

Establishment Agreement Amendment Agreement

Tamala Park Regional Council

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

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

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

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

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

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

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

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Details

Parties

Town of Cambridge

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

City of Joondalup

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

City of Perth

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

City of Stirling

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

Town of Victoria Park

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

City of Vincent

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

City of Wanneroo

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

Background

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

Agreed terms

1. Defined terms

In this Amendment Agreement:

Amendment Agreement means Establishment Agreement Amendment Agreement; and

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

2. Interpretation

The terms used in this Amendment Agreement:

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

3. Amendments

The Principal Establishment Agreement is amended:

- (a) In Background, paragraph C, delete “Each of the Participants has resolved, on the dates referred to in Schedule 2, to enter into this Establishment Agreement and to submit it to the Minister for approval under section 3.61 of the Act.” and insert:

“In 2005, each of the Participants resolved, on the dates referred to in Schedule 2, to enter into an Establishment Agreement and to submit it to the Minister for approval under section 3.61 of the Act.”

In Background, after paragraph C, insert:

“D In 2023 each of the Participants resolved, on the dates referred to in Schedule 3, to endorse a revised Establishment Agreement and submit it for approval under section 3.65 of the Act.

E The 2023 version of the Establishment Agreement supersedes the 2006 Establishment Agreement in its entirety.”

- (b) In Clause 1 – Defined Terms insert:

“**Divestment Notice** means a notice in writing stating that a Participant wishes to sell their interest in the Land.

Divesting Participant means a Participant who has given written notice to other Participants that it is selling its interest in the Land.

Remaining Participant means all parties to this Establishment Agreement who are not engaged in the process of Divestment.

Valuer means:

A person who:

- (a) is licensed under the *Land Valuers Licensing Act 1978*; and

- (b) either:
- (i) is a fellow or associate of the Australian Property Institute (Inc) (WA Division) of not less than five years standing; or
 - (ii) has not had less than five years practical experience in Western Australia in the valuation of properties of the same general classification as the land.

Withdrawal Notice means a written notice given to Participants and to CRC by a Participant who wishes to withdraw stating that wish.”

- (c) In Clause 2 – Name delete “Tamala Park” and insert:

“Catalina”

- (d) In Clause 4(a), after the words “to undertake” insert:

“, development and sale of the Land”

And delete “the rezoning, subdivision, development, marketing and sale of the Land”.

- (e) In Clause 6.3, delete all references to “chairman” and insert:

“chair”

- (f) In Clause 6.4, delete all references to “chairman” and insert:

“chair”

- (g) In Clause 6.5, delete all references to “chairman” and insert:

“chair”

- (h) In Clause 6.6, delete all references to “chairman” and insert:

“chair”

- (i) In Clause 8.1, delete the clause.

- (j) In Clause 11.1 – Withdrawal conditions, delete the words

“A Participant may withdraw from the TPRC only:

- (a) after divesting itself of its interest (if any) in the Land under clause 12; and

- (b) in accordance with an agreement in writing between the Participants under this clause.”

and insert:

“A Participant must withdraw from the CRC immediately after, or concurrently with, divestment of ownership interests under Clause 12.”

- (k) In Clause 11.3 – Permitted notice periods delete the words “must be given within 28 days of any of the following events:” and insert:

“may be given at any time.”

and delete subclauses (a) to (d).

- (l) In Clause 12.3 – Notice, delete the words “A Divesting Participant is to give to each Remaining Participant and to the TPRC, in accordance with clause 11.3, notice in writing of its proposed divestment.” and insert:

“Where a Participant has decided to pursue a divestment of their ownership interests:

- (a) a Divesting Participant is to give to each Remaining Participant and to the CRC, in accordance with clause 11.3, notice in writing of its proposed divestment. The notice shall include:
- (i) a copy of the Valuation referred to in 12.7; and
 - (ii) a timeline for the delivery of the Divestment transaction that outlines key transaction timelines for both the Divesting Participant and Remaining Participants, noting that the timeline shall:
 - (A) be compliant with provisions of this agreement;
 - (B) be compliant with the requirements of the Act;
 - (C) stipulate the date by which Remaining Participants are to respond to the Divestment notice; and
 - (D) ensure that the withdrawal transaction can be completed as soon as is practicable whilst providing reasonable and achievable timelines for all parties.
- (b) the Remaining Participants are to respond to the Divestment Notice by the date specified in 12.3(a)(ii)(C);
- (c) where Clauses 12.5 and/or 12.6(c) apply, the timeframe in clause 12.3(b) shall be extended by 30 days (or other such time period as agreed by Divesting Participant and the other Remaining Participants) for each occasion a subsequent offer is taken to be made under clause 12.5; and
- (d) a Divestment of ownership interests under this clause 12 may not proceed unless the entirety of the Divesting Participant’s interest in the Land is sold to the Remaining Participants under the provisions of this agreement.”

- (l) In Clause 12.4 – Offer to Remaining Participants, after subclause (b) insert:

(c) in accordance with the timeline set out in the notice or as otherwise agreed in writing by the parties.”

- (m) In Clause 12.5 – Acceptance among Remaining Participants, delete the words “within 30 days of the notice being given to it” and insert:

“by the date referred to in 12.3(a)(ii)(C)”

and after subclause (c) insert:

“

(d) acceptance by a Remaining Participant under 12.5(b) and 12.5(c) must be completed within 30 days.”

- (n) In Clause 12.6 – Payment, delete the words “after the date on which the offer is taken to have been made” and insert:

“of the later of:

- (i) the date referred to in 12.3(a)(ii)(C); or
- (ii) where Clause 12.5 and/or Clause 12.6(c) apply the date for acceptance of the last further offer made to the Remaining Participants under Clause 12.5 or 12.6(c);”

In subclause (b) delete the words “90 days after the date on which the offer is taken to have been made” and insert:

“60 days of acceptance of the entirety of the Divesting Participant’s interest in the Land as offered under Clause 12.3”

After subclause (c) (iii) insert:

“

- (d) the payments made to the Divesting Participant by the Remaining Participants may be adjusted to reflect changes to status and/or ownership of the land that may have occurred between the date of Valuation and the date of the acceptance of the offer. Any such adjustments will consider the methodology used is the Valuation obtained under 12.7 of this agreement;
 - (e) where six or more months have passed between the date of the valuation and the estimated date of settlement of the divestment, the CRC must seek confirmation from the Valuer appointed under 12.7 that the original valuation remains accurate and current;
 - (f) if the Valuer instructs that the original valuation is not accurate and current as at the estimated date of settlement of the divestment, the CRC must instruct the Valuer to provide an updated valuation in accordance with 12.7;
 - (g) if 12.6(f) applies the updated valuation is to be the basis of adjustments made under 12.6(d); and
 - (h) the timeline provided in Clause 12.3(b) is to be extended to provide for a further valuation where required.”
- (o) In Clause 12.7 – Valuation, in subclause (a) delete the words “its cost” and insert:

“the Withdrawing Participant’s cost”

In subclause (a) delete the words “of any of the dates specified in clause 11.3”

In subclause (b) after the words “paragraph (a)” insert:

“and arrange for a valuation as soon as is practicable.

- (c) The CRC must instruct the Valuer appointed under 12.7(a) to determine the valuation methodology for valuation of the Land in accordance with proper and accepted industry practice and considering all of the relevant factors, matters and variables used in proper land valuation have been taken into account.
- (d) The CRC must instruct the appointed Valuer to:
 - (i) give a written valuation of the Land setting out what was taken into account, what was disregarded, their respective weightings and any other adjustments;
 - (ii) act as an independent expert; and

(iii) provide the valuation as soon as practicable but in no longer than 45 days.”

- (p) In Clause 14.5 – Arbitration, in subclause (b) delete “*Commercial Arbitration Act 1985*” and insert:

“*Commercial Arbitration Act 2012*”.

- (q) In Clause 14.6 – Legal representation, delete “*Commercial Arbitration Act 1985*” and insert:

“*Commercial Arbitration Act 2012*”.

