



# Expressions of Interest

## Burns Beach food and beverage opportunity

Expressions of interest close  
2pm Wednesday 1 February 2023 WST.

# Request for Expressions of Interest

**EOI No:**

044/22

**Site:**

Proposed new building on

Portion of Reserve 42219

Ocean Parade

Burns Beach WA 6028

**Closing Time:**

2.00pm, Australian Western Standard Time

on Wednesday 1 February 2023.

## Contents

1.0	Executive Summary .....	4
2.0	Introduction .....	5
2.1	The Opportunity.....	5
2.2	The City of Joondalup .....	5
2.3	Vision.....	6
3.0	Details .....	6
3.1	The Site .....	6
3.2	Lease.....	7
3.3	Permits and Approvals .....	7
3.4	Car Parking and Vehicular Traffic .....	7
3.5	Fit out Design Guidelines .....	7
3.6	Terms and Conditions for the EOI Process.....	8
4.0	Proposals.....	8
4.1	Submission Requirements .....	8
4.2	Selection Criteria – Stage One.....	8
4.3	Stage Two – Exclusive negotiations.....	9
5.0	Lodgement Details .....	9
5.1	Lodgement Details .....	9
5.2	Closing Time .....	9
5.3	Late Lodgement .....	9
6.0	Evaluation Process .....	9
6.1	Stage One .....	9
6.2	Stage Two .....	10
6.3	Expression of Interest Dates .....	10
	Attachment 1 - Coastal node concept plan.....	11
	Attachment 2 – Building design plans and images .....	13
	Attachment 3 – EOI Terms and Conditions .....	15
	Attachment 4 – Submission Form.....	27

## 1.0 Executive Summary

Location:	Proposed new food and beverage facility Ocean Parade, Burns Beach
Lease Areas:	Lower floor – 350m <sup>2</sup> with 200m <sup>2</sup> alfresco Upper floor - 450m <sup>2</sup> with 200m <sup>2</sup> alfresco <i>Note: Areas are indicative and may be subject to change.</i>
Lessor:	City of Joondalup (The City)
Lease:	An agreement to lease may be negotiated with the preferred Respondent.
Lease term:	The lease term will be negotiated with the preferred Respondent/s. A lease term of 5 to 10 years will be considered for the right Respondents.
Uses:	The preferred uses are café and restaurant dining with or without a bar function. A tavern is not the desired use for this facility.
Rent:	Market rent to be negotiated.

## 2.0 Introduction

### 2.1 The Opportunity

The City of Joondalup is seeking expressions of interest from experienced hospitality partners to operate a high-quality, food and beverage establishment to enhance the coastal experience and assist the City in attracting visitors and local residents to the area.

The City has identified a development site at Burns Beach suitable for a food and beverage development and is currently working on a two storey building design.

This is a rare opportunity for food and beverage operators seeking an absolute beach-front location with expansive ocean views.

It is envisaged that the upper floor of the two-storey building will be a licenced restaurant or café – potentially with low key bar facilities, and the lower floor a more casual café style family offering.

The building will either consist of two separate commercial tenancies (one separate tenancy on each level) or one tenancy over the two levels. The upper floor will have superior elevated ocean and coastal views, while the lower floor will enjoy similar views with greater visual and physical interaction with the coastal dual-use path and a proposed new playground.

The City is seeking commercial tenants through a two-stage Expression of Interest process:

Stage One: Request for Expressions of Interest. Submissions are to be provided to the City by **2pm, Australian Western Standard Time, on Wednesday 1 February 2023.**

Stage Two: Request for further details as determined by the City. The City may negotiate with the preferred tenants, potentially resulting in an agreement for lease.

### 2.2 The City of Joondalup

The City of Joondalup is in the fast growing northwest corridor of Perth, with its southern boundary located just 15kms from the Central Business District of Perth. With a population of approximately 161,000 and a total land area of approximately 99 square kilometres, the City is one of the largest local governments in Western Australia by population.

The City aspires to be a 'Destination City' where unique tourism opportunities and activities provide drawcards for visitors and high amenity for residents. The City identifies the important role the coast plays in tourism attraction and seeks to create locations that are conducive to a diverse array of recreational activities with complementary services such as convenience food and beverage and casual dining opportunities that enhance the coastal experiences.

The City has identified that the establishment of high quality, environmentally sustainable café, kiosk and restaurant facilities on strategic sites owned and/or managed by the City

will deliver social benefits to residents and visitors and financial benefits to business operators and the City.

### 2.3 Vision

The project seeks to provide a café and/or restaurant facility for the use of the general community which will advance the City's ability to attract visitors and tourists for entertainment and socialising purposes whilst providing employment, business opportunities and a greater awareness of the City's natural assets. The facility at Burns Beach will be environmentally, socially and commercially sustainable providing for the lifestyle and culture of Western Australians whilst creating an opportunity for greater social and economic contribution by tourists.

