

"FA"

From: KLAASSEN Ben [Ben.Klaassen@srq.qld.gov.au]
Sent: 08/08/2008 12:48 PM
To: Ken Freer
Subject: Funding Agreement

Importance: High
Sensitivity: Confidential

Attachments: Funding Agreement - QRU Ballymore.doc



Funding Agreement
- QRU Ballym...

Dear Ken

Please find attached the proposed funding agreement for the \$4.2 million Ballymore redevelopment projects including the 25 metre indoor heated pool and an additional rugby union field.

The agreement has been consolidated into one document rather than the multiple documents I showed you the other day. Schedules A-D are the project specific elements with the information in the body of the agreement the Department's standard funding terms.

I will have 2 copies couriered over to your offices for execution. You need to sign and return both copies for our signature - one will then be returned for your records. First payment will be made once the agreement is signed by both parties.

If you have any queries please do not hesitate to contact me on 300 62606 or 0410435971.

Kind regards
Ben

Ben Klaassen
Director
Program and Industry Development
Department of Sport and Recreation
Ph: 300 62606
Fax: 323 71151
Email: Ben.Klaassen@srq.qld.gov.au

<Funding Agreement - QRU Ballymore.doc>>

IMPORTANT: This email (including any attachments) may contain confidential, private or legally privileged information and may be protected by copyright. You may only use it if you are the person(s) it was intended to be sent to and use it in an authorised way. No one else is allowed to use, review, alter, transmit, disclose, distribute, print or copy this e-mail without the appropriate authority. If this e-mail was not intended for you and was sent to you by mistake, please telephone or email me immediately, destroy any hard copies of this e-mail and delete it and any copies of it from your computer system. Any legal privilege and confidentiality attached to this e-mail is not waived or destroyed by that mistake. It is your responsibility to ensure that this e-mail does not contain and is not affected by computer viruses, defects or interference by third parties or replication problems (including incompatibility with your computer system).

CRIME & MISCONDUCT COMMISSION

No: 8/2009 Date: 22-11-09

IN THE MATTER OF: Complaint of

Doelst

Public Hearing

EXHIBIT No: H16

Alana Viera CLERK



Queensland Government

Department of Local Government,
Sport and Recreation

FUNDING AGREEMENT

Between

THE STATE OF QUEENSLAND
acting through the Department of Local Government,
Sport and Recreation

and

QUEENSLAND RUGBY UNION LTD

for the

Ballymore Redevelopment

August 2008

CONTENTS

1	INTERPRETATION.....	3
2	TERMS OF THIS FUNDING AGREEMENT.....	6
3	TERM OF FUNDING AGREEMENT	6
4	OBLIGATIONS OF THE ORGANISATION	6
5	OBLIGATIONS OF THE STATE	8
6	ACCOUNTABILITY	8
7	INTELLECTUAL PROPERTY	8
8	CONFIDENTIALITY AND PUBLICATION.....	8
9	INDEMNITY	9
10	INSURANCE	9
11	TERMINATION	9
12	EFFECT OF TERMINATION OF FUNDING AGREEMENT.....	10
13	RESOLUTION OF DISPUTES.....	10
14	GST.....	11
15	ACKNOWLEDGEMENT OF FUNDING.....	11
16	USE OF FUNDS FOR ANOTHER PURPOSE.....	12
17	FUTURE FUNDING	12
18	GENERAL.....	12
19	COSTS.....	14
20	SURVIVAL CLAUSES.....	14
	SCHEDULE A – APPROVED PROJECT PARTICULARS.....	16
	SCHEDULE B – ELIGIBLE AND INELIGIBLE ITEMS.....	17
	SCHEDULE C – PROJECT COMPLIANCE CONDITIONS	19
	SCHEDULE D REPORT PROFORMA.....	22

