

Schedule 8 - Commercial and Industrial Land

Item 1 - Maps

Part A - Map of Corporate Headquarters

Part B - Map of Lot 601

Part C - Map of Bluff Point

Part D - Map of Narngulu Lots

Part E - Map of Oakejee Lots

Part F - Map of Oakajee Revenue Stream

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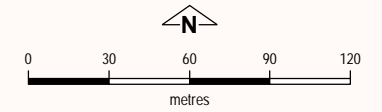
Yamatji Nation Indigenous Land Use Agreement

Corporate Headquarters

Schedule 8, Item 1, Part A
Land tenure as at October 2019

Legend

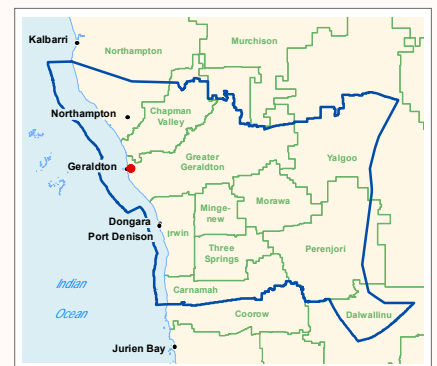
-  Corporate Headquarters
-  Freehold
-  Unallocated Crown Land
-  Crown Reserves



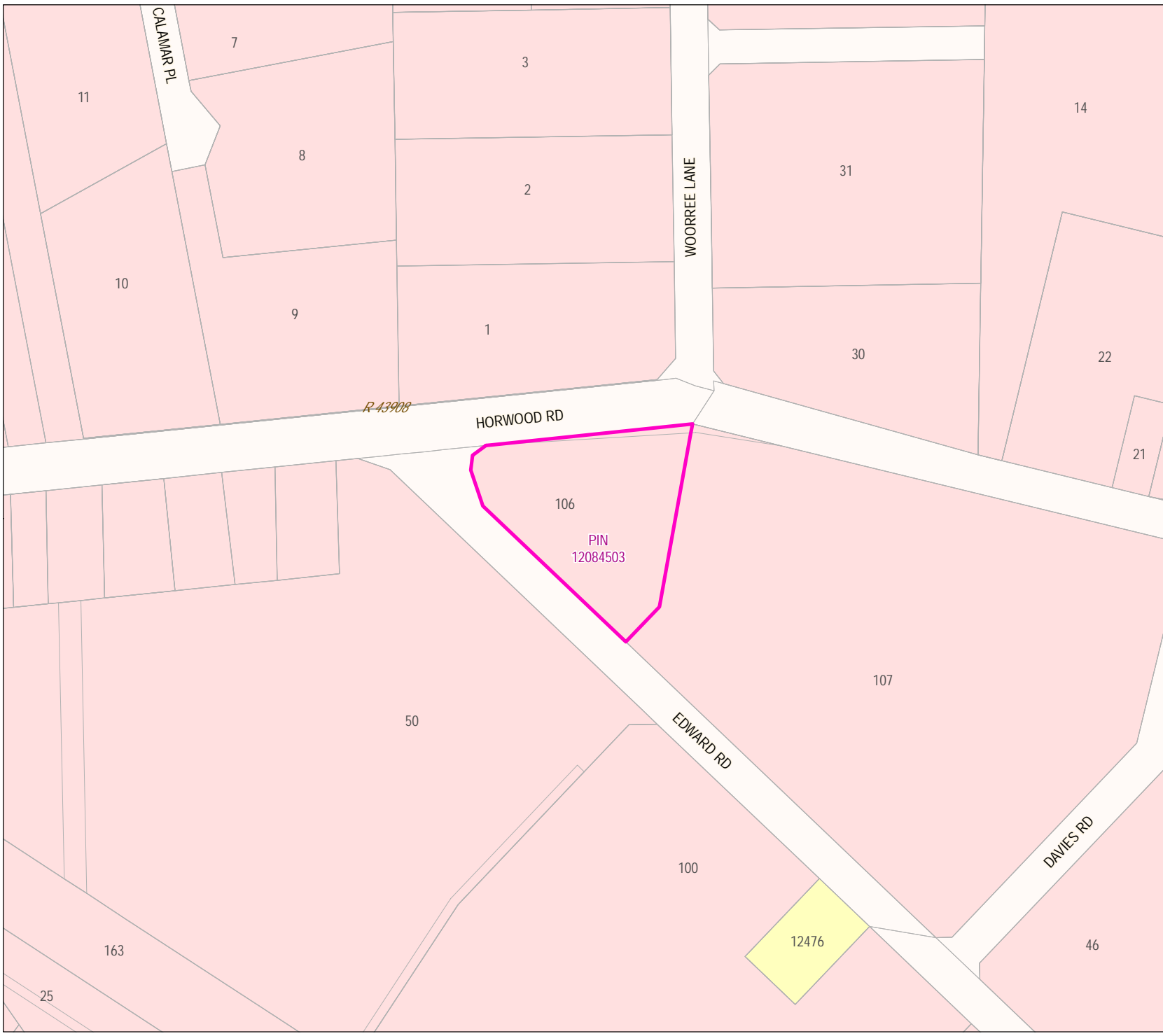
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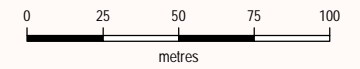
Yamatji Nation Indigenous Land Use Agreement

LandCorp lot 601

Schedule 8, Item 1, Part B
Land tenure as at October 2019

Legend

-  LandCorp lot 601
-  Freehold
-  Crown Reserves



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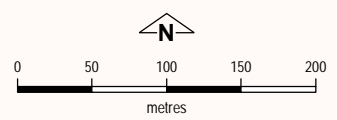
Yamatji Nation Indigenous Land Use Agreement

Bluff Point

Schedule 8, Item 1, Part C
Land tenure as at October 2019

Legend

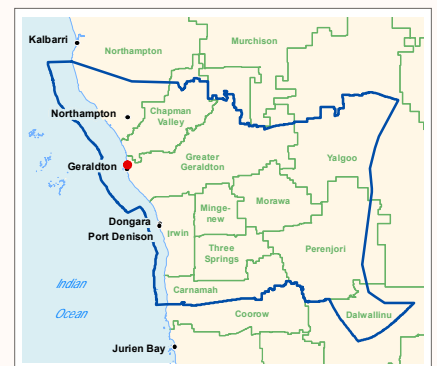
-  Bluff Point lot
-  Freehold
-  Crown Reserves



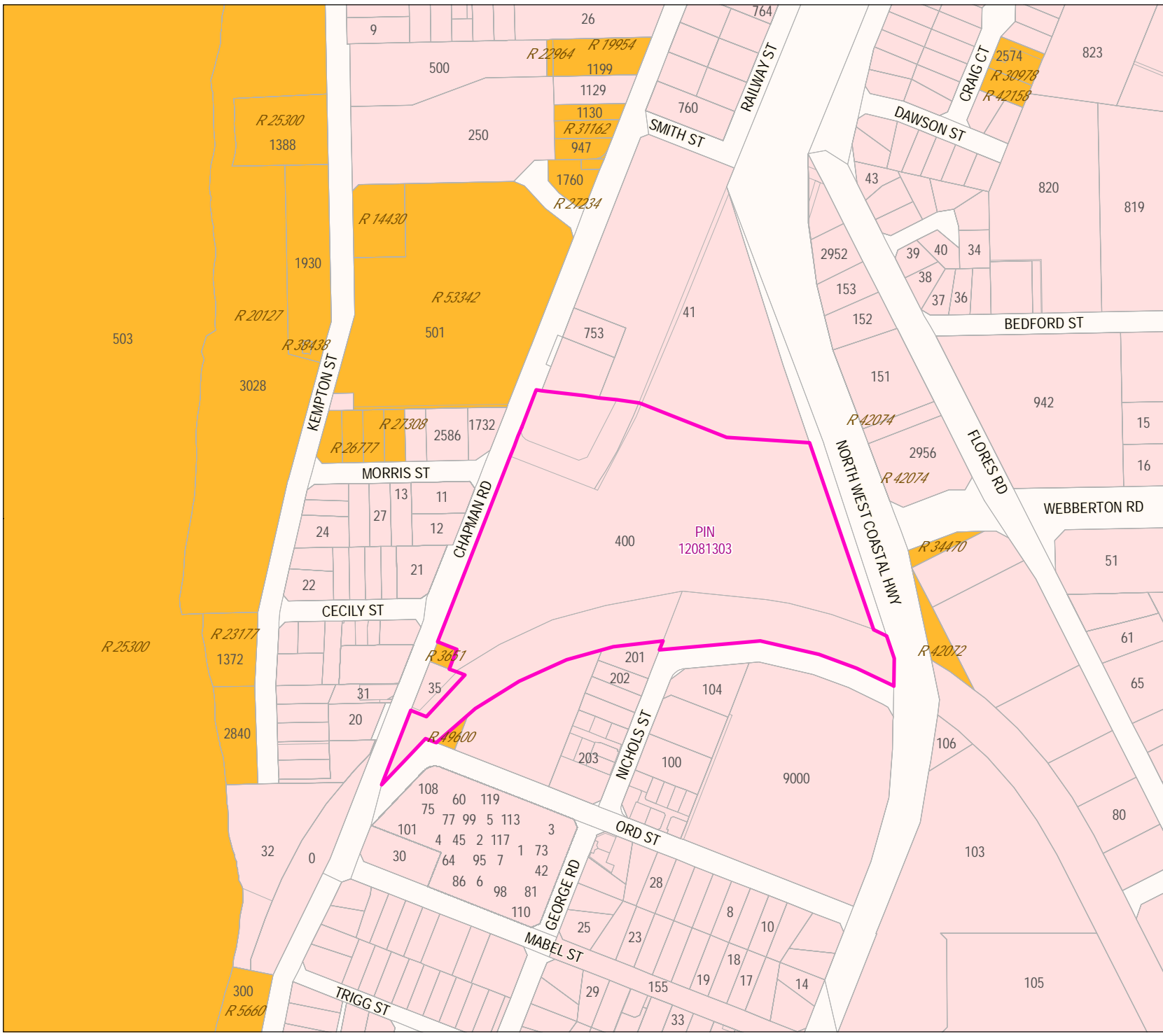
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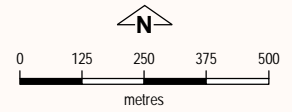
Yamatji Nation Indigenous Land Use Agreement

Narngulu industrial lot

Schedule 8, Item 1, Part D
Land tenure as at October 2019

Legend

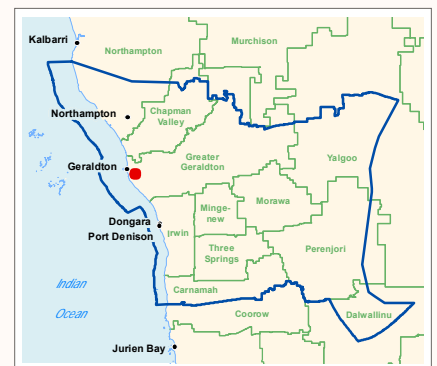
-  Narngulu industrial
-  Freehold
-  Unallocated Crown Land
-  Crown Reserves



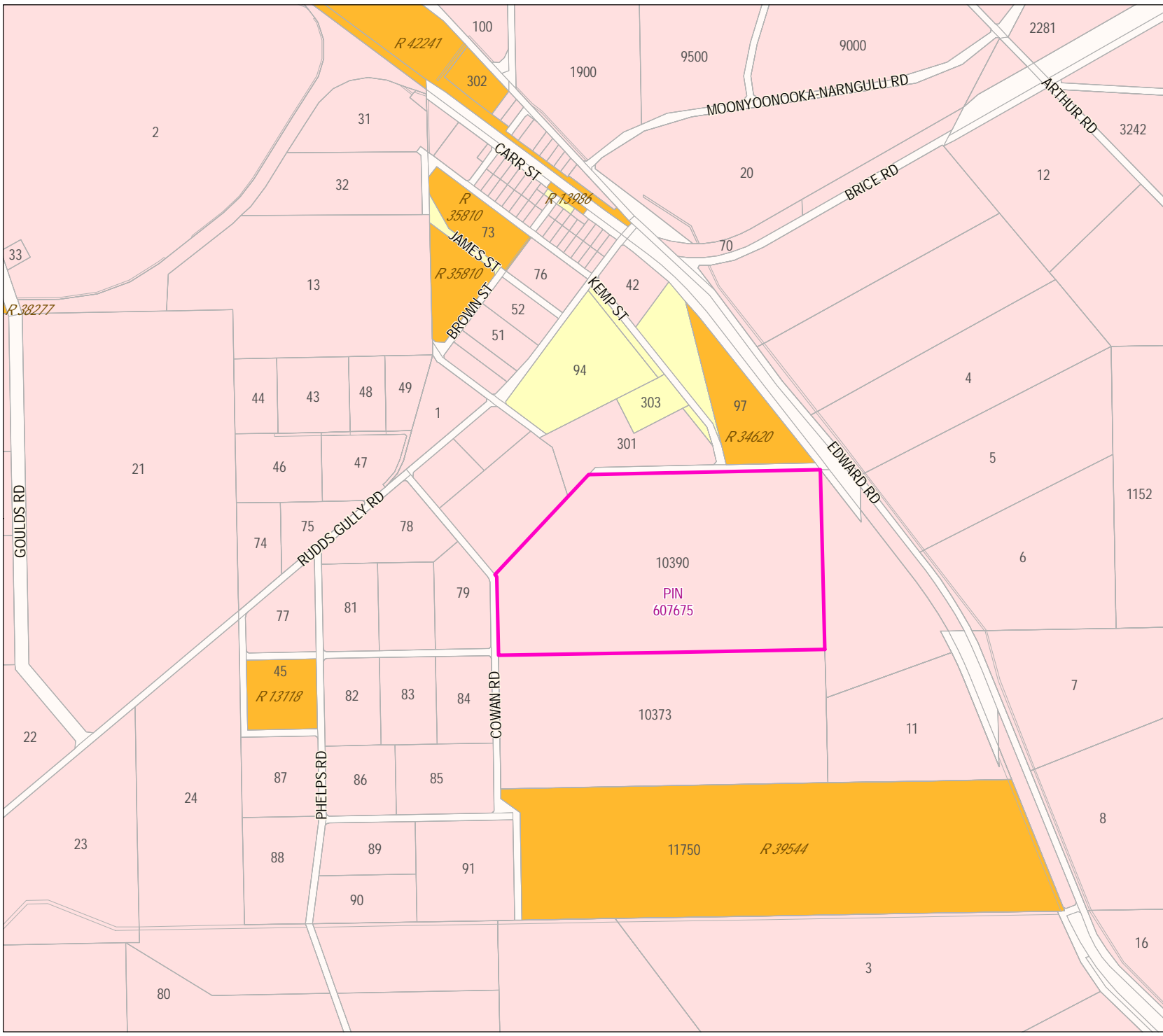
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


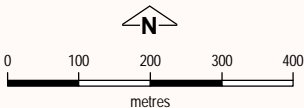
365
**Yamatji Nation
Indigenous Land Use
Agreement**

Oakajee lots

Schedule 8, Item 1, Part E

Legend

-  Oakajee lots
-  Cadastre



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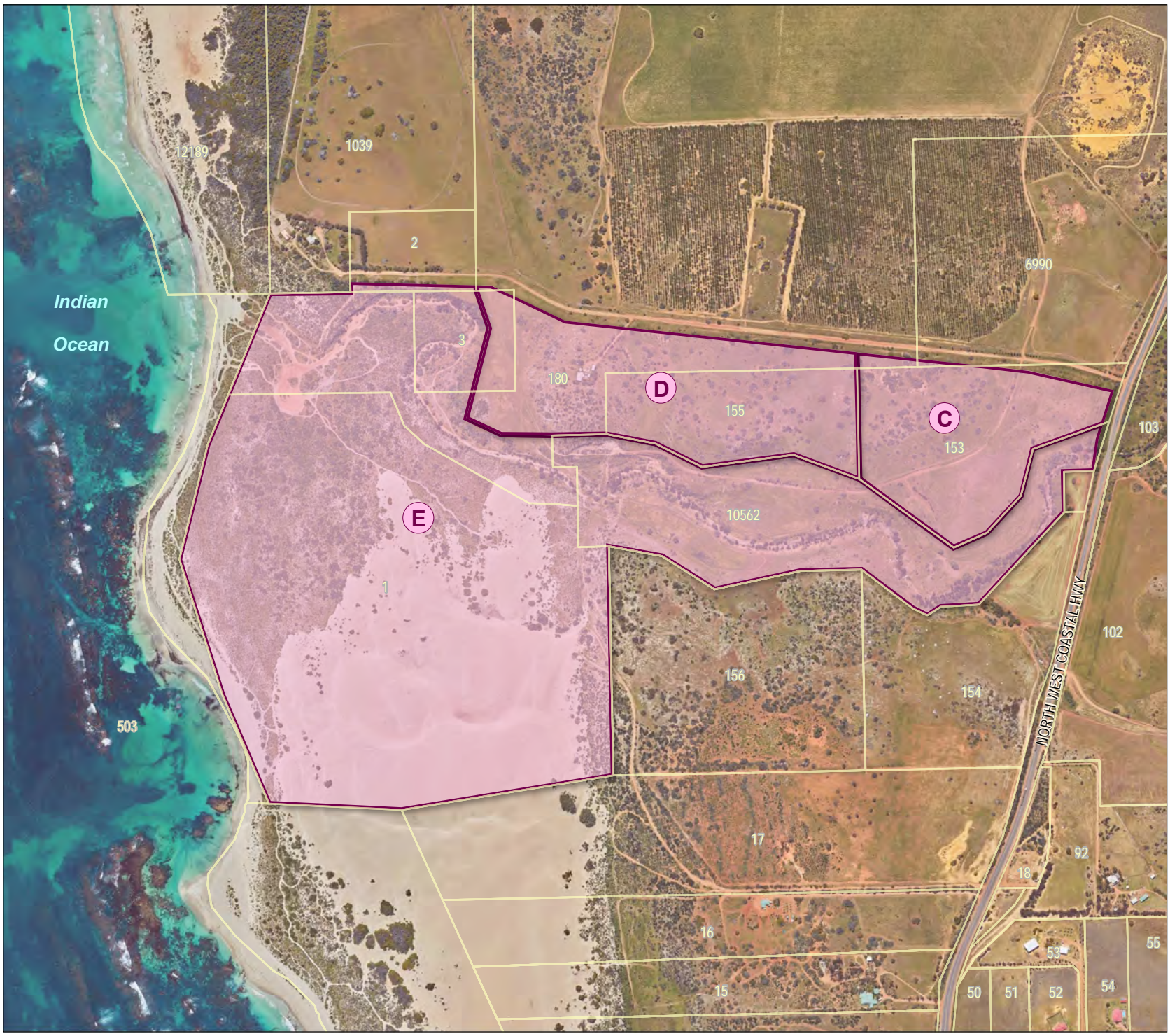
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Yamatji Nation Indigenous Land Use Agreement

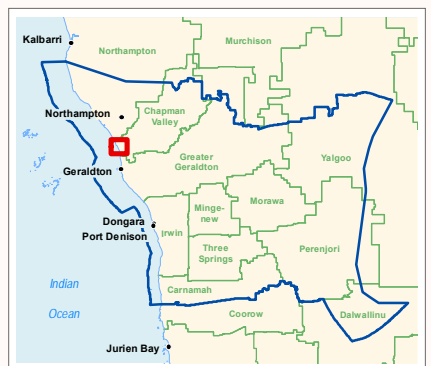
Oakajee Revenue Stream

Schedule 8, Item 1, Part F

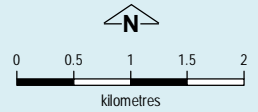
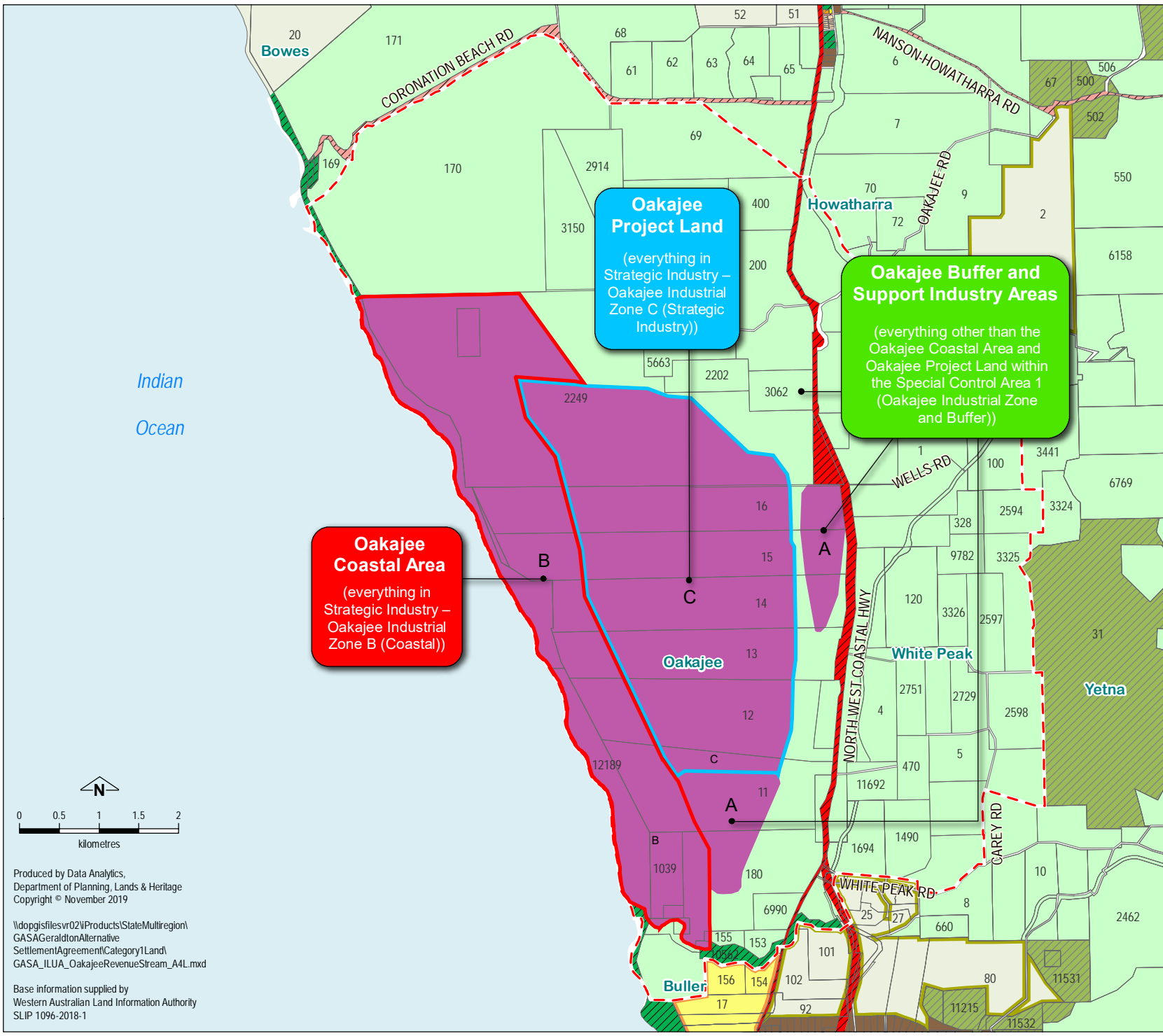
Legend

- SCA1 - Special Control Area 1 (Oakajee Industrial Zone and Buffer)
- Local Planning Scheme - Zones and Reserves

- Civic and community
- Emergency Services
- Environmental conservation reserve
- General rural
- Local distributor road
- Primary distributor road
- Public open space
- Residential
- Rural
- Rural smallholdings
- Strategic industry; Zone A, B & C
- Rural residential
- Urban development
- Local road; No zone



Index to map area



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Schedule 8 - Commercial and Industrial Land

Item 2 - Sales Contract for Lot 601 [

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CONTRACT OF SALE**- INDUSTRIAL & COMMERCIAL/MULTI-RESIDENTIAL LAND -**

BETWEEN **WESTERN AUSTRALIAN LAND AUTHORITY** trading as DevelopmentWA of Level 6, 40 The Esplanade, Perth, Western Australia (**DevelopmentWA**).

AND

(Print Full Name of Buyer)

as joint tenants/tenants in common (circle appropriate)

(Contact Telephone Number)

(Facsimile Number)

(Email)

(Address) **(Buyer)**

DevelopmentWA agrees to sell and the Buyer agrees to purchase the Land specified in the Schedule for an estate in fee simple for the Purchase Price and on the terms specified in the Schedule and subject to the DevelopmentWA Standard Industrial and Commercial/Multi-Residential Conditions (**the Conditions**) attached as Annexure A.

SCHEDULE**Description of Land**

Lot 601 on Deposited Plan 62176 and being the whole of the land in Certificate of Title Volume 2724 Folio 998

Settlement Date

As indicated in the Yamatji Indigenous Land Use Agreement between DevelopmentWA, the Buyer and others dated [] (Yamatji ILUA)

Purchase Price (inclusive of GST)

In accordance with the terms of the Yamatji ILUA

Deposit

Nil

Development/Design Guidelines

Any Development/Design Guidelines (if any) required by the City of Greater Geraldton Planning Scheme No1 as amended from time to time and any other planning requirement of any government agency department or authority.

Approved Purpose

As permitted by the City of Greater Geraldton Planning Scheme No.1 as amended from time to time.

Latest Date for Commencement of Construction of Development

Within 24 months of the Settlement Date.

Latest Date for Practical Completion of Development

As soon as practicable after the Commencement of Construction

Latest Date for Issue of Title

Not applicable

Latest Date for Finance Approval

Not applicable

Maximum Amount of Loan

Not applicable

Special Conditions

The Buyer acknowledges and agrees that the Land is encumbered by and is sold and transferred subject to an easement burden created under section 167 of the Planning and Development Act for electricity purposes to Electricity Networks Corporation as shown on Deposited Plan 62176

If the Buyer is an individual(s), sign below:

SIGNED by the Buyer(s) _____ Witness _____ Date _____

SIGNED by the Buyer(s) _____ Witness _____ Date _____

OR

If the Buyer is a Company, sign below:

EXECUTED by:

(Print Company Name)

(ACN)

In accordance with section 127 of the Corporations Act by or in the presence of:

Signature of Director/Sole Director

Signature of Director/Secretary

Print Full Name of Director/Sole Director

Print Full Name of Director/Secretary

Date: _____

SIGNED on behalf of the **WESTERN AUSTRALIAN LAND AUTHORITY** by person(s) authorised by its Board in accordance with Section 45(2)(b) of the Western Australian Land Authority Act 1992.

Authorised Officer

Authorised Officer

Full Name of Authorised Officer

Full Name of Authorised Officer

Date

DevelopmentWA's solicitor/settlement agent: DevelopmentWA – Conveyancing

Phone: 9482 7499

Fax: 9482 7401

Email: conveyancing@developmentwa.com.au

The Buyer appoints the solicitor or settlement agent named below to act on their behalf in relation to this transaction.

Buyer(s) solicitor/settlement agent: _____

Phone: _____

Fax: _____

Email: _____

Signed by the Buyer(s): _____

A true copy of this document has been received by each of the signatories to this document.

Annexures:

1. Annexure A: DevelopmentWA Standard Industrial and Commercial/Multi-Residential Conditions;

ANNEXURE A – STANDARD CONDITIONS

DEVELOPMENTWA STANDARD INDUSTRIAL AND COMMERCIAL/MULTI-RESIDENTIAL CONDITIONS

Where comments are made in boxes in relation to any Conditions these comments are a general guide only and are not legally binding. If a comment is not made, it does not mean the Condition is not important. A prospective Buyer should obtain legal or other advice (if required) in relation to these Conditions or any other conditions before signing this Contract.

1 DEFINITIONS AND INTERPRETATION

1.1 In these Conditions and the Contract unless the contrary intention appears:

Act means the Western Australian Land Authority Act 1992 (WA).

Amount of the Loan means an amount equal to or less than the amount in the Schedule under the heading entitled 'Maximum Amount of Loan'. If there is no amount referred to in the Schedule under the heading entitled 'Maximum Amount of Loan', then the amount will be an amount equal to or less than 80% of the Purchase Price.

Approved Plans means plans and specifications for the Development:

- (a) in accordance with the Development/Design Guidelines (if any);
- (b) in accordance with the requirements of any Authority; and
- (c) approved by DevelopmentWA in writing in accordance with Condition 17.

Approved Purpose means the approved purpose specified in the Schedule or as otherwise approved by DevelopmentWA pursuant to Condition 19.1.

Authority means any governmental, semi-governmental, statutory, local or public authority including without limitation the Local Authority, Department of Environment Regulation, the Commission, the Water Corporation, the Main Roads Department, 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 Approved Purpose 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 by-law.

Bank Cheque means a cheque drawn by a Bank on itself or a financial institution as defined in Section 3 of the Cheques Act 1986 (Commonwealth).

Building Ready Specifications means the specifications governing the building requirements for connection of the Development to the Network Infrastructure, a copy of which can be obtained from DevelopmentWA upon request.

Business Day means a day on which banks open for business in Perth, Western Australia excluding a Saturday, Sunday or public holiday.

Buyer's Conveyancer means any solicitor or settlement agent instructed by the Buyer to act for the Buyer on the Contract and of which appointment DevelopmentWA has been given notice.

Buyer's Obligations means all or any of the obligations and agreements contained or implied in the Contract (whether present, future, actual or contingent) to be observed and performed by the Buyer prior to or after Settlement.

Claim means any right, cause of action, charge, claim, action, proceedings, judgment, damage, injury, Loss, cost (including legal costs on a full indemnity basis), expense or liability incurred to or made or recovered against any person or entity howsoever arising and whether present, unascertained, immediate, future or contingent.

Commencement of Construction means all works preliminary to the construction of the Development including the fencing of the Land, construction of all earthworks and the construction of footings to the Main Building.

Commission means the Western Australian Planning Commission.

Conditions means these conditions for the sale of the Land.

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

Contamination has the meaning given in section 4 of the Contaminated Sites Act.

Contract means the contract for sale of the Land of which these Conditions form part. Any reference in these Conditions to the Contract shall refer to both these Conditions and the terms of the Contract.

Contract Date means the date on which DevelopmentWA executes this Contract.

Deposit means the deposit specified in the Schedule.

Development means the construction of buildings facilities and infrastructure on the Land for the Approved Purpose and in accordance with the Approved Plans.

Development/Design Guidelines means the Development/Design Guidelines and/or the provisions of a Detailed Area Plan and any other planning requirement (if any) relating to the development of the Land including landscaping and car parking.

DevelopmentWA means the Western Australian Land Authority trading as DevelopmentWA (formerly known as LandCorp) as seller of the Land to the Buyer.

DevelopmentWA's Remedies means all or any of the rights powers and remedies contained in or implied by the Contract or at common law or in equity exercisable by DevelopmentWA against the Buyer or in respect of the Land.

Electronic Conveyancing National Law means the law set out in the Appendix to the Electronic Conveyancing (Adoption of National Law) Act 2012 (NSW) applying in Western Australia because of the Electronic

Conveyancing Act 2014 (WA);

Electronic Lodgement Network has the same meaning as in section 13 of the Electronic Conveyancing Act 2014 (WA);

Electronic Lodgement Network Operator means a person approved by Landgate under section 15 of the Electronic Conveyancing Act 2014 (WA) to provide and operate Electronic Lodgement Network;

Electronic Workspace means a shared electronic workspace generated by the Electronic Lodgement Network;

Finance Application means an application made by or on behalf of the Buyer to the Lender to lend the Amount of the Loan.

Finance Approval means a written approval by the Lender of the Finance Application or a written offer to lend or a written notification of an intention to offer to lend made by the Lender (any such approval, offer or notification must be in a letter form but may be given to DevelopmentWA attached to an email).

Financial Institution means an authorised deposit-taking institution within the meaning of the *Banking Act 1959* (Cth), building society or credit union.

GST means the Goods and Services Tax as imposed by the GST Act including, where relevant, any related interest, penalties, fines or other charge and, any GST equivalent amount under any State Intergovernmental Agreement.

GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth) and any legislation substituting or amending that Act.

Input Tax Credit has the same meaning given in Section 195-1 of the GST Act.

Insolvency Event means any of the following:

- (a) a person is or states that the person is unable to pay from the person's own money all the person's debts as and when they become due and payable;
- (b) a person is taken or must be presumed to be insolvent or unable to pay its debts under any applicable legislation;
- (c) an administrator, provisional liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of a corporation or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within seven (7) days;
- (d) a receiver or receiver and manager is appointed in respect of any property of a corporation;
- (e) a corporation is deregistered under the Corporations Act or notice of its proposed deregistration is given to the corporation;
- (f) a distress, attachment or execution is levied

or becomes enforceable against any property of a person;

- (g) a person enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the person's creditors or members of a moratorium involving any of them;
- (h) a petition for the making of a sequestration order against the estate of a person is presented and the petition is not stayed, withdrawn or dismissed within seven (7) days or a person presents a petition against himself or herself;
- (i) a person presents a declaration of intention under section 54A of the *Bankruptcy Act 1966* (Cth); or
- (j) anything analogous to or of a similar effect to anything described above under the Law of any relevant jurisdiction occurs in respect of a person.

Land means the land specified in the Schedule.

Landgate means the Western Australian Land Information Authority, a statutory body corporate established by the Land Information Authority Act 2006 and trading as Landgate.

Latest Date for Finance Approval means the date specified in the Schedule.

Lender means any bank, building society, credit union or other institution as specified in the Contract or if not specified then any bank, building society, credit union or other institution which makes loans and is carrying on business in Western Australia but not including a mortgage broker (or similar).

Local Authority means the local authority having jurisdiction over the Land.

Loss means a financial loss, damage, costs or expense (including indirect or consequential loss).

Main Building means the main building to be constructed as part of the Development excluding car parking and landscaping.

Material Adverse Effect means a significant negative effect or change on the ability of the Buyer to carry out the Development or the value or use of the Land and which is caused directly as a result of:

- (a) the delay in the issue of the Certificate of Title for the Land; or
- (b) an encumbrance registered or to be registered by an Authority or DevelopmentWA after the Contract Date,

(as applicable).

Materially Prejudice or Detrimentially Affect means a variation to the final Lot following subdivision which results in:

- (a) where the variation is to the area of the Land, the area of the Land at Settlement is more than 5% less than the estimated area of the Land on the Contract Date;
- (b) where the variation is any other matter other than

a variation to the area of the Land, the value of the Land decreasing by more than 5%; or

- (c) the use of the Land for the proposed Development being materially prejudiced or detrimentally affected.

Network Infrastructure means the physical infrastructure of the high speed broadband fibre optic network to be installed on or in the Land including all fibre, cables, electronic devices and equipment, ducts, poles, towers, cabinets, housing and any other active and passive equipment and distribution infrastructure, but not including the Pit and Pipe Works, any existing pit and pipe infrastructure, lead-in conduit, the network termination unit or the power supply unit and related cable at the Development.

Non Approval Notice means a written notice given by the Buyer or the Buyer's conveyancer or real estate agent or the Lender to DevelopmentWA to the effect that Finance Approval has been rejected together with written evidence from the Lender that the Lender has rejected the Finance Application such evidence to be as required by DevelopmentWA (acting reasonably).

OSR means the office established by the Commissioner of State Revenue and known as the Office of State Revenue.

Party means DevelopmentWA and the Buyer and, if applicable, any other party to the Contract and **Parties** means all the parties to the Contract.

Pit and Pipe Works means the physical infrastructure, including all pits, pipes, conduits and any other materials to be designed and constructed by DevelopmentWA necessary to properly service the estate in which the Land is located and to properly service the Development with the Network Infrastructure.

Pollution has the same meaning as that expression is given in the Environmental Protection Act 1986 (WA).

Practical Completion means the completion of the construction of the Development on the Land to the satisfaction of DevelopmentWA in conformity with plans and specifications approved by all relevant Authorities, the Approved Plans and Condition 17 and is to be evidenced by the following as DevelopmentWA may require:

- (a) delivery to DevelopmentWA of:
- (i) a certificate from the Buyer's architect or builder certifying that the Development has been constructed or completed on the Land according to the Approved Plans;
 - (ii) a copy of written permission from the Local Authority for the occupation of the whole of the Development; and/or
 - (iii) such other form as may be required for the occupation of the Development; and/or
- (b) inspection by or on behalf of

DevelopmentWA.

Prescribed Rate means the rate defined as the Prescribed Rate in the latest version of the Real Estate Institute of WA (Inc) and Law Society of WA Inc Joint Form of General Conditions for the Sale of Land (**Joint Form**).

Purchase Price means the purchase price specified in the Schedule.

Remediation and Remediate has the meaning given in section 3 of the Contaminated Sites Act and includes the management of any contaminated site.

Repurchase Costs means the costs specified in Condition 22.5.

Repurchase Notice means the notice given in accordance with Condition 22.2.

Repurchase Price means the repurchase price as defined in Condition 22.3 or Condition 22.4.

Repurchase Settlement means the settlement of the repurchase of the Land by DevelopmentWA pursuant to Condition 22.

Schedule means the schedule to the Contract.

Services means all services to the Land including water, drainage, sewerage, gas, electricity and telecommunications.

Settlement means settlement of the purchase of the Land by the Buyer in accordance with the terms of the Contract.

Settlement Date means the date specified in the Schedule.

Special Conditions means any conditions under the heading "Special Conditions" in the Schedule (if any).

Subscriber has the meaning given to that term in the Electronic Conveyancing National Law.

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

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

Transfer means a form for the transfer of title to the Land as required by Landgate.

Valuer means a natural person who:

- (a) is licensed under the Land Valuers Licensing Act 1978 (WA);
- (b) has not less than five (5) years experience in Western Australia;
- (c) is a member of the Australian Property Institute (Western Australian Division); and
- (d) has experience in assessing the current market value of land similar to the Land.

1.2 In these Conditions (and, where applicable, the Contract) unless the contrary intention appears:

- (a) headings in the Schedule are defined terms when used in this Contract with the meaning of such term immediately following the heading;
- (b) words importing the singular include the plural

- and vice versa;
- (c) words importing any gender include the other genders;
- (d) other grammatical forms of defined words and expressions have corresponding meanings;
- (e) references to persons include corporations and bodies politic;
- (f) references to a person include the legal personal representatives successors and assigns of that person;
- (g) a reference to a Statute Ordinance Code or other Law includes regulations and other statutory instruments under it and consolidations amendments re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- (h) references to this or any other document include the document as varied or replaced and notwithstanding any change in the identity of the Parties;
- (i) references to writing include any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;
- (j) an obligation of two or more parties binds them jointly and severally;
- (k) if a word or expression is defined cognate words and expressions have corresponding definitions;
- (l) references to an association body or authority which is reconstituted amalgamated reconstructed or merged or the functions of which have become exercisable by any other person association body or authority in its place shall be taken to refer to the person association body or authority established or constituted in its place or by which its functions have become exercisable;
- (m) reference to any thing (including without limitation any amount or the Land) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (n) reference to a month and cognate terms means a period commencing on any day of a calendar month and ending on the corresponding day in the next succeeding calendar month but if a corresponding day does not occur in the next succeeding calendar month the period shall end on the first day of the next succeeding calendar month;
- (o) references to the Contract or these Conditions includes any schedules and annexures;
- (p) except for the headings in the Schedule to the Contract, headings are inserted for ease of reference only and shall be ignored in construing these Conditions or the Contract;
- (q) references to time are to local time in Perth Western Australia;
- (r) where time is to be reckoned from a day or event that day or the day of that event shall be excluded;
- (s) the word "include" used when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind;
- (t) a provision of these Conditions or the Contract must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of this Contract or the inclusion of the provision in these Conditions or the Contract;
- (u) terms defined in these Conditions have the same meaning when used in the Contract; and
- (v) any comments included in boxes are a general guide only and are not terms of these Conditions or legally binding on the Parties.

