1. DEFINITIONS, INTERPRETATION AND VENDOR'S POWERS, RIGHTS AND DUTIES

1.1. DEFINITIONS

In these Conditions and the Contract, unless the context requires otherwise, the following words have the following meaning:

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

**Completion Date** means the date settlement under the Contract is actually effected.

**Conditions** mean these conditions for the sale of the Land.

**Contaminated** has the same meaning as that term is defined in the CSA, and **Contamination** is the state of being Contaminated.

**Contract** means the contract created by the offer and acceptance of which these Conditions form part.

**Contract Date** means the date of execution of the Contract by the last party to the Contract whose execution is necessary to make the Contract binding on all parties.

**Crown** means the Crown in right of the State of Western Australia.

**CSA** means the *Contaminated Sites Act 2003*.

**Deposit** means the deposit as specified in the Particulars, being an amount not less than 10% of the Purchase Price.

**Department** means the department assisting the Minister in the administration of the LAA, being at the date of the Contract the department named in the Contract.

**Encumbrance** means a mortgage, charge, bill of sale, lien, pledge, easement, reservation, condition, positive covenant, restrictive covenant, memoral (and any conditions or statements contained in the memoral), Notification, building condition, writ, warrant, caveat (and the claims stated in the caveat) or other right or interest of any third party affecting the Land or any part of the Land.

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

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

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

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

**LAA** means the *Land Administration Act 1997*.

**Land** means the land the subject of the Contract as specified in the Particulars together with all buildings and improvements on the Land.

**Landgate** means the Western Australian Land Information Authority established under the *Land Information Authority Act 2006 (WA)* and being the agency or department responsible for the registration of dealings relating to land in the register kept pursuant to the TLA.

**Margin Scheme** has the meaning given in section 195-1 of the GST Act.
Minister means the Minister for Lands, being a body corporate continued under section 7(1) of the LAA and being the Minister to whom the administration of the LAA is from time to time committed by the Governor.

Notification means a notification endorsed on the certificate of Crown land title for the Land under section 70A of the TLA.

Outgoings means all rates, taxes, assessments, State land tax, Metropolitan Region Improvement Tax, charges (including but not limited to charges for water consumption and fixed charges), and outgoings (periodic or otherwise) chargeable or payable in respect of the Land.

Particulars means the particulars as set out in the Contract.

Purchase Price means the Purchase Price of the Land as specified in the Particulars.

Purchaser means the party named and described as the Purchaser in the Particulars and includes, in the case of a natural person, the personal representatives of the natural person and in the case of a corporation, includes the successors of the corporation and in either case, includes the permitted assigns of the Purchaser.

Purchaser’s Conveyancer means the person nominated by the Purchaser in the Contract, if any, to represent the Purchaser in relation to the settlement of the purchase of the Land.

Rate means the rate of 12% per annum calculated on a daily basis.

Register has the same meaning as defined in the TLA.

Registrar means the Registrar of Titles appointed under section 7 of the TLA.

Settlement means the settlement of the sale and purchase of the Land in accordance with clause 5.

Settlement Date is the date being the later of
(a) 60 days after the Contract Date, and
(b) the date as otherwise determined under these Conditions to be the Settlement Date, or
(c) any other date as agreed in writing between the Vendor and the Purchaser from time to time.

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

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

TLA means the Transfer of Land Act 1893.

Transfer means a transfer of the Land in a form approved by the Registrar under the TLA from the Vendor to the Purchaser which in substance and form is acceptable to Landgate for the purposes of registration under the TLA.

Vendor means the State of Western Australia acting through the Minister or the Minister’s duly authorised delegate.

