



AGENDA

PUBLIC COPY

**SPECIAL MEETING
OF COUNCIL**

To be held on
Tuesday 5 April 2011
5.30pm
City of Albany Council Chambers

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NOTICE OF A SPECIAL COUNCIL MEETING

His Worship The Mayor and Councillors

The Special Council Meeting of the City of Albany will be held on Tuesday 5 April 2011 in the Council Chambers, North Road, Yakamia commencing at 5.30 pm.

The Special Council Meeting will be adjourned at 6pm to allow the Agenda Briefing Session to commence. The Special Council Meeting will then resume 15 minutes after the Agenda Briefing Session has concluded.

The purpose of the meeting is to consider the Albany Entertainment Centre, Cull Road Development and the Albany Visitors Centre.



F James
Chief Executive Officer

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1.0 DECLARATION OF OPENING AND ANNOUNCEMENT OF VISITORS

ITEM 1.0: MOTION

THAT Council:

- **SUSPEND Standing Order clause 3.1 to allow recording of proceedings;**
- **SUSPEND Standing Order clause 4.2(4) to allow CEO Faileen James to be seated on the Mayor's right;**
- **ADJOURN the Special Council Meeting at 6pm to allow the Agenda Briefing to proceed, and**
- **RESUME the Special Council Meeting 15 minutes after the Agenda Briefing has concluded.**

2.0 OPENING PRAYER

"Heavenly Father, we thank you for the beauty and peace of this area. Direct and prosper the deliberations of this Council for the advancement of the City and the welfare of its people. Amen."

3.0 PUBLIC QUESTION AND STATEMENT TIME

Council's Standing Orders Local Laws provide that each Ordinary Meeting of the Council shall make available a total allowance of 30 minutes, which may be extended at the discretion of Council, for residents in attendance in the public gallery to address clear and concise questions to His Worship the Mayor on matters relating to the operation and concerns of the municipality.

Such questions should be submitted to the Chief Executive Officer, **in writing, no later than 10.00am** on the last working day preceding the meeting (the Chief Executive Officer shall make copies of such questions available to Members) but questions may be submitted without notice.

Each person asking questions or making comments at the Open Forum will be **LIMITED** to a time period of **4 MINUTES** to allow all those wishing to comment an opportunity to do so.

4.0 RECORD OF ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE (PREVIOUSLY APPROVED)

Mayor

M J Evans JP

Councillors:

Breaksea Ward	J Bostock
Breaksea Ward	R Hammond
Frederickstown Ward	D Wellington
Frederickstown Ward	Vacant
Kalgan Ward	M Leavesley
Kalgan Ward	C Holden
West Ward	D Wolfe
West Ward	D Dufty
Vancouver Ward	D Bostock
Vancouver Ward	R Paver
Yakamia Ward	J Matla
Yakamia Ward	R Sutton

Staff:

Chief Executive Officer	F James
A/Executive Director Corporate Services	P Wignall
Change Manager Community Services	L Hill
E/Director Planning & Development Services	G Bride
Executive Director Works and Services	K Ketterer

Minutes

J Williamson

Public Gallery and Media:

Apologies/Leave of Absence:

5.0 DECLARATION OF INTEREST

[Elected members of Council and staff are asked to use the forms prepared for the purpose, aiding the proceedings of the meeting by notifying the presiding member prior to the conduct of the meeting]

Name	Item Number	Nature of Interest

6.1: ALBANY ENTERTAINMENT CENTRE/WATERFRONT AGREEMENT

Proponents	: Chief Executive Officer
Attachments	: <ul style="list-style-type: none"> • Draft Albany Entertainment Centre/Waterfront Agreement 2011 • Albany Entertainment Centre/Waterfront Agreement 2007 • Minister for Planning; Culture & the Arts, Letter received 22 March 2011
Responsible Officer(s)	: Chief Executive Officer (F James)

IN BRIEF

- Consider the City's position in respect to proposed draft Albany Entertainment Centre (AEC)/Waterfront Agreement between the City of Albany and State Government, and future of negotiations with the State.

**ITEM 6.1: RESPONSIBLE OFFICER RECOMMENDATION
VOTING REQUIREMENT:SIMPLE MAJORITY**

That Council APPROVE the Draft Albany Entertainment Centre/Waterfront Agreement between the City of Albany and State Government 2011 for presentation to the State Government.

Council DELEGATE to the Chief Executive Officer the power to finalise the Draft Albany Entertainment Centre/Waterfront Agreement 2011, on the condition there are no financial implications to the City beyond those already committed to.

The Council DELEGATE to the Mayor, the CEO and other Councillors the CEO recommends, future discussions with the State Government regarding Council's position for the future of the Albany Entertainment Centre post 30 June 2012, bringing back to Council a proposed "way forward" at some time in the future.

BACKGROUND

The City needs to negotiate with the State Government regarding the future management, control and ownership of AEC, while ultimately ensuring good stewardship of City resources and rate payer funds.

DISCUSSION:

Council has legally committed itself in the agreement, Albany Waterfront Agreement 2007 to:

"...own and operate the Albany Entertainment Centre and be responsible for the ongoing, care, control and management of the facility which includes any annual operating deficit."

The 2007 Agreement is silent as to when and how such transfer of ownership and control will occur.

The City has interrogated its records management system and has not found any correspondence between parties that would alter the terms of the 2007 Agreement.

The Council must now determine how it complies with that Agreement, while ensuring the City of Albany minimises the risk of maintaining and operating a facility of this size and complexity.

CEO: 

GOVERNMENT CONSULTATION

The AEC Operational Advisory Committee is a Committee of the State Government, chaired by the Perth Theatre Trust and administered by the Great Southern Development Commission.

Mayor Evans and Councillor Holden were appointed to this Committee to represent the City of Albany. Ongoing consultation between the State Government and the City has been facilitated through this Committee.

The CEO attended the most recent meeting of the Committee on 24 March 2011.

PUBLIC CONSULTATION / ENGAGEMENT

No public consultation has been conducted in response to this item.

STATUTORY IMPLICATIONS

If the revised Agreement is endorsed by all parties, that revised (new) agreement will supplement the 2007 Agreement.

Section 5.41(f) of the *Local Government Act 1995* (the Act) allows for the Chief Executive Officer (CEO) to speak on behalf of the local government if the Mayor agrees.

Section 5.41(g) of the Act allows for the CEO to perform a function delegated by the Local government. Therefore, Council could delegate to the CEO, the power to communicate Council's position to appropriate senior public servants and members of the State Government.

STRATEGIC IMPLICATIONS

This item directly relates to the following elements from the Albany Insight ~ Beyond 2020 Corporate Plan...

Community Vision: Historic Albany – Home to a vibrant, resourceful and culturally diverse community...

Priority Goals and Objectives: Goal 1: Lifestyle and Environment ... Albany will be Western Australia's regional City of first choice offering a diverse range of healthy and active lifestyle opportunities...