2 PAYMENT OF PURCHASE PRICE AND SETTLEMENT

2.1 The Buyer must pay:

- (a) the Deposit in the manner specified in the Schedule; and
- (b) the balance of the Purchase Price (being the Purchase Price less the Deposit together with any adjustments due at Settlement) on the Settlement Date by an unendorsed Bank Cheque payable to DevelopmentWA or as DevelopmentWA may nominate.

2.2 DevelopmentWA is entitled (but not bound) to invest or to cause the investment of any Deposit in an interest bearing bank account and all interest accrued will belong to DevelopmentWA unless the Deposit is repaid to the Buyer as a result of the default of DevelopmentWA in which case interest (less any bank charges and taxes) will be payable to the Buyer.

2.3 If the Buyer:

- (a) does not pay the Deposit in full as required by the Contract; or
- (b) pays the Deposit by cheque and that cheque is dishonoured on presentation,

then DevelopmentWA may give the Buyer a notice requiring the Deposit to be paid or the cheque to be honoured within 48 hours of service of such notice.

2.4 If a notice issued under Condition 2.3 is not complied with (in the prescribed time), then unless otherwise provided in the notice:

- (a) the Buyer is in default; and
- (b) DevelopmentWA may terminate the Contract by

giving notice to the Buyer but without prejudice to the rights and remedies available to DevelopmentWA under the Contract, common law or in equity.

3 INTEREST ON LATE SETTLEMENT AND DEFAULT COSTS

- 3.1** If for any reason not attributable to DevelopmentWA the purchase is not completed on the Settlement Date, the Buyer must pay to DevelopmentWA on Settlement interest at the Prescribed Rate per annum on the balance of the Purchase Price and other moneys payable at Settlement.
- 3.2** The interest payable by the Buyer will be calculated on a daily basis from and including the Settlement Date but excluding the actual date of payment and will be in full settlement of any claim DevelopmentWA may have against the Buyer arising from such delay subject to the provisions of Condition 36.
- 3.3** DevelopmentWA is not required to give to the Buyer a notice requiring payment of interest under this Condition. In all other respects this Condition is without prejudice to the rights of DevelopmentWA under these Conditions or at common law or in equity.

4 ADJUSTMENT OF RATES

- 4.1** All rates taxes assessments and other outgoings in respect of the Land must be borne and paid by the Buyer as from the earlier of the actual date the Buyer is granted possession or the Settlement Date (subject to Condition 4.2) and the same must if necessary be apportioned between DevelopmentWA and the Buyer. Where under the Act DevelopmentWA is not liable to pay rates and taxes to any Authority in respect of the Land but is obliged to pay the equivalent of such rates and taxes to the State then this Condition shall apply as if such payment was a payment due to a Local Authority or other Authority for rates, taxes and outgoings and an adjustment will be effected if necessary.
- 4.2** Where there is any delay in Settlement due to the act or default of the Buyer then:
- (a) rates, taxes and outgoings will be adjusted as between DevelopmentWA and the Buyer on the Settlement Date and not the actual date of Settlement; and
 - (b) if any increase in Land Tax or any other rates and taxes payable by DevelopmentWA (either to an Authority or an equivalent amount is payable by DevelopmentWA to the State) occurs (for example, by the Settlement being delayed until after 1 July in any year), the Buyer is liable for all such additional payments (including any increase in Land Tax calculated on a multi ownership basis) which amount is due and payable to

DevelopmentWA at Settlement.

- 4.3** Subject to Condition 4.4, Land Tax will be adjusted on the basis that the Land is the only land owned by DevelopmentWA (i.e. on a single holding/single ownership basis). If Land Tax is payable on the Land at Settlement, the Buyer agrees that DevelopmentWA may, at its election, require that the Buyer pays for its proportion of Land Tax at Settlement on the basis that DevelopmentWA undertakes to pay the Land Tax payable on the Land for the relevant financial year at a later date.
- 4.4** If the Land has recently been subdivided and has not been individually rated for Land Tax as at Settlement the Buyer must pay to DevelopmentWA at Settlement a contribution to Land Tax calculated as follows:

$$LT = \frac{\text{Total LT}}{\text{Total Area}} \times \text{Land Area}$$

Where:

LT is the Land Tax contribution payable by the Buyer at Settlement.

Total LT is the Land Tax for the parent lot of which the Land forms part.

Total Area is the total area of the parent lot of which the Land forms part.

Land Area is the total area of the Land.

5 PREPARATION OF TRANSFER AND SETTLEMENT

- 5.1** This condition only applies if Condition 42 (Electronic Conveyancing) does not apply.
- 5.2** Prior to the Settlement Date the Buyer must prepare or cause to be prepared a transfer of the Land in registrable form and which must comply with Condition 30(c) and after proper execution of such transfer and having such transfer endorsed with duty must deliver such transfer to DevelopmentWA or its solicitor or settlement agent within a reasonable time prior to Settlement (being not less than five (5) Business Days prior to the Settlement Date) for the purposes of the transfer being executed by DevelopmentWA and being held by it or on its behalf pending Settlement.
- 5.3** The Buyer is entitled to request in writing that DevelopmentWA sign and return the transfer for the Land prior to it being endorsed with duty at the OSR provided that accompanying such written request is an assessment of duty payable on the Contract issued by the OSR or if duty payable on the Contract is to be assessed and paid through the Revenue Online system developed by the OSR (Revenue Online), a Transaction Summary generated through Revenue Online (Transaction Summary). If DevelopmentWA returns the land transfer to the Buyer prior to Settlement the Buyer holds such land transfer in escrow pending Settlement. If the Buyer or its representative is registered for, and has elected to have duty on the Contract assessed and paid through Revenue Online then the Buyer or its representative must:
- (a) advise DevelopmentWA that it has elected to have duty on the Contract assessed and paid through Revenue Online;

- (b) the Buyer must within five (5) Business Days after the Transaction Summary is generated provide to DevelopmentWA a copy of the Transaction Summary; and
- (c) on Settlement, the Buyer must provide to DevelopmentWA a copy of the Certificate of Duty issued by the OSR for duty paid on the Contract.

- 5.4 Settlement must take place on the Settlement Date at the offices of DevelopmentWA in Perth or at such other place in Perth as DevelopmentWA appoints.
- 5.5 At Settlement, the Buyer must deliver to DevelopmentWA in accordance with Condition 2.1(b) an unendorsed Bank Cheque or Bank Cheques for the balance of the Purchase Price and any adjustment of rates and taxes due to DevelopmentWA and against receipt of the balance of the Purchase Price and adjustment of rates and taxes or otherwise, DevelopmentWA will provide to the Buyer, subject to the Buyer's compliance with Condition 5.2, the transfer duly executed for and on behalf of DevelopmentWA together with the duplicate Certificate of Title to the Land (if issued).
- 5.6 If for any reason a Bank Cheque tendered as or towards the money payable by the Buyer on Settlement is not honoured on first presentation, the Buyer will remain liable to pay the amount of that money, without prejudice to any other rights, remedies or powers of DevelopmentWA under the Contract.
- 5.7 The Buyer must provide to DevelopmentWA either prior to Settlement or after Settlement (as specified by DevelopmentWA) a copy of the Contract including these Conditions endorsed with duty.
- 5.8 Immediately after Settlement, the Buyer must cause the transfer in respect of the Land to be lodged at Landgate for registration and use its best endeavours to have the transfer registered as soon as possible. In the event of a requisition notice being issued by Landgate, then unless the requisition arises from a document prepared by DevelopmentWA, the Buyer must do all things necessary to satisfy the requisition and pay all fees in respect of the requisition.
- 5.9 If required by DevelopmentWA, the transfer of land will be lodged as a follower dealing to an application for titles or an application to register an encumbrance.

6 COSTS

The Buyer will bear the cost of the preparation of the transfer, all duty under the Duties Act 2008 (WA) and duty penalties on the Contract and registration or other fees in respect of the transfer with Landgate.

7 SUBJECT TO FINANCE

If this Contract is subject to finance, the Buyer must apply to a Lender for finance (and not only a broker) within the time specified and in accordance with this Condition and use best endeavours to have finance approved.

- 7.1 If the Schedule provides that Buyer is to obtain Finance Approval, the Contract is conditional upon the Buyer receiving written Finance Approval on or before 5pm WST on the Latest Date for Finance Approval to assist in the purchase or development of the Land.
- 7.2 The Buyer must make a Finance Application as soon as practicable after the Contract Date and use its best endeavours in good faith to obtain Finance Approval.
- 7.3 If Finance Approval is granted subject to usual terms and conditions of the Lender or subject to conditions which have been accepted by the Buyer then Finance Approval will be deemed to be obtained on the date that the Finance Approval is given by the Lender.
- 7.4 The Buyer must immediately notify DevelopmentWA in writing:
- (a) of any Finance Approval obtained; or
 - (b) if any Finance Application is rejected at any time..
- 7.5 Where Finance Approval is obtained or deemed to be obtained in accordance with these Conditions, then Condition 0 will be satisfied and this Condition 7 will no longer apply to the Contract notwithstanding that any Lender may subsequently withdraw the Finance Approval for any reason or the loan is not be completed for any reason.
- 7.6 The Buyer may waive the benefit of this Condition at any time on or before 5pm WST on the Latest Date for Finance Approval by giving written notice to DevelopmentWA and upon giving such notice this Condition will be deemed to have been fulfilled.
- 7.7 If the Buyer has complied with Condition 7.2 and Finance Approval is not obtained by the Latest Date for Finance Approval and the Buyer gives DevelopmentWA a Non Approval Notice by 5pm on the Latest Date for Finance Approval, the Contract comes to an end without further notice.
- 7.8 If the Contract comes to an end pursuant to Condition 7.7 DevelopmentWA will refund to the Buyer the Deposit (without interest) and all other moneys (if any) paid in accordance with this Contract (less any reasonable costs and expenses incurred by DevelopmentWA) and there will be no further Claim under the Contract by either DevelopmentWA or the Buyer against the other either in law or in equity.
- 7.9 If the Buyer fails to give written notice to DevelopmentWA by 5pm WST on the Latest Date for Finance Approval either:
- (a) from the Lender that Finance Approval has been obtained; or
 - (b) giving a Non Approval Notice to DevelopmentWA,
- or the Buyer otherwise fails to comply with this

Condition 7, then DevelopmentWA may by written notice to the Buyer immediately terminate this Contract (unless the Buyer waives this Condition prior to DevelopmentWA terminating this Contract) and in which case:

- (c) the Contract will come to an end;
- (d) the Deposit (and any interest) will be retained by DevelopmentWA (without DevelopmentWA needing to give any notice to the Buyer); and
- (e) such termination will be without prejudice to any right or Claim that DevelopmentWA may have against the Buyer under the Contract either in law or in equity.

7.10 If required by DevelopmentWA, the Buyer must provide to DevelopmentWA full details of and a copy of the Finance Application made by the Buyer and any response(s) from a Lender.

8 TITLE

8.1 The Certificate of Title in respect of the Land or the parent Certificate of Title to the property of which the Land forms part may be inspected by search at Landgate and the Buyer does not require DevelopmentWA to produce an abstract of title or any other evidence of DevelopmentWA's title or right to sell the Land.

8.2 DevelopmentWA will not be required to answer any objections to or requisitions on title.

8.3 If DevelopmentWA is not the registered proprietor of the Land as at the Contract Date, then DevelopmentWA enters into this Contract in its capacity as the authorised agent of the State of Western Australia acting through the Department of Lands (State) and, in that capacity, DevelopmentWA agrees to sell and the Buyer agrees to purchase the Land on the terms of the Contract. Prior to Settlement, DevelopmentWA will acquire the Land from the State. Upon transfer of the Land to DevelopmentWA, all obligations and agreements under the Contract on the part of the State will be assumed by DevelopmentWA and the Buyer releases and discharges the State from any Claims.

9 ENCUMBRANCES

9.1 Subject to Condition 9.4, the Land is sold subject to the following as at the Settlement Date:

- (a) all easements, positive covenants, restrictive covenants and memorials;
- (b) any condition or statement contained in a memorial (including, but not limited to, memorials under Section 58 of the Contaminated Sites Act);
- (c) all rights, reservations, conditions, notifications under Section 70A of the Transfer of Land Act 1893 (WA) or Section 165 of the Planning and Development Act

2005 (WA);

- (d) all interests, orders, tenancies, public roads and encroachments; and
- (e) all claims, demands, conditions (including building conditions) or restrictions whatsoever imposed or made on the Land by any Authority or under any legislation,

(if any) affecting the Land and which are specified in the Certificate of Title or which will be specified or registered upon lodgement of the transfer of the Land to the Buyer at Landgate.

9.2 Subject to Condition 9.4, if any document or interest specified in Condition 9.1 is to be registered on the title to the Land at Settlement due to:

- (a) the requirements of the Commission;
- (b) any Authority; or
- (c) as a result of the requirements of DevelopmentWA,

then the Buyer acknowledges and agrees that such document or interest will be registered immediately before or immediately after the registration of the transfer of the Land to the Buyer as required by DevelopmentWA.

9.3 If after the Contract Date an encumbrance of the type mentioned in Condition 9.1 is required to be registered over the title to the Land either by DevelopmentWA (acting reasonably) or any Authority, then subject to Condition 9.4, the encumbrance shall be registered prior to or at Settlement and either immediately prior to or immediately after the transfer to the Buyer as required by DevelopmentWA.

9.4 If the Buyer establishes to DevelopmentWA's satisfaction (acting reasonably) that the registration of an encumbrance on the Certificate of Title pursuant to Condition 9.3 will have a Material Adverse Effect (Confirmation), the Buyer may, within seven (7) days of the date of Confirmation, terminate the Contract whereupon the Deposit will be refunded to the Buyer (without interest) and neither Party shall have any further claim against the other.

10 SUBDIVISION OF LAND

10.1 If the Land comprises part of a lot and is accordingly not a lot as defined in the Planning and Development Act 2005 (WA) then the Contract is subject to and conditional upon the approval of the Commission to the subdivision of the land of which the Land forms part being obtained in order to create a separate lot or lots in respect of the Land in accordance with Section 140(1) of the Planning and Development Act 2005 (WA) and this Condition.

10.2 If it has not already done so DevelopmentWA will at its cost make an application to the Commission for the approval of subdivision to create a separate lot for the Land within three (3) months from the Contract Date.

10.3 For the purposes of Section 140(3) of the Planning and Development Act 2005 (WA) the Contract is subject to and conditional upon the Commission giving its

approval to the subdivision of the Land on or before six (6) months from the date of lodgement of the application specified in Condition 10.2.

- 10.4** In the event that any conditions are imposed by the Commission or any other relevant Authority in relation to the subdivision of the Land which are not acceptable to DevelopmentWA in its absolute discretion then DevelopmentWA may by giving written notice to the Buyer within thirty (30) days of such conditions being imposed terminate this Contract whereupon the Deposit will be repaid to the Buyer without interest.
- 10.5** If a separate title for the Land has not issued from Landgate by the Latest Date for Issue of Title (either due to a matter mentioned in this Condition or for any other reason), DevelopmentWA may, provide a further anticipated latest date of when a Certificate of Title for the Land is scheduled to issue from Landgate (**Revised Latest Date**). If the Buyer establishes to DevelopmentWA's satisfaction (acting reasonably) that the issue of the title subsequent to the Latest Date for Issue of Title but prior to the Revised Latest Date will have a Material Adverse Effect, and DevelopmentWA confirms in writing to the Buyer that it accepts that the delay in the issue of the Certificate of Title for the Land will have a Material Adverse Effect (**Confirmation**), the Buyer may, within seven (7) days of the date of the Confirmation, by written notice to DevelopmentWA terminate this Contract whereupon the Deposit will be refunded to the Buyer (without interest) and neither Party shall have any further claim against the other.
- 10.6** The Buyer is not entitled to any compensation and DevelopmentWA is not liable for any costs, expenses or damages (whether direct or indirect) arising as a result of the Buyer commissioning the preparation of any building design or specification or incurring any other costs prior to the issue of a separate Certificate of Title for the Land.

11 DELAY IN SETTLEMENT

- 11.1** The Buyer acknowledges that a separate Certificate of Title in respect of the Land may not be available as at the date of this Contract or on the Settlement Date. DevelopmentWA is not obliged to notify the Buyer of the date of issue of the title where Settlement is subject to the issue of title.
- 11.2** The Buyer is not entitled to any compensation as a result in any delay in Settlement as a result of the Certificate of Title not being available.
- 11.3** Without limiting Condition 11.2, the Buyer acknowledges that the construction of any Development upon the Land may not be able to commence until Settlement has been effected and that any building contract entered into or other costs incurred by the Buyer prior to the date of actual Settlement are at the sole risk of the Buyer.
- 11.4** The Buyer acknowledges that DevelopmentWA has no liability for any costs or damages arising as a result of the Buyer entering into any building contract or incurring any other costs prior to actual

Settlement (including but not limited to any increase in the construction cost).

12 CHANGE TO LAND

- 12.1** Where at the Contract Date the Land is not a subdivided Lot or Lots the Buyer agrees with DevelopmentWA that:
- (a) DevelopmentWA may make any changes modifications variations and amendments to the plan of subdivision as may be required by the relevant Authorities to obtain due registration of the plan of subdivision; and
- (b) the Buyer must not make any objection or seek to terminate the Contract or seek to claim any compensation in respect of any such change modification variation or amendment to the plan of subdivision or to the configuration or size of the Land,
- 12.2** In the event of any dispute as to whether such modification variation or amendment has Materially Prejudiced or Detrimentially Affected the Land then such dispute shall be determined by a Valuer agreed between DevelopmentWA and the Buyer and if not agreed then by a Valuer appointed by the President for the time being of the Australian Property Institute (Inc) Western Australian Division who will act as an expert and not as an arbitrator whose decision shall be final and binding. The Parties will pay the costs of such Valuer equally.
- 12.3** If a change, modification, variation or amendment to the:
- (a) plan of subdivision comprising the Land; or
- (b) configuration of the Land,
- Materially Prejudices or Detrimentially Affects the Land, then the Buyer may within thirty (30) days of the later of notice of such change, modification, variation or amendment or determination of any dispute under this Condition 12.3 terminate this Contract by written notice to DevelopmentWA whereupon the Deposit will be refunded to the Buyer and neither Party will have any Claim against the other.

13 RISK

As from the Settlement Date the Land will be at the sole risk of the Buyer in respect of any loss or damage by accident, act of God or otherwise.

14 POSSESSION

- 14.1** Subject to Condition 14.2 possession of the Land will be and will be deemed to have been given and taken at Settlement subject to the Buyer having performed all of the Buyer's Obligations arising prior to Settlement.
- 14.2** DevelopmentWA may by giving written notice to the Buyer give possession of the Land to the Buyer from the date specified in the notice. If notice is given by DevelopmentWA adjustment of rates and taxes shall be effected on Settlement and not on the date of possession.

The Buyer must from the date of possession effect public liability insurance in an amount of \$20,000,000 cover with an insurer and on terms approved by DevelopmentWA (acting reasonably). The Buyer must provide DevelopmentWA with a certificate of currency in respect of such insurance.

15 COMPLIANCE WITH LEGISLATION

As from the Contract Date the Buyer must comply with and observe all provisions orders by-laws and regulations of and under any legislation in respect of or in any way affecting the Land.

16 CONSENTS

If this Contract is subject to any prior consent under any legislation, the Buyer must use best endeavours to obtain such consent.

17 DEVELOPMENT OF LAND

This Condition requires the Buyer to complete construction of a development on the Land within the time specified and in accordance with plans approved by DevelopmentWA. This is because DevelopmentWA wants to see Buyers of the Land develop the Land within a reasonable time and not allow the Land to remain vacant for a long period.

- 17.1 The Buyer must cause:
- (a) Commencement of Construction to be effected by the Latest Date for Commencement of Construction of Development in accordance with the Approved Plans; and
 - (b) Practical Completion to be effected in accordance with Approved Plans by the Latest Date for Practical Completion of Development or such later period as may be approved in writing by DevelopmentWA.
- 17.2 The Development must be carried out for the Approved Purpose and not for any other purposes.
- 17.3 The Buyer must ensure that the Development is completed:
- (a) in accordance with any plans and specifications approved by any relevant Authority and, if applicable, by DevelopmentWA;
 - (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; and

(g) unless DevelopmentWA agrees in writing, in a manner that ensures the Development is over a substantial area of the Land such that any undeveloped part of the Land cannot be the subject of a subdivision to create a separate title to the undeveloped portion of the Land.

17.4 The Buyer must submit to DevelopmentWA:

(a) within a reasonable time prior to the proposed date of Commencement of Construction and in any event in sufficient time to allow the Buyer to complete the Development in accordance with Condition 17.1(b); and

(b) prior to such plans and specifications being approved by any relevant Authority,

full copies of all proposed plans and specifications for the Development. DevelopmentWA will, within fifteen (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 Buyer of the grounds of rejection. In the event that the plans and specifications are rejected or approved conditionally, then the Buyer must amend such plans and specifications and resubmit to DevelopmentWA as reasonably required by DevelopmentWA such amended plans and specifications for approval. The Buyer must not undertake the Development other than in accordance with the Approved Plans.

17.5 Upon DevelopmentWA approving the plans and specifications submitted to DevelopmentWA in accordance with Condition 17.4, the Buyer must use its best endeavours to submit such plans and specifications as soon as possible to the relevant Authorities (if necessary) for approval.

17.6 If any Authority requires the Buyer to amend all or any of the plans and specifications submitted in accordance with Condition 17.5, then the Buyer must amend such plans and specifications in accordance with the requirements of any Authority and the Buyer must re-submit such amended plans and specifications to DevelopmentWA for approval as soon as possible. Condition 17.4 will apply in respect of any amended plans and specifications submitted to DevelopmentWA for approval in accordance with this Condition 17.6.

17.7 If plans and specifications approved by DevelopmentWA in accordance with Condition 17.4 are rejected by any Authority, then the Buyer must submit new plans and specifications for the Development to DevelopmentWA for approval in accordance with Condition 17.4 and the provisions of Condition 17 will apply to such new plans and specifications.

17.8 If requested by the Buyer prior to Settlement, DevelopmentWA will sign any documents reasonably required by the Buyer which must be signed by the person who is the owner of the Land in order for the Buyer to obtain an approval from any relevant Authority for the Development on condition that:

(a) the Buyer is solely responsible for all costs

associated with the preparation, execution, lodgement and approval of all documents executed by DevelopmentWA;

- (b) the Buyer is solely liable for the document and the Buyer has no right to make any Claim against DevelopmentWA for any matter in respect of any documents signed by DevelopmentWA and DevelopmentWA is not liable to indemnify the Buyer whatsoever or howsoever arising by reason of any documents signed by DevelopmentWA;
- (c) the Buyer indemnifies and agrees to keep fully and effectually DevelopmentWA indemnified from and against any Claim or Loss whatsoever (whether direct, indirect or consequential and whether present or future) which DevelopmentWA may incur in connection with any documents signed by DevelopmentWA and in respect of any Loss that DevelopmentWA may incur as a consequence of any act or omission of the Buyer arising from any documents signed by DevelopmentWA; and
- (d) the execution of any document by DevelopmentWA (including but not limited to any development application or building permit application) will not be considered an approval by DevelopmentWA of any activity or any use of the Land proposed by the Buyer pursuant to the document or application.

18 NO SUBDIVISION OR REZONING OR AMALGAMATION

Other than where specifically provided for under the contract, the Buyer must not at any time prior to practical completion subdivide or apply to subdivide or apply to amalgamate the land with any other land (whether by strata title or otherwise) or to apply to rezone the land without first obtaining DevelopmentWA's written consent (which may be withheld or may be subject to any conditions DevelopmentWA requires).

19 USE OF AND DISPOSITION OF LAND

This Condition provides that until completion of construction of the Development, the Buyer cannot sell, lease, mortgage or otherwise deal with the Land. This is because DevelopmentWA wants to see a completed development on the Land before the Buyer on sells or otherwise deals with the Land.

19.1 Until the Buyer has achieved Practical Completion the Buyer must not use the Land for a use other than the Approved Purpose without the prior written approval of DevelopmentWA (which approval may be given or refused in the absolute discretion of DevelopmentWA) and notwithstanding any zoning of the Land or approval from time to time by any Authority which may enable the Buyer to use the Land for a use other than the Approved Purpose.

19.2 In the event that the Approved Purpose includes a use of the Land for a purpose not permitted by any zoning of the Land or the requirements of any Authority then nothing in the Contract is to be construed as permitting the Buyer to use the Land for such purpose nor is DevelopmentWA liable to the Buyer if at any time the Buyer is not able to use the Land for the Approved Purpose.

19.3 Until the Buyer has completed the Development in accordance with Condition 17 the Buyer must not:

- (a) sell, agree to sell, enter into a conditional contract to sell, grant an option to purchase, assign, transfer or otherwise dispose of; or
- (b) lease, sub-lease, agree to lease; or
- (c) mortgage, charge (including by a fixed and floating charge), grant a security interest (including an all assets security interest) or otherwise encumber or part with possession of,

the Land or any part of the Land or any estate or interest in the Land (a **Disposition**) without first obtaining the consent in writing of DevelopmentWA and if such consent is given then only subject to such conditions as may be imposed by DevelopmentWA (including the execution of any documents required by DevelopmentWA) PROVIDED THAT DevelopmentWA will not unreasonably withhold its consent to a mortgage or other encumbrance over the Land if:

- (a) the person or company to whom the mortgage, charge, security interest or encumbrance is to be effected ("**the Mortgagee**") executes a deed of covenant to which the Buyer is a Party in a form required by DevelopmentWA;
- (b) the mortgage or other encumbrance is to secure a loan for the purpose of assisting with the purchase of the Land or in undertaking the Development; and
- (c) all moneys then due and payable by the Buyer to DevelopmentWA under the Contract have been paid and there is not any existing unremedied breach of the Buyer's Obligations.

19.4 If the Buyer:

- (a) is a corporation (other than a company listed on the Australian Stock Exchange), any change in the beneficial ownership of the shareholding in the corporation or any related corporation by which any change in the control of the corporation occurs (whether by the transfer of shares or the issue or allotment of further shares or otherwise); or
- (b) is the trustee of a trust, any change in the

beneficial interests of any trust or any change in the control of such trust,,

shall be deemed to be a Disposition of the Land for the purposes of this Condition and the Buyer must first obtain DevelopmentWA's written consent to such change.

20 DEVELOPMENTWA'S RIGHTS

- 20.1 DevelopmentWA may at any time (both prior to and after Settlement) and prior to Practical Completion of the Development enter upon the Land upon reasonable notice (being not more than 5 Business Days) to inspect the Land to ascertain whether or not the use to which the Land is being put is the Approved Purpose or to otherwise determine if the Buyer is complying with the Buyer's Obligations.
- 20.2 All powers, acts, matters or things which DevelopmentWA is empowered or required to do under the Contract or any statute may be exercised or done by DevelopmentWA or by its duly authorised solicitor, agent, contractor or employee of DevelopmentWA.
- 20.3 In the event of the failure of the Buyer to observe and perform the Buyer's Obligations DevelopmentWA may do all such acts, matters and things and pay all moneys which DevelopmentWA (acting reasonably) may in its absolute discretion consider necessary or desirable to secure the observance and performance of the Buyer's Obligations whereupon such moneys will be a debt owing to DevelopmentWA payable on demand.

21 CHARGE

- 21.1 In order to secure the Buyer's Obligations the Buyer hereby charges its interest in the Land in favour of DevelopmentWA and agrees that DevelopmentWA may lodge an absolute caveat pursuant to such charge as equitable chargee or mortgagee over the title to the Land.
- 21.2 Subject to compliance with Condition 19.3 DevelopmentWA will, at the cost of the Buyer, withdraw any absolute caveat lodged over the title to the Land pursuant to Condition 21.1 to enable a dealing in respect of the Land to be registered in favour of any approved Donee or Mortgagee PROVIDED THAT DevelopmentWA is entitled to contemporaneously lodge a new absolute caveat after such dealing pursuant to Condition 21.1.
- 21.3 Upon completion of all of the Buyer's Obligations as determined by DevelopmentWA (acting reasonably), DevelopmentWA will withdraw the absolute caveat lodged over the title to the Land pursuant to Condition 21.1 and Condition 22.11.
- 21.4 The Buyer must not take any action to remove any absolute caveat registered by DevelopmentWA pursuant to this Condition or Condition 22 and if the Buyer does take such action, the Buyer indemnifies DevelopmentWA from and against

any Loss suffered or incurred by DevelopmentWA as a result.

22 OPTION TO REPURCHASE

In accordance with the objectives of DevelopmentWA's Act, DevelopmentWA seeks to facilitate the provision and development of land in a range of localities to meet the social and economic needs of the State. In fulfilling these objectives, DevelopmentWA seeks to ensure that land (including the Land) is developed within a reasonable timeframe and the Buyer otherwise meets its obligations due after Settlement. Accordingly, if the Buyer fails to complete the Development on the Land within the period specified in the Schedule to this Contract or otherwise fails to perform any of the Buyer's Obligations, then DevelopmentWA may, at its election, exercise its option to repurchase the Land in accordance with the provisions of this Condition 22 in order for DevelopmentWA to be able to sell the Land to another buyer who will also be required to undertake a development on the Land within agreed timeframes.

- 22.1 The Buyer grants to DevelopmentWA an option to repurchase the Land and all fixed improvements on the Land from the Buyer in accordance with the provisions of this Condition 22.
- 22.2 If at any time after Settlement:
- (a) the Buyer fails to complete the Development in accordance with Condition 17;
 - (b) an Insolvency Event occurs with respect to the Buyer; or
 - (c) the Buyer otherwise fails to observe or perform any Buyer's Obligations,
- (any of which is called the Default)
- then DevelopmentWA, may at any time and without time being of the essence exercise its option to repurchase the Land for an unencumbered estate in fee simple for the Repurchase Price by giving the Buyer a written notice and the following provisions of this Condition 22 will apply.
- 22.3 If no Development works other than site clearing, earthworks and foundations have occurred on the Land at the date of exercise of the option to repurchase or if DevelopmentWA (acting reasonably) otherwise considers any development works are of minimal value for any future development then the Repurchase Price payable by DevelopmentWA will be calculated at the election of DevelopmentWA as follows:
- (a) the Purchase Price of the Land under the Contract; or
 - (b) the current market value of the Land as determined by a Valuer appointed by DevelopmentWA,
- and the Repurchase Costs shall be deducted from and offset against the Repurchase Price when paid at the Repurchase Settlement.
- 22.4 If Condition 22.3 does not apply then the Repurchase

Price shall be calculated on the basis of the Land component and the Development component. The Land component shall be calculated at the election of DevelopmentWA as either: -

- (a) the Purchase Price of the Land under the Contract; or
- (b) the current market value of the Land on the assumption no works have been undertaken on the Land as determined by a Valuer appointed by DevelopmentWA,

The Development component shall be the value of Development works undertaken up to the date of exercise of the option as determined by a Valuer appointed by DevelopmentWA.

The Valuer: -

- (i) will be entitled to appoint and obtain the advice of a qualified and experienced Quantity Surveyor if the Valuer considers it necessary or beneficial to the proposed valuation;
- (ii) must take into account what effect the partly constructed Development would have on the value of the Land if DevelopmentWA elected to on sell the Land to a third party following the Repurchase Settlement; and
- (iii) must take into account any additional costs that may be incurred by DevelopmentWA or another party for a builder to complete the Development taking into account that a builder would charge a premium to take over construction of a partly constructed Development or to rectify any defect in the development.

22.5 The Buyer agrees that the Buyer shall be liable for the following costs of DevelopmentWA on the repurchase of the Land:

- (a) DevelopmentWA's solicitor's or settlement agent's costs and disbursements incurred upon the repurchase of the Land by DevelopmentWA (including costs and disbursements on the issue of any notices to the Buyer, negotiations with the Buyer and effecting the Repurchase Settlement);
- (b) all costs incurred in respect of the original sale of the Land to the Buyer pursuant to the Contract including all real estate agent's fees and other sales costs and any rebate paid or credited to the Buyer;
- (c) all expenses or costs incurred by DevelopmentWA arising from the breach of the Buyer's Obligations including all legal and other costs of notices and repurchase;
- (d) all duty under the Duties Act 2008 (WA) or any other tax payable under any legislation;
- (e) if Condition 22.6(b) applies, the GST payable by DevelopmentWA on the Purchase Price of the Land;

- (f) if Condition 22.8(a) applies, the cost or estimated cost of removal of all structures constructed or partly constructed on the Land;
- (g) if Condition 22.8(b) applies, the cost or estimated cost of amalgamating or resubdividing the land to revert the Land to its state as at Settlement; and
- (h) the costs of appointment of a Valuer by DevelopmentWA (including the cost of obtaining the advice of a Quantity Surveyor (if applicable).

22.6 If GST was payable on the Purchase Price of the Land under the Contract and:

- (a) if the Buyer is registered for GST purposes as at the date of the Repurchase Notice, the Buyer must give DevelopmentWA a Tax Invoice prior to the Repurchase Settlement; and
- (b) if the Buyer is not registered for GST purposes as at the date of the Repurchase Notice or does not supply a Tax Invoice prior to the Repurchase Settlement, then the Buyer agrees to DevelopmentWA including an amount representing the GST payable on the Purchase Price as a cost payable by the Buyer when determining the Repurchase Costs in accordance with Condition 22.5.

22.7 If DevelopmentWA elects that the Repurchase Price will be calculated based on the current market value of the Land, DevelopmentWA will upon request by the Buyer provide the Buyer with a copy of a valuation obtained by DevelopmentWA determining the current market value of the Land as at the date of the Repurchase Notice.

22.8 DevelopmentWA may in its absolute discretion direct the Buyer prior to the date of the Repurchase Settlement to:

- (a) if Condition 22.3 applies remove all structures constructed or partly constructed on the Land and make good the Land to the reasonable satisfaction of DevelopmentWA at the Buyer's cost. In the event that the Buyer fails to remove such structures within 30 days from the date of request, then DevelopmentWA may remove such structures and add the cost of removal to the Repurchase Costs or add a reasonable estimate of the cost of the removal to the Repurchase Costs; and
- (b) amalgamate or resubdivide the Land to revert the Land to its state as at Settlement. In the event that the Buyer fails to undertake such actions within 30 days of request, then DevelopmentWA may apply for such amalgamation or resubdivision at the Buyer's cost in all respects and the Buyer must promptly sign all documents required by DevelopmentWA to effect such reversion and the Buyer grants to DevelopmentWA a power of attorney to sign such documents for and on behalf of the Buyer. Alternatively, DevelopmentWA may add the estimated costs of any amalgamation or resubdivision to the Repurchase Costs. The Buyer must also promptly obtain at its cost all required consents including but not limited to the consent of any mortgagee.

- 22.9** If the Repurchase Costs or estimated costs determined in accordance with Condition 22.5 are greater than the Repurchase Price, then the differential shall be a debt owing by the Buyer to DevelopmentWA payable on demand.
- 22.10** Settlement of the repurchase must be effected on the date being the later of thirty (30) days after the date of the issue of an assessment of duty in relation to the repurchase, or 45 days from the date of a request under Condition 22.8 (if applicable).
- 22.11** The Buyer:
- (a) acknowledges and agrees that DevelopmentWA may lodge an absolute caveat against the Certificate of Title to the Land in respect of the option granted to DevelopmentWA pursuant to this Condition (in addition to the caveat lodged pursuant to Condition 21);
 - (b) charges its interest in the Land in favour of DevelopmentWA to secure the Buyer's Obligations under this Condition; and
 - (c) the Buyer must not take any action to remove any caveat lodged by DevelopmentWA pursuant to this Condition.
- The right granted by this Condition will continue notwithstanding any transfer or other dealing with the Land.
- 22.12** Upon issue of the Repurchase Notice to the Buyer:
- (a) DevelopmentWA will prepare a registrable transfer of the Land and deliver it to the Buyer and the Buyer must execute and return such transfer to DevelopmentWA within 5 Business Days;
 - (b) the Buyer (or its officers) must, at its cost, either:
 - (i) have the Buyer's (or its officers') identity verified at Australia Post within 5 Business Days of DevelopmentWA giving the Repurchase Notice to the Buyer and the Buyer (or its officers) must do all things required by Australia Post to complete the land title identity verification form; or
 - (ii) appoint a settlement agent for the repurchase to identify the Buyer (or its officers) and provide a verification of identity certificate for the Buyer (in a form required by Landgate) on or prior to the Repurchase Settlement.
 - (c) the Buyer must ensure that the duplicate Certificate of Title (if issued) and any discharge of any mortgage or other encumbrance is provided to DevelopmentWA at the Repurchase Settlement;
 - (d) subject to Condition 22.12(e), the Repurchase Price less the Repurchase Costs will be paid to the Buyer on the date of the Repurchase Settlement;
- (e) outgoings will be adjusted as at the date of the Repurchase Settlement;
 - (f) the Buyer must sell the Land to DevelopmentWA free of all liens charges mortgages caveats or other encumbrances whatsoever over the Land (other than any restrictive covenants, easements or other encumbrances registered over the title to the Land as a requirement of the Commission) and must cause the withdrawal or removal of any such encumbrance. DevelopmentWA may pay the Repurchase Price or any part of the Repurchase Price to any encumbrancee as may be necessary to allow the withdrawal or removal of any such encumbrance; and
 - (g) the Joint Form shall apply to the Repurchase Settlement to the extent a matter is not specified in this Condition.
- 22.13** Notwithstanding any other Conditions, the option of DevelopmentWA to repurchase the Land in accordance with this Condition 22 is without prejudice to DevelopmentWA's Remedies and will not be prejudiced by or in any way limited by any delay on the part of DevelopmentWA in exercising the option to repurchase and notwithstanding that DevelopmentWA may have been aware of any breach of any of the Buyer's Obligations or that DevelopmentWA may have given any extension of time or varied the Contract.
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- 23** ERROR IN AREA
- 23.1** If there is any mistake in or omission from this Contract with respect to the description, boundary or area of the Land or any other similar matter:
- (a) the same will not invalidate the sale; and
 - (b) if notified to the other Party within seven (7) days of the date of this Contract the same will be the subject of compensation to be paid or received by DevelopmentWA as the case may require.
- 23.2** An error or misdescription as specified in Condition 23.1 will not entitle a Party to terminate the Contract or to delay Settlement and the Buyer is not entitled to compensation as a result.
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- 24** DIVIDING FENCE
- 24.1** The Buyer acknowledges that any retaining wall or boundary wall or fence between the Land and any adjoining land may be constructed on the boundary of the Land, entirely on the Land or adjoining land or partially on either (with the centre of such wall or fence not on the boundary between the Land and adjoining land). The Buyer must make its own enquires as to the boundaries of the Land and the Buyer must not make any claim against and is not entitled to any compensation from DevelopmentWA, nor terminate the Contract, if any wall or fence is not on the boundary of the Land.
- 24.2** All fences and walls purporting to be on the boundary of the Land will as between DevelopmentWA and the Buyer be deemed to be upon their true boundary and if any fence or wall is found not to be on its true boundary

the Buyer is not entitled to any compensation nor will have any claim against DevelopmentWA or any right to terminate the Contract.