FUNDING AGREEMENT

THIS FUNDING AGREEMENT is made the

day of August 2008

BETWEEN: The State of Queensland acting through the

Department of Local Government, Sport and Recreation ("the State") of
Floor 14 41 George Street Brisbane Qld 4000
ABN 61 331 950 314

AND:

Queensland Rugby Union Ltd ("the Organisation") of
231 Butterfield Street Herston Qld 4006
ABN 95055120217

BACKGROUND:

- A. The State administers various grant funding programs which aim to encourage and support lifelong participation in sport and active recreation by Queenslanders through:
 - (i) improving the capacity of Organisations to deliver their services; and
 - (ii) providing communities with facilities to service their active recreation and sporting needs for competition and training and to position Queensland as a premier sporting destination.
- B. The State has agreed to provide the Approved Funding to the Organisation to assist with part of the design, construction and associated costs of establishing the Approved Project.
- C. The State has approved a grant for the Approved Project on the terms set out in this Funding Agreement.
- D. The State is required to ensure the accountability of public funding and accordingly, the Organisation is required to expend and acquit the Approved Funding in accordance with this Funding Agreement.

FUNDING AGREEMENT:

1 INTERPRETATION

1.1 Definitions

In this Funding Agreement, the following terms have the following meanings, unless the context otherwise requires:

"Approved Funding" means the maximum amount of funding (excluding GST) as specified in Schedule A payable to the Organisation by the State under this Funding Agreement;

"Approved Funding Percentage" means the assessed percentage of funding payable to the Organisation by the State under this Funding Agreement;

"Approved Project" means the construction of the Approved Project as specified in Schedule A;

"Authorised Auditor" means

- a) A person who is a registered company auditor for the purposes of the Corporations Law and who is not a member or employee of the Organisation ; or
- b) A person who is a member of the Australian Society of Certified Practising Accountants or the Institute of Chartered Accountants, or the National Institute of Accountants, or other person approved by the Office of Fair Trading, and who is not a member or employee of the Organisation.

"Business Day" means a weekday on which banks are open for business in Queensland;

"Commencement Date" means the date specified in Item 2 of Schedule A which is the date on which this Agreement takes effect;

"Completion Date" means the date specified in Item 2 of Schedule A;

"Confidential Information" includes all trade secrets and know-how, financial information and other commercially valuable information of whatever description and in whatever form this information is communicated (whether by electronic means, in an electronic storage device, in writing or orally) and includes the interpretation, analysis and application of general information in the public domain;

"Eligible Expenditure" means the eligible expenditure on items directly related to the delivery of the Approved Project(s) as outlined in Schedule B and approved by the State or as identified in this Funding Agreement.

"Financial Contribution" means the amount of funding to be contributed by the Organisation towards the completion of the Approved Project(s) and includes eligible and ineligible expenditure;

"Force Majeure" means any event or circumstances that is not within the control of the Party and which could not have been overcome, prevented or remedied by the exercise of reasonable care on the Party's part and includes, but is not limited to:

- a) war, whether declared or undeclared, revolution or act of public enemies;
- b) riot or civil commotion;
- c) strike, stoppage, ban, limitation on work or restraint of labour;
- d) act of God;
- e) fire, explosion, flood, storm, tempest, landslide or washaway;
- f) act of restraint of any governmental or semi-governmental or other public or statutory authority;
- g) any act of terrorism; and
- h) an order of any Court;

"Funding Agreement" means this document and all schedules and attachments to it;

"Funding/Funds" means monies provided to the Organisation by the State under this Funding Agreement as specified in Schedule A;

"Funding Period" means the time frame specified, commencing on the Commencement Date and expiring on the Completion Date as specified in Schedule A or unless otherwise advised to the Organisation by the State;

"Goods and Services Tax" or "GST" means an amount of GST payable under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and *A New Tax System (Goods and Services Tax Imposition – General) Act 1999* (Cth) or otherwise imposed by the Commonwealth Government;

"GST Amount" means the amount calculated by multiplying the GST exclusive amount of the financial assistance as a taxable supply, payable under the terms of this Funding Agreement, by the rate of GST applicable from time to time;

"Ineligible Expenditure" means the expenditure on items not directly related to the delivery of the Approved Projects as outlined in Schedule B and not approved by the State or as identified in this Funding Agreement.

