

City of Subiaco

ABN: 84 387 702 890

and

Western Australian Land Authority
trading as DevelopmentWA

ABN: 34 868 192 835

and

Metropolitan Redevelopment Authority

ABN: 69 902 571 142

MEMORANDUM OF UNDERSTANDING



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THIS MEMORANDUM OF UNDERSTANDING is made on *Tuesday, 14 November* 2023

BETWEEN

CITY OF SUBIACO a local government and body corporate under the *Local Government Act 1995* of Level 2, 388 Hay Street, Subiaco, Western Australia (**City**)

and

WESTERN AUSTRALIAN LAND AUTHORITY trading as DEVELOPMENTWA of Level 2, 40 The Esplanade, Perth, Western Australia (**WALA**)

and

METROPOLITAN REDEVELOPMENT AUTHORITY trading as DevelopmentWA of Level 2, 40 The Esplanade, Perth Western Australia (**MRA**)

BACKGROUND

- A. The Subiaco East Redevelopment Area was established pursuant to the MRA Act and MRA Regulations and will be one of the first projects delivered by DevelopmentWA following the administrative merger of MRA and WALA then trading as LandCorp.
- B. The Parties have entered into this MOU to:
- (a) demonstrate coordination between the Parties to achieve the Master Plan Vision, Objectives and Project Pillars set out in the Subi East Master Plan;
 - (b) establish guidelines within which the Parties will endeavour to work together for the planning, implementation and future functioning of the Subiaco East Redevelopment Area within the City's boundaries;
 - (c) assist the Parties to more effectively and efficiently fulfil their respective functions and responsibilities for the long-term benefit of the community;
 - (d) agree procedures for the Handover by WALA to the City of areas within Precincts 1, 2, 3 and 4 as shown in Attachment A; and
 - (e) agree procedures for the Normalisation by MRA of areas within Precincts 1, 2, 3 and 4.
- C. The establishment of the guidelines referred to in Background B above will be achieved through consultation, communication, participation and cooperation at both strategic and project levels.

- D. This MOU is expected to guide the working relationships between the Parties going forward. It may also subsequently inform specific ventures, agreements and cooperative administrative processes and practices, or normalisation processes as well.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this MOU unless the context or subject matter or circumstances indicate otherwise:

Acts includes all acts and statutes (State or Federal) for the time being enacted or modifying any Acts and all regulations by-laws requisitions or orders made under any Act from time to time by any Authority and Act means any one of them

Business Day means a day which is not a Saturday, Sunday or public holiday in Western Australia

City's Land means land owned by the City of Subiaco or land under the City of Subiaco's care, control and management

DevelopmentWA means both WALA and MRA

Handover means the transfer of ownership or responsibility for Public Assets and Public Domain from WALA to the City

IPRF means the State of Western Australia's Integrated Planning and Reporting Framework.

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

Master Plan Objectives means the objectives identified in the Subi East Master Plan as set out below:

- (a) **Sense of Place:** Build a sense of place by supporting high quality urban design, heritage protection, public art and cultural activities that respond to Perth's environment, climate and lifestyle.
- (b) **Economic Wellbeing:** Promote economic wellbeing by supporting development that facilitates local investment and enables local businesses and emerging industries to satisfy market demand.

- (c) **Urban Efficiency:** Promote urban efficiency through infrastructure and buildings, the mix of land use and facilitating a critical mass of population and employment.
- (d) **Connectivity:** enhance connectivity and reduce the need to travel by car, supporting development aimed at well-designed places that support walking, cycling and public transport.
- (e) **Social Inclusion:** promote social inclusion by encouraging a diverse range of housing and by supporting community infrastructure and activities for visitors and residents to socialise.
- (f) **Environmental Integrity:** Enhance environmental integrity by encouraging ecologically sustainable design, resource efficiency, recycling, renewable energy and protection of the local ecology.

