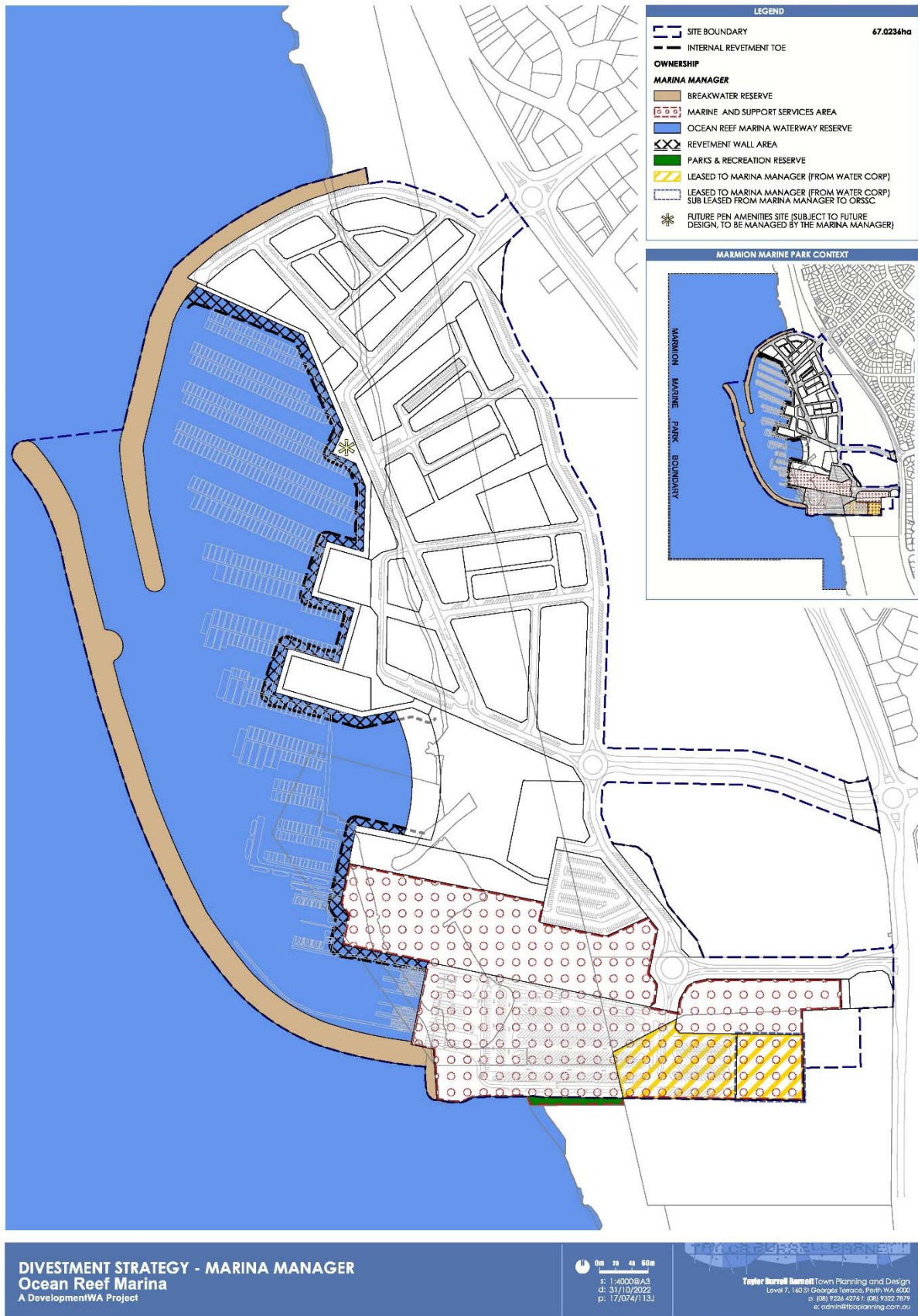
Schedule 2 – Concept Plan

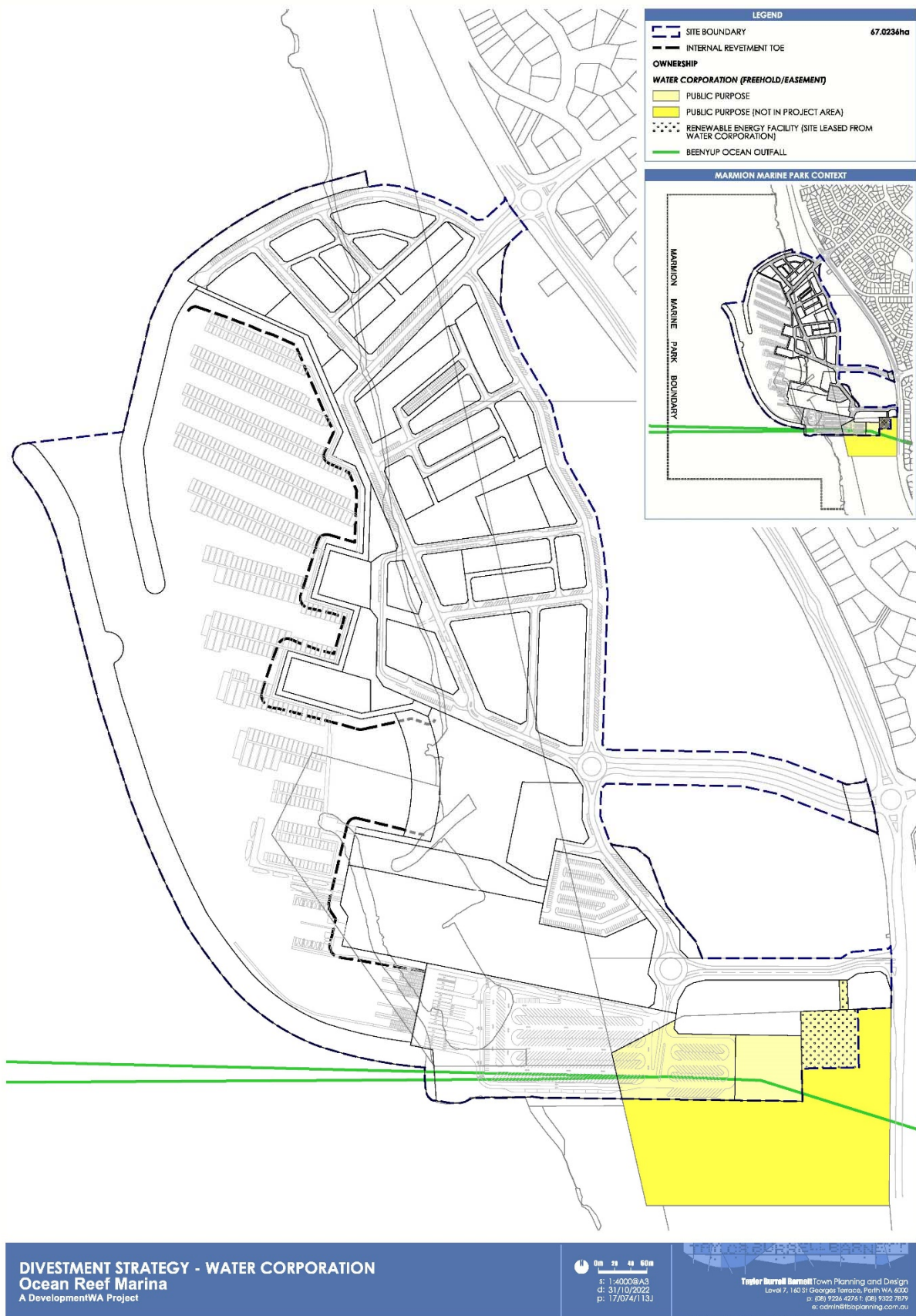


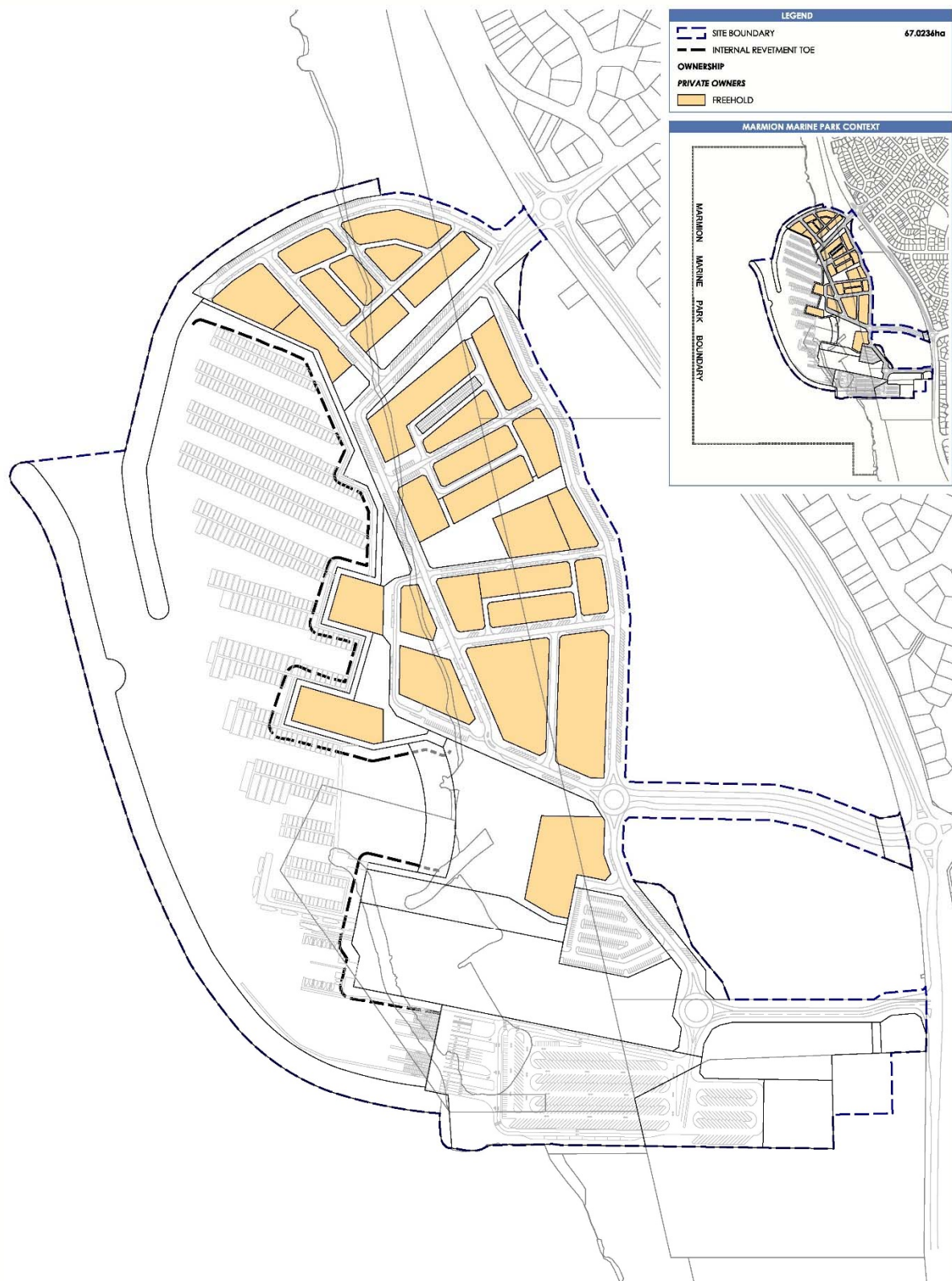
Schedule 3 – Divestment Strategy



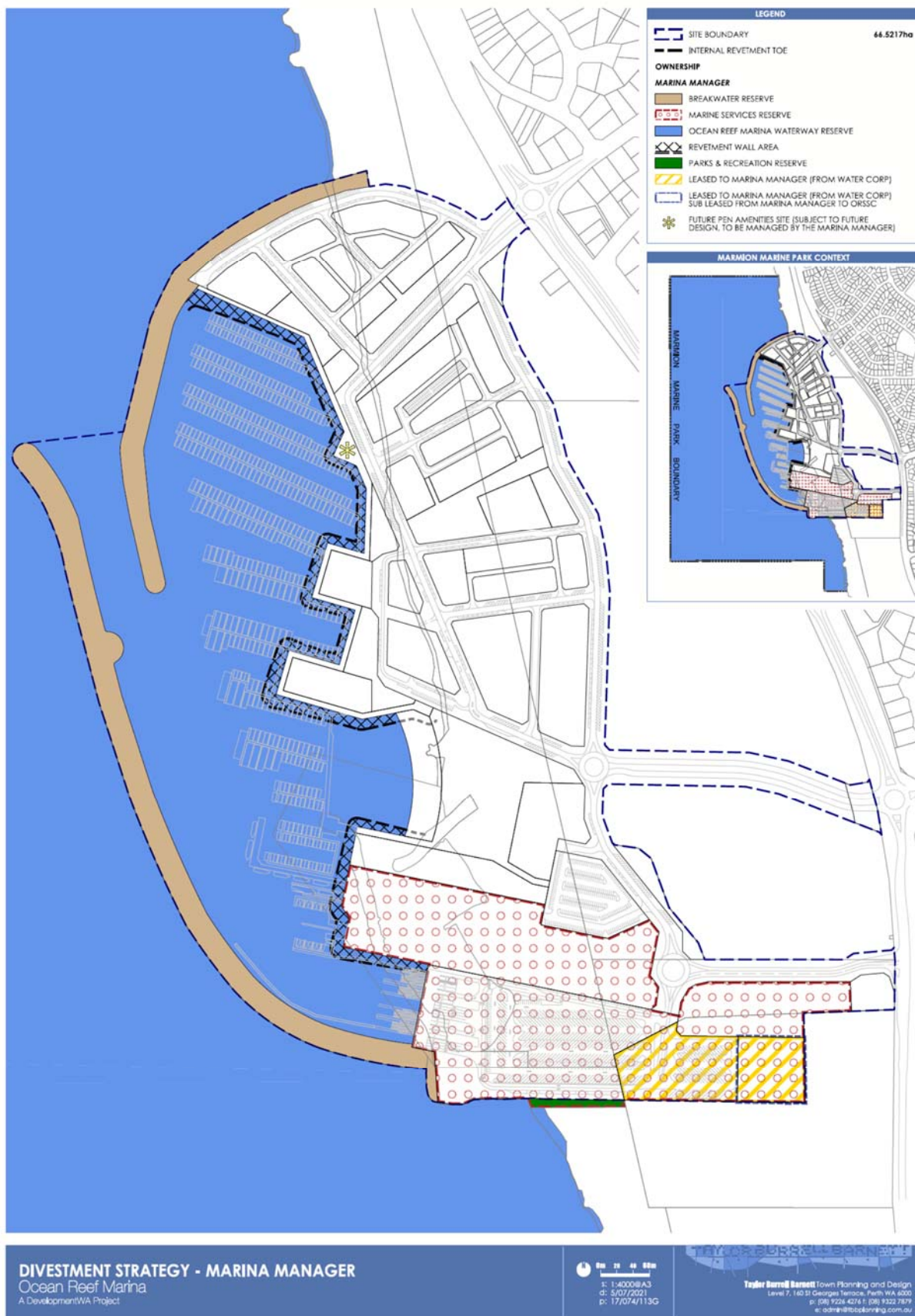








Schedule 4 – Future Marina Areas



Schedule 5 – Guiding Philosophies

JSC5-05/09 OCEAN REEF MARINA PHILOSOPHY AND PARAMETERS – [07303, 04171]

WARD: North-Central

RESPONSIBLE Mr Garry Hunt

DIRECTOR: Office of CEO

PURPOSE / EXECUTIVE SUMMARY

At the Ocean Reef Marina Committee meeting held on 2 December 2008, the Chief Executive Officer advised that the Committee should affirm the philosophy and parameters on which the project will be based to assist in clarifying and confirming its future direction.

BACKGROUND

The Ocean Reef Marina project development site is located on the coast at Ocean Reef and is approximately 61 hectares in area. The site extends from just north of Swanson Way to north of Resolute Way. The City purchased Part Lot 1029 at Ocean Reef in 1979 for a price of \$525,000. This purchase was made as an investment for the benefit of the community, to enable the development of a range of recreational, commercial and ancillary service uses.

The project has been the subject of debate for over 30 years with a range of plans having been considered during this period of time. The project was revitalised when, on 7 November 2004, the then Minister for Planning & Infrastructure announced that the State Government of the day would commit up to \$700,000 towards concept plans and a structure plan aimed at transforming Ocean Reef boat launching facility into a world-class commercial and recreational marina. At that time the City estimated a total of \$1.429m would need to be expended to undertake the project.

In April 2007 Council agreed to the establishment of a Steering Committee, comprising the Chief Executive Officer, representatives of the Western Australian Planning Commission, Department of Planning and Infrastructure, LandCorp and the Water Corporation, to oversee the project. The Steering Committee has met on seven occasions to discuss the site in relation to ownership, planning implications, marine implications and boating infrastructure.

In April 2007, Council also agreed to:

- 1 Establish the Ocean Reef Marina Committee (as a Committee of Council).
- 2 Note the Community Participation Plan for the Ocean Reef Marina as appropriate for community engagement.
- 3 Establish a Community Reference Group of 34 people.

4 Support the proposed role for the Reference Group.

The role of this group is to:

- Help the City develop a concept design and structure plan for the Ocean Reef Marina;
- Ensure the issues and concerns of the community are adequately represented;
- Represent the interests of the wider community;
- Act as a conduit to disseminate information and feedback to and from the wider community; and
- Liaise with extended networks and community groups to facilitate information sharing about the project.

During the development of Concept Plans 1 to 7, the Community Reference Group has met on five occasions to workshop and provide feedback into the planning process. The Group has viewed Concept Plan #6. Concept Plan #7 has only slight modifications to Concept Plan #6.

The considerable number of meetings, workshops, discussions and consultations over the past three years has resulted in the establishment of a number of guiding principles and philosophies for the development of the Ocean Reef Marina Structure Plan. The affirmation and acknowledgement of these principles and philosophies will ensure the integrity of the project moving forward and that the vision of the City in bringing the Ocean Reef Marina project to a reality remains uncompromised. The project philosophies and parameters are presented below.

DETAILS

Project Philosophy and Key Parameters

1. Vision for the Development

The City holds a vision for the Ocean Reef Marina site as a world class recreational, residential and tourism development that encapsulates high levels of environmental sustainability, community amenity and delivers economic growth and social benefit to the residents of the City of Joondalup. The purpose of the vision is to articulate for the record and for historical purposes the intent of the Council in progressing the project, what it is trying to do and why it is trying to do it.

The existing infrastructure at the Ocean Reef Boat Harbour is both outdated and ageing and no longer meets the expectations and needs of present and future generations of City residents or the wider Western Australian community. The site has been recognised as having the potential for development as a major tourism and recreation node for over 30 years.

The proposed facilities envisaged for the Ocean Reef Marina redevelopment provide the community with a state of the art iconic marina facility which caters for the needs of the community and provides a balance of residential, commercial and public amenities that will service the community and attract local and outside visitors into the future. The development design principles seek to ensure that the development does not become an exclusive residential enclave but rather an equitable community based facility where visitor and resident alike, can enjoy a variety of first class amenities and leisure activities.

The City recognises that there is limited opportunity for development nodes along its ocean coast line that provides an interface with the community; therefore any development must maximise land use and built form in order to satisfy this unique opportunity while recognising the environmental integrity of the site.

The project attempts to balance the needs of the community with the need to maintain and preserve the natural environment. The development concepts are sensitive and compatible with the existing environment and provide an interface between sustainable development and the natural marine and terrestrial environments.

2. Environmental strategy

The project concept plan has been developed using best practice management techniques that remain sympathetic to the natural environment.

The City acknowledges the environmental constraints identified in the preliminary reports prepared to date. These include:

- Coastal hydrology
- Flora/fauna
- Geotechnical
- Public amenity issues

By utilising up-to-date best practice urban design, architectural and construction techniques the Ocean Reef Marina can be a showcase for innovation in green design. The City is committed to achieving a sustainable green development that sets a benchmark for major developments within Western Australia.

Bush Forever

The site has been accepted by the City and the State Government as a strategic tourism and development node; however the City also accepts the existence of Bush Forever within the development area (see attached Bush Forever site plan). In consultation with the relevant government and environmental agencies the development concepts seek to enhance and safeguard the integrity of the Bush Forever site, taking into account the constraints existing to development within this type of natural environment.

The City's consultants have prepared preliminary reports on the site and further detailed analysis will be undertaken.

3. Governance and Fiscal responsibility

The City of Joondalup owns 27 hectares of valuable coastal land. The City also has a vesting interest over an additional 21 (approximately) hectares of Crown Land on the site. As such any development on the site needs to take into account the present and future benefits for City residents and the greater Western Australian population.

Land Assembly of site:

| LOT NO | AREA | REGISTERED PROPRIETOR | COMMENTS |
|----------------|---------|---|----------------------------------|
| 9000* | 7.54ha | Water Corporation | Easement |
| 1032 | 2.69ha | City of Joondalup | Easement |
| 1029 | 24.40ha | City of Joondalup | |
| 45122* | 36.92ha | State of Western Australia Interest Holder: City of Joondalup | Recreation Easement |
| 47831 / 15446* | 32.03ha | State of Western Australia Interest Holder: City of Joondalup | Recreation Telecommunications |
| 47831 / 15445* | 61.05ha | State of Western Australia Interest Holder: City of Joondalup | Recreation Telecommunications |
| 36732 / 10098 | 1.01ha | State of Western Australia Interest Holder: Water Corporation | Breakwater Sewer Outfall |
| 39014 / 10518 | 0.91ha | State of Western Australia Interest Holder: Minister for Transport | Harbour |
| 39014 / 10519 | 0.20ha | State of Western Australia Interest Holder: Minister for Transport | Harbour |
| 40064 / 10969 | 0.06ha | State of Western Australia Interest Holder: Water Corporation | Sewerage |

*Part of lot utilised

Attachments refer: Site Plan
Bush Forever plan
Land assembly plan

The City is clear on its role in the development of a structure plan and that it does not have the capacity to bring the development to fruition without a joint venture in association and agreement with the State Government or third parties. The action to date is in accord with the 2004 funding arrangements to develop a Structure Plan.

The City recognises that during the development process high ethical standards, probity, legal and legislative compliance and transparency are of vital importance. To ensure that this objective is achieved, the City proposes to undertake:

- Probity audit review and monitoring
- Internal audit review and monitoring
- Development of comprehensive and robust Business Cases and Financial Analysis.
- Extensive risk management assessment and monitoring
- Legal compliance via legal consultation

The City also understands that its endorsement of a draft concept plan is only the first step in a complex approval process and that, in liaison with other key stakeholders, it should facilitate negotiations with the relevant statutory bodies to expedite the project to Structure Plan stage. It will then determine, in association with the State Government, how the project can be best progressed to construction stage. The exact mechanism to achieve this will need to be the subject of discussion and negotiations with the State Government. Timely delivery is seen as a major issue given that the Ocean Reef Marina development has been discussed by various Councils for more than 30 years.

Through its appointment of suitably qualified consultants and peer review panels in the areas of planning and urban design, the environment, financing, engineering and infrastructure, the City is ensuring its responsibility that the development meets community, legislative and sustainability expectations is met.

4. Liaison Protocol

It is clearly understood by the City that the development of the project is in partnership with the Department of Planning and Infrastructure and the Ministries of Planning, Transport and Lands. Liaison at all stages with the State Government is of paramount importance in bringing the development to completion.

Through the instigation of the Ocean Reef Marina Steering Committee comprising representatives from the Department of Planning and Infrastructure, Water Corporation and Landcorp, the City maintains a strong liaison protocol with the key State Government stakeholders. Preliminary representation has been made to the Ministers for Transport, Lands and Planning and the Environmental Protection Authority, in an effort to ensure there is transparent, co-operative communication and consultation.

The strategic value and implicit importance of community consultation in the development of the Ocean Reef Marina has been addressed, with a community consultation plan being prepared and implemented which included the formation of the Ocean Reef Marina Community Reference Group. The Community Reference Group includes representatives from both stakeholder clubs (Whitfords Volunteer Sea Rescue Group and the Ocean Reef Sea Sports Club). Any proposed redevelopment of their existing facility will seek to maintain and enhance the important role these clubs play within the community.

Recognising the importance of providing further opportunities for community consultation and comment through both formal and informal processes, the City has prepared a communications plan to ensure the community is kept fully informed of the status of the project as it proceeds forward. This plan has been developed in accordance with the City's Public Participation Policy and Strategy.

5. Commerciality

The design principles shall attempt to meet the need for world class amenities and be of suitable high commercial value. By adopting advanced best practice building philosophies (eg green building concepts, energy efficiency, sustainability etc), the Ocean Reef Marina has the potential to be an iconic City landmark the development of which may provide the City with future financial and social benefits for its residents for generations to come. Fundamental to achieving this is the generation of income streams through parking regimes, fees and charges for rights to occupy and other income generating opportunities.

The City acknowledges the importance of maintaining public ownership of this strategically valuable City site and of generating a commercial revenue stream from the site. As such the right to occupy is proposed to be granted predominantly on a leasehold basis, determined by the land assembly and in accordance with Crown Land development constraints.

However as the City is also mindful that the project provide a return on investment; the establishment of a joint venture partnership (either public, private or a combination) and best practice financial management is seen as an integral component of the achievement of this outcome.

A Memorandum of Understanding (MOU) would need to be negotiated between the State Government and the City to ensure the roles and responsibilities of the parties involved in implementing the project are clear and defined. The MOU would need to set out the broad scope of the project and detail the implementation phases, costs and revenue sharing as well as ongoing management and maintenance arrangements. The MOU would serve as a statement of the intention between the State and City (being the principal landowners) and it is not intended to be legally binding on either party.

SUMMARY

It is viewed as appropriate and necessary that the Ocean Reef Marina Committee considers and affirms a vision for the Ocean Reef Marina project site and endorses development protocols for the site as outlined above, which comprise the project philosophy and key parameters.

Project Philosophy and Key Parameters

- 1 Development Vision
 - World class recreation, residential and tourist development
 - Sustainable community amenity
 - Social and economic benefit to all residents
 - Balance of public, residential and commercial amenities
 - Equitable facility for visitors and residents
 - Social and economic maximisation of land use
- 2 Environmental Strategy
 - Best practice management techniques
 - Coastal processes
 - Flora/fauna
 - Geotechnical
 - Public amenity
 - Innovation in green design and sustainability
 - Conservation, maintenance and management of the Bush Forever site
- 3 Governance and Fiscal responsibility
 - High ethical standards
 - Probity, legal and legislative compliance
 - Accurate and timely expediency in the preparation and submission of required documentation for the approval of a Structure Plan
 - Due diligence in the engagement of professional consultants to undertake reports/studies
 - Transparent, accountable decision making process
- 4 Liaison protocol
 - Successful, sustainable partnerships with State Government departments and agencies
 - Transparent, co-operative communication and consultation with all relevant agencies
 - Transparent, co-operative communication and consultation with City of Joondalup residents and the wider community
 - Development of a Memorandum of Understanding with the State Government

- 5 Commerciality
- Best practice financial management
 - Maintaining public ownership in accordance with statutory requirements
 - Establishment of a joint venture partnership

Link to Strategic Plan:

- Key Focus Area: Leadership and Governance – 1.1 OBJECTIVE: To engage proactively with the community.
- Key Focus Areas: The Built Environment – 4.2 OBJECTIVE: To progress a range of innovative and high quality urban development projects within the City – 4.2.1 STRATEGIES: Develop a concept for, and commit to, the development of land at the Ocean Reef Marina site.

Legislation – Statutory Provisions:

The City is governed by the requirements of the Local Government Act in relation to dealings involving commercial undertakings and land development.

Risk Management considerations:

A detailed Risk Management Assessment Report outlining the risks apparent to the project has been prepared and continues to be updated.

Financial/Budget Implications:

As outlined in Item 2 of this Agenda.

Policy implications:

Development of the project will be in accordance with the City's policies and procedures.

Regional Significance:

The development of the Ocean Reef Marina will become a significant tourist/visitor destination and a key focal point within the North West City corridor.

Sustainability implications:

Progression of the structure planning process will facilitate a number of studies/reports that address key issues pertaining to sustainability ie economic feasibility, environmental sustainability.

Consultation:

A public participation and communications strategy has been prepared for the project. To date significant community consultation has occurred via feedback from the Community Reference Group and community surveying.

COMMENT

Not applicable.

ATTACHMENTS

Nil.

VOTING REQUIREMENTS

Simple Majority

RECOMMENDATION

That Council ENDORSES the following Project Philosophy and Key Parameters related to the Ocean Reef Marina Development project:

1 Development Vision

- **World class recreation, boating, residential and tourist marina development**
- **Sustainable community amenity**
- **Social and economic benefit to all residents**
- **Balance of public, residential and commercial amenities**
- **Equitable facility for visitors and residents**
- **Social and economic maximisation of land use**

2 Environmental Strategy

- **Best practice management techniques**
- **Coastal processes**
- **Flora/fauna**
- **Geotechnical**
- **Public amenity**
- **Innovation in green design and sustainability**
- **Conservation, maintenance and management of the Bush Forever site**

3 Governance and Fiscal responsibility

- **High ethical standards**
- **Probity, legal and legislative compliance**
- **Accurate and timely expediency in the preparation and submission of required documentation for the approval of a Structure Plan**
- **Due diligence in the engagement of professional consultants to undertake reports/studies**
- **Transparent, accountable decision making process**

4 Liaison protocol

- **Successful, sustainable partnerships with State Government departments and agencies**
- **Transparent, co-operative communication and consultation with all relevant agencies**
- **Transparent, co-operative communication and consultation with City of Joondalup residents and the wider community**
- **Development of a Memorandum of Understanding with the State Government**

5 Commerciality

- **Best practice financial management**
- **Maintaining public ownership in accordance with statutory requirements**
- **Establishment of a joint venture partnership**

Schedule 6 – Indicative Project Program

| Milestone | Date (approx.) |
|--|--|
| Construction | |
| Breakwaters | Early 2021 – Mid 2023 |
| Internal Works | Mid 2022 – Mid 2023 |
| Stage 1 Subdivision | Mid 2023 – Early 2025 |
| Construction of New ORSSC/MRW Facilities | Mid 2023 – Mid/Late 2024 |
| Remaining Land Side Subdivision (Staged) | Early 2025 – 2030+ |
| Sales | |
| Release of Stage 1 Residential Lots | Late 2023/Early 2024 (Subject to Market Conditions) |
| Relocation of On-Site Tenants | |
| ORSSC/RSL & MRW Relocate Into New Facilities | 2024 |
| Community Amenity | |
| Release of First Community Open Space | 2024 |
| Project Development Completion | |
| Full Project Build Out | 2036+ |

Schedule 7 – Landscape Master Plan

KEY

- A** Northern Entry Road POS &
B Southern Entry Road POS

Small POS with opportunity for interpretation nodes, access to path network, viewing platforms, maybe picnic and infrastructure such as bike repair station and clock fountain.

- C** Northern Linear POS &
D Southern Linear POS

Creating a green entry to the site these POS create significant recreational opportunities for residents and draw the dense vegetation through to the water front.

- E** Central POS

The central residential POS will provide recreational and social opportunity that focuses on local community needs. This will include infrastructure such as play equipment, gathering spaces, informal sport facilities and passive recreation opportunities to support the health and well-being of users.

- F** Promenade North POS (both)

POS situated around proposed catchment, providing an activation to the northern promenade, enhance the recreational community and activities that may not be easily accommodated in larger POS, such as a dog park or community garden.

- G** Triangle POS

The promenade allows for significant recreation opportunities, along with a connection to the water front and boats. The POS will facilitate more popular events and activities along the promenade.

- H** Plaza POS

A highly functional urban plaza that will address the retail and commercial focus providing infrastructure for markets, offices dining and events.

- I** Beach POS

The beach park will be the 'jewel in the crown' of the site, a central recreational hub that will be a regional destination.

- J** Bush Forever

A reality of the development will be the removal of bush forever vegetation, the retained areas will be carefully considered to protect and enhance ecological value.

- K** Breakwater

Breakwater will present opportunity for increased, improved public realm through design approaches with the engineering team to include vegetation, seating nodes, recreational opportunities and art elements, where possible.



OCEAN REEF MARINA PUBLIC REALM MASTERPLAN



PROJECT NAME:
Ocean Reef Marina

CLIENT:
DevelopmentWA

DRAWN:
SH

SCALE:
1:4000 @A3

DRAWING:
MP-01

ISSUE DATE:
FEB 2022

REVISION:
J

UDLA

UDLA is a registered company of the Department of Planning, Government of Western Australia.

Schedule 8 – Marina Project Area





Execution copy

Land Transfer Deed

Ocean Reef Marina

State of Western Australia acting through the Minister for Lands
(**Minister**)

Western Australian Land Authority trading as DevelopmentWA
(**DevelopmentWA**)

City of Joondalup (**City**)

Land Transfer Deed

Ocean Reef Marina

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Details

Date

2023

Parties

Name **State of Western Australia** acting through the **Minister for Lands** a body corporate continued under the *Land Administration Act 1997* (WA) section 7, of care of the Department of Planning, Lands and Heritage

Short form name **Minister**

Notice details Level 2, 140 William Street
PERTH WA 6000

Name **Western Australian Land Authority** established by the *Western Australian Land Authority Act 1992* (WA) section 5, trading as DevelopmentWA

Short form name **DevelopmentWA**

Address Level 2, 40 The Esplanade
PERTH WA 6000

Notice details Email: andre.dines@developmentwa.com.au
Attention: Andre Dines

Name **City of Joondalup** continued under the *Local Government Act 1995* (WA) schedule 9.3, clause 5

Short form name **City**

Address 90 Boas Avenue
JOONDALUP WA 6027

Notice details Email: mat.humfrey@joondalup.wa.gov.au
Attention: Director Corporate Services

Background

- A The City owns the City Lots, and the State of Western Australia owns the City Crown Lots, which lots are, at the date of this Deed, under the care, control and management of the City.
- B DevelopmentWA and the City have entered into the Development Agreement, which sets out the framework by which DevelopmentWA will undertake and deliver the Project.
- C The execution of this Deed satisfies clause 3.1(a) of the Development Agreement.
- D DevelopmentWA requires the Project Lots for the purposes of the Project.
- E The City agrees to contribute the Project Lots to the Project as contemplated by the Land Assembly Tranche Plan and in accordance with the terms of this Deed and the Development Agreement.

Agreed terms

Part A – Preliminary Obligations

1. Definitions and interpretation

1.1 Definitions

In this Deed, the following expressions have the following meanings:

The terms **management body**, **management order**, **reserve**, **registered** have the same meaning as each of those terms has under the LA Act.

Access Licence means an access licence substantially in the form of the licence annexed to this Deed as Schedule 5.

Access Licence Notice has the meaning in clause 13.2(b).

Approvals means all approvals, consents, authorisations, permits and other permissions required from any Government Authority, or under any Written Law, for or in connection with the Project.

Balance Crown Lots means the area of the City Crown Lots as are not required for the Project, which are to be retained by the City as Crown land under the LA Act, and which at the Commencement Date are Lots 506 and 508 on proposed Deposited Plans 417825 and 417828 respectively, being part of the Subdivision Plans, as may be varied, added to or substituted from time to time in accordance with clause 5.2(a)(i) and clause 5.2(b).

Balance Freehold Lots means the area of the City Lots in the area of the Project, which are:

- (a) not required for the Project;
- (b) for an estate in fee simple; and
- (c) at the Commencement Date, Lot 504 and Lot 44 on proposed Deposited Plans 417450 and 422581 respectively, being part of the Subdivision Plans, as may be varied, added to or substituted from time to time in accordance with clause 5.2(a)(i) and clause 5.2(b).

Beach Parking Area means the part of the Future City Areas to comprise a freehold lot and which is to be publicly accessible parking and other uses as shown 'Conditional Freehold (Public Parking)' on the Divestment Strategy, and which is to be subject to the covenants in clause 15.2.

Boundary of Responsibility has the meaning in the Development Agreement but for indicative purposes at the Commencement Date is the line of demarcation of management responsibilities, as generally indicated by a bold dashed red line shown on the plan annexed to this Deed as Schedule 4.

Business Day means any day other than a Saturday, Sunday or public holiday in Perth, Western Australia.

Chief Executive means the chief executive officer, director general or other most senior executive (howsoever called) responsible for the administration of the relevant Party, but in the case of the Minister means the Minister's delegate duly authorised under the LA Act.

City Crown Lots means Crown Lot 555 and Crown Lot 15446, and **City Crown Lot** means each of them.

City Lots means Lot 1029 and Lot 1032 and **City Lot** means each of them.

City Management Orders means the management orders registered against the certificates of Crown land title to the City Crown Lots, being:

- (a) in the case of Crown Lot 555 – management order H352772; and
- (b) in the case of Crown Lot 15446 – management order K360388,

and where the context requires a management order to the City in respect of Project Lot 509 made in accordance with clause 10.2(a).

Claim means any claim, demand, proceeding or cause of action of any nature whatsoever (including for damages), whether for money or otherwise, and regardless of the legal or other basis on which it may be put (including negligence), arising out of or directly referable to the particular subject matter.

Commencement Date means the later of:

- (a) the latest date of execution of this Deed by the Parties; and
- (b) the date on which the Development Agreement commences.

Completed Road means the roads which are constructed by DevelopmentWA in accordance with the standards provided for in the Development Agreement for use as public roads, and which are intended to be dedicated as Dedicated Roads.

Contamination has the same meaning given to the term 'contaminated' under the *Contaminated Sites Act 2003* (WA).

Crown land has the same meaning as that term has in the LA Act.

Crown Lot 555 means Lot 555 on Deposited Plan 402198 being the whole of the land comprised in certificate of Crown Land Title Volume 3166 Folio 566.

Crown Lot 15446 means Lot 15446 on Deposited Plan 40340 being the whole of the land comprised in qualified certificate of Crown Land Title Volume 3133 Folio 571.

Crown Satisfaction Date has the meaning in clause 8.1(b).

Crown Subdivision has the meaning in clause 8.1(a).

Date of Practical Completion means the date of practical completion of the Future Club Facility Lot Works, subject to minor defects, to the reasonable satisfaction of DevelopmentWA and as certified by the builder or independent certifier under the construction contract for the Future Club Facility Lot Works.

Dedicated Road means the public roads constructed by DevelopmentWA pursuant to the Principal Project Documents, which are to be dedicated as a road under the LA Act or the PD Act.

Deed means this deed including all schedules, attachments and annexures to the same.

Development Agreement means the document titled 'Development Agreement' entered into, or to be entered into, by DevelopmentWA and the City in relation to the Project, as may be varied from time to time.

DevelopmentWA Management Order means:

- (a) adding the relevant land to DevelopmentWA's management order O592790 which exists at the Commencement Date in respect of the Project and is for the Project Reserve Purpose; or
- (b) the making of a management order under the LA Act placing the care, control and management of the relevant reserved land (for the Project Reserve Purpose) with DevelopmentWA on such conditions as are acceptable to DevelopmentWA, which must include the power to lease and licence.

Divestment Strategy is the means by which the Parties have agreed to effect the divestment of certain areas of land and public assets:

- (a) which are to be developed by DevelopmentWA as part of the Project;
- (b) some of which are to be transferred to the City in fee simple or reserved as Crown land and its care, control and management placed with the City, in accordance with the Development Agreement;
- (c) which is to be determined in accordance with the terms of the Development Agreement from time to time; and
- (d) a copy of the Divestment Strategy, also known as the Land and Asset Divestment Strategy which is current as at the Commencement Date, is annexed to this Deed as

Schedule 2, as may be varied, added to or substituted from time to time in accordance with clause 5.2(a)(iii).

DoT means the department which is primarily responsible for assisting in the administration of the *Marine and Harbours Act 1981* (WA) from time to time, being at the Commencement Date the Department of Transport.

DPLH means the department which is primarily responsible for assisting in the administration of the LA Act from time to time, being at the Commencement Date the Department of Planning, Lands and Heritage.

Existing Encumbrances means the Existing Leases and:

- (a) in the case of land in Lot 1032 – easement C775076; and
- (b) in the case of Crown Lot 555 – easement H306399.

Existing Leases means the following leases and licences, entered into by the City as landlord or licensor:

- (a) undated lease to Marine Rescue Whitfords in relation to part of Crown Lot 15446;
- (b) undated lease to the Ocean Reef SSC in relation to part of Crown Lot 15446 and Lot 1029; and
- (c) access deed to Telstra Corporation Limited and dated 25 July 2016 in relation to part of Crown Lot 15446.

Foundational Project Documents means the Subdivision Plans, Land Assembly Tranche Plan and Divestment Strategy.

Freehold Satisfaction Date has the meaning in clause 8.2(c).

Freehold Subdivision has the meaning in clause 8.2(a).

Future City Areas means the public assets specified or provided for in the Divestment Strategy, that are to be developed by DevelopmentWA as part of the Project and are located east of the Boundary of Responsibility including:

- (a) Public Open Space;
- (b) Future City Lots (as may be varied in accordance with this Deed);
- (c) public improvements, fixtures, fittings, plant and equipment located or affixed upon the Public Open Space and Future City Lots, including the promenade abutting the waterfront within the Marina Project Area (but excluding the internal revetment walls); and
- (d) Dedicated Roads.

Future City Lots means any proposed freehold lots or conditional freehold lots to be transferred in fee simple to the City, as identified in the Divestment Strategy, including the Beach Parking Area and Future Club Facilities Lot, and as may be varied, added to, or substituted from time to time in accordance with clause 5.2(a)(iii), subject to the terms of the Development Agreement.

Future Club Facilities Lot has the same meaning as in the Development Agreement.

Future Club Facility Lot Works means the construction of the building and other facilities on the Future Club Facilities Lot to accommodate the Ocean Reef SSC.

Government Authority means a government (Commonwealth, State or local) or a governmental, semi-governmental, judicial, statutory or public entity or authority, including any such entity or authority established under a Written Law.

Improvement Scheme means the Ocean Reef Marina Improvement Scheme No. 1 gazetted on 30 September 2020 and as may be updated from time to time.

LA Act means the *Land Administration Act 1997* (WA).

Land Assembly Tranche Plan means the plan which outlines the assembly of the Project Lots in order to facilitate the delivery of the Project as agreed by DevelopmentWA, the City and other relevant Government Authorities, from time to time. A copy of the Land Assembly Tranche Plan which is current as at the Commencement Date is annexed to this Deed as Schedule 1 as may be varied, added to or substituted from time to time in accordance with clause 5.2(a)(i).

Landgate means the Western Australia Land Information Authority established under the *Land Information Authority Act 2006* (WA) section 5.

Landscape Master Plan means the landscape master plan which is to be determined in accordance with the terms of the Development Agreement from time to time.

Leased Facilities means the buildings and improvements leased or licensed to the tenants under the Existing Leases.

Lot 1029 means Lot 1029 on Diagram 57604 being the whole of the land comprised in Certificate of Title Volume 1957 Folio 865.

Lot 1032 means Lot 1032 on Plan 13198 being the whole of the land comprised in Certificate of Title Volume 1667 Folio 921.

Marine Rescue Whitfords means Whitfords Volunteer Sea Rescue Group (Inc).

Objection Notice has the meaning in clause 5.3(c).

Ocean Reef SSC means the Ocean Reef Sea Sports Club (Inc).

ORM State land has the meaning in clause 13.1.

Party means each of the Minister, DevelopmentWA and the City and **Parties** means any two or more of them.

PD Act means the *Planning and Development Act 2005* (WA).

Principal Project Documents means this Deed, the Development Agreement and any other document which the parties agree is a Principal Project Document.

Project means the development of the Ocean Reef Marina, being the 'Project' as that term is defined in the Development Agreement.

Project Lots means those parts of the City Crown Lots and the City Lots as are reasonably required for the Project and which at the Commencement Date are proposed to be:

- (a) Lot 9001 on Deposited Plan 422581;
- (b) Lots 503 and 509 on Deposited Plan 417450;
- (c) Lot 505 on Deposited Plan 417825; and
- (d) Lots 507, 510 and 511 on Deposited Plan 417828,

being the Subdivision Plans, or as otherwise varied, added to or substituted from time to time in accordance with clause 5.2(b).

Project City Lots means those parts of the Project Lots as are, or were, comprised in the City Lots, as the case requires.

Project Crown Lots means those parts of the Project Lots as are, or were, comprised in the City Crown Lots, as the case requires.

Project Reserve Purpose means for the purposes of the *Western Australian Land Authority Act 1992* (WA).

Public Open Space means public open space to be developed as part of the Project, the care, control and management of which is to be placed with the City in accordance with the Divestment Strategy, including any parks and recreation reserves (whether under the LA Act or the PD Act), active play areas, landscaped verges and promenades in accordance with the Landscape Master Plan, as may be varied, added to or substituted from time to time in accordance with clause 5.2(a)(iii).

Reserve means each of:

- (a) Reserve 45122 in respect of Crown Lot 555; and
- (b) Reserve 47831 in respect of Crown Lot 15446,

and **Reserves** means both of them.

Reserve Purpose means for:

- (a) Reserve 45122 – the purpose of recreation;

- (b) Reserve 47831 – the purpose of recreation, telecommunications & purposes incidental thereto.

Revocation Date, for each Project Crown Lot or Tenanted Lot as the case may be, is the latest date provided for in clause 7.4(a).

Section 15 Covenant means the deed containing the restrictive covenants and positive covenants substantially in the form contained in Schedule 7, as may be varied in accordance with clause 15.3(h) or clause 15.3(i).

Services means electricity, gas, telecommunication, water, sewerage, and other utilities or services.

Specified Encumbrances means:

- (a) in the case of Lot 1032 – easement C775076;
- (b) in the case of Crown Lot 555 – easement H306399;
- (c) in the case of the Beach Parking Area – any positive or restrictive covenant or other form of encumbrance, condition or restriction provided for in clause 15.2;
- (d) in the case of the Future Club Facilities Lot – the Section 15 Covenant; and
- (e) any encumbrances imposed on the Future City Areas (with the prior approval of the City acting reasonably) in accordance with the requirements of the Minister, the WAPC or the Improvement Scheme, including easements granted in accordance with the terms of section 167 of the PD Act.

State means the State of Western Australia.

Subdivision Plans means the subdivision plans for the subdivision of any land the subject of the Project under either the LA Act or the PD Act relating to the:

- (a) the City Lots and the Crown City Lots in respect of the land assembly under the Land Assembly Tranche Plan; and
- (b) the Future City Areas in respect of the land divestment under the Divestment Strategy,

which is to be determined or agreed in accordance with the terms of the Development Agreement and this Deed from time to time and in particular clause 5.2(b) and clause 5.2(c). The Subdivision Plans which are current and agreed as at the Commencement Date for the purposes of subclause (a) are Deposited Plans 417450, 417825, 417828 and 422581 and a copy of them is annexed to this Deed as Schedule 3.

Tenanted Lots means those parts of the City Lots and City Crown Lots as are subject to the Existing Leases being the areas shown as Lots 509 and 510 on Deposited Plans 417450 and 417828 respectively, being part of the Subdivision Plans.

Term means the term of this Deed, commencing on the Commencement Date and expiring on the date specified in clause 3.

Transfer Date, for each Project City Lot, is the latest date provided for in the notice given under clause 6.4(a).

WAPC means the Western Australian Planning Commission established by the PD Act section 7.

Written Law means any statute, regulation, ordinance, by-law or other subsidiary legislation and any lawful direction or notice by a Government Authority.

1.2 Interpretation

The following rules also apply in interpreting this Deed, unless inconsistent with the context:

- (a) headings are for convenience only, and do not affect interpretation;
- (b) a reference to legislation (including subordinate legislation) is to that legislation as amended, consolidated, re-enacted or replaced, and includes any subordinate legislation issued under it;

- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Deed, and a reference to this Deed includes any schedule or annexure;
- (d) a reference to an agreement or instrument includes the agreement or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to anything includes each part of it;
- (f) a reference to a Party is a reference to that Party as may be reconstituted or substituted under any Written Law from time to time;
- (g) a reference to **A\$, \$A**, dollar or **\$** is to Australian currency;
- (h) a reference to time is to Australian Western Standard time;
- (i) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (j) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (k) another grammatical form of a defined word or expression has a corresponding meaning;
- (l) a singular word includes the plural, and vice versa;
- (m) a word which suggests one gender includes the other genders;
- (n) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (o) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Deed or any part of it; and
- (p) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

1.3 Deed is legally binding

The Parties agree that this Deed and the obligations contained herein are legally binding.

1.4 Collaboration

In performing their respective obligations under this Deed, each Party commits to work with the other Parties in a co-ordinated, co-operative and collaborative way.

2. Interdependency with Development Agreement

2.1 Interdependency

The Parties acknowledge that this Deed is interdependent with the Development Agreement, which sets out, amongst other things:

- (a) DevelopmentWA's obligations in relation to the delivery of the Project; and
- (b) conditions affecting, and the timing of, the handover of developed Future City Areas to the City.

2.2 Inconsistency

- (a) In the event of any express inconsistency arising between the terms of the Development Agreement and this Deed, the terms of this Deed shall prevail to the extent of that inconsistency.
- (b) The Land Assembly Tranche Plan is for indicative purposes and in the event of inconsistency between the Land Assembly Tranche Plan and the Subdivision Plans, the Subdivision Plans shall prevail to the extent of that inconsistency, subject to clause 5.2.

3. Term

- (a) The terms of this Deed are binding upon the Parties on and from the Commencement Date.
- (b) This Deed shall terminate upon the date on which the last of the Future City Areas is transferred to, or the care, control and management of which is placed with, the City as the case may be.

4. Minister for Lands

DevelopmentWA and the City each acknowledge and agree that the Minister:

- (a) has entered into this Deed at the request of DevelopmentWA and the City, to facilitate the orderly delivery of the land assembly aspects of the Project; and
- (b) the Minister will not be liable for any Claim howsoever arising as a result of anything done or failed to be done under this Deed including the registration of any title documents, except for clauses 6.2, 6.4(e), 7.2, 7.4(b), 9.1(a) - (c) inclusive, 9.2(b)(i) - (iv) inclusive, 10.2, 11.1(a) (as to a matter of which the Minister has knowledge, or specific notice in writing from DevelopmentWA or the City, to the contrary or is in breach of this Deed) and 15.1(b).

5. Variations and Notifications

5.1 Variation to Foundational Project Documents

The Parties acknowledge that at the Commencement Date:

- (a) the Project is anticipated to be undertaken as a long-term, staged development;
- (b) the Development Agreement outlines the framework by which variations to some of the Foundational Project Documents may be made by DevelopmentWA or agreed by DevelopmentWA and the City; and
- (c) this Deed is intended to give legal effect, and govern the implementation of, the Land Assembly Tranche Plan and Divestment Strategy as between the Parties; and
- (d) the Minister agrees to accept variations to the Foundational Project Documents, subject to clause 5.3.

5.2 Variation to Strategies and Subdivision Plans

- (a) Subject to the Development Agreement, DevelopmentWA must not vary, add to or substitute the:
 - (i) Land Assembly Tranche Plan in a way which will have the effect of changing the location, area, dimensions or boundary of any of the Balance Freehold Lots or the Balance Crown Lots;
 - (ii) external boundary of the Project Lots; or
 - (iii) Divestment Strategy in a way which will have the effect of changing the location, area, level, dimensions or boundary of any of the Future City Lots or the Future City Areas,without the prior written agreement of the City, except if the change is immaterial, and such agreement is not to be unreasonably withheld, delayed or conditioned.
- (b) DevelopmentWA must not vary, add to or substitute the Subdivision Plans relating to the City Lots and the Crown City Lots in respect of the land assembly under the Land Assembly Tranche Plan in a way that:
 - (i) is inconsistent with the Land Assembly Tranche Plan or the Divestment Strategy, as varied, added to or substituted from time to time in accordance with clause 5.2(a); or
 - (ii) has a material impact on the City,

without the prior written agreement of the City, such agreement not to be unreasonably withheld, delayed or conditioned, and clauses 12.2 or 12.4 of the Development Agreement do not apply to any such variation, addition or substitution.

- (c) The Subdivision Plans relating to the Future City Areas in respect of the land divestment under the Divestment Strategy, and any variation, addition or substitution to or of such Subdivision Plans will be prepared and dealt with in the manner provided for in clauses 12.2 and 12.4 of the Development Agreement, and this clause 5.2 does not apply to those Subdivision Plans and any variation, addition or substitution to or of them.

5.3 Notifications to and objections by Minister

- (a) This clause 5.3 applies if during the Term, any material variation or addition to, or substitution of any Foundational Project Document (**FPD change**) is proposed and the FPD change has been approved in accordance with the Development Agreement or this Deed if such approval is required.
- (b) DevelopmentWA must give notice to the Minister clearly outlining:
 - (i) the FPD change proposed, and providing any varied, additional or replacement Foundational Project Document; and
 - (ii) if DevelopmentWA was required to consult with the City in relation to, or obtain the City's agreement to, the FPD change in accordance with the terms of the Development Agreement or this Deed:
 - (A) a statement confirming such consultation process was followed or agreement was obtained; and
 - (B) where consultation with or agreement of the City was required, a statement prepared by the City in relation to the FPD change,
(Variation Notice).
- (c) If the Minister objects to the FPD change (acting reasonably), the Minister must give notice of its objection to DevelopmentWA and the City, which must include:
 - (i) reasonable details as to the basis of the objection; and
 - (ii) an explanation of why the Minister considers the proposed FPD change is inconsistent with the ultimate development outcome of the Project,and may include details of how the proposed FPD change can be achieved in a different way (**Objection Notice**).
- (d) If the Minister does not give an Objection Notice to DevelopmentWA and the City in accordance with clause 5.3(c) within 20 Business Days of its receipt of the Variation Notice, the proposed FPD change will be deemed to have been accepted by the Minister.
- (e) If the Minister gives an Objection Notice to DevelopmentWA and the City within 20 Business Days of its receipt of the Variation Notice, senior officers of the Parties will:
 - (i) meet within 10 Business Days of the Objection Notice being given by the Minister; and
 - (ii) discuss and negotiate in good faith to reach an outcome that is reasonably acceptable to the Parties, having regard to the objectives of the Project and this Deed.

Part B – Land Assembly

6. City Lots

6.1 City's agreement

- (a) The City, in consideration of the matters provided for in this Deed and the Development Agreement, agrees in its capacity as registered proprietor of the City Lots, to:
 - (i) the Freehold Subdivision being undertaken in relation to the City Lots in accordance with clause 8.2; and
 - (ii) transfer to the State each of the Project City Lots and in doing so and subject to clause 10, shall transfer the Project City Lots free from encumbrances except for the Existing Encumbrances (unless otherwise agreed by the Parties), by the Transfer Date.
- (b) With the exception of the Existing Encumbrances, DevelopmentWA accepts the Project City Lots:
 - (i) in an as is, where is condition;
 - (ii) based upon DevelopmentWA's own enquiries and investigations; and
 - (iii) with no warranties or representations being given by the City in relation to the Project City Lots,subject to clause 16.

6.2 State's agreement

The State, in consideration of the matters provided for in this Deed, agrees:

- (a) to take a transfer of each of the Project City Lots from the City on the terms provided for in clause 6.1; and
 - (b) to revest the Project City Lots in the Crown under section 82 of the LA Act and subject to the Existing Encumbrances,
- by the Transfer Date.

6.3 Transfers to occur at the same time

The transfer and revesting of the Project City Lots under this clause 6 must occur at the same time.

6.4 Timing of transfers

- (a) For the purposes of this clause 6 and for the Project City Lots, DevelopmentWA shall give a notice to the City and the Minister of the latest date by which the Project City Lots are to be transferred to the State and revested in the Crown, which date is to be at least 3 months after the date of the notice (**Transfer Date**).
- (b) Unless the City agrees otherwise, the transfer of the Project City Lots to the State and the revesting of the Project City Lots in the Crown under this clause 6 will occur at the same time with the retention of the Balance Freehold Lots by the City under clause 9.2.
- (c) DevelopmentWA must give the notice under clause 6.4(a) by not later than 10 Business Days after the Freehold Satisfaction Date.
- (d) DevelopmentWA must prepare, or procure from the Minister, and provide to the City drafts of all documents required to give effect to the transfer and revesting at least 1 month prior to the Transfer Date.
- (e) Lodgement of the relevant documents at Landgate to give effect to the following must occur in respect of the Project City Lots at the same time:
 - (i) the transfer of the Project City Lots to the State;
 - (ii) the revesting of the Project City Lots in the Crown;
 - (iii) the retention of the Balance Freehold Lots to the City under clause 9.2; and

- (iv) the reservation of the Project City Lots for the Project Reserve Purpose and the making of the DevelopmentWA Management Order,
- but subject to clause 10 in respect of any part of a Project City Lot comprising a Tenanted Lot.

7. City Crown Lots

7.1 City's agreement

The City, in consideration of the matters provided for in the Development Agreement and this Deed (including the City's Management Orders being retained over the Balance Crown Lots under clause 7.5):

- (a) consents to the Crown Subdivision being undertaken in relation to the City Crown Lots in accordance with clause 8.1; and
- (b) in its capacity as management body for and primary interest holder of each of the City Crown Lots, agrees to the revocation of the City Management Orders over:
 - (i) the Project Crown Lots; and
 - (ii) the Tenanted Lots,under section 50(1)(a) of the LA Act, and in doing so shall ensure that the Project Crown Lots and the Tenanted Lots, as the case may be, are free from encumbrances except for any Existing Encumbrances by the Revocation Date.

7.2 State's agreement

The State, in consideration of the matters provided for in this Deed, agrees:

- (a) to revoke the City Management Order relating to each of:
 - (i) the Project Crown Lots; and
 - (ii) the Tenanted Lots,under section 50(1) of the LA Act on the terms provided for in clause 7.1(b);
- (b) to cancel the Reserve relating to each of the Project Crown Lots and the Tenanted Lots, as the case may be, under section 51 of the LA Act; and
- (c) to reserve the Project Crown Lots or the Tenanted Lots, as the case may be, for the Project Reserve Purpose under section 42 of the LA Act and to make a DevelopmentWA Management Order in respect of each of the Project Crown Lots and the Tenanted Lots, as the case may be, under section 46 of the LA Act,

by the Revocation Date.

7.3 Revocations may occur separately

The revocation of the City Management Orders and cancellation of the Reserves relating to each of the Project Crown Lots and each of the Tenanted Lots under this clause 7 may occur at different times provided that clause 7.4(b) is complied with respect to the relevant Project Crown Lot.

7.4 Timing of revocations

- (a) For the purposes of this clause 7, the **Revocation Date** for each:
 - (i) Project Crown Lot is the latest date by which the City Management Order for the Project Crown Lot is to be revoked and the relevant Reserve is to be cancelled, which is the date provided for in clause 9.1; and
 - (ii) Tenanted Lot is the latest date by which the City Management Order for the Tenanted Lot is to be revoked and the relevant Reserve is to be cancelled, which is the date that is the later of:
 - (A) the date provided for in clause 9.1;

- (B) 30 Business Days after the Minister is notified by DevelopmentWA that the tenant of the Tenanted Lot has vacated the Tenanted Lot under clause 10.1(b)(ii); and
- (C) 30 April 2024 or such other date as the Parties may agree.
- (b) Lodgement of the relevant documents at Landgate to give effect to the actions referred to in clause 7.2 must occur at the same time in respect of a Project Crown Lot, but subject to clause 10 in respect of any part of a Project Crown Lot comprising a Tenanted Lot.

7.5 City to retain management of Balance Crown Lots

- (a) The Parties agree that the City will retain the City Management Orders in respect of the Balance Crown Lots (subject to any Existing Encumbrances), which will remain reserved for the relevant Reserve Purpose.
- (b) DevelopmentWA and the City may agree it would be more efficient under the Crown Subdivision for the City Management Order to be revoked over the whole of the City Crown Lot and a new management order made.
- (c) If clause 7.5(b) applies, the City agrees to consent to the revocation of the City Management Order over the whole of the City Crown Lot subject to clauses 9.1(a) to 9.1(c) inclusive being complied with, contemporaneously with the revocation.
- (d) DevelopmentWA, the City and the Minister may agree it would be more efficient for the subdivision of a City Crown Lot to be effected by way of a redescription of the boundaries of the relevant Reserve, in which case:
 - (i) the Balance Crown Lot will remain in the relevant Reserve for the relevant Reserve Purpose and subject to the relevant City Management Order;
 - (ii) the Project Crown Lot is available for dealing with under clause 9.1(d); and
 - (iii) a reference in this Deed to the City Management Order being revoked is to be read as if it were a reference to the relevant part of the City Crown Lot being removed from the relevant Reserve in the manner and to the effect provided for in this clause 7.5(d).

8. Subdivision

8.1 Crown Subdivision

- (a) DevelopmentWA will arrange for the preparation or finalisation of a Subdivision Plan to create the Project Crown Lots, the Tenanted Lots and the Balance Crown Lots, and if required a Dedicated Road (**Crown Subdivision**).
- (b) The date on which the Subdivision Plan is placed in order for dealings by Landgate or is otherwise ready to be dealt on, for the Crown Subdivision is the **Crown Satisfaction Date**.
- (c) DevelopmentWA must use its reasonable endeavours to procure the Crown Satisfaction Date by not later than 3 months after the Commencement Date.
- (d) DevelopmentWA must give a request to the Minister under clause 9.1 and provide a copy to the City within 10 Business Days of the Crown Satisfaction Date.

8.2 Freehold Subdivision

- (a) The subdivision of the City Lots in the Project to create the Project City Lots and the Balance Freehold Lots (**Freehold Subdivision**) is to be achieved by a subdivision of land under the PD Act while the City is the freehold owner of the City Lots.
- (b) DevelopmentWA will arrange for:
 - (i) the preparation or finalisation of a Subdivision Plan or Plans for the Freehold Subdivision to create the Project City Lots and the Balance Freehold Lots, and if required a Dedicated Road; and
 - (ii) the satisfaction of any conditions relating to the Freehold Subdivision,

in accordance with the Development Agreement and so as to enable the matters in clause 6.4(e) to occur at the same time.

- (c) The later of the dates on which the Subdivision Plan is placed in order for dealings by Landgate, and the conditions are satisfied, for the Freehold Subdivision is the **Freehold Satisfaction Date**.
- (d) DevelopmentWA must use its reasonable endeavours to procure the Freehold Satisfaction Date by not later than 6 months after the Commencement Date.
- (e) DevelopmentWA must give a request to the City under clause 9.2(a) and provide a copy to the Minister within 10 Business Days of the Freehold Satisfaction Date.

8.3 Subdivisions may occur separately

- (a) A Crown Subdivision under this clause 8 may occur at different times in respect of different areas of land.
- (b) A Freehold Subdivision under this clause 8 must not occur at different times in respect of different areas of land.

9. Agreement to reserve, order and transfer

9.1 Crown Subdivision agreement

The Minister agrees to, within 30 Business Days of written request by DevelopmentWA given under clause 8.1(d):

- (a) apply to the Registrar of Titles for the creation and registration of certificates of Crown land title to give effect to the Subdivision Plan for a Crown Subdivision;
- (b) if clause 7.5(b) applies and if required, reserve the land in the Balance Crown Lot or Tenanted Lot for the same purpose as the Reserve Purpose that applied to the land at the Commencement Date; and
- (c) if clause 7.5(b) applies, make a management order placing the care, control and management of the reserve for the Balance Crown Lot or Tenanted Lot with the City on the same conditions as applied to the City Management Order at the Commencement Date, or such other conditions as are agreed by the City, but which in the case of a Tenanted Lot must include a power to lease and licence for a term not exceeding 21 years; and
- (d) reserve the Project Lots for the Project Reserve Purpose and make a DevelopmentWA Management Order and lodge them at Landgate for registration,

in accordance with clause 7.4(b).

