

2018

**THE STATE OF WESTERN AUSTRALIA  
ACTING THROUGH  
THE MINISTER FOR LANDS**

**AND**

**CITY OF SUBIACO**

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**MEMORANDUM OF UNDERSTANDING –  
KITCHENER PARK & SUBIACO OVAL**

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Department of Planning, Lands and Heritage  
Lands Division  
Legal Services  
140 William Street  
PERTH WA 6000

This **Memorandum of Understanding** is made on the 9<sup>th</sup> day of February 2018

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## **BETWEEN**

The **STATE OF WESTERN AUSTRALIA** acting through the **MINISTER FOR LANDS**, a body corporate under the *Land Administration Act 1997* (WA), care of the Department of Planning, Lands and Heritage, Level 2, 140 William Street, Perth, Western Australia (**State**)

## **AND**

**CITY OF SUBIACO** of 241 Rokeby Road, Subiaco, Western Australia (**City**)

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## **BACKGROUND**

- A. The State is the owner of the Crown land comprised in the Reserves.
- B. The City has the care, control and management of the Reserves under the Management Orders.
- C. The State requires Kitchener Park for the construction of a public secondary school, which is due to commence operation in 2020.
- D. The State has constructed a new football stadium at Perth Stadium at Burswood.
- E. Subiaco Oval and Kitchener Park are no longer required for AFL football games with the move of AFL football to Perth Stadium from the commencement of the 2018 season.
- F. The City has prepared a North Subiaco Restructure Plan for an area including Subiaco Oval and Kitchener Park.
- G. The State is considering its options in relation to the redevelopment of the Precinct, and an amendment to the Subiaco redevelopment area under the MRA Act was published in the Government Gazette on 4 August 2017.
- H. The State and the City have agreed to enter into this MoU to provide for:
  - (i) the terms on which the City will agree to the revocation of the Management Orders except for Management Order G751921 in respect of Lot 12731; and
  - (ii) to provide for various matters in relation to the redevelopment of the Precinct.

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## OPERATIVE PART

### 1. DEFINITIONS, INTERPRETATION AND THE STATE'S POWERS, RIGHTS AND DUTIES

#### 1.1 Definitions

In this MoU, unless the context requires otherwise, the following words have the following meaning:

**Authority** means the Metropolitan Redevelopment Authority established by section 4 of the MRA Act.

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

**GST** has the meaning given in section 195-1 of the GST Act.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and any legislation substituted for or amending that Act.

**GST law** has the meaning given in section 195-1 of the GST Act.

**Kitchener Park** means that part of Reserve 41874 as is identified in clause 2.1 and Reserve 45294.

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

**Lot 12731** means Lot 12731 on deposited plan 219514 being the whole of the land in certificate of Crown land title volume 3006 folio 140;

**Management Order** means the management orders issued under section 46 of the LAA being in respect of:

- (i) Reserve 41874, management order number G751921 as to Lots 12731 and 12732 and management order number H502740 as to Lot 13691;
- (ii) Reserve 41875, management order number E709814;
- (iii) Reserve 45294, management order number G751922,

and **Management Orders** means all or more than one of them, as the case requires.

**Minister** means the Minister for Lands, being a body corporate continued under section 7(1) of the LAA and being the Minister to whom the administration of the LAA is from time to time committed by the Governor.

**MoU** means this Memorandum of Understanding.

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

**Party** means each of the State and the City, and **Parties** means both of them.

**Precinct** means the area generally bounded by Roberts Road to the south, Haydn Bunton Drive to the west, Coghlan Road to the east and the railway line to the north.

**Reserve 41874** means all of the land comprised in:

- (i) Lot 12731;
- (ii) Lot 12732 on deposited plan 219514 being the whole of the land in certificate of Crown land title volume 3093 folio 159;
- (iii) Lot 13691 on deposited plan 220984 being the whole of the land in certificate of Crown land title volume 3115 folio 996.

**Reserve 41875** means all of the land comprised in lot 11519 on deposited plan 217506 being the whole of the land in certificate of Crown land title volume 3093 folio 27.

**Reserve 45294** means all of the land comprised in lot 12733 on deposited plan 219514 being the whole of the land in certificate of Crown land title volume 3109 folio 428.

**Reserves** means Reserve 41874, Reserve 41875 and Reserve 45294.

**Subiaco Oval** means the balance of Reserve 41874 not comprising Kitchener Park nor Lot 12731.

**Subiaco Oval playing surface** means the playing surface of the oval provided for in the redevelopment of the Precinct.