Objective 1.4 Our cultural and artistic communities are valued, celebrated and supported.

City of Albany Mission Statement: At the City of Albany we... Seek innovative ways to do things and empower our people to deliver on expectations and promises.

POLICY IMPLICATIONS

Not applicable.

RISK IDENTIFICATION & MITIGATION

The risk identification and categorisation relies on the City's Risk Management Framework.

Risk	Risk Analysis	Mitigation
AEC operation at risk if Government ongoing funding is not forthcoming.	Medium	The City of Albany and the State formalise an agreement on a range of operational and governance issues regarding the AEC future, both up to and beyond June 2012.
Break-down in negotiations, status quo remains.	Medium	Council commits to negotiate in good faith with all Stake Holders.

FINANCIAL IMPLICATIONS

The longer term operating costs of the AEC are unknown at this stage, but early indications advised by the Perth Theatre Trust show those costs could be approximately \$1M per year in depreciation and greater than \$1M per year in operating deficit.

The Perth Theatre Trust is undertaking financial analysis and projections, using comparator Theatres and information available to them as "experts" in theatre management. Perth Theatre Trust has committed to share that information with the City once available.

LEGAL IMPLICATIONS

An Agreement is governed by the laws of the State of Western Australia. By signing the Agreement, the parties irrevocably submit to the exclusive jurisdiction of the courts of Western Australia.

ALTERNATE OPTIONS

It is recommended that if the Responsible Officer's Recommendation is not supported that an alternate position is prepared and communicated to the State Government as a matter of priority to ensure the stewardship of the rate-payers funds into the future.

SUMMARY CONCLUSION

It is recommended that Council formally communicate to the State Government City's position through the revised Albany Waterfront Agreement 2011.

Consulted References	:	Nil
File Number (Name of Ward)	:	ED.PJT.1 & ED.PJT.4 (Frederickstown Ward)
Previous Reference	:	OCM 15/02/2011 Item 4.7 - Albany Entertainment Centre (AEC) Operational Advisory Committee Meeting Minutes 25 November 2010

ALBANY WATERFRONT
MEMORANDUM OF AGREEMENT

September 2007



STATE OF WESTERN AUSTRALIA

And



ALBANY WATERFRONT MEMORANDUM OF AGREEMENT

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ALBANY WATERFRONT MEMORANDUM OF AGREEMENT

1. PURPOSE

This document represents an agreement between the State of Western Australia and City of Albany in planning, funding, constructing and managing the Albany Waterfront Project.

The key stakeholders involved in the implementation of the project are:

- LandCorp
- City of Albany
- Great Southern Development Commission (GSDC)
- Department for Planning & Infrastructure (DPI)
- Department of Housing and Works

The Albany Waterfront has the approval of State Cabinet and the City of Albany, and has the support of the key stakeholder agencies.

The project also carries strong and well-demonstrated support from the community at large.

This document replaces the previous memoranda of agreement relating to the waterfront executed in December 2002 and September 2005 respectively and serves to confirm and identify the strategic alliance that exists between the key stakeholders and the roles and responsibilities each organisation has in bringing the project to fruition. It introduces the Department of Housing & Works as project manager for the Albany Entertainment Centre.

This Memorandum of Agreement is intended to be a high level document and not to resolve all project details. It is anticipated that as the project progresses, further supplementary agreements will be entered into serving the intent of this agreement.

2. BACKGROUND – KEY MILESTONES

- The Albany Waterfront project dates back to 1983 with early planning driven by the Great Southern Development Commission and the then Town of Albany.
- In April 2001 the State Government approved in principle a marina based waterfront precinct known as the Albany Boat Harbour Project and allocated \$12.7 million in funding.
- In August 2002 a Management Steering Committee was formed consisting of the GSDC, DPI and the City of Albany which developed a design concept that was subsequently approved by the City of Albany in March 2004.

ALBANY WATERFRONT MEMORANDUM OF AGREEMENT

- In September 2004 the Minister for Planning and Infrastructure advised that LandCorp would work with the other stakeholders to review the design concept to give greater focus to the land development.
- In February 2005 the State Government announced a \$14.9m funding contribution towards the proposed Albany Entertainment Centre (AEC) planned for construction in York Street next to the Albany Town Hall Theatre.
- In March 2005 the Member for Albany and the Minister for Planning and Infrastructure proposed that consideration be given to co-locating the AEC with the Waterfront Development.
- In May 2005 the City of Albany appointed 7 Councillors to the newly constituted Albany Waterfront Development Committee to work with LandCorp officers and City staff in recommending preferred design options and concepts to the City Council.
- On 21 June 2005 the City of Albany gave approval to a concept plan which incorporated the relocation of the AEC from the York St Civic precinct to the western portion of the waterfront development site.
- On 19 July 2005 the State Government announced the allocation of additional funding for the Albany Waterfront bringing the total allocation to \$27.8m including a \$1m contribution from the City of Albany.
- On 16 May 2006 the City of Albany approved the structure plan for the development.
- On the 19 September 2006 the City of Albany adopted the precinct plan that will be used to guide and facilitate development at the Albany Waterfront.
- On the 11 October 2006 the Premier of Western Australia announced funding for up to a further \$19.95 million for the Albany Entertainment Centre project with a total project cost of \$37.55 million. *Includes \$1.2m commitment from the City of Albany and \$1.5m funding being sought by the City of Albany from the Australian Government's Regional Partnerships program of the Department of Transport and Regional Services. (Funding unconfirmed at time of Agreement).*
- The Department of Housing and Works was also appointed as project managers and coordinators for the development of the Albany Entertainment Centre. In December 2007, the Department of Housing and Works appoint Cox, Howlett Bailey Woodland to undertake the detailed design of the Albany Entertainment Centre.
- On 25 July 2007, the Premier of Western Australia announced additional \$10.5 million funding, taking the total project cost to \$49 million. The additional allocation was to cater for increased building

ALBANY WATERFRONT MEMORANDUM OF AGREEMENT

costs and the costs associated with the crystalline concept design, a design in keeping with the iconic location.

- On 14 August 2007 the City of Albany endorsed the concept design.