9.2 Freehold Subdivision agreement

- (a) The City agrees to, within 30 Business Days of written request by DevelopmentWA given under clause 8.2(e) and on presentation of the relevant Landgate forms and documents by DevelopmentWA to the City:
 - (i) apply to the Registrar of Titles for the creation and registration of certificates of land title for the land the subject of the Subdivision Plan for the Freehold Subdivision; and
 - (ii) transfer to the State the Project City Lots for an estate in fee simple free of encumbrances except:
 - (A) any Existing Encumbrances;
 - (B) as required as a condition of the Freehold Subdivision but with a requirement for the City to be consulted; and
 - (C) otherwise as may be agreed by the City (acting reasonably),
- subject to the City retaining ownership of the Balance City Lots.

- (b) The Minister agrees to, within 10 Business Days of receipt of a duly executed transfer (**Transfer**) under clause 9.2(a):
 - (i) execute the Transfer and provide it to DevelopmentWA or the City for lodgement at Landgate for registration,
 and as a joint lodgement with, or follower dealing to, the Transfer:
 - (ii) make an order revesting the land in the Transfer as Crown land and lodge it at Landgate for registration;
 - (iii) apply to the Registrar of Titles for the creation and registration of certificates of Crown land title for the land the subject of the Transfer and the revesting order; and
 - (iv) reserve the Tenanted Lots in accordance with clause 10 and the Project Lots for the Project Reserve Purpose and make a DevelopmentWA Management Order and lodge them at Landgate for registration,
 in accordance with clause 6.4(e).

10. Tenanted Lots

10.1 Management of Tenanted Lots

- (a) The Parties acknowledge that the City will retain the relevant parts of the City Lots and the City Management Orders comprising the Tenanted Lots until such time as those lots are required by DevelopmentWA for the purposes of the Project, in accordance with the Development Agreement and this clause 10.
- (b) The City and DevelopmentWA agree to use reasonable endeavours to maintain and manage each Existing Lease and the tenant's interest in the Tenanted Lot until such time as:
 - (i) the Tenanted Lot is required by DevelopmentWA for the purposes of the Project; and
 - (ii) the Existing Lease has been terminated in accordance with the terms of the Existing Lease and the Development Agreement, or surrendered with the agreement of the tenant and in accordance with the Development Agreement.
- (c) The City will give notice to DevelopmentWA, who in turn will give notice to the Minister, when an Existing Lease has been terminated or surrendered in the manner provided for in clause 10.1(b)(ii), at which time the relevant Tenanted Lot will be dealt with in accordance with the other provisions of this Deed.

10.2 Tenanted Lot held in freehold

- (a) The Parties agree that, during the period referred to in clause 10.1(a), it is more expedient and conducive for the Tenanted Lot comprised in Project Lot 509 to be transferred to the State, revested as Crown land and managed as a reserve under the LA Act by the City, subject in all respects to the Existing Lease.
- (b) For the purposes of clause 10.2(a), the Parties agree that the management of the Tenanted Lot as a reserve under the LA Act may be by way of:
 - (i) a new reserve for a suitable reserve purpose with a management order to the City with a power to lease; or
 - (ii) amalgamated with Reserve 47831 and so it becomes subject to the City's Management Order K360388.
- (c) The Parties agree to do all things reasonably necessary to give effect to the dealings and matters agreed under this clause 10.2, provided that the dealings are to occur contemporaneously and consistently with the other provisions of this Deed (to the extent they deal with the area of land in Project Lot 509).

- (d) The things reasonably necessary in clause 10.2(c) include providing and signing all relevant transfers, forms and agreements and providing all relevant consents.

10.3 Agreement to reserve Tenanted Lot

- (a) The Minister agrees to, within 10 Business Days of receipt of a notice by the City or DevelopmentWA under clause 10.1(c):
 - (i) revoke the City Management Order over the Tenanted Lot; and
 - (ii) reserve the Tenanted Lot for the Project Reserve Purpose and to make a DevelopmentWA Management Order and lodge them at Landgate for registration.
- (b) When a DevelopmentWA Management Order is made under clause 10.3(a), the relevant Tenanted Lot will then become a Project Lot for the purposes of this Deed.

10.4 Agreement to provide access

If:

- (a) a DevelopmentWA Management Order is made in respect of Project Lot 511; or
- (b) Project Lot 511 is transferred in fee simple to DevelopmentWA,

before the Tenanted Lots become Project Lots under clause 10.3(b), DevelopmentWA agrees to work collaboratively with the City and the Marine Rescue Whitfords and the Ocean Reef SSC to ensure that access is maintained to the Tenanted Lots for the benefit of Marine Rescue Whitfords and the Ocean Reef SSC prior to the Revocation Date, unless Marine Rescue Whitfords and the Ocean Reef SSC agree otherwise or have vacated their Tenanted Lot prior to the Revocation Date.

10.5 Agreement to take possession

DevelopmentWA agrees to take possession of a Tenanted Lot if:

- (a) the Existing Lease has been terminated or surrendered in the manner provided for in clause 10.1(b)(ii) and the Tenanted Lot has been vacated; and
- (b) the City has given at least 30 days' notice in writing to DevelopmentWA of the date on which clause 10.5(a) is likely to be satisfied,

whether or not clause 10.3 has been complied with, by the date on which DevelopmentWA is due to take possession of the Tenanted Lot under this clause.

11. Timing of transfer and revocation

11.1 Notice as proof

- (a) The Parties agree that the Minister may rely on any notice given by DevelopmentWA under this Deed that it contains a statement or representation that is in accordance with the Development Agreement, or any matter agreed between DevelopmentWA and the City in respect of the Project including in relation to:
 - (i) the area of a Project Lot, a Tenanted Lot, a Balance Crown Lot or a Balance Freehold Lot;
 - (ii) the timing for the transfer and revesting of each City Lot or revocation of each City Management Order over a Project Crown Lot or Tenanted Lot, as the case may be; and
 - (iii) the satisfaction of all preconditions to any such a transfer and revesting or revocation,unless the Minister has knowledge, or specific notice in writing from DevelopmentWA or the City, to the contrary or is in breach of this Deed.
- (b) The Minister is not liable to DevelopmentWA or the City for taking any steps to transfer and revest a City Lot or revoke a City Management Order in respect of a Project Crown

Lot or a Tenanted Lot, as the case may be, pursuant to a notice that the Minister may rely on under clause 11.1(a).

- (c) DevelopmentWA indemnifies the City against all losses, costs, damages, expenses or liability suffered or incurred by the City in relation to the City Lots or the City Crown Lots where all of the following apply:
 - (i) a notice is given to the Minister by DevelopmentWA under this Deed;
 - (ii) the notice contains a statement or representation that the subject matter of the notice is in accordance with the Development Agreement, or any matter agreed between DevelopmentWA and the City in respect of the Project;
 - (iii) the subject matter of the notice is not:
 - (A) in accordance with the Development Agreement; or
 - (B) a matter agreed between DevelopmentWA and the City in respect of the Project, where the City's agreement is required; and
 - (iv) the Minister is entitled to rely and relies on the notice under clause 11.1(a).

12. Restrictions on dealings by the City

- (a) The City must not sell, transfer, relinquish, dispose of, subdivide, mortgage, charge or otherwise deal with or encumber the City Lots or the City Crown Lots except in accordance with the terms of a Principal Project Document or otherwise in accordance with the prior written consent of DevelopmentWA.
- (b) Despite clause 12(a), the City may lease or otherwise deal with a Balance Crown Lot in accordance with the relevant City Management Order and the LA Act during the Term, provided that it will not materially restrict or materially prejudice the ability to deal with the relevant Reserve in the manner provided for or contemplated under a Principal Project Document.
- (c) Nothing in this Deed affects the right of the City to lease or otherwise deal with:
 - (i) a Balance Freehold Lot; or
 - (ii) a Future City Lot once it has been transferred to the City.

13. Access Licence

13.1 Application

This clause 13 applies during such times and to the extent that the land formerly comprising the City Lots and City Crown Lots, or any portion of or subdivided subsequent title affecting the same:

- (a) is held by the State in freehold; or
- (b) is unallocated Crown land or an unmanaged reserve under the LA Act,
(ORM State land).

13.2 Grant of Access Licence on provision of notice

- (a) The Minister acknowledges that DevelopmentWA may require access to the ORM State land in order to:
 - (i) undertake works or other actions to comply with a condition of a Crown Subdivision or a Freehold Subdivision; or
 - (ii) progress the development of the Project.
- (b) If DevelopmentWA requires access to ORM State land for a purpose under clause 13.2(a), DevelopmentWA may give a notice to the Minister which:
 - (i) specifies the date from which access is required (which date must be a date at least 15 Business Days after the date of the notice);

- (ii) specifies the period for which access is required; and
- (iii) attaches a sketch which identifies the part of the ORM State land to which DevelopmentWA requires access and that will comprise the licensed area for the purposes of the Access Licence.

(Access Licence Notice).

- (c) DevelopmentWA may give an Access Licence Notice to the Minister more than once in respect of:
 - (i) different parts of the ORM State land at or around the same time; or
 - (ii) the same area of the ORM State land at different times.
- (d) Within 15 Business Days of receipt of an Access Licence Notice, the Minister must grant an Access Licence to DevelopmentWA in relation to the area of land, from the commencement date and the period specified in the Access Licence Notice.

Part C – Divestment Strategy

14. Acknowledgement of Divestment Strategy

14.1 Future City Areas and Future City Lots

The Parties acknowledge that pursuant to the terms of the Development Agreement and this Deed:

- (a) DevelopmentWA will develop the Project Lots including the Tenanted Lots to create, among other things, the Future City Areas subject to the terms of clauses 12 and 20.5(b) and (c) of the Development Agreement;
- (b) the location, size and layout of the Future City Areas are detailed in the Divestment Strategy;
- (c) further subdivision plans relating to the Future City Areas will be prepared as the Project progresses;
- (d) the Future City Lots will be transferred to the City following their completion and subdivision, and subject to the Specified Encumbrances;
- (e) the Public Open Spaces will be vested in the State following their completion and subdivision, and are to be reserved and placed with the City:
 - (i) for the reserve purpose as provided for in the Divestment Strategy or as otherwise agreed by the Parties;
 - (ii) for its care, control and management and subject to the Specified Encumbrances; and
 - (iii) where applicable in accordance with the Divestment Strategy, with:
 - (A) no power to lease but with power to licence for a term not exceeding 12 months the Public Open Space comprising public open space vested under section 152 of the PD Act; and
 - (B) the power to lease or licence any other Public Open Space for a term not exceeding 21 years or as otherwise by the Minister at the time of granting the relevant management order; and
- (f) the Completed Roads will be dedicated as Dedicated Roads.

14.2 Project Lots

- (a) The Parties acknowledge that in order to facilitate the delivery of the Project including for the purpose of carrying out of subdivision and development works, the whole or part of the Project Lots may be:

- (i) held by DevelopmentWA under a DevelopmentWA Management Order; or
 - (ii) transferred by the State in fee simple to, or held by, DevelopmentWA in fee simple, instead of or subsequent to a DevelopmentWA Management Order.
- (b) Nothing in clause 14.2(a) affects the right of the City to have:
 - (i) the Balance Crown Lots reserved for the Reserve Purpose and retained or placed under the City's care, control and management; and
 - (ii) the Future City Areas delivered and dealt with in accordance with clause 14.1, and the provisions of this Deed in relation to these matters will apply to impose the relevant obligation on DevelopmentWA to the extent it has ownership or control of the relevant area of land under clause 14.2(a).

15. Actions to give effect to Divestment Strategy

15.1 General

- (a) The Parties agree to collaborate and cooperate with each other to ensure all subdivisions and transfers are effected, reserves are created or amended, and management orders are made or retained placing the care, control and management of the relevant reserves with the City as may be required to give effect to the Divestment Strategy as and when reasonably required by DevelopmentWA.
- (b) Without limiting clause 15.1(a), the Minister agrees to:
 - (i) transfer the Future City Lots (if the land is Crown land at the relevant time) to the City, subject to clause 15.2 and 15.3 (as applicable);
 - (ii) reserve and place the care, control and management of the Public Open Spaces with the City;
 - (iii) dedicate the Completed Roads as Dedicated Roads, within 30 Business Days of written notice being given by DevelopmentWA to the Minister and the City, subject to the plan for the relevant land being in order for the dealing.
- (c) The Parties will use reasonable endeavours and will negotiate in good faith to vary the terms of this Deed, or enter into further agreements, if required to give effect to the matters referred to in clause 15.1(a) and clause 15.1(b).
- (d) DevelopmentWA and the City agree that nothing in this Deed affects clause 23 or any other provision in the Development Agreement relating to the Handover (as that term is defined in the Development Agreement) of a Future City Area.

15.2 Beach Parking Area

The Parties agree that the transfer in fee simple of the Beach Parking Area will be subject to such positive or restrictive covenant or other form of encumbrance, condition or restriction:

- (a) which provides that:
 - (i) without limiting how the land may be otherwise developed and used, the land must be used for the provision of a minimum number of public car parking bays (which will not be less than 210 bays), other than during periods of repair and maintenance, replacement or refurbishment; and
 - (ii) until completion of the Project, the parking fees charged by the City will be set and maintained at a rate so as not to inhibit public visitation to, and the activation of, the Project and thereafter the City may determine the parking fees in its discretion; that is in favour of the Minister or DevelopmentWA, and otherwise on terms and conditions reasonably agreed by the Parties; and
- (b) being registered or registrable on the certificate of title to that fee simple land.

15.3 Future Club Facilities Lot

- (a) The Parties agree that the tenure of the Future Club Facilities Lot will be transferred in fee simple by DevelopmentWA to the City:
 - (i) subject to the Section 15 Covenant and this clause 15.3; and
 - (ii) by no later than the date that is 10 Business Days after the Date of Practical Completion of the Future Club Facilities Lot Works.
- (b) The Parties acknowledge and agree that:
 - (i) the restrictive covenants and positive covenants set out in the Section 15 Covenant in relation to the use of the Future Club Facilities Lot, will be entered into by the Minister for the purposes of section 15(1)(a) of the LA Act, in anticipation of the transfer of the Future Club Facilities Lot in fee simple by the Minister to DevelopmentWA and then subsequently from DevelopmentWA to the City or, if clause 15.3(h) applies, by the Minister to the City;
 - (ii) the Minister will enter into the Section 15 Covenant and make an order under section 15(3)(a)(i) of the LA Act when the Future Club Facilities Lot has been finally surveyed (in respect of that area) and is ready to be transferred in fee simple to DevelopmentWA (or the City, if clause 15.3(h) applies) (**First Transfer**), and lodge it for registration at Landgate immediately prior to the First Transfer;
 - (iii) the execution and registration of the Section 15 Covenant will create covenants that:
 - (A) are intended to be positive covenants and restrictive covenants as contemplated by section 15(7) of the LA Act, being provisions or requirements relating to the Future Club Facilities Lot as contemplated by section 15(7)(a) and (b) of the LA Act;
 - (B) are in favour of DevelopmentWA, which is a State instrumentality as defined in the LA Act and referred to in section 15(6)(a)(i) of the LA Act;
 - (C) will bind and run with the Future Club Facilities Lot pursuant to sections 15(6)(c) and 15(15) of the LA Act;
 - (D) will be enforceable against the Covenantor and its successors in title, even if the covenants are not annexed to land in which DevelopmentWA has an estate or interest, pursuant to section 15(6)(d) of the LA Act; and
 - (E) will bind the successors in title of the Covenantor when the land is transferred in fee simple, pursuant to section 15(15) of the LA Act.
- (c) The Minister agrees with DevelopmentWA and the City to transfer the fee simple estate in the Future Club Facilities Lot to DevelopmentWA, or the City if clause 15.3(h) applies, subject to the Section 15 Covenant including the obligations contained in clause 2 of it.
- (d) The Minister, DevelopmentWA and the City (if applicable) agree to enter into and execute the Section 15 Covenant and will do all things necessary to ensure that the Section 15 Covenant will be registered on the certificate of Crown land title to the Future Club Facilities Lot immediately prior to registration of the First Transfer.
- (e) If the Section 15 Covenant is not registered at the time of the First Transfer, in accordance with clause 15.3(b), for any reason, the Minister, DevelopmentWA and the City agree that:
 - (i) this Deed is an agreement for the purposes of section 15(1)(b) of the LA Act and that the Future Club Facilities Lot is 'agreement land' for the purposes of section 15(2) of the LA Act; and
 - (ii) the Future Club Facilities Lot will be transferred to DevelopmentWA, or the City if clause 15.3(h) applies, subject to the Section 15 Covenant.
- (f) DevelopmentWA and the City each acknowledge and agree that:
 - (i) the Minister has entered into this clause 15.3 at the request of DevelopmentWA and the City; and

- (ii) the Minister will not be liable for any costs, expenses, liabilities, suits, damages or claims howsoever arising:
 - (A) as a result of anything done or to be done under this clause 15.3, including the creation and registration of the Section 15 Covenant, or the Section 15 Covenant; or
 - (B) as to the subsequent validity or enforceability of the Section 15 Covenant.
 - (g) The City, in its capacity as the current management body for and primary interest holder in the land comprising the Future Club Facilities Lot being Crown Lot 15546 in respect of reserve 47831, consents to the creation and registration of the Section 15 Covenant under the terms of this Deed.
 - (h) The Parties agree that if, in carrying out the Project, DevelopmentWA and the Minister determine that it is more expedient for the Future Club Facilities Lot to be transferred in fee simple by the Minister directly to the City, or if the Section 15 Covenant is not registered at the time of the First Transfer, in accordance with clause 15.3(b) for any reason:
 - (i) the Parties agree the provisions of this clause 15.3 will apply with all suitable modifications; and
 - (ii) in particular, the City agrees to take the transfer of the fee simple of the Future Club Facilities Lot subject to the Section 15 Covenant and will enter into the Section 15 Covenant as covenantor in favour of DevelopmentWA.
 - (i) The Parties agree that due to the early design stage of the Future Club Facilities Lot at the date of this Deed, the terms of the Section 15 Covenant may need to be varied when the fee simple in the Future Club Facilities Lot is being transferred subject to the Section 15 Covenant under this clause 15.3, in which case:
 - (i) the Section 15 Covenant will be varied to give effect to the public and community purposes provided for in the design and as required by DevelopmentWA (acting reasonably and after consulting with the City), including in relation to:
 - (A) the number and location of public car parking bays, including a plan of the car parking area; and
 - (B) the portion of commercial revenue to be allocated for the maintenance and upkeep of the improvements and facilities on the Future Club Facilities Lot and surrounding areas and for the application or use for community purposes on the Future Club Facilities Lot; and
 - (ii) a dispute as to the terms of any variation of the Section 15 Covenant under clause 15.3(i)(i) will be determined in accordance with clause 20 of this Deed. If the dispute is not resolved under clause 20 within the 20 Business Day period referred to in it, the dispute will be determined by the Minister in his or her absolute discretion, on referral by either DevelopmentWA or the City.
 - (j) The City acknowledges and agrees that DevelopmentWA has agreed to the Future Club Facilities Lot being transferred in freehold subject to the Section 15 Covenant under this clause 15.3 to the City in consideration of the City agreeing as follows:
 - (i) the City will be responsible for the day to day management and day to day maintenance of the ocean pool and any associated facilities such as a kiosk (**Ocean Pool**), which is proposed to be constructed in the vicinity of the jetty adjoining the Future Club Facilities Lot;
 - (ii) the City will not be responsible for any repair, maintenance, upgrade or replacement of:
 - (A) the Ocean Pool that are works of a capital or structural nature; or
 - (B) the jetty or any other structure forming part of or in the vicinity of the Ocean Pool,
- except to the extent caused or contributed to by the wilful or negligent act or default of the City or its officers, consultants, contractors, employees and agents; and

- (iii) the City will contribute its existing jetties in the Project area free of charge for re-use as part of the new marina boat ramps in the Project.
- (k) DevelopmentWA and the City will negotiate in good faith any further management or other agreement required by either Party to give effect to any of the matters provided for in clause 15.3(j), when the design and construction of the relevant works is known.

Part D – General Provisions

16. Warranty and declaration

16.1 Warranty

The City warrants in favour of the State and DevelopmentWA that the City has provided to DevelopmentWA (and on request, will provide to the Minister) copies of all:

- (a) current leases, licences or other agreements relating to the City Lots or City Crown Lots;
- (b) environmental and contamination studies and reports relating to land including the City Lots or City Crown Lots; and
- (c) other similar documents and data relevant to the material risks pertaining to land including the City Lots or City Crown Lots, or the Project generally,

within the possession or control of the City.

16.2 Statutory Declaration

The City agrees that the City will provide to the Minister a statutory declaration as to the City's knowledge in respect of unregistered interests in, and contamination of:

- (a) the Project City Lots, when they are transferred to the State under clause 6; and
- (b) the Project Crown Lots, when the City's Management Order is revoked in respect of them under clause 7,

in a form substantially consistent with the draft statutory declaration annexed to this Deed as Schedule 6.

17. Release and indemnity

17.1 Release

On and from the Commencement Date, the City to the full extent permitted by law, releases the Minister and the State from any Claim, liability, duty or obligation to the City (or any party claiming through or on behalf of the City) in respect of the presence of any Contamination in on or under, or any pollution of (as the term 'pollution' is defined in the *Environmental Protection Act 1986* (WA)) a City Lot or City Crown Lot existing prior to the date that:

- (a) the City Lot (or any portion of it) is transferred to the State;
- (b) the City Management Order in respect of the City Crown Lot (or any portion of it) is revoked,

or possession of which is taken by DevelopmentWA, whichever is the earlier in each case.

17.2 Responsibility for Contamination

- (a) The City and DevelopmentWA agree that the State and the Minister will not be liable for any Claim, liability, duty or obligation to any third party in connection with the presence of any Contamination in on or under, or any pollution of (as the term 'pollution' is defined in the *Environmental Protection Act 1986* (WA)) a City Lot or City Crown Lot existing prior to the date that:

- (i) the City Lot (or any portion of it) is transferred to the State;
 - (ii) the City Management Order in respect of the City Crown Lot (or any portion of it) is revoked,
- or possession of which is taken by DevelopmentWA, whichever is the earlier in each case.
- (b) DevelopmentWA agrees that, as between it, the State, the Minister and the City, DevelopmentWA is liable to remediate any Contamination in on or under, or any pollution of (as the term 'pollution' is defined in the *Environmental Protection Act 1986 (WA)*) a Project Lot (formerly comprising the whole or part of a City Lot or City Crown Lot) that is required to be carried out for the development of the Project.

18. Exclusion of liability

18.1 Minister and State not liable

The City agrees that the Minister and the State shall not be liable for, and the City releases the Minister and the State from, all liability, loss, damages, or Claims arising in connection with, and costs and expenses incurred in connection with land, infrastructure or assets relating to:

- (a) the Future City Lots once transferred to the City; and
- (b) the Balance Crown Lots or the Public Open Space once the care, control and management of a Balance Crown Lot or Public Open Space is placed with the City,

except to the extent caused by the gross negligence or wilful misconduct of the Minister or its consultants, contractors, employees, agents and invitees.

18.2 Effect of Development Agreement

Nothing in this clause 18 affects the provisions in clause 27 of the Development Agreement.

19. Notices

- (a) A notice or other communication under this Deed is only effective if it is:
 - (i) in writing, signed; and
 - (ii) either left at the addressee's address or sent to the addressee by post or email, subject to clause 19(b).
- (b) A notice or other communication may not be given to the Minister under this Deed by email but must be given by leaving it at the address or sending it by post.
- (c) If the notice or communication is given by:
 - (i) leaving it at the addressee's address, it is taken to have been received:
 - (A) on the day it is left, if it is left before 5.00pm on a Business Day; or
 - (B) otherwise, on the next Business Day;
 - (ii) mail, it is taken to have been received 3 Business Days after it is posted;
 - (iii) email, it is taken to have been received when the sender of the email receives a confirmation of delivery message generated by the sender's system.
- (d) Each Party's mail and email address for the service of notices, at the Commencement Date, is set out in the Details at the front of this Deed.

20. Disputes

- (a) Each Party must use their reasonable endeavours to avoid any form of dispute under this Deed.
- (b) Should a dispute arise between the Parties:

- (i) a representative of any Party shall provide notice to the other Parties to the dispute (**Dispute Notice**);
- (ii) the affected Parties must nominate a representative to meet to resolve the dispute in good faith attempt within 10 Business Days of service of the Dispute Notice (**Initial Meeting**); and
- (iii) if the affected Parties cannot resolve the dispute through participation at an Initial Meeting (or further meetings as agreed by the Parties), the Chief Executives of each Party must meet within 20 Business Days of that Initial Meeting to meet to resolve the dispute in good faith.

21. No fetter

Nothing in this Deed fetters, replaces or alters, or is to be taken as fettering, replacing or altering the exercise of:

- (a) a statutory function (having the meaning of the term 'function' as defined in the *Interpretation Act 1984* (WA)), by the WAPC; or
- (b) the City's statutory powers, functions, obligations and discretions (including but not limited to the City's statutory planning and building functions).

22. Further action and documents

Each Party must do, at its own expense (subject to clause 4), everything reasonably necessary (including executing deeds) to give full effect to this Deed and any subdivision, transfer, grant, revocation or other transaction contemplated by it, including:

- (a) taking all reasonable actions in their control;
- (b) executing all applications (including development and subdivision applications), transfers, documents, forms and consents;
- (c) attend any joint lodgements at Landgate; and
- (d) enter into any further agreements and documents on reasonable terms to give effect to the transactions contemplated by this Deed.

23. Goods and Services Tax

23.1 Defined terms

In this clause 23:

- (a) unless the context otherwise requires, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) has the meaning given to it in that Act;
- (b) a reference to a GST liability or input tax credit entitlement of a Party includes a GST liability or input tax credit entitlement of the representative member of any GST group of which that Party is a member;
- (c) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 23; and
- (d) any reference to GST payable by, input tax credit entitlements of or adjustments for a Party includes any notional GST, input tax credits or adjustments arising in accordance with Division 177 of the GST Act or any relevant State legislation confirming the imposition of GST on State entities.

23.2 Consideration GST exclusive

Any consideration to be paid or provided for a supply made under or in connection with this Deed, unless specifically described in this Deed as 'GST inclusive', does not include an amount on account of GST.

23.3 Gross up

If a Party (**Supplier**) makes a supply under or in connection with this Deed in respect of which GST is payable (not being a supply the consideration for which is specifically described in this Deed as 'GST inclusive'):

- (a) the consideration payable or to be provided for that supply under this Deed but for the application of this clause (**GST exclusive consideration**) is increased by, and the recipient of the supply (**Recipient**) must pay to the Supplier, an amount equal to the GST payable on the supply (**GST Amount**); and
- (b) subject to clause 23.5, the GST Amount must be paid to the Supplier by the Recipient:
 - (i) at the same time as the first part of any of the GST exclusive consideration is payable; or
 - (ii) within 10 Business Days of issue of the tax invoice to which the GST Amount applies, if no other payment is required to be made as part of the consideration for the relevant supply.

23.4 Reimbursement

If a Party must reimburse or indemnify another Party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other Party is entitled to for that loss, cost or expense, and then increased in accordance with clause 23.3.

23.5 Tax invoice

- (a) The Recipient need not pay a GST Amount under this Deed until it receives a tax invoice from the Supplier for the supply to which the payment relates.
- (b) Any invoice issued by a GST registered Party in respect of a taxable supply made by that Party under or in connection with this Deed must be in the form of a valid tax invoice.

23.6 Exclusion of GST from calculations

If a payment is calculated by reference to or as a specified percentage of another amount or value, that payment will be:

- (a) calculated by reference to or as a specified percentage of the amount or value exclusive of any GST component; and
- (b) then increased in accordance with clause 23.3.

23.7 Adjustments

- (a) If the GST payable by a Supplier on any supply made under or in connection with this Deed varies from the GST Amount paid by the Recipient under clause 23.3, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient so that the correct GST Amount has been paid.
- (b) Any payment, credit or refund under this clause 23.7 is deemed to be a payment, credit or refund of the GST Amount payable under clause 23.3.
- (c) If an adjustment event occurs in relation to a taxable supply, the Supplier must issue an adjustment note to the Recipient in relation to that supply within 10 Business Days of becoming aware of that adjustment event.

23.8 Non-monetary consideration

If and to the extent that the consideration for a supply under this Deed is not expressed as an amount of money:

- (a) the Recipient must:

- (i) undertake, observe and perform the act, matter or thing being the consideration for the supply; and
 - (ii) subject to clause 23.8(b), pay the GST Amount determined by reference to clause 23.3 to the Supplier without any deduction or set-off at the time that the Recipient is obliged to undertake, observe and perform the act, matter or thing being the consideration for the supply; and
- (b) without limiting the obligation to issue tax invoices under clause 23.5, the Parties may agree that any GST Amounts payable to each other for taxable supplies to which this clause 23 applies shall be offset such that only the balance, if any, is payable.

23.9 Further definitions relating to GST

Unless the context indicates otherwise, terms used in this Deed which are defined in the GST Act have the same meaning given in GST Act. For the avoidance of doubt, a reference to consideration being paid includes (in addition to the payment of money) the performance of the act, matter or thing being the consideration for the supply.

23.10 Dispute resolution

If the Recipient disputes the Supplier's application of the provisions in this clause 23, it must notify the Supplier under clause 20 so as to initiate the dispute resolution procedures under that clause. Despite any dispute concerning the provisions of this clause 23, the Recipient must pay the GST exclusive consideration for any taxable supply made by the Supplier under this Deed in accordance with the other provisions of this Deed.

23.11 GST Penalties and Interest

The Recipient of a taxable supply made under this Deed must indemnify the Supplier for any penalties and interest for which the Supplier is liable as a result of any delay or failure on the part of the Recipient to pay a GST Amount at the time provided for in clause 23.3(b), subject to the Supplier having used its reasonable endeavours to seek remission of the penalties or interest.

23.12 Margin Scheme

To the extent the margin scheme is available and DevelopmentWA, by notice in writing to the other Parties, requires the margin scheme to be applied, the Parties agree:

- (a) the margin scheme will be applied to any taxable supply under this Deed;
- (b) the Parties will agree in writing that the margin scheme will apply to the relevant taxable supply; and
- (c) the foregoing provisions of this clause 23 will be interpreted accordingly.

24. General

24.1 Costs

Each Party must pay its own costs of negotiating, preparing and executing this Deed.

24.2 Alterations

This Deed may be altered only in writing signed by each Party.

24.3 Approvals and consents

Except where this Deed expressly states otherwise, a Party cannot unreasonably withhold or delay any approval or consent under this Deed.

24.4 Assignment

A Party may only assign this Deed or a right under this Deed with the prior written consent of each other Party.

24.5 Survival

Any indemnity or any obligation of confidence under this Deed is independent and survives termination of this Deed. Any other term by its nature intended to survive termination of this Deed survives termination of this Deed.

24.6 No merger

The rights and obligations of the Parties under this Deed do not merge on completion of any transaction contemplated by this Deed.

24.7 Entire agreement

Unless otherwise provided, the Principal Project Documents and the Foundational Project Documents constitute the entire agreement between the Parties in connection with its subject matter and supersedes all previous agreements or understandings between the Parties in connection with its subject matter.

24.8 Severability

A term or part of a term of this Deed that is illegal or unenforceable may be severed from this Deed and the remaining terms or parts of the terms of this Deed continue in force.

24.9 Waiver

A Party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the Party giving the waiver.

24.10 Relationship

Except where this Deed expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the Parties.

24.11 Governing law and jurisdiction

This Deed is governed by the law of Western Australia and each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State of Western Australia.

24.12 Counterparts

This Deed may be executed in counterparts. All executed counterparts constitute one Deed.

Signing page

SIGNED for the **STATE OF WESTERN AUSTRALIA** for and on behalf of the **MINISTER FOR LANDS** by

(Signature)

(Print full name)

(Classification level, Position title
(Division)

Department of Planning, Lands and Heritage:

Pursuant to a delegation of the Minister for Lands' powers under Section 9 of the Land Administration Act 1997 in the presence of:

(Signature of witness)

(Print full name)

(Classification level, Position title
(Division)

Department of Planning, Lands and Heritage

The Common Seal of **WESTERN AUSTRALIAN LAND AUTHORITY** was hereunto affixed with the authority of its Board in the presence of:

Chief Executive Officer

Board Member

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

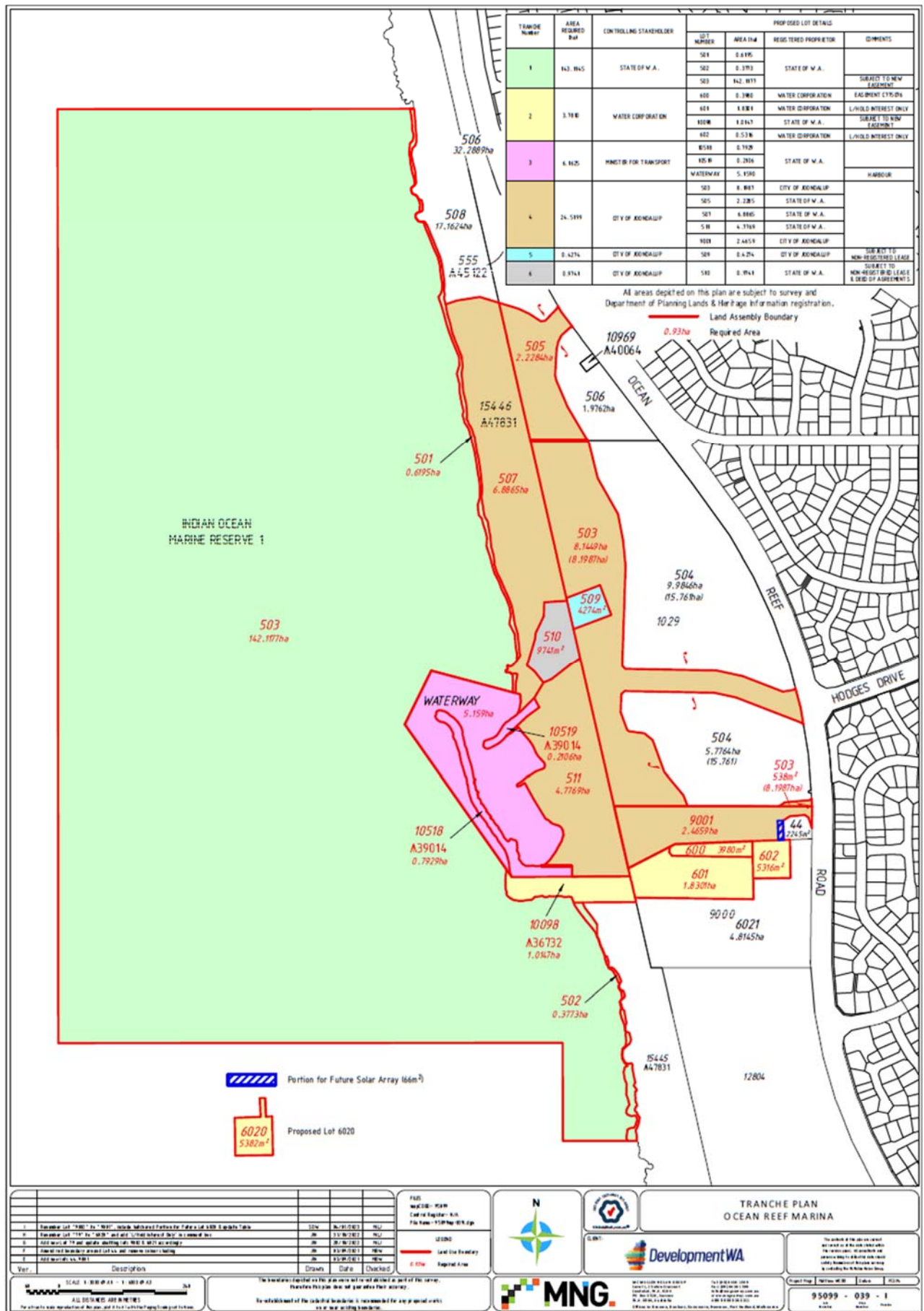
Signature of Mayor

Signature of Chief Executive Officer

Name of Mayor (print)

Name of Chief Executive Officer (print)

Schedule 1 – Land Assembly Tranche Plan



| TRANCHE Number | AREA REQUIRED (ha) | CONTROLLING STAKEHOLDER | PROPOSED LOT DETAILS | | | |
|-------------------|--------------------------|-------------------------|----------------------|-----------|-----------------------|--|
| | | | LOT NUMBER | AREA (ha) | REGISTERED PROPRIETOR | COMMENTS |
| 1 | 143.1145 | STATE OF W.A. | 501 | 0.6195 | STATE OF W.A. | SUBJECT TO NEW EASEMENT |
| | | | 502 | 0.3773 | | |
| | | | 503 | 142.1177 | | |
| 2 | 3.7810 | WATER CORPORATION | 600 | 0.3980 | WATER CORPORATION | EASEMENT C775076 |
| | | | 601 | 1.8301 | WATER CORPORATION | L/HOLD INTEREST ONLY |
| | | | 10098 | 1.0147 | STATE OF W.A. | SUBJECT TO NEW EASEMENT |
| | | | 602 | 0.5316 | WATER CORPORATION | L/HOLD INTEREST ONLY |
| 3 | 6.1625 | MINISTER FOR TRANSPORT | 10518 | 0.7929 | STATE OF W.A. | HARBOUR |
| | | | 10519 | 0.2106 | | |
| | | | WATERWAY | 5.1590 | | |
| 4 | 24.5199 | CITY OF JOONDALUP | 503 | 8.1987 | CITY OF JOONDALUP | SUBJECT TO NON-REGISTERED LEASE |
| | | | 505 | 2.2285 | STATE OF W.A. | |
| | | | 507 | 6.8865 | STATE OF W.A. | |
| | | | 511 | 4.7769 | STATE OF W.A. | |
| | | | 9001 | 2.4659 | CITY OF JOONDALUP | |
| 5 | 0.4274 | CITY OF JOONDALUP | 509 | 0.4274 | CITY OF JOONDALUP | SUBJECT TO NON-REGISTERED LEASE |
| 6 | 0.9741 | CITY OF JOONDALUP | 510 | 0.9741 | STATE OF W.A. | SUBJECT TO NON-REGISTERED LEASE & DEED OF AGREEMENTS |

Schedule 2 – Land and Asset Divestment Strategy

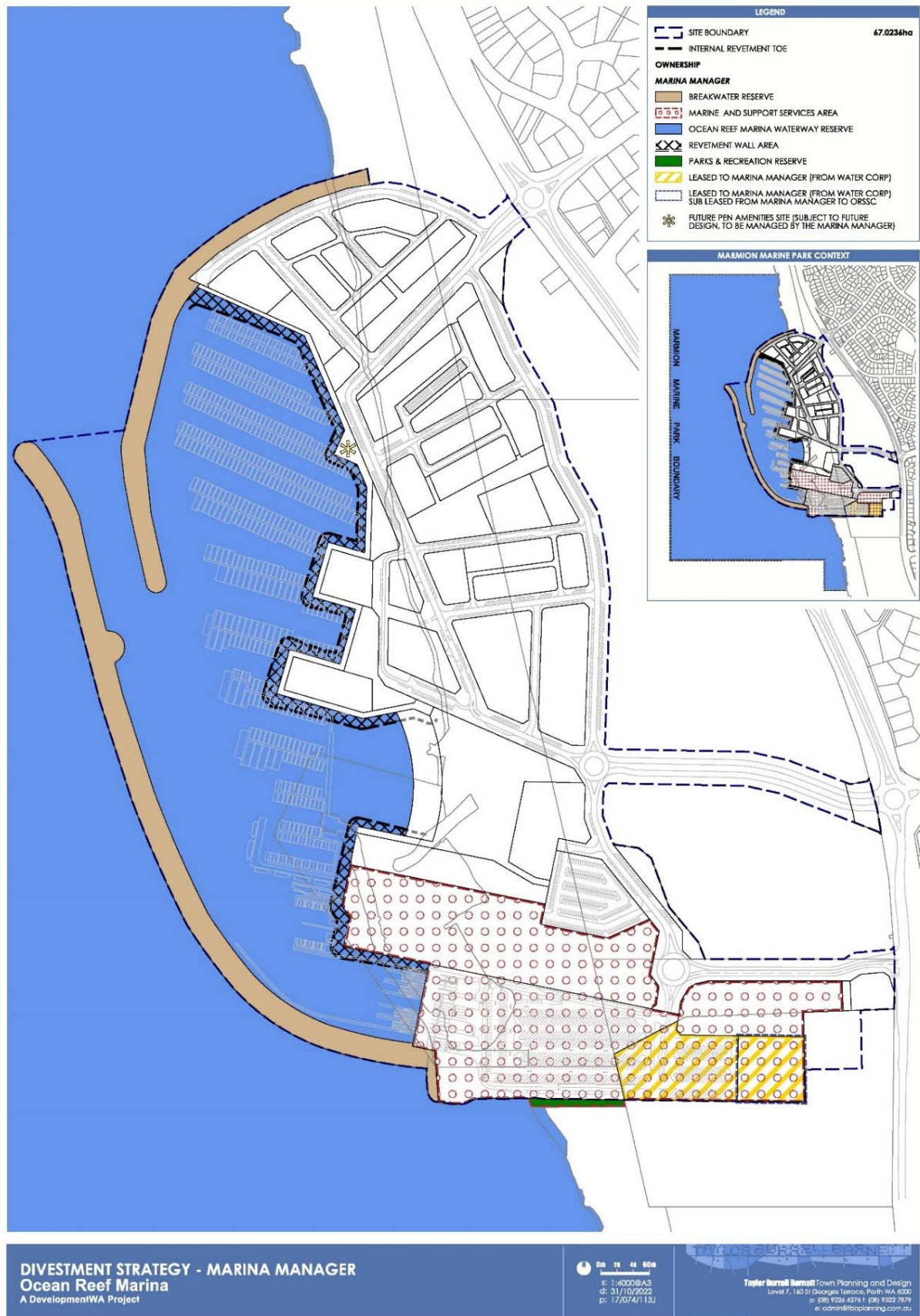
Part 1 – Combined Overview



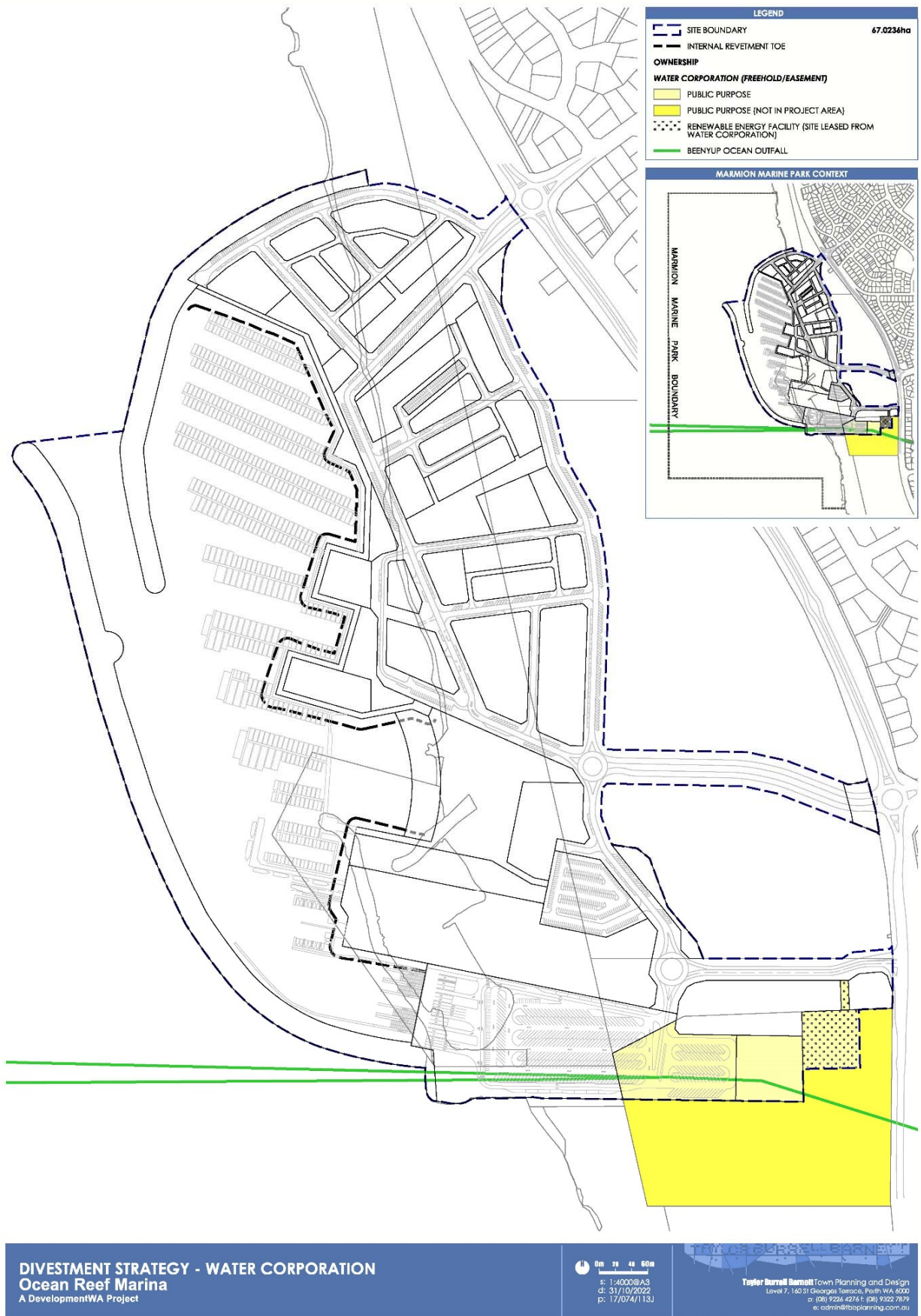
Part 2 – City of Joondalup



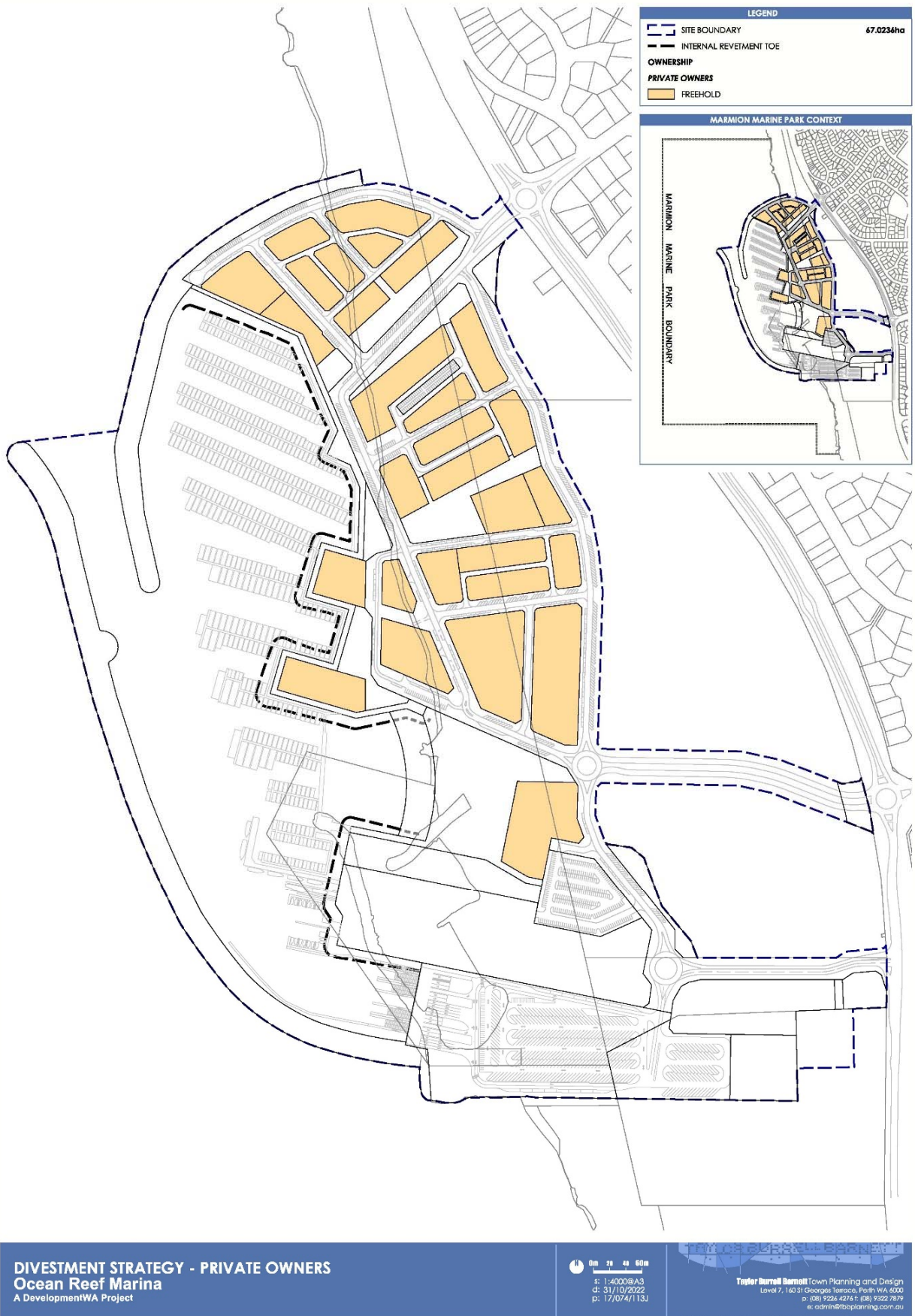
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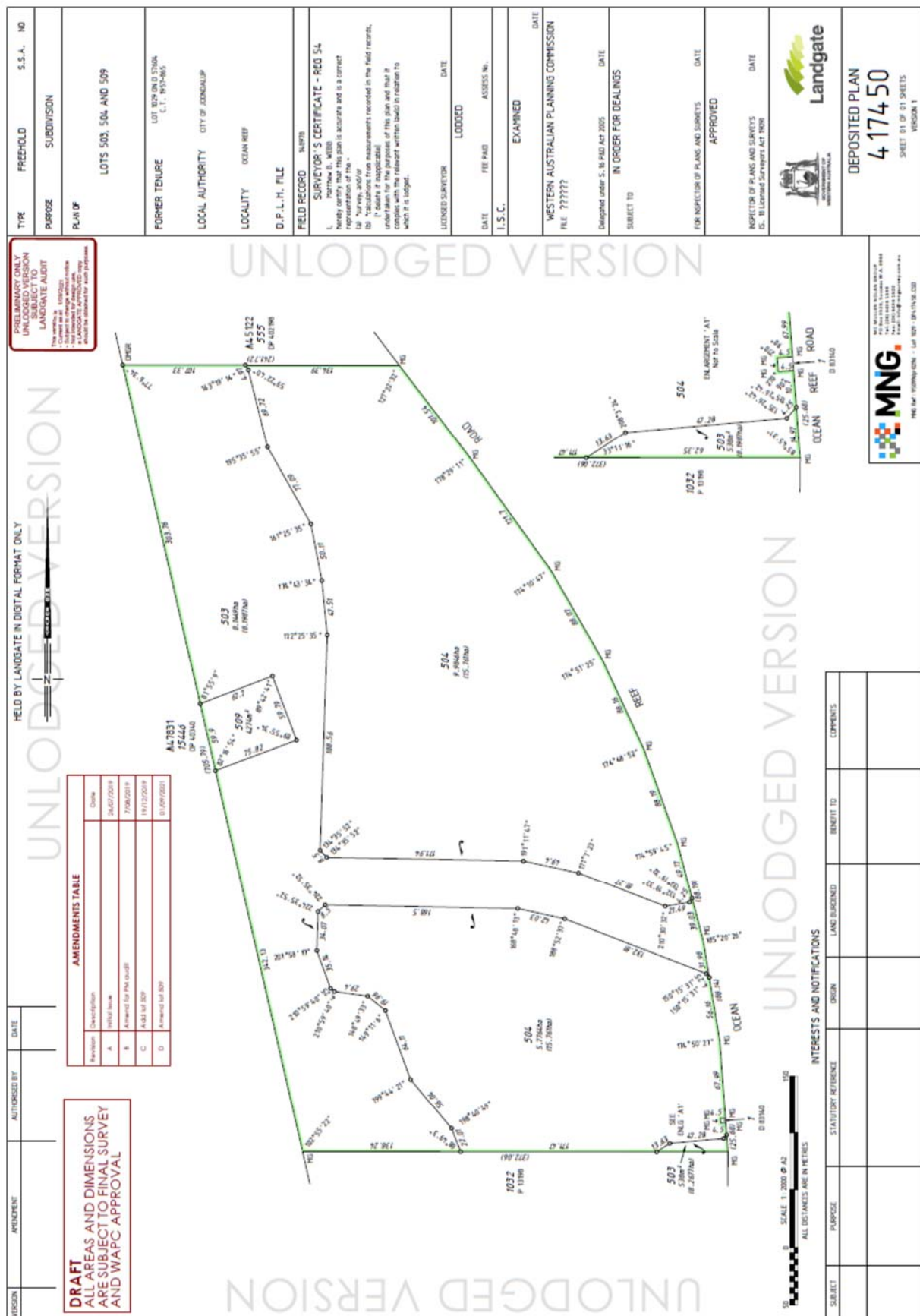


Part 4 - Water Corporation



Part 5 - Private Owners



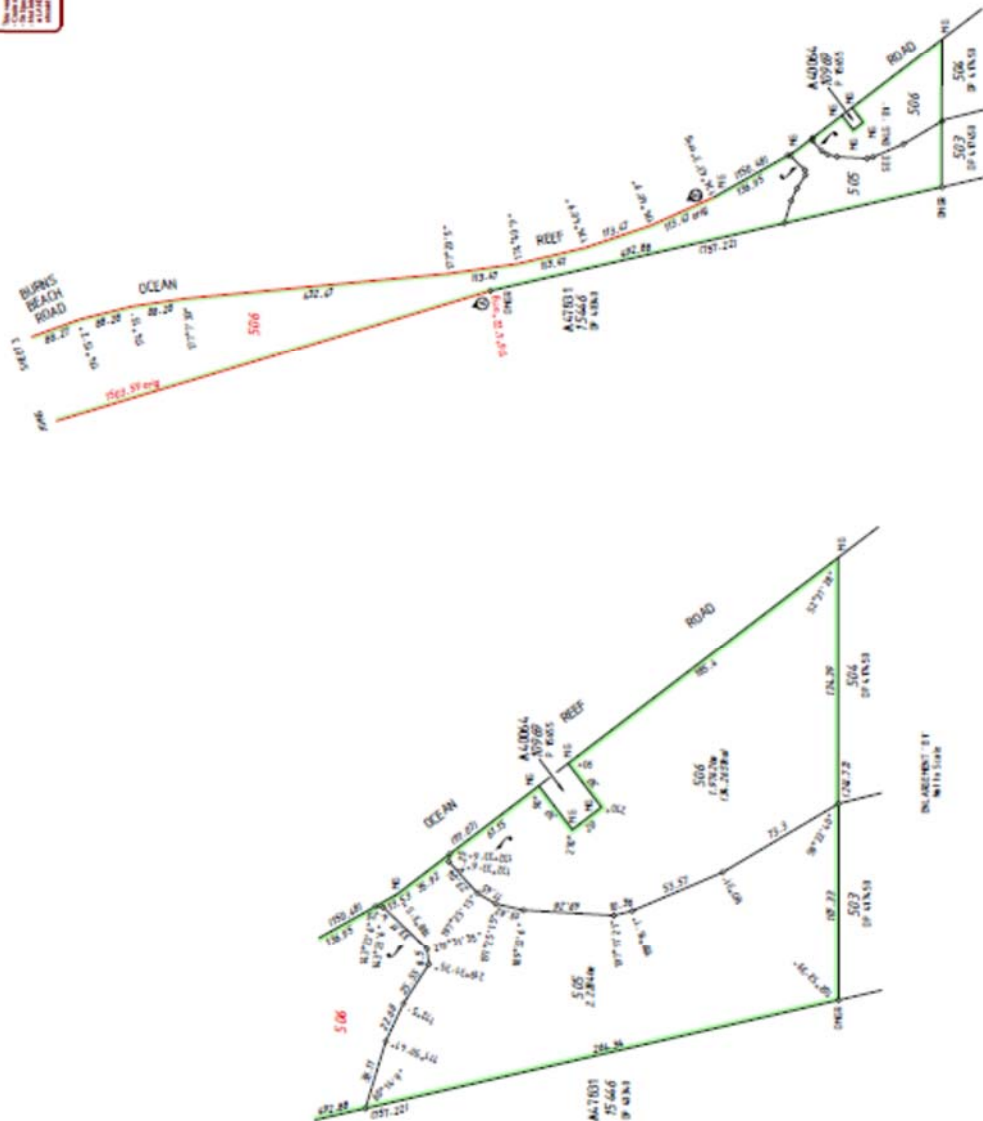


Land Transfer Deed
MinterEllison | Ref: SJE:LJR 1224217
ME 205653017 2

SEE SHEET 01 FOR AMENDMENTS TABLE

DRAFT
ALL AREAS AND DIMENSIONS
ARE SUBJECT TO FINAL SURVEY
AND WAPC APPROVAL

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SUBJECT TO
LANGUAGE AUDIT**



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Landgate

DEPOSITED PLAN

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02 OF 00
VERSION 1

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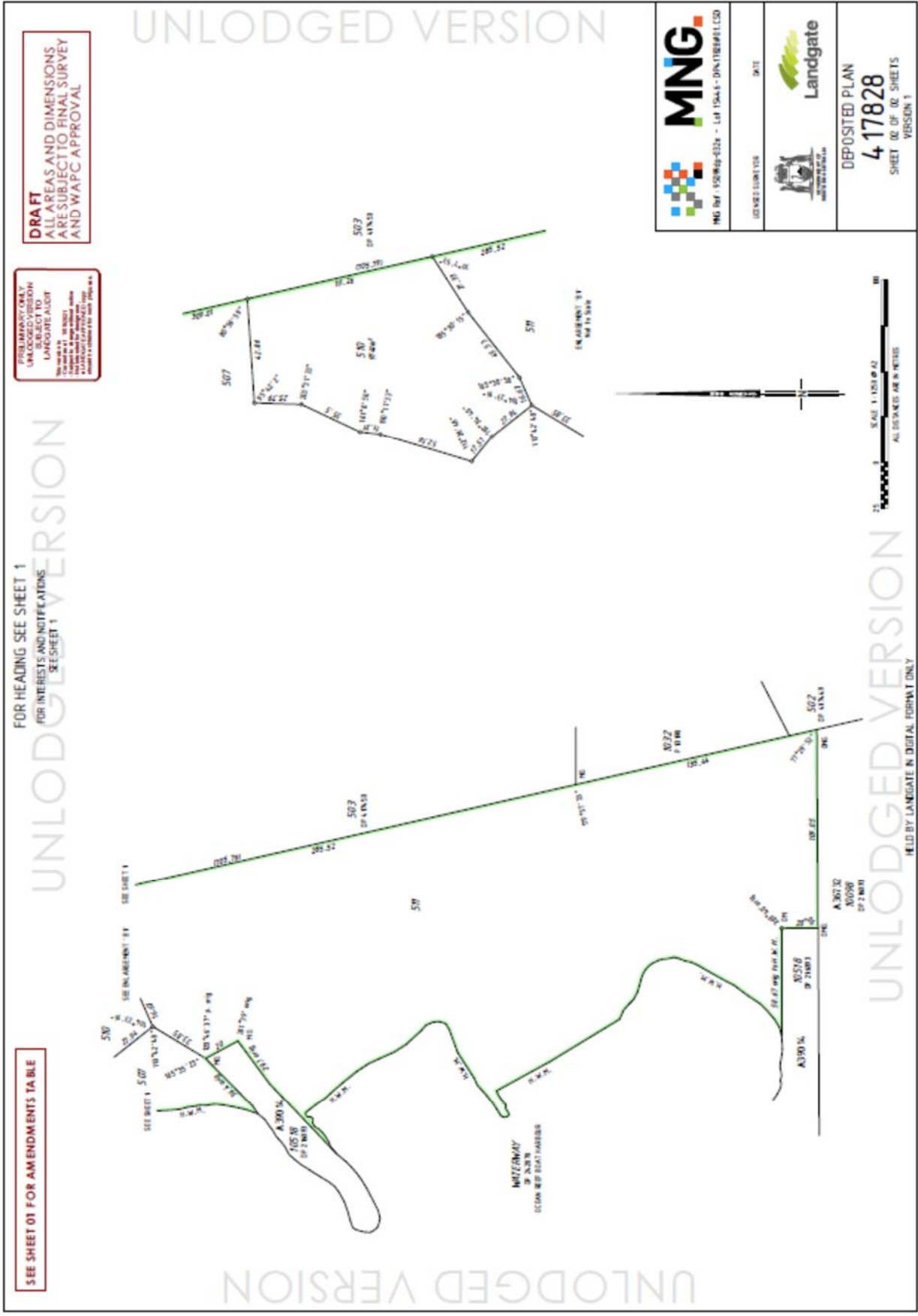
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DEPOSITED PLAN
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SHEET 03 OF 03 SHEETS
VERSION 1

DRAFT
ALL AREAS AND DIMENSIONS
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AND WAPC APPROVAL



DRAFT
ALL AREAS AND DIMENSIONS
ARE SUBJECT TO FINAL SURVEY
AND WAPC APPROVAL

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SUBJECT TO
LANDGATE AUDIT
THESE ARE NOT TO BE
USED FOR ANY OTHER
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WRITTEN PERMISSION OF
LANDGATE

FOR HEADING SEE SHEET 1
FOR INTERESTS AND NOTIFICATIONS
SEE SHEET 1

SEE SHEET 01 FOR AMENDMENTS TABLE



MNG Ref: 152866-0324 - Lot 1544-5 - DRAFT#01.CSD

ISSUED: 10/11/2024

DATE:



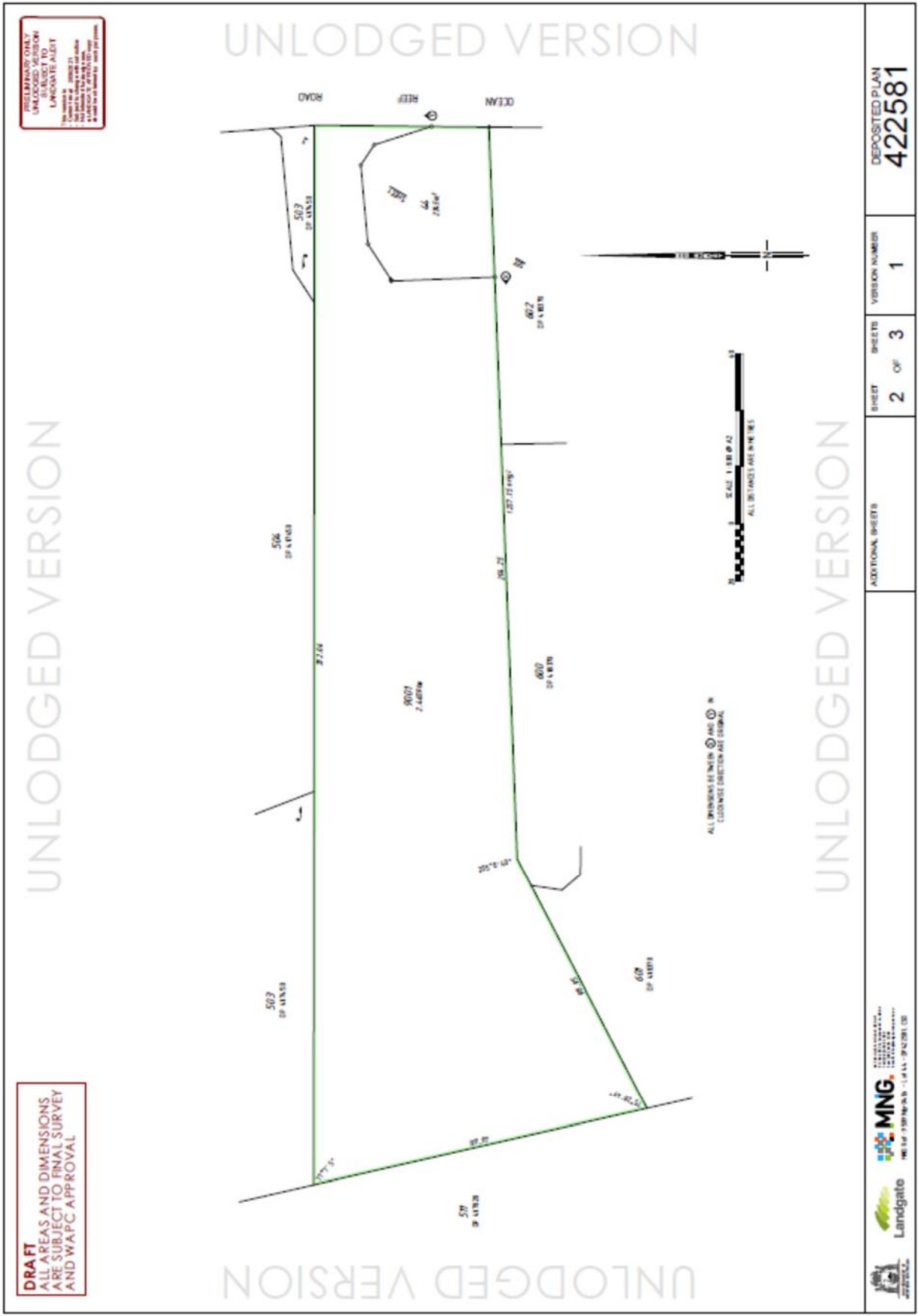
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SHEET 02 OF 02 SHEETS
VERSION 1



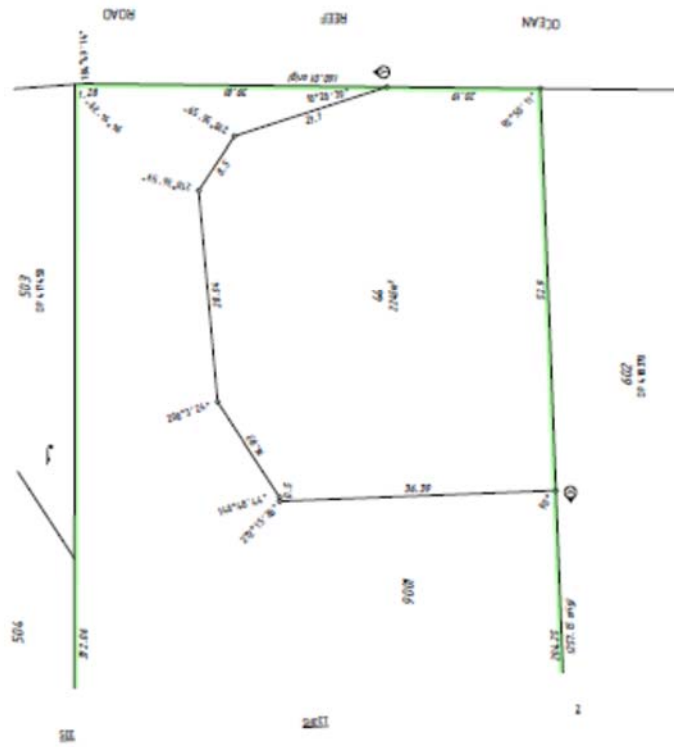
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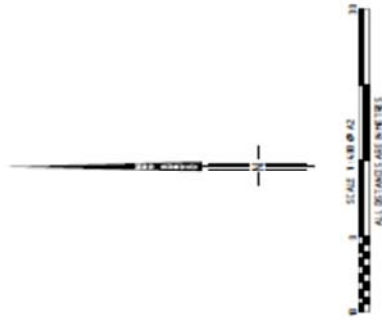
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FOR INFORMATION
LANDGATE ALERT
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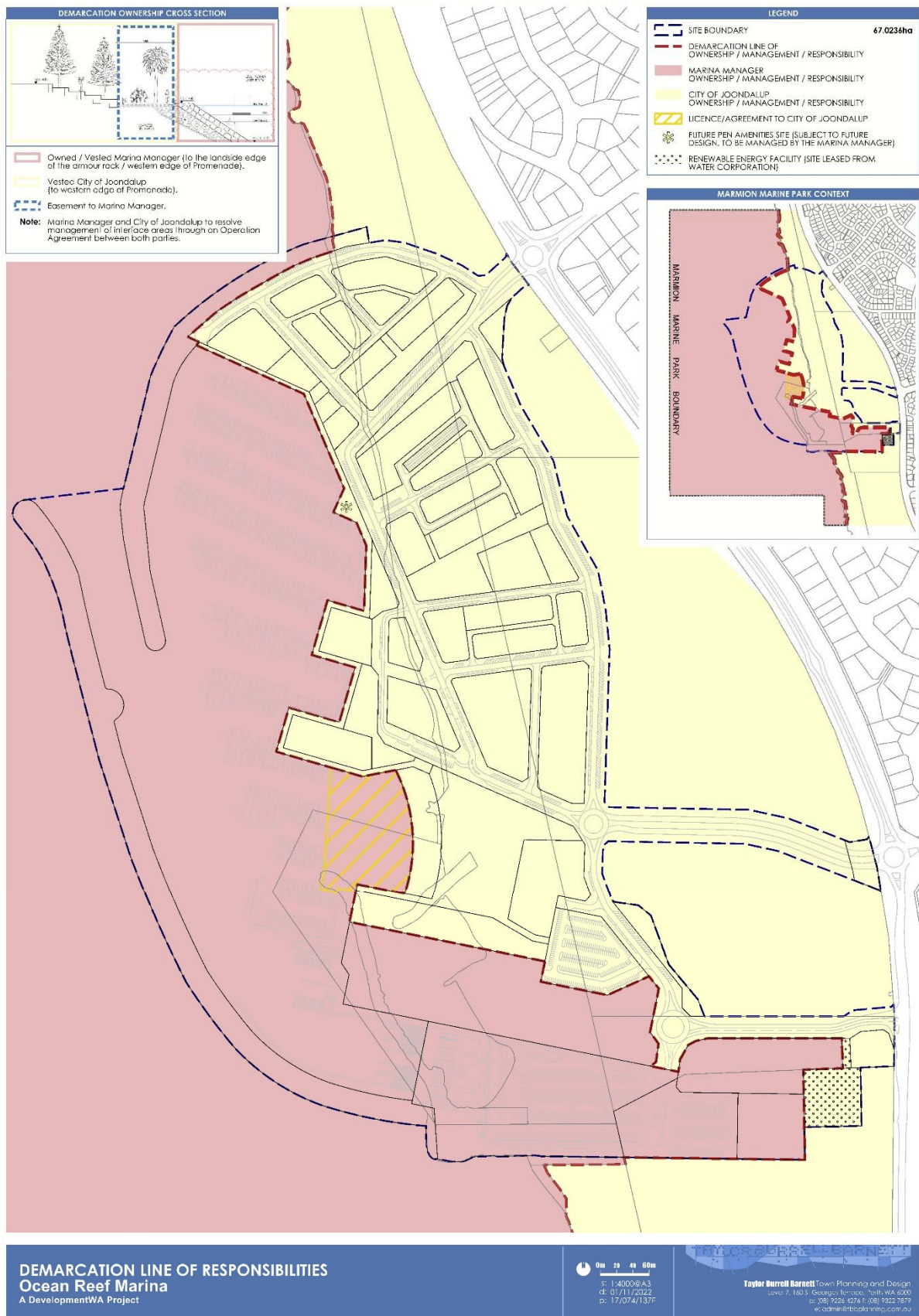
ADDITIONAL SHEETS

SHEET 3 OF 3

VERSION NUMBER 1

DEPOSITED PLAN 422581

Schedule 4 – Boundary of Responsibility



Schedule 5 – Access Licence



Department of Planning,
Lands and Heritage

Licence to Occupy Crown Land

Section -- of the *Land Administration Act 1997* (WA)

Lic **XXXXXX/XXXX_****AXXXXXXX**
(file) (year) (objective id)

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THIS DEED OF LICENCE is made on the [DAY] day of [MONTH/YEAR]

BETWEEN

THE STATE OF WESTERN AUSTRALIA ACTING THROUGH THE MINISTER FOR LANDS,
a body corporate under the *Land Administration Act 1997*, care of Department of Planning,
Lands and Heritage, 140 William Street, Perth (Licensor)

AND

[LICENSEE] (Licensee)

BACKGROUND

- A. The Licence Area is a portion of Crown land. Crown land is administered by the Minister through the Department on behalf of the State of Western Australia.
- B. The Licensee wishes to have access to the Licence Area for the Permitted Use.
- C. The Minister on behalf of the State of Western Australia is authorised by [delete below as applicable]
- (section 91 of the LAA to grant a licence of Crown land for any purpose.)
 - (section 48 of the LAA to grant a licence in respect of Crown land in an unmanaged reserved for a purpose which is different from that or those of the unmanaged reserve but which is compatible with all ancillary to the current use or the intended future use of that Crown land for the purpose or purposes of the unmanaged reserve.)
- D. The Licensor has agreed to grant to the Licensee the Licence in respect of the Licence Area on the terms and conditions and for the Permitted Use set out in this Licence.

OPERATIVE PART

The Parties covenant and agree on the matters set out above and as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. DEFINITIONS

In this Licence the following terms shall have the following meaning:

Contamination is the state of being contaminated as that term is defined in the CSA.

CSA means the *Contaminated Sites Act 2003*.

Date of Commencement means the date of commencement specified in item 2(b) of the Schedule.

Date of Expiry means the date of expiry specified in item 2(c) of the Schedule.

Department means the department principally assisting the Minister in the administration of the LAA.

Environment has the meaning given by section 3 of the *Environmental Protection Act 1986*.

Environmental Harm has the same meaning as that term is defined in the *Environmental Protection Act 1986*.

Environmental Law means all planning, environmental, contamination or pollution laws and any regulations, orders, directions, ordinances or all requirements, permission, permits or licences issued thereunder.

Environmental Notice means any notice, direction, order, demand or other requirement to take any action or refrain from taking any action from any Governmental Agency, whether written or oral and in connection with any Environmental Law.

Governmental Agency means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

LAA means the *Land Administration Act 1997*.

Law includes any requirement of any statute, regulation, proclamation, ordinance or by-law present or future whether State, Federal or otherwise.

Licence means this deed including the contractual rights granted to the Licensee under clause 2 and the rights granted under this Licence necessary for the exercise of the rights granted under clause 2.

Licence Area means the licence area specified in item 1 of the Schedule.

Licence Fee means the licence fee specified in item 3(a) of the Schedule.

Licensee's Agent includes the employees, agents, contractors, consultants, invitees and any other person acting with the authority or permission of the Licensee.

Licensee's Property means all plant, equipment, materials, and other property brought or placed on the Licence Area by, on behalf of or with the authority of the Licensee.

Minister means the Minister for Lands, a body corporate under section 7(1) of the LAA.

Parties mean the Licensor and the Licensee.

Party means the Licensor or the Licensee, as the case may be.

Permitted Use has the meaning given to that term in clause 2.1.

Pollution means any thing that is Pollution within the meaning of the *Environmental Protection Act 1986*, which is not authorised under any Law.

Schedule means the Schedule to this Licence.

Services includes water, gas and electricity supply, sewerage, waste disposal, drainage and telecommunications and all facilities pipes, cables, fixtures and fittings associated with those services.

Surrounding Area means any land or water adjacent to or in the vicinity of the Licence Area and the air generally above the Licence Area, and includes an affected site within the meaning of that term as defined in the CSA.

Term means the term specified in item 2(a) of the Schedule.

1.2. INTERPRETATION

In this Licence:

- (a) clause headings are for convenient reference only and shall have no effect in limiting or extending the language of the provisions to which they refer;
- (b) a reference to a clause, schedule or annexure is a reference to a clause of or schedule or annexure to the document in which the reference appears;
- (c) a reference to any Law includes consolidations, amendments, re-enactments or replacements of it;

- (d) the singular includes the plural, the plural includes the singular and any gender includes each other gender;
- (e) if a period of time is specified and runs from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (f) the word 'person' includes a reference to the person's personal representatives, executors, administrators, successors and assigns and a reference to a corporation includes a reference to the corporations successors and assigns;
- (g) covenants in this Licence by two or more persons shall be deemed joint and several;
- (h) a reference to the word "including" is deemed to be followed by the words "but not limited to".

2. GRANT OF LICENCE

2.1. GRANT OF LICENCE

In consideration of the matters set out in this Licence and the payment of the Licence Fee by the Licensee to the Licensor, the Licensor hereby GRANTS to the Licensee a non-exclusive right for the Term to enter upon and remain on and use the Licence Area, with such vehicles, machinery, plant or equipment as is reasonably necessary for the purpose of:

- (a) [purpose 1]
- (b) [purpose 2]

(Permitted Use) in accordance with the terms and conditions set out in this Licence.

2.2. NO ESTATE OR INTEREST IN LAND

The Licensee acknowledges and agrees that:

- (a) The rights conferred by this Licence rest in contract only and do not create in or confer upon the Licensee any tenancy or any estate or interest in or over the Licence Area and the rights of the Licensee will be those of a licensee only.
- (b) This Licence confers no right of exclusive occupation of the Licence Area upon the Licensee and the Licensor may at any time and at all times from time to time exercise all the Licensor's rights as licensor including (but without in any way limiting the generality of this provision) the Licensor's rights to use possess and enjoy the whole or any part of the same save only in so far as such rights shall not unreasonably:
 - (i) prevent the operation of the rights granted to the Licensee under this Licence; or
 - (ii) be inconsistent with the express provisions of this Licence.
- (c) The rights granted to the Licensee under this Licence are only exercisable during the Term.

3. TERM AND LICENCE FEE

3.1. TERM

The Term shall commence on the Date of Commencement and shall expire at the Date of Expiry.

3.2. FURTHER TERM

Any application for a Further Term or extension of the rights granted to the Licensee under this Licence must be made to the Licensor, in writing no less than 30 days prior to the expiration of this Licence and may be granted or refused at the Licensor's absolute discretion.

3.3. LICENCE FEE

The Licensee must pay the Licence Fee to the Department, at the times and in the manner specified in item 3 of the Schedule.

4. LICENSEE'S COVENANTS

4.1. COVENANTS WITH LICENSOR

The Licensee covenants with the Licensor that the Licensee and the Licensee's Agents:

- (a) must not construct or erect or permit to be constructed or erected any permanent structure, improvement or other thing (other than fencing or a gate) that is a fixture on the Licence Area;
- (b) must not cause or permit any damage to the Licence Area or to the Surrounding Area;
- (c) must not cause or permit any Contamination, Pollution or Environmental Harm to occur in, on or under the Licence Area or to the Surrounding Area, and if any Contamination, Pollution or Environmental Harm is caused by the Licensee or the Licensee's Agents, the Licensee must give notice of it to the Licensor and must minimise and remediate any resultant damage and harm to the reasonable satisfaction of the Licensor;
- (d) must keep the Licence Area in good and safe repair and condition, and must take all steps necessary to keep it safe and free from hazard to any property or person on or using the Licence Area or the Surrounding Area, and where required must keep secure the Licence Area;
- (e) must ensure that traffic on all adjoining and surrounding roads is not unduly disrupted due to vehicles entering or leaving the Licence Area;
- (f) must, while using the Licence Area:
 - (i) ensure the safe movement of pedestrians using the Licence Area or adjoining areas, including erecting signs to warn persons likely to be endangered by the Licensee's use of the Licence Area, and
 - (ii) ensure that pedestrians using the Licence Area or adjoining areas are not unduly disrupted;
- (g) must not dispose and not store on the Licence Area any rubbish or any poisonous, toxic or hazardous substance;
- (h) must not undertake nor allow to be undertaken any excavation or clearing of the Licence Area;
- (i) must pay all outgoings payable in respect of the Licence Area;
- (j) must punctually comply with and observe:
 - (i) all Laws; and
 - (ii) all notices received either by the Licensor or the Licensee from, and the requirements of, any relevant Governmental Agency;

- (k) must obtain, keep current and comply with all consents, approvals, permits, licences or other requirements under any Law, if any, to use the Licence Area for the purposes permitted under this Licence;
- (l) must repair or remedy any damage caused or permitted by the Licensee or the Licensee's Agents, to the Licence Area or the Surrounding Area or Services in, on, under or over the Licence Area, including remediating any Contamination, Pollution, Environmental Harm, and erosion or other form of degradation; and
- (m) must reinstate the Licence Area on the expiration of the Term or other termination of this Licence, in accordance with clause 7.

5. INDEMNITY, RELEASE AND INSURANCE

5.1. INDEMNITY AND RELEASE

- (a) The Licensee hereby releases and indemnifies and agrees to keep released and indemnified the Licensor, the State, the Crown, all Ministers of the Crown, and all officers, servants, agents, contractors, invitees and licensees of any of them (the **Indemnified Parties**) from and against all claims, demands, actions, suits, proceedings, judgments, damages, costs, charges, expenses (including legal costs of defending or settling any action, claim or proceeding) and losses of any nature whatsoever whether based in contract, tort or statute or any combination thereof which the Indemnified Parties (or any of them) may suffer or incur or which may at any time be brought maintained or made against them (or any of them) in respect of or in connection with:
 - (i) in respect of any destruction, loss (including loss of use), injury or damage of any nature or kind of or to property of any person whether or not on the Licence Area and including the property of:
 - (A) any of the Indemnified Parties; or
 - (B) the Licensee or the Licensee's Agents; and
 - (ii) in respect of any death of, or injury or illness sustained by, any person and including:
 - (A) the Indemnified Parties; or
 - (B) the Licensee or the Licensee's Agents,
 directly or indirectly caused by arising out of or in connection with:
 - (iii) the Licensee's or Licensee's Agents use or enjoyment of the Licence Area or any part of the Licence Area pursuant to the terms of this Licence;
 - (iv) any works carried out by or on behalf of the Licensee under this Licence;
 - (v) the exercise or enjoyment of any rights conferred upon the Licensee under this Licence;
 - (vi) any Contamination, Pollution or Environmental Harm of the Licence Area or the Surrounding Area caused or contributed to by the Licensee's or the Licensee's Agents use of the Licence Area;
 - (vii) any remediation required to be carried out by the Licensee under this Licence in respect of the Licence Area or the Surrounding Area

- or otherwise having to comply with any Environmental Notice or any other notice received from any Governmental Agency;
- (viii) any default by the Licensee in the due and punctual performance, observance and compliance with any of the Licensee's covenants or obligations under this Licence; or
- (ix) any other act, neglect, default or omission by the Licensee or the Licensee's Agents.
- (b) The obligations of the Licensee under this clause:
 - (i) are unaffected by the obligation of the Licensee to take out insurance and the obligations of the Licensee to indemnify are paramount; and
 - (ii) continue after the expiration or earlier determination of this Licence.

5.2. INSURANCE

- (a) The Licensee must during the Term effect, maintain and keep current with an insurer of good repute, a public liability insurance policy for the amount specified in item 6 of the Schedule for any one claim (or any other amount reasonably required by the Licensor from time to time consistent with usual prudent commercial practice) and which policy includes, but is not limited to, coverage in respect of:
 - (i) any injury to, illness of, or death of, any person;
 - (ii) any loss, damage or destruction to any property including to the property of any of the Indemnified Parties;
 - (iii) the loss of use of any property, including the property of any of the Indemnified Parties; and
 - (iv) liability arising out of any Contamination Pollution or Environmental Harm of the Licence Area or the Surrounding Area caused or contributed to by the Licensee's or the Licensee's Agents use of the Licence Area,

and such insurance shall include the interests of the Licensor under this Licence.
- (b) The Licensee
 - (i) must give to the Licensor a copy of the certificate of currency of the policy of insurance referred to in subclause (a) at the Date of Commencement; and
 - (ii) must submit evidence to the Licensor on each anniversary of the Date of Commencement during the Term, or as otherwise requested by the Licensor, which shows that the insurance policy referred to is still current.
- (c) The Licensee shall effect and maintain all insurance required to be effected by it by law. Without limiting the generality hereof, the Licensee shall have all necessary insurance with respect to its employees under the relevant Laws and shall, if required by the Licensor, produce evidence of such insurance at any time.
- (d) The Licensee will not do or omit to do any act or thing or bring onto or keep anything on the Licence Area which might render the insurance on the Licence Area void or voidable.

6. TERMINATION OF LICENCE

6.1. DEFAULT

- (a) This Licence and the rights granted to the Licensee pursuant to it, may be terminated by the Licensors by notice in writing to the Licensee:
- (i) if moneys payable under this Licence are in arrears and unpaid for 14 days after formal demand;
 - (ii) if the Licensee breaches or fails to observe any of the covenants, conditions or terms on the Licensee's part expressed or implied in this Licence, other than the obligation referred to in subclause (i) and the breach has not been remedied by the Licensee within 14 days after service of a notice from the Licensors requiring the Licensee to remedy the breach or non observance;
 - (iii) if the Licensee:
 - (A) becomes bankrupt or enters into any form of arrangement (formal or informal) with any of its creditors, or an administrator or a receiver or a receiver and manager is appointed to any of its assets;
 - (B) being a company or other body corporate, an order is made or a resolution is passed for its winding up except for the purpose of reconstruction or amalgamation;
 - (C) being a company, or other body corporate ceases or threatens to cease to carry on business or goes into liquidation, whether voluntary or otherwise, or is wound up or if a liquidator or receiver (in both cases whether provisional or otherwise) is appointed; or
 - (D) being a company, is placed under official management under the Corporations Act 2001 or enters into a composition or scheme of arrangement,and without limiting the foregoing but for the avoidance of doubt, this subclause (a)(iii) applies to any such event that may occur in relation to the Licensee if it is an Aboriginal and Torres Strait Islander corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 Cth*; or
 - (iv) if the Licensee is an Aboriginal and Torres Strait Islander corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 Cth* and a determination is made by the Registrar under that Act that the Licensee is to be under special administration; or
 - (v) if the Licensee abandons or vacates the Licence Area;
- and this Licence and rights granted pursuant to it will terminate on expiry of the notice period specified in the notice.
- (b) No compensation or money is payable to, or recoverable by, the Licensee from the Licensors for termination of the Licence under this clause.
- (c) Any termination of the Licence under this clause:
- (i) does not affect any rights and obligations that are expressed in this Licence to survive expiry or earlier termination of this Licence; and

- (ii) is without prejudice to the rights of the Licensor in respect of any antecedent breach of the terms, covenants or conditions contained or implied in this Licence by the Licensee.

6.2. LICENSOR'S RIGHT TO ENTER AND TO REMEDY

- (a) If the Licensee has breached or failed to observe any of the terms of this Licence on its part contained or implied in this Licence, and that breach or non-performance has continued for at least 14 days after the service of a written notice on the Licensee requiring it to remedy the same, without affecting its other rights under this Licence, the Licensor may (but is not obliged to) remedy the breach, including the payment of monies.
- (b) For this purpose, the Licensee acknowledges and agrees that:
 - (i) the Licensor, its servants, agents and contractors may enter the Licence Area at any time with all necessary materials and equipment to execute all or any required works as the Licensor thinks fit; and
 - (ii) all debts costs and expenses incurred by the Licensor, including legal costs and expenses, in remedying a default is a debt due to the Licensor, and must be paid by the Licensee to the Licensor on demand.

7. REMOVAL OF PROPERTY ON EXPIRY OR TERMINATION

7.1. OBLIGATION TO REMOVE PROPERTY AND RESTORE

- (a) The Licensee must upon the expiration of the Term or earlier termination of this Licence yield and deliver up possession of the Licence Area to the Licensor and in doing so must by the end of the Term or within 21 days after the earlier termination of this Licence:
 - (i) remove all of the Licensee's Property from the Licence Area, to the Licensor's absolute satisfaction;
 - (ii) reinstate the Licence Area to the state and condition in which it was at the Date of Commencement;
 - (iii) promptly make good to the satisfaction of the Licensor any damage caused by the removal of the Licensee's Property referred to in subclause (a)(i), including filling in, consolidating and levelling off any holes or trenches on the Licence Area; and
 - (iv) remediate any Contamination, Pollution or Environmental Harm to the Licence Area or the Surrounding Area caused by the Licensee or the Licensee's Agents or arising out of the Permitted Use.
- (b) The Licensee's obligations under subclause (a) will survive the expiration of the Term or other termination of this Licence.

7.2. FAILURE TO REMOVE

If the Licensee's Property is not removed in accordance with clause 7.1, its presence on the Licence Area after the expiry of the relevant period referred to in clause 7.1(a) shall no longer be authorised by this Licence and:

- (a) the Minister may treat any structure forming part of the Licensee's Property as an alleged unauthorised structure under section 270 of the LAA;
- (b) sections 270, 271 and 272 of the LAA apply with respect to the removal of any such alleged unauthorised structure;

- (c) the Minister may, but is not obliged to, remove the Licensee's Property from the Licence Area, may store it at the Licensee's expense, and may make good any damage caused by that removal, and may reinstate the Licence Area to the condition provided for in clause 7.1(a)(ii); and
- (d) any costs incurred by the Minister in doing any matter under subclause (c) or section 270(6) of the LAA, are a debt due by the Licensee to the Licensor and may be recovered in a Court of competent jurisdiction.

8. NO ASSIGNMENT

- (a) The rights granted by this Licence are for the benefit of the party named as "Licensee" in this Licence.
- (b) The Licensee must not:
 - (i) assign or transfer its rights under this Licence, or grant any sublicense or part with the possession, of the Licence Area, to any person; or
 - (ii) mortgage, charge or encumber its rights under this Licence.
- (c) To the extent that sections 80 and 82 of the *Property Law Act 1969* may be applicable, they are expressly excluded.
- (d) For the purposes of subclause (b), where the Licensee is a corporation (not being a corporation where shares are listed on any Stock Exchange in Australia) any intended change in the beneficial ownership or control of the Licensee which will have the consequence of altering the effective control of the Licensee is deemed to be an assignment of the Licensee's rights under this Licence.

9. GENERAL PROVISIONS

9.1. DUTY

The Licensee will pay duty (if any) payable under the *Duties Act 2008* in respect of any dutiable transaction arising under or in respect of this Licence.

9.2. FEES AND CHARGES

The Licensee will pay all statutory and other fees and charges (if any) relating to this Licence within 30 days of the due date.

9.3. NOTICES

- (a) Any notice that must or may be served under or pursuant to this Licence:
 - (i) must be signed by the Party giving the notice or by any solicitor or duly appointed representative of the Party giving the notice; and
 - (ii) will be sufficiently served on:
 - (A) the Licensor, if addressed to the Licensor and left at, or sent by prepaid post to the Minister for Lands c/o Director General of the Department at the address set out at item 4 of the Schedule or such other address as is notified by the Licensor to the Licensee; and
 - (B) the Licensee, if addressed to the Licensee and left at, or sent by prepaid post to the address set out at item 5 of the Schedule or such other address as is notified by the Licensee to the Licensor;

- (b) A notice sent by post will be deemed to be given at the time when it ought to be delivered in the ordinary course of a post whether the contrary is shown or not.
- (c) A notice given by facsimile transmission will be deemed to have been given on the date on which the facsimile transmission report of the machine from which it was sent, shows that it was successfully transmitted in its entirety.

9.4. EFFECT OF WAIVER

No consent or waiver express or implied by the Licensor or its officers, servants, agents, contractors or any of them, to or of any breach of any covenants conditions or stipulations of the Licensee will be construed as a consent or waiver to or of any other breach of the same or any other covenants conditions or stipulations contained or implied in this Licence.

9.5. GOVERNING LAW

- (a) This Licence shall be construed and interpreted in accordance with the laws in force in the State of Western Australia.
- (b) The Parties submit to the non-exclusive jurisdiction of the Courts of Western Australia.

9.6. VARIATION

This Licence cannot be altered or varied by the Parties except by deed.

10. GOODS AND SERVICES TAX

10.1. DEFINITIONS

In this clause 10 the following terms have the following meanings:

- (a) **GST Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any legislation substituted for or amending that Act;
- (b) The terms **GST**, **GST law**, **Tax Invoice** and **Taxable Supply** have the meaning given in section 195-1 of the GST Act.

10.2. LICENCE FEE EXCLUSIVE OF GST

The Licence Fee and any other amounts payable by the Licensee to the Licensor, under this Licence, are exclusive of GST.

10.3. LICENSEE TO PAY GST

The Licensee must pay additional to the Licence Fee and any other amounts payable by the Licensee, any GST payable by the Licensor in respect of a Taxable Supply made under this Licence.

10.4. VARIATION OF GST

Where GST is payable, the amount payable will be the amount specified in the Schedule to this Licence, until varied from time to time consequent upon each review of Licence Fee in accordance with this Licence.

10.5. TAX INVOICE

Where GST is payable, the Licensor will provide to the Licensee, a Tax Invoice in the format and form required as set out in the GST law.

10.6. NOTIFICATION IS CONCLUSIVE

A written notification given to the Licensee by the Licensor of the amount of GST that the Licensor is liable to pay on a Taxable Supply made or to be made under this Licence is conclusive between the Parties except in the case of an obvious error.

10.7. TIME FOR PAYMENT

The Licensee must pay to the Licensors the amount of the GST that the Licensee is liable to pay under this Licence:

- (a) at the same time; and
- (b) in the same manner,

as the Licensee is obliged to pay for the Taxable Supply.

10.8. APPORTIONMENT OF GST

Where a Taxable Supply is not separately supplied to the Licensee, the liability of the Licensee for any amount for GST, in relation to that Taxable Supply, is determined on the same basis as the Licensee's proportion of that Taxable Supply is determined.

SCHEDULE

| ITEM | TERM | DEFINITION |
|------|---|--|
| 1. | Licence Area | [Licence Area] |
| 2. | (a) Term | [Term] |
| | (b) Date of Commencement | [Date of Commencement] |
| | (c) Date of Expiry | [Date of Expiry] |
| 3. | (a) Licence Fee | \$(Licence Fee) |
| | (b) GST Amount | \$(GST) |
| | (c) Payment Date | [Payment Date] |
| 4. | Licensors' Address for Service of Notices | Minister for Lands C/- Department of Planning, Lands and Heritage 140 William Street PERTH WA 6000 Attention: Manager, [Attention] |
| | Facsimile No: | (08) 6552 [] |
| 5. | Licensee's Address for Service of Notices | [Licencee's Address Address continued Address continued Address continued] Attention: [Attention] Telephone: [] Fax: [] |
| 6. | Insurance Amount | \$([]) |

EXECUTED AS A DEED on the date set out on page 1 at the commencement of this Licence.

SIGNED FOR AND ON BEHALF OF THE)
STATE OF WESTERN AUSTRALIA by)

[Insert relevant execution clause)

Insert relevant execution clause)

Insert relevant execution clause)]

in the presence of:)

.....
(Signature)

.....
(Print full name)

.....
(Classification level, Position title)

(Division)

Department of Planning, Lands and Heritage

.....
Name of Witness

.....
Address of Witness

.....
Occupation of Witness

THE COMMON SEAL OF)
was hereunto affixed)

.....
Name of Witness

.....
Address of Witness

.....
Address (continued)

.....
Occupation of Witness

Schedule 6 – Draft statutory declaration

WESTERN AUSTRALIA

OATHS, AFFIDAVITS AND STATUTORY DECLARATIONS ACT 2005

STATUTORY DECLARATION

I, _____ (insert full name), _____ (insert occupation)
of _____ (insert address)

sincerely declare as follows:

1. I am a duly appointed officer of the City of Joondalup (City) which is the management body of the land described as
 - (a) Lot 555 on Deposited Plan 402198 being the whole of the land comprised in certificate of Crown Land Title Volume 3166 Folio 566 comprising Reserve 45122 (**Reserve 45122**) ;
and
 - (b) Lot 15446 on Deposited Plan 40340 being the whole of the land comprised in qualified certificate of Crown Land Title Volume 3133 Folio 571 comprising Reserve 47831 (**Reserve 47831**),

(collectively the Land).
2. The City (or its predecessor City of Wanneroo) has been the management body of the Land comprised in:
 - (a) Reserve 45122 since 2 February 2000 and its predecessor City of Wanneroo was the management body from 9 December 1997; and
 - (b) Reserve 47831 since 27 July 2007,

(each, the Relevant Period).
3. To the best of my knowledge the Land comprised in:
 - (a) Reserve 45122 has been used for the purpose of recreation; and
 - (b) Reserve 47831 has been used for the purpose of recreation, telecommunications and purposes incidental thereto,

during the Relevant Period.
4. DevelopmentWA has been provided with copies of the documents, reports, studies and other information in the possession or control of the City (but not its predecessor City of Wanneroo) which relate to contamination of the Land, being the documents listed in the Annexure to this declaration (**Contamination Information**).
5. To the best of my knowledge the Contamination Information is all of the documents, reports, studies and other information in the possession or control of the City (but not its predecessor City of Wanneroo) which relate to contamination of the Land.
6. I have reviewed, or caused to be reviewed, our records relating to the Land and I declare that, as far as I am aware:
 - (a) the following estates or interests exist or have been claimed in respect of Reserve 47831 comprising part of the Land:
 - (i) undated lease to the Marine Rescue Whitfords;

- (ii) undated lease to the Ocean Reef Sea Sports Club (Inc) (with other land owned by the City); and
- (iii) (access deed to Telstra Corporation Limited dated 25 July 2016;
- (b) subject to paragraph (a) above and any estate or interests registered on the certificates of Crown land title for the Land, no estate or interest in the Land has been transferred, granted to, or created in favour of, any other person; and
- (c) subject to paragraph (a) above, I do not have in my possession, or knowledge of, any other documents relating to estates or interests in the Land.

..
This declaration is true and I know that it is an offence to make a declaration knowing that it is false in a material particular.

This declaration is made under the *Oaths, Affidavits and Statutory Declarations Act 2005*

at _____
(place)

on _____ by _____
(date) (Signature of person making the declaration)

in the presence of –

(Signature of authorised witness)

(Name of authorised witness and qualification as such a witness)*

**Annexure
List of documents**

| REPORT DATE | CONSULTANT | REPORT | VERSION | COMMENT/OVERVIEW |
|-------------|-----------------------------|--|---------|---|
| Jul-00 | Mattiske Consulting Pty Ltd | Flora and Vegetation Assessment: Lot 1029, Bushplan Site 325. | N/A | Review of the botanical values of Lot 1029, Ocean Reef. |
| Sep-08 | SMEC Aust Pty Ltd | Environmental Opportunities and Constraints Report - Ocean Reef Marina | Ver 1 | Environmental advice on the ORM site and its implications. |
| Sep-08 | SMEC Aust Pty Ltd | Ocean Reef Marina - Preliminary Site Investigation (Contamination) | Ver 1 | Identification of potentially contaminated sites, or sources of contamination within or adjacent to the site. |
| Nov-08 | SMEC Aust Pty Ltd | City of Joondalup Environmental Summary | Ver 1 | Environmental Summary under the headings: Bush Forever Significant Vegetation Communities Rare & Priority Flora Fauna Contaminated Sites Marine Environment and Coastal Processes Further information required Recommendations |
| Nov-08 | Worley Parsons | Potential Geotechnical Solutions to Voids | N/A | Guidelines for the management of voids in limestone, should they be intersected during onshore earthworks for the construction of the proposed Ocean Reef Marina Project. |
| Nov-08 | Worley Parsons | Ocean Reef Marina: Preliminary Shoreline Impact | Ver D | A high-level assessment of the shoreline impacts associated with the proposed ORM development. The aim of the assessment was to provide an initial understanding of the sediment dynamics in the nearshore area in the vicinity of the development. PEER REVIEWED BY MP ROGERS. |
| Nov-08 | Worley Parsons | Preliminary Flushing Study | Ver 0 | Preliminary assessment of the flushing capacity of different the concept layouts proposed for the Ocean Reef Marina development. PEER REVIEWED BY MP ROGERS. |
| Dec-08 | SMEC Aust Pty Ltd | Level 1 Fauna Report | N/A | Assessment of the value of the Ocean Reef Marina development area for fauna, including fauna of conservation significance. |
| Dec-08 | SMEC Aust Pty Ltd | Vegetation Condition, Ecological Community and Flora Search Report | N/A | Assessment of the vegetation condition and ecological communities and flora searches. |
| Jan-09 | SMEC Aust Pty Ltd | Additional Environmental Information | Ver 1 | Information, additional to the Environmental Summary, under the headings: Ocean currents Waves and Wave Heights Water quality Water Corporation testing |
| Jan-09 | Worley Parsons | Preliminary Flushing Study - Addendum 1 | Ver 0 | A study extending the range of conditions for the flushing assessment of the Ocean Reef Marina to Concept Plan 6. PEER REVIEWED BY MP ROGERS. |
| Feb-09 | SMEC Aust Pty Ltd | Environmental Summary - Review of Section 38 (EPA) | Ver 1 | Review of the referral and assessment process for EPA Section 38 with particular reference to the ORM development. |

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|--------|---|--|-------|---|
| Mar-09 | M P Rogers & Assoc | Ocean Reef Marina - Coastal Processes | N/A | PEER REVIEW of the Worley Parsons coastal processes reports. Initial estimate of the coastal processes. |
| Mar-09 | Worley Parsons | ORM Preliminary Flushing Studies - Response to questions raised in peer review. | N/A | Report addresses the queries raised by M P Rogers & Associates. |
| Apr-09 | M P Rogers & Assoc | Ocean Reef Marina - Water Quality | N/A | PEER REVIEW of the Worley Parsons water quality reports on the flushing of the proposed ORM. |
| Apr-09 | SMEC Aust Pty Ltd | Graceful Sun Moth Survey 2009 | Rev 1 | Results of a survey undertaken in the ORM site to identify if the Graceful Sun Moth occurs in the project site and its location and surrounds within the site. |
| Apr-09 | Worley Parsons | Coastal Sediment Transport Assessment | Rev 1 | Assessment of the coastal longshore sediment transport. |
| Sep-09 | SMEC Aust Pty Ltd | Additional Flora Survey, Northern Portion of proposed ORM Development Site. | Final | Summary of the detailed flora survey work undertaken on the northern portion of the ORM site in September 2009. |
| May-10 | Western Wildlife | Ocean Reef Marina: Graceful Sun Moth (<i>Synemon gratiosa</i>) Survey 2010. | | Results of the 2010 GSM survey. |
| May-11 | Natural Area Consulting | Graceful Sun Moth Survey - Proposed Ocean Reef Marina Development Site. | Final | Results of the 2011 GSM survey - undertaken in accordance with DEC guidelines for GSM surveys and habitat assessment (2010). |
| Jun-11 | Rockwater (via M P Rogers & Assoc) | Ocean Reef Marina - Groundwater modeling to assess nutrient loads to the ocean and marina. | N/A | Contained within M P Rogers Concept Plan 7.2 Water Quality Report. PEER REVIEWED |
| Sep-11 | RPS APASA | Ocean Reef Marina Marine Modelling Study | Rev 0 | PER Appendix PEER REVIEWED |
| Oct-11 | M P Rogers & Assoc | Ocean Reef Marina - Concept Plan 7.2 Water Quality Investigations | Rev 0 | Investigations of the flushing rate of the single entrance marina design. |
| Mar-12 | Strategen | Gap Analysis | N/A | Analysis of existing information for the preparation of the Section 16 submission. |
| Jun-12 | Strategen | Progress Update - including Preliminary Marine Habitat Advice | N/A | Update of environmental issues since submission of Gap Analysis and preliminary information regarding marine habitat - for the purposes of the Section 16 submission. |
| Mar-13 | RPS APASA (via M P Rogers) | Ocean Reef Marina Development Phase 2: Preliminary Hydrodynamic and Wave Modelling | Rev 0 | Hydrodynamic and wave model to provide primary inputs to the water quality modelling. PEER REVIEWED |
| Jun-13 | Strategen | ORM - Marine Studies Brief | N/A | Objectives and broad scope of works for additional studies on marine issues and water quality within the MMP. |
| Nov-13 | Rockwater (via M P Rogers & Assoc) | Additional Water Quality Information | N/A | Additional information regarding the impacts on the marina of further climate change. |
| Dec-13 | Mattiske Consulting Pty Ltd (via Strategen) | Level 2 Flora and Vegetation Survey of the Proposed Ocean Reef Marina Survey Area | Ver 3 | Level 2 Flora & Vegetation survey undertaken in September 2013. |
| Apr-14 | Strategen | Ocean Reef Marina Development District Water Management Strategy. | Rev 0 | Strategy supports the MRS amendment and demonstrating that the site can be developed in a manner consistent with water sensitive urban design. |
| Apr-14 | Taylor Burrell Barnett | MRS Amendment Request - Part One | Ver N | Submitted to WAPC - April 2014 |
| Apr-14 | Taylor Burrell Barnett | MRS Amendment Request - Part Two | Ver B | Submitted to WAPC - April 2014 |
| Jun-14 | Strategen | EP Act section 38 referral | N/A | Referral and attachments submitted to the Environmental Protection Authority for assessment under section 38 of the EP Act - Marine components. |
| Nov-14 | BMT Oceanica (via Strategen) | Ocean Reef Marina Baseline Water and Sediment Quality Desktop Study | Rev 0 | To report the results of a desktop study on relevant water quality and sediment quality data for the Ocean Reef region. |
| Feb-15 | Rockwater (via M P Rogers & Assoc) | Ocean Reef Marina Groundwater Modelling to assess nutrient loads in groundwater discharging to the ocean and marina. | N/A | Calculated values of groundwater flows and nutrient loads required as an input to the oceanographic modelling (M P Rogers & Associates). PER Appendix. |
| Mar-15 | Strategen | Groundwater Monitoring Results | N/A | As required by the DWMS |

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|--------|------------------------------|--|-------|---|
| May-15 | Golder Associates | Geotechnical Investigations | Rev B | Preliminary geotechnical investigations using boreholes and near shore jet probes. Additional summary provided by M P Rogers & Associates. |
| Jun-15 | BMT Oceanica (via Strategen) | Ocean Reef Marina Baseline Studies - Marine Pest Survey | Rev C | PER Appendix |
| Aug-15 | BMT Oceanica (via Strategen) | Ocean Reef Baseline Studies - Marine Fauna Desktop Study | Rev 3 | Results of the desktop marina fauna study. As required for the PER. |
| Oct-15 | BMT Oceanica (via Strategen) | Ocean Reef Marina Baseline Studies - Marine Pest Survey | Rev 0 | Results of a targeted baseline marine pest survey. Required for the PER. |
| Dec-15 | Strategen | Acid Sulphate Soils Assessment | Rev 0 | Preliminary assessment for acid sulphate soils. |
| Jan-16 | RPS APASA (via M P Rogers) | Ocean Reef Marina Development - Phase 2 | N/A | Appendix - Monthly Sediment Fate Results - Phase 2 Water Quality Modelling Rev 6 |
| Feb-16 | BMT Oceanica (via Strategen) | Ocean Reef Marina Proposed Development - 2015 Sediment Survey | Rev 0 | PER Appendix |
| Nov-16 | Strategen | Ocean Reef Marina: Bush Forever Negotiated Planning Outcome | Ver 1 | Draft - released for public comment |
| Mar-16 | BMT Oceanica (via Strategen) | Roe's Abalone Environmental Sensitivity | Rev 0 | Review of the species environmental sensitivity to assist with the impact assessment of the ORM. PER Appendix |
| Mar-16 | BMT Oceanica (via Strategen) | Technical Note: Ocean Reef Marina Development PER: EQMF, EQC, EQP and Marine EIA advice. | N/A | PER Appendix |
| Mar-16 | BMT Oceanica (via Strategen) | Ocean Reef Marina Baseline Water Quality Results (Rev 1) | Rev 2 | PER Appendix |
| Apr-16 | M P Rogers & Assoc | Ocean Reef Marina Concept Design Report | Rev 0 | Summary of the concept design of the ORM with the purpose of providing additional information to the CHRMAP. (As recommended by the peer reviewer). |
| Apr-16 | M P Rogers & Assoc | ORM Coastal Hazards & Vulnerability | Rev 0 | PER Appendix PEER REVIEWED |
| May-16 | M P Rogers & Assoc | City of Joondalup - Cyclone Modelling | Rev 0 | Results of a cyclone storm surge modelling study for the entire coastline within the City. |
| Jun-16 | M P Rogers & Assoc | Ocean Reef Marina Coastal Hazard and Risk Management Adaptation Plan | Rev 2 | A CHRMAP prepared consistent with the requirements of State Planning Policy 2.6 and the CHRMAP guidelines. |
| Jul-16 | M P Rogers & Assoc | ORM Coastal Hazards & Vulnerability | Rev 2 | Coastal vulnerability assessment of the Ocean Reef Marina area only. |
| Jul-16 | M P Rogers & Assoc | Ocean Reef Marina: Beach Wrack Management | Ver 3 | Report on the investigations, findings and recommended monitoring and management of seagrass wrack for the proposed Ocean Reef Marina. PER Appendix |
| Jul-16 | M P Rogers & Assoc | Ocean Reef Marina - Coastal Processes Assessment | Rev 3 | PER Appendix |
| Jul-16 | Strategen | Detailed Site Investigation (Rev D - final) | Rev D | Assessment of the site for potential soil, groundwater and sediment contamination. |
| Aug-16 | BMT Oceanica (via Strategen) | Ocean Reef Benthic Habitat Map Report | Rev 6 | PER Appendix |
| Aug-16 | RPS APASA (via M P Rogers) | Ocean Reef Marina Development - Phase 2: Water Quality Modelling | Rev 5 | PER Appendix |
| Aug-16 | RPS APASA (via M P Rogers) | Ocean Reef Marina Development Phase 2: Water Quality Modelling | Rev 5 | PER Appendix |
| Aug-16 | Strategen | Environmental Assessment and Management Strategy | Rev 1 | An environmental assessment of the terrestrial portion of the project - |

| | | | | |
|---------|------------------------------|---|-------|---|
| | | | | required for the Local Structure Plan. Updated Sept 2016. |
| Sep-16 | Strategen | Ocean Reef Marina: Marina Construction Monitoring and Management Plan | Rev 2 | PER Appendix |
| Sep-16 | Strategen | Ocean Reef Marina: Marina Environmental Quality Management Plan | Rev 2 | PER Appendix |
| Sep-16 | Strategen | Local Water Management Strategy | Rec C | Detailed strategy for water management as required by the MRS and LSP. |
| Feb-17 | BMT Oceanica (via Strategen) | Ocean Reef Baseline Studies - Abalone Habitat and Abundance at Burns Beach Reef | Rev 1 | Summary of abalone habitat and abundance adjacent to the existing Ocean Reef Boat Harbour. PER Appendix |
| Feb-17 | Strategen | Bushfire Management Plan | Rev 2 | Updated BMP taking into account comments on Rev 1 from DFES. Includes BAL assessment. |
| Jul-17 | RPS APASA (via M P Rogers) | Ocean Reef Marina Development - Phase 2: Water Quality Modelling | Rev 6 | Updated following PER submissions. |
| Various | Dr Doug Treloar, Cardno | Coastal Processes Assessment (MR&A 2015) Beach Wrack Management (MR&A 2014) Coastal Hazard and Risk Management Adaptation Plan (MR&A 2016b) Coastal Hazards and Vulnerability Ocean Reef Marina Phase 1 - Scope of Works Ocean Reef Marina Phase 2: Preliminary Hydrodynamic and Wave modelling Ocean Reef Marina Development - Phase 2: Water Quality Modelling (RPS APASA 2016) | N/A | PEER REVIEW REPORTS & LETTERS |

Schedule 7 – Section 15 Covenant

FORM B2
B5683

WESTERN AUSTRALIA
TRANSFER OF LAND ACT 1893 AS AMENDED

BLANK INSTRUMENT FORM

**Deed of Section 15 Covenant – Ocean
Reef Marina Club Facilities Lot**

(Note 1)

Date:

Parties:

Minister for Lands, a body corporate under the *Land Administration Act 1997 (WA)*, acting in the name and on behalf of the State of Western Australia of care of the Department of Planning, Lands and Heritage, Level 2, 140 William Street, Perth WA 6000 (**Covenantor**)

And

Western Australian Land Authority trading as DevelopmentWA, a body corporate under the *Western Australian Land Authority Act 1992 (WA)*, Level 2, 40 The Esplanade, Perth WA 6000 (**Covenantee**)

Recitals:

- (A) The Land is Crown land.
- (B) The Minister for Lands has agreed, before the Land is transferred in fee simple, pursuant to the Agreement and for the purposes of section 15(1)(a) of the LA Act, to the imposition of covenants in relation to the Land.
- (C) Pursuant to section 15(6)(a) of the LA Act, the Western Australian Land Authority (trading as DevelopmentWA), as a State instrumentality, is able to be a covenantee of a covenant described in section 15(7) of the LA Act.
- (D) Pursuant to section 15(14) of the LA Act, the Minister for Lands may be a covenantor of covenant registered under section 15(6) of the LA Act, in relation to Crown land.
- (E) This deed of covenant operates for the Covenant Term.

It is agreed as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this deed the following words have the following meaning unless the contrary intention appears:

Agreement mean the Land Transfer Deed dated [XX] to which the Covenantor, the Covenantee and the City are parties.

Building means the Club Facility and any other improvement, structure or building constructed, or proposed to be constructed, on the Land (as the context requires).

Business Day means a that is not a Saturday, a Sunday or a public holiday in Western Australia.

City means the City of Joondalup.

Club Facility means the building(s) to be constructed on the Land, for use for Community Purposes.

Community Purpose means for the purpose of a sports, recreational or community club, or other statutory or not for profit organisation providing services or facilities for the public.

Covenant Term means the period commencing on the date that the City becomes the registered proprietor of the Land and ending on the date that is 25 years from that date.

Development means any material development of all or part of the Land, including the construction of a Building.

Development Conditions means the Covenantee's standard development conditions, which include but are not limited to those set out in Schedule 2.

LA Act means the *Land Administration Act 1997* (WA).

Land means the land comprising Lot [XX] on Deposited Plan [XX] being the whole of the land contained in certificate of Crown land title volume [XX] and folio [XX], and includes, as the context requires, the Buildings constructed on the land.

Public Car Parking means the public car parking referred to in clause 2.4.

Public Purpose means any of the following purposes:

- (a) a Community Purpose;
- (b) the Public Car Parking;
- (c) the provision of public amenities and facilities, and place activation; and
- (d) uses ancillary to the use of the Land for a purpose referred to in paragraphs (a) to (c) (inclusive).

Specified Encumbrances means the limitations, interests, encumbrances, memorials and notifications which are registered against the certificates of Crown land title for the Land and identified in Schedule 1.

State means the State of Western Australia.

1.2 Interpretation

In this deed, unless the contrary intention appears:

- (a) a transferee, successor in title or assignee of any part of the Land is a 'party' referred to as the Covenantor for the purposes of this deed but only in respect of that part of the Land of which it is, or is entitled to be, the proprietor;
- (b) a reference to the Minister for Lands, the Covenantee or other statutory body is a reference to that body as it may reconstituted, continued, or substituted under any Act of Parliament from time to time;
- (c) a reference to a party doing any act or thing (including an act involving consent and terms of consent) includes a reference to such act or thing being done by an employee or officer of the party or such other person authorised in writing by the party;
- (d) another grammatical form of a defined word or expression has a corresponding meaning;

- (e) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule to, this deed;
- (f) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (g) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this agreement, and a reference to this agreement includes any schedule or annexure;
- (h) a reference to time is to Perth, Western Australia time;
- (i) a reference to a party is to a party to this deed, and a reference to a party to a document includes the party's successors and permitted assigns;
- (j) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (k) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (l) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (m) if a word or a phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (n) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (o) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (p) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it; and
- (q) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

2. COVENANTS

2.1 Permitted Use

- (a) The Covenantor, to the intent that it shall bind its transferees, successors in title and assigns from time to time, subject to the Specified Encumbrances, covenants and agrees with the Covenantant to use and continue to use the Land for the purposes of:
 - (i) constructing on it the Club Facility and any Building or facilities required for a Public Purpose; and
 - (ii) a Public Purpose,
 subject to clause 2.1(b).
- (b) Subject to the Specified Encumbrances, the Covenantor may:

- (i) use that part of the Club Facility that the Covenantee acting reasonably agrees may be used for a purpose other than a Public Purpose, including a lease or licence under clause 2.3(d); and
- (ii) use the part of the Land not comprising the Club Facility or the Public Car Parking for limited commercial development (such as a small café or kiosk) as may be agreed by the Covenantee acting reasonably, including a lease or licence under clause 2.3(d).

2.2 Commercial development

The Covenantor, to the intent that it shall bind its transferees, successors in title and assigns from time to time, subject to the Specified Encumbrances, covenants and agrees with the Covenantee that it will not undertake a Development of the Land without first obtaining the written consent of the Covenantee acting reasonably, which, if given, may be given subject to conditions, including that the development must be undertaken in accordance with the Development Conditions.

2.3 Dealings and subdivision

The Covenantor, to the intent that it shall bind its transferees, successors in title and assigns from time to time, subject to the Specified Encumbrances, covenants and agrees with the Covenantee that it will not:

- (a) sell or transfer the Land or any part of it;
 - (b) assign its interest in the Land or any part of it;
 - (c) grant any mortgage or charge or other interest, of the Land or any part of it;
 - (d) grant a lease or licence of any part of the Land for a use other than for a Public Purpose, including for retail or commercial purposes; or
 - (e) subdivide the Land,
- without first obtaining the written consent of the Covenantee:
- (f) acting reasonably in the case of a lease or licence under subclause 2.3(d); and
 - (g) which, if given, may be given subject to conditions.

2.4 Public car parking

The Covenantor, to the intent that it shall bind its transferees, successors in title and assigns from time to time, subject to the Specified Encumbrances, covenants and agrees with the Covenantee that:

- (a) the area of the Land identified on the plan at Schedule 3 will be used for the provision of public car parking bays (which will not be less than [XX] bays), other than during periods of repair and maintenance, replacement or refurbishment; and
- (b) the parking fees charged by the City will be set and maintained at a rate so as not to inhibit public visitation to, and the activation of, the Ocean Reef Marina project.

2.5 Commercial revenue

The Covenantor, to the intent that it shall bind its transferees, successors in title and assigns from time to time, subject to the Specified Encumbrances, covenants and agrees with the Covenantee that:

- (a) at least [XX]% of gross rent received from any lease or licence of the Land for retail and commercial purposes allocated for:
 - (i) the maintenance and upkeep of the improvements and facilities on the Land and surrounding areas (**Upkeep**); or
 - (ii) for the application or use for community purposes and place activation on the Land;
- (b) for the purposes of clause 2.5(a), the calculation of the **gross rent** is:
 - (i) not to include any sum received by the Covenantor (as lessor) from the lessee that is reimbursement of rates, taxes and other third party outgoings, or any sum received on account of goods and services tax; and
 - (ii) to include the value of any in kind or non-financial incentives provided by the Covenantor (as lessor) to the lessee; and
- (c) it will establish and maintain financial records in a separate manner which shall include a record of:
 - (i) gross rent received from any lease or licence of the Land for retail and /or commercial purposes;
 - (ii) the application of at least [XX]% of all such gross rent towards the purposes referred to in clause 2.5(a);
- (d) the financial records referred to in clause 2.5(c) must be maintained in accordance with accepted accounting standards and will be made available for inspection by the Covenantantee upon request; and
- (e) it will report to the Covenantantee on or before 31 December in each year during the Covenant Term with details of:
 - (i) the gross rent received from any lease or licence of the Land for retail and /or commercial purposes;
 - (ii) the calculation of the amount of gross rent that should have been applied towards the purposes referred to in clause 2.5(a);
 - (iii) the actual amount of gross rent applied towards the purposes referred to in clause 2.5(a);
 - (iv) the maintenance, upkeep or other community purposes to which such funds were applied; and
 - (v) the reason for any deficiency in the amount of gross rent that should have been applied, but was not applied, towards the purposes referred to in clause 2.5(a),in each case, for the 12 month period ending on the immediately preceding 30 June.

2.6 Due performance

The Covenantor, to the intent that it shall bind its transferees, successors in title and assigns from time to time, pursuant to section 15(9)(a) of the LA Act will ensure the due performance of the covenants set out in this clause by persons who hold an interest in the Land from or through the Covenantor granted on or after the date of this deed.

3. COVENANT IN GROSS

The burden of the covenants in this deed runs with the Land for the benefit of the Covenantee under section 15(6)(c) of the LA Act and is enforceable against the Covenantor and its successors in title pursuant to section 15(6)(d), section 15(11) and section 15(15) of the LA Act.

4. LIMITATION ON BURDEN

A person is not liable for a breach of the covenants in this deed where the breach occurs after that person ceases to be a proprietor of the Land but nothing in this clause discharges any liability of the person which exists prior to that cessation.

5. INDEMNITY

Pursuant to section 15(9) of the LA Act, the Covenantor, its transferees, successors in title and assigns indemnify the Covenantee, and will keep the Covenantee indemnified, from any costs, claims, actions, proceedings, demands, expenses, judgments, damages and losses which result directly or indirectly from any failure to comply with the covenants in this deed by the Covenantor, its employees, officers, contractors, agents, licensee's or grantees of an interest in the Land.

6. CHARGE

This deed constitutes a charge on the Land and pursuant to section 15(10) of the LA Act will not be discharged or removed on the sale of the land by a mortgagee or annuitant.

7. TERM

This deed is operative for the Covenant Term and automatically expires at the end of the Covenant Term after which the Covenantee must promptly, following a request from the Covenantor, sign all documents and do all things to procure the removal of this deed from the title to the Land.

8. VARIATION OR DISCHARGE

The covenants may be modified or discharged in the manner provide for by section 15(13) of the LA Act.

9. CONSENT

In giving, withholding or conditioning its consent or approval to a proposed dealing, development, use or other matter under this deed (**Proposal**), including when required to act reasonably, the Covenantee may have regard to (but is not limited to):

- (a) the intention that the Land is being provided primarily for use for Public Purposes to support the activation of the Ocean Reef Marina development and that revenue from the use of the Land will be used to support that objective;
- (b) the anticipated or likely effect or impact the Proposal may have on the use and amenity of the Land, the surrounding precinct and the broader Ocean Reef Marina development;
- (c) the compatibility of the Proposal with the use of the Land for Public Purposes;
- (d) the impact of the Proposal on other existing or approved occupiers of the Land, the surrounding precinct and the general public; and

- (e) the applicable planning framework.

10. GENERAL

10.1 Governing Law

This deed is governed by the law in force in Western Australia and the Covenantor and the parties submit to the non-exclusive jurisdiction of the courts in Western Australia.

10.2 Severability

If any provision or part of a provision in this deed is void, unenforceable or illegal it is severed from this deed. The remainder of this deed has full force and effect and the validity or enforceability of that provision is not affected.

10.3 Notices

Any notice or other communication that may or must be given under this deed, to be valid and effective:

- (a) must be in writing;
- (b) may be given by an authorised officer of the party giving notice (**first party**);
- (c) must be hand-delivered or sent by prepaid post to the address of the party receiving the notice (**second party**) as set out on the first page of this deed, or such other address previously notified by the second party to the first party in accordance with this clause;
- (d) subject to subclause (e), is taken to be received:
 - (i) in the case of hand delivery, on the date of delivery; and
 - (ii) in the case of post, on the seventh Business Day after posting; and
- (e) if received after 5.00 pm or on a day other than a Business Day, is taken to be received on the next Business Day.

SCHEDULE 1

Specified Encumbrances

(a) [Insert]

DRAFT

SCHEDULE 2

Development Conditions

The following development conditions shall apply to the Development of the Land by the Covenantor, as may be required by the Covenantee under clause 2.2.

1. Timing

The Covenantor must cause:

- (a) Commencement of Construction for the Development (or if the Development is to be completed in stages, each stage of the Development) to be effected by the applicable Latest Date for Commencement of Construction in accordance with the plans approved in accordance with these conditions; and
- (b) Practical Completion for the Development (or if the Development is to be completed in stages, each stage of the Development) to be effected in accordance with the approved plans by the applicable Latest Date for Practical Completion.

2. Approval of Plans

- (a) The Covenantor must submit to the Covenantee the proposed plans and specification for the Development, prior to such plans and specifications being approved by any relevant Authority, for approval by the Covenantee.
- (b) The Covenantee will within 15 Business Days of receipt, use its reasonable endeavours to either approve (conditionally or otherwise) or reject the plans and specifications and, if rejected, inform the Covenantor of the grounds of rejection;
- (c) In the event that the plans and specifications are rejected or approved conditionally, then the Covenantor must amend such plans and specifications and resubmit to the Covenantee as reasonably required by the Covenantee such amended plans and specifications for approval.
- (d) Upon the Covenantee approving the plans and specifications submitted to the Covenantee in accordance with condition 2(a) or condition 2(c), the Covenantor must use its best endeavours to submit such plans and specifications as soon as possible to the relevant Authorities (if necessary) for approval.
- (e) If any Authority requires the Covenantor to amend all or any of the plans and specifications, then the Covenantor must amend such plans and specifications in accordance with the requirements of any Authority and the Covenantor must re-submit such amended plans and specifications to the Covenantee for approval as soon as possible. Condition 2(b) and condition 2(c) will apply in respect of any amended plans and specifications submitted to the Covenantee for approval in accordance with this condition.

- (f) If plans and specifications approved by the Covenantor in accordance with condition 2(e) are rejected by any Authority, then the Covenantor must submit new plans and specifications for the Development to the Covenantor for approval in accordance with condition 2(a) and the provisions of this condition 2 will apply to such new plans and specifications.

3. Completion of Development

The Covenantor must ensure that the Development is completed:

- (a) in accordance with the Approved Plans;
- (b) with all proper care skill and diligence;
- (c) in accordance with good industry practice;
- (d) in compliance with all applicable laws and regulations of any Authority;
- (e) in a proper and workmanlike manner; and
- (f) using materials which are in good condition of high quality and suitable for the purpose for which they are intended.

4. Force Majeure

- (a) The Covenantor shall be taken not to be in default of its obligations under these Development Conditions if and for so long as:
 - (i) the failure or delay in performance of its obligations is caused by a Force Majeure Event; and
 - (ii) the Covenantor used and uses all reasonable endeavours to prevent, minimise and overcome the effect of, the Force Majeure Event, including by taking all reasonable steps which a prudent and conscientious person having willingly undertaken the obligations would take to achieve the object of the obligation.
- (b) The Covenantor must give notice and full particulars to the Covenantor of the Force Majeure Event including of all reasonable steps taken or to be taken to prevent, minimise or overcome the effect of the Force Majeure Event.