Master Plan Project Pillars means the project pillars identified in the Subi East Master Plan as set out below:

- (a) **Connected City Village:** A connected place – with a connected community; A gateway to a great life
- (b) **Kaya Subi:** A spirited community; A rich and diverse history
- (c) **Green Pulse:** A place of equilibrium; Connected to nature
- (d) **Collective Wellbeing:** A growing community; A place of learning and care

Master Plan Vision means the vision statement set out in the Subi East Master Plan as follows:

“A Connected City Village honouring place and living memories; whole of life living for all”.

MOU means the memorandum of understanding between the Parties constituted by this document and any valid amendments made to it and this MOU has a corresponding meaning

MRA Act means the *Metropolitan Redevelopment Authority Act 2011 (WA)*.

MRA Regulations means the *Metropolitan Redevelopment Authority Regulations 2011 (WA)*.

Normalisation has the meaning given in Appendix 2 of the Scheme set out as follows:

“means the processes required to return functions, powers and responsibilities to Local Government and other government bodies”.

Party means a party to this MOU and Parties shall have a corresponding meaning

Public Asset means public infrastructure situated within a Public Domain

Public Asset Agreement means an agreement referred to in paragraph 6.2(b)

Precinct means a definable area within a Project Area as contained in Attachment A

Project Area has the meaning given in Appendix 2 of the Scheme set out as follows:

“means a definable area within a MRA redevelopment Area designated on the Scheme Map in Appendix 1, which in this case is Precincts 1, 2, 3 and 4”

Public Domain has the same meaning given to the term “Public Realm” in Appendix 2 of the Scheme set out as follows:

“means the public setting of place that people can see and access, and interact with each other and their surroundings, including public land, public places, public gardens, streets, laneways, footpaths and the associated environmental setting and building frontages”.

Redevelopment Area has the same meaning as is given to that term in section 3 of the MRA Act set out as follows:

“means any land declared to be a redevelopment area by regulations made under Part 4”

Scheme means the Subiaco Redevelopment Scheme 2

Site Specific Agreement means an agreement as referred to in paragraph 6.2(a)

Subi East Master Plan means the Subi East Master Plan approved by the WALA and MRA Boards on 28 October 2020

Subiaco Redevelopment Area means the Redevelopment Area identified in the plan entitled “Subiaco redevelopment area 2020” referred to in regulation 13 of the MRA Regulations

1.2 Construction of Terms

Unless repugnant to the sense or context:

- (a) Every covenant or agreement expressed or implied in this MOU in which more persons than one covenant or agree bind such persons and every two or more of them jointly and each of them severally;
- (b) Reference to any Party shall mean and include a reference to that Party, its successors, personal representatives and transferees;
- (c) Reference to a "person" includes a corporation, firm, unincorporated association, and any Authority;
- (d) Words importing the singular include the plural and vice versa;
- (e) Reference to any gender includes all genders;
- (f) References to any Act includes all Acts amending or consolidating it;
- (g) Words (including defined expressions) importing individual persons only shall include corporations;
- (h) Headings shall not affect the interpretation of this MOU;
- (i) The word including shall be construed as meaning including without prejudice to the foregoing generality;
- (j) Reference to a Recital, Clause, Schedule or Attachment is a reference to a recital, clause, schedule or attachment of this MOU;
- (k) Reference to money is Australian Dollars unless otherwise stated;
- (l) Reference to time is to the local time in Perth;
- (m) Reference to a month is to a calendar month; and
- (n) Where the day on or by which anything is to be done is not a Business Day, that thing must be done on or by the next succeeding Business Day.

2. THE SUBI EAST MASTER PLAN

2.1 Master Plan Vision

The Parties acknowledge the Master Plan Vision, Master Plan Objectives and Master Plan Project Pillars achieve the vision of the Subiaco East Redevelopment Area.