The City's vision for the precinct is for a unique family friendly environment, fitting for a coastal precinct in close proximity to residential areas. **The City does not envisage facilities such as large bars or taverns, night clubs or late night establishments, takeaway 'fast food' or generic chain outlets.**

## 3.0 Details

### 3.1 The Site

The development site (Attachment 1 refers) has been identified through careful consideration of aspect, development capability and potential, access and car parking opportunities, security, utility provision, existing infrastructure and complementary amenities.

The site is located within the Master Planned Burns Beach Coastal Node. In parallel to the development of the food and beverage facility the City is planning to redevelop the coastal node with improvements including:

- New public toilets and change rooms
- New playground
- 92 new car bays (235 car bays in total)
- New access path south of Burns Beach Sunsets Village
- Grassed 'sunset' lookout mound
- Open lawn areas suitable for events, markets and food trucks
- Shelters, picnic settings and barbecues
- General landscaping improvements and associated minor works.

The proposed coastal node redevelopment is outlined in Attachment 1.

### 3.2 The Building

The building consists of two stories with adjoining public amenities. Concept design images and indicative floor plans are in Attachment 2.



The building will either consist of two separate commercial tenancies (one separate tenancy on each level) or one tenancy over the two levels - depending on the outcome of negotiations with future operators. The upper floor will have superior elevated ocean and coastal views, while the lower floor will enjoy similar views with greater visual and physical interaction with the coastal dual-use path and the proposed new playground.

The upper floor will be approximately 450m<sup>2</sup> with 200m<sup>2</sup> alfresco. The lower floor tenancy will be approximately 350m<sup>2</sup> with 200m<sup>2</sup> alfresco.

### **3.2 Lease**

The preferred development site is located within a parks and recreation Crown Land Reserve, managed by the City. The City is currently negotiating the terms of a land lease to facilitate the construction of the food and beverage facility. The City plans to seek development approval for the facility and then construct the building and lease it to the successful commercial operator/s.

The City's preferred lease arrangement is a 10 year term. It is expected that the lessee will be responsible for the commercial fit out of the building and will pay market rent and outgoings to the City.

An agreement to lease will be negotiated with the preferred tenant, leading to the execution of a lease for the premises, to coincide with completion of the development works.

### **3.3 Permits and Approvals**

The City will be responsible for obtaining a Development Application for the development of the facility. Further approvals may be required by the lessee, including a commercial fit out permit and Liquor Licence.

It is the responsibility of the Respondent to seek their own planning advice and to ensure that they have made all relevant enquiries to determine the suitability of their proposed operations and to fully understand the risks involved.

### **3.4 Car Parking and Vehicular Traffic**

There are currently approximately 143 car bays servicing the area surrounding the identified development site and an additional 92 bays are proposed as part of the redevelopment of the coastal node.

### **3.5 Fit out Design Guidelines**

The Tenancies will be provided as a 'cold shell' with the individual lessees responsible for fit outs. The design of the fit out should:

- Use low energy technologies for lighting, heating and cooling, appliances and equipment.
- Use natural and/or fan-forced ventilation.
- Use of water efficient technologies, and
- Use sustainable materials, such as locally sourced and recycled content.

A building permit will be required before commencement of any commercial fit out work. The tenant is encouraged to liaise with a Building Surveyor and the City regarding the fit out.

### **3.6 Terms and Conditions for the EOI Process**

The EOI Process described in this Request is governed by the Terms and Conditions at Attachment 3 of this Request. By making a submission in response to this Request, the Respondent agrees to be bound by the Terms and Conditions.

## **4.0 Proposals**

### **4.1 Submission Requirements**

Submissions must:

- (a) contain the completed and properly executed submission form (Attachment 4)
- (b) address the Stage One evaluation criteria
- (c) assume the City has no knowledge of the Respondent, its activities, experience or any previous involvement between the Respondent and the City

### **4.2 Selection Criteria – Stage One**

- Financial capacity of Respondent Weighting 25%
  - Respondent must demonstrate it has the financial strength, capacity and capability to successfully operate the proposed business over the proposed lease term.
- Demonstrated operational capacity of Respondent Weighting 25%
  - Respondent must provide examples of previous operational experiences with a food and beverage facility comparable to that being proposed.
- Proposed operational details Weighting 25%
  - Which tenancy Respondent is interested in
  - nature of food and beverage services being offered.
  - fit out details, including cost estimates.
  - details regarding intended operating hours and seasonality of operation.
- Proposed lease details Weighting 20%
  - Respondent to provide an indication of the desired term of the proposed lease and lease details including desired annual rent.
  - Other lease details i.e. turnover rent provisions etc
- Social and Economic effects on the local community Weighting 5%
  - is the Respondent located within City of Joondalup boundaries?
  - does the Respondent currently use or propose to use (if successful) other local City of Joondalup material/service suppliers? If yes, please provide details.
  - does the Respondent currently employ any City of Joondalup residents? If not, what impact (if any) would the award of this contract have on your recruitment practices?
  - does the Respondent promote local community activities?