5. Definitions

For the purposes of these Development Conditions, the following capitalised terms have the following meanings:

- (a) **Approved Plans** means the plans approved by the Covenantor and any relevant Authority in accordance with condition 2.
- (b) **Authority** means any governmental, semi-governmental, statutory, local or public authority including without limitation the Local Government (when acting in that capacity), Department of Environment Regulation, the Western Australian Planning Commission, Water Corporation, Commissioner of Main Roads, and every and any other

board, person or authority whatsoever now or at any time in the future exercising under any present or future act of Parliament (Federal or State) any control or jurisdiction over or power in connection with the Land and/or the owner or occupier of the Land and/or in connection with any use now or hereafter carried on upon the Land and every officer or person acting under the authority of such local or public authority or under the authority of any such Act or bylaw, and includes the operator of the electricity microgrid in the Ocean Reef Marina;

- (c) **Commencement of Construction** means all works preliminary to the construction of the Development or a specified stage of the Development (as applicable), including the fencing of the relevant part of the Land, construction of all earthworks and the construction of footings to any relevant Building in the Development;
- (d) **Force Majeure Event** means an event or circumstance that is beyond the reasonable control of the Covenantor or its officers, employees, contractors, or agents, including (without limitation) an act of God, war, riot, civil disturbance, cyclone, flood, storm, fire, explosion, pandemic, epidemic, a strike or industrial dispute (not caused directly or indirectly by the Covenantor), embargo or failure of power supply.
- (e) **Latest Date for Commencement of Construction** means the date that is specified by the Covenantor in relation to the Development or stage of the Development (as applicable) (acting reasonably, having regard to the nature of the Development), being after the date that planning approval is obtained for the Development, or such later date agreed in writing by the Covenantor;
- (f) **Latest Date for Practical Completion** means the date that is specified by the Covenantor in relation to the Development or stage of the Development (as applicable) (acting reasonably, having regard to the nature of the Development and the Latest Date for Commencement of Construction), or such later date agreed in writing by the Covenantor;
- (g) **Practical Completion** means the completion of the construction of the Development or stage of the Development (as applicable) on the Land to the satisfaction of the Covenantor in conformity with the Approved Plans and any other specifications approved by all relevant Authorities, and is to be evidenced by the following as the Covenantor may require:
 - (i) delivery to the Covenantor of:
 - A. a certificate from the Covenantor's architect or builder certifying that the Development has been constructed or completed on the Land according to the Approved Plans;
 - B. a copy of written permission from the local government for the occupation of the whole of the Development; and/or
 - C. such other form of approval as may be required for the occupation of the Development; and/or
 - (ii) inspection by or on behalf of the Covenantor.

SCHEDULE 3

Plan of Public Car Parking Area

[Insert]

DRAFT

Executed as a deed on _____

SIGNED for the **STATE OF WESTERN AUSTRALIA** for and on behalf of the **MINISTER FOR LANDS** by

Pursuant to a delegation of the Minister for Lands' powers under Section 9 of the *Land Administration Act 1997* in the presence of:

Signature

Signature of witness

Print full name

Print full name

Classification level, Position title, Division
Department of Planning, Lands and Heritage

Classification level, Position title, Division
Department of Planning, Lands and Heritage

The Common Seal of **WESTERN AUSTRALIAN LAND AUTHORITY** was hereunto affixed with the authority of its Board in the presence of:

Chief Executive Officer

Board Member

| <u>INSTRUCTIONS</u> | |
|----------------------------|---|
| 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. |
| <u>NOTES</u> | |
| 1. | Insert document type. |
| 2. | A separate attestation is required for every person signing this document. Each signature should be separately witnessed by an <u>Adult Person</u> . The full name, address and occupation of the witness <u>must</u> be stated. |

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5. _____

Receiving Clerk

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Draft 6 Date 8 February 2022

MinterEllison amendments 8 February 2022

CoJ Amendments 17 February 2022

Execution copy

Development Agreement

Ocean Reef Marina

Western Australian Land Authority trading as DevelopmentWA
(DevelopmentWA)

and

City of Joondalup (City)

Level 4 Allendale Square 77 St Georges Terrace
Perth WA 6000 Australia DX 255 Perth
T +61 8 6189 7800 F +61 8 6189 7999
minterellison.com

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MinterEllison

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Development Agreement

Ocean Reef Marina

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~~26.4 Management of coastal pool~~ Error! Bookmark not defined.

~~26.5 26.3~~ No

warranty

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- Schedule 2 – Boundary of Responsibility
- Schedule 32 – Concept Plan
- Schedule 43 – Divestment Strategy
- Schedule 54 – Future Marina Areas
- Schedule 65 – Guiding Philosophies
- Schedule 76 – Indicative Project Program
- Schedule 87 – Landscape Master Plan
- Schedule 98 – Marina Project Area

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Details

Date20222023

Parties

Name**Western Australian Land Authority** established by the *Western Australian Land Authority Act 1992* (WA) section 5, trading as DevelopmentWA

Short form name**DevelopmentWA**

AddressLevel 2, 40 The Esplanade
PERTH WA 6000

Notice detailsEmail: matt.read@developmentwa.com.au
Attention: Manager **MetropolitanMetro** South

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Name**City of Joondalup** continued under the *Local Government Act 1995* (WA) schedule 9.3 clause 5

Short form name**City**

Address90 Boas Avenue
JOONDALUP WA 6027

Notice detailsEmail: **info**mat.humfrey@joondalup.wa.gov.au
Attention: **Chief Executive Officer**Director Corporate Services

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Background

- A The City owns the City Lots, and the State of Western Australia owns the City Crown Land, which lots are, at the Commencement Date, under the care, control, and management of the City.
- B Parts of the City Lots and the City Crown Land form part of the Marina Project Area.
- C Since circa 1980, the redevelopment of the Marina Project Area has been considered and discussed by a number of parties.
- D The City formally reinitiated the planning for the development in 2005 and in 2009 the City affirmed the Guiding Philosophies which continue to guide the implementation and requirements of the Project and DevelopmentWA supports the Guiding Philosophies.
- E As the City does not have the capacity or resources to deliver the Project, in October 2015, the City requested that the State Government become the proponent for the development of the Marina Project Area.
- F In July 2017 the State Government approved the State Business Case and on 3 September 2017 the State Government publicly announced the appointment of DevelopmentWA as the lead proponent of the Project. The State Government has also allocated the Project Grant to fund the delivery of the Project.
- G The MOU was entered into by the Parties to outline the vision of the Project and how the Project was to proceed.
- H In accordance with clause 6.2(d) of the MOU, DevelopmentWA has paid and the City has received an amount of \$500,000 as partial reimbursement to the City for certain costs incurred in connection with the Project.
- I The City has granted the Works Licences to DevelopmentWA over part of the City Lots, to enable DevelopmentWA to proceed with specified works, including early works, breakwater construction and super lot subdivision works.
- J The Parties have a shared Project Vision and are committed to enhanced co-ordination and collaboration in relation to the timing, planning and delivery of the Project.
- K The Project will be implemented as a 'whole of government' initiative, involving not just the cooperation of the Parties but also DoT, DPLH, Water Corporation and other Government Authorities. DevelopmentWA will facilitate and coordinate the involvement of those additional government stakeholders.
- L The City's objective is to receive and obtain the City Return in return for the City making available part of the:
 - (i) City Lots; and
 - (ii) City Crown Land.
- M The Parties wish to document their respective roles, responsibilities and contributions to the Project as well as agree to a clear process for the delivery of the Project and have entered into this Agreement to give effect to this objective.

Agreed terms

Part A – Definitions and principles

1. Definitions and interpretation

1.1 Definitions

In this Agreement, the following expressions have the following meanings:

Access Licence means an access licence ~~substantially in the form of the licence annexed to this Agreement as Schedule 4, in a form agreed by the Parties, both acting reasonably.~~

Access Licence Notice means a notice signed by DevelopmentWA (or DevelopmentWA's Chief Executive or Representative) which:

- (a) specifies the commencement date of an Access Licence (which date must be a date at least 30 calendar days after the date of the Access Licence Notice); and
- (b) attaches a sketch which indicates the part of the City Lots and/or City Crown Land that will comprise the licensed area for the purposes of the Access Licence.

Agreement means this agreement including all schedules, attachments, and annexures to the same.

Approvals means all approvals, consents, authorisations, permits and other permissions required from any Government Authority, or under any Written Law, for or in connection with the Project.

Boundary of Responsibility means the line of demarcation of management responsibilities, as indicated by a bold dashed red line shown on the plan annexed to this Agreement as Schedule 1 as clarified by this Agreement.

Business Day means any day other than a Saturday, Sunday or public holiday in Perth, Western Australia.

Chief Executive means the chief executive officer, director general or other most senior executive (howsoever called) responsible for the administration of the relevant Party.

City Crown Land means the following Crown land:

- (a) Crown Lot 555 (Reserve 45122) on Deposited Plan 402198 being the whole of the land comprised in Crown Land Title Volume LR3166 Folio 566; and

~~(b) Crown Lot 15446 (Reserve 47831) on Deposited Plan 40340 being the whole of the land comprised in Crown Land Title Volume LR3133 Folio 571.~~

(b) Crown Lot 15446.

City Lots means Lot 1029 and Lot 1032.

City Management Orders means the management orders currently registered against the certificates of Crown Land Title to the City Crown Land, ~~at the Commencement Date (being management order H352772 and management order K360388),~~ and also includes any management order relating to land that currently comprises a portion of Lot 1029 and is subject to an Existing ~~Tenancy Lease~~ and is placed with the City in accordance with clause 10 of the Transfer Deed. **[ME Note: drafting included to reflect the process referred to in the Transfer Deed and avoid inconsistency in clause 20.]**

City Return means:

- (a) the delivery and completion of the Project in a way that seeks to achieve LT Sustainability for the City;

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- (b) the delivery and completion of the Project, which has been a long-term strategic objective of the City;
- (c) the commercial opportunities for the City within the Marina Project Area on land owned or managed by the City;
- (d) the transfer in freehold, vesting or placement (as applicable) of the Future City Areas to or with the City, including the Future Club Facilities Lot in accordance with the Transfer Deed; **[ME Note: form of tenure not yet resolved and subject to confirmation by DPLH/Minister for Lands.]**
- (e) the amenity and use of the public facilities within the Marina Project Area by the City of Joondalup community and general public;
- (f) the direct and indirect social, economic, community and other benefits derived from a combined investment by the State and DevelopmentWA of approximately \$250 million in the locality of the City of Joondalup;
- (g) State funding towards the costs of a new site and facilities for ~~ORSSCOcean Reef SSC~~; and
- (h) rates revenue from the rateable land and boat pens in the Marina Project Area.

Commencement Date means the latest date of execution of this Agreement by DevelopmentWA and the City.

Completed Roads means the public roads to be constructed by DevelopmentWA for the purposes of the Project, which are, in accordance with a subdivision approval, to be dedicated as a road and vested with the City.

Concept Plan means the concept plan annexed to this Agreement as Schedule 2.

Contaminated Sites Act means the *Contaminated Sites Act 2003* (WA).

Contamination has the same meaning given to the term 'contaminated' under the Contaminated Sites Act.

Crown Lot 15446 means Crown Lot 15446 (Reserve 47831) on Deposited Plan 40340 being the whole of the land comprised in Crown Land Title Volume LR3133 Folio 571.

Defect means any defect in construction or design works procured by or on behalf of DevelopmentWA in relation to the Future City Areas and includes:

- (a) any defect or deficiency in design, materials or workmanship;
- (b) any defect, shrinkage or fault in works;
- (c) any aspect of the works which is not in accordance with the requirements of the applicable construction or services contract (including a breach of any express warranty or non-compliance with any performance level or performance requirement stated in that contract); and
- (d) any physical damage to works resulting from any such defect, deficiency, shrinkage, fault, omission or non-compliance.

Defects Liability Period means the defects liability period under the applicable third party contract for works relating to a Future City Area or part thereof.

Divestment Strategy ~~is the~~ means by which the Parties have agreed to effect the divestment of certain areas of land and public assets:

- (a) which are to be developed by DevelopmentWA as part of the Project;
- (b) some of which are to be transferred to the City in fee simple or reserved as Crown land and its care, control and management placed with the City;
- (c) which is to be determined in accordance with the terms of this Agreement and the Land and Assembly ~~Transfer Deed~~ from time to time; and
- (d) a copy of the Divestment Strategy-a copy of which-, also known as the Land and Asset Divestment Strategy which is current as at the Commencement Date, is annexed to this Agreement as ~~Schedule 4~~ Schedule 3.

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DoT means the Western Australian Government Department of Transport, or any department which supersedes that department and is responsible for regulating marina facilities in Western Australia.

DPLH means the Western Australian Government Department of Planning, Lands and Heritage or any department which supersedes that department and is responsible for the administration of the *Land Administration Act 1997* (WA).

Draft Design Documents means the draft:

- (a) designs, architectural drawings, plans and specifications prepared by or on behalf of DevelopmentWA in relation to the development and fit out of any Future City Areas or components of the same; and
- (b) draft subdivision and development applications and other applications for Approvals prepared by or on behalf of DevelopmentWA in relation to the development of any Future City Areas or components of the same.

Early Works means:

- (a) the early works described in the ~~Early~~ Works Licences;
- (b) the construction of the Hodges ~~Read~~Drive extension;
- (c) an access road leading into the southern portion of the Marina Project Area;
- (d) any land clearing and earthworks relating to the Project;
- (e) associated infrastructure and landscaping works; and
- (f) the early breakwater construction works.

Excised Marine Park Lot means Lot 500 on Deposited Plan 415585, excised from the Marmion Marine Park reserve, pursuant to the *Reserves (Marmion Marine Park) Act 2019* (WA), which is now Lots 501, 502 and 503 on Deposited Plan 415761.

Existing Leases means the following leases and licences, entered into by the City as landlord or licensor:

- (a) undated lease to the Marine Rescue Whitfords in relation to part of ~~City Crown Land~~ Lot 15446;
- (b) undated lease to the Ocean Reef SSC in relation to part of ~~City Crown Land~~ Lot 15446 and part of Lot 1029; and
- (c) access deed to Telstra Corporation Limited and dated 25 July 2016 in relation to ~~City Crown Land~~ Lot 15446.

Existing Tenants means ~~Marine Rescue Whitfords, Ocean Reef SSC and Telstra and Existing Tenant has a corresponding meaning.~~

Freehold Car Park means a freehold public parking site as shown on the Divestment Strategy to be constructed as a carpark by DevelopmentWA and to comprise at least ~~214 bays~~ 210 bays, being the 'Beach Parking Area' referred to, and which shall be subject to the restrictions specified, in the Transfer Deed.

Force Majeure Event means the existence or occurrence of damage or obstruction by lightning, fire, explosion, natural disasters (including flood, cyclone, landslide, earthquake or other seismic activity), war, terrorism and acts of terrorism, civil unrest, hostilities between nations, state wide or national industrial action, sabotage, malicious damage (not including graffiti), epidemic, pandemic, government mandated lockdown or declared state of emergency, or a combination of any of these, but only if and to the extent that:

- (a) despite the exercise of reasonable diligence, it cannot be (or be caused to be) reasonably prevented, avoided, or removed by the Party seeking to rely on the event or circumstance;
- (b) it adversely affects (including in cost or time (or both)) the ability of a Party to perform any or all of its obligations under this Agreement;

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- (c) the Party wishing to rely on the event or circumstance has taken reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of that event or circumstance (or both) on its ability to perform its obligations under this Agreement (and to mitigate the consequences of it); and
- (d) such event is not substantially the direct or indirect result of the material failure of the Party wishing to rely on the event or circumstance to perform any of its obligations under this Agreement.

Future City Areas means public assets and areas specified in the Divestment Strategy as areas and assets that shall be owned, managed or maintained by the City, including:

- (a) Public Open Space;
- (b) Future City Lots;
- (c) Future Club Facilities Lot;
- (d) Public Parking Areas;
- (e) public improvements, fixtures, fittings, plant and equipment located or affixed upon the Public Open Space and Future City Lots, including the promenade abutting the waterfront within the Marina Project Area (but excluding the internal revetment walls); and
- (f) Completed Roads.

Future City Lots means the freehold lots or conditional freehold lots to be transferred in fee simple to the City, as identified in the Divestment Strategy or any other part of the Project agreed to be transferred to the City in freehold from time to time.

Future Club Facilities Lot means the site for the Ocean Reef SSC (including club house, open space, and some parking) and other uses by the City.

Future Club Facility Lot Works means the buildings, facilities, alterations and additions to the Future Club Facilities Lot to be made to accommodate Ocean Reef SSC.

~~**Future Club Facilities Lot** means the site for the Ocean Reef SSC (including club house, open space, and some parking) and other uses by the City.~~

Future Marina Areas means the area shaded pink on the plan attached in ~~Schedule 5~~ Schedule 1, being primarily the portion of the Marina Project Area located west of the Boundary of Responsibility, which will include the assets comprising the Marina Works once completed and the waterways and all assets deemed in this Agreement to be located to the west of the Boundary of Responsibility. which are further specified in Schedule 4.

Future Other Facilities Lot means the site(s) for the Marine Rescue Whitfords and potential Marina Manager Offices/offices, as identified on the Concept Plan and Divestment Strategy.

~~**Future Other Facilities Lot Works** means the alterations and additions to the Future Other Facilities Lot to be made to accommodate Marine Rescue Whitfords and the Marina Manager.~~

Government Authority means a government (Commonwealth, State or local) or a governmental, semi-governmental, judicial, statutory or public entity or authority, including any such entity or authority established under a Written Law.

Government Steering Committee means the government steering group established in relation to the Project, comprising members nominated by each Party and other relevant Government Authorities.

Guiding Philosophies means the guiding philosophies and parameters for the Project as affirmed by the City and set out in the document titled 'Ocean Reef Marina Philosophy and Parameters' and annexed to this Agreement as Schedule 5.

Handover means; the handover of Upkeep Responsibility in relation to the Future City Areas to the City when all of the requirements for the Upkeep Responsibility Date to occur, have occurred or been achieved. [ME Note: amendments reflect latest agreed understanding of the handover and upkeep process and obligations. See comments in Part F.]

Handover Obligations means, in relation to a Future City Area, that:

- (a) all of the works that comprise that Future City Area have been completed;

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- (b) the relevant works and improvements have been completed in accordance with all Approvals;
- (c) all requirements of the City in its statutory capacity or when performing a statutory function in relation to the relevant works have been completed or cleared by the City;
- (d) all Upkeep Responsibilities of DevelopmentWA have been completed;
- (e) all damage to the relevant works and improvements since Practical Completion of the same has been rectified, excluding fair wear and tear; and
- (f) all plans, specifications, certifications, agreements, Approvals and other documents reasonably requested by the City in relation to that Future City Area have been provided to the City.

[ME Note: reference to Defects removed to reflect that the Defect liability process and principles run separate to the Upkeep Responsibility and handover process.]

Harbour Waters the current Ocean Reef boat harbour waterway, being Lot 504 on Deposited Plan 421397, comprising an area of approximately 5.1611 hectares.

HOA means the Heads of Agreement entered into by the City and DevelopmentWA in relation to the Project and dated 19 May 2021.

Improvement Scheme means the Ocean Reef Marina Improvement Scheme No.1 gazetted on 30 September 2020 and as may be updated from time to time.

Indicative Project Program means the program in ~~Schedule 7~~ Schedule 6, which program must be updated by DevelopmentWA from time to time.

Intellectual Property Rights means all intellectual property rights and interests (including common law rights and interests), including all:

- (a) patents, trademarks, service marks, copyrights, registered and unregistered designs, trade names, domain names, symbols and logos;
- (b) patent applications and applications to register trademarks, service marks and designs;
- (c) methods, plans, data, drawings, specifications, characteristics, inventions, improvements, know how, experience, trade secrets, confidential information or other information; and
- (d) licences or similar user rights in respect of any such rights and interests.

Land Assembly Process refers to the means by which the Parties and other relevant Government Authorities have agreed to affect the assembly of the land comprising the Marina Project Area (including the transfer of certain lots), as documented in the 'Land Assembly Tranche Plan' (as that term is defined in the Transfer Deed) and in order to facilitate the delivery of the Project in accordance with the terms of this Agreement. ~~The agreed version of which is identified as "XXXX".~~

Landscape Master Plan means the landscape master plan, annexed to this Agreement as ~~Schedule 8~~ Schedule 7.

Landside Works means all works required to complete the Project that are not Marina Works including:

- (a) the Future City Areas;
- (b) creation of the freehold lots and development sites for sale;
- (c) Public Parking Areas; and
- (d) roads, footpaths, cycleways, and all related landscaping (in accordance with the Landscape Master Plan).

Leased Facilities means the buildings and improvements leased to the tenants under the Existing Leases.

Leased Premises means the areas leased under each of the Existing Leases, including the Leased Facilities.

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Limitations means the agreements, acknowledgements, qualification, warranties and representations in ~~clause~~clauses 6.1 and 6.2.

LG Boundary Amendment means the amendment of the local government boundary of the City to include the ~~Marina~~Marina and the Excised Marine Park Lot.

Local Government Act means the *Local Government Act 1995* (WA).

Lot 1029 means Lot 1029 on Diagram 57604 being the whole of the land comprised in Certificate of Title Volume 1957 Folio 865.

Lot 1032 means Lot 1032 on Plan 13198 being the whole of the land comprised in Certificate of Title Volume 1667 Folio 921.

LT Sustainability refers to the City's objective of ensuring that the financial impacts to the City of the Ocean Reef Marina are sustainable in the long term and specifically LT Sustainability means that:

- (a) in relation to the City's operating surplus / deficit: recurring impact including depreciation, should be no worse than zero once the Ocean Reef Marina is fully developed (this is measured by comparing the project impacts to the existing baseline deficit); and
- (b) in relation to the City's cashflow: The 50-year cashflow impacts are zero or positive (when compared to the baseline).

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Marina Management Deed means an agreement pursuant to which DevelopmentWA, the City and any future Marina Manager agree:

- (a) that the responsibilities of the Marina Manager are in relation to the area west of the Boundary of Responsibility;
- (b) the obligations of the Marina Manager in relation to the management and operation of the Future Marina Areas;
- (c) the handover of responsibility for the management and maintenance of the Future Marina Areas from DevelopmentWA to the Marina Manager;
- (d) the co-ordination of management and maintenance responsibilities for the interface between the Future Marina Areas and the Future City Areas along the Boundary of Responsibility, as between the Marina Manager and the City;
- (e) the responsibility of the Marina Manager and DevelopmentWA for the rectification of Defects in the Future Marina Areas that impact upon the Future City Areas.

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Marina Manager means any third party marina manager (including, for example, DoT) that may be appointed to manage and maintain the Future Marina Areas, in accordance with clause 25 and clause 23.10, but until such appointment is made means DevelopmentWA.

Marina Project Area means the area of land and water outlined in ~~bluered~~bluered as shown on the map annexed to this Agreement as ~~Schedule 9~~Schedule 1, and as at the Commencement Date comprising portions of:

- (a) the City Lots;
- (b) the City Crown Land;
- (c) the Excised Marine Park Lot;
- (d) Lots 600 and 601 on Deposited Plan 418370;
- (e) the Ocean Reef Boat Harbour, comprising at the Commencement Date:
 - (i) Crown Lot 10098 on Deposited Plan 216098 and being the whole of the land comprised in Crown Land Title Volume LR3048 Folio 270;
 - (ii) Crown Lot 10518 on Deposited Plan 216098 and being the whole of the land comprised in Crown Land Title Volume LR3146 Folio 799;
 - (iii) Crown Lot 10519 on Deposited Plan 216098 and being the whole of the land comprised in Crown Land Title Volume LR3146 Folio 800; and
 - (iv) the Harbour Waters.

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Marina Works means the marina infrastructure to be constructed as part of the Project, including:

- (a) two breakwaters;
- (b) jetties;
- (c) the coastal pool;
- (d) internal marina edge (revetment) wall (but excluding the promenade);
- (e) boat pens and boat stacker sites;
- (f) boat ramps and trailer parking bays;
- (g) any seabed works;
- (h) the marine enterprise precinct immediately south of the Boundary of Responsibility but excluding the Future Club Facilities Lot; and
- (i) any other infrastructure that will become the responsibility of the Marina Manager in accordance with the Divestment Strategy; and
- (j) ancillary facilities.

Marine Rescue Whitfords means Whitfords Volunteer Sea Rescue Group (Inc).

MOU means the Memorandum of Understanding between DevelopmentWA (formerly trading as LandCorp) and the City and dated 21 February 2018.

Ocean Reef SSC means the Ocean Reef Sea Sports Club (Inc).

ORM Documents means the Concept Plan, Landscape Master Plan and the ~~Approved~~ Design Documents ~~developed under clause 12.~~

Party means DevelopmentWA or the City and **Parties** means both of them.

Practical Completion means the completion of the Marina Works or Landside Works or separable portions thereof, subject to minor Defects, to the reasonable satisfaction of DevelopmentWA.

Project means the development of the Marina Project Area generally in accordance with the Project Vision, clause 5.1 and the requirements of this Agreement.

Project Completion means the completion of Handover of all of the Future City Areas to or with the City or such other date agreed by the Parties.

Project Documents means this Agreement, the ~~Early~~ Works Licences, the Transfer Deed and any other document which the Parties agree is a Project Document.

Project Grant means the State Government funding allocated to fund part of the costs to be incurred by DevelopmentWA in undertaking the Project, being at the Commencement Date an amount of \$~~120~~192,000,000.

Project Timeline means the detailed timeline for the completion of the Project which includes:

- (a) a staging plan for the works; and
- (b) a plan for the timing of lot sales,

as prepared and updated by DevelopmentWA from time to time.

Project Vision is to establish a world class, vibrant marina precinct comprising of recreational, boating, tourism, residential, retail and commercial facilities, and more particularly, the delivery of the key infrastructure and development outcomes described in clause 5.

Proposed Variation means a ~~material~~ variation to a Design Document proposed by DevelopmentWA.

Public Open Space means public open space to be created within the Marina Project Area and placed or to be placed with the City for care, control and management.

Public Parking Areas means those parts of the Future City Areas to comprise publicly accessible parking areas, as indicated by the Divestment Strategy or otherwise agreed by the Parties, which will include the Freehold Car Park. ~~IME Note: as instructed, the parking area will be subject~~

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to service easements and a restrictive covenant or other limitation relating to the use of the land. This is to remain addressed in the Transfer Deed.]

Refined Design Documents has the meaning given in accordance with clause 12.5(b):

Representative means a person appointed to represent ~~ana~~ Party from time to time under clause 9.1(a) and where the context permits, includes any alternative Representative to the extent of their authority.

Services means electricity, gas, telecommunication, water, sewerage, and other utilities or services.

Smart Infrastructure means smart infrastructure and technology that may be integrated as part of the Project works which may include:

- (a) communication or internet-connected infrastructure, including sensors, data collection, CCTV, smart lighting, irrigation and parking technology; or
- (b) technology that otherwise will provide improved public or commercial amenity.

Specified Area Rate has the meaning given to that term under section 6.37 of the Local Government Act.

Staging Plan means the plan showing the indicative order and staging of the Project as provided to the City by DevelopmentWA from time to time.

State means the State of Western Australia.

State Business Case means the public document titled 'Business Case: Ocean Reef Marina Development' dated and approved by the State Government in July 2017.

State Club Contribution means the amount of \$6,485,000.00 towards new facilities for the Ocean Reef SSC and Marine Rescue Whitfords.

Statutory Responsibility means that the City is required to perform functions in relation to a Future City Area under a Written Law.

Statutory Responsibility Date means the date on which the City has Statutory Responsibility for the management or control of the relevant Future City Area such as the date when the City becomes the management body for or freehold owner of a Future City Area.

Telstra means Telstra Corporation Limited.

Term means the term of this Agreement, commencing on the Commencement Date and expiring on the date specified in clause 4.

Transfer Deed means the Land Transfer Deed entered into by the Minister for Lands and the Parties which records the agreements by the Parties and the Minister for Lands to the actions required to (amongst other things) give effect to:

- (a) the Land Assembly Process;
- (b) relevant terms of the HOA not otherwise addressed or detailed in this Agreement; and
- (c) the Divestment Strategy.

Upkeep Area means an area of land that is all of, or a separate lot that is part of, a Future City Area.

Upkeep Area Handover Date means the date on which Handover is confirmed under clause 23.5(a)(ii)(A) in respect of the relevant Upkeep Area.

Upkeep Responsibility means responsibility and liability for ensuring that a Future City Area:

- (a) is clean, tidy, maintained, free of rubbish, repaired, safe and generally kept in a good condition; and
- (b) is free of damage and graffiti and that any damage or graffiti is rectified, subject to fair wear and tear in the case of damage.

Upkeep Responsibility Date means, in relation to an Upkeep Area, the date which is the last to occur of:

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- (a) 2 years after construction and development of the Future City Area and all related alterations, additions and improvements have been Practically Completed; and
- (b) the Statutory Responsibility Date.

Vacant Leased Areas has the meaning in clause 20.6(b).

Vacation Date means the second to occur of:

- (a) 30 April 2024; -and
- (b) two months after Practical Completion of the Future Club Facility Lot Works by DevelopmentWA,

or such other date as the Parties may agree.

WAPC means the Western Australian Planning Commission.

Works Licences means:

- (a) the document titled 'Access Licence' dated 13 February 2020 entered into between the City as licensor and DevelopmentWA as licensee, in relation to the City Lots, City Crown Land and a portion of Ocean Reef Road, as extended by letter from the City of Joondalup dated 27 August 2020, for the purposes of early works construction;
- (b) the breakwater construction access licence dated 23 December 2020, for the purpose of undertaking the breakwater construction associated with the Ocean Reef Marina Project; and
- (c) a superlot subdivision access licence, dated 19 March 2021, for the purpose of carrying out the works necessary to implement the superlot subdivision.

Written Law means any statute, regulation, ordinance, by-law or other subsidiary legislation and any lawful direction or notice by a Government Authority.

1.2 Interpretation

The following rules also apply in interpreting this Agreement, unless inconsistent with the context:

- (a) headings are for convenience only, and do not affect interpretation;
- (b) a reference to legislation (including subordinate legislation) is to that legislation as amended, consolidated, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Agreement, and a reference to this Agreement includes any schedule or annexure;
- (d) a reference to an agreement or instrument includes the agreement or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to anything includes each part of it;
- (f) a reference to a Party is a reference to that Party as may be reconstituted or substituted under any Written Law from time to time;
- (g) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (h) a reference to time is to Australian Western Standard time;
- (i) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (j) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (k) another grammatical form of a defined word or expression has a corresponding meaning;
- (l) a singular word includes the plural, and vice versa;
- (m) a word which suggests one gender includes the other genders;

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- (n) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (o) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it; and
- (p) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed, or the event must occur on or by the next Business Day.

1.3 Agreement is legally binding

The Parties agree that this Agreement and the obligations contained herein are legally binding.

1.4 Collaboration

In performing their respective obligations under this Agreement, each Party commits to: work with the other Party in a co-ordinated, co-operative and collaborative way.

- (a) ~~work with the other Party in a co-ordinated, co-operative and collaborative way;~~
- (b) ~~explore opportunities for efficiencies;~~
- (c) ~~work with other relevant Government Authorities and stakeholders in a co-operative and efficient manner in relation to the delivery of the Project.~~

1.5 Heads of Agreement superseding

Without limiting clause 1.3 and for the avoidance of doubt, this Agreement and the Transfer Deed supersedes the HOA and MOU.

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Part B – Project outline

2. Purpose

The purpose of this Agreement is to:

- (a) set out the roles, rights and obligations of each Party in relation to the delivery of the Project by DevelopmentWA; and
- (b) ensure the implementation and completion of the Project by DevelopmentWA in an orderly and timely manner.

3. Interdependency with Transfer Deed

3.1 Timing of Transfer Deed

- (a) The Parties must enter into the Transfer Deed on the same date as this Agreement.
- (b) Either Party may terminate this Agreement if the other Party or the State fails to enter into the Transfer Deed.

3.2 Interdependency with Transfer Deed

- (a) The Parties acknowledge that the Transfer Deed is interdependent with this Agreement.
- (b) The Parties agree to execute the Transfer Deed and do all other things reasonably necessary to give effect to the Land Assembly Process in a timely manner.
- (c) In the event of an inconsistency between this Agreement and the Transfer Deed, the Transfer Deed prevails.
- (d) The City agrees with DevelopmentWA to comply with its obligations in the Transfer Deed.

- (e) DevelopmentWA agrees with the City to comply with its obligations in the Transfer Deed.

4. Term

Except where otherwise agreed by the Parties, this Agreement will terminate upon:

- (a) the last to occur of:
 - (i) the date of Project Completion; and
 - (ii) the last to occur of:
 - (A) the expiration of all Defects Liability Periods in respect of the Future City Areas; ~~and~~
 - (B) the completion of the rectification of Defects in the Future City Areas in accordance with clause 23.9; ~~and~~
 - (C) the City ~~or DevelopmentWA~~ ceasing to have any remaining rights against ~~DevelopmentWA's~~ ~~DevelopmentWA's~~ builders and consultants pursuant to ~~the deeds of collateral warranty referred to in clause 23.9(f); 23.9;~~ 23.9; or
- (b) the earlier termination of this Agreement in accordance with its terms.

5. Project Components

5.1 Key elements of the Project

The Parties agree that the Project is anticipated to include:

- (a) a marina, inclusive of eight boat launching ramps and trailer parking bays, which is to have a capacity for approximately:
 - (i) 550 boat pens; and
 - (ii) 200 boat stacker bays;
- (b) an internal beach within the protection of the marina and a coastal pool;
- (c) approximately 12,000 square metres of retail and commercial floor space;
- (d) over 5 hectares of community spaces;
- (e) approximately 1,000 dwellings, comprising of single residential homes, apartments, grouped dwellings;
- (f) mixed-use developments;
- (g) short stay and hotel rooms;
- (h) a waterfront promenade;
- (i) public parking (including car bays and boat trailer parking areas);
- (j) new sites and facilities for Marine Rescue Whitfords, Ocean Reef SSC and a telecommunications provider;
- (k) commercial opportunities for the City including commercial agreements with third parties; ~~and~~
- (l) public infrastructure to support the Project such as street lighting, road and path networks and drainage;
- (m) community spaces such as playgrounds, gazebos, BBQs and public artwork; ~~and~~
- (n) public equity, to ensure that there is unrestricted community access to the public waterfront areas (but excluding the secure marine enterprise area) as each stage is completed, ~~especially in relation to those waterfront areas in front of the residential components of the Marina~~ ~~marina~~.

5.2 Changes to certain matters

- (a) DevelopmentWA will use reasonable endeavours not to do any of the following without the prior agreement of the City, not to be unreasonably withheld, conditioned or delayed:
- (i) materially change or apply to materially change the Improvement Scheme;
 - ~~change the Boundary of Responsibility;~~
 - (ii) make any change to the location of the Future Club Facilities Lot;
 - (iii) materially change the size or scale of any Future City Area from the description of that Future City Area in the ~~[insert reference document]; and [ME Note: retention of this clause is subject to the existence of an agreed baseline document clearly establishing the size and scale of the Future City Areas (as currently proposed);]~~ Divestment Strategy; and
 - (iv) ~~[ME Note: no appropriate baseline reference exists for deleted clause (a)(vi) to (a)(viii), except for the Improvement Scheme, which is already subject to consent if there is a material changes, above.]~~ reduce public access to the waterfront areas from that shown on ~~[insert relevant document]; the Divestment Strategy.~~
- (b) The City acknowledges that given the scale and duration of the Project it may be necessary for DevelopmentWA to do any of the things described in ~~clauses clause~~ 5.2(a) and 5.3(e). The City must act promptly and reasonably when requested by DevelopmentWA to agree to any of the things described in ~~clauses clause~~ 5.2(a) and 5.3(e).

5.3 Third Party Developers

~~[Clause 5.3 to be moved to after clause 14 (Project Delivery).]~~

- (a) DevelopmentWA may:
- (i) sell or transfer 50% or less of land that is suitable for development or subdivision into lots for residential or commercial purposes in the Marina Project Area (**developable land**) to; or
 - (ii) enter into a joint venture, development management, project delivery or other similar arrangement in relation to 50% or less of developable land with, one person or group.
- (b) DevelopmentWA may:
- (i) sell or transfer more than 50% of the developable land to; or
 - (ii) enter into a joint venture, development management, project delivery or other similar arrangement in relation to more than 50% of the developable land with, one person or group (**Third Party Developer**), provided:
 - ~~(iii)~~ DevelopmentWA does so substantially in accordance with DevelopmentWA's standard conditions, policies and limitations, subject to:
 - ~~(A)(iii)~~ conditions relating to the specific project deliverable requirements imposed on the Third Party Developer by DevelopmentWA; and
 - ~~(B)(iv)~~ an option to repurchase the relevant land in the event of the Third Party Developer's default, exercisable by DevelopmentWA; ~~DevelopmentWA provides the City with notice and reasonable details of the actions taken under this clause;~~
 - ~~in the case of a sale or transfer more than 50% of the developable land, the Third Party Developer first enters into a deed of covenant with the City agreeing to observe and perform DevelopmentWA's covenants, agreements and obligations under this Agreement in relation to the relevant developable land, with such deed of covenant:~~
 - ~~(C) to be in a form acceptable to the City acting reasonably;~~

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~~(D) to require DevelopmentWA to pay the City's reasonable legal costs and expenses in relation to the preparation, negotiation and execution of the deed of covenant and all ancillary advice provided to the City in that regard.~~

~~(v) any transfer of the land occurring within a reasonable period, having regard to the nature of the arrangement; and~~

~~(vi) DevelopmentWA providing the City with notice and reasonable details of the actions taken under this clause 5.3(b).~~

(c) If clause ~~5.3(b)~~ 5.3(b) does not apply, DevelopmentWA may:

- (i) sell or transfer more than 50% of the developable land to; or
- (ii) enter into a joint venture, development management, project delivery or other similar arrangement in relation to more than 50% of the developable land with, one person or group with the prior agreement of the City, which agreement will not be unreasonably withheld, conditioned or delayed.

~~[ME Note: DevelopmentWA does not agree to the City having consent rights generally in relation to the appointment of development partners, particularly as DevelopmentWA would retain appropriate controls in accordance with DevelopmentWA's standard terms to ensure the objectives of this agreement are achieved. Amended clause 5.3 is drafted to reflect this.]~~

~~[ME Note: the previous clause 5.2(c) is deleted as clause 34 provides an appropriate escalation mechanism if agreements cannot be reached, and therefore should apply. It should go to the Party representative for discussion then to the CEO if no resolution is reached.]~~

Part C – Project governance, powers and representatives

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6. Parties powers

6.1 No fetter of statutory powers

Nothing in this Agreement fetters, replaces or alters, or is to be taken as fettering, replacing or altering:

- (a) the statutory powers, functions, obligations and discretions of the Parties or a Party's Representative or other officers (including but not limited to the City's statutory planning and building functions); or
- (b) any Ministerial discretion exercisable in respect of the Project.

6.2 Acknowledgement of statutory and policy limitations

- (a) It is acknowledged by the Parties that:
 - (i) the City must undertake its obligations under this Agreement in a way that is in compliance with the Local Government Act; and
 - (ii) DevelopmentWA must undertake its obligations under this Agreement and otherwise act in compliance with the *Western Australian Land Authority Act 1992* (WA).
- (b) The Parties warrant that they each have the powers to enter into this Agreement and that its terms are binding upon and enforceable against them and:

- (i) for its part, the City specifically warrants that, if and to the extent applicable in relation to the Project, it has complied with the requirements of sections 3.58 and 3.59 of the Local Government Act prior to entering into this Agreement; and
- (ii) each Party warrants that all consents and approvals required to enter into this Agreement have been obtained.
- (c) The following qualifications and limitations apply to this Agreement:
 - (i) nothing done by or on behalf of a Party fetters, replaces or alters, or is to be taken as fettering, replacing or altering the statutory powers, functions, obligations and discretions of that Party; and
 - (ii) unless a Party has advised otherwise in writing, there is no delegation of that Party's powers, functions or rights in favour of any person.

7. Role of the City

The City agrees that its roles and responsibilities in relation to the Project are generally described as follows:

- (a) to provide an ongoing commitment to the delivery of the Project, and assist DevelopmentWA to ensure that the Project is achieved;
 - (b) to participate in meetings of the Government Steering ~~Group~~Committee;
 - (c) to provide DevelopmentWA with access to the City Crown Land and City Lots in accordance with clause 16.1;
 - (d) to contribute and relinquish its title to the City Lots and to agree to the revocation of the City Management Orders, in accordance with this Agreement, the Land Assembly Process and the Transfer Deed;
 - (e) to accept title and control over, and responsibility for, Future City Areas to be transferred to, placed with or vested in the City in accordance with the terms of the Divestment Strategy and the Transfer Deed and at the time and in accordance with the requirements of this Agreement;
 - (f) to provide all reasonably requested support to DevelopmentWA to enable it to undertake and complete the Project, including cooperating, collaborating and engaging with other Government Authorities and stakeholders relevant to the Project; and
 - (g) to perform its obligations in this Agreement in good faith and in a timely manner, and, where applicable, as are more particularly described in this Agreement provided that the City is under no obligation to:
 - (h) provide any funding in relation to the Project; or
 - (i) assume any development risk in relation to the Project;
- except as expressly provided for in this Agreement or as otherwise agreed by the Parties.

8. Role of DevelopmentWA

The Parties acknowledge and agree that DevelopmentWA's roles and responsibilities are generally described as follows:

- (a) to deliver the Project in accordance with the Project Vision, the State Business Case and this Agreement;
- (b) to keep the City reasonably informed in relation to the Project;
- (c) to provide the City with a Project Timeline and a Staging Plan from time to time and keep these documents up to date;
- (d) to have regard to feedback from the City in relation to the Project;

- (e) to manage the Project Grant to finance DevelopmentWA's costs in undertaking the Project;
- (f) to fund the costs of undertaking and delivering the Landside Works;
- (g) to liaise with relevant Government Authorities for the purpose of securing their Approval, cooperation and agreement, where required, to deliver the Project;
- (h) to have regard to the Project Vision and the Guiding Philosophies when exercising the functions and discretions vested in it by operation of this Agreement;
- (i) to work to ensure that the Project is implemented as a 'whole of government' initiative, involving not just the cooperation of the Parties but also DoT, DPLH, Water Corporation and other Government Authorities;
- (j) to facilitate and coordinate the involvement of those additional government stakeholders;
- (k) to actively undertake and facilitate appropriate community and stakeholder consultation;
- (l) reporting, recording, monitoring, managing and rectifying of Defects during applicable Defects Liability Periods and generally assisting the City to enforce its rights against DevelopmentWA's contractors and consultants in relation to the rectification of Defects;
- (m) to perform its obligations in this Agreement in good faith and in a timely manner; and where applicable, as are more particularly described in this Agreement.

9. Representatives

9.1 Parties' Representatives

- (a) Each Party must, at all times, appoint and retain a natural person to be the Party's representative for all purposes under this Agreement.
- (b) On and from the Commencement Date:
 - (i) DevelopmentWA's Representative shall be Matt Read, Manager Metro South; and
 - (ii) the City's Representative shall be the person, from time to time occupying the position within this City known as "XXXXX" Mat Humfrey, Director of Corporate Services.
- (c) Each Party may at any time, by notice from its Chief Executive to the Chief Executive of the other Party:
 - (i) appoint an alternative Representative, who may act in the absence of the first appointed Representative; or
 - (ii) replace a Representative with another Representative.

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9.2 Role of Representatives

Each Party's Representative has the following roles and functions:

- (a) to be the primary point of contact for the Representative and other officers, employees, and agents of the other Party for the purposes of this Agreement;
- (b) to prepare for, attend, meaningfully participate in and, as much as is permissible, provide and share information at the meetings of between the Parties held in relation to the Management Committee Project; and
- (c) to contribute towards the achievement of the Project, by assisting in the co-ordination of and collaboration in the timing, planning and delivery of the Project.

9.3 Representative does not bind Party

A Representative does not, in that capacity, have power to bind a Party in respect of any matter relating to the Project or arising under this Agreement.

10. Government Steering Committee

10.1 Acknowledgement of Government Steering Committee role

The Parties acknowledge the existence and continuing role of the Government Steering ~~Committee~~Committee, which comprises members nominated by:

- (a) each Party;
- (b) DoT;
- (c) DPLH; and
- (d) any other Government Authorities that the Government Steering Committee agree should be invited to participate from time to time.

10.2 Continued participation in Government Steering Committee

The Parties agree to continue to participate in the Government Steering Committee in an open, transparent, and cooperative manner during the Term.

Part D – Project delivery, approvals, and design

11. Project funding

11.1 Management of Project Grant and other contributions

- (a) DevelopmentWA shall in accordance with its legislative and governance requirements:
 - (i) subject to clause 11.2, manage the expenditure of the Project Grant, which shall (subject to the conditions attaching to the Project Grant) primarily be allocated to funding the Marina Works in accordance with the State Business Case; and
 - (ii) contribute funding in the amount required to deliver Landside Works forming part of the Project.
- (b) The City acknowledges receipt prior to the Commencement Date of DevelopmentWA's payment(s) in the amount of \$500,000 exclusive of GST by way of the agreed contribution towards the costs the City has incurred in relation to progressing the necessary Metropolitan Region Scheme amendments and the ~~Public Environmental Review~~public environmental review, in full and final performance and discharge of its commitment under paragraph 6.2(g) of the MOU.

11.2 City acknowledgements in relation to Project Grant and other funding

The City acknowledges that:

- (a) the provision of the Project Grant is subject to State Government policy outside of DevelopmentWA's control, and therefore the provision of the Project Grant and the amount of the Project Grant may be subject to change;
- (b) DevelopmentWA makes no representations and gives no warranties that:
 - (i) the total amount of the Project Grant will be made available by the State Government for allocation to the Project; and
 - (ii) it will provide a particular level of funding towards the delivery of the Project from its own resources; and
- (c) by reason of the provision of the Project Grant, DevelopmentWA controls funding and delivery decisions in relation to the Project in accordance with the terms of this Agreement and to the extent permitted by Written Law.

11.3 DevelopmentWA warranties and representations

- (a) DevelopmentWA warrants and represents to the City that as at the Commencement Date DevelopmentWA has not received notice of and DevelopmentWA is not aware of any ~~changereduction~~ to, or need to ~~changereduce~~, the amount of the Project Grant.
- (b) DevelopmentWA agrees to promptly notify the City of:
 - (b) any plans to ~~changereduce~~ or ~~changereduction~~ to:
 - (i) the total amount of the Project Grant; or
 - (ii) any significant ~~changereduction~~ to the level of funding that DevelopmentWA intends to contribute to the delivery of the Project from its own resources.

11.4 City's commitments during Project delivery phase

- (a) The City agrees to:
 - (i) establish a team of experienced officers who will be dedicated to ensuring the City's compliance with its obligations under this Agreement; and
 - (ii) without limiting clause 11.4(a)(i), ensure adequate resources are available and included in the City's budgeting processes to enable the City to perform its obligations in this Agreement and participate in the Project.
- (b) The City may consider contributing to the development of any additional public or commercial infrastructure it proposes that is not already envisaged in the Concept Plan or Divestment Strategy, however the City is under no obligation to provide such further contributions. **[ME Note: Additional clause reflects principles in the HOA, and the agreement in Item 5 of the discussion table circulated between the Parties in November/December 2021.]**

12. Design of Future City Areas

12.1 Not part of any statutory process

- (a) ~~Clauses 12.2 to 12.5 are~~ **Clauses 12.2 to 12.5 inclusive set out** a process that the Parties have, in their capacity as Parties to this Agreement agreed to undertake.
- (b) ~~Clauses 12.2 to 12.5~~ **12.2 to 12.5 inclusive** are not part of and do not modify, inform or replace any statutory process, duty, discretion or function of the City in its capacity as a local government.

12.2 Preparation of Draft Design Documents

- (a) DevelopmentWA must prepare Draft Design Documents for the Future City Areas (or separable portions thereof) that are consistent with the requirements of this Agreement in relation to the Future City Areas and must use reasonable endeavours to ensure that the Draft Design Documents:
 - (i) are based upon, and not inconsistent with:
 - (A) the Concept Plan;
 - (B) the Project Vision;
 - (C) the Boundary of Responsibility;
 - (D) the Improvement Scheme;
 - ~~the Land Assembly Process;~~
 - (E) ~~the Upkeep Responsibility Plan;~~
 - (F) the Divestment Strategy; and
 - (G) the Staging Plan;
 - (ii) have due regard to any minimum standards or specifications of the City which would usually apply to similar developments and infrastructure; and

- (iii) subject to the Limitations, ~~be~~ prepared having regard to feedback and preferences communicated between the Parties, acting reasonably.
- (b) Once prepared, DevelopmentWA must provide the Draft Design Documents to the City for consultation, feedback and discussion purposes: with the intention of:
 - (i) streamlining and improving the timelines for approval processes; and
 - (ii) providing a forum for the City, acting reasonably, to confirm that the Project or the relevant stage to be implemented remains consistent with the City's vision, including the Project Vision.
- (c) DevelopmentWA must use reasonable endeavours to:
 - (i) respond to questions from the City; and
 - (ii) provide supporting information and detail as is reasonably requested, in relation to the Draft Design Documents.
- (d) Where a meeting is requested by either Party in relation to the Draft Design Documents, ~~at least ten (10) Business Days prior to any meeting between DevelopmentWA and the City's Representatives (or between such other representatives of the Parties as otherwise agreed) at which the documents are to be discussed DevelopmentWA must provide the City with the Draft Design Documents the subject of that meeting; the Parties shall endeavour to meet as soon as is reasonably practicable.~~

12.3 ~~Feedback or Approval of~~ Design Documents ~~or Proposed Variations~~

Where Draft Design Documents are provided to the City:-

- ~~the City may either:~~
 - (i) ~~will provide feedback only in relation to the Draft Design Documents; or~~
 - (ii) ~~apply the approval process below in relation to the Draft Design Documents.~~
- (b) ~~If the City decides to provide feedback only then clauses 12.3(c) and 12.3(d) do not apply but the City must provide its feedback within a period of not more than 15 Business Days from the last to occur of:~~
 - (i) ~~receipt of the Draft Design Document or Proposed Variation;~~
 - (ii) ~~receipt of (if any) information and documents pursuant to clause 12.2(c); and~~
 - (iii) ~~any meeting in relation to the Draft Design Documents.~~
- (c) ~~Notwithstanding anything contained in this clause 12 the City must not withhold its approval to a Draft Design Document or a Proposed Variation under this clause 12 unless the City can demonstrate to DevelopmentWA's reasonable satisfaction that the Draft Design Document or Proposed Variation does not comply with clause 12.2(a) or 12.4(b) or there is some other material issue with the Draft Design Documents, within a period of not more than 15 Business Days from the last to occur of:~~
 - (i) ~~receipt of the Draft Design Document or Proposed Variation;~~
 - (ii) ~~receipt of any information and documents pursuant to clause 12.2(c); and~~
 - (iii) ~~any meeting in relation to the Draft Design Documents.~~
- ~~(d)(a) If to DevelopmentWA is satisfied that the City has demonstrated that:~~ in a reasonable time; and
 - (i) ~~the Draft Design Document or Proposed Variation does not comply with clause 12.2(a) or 12.4(b); or~~
- (b) there is some other material issue with the DevelopmentWA must give reasonable consideration to that feedback.

~~(iii)~~ 12.4 Variations to Draft Design Documents,

~~DevelopmentWA will modify the relevant aspect of the Design Document to address the non-compliance and resubmit to the City for approval and clause 12.3(a) will apply again.~~

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12.4 Variations to Refined Design Documents

- (a) ~~If there is a Proposed Variation then DevelopmentWA may prepare and submit a must provide the Proposed Variation to the City for consultation, feedback and discussion by purposes with the Parties, by intention of:~~
- ~~(i) streamlining and improving the timelines for approval processes; and~~
 - ~~(ii) providing a forum for the City, acting reasonably, to confirm that the Project or the relevant stage to be implemented remains consistent with the City's vision, including the Project Vision.~~
- (b) ~~DevelopmentWA must use reasonable endeavours to:~~
- ~~(i) respond to questions from the City; and~~
 - ~~(ii) provide supporting information and detail as is reasonably requested, in relation to the Proposed Variation at least ten (10) Business Days prior to any.~~
- (a)(c) ~~Where a meeting between DevelopmentWA and the City's Representatives (or between such other representatives of the Parties as otherwise agreed) at which is requested by either Party in relation to the Proposed Variation is to be discussed, the Parties shall endeavour to meet as soon as is reasonably practicable.~~
- (d) ~~AWhere Proposed VariationVariations are provided to the City:~~
- ~~(i) the City will provide feedback (if any) to DevelopmentWA in a reasonable time; and~~
 - ~~(b)(ii) DevelopmentWA must be consistent with the requirements of clause 12.2(a) give reasonable consideration to that feedback.~~

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12.5 Refined Design Documents or Proposed Variation

- (a) ~~Any approval ofAny feedback provided in relation to a Draft Design Document or a Proposed Variation by the City is expressly subject to the Limitations.~~
- (b) ~~Once the Parties have discussed, agreed and or modified a Draft Design Document or Proposed Variation that Draft Design Document or Proposed Variation shall be known as a Refined Design Document.~~
- (c) ~~If the City does not approve a Design Document within the timeframes in this clause 12, DevelopmentWA may refer the matter for dispute resolution in accordance with clause34(a) and 34(b) only.~~

12.6 Obligation to comply with Approvals

~~DevelopmentWA must satisfy and comply with all relevant Approvals when undertaking the Project.~~

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~~12.7~~ 12.6 Smart Infrastructure and microgrid

- (a) The City acknowledges that DevelopmentWA will explore and promote opportunities for Smart Infrastructure and a renewable energy microgrid to be designed and developed as part of the Project.
- (b) The City will cooperate with DevelopmentWA to explore and act reasonably to agree the terms on which Smart Infrastructure and a renewable energy microgrid can be implemented as part of the Project and the City acknowledges that this may include:
- (i) the grant of appropriate tenure to a third party owner and operator of any renewable energy microgrid (including granting easements over road reserves for underground cables, conduits, pipes and wires); ~~and~~

- (ii) service agreements with the third party operator in relation to the maintenance and operation of relevant aspects of the Smart Infrastructure-; and
- (iii) the grant of a lease, easement or other right over the roof top of a building on land that the City will own, have vested in it or of which it will have the care control and management, in favour of the operator of a microgrid developed as part of the Project.
- (c) Subject to clause ~~12.7(d)~~1.1(a), DevelopmentWA agrees that if any Smart Infrastructure is intended to be owned by or become the responsibility of the City, it can only be included in the Project if the City, acting reasonably, has agreed to the terms on which it will own and be responsible for that Smart Infrastructure.
- ~~(d)~~ DevelopmentWA:
 - ~~(i)~~ acknowledges that the City does not have capacity to, and will not, assume any obligations in connection with any microgrid; ~~and~~
 - ~~(ii)(d)~~ agrees that the Project cannot include a microgrid unless Western Power or some other person of similar capacity that is acceptable to the City has agreed in writing to assume all of the obligations of the owner and /-or operator of the microgrid if the owner and /-or operator is unwilling, incapable or unable to own or operate the microgrid.

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13. Planning and other approvals

13.1 Improvement Scheme

The City acknowledges the existence of the Improvement Scheme and is aware that the WAPC exercises statutory planning functions in relation to the Marina Project Area.

13.2 City assistance with Approvals

Subject to the Limitations the City agrees to provide all reasonably requested support to DevelopmentWA to enable it to undertake and complete the Project.

13.3 Normalisation

- (a) The City acknowledges that following the repeal of the Improvement Scheme, the City will resume its statutory planning functions in relation to the Marina Project Area.
- (b) DevelopmentWA at its discretion may request, and support the applicable process for, the repeal of the Improvement Scheme, but shall not do so prior to the Handover of all the Future City Areas to the City.

13.4 Local government boundary amendment and rateability of boat pens

- (a) DevelopmentWA acknowledges that the City may apply to amend its local government boundary to include the area the subject of the LG Boundary Amendment.
- (b) DevelopmentWA agrees to provide all applicable and reasonable support and assistance to the City to enable the City to proceed with the City's actions set out in clause 13.4(a).
- (c) DevelopmentWA acknowledges that, if entitled to do so under the Local Government Act and any other relevant legislation, the City may levy rates on the boat pens or the seabed created as part of the Project, provided that while both of the following apply:
 - (i) DevelopmentWA is the Marina Manager; and
 - (ii) DevelopmentWA has acquired the boat pens or the boat pens are vested in DevelopmentWA,
 rates will not be levied against a boat pen or seabed lease until it is leased or licensed to or used by someone other than DevelopmentWA.
- (d) The City acknowledges section 32 of the *Western Australia Land Authority Act 1992*: (WA).

14. Project delivery

14.1 DevelopmentWA will undertake the Project

- (a) DevelopmentWA will use the Project Grant and State funds to undertake and complete the Project in accordance with the State Business Case.
- (b) DevelopmentWA will ~~undertake and complete the Project in accordance with the requirements of this Agreement and~~ use its reasonable endeavours to:
 - (i) undertake and complete the Project, including the Early Works, Landside Works, and the Marina Works, in accordance with:
 - (A) DevelopmentWA's standard processes and operating procedures;
 - (B) the ORM Documents; ~~and~~
 - (C) the Project Documents;
 - (D) the Project Vision;
 - ~~the Refined Design Documents;~~
 - (E) the Boundary of Responsibility;
 - (F) the Improvement Scheme;
 - (G) the Land Assembly Process;
 - (H) the Divestment Strategy; and
 - (I) the Staging Plan;
 - ~~procure and comply with all necessary Approvals required for the Project in accordance with the Improvement Scheme and the relevant Written Laws;~~
 - (ii) engage all relevant consultants, private developers, contractors and subcontractors as necessary to undertake the Project from time to time; and
 - (iii) be in alignment, at a minimum, with the standards or specifications of the City which would usually apply to similar developments and infrastructure.
- (c) DevelopmentWA must:
 - (i) ~~procure and comply with all necessary Approvals required for the Project in accordance with the Improvement Scheme and the relevant Written Laws; and~~
 - ~~(ii) otherwise~~ (ii) undertake and complete the Project in a manner that complies with all Written Laws, good industry practices and all applicable industry codes; ~~and~~
 - ~~(iii) not cease work on the Project or abandon or defer the Project without the proper agreement of the City not to be unreasonably withheld.~~

Part E – Land access, tenure and asset transfer

15. Early Works Licences

The Parties acknowledge and agree that:

- (a) the ~~Early~~ Works Licences have been granted prior to the Commencement Date for the purposes of enabling DevelopmentWA to commence the Early Works;
- (b) the roads to be constructed as part of the Early Works will be dedicated as public roads in accordance with the terms of the relevant ~~Early~~ Works Licence;
- (c) the care, control and management of those roads will be placed with the City upon dedication;

- (d) the City shall execute any applications and documents, and provide all necessary documents and assistance, to effect the dedication of the roads constructed in accordance with the relevant ~~Early~~ Works Licence; and
- (e) DevelopmentWA shall provide to the City all relevant information and documents in relation to the construction of the roads constituting the Early Works.

16. Land Access

16.1 Grant of further Access Licences on provision of notice by DevelopmentWA

- (a) The City acknowledges that DevelopmentWA will require, and the City must, in accordance with this clause 16, grant to DevelopmentWA, further access to the City Lots and City Crown Land as and when required by DevelopmentWA to progress the development of the Project.
- (b) DevelopmentWA may, at any time until the drawdown of the relevant lot in accordance with the Land Assembly Process and the Transfer Deed, give an Access Licence Notice to the City.
- (c) DevelopmentWA may give an Access Licence Notice to the City more than once and in respect of different parts of the City Lots and City Crown Land at different times.
- (d) On receipt of an Access Licence Notice, the City must grant an Access Licence to DevelopmentWA in relation to the area of land specified in the Access Licence Notice, in accordance with clause 16.2.
- (e) Without limitation to clause 20, DevelopmentWA must not give an Access Licence Notice to the City that would cause the City to breach the Existing Leases.

16.2 Preparation and signing of Access Licence

- (a) If the form of the Access Licence is not agreed by the Parties prior to the date of an Access Licence Notice:
 - (i) the Parties will use reasonable endeavours to negotiate and agree the terms of the Access Licence within 20 Business Days of the City's receipt of the Access Licence Notice; and
 - (ii) if the Parties are unable to agree the terms of the Access Licence within the time specified in clause 16.2(a)(i), either Party may refer the negotiation of any outstanding issues for resolution in accordance with the process specified in clause 34.
- (a)(b) Within 15 Business Days of receipt of an Access Licence Notice, or 5 Business Days of the date that the form of the Access Licence is agreed in accordance with clause 16.2(a) (whichever is the latter), the City must:
 - (i) sign the Access Licence (in duplicate); and
 - (ii) deliver the Access Licence to DevelopmentWA.
- (b)(c) DevelopmentWA must then hold the Access Licence in escrow pending its completion under this clause.
- (e)(d) The City irrevocably authorises DevelopmentWA or DevelopmentWA's lawyer or conveyancer to complete the Access Licence by inserting:
 - (i) the date of the Access Licence, which will be the date of the Access Licence Notice;
 - (ii) the date which is the commencement date, and the date the Access Licence expires as specified in the Access Licence Notice (to the extent that those dates are consistent with the terms of this Agreement);
 - (iii) a more appropriate description of the area the subject of the Access Licence (if required); and

- (iv) all other details necessary to complete the Access Licence.

~~(d)~~(e) After DevelopmentWA receives the Access Licence signed by the City and completes it in accordance with clause 16.2(d), DevelopmentWA must:

- (i) sign it (in duplicate);
- (ii) if duty is payable on the Access Licence, pay the duty, at DevelopmentWA's cost; and
- (iii) return one original counterpart of the Access Licence to the City for its records.

16.3 Parties bound by Access Licence

- (a) DevelopmentWA and the City are both bound by an Access Licence from the commencement date specified in the Access Licence Notice, as if the Access Licence were completed, signed, delivered and stamped.
- (b) Clause 16.3(a) applies whether or not DevelopmentWA or the City have signed the Access Licence.
- (c) If any provision of the Access Licence cannot be given effect until a detail referred to in clause 16.2(d) is determined, the provision becomes effective retrospectively when the detail is determined.
- (d) Each party agrees to do all things and sign all documents necessary or desirable to give full effect to the provisions of this document and the transactions contemplated by this document.

17. Implementation of Land Assembly

17.1 Land Assembly Process

The Parties acknowledge that the Land Assembly Process, Divestment Strategy and Transfer Deed outlines, amongst other things, the agreed:

- (a) staging of the Project and the estimated timing of the drawdown of City Lots and City Crown Land;
- (b) process for the subdivision of the City Lots and the transfer and timing of the transfer of the subdivided portions of those lots that fall within the Marina Project Area;
- (c) process for the subdivision of the City Crown Land, following which the City will agree to the revocation of the City Management Orders in respect of the relevant portions of that land; and
- (d) ~~the~~ balance Crown land and balance freehold lots (if applicable) that are to be retained by, placed with, vested in or transferred back to the City, as required to enable DevelopmentWA to undertake the Project.

17.2 Power to Lease

Without limitation to the Transfer Deed and subject to any approval or decision of DPLH or the Minister for Lands:

- (a) DevelopmentWA acknowledges that in relation to each Future City Area that is Crown land, the City requires that area to be subject to:
 - (i) a reserve purpose or purposes acceptable to the City acting reasonably; and
 - (ii) a management order that grants to the City the power to lease, grant or consent to a sublease and grant or consent to a licence of all or part of that Future City Area for up to 42 years (including options).
- (b) DevelopmentWA agrees to support the City's efforts to secure:
 - (i) a reserve purpose or purposes acceptable to the City acting reasonably; and

- (ii) management orders for the Future City Areas that are Crown land that include the power to lease, grant or consent to a sublease and grant or consent to a licence of all or part of that Future City Area for up to 42 years (including options)-, but acknowledging that the Minister for Lands has agreed to lesser terms in clause 14.1(e) of the Transfer Deed.