24.3 The Buyer will not make any Claim against DevelopmentWA pursuant to the Dividing Fences Act 1961 (WA) or however else concerning:

- (a) the construction of, or contribution to the cost of construction of, any dividing fences or walls; or
- (b) any other liability in respect of a dividing fence or wall including any liability DevelopmentWA may have incurred with any adjoining owners.

24.4 The Buyer acknowledges and agrees that this Condition may be pleaded as an absolute bar to any relief, compensation or claim sought by the Buyer against DevelopmentWA.

24.5 The Buyer must not build any structure on the Land, plant or remove any vegetation nor remove soil, rocks or other materials which may affect the structural integrity of any wall or fence between the Land and any adjoining land.

24.6 The Buyer has had the opportunity to inspect any fence or wall now constructed on the Land prior to entering into this Contract. DevelopmentWA gives no warranty as to the condition of the wall or fence as at settlement or its future use.

24.7 The Buyer accepts the condition of any fence or wall as at the Settlement Date.

25 INSPECTION OF PEGS

25.1 The Buyer acknowledges and agrees to the maximum extent possible:

- (a) the Buyer has had the opportunity to inspect the Land; and
- (b) as at the date of the Contract where any pegs marking the boundaries of the Land (if any) are in place such pegs may or may not mark the true boundaries of the Land.

25.2 DevelopmentWA is not liable to the Buyer where no pegs mark the boundary of the Land or the pegs have been removed or do not mark the true boundaries of the Land.

25.3 In the event that any pegs are removed from the Land prior to the Settlement Date for any reason DevelopmentWA is not obliged to resurvey the Land or to replace any such pegs or in any manner be liable for such removal.

26 PLANNING AND OTHER MATTERS

The Buyer acknowledges that the Land is sold subject to the following as at the Settlement Date:

- (a) the provisions of any town planning scheme, zoning by-laws and other laws affecting the Land;

- (b) any order or requisition affecting the Land;
- (c) any proposal or scheme for the widening, realignment, closure, siting or alteration of the level of any road or right of way adjacent to or in the vicinity of the Land by any Authority or person;
- (d) any resumption or proposal to resume the Land or any adjoining or other land; and
- (e) any easement, memorial (and any condition or statement contained in the memorial), notification, positive covenant or restrictive covenant or other encumbrance specified in Conditions 9.1 or 9.3 affecting the Land or which will affect the Land on registration of the transfer of the Land to the Buyer,

and the Buyer will take title subject to the above and will not be entitled to make any objection, requisition or claim for compensation, nor to rescind this Contract in respect of any matter mentioned in this Condition.

27 BUSHFIRE RISK

27.1 The Buyer acknowledges and agrees that it should enquire as to whether the Land is classified as "Bushfire Prone" by the Office of Bushfire Risk Management within the Department of Fire and Emergency Services.

27.2 If the Land is classified as "Bushfire Prone", the Buyer should:

- (a) check with the Local Authority to ascertain if a Fire Management Plan has been prepared in respect of the Land;
- (b) ascertain if a Bushfire Attack Level (BAL) has been established in respect of the Land and, if not, consider whether it should appoint a relevant consultant to determine the BAL; and
- (c) if applicable, consider if any Development should be undertaken in accordance with AS3959-2009 (as amended from time to time) relating to construction of buildings within a Bushfire Prone Area.

27.3 If a BAL has been established in respect of the Land and/or a Fire Management Plan is in existence in respect of the Land, the Buyer must take into account the BAL and comply with the Fire Management Plan in relation to any Development and:

- (a) if required, comply with AS3959-2009; and
- (b) if not required, consider compliance with AS3959-2009,

in relation to any Development.

28 MAINTENANCE OF LANDSCAPING AND STRUCTURES

28.1 The Buyer acknowledges that any landscaping, retaining walls, entry statements and other structures established by DevelopmentWA in the estate of which the Land forms part may not be maintained by DevelopmentWA after the date of the Contract.

- 28.2** In the event that a landscaped street verge adjoining the Land has been provided by DevelopmentWA the Buyer acknowledges that:
- (a) the irrigation for such street verge may be supplied from a temporary source which may be disconnected by DevelopmentWA in its absolute discretion; and
 - (b) the Buyer must in such event reconnect such irrigation to the water supply from the Land and shall undertake ongoing maintenance and watering of the landscaped verge.
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- 29 SERVICES, CONTAMINATION AND NBN**
- 29.1** The Buyer acknowledges and confirms that:
- (a) the Land has or will be provided with Services to the boundary of the Land by DevelopmentWA or by a relevant Authority in accordance with conditions imposed by the Commission;
 - (b) the Land may be filled and/or levelled by DevelopmentWA to meet the requirements of the Commission and that any additional earthworks that may be required will be at the sole cost of the Buyer;
 - (c) it has made its own enquiries in relation to all Services required to be effected to the Land for its Approved Purpose and will meet all such servicing requirements (other than as specified in paragraph (a)) at its cost;
 - (d) DevelopmentWA is not liable to the Buyer for any costs or charges which may be charged or levied in relation to the Land or the provision of Services either before or after Settlement (including, but not limited to, any headworks charges) imposed by any Authority or any service provider;
 - (e) where Settlement is due under the Contract and where any Services required to be provided by DevelopmentWA or any Authority in accordance with conditions imposed by the Commission pursuant to this Condition 29.1 have not been provided or a connection to any of the Services is not available for any reason, the Buyer must nevertheless effect Settlement on the Settlement Date and will have no Claim against DevelopmentWA as a result; and
 - (f) if required by DevelopmentWA, the Buyer grants to DevelopmentWA and its employees, agents, invitees and contractors and any service providers, agents or invitees (with or without equipment) access to the Land at all reasonable times following Settlement to supply and install any Services or carry out any works reasonably required by DevelopmentWA.
- 29.2** The Buyer acknowledges and agrees that:
- (a) the Buyer must ensure that the Building Ready Specifications and appropriate building wiring specifications are complied with in respect of the Development in order to enable connection to the Network Infrastructure; and
 - (b) a failure to comply with the Building Ready Specifications will prevent the Development being able to be connected to the Network Infrastructure or will require the Buyer to incur additional costs in order to connect to the Network Infrastructure.
- 29.3** Without limiting Condition 29.1, the Buyer acknowledges and agrees that:
- (a) the Land may be serviced by the National Broadband Network in relation to the supply of broadband internet services (NBN);
 - (b) if the Buyer proposes to connect to the NBN, the Buyer must at its cost construct the Development in accordance with the requirements and specifications of NBN Co Ltd and must obtain all relevant requirements and specifications from NBN Co Ltd directly prior to undertaking the Development;
 - (c) the Buyer must as soon as possible notify NBN Co Ltd of the number of intended connections to the NBN required by the Buyer for the Development;
 - (d) if the proposed Development is a strata-title Development or if the Buyer requires multiple connections to the NBN, delays may be experienced in NBN Co Ltd providing connections to the NBN for the Development;
 - (e) it is the sole responsibility of the Buyer to make its own independent enquiries with NBN Co Ltd and any other relevant person, company or Authority in relation to the costs, connection timeframes and all other requirements relating to the NBN and connection to the NBN prior to entering into this Contract; and
 - (f) DevelopmentWA is not responsible for, and the Buyer releases DevelopmentWA from, any costs, losses or expenses incurred by the Buyer as a result of any matter associated with the NBN or NBN Co Ltd including but not limited to all costs associated with obtaining, or failing to obtain, any connection to the NBN. The Buyer must not make any Claim against DevelopmentWA in relation to any matters associated with the NBN.
- 29.4** Other than where the Land has been reported to the Department of Environment Regulation under the Contaminated Sites Act as being Contaminated or suspected of being Contaminated, DevelopmentWA is not aware of any Contamination on or below the surface of the Land which will materially affect the use of the Land.
- 29.5** The Buyer agrees that it must make its own enquiries as to whether any condition or Contamination on or below the Land which will affect the Development or the Approved Purpose and agrees to purchase the Land subject to any Contamination or sub-surface conditions that may exist.
- 29.6** If at the date of the Contract the Land has not been connected to any Services then the Buyer must meet all

- costs relating to such connection. The Buyer acknowledges and agrees that it may be required to make payments to service providers (including Water Corporation, Western Power and Alinta Gas) at any time either prior to or subsequent to Settlement. These charges may arise for example due to the extent of consumption of services or the discharge of waste water as a result of the Buyer's proposed use of the Land which consumption is in excess of the head works contribution paid by DevelopmentWA to obtain sub-division approval.
- 29.7** If at the Contract Date a relevant Authority has determined that underground power or any other Services will be installed to or applied to the Land and a charge has been imposed on DevelopmentWA for that installation or connection then the cost of that installation or connection will be met by DevelopmentWA. The Buyer must pay any subsequent charge, assessment or liability that may apply subsequent to the Contract Date in relation to the installation of underground power or any other Services.
- 29.8** If at the Contract Date there is a septic tank on the Land which is required to be decommissioned, then the Buyer is solely responsible for decommissioning the septic tank.
- 29.9** If an electricity transformer is or will be installed on or adjacent to the Land, the Buyer must comply with the requirements of any relevant service provider and shall not construct or install any fencing or other structure within such distance from the boundary of any electricity transformer and/or switchgear site as specified by the relevant service provider.
- 29.10** Without limiting any other Condition, the Buyer acknowledges and agrees that DevelopmentWA is not liable for, and the Buyer must make its own independent enquiries as to, the Services or connections provided, or to be provided (or the lack of Services), to the Land and whether or not such Services or connections are or will be satisfactory for the Development proposed and/or the Approved Purpose.
- 29.11** The Buyer acknowledges and agrees that telecommunication services to the Land may be installed, owned, operated and/or maintained by a Party other than DevelopmentWA and that the Buyer must not make any Claim against DevelopmentWA in relation to such telecommunication services.
- 29.12** The Buyer acknowledges and agrees that connection to the sewer connection (when installed) to the Land must be effected by the Buyer. Any increase to the flow rate above the standard allowance as required by the Buyer is to be procured by the Buyer at its cost. The depth of the property connection has been designed in accordance with Water Corporation requirements. Sewer serviceability will be the responsibility of the Buyer and it is recommended that the Buyer seek the services of a hydraulic consultant to provide advice regarding serviceability in accordance with AS3500.
- 29.13** The Buyer acknowledges and agrees that the Buyer accepts any soil classification of the Land and agrees that the Buyer is solely liable for all costs arising as a result of such classification.
- 29.14** The Buyer acknowledges and agrees that it is solely liable as to the requirements to upgrade any Services to the Land, and the capacity of the Services required, in order for the Buyer to use the Land for the Development or the Approved Purpose including, but not limited to, the upgrade of power, water, sewerage or any other Services.
- 29.15** The Buyer releases and discharges DevelopmentWA and agrees that the Buyer is responsible and liable for all liability, investigation, Remediation and other costs (whether direct or indirect) associated with Contamination or Pollution affecting the Land or other land in the vicinity of the Land whether such Contamination or Pollution occurred prior to or subsequent to the date of the Contract other than Contamination caused or contributed to by DevelopmentWA.
- 29.16** The Buyer is solely liable to comply with and otherwise to deal with all laws and the requirements or orders of any relevant Authority in relation to any Contamination or Pollution or otherwise on or from the Land.
- 29.17** The Buyer agrees to indemnify and keep indemnified DevelopmentWA from and against any Claim or Loss (whether direct or indirect and whether present or future) which DevelopmentWA may suffer in relation to any Contamination or Pollution on the Land whether prior to or subsequent to the date of the Contract other than Contamination caused or contributed to by DevelopmentWA.
- 29.18** The Buyer must sign such documents and do such acts, matters and things as may be necessary or desirable in order to assume full liability for all Contamination and Pollution under the Contaminated Sites Act or future legislation other than Contamination caused or contributed to by DevelopmentWA.

30 REBATES

If a rebate is payable by DevelopmentWA or a reduction in the monies payable at Settlement is allowed by way of a rebate, the payment of or credit for the rebate is conditional upon:

- (a) the Buyer informing any Lender making a loan to the Buyer in relation to the purchase of the Land of the terms of the rebate;
- (b) the Lender in paragraph (a) providing an acknowledgement in a manner as DevelopmentWA requires acknowledging and that the Lender is aware that a rebate has or may be paid; and
- (c) if the transfer of the land is effected other than by way of electronic conveyancing in accordance with Condition 42, the Transfer of Land form to be registered at Landgate providing as the consideration for the sale in the consideration panel "The terms of the contract for sale between the Transferor (as seller) and the Transferee (as

buyer)". If the transfer of Land is effected through electronic conveyancing pursuant to Condition 42 the rebate amount shall be recorded as part of the electronic conveyancing.

for which an Input Tax Credit may be claimed by the Party, as the case may be, entitled to be reimbursed or indemnified.

31 GOODS AND SERVICES TAX

- 31.1** The Parties acknowledge and agree that DevelopmentWA is considered to be the State under the GST Act and it has previously obtained a private ruling from the Australian Taxation Office to this effect.
- 31.2** The parties acknowledge that for the purposes of this Contract and any other dealing associated with this Contract, DevelopmentWA as the State is obligated under the GST Law to deal with its notional GST liability (as that term is used in Division 177 of the GST Act) as if it were GST.
- 31.3** DevelopmentWA and the Buyer agree that the Purchase Price is inclusive of GST.
- 31.4** DevelopmentWA will provide a Tax Invoice prior to or at Settlement.
- 31.5** The Buyer acknowledges and agrees that the supply of land under this Contract is in exchange for the payment of the Purchase Price. The entry into the obligation of the buyer to undertake a development on the land is not the provision of any consideration to DevelopmentWA for the supply of the land but rather delivers social, economic or environmental outcomes as required by the Western Australian Land Authority Act.
- 31.6** The Buyer agrees that it shall not provide any invoice or tax invoice to DevelopmentWA for the supply of development works on the land (inclusive of GST).
- 31.7** Where a Party or parties to this Contract provides non-monetary consideration and the provision of this non-monetary consideration is a Taxable Supply, the Party providing the non-monetary consideration shall provide a Tax Invoice to the other Party for the GST inclusive market value of the non-monetary consideration. Without reserving exclusive rights to determine such GST inclusive market value, DevelopmentWA may determine such market value to be for a nominal sum where the parties are acting at arms-length and are not associates. The Party receiving the Tax Invoice shall pay to the other Party the GST detailed on the Tax Invoice.
- 31.8** This Contract and supporting material is not a document notifying any obligation to make payment and is not considered an invoice under the GST Act. The deposit (if any) paid is held as security for the performance of an obligation in accordance with Division 99 of the GST Act.
- 31.9** If a Party is entitled under the Contract to be reimbursed or indemnified by a Party for a cost or expense incurred in connection with this Contract, the reimbursement or indemnity payment must not include any GST component of the cost or expense

32 WARRANTY

- 32.1** The Buyer covenants and warrants with DevelopmentWA (which warranty the Buyer acknowledges has induced DevelopmentWA to enter into the Contract) that the Buyer has full power and capacity to enter into the Contract and the Buyer has obtained all relevant approvals necessary to enter into and complete the Contract.
- 32.2** The Buyer covenants and warrants to DevelopmentWA that it does not enter into the Contract as trustee of a trust or as agent for any other person or entity other than as expressly disclosed to DevelopmentWA prior to the Contract Date and as included in the Buyer's details in the Contract for Sale of the Land to which these Conditions are annexed.
- 32.3** Where the Buyer is acting as trustee, the Buyer covenants with and warrants to DevelopmentWA that the Buyer has or will have full powers pursuant to its memorandum and articles (or constitution) and its deed of trust (generally and together (if more than one) called the "Trust") under which it purports to act.
- 32.4** The Buyer covenants that:
- (a) the Trust is lawfully and validly constituted and all deeds and other instruments in respect of the Trust have been properly executed;
 - (b) the Trust will remain unrevoked and not varied other than with the prior written consent of DevelopmentWA, which will not be unreasonably withheld;
 - (c) the assets of the Trust as well as the assets of the trustee will at all times be available to satisfy the Buyer's Obligations and there is no limit or restriction on the recourse the trustee may have to the trust assets;
 - (d) the consents or approvals of all parties necessary to execute this Contract so as to bind the property of the Trust have been obtained and all necessary conditions precedent for that purpose have been met;
 - (e) no one has taken or threatened nor is the Buyer aware of any one who is likely to take action to have the Trust wound-up or otherwise administered by action brought in any Court or to charge the Buyer or any person at any time connected with the Buyer or acting on behalf or purportedly on behalf of the Buyer with any breach of trust or misappropriation of trust moneys in connection with the Trust; and
 - (f) no facts are known to the Buyer where the Trust might be wound-up voluntarily or otherwise or the trustee changed or the assets of the Trust vested in any other person or the Trust may cease to operate or be deprived of funds.
- 32.5** The Buyer acknowledges and agrees with DevelopmentWA that if DevelopmentWA on

reasonable grounds considers that there has been a breach of any of the warranties contained in this Condition then DevelopmentWA may without notice immediately terminate the Contract.

33 NO REPRESENTATIONS

33.1 The Buyer agrees that prior to entering into the Contract it has satisfied itself:

- (a) by physical examination and inspection and all other necessary enquiries including, but not limited to, enquiries as to the classification status of the Land under the Contaminated Sites Act, and relying on the opinion or advice of such experts as the Buyer may wish to consult as to the state, condition, quality and quantity of the Land;
- (b) by enquiry of all relevant authorities as to the zoning of the Land and the use to which the Land or any other land adjoining or in the vicinity of the Land may be put;
- (c) as to the easements, restrictive covenants, notifications or other agreements or encumbrances to which the Land may be or become subject;
- (d) as to the requirements of each and every Authority which has control or jurisdiction over the Land and the current and prospective use and development of the Land;
- (e) by independent valuations or reports as to the value of the Land and as to the present and future feasibility, liability and economic return that may be derived from the Land; and
- (f) by survey and physical examination as to the area of the Land and not relying on the position of any pegs purporting to mark the boundary (if any),

and is deemed to purchase the Land in reliance solely upon such examination, inspection, enquiry, perusal, opinion and advice and not upon any or any alleged statement, warranty, condition or representation whatsoever made or alleged to have been made to the Buyer by DevelopmentWA or any employee, contractor or agent of DevelopmentWA.

33.2 This Condition applies notwithstanding the contents of any brochure, document, letter or publication made, prepared or published by DevelopmentWA or by any other person with or without the authority of DevelopmentWA whether express or implied.

34 NO LIABILITY OF DEVELOPMENTWA

The Buyer has no right to make any objection or requisition or Claim against DevelopmentWA for compensation or to terminate or rescind the Contract and DevelopmentWA shall not be liable to indemnify the Buyer whatsoever or howsoever

arising by reason of:

- (a) the prior use of the Land;
- (b) the Land being unsuitable for any particular purpose including, but not limited to, the Approved Purpose;
- (c) the area of the Land being different from the area indicated on any plan, brochure, document, letter, material or other publication issued or published by or on behalf of DevelopmentWA or as indicated on the Certificate of Title to the Land;
- (d) the provision of, or a lack of, or a lack of an available connection to, water, drainage, sewerage, gas, electricity, telecommunication or other services or connections to the Land, or in respect of the fact that any Services or connections may be joint services to any other land, or because any facilities for services for any other land pass through the Land;
- (e) any encroachment onto the Land by any improvement which does not form part of the Land, or the encroachment onto adjoining land of any improvement which forms part of the Land;
- (f) the location of any sewerage, water or drainage or other pipes or cables or services affecting the Land, or that any pipes or cables pass through, or penetrates the Land; or
- (g) the fact that the current use of the Land may not be an authorised use under any applicable zoning or use law, scheme or regulation.

35 BUYER'S ACKNOWLEDGEMENTS

35.1 The Buyer acknowledges and agrees that:

- (a) no warranty or representation has been given or made to the Buyer or anyone on the Buyer's behalf by DevelopmentWA or any agent, employee or contractor or consultant of DevelopmentWA or any other person on DevelopmentWA's behalf as to:
 - (i) the title to the Land;
 - (ii) any encumbrance, restriction or right in favour of any third party affecting the Land;
 - (iii) the condition or state of repair, order or condition of the Land;
 - (iv) the suitability of the Land for any use or purpose of any kind including, but not limited to, the Approved Purpose;
 - (v) the fences (if any) purporting to be on the boundaries of the Land being on the proper boundaries of the Land; or
 - (vi) the provisions of, or lack of, or the lack of an available connection to Services or connections to the Land;
- (b) any representation or warranty implied by virtue of any statute or otherwise will not apply to, or be implied in, the Contract and any such representation or warranty is excluded to the extent permitted by law;

- (c) the Land is sold 'as is where is' and as it stands with all existing faults, defects, omissions or characteristics whether they are apparent or ascertainable on inspection or not and without any obligation on DevelopmentWA to disclose or particularise any faults, defects, omissions or characteristics known to DevelopmentWA;
- (d) DevelopmentWA will not be liable under any circumstances to make any allowance or compensation to the Buyer nor will the Purchase Price be affected by the exclusion of warranties or representations in the Condition or for any fault, defect, omission or characteristic in the Land; and
- (e) this Condition will apply despite the contents of any brochure, document, letter or publication made, prepared or published by DevelopmentWA or by any other person or consultant with or without the express or implied authority of DevelopmentWA.
- 35.2** The Buyer acknowledges that it is solely liable for all site clearance and building preparation costs on the Land which should be determined by the Buyer prior to entering into this Contract.
- 35.3** Whilst not limiting any other provision in these Conditions, the Buyer acknowledges and agrees that:
- (a) it is solely responsible at its cost for complying with and implementing all fire protection, water pressure or other requirements imposed on or affecting the Land by any Authority whether or not as a result of the Buyer's proposed use of the Land or whether generally required (including but not limited to requirements for fire protection, waste disposal, sewerage or other requirements) and that the Buyer may be required at its cost to undertake a detailed site specific assessment of the Land at the stage of applying for development approval and a building permit for the Development or otherwise; and
- (b) prior to entering into the Contract the Buyer should undertake its own independent enquiries and investigations with any relevant Authority in order to determine what fire protection, water pressure and other requirements are likely to be imposed in relation to the Land.
- 36** **DEFAULT**
- 36.1** Neither DevelopmentWA nor the Buyer may terminate the Contract by reason of the other's failure to observe or perform an obligation imposed on that other Party under the Contract unless:
- (a) that Party has first given a notice to the other Party:
- (i) specifying the failure;
- (ii) stating that the other Party must observe and perform that Party's obligations under the Contract within ten (10) Business Days from the date of service of the notice; and
- (iii) stating that if those obligations are not observed and performed within that time the Party giving the notice may terminate the Contract or that the Contract will be terminated; and
- (b) the Party receiving the notice fails to observe and perform those obligations within the period stated in that notice.
- 36.2** Condition 36.1 does not apply if:
- (a) either Party repudiates the Contract;
- (b) Condition 2.4 applies;
- (c) Condition 37 applies;
- (d) a condition precedent or subsequent has not been satisfied; or
- (e) Finance Approval has not been obtained by the Latest Date for Finance Approval or if there is a breach of Condition 7.
- 36.3** In the event that the Buyer is in breach of the Buyer's Obligations and the Contract is terminated or the Buyer repudiates the Contract, that part of the Purchase Price and any other moneys paid by the Buyer to DevelopmentWA under the Contract (including the Deposit) amounting in the aggregate to:
- (a) up to TEN PER CENTUM (10%) of the Purchase Price, will be forfeited to and retained by DevelopmentWA; and
- (b) in excess of TEN PER CENTUM (10%) of the Purchase Price, will be held by DevelopmentWA pending the exercise of DevelopmentWA's Remedies.
- 36.4** In the event that the Buyer is in breach of the Buyer's Obligations or repudiates the Contract, DevelopmentWA, without prejudice to DevelopmentWA's Remedies, may:
- (a) affirm the Contract and sue the Buyer for damages for breach of contract;
- (b) sue the Buyer for specific performance of the Contract;
- (c) subject to Condition 36.1 (if applicable):
- (i) if the notice given under that Condition states that unless the default is remedied within the time stated in the notice the Contract may be terminated; and
- (ii) the default is not remedied within the time stated,
- terminate the Contract and:
- (iii) sue the Buyer for damages for breach of contract; and
- (iv) without further notice to the Buyer, resell the Land in such manner as DevelopmentWA thinks fit.

- 36.5** If DevelopmentWA resells the Land:
- (a) DevelopmentWA may retain absolutely:
- (i) any surplus arising from the resale in excess of:
- (A) the Purchase Price; and
- (B) losses and expenses incurred by DevelopmentWA in the resale and resulting from the Buyer's default; and
- (ii) any interest paid by the Buyer; and
- (b) any amount by which the Purchase Price exceeds the proceeds of the resale, the amount of the deposit which has been forfeited and all losses and expenses incurred by DevelopmentWA in the resale and resulting from the Buyer's default are recoverable by DevelopmentWA from the Buyer as liquidated damages.

37 **INSOLVENCY EVENT**

- 37.1** The Buyer must ensure that an Insolvency Event does not occur with respect to the Buyer prior to Settlement.
- 37.2** If an Insolvency Event occurs with respect to the Buyer prior to Settlement then DevelopmentWA may terminate this Contract at any time by giving written notice to the Buyer.
- 37.3** If DevelopmentWA terminates the Contract pursuant to this Condition then the Deposit will be forfeited and released to DevelopmentWA immediately and the Buyer will not have any claim against DevelopmentWA.

38 **FACILITATE EXERCISE OF REMEDIES**

- 38.1** The Buyer must facilitate DevelopmentWA in the proper exercise of DevelopmentWA's Remedies and not claim any compensation for any inconvenience or damage caused by DevelopmentWA.
- 38.2** The Buyer must pay to DevelopmentWA on demand any moneys properly expended by DevelopmentWA (including legal costs) in connection with the proper exercise and protection of its rights and powers contained in this Contract and also upon demand pay all DevelopmentWA's reasonable costs fees and expenses of and incidental to:
- (a) any proper exercise of DevelopmentWA's Remedies;
- (b) any breach of the Buyer's Obligations;
- (c) the Buyer seeking the removal of any caveat lodged by DevelopmentWA over the title to the Land which it is entitled to maintain; and
- (d) the perusal and investigation of any request by the Buyer for permission to lease or onsell

or otherwise dispose of the Land or enter into any other arrangement which requires the permission or consent of DevelopmentWA pursuant to the Contract or the Act or otherwise howsoever.

- 38.3** The Buyer indemnifies and agrees to keep fully and effectually indemnified DevelopmentWA from and against any claim loss or liability whatsoever (whether direct or indirect and whether present or future) which DevelopmentWA may incur in connection with the Contract and in respect of any loss or expense that DevelopmentWA may incur as a consequence of any default by the Buyer in respect of the Buyer's Obligations.

39 **NOTICE**

- 39.1** Any notice given or required to be given under the Contract:

(a) must be in writing addressed to DevelopmentWA or to the Buyer (as the case may be), to DevelopmentWA's or the Buyer's address, facsimile number or email address shown in the Contract (or to any other address specified by the Buyer to DevelopmentWA or DevelopmentWA to the Buyer by notice) provided that a notice to DevelopmentWA sent by email will only be valid if emailed to Conveyancing@Developmentwa.com.au;

(b) must be signed by the sender or an officer of, or under the common seal of the sender or by the sender's lawyer, conveyancer or other authorised representative (as the case may be); and

(c) is to be regarded as being given by the sender and received by the addressee:

(i) if by delivery in person, when delivered to the addressee;

(ii) if by post (which posting must be by pre-paid security post), 3 business days from and including the date of posting to the addressee;

(iii) if by facsimile transmission:

(A) on the date the notice or communication is transmitted in its entirety by a facsimile machine; and

(B) that facsimile machine produces a transmission report which indicates that the facsimile was sent in its entirety to the facsimile number of the addressee,

but if the delivery or transmission by facsimile is on a day which is not a business day or is after 5.00 p.m. (addressee's time) it is to be regarded as being given at 9.00 a.m. (addressee's time) on the next succeeding business day; and

(iv) if by email on the earlier of:

(A) the Business Day after the date on which the email is sent provided that the sender does not receive any system message indicating that the

	transmission of the notice has been delayed or has failed (for the purposes of this clause an "out of office message" of a recipient will be deemed to be a message indicating delay of the notice unless the email is sent to more than one recipient of the Party);		DevelopmentWA, which consent may be withheld in the absolute discretion of DevelopmentWA.
	(B) the day on which the recipient of the email responds to the email (or where the response is not on a Business Day, the next Business Day); and	41.5	A provision of, or a right created under, the Contract may not be:
	(C) the day on which an automatic "read receipt" is received by the sender provided that the "read receipt" is received prior to 5.00pm on a Business Day otherwise the notice is deemed to be served on the following Business Day;		(a) waived except in writing signed by the Party granting the waiver; or
			(b) varied except in writing signed by all Parties.
39.2	Where the Buyer comprises 2 or more persons or corporations, or any combination of the same, notice to either 1 person or to 1 corporation is deemed notice to all persons and corporations comprising the Buyer.	41.6	The failure or delay on DevelopmentWA's part at any time to enforce any of its rights or to exercise any option to repurchase or discretion in accordance with the Contract will not be construed as a waiver of the provisions of the Contract or prejudice DevelopmentWA exercising such rights or the exercise of any such option or discretion.
39.3	A notice served on the Buyer's Conveyancer in accordance with this Condition will be treated for all purposes as if the notice had been served on the Buyer.	41.7	DevelopmentWA and the Buyer agree to sign, execute and complete all further assurances and documents and to do all things reasonably required to complete the matters set out in, or contemplated by the Contract.
		41.8	Without limitation to the extent that any obligations under the Contract have not been complied with on or before Settlement, those obligations survive Settlement and continue until complied with.
		41.9	Each Party is to pay its own solicitor's costs in respect of the Contract and the completion of the transaction evidenced by the Contract. Any document recording a variation to the Contract requested by the Buyer and agreed by DevelopmentWA will be at the cost of the Buyer. The Buyer must pay all duty assessed on this Contract.
		41.10	The Contract comprises the whole agreement between the Parties and subject only to any provision expressly to the contrary supersedes all prior agreements and understandings between the Parties.
40	TIME OF ESSENCE	41.11	The Contract may consist of a number of counterparts. The counterparts taken together constitute one instrument. Evidence of execution of the Contract or any counterpart may be effected by email or facsimile transmission.
	Unless otherwise stated, time will in all respects be of the essence in the Contract.		
41	MISCELLANEOUS		
41.1	The Contract is to be governed by, and construed according to the laws of Western Australia.	41.12	Where any consent or approval under these Conditions is to be given by DevelopmentWA, that consent or approval must be given by DevelopmentWA in writing and such consent or approval may be given subject to conditions determined by DevelopmentWA in its absolute discretion.
41.2	Unless application is mandatory by law, a statute, proclamation, order, regulation or moratorium, present or future, is not to apply to the Contract or these Conditions so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise affect prejudicially rights, powers, privileges, remedies or discretions given or accruing to a Party.		
41.3	If a condition, covenant or stipulation of the Contract or the application of them to a person or circumstances is, or becomes, invalid or unenforceable the remaining covenants, conditions and stipulations are not to be affected by the invalidity or enforceability, and each covenant, condition and stipulation of these Conditions and the Contract will be valid and enforceable to the fullest extent permitted by law.	42	ELECTRONIC CONVEYANCING
41.4	The Buyer may not assign or transfer its rights under the Contract (including as a result of a deemed disposition pursuant to Condition 19.4) without the prior written consent of	42.1	These Conditions apply if:
			(a) Landgate will only accept the Transfer or any other instrument to be lodged together with the Transfer following Settlement for registration conducted electronically in accordance with the Electronic Conveyancing National Law; or
			(b) the Parties agree to effect the Transfer in accordance with these Conditions.
		42.2	The Parties agree that these Conditions have priority over any other provision in the Contract to the extent of any inconsistency.

- 42.3** The Parties agree that Settlement and lodgement of the instruments necessary to transfer the Land to the Buyer and record the Buyer as registered proprietor of the Land will be conducted electronically in accordance with the Electronic Conveyancing National Law.
- 42.4** Provided that the Transfer and any other instrument to be lodged together with the Transfer following Settlement are capable of being accepted by Landgate over the counter for registration, if either Party reasonably believes that Settlement and lodgement of the Transfer and any other instrument to be lodged together with the Transfer following Settlement can no longer be conducted electronically either DevelopmentWA (or its Conveyancer or Lawyer) or the Buyer's Conveyancer (or the Buyer) must immediately give a notice to the other party (**Withdrawal Notice**). These Conditions (other than Condition 42.5) ceases to apply if a Withdrawal Notice is given and Condition 5 shall apply.
- 42.5** If a Withdrawal Notice is given by a Party to the other, then the Settlement Date shall be the later of 14 days from the date of delivery of the Withdrawal Notice and the Settlement Date specified in the Contract.
- 42.6** DevelopmentWA (or its Conveyancer or Lawyer and the Buyer's Conveyancer (or the Buyer) must:
- (a) be a Subscriber for the purposes of the Electronic Conveyancing National Law;
 - (b) ensure that all other persons for whom that party is responsible and who are associated with this transaction are, or engage, a Subscriber for the purposes of the Electronic Conveyancing National Law; and
 - (c) conduct the transaction in accordance with the Electronic National Law.
- 42.7** As soon as reasonably practicable after the Contract Date, or if the Contract is conditional, after the Contract becomes unconditional, DevelopmentWA (or its Conveyancer or Lawyer) shall:
- (a) open an Electronic Workspace with an Electronic Lodgement Network Operator; and
 - (b) invite the Buyer's Conveyancer (or the Buyer), and the holder of any encumbrance on the Certificate of Title to join the Electronic Workspace.
- 42.8** As soon as possible after receipt of an invitation to join the Electronic Workspace, the Buyer's Conveyancer (or the Buyer) shall:
- (a) accept the invitation to join the Electronic Workspace; and
 - (b) invite any Lender who is providing finance to the Buyer to join the Electronic Workspace.
- 42.9** Nothing in Condition 42.7 or 42.8 shall be taken to restrict any Party from opening the Electronic Workspace and issuing invitations to join the Electronic Workspace. The Parties agree to do all things necessary to ensure all parties required to participate in the Electronic Workspace are invited to the Electronic Workspace, including by opening an Electronic Workspace in the event that DevelopmentWA (or its Conveyancer or Lawyer) has failed to do so within a reasonable time.
- 42.10** DevelopmentWA (or its Conveyancer or Lawyer) must nominate a time of the day for locking of the Electronic Workspace at least 5 Business Days before the Settlement Date.
- 42.11** Settlement occurs when the Electronic Workspace records that:
- (a) the exchange of funds or value between financial institutions in accordance with the instructions of the parties have occurred; or
 - (b) if there is no exchange of funds or value, the documents necessary to enable the Buyer to become registered proprietor of the Land have been accepted for electronic lodgement.
- 42.12** If, after the locking of the Electronic Workspace at the nominated settlement time, Settlement has not occurred by 4.00pm, or 6.00pm if the nominated settlement time is after 4.00pm (with all times in this Condition being AEST or AEDT, as applicable), the Parties must do everything reasonably necessary to effect Settlement electronically on the next Business Day.
- 42.13** If Settlement fails to occur in accordance with Condition 42.11 by the settlement time specified in Condition 42.12 as a result of a computer system operated by Landgate, Office of State Revenue, Reserve Bank of Australia, a Financial Institution or Electronic Lodgement Network Operator is inoperative, neither Party is in default and the Settlement Date is deemed to be the next Business Day or as soon as possible after the computer system becomes operative.
- 42.14** Any rights under the Contract or at law to terminate the Contract may not be exercised during the time the Electronic Workspace is locked for Settlement.
- 42.15** Each party must do everything reasonably necessary to assist the other party to trace and identify the recipient of any mistaken payment and to recover the mistaken payment.

43 SPECIAL CONDITIONS

The Special Conditions will apply to and form part of this Contract. In the event of any inconsistency between the Special Conditions and the Conditions, the Special Conditions will prevail.

Schedule 8 - Commercial and Industrial Land

Item 3 - Sales Contract for Bluff Point Land

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CONTRACT OF SALE

BETWEEN **WESTERN AUSTRALIAN LAND AUTHORITY** trading as DevelopmentWA of Level 6, 40 The Esplanade, Perth, Western Australia (**DevelopmentWA**).

AND

(Print Full Name of Buyer)

as joint tenants/tenants in common (circle appropriate)

(Contact Telephone Number)

(Facsimile Number)

(Email)

(Address) (Buyer)

DevelopmentWA agrees to sell and the Buyer agrees to purchase the Land specified in the Schedule for an estate in fee simple for the Purchase Price and on the terms specified in the Schedule and subject to the DevelopmentWA Standard Non Residential Conditions (No Option to Repurchase) (**the Conditions**) attached as Annexure A.

SCHEDULE**Description of Land**

Lot 400 on Deposited Plan 77372 being the whole of the land in Certificate of Title Volume 2822 Folio 570

Settlement Date

As indicated in the Yamatji Indigenous Land Use Agreement between DevelopmentWA , the Buyer and others dated [] (Yamatji ILUA)

Purchase Price (inclusive of GST)

In accordance with the terms of the Yamatji ILUA

Deposit

Nil

Development/Design Guidelines

Not applicable

Latest Date for Issue of Title

Not applicable

Latest date for Finance Approval

Not applicable

Maximum Amount of Loan

Not applicable

Special Conditions

1. The Buyer acknowledges and agrees that the Land is encumbered by and is sold and transferred subject to the following encumbrances :-
 - (a) Easement H 633644 to Telstra Corporation Ltd for co-axial cable purposes as shown on Deposited Plan 77372 as created on Deposited Plan 65453 ; and
 - (b) Memorial J749770 under the Heritage of Western Australia Act as to portion of the Land as shown on Deposited Plan 77372 a copy of which is annexed as Annexure B; and
 - (c) Memorial M359250 under the Heritage of Western Australia Act as to portion of the Land as shown on Deposited Plan 77372 a copy of which is annexed as Annexure C

The Buyer acknowledges that it has read and understood this Contract and the Conditions and agree to be bound by all of these terms.

EXECUTED by:

(Print Company Name)

(ACN)

In accordance with section 127 of the Corporations Act by or in the presence of:

Signature of Director/Sole Director_____
Signature of Director/Secretary_____
Print Full Name of Director/Sole Director_____
Print Full Name of Director/Secretary_____
Date

SIGNED on behalf of the **WESTERN AUSTRALIAN LAND AUTHORITY** by person(s) authorised by its Board in accordance with Section 45(2)(b) of the Western Australian Land Authority Act 1992.

Authorised Officer_____
Authorised Officer_____
Full Name of Authorised Officer_____
Full Name of Authorised Officer_____
Date**DevelopmentWA's solicitor/settlement agent:** DevelopmentWA – Conveyancing**Phone:** 9482 7499**Fax:** 9482 7401**Email:** conveyancing@developmentwa.com.au

The Buyer appoints the solicitor or settlement agent named below to act on their behalf in relation to this transaction.

