

**PRIORITY DEVELOPMENT AREAS: PDA MEMORANDUMS OF UNDERSTANDING WITH MEDQ****Dataworks Filename:** LUP Priority Development Areas (PDAs)**Attachment:** [Memorandum of Understanding - Establishment of a Special Purpose Vehicle](#)**Responsible/Authorising Officer:**   
**Nick Clarke**  
**General Manager Organisational Services****Author:** **Peter Kelley**  
**Project Director Priority Developments**

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**PURPOSE**

The purpose of this report is to brief Council on the progress of the Priority Development Areas (PDA) and endorsement to sign MOU's with the Queensland State Government.

**BACKGROUND**

On the 16<sup>th</sup> July 2014 Council resolved to accept the expression of interest assessment panel's recommendations to proceed to the Request for Proposal (RFP) stage of the PDA project.

As part of the 'confidential report' items D and E under 'issues – next steps' require land tenure strategy and implementation.

On the 8<sup>th</sup> October 2014 a land tenure workshop was held with Council and external legal advisors HWL Ebsworth (Peter Nugent). The following required procedures were discussed

1. Necessity for a 'special purpose vehicle' (SPV) which is a corporate entity owned jointly by the State Government and Redland City Council (RCC). All Council and state land will be transferred into this company so as to provide an appropriate method of dealing with the property within the PDA's.
2. As all State Government and RCC land will be held jointly and the project thus a 50/50 joint venture approach, MEDQ will now delegate their functions to accept and decide development applications to a 'local representative committee' (LRC) which will be an entity with equal board positions from EDQ and RCC.

**ISSUES**

Memorandums of Understanding (MOU's) to establish a special purpose vehicle (SPV) and a local representative committee (LRC) have been negotiated with the State Government.

These MOU's have been signed by the State Government and are now ready to be executed by Redland City Council.

1. MOU – Local Representative Committee (Delegation):
  - a. Purpose: To establish a 'Local Representative Committee' under s158 of the *Economic Development Act 2012*, and for the MEDQ to delegate their functions to the LRC functions to accept and decide development applications, associated fees and to exercise any other powers delegated to it from MEDQ.
2. MOU – Special Purpose Vehicle (Company):
  - a. Purpose: to establish a SPV company pursuant to the Corporations Act 2001 to hold legal title to the land.

The MOU's are supported by the legal recommendations stating they are in accordance with the negotiated outcome.

## STRATEGIC IMPLICATIONS

### Legislative Requirements

Council is acting within the *Economic Development Act 2012*, the *Corporations Act 2001* and *Local Government Act 2009*.

### Risk Management

A probity plan has been developed to minimise risk throughout the competitive bid process. Council must act fairly and impartially. Probity guidelines are being followed to ensure conformity of process, improve accountability, encourage commercial competition, preserve public and bidder competence, and improve the defensibility of process and decisions to legal challenge.

### Financial

Resourcing of the PDA projects is provided for in the budget for 2014/15.

### People

An evaluation panel has been formed to oversee the competitive bid process. On-going support will be required from officers in the following groups: City Planning and Environment, City Infrastructure, Infrastructure and Planning, and Development Assessment.

### Environmental

The environmental benefits associated with both sites are quite substantial if development associated with the sites is undertaken in a manner that recognises the unique attributes and ecosystems that operate at each of the sites.

### Social

The implementation of these projects has the potential to increase public amenity and open space at both sites, enabling greater recreational use

## Alignment with Council's Policy and Plans

The recommendation primarily supports Council's strategic priorities of delivering a healthy natural environment, green living, wise planning and design, a supportive and vibrant economy, strong and connected communities, and of embracing the bay

## CONSULTATION

Consultation has occurred between senior staff of Council and external legal opinion in preparing the Memorandums of Understanding. Consultation with the probity advisor will continue to ensure that the process conforms to that detailed in the evaluation and probity plans.

## OPTIONS

To delegate authority to the Chief Executive Officer (under s.257(1)(b) of the *Local Government Act 2009*) to sign and implement the MOU as detailed.

## OFFICER'S RECOMMENDATION

That Council resolves as follows:

1. To delegate authority to the Chief Executive Officer (under s.257(1)(b) of the *Local Government Act 2009*) to sign and implement the MOU's as detailed; and
2. That this report remains confidential.

## COUNCIL RESOLUTION

Moved by: Cr M Elliott  
Seconded by: Cr P Gleeson

That Council resolves as follows:

1. To delegate authority to the Chief Executive Officer (under s.257(1)(b) of the *Local Government Act 2009*) to sign and implement the 'Memorandum of Understanding – Toondah Harbour and Weinam Creek PDAs Establishment of a Special Purpose Vehicle';
2. To appoint the Mayor and General Manager Organisational Services to the Board of the Special Purpose Vehicle;
3. To have further discussion about the Local Representative Committee at a Councillors' workshop prior to a Memorandum of Understanding being brought to Council for decision on 10 December 2014; and
4. That this report remains confidential.