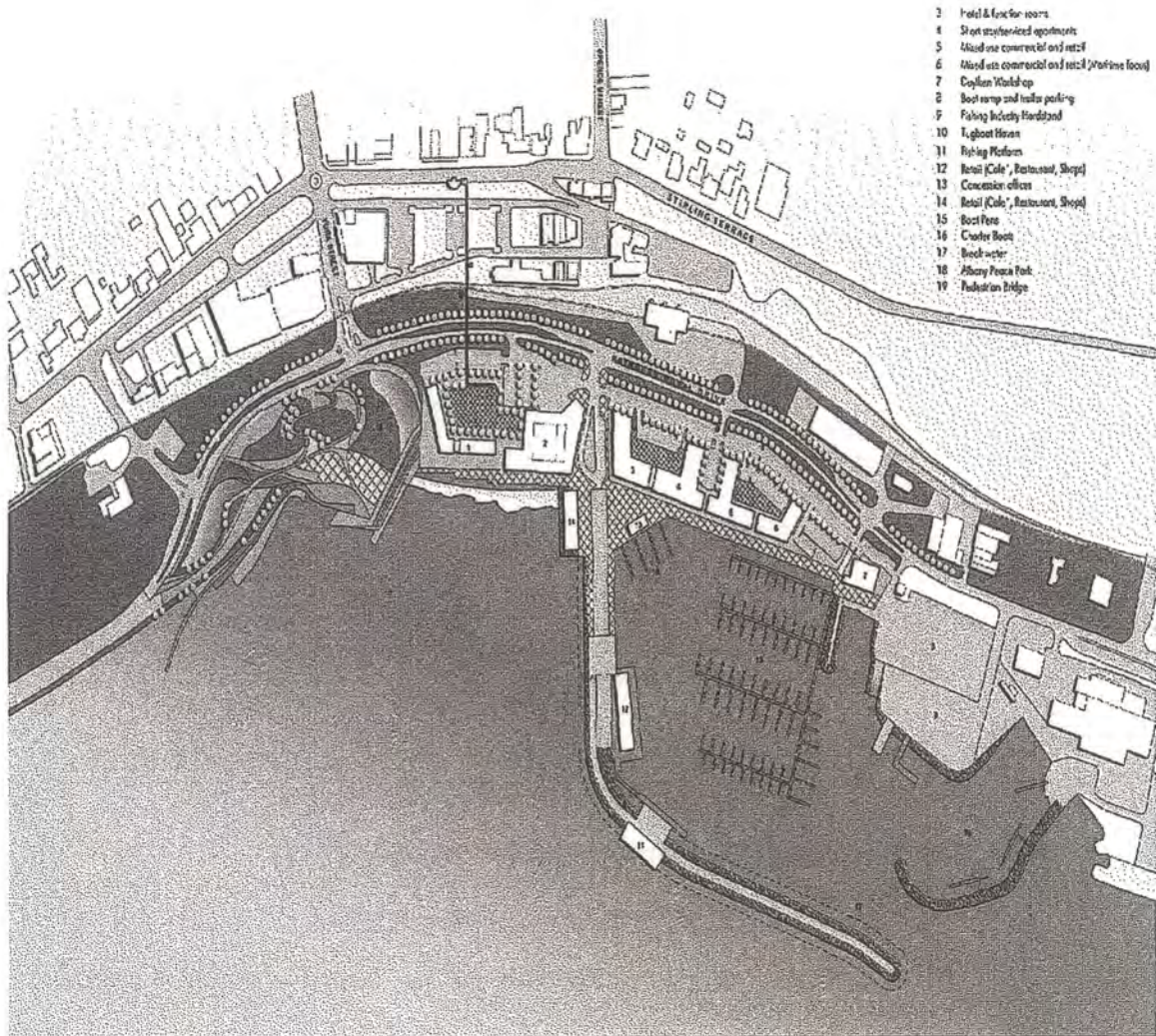


Fig1 Structure Plan – approved by City of Albany in May 2006

3. PROJECT VISION

The vision is to create a sustainable, attractive and exciting world-class waterfront precinct for the Albany community, the Great Southern Region, and visitors to the region.

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The Albany Waterfront will provide a protected boat harbour serving the recreational, fishing and tourism industries together with land-based development adjacent to the town jetty providing a range of tourist accommodation, maritime servicing, entertainment, recreational and community based facilities.

4. PROJECT OBJECTIVES

- Extend the Town to the Waterfront
- Create a New Focus for the Town by creating a tourism and entertainment precinct
- Capitalise on the location and its surrounds:
 - Port – Harbour – Anzac Park – Town – Tourism
- Create New Maritime Facilities:
 - Recreation – Fishing – Charter – Support Industries
- Build a New Entertainment Centre in keeping with the Waterfront Development and iconic nature of Princess Royal Harbour.
- Create a vibrant Activity Mix
 - Tourism – Retail – Commercial – Maritime – Entertainment-
Public Facilities
- Respect Port Access

5. COMMITMENTS TO THE COMMUNITY

The State of Western Australia and the City of Albany are committed to the following underlying principles regarding the development and ongoing operation of the Albany Waterfront:

- Acknowledgement and respect of 24 hour a day, 7 day a week heavy haulage access to the Port of Albany.
- Prohibition of permanent residential activity.
- Unfettered community access to the foreshore.
- Maintenance of the iconic Princess Royal Harbour vista as seen from the York Street Commercial Precinct.

6. PROJECT SCOPE

This agreement consists of the following components (refer figure 2 & 3):

6.1 Albany Waterfront, Boat Harbour & Pedestrian Bridge

- Albany Waterfront - The appropriate remediation and development of approximately 5.5 hectares of waterfront land

ALBANY WATERFRONT MEMORANDUM OF AGREEMENT

into subdivided lots and civic space to accommodate and service the Albany Entertainment Centre, tourism accommodation, retail, commercial, maritime, parking and public facilities.

- Boat Harbour - The development of a marina immediately to the east of the Jetty for approximately 70-80 vessels.
- Pedestrian Bridge - The construction of a pedestrian bridge linking the Albany Waterfront Project to Stirling Terrace and the Albany Railway Station Precinct has been completed.

6.2 Purchase of Waterfront Land

- The provision of \$1 million in revenue to the waterfront project from the City of Albany for the purchase of land to accommodate the Albany Entertainment Centre.

6.3 Albany Entertainment Centre

- Construction of a 620 seat Albany Entertainment Centre, architecturally compatible with, and complementary to, the future development of contiguously located hotel and convention/function facilities.
- The City of Albany will work to facilitate, in conjunction with LandCorp, an appropriately scaled and sufficient standard of convention/function facilities in the proposed hotel development which can link to and synergise with the Albany Entertainment Centre.

6.4 Anzac Peace Park

- The appropriate remediation and development of the 1.4Ha waterfront land approximately west of York St for public parkland purposes.

6.5 Emu Point Land Development

- The development of lots 1512 and 1523 at Emu point with associated funding linkages to the Waterfront project (refer fig 3).

7. ASSOCIATED LAND TRANSACTIONS

- The transfer in freehold to the City of Albany a parcel of land excised from the Albany Waterfront project site sufficient in area to construct the Albany Entertainment Centre and curtilage.

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- The City of Albany has relinquished the Management Order over Lot 1512 Emu Point. (refer fig 3).