"Intellectual Property" includes all copyright (including any future copyright), moral rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trade marks (including service marks), registered designs, confidential information (including trade secrets and know-how), circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, whether existing in Australia or otherwise, as a result of the use of the Approved Funding in the Approved Project;

"Moral Rights" has the meaning given to that term in the *Copyright Act 1968* (Cth);

"Party" means a party to this Funding Agreement;

"Practical Completion" means that stage in the carrying out and completion of the Approved Project when the works are complete except for minor defects and all relevant statutory requirements and inspections have been satisfactorily completed;

"Project Manager" means an individual professional or firm engaged by the organisation with the assigned responsibility for delivery of the project from inception to completion and registered as specified by the *Queensland Building Services Authority Act 1991*;

"Project Site" means the parcel(s) of land on which the Approved Project will be constructed or developed; and

"Tax Invoice or Invoice" means a document directed to the Organisation requesting payment for goods or services and detailing the supplier's name, the goods and services provided, the date these were provided, the amount due, the goods and services tax amount due, the terms of trade and the date of the invoice.

1.2 Interpretation

In this Funding Agreement:

- a) a reference to this Funding Agreement or other instrument includes any variation or replacement of the Funding Agreement or instrument;
- b) the singular includes the plural and vice versa;
- c) the word "person" includes a firm, body corporate, an unincorporated association or an authority;
- d) a reference to an accounting term is to be interpreted in accordance with approved accounting standards under the *Corporations Act 2001* (Cth) and, where not inconsistent with those accounting standards, generally accepted principles and practices in Australia consistently applied by an incorporated body or as between incorporated bodies and over time;
- e) a reference to the State or any other government department or entity ("Existing Entity") includes a reference to any department or other government entity ("New Entity") established or constituted in lieu of the Existing Entity, and with (as nearly as possible) the powers and responsibilities of the Existing Entity;
- f) if an act prescribed under this Funding Agreement, to be done by a party on or by a given day, is done after 5.00pm on that day, the act is deemed to be done on the following day;
- g) reference to "\$" or "dollars" means Australian dollars; and
- h) headings do not affect the interpretation of this Funding Agreement.

2 TERMS OF THIS FUNDING AGREEMENT

- 2.1 The terms noted in the following documents are incorporated in and apply to this Funding Agreement as if the terms of those documents were set out in this Funding Agreement in full:
- a) The Major Facilities Program Guidelines; and
 - b) The Organisation's application as approved by the State.
- 2.2 If there is any inconsistency or ambiguity between provisions in the different documents listed in clause 2.1 and this Agreement the following descending order of precedence will be applied to resolve the inconsistency:
- a) This Agreement;
 - b) The Major Facilities Program Guidelines; and
 - c) The Organisation's application as approved by the State.
- 2.3 The Organisation acknowledges having received and read the documents listed in clause 2.1 prior to executing this Funding Agreement.

3 TERM OF FUNDING AGREEMENT

- 3.1 This Agreement commences on the dates as specified in Schedule A unless terminated earlier in accordance with its terms or otherwise extended for a further period by the parties' mutual consent.

