



**The Hon Terry Redman MLA
Minister for Regional Development; Lands;
Minister Assisting the Minister for State Development**

Our ref: 39-35110

Hon Ken Travers MLC
Chairman
Estimates and Financial Operations Committee
Parliament House
PERTH WA 6000

Attn: Mr Mark Warner
Committee Clerk



Dear ~~Mr~~ Travers

**2016-17 BUDGET ESTIMATES HEARING – QUESTIONS TAKEN ON NOTICE –
DEPARTMENT OF REGIONAL DEVELOPMENT**

I refer to the appearance of the Department of Regional Development at the Estimates and Financial Operations Committee (Committee) 2016-17 Budget Estimates hearing on 16 June 2016 and the Committee's letter of 22 June 2016.

As requested by the Committee, please find attached responses to supplementary information and additional questions submitted by Legislative Council Members.

Yours sincerely


HON TERRY REDMAN MLA
MINISTER FOR REGIONAL DEVELOPMENT

Att 8 JUL 2016

STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

2016-17 BUDGET ESTIMATES HEARINGS

[Supplementary Information No. F1]

Department of Regional Development

Hon Alanna Clohesy MLC asked:

1. *Growing Our South Initiative Provision, under Asset Investment Program on page 162 of Budget Paper No. 2 – Can we have a list of the projects from last year's budget that were approved and the total value of each and a list of the proposed projects under this year's budget for that line item?*

Answer:

A list of all approved projects from the Growing our South Initiative with the date of their approval and funding amounts is provided in the following table.

Project	Funding Approved	Locality	Recipient	Funding Amount
Northcliffe Aged Accommodation Units	27/01/2015	Northcliffe	Northcliffe Retirement Village Inc	\$1 207 000
Pemberton Retirement Village Extension	27/01/2015	Pemberton	Pemberton Aged Accommodation Inc	\$1 340 000
Ferguson Valley Tourism Route - Upgrade and Sealing of Mungilup Road	27/01/2015	Ferguson Valley	South West Development Commission /Shire of Donnybrook-Balingup	\$1 700 000
South West Ageing in Place Housing Pilot	27/01/2015	Boyanup, Dardanup	Access Housing	\$4 867 300
Katanning Early Childhood Hub	27/01/2015	Katanning	Shire of Katanning	\$5 725 000
Boddington Leisure and Recreation Centre	27/01/2015	Boddington	Shire of Boddington	\$2 500 000
Main Street Stage 2 Richardson to Railway Upgrade	27/01/2015	Katanning	Shire of Katanning	\$350 000
Stage 1 Affordable Student Accommodation Project - Norman House	27/01/2015	Albany	Great Southern Community Housing	\$1 170 000
Torndirrup National Park Visitor Infrastructure	27/01/2015	Albany	Department of Parks and Wildlife	\$1 200 000
Byford and Districts Country Club Community Project	27/01/2015	Byford	Byford and Districts Country Club	\$600 000
Regional and Strategic Waste Management Approach	27/01/2015	Great Southern - Multiple sites	Shire of Jerramungup	\$3 112 240

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Project	Funding Approved	Locality	Recipient	Funding Amount
Jurien Bay Sewerage Project (Stage 1B)	27/01/2015	Jurien Bay	Shire of Dandaragan	\$1 062 051
Narrogin Heavy Haulage Bypass – Wanerie Road Extension (Stage 3)	27/01/2015	Narrogin	Shire of Narrogin	\$1 039 445
Northam Townsite Drainage Improvement Works	27/01/2015	Northam	Shire of Northam	\$1 027 386
Old Mandurah Traffic Bridge Replacement	18/05/2015	Mandurah	City of Mandurah	\$8 800 000
Busselton Regional Airport	15/06/2015	Busselton	City of Busselton	\$45 933 000
Dwellingup Community Village (Stage 2)	13/07/2015	Dwellingup	Shire of Murray	\$2 500 000
Hocart Lodge Harvey	13/07/2015	Harvey	Hocart Lodge Aged Centre Inc	\$3 552 000
Dementia Specific Residential Construction and Reception Upgrade	13/07/2015	Narrogin	Town of Narrogin	\$5 137 000
4WDL Well Aged Housing Project	13/07/2015	Wheatbelt	Shire of Williams	\$5 023 648
CEACA Seniors Housing Project - Stage One - Land Assembly and Servicing	13/07/2015	Wheatbelt	Shire of Merredin	\$2 075 800
Kojonup Independent Living Units Stage 2	13/07/2015	Kojonup	Shire of Kojonup	\$646 000
Collet Barker Court Stage 3	13/07/2015	Mt Barker	Plantagenet Village Homes Inc	\$1 242 289
Margaret River Perimeter Road	30/11/2015	Margaret River	Main Roads Western Australia	\$58 260 000
Margaret River Main Street Redevelopment	30/11/2015	Margaret River	South West Development Commission /Shire of Augusta Margaret River	\$5 490 000
Denmark East Development Precinct	30/11/2015	Denmark	Shire of Denmark	\$7 626 000
Revitalisation of Manjimup's Town Centre	14/12/2015	Manjimup	Shire of Manjimup	\$22 290 000
Katanning SuperTown Heritage Centre Project	14/12/2015	Katanning	Shire of Katanning	\$15 720 000
Busselton Foreshore Redevelopment (Tourism Accommodation Precinct)	14/12/2015	Busselton	City of Busselton	\$4,500,000
Bremer Bay Town Centre and Trail Project	14/12/2015	Bremer Bay	Shire of Jerramungup	\$1 696 383
Transforming Bunbury's Waterfront - Stage 1	14/12/2015	Bunbury	South West Development Commission	\$24 875 400
Transform Peel Initiative Phase 1 (Nambeelup)	04/04/2016	Peel	LandCorp	\$45 211 296

Project	Funding Approved	Locality	Recipient	Funding Amount
Transform Peel Initiative Phase 1 (Peel Food Zone and Water Initiative)	04/04/2016	Peel	Peel Development Commission	\$4 098 510
Transforming Bunbury's Waterfront - Stage 2 (Casuarina Drive)	30/05/2016	Bunbury	LandCorp	\$10 847 758
Transforming Bunbury's Waterfront - Stage 2 (Jetty Road)	30/05/2016	Bunbury	Department of Transport	\$9 878 683
CEACA Seniors Housing Project - Stage Two	20/06/2016	Wheatbelt	Shire of Merredin	\$19 986 439
Stage 2 Affordable Student Accommodation Project	20/06/2016	Albany	Great Southern Community Housing	\$10 997 000
Total				\$343 287 628

Any proposed projects you are seeking information about are still to be developed and approved by Cabinet, and therefore this information is unable to be provided.

STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

2016-17 BUDGET ESTIMATES HEARINGS

[Supplementary Information No. F2]

Department of Regional Development

Hon Alanna Clohesy MLC asked:

1. *Growing Our South – How the \$287 million has been expended (in the last two years)*
2. *Can that list include whether those projects are completed and, if they are not completed, the expected completion date?*

Answer:

A list of all approved projects from the Growing our South Initiative with the date of their expected completion and funding amounts is provided in the following table.

Project	Locality	Recipient	Expected Completion Date	Funding Amount
Northcliffe Aged Accommodation Units	Northcliffe	Northcliffe Retirement Village Inc	June 2018	\$1 207 000
Pemberton Retirement Village Extension	Pemberton	Pemberton Aged Accommodation Inc	June 2017	\$1 340 000
Ferguson Valley Tourism Route - Upgrade and Sealing of Mungilup Road	Ferguson Valley	South West Development Commission /Shire of Donnybrook-Balingup	June 2017	\$1 700 000
South West Ageing in Place Housing Pilot	Boyanup, Dardanup	Access Housing	June 2019	\$4 867 300
Katanning Early Childhood Hub	Katanning	Shire of Katanning	October 2017	\$5 725 000
Boddington Leisure and Recreation Centre	Boddington	Shire of Boddington	June 2017	\$2 500 000
Main Street Stage 2 Richardson to Railway Upgrade	Katanning	Shire of Katanning	December 2016	\$350 000
Stage 1 Affordable Student Accommodation Project - Norman House	Albany	Great Southern Community Housing	June 2017	\$1 170 000
Torndirrup National Park Visitor Infrastructure	Albany	Department of Parks and Wildlife	Completed	\$1 200 000

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Project	Locality	Recipient	Expected Completion Date	Funding Amount
Byford and Districts Country Club Community Project	Byford	Byford and Districts Country Club	December 2016	\$600 000
Regional and Strategic Waste Management Approach	Great Southern - Multiple sites	Shire of Jerramungup	June 2017	\$3 112 240
Jurien Bay Sewerage Project (Stage 1B)	Jurien Bay	Shire of Dandaragan	Completed	\$1 062 051
Narrogin Heavy Haulage Bypass – Wanerie Road Extension (Stage 3)	Narrogin	Shire of Narrogin	November 2016	\$1 039 445
Northam Townsite Drainage Improvement Works	Northam	Shire of Northam	December 2016	\$1 027 386
Old Mandurah Traffic Bridge Replacement	Mandurah	City of Mandurah	June 2018	\$8 800 000
Busselton Regional Airport	Busselton	City of Busselton	December 2018	\$45 933 000
Dwellingup Community Village (Stage 2)	Dwellingup	Shire of Murray	September 2018	\$2 500 000
Hocart Lodge Harvey	Harvey	Hocart Lodge Aged Centre Inc	December 2018	\$3 552 000
Dementia Specific Residential Construction and Reception Upgrade	Narrogin	Town of Narrogin	June 2018	\$5 137 000
4WDL Well Aged Housing Project	Wheatbelt	Shire of Williams	December 2018	\$5 023 648
CEACA Seniors Housing Project - Stage One - Land Assembly and Servicing	Wheatbelt	Shire of Merredin	June 2017	\$2 075 800
Kojonup Independent Living Units Stage 2	Kojonup	Shire of Kojonup	December 2017	\$646 000
Collet Barker Court Stage 3	Mt Barker	Plantagenet Village Homes Inc	June 2017	\$1 242 289
Margaret River Perimeter Road	Margaret River	Main Roads Western Australia	December 2018	\$58 260 000
Margaret River Main Street Redevelopment	Margaret River	South West Development Commission /Shire of Augusta Margaret River	August 2019	\$5 490 000
Denmark East Development Precinct	Denmark	Shire of Denmark	December 2018	\$7 626 000
Revitalisation of Manjimup's Town Centre	Manjimup	Shire of Manjimup	June 2020	\$22 290 000
Katanning SuperTown Heritage Centre Project	Katanning	Shire of Katanning	August 2019	\$15 720 000

Project	Locality	Recipient	Expected Completion Date	Funding Amount
Busselton Foreshore Redevelopment (Tourism Accommodation Precinct)	Busselton	City of Busselton	November 2018	\$4 500 000
Bremer Bay Town Centre and Trail Project	Bremer Bay	Shire of Jerramungup	March 2018	\$1 696 383
Transforming Bunbury's Waterfront - Stage 1	Bunbury	South West Development Commission	June 2019	\$24 875 400
Transform Peel Initiative Phase 1 (Nembeelup)	Peel	LandCorp	June 2020	\$45 211 296
Transform Peel Initiative Phase 1 (Peel Food Zone and Water Initiative)	Peel	Peel Development Commission	June 2020	\$4 098 510
Transforming Bunbury's Waterfront - Stage 2 (Casuarina Drive)	Bunbury	LandCorp	December 2019	\$10 847 758
Transforming Bunbury's Waterfront - Stage 2 (Jetty Road)	Bunbury	Department of Transport	December 2019	\$9 878 683
CEACA Seniors Housing Project - Stage Two	Wheatbelt	Shire of Merredin	December 2020	\$19 986 439
Stage 2 Affordable Student Accommodation Project	Albany	Great Southern Community Housing	June 2018	\$10 997 000
Total				\$343 287 628

STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

2016-17 BUDGET ESTIMATES HEARINGS

[Supplementary Information No. F3]

Department of Regional Development

The Chair asked:

(Seizing the Opportunity Agriculture – Infrastructure Audit)

1. *Are we able to get a copy of the audit?*

Answer:

The Seizing the Opportunity Agriculture Infrastructure Audit Final Draft Report (Report) is with the Minister for Regional Development for consideration.