17.3 Encumbrances and the Future City Areas

Except to the extent provided for in the Transfer Deed, the Project Documents or as agreed by the City otherwise, DevelopmentWA must:

- (a) ensure that the Future City Areas are transferred to the City or placed under the management of the City free of any obligation for the City to enter into an agreement or arrangement with any person in relation to:
 - (i) that Future City Area; or
 - (ii) the repair, maintenance, upgrade, operation, control or management of that Future City Area; and
- (b) not enter into any agreements on behalf of the City or any arrangements that will need to be assumed by the City.

17.4 Freehold Land

~~(a)~~ DevelopmentWA must ensure that the Freehold Car Park is transferred to the City in freehold for no consideration and is transferred free of all encumbrances, interests, limitations and notifications except ~~that~~:

- ~~(a)~~ that there may be an a positive or restrictive covenant or other form of encumbrance, condition or restriction on the title requiring the City to ensure that there is always not less than XX car parking bays on which provides that:
 - ~~(i)~~ without limiting how the land may be otherwise developed and used, the land in the lot comprising the Freehold Car Park but this encumbrance must must be used for the provision of a minimum number of public car parking bays (which will not be less than 210 bays) other than during periods of repair and maintenance, replacement or refurbishment; and
 - ~~(ii)~~ until completion of the Project, that the parking fees charged by the City will be set and maintained at a rate so as not otherwise restrict the use of the lot comprising the Freehold Car Park; to inhibit public visitation to, and the activation of, the Project and thereafter the City may determine the parking fees in its discretion; and
 - ~~(ii)~~ the lot comprising the Freehold Car Park may be subject to service easements if the City and DevelopmentWA, both acting reasonably have been unable to agree an alternative location or route for the service easements.
- ~~(b)~~ DevelopmentWA must ensure that the Future Club Facilities Lot is transferred to the City in freehold for no consideration and is transferred free of all encumbrances, interests, limitations and notifications.
- ~~(b)~~ for the Specified Encumbrances (as that term is defined in the Transfer Deed).

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18. Contamination and site risk

18.1 DevelopmentWA liability for site risks

Subject to clause 18.2, and clauses 16.1 and 17.2 of the Transfer Deed, as between the City and DevelopmentWA, DevelopmentWA accepts the land comprising the City Lots and the City Crown Land on and from the date of the transfer of that land or of the placing of the care, control and management of that land with DevelopmentWA:

- (a) in an as is where is condition;

- (b) with all Contamination;
- (c) with all defects whether apparent or not; -and
- (d) with such encumbrances and interests as provided for in the Transfer Deed.

18.2 Existing tenancies and third party responsibility

The Parties agree that clause 18.1 of this Agreement and clause 17.2 of the Transfer Deed shall not affect or limit the liability or obligations of the tenants under the Existing Leases or any other third parties, including in relation to any Contamination, and the City agrees to enforce or assist DevelopmentWA with the enforcement of any right the City has or may have against the tenant or any other person under an Existing Lease or any other third party.

18.3 Provision of studies and information

- (a) Subject to any confidentiality obligations, upon request, the City will provide to DevelopmentWA copies of all:
 - (i) current leases, licences or other agreements relating to the City Lots or City Crown Land;
 - (ii) environmental and contamination studies and reports relating to the Marina Project Area; and
 - (iii) other similar documents and data relevant to the material risks pertaining to the Marina Project Area or the Project generally within the possession or control of the City.
- (b) Subject to any confidentiality obligations, upon request, DevelopmentWA will provide to the City copies of all:
 - (i) environmental and contamination studies and reports relating to the Marina Project Area; and
 - (ii) other similar documents and data relevant to the material risks pertaining to the Marina Project Area or the Project generally within the possession or control of DevelopmentWA which relate to the Future City Areas.

19. ConsiderationCity's financial considerations

- (a) DevelopmentWA acknowledges:
 - (i) the City's stated objective of achieving the City Return; and
 - (ii) that subject to the terms of this Agreement, the City may have regard to the achievement of the City Return, to the extent applicable when performing its obligations and exercising its rights under this Agreement, but nothing in this clause fetters, impacts or limits the City in its exercise of its statutory rights, powers and functions.

~~* The City has and is taken to have satisfied itself that the City Return and the delivery of the Project by DevelopmentWA in accordance with the terms of this Agreement, is fair and reasonable consideration for the City transferring the relevant portions of the City Lots and agreeing to the revocation of the City Management Orders.~~

- (b) The City may, but is not obliged to, contribute additional funding to the Project.

20. Existing Leases

20.1 Allocation of responsibilities

- (a) In relation to the obligations of the City and DevelopmentWA ~~in relation~~relating to the Existing Leases, the following overarching agreements apply:
 - (i) the City is responsible for:

- (A) terminating or procuring the termination of the lease to ORSSCOcean Reef SSC;
- (B) procuring that ORSSCOcean Reef SSC vacate their current Leased FacilitiesPremises by the Vacation Date; -and
- (C) the relocation costs (if any) of ORSSCOcean Reef SSC that the ORSSCOcean Reef SSC is entitled to claim; and
- (ii) DevelopmentWA is subject to clause 20.1(b) the City is not responsible for:
 - (A) procuring the termination of the lease to Marine Rescue Whitfords and Telstra;
 - (B) procuring that Marine Rescue Whitfords and Telstra vacate their current Leased FacilitiesPremises by the Vacation Date; - and
 - (C) the relocation costs (if any) of Marine Rescue Whitfords and Telstra that Marine Rescue Whitfords and Telstra are may be entitled to claim; but will provide assistance in accordance with the requirements of clauses 20.6 and 20.7.
- (b) The City will sign all documents as reasonably requested by DevelopmentWA to enable DevelopmentWA the termination or surrender of the Existing Leases and the delivery of vacant possession of the Existing Leased Premises to comply with clause 20.1(a)(ii) the extent that outcome is otherwise achieved under this clause 20, such as by agreement of an Existing Tenant.
- (c) In the event of an inconsistency between ~~this~~ clause ~~20.1~~20.1(a) and any other part of this clause 20, ~~this~~ clause ~~20.1~~20.1(a) prevails.

20.2 Management of leases and tenant interests

The City agrees to maintain and manage the Existing Leases and the Leased Facilities until the relevant freehold title is transferred or the City Management Order over the portion(s) of land encumbered by the Existing Leases is revoked (as the case may be) in accordance with the terms of the Transfer Deed, with a view to:

- (a) maintaining an ongoing relationship with and facilitating the ongoing contribution to the local community by Marine Rescue Whitfords and the Ocean Reef SSC as long term tenants of the relevant Leased Facilities and the proposed future alternative premises; and
- (b) maintaining the rental income associated with the Existing Leases for as long as reasonably practicable.

20.3 Maintenance of access

DevelopmentWA agrees to work collaboratively with the City and the Marine Rescue Whitfords and the Ocean Reef SSC to ensure that access is maintained to the Leased Facilities for the benefit of Marine Rescue Whitfords and the Ocean Reef SSC prior to the Vacation Date, unless Marine Rescue Whitfords and the Ocean Reef SSC agree otherwise or have vacated their sites prior to the Vacation Date.

20.4 New site for existing tenants

- (a) DevelopmentWA has identified on the Concept Plan two separate future sites, being the Future Club Facility Lot and the Future Other Facilities Lot.
- (b) The City will offer a lease to Ocean Reef SSC in relation to the relevant portion of the Future Club Facilities Lot for a term acceptable to the parties to that lease.
- (c) DevelopmentWA will offer or cause the Marina Manager to offer Marine Rescue Whitfords a lease of the site shown on the Concept Plan for a term acceptable to the parties to that lease.
- (d) DevelopmentWA will offer or cause the Marina Manager or the Water Corporation to offer Telstra (or other telecommunications provider) a lease or licence of the site shown on the Concept Plan for a term acceptable to the parties to that lease.

20.5 Engagement with stakeholders

The Parties:

- (a) acknowledge that Marine Rescue Whitfords provides an essential service;
- (b) agree that DevelopmentWA:
 - (i) may engage with Marine Rescue Whitfords directly in relation to the termination of its existing lease; ~~and~~
 - (ii) shall engage in a collaborative manner with Marine Rescue Whitfords, the Department of Fire and Emergency Services, DoT and other applicable entities in developing the Draft Design Documents applicable to the portions of the Future ~~Club~~Other Facilities Lot that will be tenanted or utilised by Marine Rescue Whitfords;
- (c) agree to engage in a collaborative manner with Ocean Reef SSC and related stakeholders in developing the Draft Design Documents applicable to the portions of the Future Club Facilities Lot that will be tenanted or utilised by the Ocean Reef SSC;
- ~~(d)~~ agree that:
 - ~~(i)~~ the City is responsible for entering into the new lease arrangements with Ocean Reef SSC; ~~and~~
- ~~(ii)~~(d) DevelopmentWA is responsible for entering into the new lease arrangements with Marine Rescue Whitfords and Telstra (or other telecommunications provider) ~~or for causing the Marina Manager or the Water Corporation to do so; and~~
- (e) agree that of the State Club Contribution, an amount of \$4,800,000 plus GST has been allocated to the construction by DevelopmentWA of the new building for the City to lease to Ocean Reef SSC.

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20.6 Actions to procure Vacant Leased Areas

- (a) The Parties will have regard to the proposed timing and staging of the Project discussed by the Parties from time to time.
- (b) The Parties must work together collaboratively and cooperatively to facilitate the termination or surrender of the Existing Leases and the delivery of vacant possession of the Existing Leased Premises (**Vacant Leased Areas**) by the Vacation Date.
- (c) For the purposes of achieving Vacant Leased Areas by the Vacation Date, the Parties acknowledge this may involve consideration of some or all of the following issues in discussions with each of the Existing Tenants:
 - (i) the terms on which the Existing Lease may be surrendered or terminated;
 - (ii) the terms of the new lease with the Existing Tenant; and
 - (iii) the timing or terms of relocation of the Existing Tenant, including staged relocations,

and the Parties agree to participate in discussions on those issues to the extent reasonably applicable to each of them.

20.7 Costs of procuring the Vacant Leased Areas

- (a) Each Party will bear its own costs, liabilities or expenses in order to achieve the Vacant Leased Areas by the Vacation Date but without liability on either Party to incur any costs, liabilities or expenses to the Existing Tenants including in respect of any of the matters listed in clause 20.6(c), unless expressly provided for elsewhere in this Agreement.
- (b) The City:
 - (i) is not required to cause the tenants of the Existing Tenants to comply with any obligation to make good the Leased Facilities nor any other provision of the Existing Lease that apply upon the Existing Leases coming to an end except as provided for in clause 20.7(b)(ii); ~~and~~

- (ii) must not waive any right of the kind referred to in clause 18.2 without DevelopmentWA's agreement which will not be unreasonably withheld.
- (c) DevelopmentWA will assume liability and responsibility for the former Leased Premises on the earlier of the following to occur:
 - (i) the date on which DevelopmentWA takes possession of the relevant Vacant Leased Area; or
 - (ii) the date on which the City Management Order is revoked in respect of the relevant Vacant Leased Area, which the Parties will seek to occur as soon as possible after the Existing Lease comes to an end.

21. Services and Roads

21.1 Services

DevelopmentWA shall be responsible for:

- (a) the relocation of Services provided to the premises under the Existing Leases, and associated infrastructure, from the Leased Facilities to the new site for those tenancies nominated by DevelopmentWA in accordance with clause 20.4;
- (b) the relocation of any Services provided to infrastructure existing within the Marina Project Area as at the Commencement Date, to the extent required during the construction of the Project;
- (c) management of Service providers during the construction of the Project; and
- (d) providing notice to the City of any anticipated Services closures or interruptions.

21.2 Roads

Subject to the Limitations and the terms of this Agreement, including the agreements in relation to Handover:

- (a) DevelopmentWA shall be responsible for the design and construction of the roads, and associated drainage, required as part of the Project;
- (b) roads will be created by plan and upon subdivision of land affected by the Completed Roads, dedicated as a road and the care, control and management placed with the City in accordance with the Transfer Deed; and
- (c) the City must provide all reasonable assistance to DevelopmentWA in relation to the planning, approval and dedication of the roads required as part of the Project.

22. Existing infrastructure

22.1 Existing jetties

The Parties acknowledge and agree that:

- (a) there are existing jetty structures within the existing Marina marina that are owned by the City (**Existing Jetties**);
- (b) DevelopmentWA may elect to acquire or use the Existing Jetties within the Marina Project Area or elsewhere, by notice in writing to the City (**Jetty Call Notice**);
- (c) upon receipt of the Jetty Call Notice of DevelopmentWA's election, the City and DevelopmentWA shall in good faith negotiate reasonable terms for such use or acquisition of the Existing Jetties will contribute the Existing Jetties in accordance with clause 15.3(j)(iii) of the Transfer Deed;
- (d) if DevelopmentWA gives notice that it does not intend to issue the Jetty Call Notice, or otherwise if the Parties are unable to reach agreement in relation to the acquisition or use of the Existing Jetties by DevelopmentWA within 3 months of service of a Jetty Call Notice, DevelopmentWA:

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- (i) may remove the Existing Jetties and store them landside within the Marina Project Area; and
- (ii) will provide to the City at least 20 Business Days' prior notice of such removal, following which the City must remove the Existing Jetties at its cost within a reasonable time after they are stored landside by DevelopmentWA.

22.2 Existing public assets

- (a) For so long as all of the following apply:
 - (i) both Parties are satisfied that it is safe for the public to access the area in question;
 - (ii) the City wishes to keep the area in question open to the public; and
 - (iii) the area in question is either freehold land owned by the City or Crown land the subject of a management order in favour of the City,

the City will be responsible for the maintenance and management of the existing car parking area (including the collection of fees), public toilets and beach area within the Marina Project Area in accordance with its Statutory Responsibilities.
- (b) If the public assets referred to in this clause can remain open and accessible to the public after the transfer of the relevant areas to the State or DevelopmentWA in accordance with the Transfer Deed, the City may in its discretion take a licence of those areas from the State or DevelopmentWA on terms reasonably acceptable to both Parties.

22.3 Relocation of other infrastructure

Without limiting the obligations of DevelopmentWA, the Marina Manager shall be responsible for arranging the relocation of the following existing infrastructure:

- (a) the infrastructure owned by DoT, including navigational aids within the waterways or located on Lot 1029, which shall be relocated in consultation with DoT; and
- (b) the infrastructure owned by the Bureau of Meteorology, which may be relocated to Lot 1029, which will be in consultation with the City if the infrastructure is to be relocated on land that is being retained by the City.

Part F – Future management and handover

23. Divestment Strategy, Construction and Handover of Future City Areas

23.1 Divestment Strategy

The Parties acknowledge that the Divestment Strategy outlines or must outline, amongst other things, the agreed:

- (a) layout and location of the Future City Areas to be transferred to, placed with or vested in the City following the completion of the Project or a particular stage of the Project by DevelopmentWA;
- (b) purpose of the reserves to be placed with the City for its care, control and management; and
- (c) powers for the City to lease and licence the reserves (subject to the prior consent of the Minister for Lands) to be placed with the City.

23.2 Construction of Future City Areas

- (a) The Future City Areas must:
 - (i) be developed by DevelopmentWA as a component of the Project;

- (ii) be located within the Marina Project Area; and
 - (iii) be to the east of the Boundary of Responsibility.
- (b) In relation to achievement of Practical Completion of the Future City Areas the following applies:
- (i) before DevelopmentWA awards, or allows a contractor to award, Practical Completion, DevelopmentWA must:
 - (A) give the City notice of its intention to do so, which notice must include details of Defects (if any);
 - (B) inspect the works in question with the City and the contractor;
 - (C) provide the City with information and documentation in relation to the works as the City reasonably requests; and
 - (D) have due regard to any feedback from the City in relation to whether or not there are Defects in the Future City Area and whether or not Practical Completion should or should not be awarded; and
 - (ii) DevelopmentWA must keep the City informed of the rectification of Defects in accordance with clause 23.9-; and
 - ~~(e)(iii)~~ To enable the time period in paragraph (a) of the definition of Upkeep Responsibility Date to be calculated, DevelopmentWA will give a notice to the City that of the date on which Practical Completion has occurred.

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23.3 Handover of Future City Areas

- (a) Subject in all respects to this clause 23, the City accepts Statutory Responsibility for the Future City Areas on the applicable Statutory Responsibility Date.
- ~~(b)~~ The Parties agree that the standards and requirements applicable to DevelopmentWA's liability for Upkeep Responsibility of a Future City Area in accordance with this clause 23, will be the higher of:
 - ~~(i)~~ the standards and requirements described in the definition of 'Upkeep Responsibility' in this Agreement; or
 - ~~(ii)~~ the standards and requirements imposed in any condition of the subdivision approval under the *Planning and Development Act 2005* for the Future City Area.
- ~~(b)(c)~~ Irrespective of whether or not the Statutory Responsibility Date has occurred and despite the fact that Statutory Responsibility may have occurred, until ~~Handover:the Upkeep Area Handover Date~~ DevelopmentWA is liable for and must pay for Upkeep Responsibility of the Future City Areas.
 - ~~(i)~~ DevelopmentWA must insure the Future City Area;
 - ~~(ii)~~ DevelopmentWA is liable for and must pay for Upkeep Responsibility of the Future City Areas;
 - ~~(iii)~~ risk in and liability for a Future City Area remains with DevelopmentWA;
 - ~~(iv)~~ compliance with all Laws in relation to the Future City Area remains with DevelopmentWA;
 - ~~(v)~~ all occupational health and safety responsibilities in relation to the Future City Area remains with DevelopmentWA; and
 - ~~(vi)~~ if a Future City Area is damaged or destroyed that Future City Area must be reinstated and made good by DevelopmentWA.
- ~~(c)~~ in relation to the period before the applicable Handover, DevelopmentWA indemnifies and agrees to keep the City indemnified against all claims, loss, cost, damage, expense and liability however arising in relation to any failure by DevelopmentWA to undertake Upkeep Responsibility of the Future City Areas until the applicable Handover.

- (d) ~~the~~The City is liable for and must pay for Upkeep Responsibility for the Future City Areas on and from the applicable Upkeep Area Handover Date.
- (e) If a Party (**First Party**) incurs a cost or expense in relation to a Future City Area that in accordance with clause 23.3(c) or clause 23.3(d) was the responsibility of the other Party (**Second Party**) then the Second Party must reimburse the First Party, the amount of the cost or expense.
- (f) Where a Future City Area spans more than one Upkeep Area then the Parties must make a fair and reasonable apportionment of Upkeep Responsibility between the Upkeep Areas and clause 23.3(c) and clause 23.3(d) will apply in relation to the portion allocated to each Upkeep Area.

23.4 Timing of Handover of an Upkeep Area

- (a) DevelopmentWA will nominate the proposed date on which Handover of an Upkeep Area is anticipated to occur being the proposed Upkeep Area Handover Date, by providing 30 days' prior written notice to the City of the anticipated handover date, with such ~~dates~~date being no earlier than in relation to:
 - (i) the Future Club Facilities Lot, the date that is ~~insert~~60 days after Practical Completion of the ~~new-building~~Future Club Facility Lot Works; and
 - (ii) each other Future City Area, the respective Upkeep Responsibility Date for that Upkeep Area.
- (b) The written notice nominating the Handover must, as the case may be, either:
 - (i) confirm compliance with all of the obligations that apply on Handover; or
 - (ii) describe those obligations that are yet to be completed but will be completed by the Upkeep Area Handover Date.
- (c) DevelopmentWA will provide at least ~~[14]~~ days' prior written notice to the City nominating a date or dates prior to the proposed Upkeep Area Handover Date on which DevelopmentWA and City officers can meet to inspect the Future City Areas with relevant contractors (**Inspection Date**).
- (d) Handover ~~for an of Upkeep Responsibility and the~~ Upkeep Area Handover Date cannot occur unless and until:
 - (i) all of the obligations in relation to the Upkeep Responsibility that apply on the Upkeep Responsibility Date have been completed; and
 - (ii) Statutory Responsibility for that Upkeep Area is with the City.
- (e) The City may give DevelopmentWA notice of outstanding obligations in relation to the Upkeep Responsibility that apply on the Upkeep Responsibility Date.
- (f) Upon request DevelopmentWA must provide the City with:
 - (i) details of all contractors and service providers relating to the Upkeep Responsibilities including copies of the ~~Applicable~~applicable agreements;
 - (ii) details of the insurances held by those contractors and service providers;
 - (iii) full plans and specifications for the Future City Area and all plant, equipment and improvements;
 - (iv) details of DevelopmentWA's compliance with the Handover Obligations;
 - (v) registers of repairs and maintenance; and
 - (vi) details of all Defects, Defect liability periods and actions to rectify Defects.

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23.5 Inspection

- (a) The Parties must each ensure that relevant officers attend onsite on the nominated Inspection Date, or another inspection date agreed by the Parties, to:
 - (i) inspect the Upkeep Area subject to the respective Handover; and

- (ii) confirm either:
 - (A) Handover; or
 - (B) the outstanding obligations that need to be completed in order to achieve Handover.
- (b) Where there are outstanding obligations that need to be completed DevelopmentWA will complete those outstanding Handover Obligations and provide notice of a revised Upkeep Area Handover Date and an inspection will occur again.
- (c) The process will continue until all Handover occurs.

23.6 Portion Handover

The Parties must work together collaboratively and cooperatively to effect the Handover of the relevant portion of Future City Areas to the City, subject to DevelopmentWA complying with the obligations that apply on Handover in accordance with this clause 23, provided it is agreed that:

- (a) Upkeep Responsibility will transfer from DevelopmentWA to the City on a staged basis; and
- (b) unless the City agrees otherwise, there can only be one Handover for each Upkeep Area.

23.7 Assumption of costs on Handover

For the avoidance of doubt and without limitation to any other provision in this Agreement or the Project Documents, on and from Handover in relation to any portion of the Future City Areas until the date that the final subdivision proposed by DevelopmentWA has been completed and the certificate of titles issued in respect of it the City must maintain at its cost that portion of the Future City Area transferred to or placed with the City pursuant to the Divestment Strategy and the Transfer Deed, in accordance with best practice asset management and otherwise to a standard and condition:

- (a) commensurate with the standard and condition of the Future City Areas as at Handover, subject to fair wear and tear; and
- (b) consistent with the Project Vision.

23.8 Statutory Responsibility

The Parties agree to ensure the Future City Areas are transferred to, placed with or vested in the City (as applicable) on or about the Statutory Responsibility Date, in accordance with the terms of the Transfer Deed and notwithstanding clauses 23.3 ~~and 23.4~~ to 23.7 inclusive of this Agreement, including by:

- (a) as appropriate, DevelopmentWA- consenting to the revocation of any management orders affecting the relevant portion of Public Open Space in respect of which it is the management body;
- (b) the City accepting the vesting or grant of management orders placing with it the care, control and management of the relevant portion of Public Open Space;
- (c) DevelopmentWA transferring, and the City accepting the transfer of, any Future City Areas in fee simple; and
- (d) do all other things necessary to transfer ownership and control of the Future City Areas to the City.

23.9 Defects

- (a) In relation to the Future City Areas, the Parties must establish procedures for the proactive identification, reporting, recording, monitoring, managing of Defects and Defects Liability Periods.
- (b) DevelopmentWA must provide the City with all information held by DevelopmentWA in relation to the identification, reporting, recording, monitoring, managing of Defects and Defects Liability Periods.

- (c) In relation to any Defects in the Future City Areas (including any alterations, additions or improvements to those Future City Areas) that arise or are identified (whether by DevelopmentWA, the City or otherwise) before the expiry of the Defects Liability Period, DevelopmentWA must cause the contractor or subcontractor who undertook the works to rectify, remedy and make good the Defect in accordance with the terms of the relevant contract.
- (d) DevelopmentWA must enter into agreements with its consultants and contractors that are consistent with clause 23.9(a): but which are not required to impose any representations or warranties as to Defects, or a Defects Liability Period, in excess of those which are usually imposed in accordance with good industry practices and all industry codes applicable to the relevant industry (Third Party Contract).
- (e) Subject to the City notifying DevelopmentWA of any Defect and DevelopmentWA agreeing (acting reasonably) that it constitutes a Defect, DevelopmentWA must as and when requested by the City to do so during an applicable Defects Liability Period, exercise and enforce all then existing rights against its contractors under the applicable third party contract in relation to the rectification, remedying and making good that Defect, or statutory limitation period:
- (i) exercise and enforce all then existing rights against its contractors under the applicable Third Party Contract or at law in relation to the rectification, remedying and making good that Defect, if DevelopmentWA considers (acting reasonably) that there is a reasonable probability of success of taking such action; or
 - (ii) use reasonable endeavours to procure the benefit of then existing rights against its contractors under the applicable Third Party Contract or at law in relation to the rectification, remedying and making good that Defect to be exercisable by the City including by an assignment or transfer of those rights to the City.
- (f) DevelopmentWA will ensure that its contracts the Third Party Contract it enters into with its builders and consultants contain the builder appointed to construct the building on the Future Club Facility Lot contains:
- (i) a requirement that the City has, pursuant to section 11 of the Property Law Act 1969 (WA), the benefit of any builder and consultant, upon notice from DevelopmentWA, do execute and provide a deed of collateral warranty (substantially in the form attached) for the benefit of the City, warranties or representations given by the builder in favour of DevelopmentWA, with respect to the builder's or consultant's works and services in relation to Future City Areas; and [ME Note: provision subject to review of proposed deed of collateral warranty.]
 - (ii) the requirement that the builder ensure that its subcontracts contain the requirement that the subcontractors, upon notice from DevelopmentWA, do execute and provide a deed City has, pursuant to section 11 of collateral warranty (substantially in the form attached) for Property Law Act 1969 (WA), the benefit of any warranties or representations given by the City-subcontractor in favour of DevelopmentWA with respect to that subcontractor's works and services in relation to Future City Areas.
- (g) DevelopmentWA must will:
- (i) give notice to a builder or consultant under provide the City with a copy of the builder's Third Party Contract the subject of clause 23.9(f)(i) 23.9(f), when requested by the City to do so;
 - provide the City with copies of all agreements the subject of a notice under clause 23.9(f)(i); and
 - (ii) provide the City with provide all reasonable assistance to the City to enable the City to enforce and enjoy the full benefit of each deed of collateral warranty benefit of the warranties and representations given in favour of the City under clause 23.9(f) in respect of the builder's Third Party Contract.

23.10 Management and control of Future Marina Areas

For the avoidance of doubt and subject to clause 25:

- (a) as at the Commencement Date, it is intended that DevelopmentWA will retain control and responsibility for the Future Marina Areas after Practical Completion on an interim basis; and
- (b) if required by DevelopmentWA, the Parties agree to negotiate in good faith a further agreement to document any interface between the City and DevelopmentWA's responsibilities along the Boundary of Responsibility, amongst other things that may elaborate upon but not increase the liability of the City in relation to the area in proximity to the Boundary of Responsibility.

23.11 No fetter

Nothing in this clause 23 fetters, impacts or limits the Parties respective statutory rights, powers and functions in relation to the Future City Areas.

24. Boundary of Responsibility

24.1 Limits of Boundary

- (a) The Boundary of Responsibility is:
 - (i) fixed and cannot be varied without the written agreement of the City; and
 - (ii) subject to clause 24.1(c), is a vertical plane along the boundary.
- (b) Unless the City agrees otherwise in writing, DevelopmentWA must:
 - (i) not do anything that imposes responsibilities or obligations on the City in relation to the area to the west of the Boundary of Responsibility; and
 - (ii) not agree to any management orders in favour of the City that impose any obligations or responsibilities in relation to the area to the west of the Boundary of Responsibility,subject to clause 24.2.
- (c) For the avoidance of doubt it is agreed that the following are located or are deemed to be located to the west of the Boundary of Responsibility and as such are the responsibility of ~~Development WA~~DevelopmentWA and any future Marina Manager:
 - (i) jetties;
 - (ii) internal revetment walls;
 - (iii) breakwaters and seawalls;
 - (iv) boat trailer car park;
 - (v) boat ramps; and
 - (vi) any structures to prevent shoreline erosion,and all additions and improvements that form part of or support these items.

24.2 Marina management access

The City agrees to grant or consent to the grant of appropriate access rights (including in an easement or easements) on terms and conditions acceptable to the Parties (acting reasonably) to DevelopmentWA and any appointed Marina Manager (and their successors in title) for the purposes of carrying out obligated functions within the Marina Project Area, including the maintenance, repair or replacement of any of the infrastructure specified in clause 24.1(c) or to carry out any coastal management processes.

25. Marina Management

25.1 Application of clause

This clause 25 will only apply in the circumstance that a Marina Manager is appointed, or is proposed to be appointed, by DevelopmentWA.

25.2 Responsibility of a Marina Manager

- (a) The Parties agree that a Marina Manager may be appointed generally in relation to the long-term management and/or maintenance of the relevant portions of the Future Marina Areas.
- (b) The Marina Manager's roles and functions may include, specifically:
 - (i) the management of:
 - (A) the marina waterway including breakwaters and internal revetment walls;
 - (B) mooring pens within the marina and boat stackers;
 - (C) boat ramps; ~~and~~
 - (D) boat trailer parking; and
 - (E) hardstand and associated improvements and buildings; and
 - (ii) safety, maintenance, repair, upgrade and replacement of the Future Marina Areas.
- (c) DevelopmentWA shall determine the requirement for a Marina Manager, and if required, the scope of the role, functions and responsibilities to be performed by any Marina Manager, having regard to:
 - (i) consultation with DoT;
 - (ii) consultation with the City;
 - (iii) consultation with DPLH (as required); ~~and~~
 - (iv) any interface with the services that will be provided by the City along the Boundary of Responsibility, in the ordinary course of it performing its functions as local government authority.

25.3 Appointment of Marina Manager

- (a) DevelopmentWA shall determine the process for the procurement of any Marina Manager and the terms on which the Marina Manager will be appointed, pursuant to the Marina Management Deed, in consultation with DPLH, DoT and the City, which for the avoidance of doubt may include the appointment of DoT which is, at the Commencement Date, the preferred future Marina Manager.
- (b) Any decision by DevelopmentWA in relation to the procurement and appointment of a Marina Manager will be final and binding, provided that DevelopmentWA can demonstrate to the City that DevelopmentWA is satisfied that the Marina Manager is a person capable of performing that role.
- (c) DevelopmentWA must ensure that the Marina Manager enters into the Marina Management Deed with the City in relation to those aspects of the Project where the City and the Marina Manager will need to engage with each other-, including the matters referred to in the definition of Marina Management Deed and clauses ~~24.2, 25.2, 1.1 and 4.124~~ and 25.2.
- (d) Without limiting clause 25.3(a), the Parties acknowledge that the Marina Manager shall not be a party related to the Ocean Reef SSC or Marine Rescue Whitfords.
- (e) To the extent that DevelopmentWA elects to retain any role in relation to the management of the Future Marina Areas other than on an interim basis, the Parties agree to negotiate in good faith such further agreement as may be required to document the Parties' respective rights and responsibilities in relation to the same.

- (f) It is the desire of the City that the Future Marina Area remains Crown Land and if ever freeholded then the freehold ownership of the Future Marina Area remains with the State.

25.4 City not obliged to be the Marina Manager

For the avoidance of doubt, DevelopmentWA acknowledges that the City will not be the Marina Manager.

26. Further Project revenue and asset opportunities

26.1 Parking revenue

The Parties agree that following the Handover of the Public Parking Areas:

- (a) the City may charge parking fees for the use of the Public Parking Areas; and
- (b) any parking fees charged by the City will be initially set at a rate that does not inhibit public visitation to, and the activation of, the Marina Project Area but does provide a return to the City.

26.2 City Specified Area Rates

- (a) DevelopmentWA acknowledges that the City will seek to apply a Specified Area Rate in accordance with the Local Government Act in relation to all or some parts of the Marina Project Area.
- (b) The City acknowledges section 32 of the *Western Australian Land Authority Act 1992* ~~(WA)~~.
- (c) In developing any proposals or applications for a Specified Area Rate that is proposed to apply to some or all of the Marina Project Area, the City agrees to use reasonable endeavours to:
- (i) provide prior notice to and consult with DevelopmentWA in relation to the proposed rates; and
- (ii) have regard to any reasonable suggestions or concerns raised by DevelopmentWA in relation to the Specified Area Rate.

26.3 No warranty

Notwithstanding anything in this Agreement, the City acknowledges and agrees that DevelopmentWA provides no representation, warranty or guarantee:

- (a) in relation to the City securing any particular amount, source of income or commercial opportunity referred to in this Agreement; ~~and~~
- (b) that the City can or will achieve all components of the City Return (including the components referred to in paragraph (a), (b), (c), (f), (g) and (h) of the definition of City Return).

Part G – General provisions

27. Exclusion of liability

The City agrees that DevelopmentWA shall not be liable for, and the City releases DevelopmentWA from, all liability, loss, damages, or claims arising from, and costs and expenses incurred in connection with:

- (a) City Lots and City Crown Land (or portions of the same), when and for as long as they are owned by, vested in or placed with the City during the Term; and

~~* Future City Areas on and from Handover;~~

(b) Future City Areas on and from the date on which they are transferred to, placed with or vested in the City but subject to any outstanding Handover Obligations and DevelopmentWA's obligations under clauses 23.9(e) to 23.9(g) (inclusive).

except to the extent caused or contributed to by:

- ~~a breach by DevelopmentWA of this Agreement by or any other agreement between the City and DevelopmentWA; or~~
- (c) ~~an act relating to the Project; or omission;~~
- (b)(d) the negligence, misconduct, breach or default of DevelopmentWA or its consultants, contractors, employees, agents and invitees.

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28. Publicity and community announcements

Subject to the Limitations, the Parties shall work collaboratively to prepare and agree on the contents of, and make, any public announcements in connection with this Agreement or the Project, in accordance with any communications protocol agreed by the Parties, unless such announcement is required by Written Law, planning regulation or Ministerial direction, in which case the Party required to make an announcement must, to the extent practicable, first consult with and take into account the reasonable requirements of the other Party.

29. Insurance

DevelopmentWA must:

- (a) maintain appropriate insurance cover with RiskCover in relation to risks that a reputable developer would normally insure for projects of a nature and size similar to the Project; and
- (b) ensure that its contractors and service providers likewise maintain appropriate insurance cover in relation to risks that a reputable contractor or service provider would normally insure for projects of a nature and size similar to the Project.

30. Information

30.1 Exchange

Further to the intent of co-operation and collaboration contemplated by this Agreement, each Party will promptly share or supply relevant data, information and knowledge and provide updated data, information and knowledge as may be relevant to the Project and requested by the other Party, subject to:

- (a) the exception contained in clause 30.2;
- (b) the requirements of any Written Law, government policy or policy of the Party; and
- (c) any terms and conditions imposed by the disclosing Party in relation to any confidential information that is disclosed.

30.2 Confidentiality

- (a) Subject to any Written Law, each Party may withhold confidential or commercially sensitive information from the other Party at its discretion;
- (b) Each Party and its Representative receiving confidential or commercially sensitive information from another Party under this Agreement will keep it confidential except:
 - (i) as required by any Written Law or order of any court or other tribunal having jurisdiction to order its production;
 - (ii) where the information is public knowledge (but not because of a breach of this Agreement) or the party has independently created the information; or

- (iii) where disclosure is made to a person who must know for the purposes of this Agreement or to make decisions in relation to this Agreement on the basis that the person keeps the information confidential or is otherwise subject to an obligation to keep the information confidential.

30.3 Intellectual Property Rights

Any Intellectual Property Rights held in any information or other thing shared under this Agreement will remain the property of the relevant Party or other person, and the sharing of the information or other thing under this Agreement will not entitle any other Party to use or exploit it.

31. Goods and services tax

31.1 Interpretation

Words or expressions used in this clause 31, which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or, if not so defined, then which are defined in the *Trade Practices Act 1974* (Cth), have the same meaning in this clause.

31.2 Gross up of consideration

Despite any other provision in this Agreement, if a Party (**Supplier**) makes a supply under or in connection with this Agreement on which GST is imposed (not being a supply the consideration for which is specifically described in this Agreement as **GST inclusive**):

- (a) the consideration payable or to be provided for that supply under this Agreement but for the application of this clause (**GST exclusive consideration**) is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that supply; and
- (b) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

31.3 Reimbursements (net down)

If a payment to a Party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that Party, then the payment will be reduced by the amount of any input tax credit to which that Party is entitled for that loss, cost or expense.

31.4 Tax invoices

The Supplier will provide a tax invoice.

[JM note: Please can DWA:

- **clarify what it considers to be the supplies under this Agreement and the Land Transfer Deed;**
- **clarify what it considers to be consideration under this Agreement and the Land Transfer Deed for those supplies; and**
- **provide the City with drafts of DWA's / the State's proposed tax invoices under this agreement and the Land Transfer Deed.]**

32. Notices

- (a) A notice or other communication under this Agreement is only effective if it is:
 - (i) in writing, signed (and in the case of email, includes the sender's full signature block, being the sender's name, title and organisation, but does not require an electronic signature); and
 - (ii) either left at the addressee's address or sent to the addressee by post or email.
- (b) If the notice or communication is sent by:

- (i) mail, it is taken to have been received 3 Business Days after it is posted;
- (ii) email, it is taken to have been received when the sender of the email receives a confirmation of delivery message generated by the sender's system.
- (c) Each Party's mail and email address for the service of notices, at the Commencement Date, is set out in the Details at the front of this Agreement.

33. Force Majeure

33.1 Notice of Force Majeure Event

If a Force Majeure Event occurs and the affected Party wants to rely on the Force Majeure Event, then it must notify the other Party in writing of the occurrence of the Force Majeure Event and the circumstances resulting or arising from it. The notice must give:

- (a) details of the Force Majeure Event;
- (b) details of the obligations under this Agreement which are affected by the Force Majeure Event;
- (c) details of the action that the Party affected by the Force Majeure Event has taken and proposes to take to remedy the circumstances or situation arising or resulting from the Force Majeure Event; and
- (d) an estimate of the time during which the Party was or will be unable to carry out the affected obligations due to the Force Majeure Event.

33.2 Information

A Party affected by a Force Majeure Event must keep the other Party reasonably informed of the steps being taken to mitigate the effect of the Force Majeure Event upon the performance of that Party's obligations under this Agreement and of an estimate of the duration of any delays.

33.3 Rights after Force Majeure Event

During and after a Force Majeure Event, a Party's obligations under this Agreement which are affected by the Force Majeure Event will be suspended, but only to the extent, and for so long as, such obligations are genuinely affected by the Force Majeure Event.

33.4 No default

A Party will not be deemed to be in default of its obligations under this Agreement in so far as failure or delay in the observance or performance of those obligations by that Party is caused by a Force Majeure Event. Each Party must act reasonably to remedy and overcome the effects of a Force Majeure Event without unreasonable delay.

33.5 Cessation of Force Majeure Event

When the period for which a Party's obligations are affected by a Force Majeure Event ceases, that Party must, within a reasonable time, recommence performance of all obligations under this Agreement which are affected by the Force Majeure Event.

34. Disputes

- (a) Each Party must use their reasonable endeavours to avoid any form of dispute under this Agreement.
- (b) Should a dispute arise between the Parties:
 - (i) the Representative of either Party shall provide notice to the other of the dispute; (Dispute Notice);
 - (ii) the Parties must nominate a representative to meet to in good faith attempt to resolve the dispute; within 10 Business Days of service of the Dispute Notice (Initial Meeting); and

- (iii) if the Parties cannot resolve the dispute the Chief Executives of each Party must meet within 20 Business Days of ~~that Management Committee meeting~~ the Initial Meeting to meet to resolve the dispute in good faith.
- (c) If no outcome to a dispute is reached within 20 Business Days of a meeting of the Chief Executives in accordance with this clause, and if the dispute is of a complex technical nature, then:
 - (i) the Parties shall jointly appoint an appropriate independent expert to resolve the dispute as an expert;
 - (ii) such expert's determination shall be binding;
 - (iii) each Party shall bear the costs of the appointment of the expert equally;
 - (iv) if the Parties cannot agree on an appropriate expert to be appointed, the Parties shall request that the appropriate body noted below nominates an expert to determine the dispute:
 - (A) for financial disputes, the President (WA Branch) of Chartered Accountants Australia and New Zealand is to be requested to nominate a registered accountant with at least 10 years' experience for the Parties to appoint;
 - (B) a dispute relating to a land valuation, the Australian Property Institute or the Valuer-General's office (as applicable) is to be requested to nominate a valuer with at least 10 years' experience for the Parties to appoint;
 - (C) for a construction dispute, the General Manager of Engineers Australia (WA Division) is to be requested to nominate a construction engineer with at least 10 years' experience for the Parties to appoint; and
 - (D) for legal or other disputes, the President of the Law Society of WA is to be requested to nominate a lawyer with at least 10 years' experience for the Parties to appoint.
- (d) Neither Party shall commence court proceedings without having first exhausted the processes outlined in this clause.
- (e) This clause is expressly subject to the Limitations and does not apply to a dispute in relation to the Limitations.

35. General

35.1 Costs

Each Party must pay its own costs of negotiating, preparing and executing this Agreement.

35.2 Alterations

This Agreement may be altered only in writing signed by each Party.

35.3 Assignment

- (a) A Party may only assign a right under this Agreement with the prior written consent of the other Party.
- (b) DevelopmentWA must not assign, transfer or sell land in the Marina Project Area owned by DevelopmentWA unless:
~~unless:~~
 - (i) the assignee, transferee or buyer enters into a deed of covenant with the City agreeing to observe and perform DevelopmentWA's covenants, agreements and obligations in this Agreement in relation to the relevant land; or
 - (ii) clause 35.3(c) applies.

- (c) Clause ~~35.3(b)(ii)~~ 35.3(b)(ii) applies to the assignment, transfer or sale of land in the Marina Project Area:
- (i) in accordance with clause ~~5.3(a)~~ 5.3(a), clause ~~5.3(b)~~ 5.3(b) or clause ~~5.3(c)~~ 5.3(c); or
 - (ii) in accordance with the Divestment Strategy, Transfer Deed or another provision of this Agreement; or
 - (iii) that is land subdivided into residential or commercial lots to buyers in the ordinary course of undertaking the Project.

35.4 Survival

Any indemnity or any obligation of confidence under this Agreement is independent and survives termination of this Agreement. Any other term by its nature intended to survive termination of this Agreement survives termination of this Agreement.

35.5 No merger

The rights and obligations of the Parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

35.6 Entire agreement

Unless otherwise provided, the Project Documents constitute the entire agreement between the Parties in connection with its subject matter and supersedes all previous agreements or understandings between the Parties in connection with its subject matter.

35.7 Further action and documents

- (a) Each Party must do, at its own expense, everything reasonably necessary (including executing deeds) to give full effect to this Agreement and any transaction contemplated by it.
- (b) The Parties agree to enter into any further agreements and documents on reasonable terms to give effect to the transactions contemplated by this Agreement.

35.8 Severability

A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement continue in force.

35.9 Waiver

A Party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the Party giving the waiver.

35.10 Relationship

Except where this Agreement expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the Parties.

35.11 Governing law and jurisdiction

This Agreement is governed by the law of Western Australia and each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State of Western Australia.

35.12 Counterparts

This Agreement may be executed in counterparts. All executed counterparts constitute one Agreement.

|

Signing page

The Common Seal of **WESTERN
AUSTRALIAN LAND AUTHORITY**
was hereunto affixed with the authority
of its Board in the presence of:

Chief Executive Officer

Board Member

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

Signature of Mayor

Signature of Chief Executive Officer

Name of Mayor (print)

Name of Chief Executive Officer (print)

~~Schedule 2~~Schedule 1 – Boundary of Responsibility

Schedule 3 ~~Schedule 2~~ – Concept Plan

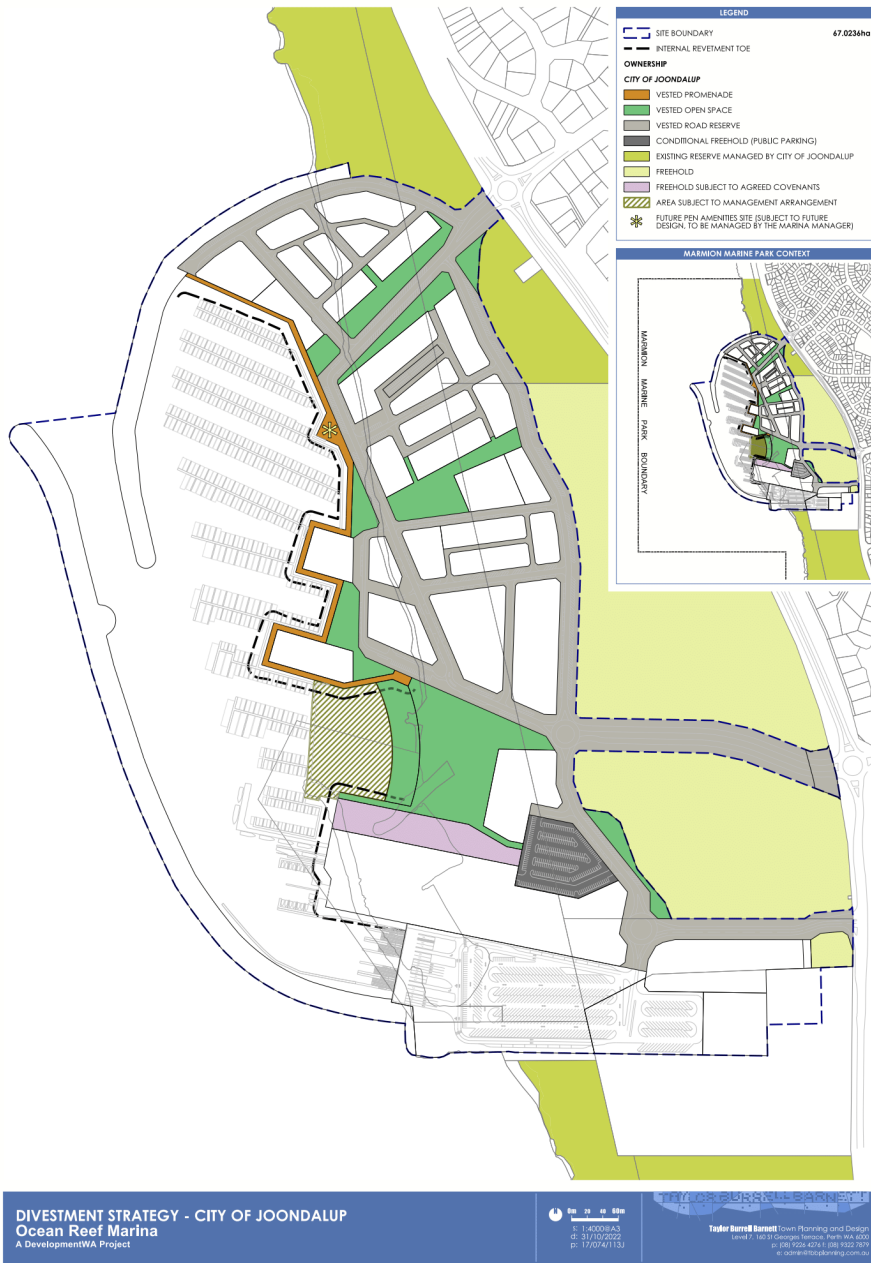
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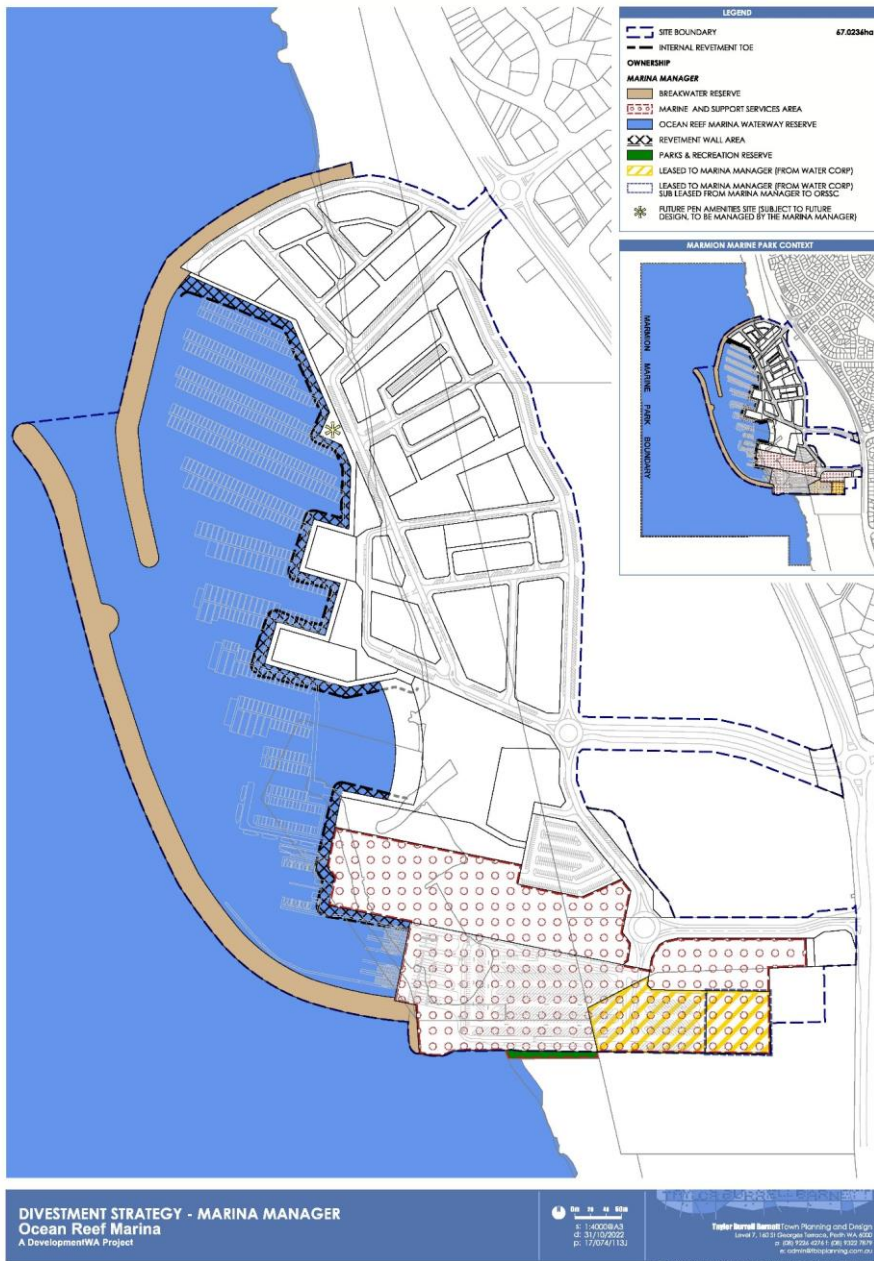


Schedule 4Schedule 3 – Divestment Strategy

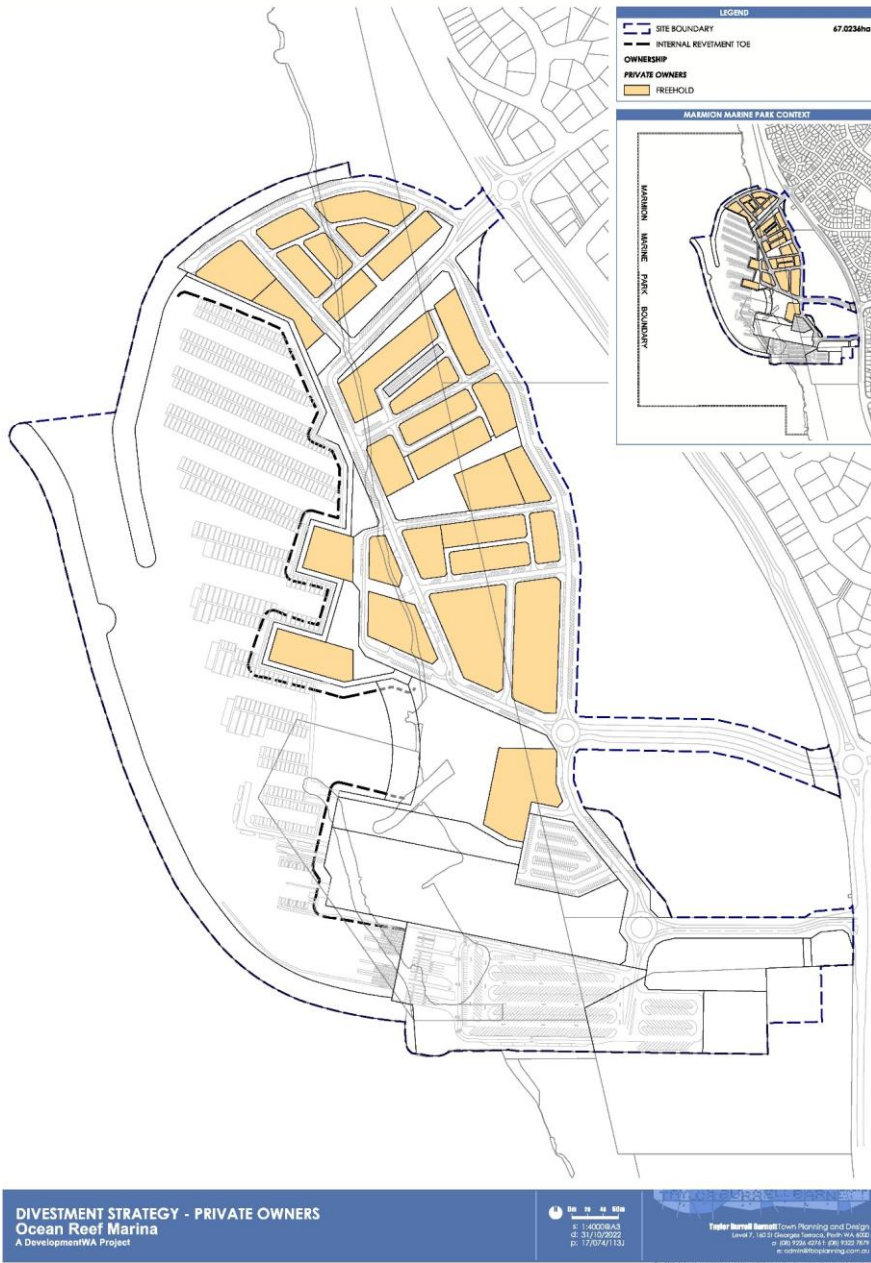
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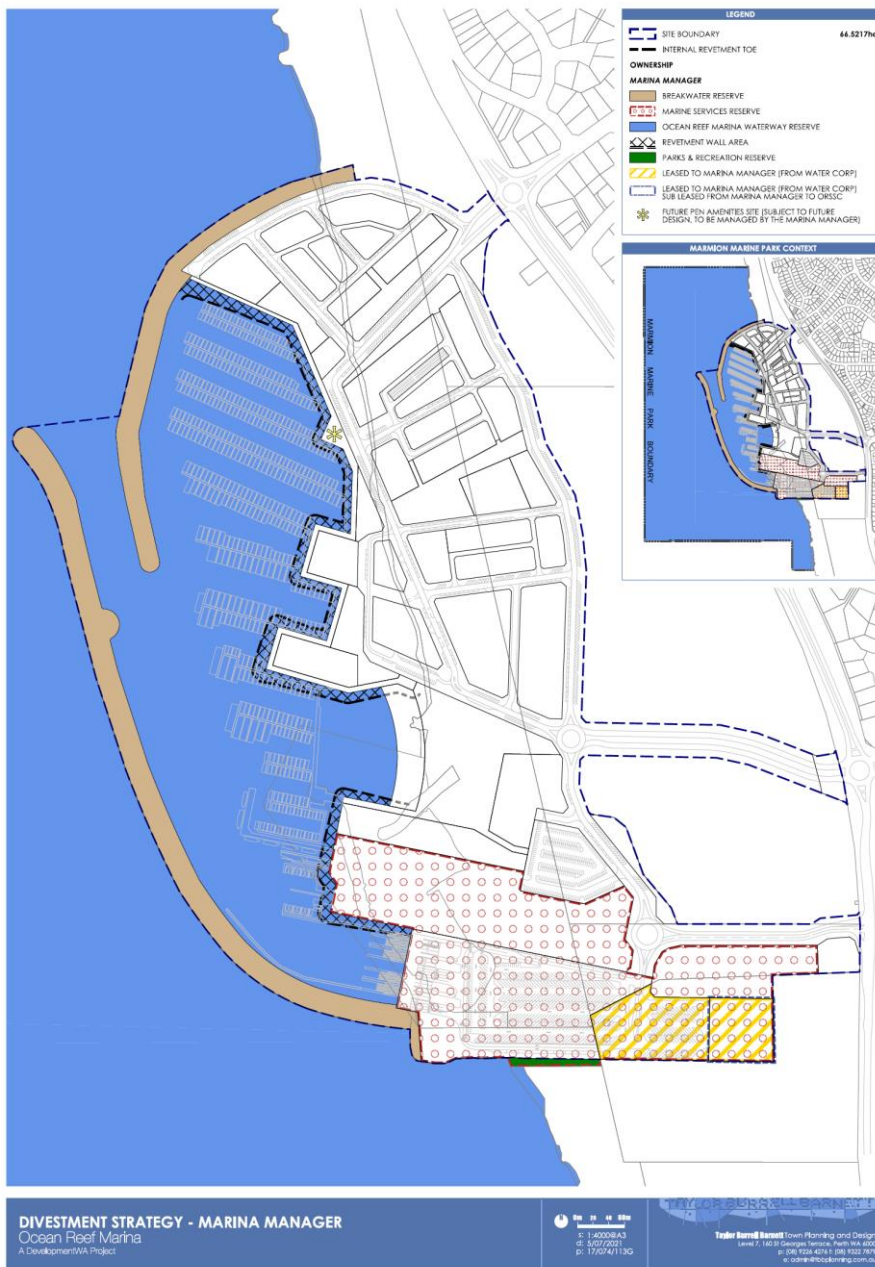






Schedule 5Schedule 4 – Future Marina Areas

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~~Schedule 6~~Schedule 5 – Guiding Philosophies

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JSC5-05/09 OCEAN REEF MARINA PHILOSOPHY AND PARAMETERS – [07303, 04171]

WARD: North-Central

RESPONSIBLE Mr Garry Hunt

DIRECTOR: Office of CEO

PURPOSE / EXECUTIVE SUMMARY

At the Ocean Reef Marina Committee meeting held on 2 December 2008, the Chief Executive Officer advised that the Committee should affirm the philosophy and parameters on which the project will be based to assist in clarifying and confirming its future direction.

BACKGROUND

The Ocean Reef Marina project development site is located on the coast at Ocean Reef and is approximately 61 hectares in area. The site extends from just north of Swanson Way to north of Resolute Way. The City purchased Part Lot 1029 at Ocean Reef in 1979 for a price of \$525,000. This purchase was made as an investment for the benefit of the community, to enable the development of a range of recreational, commercial and ancillary service uses.

The project has been the subject of debate for over 30 years with a range of plans having been considered during this period of time. The project was revitalised when, on 7 November 2004, the then Minister for Planning & Infrastructure announced that the State Government of the day would commit up to \$700,000 towards concept plans and a structure plan aimed at transforming Ocean Reef boat launching facility into a world-class commercial and recreational marina. At that time the City estimated a total of \$1.429m would need to be expended to undertake the project.

In April 2007 Council agreed to the establishment of a Steering Committee, comprising the Chief Executive Officer, representatives of the Western Australian Planning Commission, Department of Planning and Infrastructure, LandCorp and the Water Corporation, to oversee the project. The Steering Committee has met on seven occasions to discuss the site in relation to ownership, planning implications, marine implications and boating infrastructure.

In April 2007, Council also agreed to:

- 1 Establish the Ocean Reef Marina Committee (as a Committee of Council).
- 2 Note the Community Participation Plan for the Ocean Reef Marina as appropriate for community engagement.
- 3 Establish a Community Reference Group of 34 people.

4 Support the proposed role for the Reference Group.

The role of this group is to:

- Help the City develop a concept design and structure plan for the Ocean Reef Marina;
- Ensure the issues and concerns of the community are adequately represented;
- Represent the interests of the wider community;
- Act as a conduit to disseminate information and feedback to and from the wider community; and
- Liaise with extended networks and community groups to facilitate information sharing about the project.

During the development of Concept Plans 1 to 7, the Community Reference Group has met on five occasions to workshop and provide feedback into the planning process. The Group has viewed Concept Plan #6. Concept Plan #7 has only slight modifications to Concept Plan #6.

The considerable number of meetings, workshops, discussions and consultations over the past three years has resulted in the establishment of a number of guiding principles and philosophies for the development of the Ocean Reef Marina Structure Plan. The affirmation and acknowledgement of these principles and philosophies will ensure the integrity of the project moving forward and that the vision of the City in bringing the Ocean Reef Marina project to a reality remains uncompromised. The project philosophies and parameters are presented below.

DETAILS

Project Philosophy and Key Parameters

1. Vision for the Development

The City holds a vision for the Ocean Reef Marina site as a world class recreational, residential and tourism development that encapsulates high levels of environmental sustainability, community amenity and delivers economic growth and social benefit to the residents of the City of Joondalup. The purpose of the vision is to articulate for the record and for historical purposes the intent of the Council in progressing the project, what it is trying to do and why it is trying to do it.

The existing infrastructure at the Ocean Reef Boat Harbour is both outdated and ageing and no longer meets the expectations and needs of present and future generations of City residents or the wider Western Australian community. The site has been recognised as having the potential for development as a major tourism and recreation node for over 30 years.

The proposed facilities envisaged for the Ocean Reef Marina redevelopment provide the community with a state of the art iconic marina facility which caters for the needs of the community and provides a balance of residential, commercial and public amenities that will service the community and attract local and outside visitors into the future. The development design principles seek to ensure that the development does not become an exclusive residential enclave but rather an equitable community based facility where visitor and resident alike, can enjoy a variety of first class amenities and leisure activities.

The City recognises that there is limited opportunity for development nodes along its ocean coast line that provides an interface with the community; therefore any development must maximise land use and built form in order to satisfy this unique opportunity while recognising the environmental integrity of the site.

The project attempts to balance the needs of the community with the need to maintain and preserve the natural environmental. The development concepts are sensitive and compatible with the existing environment and provide an interface between sustainable development and the natural marine and terrestrial environments.

2. Environmental strategy

The project concept plan has been developed using best practice management techniques that remain sympathetic to the natural environmental.

The City acknowledges the environmental constraints identified in the preliminary reports prepared to date. These include:

- Coastal hydrology
- Flora/fauna
- Geotechnical
- Public amenity issues

By utilising up-to-date best practice urban design, architectural and construction techniques the Ocean Reef Marina can be a showcase for innovation in green design. The City is committed to achieving a sustainable green development that sets a benchmark for major developments within Western Australia.

Bush Forever

The site has been accepted by the City and the State Government as a strategic tourism and development node; however the City also accepts the existence of Bush Forever within the development area (see attached Bush Forever site plan). In consultation with the relevant government and environmental agencies the development concepts seek to enhance and safeguard the integrity of the Bush Forever site, taking into account the constraints existing to development within this type of natural environment.

The City's consultants have prepared preliminary reports on the site and further detailed analysis will be undertaken.

3. Governance and Fiscal responsibility

The City of Joondalup owns 27 hectares of valuable coastal land. The City also has a vesting interest over an additional 21 (approximately) hectares of Crown Land on the site. As such any development on the site needs to take into account the present and future benefits for City residents and the greater Western Australian population.