4 OBLIGATIONS OF THE ORGANISATION

- 4.1 The Organisation acknowledges that retainment of the Approved Funds is conditional upon the Organisation:
- a) expending the Approved Funds on the Approved Project only;
 - b) providing the State with all reports and other information as required, which establishes the status and progress of the Approved Project as specified in Schedule A and Schedule C;
 - c) not being in breach of any other funding arrangement with the State;
 - d) complying with its obligations under the Funding Agreement;
 - e) complying with all Laws and Requirements;
 - f) immediately notifying the State in writing if it receives a notice from any Authority advising that any law or requirement is not being adhered to or requiring any action to be taken; and
 - g) immediately advising the State in writing if it has any concerns about the mismanagement of Funding provided, or possible breaches of the Funding Agreement.
- 4.2 The Organisation must provide a monthly project report form detailing the nature and amount of each payment made for Eligible Items certified by the Organisation's Chief Executive Officer or approved delegation.

A claim for payment for any component of the Approved Project that is undertaken by an internal division of the Organisation or by members or employees of that Organisation must be validated in terms of a competitive tender. Payment will not be made to an Organisation for components of the Approved Project that is undertaken by its employees as part of their normal employment.

- 4.3 The Organisation agrees that it must expend its Financial Contribution, if any, towards the delivery of the Approved Project and to be accountable for project costs incurred in excess of the Approved Funding.

- 4.4 The Organisation must not amend, waive or fail to give effect to any material part of the Approved Project without the prior written approval of the State.
- 4.5 The Organisation must receive approval in writing from the State to vary the Approved Project.
- 4.6 The Approved Funding provided by the State must not be disbursed to (or otherwise applied for the direct benefit of) any other project(s), a member of the Organisation or any other third party, except to the extent that it is a consequence of and is consistent with the implementation of the Approved Project, without the prior written approval of the State.
- 4.7 The Organisation must provide the State with sufficient information to enable Payment by Electronic Funds Transfer to allow the funding to be provided to the Organisation.
- 4.8 The Organisation must ensure that, in collecting and dealing with Personal Information for the purposes of the Funding Agreement, it complies in all respects with the Information Privacy Principles set out in Queensland Government Information Standard 42, which is accessible at http://www.governmentict.qld.gov.au/02_InfoStand/standards/is42.pdf.
- 4.9 The Organisation must comply with a written notice from the State requiring the Organisation to supply information to the State in any way concerning the Organisation or the carrying out of the Organisation's obligations under the Funding Agreement. The notice need not be in any specified form, but must state:
- a) the information required; and
 - b) a reasonable time within which the Organisation must supply the information.
- 4.10 The Organisation must allow the State and its servants and agents access to the Organisation's premises on three (3) working days notice, and render all reasonable and necessary assistance to enable those persons to access the Organisation's books of account and other relevant documentation to:
- a) ensure compliance with all reporting and accountability requirements under this Funding Agreement; or
 - b) conduct audits of the Approved Project; or
 - c) undertake reviews of management of the Approved Project and the structure of the Organisation to ensure the maintenance of sound management practices and accountability mechanisms in relation to the Approved Project.
- 4.11 The Organisation must allow the State and its agents access to the Project Site and access to the contracted or nominated Project Manager on three (3) working days notice, and render all reasonable and necessary assistance to enable those persons to:
- a) undertake project monitoring;
 - b) oversee the progress of construction and development on a monthly basis; and
 - c) assess and forecast, with input from the Project Manager, the value of the work in ground.
- 4.12 The State may conduct random audits on the Approved Project to ensure compliance with the Funding Agreement and other accountability requirements.
- 4.13 The Organisation must appoint to the satisfaction of the State an appropriately qualified and experienced Project Manager to manage the Approved Project from inception to completion as specified in Schedule C.

- 4.14 The Organisation must procure goods and services for the Approved Project in line with the State Procurement Policy and provide information substantiating the purchase of goods and services for the Approved Project, such as:
- a) a copy of the advertisement for procurement of goods and services for the Approved Project;
 - b) a copy of the completed tender evaluation including explanations; and
 - c) a copy of the Executive approval of the tender.
- 4.15 The Organisation must provide to the State, within the required timeframes, Project Compliance requirements as specified in Schedule C.
- 4.16 The Organisation must ensure community access is assured for the Approved Project and provide details of how this will be achieved as specified in Schedule C.

