

Memorandum of Understanding (MOU)

MOU Details

Duration of MOU	
Commencement Date	Date this MOU is executed by both Parties.
End Date	The earlier of: (a) 31 March 2024; and (b) submission of an unsolicited proposal by the Proponent regarding the Proposal in accordance with the USP Guide.
Term	Subject to clauses 5.2 and 6, from the Commencement Date to the End Date.
Department Details	
Department	The Crown in right of the State of New South Wales, acting through the Department of Enterprise, Investment and Trade
Agency/Division	Investment NSW
Address	52 Martin Place, Sydney NSW 2000
ABN	51 766 912 245
Department Representative	Katie Knight, Chief Executive Officer, Investment NSW Deputy Secretary, Investment NSW [REDACTED]
Telephone	
Email	
Proponent Details	
Organisation	Australian Turf Club Limited
Address	Randwick Racecourse Alison Road, Randwick
ABN	81 148 157 288
Proponent Representative	Matt Galanos, Chief Executive Officer, Australian Turf Club
Telephone	
Email	

1. Parties

This MOU is made between:

The **Crown in right of the State of New South Wales** acting through the Department of Enterprise, Investment and Trade, ABN 51 766 912 245 of 52 Martin Place Sydney NSW 2000 ('the **Department**'); and

Australian Turf Club Limited, ABN 81 148 157 288 of Randwick Racecourse Alison Road, Randwick ('**Proponent**').

2. Background

- (a) This MOU sets out the agreed understanding of the parties and basis upon which the arrangement is entered. The MOU is not legally binding save for the provisions which are expressly stated to be legally binding in clause 4.
- (b) The Proponent has developed a concept which it is considering submitting as a proposal via the NSW Government's Unsolicited Proposals process (the **Process**). The proposal will be based on the concept titled "Draft Rosehill Gardens Development Opportunity" which was provided by the Proponent to the Department on 8 November 2023. Under the proposal:
 - i. A Centre of Excellence horse training facility at Horsley Park would be established to accommodate the relocation of 300-400 horses from Rosehill with the potential to expand as required;
 - ii. Warwick Farm would be redeveloped as a state-of-the-art racing, training and spectator facility;
 - iii. Premium Racing could be relocated from Rosehill Gardens to Warwick Farm;
 - iv. The Proponent would retain and develop the entire Rosehill Gardens site for housing (potentially 25,000 homes), green space and a new school;
 - v. The Proponent requests that NSW Government explores the feasibility of a new Metro station at Rosehill to deliver reliable public transport for the new Rosehill Gardens community;
 - vi. In addition to the above the Proponent will invest in racing, training and spectator facilities at Canterbury Park and Royal Randwick,(the **Proposal**).
- (c) The Parties acknowledge and agree that the Proposal will be separate and distinct from any proposals or submissions the Proponent may have made, or will make in the future, regarding the Draft Camellia Town Centre Master Plan.
- (d) The Parties agree to engage in a pre-submission concept review to formally explore whether any proposal is likely to meet the Stage 1 USP assessment criteria and to guide the Proponent in its decision regarding whether to lodge an unsolicited proposal, as set out in the USP Guide.

3. Operative Provisions

3.1 Definitions

In this MOU except where a contrary intention appears:

Commencement Date means the date of commencement of this MOU as provided in MOU Details.

Confidentiality Agreement means the Confidentiality Deed in relation to the Project between the Parties, dated 14 November 2023.

Conflict of Interest means a situation where the exercise of a person's duty or decision-making is influenced, or may appear to be influenced, by his or her private interests.

Department Representative means the person appointed as Department Representative as specified in MOU Details.

Dispute means any disagreement arising out of or in relation to this MOU.

End Date means the date that this MOU will expire or terminate as provided in MOU Details.

Law means:

- those principles of law or equity established or recognised by decisions of courts; and
- the requirements of Commonwealth, State or local government legislation, including statutes, regulations, by-laws, ordinances, orders, proclamations and other subordinate legislation.

MOU means this Memorandum of Understanding and any attachments and annexures.

Party means a party to this MOU.

Proponent's Representative means the person appointed as the Proponent's Representative as specified in MOU Details.

Proposal has the meaning given to that term in clause 2(b).

Process means the NSW Government's Unsolicited Proposals process set out in the USP Guide.

Related Entity has the meaning given to that term in the *Corporations Act 2001* (Cth).

Schedule means a schedule to this MOU.

Staff means the person or persons employed or otherwise contracted by either Party under this MOU, as the context requires.

Term means the duration of the MOU as specified in MOU Details and includes any period of extension.

USP Guide means Unsolicited Proposals: Guide for Submission and Assessment (dated May 2022), made available at https://www.nsw.gov.au/sites/default/files/2020-05/Unsolicited_Proposals_Guide.pdf.