Land Assembly of site:

| LOT NO | AREA | REGISTERED PROPRIETOR | COMMENTS |
|----------------|---------|--|----------------------------------|
| 9000* | 7.54ha | Water Corporation | Easement |
| 1032 | 2.69ha | City of Joondalup | Easement |
| 1029 | 24.40ha | City of Joondalup | |
| 45122* | 36.92ha | State of Western Australia Interest Holder: City of Joondalup | Recreation Easement |
| 47831 / 15446* | 32.03ha | State of Western Australia Interest Holder: City of Joondalup | Recreation Telecommunications |
| 47831 / 15445* | 61.05ha | State of Western Australia Interest Holder: City of Joondalup | Recreation Telecommunications |
| 36732 / 10098 | 1.01ha | State of Western Australia Interest Holder: Water Corporation | Breakwater Sewer Outfall |
| 39014 / 10518 | 0.91ha | State of Western Australia Interest Holder: Minister for Transport | Harbour |
| 39014 / 10519 | 0.20ha | State of Western Australia Interest Holder: Minister for Transport | Harbour |
| 40064 / 10969 | 0.06ha | State of Western Australia Interest Holder: Water Corporation | Sewerage |

*Part of lot utilised

Attachments refer: Site Plan
Bush Forever plan
Land assembly plan

The City is clear on its role in the development of a structure plan and that it does not have the capacity to bring the development to fruition without a joint venture in association and agreement with the State Government or third parties. The action to date is in accord with the 2004 funding arrangements to develop a Structure Plan.

The City recognises that during the development process high ethical standards, probity, legal and legislative compliance and transparency are of vital importance. To ensure that this objective is achieved, the City proposes to undertake:

- Probity audit review and monitoring
- Internal audit review and monitoring
- Development of comprehensive and robust Business Cases and Financial Analysis.
- Extensive risk management assessment and monitoring
- Legal compliance via legal consultation

The City also understands that its endorsement of a draft concept plan is only the first step in a complex approval process and that, in liaison with other key stakeholders, it should facilitate negotiations with the relevant statutory bodies to expedite the project to Structure Plan stage. It will then determine, in association with the State Government, how the project can be best progressed to construction stage. The exact mechanism to achieve this will need to be the subject of discussion and negotiations with the State Government. Timely delivery is seen as a major issue given that the Ocean Reef Marina development has been discussed by various Councils for more than 30 years.

Through its appointment of suitably qualified consultants and peer review panels in the areas of planning and urban design, the environment, financing, engineering and infrastructure, the City is ensuring its responsibility that the development meets community, legislative and sustainability expectations is met.

4. Liaison Protocol

It is clearly understood by the City that the development of the project is in partnership with the Department of Planning and Infrastructure and the Ministries of Planning, Transport and Lands. Liaison at all stages with the State Government is of paramount importance in bringing the development to completion.

Through the instigation of the Ocean Reef Marina Steering Committee comprising representatives from the Department of Planning and Infrastructure, Water Corporation and Landcorp, the City maintains a strong liaison protocol with the key State Government stakeholders. Preliminary representation has been made to the Ministers for Transport, Lands and Planning and the Environmental Protection Authority, in an effort to ensure there is transparent, co-operative communication and consultation.

The strategic value and implicit importance of community consultation in the development of the Ocean Reef Marina has been addressed, with a community consultation plan being prepared and implemented which included the formation of the Ocean Reef Marina Community Reference Group. The Community Reference Group includes representatives from both stakeholder clubs (Whitfords Volunteer Sea Rescue Group and the Ocean Reef Sea Sports Club). Any proposed redevelopment of their existing facility will seek to maintain and enhance the important role these clubs play within the community.

Recognising the importance of providing further opportunities for community consultation and comment through both formal and informal processes, the City has prepared a communications plan to ensure the community is kept fully informed of the status of the project as it proceeds forward. This plan has been developed in accordance with the City's Public Participation Policy and Strategy.

5. Commerciality

The design principles shall attempt to meet the need for world class amenities and be of suitable high commercial value. By adopting advanced best practice building philosophies (eg green building concepts, energy efficiency, sustainability etc), the Ocean Reef Marina has the potential to be an iconic City landmark the development of which may provide the City with future financial and social benefits for its residents for generations to come. Fundamental to achieving this is the generation of income streams through parking regimes, fees and charges for rights to occupy and other income generating opportunities.

The City acknowledges the importance of maintaining public ownership of this strategically valuable City site and of generating a commercial revenue stream from the site. As such the right to occupy is proposed to be granted predominantly on a leasehold basis, determined by the land assembly and in accordance with Crown Land development constraints.

However as the City is also mindful that the project provide a return on investment; the establishment of a joint venture partnership (either public, private or a combination) and best practice financial management is seen as an integral component of the achievement of this outcome.

A Memorandum of Understanding (MOU) would need to be negotiated between the State Government and the City to ensure the roles and responsibilities of the parties involved in implementing the project are clear and defined. The MOU would need to set out the broad scope of the project and detail the implementation phases, costs and revenue sharing as well as ongoing management and maintenance arrangements. The MOU would serve as a statement of the intention between the State and City (being the principal landowners) and it is not intended to be legally binding on either party.

SUMMARY

It is viewed as appropriate and necessary that the Ocean Reef Marina Committee considers and affirms a vision for the Ocean Reef Marina project site and endorses development protocols for the site as outlined above, which comprise the project philosophy and key parameters.

Project Philosophy and Key Parameters

1 Development Vision

- World class recreation, residential and tourist development
- Sustainable community amenity
- Social and economic benefit to all residents
- Balance of public, residential and commercial amenities
- Equitable facility for visitors and residents
- Social and economic maximisation of land use

2 Environmental Strategy

- Best practice management techniques
- Coastal processes
- Flora/fauna
- Geotechnical
- Public amenity
- Innovation in green design and sustainability
- Conservation, maintenance and management of the Bush Forever site

3 Governance and Fiscal responsibility

- High ethical standards
- Probity, legal and legislative compliance
- Accurate and timely expediency in the preparation and submission of required documentation for the approval of a Structure Plan
- Due diligence in the engagement of professional consultants to undertake reports/studies
- Transparent, accountable decision making process

4 Liaison protocol

- Successful, sustainable partnerships with State Government departments and agencies
- Transparent, co-operative communication and consultation with all relevant agencies
- Transparent, co-operative communication and consultation with City of Joondalup residents and the wider community
- Development of a Memorandum of Understanding with the State Government

5 Commerciality

- Best practice financial management
- Maintaining public ownership in accordance with statutory requirements
- Establishment of a joint venture partnership

Link to Strategic Plan:

- Key Focus Area: Leadership and Governance – 1.1 OBJECTIVE: To engage proactively with the community.
- Key Focus Areas: The Built Environment – 4.2 OBJECTIVE: To progress a range of innovative and high quality urban development projects within the City – 4.2.1 STRATEGIES: Develop a concept for, and commit to, the development of land at the Ocean Reef Marina site.

Legislation – Statutory Provisions:

The City is governed by the requirements of the Local Government Act in relation to dealings involving commercial undertakings and land development.

Risk Management considerations:

A detailed Risk Management Assessment Report outlining the risks apparent to the project has been prepared and continues to be updated.

Financial/Budget Implications:

As outlined in Item 2 of this Agenda.

Policy implications:

Development of the project will be in accordance with the City's policies and procedures.

Regional Significance:

The development of the Ocean Reef Marina will become a significant tourist/visitor destination and a key focal point within the North West City corridor.

Sustainability implications:

Progression of the structure planning process will facilitate a number of studies/reports that address key issues pertaining to sustainability ie economic feasibility, environmental sustainability.

Consultation:

A public participation and communications strategy has been prepared for the project. To date significant community consultation has occurred via feedback from the Community Reference Group and community surveying.

COMMENT

Not applicable.

ATTACHMENTS

Nil.

VOTING REQUIREMENTS

Simple Majority

RECOMMENDATION

That Council ENDORSES the following Project Philosophy and Key Parameters related to the Ocean Reef Marina Development project:

1 Development Vision

- World class recreation, boating, residential and tourist marina development
- Sustainable community amenity
- Social and economic benefit to all residents
- Balance of public, residential and commercial amenities
- Equitable facility for visitors and residents
- Social and economic maximisation of land use

2 Environmental Strategy

- Best practice management techniques
- Coastal processes
- Flora/fauna
- Geotechnical
- Public amenity
- Innovation in green design and sustainability
- Conservation, maintenance and management of the Bush Forever site

3 Governance and Fiscal responsibility

- High ethical standards
- Probity, legal and legislative compliance
- Accurate and timely expediency in the preparation and submission of required documentation for the approval of a Structure Plan
- Due diligence in the engagement of professional consultants to undertake reports/studies
- Transparent, accountable decision making process

4 Liaison protocol

- Successful, sustainable partnerships with State Government departments and agencies
- Transparent, co-operative communication and consultation with all relevant agencies
- Transparent, co-operative communication and consultation with City of Joondalup residents and the wider community
- Development of a Memorandum of Understanding with the State Government

5 Commerciality

- Best practice financial management
- Maintaining public ownership in accordance with statutory requirements
- Establishment of a joint venture partnership

~~Schedule 7~~Schedule 6 – Indicative Project Program

| Milestone | Date (approx.) |
|--|--|
| Construction | |
| Breakwaters | Early 2021 – Mid 2023 |
| Internal Works | Mid 2022 – Mid 2023 |
| Stage 1 Subdivision | Mid 2023 – Early 2025 |
| Construction of New ORSSC/MRW Facilities | Mid 2023 – Mid/Late 2024 |
| Remaining Land Side Subdivision (Staged) | Early 2025 – 2030+ |
| Sales | |
| Release of Stage 1 Residential Lots | Late 2023/Early 2024 (Subject to Market Conditions) |
| Relocation of On-Site Tenants | |
| ORSSC/RSL & MRW Relocate Into New Facilities | 2024 |
| Community Amenity | |
| Release of First Community Open Space | 2024 |
| Project Development Completion | |
| Full Project Build Out | 2036+ |

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~~Schedule 8~~Schedule 7 – Landscape Master Plan

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KEY

4 Northern Entry Road POS & 5 Southern Entry Road POS

These POS will support the integration of the new development into the existing urban fabric, providing a gateway to the new development and a link to the existing urban fabric.

6 Northern Linear POS & 7 Southern Linear POS

Creating a green entry to the site these POS create significant recreational opportunities for residents and open the door to the water front.

8 Central POS

The central residential POS will provide recreational and social opportunity that focuses on local community events. This will include infrastructure such as play equipment, gathering spaces, informal sport facilities and passive recreation opportunities to support the health and well-being of users.

9 Promenade North POS (both)

POS located around promenade waterfront, providing an attractive to the waterfront promenade, enhance the residential community and activities that are and be easily accessible in larger POS, such as a dog park or community garden.

10 Triangle POS

The promenade allows for significant recreation opportunities, along with a connection to the water front and beach. The POS will facilitate more popular sports and activities along the promenade.

11 Plaza POS

A highly functional urban plaza that will address the retail and commercial future providing infrastructure for markets, offices dining and events.

12 Beach POS

This beach area will be the focal point in the corner of the site, a central recreational hub that will be a regional destination.

13 Bush Forever

A reality of the development will be the removal of bush forever vegetation, the retained areas will be carefully considered to protect and enhance ecological value.

14 Breakwater

Breakwaters will present opportunity for improved, improved public realm through design opportunities with the engineering team to include vegetation, seating, water, recreational opportunities and art elements, where possible.



OCEAN REEF MARINA PUBLIC REALM MASTERPLAN

0m 100m 200m 400m



PROJECT NAME:
Ocean Reef Marina

CLIENT:
DevelopmentWA

DESIGNER:
SH

SCALE:
1:4000 @A3

REVISION:
MP - 01

ISSUE DATE:
FEB 2022

REVISION:
J

UDLA

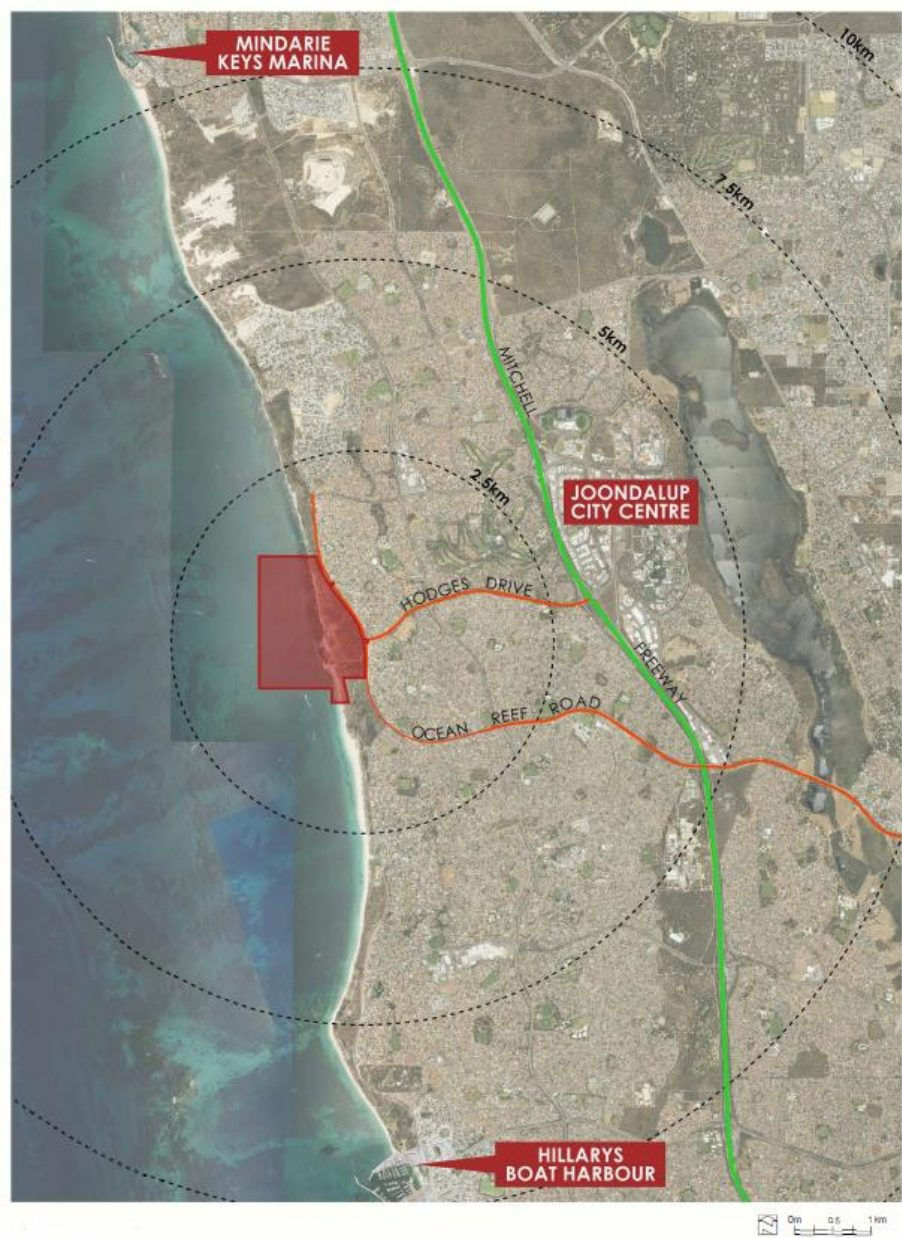
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Development Agreement
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Schedule 9 – Marina Project Area



Schedule 8

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Draft 5 Date 6 September 2021
[City of Joondalup's changes are tracked]
As at 13 October 2021 Execution copy

Land Transfer Deed

Ocean Reef Marina

State of Western Australia acting through the Minister for Lands
(Minister)

Western Australian Land Authority trading as DevelopmentWA
(DevelopmentWA)

City of Joondalup (City)

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Land Transfer Deed

Ocean Reef Marina

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Details

Date20242023

Parties

NameState of Western Australia acting through the Minister for Lands a body corporate continued under the Land Administration Act 1997 (WA) section 7, of care of the Department of Planning, Lands and Heritage

Short form nameMinister

Notice detailsLevel 2, 140 William Street, Perth, Western Australia

Email: insert

Attention: insert

PERTH WA 6000

NameWestern Australian Land Authority established by the Western Australian Land Authority Act 1992 (WA) section 5, trading as DevelopmentWA

Short form nameDevelopmentWA

AddressLevel 2, 40 The Esplanade

PERTH WA 6000

Notice detailsEmail: andre.dines@developmentwa.com.au

Attention: Andre Dines

NameCity of Joondalup continued under the Local Government Act 1995 (WA) schedule 9.3, clause 5

Short form nameCity

Address90 Boas Avenue

JOONDALUP WA 6027

Notice detailsEmail: infomat.humfrey@joondalup.wa.gov.au

Attention: Chief Executive OfficerDirector Corporate Services

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Background

- A The City owns the City Lots, and the State of Western Australia owns the City Crown Lots, which lots are, at the date of this Deed, under the care, control, and management of the City.
- B DevelopmentWA and the City have entered into the Development Agreement, which sets out the framework by which DevelopmentWA will undertake and deliver the Project.
- C The execution of this Deed satisfies clause 3.1(a-condition-precedent-in) of the Development Agreement.
- D DevelopmentWA requires the Project Lots for the purposes of the Project.
- E The City agrees to contribute the Project Lots to the Project as contemplated by the Land Assembly Tranche Plan and in accordance with the terms of this Deed and the Development Agreement.

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Agreed terms

Part A – Preliminary Obligations

1. Definitions and interpretation

1.1 Definitions

In this Deed, the following expressions have the following meanings:

The terms **management body**, **management order**, **reserve**, **registered** have the same meaning as each of those terms has under the LA Act.

Access Licence means an access licence substantially in the form of the licence annexed to this Deed as Schedule 5.

Access Licence Notice has the meaning in clause 13.2(b).

Approvals means all approvals, consents, authorisations, permits and other permissions required from any Government Authority, or under any Written Law, for or in connection with the Project.

Balance Crown Lots means the area of the City Crown Lots as are not required for the Project, which are to be retained by the City as Crown land under the LA Act, and which at the Commencement Date are Lots 506 and 508 on proposed Deposited Plans 417825 and 417828 respectively, being part of the Subdivision Plans, as may be varied, added to or substituted from time to time in accordance with clause 5.2(a)(i) and clause 5.2(b).

Balance Freehold Lots means the area of the City Lots in the area of the Project, which are:

- (a) not required for the Project;
- (b) for an estate in fee simple; and
- (c) ~~at the Commencement Date, are Lot 504 and Lot 44 on proposed Deposited Plans 417450 and 422581 respectively, being part of the Subdivision Plans, as may be varied, added to or substituted from time to time in accordance with clause 5.2(a)(i).~~
[ME Note: Descriptions of the balance lots that align with the Land Assembly Tranche Plan to be reviewed before finalisation of the document.] 5.2(a)(i) and clause 5.2(b).

Beach Parking Area means the part of the Future City Areas to comprise a freehold lot and being which is to be publicly accessible parking and other uses as shown **Freehold Conditional Freehold** (Public Parking and other uses) on the Divestment Strategy, and which is to be subject to the covenants in clause 15.2.

Boundary of Responsibility means ~~has the meaning in the Development Agreement but for indicative purposes at the Commencement Date is,~~ the line of demarcation of management responsibilities, as generally indicated by a bold dashed red line shown on the plan annexed to this Deed as ~~Schedule 4 and more particularly described in the Development Agreement, as may be varied with the written agreement of the City.~~ Schedule 4.

Business Day means any day other than a Saturday, Sunday or public holiday in Perth, Western Australia.

Chief Executive means the chief executive officer, director general or other most senior executive (howsoever called) responsible for the administration of the relevant Party, but in the case of the Minister means the Minister's delegate duly authorised under the LA Act.

City Crown Lots means Crown Lot 555 and Crown Lot 15446, and **City Crown Lot** means each of them.

City Lots means Lot 1029 and Lot 1032 and **City Lot** means each of them.

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City Management Orders means the management orders registered against the certificates of Crown land title to the City Crown Lots, being:

- (a) in the case of Crown Lot 555 – management order H352772; and
- (b) in the case of Crown Lot 15446 – management order K360388.

and where the context requires a management order to the City in respect of Project Lot 509 made in accordance with clause ~~10.2(a)~~:10.2(a).

Claim means any claim, demand, proceeding or cause of action of any nature whatsoever (including for damages), whether for money or otherwise, and regardless of the legal or other basis on which it may be put (including negligence), arising out of or directly referable to the particular subject matter.

Commencement Date means the later of:

- (a) the latest date of execution of this Deed by the Parties; and
- (b) the date on which the Development Agreement commences.

Completed Road means the roads which are constructed by DevelopmentWA in accordance with the standards provided for in the Development Agreement for use as public roads, and which are intended to be dedicated as Dedicated Roads.

Contamination has the same meaning given to the term 'contaminated' under the *Contaminated Sites Act 2003 (WA)*.

Crown land has the same meaning as that term has in the LA Act.

Crown Lot 555 means Lot 555 on Deposited Plan 402198 being the whole of the land comprised in certificate of Crown Land Title Volume 3166 Folio 566.

Crown Lot 15446 means Lot 15446 on Deposited Plan 40340 being the whole of the land comprised in qualified certificate of Crown Land Title Volume 3133 Folio 571.

Crown Satisfaction Date has the meaning in clause 8.1(b).

Crown Subdivision has the meaning in clause 8.1(a).

Date of Practical Completion means the date of practical completion of the Future Club Facility Lot Works, subject to minor defects, to the reasonable satisfaction of DevelopmentWA and as certified by the builder or independent certifier under the construction contract for the Future Club Facility Lot Works.

Dedicated Road means the public roads constructed by DevelopmentWA pursuant to the Principal Project Documents, which are to be dedicated as a road under the LA Act or the PD Act.

Deed means this deed including all schedules, attachments and annexures to the same.

Development Agreement means the document titled 'Development Agreement' entered into, or to be entered into, by DevelopmentWA and the City in relation to the Project, as may be varied from time to time.

DevelopmentWA Management Order means:

- (a) adding the relevant land to DevelopmentWA's management order O592790 which exists at the Commencement Date in respect of the Project and is for the Project Reserve Purpose; or
- (b) the making of a management order under the LA Act placing the care, control and management of the relevant reserved land (for the Project Reserve Purpose) with DevelopmentWA on such conditions as are acceptable to DevelopmentWA, which must include the power to lease and licence.

Divestment Strategy is the means by which the Parties have agreed to effect the divestment of certain areas of land and public assets:

- (a) which are to be developed by DevelopmentWA as part of the Project;

- (b) some of which are to be transferred to the City in fee simple or reserved as Crown land and its care, control and management placed with the City, in accordance with the Development Agreement;
- (c) which is to be determined in accordance with the terms of the Development Agreement from time to time; and
- (d) a copy of the Divestment Strategy, also known as the Land and Asset Divestment Strategy which is current as at the Commencement Date, is annexed to this Deed as Schedule 2, as may be varied, added to or substituted from time to time in accordance with clause 5.2(a)(iii).

DoT means the department which is primarily responsible for assisting in the administration of the *Marine and Harbours Act 1981* (WA) from time to time, being at the Commencement Date the Department of Transport.

DPLH means the department which is primarily responsible for assisting in the administration of the LA Act from time to time, being at the Commencement Date the Department of Planning, Lands and Heritage.

Existing Encumbrances means the Existing Leases and:

- (a) in the case of land in Lot 1032 – easement C775076; and
- (b) in the case of Crown Lot 555 – easement H306399.

Existing Leases means the following leases and licences, entered into by the City as landlord or licensor:

- (a) undated lease to Marine Rescue Whitfords in relation to part of Crown Lot 15446;
- (b) undated lease to the Ocean Reef SSC in relation to part of Crown Lot 15446 and Lot 1029; and
- (c) access deed to Telstra Corporation Limited and dated 25 July 2016 in relation to part of Crown Lot 15446.

[ME Note: DPLH to confirm it is acceptable for the land to be revested subject to these existing encumbrances]

Foundational Project Documents means the Subdivision Plans, Land Assembly Tranche Plan and Divestment Strategy.

Freehold Satisfaction Date has the meaning in clause 8.2(c).

Freehold Subdivision has the meaning in clause 8.2(a).

Future City Areas means the public assets specified or provided for in the Divestment Strategy, that are to be developed by DevelopmentWA as part of the Project and are located east of the Boundary of Responsibility including:

- (a) Public Open Space;
- (b) Future City Lots (as may be varied in accordance with this Deed);
- (c) public improvements, fixtures, fittings, plant and equipment located or affixed upon the Public Open Space and Future City Lots; including the promenade abutting the waterfront within the Marina Project Area (but excluding the internal revetment walls); and
- (d) Dedicated Roads; ~~and,~~
- (e) ~~[other].~~

Future City Lots means any proposed freehold lots or conditional freehold lots to be transferred in fee simple to the City, as identified in the Divestment Strategy, including the Beach Parking Area and ~~the~~ Future Club Facilities Lot, and as may be varied, added to, or substituted from time to time in accordance with clause ~~5.2(a)(iii)~~-5.2(a)(iii), subject to the terms of the Development Agreement.

Future Club Facilities Lot has the same meaning as in the Development Agreement.

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Future Club Facility Lot Works means the construction of the building and other facilities on the Future Club Facilities Lot to accommodate the Ocean Reef SSC.

Government Authority means a government (Commonwealth, State or local) or a governmental, semi-governmental, judicial, statutory or public entity or authority, including any such entity or authority established under a Written Law.

Improvement Scheme means the Ocean Reef Marina Improvement Scheme No. 1 gazetted on 30 September 2020 and as may be updated from time to time.

LA Act means the *Land Administration Act 1997* (WA).

Land Assembly Tranche Plan means the plan which outlines the assembly of the Project Lots in order to facilitate the delivery of the Project as agreed by DevelopmentWA, the City and other relevant Government Authorities, from time to time. A copy of the Land Assembly Tranche Plan which is current as at the Commencement Date is annexed to this Deed as Schedule 1 as may be varied, added to or substituted from time to time in accordance with clause 5.2(a)(i).

Landgate means the Western Australia Land Information Authority established under the *Land Information Authority Act 2006* (WA) section 5.

Landscape Master Plan means the landscape master plan which is to be determined in accordance with the terms of the Development Agreement from time to time.

Leased Facilities means the buildings and improvements leased or licensed to the tenants under the Existing Leases.

Lot 1029 means Lot 1029 on Diagram 57604 being the whole of the land comprised in Certificate of Title Volume 1957 Folio 865.

Lot 1032 means Lot 1032 on Plan 13198 being the whole of the land comprised in Certificate of Title Volume 1667 Folio 921.

Marine Rescue Whitfords means Whitfords Volunteer Sea Rescue Group (Inc).

Objection Notice has the meaning in clause 5.3(c).

Ocean Reef SSC means the Ocean Reef Sea Sports Club (Inc).

ORM State land has the meaning in clause 13.1.

Party means each of the Minister, DevelopmentWA and the City and **Parties** means any two or more of them.

PD Act means the *Planning and Development Act 2005* (WA).

Principal Project Documents means this Deed, the Development Agreement, and any other document which the parties agree is a Principal Project Document.

Project means the development of the Ocean Reef Marina, being the 'Project' as that term is defined in the Development Agreement.

Project Lots means those parts of the City Crown Lots and the City Lots as are reasonably required for the Project and which at the Commencement Date are proposed to be:

- (a) Lot 9001 on Deposited Plan 422581;
- (b) Lots 503 and 509 on Deposited Plan 417450;
- (c) Lot 505 on Deposited Plan 417825; and
- (d) Lots 507, 510 and 511 on Deposited Plan 417828,

being the Subdivision Plans, or as otherwise varied, added to or substituted from time to time in accordance with clause 5.2(a)(i)-5.2(b).

Project City Lots means those parts of the Project Lots as are, or were, comprised in the City Lots, as the case requires.

Project Crown Lots means those parts of the Project Lots as are, or were, comprised in the City Crown Lots, as the case requires.

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Project Reserve Purpose means for the purposes of the *Western Australian Land Authority Act 1992* (WA).

Public Open Space means public open space to be developed as part of the Project, the care, control and management of which is to be placed with the City in accordance with the Divestment Strategy, including any parks and recreation reserves (whether under the LA Act or the PD Act), active play areas, landscaped verges and promenades in accordance with the Landscape Master Plan, and the Future Club Facilities Lot as may be varied, added to or substituted from time to time in accordance with clause 5.2(a)(iii).

Reserve means each of:

- (a) Reserve 45122 in respect of Crown Lot 555; and
- (b) Reserve 47831 in respect of Crown Lot 15446,

and **Reserves** means both of them.

Reserve Purpose means for:

- (a) Reserve 45122 – the purpose of recreation;
- (b) Reserve 47831 – the purpose of recreation, telecommunications & purposes incidental thereto.

Revocation Date, for each Project Crown Lot or Tenanted Lot as the case may be, is the latest date provided for in the notice given under clause 7.4(a).

Section 15 Covenant means the deed containing the restrictive covenants and positive covenants substantially in the form contained in Schedule 7, as may be varied in accordance with clause 15.3(h) or clause 15.3(i).

Services means electricity, gas, telecommunication, water, sewerage, and other utilities or services.

Specified Encumbrances means:

- (a) in the case of Lot 1032 – easement C775076;
- (b) in the case of Crown Lot 555 – easement H306399;
- (c) in the case of the Beach Parking Area – any positive or restrictive covenant or other form of encumbrance, condition or restriction provided for in clause 15.2; and
- (d) in the case of the Future Club Facilities Lot – the Section 15 Covenant; and
- (d)(e) any encumbrances imposed on the Future City Areas (with the prior approval of the City acting reasonably) in accordance with the requirements of the Minister, the WAPC or the Improvement Scheme, including easements granted in accordance with the terms of section 167 of the PD Act.

State means the State of Western Australia.

Subdivision Plans means the subdivision plans for the subdivision of any land the subject of the Project under either the LA Act or the PD Act, relating to the:

- (a) the City Lots and the Crown City Lots in respect of the land assembly under the Land Assembly Tranche Plan; and
- (b) the Future City Areas in respect of the land divestment under the Divestment Strategy,

which is to be determined or agreed by the City and DevelopmentWA in accordance with the terms of the Development Agreement and this Deed from time to time and in particular as may be varied, added to or substituted from time to time in accordance with clause 5.2(b)–5.2(b) and clause 5.2(c). The Subdivision Plans which are current and agreed as at the Commencement Date for the purposes of subclause (a) are Deposited Plans 417450, 417825, 417828 and 422581 and a copy of them is annexed to this Deed as Schedule 3.

Tenanted Lots means those parts of the City Lots and City Crown Lots as are subject to the Existing Leases being the areas shown as Lots 509 and 510 on Deposited Plans 417450 and 417828 respectively, being part of the Subdivision Plans.

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Term means the term of this Deed, commencing on the Commencement Date and expiring on the date specified in clause 3.

Transfer Date, for each Project City Lot, is the latest date provided for in the notice given under clause ~~6-4-6.4(a)~~.

WAPC means the Western Australian Planning Commission established by the PD Act section 7.

Written Law means any statute, regulation, ordinance, by-law or other subsidiary legislation and any lawful direction or notice by a Government Authority.

1.2 Interpretation

The following rules also apply in interpreting this Deed, unless inconsistent with the context:

- (a) headings are for convenience only, and do not affect interpretation;
- (b) a reference to legislation (including subordinate legislation) is to that legislation as amended, consolidated, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Deed, and a reference to this Deed includes any schedule or annexure;
- (d) a reference to an agreement or instrument includes the agreement or instrument as novated, altered, supplemented, or replaced from time to time;
- (e) a reference to anything includes each part of it;
- (f) a reference to a Party is a reference to that Party as may be reconstituted or substituted under any Written Law from time to time;
- (g) a reference to **A\$, \$A, dollar or \$** is to Australian currency;
- (h) a reference to time is to Australian Western Standard time;
- (i) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (j) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (k) another grammatical form of a defined word or expression has a corresponding meaning;
- (l) a singular word includes the plural, and vice versa;
- (m) a word which suggests one gender includes the other genders;
- (n) any agreement, representation, warranty, or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (o) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Deed or any part of it; and
- (p) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed, or the event must occur on or by the next Business Day.

1.3 Deed is legally binding

The Parties agree that this Deed and the obligations contained herein are legally binding.

1.4 Collaboration

In performing their respective obligations under this Deed, each Party commits to: work with the other Parties in a co-ordinated, co-operative and collaborative way.

- (a) ~~work with the other Party in a co-ordinated, co-operative, and collaborative way;~~

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2. Interdependency with Development Agreement

2.1 Interdependency

The Parties acknowledge that this Deed is interdependent with the Development Agreement, which sets out, amongst other things:

- (a) DevelopmentWA's obligations in relation to the delivery of the Project; and
- (b) conditions affecting, and the timing of, the handover of developed Future City Areas to the City.

2.2 Inconsistency

- (a) In the event of any express inconsistency arising between the terms of the Development Agreement and this Deed, the terms of this Deed shall prevail to the extent of that inconsistency.

[ME Note: this is consistent with clause 3.4 of the Development Agreement.]

- (b) The Land Assembly Tranche Plan is for indicative purposes and in the event of inconsistency between the Land Assembly Tranche Plan and the Subdivision Plans, the Subdivision Plans shall prevail to the extent of that inconsistency, subject to clause 5.2.

3. Term

- (a) The terms of this Deed are binding upon the Parties on and from the Commencement Date.
- (b) This Deed shall terminate upon the date on which the last of the Future City Areas is transferred to, or the care, control, and management of which is placed with, the City as the case may be.

4. Minister for Lands

DevelopmentWA and the City each acknowledge and agree that the Minister:

- (a) has entered into this Deed at the request of DevelopmentWA and the City, to facilitate the orderly delivery of the land assembly aspects of the Project; and
- (b) the Minister will not be liable for any Claim howsoever arising as a result of anything done or failed to be done under this Deed including the registration of any title documents, except ~~in relation to any act of omission of the Minister and except for clauses 6.2, 6.4(d), 7.2, 7.4(b), 9.1(a) - (c) inclusive, 9.2(b)(i) - (iv) inclusive, 10.2, 11.1(a) and 15.1(b) for clauses 6.2, 6.4(e), 7.2, 7.4(b), 9.1(a) - (c) inclusive, 9.2(b)(i) - (iv) inclusive, 10.2, 11.1(a) (as to a matter of which the Minister has knowledge, or specific notice in writing from DevelopmentWA or the City, to the contrary or is in breach of this Deed) and 15.1(b).~~

[ME Note: DPLH did not agree to delete subclause (b) as requested by the City, but we have included the specific provisions on which the City will rely for the Minister to take action to protect the City's position, as a possible suitable compromise position for the City and the Minister. Consider also in the context of clauses 11.1 and 18.1.]

5. Variations and Notifications

5.1 Variation to Foundational Project Documents

The Parties acknowledge that at the Commencement Date:

- (a) the Project is anticipated to be undertaken as a long-term, staged development;

- (b) the Development Agreement outlines the framework by which variations to some of the Foundational Project Documents may be made by DevelopmentWA or agreed by DevelopmentWA and the City; and
- (c) this Deed is intended to give legal effect, and govern the implementation of, the Land Assembly Tranche Plan and Divestment Strategy as between the Parties; and
- (d) the Minister agrees to accept variations to the Foundational Project Documents, subject to clause 5.3.

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5.2 Variation to Strategies and Subdivision Plans

- (a) ~~Subject to the Development Agreement, DevelopmentWA agrees in undertaking the Project to implement the Land Assembly Plan and Divestment Strategy and~~ must not vary, add to; or substitute the:
 - (i) Land Assembly Tranche Plan in a way which will have the effect of changing the location, area, dimensions; or boundary of any of the Balance Freehold Lots or the Balance Crown Lots;
 - (ii) ~~the~~ external boundary of the Project Lots; or
 - (iii) Divestment Strategy in a way which will have the effect of changing the location, area, level, dimensions; or boundary of any of the Future City Lots or the Future City Areas,without the prior written agreement of the City, except if the change is immaterial, and such agreement is not to be unreasonably withheld, delayed or conditioned.
- (b) DevelopmentWA must not vary, add to; or substitute the Subdivision Plans relating to the City Lots and the Crown City Lots in respect of the land assembly under the Land Assembly Tranche Plan in a way that:
 - (i) is inconsistent with the Land Assembly Tranche Plan or the Divestment Strategy, as varied, added to or substituted from time to time in accordance with clause 5.2(a); or
 - (ii) has a material impact on the City,~~without the prior written agreement of the City, such agreement not to be unreasonably withheld, delayed or conditioned, and clauses 12.2 or 12.4 of the Development Agreement do not apply to any such variation, addition or substitution.~~
- (c) The Subdivision Plans relating to the Future City Areas in respect of the land divestment under the Divestment Strategy, and any variation, addition or substitution to or of such Subdivision Plans will be prepared and dealt with in the manner provided for in clauses 12.2 and 12.4 of the Development Agreement, and this clause 5.2 does not apply to those Subdivision Plans and any variation, addition or substitution to or of them.

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5.3 Notifications to and objections by Minister

- (a) This clause ~~5.3~~ 5.3 applies if during the Term, any material variation or addition to, or substitution of any Foundational Project Document (**FPD change**) is proposed and ~~that the~~ FPD change has been approved ~~by the City~~ in accordance with the Development Agreement ~~where or this Deed if~~ such approval ~~of the City~~ is required.
- (b) DevelopmentWA must give notice to the Minister clearly outlining:
 - (i) the FPD change proposed, and providing any varied, additional or replacement Foundational Project Document; and
 - (ii) if DevelopmentWA was required to consult with the City in relation to, or obtain the City's agreement to, the FPD change in accordance with the terms of the Development Agreement or this Deed:
 - (A) a statement confirming such consultation process was followed or agreement was obtained; and
 - (B) where consultation with or agreement of the City was required, a statement prepared by the City in relation to the FPD change,

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(Variation Notice).

- (c) If the Minister objects to the FPD change (acting reasonably), the Minister must give notice of its objection to DevelopmentWA and the City, which must include:
- (i) reasonable details as to the basis of the objection; and
 - (ii) an explanation of why the Minister considers the proposed FPD change is inconsistent with the ultimate development outcome of the Project,
- and may include details of how the proposed FPD change can be achieved in a different way (**Objection Notice**).
- (d) If the Minister does not give an Objection Notice to DevelopmentWA and the City in accordance with clause 5.3(c) within 20 Business Days of its receipt of the Variation Notice, the proposed FPD change will be deemed to have been accepted by the Minister.
- (e) If the Minister gives an Objection Notice to DevelopmentWA and the City within 20 Business Days of its receipt of the Variation Notice, senior officers of the Parties will:
- (i) meet within 10 Business Days of the Objection Notice being given by the Minister; and
 - (ii) discuss and negotiate in good faith to reach an outcome that is reasonably acceptable to the Parties, having regard to the objectives of the Project and this Deed.

Part B – Land Assembly

6. City Lots

6.1 City's agreement

- (a) The City, in consideration of the matters provided for in this Deed and the Development Agreement, agrees in its capacity as registered proprietor of the City Lots, to:
- (i) the Freehold Subdivision being undertaken in relation to the City Lots in accordance with clause 8.2; and
 - (ii) transfer to the State each of the Project City Lots and in doing so and subject to clause 10, shall transfer the Project City Lots free from encumbrances except for the Existing Encumbrances (unless otherwise agreed by the Parties), by the Transfer Date.
- (b) With the exception of the Existing Encumbrances, DevelopmentWA accepts the Project City Lots:
- (i) in an as is, where is condition;
 - (ii) based upon DevelopmentWA's own enquiries and investigations; and
 - (iii) with no warranties or representations being given by the City in relation to the Project City Lots,
- subject to clause 16.
- (c) ~~With the exception of the Existing Encumbrances, DevelopmentWA indemnifies and agrees to keep indemnified the City against all Claims made by the State in relation to the Project City Lots.~~

~~[ME Note: DPLH does not agree to including paragraph (b) in relation to the State as requested by the City, but DevelopmentWA agrees to the provision applying to it as it will be responsible for the land under its management order, as soon as it is transferred and revested as Crown land.]~~

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6.2 State's agreement

The State, in consideration of the matters provided for in this Deed, agrees:

- (a) to take a transfer of each of the Project City Lots from the City on the terms provided for in clause 6.1; and
 - (b) to revest the Project City Lots in the Crown under section 82 of the LA Act and subject to the Existing Encumbrances,
- by the Transfer Date.

6.3 Transfers to occur at the same time

The transfer and revesting of the Project City Lots under this clause 6 must occur at the same time.

6.4 Timing of transfers

- (a) For the purposes of this clause 6 and for the Project City Lots, DevelopmentWA shall give a notice to the City and the Minister of the latest date by which the Project City Lots are to be transferred to the State and revested in the Crown, which date is to be at least 3 months after the date of the notice (**Transfer Date**).

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- (b) Unless the City agrees otherwise, the transfer of the Project City Lots to the State and the revesting of the Project City Lots in the Crown under this clause 6 will occur at the same time with the retention of the Balance Freehold Lots by the City under clause 9.2.

- (b)(c) DevelopmentWA must give the notice under clause 6.4(a) by not later than 10 Business Days after the Freehold Satisfaction Date.

- (e)(d) DevelopmentWA must prepare, or procure from the Minister, and provide to the City drafts of all documents required to give effect to the transfer and revesting at least 1 month prior to the Transfer Date.

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- (d)(e) All of Lodgement of the relevant documents at Landgate to give effect to the following must occur in respect of the Project City Lots at the same time:

- (i) the transfer of the Project City Lots to the State;
- (ii) the revesting of the Project City Lots in the Crown;
- (iii) the retention of the Balance Freehold Lots to the City under clause 9.2; and
- (iv) the reservation of the Project City Lots for the Project Reserve Purpose and the making of the DevelopmentWA Management Order,

but subject to clause 10 in respect of any part of a Project City Lot comprising a Tenanted Lot.

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7. City Crown Lots

7.1 City's agreement

The City, in consideration of the matters provided for in the Development Agreement and this Deed (including the City's Management Orders being retained over the Balance Crown Lots under clause 7.5):

- (a) consents to the Crown Subdivision being undertaken in relation to the City Crown Lots in accordance with clause 8.1; and
- (b) in its capacity as management body for and primary interest holder of each of the City Crown Lots, agrees to the revocation of the City Management Orders over:
 - (i) the Project Crown Lots; and
 - (ii) the Tenanted Lots,

under section 50(1)(a) of the LA Act, and in doing so shall ensure that the Project Crown Lots and the Tenanted Lots, as the case may be, are free from encumbrances except for any Existing Encumbrances by the Revocation Date.

7.2 State's agreement

The State, in consideration of the matters provided for in this Deed, agrees:

- (a) to revoke the City Management Order relating to each of:
 - (i) the Project Crown Lots; and
 - (ii) the Tenanted Lots,under section 50(1) of the LA Act on the terms provided for in clause 7.1(b);
 - (b) to cancel the Reserve relating to each of the Project Crown Lots and the Tenanted Lots, as the case may be, under section 51 of the LA Act; and
 - (c) to reserve the Project Crown Lots or the Tenanted Lots, as the case may be, for the Project Reserve Purpose under section 42 of the LA Act and to make a DevelopmentWA Management Order in respect of each of the Project Crown Lots and the Tenanted Lots, as the case may be, under section 46 of the LA Act,
- by the Revocation Date.

7.3 Revocations may occur separately

The revocation of the City Management Orders and cancellation of the Reserves relating to each of the Project Crown Lots and each of the Tenanted Lots under this clause 7 may occur at different times provided that clause 7.4(b) is complied with respect to the relevant Project Crown Lot.

7.4 Timing of revocations

- (a) For the purposes of this clause 7, the **Revocation Date** for each:
 - (i) Project Crown Lot is the latest date by which the City Management Order for the Project Crown Lot is to be revoked and the relevant Reserve is to be cancelled, which is the date provided for in clause 9.1; and
 - (ii) Tenanted Lot is the latest date by which the City Management Order for the Tenanted Lot is to be revoked and the relevant Reserve is to be cancelled, which is the date that is the later of:
 - (A) the date provided for in clause 9.1; ~~and~~
 - (B) 30 Business Days after the Minister is notified by DevelopmentWA ~~or the City~~ that the tenant of the Tenanted Lot has vacated the Tenanted Lot: under clause 10.1(b)(ii); and
 - (C) The 30 April 2024 or such other date as the Parties may agree.
- (b) Lodgement of the relevant documents at Landgate to give effect to the actions referred to in clause 7.2 must occur at the same time in respect of a Project Crown Lot, but subject to clause 10 in respect of any part of a Project Crown Lot comprising a Tenanted Lot.

7.5 City to retain management of Balance Crown Lots

- (a) The Parties agree that the City will retain the City Management Orders in respect of the Balance Crown Lots (subject to any Existing Encumbrances), which will remain reserved for the relevant Reserve Purpose.
- (b) DevelopmentWA and the City may agree it would be more efficient under the Crown Subdivision for the City Management Order to be revoked over the whole of the City Crown Lot and a new management order made.
- (c) If clause 7.5(b) applies, the City agrees to consent to the revocation of the City Management Order over the whole of the City Crown Lot subject to clauses 9.1(a) to 9.1(c) inclusive being complied with, contemporaneously with the revocation.

- (d) DevelopmentWA, the City and the Minister may agree it would be more efficient for the subdivision of a City Crown Lot to be effected by way of a redescription of the boundaries of the relevant Reserve, in which case:
- (i) the Balance Crown Lot will remain in the relevant Reserve for the relevant Reserve Purpose and subject to the relevant City Management Order;
 - (ii) the Project Crown Lot is available for dealing with under clause 9.1(d); and
 - (iii) a reference in this Deed to the City Management Order being revoked is to be read as if it were a reference to the relevant part of the City Crown Lot being removed from the relevant Reserve in the manner and to the effect provided for in this clause 7.5(d).

8. Subdivision

8.1 Crown Subdivision

- (a) DevelopmentWA will arrange for the preparation or finalisation of a Subdivision Plan to create the Project Crown Lots, the Tenanted Lots and the Balance Crown Lots, and if required a Dedicated Road (**Crown Subdivision**).
- (b) The date on which the Subdivision Plan is placed in order for dealings by Landgate or is otherwise ready to be dealt on, for the Crown Subdivision is the **Crown Satisfaction Date**.
- (c) DevelopmentWA must use its reasonable endeavours to procure the Crown Satisfaction Date by not later than 3 months after the Commencement Date.
- (d) DevelopmentWA must give a request to the Minister under clause 9.1 and provide a copy to the City within 10 Business Days of the Crown Satisfaction Date.

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8.2 Freehold Subdivision

- (a) The subdivision of the City Lots in the Project to create the Project City Lots and the Balance Freehold Lots (**Freehold Subdivision**) is to be achieved by a subdivision of land under the PD Act while the City is the freehold owner of the City Lots.
- (b) DevelopmentWA will arrange for:
 - (i) the preparation or finalisation of a Subdivision Plan or Plans for the Freehold Subdivision to create the Project City Lots and the Balance Freehold Lots, and if required a Dedicated Road; and
 - (ii) the satisfaction of any conditions relating to the Freehold Subdivision, in accordance with the Development Agreement and so as to enable the matters in clause 6.4(e) to occur at the same time.
- (c) The later of the dates on which the Subdivision Plan is placed in order for dealings by Landgate, and the conditions are satisfied, for the Freehold Subdivision is the **Freehold Satisfaction Date**.
- (d) DevelopmentWA must use its reasonable endeavours to procure the Freehold Satisfaction Date by not later than 6 months after the Commencement Date.
- (e) DevelopmentWA must give a request to the City under clause 9.2(a) and provide a copy to the Minister within 10 Business Days of the Freehold Satisfaction Date.

~~8.3 Not used~~

8.48.3 Subdivisions may occur separately

- (a) A Crown Subdivision under this clause 8 may occur at different times in respect of different areas of land.
- (b) A Freehold Subdivision under this clause 8 must not occur at different times in respect of different areas of land.

9. Agreement to reserve, order and transfer

9.1 Crown Subdivision agreement

The Minister agrees to, within 30 Business Days of written request by DevelopmentWA given under clause 8.1(d):

- (a) apply to the Registrar of Titles for the creation and registration of certificates of Crown land title to give effect to the Subdivision Plan for a Crown Subdivision;
- (b) if clause 7.5(b) applies and if required, reserve the land in the Balance Crown Lot or Tenanted Lot for the same purpose as the Reserve Purpose that applied to the land at the Commencement Date; and
- (c) if clause 7.5(b) applies, make a management order placing the care, control and management of the reserve for the Balance Crown Lot or Tenanted Lot with the City on the same conditions as applied to the City Management Order at the Commencement Date, or such other conditions as are agreed by the City, but which in the case of a Tenanted Lot must include a power to lease and licence for a term not exceeding 21 years; and
- (d) reserve the Project Lots for the Project Reserve Purpose and make a DevelopmentWA Management Order and lodge them at Landgate for registration,

in accordance with clause 7.4(b).

9.2 Freehold Subdivision agreement

- (a) The City agrees to, within 30 Business Days of written request by DevelopmentWA given under clause 8.2(e) and on presentation of the relevant Landgate forms and documents by DevelopmentWA to the City:

- (i) apply to the Registrar of Titles for the creation and registration of certificates of land title for the land the subject of the Subdivision Plan for the Freehold Subdivision; and
- (ii) transfer to the State the Project City Lots for an estate in fee simple free of encumbrances except:
 - (A) any Existing Encumbrances;
 - (B) as required as a condition of the Freehold Subdivision but with a requirement for the City to be consulted-; and
 - (C) otherwise as may be agreed by the City (acting reasonably),

subject to the City retaining ownership of the Balance City Lots.

- (b) The Minister agrees to, within 10 Business Days of receipt of a duly executed transfer (**Transfer**) under clause 9.2(a):

- (i) execute the Transfer and ~~lodge~~provide it to DevelopmentWA or the City for lodgement at Landgate for registration;

and as a joint lodgement with, or follower dealing to, the Transfer:

- (ii) make an order revesting the land in the Transfer as Crown land and lodge it at Landgate for registration;
- (iii) apply to the Registrar of Titles for the creation and registration of certificates of Crown land title for the land the subject of the Transfer and the revesting order;
- ~~(iv)~~ -and

~~(iv)~~(iv) reserve the Tenanted Lots in accordance with clause ~~10 below~~10 and ~~reserve~~ the Project Lots for the Project Reserve Purpose and make a DevelopmentWA Management Order and lodge them at Landgate for registration,

in accordance with clause 6.4(e).

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10. Tenanted Lots

10.1 Management of Tenanted Lots

~~(a)~~ The Parties acknowledge:

~~(b)(a)~~ that the City will retain the relevant parts of the City Lots and the City Management Orders comprising the Tenanted Lots until such time as those lots are required by DevelopmentWA for the purposes of the Project, in accordance with the Development Agreement and this clause 10.

~~(e)(b)~~ The City and DevelopmentWA agree to use reasonable endeavours to maintain and manage each Existing Lease and the tenant's interest in the Tenanted Lot until such time as:

- (i) the Tenanted Lot is required by DevelopmentWA for the purposes of the Project; and
- (ii) the Existing Lease has been terminated in accordance with the terms of the Existing Lease and the Development Agreement, or surrendered with the agreement of the tenant and in accordance with the Development Agreement.

~~(d)(c)~~ The City will give notice to DevelopmentWA, who in turn will give notice to the Minister, when an Existing Lease has been terminated or surrendered in the manner provided for in clause 10.1(b)(ii), at which time the relevant Tenanted Lot will be dealt with in accordance with the other provisions of this Deed.

10.2 Tenanted Lot held in freehold

- (a) The Parties agree that, during the period referred to in clause 1.1(a), it is more expedient and conducive for the Tenanted Lot comprised in Project Lot 509 to be transferred to the State, revested as Crown land and managed as a reserve under the LA Act by the City-, subject in all respects to the Existing Lease.
- (b) For the purposes of clause 10.2(a), the Parties agree that the management of the Tenanted Lot as a reserve under the LA Act may be by way of:
 - (i) a new reserve for a suitable reserve purpose with a management order to the City with a power to lease-; or
 - (ii) amalgamated with Reserve 47831 and so it becomes subject to the City's Management Order K360388.
- (c) The Parties agree to do all things reasonably necessary to give effect to the dealings and matters agreed under this clause 10.2, provided that the dealings are to occur contemporaneously and consistently with the other provisions of this Deed (to the extent they deal with the area of land in Project Lot 509).
- (d) The things reasonably necessary in clause 10.2(c) include providing and signing all relevant transfers, forms and agreements and providing all relevant consents.

10.3 Agreement to reserve Tenanted Lot

~~(a)~~ On revocation~~The Minister agrees to, within 10 Business Days of receipt of a notice by the City or DevelopmentWA under clause 10.1(c):~~

~~(i)~~ revoke the City Management Order over a~~the Tenanted Lot which must happen in release to each Tenanted Lot immediate after the tenant has vacated, the Minister agrees to ; and~~

~~(a)(ii)~~ reserve the Tenanted Lot for the Project Reserve Purpose and to make a DevelopmentWA Management Order and lodge them at Landgate for registration.

- (b) When a DevelopmentWA Management Order is made under clause 10.3(a), the relevant Tenanted Lot will then become a Project Lot for the purposes of this Deed.

10.4 Agreement to provide access

If:

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- (a) a DevelopmentWA Management Order is made in respect of Project Lot 511; or
- (b) Project Lot 511 is transferred in fee simple to DevelopmentWA,

before the Tenanted Lots become Project Lots under clause 10.3(b), DevelopmentWA agrees to provide safe vehicular work collaboratively with the City and the Marine Rescue Whitfords and the Ocean Reef SSC to ensure that access is maintained to the Tenanted Lots for the lessees and authorised users benefit of the lessees Marine Rescue Whitfords and the Ocean Reef SSC prior to the Revocation Date, unless Marine Rescue Whitfords and the Ocean Reef SSC agree otherwise or have vacated their Tenanted Lot prior to the Revocation Date.

10.5 Agreement to take possession

DevelopmentWA agrees to take possession of a Tenanted Lot if:

- (a) the Existing Leases until the Existing Leases are Lease has been terminated or surrendered in the manner provided for in clause 10.1(b)(ii) and the Tenanted Lot has been vacated; and

- (b) the City has given at least 30 days' notice in writing to DevelopmentWA of the date on which clause 10.5(a) is likely to be satisfied.

whether or not clause 10.3 has been complied with, by the date on which DevelopmentWA is due to take possession of the Tenanted Lot under this clause.

11. Timing of transfer and revocation

11.1 Notice as proof

- (a) The Parties agree that the Minister may rely on any notice given by DevelopmentWA under this Deed that it contains a statement or representation that is in accordance with the Development Agreement, or any matter agreed between DevelopmentWA and the City in respect of the Project including in relation to:
 - (i) the area of a Project Lot, a Tenanted Lot, a Balance Crown Lot or a Balance Freehold Lot;
 - (ii) the timing for the transfer and revesting of each City Lot or revocation of each City Management Order over a Project Crown Lot or Tenanted Lot, as the case may be; and
 - (iii) the satisfaction of all preconditions to any such a transfer and revesting or revocation,unless the Minister has knowledge, or specific notice in writing from DevelopmentWA or the City, to the contrary or is in breach of this Deed.
- (b) The Minister is not liable to DevelopmentWA or the City for taking any steps to transfer and revest a City Lot or revoke a City Management Order in respect of a Project Crown Lot or a Tenanted Lot, as the case may be, pursuant to a notice that the Minister may rely on under clause 11.1(a).
- (c) DevelopmentWA indemnifies the City against all losses, costs, damages, expenses or liability suffered or incurred by the City in relation to the City Lots or the City Crown Lots where all of the following apply:
 - (i) a notice is given to the Minister by DevelopmentWA under this Deed;
 - (ii) the notice contains a statement or representation that the subject matter of the notice is in accordance with the Development Agreement, or any matter agreed between DevelopmentWA and the City in respect of the Project;
 - (iii) the subject matter of the notice is not:
 - (A) in accordance with the Development Agreement; or
 - (B) a matter agreed between DevelopmentWA and the City in respect of the Project, where the City's agreement is required; and

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- (iv) the Minister is entitled to rely and relies on the notice under clause 11.1(a).

12. Restrictions on dealings by the City

- (a) The City must not sell, transfer, relinquish, dispose of, subdivide, mortgage, charge or otherwise deal with or encumber the City Lots or the City Crown Lots except in accordance with the terms of a Principal Project Document or otherwise in accordance with the prior written consent of DevelopmentWA.
- (b) Despite clause 12(a), the City may lease or otherwise deal with a Balance Crown Lot in accordance with the relevant City Management Order and the LA Act during the Term, provided that it will not materially restrict or materially prejudice the ability to deal with the relevant Reserve in the manner provided for or contemplated under a Principal Project Document.
- (c) Nothing in this Deed affects the right of the City to lease or otherwise deal with:
 - (i) a Balance Freehold Lot; or
 - (ii) a Future City Lot once it has been transferred to the City.

13. Access Licence

13.1 Application

This clause 13 applies during such times and to the extent that the land formerly comprising the City Lots and City Crown Lots, or any portion of or subdivided subsequent title affecting the same:

- (a) is held by the State in freehold; or
- (b) is unallocated Crown land or an unmanaged reserve under the LA Act, (ORM State land).

13.2 Grant of Access Licence on provision of notice

- (a) The Minister acknowledges that DevelopmentWA may require access to the ORM State land in order to:
 - (i) undertake works or other actions to comply with a condition of a Crown Subdivision or a Freehold Subdivision; or
 - (ii) progress the development of the Project.
- (b) If DevelopmentWA requires access to ORM State land for a purpose under clause 13.2(a), DevelopmentWA may give a notice to the Minister which:
 - (i) specifies the date from which access is required (which date must be a date at least 15 Business Days after the date of the notice);
 - (ii) specifies the period for which access is required; and
 - (iii) attaches a sketch which identifies the part of the ORM State land to which DevelopmentWA requires access and that will comprise the licensed area for the purposes of the Access Licence.(Access Licence Notice).
- (c) DevelopmentWA may give an Access Licence Notice to the Minister more than once in respect of:
 - (i) different parts of the ORM State land at or around the same time; or
 - (ii) the same area of the ORM State land at different times.
- (d) Within 15 Business Days of receipt of an Access Licence Notice, the Minister must grant an Access Licence to DevelopmentWA in relation to the area of land, from the commencement date and the period specified in the Access Licence Notice.

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Part C – Divestment Strategy

14. Acknowledgement of Divestment Strategy

14.1 Future City Areas and Future City Lots

The Parties acknowledge that pursuant to the terms of the Development Agreement and this Deed:

- (a) DevelopmentWA will develop the Project Lots including the Tenanted Lots to create, among other things, the Future City Areas subject to the terms of clauses 12 and 20.5(b) and (c) of the Development Agreement;
- (b) the location, size and layout of the Future City Areas are detailed in the Divestment Strategy;
- (c) further subdivision plans relating to the Future City Areas will be prepared as the Project progresses;
- (d) the Future City Lots will be transferred to the City following their completion and subdivision, and subject to the Specified Encumbrances;
- (e) the Public Open Spaces ~~that the Divestment Strategy identifies as being reserved and placed with the City~~ will be vested in the State following their completion and subdivision, and are to be reserved and placed with the City:
 - (i) ~~with~~for the reserve purpose(s) appearing as provided for in the Divestment Strategy or as otherwise agreed by the Parties;
 - (ii) for its care, control, and management and subject to the Specified Encumbrances; and
 - (iii) where applicable in accordance with the Divestment Strategy, ~~with the power to lease or licence the Public Open Space for a term not exceeding 42 years or as otherwise agreed by the Parties;~~
 - (A) no power to lease but with power to licence for a term not exceeding 12 months the Public Open Space comprising public open space vested under section 152 of the PD Act; and
 - (B) the power to lease or licence any other Public Open Space for a term not exceeding 21 years or as otherwise by the Minister at the time of granting the relevant management order; and
- (f) the Completed Roads will be dedicated as Dedicated Roads.

14.2 Project Lots

- (a) The Parties acknowledge that in order to facilitate the delivery of the Project including for the purpose of carrying out of subdivision and development works, the whole or part of the Project Lots may be:
 - (i) held by DevelopmentWA under a DevelopmentWA Management Order; or
 - (ii) transferred by the State in fee simple to, or held by, DevelopmentWA in fee simple, instead of or subsequent to a DevelopmentWA Management Order.
- (b) Nothing in clause 14.2(a) affects the right of the City to have:
 - (i) the Balance Crown Lots reserved for the Reserve Purpose and retained or placed under the City's care, control, and management; and
 - (ii) the Future City Areas delivered and dealt with in accordance with clause 14.1,

and the provisions of this Deed in relation to these matters will apply to impose the relevant obligation on DevelopmentWA to the extent it has ownership or control of the relevant area of land under clause ~~14.2(a)~~ 14.2(a).

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15. Actions to give effect to Divestment Strategy

15.1 General

- (a) The Parties agree to collaborate and cooperate with each other to ensure all subdivisions and transfers are effected, reserves are created or amended, and management orders are made or retained placing the care, control and management of the relevant reserves with the City as may be required to give effect to the Divestment Strategy as and when reasonably required by DevelopmentWA.
- (b) Without limiting clause 15.1(a), the Minister agrees to:
 - (i) transfer the Future City Lots (if the land is Crown land at the relevant time) to the City, subject to clause 15.2; and 15.3 (as applicable);
 - (ii) reserve and place the care, control, and management of the Public Open Spaces with the City, subject to clause 15.3;
 - (iii) dedicate the Completed Roads as Dedicated Roads, within 30 Business Days of written notice being given by DevelopmentWA to the Minister and the City, subject to the plan for the relevant land being in order for the dealing.
- (c) The Parties will use reasonable endeavours and will negotiate in good faith to vary the terms of this Deed, or enter into further agreements, if required to give effect to the matters referred to in ~~clauses~~ clause 15.1(a) and ~~(b)~~ clause 15.1(b).
- (d) DevelopmentWA and the City agree that nothing in this Deed affects clause 2623 or any other provision in the Development Agreement relating to the Handover (as that term is defined in the Development Agreement) of a Future City Area.

15.2 Beach Parking Area

~~The Minister agrees to~~ Parties agree that the transfer in fee simple of the Beach Parking Area to the City once developed and constructed to the point of practical completion by DevelopmentWA and the Parties agree that the Beach Parking Area will be subject to such positive or restrictive covenant or other form of encumbrance, condition, or restriction:

- (a) which provides that:
 - (i) without limiting how the land may be otherwise be developed and used, any development and use of the land must include be used for the provision of a minimum number of [XXX] public car parking bays (which will not be less than 210 bays), other than during periods of repair and maintenance, replacement or refurbishment; and
 - (ii) until completion of the Project, the parking fees charged by the City will be set and maintained at a minimal rate so as not to inhibit public visitation to, and the activation of, the Project and thereafter the City may determine the parking fees in its discretion;
- ~~(b)~~ that is in favour of the Minister or DevelopmentWA, and otherwise on terms and conditions reasonably agreed by the Parties; and

~~(e)(b)~~ being registered or registrable on the certificate of title to that fee simple land.

Provided that development and use of the Beach Parking Area includes a minimum of [XXX] parking bays, the Beach Parking Area may be used for purposes that are not public car parking and the implementation of the Divestment Strategy must not restrict the use of the Beach Parking Area to public parking.