5 OBLIGATIONS OF THE STATE

- 5.1 Subject to the terms and conditions of this Funding Agreement, the State will provide the Organisation with the Approved Funds over the Funding Period, to be expended by the Organisation, on the Approved Project as outlined in Schedule A.
- 5.2 The State will provide the Approved Funding in accordance with the Payment Schedule as set out in Schedule A. Refer to Schedule B for eligible and ineligible items.
- 5.3 The State's obligation to continue to pay the Approved Funding to the Organisation is subject to the Organisation receiving written approval from the State to proceed to construction for the Approved Project.
- 5.4 The State's obligation to pay the Approved Funding to the Organisation in accordance with this Clause 5 is subject to the State, in its sole discretion, being satisfied that the Organisation has complied with all aspects of this Funding Agreement.

6 ACCOUNTABILITY

All financial transactions incurred in the conduct of the Approved Project must be represented in the Organisation's books of account in a manner that identifies the expenditure with the Approved Project.

7 INTELLECTUAL PROPERTY

- 7.1 The State and the Organisation acknowledge that any Intellectual Property created during the Approved Project, upon its creation, shall vest in the Organisation.
- 7.2 The Organisation will grant to the State, at the State's request, perpetual, royalty-free, non-transferable, non-exclusive licences to use, modify and develop the Intellectual Property for the sole purpose of discharging the State's portfolio responsibilities.

8 CONFIDENTIALITY AND PUBLICATION

- 8.1 Each Party ("Receiving Party") agrees that it will keep secret and confidential and not disclose any Confidential Information of the other Party ("Disclosing Party") (including in relation to the Intellectual Property) without the prior written consent of the Disclosing Party. In giving written approval, the Disclosing Party may impose conditions, as it thinks fit, and the Receiving Party agrees to comply with the conditions.
- 8.2 The obligations imposed upon a Receiving Party by this clause 8 will not apply to any data or Confidential Information which:
- a) prior to the disclosure being made, is in the public domain or in published literature or subsequent to disclosure being made to the Receiving Party, becomes part of the

public domain or is published other than as a result of an unauthorised act or failure to act by the Receiving Party;

- b) is received by the Receiving Party from a third party without any obligation to hold it in confidence and which has been obtained by a third party directly or indirectly from any other party or is independently developed by an employee or officer of the Receiving Party owing the obligation of confidentiality whilst having no knowledge of the Disclosing Party's Confidential Information; or
- c) is required to be disclosed by law or for any Government accountability purposes.

8.3 The obligations of confidentiality imposed on a Party under this clause 8 will survive termination of this Funding Agreement until each part of the Confidential Information lawfully becomes part of the public domain, unless otherwise agreed in writing.

8.4 The State may use general details of the Organisation and the Approved Project to publicise the State's Funding of the Organisation, including creating case studies and promotional materials.

8.5 The State reserves the right to disclose to sitting Members of Parliament the general details, including Confidential Information of the Organisation and the Approved Project and the fact that the State has made a financial contribution to the Organisation for the Approved Project.

9 INDEMNITY

The Organisation agrees to release, indemnify and hold harmless the State, its employees, contractors and agents ("those indemnified") from and against any loss, expenses, damages, costs and any indirect or consequential loss or damage and whether incurred by or awarded against those indemnified that those indemnified may sustain or incur as a result, whether directly or indirectly, of:

- a) any breach of this Funding Agreement by the Organisation, its directors, officers, employees, contractors or agents including, but not limited to, a breach in respect of which those indemnified exercise an express right to terminate this Funding Agreement; or
- b) any loss of or damage to any property or injury to or death of any person caused by any negligent act or omissions or wilful misconduct of the Organisation, its directors, officers, employees, contractors or agents.