### **4.3 Stage Two**

Stage Two may result in the City requesting a level of detailed information that, along with information from the Stage One submissions, will be sufficient to allow the City to decide on a preferred Respondent for each tenancy.

This stage may include exclusive negotiations with preferred tenant/s regarding proposals and may result in the City signing a formal agreement to lease.

## **5.0 Lodgement Details**

### **5.1 Lodgement Details**

City of Joondalup e-Procurement Portal

<https://portal.tenderlink.com/joondalup>

### **5.2 Closing Time**

The closing date and time for receiving submissions is before **2pm, Australian Western Standard Time, on Wednesday 1 February 2023.**

### **5.3 Late Lodgement**

The City, at its absolute discretion, reserves the right to refuse to consider or evaluate a submission received after the closing time.

## **6.0 Evaluation Process**

### **6.1 Stage One**

The intent of the Expression of Interest (Stage One) process is for the City to determine Respondents suitable for stage two exclusive negotiations.

Proposals shall be assessed by an evaluation panel (established by the City) against the evaluation criteria outlined in section 3.2 Selection Criteria – Stage One, using a rating scale of zero to ten (0 – 10).

As part of the evaluation process Respondents may be invited to provide further information in clarification at any forum (including presentations) to the evaluation panel.

Giving due consideration to the information received from the Respondent in response to the clarifications (if applicable) and the evaluation scores, an evaluation report recommending a successful Respondent, or shortlist of Respondents, shall be produced.

As determined by the City the shortlisted Respondent/s may be invited to submit detailed proposals for Stage Two of the process or be invited to participate in a tender process.

The City is not obliged to shortlist any proposals and may shortlist one or several proposals, at its absolute discretion.

## 6.2 Stage Two

As outlined above one or more Respondents may be invited to submit detailed proposals.

Giving due consideration to the information received from the Respondent in response to the clarifications (if applicable) a report recommending the preferred Respondent shall be presented to Council for consideration.

As determined by Council the preferred Respondent may be invited to enter into an agreement to lease with the City.

## 6.3 Expression of Interest Dates

The timetables below are indicative only and the City reserves the right to change the timetable at its absolute discretion.

Stage One	Dates
Release of Request for Expressions of Interest	19 November 2022.
Closing date for submissions	1 February 2023.
Stage One Evaluations	February to April 2023.
Council decision on shortlist / preferred Respondent	May 2023.

Stage Two	Dates
Consider section 3.59 of the <i>Local Government Act 1995</i>	May 2023
Issue request for additional information.	November 2023 onwards.

# Attachment 1 - Coastal Node Concept Plan



## Burns Beach Coastal Node Concept Design

- Legend**
- 1 Proposed new Cafe / Restaurants space
  - 2 Existing Cafe/Spas Burns Beach
  - 3 Dual Use Path to remain
  - 4 Burns Beach Sports Village
  - 5 Proposed new car park = 150 Bays
  - 6 COG Car park 7 = 43 Bays
  - 7 New parallel parking along Ocean Parade = 42 Bays
  - 8 Realigned roundabout intersection
  - 9 Existing dune vegetation to be retained & rehabilitated
  - 10 New paths to low grade car park, bike paths and paths along ocean frontage, also POO
  - 11 Open turf area for events, markets and food trucks
  - 12 Turf mound providing lookout over ocean, playground
  - 13 New playground node with restaurant access, mix of traditional and nature play equipment
  - 14 Shelters, Picnic settings, BBQ facilities & Drink fountains
  - 15 Mlich surface under existing Casuarina trees
  - 16 Staff access from upper level
  - 17 Vehicle maintenance access points
  - 18 Drop off bay
  - 19 Relocated Transperth bus bay and bus stop
  - 20 Footpath / Bush track connecting into Ocean Parade path network
  - 21 Seating node with timber benches
  - 22 Restaurant lookout and turf node. Propose feature public art here. Change rooms & public toilets below
  - 23 Existing vegetated sump
  - 24 Existing Blush reserve
  - 25 Total Existing car bays = 107
  - 26 Total Proposed car bays = 235



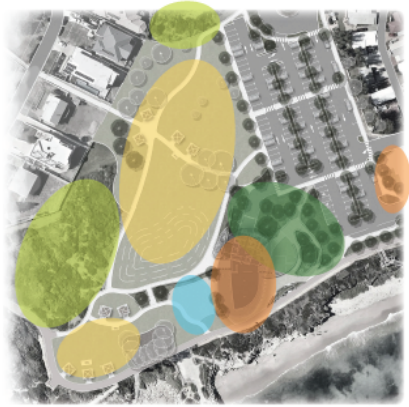
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**Accessibility**  
 - - - Universal access pathway / ramp  
 ⇄ Stair access



**Zones**  
 ● Cafe / Restaurant  
 ● Play  
 ● Garden / more formal landscape planting  
 ● Open Space / Events / Market Space  
 ● Revegetation / Dual / Existing Veg