Buyer(s) solicitor/settlement agent: _____**Phone:** _____**Fax:** _____

Email: _____

Signed by the Buyer(s): _____

Each of the signatories to this document has received a true copy of this document.

Annexures:

1. Annexure A: DevelopmentWA Standard Non Residential Conditions (No Option to Repurchase);
2. Annexure B: Memorial J749770 under the Heritage of Western Australia Act
3. Annexure C: Memorial M359250 under the Heritage of Western Australia Act.

ANNEXURE A – STANDARD CONDITIONS

DEVELOPMENTWA STANDARD NON RESIDENTIAL CONDITIONS **(No Option to Repurchase)**

Where comments are made in boxes in relation to any Conditions these comments are a general guide only and are not legally binding. If a comment is not made, it does not mean the Condition is not important. A prospective Buyer should obtain legal or other advice (if required) in relation to these Conditions or any other conditions before signing this Contract.

1 DEFINITIONS AND INTERPRETATION

1.1 In these Conditions and the Contract unless the contrary intention appears:

Act means the Western Australian Land Authority Act 1992 (WA);

Amount of the Loan means an amount equal to or less than the amount in the Schedule under the heading entitled 'Maximum Amount of Loan'. If there is no amount referred to in the Schedule under the heading entitled 'Maximum Amount of Loan', then the amount will be an amount equal to or less than 80% the Purchase Price.

Authority means any governmental, semi-governmental, statutory, local or public authority including without limitation the Local Authority, Department of Environment Regulation, the Western Australian Planning Commission, the Water Corporation, the Main Roads Department, 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 by-law.

Bank Cheque means a cheque drawn by a Bank on itself or a financial institution as defined in Section 3 of the Cheques Act 1986 (Commonwealth).

Building Ready Specifications means the specifications governing the building requirements for connection of any Development to the Network Infrastructure, a copy of which can be obtained from DevelopmentWA upon request.

Business Day means a day on which banks open for business in Perth, Western Australia excluding a Saturday, Sunday or public holiday.

Buyer's Conveyancer means any solicitor or settlement agent instructed by the Buyer to act for the Buyer on the Contract and of which appointment DevelopmentWA has been given notice.

Buyer's Obligations means all or any of the obligations and agreements contained or implied in the Contract (whether present, future, actual or contingent) to be

observed and performed by the Buyer prior to or after Settlement.

Claim means any right, cause of action, charge, claim, action, proceedings, judgment, damage, injury, Loss, cost (including legal costs on a full indemnity basis), expense or liability incurred to or made or recovered against any person or entity howsoever arising and whether present, unascertained, immediate, future or contingent.

Commission means the Western Australian Planning Commission.

Conditions means these conditions for the sale of the Land.

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

Contamination has the meaning given in section 4 of the Contaminated Sites Act.

Contract means the contract for sale of the Land of which these Conditions form part. Any reference in these Conditions to the Contract shall refer to both these Conditions and the terms of the Contract.

Contract Date means the date on which DevelopmentWA executes this Contract.

Deposit means the deposit specified in the Schedule.

Development means the construction of any development on the Land.

DevelopmentWA means the Western Australian Land Authority trading as DevelopmentWA (formerly known as LandCorp) as seller of the Land to the Buyer.

DevelopmentWA's Remedies means all or any of the rights powers and remedies contained in or implied by the Contract or at common law or in equity exercisable by DevelopmentWA against the Buyer or in respect of the Land.

Electronic Conveyancing National Law means the law set out in the Appendix to the Electronic Conveyancing (Adoption of National Law) Act 2012 (NSW) applying in Western Australia because of the Electronic Conveyancing Act 2014 (WA).

Electronic Lodgement Network has the same meaning as in section 13 of the Electronic Conveyancing Act 2014 (WA).

Electronic Lodgement Network Operator means a person approved by Landgate under section 15 of the Electronic Conveyancing Act 2014 (WA) to provide and operate Electronic Lodgement Network.

Electronic Workspace means a shared electronic workspace generated by the Electronic Lodgement Network.

Finance Application means an application made by or on behalf of the Buyer to the Lender to lend the Amount of the Loan.

Finance Approval means a written approval by the Lender of the Finance Application or a written offer to lend or a written notification of an intention to offer to lend made by the Lender (any such approval, offer or notification must be in a letter form but may be given to DevelopmentWA attached to an email).

Financial Institution means an authorised deposit-taking institution within the meaning of the *Banking Act 1959* (Cth), building society or credit union.

GST means the Goods and Services Tax as imposed by the GST Act including, where relevant, any related interest, penalties, fines or other charge and any GST equivalent amount under any State Intergovernmental Agreement.

GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth) and any legislation substituting or amending that Act.

Input Tax Credit has the same meaning given in Section 195-1 of the GST Act.

Insolvency Event means any of the following:

- (a) a person is or states that the person is unable to pay from the person's own money all the person's debts as and when they become due and payable;
- (a) a person is taken or must be presumed to be insolvent or unable to pay its debts under any applicable legislation;
- (b) an administrator, provisional liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of a corporation or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within seven (7) days;
- (c) a receiver or receiver and manager is appointed in respect of any property of a corporation;
- (d) a corporation is deregistered under the Corporations Act or notice of its proposed deregistration is given to the corporation;
- (e) a distress, attachment or execution is levied or becomes enforceable against any property of a person;
- (f) a person enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the person's creditors or members of a moratorium involving any of them;

- (g) a petition for the making of a sequestration order against the estate of a person is presented and the petition is not stayed, withdrawn or dismissed within seven (7) days or a person presents a petition against himself or herself;
- (h) a person presents a declaration of intention under section 54A of the Bankruptcy Act 1966 (Cth); or
- (i) anything analogous to or of a similar effect to anything described above under the Law of any relevant jurisdiction occurs in respect of a person.

Land means the land specified in the Schedule.

DevelopmentWA means the Western Australian Land Authority trading as DevelopmentWA as seller of the Land to the Buyer.

Landgate means the Western Australian Land Information Authority, a statutory body corporate established by the Land Information Authority Act 2006 and trading as Landgate.

Latest Date for Finance Approval means the date specified in the Schedule.

Lender means any bank, building society, credit union or other institution as specified in the Contract or if not specified, then any bank, building society, credit union or other institution which makes loans and is carrying on business in Western Australia but not including a mortgage broker (or similar).

Local Authority means the local authority having jurisdiction over the Land.

Loss means a financial loss, damage, costs or expense (including indirect or consequential loss).

Margin Scheme means the scheme described in Division 75 of the GST Act as the margin scheme.

Material Adverse Effect means a significant negative effect or change on the ability of the Buyer to carry out the Development or the value or use of the Land and which is caused directly as a result of:

- (a) the delay in the issue of the Certificate of Title for the Land; or
 - (b) an encumbrance registered or to be registered by an Authority or DevelopmentWA after the Contract Date,
- (as applicable).

Materially Prejudice or Detrimentally Affect means a variation to the final Lot following subdivision which results in:

- (a) where the variation is to the area of the Land, the area of the Land at Settlement is more than

- 5% less than the estimated area of the Land on the Contract Date;
- (b) where the variation is any other matter other than a variation to the area of the Land, the value of the Land decreasing by more than 5%; or
- (c) the use of the Land for the proposed Development being materially prejudiced or detrimentally affected.

Network Infrastructure means the physical infrastructure of the high speed broadband fibre optic network to be installed on or in the Land including all fibre, cables, electronic devices and equipment, ducts, poles, towers, cabinets, housing and any other active and passive equipment and distribution infrastructure, but not including the Pit and Pipe Works, any existing pit and pipe infrastructure, lead-in conduit, the network termination unit or the power supply unit and related cable at any Development.

Non Approval Notice means a written notice given by the Buyer or the Buyer's conveyancer or real estate agent or the Lender to DevelopmentWA to the effect that Finance Approval has been rejected together with written evidence from the Lender that the Lender has rejected the Finance Application such evidence to be as required by DevelopmentWA (acting reasonably).

OSR means the office established by the Commissioner of State Revenue and known as the Office of State Revenue.

Party means DevelopmentWA and the Buyer and, if applicable, any other party to the Contract and **Parties** means all the parties to the Contract.

Pit and Pipe Works means the physical infrastructure, including all pits, pipes, conduits and any other materials to be designed and constructed by DevelopmentWA necessary to properly service the estate in which the Land is located and to properly service any Development with the Network Infrastructure.

Pollution has the same meaning as that expression is given in the Environmental Protection Act 1986 (WA).

Prescribed Rate means the rate defined as the Prescribed Rate in the latest version of the Real Estate Institute of WA (Inc) and Law Society of WA Inc Joint Form of General Conditions for the Sale of Land (**Joint Form**).

Purchase Price means the purchase price (inclusive of GST) specified in the Schedule.

Remediation and Remediate has the meaning given in section 3 of the Contaminated Sites Act and includes the management of any contaminated site.

Schedule means the schedule to the Contract.

Settlement means settlement of the purchase of the

Land by the Buyer in accordance with the terms of the Contract.

Settlement Date means the date specified in the Schedule.

Services means all services to the Land including water, drainage, sewerage, gas, electricity and telecommunications.

Special Conditions means any conditions under the heading "Special Conditions" in the Schedule (if any).

Subscriber has the meaning given to that term in the Electronic Conveyancing National Law.

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

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

Transfer means a form for the transfer of title to the Land as required by Landgate.

Valuer means a natural person who:

- (a) is licensed under the Land Valuers Licensing Act 1978 (WA);
- (b) has not less than five (5) years experience in Western Australia;
- (c) is a member of the Australian Property Institute (Western Australian Division); and
- (d) has experience in assessing the current market value of land similar to the Land

1.2

In these Conditions (and, where applicable, the Contract) unless the contrary intention appears:

- (a) headings in the Schedule are defined terms when used in this Contract with the meaning of such term immediately following the heading;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing any gender include the other genders;
- (d) other grammatical forms of defined words and expressions have corresponding meanings;
- (e) references to persons include corporations and bodies politic;
- (f) references to a person include the legal personal representatives successors and assigns of that person;
- (g) a reference to a Statute Ordinance Code or other Law includes regulations and other statutory instruments under it and

- consolidations amendments re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- (h) references to this or any other document include the document as varied or replaced and notwithstanding any change in the identity of the Parties;
- (i) references to writing include any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;
- (j) an obligation of two or more parties binds them jointly and severally;
- (k) if a word or expression is defined cognate words and expressions have corresponding definitions;
- (l) references to an association body or authority which is reconstituted amalgamated reconstructed or merged or the functions of which have become exercisable by any other person association body or authority in its place shall be taken to refer to the person association body or authority established or constituted in its place or by which its functions have become exercisable;
- (m) reference to any thing (including without limitation any amount or the Land) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (n) reference to a month and cognate terms means a period commencing on any day of a calendar month and ending on the corresponding day in the next succeeding calendar month but if a corresponding day does not occur in the next succeeding calendar month the period shall end on the first day of the next succeeding calendar month;
- (o) references to the Contract or these Conditions includes any schedules and annexures;
- (p) except for the headings in the Schedule to the Contract, headings are inserted for ease of reference only and shall be ignored in construing these Conditions or the Contract;
- (q) references to time are to local time in Perth Western Australia;
- (r) where time is to be reckoned from a day or event that day or the day of that event shall be excluded;
- (s) the word include used when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind;
- (t) a provision of these Conditions or the Contract must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of this Contract or the inclusion of the provision in these Conditions or the Contract;
- (u) terms defined in these Conditions have the same meaning when used in the Contract; and
- (v) any comments included in boxes are a general guide only and are not terms of these Conditions or legally binding on the Parties.

2 PAYMENT OF PURCHASE PRICE AND SETTLEMENT

2.1 The Buyer must pay:

- (a) the Deposit in the manner specified in the Schedule; and
- (b) the balance of the Purchase Price (being the Purchase Price less the Deposit together with any adjustments due at Settlement) on the Settlement Date by an unendorsed Bank Cheque payable to DevelopmentWA or as DevelopmentWA may nominate.

2.2 DevelopmentWA is entitled (but not bound) to invest or to cause the investment of any Deposit in an interest bearing bank account and all interest accrued will belong to DevelopmentWA unless the Deposit is repaid to the Buyer as a result of the default of DevelopmentWA in which case interest (less any bank charges and taxes) will be payable to the Buyer.

2.3 If the Buyer:

- (a) does not pay the Deposit in full as required by the Contract; or
- (b) pays the Deposit by cheque and that cheque is dishonoured on presentation,

then DevelopmentWA may give the Buyer a notice requiring the Deposit to be paid or the cheque to be honoured within 48 hours of service of such notice.

2.4 If a notice issued under Condition 2.3 is not complied with (in the prescribed time), then unless otherwise provided in the notice:

- (a) the Buyer is in default; and
- (b) DevelopmentWA may terminate the Contract by giving notice to the Buyer but without prejudice to the rights and remedies available to DevelopmentWA under the Contract, common law or in equity.

3 INTEREST ON LATE SETTLEMENT AND DEFAULT COSTS

- 3.1 If for any reason not attributable to DevelopmentWA the purchase is not completed on the Settlement Date, the Buyer must pay to DevelopmentWA on Settlement interest at Prescribed Rate per annum on the balance of the Purchase Price and other moneys payable at Settlement.
- 3.2 The interest payable by the Buyer will be calculated on a daily basis from and including the Settlement Date but excluding the actual date of payment and will be in full settlement of any claim DevelopmentWA may have against the Buyer arising from such delay subject to the provisions of Condition 30.
- 3.3 DevelopmentWA is not required to give to the Buyer a notice requiring payment of interest under this Condition. In all other respects this Condition is without prejudice to the rights of DevelopmentWA under these Conditions or at common law or in equity.

4 ADJUSTMENT OF RATES

- 4.1 All rates taxes assessments and other outgoings in respect of the Land must be borne and paid by the Buyer as from the earlier of the actual date the Buyer is granted possession or the Settlement Date (subject to Condition 4.2) and the same must if necessary be apportioned between DevelopmentWA and the Buyer. Where under the Act DevelopmentWA is not liable to pay rates and taxes to any Authority in respect of the Land but is obliged to pay the equivalent of such rates and taxes to the State then this Condition shall apply as if such payment was a payment due to a Local Authority or other Authority for rates, taxes and outgoings and an adjustment will be effected if necessary.
- 4.2 Where there is any delay in Settlement due to the act or default of the Buyer then:
- (a) rates, taxes and outgoings will be adjusted as between DevelopmentWA and the Buyer on the Settlement Date and not the actual date of Settlement; and
 - (b) if any increase in Land Tax or any other rates and taxes payable by DevelopmentWA (either to an Authority or an equivalent amount is payable by DevelopmentWA to the State) occurs (for example, by the Settlement being delayed until after 1 July in any year), the Buyer is liable for all such additional payments (including any increase in Land Tax calculated on a multi ownership basis) which amount is due and payable to DevelopmentWA at Settlement.
- 4.3 Subject to Condition 4.4, Land Tax will be adjusted on the basis that the Land is the only land owned by DevelopmentWA (i.e. on a single holding/single ownership basis). If Land Tax is payable on the Land at

Settlement, the Buyer agrees that DevelopmentWA may, at its election, require that the Buyer pays for its proportion of Land Tax at Settlement on the basis that DevelopmentWA undertakes to pay the Land Tax payable on the Land for the relevant financial year at a later date.

- 4.4 If the Land has recently been subdivided and has not been individually rated for Land Tax as at Settlement the Buyer must pay to DevelopmentWA at Settlement a contribution to Land Tax calculated as follows:

$$LT = \frac{\text{Total LT}}{\text{Total Area}} \times \text{Land Area}$$

Where:

LT is the Land Tax contribution payable by the Buyer at Settlement.

Total LT is the Land Tax for the parent lot of which the land forms part.

Total Area is the total area of the parent lot of which the land forms part.

5 PREPARATION OF TRANSFER AND SETTLEMENT

- 5.1 This condition only applies if Condition 36 (Electronic Conveyancing) does not apply.
- 5.2 Prior to the Settlement Date the Buyer must prepare or cause to be prepared a transfer of the Land in registrable form and which must comply with Condition 24(c) and after proper execution of such transfer and having such transfer endorsed with duty must deliver such transfer to DevelopmentWA or its solicitor or settlement agent within a reasonable time prior to Settlement (being not less than five (5) Business Days prior to the Settlement Date) for the purposes of the transfer being executed by DevelopmentWA and being held by it or on its behalf pending Settlement.
- 5.3 The Buyer is entitled to request in writing that DevelopmentWA sign and return the transfer for the Land prior to it being endorsed with duty at the OSR provided that accompanying such written request is an assessment of duty payable on the Contract issued by the OSR or if duty payable on the Contract is to be assessed and paid through the Revenue Online system developed by the OSR (Revenue Online), a Transaction Summary generated through Revenue Online (Transaction Summary). If DevelopmentWA returns the land transfer to the Buyer prior to Settlement the Buyer shall hold such land transfer in escrow pending Settlement. If the Buyer or its representative is registered for, and has elected to have duty on the Contract assessed and paid through, Revenue Online then the Buyer or its representative must:
- (a) advise DevelopmentWA that it has elected to have duty on the Contract assessed and paid through Revenue Online;

- (b) the Buyer must within five (5) Business Days after the Transaction Summary is generated provide to DevelopmentWA a copy of the Transaction Summary; and
- (c) on Settlement, the Buyer must provide to DevelopmentWA a copy of the Certificate of Duty issued by the OSR for duty paid on the Contract.

- 5.4** Settlement must take place on the Settlement Date at the offices of DevelopmentWA in Perth or at such other place in Perth as DevelopmentWA appoints.
- 5.5** At Settlement, the Buyer must deliver to DevelopmentWA in accordance with Condition 2.1(b) an unendorsed Bank Cheque or Bank Cheques for the balance of the Purchase Price and any adjustment of rates and taxes due to DevelopmentWA and against receipt of the balance of the Purchase Price and adjustment of rates and taxes or otherwise, DevelopmentWA will provide to the Buyer, subject to the Buyer's compliance with Condition 5.2, the transfer duly executed for and on behalf of DevelopmentWA together with the duplicate Certificate of Title to the Land (if issued).
- 5.6** If for any reason a Bank Cheque tendered as or towards the money payable by the Buyer on Settlement is not honoured on first presentation, the Buyer will remain liable to pay the amount of that money, without prejudice to any other rights, remedies or powers of DevelopmentWA under the Contract.
- 5.7** The Buyer must provide to DevelopmentWA either prior to Settlement or after Settlement (as specified by DevelopmentWA) a copy of the stamped Contract including these Conditions.
- 5.8** Immediately after Settlement, the Buyer must cause the transfer in respect of the Land to be lodged at Landgate for registration and use its best endeavours to have the transfer registered as soon as possible. In the event of a requisition notice being issued by Landgate, then unless the requisition arises from a document prepared by DevelopmentWA, the Buyer must do all things necessary to satisfy the requisition and pay all fees in respect of the requisition.
- 5.9** If required by DevelopmentWA, the transfer of land will be lodged as a follower dealing to an application for titles or an application to register an encumbrance.

6 COSTS

The Buyer will bear the cost of the preparation of the transfer, all duty under the Duties Act 2008 (WA) and duty penalties on the Contract and registration or other fees in respect of the transfer with Landgate.

7 SUBJECT TO FINANCE

If this Contract is subject to finance, the Buyer must apply to a Lender for finance (and not only a broker) within the time specified and in accordance with this Condition and use best endeavours to have finance approved.

- 7.1** If the Schedule provides that the Buyer is to obtain Finance Approval, the Contract is conditional upon the Buyer receiving written Finance Approval on or before 5pm WST on the Latest Date for Finance Approval to assist in the purchase or development of the Land.
- 7.2** The Buyer must make a Finance Application as soon as practicable after the Contract Date and use its best endeavours in good faith to obtain Finance Approval.
- 7.3** If Finance Approval is granted subject to usual terms and conditions of the Lender or subject to conditions which have been accepted by the Buyer then Finance Approval will be deemed to be obtained on the date that the Finance Approval is given by the Lender.
- 7.4** The Buyer must immediately notify DevelopmentWA in writing:
- (a) of any Finance Approval obtained; or
- (b) if any Finance Application is rejected at any time.
- 7.5** Where Finance Approval is obtained or deemed to be obtained in accordance with these Conditions, then Condition 7.1 will be satisfied and this Condition 7 will no longer apply to the Contract notwithstanding that any Lender may subsequently withdraw the Finance Approval for any reason or the loan is not completed for any reason.
- 7.6** The Buyer may waive the benefit of this Condition at any time on or before 5pm WST on the Latest Date for Finance Approval by giving written notice to DevelopmentWA and upon giving such notice this Condition will be deemed to have been fulfilled.
- 7.7** If the Buyer has complied with Condition 7.2 and Finance Approval is not obtained by the Latest Date for Finance Approval and the Buyer gives DevelopmentWA a Non Approval Notice by 5pm on the Latest Date for Finance Approval, the Contract comes to an end without further notice.
- 7.8** If the Contract comes to an end pursuant to Condition 7.7 DevelopmentWA will refund to the Buyer the Deposit (without interest) and all other moneys (if any) paid in accordance with this Contract (less any reasonable costs and expenses incurred by DevelopmentWA) and there will be no further Claim under the Contract by either DevelopmentWA or the Buyer against the other either in law or in equity.
- 7.9** If the Buyer fails to give written notice to

DevelopmentWA by 5pm WST on the Latest Date for Finance Approval either:

- (a) from the Lender that Finance Approval has been obtained; or
- (b) giving a Non Approval Notice to DevelopmentWA,

or the Buyer otherwise fails to comply with this Condition 7, then DevelopmentWA may by written notice to the Buyer immediately terminate this Contract (unless the Buyer waives this Condition prior to DevelopmentWA terminating this Contract) and in which case:

- (a) the Contract will come to an end;
- (b) the Deposit (and any interest) will be retained by DevelopmentWA (without DevelopmentWA needing to give any notice to the Buyer); and
- (c) such termination will be without prejudice to any right or Claim that DevelopmentWA may have against the Buyer under the Contract either in law or in equity.

7.10 If required by DevelopmentWA, the Buyer must provide to DevelopmentWA full details of and a copy of the Finance Application made by the Buyer and any response(s) from a Lender.

8 TITLE

8.1 The Certificate of Title in respect of the Land or the parent Certificate of Title to the property of which the Land forms part may be inspected by search at Landgate and the Buyer does not require DevelopmentWA to produce an abstract of title or any other evidence of DevelopmentWA's title or right to sell the Land.

8.2 DevelopmentWA will not be required to answer any objections to or requisitions on title.

8.3 If DevelopmentWA is not the registered proprietor of the Land as at the Contract Date, then DevelopmentWA enters into this Contract in its capacity as the authorised agent of the State of Western Australia acting through the Department of Lands (State) and, in that capacity, DevelopmentWA agrees to sell and the Buyer agrees to purchase the Land on the terms of the Contract. Prior to Settlement, DevelopmentWA will acquire the Land from the State. Upon transfer of the Land to DevelopmentWA, all obligations and agreements under the Contract on the part of the State will be assumed by DevelopmentWA and the Buyer releases and discharges the State from any Claims.

9 ENCUMBRANCES

9.1 Subject to Condition 9.4, the Land is sold subject to the following as at the Settlement Date:

- (a) all easements, positive covenants, restrictive covenants and memorials;
- (b) any condition or statement contained in a memorial (including but not limited to, memorials under Section 58 of the Contaminated Sites Act 2003 (WA));
- (c) all rights, reservations, conditions, notifications under Section 70A of the Transfer of Land Act 1893 (WA) or Section 165 of the Planning & Development Act 2005 (WA);
- (d) all interests, orders, tenancies, public roads and encroachments; and
- (e) all claims, demands, conditions (including building conditions) or restrictions whatsoever imposed or made on the Land by any Authority or under any legislation,

(if any) affecting the Land and which are specified in the Certificate of Title or which will be specified or registered upon lodgement of the transfer of the Land to the Buyer at Landgate.

9.2 Subject to Condition 9.4, if any document or interest specified in Condition 9.1 is to be registered on the title to the Land at Settlement due to:

- (a) the requirements of the Commission;
- (b) any Authority having jurisdiction over the Land; or
- (c) as a result of the requirements of DevelopmentWA,

then the Buyer acknowledges and agrees that such document or interest will be registered immediately before or immediately after the registration of the transfer of the Land to the Buyer as required by DevelopmentWA.

9.3 If after the Contract Date an encumbrance of the type mentioned in Condition 9.1 is required to be registered over the title to the Land either by DevelopmentWA (acting reasonably) or any Authority, then subject to Condition 9.4 the encumbrance shall be registered prior to or at Settlement and either immediately prior to or immediately after the transfer to the Buyer as required by DevelopmentWA.

9.4 If the Buyer establishes to DevelopmentWA's satisfaction (acting reasonably) that the registration of an encumbrance on the Certificate of Title pursuant to Condition 9.3 will have a Material Adverse Effect (Confirmation), the Buyer may, within seven (7) days of the date of Confirmation, terminate the Contract

whereupon the Deposit will be refunded to the Buyer (without interest) and neither Party shall have any further claim against the other.

10 SUBDIVISION OF LAND

- 10.1** If the Land comprises part of a lot and is accordingly not a lot as defined in the Planning and Development Act 2005 (WA) then the Contract is subject to and conditional upon the approval of the Commission to the subdivision of the land of which the Land forms part being obtained in order to create a separate lot or lots in respect of the Land in accordance with Section 140(1) of the Planning and Development Act 2005 (WA) and this Condition.
- 10.2** If it has not already done so DevelopmentWA will at its cost make an application to the Commission for the approval of subdivision to create a separate lot for the Land within three (3) months from the Contract Date.
- 10.3** For the purposes of Section 140(3) of the Planning and Development Act 2005 (WA) the Contract is subject to and conditional upon the Commission giving its approval to the subdivision of the Land on or before six (6) months from the date of the lodgement of the application specified in Condition 10.2.
- 10.4** In the event that any conditions are imposed by the Commission or any other relevant Authority in relation to the subdivision of the Land which are not acceptable to DevelopmentWA in its absolute discretion then DevelopmentWA may by giving written notice to the Buyer within thirty (30) days of such conditions being imposed terminate this Contract whereupon the Deposit will be repaid to the Buyer without interest.
- 10.5** If a separate title for the Land has not issued from Landgate by the Latest Date for Issue of Title (either due to a matter mentioned in this Condition or for any other reason), DevelopmentWA may, provide a further anticipated latest date of when a Certificate of Title for the Land is scheduled to issue from Landgate (**Revised Latest Date**). If the Buyer establishes to DevelopmentWA's satisfaction (acting reasonably) that the issue of the title subsequent to the Latest Date for Issue of Title but prior to the Revised Latest Date will have a Material Adverse Effect and DevelopmentWA confirms in writing to the Buyer that it accepts that the delay in the issue of the Certificate of Title for the Land will have a Material Adverse Effect (**Confirmation**), the Buyer may, within seven (7) days of the date of the Confirmation, by written notice to DevelopmentWA terminate this Contract whereupon the Deposit will be refunded to the Buyer (without interest) and neither Party shall have any further claim against the other.
- 10.6** The Buyer is not entitled to any compensation and DevelopmentWA is not liable for any costs, expenses or damages (whether direct or indirect) arising as a result of the Buyer commissioning the preparation of any building design or specification or incurring any other costs prior to the issue of a separate Certificate of Title for the Land.

11 DELAY IN SETTLEMENT

- 11.1** The Buyer acknowledges that a separate Certificate of Title in respect of the Land may not be available as at the date of this Contract or on the Settlement Date. DevelopmentWA is not obliged to notify the Buyer of the date of issue of the title where Settlement is subject to the issue of title.
- 11.2** The Buyer is not entitled to any compensation as a result in any delay in Settlement as a result of the Certificate of Title not being available.
- 11.3** Without limiting Condition 11.2, the Buyer acknowledges that the construction of any Development upon the Land may not be able to commence until Settlement has been effected and that any building contract entered into or other costs incurred by the Buyer prior to the date of actual Settlement are at the sole risk of the Buyer.
- 11.4** The Buyer acknowledges that DevelopmentWA has no liability for any costs or damages arising as a result of the Buyer entering into any building contract or incurring any other costs prior to actual Settlement (including but not limited to any increase in the construction cost).

12 CHANGE TO LAND

- 12.1** Where at the Contract Date the Land is not a subdivided Lot or Lots the Buyer agrees with DevelopmentWA that:
- (a) DevelopmentWA may make any changes modifications variations and amendments to the plan of subdivision as may be required by the relevant Authorities to obtain due registration of the plan of subdivision; and
 - (b) the Buyer must not make any objection or seek to terminate the Contract or seek to claim any compensation in respect of any such change modification variation or amendment to the plan of subdivision or to the configuration or size of the Land.
- 12.2** In the event of any dispute as to whether such modification variation or amendment has Materially Prejudiced or Detrimentially Affected the Land then such dispute shall be determined by a Valuer agreed between DevelopmentWA and the Buyer and if not agreed then by a Valuer appointed by the President for the time being of the Australian Property Institute (Inc) Western Australian Division who will act as an expert and not as an arbitrator whose decision shall be final and binding. The Parties will pay the costs of such Valuer equally.
- 12.3** If a change, modification, variation or amendment to the:
- (a) plan of subdivision comprising the Land; or

(b) configuration of the Land,

Materially Prejudices or Detrimentially Affects the Land, then the Buyer may within thirty (30) days of the later of notice of such change, modification, variation or amendment or determination of any dispute under this Condition 12.3 terminate this Contract by written notice to DevelopmentWA whereupon the Deposit will be refunded to the Buyer and neither Party will have any Claim against the other.

(a) the same will not invalidate the sale; and

(b) if notified to the other Party within seven (7) days of the date of this Contract the same will be the subject of compensation to be paid or received by DevelopmentWA as the case may require.

17.2 An error or misdescription as specified in Condition 17.1 will not entitle a Party to terminate the Contract or to delay Settlement and the Buyer is not entitled to compensation as a result.

13 RISK

As from the Settlement Date the Land sold will be at the sole risk of the Buyer in respect of any loss or damage by accident, act of God or otherwise.

14 POSSESSION

14.1 Subject to Condition 14.2 possession of the Land will be and shall be deemed to have been given and taken at Settlement subject to the Buyer having performed all of the Buyer's Obligations arising prior to Settlement.

14.2 DevelopmentWA may by giving written notice to the Buyer give possession of the Land to the Buyer from the date specified in the notice. If notice is given by DevelopmentWA adjustment of rates and taxes shall be effected on Settlement and not on the date of possession. The Buyer must from the date of possession effect public liability insurance in an amount of \$20,000,000 cover with an insurer and on the terms approved by DevelopmentWA (acting reasonably). The Buyer must provide DevelopmentWA with a certificate of currency in respect of such insurance.

15 COMPLIANCE WITH LEGISLATION

As from the Contract Date the Buyer shall comply with and observe all provisions orders by-laws and regulations of and under any legislation in respect of or in any way affecting the Land.

16 CONSENTS

If this Contract is subject to any prior consent under any legislation, the Buyer must use best endeavours to obtain such consent.

17 ERROR IN AREA

17.1 If there is any mistake in or omission from this Contract with respect to the description boundary or area of the Land or any other similar matter:

18 DIVIDING FENCE

18.1 The Buyer acknowledges that any retaining wall or boundary wall or fence between the Land and any adjoining land may be constructed on the boundary of the Land, entirely on the Land or any adjoining land or partially on either (with the centre of such wall or fence not on the boundary between the Land and any adjoining land (if any)). The Buyer must make its own enquires as to the boundaries of the Land and the Buyer must not make any claim against and is not entitled to any compensation from DevelopmentWA, nor terminate the Contract, if any wall or fence is not on the boundary of the Land.

18.2 All fences and walls purporting to be on the boundary of the Land will as between DevelopmentWA and the Buyer be deemed to be upon their true boundary and if any fence or wall is found not to be on its true boundary the Buyer is not entitled to any compensation or have any claim against DevelopmentWA or any right to terminate the Contract.

18.3 The Buyer will not make any Claim against DevelopmentWA pursuant to the Dividing Fences Act 1961 or however else concerning:

(a) the construction of, or contribution to the cost of construction of, any dividing fences or walls; or

(b) any other liability in respect of a dividing fence or wall including any liability DevelopmentWA may have incurred with any adjoining owners.

18.4 The Buyer acknowledges and agrees that this Condition may be pleaded as an absolute bar to any relief, compensation or claim sought by the Buyer against DevelopmentWA.

18.5 The Buyer must not build any structure on the Land, plant or remove any vegetation nor remove soil, rocks or other materials which may affect the structural integrity of any wall or fence between the Land and any adjoining land.

18.6 The Buyer has had the opportunity to inspect any fence or wall now constructed on the Land prior to entering into this Contract. DevelopmentWA gives no warranty as to the condition of the wall or fence as at settlement or its future use.

18.7 The Buyer accepts the condition of any fence or wall as at the Settlement Date.

20.2 If the Contract refers to design guidelines or a detailed area plan or other requirements for development then the Buyer shall comply with all requirements.

19 INSPECTION OF PEGS

19.1 The Buyer acknowledges and agrees that to the maximum extent possible:

- (a) the Buyer has had the opportunity to inspect the Land; and
- (b) as at the date of the Contract where any pegs marking the boundaries of the Land (if any) are in place such pegs may or may not mark the true boundaries of the Land.

19.2 DevelopmentWA is not liable to the Buyer where no pegs mark the boundary of the Land or the pegs have been removed or do not mark the true boundaries of the Land.

19.3 In the event that any pegs are removed from the Land prior to the Settlement Date for any reason DevelopmentWA is not obliged to resurvey the Land or to replace any such pegs or in any manner be liable for such removal.

20.3 If requested by the Buyer prior to Settlement, DevelopmentWA will sign any documents reasonably required by the Buyer which must be signed by the person who is the owner of the Land in order for the Buyer to obtain an approval from any relevant Authority for any Development on condition that:

- (a) the Buyer is solely responsible for all costs associated with the preparation, execution, lodgement and approval of all documents executed by DevelopmentWA;
- (b) the Buyer is solely liable for the document and the Buyer has no right to make any Claim against DevelopmentWA for any matter in respect of any documents signed by DevelopmentWA and DevelopmentWA is not liable to indemnify the Buyer whatsoever or howsoever arising by reason of any documents signed by DevelopmentWA;
- (c) the Buyer indemnifies and agrees to keep fully and effectually DevelopmentWA indemnified from and against any Claim or Loss whatsoever (whether direct, indirect or consequential and whether present or future) which DevelopmentWA may incur in connection with any documents signed by DevelopmentWA and in respect of any Loss that DevelopmentWA may incur as a consequence of any act or omission of the Buyer arising from any documents signed by DevelopmentWA; and

20 PLANNING AND OTHER MATTERS

20.1 The Buyer acknowledges that the Land is sold subject to the following as at the Settlement Date:

- (a) the provisions of any town planning scheme, zoning by-laws and other laws affecting the Land;
- (b) any order or requisition affecting the Land;
- (c) any proposal or scheme for the widening, realignment, closure, siting or alteration of the level of any road or right of way adjacent to or in the vicinity of the Land by any Authority or person;
- (d) any resumption or proposal to resume the Land or any adjoining or other land; and
- (e) any easement, memorial (and any condition or statement contained in the memorial), notification, positive covenant or restrictive covenant or other encumbrance specified in Conditions 9.1 or 9.3 affecting the Land or which will affect the Land on registration of the transfer of the Land to the Buyer,

and the Buyer will take title subject to the above and will not be entitled to make any objection, requisition or claim for compensation, nor to rescind this Contract in respect of any matter specified in this Condition.

20.4 the execution of any document by DevelopmentWA (including but not limited to any development application or building permit application) will not be considered an approval by DevelopmentWA of any activity or any use of the Land proposed by the Buyer pursuant to the document or application.

21 BUSHFIRE RISK

21.1 The Buyer acknowledges and agrees that it should enquire as to whether the Land is classified as "Bushfire Prone" by the Office of Bushfire Risk Management within the Department of Fire and Emergency Services.

21.2 If the Land is classified as "Bushfire Prone", the Buyer should:

- (a) check with the Local Authority to ascertain if a Fire Management Plan has been prepared in respect of the Land;
- (b) ascertain if a Bushfire Attack Level (BAL) has been established in respect of the Land and, if not, consider whether it should appoint a relevant consultant to determine the BAL; and
- (c) if applicable, consider if any Development

should be undertaken in accordance with AS 3959-2009 (as amended from time to time) relating to construction of buildings within a Bushfire Prone Area.

21.3 If a BAL has been established in respect of the Land and/or a Fire Management Plan is in existence in respect of the Land, the Buyer must take into account the BAL and comply with the Fire Management Plan in relation to any Development and:

- (a) if required, comply with AS 3959-2009; and
- (b) if not required, consider compliance with AS3959-2009,

in relation to any Development.

22 MAINTENANCE OF LANDSCAPING AND STRUCTURES

22.1 The Buyer acknowledges that any landscaping, retaining walls, entry statements and other structures established by DevelopmentWA in the estate of which the Land forms part may not be maintained by DevelopmentWA after the date of the Contract.

22.2 In the event that a landscaped street verge adjoining the Land has been provided by DevelopmentWA the Buyer acknowledges that:

- (a) the irrigation for such street verge may be supplied from a temporary source which may be disconnected by DevelopmentWA in its absolute discretion; and
- (b) the Buyer shall in such event reconnect such irrigation to the water supply from the Land and must undertake ongoing maintenance and watering of the landscaped verge.

23 SERVICES, CONTAMINATION AND NBN

23.1 The Buyer acknowledges and confirms that:

- (a) the Land has or will be provided with Services to the boundary of the Land by DevelopmentWA or a relevant Authority in accordance with conditions imposed by the Commission;
- (b) the Land may be filled and/or levelled by DevelopmentWA to meet the requirements of the Commission and that any additional earthworks that may be required will be at the sole cost of the Buyer;
- (c) it has made its own enquiries in relation to all servicing required to be effected to the Land for its proposed use and will meet all such servicing requirements (other than as specified in

paragraph (a)) at its cost;

(d) DevelopmentWA is not liable to the Buyer for any costs or charges which may be charged or levied in relation to the Land or the provision of Services either before or after Settlement imposed by any Authority or any service provider;

(e) where Settlement is due under the Contract and where any Services required to be provided by DevelopmentWA or any Authority in accordance with conditions imposed by the Commission pursuant to this Condition 23.1 have not been provided or a connection to any of the Services is not available for any reason, the Buyer must nevertheless effect Settlement on the Settlement Date and will have no Claim against DevelopmentWA as a result; and

(f) if required by DevelopmentWA, the Buyer grants to DevelopmentWA and its employees, agents, invitees and contractors and any service providers (with or without equipment) access to the Land at all reasonable times following Settlement to supply and not install any Services or carry out any works reasonably required by DevelopmentWA.