10 INSURANCE

10.1 The Organisation must effect and maintain adequate insurance or similar coverage to cover any liability arising as a result of its conduct of the Approved Project and, if requested, provide the State with a copy of the relevant policies or certificates of currency, whichever is applicable. In particular, the Organisation must maintain the following insurances:

- a) a workers' compensation insurance as required by law;
- b) public liability insurance; and
- c) insurance over assets purchased with the Approved Funding.

10.2 Where the completed Approved Project is destroyed or loss or damage occurs to any part of the completed Approved Project, the Organisation must apply all insurance proceeds received in respect of such damage or destruction toward the cost of reinstatement or repair of and making good the damage or destruction of the Approved Project.

11 TERMINATION

11.1 If a Party defaults in the performance of its obligations under this Funding Agreement, the other Party may give a notice of default requiring the default to be rectified within a

reasonable period nominated in the notice, or if no such period is nominated then, 14 days.

- 11.2 Without limiting clause 11.1, the Organisation will be deemed to have defaulted in the performance of its obligations under this Funding Agreement if the Organisation:
- a) becomes insolvent, or is unable to pay its debts when due, or admits in writing its inability to pay its debts; or
 - b) enters into any arrangements or composition with its creditors generally, or has a receiver appointed; or
 - c) goes into liquidation, or passes a resolution to go into liquidation, other than for the purpose of reconstruction; or
 - d) suffers any distress or execution levied against any assets of the Organisation which would, in the reasonable opinion of the State, have a material adverse effect on the Organisation undertaking the Approved Project; or
 - e) fails to submit a report, establish a record, or allow access required pursuant to this Funding Agreement; or
 - f) fails to complete the Approved Project on or before the end of the term of this Funding Agreement; or
 - g) ceases to be incorporated; or
 - h) breaches a term of this Funding Agreement.

- 11.3 If the default is not remedied within the period specified in clause 11.1, the non-defaulting party may terminate this Funding Agreement immediately by written notice to the other Party.

- 11.4 The State may terminate this Funding Agreement, without cause, upon 30 days written notice to the Organisation.

- 11.5 Termination of this Funding Agreement under this clause 11 does not affect any accrued rights or remedies of a Party.

12 EFFECT OF TERMINATION OF FUNDING AGREEMENT

In the event of termination or expiration of this Funding Agreement:

- a) the State may require the return of all or part of the Approved Funding not yet acquitted by the Organisation;
- b) subject to clause 8.2, each Party must stop using the Confidential Information of the other Party and, at the other Party's option:
 - (i) return to the other Party;
 - (ii) destroy and certify in writing to the other Party the destruction of; or
 - (iii) destroy and permit the other Party to witness the destruction of all of the other Party's Confidential Information in that Party's possession or control; and
- c) the State shall be entitled to retain one copy of the Disclosing Party's Confidential Information for the purposes of fulfilling its portfolio responsibilities, record keeping and accountability purposes.

13 RESOLUTION OF DISPUTES

- 13.1 If the State or the Organisation considers that a dispute has arisen in relation to this Funding Agreement ("Dispute") either Party must immediately send a notice to the other Party ("Notice") setting out a full description of the matters in dispute.
- 13.2 If the Dispute is not resolved within 28 days of the Notice, or any longer period of time agreed in writing between the Parties, the Parties must immediately submit the Dispute to mediation by a mediator or determination by an independent industry expert, depending upon the circumstances of the Dispute, to be resolved by a process agreed by the Parties.

13.3 If the Parties fail to agree upon the appointment of a mediator or independent industry expert within 7 days of the expiry of the period specified in clause 13.2, the mediator or independent industry expert will be appointed, at the request of either Party, by the Australian Commercial Disputes Centre (Qld) ("ACDC").

13.4 The costs and expenses of any mediation or determination will be borne equally by the Parties.

13.5 Except where a Party seeks urgent interlocutory relief, a Party must not commence litigation in a court unless it has first complied with this clause 13.