It is intended that the Report will be made public once the Minister for Regional Development has endorsed the Report and it has been considered and noted by Cabinet.

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STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

2016-17 BUDGET ESTIMATES HEARINGS

[Supplementary Information No. F4]

Department of Regional Development

The Chair asked:

- 1. what is the government's policy position regarding the grain freight rail network?*

Answer:

This is not a question that the Department of Regional Development can respond to and it does not fall within the responsibility of the Minister for Regional Development. The responsible Minister for this area is the Minister for Agriculture and Food; Transport, Hon Dean Nalder MLA. It is suggested that this question be referred to Minister Nalder for a response.

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STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

2016-17 BUDGET ESTIMATES HEARINGS

[Supplementary Information No. F5]

Department of Regional Development

Hon Adele Farina MLC asked:

(Growing Our South Unit)

1. *\$2.5 million is allocated in this financial year. I want a breakdown of how that \$2.5 million is going to be spent?*

Answer:

- An allocation of 2.5 per cent of the Growing Our South Fund was approved by Cabinet for use as an administration component of the Fund. These funds can be used for project development and management activities such as the preparation of business cases and independent due diligence of projects.
- For 2016-17, none of the \$2.5 million has been allocated to specific activities. However as additional projects are submitted for consideration for Growing Our South funding it is anticipated that these funds will be allocated.

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STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

2016-17 BUDGET ESTIMATES HEARINGS

Date of Hearing: Thursday 16 June 2016

Daily *Hansard* page: 19

Division: Department of Regional Development

[Supplementary Information No. F6]

Question: Bunbury Waterfront Project Stage 1 – Why is there a difference between what has been allocated by Royalties for Regions for that project, and what is in the master plan that went before the City of Bunbury for approval?

If you can provide a reconciliation of all the funds against the council document, that would be useful.

Answer:

The master plan for the Koombana Bay Landscaping component of the Transforming Bunbury's Waterfront (TBW) Stage 1 project as submitted to the City of Bunbury Council was a total of \$10,242,450.

The figure presented to Council was exclusive of 20 per cent contingency costs (\$2,048,490) and \$250,000 public art allowance.

Subsequent to business plan submission, RPS provided minor revisions to the estimates. The costings (including the contingency) were updated to reflect those revised figures.

The total variance between the figure presented to council (\$10,242,450) and the figure presented in the TBW Stage 1 Business Case for the Koombana Landscaping (\$12,585,700) is \$2,343,250.

Reconciliation of Stage 1 Royalties for Regions Funding Allocation and Master Plan for Koombana Foreshore is on the following page:

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		R4R Funding Application	Master Plan only (CofB)	Variance	
TBW Stage One					
Koombana Landscaping	Construction	\$9,779,750	\$9,742,450	\$37,300	A
	Project Management	\$500,000	\$500,000	\$0	
Koombana Landscaping sub-total		\$10,279,750	\$10,242,450	\$37,300	B
	Public Art	\$250,000		\$250,000	C
	Contingency	\$2,055,950	\$2,048,490	\$7,460	D
Koombana Landscaping Total		\$12,585,700	\$12,290,940	\$294,760	
Dolphin Discovery Centre		\$12,289,700			
TBW Stage One Total		\$24,875,400			
Total variance between Master Plan and Landscaping component of Business				\$2,343,250	
A. Difference equals revised RPS report.					
B. Stage 1 Masterplan submitted to City of Bunbury council \$10,242,450 is <i>exclusive</i> of 20% contingency cost.					
C. Public Art not part of MasterPlan but added to Business Case as it will be required as part of overall TBW Stage 1 delivery.					
D. Variance due to contingency figure being a % of total construction costs. Based on variance above of \$37,300.					

STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

2016-17 BUDGET ESTIMATES HEARINGS

[Supplementary Information No. F7]

Department of Regional Development

Hon Adele Farina MLC asked:

Question: Bunbury Waterfront Project Stage 1 – Can you give me a breakdown of what works are being done at the Dolphin Discovery Centre for \$12.3 million?

Answer:

Below is a table providing a breakdown of costs:

Item	Amount
New Building	4,774,700
Existing building	452,500
Loose Furniture	254,100
External works and services	1,464,400
	6,945,700
Builder's Preliminaries	834,000
Building Act Compliance and BCITF Levy	61,000
	7,840,700
Design and Construction Contingency	1,087,000
	8,927,700
Interpretive Display	2,000,000
Art	172,000
	11,099,700
Professional Fees	1,190,000
Net Project Cost (At Current Prices)	12,289,700

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STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

2016-17 BUDGET ESTIMATES HEARINGS

[Supplementary Information No. F8]

Department of Regional Development

The Chair asked:

Question: Bunbury Waterfront Project Stage 1 – Can you provide an estimate of the jobs employed in the construction and the actual works and an estimate of the job creations beyond that in an ongoing manner?

Answer:

An independent economic evaluation by RPS indicated that 43 jobs will be directly supported during the construction phase with another 117 jobs indirectly. During the operational phase the investment is expected to directly support 29 full-time equivalent jobs.

It is also expected that there will be a further expansion of the volunteer activities at the Dolphin Discovery Centre.

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STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

2016-17 BUDGET ESTIMATES HEARINGS

[Supplementary Information No. F9]

Department of Regional Development

Hon Adele Farina MLC asked:

Question: Bunbury Waterfront Project Stage 2 - The funding announcement is \$20.73 million. The master plan that has been approved by the City of Bunbury, which should be exactly the same as what you have given funding for, is \$6.9 million. Again there is a massive gap between the cost estimates in the City of Bunbury master plan and the funding that has been allocated under Royalties for Regions. I would like an explanation for why there is such a massive funding gap?

Answer:

The master plan that has been approved by the City of Bunbury relates to the concept design prepared by RPS. This concept design is primarily focussed on the Casuarina Drive landscaping component and is for \$6 934 850 plus a 20 per cent contingency of \$1 386 970, totalling \$8 321 820.

The masterplan does not include the work to be undertaken by the Department of Transport along the Jetty Road causeway or the establishment of a service corridor along Casuarina Drive. These costings have been prepared separately by a specialist engineering consultancy. It is important to establish the service corridor prior to the proposed masterplan work as the service corridor will be located immediately below the project area.

The breakdown of the \$20.73 million is as follows:

• Masterplan (including contingency)	\$8 321 820
• Work relating to the service corridor along Casuarina Road	\$2 847 938
• Remedial work to the causeway	\$6 974 400
• Improvement work along Jetty Road, including service corridor	\$2 382 283
• Public Art	\$200 000
Total	\$20 726 441

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STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

2016-17 BUDGET ESTIMATES HEARINGS

[Supplementary Information No. F10]

Department of Regional Development

Hon Adele Farina MLC asked:

Question: Bunbury Waterfront Project - Is the rail reserve along Koombana Drive going to be protected as part of this project?

Answer:

The current rail corridor is redundant and will not be utilised for a future train service and will therefore be incorporated into the landscape works. The Koombana and Casuarina Masterplan (p27) allows for a rail corridor adjacent to Koombana Drive and limits works in this area to soft landscaping to allow for future use if required.

STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

2016-17 BUDGET ESTIMATES HEARINGS

[Supplementary Information No. F11]

Department of Regional Development

Hon Adele Farina MLC asked:

Question: Bunbury Waterfront Project Koombana Bay revitalisation works - Can you give me an itemised list of what that provision [for investment to combat the coastal erosion resulting from storm events] is and the costing for each measure?

Answer:

Total allowance over the Koombana bay area is \$1.5 million.

This consists of:

- \$500 000 allowance for erosion protection including sand nourishment.
- \$1 million allowance for erosion protection at the Dolphin Discovery Centre likely to consist of the construction of a buried sea wall.

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STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

2016-17 BUDGET ESTIMATES HEARINGS

[Supplementary Information No. F12]

Department of Regional Development

Hon Adele Farina MLC asked:

Question: Bunbury Waterfront Project – Koombana Bay Revitalisation works - The master plan refers to the need to do sand nourishment, and possibly construct a groyne as well as sea walls. It does not identify the rate of littoral drift, which is the sand movement along the coast. Can you please tell me what that is?

Answer:

The Koombana Bay Masterplan supporting documentation states that:

“An analysis of historical shoreline movement adjacent to Koombana Drive showed erosion rates of up to 0.5m/yr for the eastern section of the beach. This is consistent with the findings of Seashore Engineering (2013) who noted an average scarp recession of 0.5 m/yr since 1991.”

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STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

2016-17 BUDGET ESTIMATES HEARINGS

[Supplementary Information No. F13]

Division: Department of Regional Development

Hon Adele Farina MLC asked:

Question: Bunbury Waterfront Project - Koombana Bay revitalisation works - Will this proposal put at risk the fast train proposal into Bunbury CBD along Koombana Drive?

Assuming that this does not kill off the fast train proposal and the fast train proposal gets funding in the near future, given the amount of money that will be spent on landscaping that area for the car parking and parkland, how are you going to deal with the interaction of people and an electric rail line?

Answer:

A future rail corridor has been considered as part of this plan with only soft landscaping included over the future new rail corridor.

Should the train service proposal proceed, then minor works may be required to separate rail and recreational uses. This may require some alterations to parking and road networks within the precinct, however this impact will be limited to areas adjacent to the new rail line.

Key areas of investment in stage one, such as the amphitheatre, boardwalk and footbridge are located away from the rail corridor and will not be impacted.

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STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

2016-17 BUDGET ESTIMATES HEARINGS

[Supplementary Information No. F14]

Department of Regional Development

Hon Adele Farina MLC asked:

Question: Bunbury Waterfront Project - A significant parkland is going to be created out of stages 1 and 2 of the Bunbury waterfront project. When we have tried to secure irrigation of existing parkland in Bunbury, we have been told by the city that they have maxed out their water allocation so there is no way we can irrigate parklands that are not irrigated. I notice that the detail of the master plan talks about irrigation for these new park areas that are being created as part of this project and that they intend on drawing down from the Yarragadee in order to irrigate this new parkland area.

I would like to know how much water is going to be drawn down from the Yarragadee and whether that is within the existing licence that the City of Bunbury has or whether the City of Bunbury needs to get an existing water licence to draw down from the Yarragadee?

Answer:

When completed, the landscaped areas for Stage 1 and 2 will require a total of 54 299 Kl/annum. The City of Bunbury advises that it has 145 054 Kl/annum available from its existing licence.

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STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

2016-17 BUDGET ESTIMATES HEARINGS

[Supplementary Information No. F15]

Department of Regional Development

Hon Adele Farina MLC asked:

1. *(Bunbury Waterfront Project) Will you table the business case?*

Answer:

No. The business case formed part of the submission to Cabinet for funding of the project and as such is *Cabinet in Confidence*.