Vendor’s Agent means the Vendor’s agent as specified in the Particulars who is validly authorised by the Vendor to offer the Land for sale.
1.2. INTERPRETATION
In these Conditions and the Contract, unless the context otherwise requires
(a) headings, underlining and numbering are for convenience only and do not affect the interpretation of these Conditions,
(b) words importing the singular include the plural and vice versa,
(c) words importing a gender include every gender,
(d) an expression importing a natural person includes a company, partnership, joint venture, association, corporation or other body corporate,
(e) a reference to a thing includes a part of that thing,
(f) references to parts, clauses and parties are references to parts and clauses of, and parties to, these Conditions,
(g) a reference to a party to the Contract includes that party’s successors and permitted assigns and in the case of a natural person also includes that person’s personal representatives and administrators,
(h) where the day on or by which a thing is required to be done is not a Business Day that thing must be done on or by the succeeding Business Day,
(i) a covenant or agreement by more than one person binds, and is enforceable against, those persons jointly and each of them severally,
(j) no rules of construction apply to the disadvantage of a party because that party was responsible for the drafting of these Conditions or the Contract or of any part of these Conditions or of the Contract,
(k) a reference to a statute, regulation, proclamation, order, ordinance or by-law includes every statute, regulation, proclamation, order, ordinance or by-law including every statute, regulation, proclamation, order, ordinance or by-law varying, consolidating or replacing it, and a reference to a statute includes every regulation, proclamation, ordinance and by-law issued under that statute,
(l) a reference in these Conditions to a sub-clause, paragraph or sub-paragraph is a reference to a sub-clause, paragraph or sub-paragraph in the clause or definition in which the reference appears, and
(m) words used in these Conditions which are not expressly defined in these Conditions but which are defined in the LAA or the TLA have the meaning given to them under the LAA or the TLA, as the case may be

1.3. EXERCISE AND PERFORMANCE OF THE VENDOR’S POWERS AND DUTIES
The Purchase acknowledges that under the provisions of the LAA
(a) any right, duty or power conferred or imposed on the Vendor under the Contract may be exercised or performed by the Minister, and
(b) the Minister may, under an instrument of delegation, delegate to a person any right, duty or power which this condition or the Contract authorises or requires the Minister to exercise or perform

1.4. CONDITIONS NOT TO AFFECT VENDOR’S OR MINISTER’S RIGHTS OR POWERS UNDER THE LAA
The Purchaser agrees that these Conditions do not in any way affect, alter or derogate from the Vendor’s or the Minister’s rights or powers under the LAA
2. **LAND AND ENCUMBRANCES**

The Land is offered for sale and will be sold in accordance with these Conditions free of all Encumbrances except

(a) as specified in the Contract, and

(b) any easement, positive covenant, restrictive covenant, memorial (and any condition or statement contained in the memorial), reservation, condition, building condition or Notification recorded or registered or to be recorded or registered on the certificate of Crown land title for the land.

3. **PURCHASE PRICE**

The Purchase Price is to be paid to the Vendor and satisfied as follows

(a) by payment of the Deposit by cheque made payable to the Department contemporaneously with the execution of this Contract by the Purchaser (receipt of which is acknowledged by the Vendor by the execution of the Contract for and on behalf of the Vendor, and

(b) by payment of the balance of the Purchase Price (being the purchase price less the Deposit) by unendorsed bank cheque made payable to the Department (or as otherwise directed in writing by an authorised officer of the Department) on the Settlement Date.

4. **DEPOSIT**

4.1. **PAYMENT OF DEPOSIT**

The Deposit is to be paid to the Department and held by the Department as agent for the Vendor.

4.2. **FAILURE TO PAY DEPOSIT**

If the Deposit is paid by cheque and the cheque is dishonoured on presentation to the drawer's bank, then

(a) the Purchaser is immediately in default under the Contract, and

(b) the Vendor may, without prejudice to any other rights or remedies available to the Vendor, immediately terminate the Contract by notice in writing to the Purchaser.

5. **SETTLEMENT**

5.1. **SETTLEMENT**

Settlement is to take place on the Settlement Date at the offices of the Department in Perth or at any other place in Perth as the Vendor appoints.

5.2. **PURCHASER TO TENDER TRANSFER**

A reasonable time before the Settlement Date, and in any event not less than ten (10) Business Days before the Settlement Date, the Purchaser must at the Purchaser's expense tender to the Department the Transfer which has been stamped and duly executed by the Purchaser as transferee.