14 GST

14.1 The Approved Funding paid to the Organisation by the State is a "taxable supply" of services within the meaning of the GST Act. As a result, the Organisation must issue a valid tax invoice for the supply of the service, unless the Organisation is a government related entity. The 'service' is the delivery of the Approved Project.

14.2 Further to this:

- a) If the Organisation has an Australian Business Number (ABN) and is GST registered then it has the responsibility to charge, collect and pay GST to the Australian Tax Office (ATO). The Grant paid to the Organisation will include GST, normally an extra 10% of the Eligible Project Costs.
- b) To receive the Grant, the Organisation has the option of issuing the State with a valid tax invoice or requesting the State to enter into a Recipient Created Tax Invoice (RCTI) agreement. If the Organisation chooses to enter into the RCTI agreement, the State will issue the Organisation an RCTI. The Organisation must not issue a tax invoice in this instance.
- c) If the Organisation has an Australian Business Number (ABN) but is not GST registered, the Organisation must issue an invoice to the State to receive the Grant. The Grant paid to the Organisation will not include GST.
- d) If the Organisation does not have an ABN but it has tax exemption status, the Organisation must provide the State with a Statement by a Supplier to receive the Grant. The Grant will not include GST.
- e) If the Organisation does not have an ABN and does not have exemption status there is an ATO requirement that 48.5% of the Grant will be withheld and remitted to the ATO.

14.3 If it is determined on reasonable grounds that the amount of GST collected from the State by the Organisation under this clause 14 differs, for any reason, from the amount of GST paid or payable by the Organisation, including by reason of:

- a) any amendment to the GST;
- b) the issuance of a ruling or advice by the Commissioner of Taxation; or
- c) a refund to the Organisation in respect of a supply made under this Funding Agreement,

the State is entitled to a refund of the appropriate consideration collected from the State and the Organisation must issue an appropriate GST adjustment notice.

15 ACKNOWLEDGEMENT OF FUNDING

15.1 The Organisation will acknowledge the Approved Funding in the following ways, where reasonable:

- a) on the Organisation's website;
- b) erection of construction and permanent signage and placement of plaques at the Project Site in accordance with guidelines which can be accessed at http://www.sportrec.qld.gov.au/funding/major_facilities_program.cfm

- c) acknowledgement in publicly made statements, or appropriate documentation or publications; and
- d) opening ceremonies, speeches and addresses at all events connected with the Approved Project.

15.2 Where reasonable, all joint publicity is to be approved in advance by both the State and the Organisation.

15.3 The Organisation will ensure that the Queensland Government logo is used in the format provided by the State of Queensland without alteration.

16 USE OF FUNDS FOR ANOTHER PURPOSE

16.1 If any of the Funds are used for a purpose or during a period of time other than for the Approved Project the State may, in its absolute discretion, give the Organisation a notice for repayment to the State of those Funds. The parties agree that the amount specified in a notice given under this clause will, on service of the notice, be a debt due and payable to the State.

16.2 This clause does not limit any other rights which the State may have.

17 FUTURE FUNDING

The Funding Agreement does not commit the State to provide the Organisation with any future or additional funding for any purpose.

18 GENERAL

18.1 Relationship

- a) the Organisation, any member of the Organisation and any persons employed by the Organisation or any member of the Organisation are not and are not deemed to be employees or agents of the State.
- b) nothing contained in this Funding Agreement constitutes a relationship of partnership, joint venture, principal or agent between the Parties.
- c) all work performed by the Organisation, and all employment and other contracts made by the Organisation in the performance of its obligations under this Funding Agreement, will be performed or made by the Organisation as principal and not as the agent of the State.

18.2 Assignment

The Organisation must not assign, novate, transfer, encumber or subcontract any or all of its rights or obligations under this Funding Agreement to any other party, except with the prior written consent of the State.