3.2 Construction

In this MOU, except where a contrary intention appears, the following rules apply:

- (a) **Headings.** The table of contents and headings in this MOU are for convenience only and do not affect the interpretation of this MOU.
- (b) **Definitions.** If a word or phrase is defined, cognate words and phrases have corresponding definitions.
- (c) **References to legislation.** A reference to legislation (including subordinate legislation) is a reference to that legislation as amended, consolidated, re-enacted or replaced, and includes any subordinate legislation issued under it.
- (d) **References to singular.** A reference to a word or expression in the singular form includes a reference to the word or expression in the plural form and vice versa.
- (e) **References to persons.** References to 'person' or 'persons' will be taken to include any natural or legal person.
- (f) **References to groups.** A reference to a group of persons is a reference to all of them collectively and to any two or more of them collectively and to each of them individually.
- (g) **References to a gender.** A reference to a gender includes a reference to other genders and each of them.
- (h) **References to day.** References to 'day' refer to a calendar day.
- (i) **References to month and year.** References to 'month' refer to a calendar month, and a 'year' means a period of twelve consecutive months.
- (j) **Reference to Business Day.** References to 'Business Day' refer to a weekday, excluding any day which is a Public Holiday in the State of New South Wales.
- (k) **References to Public Holiday.** References to 'Public Holiday' mean any day which is gazetted as a public holiday in the State of New South Wales.
- (l) **Monetary amounts.** Money references are references to Australian currency.
- (m) **Time limits.** Where any time limit under this Deed falls on a Saturday, Sunday or Public Holiday in the State of New South Wales then that time limit will be deemed to have expired on the next Business Day.
- (n) **Grammatical forms.** Where a word or a phrase is given a defined meaning any other part of speech or other grammatical forms of that word have, unless the context of that word otherwise requires, a corresponding meaning.
- (o) **Joint obligations.** Where a person is comprised of more than one person, each obligation of the person will bind those persons jointly and severally and will be enforceable against them jointly and severally.
- (p) **Reconstitution of a Party.** A reference to a person which has ceased to exist or has been reconstituted, amalgamated or merged, or other functions of which have become exercisable by any other person or body in its place, will be taken to refer to the body established or constituted in its place by which its said functions have become exercisable.

4. Non-binding Memorandum of Understanding

- (a) This MOU is not intended to create legally enforceable rights or obligations for either Party save for the following provisions which are expressly stated to be legally binding between the Parties: this Clause 4 (Non-binding Memorandum of Understanding), Clause 9 (Relationship), Clause 10 (Confidential

Information), Clause 11 (Prohibition on Lobbying), Clause 12 (Publicity and Public Announcements) and Clause 17 (Miscellaneous).

- (b) Save for the qualification in (a), this MOU merely constitutes a statement of the mutual intentions of the Parties with respect to its contents and each Party represents to the other that:
- (i) no reliance will be placed on it;
 - (ii) it does not constitute an obligation binding either side;
 - (iii) it does not contain all matter upon which agreement must be reached in order for an agreement to be consummated;
 - (iv) it creates no rights in favour of either Party; and
 - (v) for the avoidance of doubt and without limiting the above in any way, this MOU imposes no commitment on any person to proceed with an agreement.

5. Term

5.1 Term

This MOU commences on the Commencement Date and subject to this MOU will continue for the Term.

5.2 Option to extend Term

The Parties may extend the Term of this MOU for a further period or periods by providing agreement in writing.

6. Termination

- (a) Either Party may terminate this MOU during the Term by giving the other Party written notice.
- (b) Any termination of this MOU by a Party will be without prejudice any of its rights in Law against the other Party in any matter arising from this MOU.

7. Obligations of the Parties

The Parties will:

- (a) work together in good faith on a pre-submission concept review, in accordance with the USP Guide;
- (b) ensure they comply with the USP Guide;
- (c) only engage regarding the Proposal through the Process;
- (d) keep the other informed in writing as to any issues arising and keep an ongoing written record of the status of each issue and when and how it was resolved;
- (e) subject to clause 12, agree timing, form and contents for joint public announcements regarding the Proposal;
- (f) comply with their obligations under this MOU and all applicable Laws.

8. Obligations of the Proponent

Subject to the outcome of the pre-submission concept review, including that the Proposal may have merit under the assessment criteria set out in the USP Guide, the Proponent will:

- (a) develop the Proposal to contain sufficient detail to enable submission and assessment through the USP process, in accordance with the USP Guide;
- (b) advise the Department of the date on which the Proposal will be considered by the Proponent's Board;
- (c) advise the Department of the outcome of the consideration of the Proposal by the Proponent's Board as soon as practicable following such consideration; and
- (d) provided the Board approves the submission of the Proposal, formally submit the Proposal as a USP in accordance with the USP Guide.

9. Relationship

9.1 No partnership

Neither Party is an employee, agent, joint venturer or partner of the other for any purpose.

9.2 Cooperation

In carrying out its respective obligations under this MOU, the Parties agree to cooperate in a timely and effective manner with each other and to act in good faith.

9.3 No fetter

The Proponent acknowledges that:

- (a) the Department, Ministers and other NSW Government agencies are required to carry out their statutory and governmental functions under applicable laws; and
- (b) nothing in this MOU does or will restrain, limit or otherwise fetter the exercise of any powers, duties and discretions which the Department, any Minister or other NSW Government agencies have at law, and which the Department, a Minister or other NSW Government agencies are not permitted by law to restrain, limit or fetter.