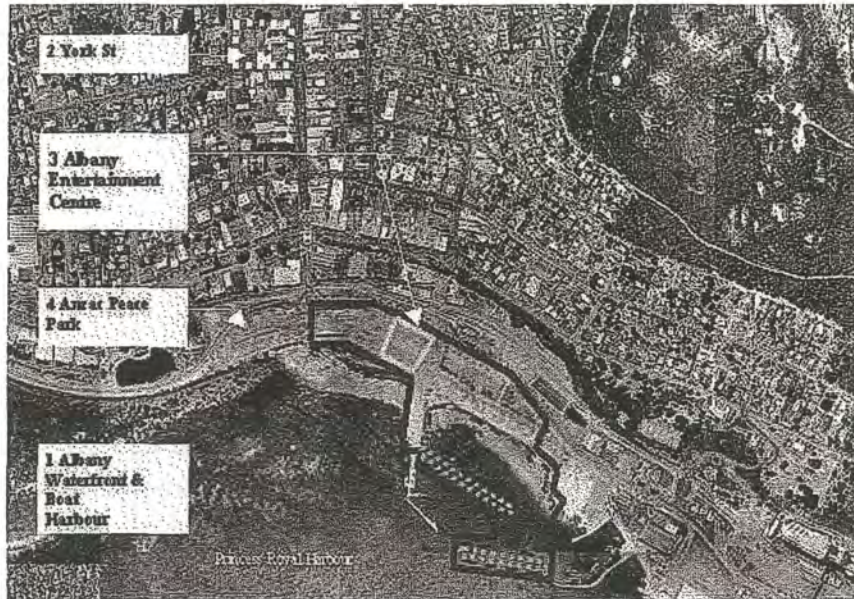


Fig2 Location Plan

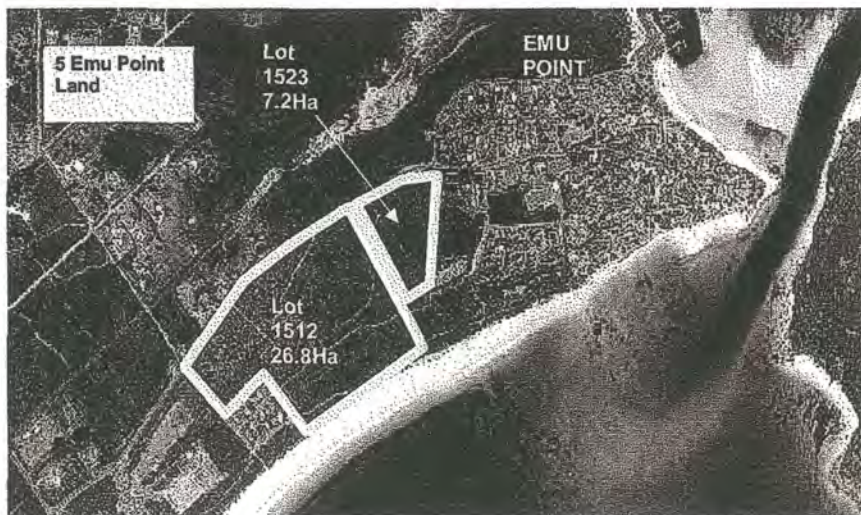


Fig3 Emu Point Land

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8. ROLES & RESPONSIBILITIES

8.1 Overall Co-ordination - Stakeholder Reference Group

A group consisting of representatives of the key stakeholders will meet at least bi-annually to facilitate coordination and timely delivery of the project components at an operational level. This group will consist of:

- Member for Albany (Chairman)
- LandCorp
- City of Albany
- Great Southern Development Commission (GSDC)
- Department of Planning & Infrastructure
- Department of Housing and Works

The group will be advisory in nature and will not hold any specific decision-making powers. The Stakeholder Reference Group will be chaired by the Member for Albany or his representative.

If appropriate the Stakeholder Reference Group may invite other agencies or parties to participate in meetings on matters of common interest.

8.2 Project Roles and Responsibilities

Roles and responsibilities for the delivery of the various project outcomes are as follows:

8.2.1 The Albany Waterfront, Boat Harbour & Pedestrian Bridge

- *LandCorp* will be principally responsible for and project manage the urban design, statutory approvals process, construction of infrastructure, and subdivision and release of land.
- *The City of Albany* will be responsible for the care and management of all road reserves, the pedestrian bridge, civic spaces, waterfront promenades and all fixtures and improvements coming into its control as a result of the subdivision process.
- *The Department of Planning and Infrastructure* will be responsible for the management of the Marina and the care and management of maritime infrastructure and any leasehold land coming into its control as a result of the subdivision process.

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8.2.2 The Albany Entertainment Centre

The Department of Housing and Works will be responsible for constructing the Albany Entertainment Centre including the project management, design, statutory approval processes, construction and commissioning.

The Great Southern Development Commission will oversee and administer the project capital works budget.

The Department of Housing and Works and the Great Southern Development Commission will provide the City of Albany with the opportunity to contribute to the design and selection of fitout for the facility and the endorsement of the selection of the architect and the final design and statutory approval (as necessary).

The Department of Housing and Works, Great Southern Development Commission and City of Albany will establish a Project Control Group (PCG) to provide strategic leadership and direction to the project.

The PCG will establish, as required, reference groups to input into the project, for example

- a design review committee to oversee the design phase of the project,
- a local reference group comprising of appropriately qualified City personnel to liaise with the project architect on matters relating to interior fitout, landscaping and public art

The City of Albany will own and operate the Albany Entertainment Centre and be responsible for the ongoing, care, control and management of the facility which includes any annual operating deficit.

The City of Albany will work to facilitate, in conjunction with LandCorp, an appropriately scaled and sufficient standard of convention/function facilities in the proposed hotel development which can link to and synergise with the Albany Entertainment Centre.

8.2.3 Anzac Peace Park

The City of Albany will be principally responsible for and project manage the design, statutory approvals process,

ALBANY WATERFRONT MEMORANDUM OF AGREEMENT

development, commissioning and ongoing care, control and management of the facility.

The City of Albany will collaborate with *LandCorp* in undertaking coordinated environmental investigations of the Anzac Peace Park site and Albany Waterfront site. *The City of Albany* will be the proponent for the environmental assessment and any resulting conditions pertaining to the development of the Anzac Peace Park.

The City of Albany will use best endeavours to construct the Anzac Peace Park project in the same timeframe as the Albany Waterfront project.

8.2.4 Emu Point

LandCorp will seek approvals to develop of lots 1512 and 1523 at Emu point these lots primarily for residential purposes with development proceeds to be allocated to the waterfront project and any surplus development profits are to be returned to the State Government.

8.2.5 Associated Land Transactions

LandCorp will transfer land excised from the Albany Waterfront project site sufficient in area to construct the Albany Entertainment Centre and curtilage to the City of Albany upon the creation of the new lot. *LandCorp* may consider a development lease to the City of Albany to allow construction of the Albany Entertainment Centre Facility to commence prior to the creation of the new lot.

The City of Albany has advised the Department of Land Administration that it has relinquished the Management Order over Lot 1512 Emu Point.

9. FINANCING

- 9.1 The State of Western Australia will contribute \$38 million to the Albany Waterfront Project.
- 9.2 The State of Western Australia will contribute a maximum of \$46.3 million to the Albany Entertainment Centre Project.
- 9.3 The City of Albany will contribute \$1.0 million to the Albany Waterfront project in the 2007-08 financial year as payment for the land necessary to accommodate the Albany Entertainment Centre Project.