5.3. **PROCEDURE ON SETTLEMENT**

At Settlement, the Purchaser will deliver to the Vendor in accordance with clause 3(b) an unendorsed bank cheque or bank cheques for the balance of the Purchase Price and against receipt of the balance of the Purchase Price, the Vendor will provide to the Purchase, subject the Purchaser's compliance with clause 5.2, the Transfer duly executed for an on behalf of the Vendor.
5.4. PURCHASER TO REMAIN LIABLE

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

5.5. ACKNOWLEDGEMENT BY PURCHASER

The Purchaser acknowledges that

(a) a duplicate certificate of Crown land title for the Land does not exist and will not be delivered by the Vendor to the Purchaser at Settlement,

(b) on the Completion Date, a Certificate of Title for the Land will not exist and the Vendor is not obliged to produce to the Purchaser a duplicate Certificate of Title for the Land at Settlement,

(c) a Certificate of Title for the land will be created by the Registrar once the Transfer has been registered in accordance with the provisions of the TLA where the Registrar will endorse on the Certificate of Title the particulars of all dealings and matters affecting the Land as specified in, or effected by, the Contract and the Transfer, and

(d) unless the Purchaser has on the Transfer requested the duplicate Certificate of Title for the Land not to be issued, a duplicate Certificate of Title for the Land will be issued by the Registrar and forwarded to the issuing party as requested on the Transfer.

6. DELAY IN SETTLEMENT

(a) If for any reason attributable to the Purchaser, Settlement is not effected on or within three (3) Business Days after the Settlement Date, the Purchaser is to pay to the Vendor on Settlement interest at the Rate on the balance of the Purchase Price and all other money which is payable on Settlement, calculated from and including the Settlement Date to but excluding the Completion Date.

(b) The Vendor’s right to a payment under sub-clause (a) is conditional on the Vendor being ready, willing and able to complete the sale on the Settlement Date and if the Vendor is not, the Vendor’s right to the payment commences from the day on which the Vendor is ready, willing and able to complete the sale and has given notice to the Purchaser of that fact.

(c) Except as provided in sub-clause (b), it is not necessary for the Vendor to give to the Purchaser a notice requiring the payment of interest under this clause.

(d) The rights of the Vendor under this clause are without prejudice to the rights of the Vendor under these Conditions or the Contract.

7. POSSESSION AND RISK

7.1. POSSESSION

Subject to

(a) payment in full of the Purchase Price as is due and payable on the Settlement Date, and

(b) the Purchaser having performed all of the Purchaser’s obligations under these Conditions,
the Purchaser will be entitled to, and the Vendor will deliver to the Purchaser, possession of the Land on the Completion Date

7.2. RISK
Purchaser from the time at which Settlement occurs or from the date the Purchaser is entitled to or is given possession of the Land, whichever is the earliest

8. OUTGOINGS
8.1. NO OUTGOINGS ASSESSED ON THE LAND
The Land is not subject to any Outgoings, as the Land is owned by the Crown in right of the State of Western Australia

8.2. NO ADJUSTMENT OF OUTGOINGS
As a result of what is state in clause 8.1, the Purchaser agrees with the Vendor that no Outgoings will be apportioned between the Vendor and the Purchaser. The Purchaser is responsible for the payment of all Outgoings chargeable or payable in respect of the Land from the Completion Date or the date the Purchaser is entitled to or is given possession of the Land, whichever is the earliest