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STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

2016-17 BUDGET ESTIMATES HEARINGS

[Supplementary Information No. F16]

Division: Department of Regional Development

Hon Adele Farina MLC asked

1. *(Bunbury Waterfront Project – Stage 1) If the agreement has been signed, can you table the (financial assistance) agreement?*

Answer:

[See tabled paper no.]

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Department of
Regional Development



ROYALTIES
FOR REGIONS

SOUTH WEST
DEVELOPMENT COMMISSION



FINANCIAL ASSISTANCE AGREEMENT

ROYALTIES FOR REGIONS PROJECT

GROWING OUR SOUTH

STATE OF WESTERN AUSTRALIA

AND

THE CITY OF BUNBURY

61 002 948 455

TRANSFORMING BUNBURY'S WATERFRONT:

KOOMBANA BAY REVITALISATION

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THIS Agreement is made on the _____ day of _____ 20__.

BETWEEN:

The State of Western Australia (State)

AND

the City of Bunbury (Recipient), of 4 Stephen Street, Bunbury, WA 6230, Australia

RECITALS

- (a) The Department of Regional Development administers Royalties for Regions.
- (b) The South West Development Commission provides Royalties for Regions assistance under an Agreement with the Department of Regional Development.
- (c) The Recipient has agreed to work with the South West Development Commission to undertake the Project and the State has agreed to provide the Funding to the Recipient on the terms and conditions set out in this Agreement.

OPERATIVE PART

THE PARTIES AGREE as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless repugnant to the context:

Act means the *Royalties for Regions Act 2009* (WA).

Additional/New Milestones has the meaning given to it in clause 4.1(c).

Agreement means this Financial Assistance Agreement, including its recitals, schedules and annexures.

ASX means Australian Securities Exchange.

Associates means any officer, employee, agent, consultant, contractor, nominee, licensee or adviser of the State, including any other Government Party.

Auditor means the Auditor General or a person who is independent of, and not related in any way to, the Recipient and is a member of CPA Australia, the Institute of Public Accountants in Australia or the Institute of Chartered Accountants in Australia.

Auditor General means the Auditor General for the State.

Authorisation means any consent, authorisation, registration, filing, agreement, notarisation, clearance, certificate, permission, licence, permit, waiver, approval, authority or exemption from, by or within a Government Agency required under any Laws, and includes any renewal of, or variation to, any of them.

Best Industry Practice means:

- (a) the exercise of that degree of skill, diligence, prudence and foresight that would be reasonably expected from a reputable and prudent person in providing works and services similar to the Works and under conditions comparable with those applicable to the Works;
- (b) compliance with applicable standards and codes, being the standards and codes specified in this Agreement or, if this Agreement does not specify the applicable standards and codes, those standards and codes as would ordinarily be applied in the circumstances; and
- (c) compliance with all applicable Laws.

Building means a building, any extension of or addition to that building, and any related facilities, structures and infrastructure.

Business Day means a day which is not a Saturday, Sunday or public holiday in the State.

Claim means any claim, proceeding, cause of action, action, demand or suit (including by way of a claim for contribution or an indemnity).

Commencement Date means the execution date of this Agreement.

Commission means the South West Development Commission which is a State Government agency.

Commonwealth means the Commonwealth of Australia.

Construct means one or more of construct, build, erect, assemble, renovate, refurbish and any similar or incidental activity or thing.

Construction means one or more of construction, building, erection, assembling, renovation, refurbishment and any similar or incidental activity or thing.

Contact Officer has the meaning given in clause 6 of this Agreement.

Date for Project Completion means the date by which the Recipient must complete the Project set out in item 4.3 of Schedule 4.

Defect means:

- (a) any error, deficiency, omission, non-conformity, fault, failure, malfunction, irregularity or other defect in the Works;
- (b) any aspect of the Works which is not in accordance with the requirements of this Agreement; or
- (c) any failure of the Works to perform at its expected range of capacity and operation in accordance with the relevant technical specifications for the Works and any other the requirements in this Agreement.

Defects Liability Period means, where the Recipient has obligations in this Agreement to Construct any Building and therefore to perform Works, the defects liability period in relation to all or part of those Works contained in an agreement between the Recipient and any other party it engages to carry out all or part of those Works and, if the Recipient engages more than one party to carry out those Works, meaning a defects liability period is contained in more than one agreement, **Defects Liability Period** in this Agreement means the defects liability period in those agreements that finishes on the latest date.

Department means the Department of Regional Development which is a department of the State.

Evaluation or Audit means one or more of an audit, examination, investigation, inspection, review, evaluation, or a similar activity.

Event of Default has the meaning given in clause 11.1.

Final Report has the meaning given in Schedule 5 to this Agreement.

Funding means the amount specified in item 2 of Schedule 4.

Government Agency means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.

Government Party means any governmental, semi-governmental or local government authority, minister, department, statutory corporation, instrumentality or government owned corporation.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and includes all associated legislation and regulations.

Insolvency Event means the happening of any of these events:

- (a) an order is made, or an application is made to a court for an order, that a body corporate be wound up; or
- (b) except to reconstruct or amalgamate while solvent, a body corporate:
 - (i) is wound up or dissolved; or
 - (ii) resolves to wind itself up or otherwise dissolve itself, or gives notice of intention to do so; or
 - (iii) enters into, or resolves to enter into, any form of formal or informal arrangement for the benefit of all or any class of its creditors, including a scheme of arrangement, deed of company arrangement, compromise or composition with, or assignment for the benefit of, all or any class of its creditors; or
- (c) a liquidator or provisional liquidator is appointed (whether or not under an order), or an application is made to a court for an order, or a meeting is convened or a resolution is passed, to make such an appointment, in respect of a body corporate; or
- (d) a receiver, manager, receiver and manager, trustee, administrator, controller (as defined in section 9 of the *Corporations Act 2001* (Cth)) or similar officer is appointed, or an application is made to a court for an order, or a meeting is convened, or a resolution is passed, to make such an appointment, in respect of a body corporate; or
- (e) any step is taken to enforce security over, or a distress, attachment, execution or other similar process is levied, enforced or served out against, any asset or undertaking of a body corporate; or
- (f) the process of any court or authority is invoked against a body corporate, or any asset or undertaking of a body corporate, to enforce any judgment or order for the payment or money or the recovery of any property; or
- (g) a body corporate:
 - (i) takes any step to obtain protection, or is granted protection, from its creditors under any applicable legislation; or
 - (ii) stops or suspends payment of all, or a class of, its debts; or
 - (iii) is, or is taken by any applicable legislation to be, or states that it is, or makes a statement from which it may be reasonably deduced that it is:
 - a. insolvent or unable to pay its debts when they fall due; or
 - b. the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act 2001* (Cth); or
 - (iv) is taken to have failed to comply with a statutory demand as a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth); or
 - (v) ceases, or threatens to cease, to carry on all or a material part of its business; or

- (h) a person becomes an insolvent under administration as defined in section 9 of the *Corporations Act 2001* (Cth) or action is taken that could result in that event; or
- (i) anything analogous or having a similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Law means all applicable present and future laws including:

- (a) all acts, ordinances, regulations by-laws, orders, awards and proclamations of the State of Western Australia or the Commonwealth;
- (b) Authorisations;
- (c) principles of law or equity;
- (d) standards, codes, policies and guidelines; and
- (e) the ASX listing rules.

Leveraged Funding has the meaning given to it in item 5.1 of Schedule 4.

Liability means any debt, obligation, cost (including legal costs), expense, Loss, damage, compensation, charge or liability of any kind (whether arising in negligence or otherwise), including those that are prospective or contingent and those the amount of which is not ascertained or ascertainable.

Loss includes any loss, cost, expense, damage or liability whether direct, indirect or consequential (including pure economic loss), present or future, ascertained, unascertained, actual, prospective or contingent or any fine or penalty.

Milestones means the milestones set out in item 4.3 of Schedule 4, with each milestone in relation to an Obligation being the date by which that Obligation must be completed, and includes the Date for Project Completion.

Notification means a notice by the State given in accordance with this Agreement that in the State's opinion the Recipient has properly complied with and fulfilled all of its Obligations, including that the Final Report provided by the Recipient in accordance with Schedule 5 is satisfactory.

Obligation means an obligation in this Agreement.

Party means each of the State or the Recipient as the context requires, and **Parties** means both of them.

Project means the initiative or activities described in item 4 of Schedule 4.

Project Budget means the budget set out in item 4.4 of Schedule 4.

Provision means any term, condition, undertaking, promise, obligation or warranty of, made or given under this Agreement.

RCTI means a recipient-created tax invoice, which term has the same meaning as in the GST Act.

RDC means Regional Development Commission.

Related Body Corporate has the meaning given to it in the *Corporations Act 2001* (Cth).

Royalties for Regions means the State's Royalties for Regions program under which monies standing to the credit of the Fund (as defined in section 3 of the Act) are expended for purposes permitted by the Act.

Schedule means any schedule to, and forming part of, this Agreement.

Senior Staff Member means a staff member of the Recipient who performs or holds any executive or managerial role including the role of chief executive officer, chief financial officer or an equivalent or similar role, or the role of head of a department or division, manager, senior project officer, or any other senior role.

Shortfall has the meaning given to it in item 5.1 of Schedule 4.

Site means the site where the Works will be carried out.

Special Conditions means the conditions in item 5 of Schedule 4.

Works has the meaning given in item 5.6 of Schedule 4.

Third Party Agreement has the meaning given to it in Clause 12.

1.2 Interpretation

In this Agreement unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include the other genders;
- (c) references to a person include an individual, the estate of an individual and any type of entity or body of persons, including a corporation, an incorporated or unincorporated association or parties in a joint venture, a partnership or a trust and the legal personal representatives, successors and assigns of that person;
- (d) a reference to the State includes each and every agency department, instrumentality and emanation of the State;
- (e) a reference to a statute, ordinance, code, or other law includes regulations, by-laws, rules and other statutory instruments under it for the time being in force and consolidations, amendments, re-enactments, or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- (f) references to this Agreement or any other instrument include this Agreement or other instrument as varied or replaced, and notwithstanding any change in the identity of the Parties;
- (g) references to writing include any mode of representing or reproducing words in tangible and permanently visible form, and include e-mail and facsimile transmission;
- (h) an Obligation incurred in favour of two or more persons is enforceable by them jointly and severally;
- (i) if a word or a phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (j) references to this Agreement include its recitals, schedules and annexures;

- (k) headings are inserted for ease of reference only and are to be ignored in construing this Agreement;
- (l) references to time are local time in Perth, Western Australia;
- (m) where time is to be reckoned from a day or event, that day or the day of that event is to be included;
- (n) references to currency are to Australian currency unless otherwise stated;
- (o) no rule of construction applies to the disadvantage of a Party on the basis that the Party put forward this Agreement or any part thereof;
- (p) a reference to any thing is a reference to the whole and each part of it, and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (q) when the day or last day for doing an act is not a Business Day, then the day or last day for doing the act will be the directly preceding Business Day;
- (r) if the word "including" or "includes" is used, the words "without limitation" are taken to immediately follow;
- (s) the phrases "described in", "set out" and "specified in" shall all read as if the words "expressly or impliedly" appeared immediately before them; and
- (t) reference to a contractor or sub-contractor means a contractor or sub-contractor at any tier.