**Burns Beach Coastal Node**  
 Concept Design

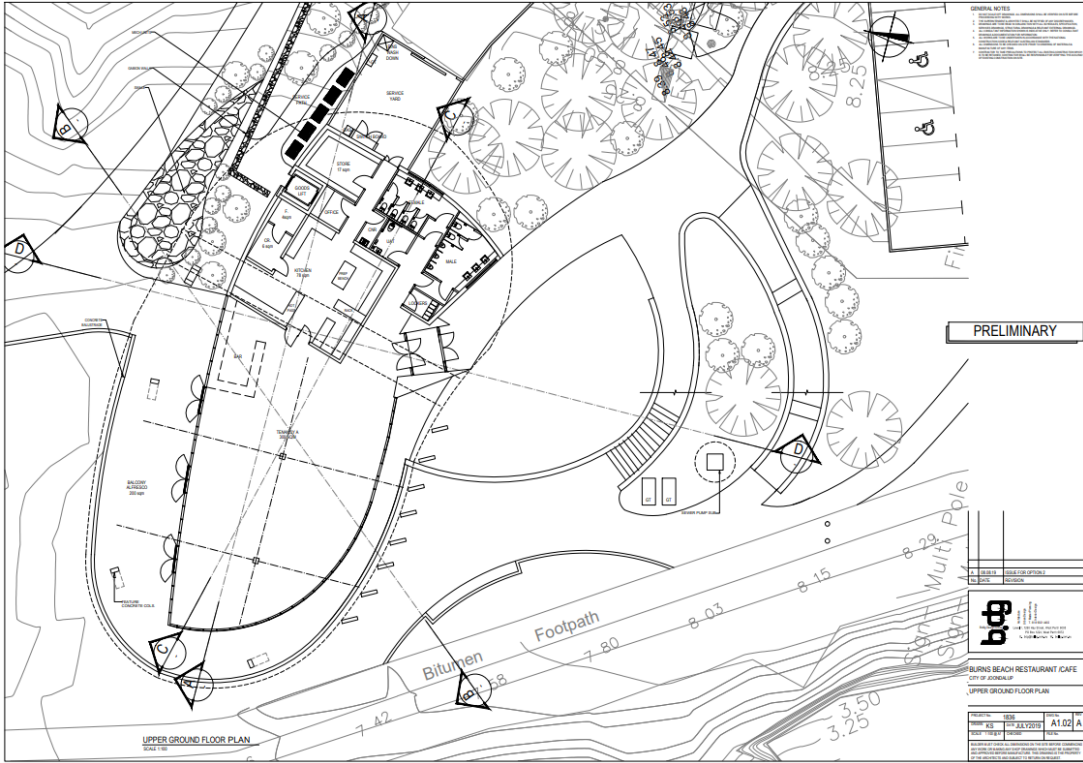
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  - 2 Existing Cafe 'Sista's Burns Beach
  - 3 Dual Use Path to remain
  - 4 Burns Beach Sunsets Village
  - 5 Proposed new car park = 150 Bays
  - 6 CoJ 'Car park' = 43 Bays
  - 7 Refer previous plan for Ocean Parade
  - 8 Realigned roundabout intersection
  - 9 Existing dune vegetation to be retained & rehabilitated
  - 10 Car park access path to follow grade of car park, bollards and trees along length to prevent vehicle access into POS
  - 11 Open turf area for events, markets and food trucks
  - 12 Turf mound providing lookout over ocean, playground node, sunset views
  - 13 New playground node with restaurant access - mix of traditional and future play equipment
  - 14 Shelters, Picnic settings, BBQ facilities & Drink fountains
  - 15 Mutch surface under existing Casuarina trees
  - 16 Stair access from upper level
  - 17 Vehicle maintenance access points
  - 18 Drop off bay
  - 19 Refer previous plan for relocated Transperth bus bay
  - 20 Ecopark / Bush track connecting into Ocean Parade path network
  - 21 Seating node with timber benches
  - 22 Restaurant lookout and turf node. Propose feature public art here. Change rooms & public toilets below
  - 23 Existing vegetated sump
  - 24 Existing Bush reserve