9. GENERAL PROVISIONS
9.1. PURCHASER’S ACKNOWLEDGEMENTS
The Purchaser acknowledges and agrees that, except as disclosed in these Conditions
(a) no warranty or representation has been given or made to the Purchaser or anyone on the Purchaser’s behalf by the Vendor, the Minister, the Vendor’s Agent or any agent, employee or contractor of the Department or any other person on the Vendor’s or Minister’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 of the Land or any part of the Land,
(iv) the condition or state of repair of the Improvements or any part of the Improvements,
(v) the Suitability of the Land for any use or purpose of any kind, or
(vi) whether or not the fences (if any) purporting to be on the boundaries of the Land are in fact on the proper boundaries of the Land,
(b) any representation or warranty implied by virtue of any statute or otherwise will not apply to, or be implied in, these Conditions or the Contract and any such representation or warranty is excluded to the extent permitted by law,
(c) the Land is sold as it stands with all existing faults, defects or characteristics whether they are apparent or ascertainable on inspection or not and without any obligation on the Vendor to disclose or particularise any faults, defects or characteristics known to the Vendor,
(d) the Purchaser is purchasing and is deemed to purchase in reliance on the Purchaser’s own inspection of, and enquires in relation to, the Land,
(e) the Vendor will not be liable under any circumstances to make any allowance or compensation to the Purchaser not will the Purchase Price be
affected by the exclusion of warranties or representations in this clause 9.1 or for any fault, defect or characteristic in the Land, and

(f) this clause will apply despite the contents of any brochure, document, letter or publication made, prepared or published by the Department or by any other person with the express or implied authority of the Department.

9.2. ERROR OR MISDESCRIPTION
No error or misdescription of the Land will annul the sale or affect the Purchase Price.

9.3. REQUISITIONS ON TITLE
The Purchaser is not entitled to make any objection to or requisition on the title to the Land, and the Vendor will not be obliged to furnish any answer to any objection or requisition on the title to the Land delivered by or on behalf of the Purchaser, it being acknowledged by the Purchaser that

(a) the Land is Crown land within the meaning of the LAA

(b) the State of Western Australia is, or is entitled to be recorded as the registered proprietor of the Land by virtue of section 29(5) of the LAA.

(c) the Minister is authorised by section 74 of the LAA to sell Crown land.

(d) the Minister through its authorised officer by delegated authority under section 9 of the LAA has executed the Contract on behalf of the State of Western Australia as authorised under section 10 of the LAA, and

(e) the Land has been sold under section 74 of the LAA and the provisions of the LAA relating to the sale of Crown land apply to the Contract.

9.4. NO COMPENSATION
The Purchaser is not entitled to make any objection, requisition or claim for compensation, or to rescind the Contract in respect of

(a) the provision of, or lack of, water, drainage, sewerage, gas, electricity, telephone 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 service for another land pass through the Land,

(b) 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,

(c) the location of any sewerage, water or drainage pipes or services affecting the Land, or that any sewer passes through, or penetrates the Land,

(d) 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,

(e) the fact that any fence on the Land is not on the proper boundaries of the Land, or

(f) the fact that the area of the Land is different from the area indicated on any plan, brochure or document issued or published by or on behalf of the Department or Landgate or as indicated on the certificate of Crown land title to the Land.
9.5. PLANNING AND OTHER MATTERS

The Purchaser acknowledges that the Land is sold subject to the following as at the Completion 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 lever of any road or right of way adjacent to the Land by any competent authority or person,

(d) any resumption or proposal to resume the Land or any part of the Land, and

(e) any easement, memorial (and any condition or statement contained in the memorial), Notification, reservation, condition, building condition, positive covenant or restrictive covenant affecting the Land,

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

10. DEFAULT

10.1. TIME OF THE ESSENCE

Time is of the essence is respect of the Contract in all respects.

10.2. TERMINATION OF CONTRACT

(a) Except as otherwise specifically provided in these Conditions

(i) the Vendor is not entitled to forfeit any money paid by the Purchase or take or recover possession of the land on the ground of the Purchaser’s default in performing or observing any obligation imposed on the Purchaser under the Contract, and

(ii) neither the Vendor nor the Purchaser is entitled to terminate the Contract on the ground of the other’s default in performing or observing any obligation imposed on that other party under the Contract,

UNLESS:

(iii) the party not in fault has first given to the party in default a written notice specifying the default complained of, which notice shall require that the default be remedied within the period stipulated in that notice, and

(iv) the party in default fails to remedy within the period stipulated in that notice

(b) The period stipulated in the written notice referred to in clause 10.2(a)(iii) will not be less than five (5) Business Days.