**Taxable Supply** has the meaning given in section 195-1 of the GST Act.

**Tax Invoice** has the meaning given in section 195-1 of the GST Act.

**WAFC** means the Western Australian Football Commission.

**WAPC** means the Western Australian Planning Commission established by the *Planning and Development Act 2005* (WA).

## **1.2 Interpretation**

In this MoU, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this MoU;



- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include every gender;
- (d) a reference to a thing includes a part of that thing;
- (e) a reference to a clause or Party is a reference to a clause of or Party to, this MoU;
- (f) a reference in this MoU to a sub-clause or paragraph is a reference to a sub-clause or paragraph in the clause or definition in which the reference appears;
- (g) where the day on or by which a thing is required to be done is not a Business Day that thing must be done on or by the succeeding Business Day;
- (h) no rules of construction apply to the disadvantage of a party because that party was responsible for the drafting of this MoU or of any part of it;
- (i) a reference to a party, if that party ceases to exist or is reconstituted, renamed or replaced, or its powers or functions are transferred to any other person, refers respectively to the person established or constituted in its place or succeeding to its powers or functions
- (j) a reference to a statute, regulation, proclamation, order or by-law includes every statute, regulation, proclamation, order or by-law varying, consolidating or replacing it, and a reference to a statute includes every regulation, proclamation, order and by-law issued under that statute;
- (k) a reference to "including" is to be read as "including, without limitation"; and
- (l) words used in this MoU which are not expressly defined in this MoU but which are defined in the LAA or the GST Act have the meaning given to them under the LAA or the GST Act as the case may be.

### **1.3 No Fetter**

The City agrees nothing in this MoU fetters, controls or derogates from the exercise by any person (including the Minister, the Minister for Planning, the WAPC or the Authority) of a statutory power or discretion otherwise than in accordance with the statute.

To the extent of any inconsistency between the exercise of a statutory power or discretion and this MoU, the exercise of the statutory power or discretion prevails.

Except as provided in this clause, the State will perform its obligations under this MoU in accordance with its terms.

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## **2. KITCHENER PARK AND MASTER PLANNING**

### **2.1 Kitchener Park Area**

The part of Reserve 41874 (excluding Lot 12731) to be comprised in Kitchener Park will be determined by the Minister at her absolute discretion, as being the area reasonably required for the construction of a public secondary school. For indicative purposes only, it will be approximately the area shaded in red on the plan attached to this MoU.

### **2.2 Revocation of Management Order for Kitchener Park**

- (a) In consideration of the State entering into this MoU and the commitments made by the State in this MoU, the City hereby agrees, subject to subclause (b) below, to the revocation of the Management Orders except for Management Order G751921 in respect of Lot 12731. The timing of the revocation after that date will be at the discretion of the Minister.
- (b) Notwithstanding any other provision of this MOU, the State covenants and agrees with the City that:
  - (i) the City will not in any circumstances bear any liability or cost in relation to revocation of the Management Orders or the interests the subject of the Management Orders (save and except for Management Order G751921); and
  - (ii) the State will indemnify and keep indemnified the City from and against all actions, suits, proceedings, costs, claims, demands, liabilities, damage and losses of whatsoever nature caused by or arising out of:
    - (A) the revocation of the Management Orders; or
    - (B) any interests the subject of the Management Orders (save and except for Management Order G751921).
- (c) Notwithstanding any other provision in this MoU, the City does not, and will not be required to, agree to the revocation of Management Order G751921 in respect of Lot 12731.

### **2.3 Public Secondary School and Precinct Principles**

The Parties agree that the following principles will be applied in the design of the high school on Kitchener Park and the master planning of the Precinct:

- (a) design excellence and functionality of the new high school is to be paramount in the master planning of the Precinct;



- (b) traffic, transport, access and parking arrangements will be suitable for all proposed uses in the Precinct, and will consider the traffic impact on Roberts Road and Hay Street;
- (c) the retention of the Subiaco Oval playing surface;
- (d) a 'green belt' link will be included to link Mueller Park to the Subiaco Oval playing surface;
- (e) given the primacy of school functionality, as much active recreation space as possible is to be included in the master planning of the Precinct;
- (f) heritage interpretation will be incorporated in the master planning of the part of the Precinct comprising Subiaco Oval;
- (g) the master planning of the Precinct will investigate and negotiate the funding, ownership and management of a site suitable for a co-shared multi-use recreation facility, with use shared between the City and the State, but no commitment as to State government funding of the facility is given in this MoU;
- (h) design of the new high school will allow for repurposing in the future as demand changes.

#### **2.4 Liaison Committee**

The State will convene a Precinct Liaison Committee which includes representatives of the Authority, Department of Education, Department of Local Government Sport and Cultural Industries, Department of Planning, Lands and Heritage, Department of Communities, Department of Finance (Strategic Projects), Metronet, the Town of Cambridge and the Mayor and Chief Executive Officer as representatives of the City.