CARRIED 11/0

# **Memorandum of Understanding Toondah Harbour and Weinam Creek PDAs to Establishment of a local representative committee**

## **Parties**

**Redland City Council**  
(Redland)

**Minister for Economic Development Queensland**  
(MEDQ)

# Memorandum of Understanding Toondah Harbour and Weinam Creek PDAs

## Parties

### Redland City Council

Address	Corner Bloomfield and Middle Street, Cleveland, Queensland
Contact	Peter Kelley
Short name	Redland

### Minister for Economic Development Queensland

Address	Level 7, 63 George Street, Brisbane, Queensland
Contact	Mark Hargraves
Short name	MEDQ

## Background

- 1 The Toondah Harbour and Weinam Creek PDAs were declared by Regulation on 21 June 2013.
- 2 Redland and MEDQ have agreed to act jointly to oversee the development of the Toondah Harbour and Weinam Creek PDAs and wish to enter into suitable development approval arrangements for the development.
- 3 Expressions of Interest were called by Redland and MEDQ from interested parties to develop the Toondah Harbour and Weinam Creek PDAs.
- 4 Following an assessment of the Expressions of Interest received, Redland and MEDQ have determined to enter into negotiations with Walker Group Holdings Pty Ltd (Walker) to work towards an agreement for the development of Toondah Harbour and Weinam Creek to the mutual benefit of all parties.
- 5 Redland and MEDQ now wish to set out their expectations for the establishment of a local representative committee pursuant to section 158 of the *Economic Development Act 2012* (ED Act).

## Agreement

### 1 Definitions

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In this document, unless the context requires otherwise, definitions in relation to the LRC will be as those terms are defined in the ED Act.

### 2 Functions of Local Representative Committee

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The Parties acknowledge that the functions of a LRC are set out in section 159 of the ED Act.

### **3 Composition of the Local Representative Committee**

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#### **3.1 MEDQ to appoint members**

The MEDQ will appoint 4 members to the LRC. One member will be a suitably qualified person from the Department of State Development Infrastructure and Planning (DSDIP), and 1 member must be from the Economic Development Board in accordance with section 158(2) of the ED Act. The chair of the LRC will be the member of the Economic Development Board. The other 2 members will be suitably qualified persons recommended by RCC.

#### **3.2 Suitably qualified**

Other than for the member of the Economic Development Board, a member of the LRC must have significant experience to the MEDQ's satisfaction in one or more of the following:

- (a) town planning;
- (b) law;
- (c) local government;
- (d) engineering; or
- (e) property development,

and able to represent the interests of entities affected by development in the PDA.

### **4 Role of the Local Representative Committee**

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#### **4.1 Delegations**

The MEDQ will delegate functions and powers to the LRC to allow it to:

- (a) decide and allocate fees for development assessment, self-certification processes and hand over of assets;
- (b) accept development applications from development proponents;
- (c) accept development application fees and charges for itself or on behalf the entity or person carrying out development assessment on behalf of the LRC;
- (d) grant development approvals; and
- (e) carry out any other function or power granted by the MEDQ from time to time.

#### **4.2 Development assessment**

The parties agree that the assessment of development applications for the Toondah Harbour and Weinam Creek PDAs will be assessed by the DSDIP Planning and Property Division in accordance with or under arrangements acceptable to the LRC and the DSDIP Planning and Property division.

#### **4.3 Not fettering**

The parties acknowledge and agree that the LRC must perform its functions and powers as delegated or in accordance with the provisions of the ED Act, and neither party will, except to the extent permitted by law, interfere with the exercise of those functions and powers.

#### **4.4 Reporting**

The LRC will report its activities to the MEDQ and the Economic Development Board at times and in the manner agreed with the MEDQ.

## **5 Agreement in principle**

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### **5.1 Agreement to negotiate**

The parties agree in principle to negotiate in good faith to:

- (a) settle any dispute in relation to operations of the LRC; and
- (b) provide resources for the use of the LRC.

### **5.2 Not binding**

This agreement does not bind the parties to it and a party may refuse to agree a matter or to enter into a further agreement proposed by this agreement in the party's absolute discretion.