2.2 Environmental Integrity

In addition to the Master Plan Objective relating to environmental Integrity the Parties acknowledge that development should promote biodiversity through nature based

spatial planning solutions, education and protection of the natural environment, including, but not limited to, green infrastructure and public open spaces

3. THE METROPOLITAN REDEVELOPMENT AUTHORITY (MRA)

3.1 Functions of the MRA

The functions of the MRA when operating within a Redevelopment Area are outlined in section 7 of the MRA Act and in relation to the Project Area includes:

- (a) planning, undertaking, promoting and coordinating the development of land.
- (b) preparing and keeping under review strategic and policy documents in relation to the development of land in the Project Area;
- (c) pursuant to Part 5 of the MRA Act, preparing and keeping under review a redevelopment scheme for the Project Area;
- (d) pursuant to Part 6 of the MRA Act, to control development in the Project Area; and
- (e) pursuant to section 30(5)(c) of the MRA Act, ensuring the Redevelopment Area objectives set out in Regulation 14 of the MRA Regulations set out below are achieved for the Project Area;
 - (i) Build a sense of place;
 - (ii) Promote economic wellbeing;
 - (iii) Promote urban efficiency;
 - (iv) Enhance connectivity;
 - (v) Promote social inclusion; and
 - (vi) Enhance environmental integrity

4. THE CITY OF SUBIACO (CITY)

4.1 Functions of the City

The City is established pursuant to the *Local Government Act 1995* and under the IPRF the functions of the City are to ensure that:

- (a) decisions and actions meet the needs and aspirations of both current and future generations; and

- (b) it achieves its functions in a manner that is environmentally, socially and financially responsible.

4.2 Key Stakeholder

The City has the responsibility to undertake and implement long term strategic, asset, financial, workforce, community and place, planning, governance and management within the district of the City of Subiaco and is a key stakeholder of the Project Area.

4.3 Resuming Former Functions

As DevelopmentWA fulfils their functions and responsibilities, the City will resume its former functions including but not limited to the ownership, care, control and management of identified Public Domains within the Project Area by the process of Normalisation.

4.4 City's Approval

Where the City's approval and/or involvement is required in considering development within the Project Area, the City shall use reasonable endeavours to ensure it is done in a timely and coordinated manner.

5. DEVELOPMENTWA

5.1 Functions of DevelopmentWA

DevelopmentWA will be responsible for:

- (a) planning, development and short / medium term maintenance across parts of the Subiaco Redevelopment Area.
- (b) the maintenance of Public Domain areas within the Project Area for a period of two years from practical completion of the works, in accordance with relevant development approvals.
- (c) undertaking environmental rehabilitation and planning, and implementing and coordinating urban regeneration across the Subiaco Redevelopment Area.

5.2 Relationship with the City

DevelopmentWA will:

- (a) work closely with the City during the planning, design, delivery and Handover phases in delivering the Master Plan Vision and Master Plan Objectives; and
- (b) MRA will progressively hand back management and functions to the City through the Normalisation process as redevelopment progresses.

6. CONSULTATION, COMMUNICATION, PARTICIPATION AND COOPERATION

6.1 Generally

The Parties agree to use their best endeavours to:

- (a) consult on relevant matters relating to the Project Area in a timely and coordinated manner relating to the planning, approvals, design development, construction and Handover process;
- (b) provide to each other information, for the Project Area in a timely manner which assists each party to forward plan its workforce, procurement, budget and specialist asset management commitments and any other involvement in the Project Area;
- (c) support the planning of Normalisation of the Project Area and transferring all planning powers and functions back to the City.

6.2 Site Specific & Public Asset Agreements

The Parties agree that as soon as reasonably practicable prior to the commencement of the Handover process, with respect to any Precinct or part of a Precinct that;

- (a) they will endeavour to reach agreement (**Site Specific Agreement**) on the following range of matters and issues which are described in more detail in Attachment C.
 - (i) Identification of New Public Domains within Redevelopment Area;
 - (ii) Identification of Existing Public Domains within Redevelopment Area;
 - (iii) Identification of Existing Site Conditions;
 - (iv) Subdivision Applications and Development Applications;
 - (v) Rate Setting; and
 - (vi) Service Level Agreements
- (b) they will endeavour to reach agreement (**Public Asset Agreement**) on the following range of matters and issues which are described in more detail in Attachment D.
 - (i) Approval Requirements
 - (ii) Asset Design and Specification Requirements

- (iii) Construction Phase Requirements
- (iv) Handover Phase Requirements
- (c) WALA shall provide a written notice to the City in accordance with clause 13 to advise of its intention to undertake a Handover of a Precinct or part of a Precinct. The notice shall provide for not less than 3 months for the Handover to be completed. WALA must provide with notice a draft Site-Specific Agreement and Public Asset Agreement.
- (d) WALA and the City will negotiate in good faith to progress and finalise the Site Specific Agreement and Public Asset Agreement as soon as practicable.