## Attachment 2 – Building Images and Design Plans

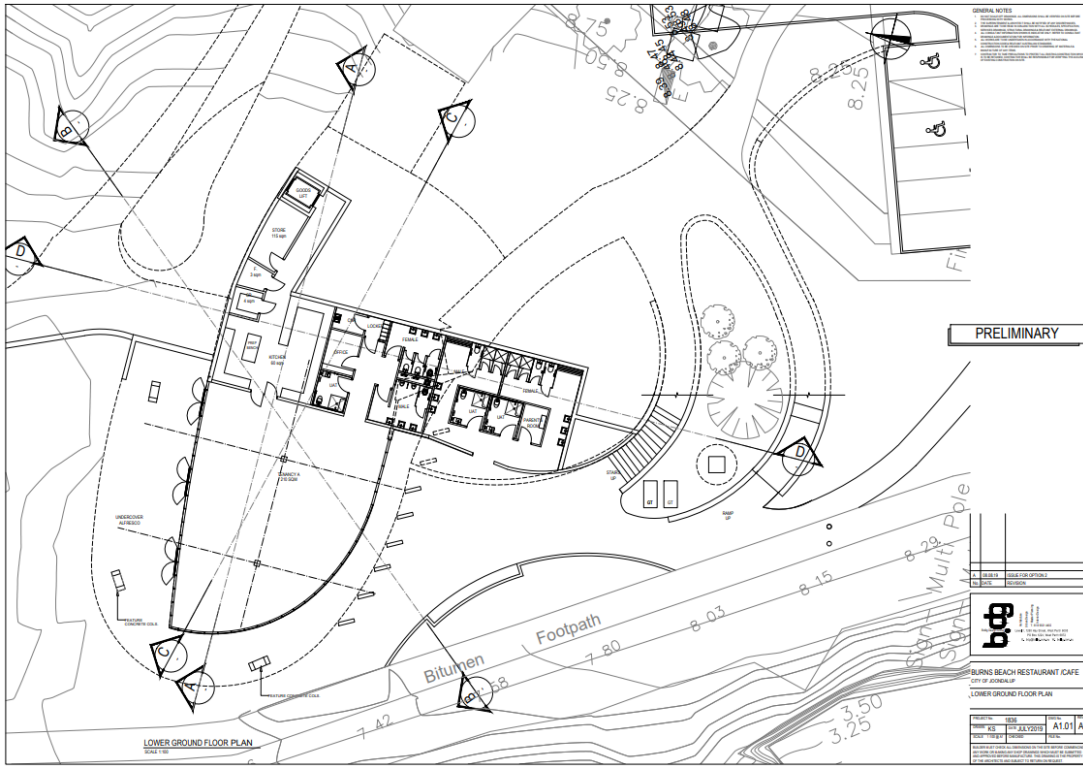


Artist Impressions





Indicative Upper Ground Floor Plan



Indicative Lower Ground Floor Plan

## Attachment 3 – EOI Terms and Conditions

### 1. Definitions and Interpretation

#### 1.1 Definitions

Addendum	means modifications or clarifications to this Request issued by the City.
City	means the City of Joondalup.
EOI Process	means the process set out in this Request, or as varied by the City.
Project	means the project described in this Request.
Proposal	means any proposal submitted in response to this Request.
Request	means this request for expressions of interest document.
Respondent	means the entity named as the Respondent on the Proposal Form.
Selection Criteria	means the criteria set out in section 4.2 of this Request.
Site	means the site for the Project described in section 3.1 of this Request.
Submission Form	means the document constituting Attachment 4 to this Request.

#### 1.2 Interpretation

In this Request, unless the context otherwise requires:

- a) the singular includes the plural and vice versa;
- b) a reference to an Act of Parliament or to a section of an Act includes any amendment or re-enactment for the time being in force;
- c) where two or more persons are named in this document their liability is joint and several;
- d) where the day or last day for doing an act is not a Business Day, the day or last day for doing the act will be deemed to be the next following Business Day;



- e) headings do not affect the construction of this Request; and
- f) if any of the Terms and Conditions purport to exclude liability for a particular matter, such exclusion only operates to the extent permitted by law.

## **2. Respondent bound by Terms and Conditions**

By submitting a Proposal in response to this Request, the Respondent agrees to comply with this Request (including these Terms and Conditions) for the duration of the EOI Process.

## **3. City's rights**

### **3.1 Directions**

The Respondent must comply with any direction or requirement of the City given under the Terms and Conditions or issued under any Addenda.

### **3.2 Rights**

The Respondent acknowledges and agrees that the City reserves the right in its absolute discretion and at any time to:

- a) cancel, suspend or change the Project, the procurement method for the Project, or any aspect of the EOI Process or to take such other action as the City considers, in its absolute discretion, appropriate in relation to the EOI Process or the Project;
- b) require additional information from the Respondent in which case the Respondent must provide such information within a reasonable time of the City's request;
- c) refuse to consider or evaluate the Respondent's Proposal or terminate the Respondent's participation in the EOI Process if:
  - (i) the Respondent breaches the Terms and Conditions;
  - (ii) the Respondent's Proposal is materially incomplete or fails to satisfactorily address the Evaluation Criteria;
  - (iii) the Respondent's Proposal is lodged after the Closing Time; or
  - (iv) the Respondent fails to meet a direction or requirement of the City under this Request;
- d) not accept the lowest cost Proposal, the highest scoring Proposal, or any Proposal;
- e) change any Evaluation Criteria upon giving reasonable notice to the Respondent;

- f) conduct private briefings with Respondents and prospective Respondents;
- g) in selecting the Preferred Respondent, have regard to:
  - (i) the City's knowledge and previous experience and dealings with the Respondent;
  - (ii) information concerning the Respondent which is in the public domain or which is obtained by the City through investigations;
- h) consider and accept any Proposal that does not comply with the requirements of this Request;
- i) change the Preferred Respondent;
- j) discuss and negotiate with the Respondent any matter arising out of this Request or their Proposal and take such discussions and negotiations into account in its evaluation;
- k) discuss and negotiate with any competing Respondent any matter arising out of this Request or their Proposal with or without disclosing this to the Respondent and take such discussions and negotiations into account in its evaluation;
- l) publish the name of the Respondent; and
- m) waive any requirement or obligation under this Request.