23.2 Without limiting Condition 23.1, the Buyer acknowledges and agrees that:

- (a) the Land may be serviced by the National Broadband Network in relation to the supply of broadband internet services (NBN);
- (b) if the Buyer proposes to connect to the NBN, the Buyer must at its cost construct any Development in accordance with the requirements and specifications of NBN Co Ltd and must obtain all relevant requirements and specifications from NBN Co Ltd directly prior to undertaking any Development;
- (c) the Buyer must as soon as possible notify NBN Co Ltd of the number of intended connections to the NBN required by the Buyer for any Development;
- (d) if the proposed Development is a strata-title Development or if the Buyer requires multiple connections to the NBN, delays may be experienced in NBN Co Ltd providing connections to the NBN for any Development;
- (e) it is the sole responsibility of the Buyer to make its own independent enquiries with NBN Co Ltd and any other relevant person, company or Authority in relation to the costs, connection timeframes and all other requirements relating to the NBN and connection to the NBN prior to entering into this Contract; and
- (f) DevelopmentWA is not responsible for, and the Buyer releases DevelopmentWA from, any costs, losses or expenses incurred by the Buyer

- as a result of any matter associated with the NBN or NBN Co Ltd including but not limited to all costs associated with obtaining, or failing to obtain, any connection to the NBN. The Buyer must not make any Claim against DevelopmentWA in relation to any matters associated with the NBN.
- 23.3** The Buyer acknowledges and agrees that:
- (a) the Buyer must ensure that the Building Ready Specifications and appropriate building wiring specifications are complied with in respect of any Development in order to enable connection to the Network Infrastructure; and
- (b) a failure to comply with the Building Ready Specifications will prevent any Development being able to be connected to the Network Infrastructure or will require the Buyer to incur additional costs in order to connect to the Network Infrastructure.
- 23.4** Other than where the Land has been reported to the Department of Environment Regulation under the Contaminated Sites Act as being Contaminated or suspected of being Contaminated, DevelopmentWA is not aware of any Contamination on or below the surface of the Land which will materially affect the use of the Land.
- 23.5** The Buyer agrees that it must make its own enquiries as to whether any condition or Contamination on or below the Land will affect any Development or the use of the Land proposed by the Buyer and agrees to purchase the Land subject to any Contamination or sub-surface conditions that may exist.
- 23.6** If as at the date of the Contract the Land has not been connected to any Services then the Buyer must meet all costs relating to such connection.
- 23.7** If at the Contract Date a relevant Authority has determined that underground power or any other Services will be installed to or applied to the Land and a charge has been imposed on DevelopmentWA for that installation or connection then the cost of that installation or connection will be met by DevelopmentWA. The Buyer must pay any subsequent charge, assessment or liability that may apply subsequent to the Contract Date in relation to the installation of underground power or any other Services.
- 23.8** If at the Contract Date there is a septic tank on the Land which is required to be decommissioned, then the Buyer is solely responsible for decommissioning the septic tank.
- 23.9** If an electricity transformer is or will be installed on or adjacent to the Land, the Buyer must comply with the requirements of any relevant service provider and shall not construct or install any fencing or other structure within such distance from the boundary of any electricity transformer and/or switchgear site as specified by the relevant service provider.
- 23.10** Without limiting any other Condition, the Buyer acknowledges and agrees that DevelopmentWA is not liable for, and the Buyer must make its own independent enquiries as to, the Services or connections provided, or to be provided (or the lack of Services), to the Land and whether or not such Services or connections are or will be satisfactory for any Development or any use.
- 23.11** The Buyer acknowledges and agrees that telecommunication services to the Land may be installed, owned, operated and/or maintained by a Party other than DevelopmentWA and that the Buyer must not make any Claim against DevelopmentWA in relation to such telecommunication services.
- 23.12** The Buyer acknowledges and agrees that connection to the sewer connection (when installed) to the Land must be effected by the Buyer. Any increase to the flow rate above the standard allowance as required by the Buyer is to be procured by the Buyer at its cost. The depth of the property connection has been designed in accordance with Water Corporation requirements.
- 23.13** The Buyer acknowledges and agrees that the Buyer accepts any soil classification of the Land and agrees that the Buyer is solely liable for all costs arising as a result of such classification.
- 23.14** The Buyer acknowledges and agrees that it is solely liable as to the requirements to upgrade any Services to the Land, and the capacity of the Services required, in order for the Buyer to use the Land for any Development or any other use including, but not limited to, the upgrade of power, water, sewerage or any other Services.
- 23.15** The Buyer releases and discharges DevelopmentWA and agrees that the Buyer is responsible and liable for all liability, investigation, Remediation and other costs (whether direct or indirect) associated with Contamination or Pollution affecting the Land or other land in the vicinity of the Land whether such Contamination or Pollution occurred prior to or subsequent to the date of the Contract other than Contamination caused or contributed to by DevelopmentWA.
- 23.16** The Buyer is solely liable to comply with and otherwise to deal with all laws and the requirements or orders of any relevant Authority in relation to any Contamination or Pollution or otherwise on or from the Land.
- 23.17** The Buyer agrees to indemnify and keep indemnified DevelopmentWA from and against any Claim or Loss (whether direct or indirect and whether present or future) which DevelopmentWA may suffer in relation to any Contamination or Pollution on the Land whether prior to or subsequent to the date of the Contract other than Contamination caused or contributed to by DevelopmentWA.
- 23.18** The Buyer must sign such documents and do such acts, matters and things as may be necessary or desirable in order to assume full liability for all Contamination and Pollution under the Contaminated Sites Act or future

legislation other than Contamination caused or contributed to by DevelopmentWA.

where the parties are acting at arms-length and are not associates. The Party receiving the Tax Invoice shall pay to the other Party the GST detailed on the Tax Invoice.

24 REBATES

If a rebate is payable by DevelopmentWA or a reduction in the monies payable at Settlement is allowed by way of a rebate, the payment of or credit for the rebate is conditional upon:

- (a) the Buyer informing any Lender making a loan to the Buyer in relation to the purchase of the Land of the terms of the rebate;
- (b) the Lender in paragraph (a) providing an acknowledgement in a manner as DevelopmentWA requires acknowledging that the Lender is aware that a rebate has or may be paid; and
- (c) if the transfer of the land is effected other than by way of electronic conveyancing in accordance with Condition 36, the Transfer of Land form to be registered at Landgate providing as the consideration for the sale in the consideration panel "The terms of the contract for sale between the Transferor (as seller) and the Transferee (as buyer)". If the transfer of Land is effected through electronic conveyancing pursuant to Condition 36 the rebate amount shall be recorded as part of the electronic conveyancing.

25 GOODS AND SERVICES TAX

- 25.1 The Parties acknowledge and agree that DevelopmentWA is considered to be the State under the GST Act and it has previously obtained a private ruling from the Australian Taxation Office to this effect.
- 25.2 The parties acknowledge that for the purposes of this Contract and any other dealing associated with the Contract, DevelopmentWA as the State is obligated under the GST Law to deal with its notional GST liability (as that term is used in Division 177 of the GST Act) as if it were GST.
- 25.3 DevelopmentWA and the Buyer agree that the Purchase Price is inclusive of GST.
- 25.4 DevelopmentWA will provide a Tax Invoice on or prior to Settlement.
- 25.5 Where a Party or parties to this Contract provides non-monetary consideration and the provision of this non-monetary consideration is a Taxable Supply, the Party providing the non-monetary consideration shall provide a Tax Invoice to the other Party for the GST inclusive market value of the non-monetary consideration. Without reserving exclusive rights to determine such GST inclusive market value, DevelopmentWA may determine such market value to be for a nominal sum

25.6 This Contract and supporting material is not a document notifying any obligation to make payment and is not considered an invoice under the GST Act. The deposit (if any) paid is held as security for the performance of an obligation in accordance with Division 99 of the GST Act.

25.7 If a Party is entitled under the Contract to be reimbursed or indemnified by a Party for a cost or expense incurred in connection with this Contract, the reimbursement or indemnity payment must not include any GST component of the cost or expense for which an Input Tax Credit may be claimed by the Party, as the case may be, entitled to be reimbursed or indemnified.

26 WARRANTY

26.1 The Buyer covenants and warrants with DevelopmentWA (which warranty the Buyer acknowledges has induced DevelopmentWA to enter into the Contract) that the Buyer has full power and capacity to enter into this Contract and the Buyer has obtained all relevant approvals necessary to enter into and complete the Contract.

26.2 The Buyer covenants and warrants to DevelopmentWA that it does not enter into the Contract as trustee of a trust or as agent for any other person or entity other than as expressly disclosed to DevelopmentWA prior to the Contract Date and as included in the Buyer's details in the Contract for Sale of the Land to which these Conditions are annexed.

26.3 Where the Buyer is acting as trustee, the Buyer covenants with and warrants to DevelopmentWA that the Buyer has or have or will have full powers pursuant to its memorandum and articles (or constitution) and its deed of trust (generally and together (if more than one) called the Trust) under which it purports to act.

26.4 The Buyer covenants that:

- (a) the Trust is lawfully and validly constituted and all deeds and other instruments in respect of the Trust have been properly executed;
- (b) the Trust will remain unrevoked and not varied other than with the prior written consent of DevelopmentWA, which will not be unreasonably withheld;
- (c) the assets of the Trust as well as the assets of the trustee will at all times be available to satisfy the Buyer's Obligations and there is no limit or restriction on the recourse the trustee may have to the Trust assets;
- (d) the consents or approvals of all Parties necessary to execute this Contract so as to bind the property of the Trust have been obtained

and all necessary conditions precedent for that purpose have been met;

- (e) no one has taken or threatened nor is the Buyer aware of any one who is likely to take action to have the Trust wound-up or otherwise administered by action brought in any Court or to charge the Buyer or any person at any time connected with the Buyer or acting on behalf or purportedly on behalf of the Buyer with any breach of trust or misappropriation of trust moneys in connection with the Trust; and
- (f) no facts are known to the Buyer where the Trust might be wound-up voluntarily or otherwise or the trustee changed or the assets of the Trust vested in any other person or the Trust may cease to operate or be deprived of funds prior to expiration of the Term.

26.5 The Buyer acknowledges and agrees with DevelopmentWA that if DevelopmentWA on reasonable grounds considers that there has been a breach of any of the warranties contained in this Condition then DevelopmentWA may without notice immediately terminate this Contract.

27 NO REPRESENTATIONS

27.1 The Buyer agrees that prior to entering into the Contract it has satisfied itself:

- (a) by physical examination and inspection and all other necessary enquiries including, but not limited to, enquiries as to the classification status of the Land under the Contaminated Site Act, and relying on the opinion or advice of such experts as the Buyer may wish to consult as to the state, condition, quality and quantity of the Land;
- (b) by enquiry of all relevant authorities as to the zoning of the Land and the use to which the Land or any other land adjoining or in the vicinity of the Land may be put;
- (c) as to the easements, restrictive covenants, notifications or other agreements or encumbrances to which the Land may be or become subject;
- (d) as to the requirements of each and every Authority which has control or jurisdiction over the Land and the current and prospective use and development of the Land;
- (e) by independent valuations or reports as to the value of the Land and as to the present and future feasibility, liability and economic return that may be derived from the Land; and
- (f) by survey and physical examination as to the area of the Land and not relying on the position of any pegs purporting to mark the boundary (if

any),

and is deemed to purchase the Land in reliance solely upon such examination, inspection, enquiry, perusal, opinion and advice and not upon any or any alleged statement, warranty, condition or representation whatsoever made or alleged to have been made to the Buyer by DevelopmentWA or any employee, contractor or agent of DevelopmentWA.

27.2 This Condition applies notwithstanding the contents of any brochure, document, letter or publication made, prepared or published by DevelopmentWA or by any other person with or without the authority of DevelopmentWA whether express or implied.

28 NO LIABILITY OF DEVELOPMENTWA

The Buyer has no right to make any objection or requisition or Claim against DevelopmentWA for compensation or to terminate or rescind the Contract and DevelopmentWA shall not be liable to indemnify the Buyer whatsoever or howsoever arising by reason of:

- (a) the prior use of the Land;
- (b) the Land being unsuitable for any particular purpose;
- (c) the area of the Land being different from the area indicated on any plan, brochure, document, letter, material or other publication issued or published by or on behalf of DevelopmentWA or as indicated on the Certificate of Title to the Land;
- (d) the provision of, or a lack of, or lack of an available connection to, water, drainage, sewerage, gas, electricity, telecommunication or other services or connections to the Land, or in respect of the fact that any Services or connections may be joint services to any other land, or because any facilities for services for any other land pass through the Land;
- (e) any encroachment onto the Land by any improvement which does not form part of the Land, or the encroachment onto adjoining land of any improvement which forms part of the Land;
- (f) the location of any sewerage, water or drainage or other pipes or cables or services affecting the Land, or that any pipes or cables pass through, or penetrates the Land; or

28.2 the fact that the current use of the Land may not be an authorised use under any applicable zoning or use law, scheme or regulation.

29	BUYER'S ACKNOWLEDGEMENTS	29.3	Whilst not limiting any other provision in these Conditions, the Buyer acknowledges and agrees that:
29.1	The Buyer acknowledges and agrees that:	(a)	it is solely responsible at its cost for complying with and implementing all fire protection, water pressure or other requirements imposed on or affecting the Land by any Authority whether or not as a result of the Buyer's proposed use of the Land or whether generally required (including but not limited to requirements for fire protection, waste disposal, sewerage or other requirements) and that the Buyer may be required at its cost to undertake a detailed site specific assessment of the Land at the stage of applying for development approval and a building permit for any Development or otherwise; and
	(a) no warranty or representation has been given or made to the Buyer or anyone on the Buyer's behalf by DevelopmentWA or any agent, employee or contractor or consultant of DevelopmentWA or any other person on DevelopmentWA's behalf as to:	(b)	prior to entering into the Contract the Buyer should undertake its own independent enquiries and investigations with any relevant Authority in order to determine what fire protection, water pressure and other requirements are likely to be imposed in relation to the Land.
	(i) the title to the Land;		
	(ii) any encumbrance, restriction or right in favour of any third party affecting the Land;		
	(iii) the condition or state of repair, order or condition of the Land;		
	(iv) the suitability of the Land for any use or purpose of any kind;		
	(v) the fences (if any) purporting to be on the boundaries of the Land being on the proper boundaries of the Land; or		
	(vi) the provisions of, or lack of, or the lack of an available connection to Services or connections to the Land.		
	(b) any representation or warranty implied by virtue of any statute or otherwise will not apply to, or be implied in, the Contract and any such representation or warranty is excluded to the extent permitted by law;		
	(c) the Land is sold 'as is where is' and as it stands with all existing faults, defects, omissions or characteristics whether they are apparent or ascertainable on inspection or not and without any obligation on DevelopmentWA to disclose or particularise any faults, defects, omissions or characteristics known to DevelopmentWA;		
	(d) DevelopmentWA will not be liable under any circumstances to make any allowance or compensation to the Buyer nor will the Purchase Price be affected by the exclusion of warranties or representations in this Condition or for any fault, defect or characteristic in the Land; and		
	(e) this Condition will apply despite the contents of any brochure, document, letter or publication made, prepared or published by DevelopmentWA or by any other person or consultant with or without the express or implied authority of DevelopmentWA;		
29.2	The Buyer acknowledges that it is solely liable for all site clearance and building preparation costs on the Land which should be determined by the Buyer prior to entering into this Contract.		
		30	DEFAULT
		30.1	Neither DevelopmentWA nor the Buyer may terminate the Contract by reason of the other's failure to observe or perform an obligation imposed on that other Party under the Contract unless:
		(a)	that Party has first given a notice to the other Party:
		(i)	specifying the failure;
		(ii)	stating that the other Party must observe and perform that Party's obligations under the Contract within ten (10) Business Days from the date of service of the notice; and
		(iii)	stating that if those obligations are not observed and performed within that time the Party giving the notice may terminate the Contract or that the Contract will be terminated; and
		(b)	the Party receiving the notice fails to observe and perform those obligations within the period stated in that notice.
		30.2	Condition 30.1 does not apply if:
		(a)	either Party repudiates the Contract;
		(b)	Condition 2.4 applies;
		(c)	Condition 31 applies;
		(d)	a condition precedent or subsequent has not been satisfied; or

- (e) Finance Approval has not been obtained by the Latest Date for Finance Approval or if there is a breach of Condition 7.

30.3 In the event that the Buyer is in breach of the Buyer's Obligations and the Contract is terminated or the Buyer repudiates the Contract that part of the Purchase Price and any other moneys paid by the Buyer to DevelopmentWA under the Contract (including the Deposit) amounting in the aggregate to:

- (a) up to TEN PER CENTUM (10%) of the Purchase Price, will be forfeited to and retained by DevelopmentWA; and
- (b) in excess of TEN PER CENTUM (10%) of the Purchase Price, will be held by DevelopmentWA pending the exercise of DevelopmentWA's Remedies.

30.4 In the event that the Buyer is in breach of the Buyer's Obligations or repudiates the Contract, DevelopmentWA without prejudice to DevelopmentWA's Remedies may:

- (a) affirm the Contract and sue the Buyer for damages for breach of contract;
- (b) sue the Buyer for specific performance of the Contract;
- (c) subject to Condition 30.1 (if applicable):
- (i) if the notice given under that Condition states that unless the default is remedied within the time stated in the notice the Contract may be terminated; and
- (ii) the default is not remedied within the time stated,
- terminate the Contract and:
- (iii) sue the Buyer for damages for breach of contract; and
- (iv) without further notice to the Buyer resell the Land in such manner as DevelopmentWA thinks fit.

30.5 If DevelopmentWA resells the Land:

- (a) DevelopmentWA may retain absolutely:
- (i) any surplus arising from the resale in excess of:
- (A) the Purchase Price; and
- (B) losses and expenses incurred by DevelopmentWA in the resale and resulting from the Buyer's default; and
- (ii) any interest paid by the Buyer; and

- (b) any amount by which the Purchase Price exceeds the proceeds of the resale, the amount of the Deposit which has been forfeited and all losses and expenses incurred by DevelopmentWA in the resale and resulting from the Buyer's default are recoverable by DevelopmentWA from the Buyer as liquidated damages.

31 **INSOLVENCY EVENT**

- 31.1** The Buyer must ensure that an Insolvency Event does not occur with respect to the Buyer prior to Settlement.
- 31.2** If an Insolvency Event occurs with respect to the Buyer prior to Settlement then DevelopmentWA may terminate this Contract at any time by giving written notice to the Buyer.
- 31.3** If DevelopmentWA terminates the Contract pursuant to this Condition then the Deposit will be forfeited and released to DevelopmentWA immediately and the Buyer will not have any claim against DevelopmentWA.

32 **FACILITATE EXERCISE OF REMEDIES**

- 32.1** The Buyer must facilitate DevelopmentWA in the proper exercise of DevelopmentWA's Remedies and not claim any compensation for any inconvenience or damage caused by DevelopmentWA.
- 32.2** The Buyer must pay to DevelopmentWA on demand any moneys properly expended by DevelopmentWA (including legal costs) in connection with the proper exercise and protection of its rights and powers contained in this Contract and also upon demand pay all DevelopmentWA's reasonable costs fees and expenses of and incidental to:
- (a) any proper exercise of DevelopmentWA's Remedies;
- (b) any breach of the Buyer's Obligations;
- (c) the Buyer seeking the removal of any caveat lodged by DevelopmentWA over the title to the Land which it is entitled to maintain; and
- (d) the perusal and investigation of any request by the Buyer for permission to lease or onsell or otherwise dispose of the Land or enter into any other arrangement which requires the permission or consent of DevelopmentWA pursuant to the Contract or the Act or otherwise howsoever.

- 32.3** The Buyer indemnifies and agrees to keep fully and

effectually indemnified DevelopmentWA from and against any claim loss or liability whatsoever (whether direct or indirect and whether present or future) which DevelopmentWA may incur in connection with the Contract and in respect of any loss or expense that DevelopmentWA may incur as a consequence of any default by the Buyer in respect of the Buyer's Obligations.

32.4 All powers, acts, matters or things which DevelopmentWA is empowered or required to do under the Contract or any statute may be exercised or done by DevelopmentWA or by its duly authorised solicitor, agent, contractor or employee of DevelopmentWA.

32.5 No demand or notice made or given by DevelopmentWA under the Contract or any statute will be waived by any subsequent negotiation.

33 NOTICE

33.1 Any notice given or required to be given under the Contract:

(a) must be in writing addressed to DevelopmentWA or to the Buyer (as the case may be), to DevelopmentWA's or the Buyer's address, facsimile number or email address shown in the Contract (or to any other address specified by the Buyer to DevelopmentWA or DevelopmentWA to the Buyer by notice) provided that a notice to DevelopmentWA sent by email will only be valid if emailed to Conveyancing@developmentwa.com.au;

(b) must be signed by the sender or an officer of, or under the common seal of the sender or by the sender's lawyer, conveyancer or other authorised representative (as the case may be); and

(c) is to be regarded as being given by the sender and received by the addressee:

(i) if by delivery in person, when delivered to the addressee;

(ii) if by post (which posting must be by pre-paid security post), 3 business days from and including the date of posting to the addressee;

(iii) if by facsimile transmission:

(A) on the date the notice or communication is transmitted in its entirety by a facsimile machine; and

(B) that facsimile machine produces a transmission report which indicates that the facsimile was sent in its entirety to the facsimile number of the addressee,

but if the delivery or transmission by facsimile is on a day which is not a business day or is after 5.00 p.m. (addressee's time) it is to be regarded as being given at 9.00 a.m. (addressee's time) on the next succeeding business day; and

(iv) if by email on the earlier of:

(A) the Business Day after the date on which the email is sent provided that the sender does not receive any system message indicating that the transmission of the notice has been delayed or has failed (for the purposes of this clause an out of office message of a recipient will be deemed to be a message indicating delay of the notice unless the email is sent to more than one recipient of the Party);

(B) the day on which the recipient of the email responds to the email (or where the response is not on a Business Day, the next Business Day); and

(C) the day on which an automatic read receipt is received by the sender provided that the read receipt is received prior to 5.00pm on a Business Day otherwise the notice is deemed to be served on the following Business Day.

33.2 Where the Buyer comprises 2 or more persons or corporations, or any combination of the same, notice to either 1 person or to 1 corporation is deemed notice to all persons and corporations comprising the Buyer.

33.3 A notice served on the Buyer's Conveyancer in accordance with this Condition will be treated for all purposes as if the notice had been served on the Buyer.

34 TIME OF ESSENCE

Unless otherwise stated, time will in all respects be of the essence in the Contract.

35 MISCELLANEOUS

35.1 The Contract is to be governed by, and construed according to the laws of Western Australia.

35.2 Unless application is mandatory by law, a statute, proclamation, order, regulation or moratorium, present or future, is not to apply to the Contract or these Conditions so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise affect prejudicially rights, powers, privileges, remedies or discretions given or accruing to a Party.

ANNEXURE B - MEMORIAL J749770

J749770 MH

19 May 2008 09:33:27 Perth



REG \$ 80.00

MH Memorial Heritage

LODGED BY Heritage Council of WA

ADDRESS 108 Adelaide Terrace
EAST PERTH WA 6004

PHONE No. 9220 4114

FAX No. 9221 4151

REFERENCE No.

ISSUING BOX No. 888

PREPARED BY Heritage Council of WA

ADDRESS 108 Adelaide Terrace
EAST PERTH WA 6004

PHONE No. 9220 4114

FAX No. 9221 4151

INSTRUCT IF ANY DOCUMENTS ARE TO ISSUE TO OTHER THAN
LODGING PARTY

2 10

TITLES, LEASES, DECLARATIONS ETC LODGED HEREWITH

- 1. Register Entry Received Items
- 2. Sketch Nos.
- 3. _____
- 4. _____
- 5. _____
- 6. _____ Receiving Clerk

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

EXAMINED



- TO REGISTRAR OF TITLES
REGISTRAR OF DEEDS AND TRANSFERS
EXECUTIVE DIRECTOR, DEPARTMENT OF LAND ADMINISTRATION

Form Approval B 1106

MEMORIAL

HERITAGE COUNCIL
Ref. No.: 1259

HERITAGE OF WESTERN AUSTRALIA ACT 1990
REGISTER OF HERITAGE PLACES
- NOTIFICATION OF ENTRY
SECTION 56 (1)

DESCRIPTION OF LAND	EXTENT	VOLUME	FOLIO
GERALDTON TO WALKAWAY RAILWAY PRECINCT, RAILWAY LINE BETWEEN BLUFF POINT AND WALKAWAY			
LOT 3046 ON DEPOSITED PLAN 193132 AS TO THE LAND SHOWN ON THE ATTACHED SKETCH ONLY	WHOLE	LR3109	274

REGISTERED PROPRIETOR OF LAND

STATE OF WESTERN AUSTRALIA

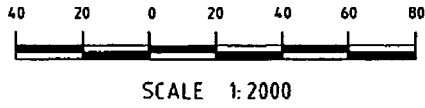
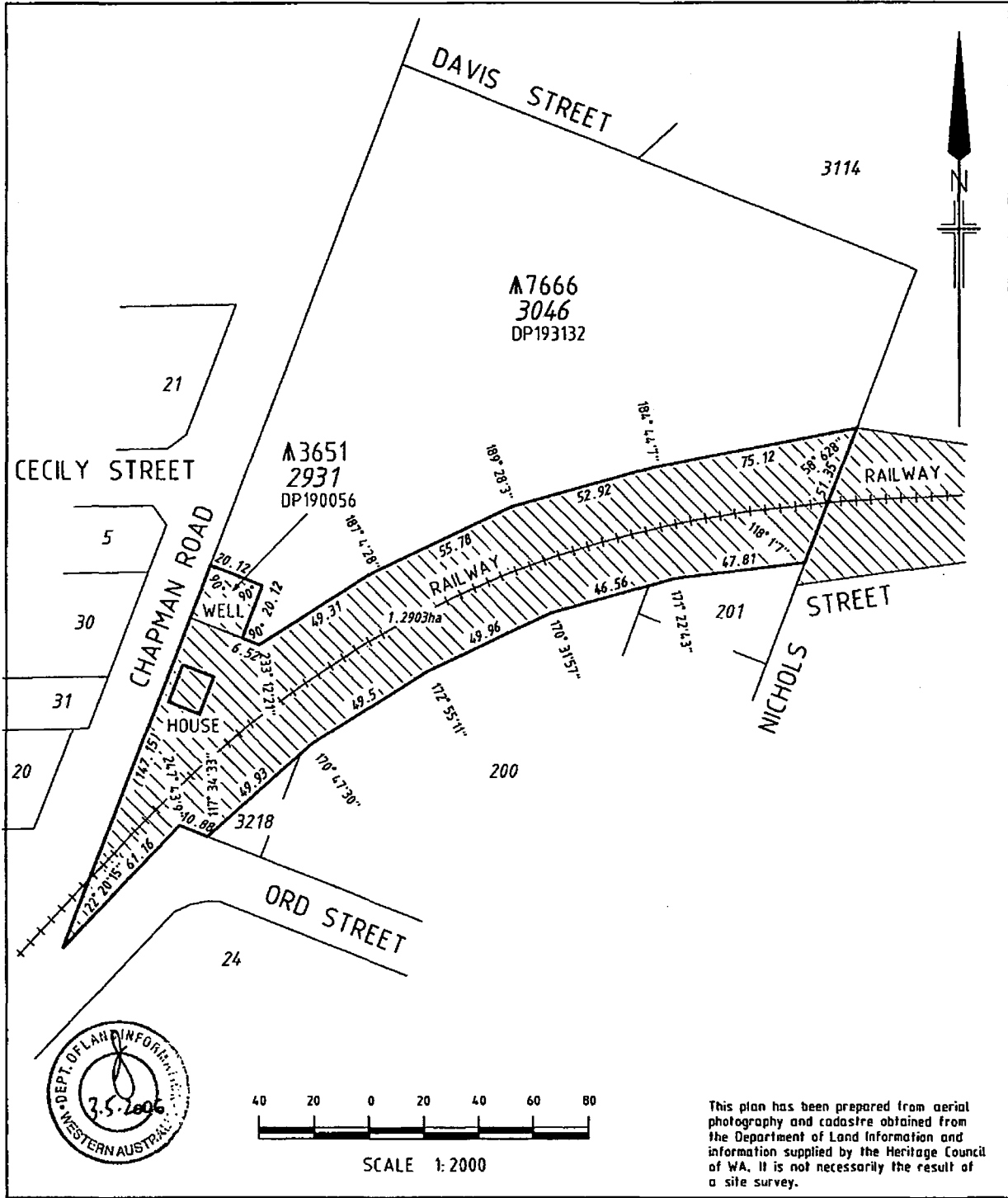
ON THE 9th DAY OF MAY 2006

AN ENTRY IN RESPECT TO THE ABOVE DESCRIBED LAND WAS MADE
IN THE REGISTER OF HERITAGE PLACES, PURSUANT TO DIVISION 2 OF
PART 5 OF THE HERITAGE OF WESTERN AUSTRALIA ACT, AND THE
PARTICULARS REGISTERED IN RESPECT OF THAT ENTRY ARE
INCLUDED HEREWITH.

DATED THIS 19th DAY OF MAY 2006


DIRECTOR
FOR THE HERITAGE COUNCIL
OF WESTERN AUSTRALIA


WITNESS, GEORGE POPPAS
AN OFFICER OF THE COUNCIL



This plan has been prepared from aerial photography and cadastre obtained from the Department of Land Information and information supplied by the Heritage Council of WA. It is not necessarily the result of a site survey.

Macquarie Holdings Pty Ltd trading as

MIDLAND SURVEY SERVICES
 ACN 009 184 212 ABN 69 009 184 212
 LAND AND ENGINEERING SURVEYORS
 2 Victoria Street Midland Western Australia
 Telephone (08) 9274 2535 Fax (08) 9274 2545
 Email: admin@warrenking.com.au
 Website: www.warrenking.com.au

MSS
 LAND SURVEYING
 ENGINEERING

WARREN KING
 CONSULTANTS

© "This drawing is and shall remain the property of WKC and MSS. The drawing may only be used in accordance with the terms of engagement for the commission. Unauthorised use of this drawing in any way is prohibited. The drawing shall not be modified unless the title block and reference to WKC and MSS are removed."

0	APPROVED AND ISSUED TO CLIENT	16.6.05	CWK	CWK	WKC No 05430 001	HCWA DRAWING NUMBER PART 1259	REV 0	SIZE A4
No.	REVISION	Date	Surveyor	Approved				

DRAWN	M.ARIOTTI	14/06/2005	APPROVED	C.W.KING
SURVEYOR				
CHECKED	E.TURTON	14/06/2005	FB	LB

HERITAGE COUNCIL OF WESTERN AUSTRALIA

PART OF THE GERALDTON TO WALKAWAY RAILWAY

10. STATEMENT OF SIGNIFICANCE

Geraldton to Walkaway Railway Precinct, the 28km route of the original railway line from Geraldton to Walkaway (1886), six railway buildings: (*Gate-keeper's House, Bluff Point* (1886); *Gate-keeper's House, Utakarra* (1886); *Gate-keeper's House, Georgina* (1886); *Gate-keeper's House, Walkaway* (1886) all constructed of stone and iron in the Victorian Georgian style; *Walkaway Railway Station* (1886) in the Federation Arts & Crafts style; and *Station Master's House, Narngulu* (1896) in the Federation Bungalow style, and the remains of a stone siding, has cultural heritage significance for the following reasons:

the precinct is rare as a substantially intact and fine example of a late 19th century railway system, and is unique in Western Australia having been designed in the British tradition where Gatekeepers resided beside the crossings;

the Gate-keeper's Houses are rare in Western Australia and the examples in this precinct are unique in Western Australia having been designed as small villas rather than simple cottages;

the Geraldton-Walkaway Railway line was the first section of the railway line that eventually linked Perth with the major northern port of Geraldton and provided for the transport of passengers for over 60 years and which partly still operates for freight in 2005,;

the Station Master's House, Narngulu and the *Walkaway Railway Station* demonstrate a significant change in station master's accommodation during the late nineteenth century;

the precinct is highly valued by the local and wider community as evidenced by the efforts of the City of Geraldton, Shire of Greenough and local residents to conserve the buildings; and,

the precinct is associated with prominent railway contractor Edward Keane who was responsible for its construction.

The various additions and outbuildings associated with the Gate-keeper's Houses and Station Master's House, Narngulu have no heritage significance.



REGISTER OF HERITAGE PLACES

Interim Entry

1. **DATA BASE No.** 01259
2. **NAME** *Geraldton to Walkaway Railway Precinct (1886 & 1896)*
OTHER ELEMENTS Gate-keeper's Cottages, Narngulu Station Master's House, Walkaway Railway Station
3. **LOCATION** The railway line between Bluff Point and Walkaway and various locations on railway line.
4. **DESCRIPTION OF PLACE INCLUDED IN THIS ENTRY**
 1. Lot 12605 on Deposited Plan 26262 being Reserve 46611 and being the whole of the land contained in Crown Land Title Volume 3124 Folio 109.
 2. Lots 12813 and 12814 on Deposited Plan 40581 being Reserve 47589 and being the whole of the land contained in Certificate of Crown Land Title Volume 3133. Folio 270 and Volume 3133 Folio 271 respectively
 3. Portion of Lot 3046 on Deposited Plan 193132 being part of Reserve 7666 and being part of the land contained in Crown Land Title Volume 3109 Folio 274 as shown on part Heritage Council of Western Australia Survey Drawing No. Part 1259 prepared by Midland Survey Services
 4. Unnumbered Railway Reserve being the whole of Lot 0 on Plan 2049.
 5. Lot 12604 on Deposited Plan 26262 being Reserve 46610 and being the whole of the land contained in Crown Land Title Volume 3124 Folio 108
 6. Lot 2931 on Deposited Plan 190056 being Reserve 3651 and the whole of the land contained in Crown Land Title Volume 3068 Folio 551
 7. Railway Crossings over North West Coastal Highway, Place Road, Geraldton-Mount Magnet Road
 8. Railway Crossings over Goulds Road, Rudds Gully Road, Bootenal Road, Georgia Road, McCartney Road and Short Road road reserves.
 9. Lot 12601 on Deposited Plan 27001 being unallocated Crown Land and being the whole of the land contained in Certificate of Crown Land Title Volume 3123 Folio 831
 10. Lot 123 on Diagram 10197 and being the whole of the land contained in Certificate of Title Volume 1050 Folio 191
 11. Lot 101 on Deposited Plan 191415 and being the whole of the land contained in Certificate of Title Volume 2069 Folio 772
 12. Lot 8329 on Deposited Plan 152079 being the whole of the land contained in Certificate of Title Volume 1317 Folio 139

ANNEXURE C - MEMORIAL M359250

INSTRUCTIONS

1. If insufficient space in any section, Additional Sheet, Form B1 should be used with appropriate headings. The boxed sections should only contain the words "see page..."
2. Additional Sheets shall be numbered consecutively and bound to this document by staples along the left margin prior to execution by the parties.
3. No alteration should be made by erasure. Erasure by correction fluid or tape is not acceptable. The words rejected should be scored through and those substituted typed or written above them, the alteration being initialled by the persons signing this document and their witnesses.

NOTES

1. **DESCRIPTION OF LAND**
 Lot and Diagram/Plan/Strata/Survey-Strata Plan number or Location name and number to be stated.
 Extent - Whole, part or balance of the land comprised in the Certificate of title to be stated.
2. **REGISTERED PROPRIETOR**
 State full name and address of the Registered Proprietor as shown on the Certificate of Title or Crown Lease.

EXAMINED

M359250 MH

01 Aug 2013 11:19:30 Perth



REG \$ 160.00

MEMORIAL

HERITAGE OF WESTERN AUSTRALIA ACT 1990

LODGED BY Heritage Council of WA
 ADDRESS 491 Wellington Street
 PERTH WA 6000
 PHONE No. (08) 6552 4000
 FAX No. (08) 6552 4001
 REFERENCE
 ISSUING BOX No. 888V

PREPARED BY Heritage Council of WA
 ADDRESS 491 Wellington Street
 PERTH WA 6000
 PHONE No. (08) 6552 4000
 FAX No. (08) 6552 4001

INSTRUCT IF ANY DOCUMENTS ARE TO ISSUE TO OTHER THAN LODGING PARTY

4/1

TITLES, LEASES, DECLARATIONS ETC LODGED HEREWITH

- | | |
|-------------------------|-----------------|
| 1. Register Entry _____ | Received Items |
| 2. IODP 77542 _____ | Nos. |
| 3. _____ | |
| 4. _____ | |
| 5. _____ | Receiving Clerk |
| 6. _____ | |
- [Signature]*

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



TO REGISTRAR OF TITLES
REGISTRAR OF DEEDS AND TRANSFERS
CHIEF EXECUTIVE OFFICER, LANDGATE

Form Approval No. B1106

MEMORIAL

HERITAGE COUNCIL
Ref. No.: 1259

HERITAGE OF WESTERN AUSTRALIA ACT 1990
REGISTER OF HERITAGE PLACES
NOTIFICATION OF ENTRY
SECTION 56 (1)

DESCRIPTION OF LAND (Note 1)	EXTENT	VOLUME	FOLIO
GERALDTON TO WALKAWAY RAILWAY PRECINCT RAILWAY LINE BETWEEN BLUFF POINT AND NARNGULU LOT 9001 ON DEPOSITED PLAN 65453 AS TO THAT PORTION LABELLED "M" ON DEPOSITED PLAN 77542	PART	2802	841

REGISTERED PROPRIETOR OF LAND (Note 2)

PUBLIC TRANSPORT AUTHORITY OF WESTERN AUSTRALIA
OF POST OFFICE BOX 8125, PERTH BUSINESS CENTRE, PERTH

On the 9TH day of DECEMBER 2011

AN ENTRY IN RESPECT TO THE ABOVE DESCRIBED LAND WAS MADE IN THE REGISTER OF HERITAGE PLACES, PURSUANT TO DIVISION 2 OF PART 5 OF THE HERITAGE OF WESTERN AUSTRALIA ACT 1990, AND THE PARTICULARS REGISTERED IN RESPECT OF THAT ENTRY ARE INCLUDED HEREWITH.

Dated this 31ST day of JULY 2013

Penelope O'Connor
 PENELOPE O'CONNOR
 MANAGER FOR ASSESSMENT AND
 REGISTRATION, STATE HERITAGE OFFICE,
 A DELEGATE OF THE HERITAGE COUNCIL
 OF WESTERN AUSTRALIA (GOVERNMENT
 GAZETTE 30 MARCH 2012, PAGE 1556)

Denise Daly
 WITNESS, DENISE DALY,
 AN OFFICER OF THE
 STATE HERITAGE OFFICE

10. STATEMENT OF SIGNIFICANCE

Geraldton to Walkaway Railway Precinct, comprising the 10km route of the original railway line (excluding the disused railway level crossing of the North West Coastal Highway, the disused railway level crossing on the Geraldton-Mt Magnet Road (Utakarra Road) in Geraldton, and the section of permanent way at Narngulu where the Geraldton Southern Transport Corridor crosses) from Geraldton to Narngulu (1886), Gatekeeper's House, Bluff Point (1886), Gatekeeper's House, Utakarra (1886), Gatekeeper's House, Walkaway (1886), all constructed of stone and iron in the Victorian Georgian style, and the remains of a stone siding, has cultural heritage significance for the following reasons:

the precinct is rare as a substantially intact and fine example of a late 19th century railway system, and is unique in Western Australia having been designed in the British tradition where Gatekeepers resided beside the crossings;

the Gatekeepers' Houses are rare in Western Australia and the examples in this precinct are unique in Western Australia having been designed as small villas rather than simple cottages;

the Geraldton-Walkaway Railway line was the first section of the railway line that eventually linked Perth with the major northern port of Geraldton and provided for the transport of passengers for over 60 years and which partly still operates for freight in 2008;

the precinct is highly valued by the local and wider community as evidenced by the efforts of the City of Geraldton, Shire of Greenough and local residents to conserve the buildings; and,

the precinct is associated with prominent railway contractor Edward Keane who was responsible for its construction.