6.3 Further MOU's or Agreements

The Parties agree that:

- (a) this MOU is an overarching document intended to set in place the high-level philosophy and parameters of how the Parties will work together across the Subiaco East Redevelopment Area; and
- (b) in addition to this MOU, the Parties will jointly prepare and implement relevant, related, non-binding Agreements for the Project Area as required, including but not limited to the Site-Specific Agreements and Public Asset Agreements referred to in clause 6.2 above.

6.4 Costs to develop Agreements / MOU's

Each Party agrees to pay its own costs in relation to the drafting and implementation of the documents referred to in this clause 6.

7. ACCESS TO THE CITY'S LAND

The Parties acknowledge and agree that:

- (a) DevelopmentWA may require access to land owned by the City or land under the City's care, control and management (**City's Land**) within or adjacent to the Subiaco Redevelopment Area associated with the Subi East Masterplan for the purpose of achieving its redevelopment area objectives as described in the MRA Regulations.
- (b) The City will not unreasonably withhold its consent to DevelopmentWA or MRA accessing the City's Land for such purpose. The City may to the extent permitted by law place restrictions on the use of the City's Land under clause 7(a) including but not limited to the duration of access and the type of use permitted to occur.

- (c) If DevelopmentWA access the City's Land in accordance with clause 7(a) and (b), the land shall be returned to its original condition to the satisfaction of the City within 90 days from the date the land is no longer required to achieve the objectives of the Redevelopment Area, unless otherwise agreed by the City in writing.

8. NORMALISATION

8.1 Process of Normalisation

In accordance with and pursuant to the Scheme;

- (a) As planning and redevelopment for the whole or part of each Precinct forming part of the Project Area is completed or reaches agreed milestones the MRA will progressively divest itself or 'normalise' planning authority over those parts of the Project Areas. MRA may also consider a request from the City for normalisation of a Precinct to occur on the basis that the redevelopment objectives of a Precinct are unlikely to be achieved in full within a reasonable timeframe as agreed upon by the parties.
- (b) Normalisation will be implemented in consultation with the City and the Western Australian Planning Commission (WAPC) and will be achieved by returning planning and development controls and responsibilities for the relevant Precincts to the City and the WAPC pursuant to Local and Metropolitan Region Planning Schemes.

8.2 Timing and Coordination of Normalisation

The Parties agree;

- (a) that Normalisation of one or more Precincts or part of the Precincts shall occur at the point at which the redevelopment objectives of the Scheme are considered to have been met. The project objectives to be satisfied include:
 - (i) Establishment of a Redevelopment Strategy, the Scheme, Development Policies and associated Design Guidelines.
 - (ii) Creation, divestment and development approval of development lots.
 - (iii) Creation of public realm areas on State Government owned land (public open space, roads, community facilities).
- (b) DevelopmentWA shall provide a written Notice to the City in accordance with clause 13 to advise of an intention to normalise the Redevelopment Area or one or more Precincts. The notice shall provide for no less than six (6) months for the Normalisation to be initiated.

- (c) to coordinate the Normalisation process and support any necessary amendments to the planning framework that are required to support the transfer of planning power. This includes any amendments the parties agree are necessary to ensure condition clearance, planning compliance, amendment and extensions to development approvals issued under the MRA Act can be undertaken effectively by the City, post normalisation.
- (d) in accordance with section 34 of the MRA Act,
 - (i) any development application received prior to normalisation, will be determined by the MRA, even if the determination occurs after the date of Normalisation; and
 - (ii) any future condition clearance or compliance matters will be the responsibility of the City at the point of Normalisation.
- (e) that all relevant records and information as agreed between the Parties shall be provided to the City up to Normalisation.