The City is not required to give reasons for the exercise of any of the City's rights in accordance with this clause 3.2.

### **3.3 City's Consent**

Whenever the consent of the City is required under this Request, that consent may be given or withheld by the City in the City's absolute discretion and may be given subject to such conditions as the City may determine.

### **3.4 No Claim**

The Respondent releases the City and its Associates from all liability in relation to the EOI Process and the Respondent will not make a Claim against the City or any of the City's Associates arising out of the exercise or any failure of the City to exercise or perform any rights, obligations or duties under this Request or otherwise in connection with the EOI Process. This clause 3.4 may be pleaded by the City or its Associates as a bar to any proceedings commenced by the Respondent against the City or its Associates in relation to the EOI Process.

#### **4. No Legal Relationship**

The Respondent acknowledges and agrees that:

- a) this Request does not obligate the City to enter into negotiations with a preferred Respondent or proceed with the Project;
- b) this Request does not constitute an offer to enter into an Agreement to Lease or any final transaction documents arising out of an Agreement to Lease;
- c) no agreement exists or will arise between the City and the Respondent in respect of the Project unless and until the Agreement to Lease is executed by the City; and
- d) neither the City nor the Respondent intend to create a legal relationship.

#### **5. Information from the City**

##### **5.1 No warranty**

The City makes no representation or warranty, expressed or implied, as to the accuracy, completeness, reasonableness or reliability of the Disclosed Information.

##### **5.2 Inconsistency**

The City may elect to issue this Request and any other Disclosed Information to the Respondent in hard copy and electronically. To the extent that there is any inconsistency between a hard copy and an electronic version, unless the City's Representative directs otherwise (acting in its discretion), the hard copy shall take precedence.

##### **5.3 Own enquiries**

The Respondent agrees that it must not rely on any information provided by the City or its Associates in relation to the Project and that it must make its own enquiries in relation to the Project.

##### **5.4 No details**

The City is not required, and does not intend to release any details regarding the evaluation process other than as contained in this Request.

#### **6. Addenda**

The Respondent agrees that:

- a) at any time during the EOI Process the City may, for any reason (but without being obliged to do so), amend this Request by issuing an Addendum to this Request;
- b) any Addenda issued shall be deemed to form part of this Request;

- c) neither the City or any of the City's Associates will be liable for any costs, losses, expenses or damages incurred by the Respondent as a consequence of any such Addenda;
- d) the Respondent must prepare its Proposal to take into account and reflect the content of any Addendum;
- e) this Request may only be amended or supplemented by Addenda issued under this clause 6; and
- f) no statement or representation made by the City or by an Associate of the City (whether at an industry briefing, workshop, question and answer session or otherwise) modifies or supplements this Request, unless the statement or representation is confirmed by an Addendum.

## **7. Protocol for enquiries, clarification and questions**

### **7.1 Enquiries to the City's Representative**

- a) The Respondent must submit any enquiries or clarification questions regarding the EOI Process in writing to the City's Enquiries Officer.
- b) Other than in accordance with clause 7.1(a), the Respondent may not directly contact the City to discuss any aspect of the EOI Process (including this Request).

### **7.2 City requests clarification**

The City may:

- a) request written clarification;
- b) conduct clarification meetings; or
- c) request further information in clarification workshops, with the Respondent as part of the City's evaluation process.

### **7.3 Respondent requests clarification**

- a) All requests for clarification from the Respondent in respect of this Request must be in writing and in a form required or otherwise approved by the City.
- b) The decision of whether to respond to any request for clarification from the Respondent and the content of any response is at the discretion of the City.
- c) Subject to clause 7.3d), the City may circulate clarification questions of a general nature together with the City's response to the Respondent and all competing Respondents.

- d) If the Respondent is of the view that a clarification question is not of a general nature, but relates to proprietary aspects of its Proposal, the Respondent must identify that question as such when asking the clarification question. If, in the opinion of the City:
  - (i) the question is not proprietary, the City Representative will advise the Respondent who has the option to withdraw the question. If the Respondent continues to request a response to that question, the City's response will be circulated to the Respondent and all competing Respondents in accordance with clause 7.3c) above; or
  - (ii) the question does relate to proprietary aspects of the Respondent's Proposal, the City's response to the question will be provided to the Respondent only (and will not be circulated to any competing Respondents).