(c) The giving of a notice under this clause does not prejudice the right of either party to give a further notice under this clause.

(d) This clause does not apply where either party repudiates the Contract.
10.3. PURCHASER DEFAULT

(a) If the Purchaser is in default in performing or observing any obligation imposed on the Purchaser under the Contract or if the Purchaser repudiates the Contract, then in addition to any other rights or remedies the Vendor has under the Contract, then in addition to any other rights or remedies the Vendor has under the Contract or otherwise, the Vendor may

(i) affirm the Contract and sue the Purchaser for damages for breach,

(ii) affirm the Contract and sue the Purchaser for specific performance of the Contract and damages for breach in addition to or in lieu of specific performance of the Contract,

(iii) proceed to take or recover possession of the Land, or

(iv) terminate the Contract and

(A) forfeit the Deposit paid, except so much as exceeds 10% of the Purchase Price (which excess, if any, is to be regarded for the purposes of this clause as an instalment of the Purchase Price),

(B) sue the Purchaser for damages for breach, and

(C) without further notice to the Purchaser re-sell the Land in such manner as the Vendor in good faith deems fit and deficiency arising from such re-sale and all expenses incurred by the Vendor (but after giving credit for the Deposit if it has been forfeited) arising from that re-sale is recoverable by the Vendor from the Purchaser as liquidated damages.

(b) The Vendor is entitled to retain, pending re-sale of the Land, all instalments of Purchaser Price paid to the Vendor

(c) If the Vendor re-sells the Land the Vendor may

(i) apply any instalments of the Purchase Price paid to the Vendor in or towards satisfaction of any damages mentioned in clause 10.3(a)(iv), and

(ii) retain absolutely

(A) any surplus arising from such re-sale in excess of the original Purchase Price and expenses arising from the re-sale and all losses and expenses incurred by the Vendor resulting from the Purchaser’s default, and

(B) any interest paid by the Purchaser

(d) If the Vendor does not commence proceedings for the recovery of damages or fails to re-sell and settle the re-sale of the Land within twelve (12) months from the termination of the Contract, then after that period of twelve (12) months has expired, the Vendor shall account to the Purchaser for all instalments of Purchase Price received by the Vendor (other than the Deposit forfeited by the Vendor in accordance with the Contract) without interest.
10.4. VENDOR DEFAULT

If the Vendor defaults in performing or observing any obligation imposed on the Vendor under the Contract or if the Vendor repudiates the Contract then the Purchaser, in addition to any other rights and remedies the Purchaser has under the Contract or otherwise, is entitled to the repayment of all money paid by the Purchaser under the Contract.

11. DIVIDING FENCES

11.1. VENDOR NOT LIABLE

The Purchaser and the Vendor agree that the Vendor will not be liable to the Purchaser or any other party claiming through the Purchaser to contribute to the cost of erecting or repairing any dividing fence whether under the Dividing Fences Act 1961 or otherwise and that the Purchaser will assume any existing liability as from and including Settlement.

11.2. PURCHASER TO INDEMNIFY THE VENDOR

If the Vendor defaults in performing or observing any obligation imposed on the Vendor under the Contract or if the Vendor repudiates the Contract then the Purchaser, in addition to any other rights and remedies the Purchaser has under the Contract or otherwise, is entitled to the repayment of all money paid by the Purchaser under the Contract.

12. CAVEATS

If a caveat is lodged against the certificate of Crown land title for the Land before the Settlement Date (other than a caveat registered by or in relation to the Purchaser or the Purchaser's interest in the Land) and the Vendor is unable to produce to the Purchaser at Settlement a withdrawal of the caveat:

(a) despite any other clause in the Contract, the Vendor may by written notice to the Purchaser extend the Settlement Date by such period not exceeding 60 Business Days as the Vendor shall elect in its absolute discretion to attempt to cause the caveat to be withdrawn, removed or lapsed from the Register, and

(b) if the Vendor for whatever reason cannot cause the caveat to be withdrawn, removed or lapsed from the Register on or before the extended Settlement Date under sub-clause (a), the Contract will be deemed to have come to an end upon which so much of the Purchase Price that has been paid by the Purchaser will be refunded to the Purchaser and there will be no further claim under the Contract by either the Vendor or the Purchaser against the other at law or in equity.