9. CONFIDENTIALITY

The Parties agree that

- (a) any confidential information, for the purpose and intent of this MOU, and except as required by law, will not be disclosed to any person, other than each Party's Council/Board, officers and employees, and the Ministers responsible for the administration of the WALA Act, the MRA Act and the LG Act or any other Minister.
- (b) any Party may disclose confidential information to persons who have a need to know for the purpose and intent of this MOU; and
- (c) a Party must obtain the prior written consent of the other Party prior to making a disclosure referred to in clause 9(b) above.

10. GOVERNANCE

- (a) The Parties will establish an operational meeting structure in the form set out in the diagram contained in Attachment B to ensure the intent and terms of this MOU and the subsequent related Agreements referred to in clause 6 above are achieved.
- (b) Formalising this meeting structure will occur through jointly agreed terms of reference, to identify frequency, membership and roles.

11. ADMINISTRATIVE ARRANGEMENTS

11.1 Term

This MOU shall take effect on and from the date it is signed by all of the Parties and continue until completion of Normalisation of the Subiaco Redevelopment Area.

11.2 Time for Review

The Parties will review the operation of this MOU at intervals of no more than 5 years, with a view to improving its operation.

11.3 Dispute Resolution

- (a) Any Party may give notice to the other Parties of a dispute concerning the operation of this MOU.
- (b) Where a dispute arises, the Parties will attempt to resolve it by consultation with each other.
- (c) Representatives being senior managers of each of the parties shall promptly meet to seek to resolve the dispute with parties negotiating in good faith.
- (d) If the dispute is not resolved within one month of the representatives first meeting, the dispute shall be referred to the CEO's of each party who shall promptly meet to seek to resolve the dispute.
- (e) Notwithstanding anything express or implied in this MOU to the contrary, the MOU is not a delegation by the Council of the City of Subiaco for the future exercise of any power function or decision making that, without this MOU, would require a decision by the City of Subiaco Council.

11.4 Amendment

This MOU may be amended at any time on written agreement of the Parties.

11.5 Nature of MOU

Nothing in this MOU creates a partnership, joint venture or fiduciary relationship between the Parties.

11.6 No Authority to enter Agreements

Nothing in this MOU provides a Party with the power or authority to enter into any agreement or other agreement on behalf of or otherwise bind another Party or Parties to any matter contemplated by this MOU or otherwise.

11.7 Governing Law

- (a) This MOU shall be governed by and be interpreted in accordance with the laws of Western Australia.
- (b) The Parties submit to the non-exclusive jurisdiction of the courts of Western Australia.

11.8 Attorneys

Where this MOU is executed by an attorney, that attorney by executing declares that it has no notice of the revocation of the power of attorney under which it is acting.

12. LEGAL EFFECT OF MOU

The Parties understand and acknowledge that:

- (a) this MOU is intended only to be a statement of intention and understanding between the parties and that subject to the clauses specified in clause 12(b) below is not otherwise legally or contractually binding and does not impose any legal liability or obligation on the Parties.
- (b) the **only** parts of this MOU that are intended to be legally binding and enforceable are clause numbers 1, 6.4, 11, 12 and 13.
- (c) this MOU does not contain all matters upon which agreement must be reached in relation to the Subiaco Redevelopment Area;
- (d) nothing in the MOU is intended to fetter the Parties in their performance of their statutory functions or the exercise of their statutory powers; and
- (e) to the extent of inconsistency between a Party's statutory functions or the exercise of its statutory functions and this MOU, the Party's obligation to perform its statutory functions and the exercise of its statutory powers will prevail.

13. NOTICES

13.1 Notice

Each notice to be given to a Party shall be in writing and may be delivered personally or sent by properly addressed and pre-paid mail in each case addressed to the Party at its address.

13.2 Address

The addresses of the Parties shall be the addresses set out on page 1 of this MOU:

13.3 Change of Address

Each Party may change its address by giving notice to every other Party.