## **8. Respondent's representations, acknowledgements and warranties**

### **8.1 Acknowledgements**

The Respondent acknowledges and agrees that:

- a) the entire EOI Process is being conducted solely for the City's benefit;
- b) the City will rely upon the warranties given by the Respondent in clause 8.2, in evaluating any Proposal;
- c) in no circumstances will the City or any Associate of the City be liable to the Respondent whether in contract, tort (including negligence, misrepresentation or breach of warranty), under statute or otherwise for any costs, losses, expenses or damages incurred or suffered by any Respondent as a result of or arising from:
  - (i) any incompleteness or inadequacy of, or any inaccuracy or error in, or omission from; or
  - (ii) any use of, or reliance by, any Respondent upon, any Disclosed Information;
- d) it is bound by the content of its Proposal including any schedules, annexures, attachments and appendices which form part of the Proposal;
- e) the Respondent participates in the EOI Process at its own cost and risk; and
- f) no payment will be made by the City or the City's Associates to any Respondent for any costs, losses, expenses or damages incurred by any Respondent in preparing and submitting a Proposal, or otherwise participating in the EOI Process.

## **8.2 Representations and warranties**

By submitting a Proposal the Respondent represents and warrants that:

- a) it has examined all information and documents which are relevant to the Project;
- b) its Proposal and any subsequent information submitted to the City pursuant to this Request:
  - (i) is based on its own independent assessment and investigations, interpretations, deductions, information and determinations; and
  - (ii) is complete and accurate;
- c) it has examined all information and documents which are relevant to the Project;
- d) it has examined all information relevant to the risks, contingencies and other circumstances having an effect on its Proposal which is obtainable by the making of reasonable enquiries, which enquiries the Respondent has made;
- e) it has not paid or received and will not pay or receive any secret commission in respect of this Request;
- f) it has not entered and will not enter into any unlawful arrangements with any other person in respect of this Request;
- g) it has not sought and will not seek to influence any decision in respect of this Request by improper means; and
- h) it did not place any reliance upon the completeness, accuracy, adequacy or correctness of any Disclosed Information.

## **9. Status of Request, Proposal and Respondent**

### **9.1 Material changes**

- a) The Respondent must notify the City promptly in writing of any:
  - (i) material change:
    - A. to any of the information contained in its Proposal;
    - B. to any additional information submitted to the City pursuant to this Request; and
    - C. to any information submitted to the City in any interview, meeting or workshop conducted pursuant to this Request;

- (ii) event which may affect or have a material impact on the financial position or capacity of the Respondent; or
  - (iii) circumstances which may affect the truth, completeness or accuracy of any of the information provided in, or in connection with, this Request.
- b) Upon receipt of any written notification pursuant to clause 9.1a) above, the City reserves the right to assess the change and terminate the Respondent's further participation in the EOI Process, or to invite the Respondent to amend its Proposal accordingly.

## **9.2 No amendment**

The Respondent may not amend a Proposal (unless invited or requested to do so by the City) after it has been submitted.

## **9.3 No requirements to return**

The Respondent agrees that the City will not be required to return the Proposal or any documents, materials, articles and information lodged by the Respondent as part of, or in support of a Proposal.

## **10. Confidentiality**

The Respondent must keep Disclosed Information confidential except where disclosure is agreed to or required by the City.

## **11. City's Public Disclosure and Freedom of Information**

### **11.1 City Licence**

The Respondent grants the City and Associates of the City an irrevocable, perpetual, royalty free, non-exclusive licence to disclose, copy, use, adapt, modify, sublicense or reproduce the whole or any portion of the Proposal for the purposes of evaluation and clarification of the Proposal.

### **11.2 Freedom of Information Act and other legislation**

- a) The Respondent acknowledges that the *Freedom of Information Act 1992 (WA)* (**FOI Act**) applies to the information provided by the Respondent in its Proposal or as otherwise submitted by the Respondent to the City pursuant to this Request and that:
- (i) the FOI Act allows members of the public rights of access to the City's documents;
  - (ii) all or part of the information provided by the Respondent may be disclosed to third parties if there is a requirement to do so under the provisions of the FOI Act;



- (iii) any information that the Respondent considers is commercially sensitive or confidential must be marked "commercial and confidential". (This special notation must not be used unless the information is genuinely confidential. Marking information as "commercial and confidential" will not necessarily prevent disclosure of the information in accordance with the FOI Act. Any decision to release information will be determined by the requirements of the FOI Act); and
  - (iv) save to the extent expressly permitted under the FOI Act, no Respondent will be able to commence any action or make any claim against the City or any Associate of the City for the release of any information by the City under the FOI Act (including any information submitted by any Respondent to the City pursuant to this Request).
- b) The Respondent releases the City from all liability whatsoever for any loss, injury, damage, liability, costs or expense resulting from the disclosure of its Proposal or information, submitted by the Respondent in response to, or in connection with, the Request, under this clause by the City.

## **12. Probity**

### **12.1 Inducement**

The Respondent must not offer any incentive to, or otherwise attempt to, influence any Elected Members or the City's Associates in relation to the awarding of any contract in relation to the Project.

Without limiting clause 12.1, the Respondent must not:

- a) without the prior written consent of the City, directly or indirectly approach or communicate with any Elected Member or the City's Associates having any connection or involvement with this Request, with respect to:
  - (i) an offer of employment; or
  - (ii) availability of employment, with the Respondent or any related entity; or
- b) directly or indirectly offer a bribe, gift or inducement to any of the City's Associates or Elected Members in connection with this Request.