2. COMMISSION

- (a) The Commission acts for and on behalf of the State and may at any time perform any of the State's Obligations and exercise the State's rights and powers in and under this Agreement, including taking any actions, making any requests and giving or withholding any consents or approvals which the State has the right or obligation to take, make, give or withhold under this Agreement or at Law.
- (b) The Recipient agrees to treat any notices or other communications (including any requests) from the Commission as being from and on behalf of the State.
- (c) Where the Recipient has any Obligation to remit or pay monies to the State, the Recipient must make payment to the State in the manner requested by the State, including making payment into a bank account nominated by the State if so requested, which may be a bank account held in the name of the Commission.

3. SCOPE OF THIS AGREEMENT

- (a) The Recipient must:
 - (i) carry out all aspects of the Project and fulfil its Obligations in a competent, diligent, satisfactory and professional manner, and to a high standard;
 - (ii) comply with this Agreement; and

- (iii) provide funding and other resources, including human resources, adequate to properly meet its Obligations.
- (b) The State must pay to the Recipient the Funding in the manner set out in Schedule 4 which must be used by the Recipient to carry out the Project and for no other purpose.
- (c) The Recipient must:
 - (i) notify the Commission of any actual, pending or threatened Claim, against one or more of the Recipient, a Related Body Corporate or a Senior Staff Member as soon as practicable after the Recipient first becomes aware of that Claim;
 - (ii) notify the Commission immediately if the Recipient is in breach of any Law, receives an audit qualification, or breaches, fails to obtain or is under scrutiny through an inquiry or decree in respect to (as applicable) any consent, registration, approval, licence or permit or agreement, order or award binding on the Recipient or which the Recipient requires in order to carry out one or both of the Project or its business; and
 - (iii) notify the Commission immediately if the Recipient becomes aware of any fraud or corruption in relation to the Project, the Funding, any interest which accrues on the Funding, or this Agreement.
- (d) The Recipient must:
 - (i) keep and maintain accurate, complete, up-to-date and properly detailed written records of income, expenditure, work, activities, progress, setbacks, problems and business and commercial arrangements and dealings in relation to either or both of this Agreement and the Project, and promptly provide the Commission with information or documentation (relating in any way to the Project or this Agreement) requested by the State. The Recipient must ensure that all such information or documentation (as the case may be) is accurate, complete, up-to-date, properly detailed and not in any way misleading or deceptive;
 - (ii) provide the Commission within five (5) Business Days of any request with written evidence (to the satisfaction of the State in its absolute discretion) that the Recipient is solvent and financially viable and secure and has the expertise and operational capability and capacity to carry out the Project; and
 - (iii) establish a separate account or cost centre within its financial system solely for the Funding and any interest which accrues on the Funding.

4. OBLIGATIONS OF RECIPIENT

4.1. Use of Funding

- (a) The Recipient must use the Funding (and any interest which accrues on the Funding) for the carrying out of the Project in accordance with this Agreement and the Project Budget. All of this expenditure must be effected in a commercially prudent, sensible and reasonable manner.

- (b) In carrying out the Project, the Recipient must comply with and meet all Milestones including completing the Project by the Date for Project Completion.
- (c) Without in any way limiting the State's rights under this Agreement, including under clause 11, or under Law, if the Recipient fails to comply with or meet a Milestone, the State may at any time impose additional milestones in relation to any aspect of the Project or replace any Milestones with new milestones (**Additional/New Milestones**). The State has absolute discretion as to whether to impose additional milestones, or replace existing Milestones, and as to what those new or replacement milestones will be and what aspects of the Project or Agreement they will relate to. In carrying out the Project, the Recipient must comply with and meet all Additional/New Milestones. If the Recipient fails to comply with or meet an Additional/New Milestone or any further milestones set by the State, the State has the same rights as set out above to at any time impose new or replacement milestones in its absolute discretion without in any way limiting the State's rights under this Agreement, including under clause 11, or under Law.

4.2. No Changes

The Recipient must not make any changes to the Project or any agreed budget (including the Project Budget) without the prior written consent of the State, which consent may be withheld in the State's absolute discretion.

4.3. No Endorsement

The Recipient agrees that nothing in this Agreement constitutes an endorsement by the State of any goods or services provided by the Recipient.

4.4. Acknowledgement of the Department

- (a) Any communications in relation to one or more of Royalties for Regions, the Project and this Agreement including presentations, publications, signage, articles, newsletters, or other literary works relating to the Project must:
 - (i) equally represent the Parties when Royalties for Regions' or Project logos are displayed, including containing the Department's, Commission's and Recipient's logos and names in an equally prominent position; and
 - (ii) be consistent with the Department's Marketing, Communications and Acknowledgements Policy.
- (b) The respective roles of the State, Department, Commission and the Recipient must be acknowledged at relevant fora, conferences, and project launches where the Project is promoted.
- (c) The Parties shall:
 - (i) work cooperatively at the senior management and officer levels;

- (ii) maintain open communication, both formal and informal, to progress the objectives of this Agreement;
 - (iii) share information and knowledge as practicable; and
 - (iv) advise any stakeholders in the Project about arrangements between the Parties.
- (d) The Parties must coordinate joint communications when dealing with the media and stakeholders in the Project in relation to the Project on issues of significance or mutual concern, including circulating draft media statements, advertising proposals and advertisements between the Parties for comment prior to publication.
- (e) The Recipient must liaise with the Department and the Commission prior to releasing, and gain the prior written approval of the State to the release of, any media statement, advertising proposal or advertisement by the Recipient in relation to the Project.

4.5. Accounts and Reporting

- (a) The Recipient must provide the Commission with annual and progress reports containing the information and within the timeframes set out in Schedules 2, 3 and 5 of this Agreement.
- (b) The Recipient must provide the Commission with a Final Report within three (3) months after receipt by the Recipient of any written request from the State to do so or of any earlier termination of this Agreement.
- (c) This clause 4.5 survives termination of this Agreement.

4.6. General Undertakings of the Recipient

The Recipient must:

- (a) at all times duly perform and observe its Obligations and must promptly inform the Commission of any occurrence that might adversely affect its ability to do so in a material way;
- (b) undertake its Obligations with integrity, good faith and probity in accordance with good corporate governance practices;
- (c) not, nor attempt to, sell, transfer, assign, mortgage, charge or otherwise dispose of or deal with any of its rights, entitlements and powers or Obligations under this Agreement;
- (d) comply with all Laws; and
- (e) cooperate fully with the Commission in the administration of this Agreement.

4.7. Negation of Employment, Partnership and Agency

- (a) The Recipient must not represent itself, and must ensure that its employees, contractors, sub-contractors or agents do not represent themselves, as being an employee, partner or agent of the State or the Commission or as otherwise able to bind or represent the State or Commission.

- (b) The Recipient will not, by virtue of this Agreement, be or for any purpose be deemed to be, an employee, partner, or agent of the State or the Commission, or have any power or authority to bind or represent the State or the Commission.

4.8. Notification

- (a) The State intends to provide the Recipient with the Notification once it considers that the Recipient has properly complied with and fulfilled all of its Obligations including that the Final Report provided by the Recipient in accordance with Schedule 5 is satisfactory.
- (b) The Recipient acknowledges and agrees that:
 - (i) the State has absolute discretion in:
 - (A) determining whether and when it considers that the Recipient has properly complied with and fulfilled all of its Obligations including that the Final Report provided by the Recipient in accordance with Schedule 5 is satisfactory; and
 - (B) determining whether and when to provide the Notification to the Recipient; and
 - (ii) receipt of the Notification does not in any way preclude, or operate as a waiver of, the exercise or enforcement of any right power or remedy of the State under this Agreement or under any Law in relation to any Obligation of the Recipient which the State subsequently discovers has not been properly complied with by the Recipient.

5. EVALUATION OR AUDIT RIGHTS

At any time until Five (5) years after receipt of the Notification by the Recipient or any earlier termination of this Agreement, the State may arrange for an Evaluation or Audit to be carried out in relation to either or both of the Project and this Agreement by either the Commission, an Auditor or any other person that the State in its absolute discretion wishes to carry out the Evaluation or Audit. If the State arranges for an Evaluation or Audit:

- (a) the State must notify the Recipient that the State has arranged for an Evaluation or Audit to be carried out; and
- (b) the Recipient must allow all persons appointed by the State to carry out the Evaluation or Audit to:
 - (i) have full access to all documents, records and premises in the control or possession of the Recipient for the purpose of carrying out the Evaluation or Audit; and
 - (ii) make and take copies of any and all documents and records in the control or possession of the Recipient relating in any way to either or both of the Project and this Agreement.

This clause 5 survives the termination of this Agreement.

6. CONTACT OFFICERS

- (a) Each Party must appoint a staff member to be a contact officer in relation to the Project and this Agreement (this staff member and any replacement staff member performing the same role are referred to in this Agreement as the **Contact Officer**). The Contact Officer for each Party is authorised to act for that Party in relation to this Agreement and is the first point of contact for the other Party in relation to any disputes arising under this Agreement.
- (b) The details of each Party's Contact Officer as at the Commencement Date are set out in Schedule 1.
- (c) If a Party changes its Contact Officer that Party must notify the other Party in writing of the details (being the same categories of information set out in Schedule 1 for each Contact Officer) of the new Contact Officer within five (5) Business Days after the change.

7. REPAYMENT AND RETENTION OF THE FUNDING

Within twenty (20) Business Days from receipt by the Recipient of any written request from the State to provide a Final Report or any earlier termination of this Agreement, the Recipient must remit to the State any Funding that the State has paid to the Recipient and that has not been spent or committed in accordance with this Agreement and any interest which accrues on that Funding. This clause 7 does not limit clause 11.3 in any way.

8. LIMITATION OF LIABILITY

- (a) The State is not responsible or liable in any way for the success or otherwise of the Project or for any losses suffered by the Recipient in undertaking the Project. The Recipient releases the State from all Liability in relation to one or more of the Project, this Agreement and any related matter and agrees that neither it nor any Related Body Corporate will make a Claim against the State or any of the State's Associates arising directly or indirectly in relation to one or more of the Project, this Agreement and any related matter. This clause 8 may be pleaded by the State or its Associates as a bar to any proceedings commenced by the Recipient against the State or its Associates in relation to one or more of the Project, this Agreement and any related matter.
- (b) If the Funding (and any interest which accrues on the Funding) is insufficient for the Recipient to properly fulfil all of its Obligations, then the Recipient must still fulfil its Obligations at its own cost.
- (c) The Recipient must indemnify the State and must keep it indemnified and hold it and its officers, employees and agents harmless from and against all Claims or Liability, suffered or incurred by or brought against the State or any of its respective officers, employees and agents whether before or after the date of this Agreement caused by, arising out of or relating directly or indirectly to any:
 - (i) breach of any Provision by the Recipient;
 - (ii) act or omission of the Recipient or its employees, contractors, officers or agents; or

- (iii) breach of a Law by the Recipient or any of its employees, contractors, officers or agents.
- (d) The Recipient must comply with the insurance requirements set out in item 5.6 of Schedule 4.
- (e) This clause 8 survives the termination of this Agreement.

9. FREEDOM OF INFORMATION ACT 1992, FINANCIAL MANAGEMENT ACT 2006 AND AUDITOR GENERAL ACT 2006

- (a) This Agreement and information regarding it is subject to the *Freedom of Information Act 1992*. The State may publicly disclose information in relation to this Agreement, including its terms and the details of the Recipient.
- (b) Despite any express or implied provision of this Agreement to the contrary, nothing in this Agreement in any way alters, limits or affects the operation of the *Auditor General Act 2006*, the *Financial Management Act 2006* or the Recipient's obligations (if any) in relation to these Acts. To the extent permitted by law, the Recipient must allow the Auditor General, or an authorised representative, to have access to and audit (or otherwise review, examine or evaluate) the Recipient's records and information concerning either or both of this Agreement and the Project.