13.4 Service

Any notice given shall be conclusively deemed to have been received:

- (a) in the case of personal delivery, on the actual day of delivery if delivered prior to 5.00 p.m. on a Business Day, or on the next following Business Day if delivered after 5.00 p.m. on a Business Day or on any day that is not a Business Day; or
- (b) if sent by mail, on the second clear Business Day after the day of posting.

EXECUTED by the Parties

THE COMMON SEAL of the CITY OF)
SUBIACO was hereunto affixed in the)
presence of :)
)



Signature: *David McMullen*

Name: DAVID McMULLEN
PLEASE PRINT

Signature: *Colin Cameron*

Name: COLIN CAMERON
PLEASE PRINT

Mayor

Chief Executive Officer

Signed on behalf of the WESTERN)
AUSTRALIAN LAND AUTHORITY by)
persons authorised by its Board in)
accordance with section 45(2) (b) of the)
Western Australian Land Authority Act)
1992)
:

Signature: *Andrew Williams*

Name: Andrew Williams
PLEASE PRINT

Authorised Officer

Signature: *Emma-lee Hollings*

Name: Emma-lee Hollings
PLEASE PRINT

Authorised Officer

Signed on behalf of the METROPOLITAN)
REDEVELOPMENT AUTHORITY by)
persons authorised by)
.....)
.....)
.....)