The Precinct Liaison Committee will provide input into the master planning of the Precinct.

#### **2.5 Giving Effect**

The Parties agree that they will:

- (a) issue a joint media statement in relation to the entering into of this MoU; and
- (b) sign and complete all documents and do all things reasonably required to give effect to the matters set out in this clause 2.

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### **3. SUBIACO OVAL**

#### **3.1 Further Negotiations**

Irrespective of when the Management Orders (except for Management Order G751921 in respect of Lot 12731) are revoked, the Parties will negotiate in good faith with a view to reaching agreement in relation to:

- (a) the timing of the demolition of infrastructure on Subiaco Oval with the State bearing the cost and responsibility for demolition; and
- (b) continuation or otherwise of existing interests over Subiaco Oval including the lease to the WAFC, the allocation of liabilities in respect of those interests;
- (c) shared use of the Subiaco Oval playing surface with the State co-ordinating the entering into of shared arrangements for the use and management of the Subiaco Oval playing surface with City of Subiaco and other relevant bodies, which shall include some form of general community use and use by the City to alleviate pressure on existing playing areas.

#### **3.2 WAFC**

The City acknowledges the State is negotiating with the WAFC in relation to relocation of AFL football games to Perth Stadium and related matters. It is intended the outcome of the negotiations referred to in clauses 2.3 (h) and 3.1 will not prejudice the State's negotiations with the WAFC in relation to these matters; and the redevelopment of the Precinct will accommodate any agreement reached between the State and the WAFC.

To that end, it is intended the WAFC will be offered appropriate office accommodation at Subiaco Oval, via a short term lease from the State.

#### **3.3 Subiaco Oval Gates**

The State acknowledges that the Subiaco Oval gates are registered as a place (number 5478) on the Register of Heritage Places under the *Heritage of Western Australia Act 1990* (WA).

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### **4. GENERAL PROVISIONS**

#### **4.1 MoU Partly Binding**

The Parties agree that this MoU is intended to create legal relations and is enforceable and binding on each of the Parties, subject to clause 1.3, clause 4 and clause 5 (if applicable).



## **4.2 Relationship**

Nothing in this MoU:

- (a) creates an agency, partnership, joint venture or fiduciary relationship between the Parties;
- (b) gives a Party the power or authority to enter into any agreement or other arrangement on behalf of, or otherwise bind, the other Party in respect of any matter contemplated by this MoU.

## **4.3 Notices**

- (a) Any notice given or required to be given under this MoU must be in writing addressed as shown below:

- (i) if to the State:

Department of Planning, Lands and Heritage (**DPLH**)  
Level 2, 140 William Street  
PERTH WA 6000  
Attn: Manager, Case Management - Metropolitan and Peel  
Facsimile: (08) 6552 4417

- (ii) if to the City, to its address shown in this MoU.

- (b) A Notice must be signed by the sender or an officer of, or under the common seal, of the sender or by the sender's authorised representative (as the case may be).

## **4.4 Governing Law**

This MoU is to be governed by, and construed according to, the laws of Western Australia.

## **4.5 Costs**

Each Party is to pay its own costs including any solicitor's costs in respect of this MoU and the giving effect to or completion of any matter under it, including the negotiation and drafting of any agreements or other documents.

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# **5. GOODS AND SERVICES TAX**

## **5.1 Consideration GST exclusive**

The consideration for any Supply under this MoU is exclusive of any GST imposed on the Supply.

## 5.2 City to pay GST

The Recipient must pay any GST payable by the Supplier in respect of a Taxable Supply made under this MoU within ten (10) Business Days of demand by the Supplier, subject to clause 5.3.

## 5.3 Tax Invoice

Where GST is payable, the Supplier shall provide to the Recipient, if required by the Recipient, a Tax Invoice in the format and form required as set out in the GST law.

## 5.4 Notification is conclusive

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


**EXECUTED** by the Parties as an agreement.

The common seal of the **MINISTER FOR LANDS**, a body corporate continued under Section 7 of the *Land Administration Act 1997* (WA) was hereunto affixed in the presence of:

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)  
)  
)  
)



HON RITA SAFFIOTI MLA

  
Signature of Witness

Cecelia Smith  
Full name of Witness (print)

9 Feb 2018  
Date

The COMMON SEAL of the CITY OF SUBIACO was affixed by the authority of a resolution of council in the presence of:

  
Signature of Mayor

  
Signature of Chief Executive Officer

Penelope May Mitchell Taylor  
Full name of Mayor

Denard Stuart Burman  
Full name of Chief Executive Officer





## INDICATIVE PLAN OF KITCHENER PARK AREA - CONFIDENTIAL