10. NOTICES

In order for any notice or other communication (including any request, approval or the like) that may or must be given under this Agreement to be effective, that notice or other communication:

- (a) must be in writing;
- (b) must be given by the Contact Officer of the Party giving notice or by another authorised officer of that Party (who must be a Senior Staff Member) if the Contact Officer is unable to give a notice or communication in a particular instance;
- (c) must be:
 - (i) hand-delivered or sent by prepaid post to the address of the Party receiving that notice or other communication set out in item 1 of Schedule 1;
 - (ii) sent by facsimile to the facsimile number of the Party receiving the notice set out in item 1 of Schedule 1; or
 - (iii) where this Agreement provides that the Recipient must notify the Commission of, or provide it with, any occurrence or thing, hand-delivered or sent by prepaid post to the address of the Commission set out in item 1 of Schedule 1 or sent by facsimile to the facsimile number of the Commission set out in item 1 of Schedule 1;
- (d) subject to paragraph (e) of this clause 10, is taken to be received:
 - (i) in the case of hand delivery, on the date of delivery;
 - (ii) in the case of post, on the seventh Business Day after posting; and
 - (iii) in the case of facsimile, on the date of transmission; and

- (e) if received after 5.00 pm or on a day other than a Business Day, is taken to be received on the next Business Day.

11. DEFAULT AND TERMINATION

11.1. Event of Default by the Recipient

An **Event of Default** occurs if:

- (a) the Recipient breaches any Provision, which (if remediable) continues without remedy for five (5) Business Days after notice in writing has been served on the Recipient by the State. This subclause does not limit any other part of this clause 11.1 in any way; or
- (b) the Recipient breaches any Provision of this Agreement and such breach cannot be remedied. This subclause does not limit any other part of this clause 11.1 in any way; or
- (c) the Recipient fails to comply with or meet a Milestone, an Additional/New Milestone or any other milestone set by the Commission in accordance with this Agreement; or
- (d) the Recipient suffers, or is or becomes subject to, an Insolvency Event; or
- (e) the State believes, in its absolute discretion, that the Recipient is unwilling or unable to comply with any one or more of the Provisions; or
- (f) the Recipient repudiates the Agreement; or
- (g) a material warranty given by or representation made by the Recipient is or becomes untrue; or
- (h) the Recipient makes a notification to the Commission of the type set out in clause 3(c); or
- (i) the Recipient fails to comply with item 5.6 of Schedule 4; or
- (j) any aspect of this Agreement is or is held to be void, unenforceable, or invalid for whatever reason; or
- (k) the Recipient persistently, regularly, consistently or continually breaches the Provisions. This subclause does not limit any other part of this clause 11.1 in any way; or
- (l) where this Agreement provides for or contemplates the Parties reaching further agreement in relation to anything the subject of, or related to, either or both of this Agreement and the Project, this further agreement is not reached and recorded in writing within a reasonable time.

11.2. Effect of Event of Default

- (a) If an Event of Default occurs, the State may terminate the Agreement by providing notice in writing to the Recipient and the Agreement is then terminated from the date specified in that notice.

- (b) Without limiting the State's rights under clause 11.2(a), if the Recipient is in breach of this Agreement, the State may suspend the performance of its Obligations until such time as it is satisfied in its absolute discretion that the Recipient has remedied that breach.
- (c) The State may terminate the Agreement by providing notice in writing to the Recipient if, in the opinion of the State exercisable in its absolute discretion, the Project is no longer necessary for any reason and the Agreement is then terminated from the date specified in that notice, although in this instance only, clause 11.3(c) of this Agreement does not apply.
- (d) If the State terminates this Agreement in accordance with this clause 11.2 or otherwise, or this Agreement otherwise comes to an end:
 - (i) clauses 2, 3(c), 4.4, 4.5, 4.7, 5, 7, 8, 9, 10, 11.3, 12 and 14 will survive termination of this Agreement; and
 - (ii) in respect of item 5.6 of Schedule 4:
 - (A) where the Recipient has an obligation in subitem 5.6.1 of Schedule 4 to effect, maintain and keep in force any policy of insurance set out in subitem 5.6.1 for a period referable to "the date the Recipient receives the Notification", that policy of insurance must now be effected, maintained and kept in force as if the words "the date the Recipient receives the Notification" are replaced with the words "the date the Recipient receives notice in writing from the State that the State is terminating this Agreement, or the date this Agreement otherwise comes to an end";
 - (B) where the Recipient has an obligation in subitem 5.6.1 of Schedule 4 to effect, maintain and keep in force any policy of insurance set out in subitem 5.6.1 until the end of any Defects Liability Period, it must continue to effect, maintain and keep in force that policy of insurance until the end of any Defects Liability Period; and
 - (C) subitems 5.6.2, 5.6.3, 5.6.4 and 5.6.5 of Schedule 4 survive until the Recipient no longer has any Obligation to effect, maintain and keep in force any policy of insurance set out in subitem 5.6.1 of Schedule 4.

For the avoidance of doubt, this sub-clause 11.2(d) does not set out an exhaustive list of clauses, rights and obligations that will survive termination and any other clauses, rights and obligations that survive at common law are also intended by the parties to, and do, survive the termination of this Agreement.

11.3. No Further Funding and Recovery of Funding

If the Agreement is terminated under clause 11.2, or terminated unlawfully by the Recipient:

- (a) the State has no further obligation to pay the Recipient any part of the Funding which has not yet been paid to the Recipient;

- (b) the Recipient must remit to the State within twenty (20) Business Days from the termination date specified by the State all Funding paid to the Recipient under the Agreement that has not been spent or committed in accordance with this Agreement by the termination date specified by the State and any interest which has accrued on that Funding; and
- (c) subject to clause 11.2(c), if requested by the State in writing, the Recipient must remit to the State within twenty (20) Business Days from the date of the State's request all Funding paid to the Recipient under the Agreement that has been spent or committed and any interest which has accrued on that Funding. If the State only requests the Recipient to remit part of those monies, then the Recipient must remit that part of those monies within twenty (20) Business Days from the date of the State's request.

12. AGREEMENT BETWEEN THE RECIPIENT AND A THIRD PARTY

If the Recipient enters into an agreement with any other party relating in any way to either or both of this Agreement and the Funding (Third Party Agreement), including a Third Party Agreement with a party to deliver or fulfil any of the Recipient's Obligations or to provide services to the Recipient to assist or enable it to fulfil its Obligations, the Recipient must ensure that the other party:

- (a) has obligations in the Third Party Agreement which, if properly fulfilled, will ensure that the Recipient properly fulfils its corresponding Obligations and to the extent necessary to ensure that the other party has these obligations, the Recipient must ensure that the Third Party Agreement mirrors the terms of this Agreement; and
- (b) agrees to the Recipient providing the State with any documents that the other party provides to the Recipient and to the State attending any meetings it has with the Recipient if the State wishes to obtain copies of such documents or attend such meetings.

13. GOODS AND SERVICES TAX (GST)

- (a) For the purposes of this Agreement, including this clause 13, the terms "GST", "recipient-created tax invoice", "registered", "supply", "tax invoice", and "taxable supply" have the same meanings as in the GST Act.
- (b) Subject to clause 13(c) below, If GST is or becomes payable by a party (**Supplier**) in relation to any supply that it makes under, in connection with, or resulting from, this Agreement, then (unless the consideration for that supply is expressly stated to include GST) in addition to any consideration provided by a party (**Supplied Party**) for that supply, the Supplied Party must pay to the Supplier the amount of any GST for which the Supplier is liable in relation to that supply (**Additional Amount**) at the same time as the relevant consideration or any part of it is provided.
- (c) Subject to clause 13(e) below, the obligation in clause 13(b) above to pay the Additional Amount only arises once the Supplier has issued a tax invoice to the Supplied Party in respect of the Additional Amount.

- (d) If the Funding is consideration for the supply of anything under, in connection with, or resulting from, this Agreement which is a taxable supply under the GST Act, the Funding is exclusive of GST.
- (e) If the Funding is consideration for the supply of anything under, in connection with, or resulting from, this Agreement which is a taxable supply under the GST Act, the State may choose (in its absolute discretion) by notice to the Recipient to have the Commission issue a RCTI in respect of the Additional Amount and if the State so chooses:
 - (i) the Commission will issue a RCTI in respect of the Additional Amount and the Recipient will not issue a tax invoice in respect of that Additional Amount;
 - (ii) the Recipient warrants that it is registered for GST and will notify the Commission as soon as practicable of any change to the Recipient's registration;
 - (iii) the State warrants that the Commission is registered for GST and will notify the Recipient as soon as practicable of any change to the Commission's registration; and
 - (iv) the State will indemnify and keep indemnified the Recipient for any liability for GST and any related penalty or interest charge that may arise from a statement of GST payable on the supply for which the Commission issues a RCTI under this Agreement.

14. WAIVER

- (a) No right under this Agreement shall be deemed to be waived except by notice in writing signed by both Parties.
- (b) A waiver by either Party will not prejudice that Party's rights in relation to any further breach of this Agreement by the other Party.
- (c) Any failure to enforce any part of this Agreement, or any forbearance, delay or indulgence granted by one Party to the other Party, will not be construed as a waiver of any rights under this Agreement or under any Law.

15. ENTIRE AGREEMENT

This Agreement constitutes the entire, full and complete understanding and agreement between the Parties in relation to its subject matter and supersedes all prior communications, negotiations, arrangements and agreements between the Parties with respect to the subject matter of this Agreement.

16. ASSIGNMENT

- (a) This Agreement is personal to the Recipient and may not be assigned by the Recipient without the State's consent, which may be withheld in the State's absolute discretion. The State may at any time, in its absolute discretion, assign or transfer its rights and Obligations under this Agreement as it sees fit.

- (b) For the purposes of this clause 16, the Recipient shall be deemed to have assigned this Agreement if any act, matter or thing is done or occurs, the effect of which is, in the opinion of the State, to transfer, directly or indirectly, the management or control of the Recipient.

17. VARIATION

Any modification, amendment or other variation to this Agreement must be made in writing, and must, unless the State in its absolute discretion directs in writing otherwise, be duly executed by both Parties.

18. RIGHTS, POWERS AND REMEDIES

The rights, powers and remedies in this Agreement are in addition to, and not exclusive of, the rights, powers and remedies existing at law or in equity.

19. GOVERNING LAW

This Agreement is governed by the laws in force in the State. Each Party irrevocably submits unconditionally to the non-exclusive jurisdiction of the Courts of Western Australia and of all Courts competent to hear appeals therefrom in relation to any legal action, suit or proceeding arising out of or with respect to the Agreement.

20. ACCESS TO LAND

If the Project is being undertaken on land (whether freehold or Crown land) that is not owned, leased or managed by the Recipient, the Recipient must obtain and have in place from the Commencement Date until receipt of the Notification by the Recipient the written consent of the person owning or leasing that land to undertake the Project on that land.

21. SCHEDULES

- (a) Any express or implied provision of any Schedule to this Agreement is hereby deemed to be a provision of this Agreement and therefore must be complied with (by the relevant Party) in accordance with its terms.
- (b) In clause 21(a), "provision" includes term, condition, warranty, stipulation, right, Obligation, representation and the like.
- (c) Without limiting the preceding provisions of this clause 21, the Recipient agrees to comply with the Special Conditions, if any.