13. CERTIFICATE OF CROWN LAND TITLE NOT CREATED AND REGISTERED ON THE CONTRACT DATE

13.1. APPLICATION

If a certificate of Crown land title for the Land has not been created and registered as at the Contract Date, this clause shall apply to the Contract.

13.2. VENDOR TO APPLY FOR CERTIFICATE OF CROWN LAND TITLE

The Vendor will at the Vendor's expense as soon as practicable after the Contract Date, apply to the Registrar for the creation and registration of a separate certificate of Crown land title for the Land.
13.3. MINOR ALTERATIONS
The Purchaser must not unreasonably object to minor alterations to the area or boundaries of the Land shown on the relevant plan or the certificate of Crown land title as required by any third party whose consent or approval is required for the creation and registration of a certificate of Crown land title for the Land.

13.4. PURCHASER TO ACCEPT TITLE
The Purchaser must not refuse to accept title to the Land or make any claim for compensation for minor alterations to the area or boundaries of the Land shown on the relevant plan or the certificate of Crown land title.

13.5. VENDOR TO NOTIFY CREATION AND REGISTRATION OF CERTIFICATE OF CROWN LAND TITLE
The Vendor must send a notice notifying the Purchaser or the Purchaser’s Conveyancer in writing within 5 Business Days of the creation and registration of a certificate of Crown land title for the Land.

13.6. SETTLEMENT
Settlement in terms of clause 5 is to take place on the later of
(a) 14 Business Days after the service of a notice under clause 13.5, or
(b) the Settlement Date.

13.7. TERMINATION OF CONTRACT
If, prior to the Settlement date
(a) a certificate of Crown land title for the Land in accordance with these Conditions has not been created and registered, or
(b) the Vendor is unable for whatever reason to transfer title to the Land in accordance with these Conditions,
the Vendor shall repay to the Purchaser the Deposit and all other monies (if any) paid by the Purchaser to the Vendor under the Contract without deduction and on repayment, the Contract will cease to have effect and neither party will have any claim of any nature against the other.

14. CONNECTIONS TO SEWER
If, at the Contract Date
(a) the Land is not connected to a sewer, and
(b) the Vendor has not received a notice from a competent authority requiring the Land to be so connected,
and on or before the Settlement Date a competent authority issues to the Vendor a notice requiring the Land to be connected to a sewer, the Purchaser will be responsible for the payment of all costs and expenses payable to the competent authority or any other body in respect of that connection.

15. MISCELLANEOUS
15.1. NOTICES
(a) Any notice given or required to be given under this Contract or these Conditions
must be in writing addressed as shown below

(A) if to the Vendor

ADDRESS
Department of Planning, Lands and Heritage
PO Box 1221, West Perth WA 6872
Marked for the attention of the party set out in the Contract and if by fax at the fax number set out in the Contract,

(B) if to the Purchaser, to the Purchaser's address shown in the Contract (or to any other address specified by the Purchaser to the Department by notice)

(ii) served on the Purchaser's Conveyancer in accordance with this clause will be treated for all purposes as if the notice had been served on the Purchaser,

(iii) must be signed by the sender or an officer of, or under the common seal, of the sender or by the sender's authorised representative (as the case may be),

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

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

(B) 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, and

(C) if by facsimile transmission

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

(2) 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 can be relied upon by the addressee, and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.

(b) Where the Purchaser 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 Purchaser.

15.2. GOVERNING LAW

These Conditions and the Contract are to be governed by and construed according to the laws of Western Australia.