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- 9.4 The City of Albany will contribute \$1.2 million plus any Federal grant monies obtained in the order of \$1.5million to the Albany Entertainment Centre Project.
- 9.5 The City of Albany is responsible for financing and obtaining further funding for the design and development of Anzac Peace Park.
- 9.6 The City of Albany acknowledges that the proceeds of the development of Lots 1512 and 1523 Emu Point are to be applied by the State Government to the Albany Waterfront Project.
- 9.7 Project Cash Flow table: – Albany Waterfront, Albany Entertainment Centre and Anzac Park.

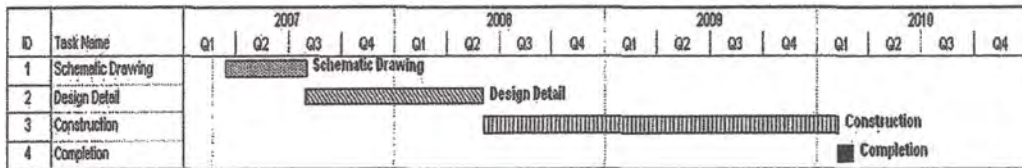
FORECAST CASHFLOW (\$million)	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	TOTAL
ALBANY WATERFRONT (PROJECT)							
State of Western Australia							
Capital works allocation and land sales from the Waterfront and Emu Point	5.4	5.2	7.0	1.7	18.7		38.0
City of Albany							
City of Albany Contribution from development of the York St site			1.0				1.0
TOTAL	5.4	5.2	8.0	1.7	18.7		39.0
ALBANY ENTERTAINMENT CENTRE							
City of Albany Contribution			0.4	0.8			1.2
State Government through GSDC		0.68	0.42	25.46	15.44	4.3	46.3
Australian Government (unconfirmed)			1.5				1.5
TOTAL		0.68	2.32	26.26	15.44	4.3	49
ANZAC PEACE PARK (Notional In Negotiation)							
Australian Government Veterans Affairs			0.45				0.45
Australian Government DoTARS			0.44				0.44
City of Albany			0.68				0.68
Lotterywest			0.72				0.72
Premier and Cabinet (175 th Anniversary Fund)			0.25				0.25
TOTAL			2.54				2.54

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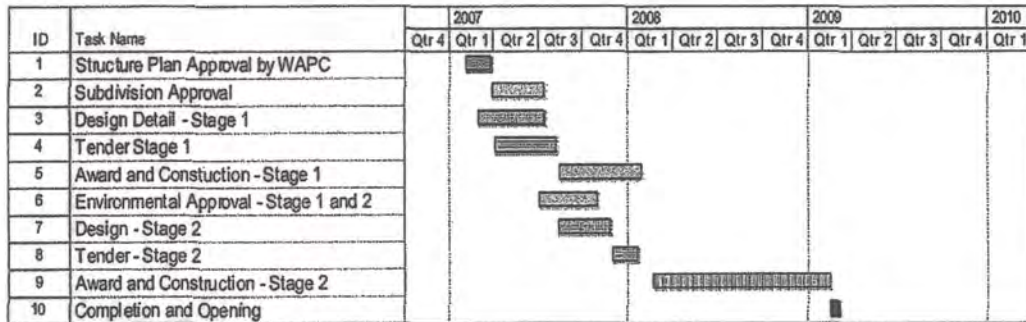
10. PROGRAM

The following timeframes are estimates only and subject to statutory approvals and more detailed planning.

Albany Entertainment Centre Program



Albany Waterfront Program



11. FUTURE AGREEMENTS

It is anticipated that as the project progresses, further supplementary agreements, partnerships, contracts and leases will emerge between project stakeholders and other parties serving the intent of this document.

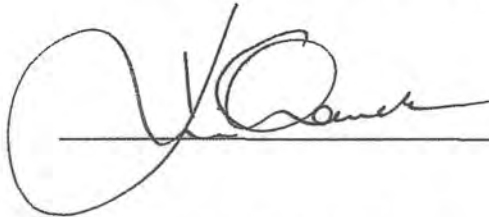
ALBANY WATERFRONT MEMORANDUM OF AGREEMENT

THE AGREEMENT

**THE PARTIES HERETO AGREE TO THE FORMATION OF THIS
PARTNERSHIP TO GUIDE THE PLANNING AND DELIVERY OF THE
ALBANY WATERFRONT PROJECT AS EXPRESSED ABOVE.**

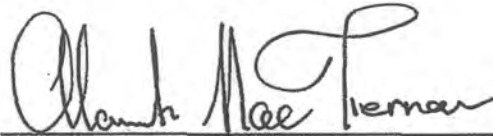
Executed on behalf of the State of Western Australia

KIM CHANCE MLC
MINISTER FOR THE GREAT SOUTHERN



25, 09, 2007

ALANNAH MACTIERNAN MLA
MINISTER FOR PLANNING AND INFRASTRUCTURE



24, 09, 07

Executed on behalf of the City of Albany

HER WORSHIP THE MAYOR ALISON GOODE



8 11 07

2011

DRAFT

**ALBANY WATERFRONT
AGREEMENT**

THIS AGREEMENT is entered into on the day of 2011

BETWEEN

STATE OF WESTERN AUSTRALIA through its Department of Treasury and Finance
(State)

AND

CITY OF ALBANY of [] (CITY)

DRAFT

AND

GREAT SOUTHERN DEVELOPMENT COMMISSION of [] (GSDC)

AND

WESTERN AUSTRALIAN LAND AUTHORITY of [] (LandCorp)

AND

PERTH THEATRE TRUST of [] (PTT)

BACKGROUND

1. In October 2007 an agreement was entered into between the State and the City in respect of the Project.
2. The Parties now wish to enter into this Agreement in order to amend the Original Agreement and to provide further terms in respect of the Project.

NOW THE PARTIES AGREE:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement unless the context otherwise requires:

Agreement means this agreement.

AEC means the Albany Entertainment Centre

AEG Ogden means AEG Ogden (Perth) PTY Ltd

BMW means Building Management and Works, being a branch of the Department.

Business Day means any day that is not a Saturday, Sunday or public holiday in the State of Western Australia.

Cafe means the cafe which is contained within and forms part of the Albany Entertainment Centre.

Department means the Department of Treasury and Finance.

Emu Point Land means the land comprised in Certificate of Title Volume 2652

Folio 910 and Certificate of Title Volume 2652 Folio 911.

Entertainment Centre means the Albany Entertainment Centre being constructed on the Land.

Entertainment Centre Completion Date means the date on which construction and fit out of the Entertainment Centre is completed as certified by BMW.

GST has the same meaning as in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and where the context permits, includes the Commissioner of Taxation's goods and service tax rulings and determinations and any other written law dealing with GST applying for the time being in the State of Western Australia.