Signature: *Gavin P. Casey*

Name: Gavin P. Casey
PLEASE PRINT

Authorised Officer

Signature: *Matt Ryan*

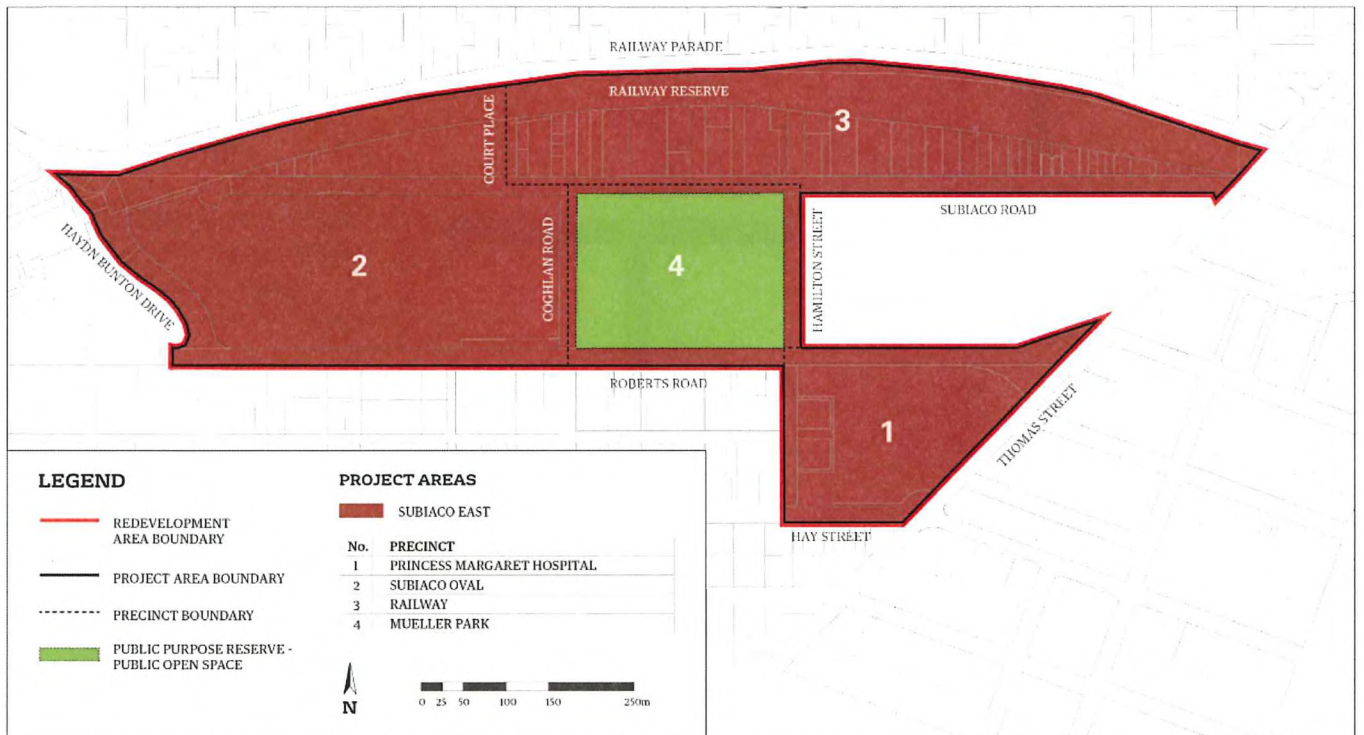
Name: MATT RYAN
PLEASE PRINT

Authorised Officer

ATTACHMENT A

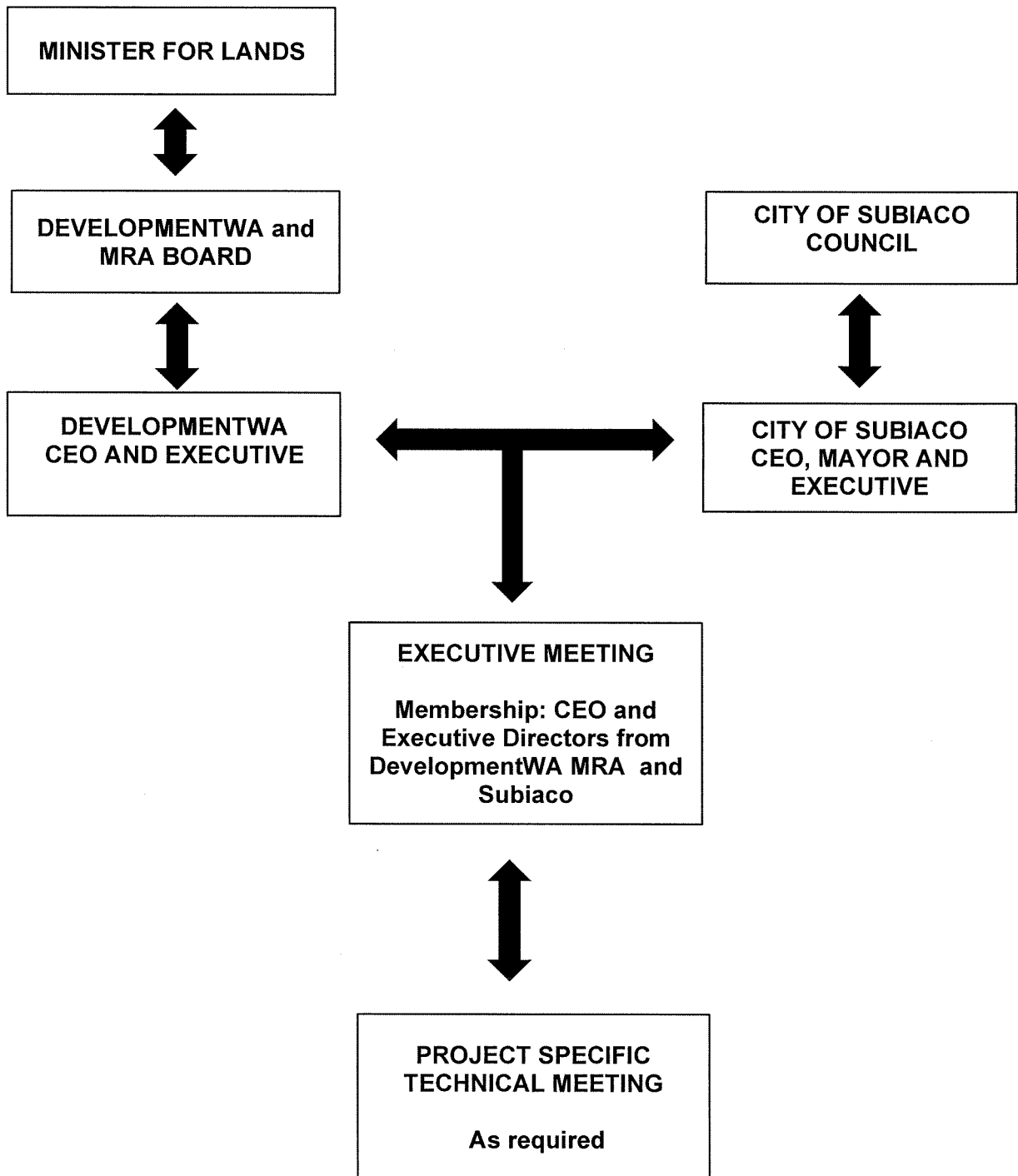
SUBIACO EAST PROJECT AREA MAP

SUBIACO EAST PROJECT AREA MAP



ATTACHMENT B

Governance Structure



ATTACHMENT C

Generic content for Site Specific Agreements for each Project Area

Note: The below headings and content for the Site-Specific Agreements will be subject to change and will be informed by the Redevelopment Area's status and priorities.

1. IDENTIFICATION OF NEW PUBLIC DOMAINS WITHIN REDEVELOPMENT AREA

- (a) Define the Public Domains to be handed over to the City of Subiaco (roads, road reserves, public open spaces, thoroughfares, public buildings and assets , heritage buildings) and agreement on design and construction.
- (b) Staging of the Handover of the public domains.
- (c) Agreement on the overarching process for public domain Handover and dates.
- (d) Agreement on the creation, conditions and dates for management orders over public open spaces.
- (e) Agreement on the process for Handover of roads and road reserves subject to automatic vesting orders.
- (f) Agreement on requirements for developer when a Public Domain is handed to the City of Subiaco and construction works continue in the area (including but not limited to detailed "as constructed" plans and drawings for all new infrastructure and buildings.

2. IDENTIFICATION OF EXISTING PUBLIC DOMAINS WITHIN REDEVELOPMENT AREA

- (a) Agreement on condition of existing roads.
- (b) Agreement on requirements for condition of existing roads when returned to the City of Subiaco.
- (c) Agreement on condition of existing public open space.
- (d) Agreement on requirements for condition of existing public open space when returned to the City of Subiaco.

3. IDENTIFICATION OF EXISTING SITE CONDITIONS

- (a) Contaminated site areas.

- (b) Any other conditions that require identification that could impact the operation and maintenance of public domains.