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15.3 ~~Future Club Facilities and other areas~~Lot

- (a) The Parties agree that the tenure of the Future Club Facilities Lot will be transferred ~~to the City~~ in fee simple by DevelopmentWA to the City:
- (i) subject to the Section 15 Covenant and this clause 15.3; and
 - (ii) by no later than the date that is 10 Business Days after the Date of Practical Completion of the Future Club Facilities Lot Works.
- (b) The Parties acknowledge and agree that:
- (i) the restrictive covenants and unencumbered-positive covenants set out in the Section 15 Covenant in relation to the use of the Future Club Facilities Lot, will be entered into by the Minister for the purposes of section 15(1)(a) of the LA Act, in anticipation of the transfer of the Future Club Facilities Lot in fee simple by the Minister to DevelopmentWA and then subsequently from DevelopmentWA to the City or, if clause 15.3(h) applies, by the Minister to the City;
 - (ii) the Minister will enter into the Section 15 Covenant and make an order under section 15(3)(a)(i) of the LA Act when the Future Club Facilities Lot has been finally surveyed (in respect of that area) and is ready to be transferred in fee simple to DevelopmentWA (or the City, if clause 15.3(h) applies) (First Transfer), and lodge it for registration at Landgate immediately prior to the First Transfer;
 - (iii) the execution and registration of the Section 15 Covenant will create covenants that:
 - (A) are intended to be positive covenants and restrictive covenants as contemplated by section 15(7) of the LA Act, being provisions or requirements relating to the Future Club Facilities Lot as contemplated by section 15(7)(a) and (b) of the LA Act;
 - (B) are in favour of DevelopmentWA, which is a State instrumentality as defined in the LA Act and referred to in section 15(6)(a)(i) of the LA Act;
 - (C) will bind and run with the Future Club Facilities Lot pursuant to sections 15(6)(c) and 15(15) of the LA Act;
 - (D) will be enforceable against the Covenantor and its successors in title, even if the covenants are not annexed to land in which DevelopmentWA has an estate or interest, pursuant to section 15(6)(d) of the LA Act; and
 - (E) will bind the successors in title of the Covenantor when the land is transferred in fee simple, pursuant to section 15(15) of the LA Act.
- (c) The Minister agrees with DevelopmentWA and the City to transfer the fee simple estate in the Future Club Facilities Lot to DevelopmentWA, or the City if clause 15.3(h) applies, subject to the Section 15 Covenant including the obligations contained in clause 2 of it.
- (d) The Minister, DevelopmentWA and the City (if applicable) agree to enter into and execute the Section 15 Covenant and will do all things necessary to ensure that the Section 15 Covenant will be registered on the certificate of Crown land title to the Future Club Facilities Lot immediately prior to registration of the First Transfer.
- (e) If the Section 15 Covenant is not registered at the time of the First Transfer, in accordance with clause 15.3(b), for any reason, the Minister, DevelopmentWA and the City agree that:
- (i) this Deed is an agreement for the purposes of section 15(1)(b) of the LA Act and that the Future Club Facilities Lot is 'agreement land' for the purposes of section 15(2) of the LA Act; and
 - (ii) the Future Club Facilities Lot will be transferred to DevelopmentWA, or the City if clause 15.3(h) applies, subject to the Section 15 Covenant.
- (f) DevelopmentWA and the City each acknowledge and agree that:
- (i) the Minister has entered into this clause 15.3 at the request of DevelopmentWA and the City; and

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- (ii) the Minister will not be liable for any costs, expenses, liabilities, suits, damages or claims howsoever arising:
- (A) as a result of anything done or to be done under this clause 15.3, including the creation and registration of the Section 15 Covenant, or the Section 15 Covenant; or
- (B) as to the subsequent validity or enforceability of the Section 15 Covenant.
- (g) The City, in its capacity as the current management body for and primary interest holder in the land comprising the Future Club Facilities Lot being Crown Lot 15546 in respect of reserve 47831, consents to the creation and registration of the Section 15 Covenant under the terms of this Deed.
- (h) The Parties agree that if, in carrying out the Project, DevelopmentWA and the Minister determine that it is more expedient for the Future Club Facilities Lot to be transferred in fee simple by the Minister directly to the City, or if the Section 15 Covenant is not registered at the time of the First Transfer, in accordance with clause 15.3(b) for any reason:
- (i) the Parties agree the provisions of this clause 15.3 will apply with all suitable modifications; and
- (ii) in particular, the City agrees to take the transfer of the fee simple of the Future Club Facilities Lot subject to the Section 15 Covenant and will enter into the Section 15 Covenant as covenantor in favour of DevelopmentWA.
- (i) The Parties agree that due to the early design stage of the Future Club Facilities Lot at the date of this Deed, the terms of the Section 15 Covenant may need to be varied when the fee simple in the Future Club Facilities Lot is being transferred subject to the Section 15 Covenant under this clause 15.3, in which case:
- (i) the Section 15 Covenant will be varied to give effect to the public and community purposes provided for in the design and as required by DevelopmentWA (acting reasonably and after consulting with the City), including in relation to:
- (A) the number and location of public car parking bays, including a plan of the car parking area; and
- (B) the portion of commercial revenue to be allocated for the maintenance and upkeep of the improvements and facilities on the Future Club Facilities Lot and surrounding areas and for the application or use for community purposes on the Future Club Facilities Lot; and
- (ii) a dispute as to the terms of any variation of the Section 15 Covenant under clause 15.3(i) will be determined in accordance with clause 20 of this Deed. If the dispute is not resolved under clause 20 within the 20 Business Day period referred to in it, the dispute will be determined by the Minister in his or her absolute discretion, on referral by either DevelopmentWA or the City.
- (i) The City acknowledges and agrees that DevelopmentWA has agreed to the Future Club Facilities Lot being transferred in freehold subject to the Section 15 Covenant under this clause 15.3 to the City in consideration of the City agreeing as follows:
- (i) the City will be responsible for the day to day management and day to day maintenance of the ocean pool and any associated facilities such as a kiosk (Ocean Pool), which is proposed to be constructed in the vicinity of the jetty adjoining the Future Club Facilities Lot;
- (ii) the City will not be responsible for any repair, maintenance, upgrade or replacement of:
- (A) the Ocean Pool that are works of a capital or structural nature; or
- (B) the jetty or any other structure forming part of or in the vicinity of the Ocean Pool,
- except to the extent caused or contributed to by the wilful or negligent act or default of the City or its officers, consultants, contractors, employees and agents; and

- (iii) the City will contribute its existing jetties in the Project area free of charge for re-use as part of the new marina boat ramps in the Project.
- (k) DevelopmentWA and the City will negotiate in good faith any further management or other agreement required by either Party to give effect to any of the matters provided for in clause 15.3(j), when the design and construction of the relevant works is known.

Part D – General Provisions

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16. Warranty and declaration

16.1 Warranty

The City warrants in favour of the State and DevelopmentWA that the City has provided to DevelopmentWA (and on request, will provide to the Minister) copies of all:

- (a) current leases, licences or other agreements relating to the City Lots or City Crown Lots;
- (b) environmental and contamination studies and reports relating to land including the City Lots or City Crown Lots; and
- (c) other similar documents and data relevant to the material risks pertaining to land including the City Lots or City Crown Lots, or the Project generally.
- (e) within the possession or control of the City.

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16.2 Statutory Declaration

The City agrees that the City will provide to the Minister a statutory declaration as to the City's knowledge in respect of unregistered interests in and contamination of:

- (a) the Project City Lots, when they are transferred to the State under clause 6; and
- (b) the Project Crown Lots, when the City's Management Order is revoked in respect of them under clause 7.

~~17. Not used~~

in a form substantially consistent with the draft statutory declaration annexed to this Deed as Schedule 6.

17. Release and indemnity

17.1 Release

On and from the Commencement Date, the City to the full extent permitted by law, releases the Minister and the State from any Claim, liability, duty or obligation to the City (or any party claiming through or on behalf of the City) in respect of the presence of any Contamination in on or under, or any pollution of (as the term 'pollution' is defined in the *Environmental Protection Act 1986* (WA)) a City Lot or City Crown Lot existing prior to the date that:

- (a) the City Lot (or any portion of it) is transferred to the State;
- (b) the City Management Order in respect of the City Crown Lot (or any portion of it) is revoked,

or possession of which is taken by DevelopmentWA, whichever is the earlier in each case.

17.2 Responsibility for Contamination

- (a) The City and DevelopmentWA agree that the State and the Minister will not be liable for any Claim, liability, duty or obligation to any third party in connection with the presence of

any Contamination in on or under, or any pollution of (as the term 'pollution' is defined in the Environmental Protection Act 1986 (WA)) a City Lot or City Crown Lot existing prior to the date that:

(i) the City Lot (or any portion of it) is transferred to the State;

(ii) the City Management Order in respect of the City Crown Lot (or any portion of it) is revoked,

or possession of which is taken by DevelopmentWA, whichever is the earlier in each case.

- (b) DevelopmentWA agrees that, as between it, the State, the Minister and the City, DevelopmentWA is liable to remediate any Contamination in on or under, or any pollution of (as the term 'pollution' is defined in the Environmental Protection Act 1986 (WA)) a Project Lot (formerly comprising the whole or part of a City Lot or City Crown Lot) that is required to be carried out for the development of the Project.

18. Exclusion of liability

18.1 Minister and State not liable

The City agrees that the Minister and the State shall not be liable for, and the City releases the Minister and the State from, all liability, loss, damages, or Claims arising in connection with, and costs and expenses incurred in connection with land, infrastructure or assets relating to:

- (a) the Future City Lots once transferred to the City; and
- (b) the Balance Crown Lots ,or the Public Open Space once the care, control and management of a Balance Crown Lot or Public Open Space is placed with the City,

except to the extent caused by the gross negligence or wilful misconduct of the Minister ~~or the State~~ or its consultants, contractors, employees, agents and invitees.

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18.2 Effect of Development Agreement

Nothing in this clause 18 affects the provisions in clause ~~26~~²⁷ of the Development Agreement.

[ME Note: Liability issues (including indemnities, handover of assets and the like) as between the City and DevelopmentWA are dealt with in the Development Agreement.]

19. Notices

- (a) A notice or other communication under this Deed is only effective if it is:
- (i) in writing, signed; and
- (ii) either left at the addressee's address or sent to the addressee by post or email, subject to clause 19(b).
- (b) A notice or other communication may not be given to the Minister under this Deed by email but must be given by leaving it at the address or sending it by post.
- (c) If the notice or communication is given by:
- (i) leaving it at the addressee's address, it is taken to have been received:
- (A) on the day it is left, if it is left before 5.00pm on a Business Day; or
- (B) otherwise, on the next Business Day;
- (ii) mail, it is taken to have been received 3 Business Days after it is posted;
- (iii) email, it is taken to have been received when the sender of the email receives a confirmation of delivery message generated by the sender's system.
- (d) Each Party's mail and email address for the service of notices, at the Commencement Date, is set out in the Details at the front of this Deed.

20. Disputes

- (a) Each Party must use their reasonable endeavours to avoid any form of dispute under this Deed.
- (b) Should a dispute arise between the Parties:
 - (i) a representative of any Party shall provide notice to the other Parties to the dispute (**Dispute Notice**);
 - (ii) the affected Parties must nominate a representative to meet to resolve the dispute in good faith attempt within 10 Business Days of service of the Dispute Notice (**Initial Meeting**); and
 - (iii) if the affected Parties cannot resolve the dispute through participation at an Initial Meeting (or further meetings as agreed by the Parties), the Chief Executives of each Party must meet within 20 Business Days of that Initial Meeting to meet to resolve the dispute in good faith.

21. No fetter

Nothing in this Deed fetters, replaces or alters, or is to be taken as fettering, replacing or altering the exercise of:

- (a) a statutory function (~~as that having the meaning of the~~ term is 'function' as defined in the *Interpretation Act 1984* (WA)), by the WAPC; or
- (b) the City's statutory powers, functions, obligations, and discretions (including but not limited to the City's City's statutory planning and building functions); ~~;-).~~

22. Further action and documents

Each Party must do, at its own expense (subject to clause 4), everything reasonably necessary (including executing deeds) to give full effect to this Deed and any subdivision, transfer, grant, revocation, or other transaction contemplated by it, including:

- (a) taking all reasonable actions in their control;
- (b) executing all applications (including development and subdivision applications), transfers, documents, forms, and consents;
- (c) attend any joint lodgements at Landgate; and
- (d) enter into any further agreements and documents on reasonable terms to give effect to the transactions contemplated by this Deed.

23. Goods and Services Tax ~~[Subject to further review and consideration]~~

23.1 Defined terms

In this clause 23:

- (a) unless the context otherwise requires, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) has the meaning given to it in that Act;
- (b) a reference to a GST liability or input tax credit entitlement of a Party includes a GST liability or input tax credit entitlement of the representative member of any GST group of which that Party is a member;
- (c) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 23; and
- (d) any reference to GST payable by, input tax credit entitlements of or adjustments for a Party includes any notional GST, input tax credits or adjustments arising in accordance

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with Division 177 of the GST Act or any relevant State legislation confirming the imposition of GST on State entities.

23.2 Consideration GST exclusive

Any consideration to be paid or provided for a supply made under or in connection with this Deed, unless specifically described in this Deed as 'GST inclusive', does not include an amount on account of GST.

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23.3 Gross up

If a Party (**Supplier**) makes a supply under or in connection with this Deed in respect of which GST is payable (not being a supply the consideration for which is specifically described in this Deed as 'GST inclusive'):

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- (a) the consideration payable or to be provided for that supply under this Deed but for the application of this clause (**GST exclusive consideration**) is increased by, and the recipient of the supply (**Recipient**) must pay to the Supplier, an amount equal to the GST payable on the supply (**GST Amount**); and
- (b) subject to clause 23.5, the GST Amount must be paid to the Supplier by the Recipient:
 - (i) at the same time as the first part of any of the GST exclusive consideration is payable; or
 - (ii) within 10 Business Days of issue of the tax invoice to which the GST Amount applies, if no other payment is required to be made as part of the consideration for the relevant supply.

23.4 Reimbursement

If a Party must reimburse or indemnify another Party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other Party is entitled to for that loss, cost or expense, and then increased in accordance with clause 23.3.

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23.5 Tax invoice

- (a) The Recipient need not pay a GST Amount under this Deed until it receives a tax invoice from the Supplier for the supply to which the payment relates.
- (b) Any invoice issued by a GST registered Party in respect of a taxable supply made by that Party under or in connection with this Deed must be in the form of a valid tax invoice.

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23.6 Exclusion of GST from calculations

If a payment is calculated by reference to or as a specified percentage of another amount or value, that payment will be:

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- (a) calculated by reference to or as a specified percentage of the amount or value exclusive of any GST component; and
- (b) then increased in accordance with clause 23.3.

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23.7 Adjustments

- (a) If the GST payable by a Supplier on any supply made under or in connection with this Deed varies from the GST Amount paid by the Recipient under clause 23.3, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient so that the correct GST Amount has been paid.
- (b) Any payment, credit or refund under this clause 23.7 is deemed to be a payment, credit or refund of the GST Amount payable under clause 23.3.
- (c) If an adjustment event occurs in relation to a taxable supply, the Supplier must issue an adjustment note to the Recipient in relation to that supply within 10 Business Days of becoming aware of that adjustment event.

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23.8 Non-monetary consideration

If and to the extent that the consideration for a supply under this Deed is not expressed as an amount of money:

- (a) the Recipient must:
 - (i) undertake, observe, and perform the act, matter or thing being the consideration for the supply; and
 - (ii) subject to clause 23.8(b), pay the GST Amount determined by reference to clause 23.3 to the Supplier without any deduction or set-off at the time that the Recipient is obliged to undertake, observe, and perform the act, matter or thing being the consideration for the supply; and
- (b) without limiting the obligation to issue tax invoices under clause 23.5, the Parties may agree that any GST Amounts payable to each other for taxable supplies to which this clause 23 applies shall be offset such that only the balance, if any, is payable.

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23.9 Further definitions relating to GST

Unless the context indicates otherwise, terms used in this Deed which are defined in the GST Act have the same meaning given in GST Act. For the avoidance of doubt, a reference to consideration being paid includes (in addition to the payment of money) the performance of the act, matter or thing being the consideration for the supply.

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23.10 Dispute resolution

If the Recipient disputes the Supplier's application of the provisions in this clause 23, it must notify the Supplier under clause 20 so as to initiate the dispute resolution procedures under that clause. Despite any dispute concerning the provisions of this clause 23, the Recipient must pay the GST exclusive consideration for any taxable supply made by the Supplier under this Deed in accordance with the other provisions of this Deed.

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23.11 GST Penalties and Interest

The Recipient of a taxable supply made under this Deed must indemnify the Supplier for any penalties and interest for which the Supplier is liable as a result of any delay or failure on the part of the Recipient to pay a GST Amount at the time provided for in clause 23.3(b), subject to the Supplier having used its reasonable endeavours to seek remission of the penalties or interest.

23.12 Margin Scheme

To the extent the margin scheme is available and DevelopmentWA, by notice in writing to the other Parties, requires the margin scheme to be applied, the Parties agree:

- (a) the margin scheme will be applied to any taxable supply under this Deed;
- (b) the Parties will agree in writing that the margin scheme will apply to the relevant taxable supply; and
- (c) the foregoing provisions of this clause 23 will be interpreted accordingly.

24. General

24.1 Costs

Each Party must pay its own costs of negotiating, preparing and executing this Deed.

24.2 Alterations

This Deed may be altered only in writing signed by each Party.

24.3 Approvals and consents

Except where this Deed expressly states otherwise, a Party cannot unreasonably withhold or delay any approval or consent under this Deed.

24.4 Assignment

A Party may only assign this Deed or a right under this Deed with the prior written consent of each other Party.

24.5 Survival

Any indemnity or any obligation of confidence under this Deed is independent and survives termination of this Deed. Any other term by its nature intended to survive termination of this Deed survives termination of this Deed.

24.6 No merger

The rights and obligations of the Parties under this Deed do not merge on completion of any transaction contemplated by this Deed.

24.7 Entire agreement

~~The~~Unless otherwise provided, the Principal Project Documents and the Foundational Project Documents constitute the entire agreement between the Parties in connection with its subject matter and supersedes all previous agreements or understandings between the Parties in connection with its subject matter.

24.8 Severability

A term or part of a term of this Deed that is illegal or unenforceable may be severed from this Deed and the remaining terms or parts of the terms of this Deed continue in force.

24.9 Waiver

A Party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the Party giving the waiver.

24.10 Relationship

Except where this Deed expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the Parties.

24.11 Governing law and jurisdiction

This Deed is governed by the law of Western Australia and each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State of Western Australia.

24.12 Counterparts

This Deed may be executed in counterparts. All executed counterparts constitute one Deed.

Signing page

SIGNED for the **STATE OF WESTERN AUSTRALIA** for and on behalf of the **MINISTER FOR LANDS** by

(Signature)

(Print full name)

(Classification level, Position title
(Division)

Department of Planning, Lands and Heritage:

Pursuant to a delegation of the Minister for Lands' powers under Section 9 of the Land Administration Act 1997 in the presence of:

(Signature of witness)

(Print full name)

(Classification level, Position title
(Division)

Department of Planning, Lands and Heritage

The Common Seal of **WESTERN AUSTRALIAN LAND AUTHORITY** was hereunto affixed with the authority of its Board in the presence of:

Chief Executive Officer

Board Member

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~~EXECUTED by and on behalf~~THE COMMON
SEAL of the
CITY OF JOONDALUP ~~was hereunto affixed by~~
~~its Chief Executive Officer~~authority of a resolution
of the council in the presence of:

Signature of ~~witness~~Mayor

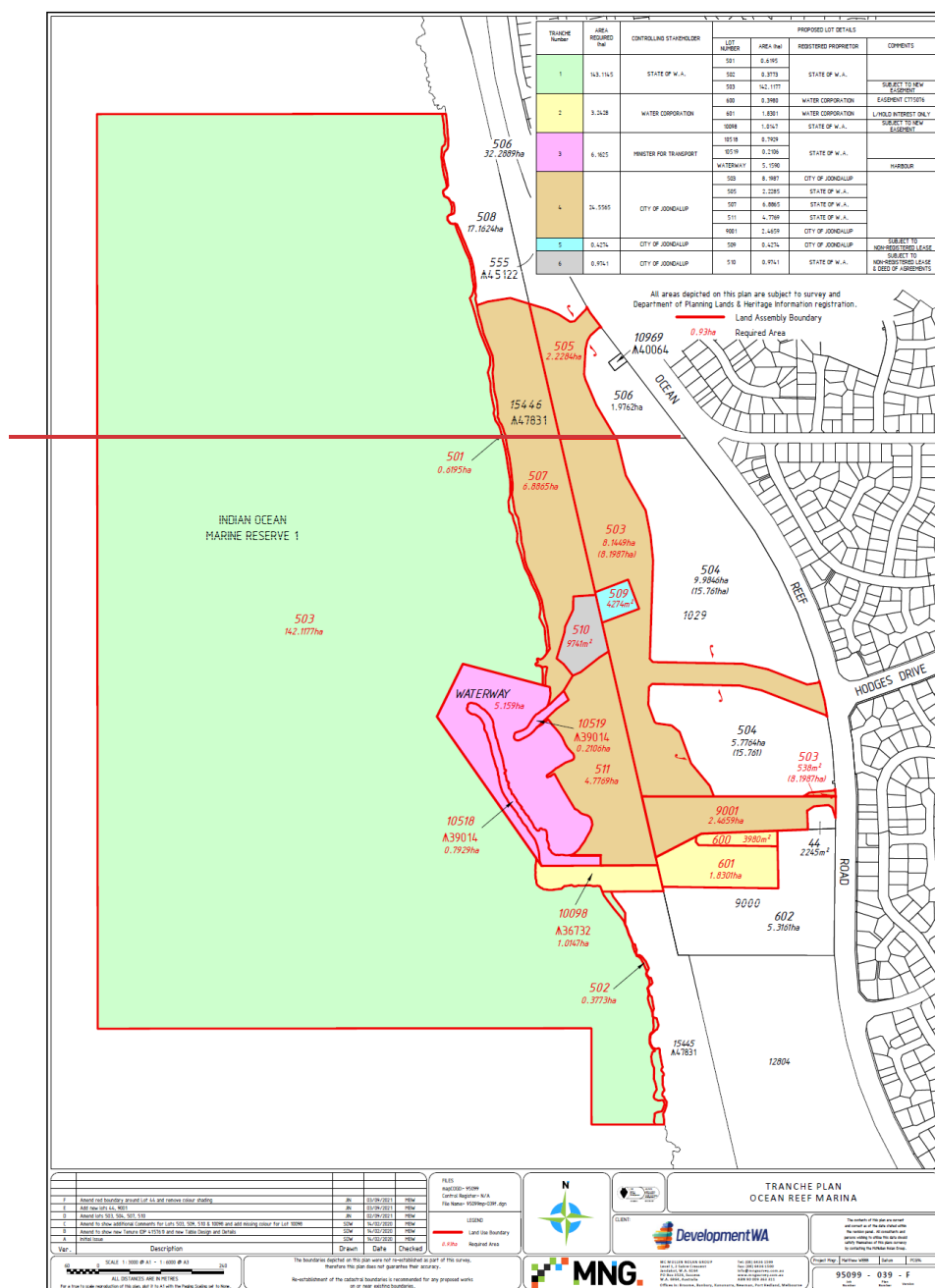
Signature of Chief Executive Officer

Name of ~~witness~~Mayor (print)

~~Date~~Name of Chief Executive Officer (print)

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Schedule 1 – Land Assembly Tranche Plan



| Tranche Number | Area Required (ha) | Controlling Stakeholder | Proposed Lot Details | | | |
|----------------|--------------------|-------------------------|----------------------|-----------|-----------------------|--|
| | | | Lot Number | Area (ha) | Registered Proprietor | Comments |
| 1 | 143.1145 | STATE OF W.A. | 501 | 0.6195 | STATE OF W.A. | SUBJECT TO NEW EASEMENT |
| | | | 502 | 0.3773 | | |
| | | | 503 | 142.1177 | | |
| 2 | 3.7810 | WATER CORPORATION | 600 | 0.3980 | WATER CORPORATION | EASEMENT C775076 |
| | | | 601 | 1.8301 | WATER CORPORATION | L/HOLD INTEREST ONLY |
| | | | 10098 | 1.0147 | STATE OF W.A. | SUBJECT TO NEW EASEMENT |
| | | | 602 | 0.5316 | WATER CORPORATION | L/HOLD INTEREST ONLY |
| 3 | 6.1625 | MINISTER FOR TRANSPORT | 10518 | 0.7929 | STATE OF W.A. | HARBOUR |
| | | | 10519 | 0.2106 | | |
| | | | WATERWAY | 5.1590 | | |
| 4 | 24.5199 | CITY OF JOONDALUP | 503 | 8.1987 | CITY OF JOONDALUP | SUBJECT TO NON-REGISTERED LEASE |
| | | | 505 | 2.2285 | STATE OF W.A. | |
| | | | 507 | 6.8865 | STATE OF W.A. | |
| | | | 511 | 4.7769 | STATE OF W.A. | |
| | | | 9001 | 2.4659 | CITY OF JOONDALUP | |
| 5 | 0.4274 | CITY OF JOONDALUP | 509 | 0.4274 | CITY OF JOONDALUP | SUBJECT TO NON-REGISTERED LEASE |
| 6 | 0.9741 | CITY OF JOONDALUP | 510 | 0.9741 | STATE OF W.A. | SUBJECT TO NON-REGISTERED LEASE & DEED OF AGREEMENTS |

Schedule 2 – Land and Asset Divestment Strategy

Part 1 – Combined Overview (as at 5 July 2024)



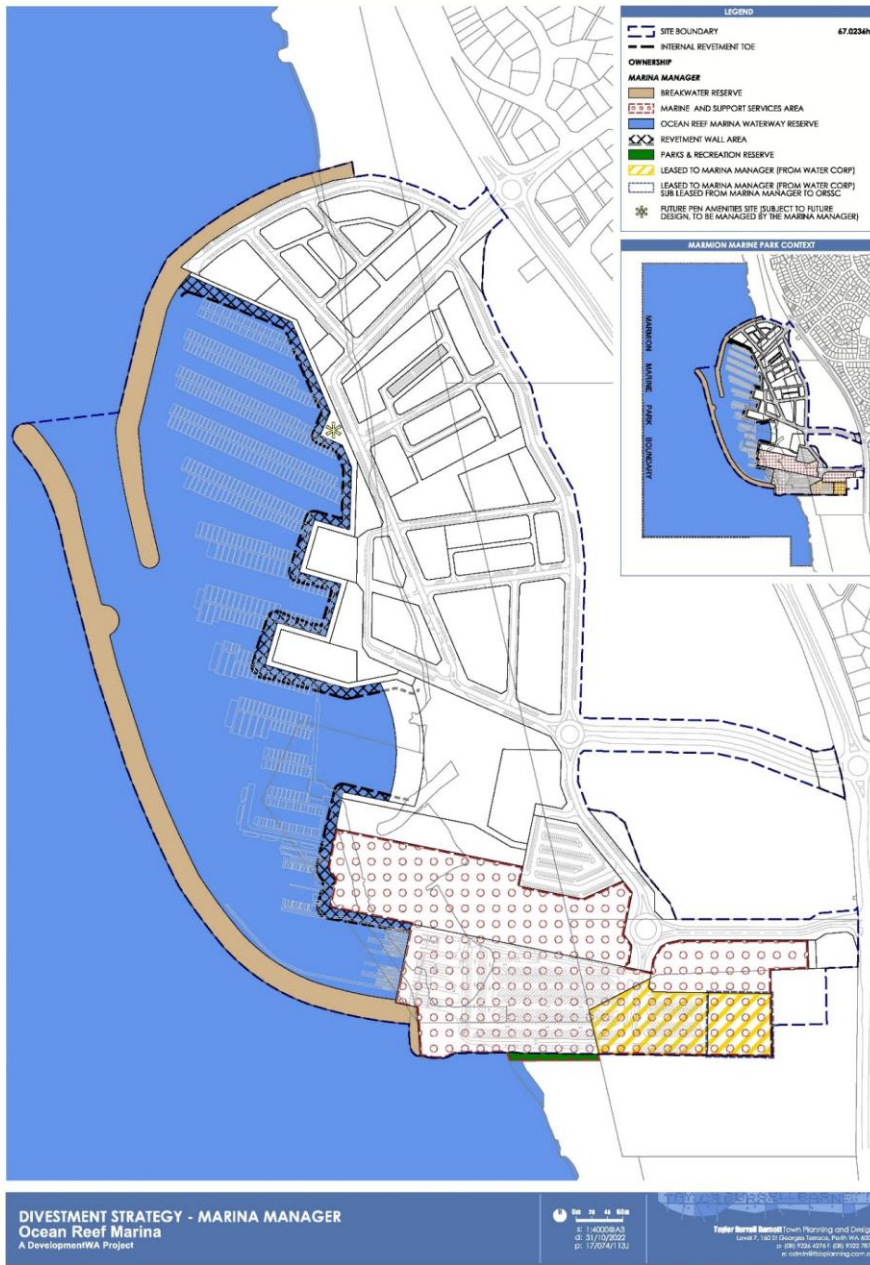
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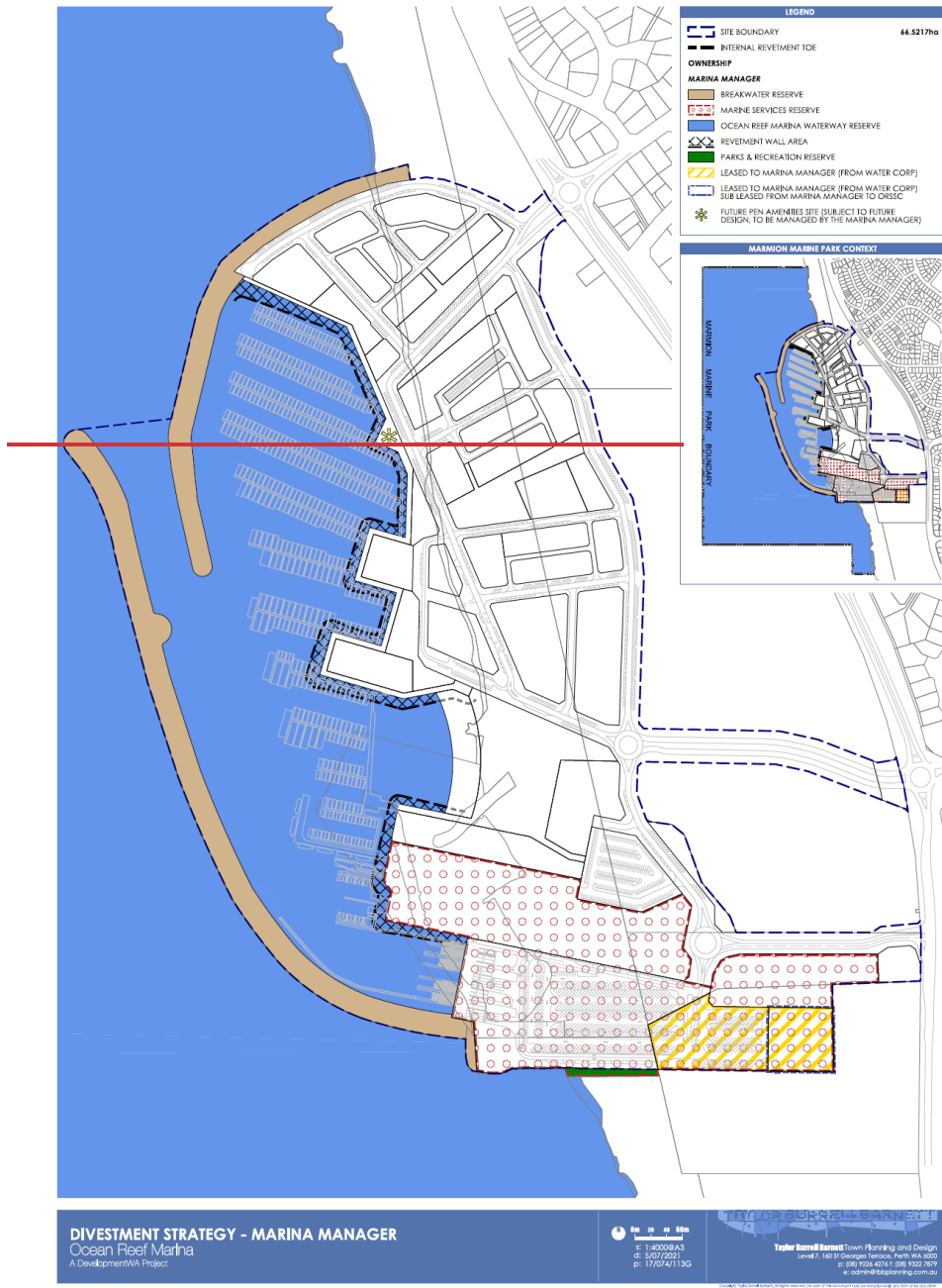
Part 2 – City of Joondalup (as at 5 July 2021)



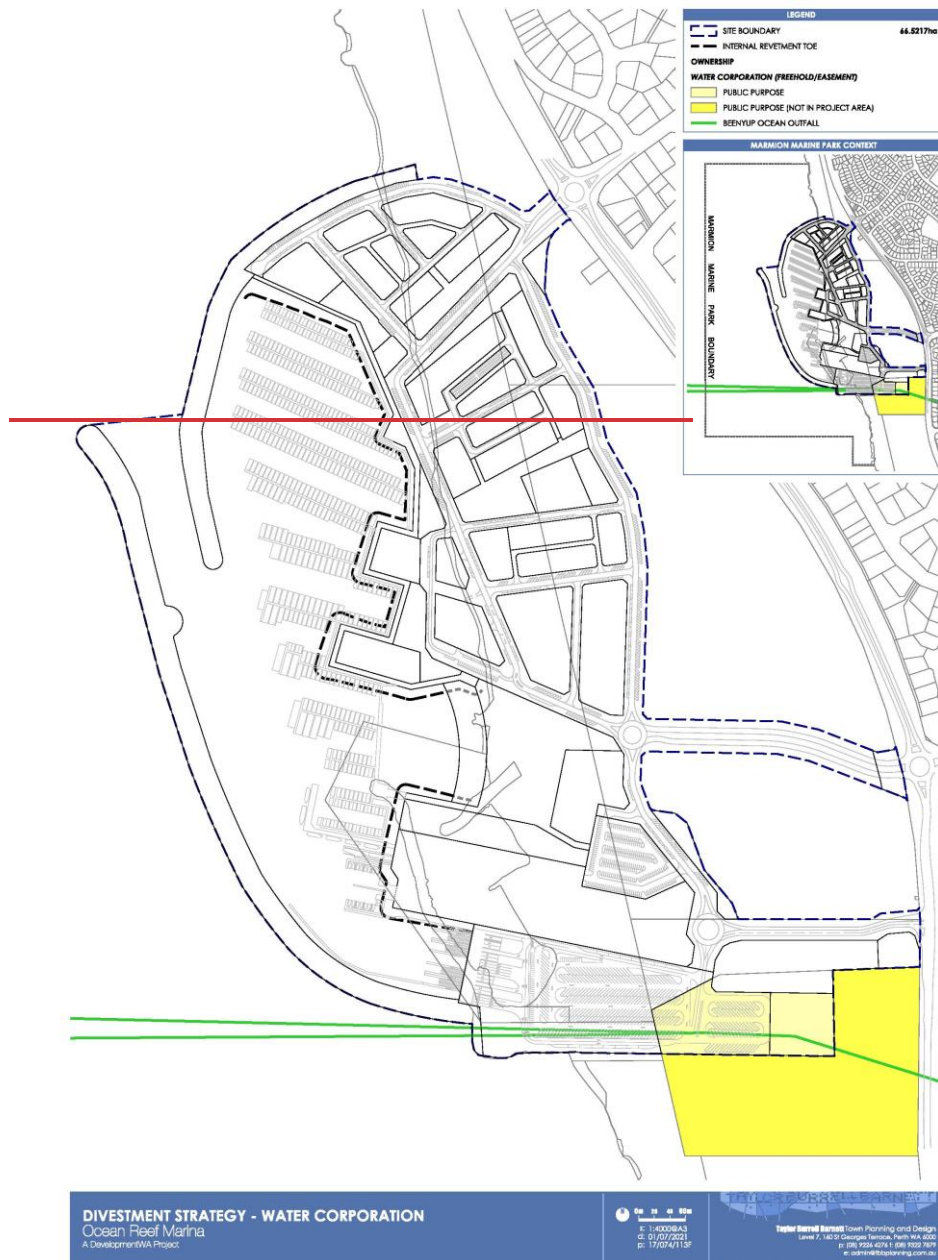


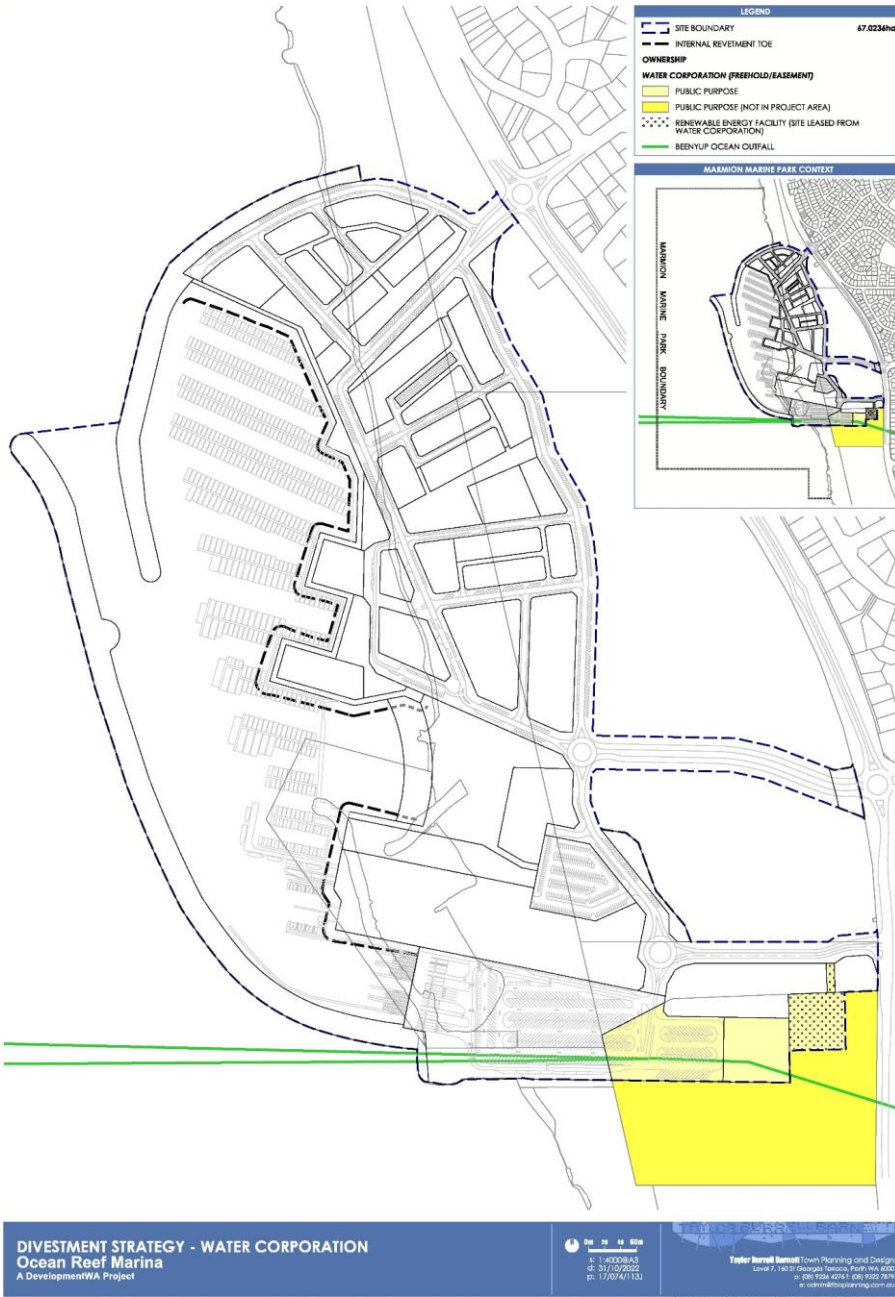
Part 3 – Marina Manager (as at 5 July 2021)



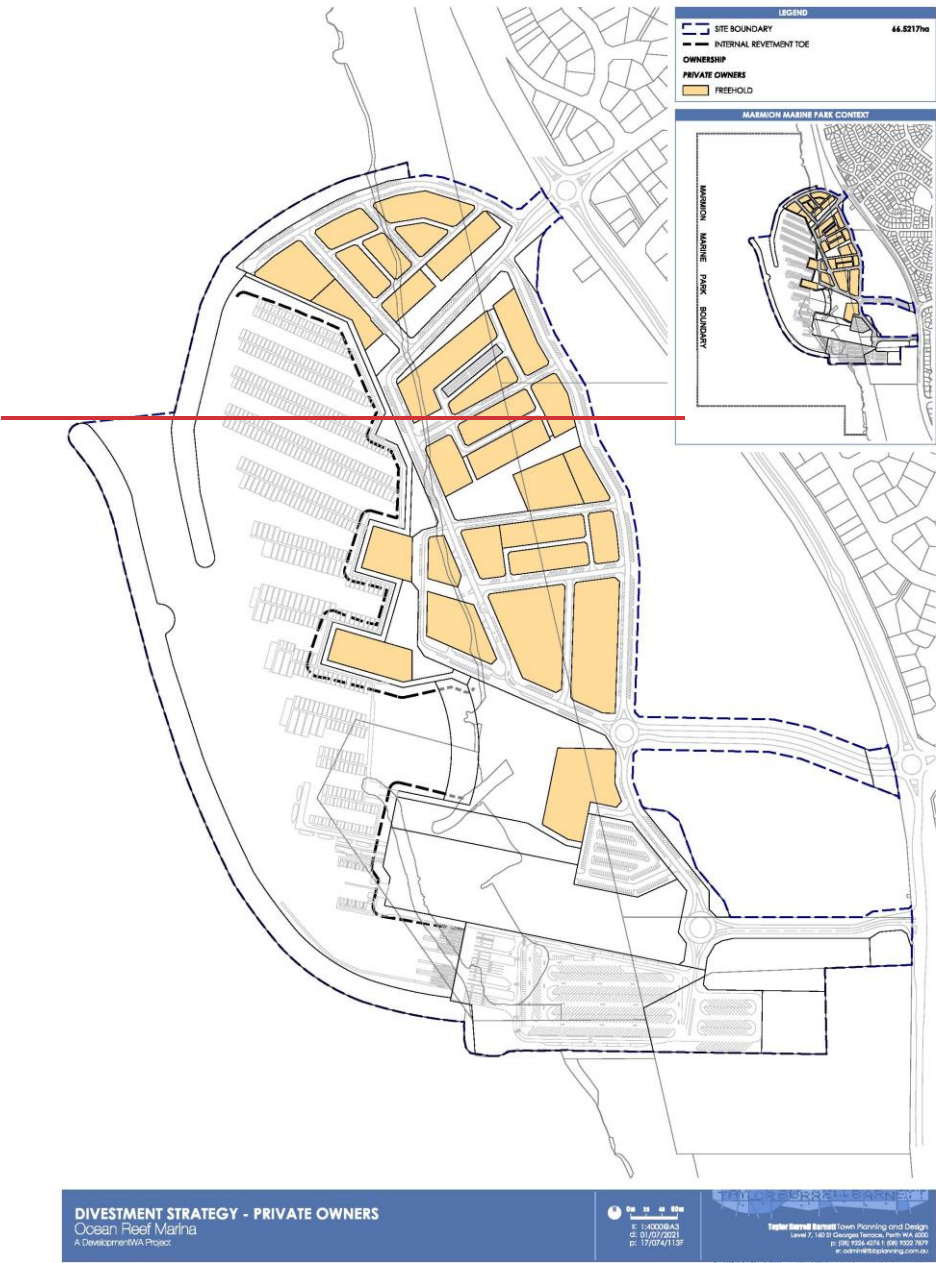


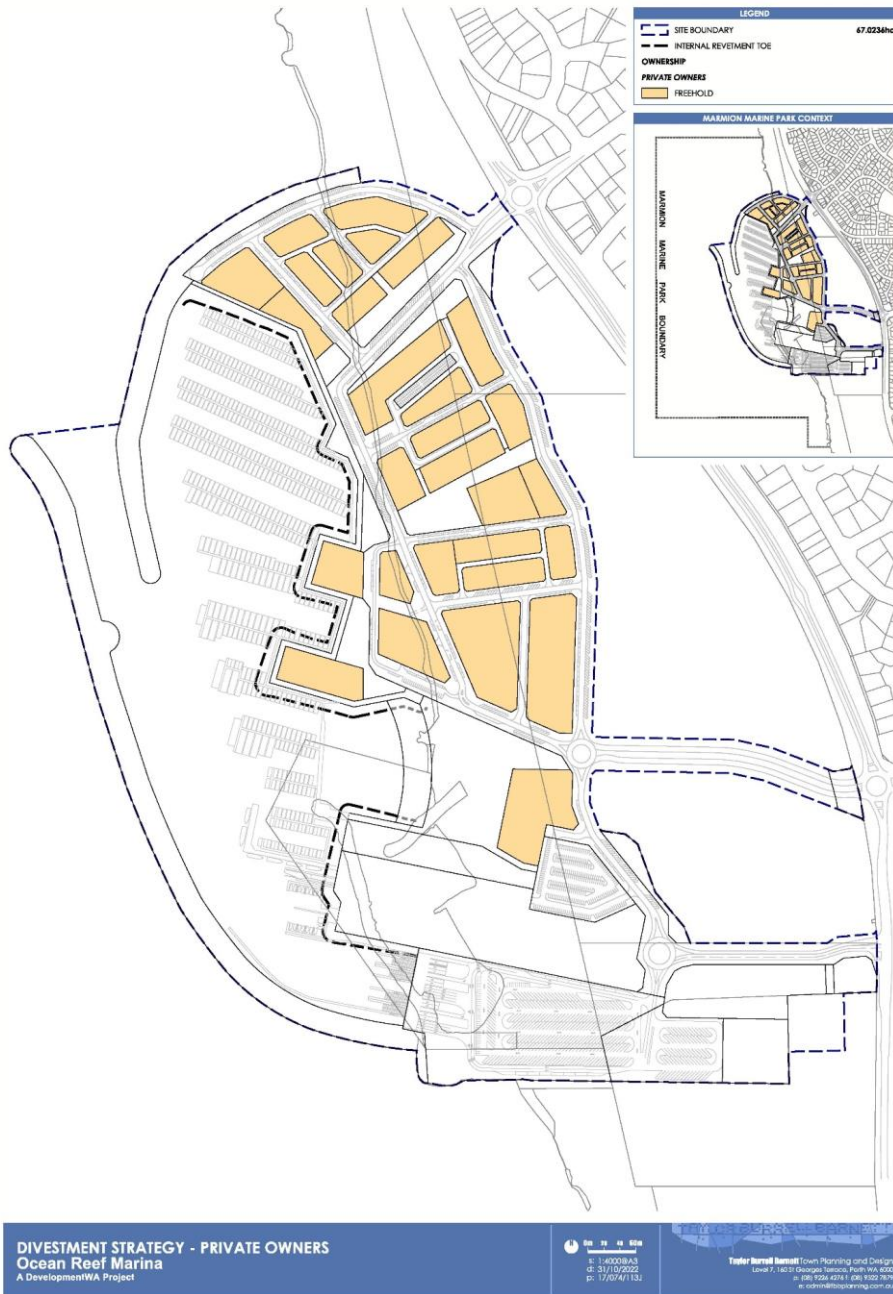
Part 4 - Water Corporation ~~(as at 1 July 2021)~~





Part 5 - Private Owners (as at 1 July 2021)





Schedule 3 – Subdivision Plans

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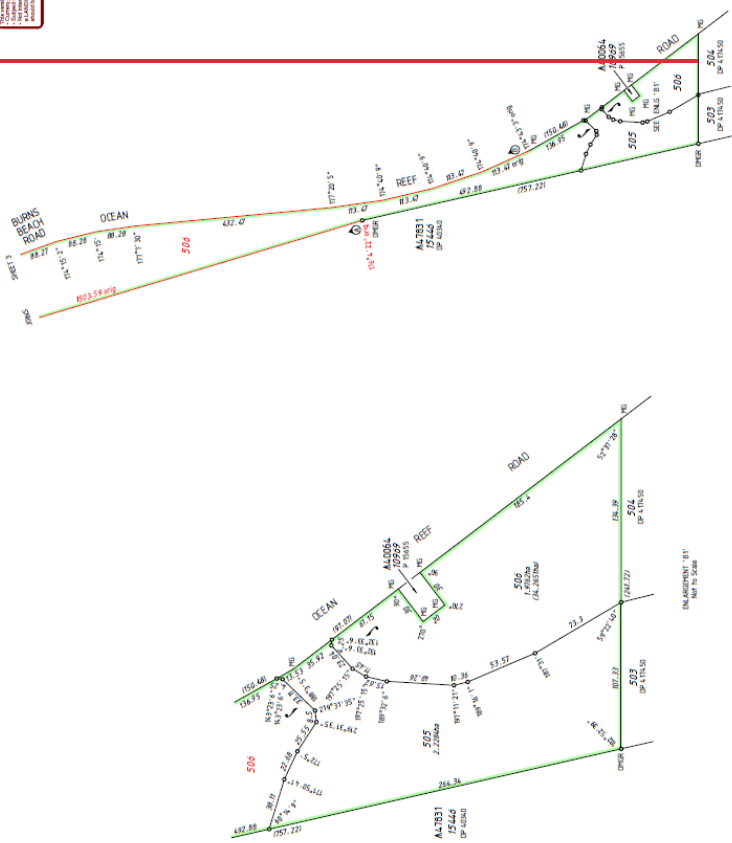
FOR HEADING SEE SHEET 1
FOR INTERESTS AND NOTIFICATIONS
SEE SHEET 1

SEE SHEET 01 FOR AMENDMENTS TABLE

DRAFT
ALL AREAS AND DIMENSIONS
ARE SUBJECT TO FINAL SURVEY
AND WAPC APPROVAL

THIS DOCUMENT IS A
DRAFT AND NOT
FOR CONSTRUCTION
OR RECORD PURPOSES
IT IS NOT TO BE USED
FOR ANY PURPOSE
WITHOUT THE WRITTEN
CONSENT OF MNG

UNLODGED VERSION



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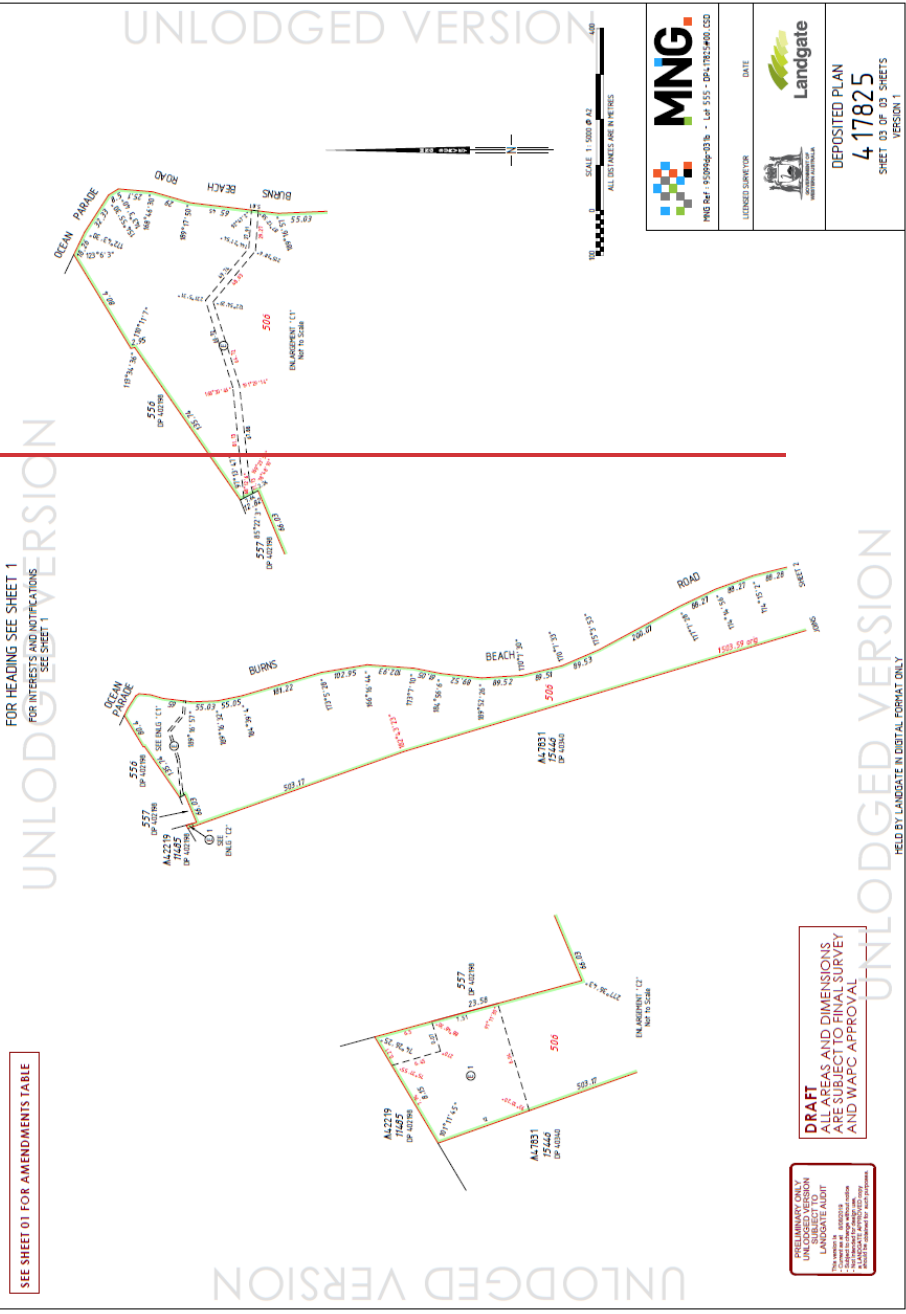
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DATE

DEPOSITED PLAN
4 17825
SHEET 02 OF 03 SHEETS
VERSION 1

UNLODGED VERSION
HELD BY LANDGATE IN DIGITAL FORMAT ONLY



FOR HEADING SEE SHEET 1
FOR INTERESTS AND NOTIFICATIONS
SEE SHEET 1

SEE SHEET 01 FOR AMENDMENTS TABLE



MNG Ref: 190946-03b - Lot 555 - DP417825400 COO



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VERSION 1

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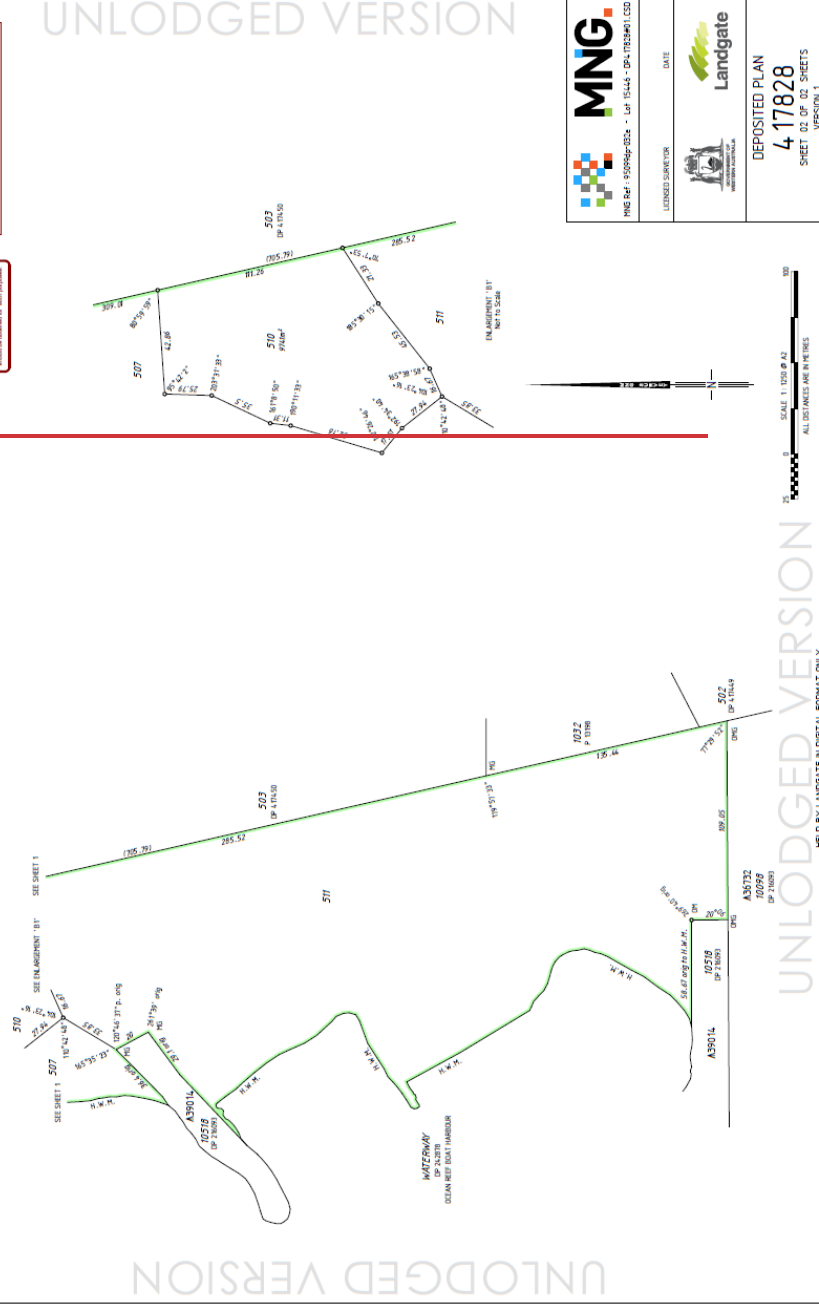
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FOR HEADINGS SEE SHEET 1
FOR INTERESTS AND NOTIFICATIONS
SEE SHEET 1

SEE SHEET 01 FOR AMENDMENTS TABLE

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SUBJECT TO
LANDGATE AUDIT
1. This plan is a preliminary survey and is not to be used for any purpose other than for information only.
2. It is not to be used for any purpose other than for information only.
3. It is not to be used for any purpose other than for information only.



| | |
|--|---|
|  MNG Ref: 105059p-02a - Lp 10448 - DP 41782M91.030 | DATE |
|  LANDGATE SOUTH AUSTRALIA | DEPOSITED PLAN 4 17828 SHEET 02 OF 02 SHEETS VERSION 1 |

| | | | | | |
|---|--|---|--|-----------------------|--------------------------|
| Plan Information | | Survey Details | | Amendments | |
| Tenure Type | Freehold | First Records | 148573 | Version | |
| Plan Type | Deposited Plan | Declared as Special Survey | No | Logement Type | |
| Plan Purpose | Subdivision | Area | | Amendment Description | |
| Plan Heading | | Survey Certificate - Regulation 54 | | Authorised By | |
| Lot 44 and 501 | | | | Date | |
| Locality & Local Government | | Former Tenure | | | |
| Locality | Ocean Reef | New Lot / Land | Project Lot Number | Title Reference | Subject Land Description |
| Local Government | City of Joondalup | 144 AND 501 | LOT 1312 | 5467 911 | |
| Department of Planning, Lands and Heritage | | Former Tenure Interests and Notifications | | | |
| File Number | | Subject | Purpose | Statutory Reference | Land Burdened |
| Examination | | Name | MNG McALLAN/NOJAN GROUP | DD 15719 (M) | ALL LOTS |
| Address | | Phone | PO Box 3205, SUCCESSE WA 6064 | | |
| Phone | | Fax | 606 1950 | | |
| Fax | | Email | 606 1950 | | |
| Reference | | Reference | 900 @ mngsurvey.com.au | | |
| Reference | | Reference | 5000ap-040 | | |
| Examiners | | For Registrar of Titles | | | |
| Examiner | | Date | | | |
| Planning Approval | | | | | |
| Planning Authority | Western Australian Planning Commission | | | | |
| Reference | 7 | | | | |
| Designated under s. 16 PSLD Act 2005 | | In Order For Dealings | | | |
| Designated under s. 16 PSLD Act 2005 | | Subject To | | | |
| For Registrar of Titles | | Plan Approved | | | |
| For Registrar of Titles | | Date | | | |
| Inspector of Plans and Surveys / Authorised Land Officer | | Inspector of Plans and Surveys / Authorised Land Officer | | | |
| Inspector of Plans and Surveys / Authorised Land Officer | | Date | | | |
| AMENDMENTS TABLE | | DRAFT | | | |
| Revision | Description | Date | ALL AREAS AND DIMENSIONS ARE SUBJECT TO FINAL SURVEY AND WAPC APPROVAL | | |
| A | Initial Issue | 03/09/2020 | | | |
| B | Amended after Plan check | 03/09/2020 | | | |
| AMENDMENTS | | DEPOSITED PLAN | | | |
| 1 | | SHEETS | | VERSION NUMBER | 422581 |
| 1 OF 3 | | SHEETS | | VERSION NUMBER | 422581 |
| 1 OF 3 | | SHEETS | | VERSION NUMBER | 422581 |

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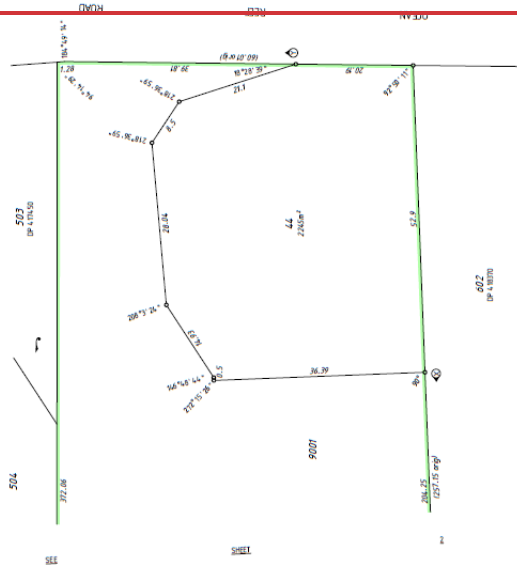
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LANDGATE AUDIT
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It is not intended for use in any legal proceedings
It is not intended for use in any legal proceedings
It is not intended for use in any legal proceedings



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ALL DISTANCES ARE IN FEET



DEPOSITED PLAN
422581

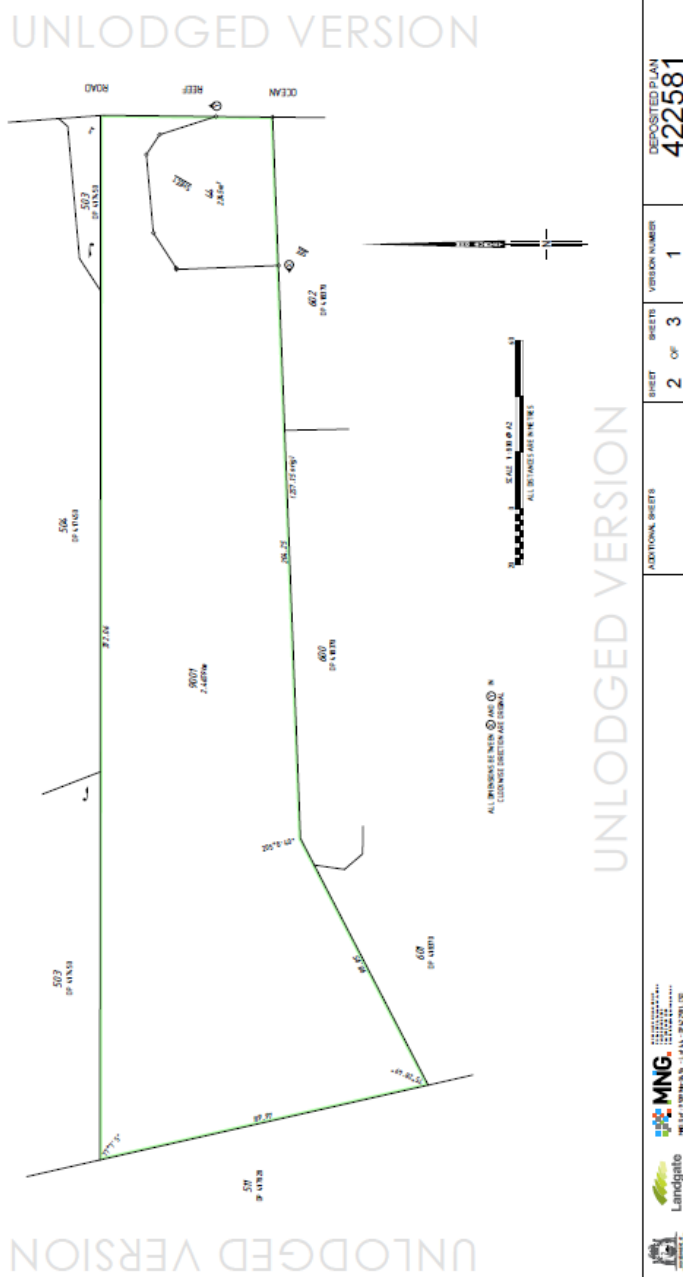
SHEET 3 OF 3
VERSION NUMBER 1

ADDITIONAL SHEETS

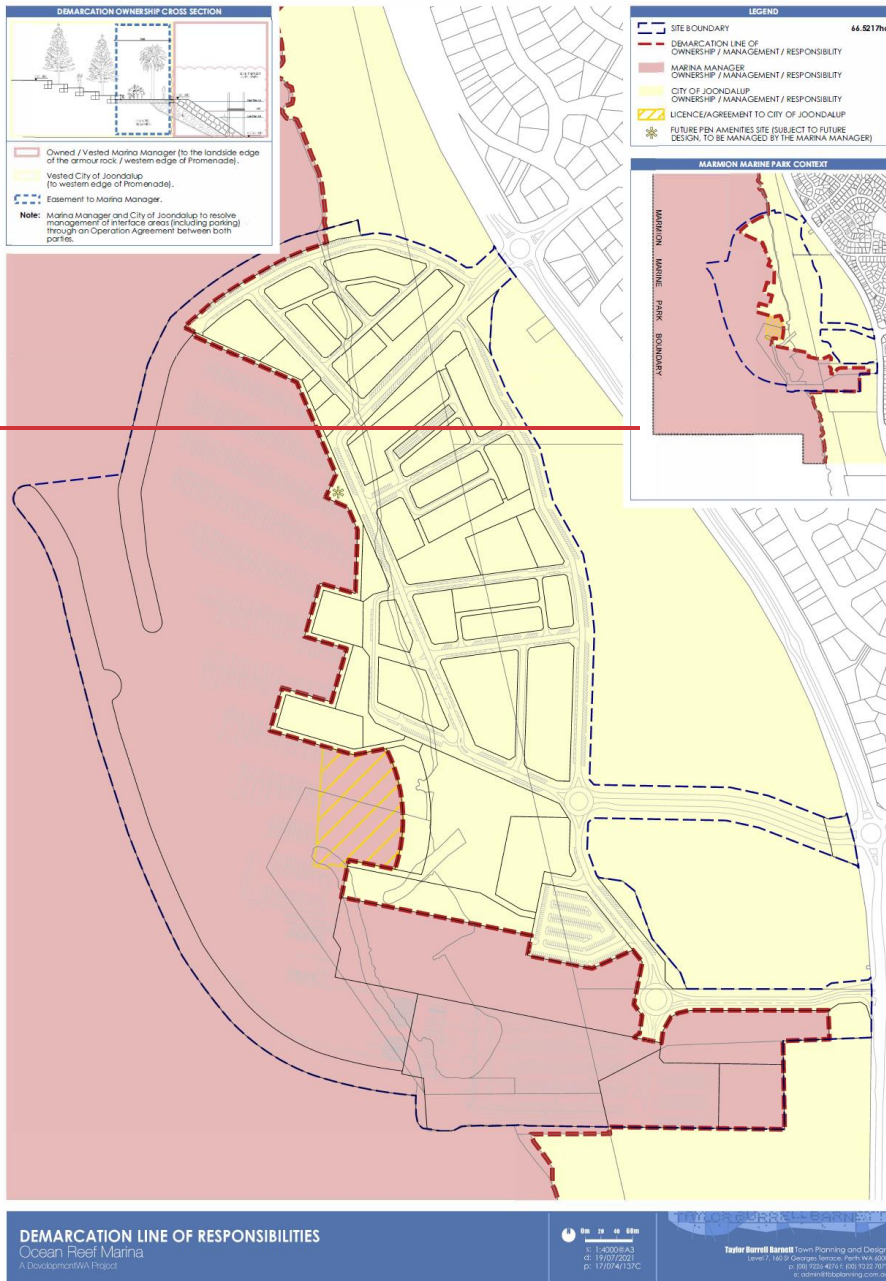
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ALL AREAS AND DIMENSIONS
ARE SUBJECT TO FINAL SURVEY
AND WAPC APPROVAL

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LANGGATE AUDIT**



Schedule 4 – Boundary of Responsibility



Schedule 5 – Access Licence



Licence to provide standard Occupy Crown land access
licence Land

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Land Administration Act 1997 (WA)

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Lic XXXXX/XXXX_ AXXXXXX

(file) (year) (objective id)

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THIS DEED OF LICENCE is made on the [DAY] day of [MONTH/YEAR]

BETWEEN

THE STATE OF WESTERN AUSTRALIA ACTING THROUGH THE MINISTER FOR LANDS,
a body corporate under the *Land Administration Act 1997*, care of Department of Planning,
Lands and Heritage, 140 William Street, Perth (**Licensor**)

AND

[**LICENSEE**] (Licensee)

BACKGROUND

- A. The Licence Area is a portion of Crown land. Crown land is administered by the Minister through the Department on behalf of the State of Western Australia.
- B. The Licensee wishes to have access to the Licence Area for the Permitted Use.
- C. The Minister on behalf of the State of Western Australia is authorised by [delete below as applicable]
 - (section 91 of the LAA to grant a licence of Crown land for any purpose.)
 - (section 48 of the LAA to grant a licence in respect of Crown land in an unmanaged reserve for a purpose which is different from that or those of the unmanaged reserve but which is compatible with all ancillary to the current use or the intended future use of that Crown land for the purpose or purposes of the unmanaged reserve.)
- D. The Licensor has agreed to grant to the Licensee the Licence in respect of the Licence Area on the terms and conditions and for the Permitted Use set out in this Licence.