The various additions and outbuildings associated with the Gatekeepers' Houses have no heritage significance.

6. OWNER.

1. State of WA (Management Order - Public Transport Authority of Western Australia)
2. State of WA (Responsible Agency – Department of Regional Development and Lands – State Land Services)
3. Public Transport Authority of Western Australia
4. State of WA (Responsible Agency - Public Transport Authority of Western Australia)
5. State of WA (Responsible Agencies – Main Roads Western Australia; City of Greater Geraldton)
6. State of WA (Management Order – City of Greater Geraldton)
7. State of Western Australia (Responsible Agency – Department of Regional Development and Lands – State Land Services)
8. Public Transport Authority of Western Australia
9. Commissioner of Railways

7. HERITAGE LISTINGS

- Register of Heritage Places:

Interim Entry (Amended)	06/06/2008
Permanent Entry	09/12/2011
Walkaway Railway Station (1170 - Permanent)	15/10/1999
<i>Gatekeeper's House, Bluff Point</i> (13253 - Permanent)	20/02/2004
- National Trust Classification:

<i>Gatekeeper's Cottage, Bluff Point</i> (Classified)	07/03/1995
Walkaway Railway Station (recorded)	03/11/1975
- Town Planning Scheme:

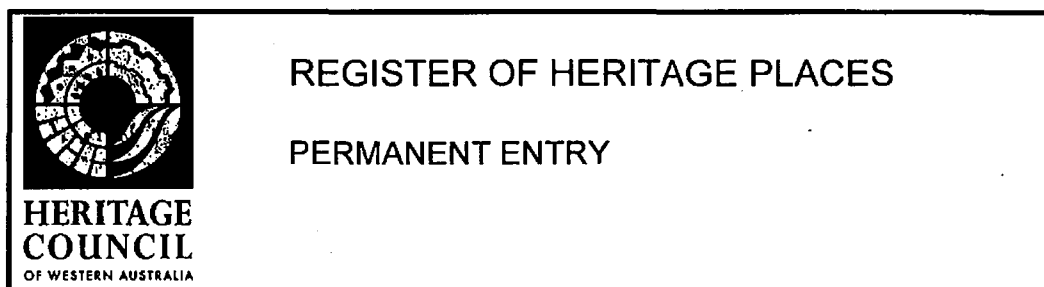
Gatekeeper's Cottage, Utakarra & Gatekeeper's Cottage, Bluff Point (Geraldton)	17/04/98
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- Municipal Inventory:

Gatekeeper's Cottage, Utakarra & Gatekeeper's Cottage, Bluff Point (Geraldton – Adopted)	12/12/1998
Walkaway Railway Station (Greenough – Adopted)	22/12/1998
- Register of the National Estate: -----

8. CONSERVATION ORDER
-----**9. HERITAGE AGREEMENT**

Register of Heritage Places
Geraldton to Walkaway Railway Precinct
09 December 2011

2



REGISTER OF HERITAGE PLACES

PERMANENT ENTRY

1. **DATA BASE No.** 01259
2. **NAME** *Geraldton to Walkaway Railway Precinct (1886 & 1896)*
OTHER ELEMENTS Gatekeepers' Cottages
3. **LOCATION** The railway line route between Bluff Point and Narngulu
4. **DESCRIPTION OF PLACE INCLUDED IN THIS ENTRY**
 1. Reserve 47589 being Lot 12813 on Deposited Plan 40581 and Lot 500 on Deposited Plan 63108 and being the whole of the land in Crown Land Titles Volume 3133 Folio 270 and Volume 3157 Folio 802 respectively.
 2. Unallocated Crown Land being Lot 501 on Deposited Plan 63108 and being the whole of the land contained in Crown Land Title Volume 3157 Folio 803.
 3. Portion of Lot 500 on Deposited Plan 65439 being part of the land contained in Certificate of Title Volume 2734 Folio 376.
 4. Those portions of unnumbered Railway Reserve land running between Lot 500 on Deposited Plan 65439 and Lot 163 on Plan 2049 and between Lot 162 on Plan 2049 and Lot 12813 on Deposited Plan 40581.
 5. In respect to the Railway Reserve land described previously, portions of road reserves being railway crossings over North West Coastal Highway, Eastward Road (also known as Geraldton – Mount Magnet Road), Place Road, Ross Ariti Road and Barrie Court (formerly Goulds Road).
 6. Reserve 3651 being Lot 2931 on Deposited Plan 190056 and being the whole of the land contained in Crown Land Title Volume 3068 Folio 551.
 7. Unallocated Crown Land being Lot 12601 on Deposited Plan 27001 and being the whole of the land contained in Crown Land Title Volume 3123 Folio 831.
 8. Lot 123 on Diagram 10197 being the whole of the land contained in Certificate of Title Volume 1050 Folio 191.
 9. Lots 162 and 163 on Plan 2049 being the whole of the land contained in Certificates of Title Volume 183 Folio 97 and Volume 183 Folio 104 respectively.
5. **LOCAL GOVERNMENT AREA** City of Greater Geraldton

Register of Heritage Places
Geraldton to Walkaway Railway Precinct
09 December 2011

1

Schedule 8 - Commercial and Industrial Land

Item 4 - Sales Contract for Narngulu Lot

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CONTRACT OF SALE
- NON RESIDENTIAL LAND -

BETWEEN **WESTERN AUSTRALIAN LAND AUTHORITY** trading as DevelopmentWA of Level 6, 40 The Esplanade, Perth, Western Australia (**DevelopmentWA**).

AND

(Print Full Name of Buyer)

as joint tenants/tenants in common (circle appropriate)

(Contact Telephone Number)

(Facsimile Number)

(Email)

(Address) (Buyer)

DevelopmentWA agrees to sell and the Buyer agrees to purchase the Land specified in the Schedule for an estate in fee simple for the Purchase Price and on the terms specified in the Schedule and subject to the DevelopmentWA Standard Non Residential Conditions (No Option to Repurchase) (the **Conditions**) attached as Annexure A.

SCHEDULE

Description of Land

Lot 10390 on Deposited Plan 206909 being the whole of the land in Certificate of Title Volume 2046 Folio 543 and known as 124 Kemp Street Narngulu

Settlement Date

As indicated in the Yamatji Indigenous Land Use Agreement between DevelopmentWA , the Buyer and others dated [] (Yamatji ILUA)

Purchase Price (inclusive of GST)

In accordance with the terms of the Yamatji ILUA

Deposit

Nil

Development/Design Guidelines

Not applicable

Latest Date for Issue of Title

Not applicable

Latest date for Finance Approval

Not applicable

Maximum Amount of Loan

Not applicable

Special Conditions

1. The Buyer acknowledges and agrees that the Land is encumbered by and is sold and transferred subject to the following encumbrances :-
 - (a) Restrictive Covenant burden F230717 a copy of which is annexed as Annexure B; and
 - (b) Memorial N580406 under the Contaminated Sites Act a copy of which is annexed as Annexure C

The Buyer acknowledges that it has read and understood this Contract and the Conditions and agree to be bound by all of these terms.

EXECUTED by:

(Print Company Name)

(ACN)

In accordance with section 127 of the Corporations Act by or in the presence of:

Signature of Director/Sole Director

Signature of Director/Secretary

Print Full Name of Director/Sole Director

Print Full Name of Director/Secretary

Date

SIGNED on behalf of the **WESTERN AUSTRALIAN LAND AUTHORITY** by person(s) authorised by its Board in accordance with Section 45(2)(b) of the Western Australian Land Authority Act 1992.

Authorised Officer

Authorised Officer

Full Name of Authorised Officer

Full Name of Authorised Officer

Date

DevelopmentWA's solicitor/settlement agent: DevelopmentWA – Conveyancing

Phone: 9482 7499

Fax: 9482 7401

Email: conveyancing@developmentwa.com.au

The Buyer appoints the solicitor or settlement agent named below to act on their behalf in relation to this transaction.

Buyer(s) solicitor/settlement agent: _____

Phone: _____

Fax: _____

Email: _____

Signed by the Buyer(s): _____

Each of the signatories to this document has received a true copy of this document.

Annexures:

1. Annexure A: DevelopmentWA Standard Non Residential Conditions (No Option to Repurchase);
2. Annexure B : Restrictive Covenant F230714
3. Annexure C: Memorial N580406 under the Contaminated Sites Act.

ANNEXURE A – STANDARD CONDITIONS

DEVELOPMENTWA STANDARD NON RESIDENTIAL CONDITIONS **(No Option to Repurchase)**

Where comments are made in boxes in relation to any Conditions these comments are a general guide only and are not legally binding. If a comment is not made, it does not mean the Condition is not important. A prospective Buyer should obtain legal or other advice (if required) in relation to these Conditions or any other conditions before signing this Contract.

1 DEFINITIONS AND INTERPRETATION

1.1 In these Conditions and the Contract unless the contrary intention appears:

Act means the Western Australian Land Authority Act 1992 (WA);

Amount of the Loan means an amount equal to or less than the amount in the Schedule under the heading entitled 'Maximum Amount of Loan'. If there is no amount referred to in the Schedule under the heading entitled 'Maximum Amount of Loan', then the amount will be an amount equal to or less than 80% the Purchase Price.

Authority means any governmental, semi-governmental, statutory, local or public authority including without limitation the Local Authority, Department of Environment Regulation, the Western Australian Planning Commission, the Water Corporation, the Main Roads Department, 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 by-law.

Bank Cheque means a cheque drawn by a Bank on itself or a financial institution as defined in Section 3 of the Cheques Act 1986 (Commonwealth).

Building Ready Specifications means the specifications governing the building requirements for connection of any Development to the Network Infrastructure, a copy of which can be obtained from DevelopmentWA upon request.

Business Day means a day on which banks open for business in Perth, Western Australia excluding a Saturday, Sunday or public holiday.

Buyer's Conveyancer means any solicitor or settlement agent instructed by the Buyer to act for the Buyer on the Contract and of which appointment DevelopmentWA has been given notice.

Buyer's Obligations means all or any of the obligations and agreements contained or implied in the Contract (whether present, future, actual or contingent) to be

observed and performed by the Buyer prior to or after Settlement.

Claim means any right, cause of action, charge, claim, action, proceedings, judgment, damage, injury, Loss, cost (including legal costs on a full indemnity basis), expense or liability incurred to or made or recovered against any person or entity howsoever arising and whether present, unascertained, immediate, future or contingent.

Commission means the Western Australian Planning Commission.

Conditions means these conditions for the sale of the Land.

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

Contamination has the meaning given in section 4 of the Contaminated Sites Act.

Contract means the contract for sale of the Land of which these Conditions form part. Any reference in these Conditions to the Contract shall refer to both these Conditions and the terms of the Contract.

Contract Date means the date on which DevelopmentWA executes this Contract.

Deposit means the deposit specified in the Schedule.

Development means the construction of any development on the Land.

DevelopmentWA means the Western Australian Land Authority trading as DevelopmentWA (formerly known as LandCorp) as seller of the Land to the Buyer.

DevelopmentWA's Remedies means all or any of the rights powers and remedies contained in or implied by the Contract or at common law or in equity exercisable by DevelopmentWA against the Buyer or in respect of the Land.

Electronic Conveyancing National Law means the law set out in the Appendix to the Electronic Conveyancing (Adoption of National Law) Act 2012 (NSW) applying in Western Australia because of the Electronic Conveyancing Act 2014 (WA).

Electronic Lodgement Network has the same meaning as in section 13 of the Electronic Conveyancing Act 2014 (WA).

Electronic Lodgement Network Operator means a person approved by Landgate under section 15 of the Electronic Conveyancing Act 2014 (WA) to provide and operate Electronic Lodgement Network.

Electronic Workspace means a shared electronic workspace generated by the Electronic Lodgement Network.

Finance Application means an application made by or on behalf of the Buyer to the Lender to lend the Amount of the Loan.

Finance Approval means a written approval by the Lender of the Finance Application or a written offer to lend or a written notification of an intention to offer to lend made by the Lender (any such approval, offer or notification must be in a letter form but may be given to DevelopmentWA attached to an email).

Financial Institution means an authorised deposit-taking institution within the meaning of the *Banking Act 1959* (Cth), building society or credit union.

GST means the Goods and Services Tax as imposed by the GST Act including, where relevant, any related interest, penalties, fines or other charge and any GST equivalent amount under any State Intergovernmental Agreement.

GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth) and any legislation substituting or amending that Act.

Input Tax Credit has the same meaning given in Section 195-1 of the GST Act.

Insolvency Event means any of the following:

- (a) a person is or states that the person is unable to pay from the person's own money all the person's debts as and when they become due and payable;
- (a) a person is taken or must be presumed to be insolvent or unable to pay its debts under any applicable legislation;
- (b) an administrator, provisional liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of a corporation or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within seven (7) days;
- (c) a receiver or receiver and manager is appointed in respect of any property of a corporation;
- (d) a corporation is deregistered under the Corporations Act or notice of its proposed deregistration is given to the corporation;
- (e) a distress, attachment or execution is levied or becomes enforceable against any property of a person;
- (f) a person enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the person's creditors or members of a moratorium involving any of them;

- (g) a petition for the making of a sequestration order against the estate of a person is presented and the petition is not stayed, withdrawn or dismissed within seven (7) days or a person presents a petition against himself or herself;
- (h) a person presents a declaration of intention under section 54A of the Bankruptcy Act 1966 (Cth); or
- (i) anything analogous to or of a similar effect to anything described above under the Law of any relevant jurisdiction occurs in respect of a person.

Land means the land specified in the Schedule.

DevelopmentWA means the Western Australian Land Authority trading as DevelopmentWA as seller of the Land to the Buyer.

Landgate means the Western Australian Land Information Authority, a statutory body corporate established by the Land Information Authority Act 2006 and trading as Landgate.

Latest Date for Finance Approval means the date specified in the Schedule.

Lender means any bank, building society, credit union or other institution as specified in the Contract or if not specified, then any bank, building society, credit union or other institution which makes loans and is carrying on business in Western Australia but not including a mortgage broker (or similar).

Local Authority means the local authority having jurisdiction over the Land.

Loss means a financial loss, damage, costs or expense (including indirect or consequential loss).

Margin Scheme means the scheme described in Division 75 of the GST Act as the margin scheme.

Material Adverse Effect means a significant negative effect or change on the ability of the Buyer to carry out the Development or the value or use of the Land and which is caused directly as a result of:

- (a) the delay in the issue of the Certificate of Title for the Land; or
 - (b) an encumbrance registered or to be registered by an Authority or DevelopmentWA after the Contract Date,
- (as applicable).

Materially Prejudice or Detrimentally Affect means a variation to the final Lot following subdivision which results in:

- (a) where the variation is to the area of the Land, the area of the Land at Settlement is more than

5% less than the estimated area of the Land on the Contract Date;

- (b) where the variation is any other matter other than a variation to the area of the Land, the value of the Land decreasing by more than 5%; or
- (c) the use of the Land for the proposed Development being materially prejudiced or detrimentally affected.

Network Infrastructure means the physical infrastructure of the high speed broadband fibre optic network to be installed on or in the Land including all fibre, cables, electronic devices and equipment, ducts, poles, towers, cabinets, housing and any other active and passive equipment and distribution infrastructure, but not including the Pit and Pipe Works, any existing pit and pipe infrastructure, lead-in conduit, the network termination unit or the power supply unit and related cable at any Development.

Non Approval Notice means a written notice given by the Buyer or the Buyer's conveyancer or real estate agent or the Lender to DevelopmentWA to the effect that Finance Approval has been rejected together with written evidence from the Lender that the Lender has rejected the Finance Application such evidence to be as required by DevelopmentWA (acting reasonably).

OSR means the office established by the Commissioner of State Revenue and known as the Office of State Revenue.

Party means DevelopmentWA and the Buyer and, if applicable, any other party to the Contract and **Parties** means all the parties to the Contract.

Pit and Pipe Works means the physical infrastructure, including all pits, pipes, conduits and any other materials to be designed and constructed by DevelopmentWA necessary to properly service the estate in which the Land is located and to properly service any Development with the Network Infrastructure.

Pollution has the same meaning as that expression is given in the Environmental Protection Act 1986 (WA).

Prescribed Rate means the rate defined as the Prescribed Rate in the latest version of the Real Estate Institute of WA (Inc) and Law Society of WA Inc Joint Form of General Conditions for the Sale of Land (**Joint Form**).

Purchase Price means the purchase price (inclusive of GST) specified in the Schedule.

Remediation and Remediate has the meaning given in section 3 of the Contaminated Sites Act and includes the management of any contaminated site.

Schedule means the schedule to the Contract.

Settlement means settlement of the purchase of the

Land by the Buyer in accordance with the terms of the Contract.

Settlement Date means the date specified in the Schedule.

Services means all services to the Land including water, drainage, sewerage, gas, electricity and telecommunications.

Special Conditions means any conditions under the heading "Special Conditions" in the Schedule (if any).

Subscriber has the meaning given to that term in the Electronic Conveyancing National Law.

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

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

Transfer means a form for the transfer of title to the Land as required by Landgate.

Valuer means a natural person who:

- (a) is licensed under the Land Valuers Licensing Act 1978 (WA);
- (b) has not less than five (5) years experience in Western Australia;
- (c) is a member of the Australian Property Institute (Western Australian Division); and
- (d) has experience in assessing the current market value of land similar to the Land

1.2 In these Conditions (and, where applicable, the Contract) unless the contrary intention appears:

- (a) headings in the Schedule are defined terms when used in this Contract with the meaning of such term immediately following the heading;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing any gender include the other genders;
- (d) other grammatical forms of defined words and expressions have corresponding meanings;
- (e) references to persons include corporations and bodies politic;
- (f) references to a person include the legal personal representatives successors and assigns of that person;
- (g) a reference to a Statute Ordinance Code or other Law includes regulations and other statutory instruments under it and

- consolidations amendments re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- (h) references to this or any other document include the document as varied or replaced and notwithstanding any change in the identity of the Parties;
- (i) references to writing include any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;
- (j) an obligation of two or more parties binds them jointly and severally;
- (k) if a word or expression is defined cognate words and expressions have corresponding definitions;
- (l) references to an association body or authority which is reconstituted amalgamated reconstructed or merged or the functions of which have become exercisable by any other person association body or authority in its place shall be taken to refer to the person association body or authority established or constituted in its place or by which its functions have become exercisable;
- (m) reference to any thing (including without limitation any amount or the Land) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (n) reference to a month and cognate terms means a period commencing on any day of a calendar month and ending on the corresponding day in the next succeeding calendar month but if a corresponding day does not occur in the next succeeding calendar month the period shall end on the first day of the next succeeding calendar month;
- (o) references to the Contract or these Conditions includes any schedules and annexures;
- (p) except for the headings in the Schedule to the Contract, headings are inserted for ease of reference only and shall be ignored in construing these Conditions or the Contract;
- (q) references to time are to local time in Perth Western Australia;
- (r) where time is to be reckoned from a day or event that day or the day of that event shall be excluded;
- (s) the word include used when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind;
- (t) a provision of these Conditions or the Contract must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of this Contract or the inclusion of the provision in these Conditions or the Contract;
- (u) terms defined in these Conditions have the same meaning when used in the Contract; and
- (v) any comments included in boxes are a general guide only and are not terms of these Conditions or legally binding on the Parties.
-
- 2 PAYMENT OF PURCHASE PRICE AND SETTLEMENT**
- 2.1** The Buyer must pay:
- (a) the Deposit in the manner specified in the Schedule; and
- (b) the balance of the Purchase Price (being the Purchase Price less the Deposit together with any adjustments due at Settlement) on the Settlement Date by an unendorsed Bank Cheque payable to DevelopmentWA or as DevelopmentWA may nominate.
- 2.2** DevelopmentWA is entitled (but not bound) to invest or to cause the investment of any Deposit in an interest bearing bank account and all interest accrued will belong to DevelopmentWA unless the Deposit is repaid to the Buyer as a result of the default of DevelopmentWA in which case interest (less any bank charges and taxes) will be payable to the Buyer.
- 2.3** If the Buyer:
- (a) does not pay the Deposit in full as required by the Contract; or
- (b) pays the Deposit by cheque and that cheque is dishonoured on presentation,
- then DevelopmentWA may give the Buyer a notice requiring the Deposit to be paid or the cheque to be honoured within 48 hours of service of such notice.
- 2.4** If a notice issued under Condition 2.3 is not complied with (in the prescribed time), then unless otherwise provided in the notice:
- (a) the Buyer is in default; and
- (b) DevelopmentWA may terminate the Contract by giving notice to the Buyer but without prejudice to the rights and remedies available to DevelopmentWA under the Contract, common law or in equity.

3 INTEREST ON LATE SETTLEMENT AND DEFAULT COSTS

- 3.1 If for any reason not attributable to DevelopmentWA the purchase is not completed on the Settlement Date, the Buyer must pay to DevelopmentWA on Settlement interest at Prescribed Rate per annum on the balance of the Purchase Price and other moneys payable at Settlement.
- 3.2 The interest payable by the Buyer will be calculated on a daily basis from and including the Settlement Date but excluding the actual date of payment and will be in full settlement of any claim DevelopmentWA may have against the Buyer arising from such delay subject to the provisions of Condition 30.
- 3.3 DevelopmentWA is not required to give to the Buyer a notice requiring payment of interest under this Condition. In all other respects this Condition is without prejudice to the rights of DevelopmentWA under these Conditions or at common law or in equity.

4 ADJUSTMENT OF RATES

- 4.1 All rates taxes assessments and other outgoings in respect of the Land must be borne and paid by the Buyer as from the earlier of the actual date the Buyer is granted possession or the Settlement Date (subject to Condition 4.2) and the same must if necessary be apportioned between DevelopmentWA and the Buyer. Where under the Act DevelopmentWA is not liable to pay rates and taxes to any Authority in respect of the Land but is obliged to pay the equivalent of such rates and taxes to the State then this Condition shall apply as if such payment was a payment due to a Local Authority or other Authority for rates, taxes and outgoings and an adjustment will be effected if necessary.
- 4.2 Where there is any delay in Settlement due to the act or default of the Buyer then:
- (a) rates, taxes and outgoings will be adjusted as between DevelopmentWA and the Buyer on the Settlement Date and not the actual date of Settlement; and
 - (b) if any increase in Land Tax or any other rates and taxes payable by DevelopmentWA (either to an Authority or an equivalent amount is payable by DevelopmentWA to the State) occurs (for example, by the Settlement being delayed until after 1 July in any year), the Buyer is liable for all such additional payments (including any increase in Land Tax calculated on a multi ownership basis) which amount is due and payable to DevelopmentWA at Settlement.
- 4.3 Subject to Condition 4.4, Land Tax will be adjusted on the basis that the Land is the only land owned by DevelopmentWA (i.e. on a single holding/single ownership basis). If Land Tax is payable on the Land at

Settlement, the Buyer agrees that DevelopmentWA may, at its election, require that the Buyer pays for its proportion of Land Tax at Settlement on the basis that DevelopmentWA undertakes to pay the Land Tax payable on the Land for the relevant financial year at a later date.

- 4.4 If the Land has recently been subdivided and has not been individually rated for Land Tax as at Settlement the Buyer must pay to DevelopmentWA at Settlement a contribution to Land Tax calculated as follows:

$$LT = \frac{\text{Total LT}}{\text{Total Area}} \times \text{Land Area}$$

Where:

LT is the Land Tax contribution payable by the Buyer at Settlement.

Total LT is the Land Tax for the parent lot of which the land forms part.

Total Area is the total area of the parent lot of which the land forms part.

5 PREPARATION OF TRANSFER AND SETTLEMENT

- 5.1 This condition *only* applies if Condition 36 (Electronic Conveyancing) does not apply.
- 5.2 Prior to the Settlement Date the Buyer must prepare or cause to be prepared a transfer of the Land in registrable form and which must comply with Condition 24(c) and after proper execution of such transfer and having such transfer endorsed with duty must deliver such transfer to DevelopmentWA or its solicitor or settlement agent within a reasonable time prior to Settlement (being not less than five (5) Business Days prior to the Settlement Date) for the purposes of the transfer being executed by DevelopmentWA and being held by it or on its behalf pending Settlement.
- 5.3 The Buyer is entitled to request in writing that DevelopmentWA sign and return the transfer for the Land prior to it being endorsed with duty at the OSR provided that accompanying such written request is an assessment of duty payable on the Contract issued by the OSR or if duty payable on the Contract is to be assessed and paid through the Revenue Online system developed by the OSR (Revenue Online), a Transaction Summary generated through Revenue Online (Transaction Summary). If DevelopmentWA returns the land transfer to the Buyer prior to Settlement the Buyer shall hold such land transfer in escrow pending Settlement. If the Buyer or its representative is registered for, and has elected to have duty on the Contract assessed and paid through, Revenue Online then the Buyer or its representative must:
- (a) advise DevelopmentWA that it has elected to have duty on the Contract assessed and paid through Revenue Online;

(b) the Buyer must within five (5) Business Days after the Transaction Summary is generated provide to DevelopmentWA a copy of the Transaction Summary; and

(c) on Settlement, the Buyer must provide to DevelopmentWA a copy of the Certificate of Duty issued by the OSR for duty paid on the Contract.

5.4 Settlement must take place on the Settlement Date at the offices of DevelopmentWA in Perth or at such other place in Perth as DevelopmentWA appoints.

5.5 At Settlement, the Buyer must deliver to DevelopmentWA in accordance with Condition 2.1(b) an unendorsed Bank Cheque or Bank Cheques for the balance of the Purchase Price and any adjustment of rates and taxes due to DevelopmentWA and against receipt of the balance of the Purchase Price and adjustment of rates and taxes or otherwise, DevelopmentWA will provide to the Buyer, subject to the Buyer's compliance with Condition 5.2, the transfer duly executed for and on behalf of DevelopmentWA together with the duplicate Certificate of Title to the Land (if issued).

5.6 If for any reason a Bank Cheque tendered as or towards the money payable by the Buyer on Settlement is not honoured on first presentation, the Buyer will remain liable to pay the amount of that money, without prejudice to any other rights, remedies or powers of DevelopmentWA under the Contract.

5.7 The Buyer must provide to DevelopmentWA either prior to Settlement or after Settlement (as specified by DevelopmentWA) a copy of the stamped Contract including these Conditions.

5.8 Immediately after Settlement, the Buyer must cause the transfer in respect of the Land to be lodged at Landgate for registration and use its best endeavours to have the transfer registered as soon as possible. In the event of a requisition notice being issued by Landgate, then unless the requisition arises from a document prepared by DevelopmentWA, the Buyer must do all things necessary to satisfy the requisition and pay all fees in respect of the requisition.

5.9 If required by DevelopmentWA, the transfer of land will be lodged as a follower dealing to an application for titles or an application to register an encumbrance.

6 COSTS

The Buyer will bear the cost of the preparation of the transfer, all duty under the Duties Act 2008 (WA) and duty penalties on the Contract and registration or other fees in respect of the transfer with Landgate.

7 SUBJECT TO FINANCE

If this Contract is subject to finance, the Buyer must apply to a Lender for finance (and not only a broker) within the time specified and in accordance with this Condition and use best endeavours to have finance approved.

7.1 If the Schedule provides that the Buyer is to obtain Finance Approval, the Contract is conditional upon the Buyer receiving written Finance Approval on or before 5pm WST on the Latest Date for Finance Approval to assist in the purchase or development of the Land.

7.2 The Buyer must make a Finance Application as soon as practicable after the Contract Date and use its best endeavours in good faith to obtain Finance Approval.

7.3 If Finance Approval is granted subject to usual terms and conditions of the Lender or subject to conditions which have been accepted by the Buyer then Finance Approval will be deemed to be obtained on the date that the Finance Approval is given by the Lender.

7.4 The Buyer must immediately notify DevelopmentWA in writing:

- (a) of any Finance Approval obtained; or
- (b) if any Finance Application is rejected at any time.

7.5 Where Finance Approval is obtained or deemed to be obtained in accordance with these Conditions, then Condition 7.1 will be satisfied and this Condition 7 will no longer apply to the Contract notwithstanding that any Lender may subsequently withdraw the Finance Approval for any reason or the loan is not be completed for any reason.

7.6 The Buyer may waive the benefit of this Condition at any time on or before 5pm WST on the Latest Date for Finance Approval by giving written notice to DevelopmentWA and upon giving such notice this Condition will be deemed to have been fulfilled.

7.7 If the Buyer has complied with Condition 7.2 and Finance Approval is not obtained by the Latest Date for Finance Approval and the Buyer gives DevelopmentWA a Non Approval Notice by 5pm on the Latest Date for Finance Approval, the Contract comes to an end without further notice.

7.8 If the Contract comes to an end pursuant to Condition 7.7 DevelopmentWA will refund to the Buyer the Deposit (without interest) and all other moneys (if any) paid in accordance with this Contract (less any reasonable costs and expenses incurred by DevelopmentWA) and there will be no further Claim under the Contract by either DevelopmentWA or the Buyer against the other either in law or in equity.

7.9 If the Buyer fails to give written notice to

DevelopmentWA by 5pm WST on the Latest Date for Finance Approval either:

- (a) from the Lender that Finance Approval has been obtained; or
- (b) giving a Non Approval Notice to DevelopmentWA,

or the Buyer otherwise fails to comply with this Condition 7, then DevelopmentWA may by written notice to the Buyer immediately terminate this Contract (unless the Buyer waives this Condition prior to DevelopmentWA terminating this Contract) and in which case:

- (a) the Contract will come to an end;
- (b) the Deposit (and any interest) will be retained by DevelopmentWA (without DevelopmentWA needing to give any notice to the Buyer); and
- (c) such termination will be without prejudice to any right or Claim that DevelopmentWA may have against the Buyer under the Contract either in law or in equity.

7.10 If required by DevelopmentWA, the Buyer must provide to DevelopmentWA full details of and a copy of the Finance Application made by the Buyer and any response(s) from a Lender.

8 TITLE

8.1 The Certificate of Title in respect of the Land or the parent Certificate of Title to the property of which the Land forms part may be inspected by search at Landgate and the Buyer does not require DevelopmentWA to produce an abstract of title or any other evidence of DevelopmentWA's title or right to sell the Land.

8.2 DevelopmentWA will not be required to answer any objections to or requisitions on title.

8.3 If DevelopmentWA is not the registered proprietor of the Land as at the Contract Date, then DevelopmentWA enters into this Contract in its capacity as the authorised agent of the State of Western Australia acting through the Department of Lands (State) and, in that capacity, DevelopmentWA agrees to sell and the Buyer agrees to purchase the Land on the terms of the Contract. Prior to Settlement, DevelopmentWA will acquire the Land from the State. Upon transfer of the Land to DevelopmentWA, all obligations and agreements under the Contract on the part of the State will be assumed by DevelopmentWA and the Buyer releases and discharges the State from any Claims.

9 ENCUMBRANCES

9.1 Subject to Condition 9.4, the Land is sold subject to the following as at the Settlement Date:

- (a) all easements, positive covenants, restrictive covenants and memorials;
- (b) any condition or statement contained in a memorial (including but not limited to, memorials under Section 58 of the Contaminated Sites Act 2003 (WA));
- (c) all rights, reservations, conditions, notifications under Section 70A of the Transfer of Land Act 1893 (WA) or Section 165 of the Planning & Development Act 2005 (WA);
- (d) all interests, orders, tenancies, public roads and encroachments; and
- (e) all claims, demands, conditions (including building conditions) or restrictions whatsoever imposed or made on the Land by any Authority or under any legislation,

(if any) affecting the Land and which are specified in the Certificate of Title or which will be specified or registered upon lodgement of the transfer of the Land to the Buyer at Landgate.

9.2 Subject to Condition 9.4, if any document or interest specified in Condition 9.1 is to be registered on the title to the Land at Settlement due to:

- (a) the requirements of the Commission;
- (b) any Authority having jurisdiction over the Land; or
- (c) as a result of the requirements of DevelopmentWA,

then the Buyer acknowledges and agrees that such document or interest will be registered immediately before or immediately after the registration of the transfer of the Land to the Buyer as required by DevelopmentWA.

9.3 If after the Contract Date an encumbrance of the type mentioned in Condition 9.1 is required to be registered over the title to the Land either by DevelopmentWA (acting reasonably) or any Authority, then subject to Condition 9.4 the encumbrance shall be registered prior to or at Settlement and either immediately prior to or immediately after the transfer to the Buyer as required by DevelopmentWA.

9.4 If the Buyer establishes to DevelopmentWA's satisfaction (acting reasonably) that the registration of an encumbrance on the Certificate of Title pursuant to Condition 9.3 will have a Material Adverse Effect (**Confirmation**), the Buyer may, within seven (7) days of the date of Confirmation, terminate the Contract

whereupon the Deposit will be refunded to the Buyer (without interest) and neither Party shall have any further claim against the other.

10 SUBDIVISION OF LAND

- 10.1** If the Land comprises part of a lot and is accordingly not a lot as defined in the Planning and Development Act 2005 (WA) then the Contract is subject to and conditional upon the approval of the Commission to the subdivision of the land of which the Land forms part being obtained in order to create a separate lot or lots in respect of the Land in accordance with Section 140(1) of the Planning and Development Act 2005 (WA) and this Condition.
- 10.2** If it has not already done so DevelopmentWA will at its cost make an application to the Commission for the approval of subdivision to create a separate lot for the Land within three (3) months from the Contract Date.
- 10.3** For the purposes of Section 140(3) of the Planning and Development Act 2005 (WA) the Contract is subject to and conditional upon the Commission giving its approval to the subdivision of the Land on or before six (6) months from the date of the lodgement of the application specified in Condition 10.2.
- 10.4** In the event that any conditions are imposed by the Commission or any other relevant Authority in relation to the subdivision of the Land which are not acceptable to DevelopmentWA in its absolute discretion then DevelopmentWA may by giving written notice to the Buyer within thirty (30) days of such conditions being imposed terminate this Contract whereupon the Deposit will be repaid to the Buyer without interest.
- 10.5** If a separate title for the Land has not issued from Landgate by the Latest Date for Issue of Title (either due to a matter mentioned in this Condition or for any other reason), DevelopmentWA may, provide a further anticipated latest date of when a Certificate of Title for the Land is scheduled to issue from Landgate (**Revised Latest Date**). If the Buyer establishes to DevelopmentWA's satisfaction (acting reasonably) that the issue of the title subsequent to the Latest Date for Issue of Title but prior to the Revised Latest Date will have a Material Adverse Effect and DevelopmentWA confirms in writing to the Buyer that it accepts that the delay in the issue of the Certificate of Title for the Land will have a Material Adverse Effect (**Confirmation**), the Buyer may, within seven (7) days of the date of the Confirmation, by written notice to DevelopmentWA terminate this Contract whereupon the Deposit will be refunded to the Buyer (without interest) and neither Party shall have any further claim against the other.
- 10.6** The Buyer is not entitled to any compensation and DevelopmentWA is not liable for any costs, expenses or damages (whether direct or indirect) arising as a result of the Buyer commissioning the preparation of any building design or specification or incurring any other costs prior to the issue of a separate Certificate of Title for the Land.

11 DELAY IN SETTLEMENT

- 11.1** The Buyer acknowledges that a separate Certificate of Title in respect of the Land may not be available as at the date of this Contract or on the Settlement Date. DevelopmentWA is not obliged to notify the Buyer of the date of issue of the title where Settlement is subject to the issue of title.
- 11.2** The Buyer is not entitled to any compensation as a result in any delay in Settlement as a result of the Certificate of Title not being available.
- 11.3** Without limiting Condition 11.2, the Buyer acknowledges that the construction of any Development upon the Land may not be able to commence until Settlement has been effected and that any building contract entered into or other costs incurred by the Buyer prior to the date of actual Settlement are at the sole risk of the Buyer.
- 11.4** The Buyer acknowledges that DevelopmentWA has no liability for any costs or damages arising as a result of the Buyer entering into any building contract or incurring any other costs prior to actual Settlement (including but not limited to any increase in the construction cost).

12 CHANGE TO LAND

- 12.1** Where at the Contract Date the Land is not a subdivided Lot or Lots the Buyer agrees with DevelopmentWA that:
- (a) DevelopmentWA may make any changes modifications variations and amendments to the plan of subdivision as may be required by the relevant Authorities to obtain due registration of the plan of subdivision; and
 - (b) the Buyer must not make any objection or seek to terminate the Contract or seek to claim any compensation in respect of any such change modification variation or amendment to the plan of subdivision or to the configuration or size of the Land.
- 12.2** In the event of any dispute as to whether such modification variation or amendment has Materially Prejudiced or Detrimentially Affected the Land then such dispute shall be determined by a Valuer agreed between DevelopmentWA and the Buyer and if not agreed then by a Valuer appointed by the President for the time being of the Australian Property Institute (Inc) Western Australian Division who will act as an expert and not as an arbitrator whose decision shall be final and binding. The Parties will pay the costs of such Valuer equally.
- 12.3** If a change, modification, variation or amendment to the:
- (a) plan of subdivision comprising the Land; or

(b) configuration of the Land,

Materially Prejudices or Detrimentially Affects the Land, then the Buyer may within thirty (30) days of the later of notice of such change, modification, variation or amendment or determination of any dispute under this Condition 12.3 terminate this Contract by written notice to DevelopmentWA whereupon the Deposit will be refunded to the Buyer and neither Party will have any Claim against the other.

(a) the same will not invalidate the sale; and

(b) if notified to the other Party within seven (7) days of the date of this Contract the same will be the subject of compensation to be paid or received by DevelopmentWA as the case may require.

17.2 An error or misdescription as specified in Condition 17.1 will not entitle a Party to terminate the Contract or to delay Settlement and the Buyer is not entitled to compensation as a result.

13 RISK

As from the Settlement Date the Land sold will be at the sole risk of the Buyer in respect of any loss or damage by accident, act of God or otherwise.

14 POSSESSION

14.1 Subject to Condition 14.2 possession of the Land will be and shall be deemed to have been given and taken at Settlement subject to the Buyer having performed all of the Buyer's Obligations arising prior to Settlement.

14.2 DevelopmentWA may by giving written notice to the Buyer give possession of the Land to the Buyer from the date specified in the notice. If notice is given by DevelopmentWA adjustment of rates and taxes shall be effected on Settlement and not on the date of possession. The Buyer must from the date of possession effect public liability insurance in an amount of \$20,000,000 cover with an insurer and on the terms approved by DevelopmentWA (acting reasonably). The Buyer must provide DevelopmentWA with a certificate of currency in respect of such insurance.

15 COMPLIANCE WITH LEGISLATION

As from the Contract Date the Buyer shall comply with and observe all provisions orders by-laws and regulations of and under any legislation in respect of or in any way affecting the Land.

16 CONSENTS

If this Contract is subject to any prior consent under any legislation, the Buyer must use best endeavours to obtain such consent.

17 ERROR IN AREA

17.1 If there is any mistake in or omission from this Contract with respect to the description boundary or area of the Land or any other similar matter:

18 DIVIDING FENCE

18.1 The Buyer acknowledges that any retaining wall or boundary wall or fence between the Land and any adjoining land may be constructed on the boundary of the Land, entirely on the Land or any adjoining land or partially on either (with the centre of such wall or fence not on the boundary between the Land and any adjoining land (if any)). The Buyer must make its own enquires as to the boundaries of the Land and the Buyer must not make any claim against and is not entitled to any compensation from DevelopmentWA, nor terminate the Contract, if any wall or fence is not on the boundary of the Land.