Albany Entertainment Centre Operational Advisory Committee means a committee set up to provide advice to the Perth Theatre Trust Board on the operations and management of the Entertainment Centre during the Interim Management Period.

Interim Management Period means the period of time between the Entertainment Centre Completion Date and the Management Transfer Date.

Land means Lot 2 on Deposited Plan 60527.

Management Transfer Date means the date on which the State transfers ownership, control and management of the Entertainment Centre to the City.

Original Agreement means the agreement entered into between the State and the City in October 2007.

Party means a party to this Agreement and **Parties** means two or more of them.

Project means the Albany Waterfront Project, encompassing the Entertainment, Accommodation, Commercial, Town Jetty and Harbour Precincts as defined in the Albany Waterfront Precinct Plan and detailed Design Guidelines adopted by the City of Albany on 19 September 2006.

Town Hall means the Albany Town Hall.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to anyone or more of them;
- (c) a reference to a gender includes other genders;
- (d) a reference to a person includes a public body, a company and an incorporated or unincorporated association or body of persons;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, a person taking by novation) and permitted assigns;
- (f) if the Recipient consists of a partnership or joint venture, then:
 - (i) an obligation imposed on the Recipient under this Agreement binds each person who comprises the Recipient jointly and severally;

- (ii) each person who comprises the Recipient is deemed to agree to do all things necessary to enable the obligations imposed on the Recipient under this Agreement to be undertaken;
 - (iii) the act of one person who comprises the Recipient binds the other persons who comprise the Recipient; and
 - (iv) an Event of Default by one person who comprises the Recipient constitutes an Event of Default by the Recipient;
- (g) an agreement, representation or warranty on the part of, or in favour of, 2 or more persons binds, or is for the benefit of, them jointly and severally;
- (h) a reference to this Agreement or another instrument includes all variations and replacements of either of them despite any change of, or any change in the identity of, the Minister or the Recipient;
- (i) a reference to a clause, schedule, attachment or appendix is a reference to a clause in, or a schedule, attachment or appendix to, this Agreement;
- (j) all the provisions in any schedule, attachment or appendix to this Agreement are incorporated in, and form part of, this Agreement and bind the Minister and the Recipient;
- (k) headings are included for convenience and do not affect the interpretation of this Agreement;
- (l) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (m) no rule of interpretation is to be applied to disadvantage the Minister or the Recipient on the basis that it was responsible for preparing this Agreement;
- (n) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;
- (o) if the word "including" or "includes" is used, the words "without limitation" are taken to immediately follow;
- (p) a reference to writing includes all means of representing or reproducing words in visible form including by electronic means such as facsimile transmission;
- (q) a reference to a liability includes all obligations to pay money and all other losses, costs and expenses of any kind;
- (r) a reference to a month is to a calendar month and a reference to a year is to a calendar year;
- (s) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated inclusive of that day;

- (t) if a date stipulated for payment or for doing an act is not a Business Day, the payment must be made, or the act must be done, on the next Business Day; and
- (u) a reference to a monetary amount means that amount in Australian currency

2. ACKNOWLEDGMENT

The Parties acknowledge and agree:

- (a) the Original Agreement remains on foot and binding on the parties thereto;
- (b) any inconsistency between this Agreement and the Original Agreement shall be interpreted in accordance with the provisions of this Agreement.

3. ENTERTAINMENT CENTRE

3.1 Management

Whereas the Original Agreement states that the ownership, management and control of the AEC the Parties have agreed arrangements as follows until such transfer of ownership, management and control occurs:

- (a) During the Interim Management Period the Entertainment Centre shall be managed by the State of WA.
- (b) The State of WA may appoint entities it determines can reasonably manage the Entertainment Centre as its agents.
- (c) The State or its agent will establish an AEC Operational Advisory Committee.
- (d) The AEC Operational Advisory Committee shall comprise two representatives from Perth Theatre Trust one of whom will Chair the Committee, one representative from the Great Southern Development Commission, a representative nominated by the State's agent the Chief Executive Officer of the City or delegate, and two representatives of Council from the City of Albany. The Chair of the AEC Operational Advisory Committee, in consultation with the members of the Committee, may invite other people with specialised expertise to join or attend the Committee.
- (e) At the end of the Interim Management Period, the AEC Operational Advisory Committee shall be dissolved and the City shall assume full ownership, control and management of the Entertainment Centre
- (f) Until the Management Transfer Date the State shall provide the Committee and the City with copies of budgets and financial statements (on a quarterly basis) for the operations of the AEC and the City may use those documents as part of its usual budgetary and management processes ensuring commercial-in-confidence
- (g) After the Management Transfer Date the City shall manage the AEC diligently and with probity and integrity with a view to making the AEC a superior facility to the people of Albany and the Great Southern region of Western Australia.

3.2 Town Hall

- (a) It is acknowledged by the parties that from 31 December 2010 the Town Hall will be managed by the City, but that the Town Hall will not compete for events which could reasonably and cost efficiently be held at the AEC and the City shall use the AEC for such events in preference to the Town Hall.

3.3 Payments by City

- (a) The City shall pay LandCorp the sum of \$One million dollars as a contribution to the Albany Waterfront Project (as that term is defined in the original agreement between the parties referred to in the Recitals) (Payment).
- (b) The Payment shall be made by electronic transfer of two equal instalments to an account nominated in advance in writing by LandCorp, the first instalment being payable by 4pm 30 June 2011 and the second instalment being payable by 4pm 30 June 2012.
- (c) If the City fails to pay LandCorp an instalment referred to in Paragraph (b), then the City shall pay interest thereon from the due date to the date of payment at the rate prescribed under section 8(1)(a) of the Civil Judgments Enforcement Act 2004 at the relevant time.
- (d) As a contribution towards the AEC opening event and additional capital required in the first two years of the AEC's operations the City will provide to the State \$803,000, on the basis of \$403,000 in 2010/2011 financial year and up to \$400,000 in 2011/2012 financial year as detailed in Appendix 1.

3.4 Transfer of Land

- (a) LandCorp shall transfer title of the Land to the City on the Management Transfer Date and once the conditions set out in subclause 3.3(a) and (b) have been fulfilled or at another date agreed between the parties.
- (b) All settlement costs, stamp duty and registration costs associated with the Transfer shall be shared by the City and the State.

4. ACCOMMODATION PRECINCT

The City shall, while complying with its statutory obligations regarding land and infrastructure development, exercise its best efforts to work collaboratively with LandCorp to facilitate the successful development of an accommodation precinct within the Albany Waterfront Precinct.

5. EMU POINT LAND

5.1 Development

LandCorp shall proceed to develop the Emu Point Land for residential purposes.
[More details required unless set out in another signed agreement, in which case refer to it.]

5.2 Proceeds of Sale

LandCorp shall pay to the State all proceeds of sale of the Emu Point Land over and above development costs

6. ANZAC PEACE PARK

The City acknowledges and agrees that the creation and ongoing management and maintenance of the ANZAC Peace Park is the responsibility of the City and that the State neither has nor in future will have any financial obligation in respect thereof.