OPERATIVE PART

The Parties covenant and agree on the matters set out above and as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. DEFINITIONS

In this Licence the following terms shall have the following meaning:

Contamination is the state of being contaminated as that term is defined in the CSA.

CSA means the *Contaminated Sites Act 2003*.

Date of Commencement means the date of commencement specified in item 2(b) of the Schedule.

Date of Expiry means the date of expiry specified in item 2(c) of the Schedule.

Department means the department principally assisting the Minister in the administration of the LAA.

Environment has the meaning given by section 3 of the *Environmental Protection Act 1986*.

Environmental Harm has the same meaning as that term is defined in the *Environmental Protection Act 1986*.

Environmental Law means all planning, environmental, contamination or pollution laws and any regulations, orders, directions, ordinances or all requirements, permission, permits or licences issued thereunder.

Environmental Notice means any notice, direction, order, demand or other requirement to take any action or refrain from taking any action from any Governmental Agency, whether written or oral and in connection with any Environmental Law.

Governmental Agency means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

LAA means the *Land Administration Act 1997*.

Law includes any requirement of any statute, regulation, proclamation, ordinance or by-law present or future whether State, Federal or otherwise.

Licence means this deed including the contractual rights granted to the Licensee under clause 2 and the rights granted under this Licence necessary for the exercise of the rights granted under clause 2.

Licence Area means the licence area specified in item 1 of the Schedule.

Licence Fee means the licence fee specified in item 3(a) of the Schedule.

Licensee's Agent includes the employees, agents, contractors, consultants, invitees and any other person acting with the authority or permission of the Licensee.

Licensee's Property means all plant, equipment, materials, and other property brought or placed on the Licence Area by, on behalf of or with the authority of the Licensee.

Minister means the Minister for Lands, a body corporate under section 7(1) of the LAA.

Parties mean the Licensor and the Licensee.

Party means the Licensor or the Licensee, as the case may be.

Permitted Use has the meaning given to that term in clause 2.1.

Pollution means any thing that is Pollution within the meaning of the *Environmental Protection Act 1986*, which is not authorised under any Law.

Schedule means the Schedule to this Licence.

Services includes water, gas and electricity supply, sewerage, waste disposal, drainage and telecommunications and all facilities pipes, cables, fixtures and fittings associated with those services.

Surrounding Area means any land or water adjacent to or in the vicinity of the Licence Area and the air generally above the Licence Area, and includes an affected site within the meaning of that term as defined in the CSA.

Term means the term specified in item 2(a) of the Schedule.

1.2. INTERPRETATION

In this Licence:

- (a) clause headings are for convenient reference only and shall have no effect in limiting or extending the language of the provisions to which they refer;
- (b) a reference to a clause, schedule or annexure is a reference to a clause of or schedule or annexure to the document in which the reference appears;
- (c) a reference to any Law includes consolidations, amendments, re-enactments or replacements of it;

- (d) the singular includes the plural, the plural includes the singular and any gender includes each other gender;
- (e) if a period of time is specified and runs from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (f) the word 'person' includes a reference to the person's personal representatives, executors, administrators, successors and assigns and a reference to a corporation includes a reference to the corporations successors and assigns;
- (g) covenants in this Licence by two or more persons shall be deemed joint and several;
- (h) a reference to the word "including" is deemed to be followed by the words "but not limited to".

2. GRANT OF LICENCE

2.1. GRANT OF LICENCE

In consideration of the matters set out in this Licence and the payment of the Licence Fee by the Licensee to the Licensor, the Licensor hereby GRANTS to the Licensee a non-exclusive right for the Term to enter upon and remain on and use the Licence Area, with such vehicles, machinery, plant or equipment as is reasonably necessary for the purpose of:

- (a) [purpose 1]
- (b) [purpose 2]

(Permitted Use) in accordance with the terms and conditions set out in this Licence.

2.2. NO ESTATE OR INTEREST IN LAND

The Licensee acknowledges and agrees that:

- (a) The rights conferred by this Licence rest in contract only and do not create in or confer upon the Licensee any tenancy or any estate or interest in or over the Licence Area and the rights of the Licensee will be those of a licensee only.
- (b) This Licence confers no right of exclusive occupation of the Licence Area upon the Licensee and the Licensor may at any time and at all times from time to time exercise all the Licensor's rights as licensor including (but without in any way limiting the generality of this provision) the Licensor's rights to use possess and enjoy the whole or any part of the same save only in so far as such rights shall not unreasonably:
 - (i) prevent the operation of the rights granted to the Licensee under this Licence; or
 - (ii) be inconsistent with the express provisions of this Licence.
- (c) The rights granted to the Licensee under this Licence are only exercisable during the Term.

3. TERM AND LICENCE FEE

3.1. TERM

The Term shall commence on the Date of Commencement and shall expire at the Date of Expiry.

3.2. FURTHER TERM

Any application for a Further Term or extension of the rights granted to the Licensee under this Licence must be made to the Licensor, in writing no less than 30 days prior to the expiration of this Licence and may be granted or refused at the Licensor's absolute discretion.

3.3. LICENCE FEE

The Licensee must pay the Licence Fee to the Department, at the times and in the manner specified in item 3 of the Schedule.

4. LICENSEE'S COVENANTS

4.1. COVENANTS WITH LICENSOR

The Licensee covenants with the Licensor that the Licensee and the Licensee's Agents:

- (a) must not construct or erect or permit to be constructed or erected any permanent structure, improvement or other thing (other than fencing or a gate) that is a fixture on the Licence Area;
- (b) must not cause or permit any damage to the Licence Area or to the Surrounding Area;
- (c) must not cause or permit any Contamination, Pollution or Environmental Harm to occur in, on or under the Licence Area or to the Surrounding Area, and if any Contamination, Pollution or Environmental Harm is caused by the Licensee or the Licensee's Agents, the Licensee must give notice of it to the Licensor and must minimise and remediate any resultant damage and harm to the reasonable satisfaction of the Licensor;
- (d) must keep the Licence Area in good and safe repair and condition, and must take all steps necessary to keep it safe and free from hazard to any property or person on or using the Licence Area or the Surrounding Area, and where required must keep secure the Licence Area;
- (e) must ensure that traffic on all adjoining and surrounding roads is not unduly disrupted due to vehicles entering or leaving the Licence Area;
- (f) must, while using the Licence Area:
 - (i) ensure the safe movement of pedestrians using the Licence Area or adjoining areas, including erecting signs to warn persons likely to be endangered by the Licensee's use of the Licence Area, and
 - (ii) ensure that pedestrians using the Licence Area or adjoining areas are not unduly disrupted;
- (g) must not dispose and not store on the Licence Area any rubbish or any poisonous, toxic or hazardous substance;
- (h) must not undertake nor allow to be undertaken any excavation or clearing of the Licence Area;
- (i) must pay all outgoings payable in respect of the Licence Area;
- (j) must punctually comply with and observe:
 - (i) all Laws; and
 - (ii) all notices received either by the Licensor or the Licensee from, and the requirements of, any relevant Governmental Agency;

- (k) must obtain, keep current and comply with all consents, approvals, permits, licences or other requirements under any Law, if any, to use the Licence Area for the purposes permitted under this Licence;
- (l) must repair or remedy any damage caused or permitted by the Licensee or the Licensee's Agents, to the Licence Area or the Surrounding Area or Services in, on, under or over the Licence Area, including remediating any Contamination, Pollution, Environmental Harm, and erosion or other form of degradation; and
- (m) must reinstate the Licence Area on the expiration of the Term or other termination of this Licence, in accordance with clause 7.

5. INDEMNITY, RELEASE AND INSURANCE

5.1. INDEMNITY AND RELEASE

- (a) The Licensee hereby releases and indemnifies and agrees to keep released and indemnified the Licensor, the State, the Crown, all Ministers of the Crown, and all officers, servants, agents, contractors, invitees and licensees of any of them (the **Indemnified Parties**) from and against all claims, demands, actions, suits, proceedings, judgments, damages, costs, charges, expenses (including legal costs of defending or settling any action, claim or proceeding) and losses of any nature whatsoever whether based in contract, tort or statute or any combination thereof which the Indemnified Parties (or any of them) may suffer or incur or which may at any time be brought maintained or made against them (or any of them) in respect of or in connection with:
 - (i) in respect of any destruction, loss (including loss of use), injury or damage of any nature or kind of or to property of any person whether or not on the Licence Area and including the property of:
 - (A) any of the Indemnified Parties; or
 - (B) the Licensee or the Licensee's Agents; and
 - (ii) in respect of any death of, or injury or illness sustained by, any person and including:
 - (A) the Indemnified Parties; or
 - (B) the Licensee or the Licensee's Agents,

directly or indirectly caused by arising out of or in connection with:

 - (iii) the Licensee's or Licensee's Agents use or enjoyment of the Licence Area or any part of the Licence Area pursuant to the terms of this Licence;
 - (iv) any works carried out by or on behalf of the Licensee under this Licence;
 - (v) the exercise or enjoyment of any rights conferred upon the Licensee under this Licence;
 - (vi) any Contamination, Pollution or Environmental Harm of the Licence Area or the Surrounding Area caused or contributed to by the Licensee's or the Licensee's Agents use of the Licence Area;
 - (vii) any remediation required to be carried out by the Licensee under this Licence in respect of the Licence Area or the Surrounding Area

- or otherwise having to comply with any Environmental Notice or any other notice received from any Governmental Agency;
- (viii) any default by the Licensee in the due and punctual performance, observance and compliance with any of the Licensee's covenants or obligations under this Licence; or
- (ix) any other act, neglect, default or omission by the Licensee or the Licensee's Agents.
- (b) The obligations of the Licensee under this clause:
 - (i) are unaffected by the obligation of the Licensee to take out insurance and the obligations of the Licensee to indemnify are paramount; and
 - (ii) continue after the expiration or earlier determination of this Licence.

5.2. INSURANCE

- (a) The Licensee must during the Term effect, maintain and keep current with an insurer of good repute, a public liability insurance policy for the amount specified in item 6 of the Schedule for any one claim (or any other amount reasonably required by the Licensor from time to time consistent with usual prudent commercial practice) and which policy includes, but is not limited to, coverage in respect of:
 - (i) any injury to, illness of, or death of, any person;
 - (ii) any loss, damage or destruction to any property including to the property of any of the Indemnified Parties;
 - (iii) the loss of use of any property, including the property of any of the Indemnified Parties; and
 - (iv) liability arising out of any Contamination Pollution or Environmental Harm of the Licence Area or the Surrounding Area caused or contributed to by the Licensee's or the Licensee's Agents use of the Licence Area,
 and such insurance shall include the interests of the Licensor under this Licence.
- (b) The Licensee
 - (i) must give to the Licensor a copy of the certificate of currency of the policy of insurance referred to in subclause (a) at the Date of Commencement; and
 - (ii) must submit evidence to the Licensor on each anniversary of the Date of Commencement during the Term, or as otherwise requested by the Licensor, which shows that the insurance policy referred to is still current.
- (c) The Licensee shall effect and maintain all insurance required to be effected by it by law. Without limiting the generality hereof, the Licensee shall have all necessary insurance with respect to its employees under the relevant Laws and shall, if required by the Licensor, produce evidence of such insurance at any time.
- (d) The Licensee will not do or omit to do any act or thing or bring onto or keep anything on the Licence Area which might render the insurance on the Licence Area void or voidable.

6. TERMINATION OF LICENCE

6.1. DEFAULT

- (a) This Licence and the rights granted to the Licensee pursuant to it, may be terminated by the Licensor by notice in writing to the Licensee:
- (i) if moneys payable under this Licence are in arrears and unpaid for 14 days after formal demand;
 - (ii) if the Licensee breaches or fails to observe any of the covenants, conditions or terms on the Licensee's part expressed or implied in this Licence, other than the obligation referred to in subclause (i) and the breach has not been remedied by the Licensee within 14 days after service of a notice from the Licensor requiring the Licensee to remedy the breach or non observance;
 - (iii) if the Licensee:
 - (A) becomes bankrupt or enters into any form of arrangement (formal or informal) with any of its creditors, or an administrator or a receiver or a receiver and manager is appointed to any of its assets;
 - (B) being a company or other body corporate, an order is made or a resolution is passed for its winding up except for the purpose of reconstruction or amalgamation;
 - (C) being a company, or other body corporate ceases or threatens to cease to carry on business or goes into liquidation, whether voluntary or otherwise, or is wound up or if a liquidator or receiver (in both cases whether provisional or otherwise) is appointed; or
 - (D) being a company, is placed under official management under the Corporations Act 2001 or enters into a composition or scheme of arrangement,
and without limiting the foregoing but for the avoidance of doubt, this subclause (a)(iii) applies to any such event that may occur in relation to the Licensee if it is an Aboriginal and Torres Strait Islander corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 Cth*; or
 - (iv) if the Licensee is an Aboriginal and Torres Strait Islander corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 Cth* and a determination is made by the Registrar under that Act that the Licensee is to be under special administration; or
 - (v) if the Licensee abandons or vacates the Licence Area;
and this Licence and rights granted pursuant to it will terminate on expiry of the notice period specified in the notice.
- (b) No compensation or money is payable to, or recoverable by, the Licensee from the Licensor for termination of the Licence under this clause.
- (c) Any termination of the Licence under this clause:
- (i) does not affect any rights and obligations that are expressed in this Licence to survive expiry or earlier termination of this Licence; and

- (ii) is without prejudice to the rights of the Licensor in respect of any antecedent breach of the terms, covenants or conditions contained or implied in this Licence by the Licensee.

6.2. LICENSOR'S RIGHT TO ENTER AND TO REMEDY

- (a) If the Licensee has breached or failed to observe any of the terms of this Licence on its part contained or implied in this Licence, and that breach or non-performance has continued for at least 14 days after the service of a written notice on the Licensee requiring it to remedy the same, without affecting its other rights under this Licence, the Licensor may (but is not obliged to) remedy the breach, including the payment of monies.
- (b) For this purpose, the Licensee acknowledges and agrees that:
 - (i) the Licensor, its servants, agents and contractors may enter the Licence Area at any time with all necessary materials and equipment to execute all or any required works as the Licensor thinks fit; and
 - (ii) all debts costs and expenses incurred by the Licensor, including legal costs and expenses, in remedying a default is a debt due to the Licensor, and must be paid by the Licensee to the Licensor on demand.

7. REMOVAL OF PROPERTY ON EXPIRY OR TERMINATION

7.1. OBLIGATION TO REMOVE PROPERTY AND RESTORE

- (a) The Licensee must upon the expiration of the Term or earlier termination of this Licence yield and deliver up possession of the Licence Area to the Licensor and in doing so must by the end of the Term or within 21 days after the earlier termination of this Licence:
 - (i) remove all of the Licensee's Property from the Licence Area, to the Licensor's absolute satisfaction;
 - (ii) reinstate the Licence Area to the state and condition in which it was at the Date of Commencement;
 - (iii) promptly make good to the satisfaction of the Licensor any damage caused by the removal of the Licensee's Property referred to in subclause (a)(i), including filling in, consolidating and levelling off any holes or trenches on the Licence Area; and
 - (iv) remediate any Contamination, Pollution or Environmental Harm to the Licence Area or the Surrounding Area caused by the Licensee or the Licensee's Agents or arising out of the Permitted Use.
- (b) The Licensee's obligations under subclause (a) will survive the expiration of the Term or other termination of this Licence.

7.2. FAILURE TO REMOVE

If the Licensee's Property is not removed in accordance with clause 7.1, its presence on the Licence Area after the expiry of the relevant period referred to in clause 7.1(a) shall no longer be authorised by this Licence and:

- (a) the Minister may treat any structure forming part of the Licensee's Property as an alleged unauthorised structure under section 270 of the LAA;
- (b) sections 270, 271 and 272 of the LAA apply with respect to the removal of any such alleged unauthorised structure;

- (c) the Minister may, but is not obliged to, remove the Licensee's Property from the Licence Area, may store it at the Licensee's expense, and may make good any damage caused by that removal, and may reinstate the Licence Area to the condition provided for in clause 7.1(a)(ii); and
- (d) any costs incurred by the Minister in doing any matter under subclause (c) or section 270(6) of the LAA, are a debt due by the Licensee to the Licensor and may be recovered in a Court of competent jurisdiction.

8. NO ASSIGNMENT

- (a) The rights granted by this Licence are for the benefit of the party named as "Licensee" in this Licence.
- (b) The Licensee must not:
 - (i) assign or transfer its rights under this Licence, or grant any sublicence or part with the possession, of the Licence Area, to any person; or
 - (ii) mortgage, charge or encumber its rights under this Licence.
- (c) To the extent that sections 80 and 82 of the *Property Law Act 1969* may be applicable, they are expressly excluded.
- (d) For the purposes of subclause (b), where the Licensee is a corporation (not being a corporation where shares are listed on any Stock Exchange in Australia) any intended change in the beneficial ownership or control of the Licensee which will have the consequence of altering the effective control of the Licensee is deemed to be an assignment of the Licensee's rights under this Licence.

9. GENERAL PROVISIONS

9.1. DUTY

The Licensee will pay duty (if any) payable under the *Duties Act 2008* in respect of any dutiable transaction arising under or in respect of this Licence.

9.2. FEES AND CHARGES

The Licensee will pay all statutory and other fees and charges (if any) relating to this Licence within 30 days of the due date.

9.3. NOTICES

- (a) Any notice that must or may be served under or pursuant to this Licence:
 - (i) must be signed by the Party giving the notice or by any solicitor or duly appointed representative of the Party giving the notice; and
 - (ii) will be sufficiently served on:
 - (A) the Licensor, if addressed to the Licensor and left at, or sent by prepaid post to the Minister for Lands c/o Director General of the Department at the address set out at item 4 of the Schedule or such other address as is notified by the Licensor to the Licensee; and
 - (B) the Licensee, if addressed to the Licensee and left at, or sent by prepaid post to the address set out at item 5 of the Schedule or such other address as is notified by the Licensee to the Licensor;

- (b) A notice sent by post will be deemed to be given at the time when it ought to be delivered in the ordinary course of a post whether the contrary is shown or not.
- (c) A notice given by facsimile transmission will be deemed to have been given on the date on which the facsimile transmission report of the machine from which it was sent, shows that it was successfully transmitted in its entirety.

9.4. EFFECT OF WAIVER

No consent or waiver express or implied by the Licensor or its officers, servants, agents, contractors or any of them, to or of any breach of any covenants conditions or stipulations of the Licensee will be construed as a consent or waiver to or of any other breach of the same or any other covenants conditions or stipulations contained or implied in this Licence.

9.5. GOVERNING LAW

- (a) This Licence shall be construed and interpreted in accordance with the laws in force in the State of Western Australia.
- (b) The Parties submit to the non-exclusive jurisdiction of the Courts of Western Australia.

9.6. VARIATION

This Licence cannot be altered or varied by the Parties except by deed.

10. GOODS AND SERVICES TAX

10.1. DEFINITIONS

In this clause 10 the following terms have the following meanings:

- (a) **GST Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any legislation substituted for or amending that Act;
- (b) The terms **GST**, **GST law**, **Tax Invoice** and **Taxable Supply** have the meaning given in section 195-1 of the GST Act.

10.2. LICENCE FEE EXCLUSIVE OF GST

The Licence Fee and any other amounts payable by the Licensee to the Licensor, under this Licence, are exclusive of GST.

10.3. LICENSEE TO PAY GST

The Licensee must pay additional to the Licence Fee and any other amounts payable by the Licensee, any GST payable by the Licensor in respect of a Taxable Supply made under this Licence.

10.4. VARIATION OF GST

Where GST is payable, the amount payable will be the amount specified in the Schedule to this Licence, until varied from time to time consequent upon each review of Licence Fee in accordance with this Licence.

10.5. TAX INVOICE

Where GST is payable, the Licensor will provide to the Licensee, a Tax Invoice in the format and form required as set out in the GST law.

10.6. NOTIFICATION IS CONCLUSIVE

A written notification given to the Licensee by the Licensor of the amount of GST that the Licensor is liable to pay on a Taxable Supply made or to be made under this Licence is conclusive between the Parties except in the case of an obvious error.

10.7. TIME FOR PAYMENT

The Licensee must pay to the Licensor the amount of the GST that the Licensee is liable to pay under this Licence:

- (a) at the same time; and
- (b) in the same manner,

as the Licensee is obliged to pay for the Taxable Supply.

10.8. APPORTIONMENT OF GST

Where a Taxable Supply is not separately supplied to the Licensee, the liability of the Licensee for any amount for GST, in relation to that Taxable Supply, is determined on the same basis as the Licensee's proportion of that Taxable Supply is determined.

| SCHEDULE | | |
|----------|---|--|
| ITEM | TERM | DEFINITION |
| 1. | Licence Area | [Licence Area] |
| 2. | (a) Term | [Term] |
| | (b) Date of Commencement | [Date of Commencement] |
| | (c) Date of Expiry | [Date of Expiry] |
| 3. | (a) Licence Fee | \$(Licence Fee) |
| | (b) GST Amount | \$(GST) |
| | (c) Payment Date | [Payment Date] |
| 4. | Licensor's Address for Service of Notices | Minister for Lands C/- Department of Planning, Lands and Heritage 140 William Street PERTH WA 6000 Attention: Manager, [Attention] |
| | Facsimile No: | (08) 6552 [] |
| 5. | Licensee's Address for Service of Notices | [Licensee's Address] Address continued Address continued Address continued] Attention: [Attention] Telephone: [] Fax: [] |
| 6. | Insurance Amount | \$([]) |

EXECUTED AS A DEED on the date set out on page 1 at the commencement of this Licence.

SIGNED FOR AND ON BEHALF OF THE)
STATE OF WESTERN AUSTRALIA by)

[Insert relevant execution clause)

Insert relevant execution clause)

Insert relevant execution clause)]

in the presence of:)

.....
(Signature)

.....
(Print full name)

.....
(Classification level, Position title)

(Division)

Department of Planning, Lands and Heritage

.....
Name of Witness

.....
Address of Witness

.....
Occupation of Witness

THE COMMON SEAL OF)
was hereunto affixed)

.....
Name of Witness

.....
Address of Witness

.....
Address (continued)

.....
Occupation of Witness

Schedule 6 – Draft statutory declaration

WESTERN AUSTRALIA

OATHS, AFFIDAVITS AND STATUTORY DECLARATIONS ACT 2005

STATUTORY DECLARATION

I, _____ (insert full name), _____ (insert occupation)

of _____ (insert address)

sincerely declare as follows:

1. I am a duly appointed officer of the City of Joondalup (City) which is the management body of the land described as
 - (a) Lot 555 on Deposited Plan 402198 being the whole of the land comprised in certificate of Crown Land Title Volume 3166 Folio 566 comprising Reserve 45122 (Reserve 45122); and
 - (b) Lot 15446 on Deposited Plan 40340 being the whole of the land comprised in qualified certificate of Crown Land Title Volume 3133 Folio 571 comprising Reserve 47831 (Reserve 47831),(collectively the Land).
2. The City (or its predecessor City of Wanneroo) has been the management body of the Land comprised in:
 - (a) Reserve 45122 since 2 February 2000 and its predecessor City of Wanneroo was the management body from 9 December 1997; and
 - (b) Reserve 47831 since 27 July 2007,(each, the Relevant Period).
3. To the best of my knowledge the Land comprised in:
 - (a) Reserve 45122 has been used for the purpose of recreation; and
 - (b) Reserve 47831 has been used for the purpose of recreation, telecommunications and purposes incidental thereto,during the Relevant Period.
4. DevelopmentWA has been provided with copies of the documents, reports, studies and other information in the possession or control of the City (but not its predecessor City of Wanneroo) which relate to contamination of the Land, being the documents listed in the Annexure to this declaration (Contamination Information).
5. To the best of my knowledge the Contamination Information is all of the documents, reports, studies and other information in the possession or control of the City (but not its predecessor City of Wanneroo) which relate to contamination of the Land.
6. I have reviewed, or caused to be reviewed, our records relating to the Land and I declare that, as far as I am aware:
 - (a) the following estates or interests exist or have been claimed in respect of Reserve 47831 comprising part of the Land:
 - (i) undated lease to the Marine Rescue Whitfords;

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- (ii) undated lease to the Ocean Reef Sea Sports Club (Inc) (with other land owned by the City); and
- (iii) (access deed to Telstra Corporation Limited dated 25 July 2016;
- (b) subject to paragraph (a) above and any estate or interests registered on the certificates of Crown land title for the Land, no estate or interest in the Land has been transferred, granted to, or created in favour of, any other person; and
- (c) subject to paragraph (a) above, I do not have in my possession, or knowledge of, any other documents relating to estates or interests in the Land.

..

This declaration is true and I know that it is an offence to make a declaration knowing that it is false in a material particular.

This declaration is made under the *Oaths, Affidavits and Statutory Declarations Act 2005*

at _____
(place)

on _____ by _____
(date) (Signature of person making the declaration)

in the presence of –

(Signature of authorised witness)

(Name of authorised witness and qualification as such a witness)*

Annexure
List of documents

| REPORT DATE | CONSULTANT | REPORT | VERSION | COMMENT/OVERVIEW |
|-------------|-----------------------------|--|---------|---|
| Jul-00 | Mattiske Consulting Pty Ltd | Flora and Vegetation Assessment: Lot 1029, Bushplan Site 325. | N/A | Review of the botanical values of Lot 1029, Ocean Reef. |
| Sep-08 | SMEC Aust Pty Ltd | Environmental Opportunities and Constraints Report - Ocean Reef Marina | Ver 1 | Environmental advice on the ORM site and its implications. |
| Sep-08 | SMEC Aust Pty Ltd | Ocean Reef Marina - Preliminary Site Investigation (Contamination) | Ver 1 | Identification of potentially contaminated sites, or sources of contamination within or adjacent to the site. |
| Nov-08 | SMEC Aust Pty Ltd | City of Joondalup Environmental Summary | Ver 1 | Environmental Summary under the headings: Bush Forever Significant Vegetation Communities Rare & Priority Flora Fauna Contaminated Sites Marine Environment and Coastal Processes Further information required Recommendations |
| Nov-08 | Worley Parsons | Potential Geotechnical Solutions to Voids | N/A | Guidelines for the management of voids in limestone, should they be intersected during onshore earthworks for the construction of the proposed Ocean Reef Marina Project. |
| Nov-08 | Worley Parsons | Ocean Reef Marina: Preliminary Shoreline Impact | Ver D | A high-level assessment of the shoreline impacts associated with the proposed ORM development. The aim of the assessment was to provide an initial understanding of the sediment dynamics in the nearshore area in the vicinity of the development. PEER REVIEWED BY MP ROGERS. |
| Nov-08 | Worley Parsons | Preliminary Flushing Study | Ver 0 | Preliminary assessment of the flushing capacity of different the concept layouts proposed for the Ocean Reef Marina development. PEER REVIEWED BY MP ROGERS. |
| Dec-08 | SMEC Aust Pty Ltd | Level 1 Fauna Report | N/A | Assessment of the value of the Ocean Reef Marina development area for fauna, including fauna of conservation significance. |
| Dec-08 | SMEC Aust Pty Ltd | Vegetation Condition, Ecological Community and Flora Search Report | N/A | Assessment of the vegetation condition and ecological communities and flora searches. |
| Jan-09 | SMEC Aust Pty Ltd | Additional Environmental Information | Ver 1 | Information, additional to the Environmental Summary, under the headings: Ocean currents Waves and Wave Heights Water quality Water Corporation testing |
| Jan-09 | Worley Parsons | Preliminary Flushing Study - Addendum 1 | Ver 0 | A study extending the range of conditions for the flushing assessment of the Ocean Reef Marina to Concept Plan 6. PEER REVIEWED BY MP ROGERS. |
| Feb-09 | SMEC Aust Pty Ltd | Environmental Summary - Review of Section 38 (EPA) | Ver 1 | Review of the referral and assessment process for EPA Section 38 with particular reference to the ORM development. |

| | | | | |
|--------|---|--|-------|---|
| Mar-09 | M P Rogers & Assoc | Ocean Reef Marina - Coastal Processes | N/A | PEER REVIEW of the Worley Parsons coastal processes reports. Initial estimate of the coastal processes. |
| Mar-09 | Worley Parsons | ORM Preliminary Flushing Studies - Response to questions raised in peer review. | N/A | Report addresses the queries raised by M P Rogers & Associates. |
| Apr-09 | M P Rogers & Assoc | Ocean Reef Marina - Water Quality | N/A | PEER REVIEW of the Worley Parsons water quality reports on the flushing of the proposed ORM. |
| Apr-09 | SMEC Aust Pty Ltd | Graceful Sun Moth Survey 2009 | Rev 1 | Results of a survey undertaken in the ORM site to identify if the Graceful Sun Moth occurs in the project site and its location and surrounds within the site. |
| Apr-09 | Worley Parsons | Coastal Sediment Transport Assessment | Rev 1 | Assessment of the coastal longshore sediment transport. |
| Sep-09 | SMEC Aust Pty Ltd | Additional Flora Survey, Northern Portion of proposed ORM Development Site. | Final | Summary of the detailed flora survey work undertaken on the northern portion of the ORM site in September 2009. |
| May-10 | Western Wildlife | Ocean Reef Marina: Graceful Sun Moth (<i>Synemon gratiosa</i>) Survey 2010. | | Results of the 2010 GSM survey. |
| May-11 | Natural Area Consulting | Graceful Sun Moth Survey - Proposed Ocean Reef Marina Development Site. | Final | Results of the 2011 GSM survey - undertaken in accordance with DEC guidelines for GSM surveys and habitat assessment (2010). |
| Jun-11 | Rockwater (via M P Rogers & Assoc) | Ocean Reef Marina - Groundwater modeling to assess nutrient loads to the ocean and marina. | N/A | Contained within M P Rogers Concept Plan 7.2 Water Quality Report. PEER REVIEWED |
| Sep-11 | RPS APASA | Ocean Reef Marina Marine Modelling Study | Rev 0 | PER Appendix PEER REVIEWED |
| Oct-11 | M P Rogers & Assoc | Ocean Reef Marina - Concept Plan 7.2 Water Quality Investigations | Rev 0 | Investigations of the flushing rate of the single entrance marina design. |
| Mar-12 | Strategen | Gap Analysis | N/A | Analysis of existing information for the preparation of the Section 16 submission. |
| Jun-12 | Strategen | Progress Update - including Preliminary Marine Habitat Advice | N/A | Update of environmental issues since submission of Gap Analysis and preliminary information regarding marine habitat - for the purposes of the Section 16 submission. |
| Mar-13 | RPS APASA (via M P Rogers) | Ocean Reef Marina Development Phase 2: Preliminary Hydrodynamic and Wave Modelling | Rev 0 | Hydrodynamic and wave model to provide primary inputs to the water quality modelling. PEER REVIEWED |
| Jun-13 | Strategen | ORM - Marine Studies Brief | N/A | Objectives and broad scope of works for additional studies on marine issues and water quality within the MMP. |
| Nov-13 | Rockwater (via M P Rogers & Assoc) | Additional Water Quality Information | N/A | Additional information regarding the impacts on the marina of further climate change. |
| Dec-13 | Mattiske Consulting Pty Ltd (via Strategen) | Level 2 Flora and Vegetation Survey of the Proposed Ocean Reef Marina Survey Area | Ver 3 | Level 2 Flora & Vegetation survey undertaken in September 2013. |
| Apr-14 | Strategen | Ocean Reef Marina Development District Water Management Strategy. | Rev 0 | Strategy supports the MRS amendment and demonstrating that the site can be developed in a manner consistent with water sensitive urban design. |
| Apr-14 | Taylor Burrell Barnett | MRS Amendment Request - Part One | Ver N | Submitted to WAPC - April 2014 |
| Apr-14 | Taylor Burrell Barnett | MRS Amendment Request - Part Two | Ver B | Submitted to WAPC - April 2014 |
| Jun-14 | Strategen | EP Act section 38 referral | N/A | Referral and attachments submitted to the Environmental Protection Authority for assessment under section 38 of the EP Act - Marine components. |
| Nov-14 | BMT Oceanica (via Strategen) | Ocean Reef Marina Baseline Water and Sediment Quality Desktop Study | Rev 0 | To report the results of a desktop study on relevant water quality and sediment quality data for the Ocean Reef region. |
| Feb-15 | Rockwater (via M P Rogers & Assoc) | Ocean Reef Marina Groundwater Modelling to assess nutrient loads in groundwater discharging to the ocean and marina. | N/A | Calculated values of groundwater flows and nutrient loads required as an input to the oceanographic modelling (M P Rogers & Associates). PER Appendix. |
| Mar-15 | Strategen | Groundwater Monitoring Results | N/A | As required by the DWMS |

| | | | | |
|--------|------------------------------|--|-------|---|
| May-15 | Golder Associates | Geotechnical Investigations | Rev B | Preliminary geotechnical investigations using boreholes and near shore jet probes. Additional summary provided by M P Rogers & Associates. |
| Jun-15 | BMT Oceanica (via Strategen) | Ocean Reef Marina Baseline Studies - Marine Pest Survey | Rev C | PER Appendix |
| Aug-15 | BMT Oceanica (via Strategen) | Ocean Reef Baseline Studies - Marine Fauna Desktop Study | Rev 3 | Results of the desktop marina fauna study. As required for the PER. |
| Oct-15 | BMT Oceanica (via Strategen) | Ocean Reef Marina Baseline Studies - Marine Pest Survey | Rev 0 | Results of a targeted baseline marine pest survey. Required for the PER. |
| Dec-15 | Strategen | Acid Sulphate Soils Assessment | Rev 0 | Preliminary assessment for acid sulphate soils. |
| Jan-16 | RPS APASA (via M P Rogers) | Ocean Reef Marina Development - Phase 2 | N/A | Appendix - Monthly Sediment Fate Results - Phase 2 Water Quality Modelling Rev 6 |
| Feb-16 | BMT Oceanica (via Strategen) | Ocean Reef Marina Proposed Development - 2015 Sediment Survey | Rev 0 | PER Appendix |
| Nov-16 | Strategen | Ocean Reef Marina: Bush Forever Negotiated Planning Outcome | Ver 1 | Draft - released for public comment |
| Mar-16 | BMT Oceanica (via Strategen) | Roe's Abalone Environmental Sensitivity | Rev 0 | Review of the species environmental sensitivity to assist with the impact assessment of the ORM. PER Appendix |
| Mar-16 | BMT Oceanica (via Strategen) | Technical Note: Ocean Reef Marina Development PER: EQMF, EQC, EQP and Marine EIA advice. | N/A | PER Appendix |
| Mar-16 | BMT Oceanica (via Strategen) | Ocean Reef Marina Baseline Water Quality Results (Rev 1) | Rev 2 | PER Appendix |
| Apr-16 | M P Rogers & Assoc | Ocean Reef Marina Concept Design Report | Rev 0 | Summary of the concept design of the ORM with the purpose of providing additional information to the CHRMAP. (As recommended by the peer reviewer). |
| Apr-16 | M P Rogers & Assoc | ORM Coastal Hazards & Vulnerability | Rev 0 | PER Appendix PEER REVIEWED |
| May-16 | M P Rogers & Assoc | City of Joondalup - Cyclone Modelling | Rev 0 | Results of a cyclone storm surge modelling study for the entire coastline within the City. |
| Jun-16 | M P Rogers & Assoc | Ocean Reef Marina Coastal Hazard and Risk Management Adaptation Plan | Rev 2 | A CHRMAP prepared consistent with the requirements of State Planning Policy 2.6 and the CHRMAP guidelines. |
| Jul-16 | M P Rogers & Assoc | ORM Coastal Hazards & Vulnerability | Rev 2 | Coastal vulnerability assessment of the Ocean Reef Marina area only |
| Jul-16 | M P Rogers & Assoc | Ocean Reef Marina: Beach Wrack Management | Ver 3 | Report on the investigations, findings and recommended monitoring and management of seagrass wrack for the proposed Ocean Reef Marina. PER Appendix |
| Jul-16 | M P Rogers & Assoc | Ocean Reef Marina - Coastal Processes Assessment | Rev 3 | PER Appendix |
| Jul-16 | Strategen | Detailed Site Investigation (Rev D - final) | Rev D | Assessment of the site for potential soil, groundwater and sediment contamination. |
| Aug-16 | BMT Oceanica (via Strategen) | Ocean Reef Benthic Habitat Map Report | Rev 6 | PER Appendix |
| Aug-16 | RPS APASA (via M P Rogers) | Ocean Reef Marina Development - Phase2: Water Quality Modelling | Rev 5 | PER Appendix |
| Aug-16 | RPS APASA (via M P Rogers) | Ocean Reef Marina Development Phase 2: Water Quality Modelling | Rev 5 | PER Appendix |
| Aug-16 | Strategen | Environmental Assessment and Management Strategy | Rev 1 | An environmental assessment of the terrestrial portion of the project - |

| | | | | |
|---------|---------------------------------|--|-------|--|
| | | | | required for the Local Structure Plan. Updated Sept 2016. |
| Sep-16 | Strategen | Ocean Reef Marina: Marina Construction Monitoring and Management Plan | Rev 2 | PER Appendix |
| Sep-16 | Strategen | Ocean Reef Marina: Marina Environmental Quality Management Plan | Rev 2 | PER Appendix |
| Sep-16 | Strategen | Local Water Management Strategy | Rec C | Detailed strategy for water management as required by the MRS and LSP. |
| Feb-17 | BMT Oceanica (via Strategen) | Ocean Reef Baseline Studies - Abalone Habitat and Abundance at Burns Beach Reef | Rev 1 | Summary of abalone habitat and abundance adjacent to the existing Ocean Reef Boat Harbour. PER Appendix |
| Feb-17 | Strategen | Bushfire Management Plan | Rev 2 | Updated BMP taking into account comments on Rev 1 from DFES. Includes BAL assessment. |
| Jul-17 | RPS APASA (via M P Rogers) | Ocean Reef Marina Development - Phase 2: Water Quality Modelling | Rev 6 | Updated following PER submissions. |
| Various | Dr Doug Treloar, Cardno | Coastal Processes Assessment (MR&A 2015) Beach Wrack Management (MR&A 2014) Coastal Hazard and Risk Management Adaptation Plan (MR&A 2016b) Coastal Hazards and Vulnerability Ocean Reef Marina Phase 1 - Scope of Works Ocean Reef Marina Phase 2: Preliminary Hydrodynamic and Wave modelling Ocean Reef Marina Development - Phase 2: Water Quality Modelling (RPS APASA 2016) | N/A | PEER REVIEW REPORTS & LETTERS |

Schedule 7 – Section 15 Covenant

FORM B2
B5683
WESTERN AUSTRALIA
TRANSFER OF LAND ACT 1893 AS AMENDED

BLANK INSTRUMENT FORM

Deed of Section 15 Covenant – Ocean Reef Marina Club Facilities Lot

(Note 1)

Date:

Parties:

Minister for Lands, a body corporate under the *Land Administration Act 1997 (WA)*, acting in the name and on behalf of the State of Western Australia of care of the Department of Planning, Lands and Heritage, Level 2, 140 William Street, Perth WA 6000 (Covenantor)

And

Western Australian Land Authority trading as DevelopmentWA, a body corporate under the *Western Australian Land Authority Act 1992 (WA)*, Level 2, 40 The Esplanade, Perth WA 6000 (Covenantee)

Recitals:

(A) The Land is Crown land.

(B) The Minister for Lands has agreed, before the Land is transferred in fee simple, pursuant to the Agreement and for the purposes of section 15(1)(a) of the LA Act, to the imposition of covenants in relation to the Land.

(C) Pursuant to section 15(6)(a) of the LA Act, the Western Australian Land Authority (trading as DevelopmentWA), as a State instrumentality, is able to be a covenantee of a covenant described in section 15(7) of the LA Act.

(D) Pursuant to section 15(14) of the LA Act, the Minister for Lands may be a covenantor of covenant registered under section 15(6) of the LA Act, in relation to Crown land.

(E) This deed of covenant operates for the Covenant Term.

It is agreed as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this deed the following words have the following meaning unless the contrary intention appears:

Agreement mean the Land Transfer Deed dated [XX] to which the Covenantor, the Covenantee and the City are parties.

Building means the Club Facility and any other improvement, structure or building constructed, or proposed to be constructed, on the Land (as the context requires).

Business Day means a that is not a Saturday, a Sunday or a public holiday in Western Australia.

City means the City of Joondalup.

Club Facility means the building(s) to be constructed on the Land, for use for Community Purposes.

Community Purpose means for the purpose of a sports, recreational or community club, or other statutory or not for profit organisation providing services or facilities for the public.

Covenant Term means the period commencing on the date that the City becomes the registered proprietor of the Land and ending on the date that is 25 years from that date.

Development means any material development of all or part of the Land, including the construction of a Building.

Development Conditions means the Covenantor's standard development conditions, which include but are not limited to those set out in Schedule 2.

LA Act means the *Land Administration Act 1997* (WA).

Land means the land comprising Lot [XX] on Deposited Plan [XX] being the whole of the land contained in certificate of Crown land title volume [XX] and folio [XX], and includes, as the context requires, the Buildings constructed on the land.

Public Car Parking means the public car parking referred to in clause 2.4.

Public Purpose means any of the following purposes:

- (a) a Community Purpose;
- (b) the Public Car Parking;
- (c) the provision of public amenities and facilities, and place activation; and
- (d) uses ancillary to the use of the Land for a purpose referred to in paragraphs (a) to (c) (inclusive).

Specified Encumbrances means the limitations, interests, encumbrances, memorials and notifications which are registered against the certificates of Crown land title for the Land and identified in Schedule 1.

State means the State of Western Australia.

1.2 Interpretation

In this deed, unless the contrary intention appears:

- (a) a transferee, successor in title or assignee of any part of the Land is a 'party' referred to as the Covenantor for the purposes of this deed but only in respect of that part of the Land of which it is, or is entitled to be, the proprietor;
- (b) a reference to the Minister for Lands, the Covenantor or other statutory body is a reference to that body as it may reconstituted, continued, or substituted under any Act of Parliament from time to time;
- (c) a reference to a party doing any act or thing (including an act involving consent and terms of consent) includes a reference to such act or thing being done by an employee or officer of the party or such other person authorised in writing by the party;
- (d) another grammatical form of a defined word or expression has a corresponding meaning;

- (e) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule to, this deed;
- (f) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (g) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this agreement, and a reference to this agreement includes any schedule or annexure;
- (h) a reference to time is to Perth, Western Australia time;
- (i) a reference to a party is to a party to this deed, and a reference to a party to a document includes the party's successors and permitted assigns;
- (j) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (k) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (l) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (m) if a word or a phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (n) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (o) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (p) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it; and
- (q) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

2. COVENANTS

2.1 Permitted Use

- (a) The Covenantor, to the intent that it shall bind its transferees, successors in title and assigns from time to time, subject to the Specified Encumbrances, covenants and agrees with the Covenantee to use and continue to use the Land for the purposes of:
 - (i) constructing on it the Club Facility and any Building or facilities required for a Public Purpose; and
 - (ii) a Public Purpose,
 subject to clause 2.1(b).
- (b) Subject to the Specified Encumbrances, the Covenantor may:

- (i) use that part of the Club Facility that the Covenantor acting reasonably agrees may be used for a purpose other than a Public Purpose, including a lease or licence under clause 2.3(d); and
- (ii) use the part of the Land not comprising the Club Facility or the Public Car Parking for limited commercial development (such as a small café or kiosk) as may be agreed by the Covenantor acting reasonably, including a lease or licence under clause 2.3(d).

2.2 Commercial development

The Covenantor, to the intent that it shall bind its transferees, successors in title and assigns from time to time, subject to the Specified Encumbrances, covenants and agrees with the Covenantor that it will not undertake a Development of the Land without first obtaining the written consent of the Covenantor acting reasonably, which, if given, may be given subject to conditions, including that the development must be undertaken in accordance with the Development Conditions.

2.3 Dealings and subdivision

The Covenantor, to the intent that it shall bind its transferees, successors in title and assigns from time to time, subject to the Specified Encumbrances, covenants and agrees with the Covenantor that it will not:

- (a) sell or transfer the Land or any part of it;
 - (b) assign its interest in the Land or any part of it;
 - (c) grant any mortgage or charge or other interest, of the Land or any part of it;
 - (d) grant a lease or licence of any part of the Land for a use other than for a Public Purpose, including for retail or commercial purposes; or
 - (e) subdivide the Land,
- without first obtaining the written consent of the Covenantor:
- (f) acting reasonably in the case of a lease or licence under subclause 2.3(d); and
 - (g) which, if given, may be given subject to conditions.

2.4 Public car parking

The Covenantor, to the intent that it shall bind its transferees, successors in title and assigns from time to time, subject to the Specified Encumbrances, covenants and agrees with the Covenantor that:

- (a) the area of the Land identified on the plan at Schedule 3 will be used for the provision of public car parking bays (which will not be less than [XX] bays), other than during periods of repair and maintenance, replacement or refurbishment; and
- (b) the parking fees charged by the City will be set and maintained at a rate so as not to inhibit public visitation to, and the activation of, the Ocean Reef Marina project.

2.5 Commercial revenue

The Covenantor, to the intent that it shall bind its transferees, successors in title and assigns from time to time, subject to the Specified Encumbrances, covenants and agrees with the Covenantor that:

- (a) at least [XX]% of gross rent received from any lease or licence of the Land for retail and commercial purposes allocated for:
 - (i) the maintenance and upkeep of the improvements and facilities on the Land and surrounding areas (**Upkeep**); or
 - (ii) for the application or use for community purposes and place activation on the Land;
- (b) for the purposes of clause 2.5(a), the calculation of the **gross rent** is:
 - (i) not to include any sum received by the Covenantor (as lessor) from the lessee that is reimbursement of rates, taxes and other third party outgoings, or any sum received on account of goods and services tax; and
 - (ii) to include the value of any in kind or non-financial incentives provided by the Covenantor (as lessor) to the lessee; and
- (c) it will establish and maintain financial records in a separate manner which shall include a record of:
 - (i) gross rent received from any lease or licence of the Land for retail and /or commercial purposes;
 - (ii) the application of at least [XX]% of all such gross rent towards the purposes referred to in clause 2.5(a);
- (d) the financial records referred to in clause 2.5(c) must be maintained in accordance with accepted accounting standards and will be made available for inspection by the Covenantantee upon request; and
- (e) it will report to the Covenantantee on or before 31 December in each year during the Covenant Term with details of:
 - (i) the gross rent received from any lease or licence of the Land for retail and /or commercial purposes;
 - (ii) the calculation of the amount of gross rent that should have been applied towards the purposes referred to in clause 2.5(a);
 - (iii) the actual amount of gross rent applied towards the purposes referred to in clause 2.5(a);
 - (iv) the maintenance, upkeep or other community purposes to which such funds were applied; and
 - (v) the reason for any deficiency in the amount of gross rent that should have been applied, but was not applied, towards the purposes referred to in clause 2.5(a);in each case, for the 12 month period ending on the immediately preceding 30 June.

2.6 Due performance

The Covenantor, to the intent that it shall bind its transferees, successors in title and assigns from time to time, pursuant to section 15(9)(a) of the LA Act will ensure the due performance of the covenants set out in this clause by persons who hold an interest in the Land from or through the Covenantor granted on or after the date of this deed.

3. COVENANT IN GROSS

The burden of the covenants in this deed runs with the Land for the benefit of the Covenantee under section 15(6)(c) of the LA Act and is enforceable against the Covenantor and its successors in title pursuant to section 15(6)(d), section 15(11) and section 15(15) of the LA Act.

4. LIMITATION ON BURDEN

A person is not liable for a breach of the covenants in this deed where the breach occurs after that person ceases to be a proprietor of the Land but nothing in this clause discharges any liability of the person which exists prior to that cessation.

5. INDEMNITY

Pursuant to section 15(9) of the LA Act, the Covenantor, its transferees, successors in title and assigns indemnify the Covenantee, and will keep the Covenantee indemnified, from any costs, claims, actions, proceedings, demands, expenses, judgments, damages and losses which result directly or indirectly from any failure to comply with the covenants in this deed by the Covenantor, its employees, officers, contractors, agents, licensee's or grantees of an interest in the Land.

6. CHARGE

This deed constitutes a charge on the Land and pursuant to section 15(10) of the LA Act will not be discharged or removed on the sale of the land by a mortgagee or annuitant.

7. TERM

This deed is operative for the Covenant Term and automatically expires at the end of the Covenant Term after which the Covenantee must promptly, following a request from the Covenantor, sign all documents and do all things to procure the removal of this deed from the title to the Land.

8. VARIATION OR DISCHARGE

The covenants may be modified or discharged in the manner provide for by section 15(13) of the LA Act.

9. CONSENT

In giving, withholding or conditioning its consent or approval to a proposed dealing, development, use or other matter under this deed (**Proposal**), including when required to act reasonably, the Covenantee may have regard to (but is not limited to):

- (a) the intention that the Land is being provided primarily for use for Public Purposes to support the activation of the Ocean Reef Marina development and that revenue from the use of the Land will be used to support that objective;
- (b) the anticipated or likely effect or impact the Proposal may have on the use and amenity of the Land, the surrounding precinct and the broader Ocean Reef Marina development;
- (c) the compatibility of the Proposal with the use of the Land for Public Purposes;
- (d) the impact of the Proposal on other existing or approved occupiers of the Land, the surrounding precinct and the general public; and

- (e) the applicable planning framework.

10. GENERAL

10.1 Governing Law

This deed is governed by the law in force in Western Australia and the Covenantor and the parties submit to the non-exclusive jurisdiction of the courts in Western Australia.

10.2 Severability

If any provision or part of a provision in this deed is void, unenforceable or illegal it is severed from this deed. The remainder of this deed has full force and effect and the validity or enforceability of that provision is not affected.

10.3 Notices

Any notice or other communication that may or must be given under this deed, to be valid and effective:

- (a) must be in writing;
- (b) may be given by an authorised officer of the party giving notice (**first party**);
- (c) must be hand-delivered or sent by prepaid post to the address of the party receiving the notice (**second party**) as set out on the first page of this deed, or such other address previously notified by the second party to the first party in accordance with this clause;
- (d) subject to subclause (e), is taken to be received:
 - (i) in the case of hand delivery, on the date of delivery; and
 - (ii) in the case of post, on the seventh Business Day after posting; and
- (e) if received after 5.00 pm or on a day other than a Business Day, is taken to be received on the next Business Day.

SCHEDULE 1

Specified Encumbrances

(a) [Insert]

DRAFT

SCHEDULE 2

Development Conditions

The following development conditions shall apply to the Development of the Land by the Covenantor, as may be required by the Covenantee under clause 2.2.

1. Timing

The Covenantor must cause:

- (a) Commencement of Construction for the Development (or if the Development is to be completed in stages, each stage of the Development) to be effected by the applicable Latest Date for Commencement of Construction in accordance with the plans approved in accordance with these conditions; and
- (b) Practical Completion for the Development (or if the Development is to be completed in stages, each stage of the Development) to be effected in accordance with the approved plans by the applicable Latest Date for Practical Completion.

2. Approval of Plans

- (a) The Covenantor must submit to the Covenantee the proposed plans and specification for the Development, prior to such plans and specifications being approved by any relevant Authority, for approval by the Covenantee.
- (b) The Covenantee will within 15 Business Days of receipt, use its reasonable endeavours to either approve (conditionally or otherwise) or reject the plans and specifications and, if rejected, inform the Covenantor of the grounds of rejection;
- (c) In the event that the plans and specifications are rejected or approved conditionally, then the Covenantor must amend such plans and specifications and resubmit to the Covenantee as reasonably required by the Covenantee such amended plans and specifications for approval.
- (d) Upon the Covenantee approving the plans and specifications submitted to the Covenantee in accordance with condition 2(a) or condition 2(c), the Covenantor must use its best endeavours to submit such plans and specifications as soon as possible to the relevant Authorities (if necessary) for approval.
- (e) If any Authority requires the Covenantor to amend all or any of the plans and specifications, then the Covenantor must amend such plans and specifications in accordance with the requirements of any Authority and the Covenantor must re-submit such amended plans and specifications to the Covenantee for approval as soon as possible. Condition 2(b) and condition 2(c) will apply in respect of any amended plans and specifications submitted to the Covenantee for approval in accordance with this condition.

- (f) If plans and specifications approved by the Covenantor in accordance with condition 2(e) are rejected by any Authority, then the Covenantor must submit new plans and specifications for the Development to the Covenantee for approval in accordance with condition 2(a) and the provisions of this condition 2 will apply to such new plans and specifications.

3. Completion of Development

The Covenantor must ensure that the Development is completed:

- (a) in accordance with the Approved Plans;
- (b) with all proper care skill and diligence;
- (c) in accordance with good industry practice;
- (d) in compliance with all applicable laws and regulations of any Authority;
- (e) in a proper and workmanlike manner; and
- (f) using materials which are in good condition of high quality and suitable for the purpose for which they are intended.

4. Force Majeure

- (a) The Covenantor shall be taken not to be in default of its obligations under these Development Conditions if and for so long as:
 - (i) the failure or delay in performance of its obligations is caused by a Force Majeure Event; and
 - (ii) the Covenantor used and uses all reasonable endeavours to prevent, minimise and overcome the effect of, the Force Majeure Event, including by taking all reasonable steps which a prudent and conscientious person having willingly undertaken the obligations would take to achieve the object of the obligation.
- (b) The Covenantor must give notice and full particulars to the Covenantee of the Force Majeure Event including of all reasonable steps taken or to be taken to prevent, minimise or overcome the effect of the Force Majeure Event.

5. Definitions

For the purposes of these Development Conditions, the following capitalised terms have the following meanings:

- (a) **Approved Plans** means the plans approved by the Covenantee and any relevant Authority in accordance with condition 2.
- (b) **Authority** means any governmental, semi-governmental, statutory, local or public authority including without limitation the Local Government (when acting in that capacity), Department of Environment Regulation, the Western Australian Planning Commission, Water Corporation, Commissioner of Main Roads, and every and any other

board, person or authority whatsoever now or at any time in the future exercising under any present or future act of Parliament (Federal or State) any control or jurisdiction over or power in connection with the Land and/or the owner or occupier of the Land and/or in connection with any use now or hereafter carried on upon the Land and every officer or person acting under the authority of such local or public authority or under the authority of any such Act or bylaw, and includes the operator of the electricity microgrid in the Ocean Reef Marina;

- (c) **Commencement of Construction** means all works preliminary to the construction of the Development or a specified stage of the Development (as applicable), including the fencing of the relevant part of the Land, construction of all earthworks and the construction of footings to any relevant Building in the Development;
- (d) **Force Majeure Event** means an event or circumstance that is beyond the reasonable control of the Covenantor or its officers, employees, contractors, or agents, including (without limitation) an act of God, war, riot, civil disturbance, cyclone, flood, storm, fire, explosion, pandemic, epidemic, a strike or industrial dispute (not caused directly or indirectly by the Covenantor), embargo or failure of power supply.
- (e) **Latest Date for Commencement of Construction** means the date that is specified by the Covenantee in relation to the Development or stage of the Development (as applicable) (acting reasonably, having regard to the nature of the Development), being after the date that planning approval is obtained for the Development, or such later date agreed in writing by the Covenantee;
- (f) **Latest Date for Practical Completion** means the date that is specified by the Covenantee in relation to the Development or stage of the Development (as applicable) (acting reasonably, having regard to the nature of the Development and the Latest Date for Commencement of Construction), or such later date agreed in writing by the Covenantee;
- (g) **Practical Completion** means the completion of the construction of the Development or stage of the Development (as applicable) on the Land to the satisfaction of the Covenantee in conformity with the Approved Plans and any other specifications approved by all relevant Authorities, and is to be evidenced by the following as the Covenantee may require:
 - (i) delivery to the Covenantee of:
 - A. a certificate from the Covenantor's architect or builder certifying that the Development has been constructed or completed on the Land according to the Approved Plans;
 - B. a copy of written permission from the local government for the occupation of the whole of the Development; and/or
 - C. such other form of approval as may be required for the occupation of the Development; and/or
 - (ii) inspection by or on behalf of the Covenantee.

SCHEDULE 3

Plan of Public Car Parking Area

[Insert]

DRAFT

Executed as a deed on _____

SIGNED for the STATE OF WESTERN
AUSTRALIA for and on behalf of the
MINISTER FOR LANDS by

Pursuant to a delegation of the Minister
for Lands' powers under Section 9 of the
Land Administration Act 1997 in the
presence of:

Signature

Signature of witness

Print full name

Print full name

Classification level, Position title, Division
Department of Planning, Lands and Heritage

Classification level, Position title, Division
Department of Planning, Lands and
Heritage

The Common Seal of WESTERN
AUSTRALIAN LAND AUTHORITY
was hereunto affixed with the authority
of its Board in the presence of:

Chief Executive Officer

Board Member

| INSTRUCTIONS | | OFFICE USE ONLY | |
|--------------|--|--|--|
| 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. | LODGED BY ADDRESS PHONE No. FAX No. REFERENCE No. ISSUING BOX No. | |
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