18.2 All fences and walls purporting to be on the boundary of the Land will as between DevelopmentWA and the Buyer be deemed to be upon their true boundary and if any fence or wall is found not to be on its true boundary the Buyer is not entitled to any compensation or have any claim against DevelopmentWA or any right to terminate the Contract.

18.3 The Buyer will not make any Claim against DevelopmentWA pursuant to the Dividing Fences Act 1961 or however else concerning:

(a) the construction of, or contribution to the cost of construction of, any dividing fences or walls; or

(b) any other liability in respect of a dividing fence or wall including any liability DevelopmentWA may have incurred with any adjoining owners.

18.4 The Buyer acknowledges and agrees that this Condition may be pleaded as an absolute bar to any relief, compensation or claim sought by the Buyer against DevelopmentWA.

18.5 The Buyer must not build any structure on the Land, plant or remove any vegetation nor remove soil, rocks or other materials which may affect the structural integrity of any wall or fence between the Land and any adjoining land.

18.6 The Buyer has had the opportunity to inspect any fence or wall now constructed on the Land prior to entering into this Contract. DevelopmentWA gives no warranty as to the condition of the wall or fence as at settlement or its future use.

- 18.7** The Buyer accepts the condition of any fence or wall as at the Settlement Date.
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- 19 INSPECTION OF PEGS**
- 19.1** The Buyer acknowledges and agrees that to the maximum extent possible:
- (a) the Buyer has had the opportunity to inspect the Land; and
 - (b) as at the date of the Contract where any pegs marking the boundaries of the Land (if any) are in place such pegs may or may not mark the true boundaries of the Land.
- 19.2** DevelopmentWA is not liable to the Buyer where no pegs mark the boundary of the Land or the pegs have been removed or do not mark the true boundaries of the Land.
- 19.3** In the event that any pegs are removed from the Land prior to the Settlement Date for any reason DevelopmentWA is not obliged to resurvey the Land or to replace any such pegs or in any manner be liable for such removal.
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- 20 PLANNING AND OTHER MATTERS**
- 20.1** The Buyer acknowledges that the Land is sold subject to the following as at the Settlement Date:
- (a) the provisions of any town planning scheme, zoning by-laws and other laws affecting the Land;
 - (b) any order or requisition affecting the Land;
 - (c) any proposal or scheme for the widening, realignment, closure, siting or alteration of the level of any road or right of way adjacent to or in the vicinity of the Land by any Authority or person;
 - (d) any resumption or proposal to resume the Land or any adjoining or other land; and
 - (e) any easement, memorial (and any condition or statement contained in the memorial), notification, positive covenant or restrictive covenant or other encumbrance specified in Conditions 9.1 or 9.3 affecting the Land or which will affect the Land on registration of the transfer of the Land to the Buyer,
- and the Buyer will take title subject to the above and will not be entitled to make any objection, requisition or claim for compensation, nor to rescind this Contract in respect of any matter specified in this Condition.
- 20.2** If the Contract refers to design guidelines or a detailed area plan or other requirements for development then the Buyer shall comply with all requirements.
- 20.3** If requested by the Buyer prior to Settlement, DevelopmentWA will sign any documents reasonably required by the Buyer which must be signed by the person who is the owner of the Land in order for the Buyer to obtain an approval from any relevant Authority for any Development on condition that:
- (a) the Buyer is solely responsible for all costs associated with the preparation, execution, lodgement and approval of all documents executed by DevelopmentWA;
 - (b) the Buyer is solely liable for the document and the Buyer has no right to make any Claim against DevelopmentWA for any matter in respect of any documents signed by DevelopmentWA and DevelopmentWA is not liable to indemnify the Buyer whatsoever or howsoever arising by reason of any documents signed by DevelopmentWA;
 - (c) the Buyer indemnifies and agrees to keep fully and effectually DevelopmentWA indemnified from and against any Claim or Loss whatsoever (whether direct, indirect or consequential and whether present or future) which DevelopmentWA may incur in connection with any documents signed by DevelopmentWA and in respect of any Loss that DevelopmentWA may incur as a consequence of any act or omission of the Buyer arising from any documents signed by DevelopmentWA; and
- 20.4** the execution of any document by DevelopmentWA (including but not limited to any development application or building permit application) will not be considered an approval by DevelopmentWA of any activity or any use of the Land proposed by the Buyer pursuant to the document or application.
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- 21 BUSHFIRE RISK**
- 21.1** The Buyer acknowledges and agrees that it should enquire as to whether the Land is classified as "Bushfire Prone" by the Office of Bushfire Risk Management within the Department of Fire and Emergency Services.
- 21.2** If the Land is classified as "Bushfire Prone", the Buyer should:
- (a) check with the Local Authority to ascertain if a Fire Management Plan has been prepared in respect of the Land;
 - (b) ascertain if a Bushfire Attack Level (BAL) has been established in respect of the Land and, if not, consider whether it should appoint a relevant consultant to determine the BAL; and
 - (c) if applicable, consider if any Development

should be undertaken in accordance with AS 3959-2009 (as amended from time to time) relating to construction of buildings within a Bushfire Prone Area.

21.3 If a BAL has been established in respect of the Land and/or a Fire Management Plan is in existence in respect of the Land, the Buyer must take into account the BAL and comply with the Fire Management Plan in relation to any Development and:

- (a) if required, comply with AS 3959-2009; and
- (b) if not required, consider compliance with AS3959-2009,

in relation to any Development.

22 MAINTENANCE OF LANDSCAPING AND STRUCTURES

22.1 The Buyer acknowledges that any landscaping, retaining walls, entry statements and other structures established by DevelopmentWA in the estate of which the Land forms part may not be maintained by DevelopmentWA after the date of the Contract.

22.2 In the event that a landscaped street verge adjoining the Land has been provided by DevelopmentWA the Buyer acknowledges that:

- (a) the irrigation for such street verge may be supplied from a temporary source which may be disconnected by DevelopmentWA in its absolute discretion; and
- (b) the Buyer shall in such event reconnect such irrigation to the water supply from the Land and must undertake ongoing maintenance and watering of the landscaped verge.

23 SERVICES, CONTAMINATION AND NBN

23.1 The Buyer acknowledges and confirms that:

- (a) the Land has or will be provided with Services to the boundary of the Land by DevelopmentWA or a relevant Authority in accordance with conditions imposed by the Commission;
- (b) the Land may be filled and/or levelled by DevelopmentWA to meet the requirements of the Commission and that any additional earthworks that may be required will be at the sole cost of the Buyer;
- (c) it has made its own enquiries in relation to all servicing required to be effected to the Land for its proposed use and will meet all such servicing requirements (other than as specified in

paragraph (a)) at its cost;

(d) DevelopmentWA is not liable to the Buyer for any costs or charges which may be charged or levied in relation to the Land or the provision of Services either before or after Settlement imposed by any Authority or any service provider;

(e) where Settlement is due under the Contract and where any Services required to be provided by DevelopmentWA or any Authority in accordance with conditions imposed by the Commission pursuant to this Condition 23.1 have not been provided or a connection to any of the Services is not available for any reason, the Buyer must nevertheless effect Settlement on the Settlement Date and will have no Claim against DevelopmentWA as a result; and

(f) if required by DevelopmentWA, the Buyer grants to DevelopmentWA and its employees, agents, invitees and contractors and any service providers (with or without equipment) access to the Land at all reasonable times following Settlement to supply and not install any Services or carry out any works reasonably required by DevelopmentWA.

23.2 Without limiting Condition 23.1, the Buyer acknowledges and agrees that:

(a) the Land may be serviced by the National Broadband Network in relation to the supply of broadband internet services (NBN);

(b) if the Buyer proposes to connect to the NBN, the Buyer must at its cost construct any Development in accordance with the requirements and specifications of NBN Co Ltd and must obtain all relevant requirements and specifications from NBN Co Ltd directly prior to undertaking any Development;

(c) the Buyer must as soon as possible notify NBN Co Ltd of the number of intended connections to the NBN required by the Buyer for any Development;

(d) if the proposed Development is a strata-title Development or if the Buyer requires multiple connections to the NBN, delays may be experienced in NBN Co Ltd providing connections to the NBN for any Development;

(e) it is the sole responsibility of the Buyer to make its own independent enquiries with NBN Co Ltd and any other relevant person, company or Authority in relation to the costs, connection timeframes and all other requirements relating to the NBN and connection to the NBN prior to entering into this Contract; and

(f) DevelopmentWA is not responsible for, and the Buyer releases DevelopmentWA from, any costs, losses or expenses incurred by the Buyer

- as a result of any matter associated with the NBN or NBN Co Ltd including but not limited to all costs associated with obtaining, or failing to obtain, any connection to the NBN. The Buyer must not make any Claim against DevelopmentWA in relation to any matters associated with the NBN.
- 23.3** The Buyer acknowledges and agrees that:
- (a) the Buyer must ensure that the Building Ready Specifications and appropriate building wiring specifications are complied with in respect of any Development in order to enable connection to the Network Infrastructure; and
- (b) a failure to comply with the Building Ready Specifications will prevent any Development being able to be connected to the Network Infrastructure or will require the Buyer to incur additional costs in order to connect to the Network Infrastructure.
- 23.4** Other than where the Land has been reported to the Department of Environment Regulation under the Contaminated Sites Act as being Contaminated or suspected of being Contaminated, DevelopmentWA is not aware of any Contamination on or below the surface of the Land which will materially affect the use of the Land.
- 23.5** The Buyer agrees that it must make its own enquiries as to whether any condition or Contamination on or below the Land will affect any Development or the use of the Land proposed by the Buyer and agrees to purchase the Land subject to any Contamination or sub-surface conditions that may exist.
- 23.6** If as at the date of the Contract the Land has not been connected to any Services then the Buyer must meet all costs relating to such connection.
- 23.7** If at the Contract Date a relevant Authority has determined that underground power or any other Services will be installed to or applied to the Land and a charge has been imposed on DevelopmentWA for that installation or connection then the cost of that installation or connection will be met by DevelopmentWA. The Buyer must pay any subsequent charge, assessment or liability that may apply subsequent to the Contract Date in relation to the installation of underground power or any other Services.
- 23.8** If at the Contract Date there is a septic tank on the Land which is required to be decommissioned, then the Buyer is solely responsible for decommissioning the septic tank.
- 23.9** If an electricity transformer is or will be installed on or adjacent to the Land, the Buyer must comply with the requirements of any relevant service provider and shall not construct or install any fencing or other structure within such distance from the boundary of any electricity transformer and/or switchgear site as specified by the relevant service provider.
- 23.10** Without limiting any other Condition, the Buyer acknowledges and agrees that DevelopmentWA is not liable for, and the Buyer must make its own independent enquiries as to, the Services or connections provided, or to be provided (or the lack of Services), to the Land and whether or not such Services or connections are or will be satisfactory for any Development or any use.
- 23.11** The Buyer acknowledges and agrees that telecommunication services to the Land may be installed, owned, operated and/or maintained by a Party other than DevelopmentWA and that the Buyer must not make any Claim against DevelopmentWA in relation to such telecommunication services.
- 23.12** The Buyer acknowledges and agrees that connection to the sewer connection (when installed) to the Land must be effected by the Buyer. Any increase to the flow rate above the standard allowance as required by the Buyer is to be procured by the Buyer at its cost. The depth of the property connection has been designed in accordance with Water Corporation requirements.
- 23.13** The Buyer acknowledges and agrees that the Buyer accepts any soil classification of the Land and agrees that the Buyer is solely liable for all costs arising as a result of such classification.
- 23.14** The Buyer acknowledges and agrees that it is solely liable as to the requirements to upgrade any Services to the Land, and the capacity of the Services required, in order for the Buyer to use the Land for any Development or any other use including, but not limited to, the upgrade of power, water, sewerage or any other Services.
- 23.15** The Buyer releases and discharges DevelopmentWA and agrees that the Buyer is responsible and liable for all liability, investigation, Remediation and other costs (whether direct or indirect) associated with Contamination or Pollution affecting the Land or other land in the vicinity of the Land whether such Contamination or Pollution occurred prior to or subsequent to the date of the Contract other than Contamination caused or contributed to by DevelopmentWA.
- 23.16** The Buyer is solely liable to comply with and otherwise to deal with all laws and the requirements or orders of any relevant Authority in relation to any Contamination or Pollution or otherwise on or from the Land.
- 23.17** The Buyer agrees to indemnify and keep indemnified DevelopmentWA from and against any Claim or Loss (whether direct or indirect and whether present or future) which DevelopmentWA may suffer in relation to any Contamination or Pollution on the Land whether prior to or subsequent to the date of the Contract other than Contamination caused or contributed to by DevelopmentWA.
- 23.18** The Buyer must sign such documents and do such acts, matters and things as may be necessary or desirable in order to assume full liability for all Contamination and Pollution under the Contaminated Sites Act or future

legislation other than Contamination caused or contributed to by DevelopmentWA.

where the parties are acting at arms-length and are not associates. The Party receiving the Tax Invoice shall pay to the other Party the GST detailed on the Tax Invoice.

24 REBATES

If a rebate is payable by DevelopmentWA or a reduction in the monies payable at Settlement is allowed by way of a rebate, the payment of or credit for the rebate is conditional upon:

- (a) the Buyer informing any Lender making a loan to the Buyer in relation to the purchase of the Land of the terms of the rebate;
- (b) the Lender in paragraph (a) providing an acknowledgement in a manner as DevelopmentWA requires acknowledging that the Lender is aware that a rebate has or may be paid; and
- (c) if the transfer of the land is effected other than by way of electronic conveyancing in accordance with Condition 36, the Transfer of Land form to be registered at Landgate providing as the consideration for the sale in the consideration panel "The terms of the contract for sale between the Transferor (as seller) and the Transferee (as buyer)". If the transfer of Land is effected through electronic conveyancing pursuant to Condition 36 the rebate amount shall be recorded as part of the electronic conveyancing.

25 GOODS AND SERVICES TAX

- 25.1 The Parties acknowledge and agree that DevelopmentWA is considered to be the State under the GST Act and it has previously obtained a private ruling from the Australian Taxation Office to this effect.
- 25.2 The parties acknowledge that for the purposes of this Contract and any other dealing associated with the Contract, DevelopmentWA as the State is obligated under the GST Law to deal with its notional GST liability (as that term is used in Division 177 of the GST Act) as if it were GST.
- 25.3 DevelopmentWA and the Buyer agree that the Purchase Price is inclusive of GST.
- 25.4 DevelopmentWA will provide a Tax Invoice on or prior to Settlement.
- 25.5 Where a Party or parties to this Contract provides non-monetary consideration and the provision of this non-monetary consideration is a Taxable Supply, the Party providing the non-monetary consideration shall provide a Tax Invoice to the other Party for the GST inclusive market value of the non-monetary consideration. Without reserving exclusive rights to determine such GST inclusive market value, DevelopmentWA may determine such market value to be for a nominal sum

- 25.6 This Contract and supporting material is not a document notifying any obligation to make payment and is not considered an invoice under the GST Act. The deposit (if any) paid is held as security for the performance of an obligation in accordance with Division 99 of the GST Act.

- 25.7 If a Party is entitled under the Contract to be reimbursed or indemnified by a Party for a cost or expense incurred in connection with this Contract, the reimbursement or indemnity payment must not include any GST component of the cost or expense for which an Input Tax Credit may be claimed by the Party, as the case may be, entitled to be reimbursed or indemnified.

26 WARRANTY

- 26.1 The Buyer covenants and warrants with DevelopmentWA (which warranty the Buyer acknowledges has induced DevelopmentWA to enter into the Contract) that the Buyer has full power and capacity to enter into this Contract and the Buyer has obtained all relevant approvals necessary to enter into and complete the Contract.

- 26.2 The Buyer covenants and warrants to DevelopmentWA that it does not enter into the Contract as trustee of a trust or as agent for any other person or entity other than as expressly disclosed to DevelopmentWA prior to the Contract Date and as included in the Buyer's details in the Contract for Sale of the Land to which these Conditions are annexed.

- 26.3 Where the Buyer is acting as trustee, the Buyer covenants with and warrants to DevelopmentWA that the Buyer has or have or will have full powers pursuant to its memorandum and articles (or constitution) and its deed of trust (generally and together (if more than one) called the Trust) under which it purports to act.

- 26.4 The Buyer covenants that:

- (a) the Trust is lawfully and validly constituted and all deeds and other instruments in respect of the Trust have been properly executed;
- (b) the Trust will remain unrevoked and not varied other than with the prior written consent of DevelopmentWA, which will not be unreasonably withheld;
- (c) the assets of the Trust as well as the assets of the trustee will at all times be available to satisfy the Buyer's Obligations and there is no limit or restriction on the recourse the trustee may have to the Trust assets;
- (d) the consents or approvals of all Parties necessary to execute this Contract so as to bind the property of the Trust have been obtained

and all necessary conditions precedent for that purpose have been met;

- (e) no one has taken or threatened nor is the Buyer aware of any one who is likely to take action to have the Trust wound-up or otherwise administered by action brought in any Court or to charge the Buyer or any person at any time connected with the Buyer or acting on behalf or purportedly on behalf of the Buyer with any breach of trust or misappropriation of trust moneys in connection with the Trust; and
- (f) no facts are known to the Buyer where the Trust might be wound-up voluntarily or otherwise or the trustee changed or the assets of the Trust vested in any other person or the Trust may cease to operate or be deprived of funds prior to expiration of the Term.

26.5 The Buyer acknowledges and agrees with DevelopmentWA that if DevelopmentWA on reasonable grounds considers that there has been a breach of any of the warranties contained in this Condition then DevelopmentWA may without notice immediately terminate this Contract.

27 NO REPRESENTATIONS

27.1 The Buyer agrees that prior to entering into the Contract it has satisfied itself:

- (a) by physical examination and inspection and all other necessary enquiries including, but not limited to, enquiries as to the classification status of the Land under the Contaminated Site Act, and relying on the opinion or advice of such experts as the Buyer may wish to consult as to the state, condition, quality and quantity of the Land;
- (b) by enquiry of all relevant authorities as to the zoning of the Land and the use to which the Land or any other land adjoining or in the vicinity of the Land may be put;
- (c) as to the easements, restrictive covenants, notifications or other agreements or encumbrances to which the Land may be or become subject;
- (d) as to the requirements of each and every Authority which has control or jurisdiction over the Land and the current and prospective use and development of the Land;
- (e) by independent valuations or reports as to the value of the Land and as to the present and future feasibility, liability and economic return that may be derived from the Land; and
- (f) by survey and physical examination as to the area of the Land and not relying on the position of any pegs purporting to mark the boundary (if

any),

and is deemed to purchase the Land in reliance solely upon such examination, inspection, enquiry, perusal, opinion and advice and not upon any or any alleged statement, warranty, condition or representation whatsoever made or alleged to have been made to the Buyer by DevelopmentWA or any employee, contractor or agent of DevelopmentWA.

27.2 This Condition applies notwithstanding the contents of any brochure, document, letter or publication made, prepared or published by DevelopmentWA or by any other person with or without the authority of DevelopmentWA whether express or implied.

28 NO LIABILITY OF DEVELOPMENTWA

The Buyer has no right to make any objection or requisition or Claim against DevelopmentWA for compensation or to terminate or rescind the Contract and DevelopmentWA shall not be liable to indemnify the Buyer whatsoever or howsoever arising by reason of:

- (a) the prior use of the Land;
- (b) the Land being unsuitable for any particular purpose;
- (c) the area of the Land being different from the area indicated on any plan, brochure, document, letter, material or other publication issued or published by or on behalf of DevelopmentWA or as indicated on the Certificate of Title to the Land;
- (d) the provision of, or a lack of, or lack of an available connection to, water, drainage, sewerage, gas, electricity, telecommunication or other services or connections to the Land, or in respect of the fact that any Services or connections may be joint services to any other land, or because any facilities for services for any other land pass through the Land;
- (e) any encroachment onto the Land by any improvement which does not form part of the Land, or the encroachment onto adjoining land of any improvement which forms part of the Land;
- (f) the location of any sewerage, water or drainage or other pipes or cables or services affecting the Land, or that any pipes or cables pass through, or penetrates the Land; or

28.2 the fact that the current use of the Land may not be an authorised use under any applicable zoning or use law, scheme or regulation.

29	BUYER'S ACKNOWLEDGEMENTS	29.3	Whilst not limiting any other provision in these Conditions, the Buyer acknowledges and agrees that:
29.1	The Buyer acknowledges and agrees that:	(a)	it is solely responsible at its cost for complying with and implementing all fire protection, water pressure or other requirements imposed on or affecting the Land by any Authority whether or not as a result of the Buyer's proposed use of the Land or whether generally required (including but not limited to requirements for fire protection, waste disposal, sewerage or other requirements) and that the Buyer may be required at its cost to undertake a detailed site specific assessment of the Land at the stage of applying for development approval and a building permit for any Development or otherwise; and
	(a) no warranty or representation has been given or made to the Buyer or anyone on the Buyer's behalf by DevelopmentWA or any agent, employee or contractor or consultant of DevelopmentWA or any other person on DevelopmentWA's behalf as to:	(b)	prior to entering into the Contract the Buyer should undertake its own independent enquiries and investigations with any relevant Authority in order to determine what fire protection, water pressure and other requirements are likely to be imposed in relation to the Land.
	(i) the title to the Land;		
	(ii) any encumbrance, restriction or right in favour of any third party affecting the Land;		
	(iii) the condition or state of repair, order or condition of the Land;		
	(iv) the suitability of the Land for any use or purpose of any kind;		
	(v) the fences (if any) purporting to be on the boundaries of the Land being on the proper boundaries of the Land; or		
	(vi) the provisions of, or lack of, or the lack of an available connection to Services or connections to the Land.		
	(b) any representation or warranty implied by virtue of any statute or otherwise will not apply to, or be implied in, the Contract and any such representation or warranty is excluded to the extent permitted by law;		
	(c) the Land is sold 'as is where is' and as it stands with all existing faults, defects, omissions or characteristics whether they are apparent or ascertainable on inspection or not and without any obligation on DevelopmentWA to disclose or particularise any faults, defects, omissions or characteristics known to DevelopmentWA;		
	(d) DevelopmentWA will not be liable under any circumstances to make any allowance or compensation to the Buyer nor will the Purchase Price be affected by the exclusion of warranties or representations in this Condition or for any fault, defect or characteristic in the Land; and		
	(e) this Condition will apply despite the contents of any brochure, document, letter or publication made, prepared or published by DevelopmentWA or by any other person or consultant with or without the express or implied authority of DevelopmentWA;		
29.2	The Buyer acknowledges that it is solely liable for all site clearance and building preparation costs on the Land which should be determined by the Buyer prior to entering into this Contract.		
		30	DEFAULT
		30.1	Neither DevelopmentWA nor the Buyer may terminate the Contract by reason of the other's failure to observe or perform an obligation imposed on that other Party under the Contract unless:
		(a)	that Party has first given a notice to the other Party:
		(i)	specifying the failure;
		(ii)	stating that the other Party must observe and perform that Party's obligations under the Contract within ten (10) Business Days from the date of service of the notice; and
		(iii)	stating that if those obligations are not observed and performed within that time the Party giving the notice may terminate the Contract or that the Contract will be terminated; and
		(b)	the Party receiving the notice fails to observe and perform those obligations within the period stated in that notice.
		30.2	Condition 30.1 does not apply if:
		(a)	either Party repudiates the Contract;
		(b)	Condition 2.4 applies;
		(c)	Condition 31 applies;
		(d)	a condition precedent or subsequent has not been satisfied; or

- (e) Finance Approval has not been obtained by the Latest Date for Finance Approval or if there is a breach of Condition 7.
- 30.3** In the event that the Buyer is in breach of the Buyer's Obligations and the Contract is terminated or the Buyer repudiates the Contract that part of the Purchase Price and any other moneys paid by the Buyer to DevelopmentWA under the Contract (including the Deposit) amounting in the aggregate to:
- (a) up to TEN PER CENTUM (10%) of the Purchase Price, will be forfeited to and retained by DevelopmentWA; and
- (b) in excess of TEN PER CENTUM (10%) of the Purchase Price, will be held by DevelopmentWA pending the exercise of DevelopmentWA's Remedies.
- 30.4** In the event that the Buyer is in breach of the Buyer's Obligations or repudiates the Contract, DevelopmentWA without prejudice to DevelopmentWA's Remedies may:
- (a) affirm the Contract and sue the Buyer for damages for breach of contract;
- (b) sue the Buyer for specific performance of the Contract;
- (c) subject to Condition 30.1 (if applicable):
- (i) if the notice given under that Condition states that unless the default is remedied within the time stated in the notice the Contract may be terminated; and
- (ii) the default is not remedied within the time stated,
- terminate the Contract and:
- (iii) sue the Buyer for damages for breach of contract; and
- (iv) without further notice to the Buyer resell the Land in such manner as DevelopmentWA thinks fit.
- 30.5** If DevelopmentWA resells the Land:
- (a) DevelopmentWA may retain absolutely:
- (i) any surplus arising from the resale in excess of:
- (A) the Purchase Price; and
- (B) losses and expenses incurred by DevelopmentWA in the resale and resulting from the Buyer's default; and
- (ii) any interest paid by the Buyer; and
- (b) any amount by which the Purchase Price exceeds the proceeds of the resale, the amount of the Deposit which has been forfeited and all losses and expenses incurred by DevelopmentWA in the resale and resulting from the Buyer's default are recoverable by DevelopmentWA from the Buyer as liquidated damages.
-
- 31** **INSOLVENCY EVENT**
- 31.1** The Buyer must ensure that an Insolvency Event does not occur with respect to the Buyer prior to Settlement.
- 31.2** If an Insolvency Event occurs with respect to the Buyer prior to Settlement then DevelopmentWA may terminate this Contract at any time by giving written notice to the Buyer.
- 31.3** If DevelopmentWA terminates the Contract pursuant to this Condition then the Deposit will be forfeited and released to DevelopmentWA immediately and the Buyer will not have any claim against DevelopmentWA.
-
- 32** **FACILITATE EXERCISE OF REMEDIES**
- 32.1** The Buyer must facilitate DevelopmentWA in the proper exercise of DevelopmentWA's Remedies and not claim any compensation for any inconvenience or damage caused by DevelopmentWA.
- 32.2** The Buyer must pay to DevelopmentWA on demand any moneys properly expended by DevelopmentWA (including legal costs) in connection with the proper exercise and protection of its rights and powers contained in this Contract and also upon demand pay all DevelopmentWA's reasonable costs fees and expenses of and incidental to:
- (a) any proper exercise of DevelopmentWA's Remedies;
- (b) any breach of the Buyer's Obligations;
- (c) the Buyer seeking the removal of any caveat lodged by DevelopmentWA over the title to the Land which it is entitled to maintain; and
- (d) the perusal and investigation of any request by the Buyer for permission to lease or onsell or otherwise dispose of the Land or enter into any other arrangement which requires the permission or consent of DevelopmentWA pursuant to the Contract or the Act or otherwise howsoever.
- 32.3** The Buyer indemnifies and agrees to keep fully and

effectually indemnified DevelopmentWA from and against any claim loss or liability whatsoever (whether direct or indirect and whether present or future) which DevelopmentWA may incur in connection with the Contract and in respect of any loss or expense that DevelopmentWA may incur as a consequence of any default by the Buyer in respect of the Buyer's Obligations.

32.4 All powers, acts, matters or things which DevelopmentWA is empowered or required to do under the Contract or any statute may be exercised or done by DevelopmentWA or by its duly authorised solicitor, agent, contractor or employee of DevelopmentWA.

32.5 No demand or notice made or given by DevelopmentWA under the Contract or any statute will be waived by any subsequent negotiation.

33 NOTICE

33.1 Any notice given or required to be given under the Contract:

(a) must be in writing addressed to DevelopmentWA or to the Buyer (as the case may be), to DevelopmentWA's or the Buyer's address, facsimile number or email address shown in the Contract (or to any other address specified by the Buyer to DevelopmentWA or DevelopmentWA to the Buyer by notice) provided that a notice to DevelopmentWA sent by email will only be valid if emailed to Conveyancing@developmentwa.com.au;

(b) must be signed by the sender or an officer of, or under the common seal of the sender or by the sender's lawyer, conveyancer or other authorised representative (as the case may be); and

(c) is to be regarded as being given by the sender and received by the addressee:

(i) if by delivery in person, when delivered to the addressee;

(ii) if by post (which posting must be by pre-paid security post), 3 business days from and including the date of posting to the addressee;

(iii) if by facsimile transmission:

(A) on the date the notice or communication is transmitted in its entirety by a facsimile machine; and

(B) that facsimile machine produces a transmission report which indicates that the facsimile was sent in its entirety to the facsimile number of the addressee,

but if the delivery or transmission by facsimile is on a day which is not a business day or is after 5.00 p.m. (addressee's time) it is to be regarded as being given at 9.00 a.m. (addressee's time) on the next succeeding business day; and

(iv) if by email on the earlier of:

(A) the Business Day after the date on which the email is sent provided that the sender does not receive any system message indicating that the transmission of the notice has been delayed or has failed (for the purposes of this clause an out of office message of a recipient will be deemed to be a message indicating delay of the notice unless the email is sent to more than one recipient of the Party);

(B) the day on which the recipient of the email responds to the email (or where the response is not on a Business Day, the next Business Day); and

(C) the day on which an automatic read receipt is received by the sender provided that the read receipt is received prior to 5.00pm on a Business Day otherwise the notice is deemed to be served on the following Business Day.

33.2 Where the Buyer comprises 2 or more persons or corporations, or any combination of the same, notice to either 1 person or to 1 corporation is deemed notice to all persons and corporations comprising the Buyer.

33.3 A notice served on the Buyer's Conveyancer in accordance with this Condition will be treated for all purposes as if the notice had been served on the Buyer.

34 TIME OF ESSENCE

Unless otherwise stated, time will in all respects be of the essence in the Contract.

35 MISCELLANEOUS

35.1 The Contract is to be governed by, and construed according to the laws of Western Australia.

35.2 Unless application is mandatory by law, a statute, proclamation, order, regulation or moratorium, present or future, is not to apply to the Contract or these Conditions so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise affect prejudicially rights, powers, privileges, remedies or discretions given or accruing to a Party.

<p>35.3 If a condition, covenant or stipulation of the Contract or the application of them to a person or circumstances is, or becomes, invalid or unenforceable the remaining covenants, conditions and stipulations are not to be affected by the invalidity or enforceability, and each covenant, condition and stipulation of these Conditions and the Contract will be valid and enforceable to the fullest extent permitted by law.</p> <p>35.4 The Buyer may not assign, transfer or dispose of its rights under the Contract (including as a result of a Deemed Disposition) without the prior written consent of DevelopmentWA, which consent may be withheld in the absolute discretion of DevelopmentWA.</p> <p>35.5 A provision of, or a right created under, the Contract may not be:</p> <p>(a) waived except in writing signed by the Party granting the waiver; or</p> <p>(b) varied except in writing signed by all Parties.</p> <p>35.6 The failure or delay on DevelopmentWA's part at any time to enforce any of its rights or to exercise any option to repurchase or discretion in accordance with the Contract will not be construed as a waiver of the provisions of the Contract or prejudice DevelopmentWA exercising such rights or the exercise of any such option or discretion.</p> <p>35.7 DevelopmentWA and the Buyer agree to sign, execute and complete all further assurances and documents and to do all things reasonably required to complete the matters set out in, or contemplated by the Contract.</p> <p>35.8 Without limitation to the extent that any obligations under the Contract have not been complied with on or before Settlement, those obligations survive Settlement and continue until complied with.</p> <p>35.9 Each Party is to pay its own solicitor's costs in respect of the Contract and the completion of the transaction evidenced by the Contract. Any document recording a variation to the Contract requested by the Buyer and agreed by DevelopmentWA will be at the cost of the Buyer. The Buyer must pay all duty assessed on this Contract.</p> <p>35.10 The Contract comprises the whole agreement between the Parties and subject only to any provision expressly to the contrary supersedes all prior agreements and understandings between the Parties.</p> <p>35.11 The Contract may consist of a number of counterparts. The counterparts taken together constitute one instrument. Evidence of execution of the Contract or any counterpart may be effected by email or facsimile transmission.</p> <p>35.12 Where any consent or approval under these Conditions is to be given by DevelopmentWA, that consent or approval must be given by DevelopmentWA in writing and such consent or approval may be given subject to conditions determined by DevelopmentWA in its absolute discretion.</p>	<hr/> <p>36 ELECTRONIC CONVEYANCING</p> <p>36.1 These Conditions apply if:</p> <p>(a) Landgate will only accept the Transfer or any other instrument to be lodged together with the Transfer following Settlement for registration conducted electronically in accordance with the Electronic Conveyancing National Law.</p> <p>(b) the Parties agree to effect the Transfer in accordance with these Conditions.</p> <p>36.2 The Parties agree that these Conditions have priority over any other provision in the Contract to the extent of any inconsistency.</p> <p>36.3 The Parties agree that Settlement and lodgement of the instruments necessary to transfer the Land to the Buyer and record the Buyer as registered proprietor of the Land will be conducted electronically in accordance with the Electronic Conveyancing National Law.</p> <p>36.4 Provided that the Transfer and any other instrument to be lodged together with the Transfer following Settlement are capable of being accepted by Landgate over the counter for registration, if either Party reasonably believes that Settlement and lodgement of the Transfer and any other instrument to be lodged together with the Transfer following Settlement can no longer be conducted electronically either DevelopmentWA (or its Conveyancer or Lawyer) or the Buyer's Conveyancer (or the Buyer) must immediately give a notice to the other party (Withdrawal Notice). These Conditions (other than Condition 36.5) ceases to apply if a Withdrawal Notice is given and Condition 5 shall apply.</p> <p>36.5 If a Withdrawal Notice is given by a Party to the other, then the Settlement Date shall be the later of 14 days from the date of delivery of the Withdrawal Notice and the Settlement Date specified in the Contract.</p> <p>36.6 DevelopmentWA (or its Conveyancer or Lawyer and the Buyer or the Buyer's Conveyancer) must:</p> <p>(a) be a Subscriber for the purposes of the Electronic Conveyancing National Law;</p> <p>(b) ensure that all other persons for whom that party is responsible and who are associated with this transaction are, or engage, a Subscriber for the purposes of the Electronic Conveyancing National Law; and</p> <p>(c) conduct the transaction in accordance with the Electronic National Law.</p> <p>36.7 As soon as reasonably practicable after the Contract Date, or if the Contract is conditional, after the Contract becomes unconditional, DevelopmentWA (or its Conveyancer or Lawyer) shall:</p> <p>(a) open an Electronic Workspace with an Electronic Lodgement Network Operator; and</p>
--	--

(b) invite the Buyer's Conveyancer (or the Buyer), and the holder of any encumbrance on the Certificate of Title to join the Electronic Workspace.

assist the other party to trace and identify the recipient of any mistaken payment and to recover the mistaken payment.

36.8 As soon as possible after receipt of an invitation to join the Electronic Workspace, the Buyer's Conveyancer (or the Buyer) shall:

37 SPECIAL CONDITIONS

(a) accept the invitation to join the Electronic Workspace; and

The Special Conditions will apply to and form part of the Contract. In the event of any inconsistency between the Special Conditions and the Conditions the Special Conditions shall prevail.

(b) invite any Lender who is providing finance to the Buyer to join the Electronic Workspace.

36.9 Nothing in Condition 36.7 or 36.8 shall be taken to restrict any Party from opening the Electronic Workspace and issuing invitations to join the Electronic Workspace. The Parties agree to do all things necessary to ensure all parties required to participate in the Electronic Workspace are invited to the Electronic Workspace, including by opening an Electronic Workspace in the event that DevelopmentWA (or its Conveyancer or Lawyer) has failed to do so within a reasonable time.

36.10 DevelopmentWA (or its Conveyancer or Lawyer) must nominate a time of the day for locking of the Electronic Workspace at least 5 Business Days before the Settlement Date.

36.11 Settlement occurs when the Electronic Workspace records that:

(a) the exchange of funds or value between financial institutions in accordance with the instructions of the parties have occurred; or

(b) if there is no exchange of funds or value, the documents necessary to enable the Buyer to become registered proprietor of the Land have been accepted for electronic lodgement.

36.12 If, after the locking of the Electronic Workspace at the nominated settlement time, Settlement has not occurred by 4.00pm, or 6.00pm if the nominated settlement time is after 4.00pm (with all times in this Condition being AEST or AEDT, as applicable), the Parties must do everything reasonably necessary to effect Settlement electronically on the next Business Day.

36.13 If Settlement fails to occur in accordance with Condition 36.11 by the settlement time specified in Condition 36.12 as a result of a computer system operated by Landgate, Office of State Revenue, Reserve Bank of Australia, a Financial Institution or Electronic Lodgement Network Operator is inoperative, neither Party is in default and the Settlement Date is deemed to be the next Business Day or as soon as possible after the computer system becomes operative.

36.14 Any rights under the Contract or at law to terminate the Contract may not be exercised during the time the Electronic Workspace is locked for Settlement.

36.15 Each party must do everything reasonably necessary to

ANNEXURE B – RESTRICTIVE COVENANT

Approval: A4098

WESTERN AUSTRALIA
TRANSFER OF LAND ACT 1893 AS AMENDED

BLANK INSTRUMENT FORM

**DEED OF
RESTRICTIVE COVENANT**

(Note 1)

A large, empty rectangular box with a thin black border, occupying the central portion of the page. This box is intended for the text of the deed of restrictive covenant.

WESTERN AUSTRALIA STAMP DUTY
23/06/93 16670303 SD \$*****5.00

THIS DEED is made the *17th* day of *June* 1993

BETWEEN:

METRO MEAT LTD (ACN 007 872 353) of 2 Hurtle Square, Adelaide, South Australia (hereinafter called "Metro Meat")

AND

The party named and described in Item 1 of the Schedule hereto (hereinafter called "the Purchaser").

WHEREAS:

- A. Pursuant to a contract made the 29th day of April 1993 between Metro Meat and the Purchaser (hereinafter called "the Contract"), Metro Meat has agreed to sell and the Purchaser has agreed to purchase all that the property described in Item 2 of the Schedule hereto (hereinafter called "the Land").
- B. It is a term of the Contract that the Purchaser shall enter into a deed of agreement restricting the future use of the Land with respect to use of the land as an abattoir.

NOW IT IS HEREBY AGREED as follows:

1. **Interpretation**

The headings to clauses in this instrument shall not effect it's construction except to the extent that such interpretation shall be excluded by or be repugnant to the context, in this instrument:

the expression "**Metro Meat**" means the corporation herein so described and that corporation's successors and assigns;

the expression "**the Business**" means the business of carrying on an abattoir;

the expression "**the Benefited Land**" means the land described in Item 3 of the Schedule hereto.

the expression "**the Land**" means the land described in Item 2 of the Schedule hereto.

- 2 -

the expression "the Purchaser" where persons, means the persons herein so described and each of them and their and each of their respective personal representatives and assigns and where a corporation, means the corporation herein so described and that corporations successors and assigns;

the words "Party" and "Parties" mean, respectively, the party or parties to this instrument;

the word "person" includes a corporation;

a word importing a singular number or plural number includes the plural and singular respectively;

if two or more persons by this instrument undertake an obligation or give any warranty they shall be bound thereby jointly and severally;

a word importing any gender includes every other gender;

a reference to this instrument includes a reference to any schedule hereto.