- (c) Agreement on the process for addressing contaminated site areas and conditions on which the contaminated site will be returned to the City of Subiaco.
- (d) Agreement on the process for addressing any other conditions that could impact the operation and maintenance of public domains.

4. SUBDIVISION APPLICATIONS AND DEVELOPMENT APPLICATIONS

- (a) Identification of the forecast dates for subdivision applications (to be made by either Party), submission dates and the party responsible for the submission.
- (b) Identification of the forecast dates for development applications (to be made by either Party), submission dates and the Party responsible for the submission,
- (c) Process for the City of Subiaco providing advice, comments and (where required) approval against relevant codes and standards that apply to public domain works.
- (d) Process for the City of Subiaco to provide comment and recommendation on clearances for development applications for public domain works and private buildings.

5. RATE SETTING

- (a) Documentation of proposed titles for the Redevelopment Area.
- (b) Confirmation on the scheduled creation of private lots, and proposed and actual dates for transfer of titles for subdivided land and creation of rateable land.

6. SERVICE LEVEL AGREEMENTS

- (a) Agreement on the service level agreements to be developed between DevelopmentWA and the City of Subiaco for provision of services by the City and DWA staff representatives (including agreement on any contributions sought from DWA or by the City for management of Public Domains).

ATTACHMENT D

Generic content for Agreement for public asset design, approval, development and Handover for the Redevelopment Area

Note: The below headings and content for the Agreement for Public Asset Design, Approval, Development and Handover will be subject to change and will be informed by the Project Area's status and priorities.

- (a) Approval Requirements
- (b) Asset Design and Specification Requirements
- (c) Construction Phase Requirements
- (d) Handover Phase Requirements