15.3. MORATORIUM

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

15.4. SEVERABILITY
If a condition, covenant or stipulation of these Conditions or 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

15.5. ASSIGNMENT
The Purchaser may not assign its rights under the Contract without the prior written consent of the Vendor, which consent may be withheld in the absolute discretion of the Vendor

15.6. WAIVER AND VARIATION
A provision of, or a right created under, the Contract may not be
(a) waived except in writing signed by the party granting the waiver, or
(b) varied except in writing signed by all parties

15.7. FURTHER ASSURANCES
The Vendor and the Purchaser 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, these Conditions and the Contract

15.8. OBLIGATIONS SURVIVE SETTLEMENT
Without limitation, to the extent that any obligations under the Contract and these Conditions have not been complied with on or before Settlement, those obligations survive Settlement and continue until complied with

15.9. LEGAL COSTS
Subject always to clause 15.11, each party is to pay its own solicitor's costs in respect of the Contract and the completion of the Contract

15.10. DUTY
The Purchaser is to pay all duties (including fines or penalties incurred as a result of the Purchaser's action or inaction) payable in relation to the Contract and the Transfer

15.11. DEFAULT COSTS AND EXPENSES
The Purchaser shall on demand pay to the Vendor all monies, costs, charges and expenses incurred or expended by the Vendor under or in connection with or by reason of the breach or failure by the Purchaser to observe and perform any of the covenants or conditions on the part of the Purchaser in the Contract or by reason of or in relation to the exercise or attempted exercise by the Vendor of the rights, powers and authorities of the Vendor under the Contract together with interest on those monies at the Rate computed from the time of payment to but excluding the date of repayment or discharge of the liability
16. GOODS AND SERVICES TAX

16.1. PURCHASER TO PAY GST

The Purchaser must pay additional to the Purchase Price any GST payable by the Vendor in respect of a Taxable Supply made under this Contract. Where GST is payable, the Vendor shall provide to the Purchaser, if required by the Purchaser, a Tax Invoice in the format and form required as set out in the GST law

16.2. TAX INVOICE

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

16.3. NOTIFICATION IS CONCLUSIVE

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

16.4. IF NO GST LIABILITY

Where the Vendor does not have a liability under the GST Act for GST for a supply under this Contract, the parties agree that the Purchase Price shall be exclusive of any amount in respect of GST.

16.5. MARGIN SCHEME

Where the Vendor has a liability for GST for a Taxable Supply under this Contract and the Vendor is entitled to use the Margin Scheme under the GST Act, if the Vendor and the Purchaser have agreed in writing that the Margin Scheme is to apply to calculate the GST liability prior to the making of the Taxable Supply then the Purchaser shall pay to the Vendor any GST on the Taxable Supply determined in accordance with the Margin Scheme in addition to the Purchase Price.

16.6. THE PURCHASER MUST PAY GST AT SAME TIME

The Purchaser must pay to the Vendor the amount of the GST that the Purchaser is liable to pay under this Contract

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

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

16.7. TAX RULING

(a) If, at any time, the Vendor wishes to obtain a tax ruling from the Australian Taxation Office as to whether or not there is a liability for GST on the Vendor on the Taxable Supply pursuant to this Contract or as to whether or not the Vendor may adopt the Margin Scheme to calculate such GST liability, then the Vendor may (but shall not be obliged to) apply to the Australian Taxation Office for a tax ruling.

(b) The application for the tax ruling will be made by the Vendor at its sole cost.

(c) The Purchaser shall provide such assistance as the Vendor may reasonably require to obtain the tax ruling on the matter.

(d) The Vendor shall not be obliged to accept the tax ruling.
(e) If at tax ruling has not been obtained prior to the date on which the Purchaser is obliged to pay for the Taxable Supply, then the Purchaser shall pay to the Vendor the amount of GST appearing in the notification mentioned in clause 16.3, subject to a refund or a partial refund being made to the Purchaser if it is finally established that there is no liability for GST or that the Purchaser and the Vendor can validly adopt the Margin Scheme, respectively.