SCHEDULE 1 – CONTACT OFFICERS

1 Notice Addresses

1.1 State and Commission

Registered Mail:	PO Box 2000, BUNBURY WA 6231
Facsimile:	(08) 9792 2000

1.2 Recipient

Registered Mail:	PO Box 21, BUNBURY WA 6231
Facsimile:	(08) 9792 7184

2. Contact Officers

2.1 State

Name:	Ashley Clements
Job Title:	Strategic Manager Infrastructure
Phone:	(08) 9792 2000
Facsimile:	(08) 9791 3223
Email:	ashley.clements@swdc.wa.gov.au
Postal Address:	PO Box 2000, Bunbury WA 6231
Street Address:	9 th Floor, 61 Victoria Street, Bunbury WA 6230
Supervisor:	Don Punch, Chief Executive Officer

2.2 Recipient

Name:	Andrew Brien
Job Title:	Chief Executive Officer
Phone:	(08) 9792 7000
Facsimile:	(08) 9792 7184
Email:	ceo@bunbury.wa.gov.au
Postal Address:	PO Box 21, BUNBURY WA 6231
Street Address:	4 Stephen Street, BUNBURY WA 6230
Supervisor:	

2.3 Recipient financial contact

Name:	David Ransom
Job Title:	Manager Finance
Phone:	(08) 9792 7160
Email:	davidr@bunbury.wa.gov.au

SCHEDULE 2 – FINANCIAL REPORT

The information listed below is indicative of the information requested by the State and may be varied by the State from time to time in its absolute discretion.

1. Total approved Royalties for Regions budget for the current financial year.
2. Balance brought forward from previous reporting period.
3. Actual payments to date.
4. Amount of interest earned on the Funding and on any income generated by the Project.

SCHEDULE 3 – PROJECT REPORT

The information listed below, is indicative of the information requested by the State and may be varied by the State from time to time in its absolute discretion.

1. Fulfilment of Recipient's Obligations.
2. To what degree has the Recipient achieved Royalties for Regions' objectives in fulfilling its Obligations.
3. Project indicators.
4. Milestones/achievements target for the reporting period.
5. Milestones/actual achievements for the reporting period.
6. Explanation of variances between target and actual achievements, including reasons why milestones were not achieved, impediments encountered, action taken to overcome these and potential future impediments if any.
7. Risks in relation to the Project, including in relation to completing the Recipient's Obligations and solutions proposed by the Recipient in relation to these risks.
8. Funding allocation by project category.
9. What the Funding received has been spent on.
10. Provide copies of contracts entered into between the Recipient and any other party in relation to the Project, including Third Party Agreements.

SCHEDULE 4 – ROYALTIES FOR REGIONS PROJECT DETAILS

1. Use of Funding by the Recipient

Without limiting clause 8(b) or clause 11.3 in any way, the Recipient must use the Funding (and any interest which accrues on that Funding) to carry out the Koombana Bay Revitalisation Project in accordance with this Agreement and for no other purpose.

2. Funding Amount

Funding of \$12,585,700 (excluding GST) will be provided by the State to the Recipient in the manner and within the timeframes outlined in item 3.1 of this Schedule 4 and in Schedule 7.

Disbursal of Funding will be subject to availability of funds through the State budget and mid-year review of the State budget each financial year.

3. Manner in which Funding is to be Paid

3.1. Payment of Royalties for Regions Funding

All the amounts set out in the table below are exclusive of GST.

Deliverable	Payment details and timing	Amount \$
Execution of this Agreement by both Parties	<p>The Commission will initiate payment following:</p> <ul style="list-style-type: none">• Execution of this Agreement• Written evidence of the establishment of WATC account for this purpose• Acceptance of a valid Tax Invoice from the Recipient to the Commission.	12,585,700
Total Payment		12,585,700

3.2. Western Australian Treasury Corporation (WATC) Account

The Recipient is required to establish a WATC account as detailed in Schedule 7 of this Agreement, in which the funds mentioned in item 3.1 of this Schedule 4 are to be placed. Authorising signatories to the WATC account are required to be:

- South West Development Commission – Chief Executive Officer (Proxy: Strategic Manager Infrastructure), and
- City of Bunbury – Chief Executive Officer

The Recipient will ensure that the funds are held in the WATC account until such time as required as per the terms of this Agreement. The Recipient must ensure that withdrawals from the account are done efficiently, effectively and by all signatories as required by this Agreement by progressing a WATC Notice of Withdrawal.

The Recipient must provide its authority for the WATC to send to the Department of Regional Development and the Commission copies of all investment confirmations and monthly statements as evidence of investments and/or transactions. The timeframe for account withdrawals is as follows:

Activity	Withdrawal details and timing	Amount \$
1 st withdrawal on account - Execution of this Agreement by both Parties	<p>The withdrawal will be executed following:</p> <ul style="list-style-type: none"> • Execution of this Agreement, • Written evidence of the establishment of WATC account for this purpose as set out in Schedule 4 and Schedule 7 of this Agreement, and • Provision of a valid Western Australian Treasury Corporation Notice of Withdrawal. 	1,000,000
2 nd withdrawal on account - Completion of detailed design works	<p>The withdrawal will be executed following:</p> <ul style="list-style-type: none"> • Written evidence of the completed detailed design works. • Provision of a valid Western Australian Treasury Corporation Notice of withdrawal. 	1,000,000
3rd withdrawal on account - Appointment of civil works contract for construction of coastal erosion defences	<p>The withdrawal will be executed following:</p> <ul style="list-style-type: none"> • Written evidence of the appointment a civil works contract for coastal erosion defences. • Provision of a valid Western Australian Treasury Corporation Notice of withdrawal. 	3,500,000
4th withdrawal on account - Appointment of civil works contract for Koombana Bay revitalisation	<p>The withdrawal will be executed following:</p> <ul style="list-style-type: none"> • Written evidence of the appointment of a civil works contract for Koombana Bay revitalisation. • Provision of a valid Western Australian Treasury Corporation Notice of withdrawal. 	3,500,000
5th withdrawal on account - 50% completion of civil works contract	<p>The withdrawal will be executed following:</p> <ul style="list-style-type: none"> • Written evidence of 50% completion of the civil works contract. • Provision of a valid Western Australian Treasury Corporation Notice of withdrawal. 	3,585,700
Total		12,585,700

At the end of the project the Recipient is required to ensure that all monies left in the account, including any interest earned, are returned to the Commission.

4. Detailed Description of Project

4.1. Project Description

The Project will involve the revitalisation of Koombana Bay including:

- Redevelopment of car parking from the immediate foreshore to locations adjacent to Koombana Drive. Over 100 additional spaces will be created increasing the overall capacity of the space to function for enhanced public amenity purposes.
- Traffic calming infrastructure.
- New pathways and landscaping will create shaded areas where families can access the beach or walk to and from the city centre providing a direct linkage to the Dolphin Discovery Centre.
- An amphitheatre and plaza area that will provide a venue for beach focussed activity including sports, music events and other functions.
- Children's play area with equipment.
- Redevelopment of the footbridge across the Koombana Cut. The bridge will be upgraded to a contemporary standard and facilitate direct safe access to the City Centre and Marlston Hill.
- Facilities for events and festivals.
- Investment to combat coastal erosion, resulting from existing storm events.

The Recipient is responsible for ensuring works are carried out, however the funding for the project is to be managed by the Recipient by establishing and maintaining a Western Australian Treasury Corporation (WATC) account, which is the subject of this Agreement in accordance with item 3.2 of this Schedule 4.

4.2. Recipient's Obligations

The Recipient must perform the Obligations set out in the table below by the Milestones (see item 4.3 of this Schedule 4).

Recipient's Obligations	Performance Measures	Performance method Measure
WATC ACCOUNT		
Establish a WATC account with authorising signatories	Account is established as required with all parties listed in item 4.1 of this Schedule 4 as signatories.	Written evidence of account being established Written evidence of funding provided having been transferred into nominated WATC account.
Quarterly account statement provided to the Commission	Management of account.	Quarterly account statement provided to the Commission within 10 Business Days of quarter end.

Recipient's Obligations	Performance Measures	Performance method Measure
Initiate and complete 1 st withdrawal on account	Monies withdrawn from WATC account provided to the Recipient.	Withdrawal carried out efficiently and authorised by all nominated parties.
Initiate and complete 2 nd withdrawal on account	Monies withdrawn from WATC account provided to the Recipient.	Withdrawal carried out efficiently and authorised by all nominated parties.
Initiate and complete 3 rd withdrawal on account	Monies withdrawn from WATC account provided to the Recipient.	Withdrawal carried out efficiently and authorised by all nominated parties.
Initiate and complete 4 th withdrawal on account	Monies withdrawn from WATC account provided to the Recipient.	Withdrawal carried out efficiently and authorised by all nominated parties.
Initiate and complete 5 th withdrawal on account	Monies withdrawn from WATC account provided to the Recipient.	Withdrawal carried out efficiently and authorised by all nominated parties.
Account closure	Any remaining monies, including any interest accrued on the account are transferred back to the Commission upon request.	Withdrawal carried out efficiently and authorised by all nominated parties.

KOOMBANA BAY REVITALISATION

- | | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> • Creation of a new amphitheatre and plaza • Creation of 100 additional bays in a redesigned parking area • Creation of social spaces including picnic areas, playground, BBQ facilities and informal seating areas. • Construction of coastal defences to combat coastal erosion. | <p>Construction completed to specification</p> | <p>Certificate of Practical Completion or other suitable documentation detailing completion of works to specification</p> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|

Recipient's Obligations	Performance Measures	Performance method Measure
<ul style="list-style-type: none"> Improved pedestrian and off road cycle links Construction of a pedestrian bridge connecting Koombana Bay foreshore to Koombana North Koombana Drive Road modification 		

4.3. Project Timeframe

The Recipient agrees to commence the Project within six (6) months of execution of this Agreement.

Obligations (Deliverables)	Milestone
WATC ACCOUNT	
Establish a WATC account with authorising signatories	Within 5 business days of execution of this Agreement.
Deposit funding into the WATC account	Within 5 business days of receipt of funding.
Quarterly account statement provided to the Commission	Within 10 business days of end of financial quarter (30 September, 31 December, 31 March and 30 June).
1st withdrawal on account and monies transferred to the Recipient	Within 5 business days of written request from Recipient.
2nd withdrawal on account and monies transferred to the Recipient	Within 5 business days of written request from Recipient.
3rd withdrawal on account and monies transferred to the Recipient	Within 5 business days of written request from Recipient.
4th withdrawal on account and monies transferred to the Recipient	Within 5 business days of written request from Recipient.

Obligations (Deliverables)	Milestone
5th withdrawal on account and monies transferred to the Recipient	Within 5 business days of written request from Recipient.
Account closure and any remaining monies in the account transferred to the Commission	Within 5 business days of written request from Commission.