10. Confidential Information

- (a) The Parties acknowledge and agree that they are subject to the Confidentiality Agreement which will remain legally binding in accordance with its terms.
- (b) The Parties agree that this clause 10 (along with the Confidentiality Agreement) survives termination or expiry of this MOU.

11. Prohibition on Lobbying

The Proponent warrants and represents that it will ensure that with regard to the Proposal:

- (a) the Proponent and its Related Entities;

- (b) its personnel, advisors, agents or other such representatives; and
- (c) any person within the control of the Proponent who has, or may be perceived to have, a legal, beneficial or other interest in the Project,

does not lobby, or make any representations to, any public official, entity, or their advisers, however described, including but not limited to, a "Government official" under the *Lobbying of Government Officials Act 2011* or a Member of Parliament.

12. Publicity and Public Announcements

- (a) Neither Party may use the name or logo of the other Party without the prior written consent of the other Party.
- (b) Subject to clause 9.3, neither Party may make public statements about this MOU (whether verbal or written), the Proposal or the activities under it unless first agreed in writing by the other Party, including (but not limited to) the form, contents and timing of any such statement.
- (c) The Parties agree that this clause 12 survives termination or expiry of this MOU.

13. Representatives of the Parties

13.1 Change of Representatives

The Parties should inform the other Party in writing about any change of Representative from that specified in MOU Details.

13.2 Power and authority of Representatives

The Department Representative and the Proponent's Representative:

- (a) are the agent of the respective Party for the purposes of doing anything to be done under this MOU; and
- (b) have the authority to make and give, or accept, on the Party's behalf, any approvals, acceptances, directions, notice and other decisions that the Party may make and give, or accept, under this MOU (but not, for the avoidance of doubt, in relation to binding commitments in relation to the Proposal).

14. Resolution of Disputes

- (a) In the event of any dispute arising under this MOU, the Parties agree to settle the dispute as follows:
 - (i) a Party claiming that a dispute has arisen must give notice to the other Party with details of the dispute (dispute notice);
 - (ii) the Parties must negotiate in good faith by escalating the dispute to progressively higher levels of management;
 - (iii) if the Parties are unable to resolve any dispute by negotiation in accordance with clause 14(a)(ii) within 30 days of a dispute notice being sent, then either Party may request in writing to the other that the dispute be referred to the ATC Chairman and Secretary, Department of Enterprise, Investment and Trade for a decision on the basis that they (or their nominees) will meet as soon as practicable and attempt in good faith to negotiate a resolution of any dispute. If they are unable to resolve the matter within the agreed time, either Party may terminate

this MOU by giving notice to the other Party in accordance with clause 6.

- (b) Both Parties agree to act in good faith in carrying out their obligations under this MOU and to attempt to resolve any Dispute in good faith.

15. Conflict of Interest

- (a) The Proponent must notify the Department in writing, immediately upon becoming aware of the existence or potential of a Conflict of Interest.
- (b) The Proponent agrees to comply with any reasonable direction of the Department to appropriately manage the Conflict of Interest within the timeframe stipulated by the Department.

16. Notices

16.1 General

Any notices under this MOU must be given by an Authorised Representative of the Parties.

16.2 Address for communication

The address and email for service of notices are contained in MOU Details.

16.3 Change of address

Each Party must notify the other Party in writing of any changes to notice details specified in MOU Details.

17. Miscellaneous

17.1 Legal costs

Subject to any express provision in this MOU to the contrary, each Party must bear its own legal and other costs and expenses relating directly or indirectly to the preparation of, and performance of its obligations under this MOU.

17.2 Amendment

All amendments to this MOU and all consents, approvals, waivers and agreements made under this MOU must be evidenced in writing and signed by both Parties.

17.3 Jurisdiction

This MOU is governed by, and must be construed in accordance with, the laws in force in the State of New South Wales. Each Party submits to the exclusive jurisdiction of the Courts exercising jurisdiction in the State of New South Wales.

This Agreement is executed on the last first written below

Execution by the Department

Executed for and on behalf of the Crown in right of the **State of New South Wales** by an authorised officer of the Department of Enterprise, Investment and Trade, but not so as to incur personal liability.

Katherine Knight
~~CEO, Investment NSW~~
Deputy Secretary, Investment NSW

At Sydney

Date: 5 December 2023



Signature

Execution by the Proponent

Executed for and on behalf of Australian Turf Club Limited in accordance with section 127 of the *Corporations Act 2001* (Cth)

ABN 81 148 157 288

By: Peter McGauran - Director

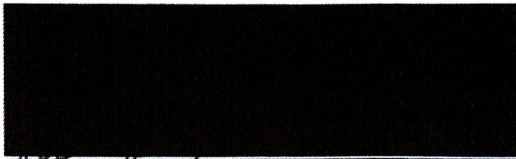
At: SYDNEY

Date: 1/12/2023

By: Matt Galanos – Company Secretary

At: SYDNEY

Date: 1/12/2023



Signature



Signature