# Execution

Signed by Bill Lyon, Chief Executive Officer of  
Redland City Council:

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Signature

Signed by Jenny Ryan, General Manager  
Economic Development Queensland for the  
**Minister for Economic Development**  
Queensland:

  
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Signature



# **Memorandum of Understanding Toondah Harbour and Weinam Creek PDAs Establishment of a Special Purpose Vehicle**

## **Parties**

**Redland City Council**  
(Redland)

**Minister for Economic Development Queensland**  
(MEDQ)

# Memorandum of Understanding

## Toondah Harbour and Weinam Creek PDAs

### Parties

#### Redland City Council

Address	Corner Bloomfield and Middle Street, Cleveland, Queensland
Contact	Peter Kelley
Short name	Redland

#### Minister for Economic Development Queensland

Address	Level 7, 63 George Street, Brisbane, Queensland
Contact	Mark Hargraves
Short name	MEDQ

### Background

- 1 The Toondah Harbour and Weinam Creek PDAs were declared by Regulation on 21 June 2013.
- 2 Redland and MEDQ have agreed to act jointly to oversee the development of the Toondah Harbour and Weinam Creek PDAs and wish to enter into suitable governance arrangements for oversighting and making land available for the development.
- 3 Expressions of Interest were called by Redland and MEDQ from interested parties to develop the Toondah Harbour and Weinam Creek PDAs.
- 4 Following an assessment of the Expressions of Interest received, Redland and MEDQ have determined to enter into negotiations with Walker Group Holdings Pty Ltd (Walker) to work towards an agreement for the development of Toondah Harbour and Weinam Creek to the mutual benefit of all parties.
- 5 Redland and MEDQ now wish to set out their expectations for the governance of the State Interests and Council Interests in the development.
- 6 The parties will make all necessary resources available to ensure that the maximum benefit for both parties is realised from the development.

### Agreement

#### 1 Definitions

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In this document, unless the context requires otherwise:

**Authorities** means:

- (a) any government or any governmental, semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality; and
- (b) any person having jurisdiction over, ownership of, or any other power, right, interest or privilege in relation to, Utilities.

**Community Infrastructure** means the parks and transport infrastructure and other public realm to be provided in each PDA that is not normal development infrastructure or trunk infrastructure required under the priority infrastructure plans for the PDAs.

**Development Agreement** means the proposed agreement with Walker for the development of the Toondah Harbour and Weinam Creek PDAs.

**ED Act** means the *Economic Development Act 2012*.

**Interests** means:

- (a) the land and other property and infrastructure to be made available for development under the Development Agreement;
- (b) the outcomes to be achieved through the Development Agreement for the benefit of the public.

**Local representative committee** means a local representative committee established under the ED Act.

**Master Plan** means the master plan attached to the Development Agreement.

## **2 Objectives of Special Purpose Vehicle**

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### **2.1 Parties' acknowledgement**

The Parties agree that the objectives of establishing a Special Purpose Vehicle (SPV) are to:

- (a) facilitate the efficient and effective development of the Toondah Harbour and Weinam Creek PDAs. Walker has expressed its preference to deal with a single entity to avoid red tape and duplication of process and avoid administration costs associated in dealing with multiple parties;
- (b) manage risks associated with the proposed development including but not limited to financial, reputation, construction and work health and safety risks, community issues and communication with the residents affected by any proposed development;
- (c) receive the proceeds from the development and ensure that commercial returns are apportioned to each party in accordance with its contributions in land to the development subject to any contributions by a party to Community Infrastructure. The contributions will be expressed based on the proportion of the area of the land (as set out in Schedule 1) contributed by the parties and shown as a percentage of the total land contributed to the development;
- (d) provide suitable governance arrangements that are transparent and in accordance with the law and policies and procedures that apply to the parties; and
- (e) allow each party to equally participate in the control of the development in accordance with the Toondah Harbour and Weinam Creek Development Schemes.

### 3 Special Purpose Vehicle

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#### 3.1 Establishing a Special Purpose Vehicle

The parties agree to do all things necessary to establish an incorporated SPV pursuant to the provisions of the *Corporations Act 2001* (Cth), and provide it with appropriate power and authority, to, including but without limitation:

- (a) hold the legal title to all land (**Land**) that has been identified as available for development within the Toondah Harbour and Weinam Creek PDAs and set out in the Expression of Interest Invitation for Tender reference EDQ-10-229/14;
- (b) sign or provide:
  - (i) owner's consent to development applications and applications for approvals from Authorities;
  - (ii) all documents in relation to the sale, registration of plans and associated documents that subdivide the land, create of community titles schemes, or transfers ownership of the Land to ultimate purchasers; and
  - (iii) leases, licences and other arrangements for access and occupancy by Walker its agents, contractors, subcontractors, employees, invitees and other related parties to the Land and other land, where necessary and in the power of the SPV to grant such access for construction and other related purposes; and
- (c) enter into negotiations and agreements (or facilitate the agreement of RCC or MEDQ) with owners of land other than the Land, including government agencies, infrastructure providers, contractors and consultants that will facilitate the proposed development of the Toondah Harbour and Weinam Creek PDAs accordance with Walker's Master Plan, where necessary and in the power of the SPV to enter into such negotiations and agreements.