KOOMBANA BAY REVITALISATION

Koombana Drive road modification completed	31 December 2016
Design work completed and endorsed by the Transforming Bunbury's Waterfront Steering Committee	31 January 2017
Redevelopment completed	28 February 2018
Completion of the Project, including all of the Recipient's Obligations	30 June 2018

4.4. Project Budget

Item of Expenditure	Budget (\$)	Source of Funds
Koombana Bay Redevelopment		
Construction Costs	9,779,750	Royalties for Regions
Project Management	500,000	Royalties for Regions
Public Art	250,000	Royalties for Regions
Playground Equipment	138,500	City of Bunbury
Road Modification	900,000	City of Bunbury
Contingency	2,055,950	Royalties for Regions
Total Budget	13,624,200	

5. Special Conditions

5.1 Leveraged Funding

- (a) The Recipient must provide leveraged funding as set out in the table immediately below (**Leveraged Funding**), which the Recipient must use to carry out the Project in accordance with this Agreement and for no other purpose:

Source of Leveraged Funding	Amount (\$)
City of Bunbury	1,038,500

- (b) Despite anything express or implied to the contrary in this Agreement, before the Recipient is entitled to any payment under this Agreement, it has to provide evidence to the Commission which proves to the satisfaction of the Commission, in its absolute discretion, that the Recipient has obtained the Leveraged Funding. If the Recipient does not obtain any part of the Leveraged Funding (that part being the **Shortfall**), the Commission may reduce the amount it is to pay the Recipient under this Agreement by the amount of the Shortfall.

5.2 Governance

A Project Control Group will be established, consisting of representatives of the South West Development Commission (Chair), City of Bunbury, Dolphin Discovery Centre and LandCorp.

The Project Control Group will oversee the progress of the Project, have oversight of issues relating to planning an achievement of key milestones, provide guidance and assistance in achieving those goals and ensure that all monies are managed appropriately. The meeting dates will coincide with the timeframes in this Agreement.

The Recipient is to provide the final detailed plans for the Koombana Bay Revitalisation for endorsement by the Transforming Bunbury's Waterfront (TBW) Steering Committee. The Recipient is to ensure that the plans are provided to the Commission as soon as practical to enable the Commission to convene the TBW Steering Committee meeting within a reasonable timeframe.

5.3 Dolphin Discovery Centre – Business Disruption Contribution

The Recipient agrees to provide a business disruption contribution of \$50,000 from the Contingency Allocation Funds (Section 4.4 Project Budget) directly to the Dolphin Discovery Centre on or before 31 August 2016.

5.4 Local Products and Services

The Recipient must comply with the State's Buy Local Policy and Building Local Industry Policy when purchasing goods or services or works for the Project.

5.5 Aboriginal Participation

In carrying out the Project, the Recipient must comply with any applicable State policies in relation to creating employment opportunities and engaging and developing relationships with Indigenous peoples.

5.6 Insurance

5.6.1. Policies of insurance

The Recipient must effect, maintain and keep in force from the Commencement Date until it receives the Notification (or for a longer period where it is required to keep any insurance current for a longer period as set out in this subitem below) adequate insurance cover in its name for its respective rights and interests (and noting the interests of the State) in relation to the Project with a reputable and solvent insurer (with a Standard and Poor's rating of not less than A minus) which carries on insurance business in Australia and is authorised in Australia to operate as an insurance company, including effecting, maintaining and keeping in force the following policies of insurance for the Project:

- (a) a public liability policy for an amount of indemnity of not less than ONE HUNDRED MILLION DOLLARS (\$100,000,000) (or any higher sum as is determined by the State from time to time (acting reasonably)) for any one occurrence which must:
 - (i) be effected, maintained and kept in force from the Commencement Date until the later of one year from the date the Recipient receives the Notification and the end of any Defects Liability Period;
 - (ii) be endorsed to contain a principal's indemnity extension in favour of the State to the extent of its vicarious liability caused, contributed to, or arising directly or indirectly out of the negligent acts or omissions of the Recipient, its employees, contractors or agents in their performance or non-performance of the Project;
 - (iii) cover liability resulting from loss of or damage to property and the death or illness of, or injury to, any person (other than liability which is required by Law to be insured under a workers compensation policy of insurance) arising out of or in connection with the Project, this Agreement or both;
 - (iv) cover liability of the State caused or contributed to by the Recipient's acts or omissions;
 - (v) be endorsed to cover:
 - (A) the use of unregistered motor vehicles, plant and equipment; and
 - (B) sudden and accidental pollution.
- (b) where the Recipient has obligations in this Agreement to Construct any Building, a policy of insurance in relation to all work required for and incidental to the Construction of that Building and rectifying Defects (**Works**) which must:

- (i) be in the joint names of the State, Recipient and all agents and contractors employed from time to time in relation to the Works;
 - (ii) cover against any and all physical loss or damage to the Works including covering the:
 - (A) full replacement value of that Building, including any extension of or addition to that Building;
 - (B) the cost of removal of materials and debris from the Site;
 - (C) any loss or damage to any equipment used in relation to the Works;
 - (iii) covering the cost of making good resultant damage arising in connection with faulty design;
 - (iv) provide that any breach of the conditions of this policy of insurance by an insured under the policy must not in any way prejudice or diminish any rights which the State has under the policy;
 - (v) provide that the insurance provided under this policy is primary with respect to the interest of the State and any other insurance or self insurance arrangements maintained by the State is excess to and not contributory with this policy;
 - (vi) provide that a notice of claim given to the insurer by an insured under this policy must be accepted by the insurer as a notice of claim given by the State; and
 - (vii) be effected, maintained and kept in force from the Commencement Date until the end of any Defects Liability Period, or if there is no Defects Liability Period, then until one year from the date the Recipient receives the Notification;
- (c) where the Recipient has obligations in this Agreement to Construct any Building, a vehicle and equipment policy of insurance for the Recipient's vehicles, registered plant and equipment brought on to the Site or used in connection with the Project whether owned, hired or leased (**Recipient's Vehicles**) in addition to any compulsory motor vehicle third party insurance required to be taken out by the Recipient under any Law. This vehicle and equipment insurance policy must;
- (i) cover third party liability for personal injury or death (other than compulsory third party motor vehicle insurance) and property loss or damage involving the Recipient's Vehicles;
 - (ii) be for not less than thirty million dollars (\$30,000,000) third party liability insurance for any one occurrence and unlimited as to the number of occurrences;
 - (iii) to the extent available at the times of placement and each renewal, be endorsed to cover the State to the extent of its vicarious liability caused, contributed to, or arising directly or indirectly out of the use of the Recipient's vehicles; and

- (iv) be effected, maintained and kept in force from the Commencement Date until the later of one year from the date the Recipient receives the Notification and the end of any Defects Liability Period;
- (d) where the Recipient has obligations in this Agreement to Construct any Building, in addition to the insurance cover set out in subitem 5.6.1(b) and 5.6.1(c) of this Schedule 4, it must take out any other policies of insurance consistent with Best Industry Practice for the engineering, design, procurement, supply, Construction, testing and commissioning of the Project, which must be effected, maintained and kept in force from the Commencement Date until the end of any Defects Liability Period, or if there is no Defects Liability Period, then until one year from the date the Recipient receives the Notification;
- (e) where the Recipient is in the business of providing professional services, has Obligations to provide professional services, or both, a professional indemnity policy of insurance, which must:
 - (i) be endorsed to contain a principal's indemnity extension in favour of the State if the Recipient has Obligations to provide professional services;
 - (ii) include one full automatic reinstatement of the limit of liability;
 - (iii) cover liability arising from any act or omission in connection with or arising out of the professional activities and duties under this Agreement;
 - (iv) cover claims in respect of this Agreement or otherwise under the *Competition and Consumer Act 2010 (Cth)*, *Fair Trading Act 2010 (WA)*, *Fair Trading Act 1987 (WA)*, and any similar legislation in any other state or territory insofar as they relate to the provision of professional advice; and
 - (v) be effected, maintained and kept in force from the Commencement Date until seven (7) years from the date the Recipient receives the Notification for not less than one hundred million (\$100,000,000) million for each and every claim and in the aggregate annually; and
- (f) a policy of insurance which:
 - (i) insures against liability under any applicable statute relating to workers or accident compensation for death of, or illness or injury to, natural persons employed or engaged by the Recipient which are required to be insured under the *Workers' Compensation and Injury Management Act 1981 (WA)* or equivalent legislation in other Australian jurisdictions in work under this Agreement including liability by statute and, where available, at common law;
 - (ii) must be extended to indemnify the State as principal ("principal" in this subitem having the same meaning as the term "principal" in section 175(1) of the *Workers' Compensation and Injury Management Act 1981 (WA)*) for liability under section 175 of the *Workers' Compensation and Injury Management Act 1981 (WA)*; and

- (iii) which must be effected, maintained and kept in force from the Commencement Date until the date the Recipient receives the Notification. Where common law claims are not fully covered under this policy of insurance, the Recipient must effect, maintain and keep in force from the Commencement Date until the date the Recipient receives the Notification a policy of insurance which insures against employer's liability at common law for not less than fifty million dollars (\$50,000,000.00) for any one event.

5.6.2. Proof of insurance

- (a) Within five (5) Business Days from:
 - (i) the Commencement Date;
 - (ii) the date the Recipient receives the Notification (except in relation to insurance cover which is only required under this Agreement to be maintained until receipt by the Recipient of the Notification);
 - (iii) the date any insurance policy is renewed or varied; and
 - (iv) any other request by the State,the Recipient must provide the Commission with both of the following:
 - (v) a written statement by the Recipient of the insurance cover for the Project held by the Recipient;
 - (vi) for the insurance cover for the Project held by the Recipient:
 - (A) certificates of currency from the insurer who provided the insurance and a copy of the policies of insurance or other broker's evidence of cover incorporating policy wording and schedules. Any such evidence and certificates of currency must be accurate as at the time of issue, must not contain a general disclaimer to the effect that they can not be relied upon and must contain sufficient information to enable the Recipient to demonstrate to the satisfaction of the State in its absolute discretion that the Recipient's insurance arrangements comply with its Obligations. Where any such evidence or certificates of currency do not provide this information, then the Recipient must provide such further information as the State may require to demonstrate compliance with its Obligations. The Recipient is entitled to redact commercially sensitive information in the insurance policies, broker's evidence of cover or certificates of currency which relate to other projects; and
 - (B) receipts for premiums paid for each policy of insurance.
- (b) If, after being requested in writing by the State to do so, the Recipient fails to produce evidence (to the satisfaction of the State in its absolute discretion) of compliance with its insurance obligations under this clause Item 5.6 of Schedule 4, the State may do one or more of the following:
 - (i) effect and maintain the required insurance and pay the premiums. The amount paid by the State in effecting and maintaining the required insurance is a debt due and payable on demand from the Recipient to the State;

- (ii) exercise its rights under clause 11 of this Agreement; or
- (iii) suspend one or both of the performance of the Recipient's Obligations and the provision of Funding to the Recipient until evidence of the insurances required under this item 5.6 of Schedule 4 is provided to the Commission and is satisfactory to the State in its absolute discretion.

The rights given to the State by this subitem 5.6.2(b) of Schedule 4 are in addition to any other rights the State may have.