- (r) In Schedule 1 – Ownership shares, delete “Town of Vincent” and insert:

“City of Vincent”.

- (s) In Schedule 2 – Resolution dates, delete “Town of Vincent” and insert:

“City of Vincent”.

- (t) Insert after Schedule 2 a new table – Resolution dates for revised Establishment Agreement 2023:

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

- (u) In Schedule 3 – Number of Members, delete “Town of Vincent” and insert:

“City of Vincent”.

Schedule 1 – Resolution dates

Participant	Date of resolution to enter into this Amendment Agreement
Town of Cambridge	26 April 2023
City of Joondalup	23 May 2023
City of Perth	26 April 2023
City of Stirling	4 April 2023
Town of Victoria Park	16 May 2023
City of Vincent	4 April 2023
City of Wanneroo	18 April 2023



Signing page

EXECUTED []2023

THE COMMON SEAL of the Town of Cambridge is affixed in the presence of -



Signature of Mayor

KERI SHANNON

Name of Mayor (print)





Signature of Chief Executive Officer

GARY TUFFIN

Name of Chief Executive Officer (print)

THE COMMON SEAL of the City of Joondalup is affixed in the presence of -



Signature of Chairman of Commissioners
MAYOR

ALBERT JACOB

Name of Chairman of Commissioners (print)
MAYOR

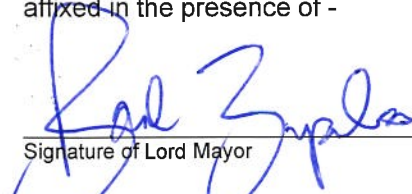


Signature of Chief Executive Officer

JAMES PEARSON

Name of Chief Executive Officer (print)

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



Signature of Lord Mayor

BASIL ZEMPILAS

Name of Lord Mayor (print)



Signature of Chief Executive Officer

Michelle Reynolds

Name of Chief Executive Officer (print)



THE COMMON SEAL of the City of Stirling is affixed in the presence of -



Signature of Mayor

MARK IWAN

Name of Mayor (print)



Signature of Chief Executive Officer (ACTING)

INGRID HANKINS

Name of Chief Executive Officer (print) (ACTING)

THE COMMON SEAL of the Town of Victoria Park is affixed in the presence of -



[Handwritten signature]

Signature of Mayor

[Handwritten signature]

Signature of Chief Executive Officer

KAREN VERNON

Name of Mayor (print)

ARPAOM JOHN VUETA

Name of Chief Executive Officer (print)

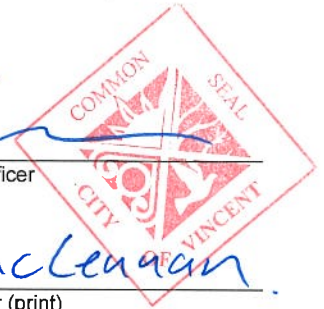
THE COMMON SEAL of the City of Vincent is affixed in the presence of -

[Handwritten signature]

Signature of Mayor

[Handwritten signature]

Signature of Chief Executive Officer



Emma Cole

Name of Mayor (print)

David MacLagan

Name of Chief Executive Officer (print)

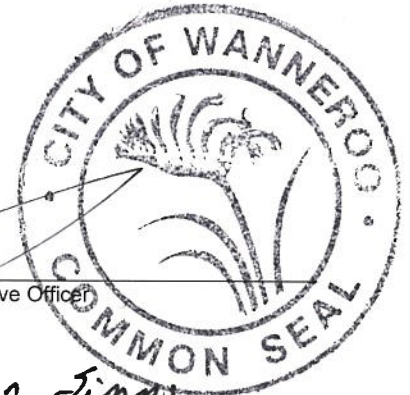
THE COMMON SEAL of the City of Wanneroo is affixed in the presence of -

[Handwritten signature]

Signature of Mayor

[Handwritten signature]

Signature of Chief Executive Officer



Linda May Aitken

Name of Mayor (print)

Daniel John Jimms

Name of Chief Executive Officer (print)

Approved

Hon. John Newton Carey MLA
Minister for Housing; Lands; Homelessness; Local Government

[.....] 2023