2. **Restriction on Business**

The Purchaser covenants that the Purchaser will not from the date of settlement of the Contract:

- (a) directly or indirectly and whether as agents, consultant, adviser or shareholder of any corporation carry on or assist in the carrying on, be interested in, be connected with or be engaged in the carrying on of the Business on the Land; or
- (b) permit or suffer any person or corporation using or occupying the Land to carry on the Business on it; or
- (c) grant to any person or corporation any lease, tenancy or licence to occupy the Land for the purpose of carrying on the Business or under which the carrying on of the Business is permitted.

3. **Sale or other Disposition by Purchaser**

The Purchaser covenants with Metro Meat that the Purchaser shall not sell, transfer, demise, mortgage or part with possession of the Land or any part thereof without first obtaining from any such purchaser, transferee, lessee or mortgagee or other person entitled to the possession thereof (but in the case of a mortgagee to become effective only in the event of that mortgagee entering into possession pursuant to the mortgage or exercising its other powers and remedies thereunder) a Deed with Metro Meat to observe and perform the terms and conditions of this instrument (including without limitation this clause) as if named as a party herein and such Deed shall contain a further covenant by such purchaser, transferee, lessee or mortgagee (but in the case

perL:\DOC\4565380.DL\72

- 3 -

of a mortgagee to become effective only in the event of the sale of the property or part thereof by the mortgagee pursuant to the mortgage or exercising its other powers and remedies thereunder) or other person entitled to possession thereof that he will procure a Deed of Covenant in similar terms to this agreement from any subsequent purchaser, transferee, lessee, mortgagee or other persons entitled to possession of the Land or part thereof PROVIDED THAT nothing in this clause shall be deemed to affect the right of the Purchaser to grant leases and licences in the ordinary course of business to tenants and prospective tenants of any part or parts of the buildings from time to time erected on the Land and which leases or licences (as the case may be) are not inconsistent with the provisions of Clause 2 hereof.

4. **Burden and Benefit**

The parties intend that the restrictive covenant contained in this instrument shall burden the Land and benefit the benefited Land.

5. **Covenant Running with Land**

The Purchaser intends that the burden of the restrictive covenant contained in this instrument shall run with the Land. The Purchaser intends that the burden of the restrictive covenant contained in this instrument shall run with the Land and that the benefit of the restrictive covenant contained in this instrument shall run with the benefited Land.

6. **Further Assurance**

The Parties shall sign and execute all assurances, documents and deeds and do such acts and things as shall be required by the provisions of this instrument and to completely effectuate the terms hereof and the rights and intentions of the Parties hereunder.

7. The Purchaser shall at the request of Metro Meat do all acts and things and execute all such deeds, follower letters and other documents, including but not limited to the production of the duplicate certificates of title and otherwise comply with the requirements of the Registrar of Titles so as to enable the registered proprietor or the person entitled to be the registered proprietor of the benefited land to enjoy the restrictive covenant and have the restrictive covenant registered on the Certificate of Title for the Land and/or the benefited land.

IN WITNESS WHEREOF the parties have executed this deed the day and year first hereinbefore mentioned.

perL:\DOC\45163580.DLY3

SCHEDULE

1. **The Purchaser**

JUDITH LEE DYMOND of 1 Ashton Avenue, Mount Tarcoola, W.A.
being the Purchaser named in the Contract.

2. **The Land**

Victoria Location 10390 and being the whole of the land comprised in Certificate of
Title Volume 1318 Folio 947.

3. **The Benefited Land**

Victoria Location 10373 and being the whole of the land comprised in Certificate of
Title Volume 1316 Folio 568.

THE COMMON SEAL of)
METRO MEAT LTD)
(ACN 007 872 353))
was hereunto affixed by)
authority of the Directors)
in the presence of:)



.....
DIRECTOR

R. J. Wright

.....
DIRECTOR/SECRETARY

D. Smith

.....
NAME (Please Print)

R. J. WRIGHT

.....
NAME (Please Print)

D. SMITH

SIGNED by the said)
JUDITH LEE DYMOND)
in the presence of:)

J. J. Dymond

WITNESS)
ADDRESS)
OCCUPATION)

[Signature]

Commissioner for Declarations

INSTRUCTIONS

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

NOTES

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

F 230714 E

28 Jun, 1993 10:23



REG. \$ 62.00

DEED OF RESTRICTIVE COVENANT

TIME CLOCK

LODGED BY:

ADDRESS **SHERWOOD COURT SETTLEMENTS P/L**
 Licensed Real Estate Settlement Agent
 9th FLOOR, 81 ST GEORGE'S TERRACE
 PHONE No. PERTH 6000 Ph. 321 2188
 L.T.O. BOX 152 Fax 321 2002
 FAX No.

REFERENCE No. PCR:SHD:METR5940.001

ISSUING BOX No. 152

PREPARED BY: JACKSON McDONALD

ADDRESS 81 St. George's Terrace
 PERTH WA 6000
 (45)65585.DLY

PHONE NO. 321.2144 FAX NO. 321.2002

INSTRUCT IF ANY DOCUMENTS ARE TO ISSUE TO OTHER THAN LODGING PARTY

(Handwritten signature)

TITLES, LEASES, DECLARATIONS ETC LODGED HERewith

1. <u>Tip</u>	Received Items
2. _____	Nos. /
3. _____	
4. _____	
5. _____	Receiving Clerk
6. _____	

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

INITIALS OF SIGNING OFFICER

CG Sach 1

REGISTRAR OF TITLES

ENDORISING INSTRUCTION
Restrictive Covenant -
Restoring of Jmde.
WSEN *CG c/1 1318/947*

EXAMINED

ANNEXURE C - MEMORIAL

INSTRUCTIONS

1. If insufficient space in any section, Additional Sheet Form B1, should be used with appropriate headings. The boxed sections should only contain the words "see page....."
2. Additional Sheets shall be numbered consecutively and bound to this document by staples along the left margin prior to execution by the parties.
3. No alteration should be made by erasure. The words rejected should be scored through and those substituted typed or written above them, the alteration being initialled by the persons signing this document and their witnesses.

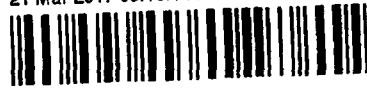
NOTES

1. **DESCRIPTION OF LAND**
Lot and Diagram/Plan/Strata/Survey-Strata Plan number or Location name and number to be stated.
Extent - Whole, part or balance of the land comprised in the Certificate of Title to be stated. If this document relates to only part of the land comprised in the Certificate of Title further narrative or graphic description may be necessary. The volume and folio number to be stated.
2. **REGISTERED PROPRIETOR**
State full name and address of the Registered Proprietors as shown on the Certificate of Title and the address / addresses to which future notices can be sent.
3. **INFORMATION CONCERNING SITE CLASSIFICATION**
Include information concerning site classification as either: contaminated - restricted use, contamination - remediation required, remediated for restricted use or possibly contaminated - investigation required.
4. **CHIEF EXECUTIVE OFFICER'S ATTESTATION**
This document must be signed by or on behalf of the Chief Executive Officer, Department of Environment Regulation under Section 91 of Contaminated Sites Act 2003. An Adult Person should witness this signature. The address and occupation of the witness must be stated.

EXAMINED

N580406 ML

21 Mar 2017 09:13:14 Midland



**MEMORIAL
CONTAMINATED SITES ACT 2003**

LODGED BY
Department of Environment Regulation

ADDRESS
Level 4, 168 St Georges Terrace
Perth, WA 6000

PHONE No. 1300 762 982

FAX No. (08) 9333 7575

REFERENCE No. 8311

ISSUING BOX No. 888V

PREPARED BY
Contaminated Sites
Department of Environment Regulation

ADDRESS
Level 4, 168 St Georges Terrace
Perth, WA 6000

PHONE No. 1300 762 982 FAX No. (08) 9333 7575

INSTRUCT IF ANY DOCUMENTS ARE TO ISSUE TO OTHER THAN LODGING PARTY

3/3

TITLES, LEASES, DECLARATIONS ETC LODGED HEREWITH

1. _____	Received Items Nos. 0.
2. _____	
3. _____	
4. _____	
5. _____	
6. _____	

Receiving Clerk

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

APPROVAL NUMBER

Schedule 8 - Commercial and Industrial Land

DEPARTMENT OF ENVIRONMENT
REGULATION

Client ID 686

WESTERN AUSTRALIA
TRANSFER OF LAND ACT 1893 AS AMENDED

MEMORIAL

CONTAMINATED SITES ACT 2003

SECTION 58(1) (a) (i) (I) (II) (III) (IV)

DESCRIPTION OF LAND (Note 1)

LOT 10390 ON DEPOSITED PLAN 206909

EXTENT

Whole

VOLUME

2046

FOLIO

543

REGISTERED PROPRIETOR (Note 2)

WESTERN AUSTRALIAN LAND AUTHORITY OF 8 DAVIDSON TERRACE, JOONDALUP

INFORMATION CONCERNING SITE CLASSIFICATION (Note 3)

Under the Contaminated Sites Act 2003, this site has been classified as "possibly contaminated - investigation required". For further information on the contamination status of this site, please contact Contaminated Sites at the Department of Environment Regulation.

Dated this Twentieth day of March Year 2017

CHIEF EXECUTIVE OFFICER'S ATTESTATION (Note 4)



Paul Newell
Manager

DELEGATE OF THE CHIEF EXECUTIVE OFFICER
DEPARTMENT OF ENVIRONMENT REGULATION
UNDER SECTION 91 OF THE
CONTAMINATED SITES ACT 2003



SIGNATURE OF WITNESS

FULL NAME:
ADDRESS:
OCCUPATION:

Christopher Chau
168 St Georges Tce, PERTH WA 6000
Senior Business Systems Officer

Schedule 8 - Commercial and Industrial Land

Item 5 - Development Notice for Bluff Point

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Item 5

Exercise Notice

Bluff Point Land

TO: WESTERN AUSTRALIAN LAND AUTHORITY (ABN 34 686 192 845) trading as Development WA

[The Trustee of the Charitable Trust] exercises the option under clause 15.2 of the Yamatji Nation Indigenous Land Use Agreement (**ILUA**) with respect to Lot 400 on Deposited Plan 77372, being the whole of the land described in Certificate of Crown Land Title Volume 2822 Folio 570 (**Lot 400**), to:

()(**)(***) Delete whichever is not applicable*

(*) accept the transfer of Lot 400 in accordance with clauses 15.2(e) and (f) of the ILUA.

(**) enter into a joint venture participation/development agreement with Development WA in accordance with clause 15.2(g) of the ILUA.

(***) receive the Bluff Point Lot Payment (as defined in the ILUA) in accordance with clause 15.2(h) of the ILUA.

DATED: The _____ day of _____ 20[*]

EXECUTED by _____)
_____)
_____)
_____)
_____)
_____)
_____)

Director

Director/Secretary

Name of Director (print)

Name of Director/Secretary (print)

Schedule 8 - Commercial and Industrial Land

Item 6 - Development Notice for Narngulu

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Item 6

Exercise Notice

Nargnulu Land

TO: **WESTERN AUSTRALIAN LAND AUTHORITY (ABN 34 686 192 845)** trading as Development WA

[The Trustee of the Charitable Trust] exercises the option under clause 15.3 of the Yamatji Nation Indigenous Land Use Agreement (**ILUA**) with respect to Lot 10390 on Deposited Plan 206909, being the whole of the land described in Certificate of Crown Land Title Volume 20146 Folio 543 (**Lot 10390**), to:

()(**)~~Delete whichever is not applicable~~*

- (*) accept the transfer of Lot 10390 in accordance with clauses 15.3(e) and (f) of the ILUA.
- (**) receive the Lot Payment (as defined in the ILUA) in accordance with clause 15.3(g) of the ILUA.

DATED: The _____ day of _____ 20[*]

EXECUTED by _____)
_____)
_____)
_____)
_____)
_____)

Director

Director/Secretary

Name of Director (print)

Name of Director/Secretary (print)

Schedule 8 - Commercial and Industrial Land

Item 7 - DevelopmentWA Payment Conditions

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Item 7 - DevelopmentWA Payment Condition

1. DEFINITIONS AND INTERPRETATIONS

1.1 Agreement Definitions

In these Conditions, any capitalised term for which a definition is not included in clause 1.2 of these Conditions will, where the term is defined in the Agreement, have the meaning given to that term in the Agreement, as at the Execution Date.

1.2 Definitions

In these Conditions, unless the context requires otherwise:

Agreement means the Yamatji Nation - Indigenous Land Use Agreement (Area Agreement) to which these Conditions are attached as Schedule XX.

Conditions means these conditions.

Developed Lot means a Lot (other than a Superlot that can be further subdivided to create Developed Lots or a Public Purpose Lot) that has been subdivided as part of a Subdivision out of any part of the DevelopmentWA Land (including a Superlot within the DevelopmentWA Land):

- (a) which is a serviced Lot (with those services to be provided in accordance with the conditions of subdivision imposed under section 143 of the *Planning and Development Act 2005* (WA)) or a Lot on a strata plan or a survey-strata plan (as the case may be) which is not in a Strata Title Development; and
- (a) which is available for sale for residential, commercial or light industrial purposes, and which, for the purposes of these Conditions, is to include Lots transferred to the Housing Authority for its own programs (including public housing and government worker accommodation within that Subdivision); and
- (b) for which a separate certificate of title has been, or can be, issued.

DevelopmentWA Land means each of:

- (a) Lot 400 (as defined in clause 15.2 of the Agreement); and
- (b) Lot 10390 (as defined in clause 15.3 of the Agreement).

Developer means any individual, corporation (other than the Minister for Lands and the Housing Authority), local government, joint venture, partnership, firm or other group of persons, and includes a joint venture, partnership, firm or other group of persons which includes:

- (a) the Minister for Lands on behalf of the State or the Housing Authority; and
- (c) a corporation or other body which is owned directly or indirectly, wholly or in part, by the State or the Housing Authority.

Encumbrance means any:

- (a) security for the payment of money or performance of obligations (including a mortgage, charge, lien, pledge, trust or power of title retention arrangement);
- (b) right of set-off, assignment of income, garnishee order or monetary claim;
- (c) equity, interest or enforcement order; or
- (d) any other right or interest of any third party.

Lease Payment means an amount payable in accordance with clause 7 of these Conditions.

Lot has the meaning given to the term "lot" in section 4 of the *Planning and Development Act 2005* (WA).

Lot Payment means, subject to clause 6 and clause 8 of these Conditions:

- (a) in respect of the sale of any DevelopmentWA Land as referred to in clause 2 of these Conditions, an amount payable which is equal to 5% of the Purchase Price of the DevelopmentWA Land which is the subject of the sale;
- (b) in respect of a Strata Title Development undertaken on any DevelopmentWA Land as referred to in clause 3 of these Conditions, an amount payable which is equal to 5% of the Purchase Price of the DevelopmentWA Land upon which the Strata Title Development is to be undertaken;
- (c) in respect of a Developed Lot in a Subdivision as referred to in clause 4 or clause 5 of these Conditions, an amount payable which is equal to 5% of the Purchase Price of the Developed Lot.

Native Title Parties has the meaning given to that term in clause 1.2 of the Agreement.

Oakajee Project Land has the meaning given to that term in clause 15.5 of the Agreement.

Public Purpose Lot means any Lot which has been subdivided as part of a Subdivision out of any part of the DevelopmentWA Land (including a Superlot) and which:

- (a) the State or the Minister for Lands determines is required for a public work within the meaning of the *Public Works Act 1902* (WA) or any other Law but excluding Lots developed for the Housing Authority for sale or retention for its own programs (including public housing and government worker accommodation within that Subdivision); or
- (b) is vested in the Crown under section 152 of the *Planning and Development Act 2005* (WA); or

- (c) is vested in, or transferred to, the Crown, any servicing authority (such as the Water Corporation or Horizon Power) whether or not a statutory corporation, or a local government, for nil consideration; or
- (d) is a road.

Purchase Price means an amount specified in, or determined under, one of the following paragraphs and which has been, or is to be, calculated, determined or valued exclusive of any GST:

- (a) in respect of the sale of any DevelopmentWA Land as referred to in clause 2 of these Conditions, the greater of:
 - (i) the consideration shown on the instrument of transfer of land for such DevelopmentWA Land to be lodged or lodged for registration as the case may be under the TLA; or
 - (ii) the consideration amount on which duty is assessed for such DevelopmentWA Land under the *Duties Act 2008* (WA); or
 - (iii) if nil or nominal monetary consideration is shown or being provided, then the market value determined by the Valuer-General of the DevelopmentWA Land being transferred.
- (b) in respect of a Strata Title Development undertaken on any DevelopmentWA Land as referred to in clause 3 of these Conditions, the value of the land upon which the Strata Title Development is to be undertaken at the stage that construction of the buildings is to commence, as determined by the Valuer-General; and
- (c) in respect of a Developed Lot in a Subdivision as referred to in clause 4 or clause 5 of these Conditions, the greater of:
 - (i) the consideration shown on the instrument of transfer of land for such Developed Lot to be lodged or lodged for registration as the case may be under the TLA; or
 - (ii) the consideration amount on which duty is assessed for such Developed Lot under the *Duties Act 2008* (WA); or
 - (iii) if nil or nominal monetary consideration is shown or being provided, then the market value determined by the Valuer-General of the Developed Lot being transferred.

Quarter means each 3 month period commencing 1 January, 1 April, 1 July and 1 October each year.

Regional Entity has the meaning given to that term in clause 1.2 of the Agreement.

State has the meaning set out in clause 1.2 of the Agreement.

Strata Title Development means the development of land, or part of land in stages, by the construction of a building or buildings for occupation and other improvements, on the completion of which it is intended to apply for the registration of:

- (a) a strata plan or re-subdivision or amendment of an existing strata plan over the land or relevant part of the land under the *Strata Titles Act 1985* (WA); or
- (b) a community titles (building) scheme or an amendment of a scheme plan for a community titles (building) scheme over the land or relevant part of the land under the *Community Titles Act 2018* (WA).

Subdivision:

- (a) means the subdivision of any part of the DevelopmentWA Land, including a Superlot, into Lots which:
 - (i) results in the creation of Developed Lots for any one or more of residential, commercial or light industrial purposes; and
 - (ii) may involve the creation of Public Purpose Lots, Superlots and Lots for uses other than Developed Lots; and
- (b) occurs when the Developed Lots are created, being the date on which approval is given by the Western Australian Planning Commission established under section 7 of the *Planning and Development Act 2005* (WA) to the deposited plan, strata plan, survey-strata plan or a scheme plan for a community titles scheme (as the case may be) which contains the subdivision of those Developed Lots,

but does not include a Strata Title Development.

Superlot means a Lot which is created:

- (a) by undertaking a subdivision of any part of the DevelopmentWA Land; and
- (b) for the purpose of a Subdivision of that Lot.

TLA means the *Transfer of Land Act 1893* (WA).

2. SALE OF DEVELOPMENTWA LAND

If DevelopmentWA sells any DevelopmentWA Land (without a Subdivision being undertaken) and clause 5 of these Conditions does not apply, then DevelopmentWA will, subject to, and in accordance with these Conditions, pay to the Trustee of the Charitable Trust (in accordance with clause XX of the Agreement) the Lot Payment in respect of the DevelopmentWA Land which is the subject of the sale.

3. STRATA TITLE DEVELOPMENT OF DEVELOPMENTWA LAND

If DevelopmentWA undertakes a Strata Title Development in respect of any DevelopmentWA Land or transfers any DevelopmentWA Land to a Developer for the

purpose of Strata Title Development, then DevelopmentWA will subject to, and in accordance with these Conditions:

- (a) pay to the Trustee of the Charitable Trust (in accordance with clause XX of the Agreement); or
- (b) procure the Developer (if any) to pay to the Trustee of the Charitable Trust (in accordance with clause 9(b) of these Conditions),

the Lot Payment in respect of the DevelopmentWA Land which is the subject of Strata Title Development.

4. SUBDIVISION BY DEVELOPMENTWA

If DevelopmentWA undertakes a Subdivision of any part of the DevelopmentWA Land (including a Superlot), then DevelopmentWA will subject to, and in accordance with, this Agreement, pay to the Trustee of the Charitable Trust (in accordance with clause XX of the Agreement) the Lot Payment in respect of each Developed Lot in the Subdivision.

5. SUBDIVISION OF DEVELOPMENTWA LAND BY A DEVELOPER

- (a) Before DevelopmentWA sells, transfers or conveys any part of the DevelopmentWA Land to a Developer, DevelopmentWA will procure the Developer to execute a deed with DevelopmentWA which is expressed to be for the benefit of the Yamatji Nation under which the Developer undertakes the following obligations:
 - (i) until the expiration of one year after settlement of the sale by the Developer of the last Developed Lot created out of the Subdivision of that part of the DevelopmentWA Land, to promptly provide DevelopmentWA and the Regional Entity with such information in respect of that part of the DevelopmentWA Land, the Subdivision of that part of the DevelopmentWA Land and the sale of Developed Lots as either of them may from time to time request for the purpose of this Agreement including as to the Purchase Price of Developed Lots created out of the Subdivision of that part of the DevelopmentWA Land;
 - (ii) to pay to the Trustee of the Charitable Trust (in accordance with clause 9(b) of these Conditions) the Lot Payment in respect of each Developed Lot in the Subdivision of that part of the DevelopmentWA Land;
 - (iii) to make any such payments in compliance with the provisions set out in clause 9 of these Conditions and to provide the information in compliance with clause 10 of these Conditions; and
 - (iv) the Developer may only sell (which does not include the marketing, or sale off the plan, of Developed Lots), transfer or convey that part of the DevelopmentWA Land before:

- (A) the Subdivision of it has been completed; and
- (B) titles for the Developed Lots have been issued by Landgate, if the sale, transfer or conveyance is:
 - (C) for the whole of its freehold title to that part of the DevelopmentWA Land; and
 - (D) to another Developer which has entered into a deed with DevelopmentWA under which that other Developer undertakes the obligations of the Developer set out in this clause 5(a).
- (b) Until the relevant Lot Payments have been made in accordance with clause 5(a)(ii) of these Conditions, the performance of the obligations of a Developer as set out in clause 5(a) of these Conditions must be secured by an absolute caveat or absolute caveats in favour of DevelopmentWA over the titles to the lots comprising the relevant part of the DevelopmentWA Land or the lots subdivided (as part of the Subdivision) out of the relevant part of the DevelopmentWA Land to prevent any dealing with that part of the DevelopmentWA Land or any Developed Lots subdivided out of that part of the DevelopmentWA Land other than in accordance with these Conditions and the deed executed by the Developer in relation to that part of the DevelopmentWA Land and Subdivision of that part of the DevelopmentWA Land.
- (c) An absolute caveat as referred to in clause 5(b) of these Conditions lodged against a Developed Lot subdivided (as part of the Subdivision) out of a part of the DevelopmentWA Land may only be withdrawn to permit:
 - (i) the sale and transfer of the Lot as a Developed Lot; or
 - (ii) a temporary lifting (with a subsequent re-lodgement) of the caveat so as to enable a transaction in relation to the Developed Lot which would not compromise the obligations that have been imposed on the Developer in accordance with this Agreement or the purpose or effect of any deed executed by the Developer in relation to that part of the DevelopmentWA Land.

6. AMALGAMATION OF DEVELOPMENTWA LAND

- (a) This clause 6 applies if DevelopmentWA Land for which a Lot Payment is, or may become, payable in accordance with these Conditions, is amalgamated into adjoining freehold land including freehold land held by DevelopmentWA, to which these Conditions do not apply (**Other Freehold Land**).
- (b) If the DevelopmentWA Land which is being amalgamated has an area which is less than 5 hectares, then:

- (i) the Lot Payment for that land is payable when the two areas of land are amalgamated;
- (ii) the amount of the Lot Payment is calculated according to the following formula:

$$5\% \times [FH_a - FH_b]$$

Where:

FH_a is the current unimproved value of the Other Freehold Land and the amalgamated DevelopmentWA Land.

FH_b is the current unimproved value of Other Freehold Land before the amalgamation.

- (c) If a Lot Payment is made under clause 6(b) of these Conditions, then no other Lot Payment is payable in respect of the DevelopmentWA Land that was the subject of the Lot Payment when that DevelopmentWA Land is subsequently Subdivided into a Developed Lot and sold.
- (d) If the DevelopmentWA Land which is being amalgamated into a Lot has an area which is 5 or more hectares, then a Lot Payment is not payable in respect of the amalgamation and:
 - (i) if, after the amalgamation, the Lot wholly comprises DevelopmentWA Land, then the Lot Payment is to be calculated in accordance with clause 2, clause 3, clause 4 or clause 5 of these Conditions, as the case may be; or
 - (ii) if, after the amalgamation, the Lot partly comprises DevelopmentWA Land and partly comprises Other Freehold Land, then the Lot Payment is to be calculated according to the following formula:

$$5\% \text{ of Purchase Price of Lot} \quad \times \quad \frac{FH_c}{FH_c + FH_d}$$

Where:

FH_c is the area of DevelopmentWA Land in the Lot.

FH_d is the area of the Other Freehold Land in the Lot.

Purchase Price is calculated in accordance with clause 2, clause 3, clause 4 or clause 5 of these Conditions, as the case may be.

7. LEASE BY DEVELOPMENTWA

If DevelopmentWA grants a lease over all or any part of the Oakajee Project Land, then DevelopmentWA will subject to, and in accordance with, these Conditions, pay

to the Trustee of the Charitable Trust (in accordance with clause XX of the Agreement) periodically for the term of the lease, an amount equal to 5% of whichever is the greater of:

- (a) the annual rent (excluding GST) shown on the lease lodged for registration under the TLA; or
- (b) the rent (excluding GST) payable by the lessee at the time that each Lease Payment is due; or
- (c) if no monetary consideration is shown, or the lease is not registered, then the market annual rent at the date of the lease as determined by the Valuer-General.

8. EXCEPTIONS AND QUALIFICATIONS TO THE OBLIGATION TO MAKE PAYMENTS

The Parties agree that:

- (a) these Conditions do not apply to, and no Lot Payments or Lease Payments are payable in respect of:
 - (i) a transfer of part of the DevelopmentWA Land by the Minister for Lands to DevelopmentWA for the purpose of a Subdivision of it; or
 - (ii) the grant of an option or a lease, licence or Management Order over all or any part of the DevelopmentWA Land or a Superlot by the Minister for Lands to DevelopmentWA prior to DevelopmentWA undertaking a Subdivision of that part of the DevelopmentWA Land and regardless of whether the option, lease, licence or Management Order contemplates transfer of the fee simple of the land,

but this Agreement continues to apply to that DevelopmentWA Land and Lot Payments and Lease Payments may be payable in accordance with these Conditions in respect of any subsequent transfer, development or lease of that land;
- (b) where a Lot Payment is required to be paid in accordance with these Conditions, no further Lot Payments or Lease Payments are required to be made to the Trustee of the Charitable Trust for the benefit of the Yamatji Nation including where there is a subsequent Subdivision (including a subdivision pursuant to the *Strata Titles Act 1985* (WA) or the *Community Titles Act 2018* (WA)) or sale of such Developed Lot or a Strata Title Development;
- (c) a Lot Payment will not be required to be made in respect of:
 - (i) a Superlot;
 - (ii) Public Purpose Lots; or

- (iii) the transfer or lease of a Developed Lot to the Trustee of the Charitable Trust or any Native Title Party;
- (d) a Lot Payment is only required to be made in respect of the first transfer of a Developed Lot by DevelopmentWA or a Developer (as the case may be) which undertook the relevant Subdivision; and
- (e) Lease Payments are only required to be made by DevelopmentWA in respect of a Developed Lot until the first transfer of that Developed Lot and if a lease from DevelopmentWA permits the transfer of the leased land in stages, then the rental payments and the corresponding Lease Payments will reduce proportionately on an area basis.

9. PAYMENT OF LOT PAYMENTS AND LEASE PAYMENTS

- (a) **(Lot Payments by DevelopmentWA)** Each Lot Payment payable by DevelopmentWA to the Trustee of the Charitable Trust under these Conditions must be paid:
 - (i) within 30 Business Days of the end of the Quarter in which, as the case may be:
 - (A) settlement of the sale or transfer of the relevant DevelopmentWA Land to which clause 2 of these Conditions applies occurs;
 - (B) commencement of construction of the buildings in a Strata Title Development to which clause 3 of these Conditions applies occurs;
 - (C) settlement of the sale or transfer of the relevant Developed Lot to which clause 4 of these Conditions applies occurs; or
 - (D) the relevant Developed Lot is transferred to the Housing Authority; and
 - (ii) in full at the time set out in clause 9(a)(i) of these Conditions even if the Purchase Price is not paid in full at that time; and
 - (iii) in accordance with clause XX of the Agreement.
- (b) **(Lot Payments by Developer)** Each Lot Payment payable by a Developer to the Trustee of the Charitable Trust under these Conditions must be paid:
 - (i) on or before the date of settlement of the sale of the relevant Developed Lot; and
 - (ii) by bank cheque to be provided to DevelopmentWA which bank cheque is to be in favour of the Trustee of the Charitable Trust, and DevelopmentWA will forward that bank cheque to Trustee of the Charitable Trust within 10 Business Days of receiving it. The

Parties may agree after the Execution Date to make payment by electronic funds transfer to an account nominated in writing by Trustee of the Charitable Trust.

- (c) **(Lease Payments by DevelopmentWA)** Each Lease Payment payable by DevelopmentWA to the Trustee of the Charitable Trust under these Conditions must be paid:
- (i) within 30 Business Days of the end of the Quarter in which the lease subsists based on the number of days that the lease subsisted in the Quarter; and
 - (ii) in accordance with clause XX of the Agreement.
- (d) **(Interest payable)** If:
- (i) DevelopmentWA fails to pay the Trustee of the Charitable Trust (in accordance with clause XX of the Agreement) any Lot Payment or any Lease Payment; or
 - (ii) a Developer fails to pay the Trustee of the Charitable Trust (in accordance with clause 9(b) of these Conditions) any Lot Payment,
- by the date on which the payment is due to be made, then DevelopmentWA or the Developer (as the case may be) will pay interest on moneys outstanding in accordance with clause 9(e) of these Conditions from, and including, the due date for payment to, but excluding, the date of payment.
- (e) **(Interest rate)** The interest rate applicable in respect of clause 9(d) of these Conditions is the rate prescribed under section 8(1)(a) of the *Civil Judgments Enforcement Act 2004* (WA) at the relevant time.

10. PROVISION OF INFORMATION ABOUT LOT PAYMENTS AND LEASE PAYMENTS

- (a) No later than 20 Business Days after the date DevelopmentWA or the Developer (as the case may be) makes a Lot Payment, it must give to the Trustee of the Charitable Trust and the Regional Entity a written statement detailing in respect of the relevant Developed Lot in respect of which the Lot Payment was made the following information (as applicable):
- (i) the date of settlement of the sale of the Developed Lot or, in the case of a Developed Lot being transferred to the Housing Authority, the date on which the relevant Developed Lot is transferred;
 - (ii) the Purchase Price; and
 - (iii) the amount of the Lot Payment (including how the payment has been calculated).
- (b) No later than 20 Business Days after the date DevelopmentWA makes a Lease Payment, it must give to the Trustee of the Charitable Trust and the

Regional Entity a written statement detailing in respect of the lease of the Superlot in respect of which the Lease Payment was made the following information:

- (i) the date of commencement of, and term of, the lease;
- (ii) the annual rent (excluding GST); and
- (iii) the amount of the Lease Payment (including how the payment has been calculated).

11. NATIVE TITLE PARTY RIGHTS IN RELATION TO DEVELOPMENTWA LAND

11.1 No right to challenge

- (a) The Native Title Parties agree that none of the Native Title Parties has any right to challenge or object to:
 - (i) the price at which any Developed Lot is marketed for sale; or
 - (ii) the price at which any DevelopmentWA Land is sold or leased; or
 - (iii) any Purchase Price; or
 - (iv) the rental for which any Oakajee Project Land is leased.
- (b) DevelopmentWA agrees that clause 11.1(a) does not prevent the Trustee of the Charitable Trust or the Regional Entity from disputing that a Lot Payment or a Lease Payment was correctly calculated in accordance with these Conditions.
- (c) Where under these Conditions the Valuer-General has or is required to determine the value (including market rental) of any land, the Trustee of the Charitable Trust or the Regional Entity may make written submissions to the Valuer-General within 20 Business Days after receiving notification under these Conditions of the Valuer-General's determination of the value. Any such written submission is to be provided by the Trustee of the Charitable Trust or [the Regional Entity to DevelopmentWA, which will ensure that the submission is promptly provided to the Valuer- General.
- (d) If the Trustee of the Charitable Trust or the Regional Entity provide a written submission in accordance with clause 11.1(c) of these Conditions after receiving notice of the Valuer-General's determination, then:
 - (i) DevelopmentWA will use its best endeavours to procure the Valuer-General to:
 - (A) consider the written submission;
 - (B) if requested by the Trustee of the Charitable Trust, meet in Perth with a representative of the Trustee of the Charitable

Trust (which may be or include a licensed valuer engaged by the Trustee of the Charitable Trust) to discuss the Valuer-General's valuation and the written submission;

- (C) either determine a higher valuation or decline to alter the valuation; and
 - (D) provide DevelopmentWA with brief written reasons in respect of the decision referred to in clause 11.1(d)(i)(C) of these Conditions; and
- (ii) DevelopmentWA must provide the Trustee of the Charitable Trust with the written reasons referred to in clause 11.1(d)(i)(D) of these Conditions.

11.2 No other option or interest in DevelopmentWA Land, Superlots or Lots

The Native Title Parties agree that none of the Native Title Parties:

- (a) has, nor is granted, any option to purchase any part of the DevelopmentWA Land, including any Superlot or Developed Lot other than as specified in clause 15 of the Agreement;
- (b) has, nor is granted, an option to lease any part of the DevelopmentWA Land, including any Superlot or Developed Lot;
- (c) has any interest in any part of the DevelopmentWA Land, including any Superlot or Developed Lot, nor in any agreement for the sale of any part of the DevelopmentWA Land;
- (d) has any right which otherwise derogates from the discretion of DevelopmentWA or a Developer to develop, market and sell any part of the DevelopmentWA Land, a Superlot or a Developed Lot on such terms and conditions and at such price it thinks fit provided that these Conditions are complied with; and
- (e) has any right which otherwise derogates from the discretion of DevelopmentWA to lease any part of the Oakajee Project Land on such terms and conditions and at such rental it thinks fit provided that these Conditions are complied with; and
- (f) may lodge a caveat or Encumbrance over any part of the DevelopmentWA Land or any Superlot or any Developed Lot, or the Oakajee Project Land in connection with the right to receive Lot Payments and Lease Payments under this Agreement.

11.3 No limitations on acquiring DevelopmentWA Land

The Parties agree that this clause 11 of these Conditions does not prevent any Native Title Party from purchasing or acquiring rights in any part of the DevelopmentWA Land in the same way as any member of the public.

Schedule 8 – Commercial and Industrial Land

Item 8 – Description of Oakajee Lots

[Page intentionally left blank – see next page]

OAKJEE LOTS***PIN 11406989***

Lot 1 on Deposited Plan 45585 and being the whole of the land described in Certificate of Title Volume 2848 Folio 236

PIN 1278756

Lot 155 on Deposited Plan 302257 and being the whole of the land described in Certificate of Title Volume 2140 Folio 529

PIN 1241387

Lot 10562 on Deposited Plan 167487 and being the whole of the land described in Certificate of Title Volume 1682 Folio 800

PIN 991492

All those lands and waters commencing at the southeastern corner of Lot 3 as shown on Deposited Plan 231530 and extending westerly, northerly and easterly along the southern, western and northern boundaries of that lot to an intersection with approximate coordinate point Latitude 28.638003 East, Longitude 114.611541 South; then southeasterly to approximate coordinate point Latitude 28.638121 East Longitude 114.611807 South on the eastern boundary of again Lot 3 as shown on Deposited Plan 231530; then southerly along the eastern boundary of that lot back to the commencement point.

PIN 991490

All those lands and waters commencing at the southeastern corner of Lot 2 as shown on Deposited Plan 231530 and extending westerly and northerly along the southern and western boundaries of that lot to an intersection with approximate coordinate point Latitude 28.637811 East, Longitude 114.608469 South; then southeasterly to approximate coordinate point Latitude 28.637911 East, Longitude 114.611035 South on the eastern boundary of again Lot 2 as shown on Deposited Plan 231530; then southerly along the eastern boundary of that lot back to the commencement point.

PIN 1278754

All those lands and waters commencing at the northwestern corner of Lot 153 as shown on Deposited Plan 302146 and extending southerly, southeasterly and generally northeasterly along western, southwestern and southeastern boundaries of that lot to a

point situate on a southeastern boundary (approximate coordinate point Latitude 28.640630 South, Longitude 114.623805 East); then northeasterly to a point situate (approximate coordinate point Latitude 28.640030 South, Longitude 114.624035 East); then northwesterly to a point situate (approximate coordinate point Latitude 28.639647 South, Longitude 114.622305 East); then northwesterly to a point situate on the northern boundary of Lot 153 as show on Deposited Plan 302146 (approximate coordinate point Latitude 28.639541 South, Longitude 114.62135 East); then westerly along that boundary back to the commencement point.

PIN 1278755

Area One

All those lands and waters commencing at the westernmost northwestern corner of Lot 180 as shown on Deposited Plan 302131 and extending southwesterly, easterly, generally southeasterly, northerly, westerly, again easterly, again northerly, again easterly and again northerly along boundaries of that lot to a point situate along a northern boundary (approximate coordinate point Latitude 28.639391 South, Longitude 114.620027 East); then northwesterly to a point situate (approximate coordinate point Latitude 28.638583 South, Longitude 114.612848 East); then northwesterly to a point situate on a western boundary of Lot 180 as shown on Deposited Plan 302131 (approximate coordinate point Latitude 28.638124 South, Longitude 114.611807 East); then northerly and westerly along boundaries of that lot to a point situate on a northern boundary of that lot (approximate coordinate point Latitude 28.638006 South, Longitude 114.611547 East); then southerly, westerly, northerly and again westerly along boundaries of that lot back to the commencement point.

Area Two

All those lands and waters commencing at a southwestern corner of Lot 180 as shown on Deposited Plan 302131 and extending westerly along a southern boundary of that lot to a point situate (approximate coordinate point Latitude 28.638007 South, Longitude 114.611545 East); then north westerly to a point situate (approximate coordinate point Latitude 28.637820 South, Longitude 114.611358 East); then northwesterly to a point situated along a western boundary of Lot 180 as shown on Deposited Plan 302131 (approximate coordinate point Latitude 28.637908 South, Longitude 114.611036 East); then southerly along that boundary back to the commencement point.

Note: **Geographic Coordinates provided in Decimal Degrees.**

All referenced Deposited Plans and Diagrams are held by the Western Australian Land Information Authority, trading as Landgate.

Cadastral boundaries sourced from Landgate's Spatial Cadastral Database dated 1st August 2019.

Datum: **Geocentric Datum of Australia 1994 (GDA94)**

Prepared By: **Graphic Services (Landgate) 31st January 2020**

Use of Coordinates:

Where coordinates are used within the description to represent cadastral or topographical boundaries or the intersection with such, they are intended as a guide only. As an outcome to the custodians of cadastral and topographic data continuously recalculating the geographic position of their data based on improved survey and data maintenance procedures, it is not possible to accurately define such a position other than by detailed ground survey.

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