#### 3.2 SPV as sole counterparty

For the avoidance of doubt, the parties state their intention that the SPV will be the only counterparty to negotiate and enter into development agreements and other agreements referred to in clause 3.1 above.

#### 3.3 Process

The parties will obtain all necessary consents, permissions and approvals from its respective controlling bodies to establish the SPV.

#### 3.4 No fetter

The parties acknowledge and agree that the SPV:

- (a) is not a consent authority;
- (b) does not fetter Redland, MEDQ or a local representative committee in the assessment of any development application for a PDA preliminary approval or any other development approval pursuant to any law; and
- (c) will not assume any role that Redland or MEDQ has pursuant to any other law, such as the *Local Government Act 2009*, or the ED Act.

## **4 Governance of the Special Purpose Vehicle and related issues**

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### **4.1 Purpose of governance provisions**

- (a) The purpose of the governance provisions is to establish the SPV with a view to the long-term nature of the project and the need to ensure that the SPV is able to continue to function in accordance with the original intent of Redland and the State unless they agree to changes in the role and function of the SPV.
- (b) Recognising the particular importance of the SPV and the Projects and the degree of local interest, the governance arrangements will be structured so that, consistent with their duties under the Corporations Act, the directors appointed by the respective shareholders will be encouraged to negotiate and agree all outcomes on a reasonable basis and from a position of equality of goals and power.

### **4.2 Constitution**

The constitution of the SPV will reflect the governance arrangements provided for in this agreement and will also specify the following objects for the SPV:

- (a) providing the opportunity to establish and fund infrastructure for the benefit of the local and broader community;
- (b) maximising the return to the SPV and shareholders from the development of the SPV's land and other assets to provide the funds for the community infrastructure;
- (c) encouraging economic development through making land available for development to its highest and best use;
- (d) ensuring the development on the land of high-quality transport infrastructure as the gateway to the Moreton Bay islands that is structured as far as possible as self-sustaining commercial enterprises.

### **4.3 Board of SPV**

The board of directors of the SPV will consist of:

- (a) two members appointed by MEDQ, one of whom will be the MEDQ or the MEDQ's delegate from time to time; and
- (b) two members appointed by Redland, one of whom will be the Mayor or the Mayor's delegate from time to time.

### **4.4 Chair**

The SPV will be chaired by the Minister for State Development Infrastructure and Planning in his role as the MEDQ or his delegate.

### **4.5 Secretary**

The SPV must appoint a company secretary.

### **4.6 Delegation**

The SPV and members of the board may, from time to time and to the extent permissible by law, delegate powers and functions to appropriately qualified persons including legal advisors and staff of Redland and MEDQ. Any such delegations must be approved in the way determined by the SPV.

### **4.7 Staffing and resources of the SPV**

Redland and MEDQ agree to provide resources and staff to carry out any function necessary to give effect to the decisions of the SPV. The SPV will not directly employ any person.

Redland and MEDQ agree that any action recommended by the SPV, including spending money, and that must be or is appropriate to be taken by either Redland or MEDQ, will be carried out diligently and to ensure that the objectives set out in clause 2 above for establishing the SPV are given effect to.

#### 4.8 Reporting

The SPV will report its activities to the governing bodies of RCC and MEDQ at times and in the manner agreed.

#### 4.9 Other agreements

The parties anticipate that the project may require an infrastructure agreement to provide for trunk infrastructure and credits to be negotiated.

The SPV will not be a party to any infrastructure agreement beyond the extent necessary to ensure that provisions of the agreement attach to the land. To the extent possible the SPV must use reasonable endeavours to procure the agreement of the appropriate entity for an infrastructure agreement.

### 5 Agreement in principle

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#### 5.1 Agreement to negotiate

The parties agree in principle to negotiate in good faith to:

- (a) settle any dispute in relation to the operations of the SPV;
- (b) provide resources for the use of the SPV;
- (c) negotiate the terms of the Development Agreement;
- (d) the terms on which the Land is transferred to Walker or directly to purchasers.

The parties acknowledges that final agreement for any decision will be subject to the respective approval requirements under each party's legislation.

#### 5.2 Not binding

This agreement does not bind the parties to it and a party may refuse to agree a matter or to enter into a further agreement proposed by this agreement in the party's absolute discretion.

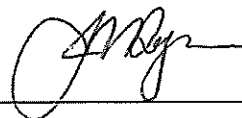
## Execution

**Signed by Bill Lyon, Chief Executive Officer of Redland City Council:**

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Signature

**Signed by Jenny Ryan, General Manager Economic Development Queensland for the Minister for Economic Development Queensland:**



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Signature