17. CONTAMINATION AND RELATED MATTERS

17.1. NO WARRANTY

The Vendor makes no warranty

(a) as to the nature or extent to which the Land may be affected by any Contamination, and

(b) that remediation works will not be required to be carried out by the Purchaser for any use which the Purchaser may make of the Land.

17.2. MEMORIAL

(a) The Vendor may at its sole discretion lodge with the Registrar of Titles a memorial pursuant to section 17 of the LAA over the Land with a statement warning of any Contamination of the Land or other relevant factor as a hazard or other factor affecting, or likely to affect, the use or enjoyment of the Land.

(b) The Purchaser's execution of this Contract evidences the Purchaser's acknowledgment and consent to any action by the Vendor in accordance with sub-clause (a) and may be relied upon as its consent for the purpose of lodging any such memorial, under section 17(1) of the LAA.

17.3. NO COMPENSATION

Without limiting anything in clause 9, the Purchaser agrees and acknowledges and accepts the Land in its present condition including without limitation the presence of any Contamination and shall not make or take any objection, requisition or claim for compensation, or rescind or terminate the Contract in relation to the presence of any Contamination in over or on the Land which is present at, or may become apparent after, Settlement.

17.4. PURCHASER TO ASSUME ALL RESPONSIBILITY

The Purchaser as owner of the Land must at its own cost and expense assume all responsibility for the presence of any Contamination found over, on or in the Land and must to the fullest extent permitted by the law assume all responsibility for

(a) compliance with all Environmental Laws,

(b) the conduct and performance of any work required by any competent authority in respect of any Contamination or under any Environmental Laws, and

(c) any legal, statutory or other liability under or in connection with or resulting from the presence of any Contamination over, on or in the Land.

17.5. RELEASE AND INDEMNITY

The Purchaser releases and indemnifies and will keep indemnified, the Minister and the Crown from and against all actions, claims, writs, proceedings, suits,
demands, losses, damages, compensation, costs of remediation, legal costs, charges and expenses whatsoever which at any time may be brought, maintained or made against the Minister or the Crown arising from or relating to
(a) the state or condition of the Land,
(b) any Contamination over, on or in the Land or emanating from the Land, or
(c) both of the matters covered in sub-clauses (a) and (b)

17.6. CLAUSE CONTINUANCE
This clause and the matters binding it
(a) do not merge on Settlement, and
(b) continue after Settlement
1442. Hon Martin Aldridge to the Minister for Environment representing the Minister for Lands

I refer to Legislative Council question on notice No. 1190, in relation to the sale of State land, and I ask:
(a) please provide the standard conditions for the sale of crown land;
(b) what was the sale price of the land to the Shire of Chapman Valley and any conditions applied to the sale;
(c) why were adjoining land owners not offered the land on the same terms as the Shire of Chapman Valley i.e. sale by private treaty pursuant to section 86 of the Land Administration Act 1997;
(d) why was the sale of the land not subjected to an open and competitive process that ensured all interested parties were treated fairly and the State received the greatest benefit for the disposal of the asset;
(e) I refer to Section 3.58 of the Local Government Act 1995 in relation to disposal of property, is the State's approach to the disposal of property inconsistent with which it expects of Local Government by allowing for private negotiation and little transparency; and
(f) are you aware the land in question has no road frontage or road access, what are the arrangements that would be necessary to provide access to the lot given negotiation or communication has not occurred in this respect with adjoining land owners?

Answer

(a) [See tabled paper no.]

(b) This information is publicly available through Landgate, however for the member’s benefit: $11,000.00 GST inclusive.

Conditions of sale are contained in the tabled paper.

(c) Section 86 of the Land Administration Act 1997 applies only to the Commonwealth, another State or Territory and any local government.

(d) Consideration to dispose of Lot 90 direct to the Shire of Chapman Valley was approved once negotiations with the owners of adjoining land had been exhausted.

(e) The sale of this land was conducted pursuant to section 86 of the Land Administration Act 1997.

(f) The Shire has a right of carriageway easement providing access through Lot 80 via Hester Place.