7. DISPUTE RESOLUTION

If a difference or dispute (together called a 'dispute') between the parties arises in connection with the subject matter of the Agreement, then either party shall, by hand or by registered post, give the other party a written notice of dispute adequately identifying and providing details of the dispute.

Notwithstanding the existence of the dispute, the parties shall continue to implement the Agreement.

Within 14 days after receiving a notice of dispute, the parties shall confer at least once to resolve the dispute or to agree on methods of doing so. At every such conference each party shall be represented by a person having authority to agree to such resolution or methods of resolution. All aspects of every such conference except the fact of the occurrence shall be privileged.

8. NOTICES

8.1 Notices

A notice or other communication in connection with this Agreement:

- (a) must be in writing;
 - (b) may be given by an authorised officer or solicitor of the State or an Authorised Officer or solicitor of the Recipient (as the case may be); and
 - (c) must be:
 - (i) hand delivered or sent by prepaid post to the address of the recipient specified in clause 8.2; or
 - (ii) sent by facsimile to the facsimile number of the recipient specified in clause 8.2.
- (a) subject to clause 8.1 (c), 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 third Business Day after posting; and

- (iii) in the case of facsimile, on the date on which the sender's facsimile machine records that the facsimile was successfully transmitted;

and

- (b) 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.

8.2 Addresses for Service

The Parties' respective addresses for service are as follows:

- (a) **The State:**
Under Treasurer
Department of Treasury and Finance
Telephone: (08) 9222 5555
Facsimile: (08) 9481 0656
- (b) **The City:**
Chief Executive Officer
Telephone: (08) 9841 9333
Facsimile: (08) 9841 4099
- (c) **Great Southern Development Commission**
Chief Executive Officer
Telephone: (08) 9842 4888
Facsimile: (08) 9842 4828
- (d) **Western Australian Land Authority**
Chief Executive Officer, LandCorp
Telephone: (08) 9482 7499
Facsimile: (08) 9481 0861
- (e) **Perth Theatre Trust**
General Manager
Telephone: (08) 9224 7360
Facsimile: (08) 9224 7361

9. FURTHER ASSURANCES

The Parties must do everything reasonably necessary, including signing further documents, to give full effect to this Agreement.

10. WAIVER

- (a) Any waiver by a Party must be in writing signed by the Party waiving the right.
- (b) A waiver does not affect a Party's rights in respect of any other breach of this Agreement by a Party including by the Party whose breach was waived.
- (c) Any failure by a Party to enforce any right under this Agreement will not be construed as a waiver of its rights under this Agreement.

11. RIGHTS 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.

12. ENTIRE AGREEMENT

Subject to clause 2(a), this Agreement supersedes all prior negotiations, understandings and agreements between the Parties relating to matters covered by this Agreement and constitutes the full and complete agreement between the Parties relating to the matters covered by this Agreement.

13. VARIATIONS

This Agreement may only be varied in writing executed by the Parties.

14. COSTS

The Parties must pay their own legal and other costs in connection with the preparation and signing of this Agreement.

15. GOVERNING LAW

This Agreement is governed by the laws of the State of Western Australia. The Parties irrevocably submit to the exclusive jurisdiction of the courts of Western Australia.

This Agreement has been executed by the Parties as an agreement.

SIGNED by [_____], Under Treasurer,)
for and on behalf of the **STATE OF WESTERN**)
AUSTRALIA in the presence of:)

Witness

The Common Seal of **CITY OF ALBANY**)
was hereunto affixed in the presence of:)
)

Mayor

Chief Executive Officer

The Common Seal of **GREAT SOUTHERN**)
DEVELOPMENT COMMISSION was hereunto)
affixed by resolution of the board in the presence of:)
)

Chairperson

Chief Executive Officer

The Common Seal of **WESTERN AUSTRALIAN**)
LAND AUTHORITY was hereunto affixed in the)
presence of:)
)

Director

Chief Executive Officer

The Common Seal of **PERTH THEATRE TRUST**)
was hereunto affixed by resolution of the Trust in the)
presence of:)