5.6.3 *Recipient's Obligations and Recipient's further obligations*

- (a) The Recipient's compliance with this Item 5.6 of Schedule 4 does not in any way affect or limit its liabilities under this Agreement or its Obligations which it is still required to fulfil in full.
- (b) Unless the Recipient first obtains the State's prior written consent, which consent can be given or withheld by the State in its absolute discretion, the Recipient must not:
 - (i) do or allow anything to be done by it or another person which adversely affects any insurance cover taken out by the Recipient or State in relation to the Project or this Agreement or both, or which may increase the premium on that insurance;
 - (ii) store or use inflammable, volatile or explosive substances on the site or premises on which the Project is being carried out except those normally used in the Recipient's business; or
 - (iii) settle or compromise any claim under any policy or insurance relating to the Project or this Agreement, or both.
- (c) The Recipient must give notice to the Commission immediately if:
 - (i) an event occurs which may give rise to a claim under any of the policies of insurance held by it in relation to the Project (or under any of the policies of insurance held by a sub-contractor or sub-grantee in relation to the Project) and must keep the Commission informed of subsequent developments concerning the claim. This requirement does not apply to those occurrences that may give rise to a motor vehicle or worker's compensation claim;
 - (ii) an event occurs which could adversely affect any of the policies of insurance held by it in relation to the Project (or under any of the policies of insurance held by a sub-contractor or sub-grantee in relation to the Project); or
 - (iii) any of the policies of insurance held by it in relation to the Project (or under any of the policies of insurance held by a sub-contractor or sub-grantee in relation to the Project) are cancelled.
- (d) The Recipient must pay all premiums and all deductibles applicable to the policies of insurance effected by it in relation to the Project and promptly reinstate any of these policies which lapse or under which cover is exhausted.
- (e) To the extent available at the times of placement and each renewal, the policies of insurance effected by the Recipient in relation to the Project must:

- (i) provide that where the State is a named insured or is entitled to cover under any of these policies, the insurers must waive all express and implied rights of subrogation against the State;
 - (ii) state that they are governed by the laws of Western Australia and that each insurer irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Western Australia; and
 - (iii) provide that the excess in any of these policies must not exceed 1% of the insurance amount.
- (f) Where a party is to be named or noted on an insurance policy effected by the Recipient in relation to the Project, or where such a policy is to extend to a party, it is intended that the cover provided by that policy will be provided to each of the parties so named, noted or to whom the policy extends, for the risks covered by that policy, including their negligence.
- (g) The Recipient must not do or omit to do, and must ensure that the Recipient's personnel not do or omit to do, any act or thing that would be grounds for an insurer to refuse to pay the whole of or any part of a claim made under any of the insurance policies effected by the Recipient in relation to the Project.
- (h) The Recipient must give the Commission prior notice of at least one (1) month of the cancellation, non-renewal, or a material alteration to the detriment of cover of any of the insurance policies effected by the Recipient in relation to the Project or in accordance with the *Insurance Contracts Act 1984 (Cth)*.

5.6.4 Settlement of claims

Upon settlement of a claim under any of the policies of insurance required to be effected by the Recipient under this Agreement to the extent that the work to be reinstated or services to be repeated have been the subject of a payment of Funding by the State to the Recipient, the State may determine in its absolute discretion whether the Recipient must repay that Funding (and any interest accrued on that Funding) to the State out of the proceeds of insurance or use the proceeds of insurance to reinstate the work or repeat the services for which the Funding was provided.

5.6.5 Insurance review

- (a) The State may, from time to time, review the adequacy and appropriateness of the policies of insurance effected by the Recipient in relation to the Project. As part of this review, the State may ascertain whether, in the State's reasonable opinion, any additional insurance policies are required, or whether any insurance policies effected by the Recipient in relation to the Project and maintained at the time of the review are still required or require amendment.
- (b) To allow the State to perform this function, it may make a request for the documents set out in subitem 5.6.2 of this Schedule 4 which the Recipient must comply with.
- (c) The Recipient must commence negotiations to obtain insurances or amend the policies of insurance effected by the Recipient in relation to the Project within ten (10) Business Days of receiving notice from the State to do so, and must, as soon as practicable thereafter at the Recipient's own cost, obtain insurances or amend the policies of insurance effected by the Recipient in

relation to the Project to reflect the recommendations made by the State following its review.

- (d) The Recipient must promptly notify the Commission if it is unable to, or it becomes apparent that it will be unable to, comply with the recommendations arising in connection with the State's review. The parties must determine what action, if any, is to be taken following receipt of this notice.

SCHEDULE 5 – ACCOUNTS AND REPORTING

- (a) The Recipient is to provide to the Commission progress reports on a quarterly basis (as at 30 September, 31 December, 31 March and 30 June), or as determined from time to time by the State, until receipt by the Recipient of the Notification. These progress reports must be certified by the Chief Financial Officer or other accountable officer of the Recipient and include:
- (i) a financial report containing information with respect to the Project, which must include the information set out in Schedule 2; and
 - (ii) a project report which must include the information set out in Schedule 3, showing how and to what extent the Funding (and any interest accrued on the Funding) was spent and the extent to which the Recipient's Obligations were performed and the Milestones met.

Note – quarterly reports are to be submitted within ten (10) Business Days after the end of each quarter.

For the avoidance of doubt the State may:

- (i) request progress reports at more regular intervals than one progress report every quarter but must not request progress reports at more regular intervals than every week; and
 - (ii) determine in its absolute discretion what information the Recipient is required to include in a progress report and requiring less information in a progress report than that prescribed in item (a) of this Schedule 5 in any one instance does not constitute a waiver of the State's right to receive the information prescribed in item (a) of this Schedule 5 in every other progress report.
- (b) The Recipient is to provide to the Commission an annual report on the Project based on a financial year ending 30 June until receipt by the Recipient of the Notification. These annual reports must be certified by the Chief Financial Officer or other accountable officer of the Recipient and audited by an Auditor, and include:
- (i) a financial report containing information with respect to the Project which must include the information set out in Schedule 2; and
 - (ii) a project report which must include the information set out in Schedule 3, showing how and to what extent the Funding (and any interest accrued on the Funding) was spent and the extent to which the Recipient's Obligations were performed and the Milestones and met.

Note – the annual report on the Project is to be submitted within two (2) months after the end of the financial year to which the annual report relates.

- (c) The Recipient must provide the Commission with a report (**Final Report**) within two (2) months after receipt by the Recipient of any written request from the State to do so or of any earlier termination of this Agreement, which must be certified by the Chief Financial Officer or other accountable officer of the Recipient and audited by an Auditor, and include:

- (i) a financial report) certifying that the Funding (and any interest accrued on the Funding) was used for the Project, confirming the amount of Funding spent and which must include the information set out in Schedule 2; and
- (ii) a project report which must include the information set out in Schedule 3, showing how and to what extent the Funding (and any interest accrued on the Funding) was spent and the extent to which the Recipient's Obligations were performed and the Milestones met.

SCHEDULE 6 – PAYMENT OF THE FUNDING

Funding will be made available subject to, in the manner outlined in, and for the purpose outlined in, this Agreement.

The payment of the Funding or each tranche of the Funding (if applicable) will be processed by the State and by the time required by this Agreement, transferred into the following bank account of the Recipient by electronic funds transfer:

Account name:	CITY OF BUNBURY MUNICIPAL ACCOUNT
BSB:	
Account number:	

SCHEDULE 7 – REQUIREMENT OF FUNDS TO BE INVESTED WITH THE WESTERN AUSTRALIAN TREASURY CORPORATION

The full amount of the Funding provided under this Agreement is required to be invested by the Recipient, with the Western Australian Treasury Corporation (WATC) until expended as per the Approved Budget detailed in Schedule 4.

The Recipient must invest the Funding with the WATC by opening a separate Overnight Cash Deposit Facility (OCDF) and depositing in the OCDF the Funding, within five (5) days of receipt of the Funding from the Commission. Interest is calculated daily and paid monthly.

The Recipient is required to authorise the Commission as a joint signatory to its WATC OCDF account relating to the Funding and all withdrawals/drawdowns will require the approved signatures of the Commission and the Recipient before WATC will release the funds.

The Recipient provides authority for the WATC to send to the Department and the Commission copies of all investment confirmations and monthly statements as evidence of investments and/or transactions.

The Recipient may invest the whole or any part of the Funding from the OCDF into one or more WATC Short Term Inscribed Stock facility (STIS facility). On maturity of investment of the Funding in a STIS facility, the Funding may be reinvested in a further STIS facility. The Funding must be redeposited into the OCDF once it is no longer held in a STIS facility.

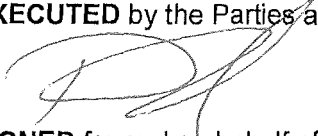
Any interest earned from either the Recipient's OCDF account or a STIS facility must be deposited into the OCDF and utilised for the purpose of the Koombana Bay Revitalisation project in accordance with direction from the Transforming Bunbury's Waterfront Steering Committee.


The contact at Western Australian Treasury Corporation is:

Tamara Marsh
Client Relationship Manager, Client Services
Western Australian Treasury Corporation
PO Box 7282
Perth Cloisters Square, WA 6850
Tel: (08) 9235 9153
Fax: (08) 9235 9199
Email: Tamara.Marsh@watc.wa.gov.au

EXECUTION OF THIS AGREEMENT

EXECUTED by the Parties as an Agreement.


SIGNED for and on behalf of the **STATE**)
OF WESTERN AUSTRALIA by Don)
Punch of the **SOUTH WEST**)
DEVELOPMENT COMMISSION in the)
presence of:)



Signature of Commission witness

Strategic manager Infrastructure.
Full name and position of Commission witness

Signed for and on behalf of City of Bunbury

The Common Seal of City of Bunbury was hereto duly affixed in the presence of:


Signature

Director/Board Member/ Office Holder

GARY BRENNAN

Print full name of Authorised Person

CITY OF BUNBURY MAYOR

Print the position of the Authorised
Person


Signature

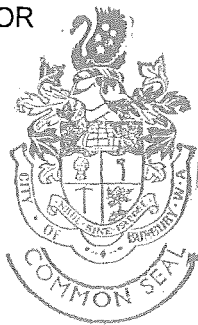
Director/Board Member/ Office Holder

ANDREW BRIEN

Print full name of Authorised Person

CHIEF EXECUTIVE OFFICER

Print the position of the Authorised
Person



STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

2016-17 BUDGET ESTIMATES HEARINGS

[Supplementary Information No. F17]

Department of Regional Development

Hon Helen Morton MLC asked:

- 1. Whether a request at any point of the process was made for capital funding through the Royalties for Regions program for the step-down facility in Kalgoorlie?*

Answer:

No request or application was made by the Mental Health Commission through the Department of Regional Development to consider providing Royalties for Regions funds to support the construction of the Step-Down mental health facility in Kalgoorlie.

K

STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

2016-17 BUDGET ESTIMATES HEARINGS

[Supplementary Information No. F18]

Department of Regional Development

The Chair asked:

1. *What government departments are using The Quarter?*
2. *What impact has that had on other commercial tenancies in the Karratha area as result of government offices departing where they are and moving to The Quarter, and whether there has been any complaints as a result of that transfer?*

Answer:

The fit out of the government offices in The Quarter has not yet been completed.

No government department is currently using The Quarter.

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STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

2016-17 BUDGET ESTIMATES HEARINGS

[Supplementary Information No. F19]

Department of Regional Development

Hon Adele Farina MLC asked:

1. *I refer to page 364, the royalties for regions expenditure, there is a line item "Western Australian Regional Film Fund" of \$6 million next financial year through to \$16 million over a four-year period. Will members of the ScreenWest board and their businesses be excluded from accessing any of that funding?*

Answer:

ScreenWest has in place conflict of interest policies to ensure any ScreenWest Board (Board) member seeking to access funding provided by ScreenWest, follows the same process and guidelines as all other applicants.

The Board member is not involved in ScreenWest's and the Board's decision making procedures in respect of their application and any other applications being assessed at the same time in the same funding round.

The conflict of interest policies will be applied to ScreenWest's administration of the Western Australian Regional Film Fund.

k