### **12.2 Probity Checks**

Without limiting the City's rights pursuant to clause 3.2, the Respondent consents to the City undertaking probity checks in respect of the Respondent which may include:

- a) investigations into commercial structure, business and credit history;

- b) prior contract compliance in respect of other projects;
- c) police checks or any checks for any criminal records or pending charges; and
- d) research into any relevant activity that is, or might reasonably be expected to be, the subject of regulatory investigation.

### **12.3 Conflict of interest**

The Respondent must:

- a) disclose in the Proposal submitted by the Respondent any circumstances, arrangements or understandings which constitute, or may reasonably be considered to constitute, an actual or potential conflict of interest with the Respondent's obligations under this Request;
- b) provide details of its proposed strategy for managing any actual or potential conflict of interest disclosed in its Proposal pursuant to clause 12.3a) above;
- c) not place itself in a position which may, or will give rise to a conflict of interest, or a potential conflict of interest during the EOI Process; and
- d) otherwise notify the City promptly in writing upon becoming aware of any actual or perceived circumstances, arrangements or understandings which constitute, or may reasonably be considered to constitute, an actual or potential conflict of interest with the Respondent's obligations under this Request.

To the extent that the City directs the Respondent to take particular action in respect to a conflict of interest, the Respondent must comply with such a direction. If the Respondent is unable or unwilling to comply with any such direction, the City may exclude the Respondent from further participation in the EOI Process.

### **12.4 Canvassing**

If the Respondent, whether personally or by any agent, shall canvass any Elected Member or the City's Associates with a view to influencing the EOI Process the City at its discretion may omit the Respondent's Proposal from consideration.

## **13. Collusion**

### **13.1 Collusion**

The Respondent must not engage in any collusive tendering, anti-competitive conduct or any other similar conduct with any competing Respondent (or member of a competing Respondent) or other person in relation to the EOI Process.

### **13.2 Seek to obtain information**

The Respondent must not seek to obtain any information from the City or any Associate of the City in respect of a competing Respondent's Proposal.

## **14. Miscellaneous**

### **14.1 Site inspections**

- a) The City's Representative may give permission for the Respondent to attend the Site.
- b) The Respondent must comply with any protocols, procedures or requirements notified by the City prior to or during any inspection.
- c) The Respondent releases the City and Associates of the City from any Claim or liability that the Respondent or its Associates may have arising out of or relating to any Site inspection.
- d) The Respondent indemnifies the City and Associates of the City from and against any costs, losses, expenses or damages incurred by the City or Associates of the City arising out of or relating to any Site inspection.

### **14.2 Obligation to negotiate**

If the Respondent is appointed the Preferred Respondent, the Respondent must negotiate promptly, diligently and in good faith with the City.

### **14.3 Preferred Respondent**

The Respondent acknowledges and agrees that:

- a) the selection of a Preferred Respondent does not constitute an acceptance of the Proposal submitted by the Preferred Respondent and is without prejudice to the right of the City to decline to enter into an Agreement to Lease, or to enter into an Agreement to Lease with a competing Respondent; and
- b) the City may suspend any negotiations with the Preferred Respondent and commence negotiations with a competing Respondent, if in the opinion of the City:
  - (i) timely finalisation and execution of an Agreement to Lease on terms acceptable to the City is unlikely to be achieved with the Preferred Respondent;
  - (ii) the Respondent, has breached a term or condition of the EOI Process;
  - (iii) there is change to the information on which the City has relied in appointing the Respondent as the Preferred Respondent; or
  - (iv) for any other reason.

### **14.4 No fettering**

The Respondent acknowledges and agrees that nothing contained or implied in this Request will be construed or interpreted as unlawfully restricting, or otherwise

unlawfully affecting the unfettered discretion of the City to exercise any of its powers or functions under any law.

**14.5 Severability**

If any of these Terms and Conditions or any part of them is inconsistent with any law, it will be severed from these Terms and Conditions to the extent of the inconsistency without invalidating or otherwise affecting the enforceability of the remaining Terms and Conditions.

## Attachment 4 – Submission Form

PLEASE COMPLETE AND RETURN WITH SUBMISSION

The Respondent's details are as follows:

### RESPONDENT'S CORPORATE INFORMATION

Full Company Name	
ABN/ACN	
Address for Notices	
Email Address for Notices	
Telephone Number	
Name and position of the individual nominated as the Respondent's contact	

### Undertaking

The Respondent agrees to be bound by the conditions of the Expression of Interest contained within this document.

### Attachments

*Response Instruction:* Respondent to attach submission in response to Expression of Interest Document

### Execution

This submission is dated the \_\_\_\_\_ day of \_\_\_\_\_ 2022.

Authorised signatory of the Respondent

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name



**T:** 08 9400 4000

**E:** [info@joondalup.wa.gov.au](mailto:info@joondalup.wa.gov.au)

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alternative formats upon request.