_____ Trustee

_____ Trustee

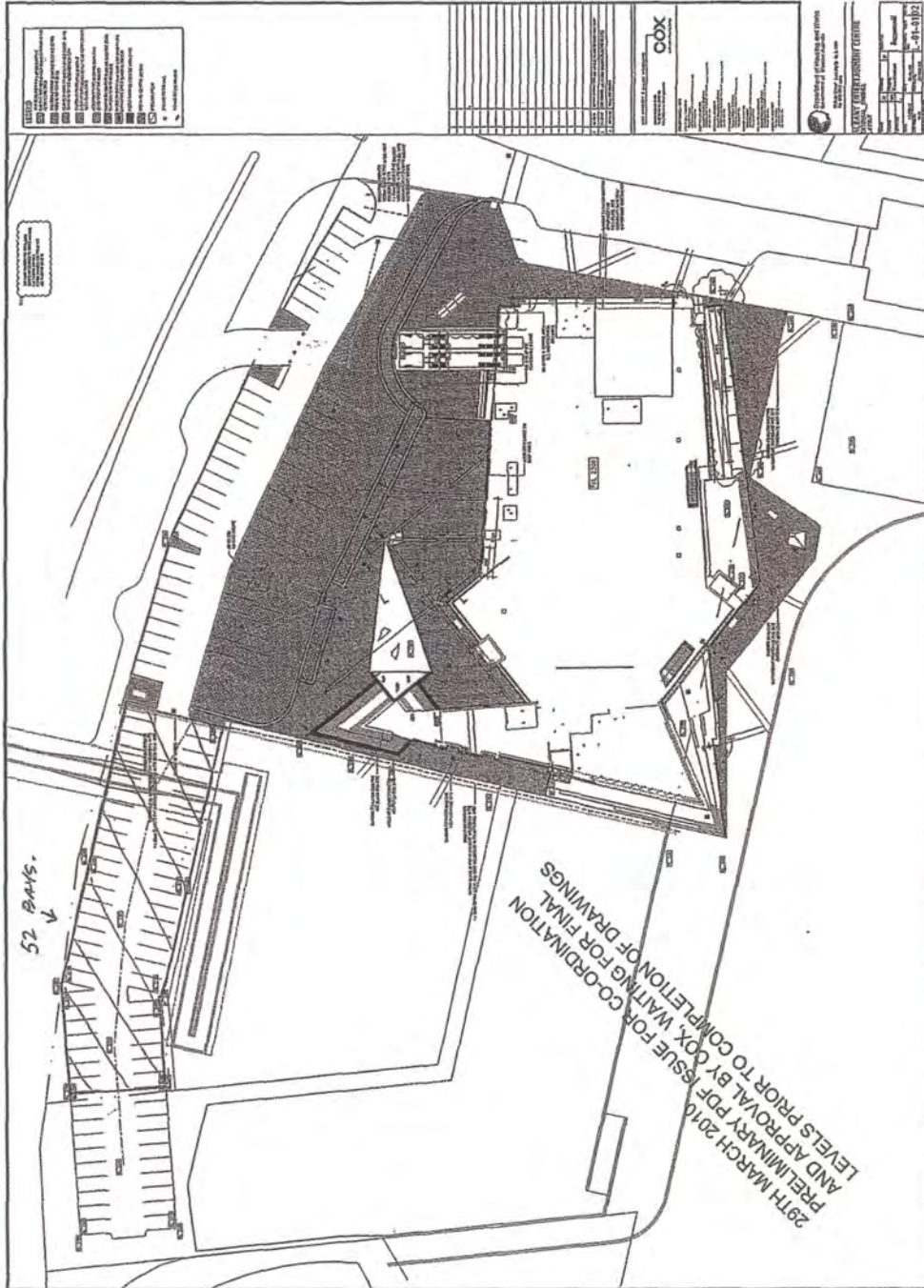
APPENDIX I

The City has agreed to provide funding of \$403,000 in 2010/11 and up to \$400,000 in 2011/12 for additional capital items for the Entertainment Centre.

The State will negotiate with the City to determine the details of capital items to be funded by the City in 2011/12.

CAPITAL ITEMS TO BE FUNDED BY THE CITY IN 2010/11	
Items	
1	Opening Event
2	Furniture and Theatre Equipment to be restored
3	Specialist Theatre Equipment
	To complete main theatre flying system a) 8 x additional single purchase counterweight mechanisms to fit into existing counterweight frame. Inclusive of 3000kg additional weights (subject to site survey)
	To complete main theatre flying system b) 45 x Jands MP473 Hand rope brakes for counterweight system
	1 x Panasonic 6000 ANSI Lumen projector complete with 1 x 10m wide framed screen surface (front or rear) and including bracket for projector (subject to site survey)
	1 x Elevating Work Platform for studio, genie or equivalent
	Lighting and rigging components as requested by the City of Albany to complete the inventory
4	F&B Loose Equipment
	Crockery, Cutlery, Glassware, Bar Equipment, etc
	Pots, Trays, Ladles, Chopping Boards, etc
	Mixer, Blender, Processor, Slicer, etc
	Large round tables (1800mm) and trolley
	Hi Bar Tables
	Tables, chairs, occasional furniture etc
5	Acoustic Shell

APPENDIX 2



EF 1132674



Minister for Planning; Culture & the Arts
Government of Western Australia

Mayor Milton Evans JP
City of Albany
PO Box 484
ALBANY WA 6331

Dear Mayor Evans

I refer to your recent request for a meeting with me regarding the Albany Entertainment Centre (AEC). I understand the next meeting of the AEC Operational Advisory Committee is scheduled for 24 March 2011 and you were wishing to meet with me prior to this date.

As my office have indicated, I am unable to meet prior to this date but feel it is important to express my concern that the City of Albany have not committed to signing the Albany Waterfront Agreement (AWA).

As you are aware, the State Government has made a significant funding investment in building the \$70 million Albany Entertainment Centre and more recently, in committing further funding of \$3.96million in operating costs over the financial years 2010/11 and 2011/12, subject to the AWA being agreed to.

Under these funding arrangements the Perth Theatre Trust (PTT) has taken ownership of the AEC for two years with the centre returning to the City on 30 June 2012.

At the time of this announcement in September 2010, I understood that the City of Albany welcomed this support from the State Government and expressed that this interim management arrangement gave the City time to create funding reserves to ensure the future sustainability of the AEC.

In speaking with Alan Ferris, General Manager, Perth Theatre Trust, I understand that negotiations over the AWA have been conducted amicably and in good faith. Given this it is undesirable that the AWA remains unsigned and I urge the City to consider signing this agreement at the meeting of 24 March 2011.

The State Government is not in a position to commit further financial support beyond the current arrangement and it remains the State's position that the AEC will be transferred back to the City on 30 June 2012.

I look forward to the signing of the AWA as soon as possible and of hearing about the City's future management plans for the AEC from July 2012 and beyond.

Yours sincerely

JOHN DAY
MINISTER FOR CULTURE AND THE ARTS

13th Floor, 2 Havelock Street, West Perth, Western Australia 6005
Telephone: +61 8 9213 6600 Facsimile: +61 8 9213 6601 Email: Minister.Day@dpc.wa.gov.au

6.2: CULL ROAD DEVELOPMENT

Proponent : City of Albany
Responsible Officer(s) : Chief Executive Officer (F James)

THIS ITEM WILL BE DEALT WITH BEHIND CLOSED DOORS

Council delegation is sought for the CEO to undertake further steps for:

- addressing stakeholder concerns regarding the development; and
- marketing and selling lots in the Cull Road Subdivision.

It is recommended that the Cull Road Development Report is tabled and discussed behind closed doors in accordance with section 5.23(2) of the *Local Government Act 1995*, as the matters to be discussed:

- a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting; and
- legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting.

Consulted Reference	:	CEO-In-Confidence, Confidential Briefing Note to Council – Cull Road Development – RPT 2531
File Number (Name of Ward)	:	PRO357 (Vancouver Ward)
Previous Reference	:	OCM 15/02/2011 Item 2.4 – Cull Road Subdivision – Sale & Marketing

CEO:



6.3: COUNCIL INFORMATION PAPER – ALBANY VISITORS CENTRE

- Proponent** : City of Albany
- Attachments** :
- Email dated 28 January 2011
 - Email dated 10 February 2011
 - Email dated 21 February 2011
 - Email dated 22 February 2011
 - Email dated 14 March 2011
 - Item 2.5 OCM 15 March 2011
 - Media Statement dated 24 March 2011
 - Email correspondence between the CEO and Mr Hammond dated 25 March 2011 and 26 March 2011
 - CEO File Note 28 March 2011
- Responsible Officer(s)** : Acting Executive Director, Corporate Services (P Wignall)

THIS ITEM WILL BE DEALT WITH BEHIND CLOSED DOORS

Council delegation is sought for the CEO to formally communicate with Mr Ray Hammond (in his capacity of Director of Albany Inbound Pty Ltd and Tayson Pty Ltd) regarding the transfer of Albany Inbound Pty Ltd services to the City.

It is recommended that this matter is discussed behind closed doors in accordance with section 5.23(2) of the *Local Government Act 1995*, as the matters to be discussed:

- a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting; and
- legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting.

Consulted References	:	Nil
File Number (Name of Ward)	:	(All Wards)
Previous Reference	:	OCM 15 March 2011 – Item 2.5

CEO: 	RESPONSIBLE OFFICER: 
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7.0 CLOSURE OF MEETING

ITEM 7.0: MOTION

VOTING REQUIREMENT: SIMPLE MAJORITY

THAT Council Resume Standing Order 3.1, to stop recording of proceedings.

The Presiding member declared the meeting closed at _____.