18.3 Force Majeure

No Party is liable for any failure to perform or delay in performing its obligations under this Funding Agreement if that failure or delay is due to anything beyond that Party's reasonable control. If that failure or delays exceed 60 days either the Organisation or the State may terminate this Funding Agreement with immediate effect by giving notice to the other Party.

18.4 Non Waiver

- a) no right under the Funding Agreement may be waived except by notice in writing signed by each Party.
- b) any failure by the State to enforce any clause of the Funding Agreement or any forbearance, delay or indulgence granted by the State is not a waiver of the State's

rights under the Funding Agreement or permission to the Organisation to repeat or continue that default or breach.

- c) any waiver by the State must be signed by the Director-General, Department of Local Government, Sport and Recreation or an authorised delegate of the Director-General.

18.5 Compliance with Law

The Organisation must in carrying out the Approved Project comply with the provisions of any relevant statutes, regulations, by-laws and requirements of any applicable Commonwealth, State, Territory or local authority.

18.6 Applicable Law

This Funding Agreement is governed by and construed in accordance with the laws of the State of Queensland and the Parties submit to the exclusive jurisdiction of the courts of Queensland.

18.7 Notices

Notices must be in writing and may be delivered, posted by ordinary mail or sent by facsimile to the Party at the address specified in Schedule A or other address subsequently notified by a Party to the other. Notices will be deemed to be given:

- a) 2 Business Days after deposit in the mail with postage prepaid;
- b) immediately upon delivery by hand; or
- c) immediately upon an apparently successful facsimile transmission of the entire notice being noted by the sender's transmitter,

prior to 5 p.m. on any business day in Queensland, and if after 5 p.m. the notice will be deemed to be given at 9.00 a.m. on the next business day.

18.8 Right of First Refusal

The Organisation must not sell or agree to sell the Project Site, if any, to any third party, for ten years unless the Organisation has first offered the Project Site for sale to the State and has obtained written approval from the State for any sale. The State cannot unreasonably withhold its consent.

18.9 Entire Funding Agreement

Subject to clause 2 of this Agreement, the terms of the Funding Agreement between the Parties are those set out in this Funding Agreement and no written or oral agreement, arrangement or understanding made or entered into prior to the date of this Funding Agreement may be read or incorporated into this Funding Agreement.

18.10 Counterparts

This Funding Agreement may be signed in any number of counterparts. All counterparts will be taken to constitute one instrument.

18.11 Severability

If any provision of this Funding Agreement is held to be illegal or unenforceable the provision will be severed from the Funding Agreement and the remaining provisions will govern the relationship of the parties as if the offending provision had never been included.

18.12 Variation

The parties may, in writing, agree to vary this Funding Agreement from time to time.

19 COSTS

Both the State and the Organisation will pay their own costs for preparing and executing the Funding Agreement.

20 SURVIVAL CLAUSES

The rights of the parties accrued under any of the following clauses:

- a) clause 4.2 (Surplus Funds);
- b) clause 7 (Intellectual Property);
- c) clause 8 (Confidentiality and Publication);
- d) clause 9 (Indemnity);
- e) clause 10 (Insurance);
- f) clause 14 (GST);
- g) clause 15 (Acknowledgement of Funding); and
- h) clause 18.8 (Right of First Refusal),

will survive termination of the Funding Agreement.

IN WITNESS WHEREOF the parties have executed this Funding Agreement on the dates below:

SIGNED for and on behalf the QUEENSLAND RUGBY UNION LTD

by _____
(name)

(signature)

the _____
(position)

being duly authorised in this behalf,

this _____ day of _____ 20__

in the presence of

(signature of witness)

(name of witness)

SIGNED for and on behalf of
the STATE OF QUEENSLAND acting through the
Department of Local Government, Sport and Recreation.

by _____
(name)

(signature)

the _____
(position)

being duly authorised in this behalf,

this _____ day of _____ 20__

in the presence of

(signature of witness)

(name of witness)

SCHEDULE A – APPROVED PROJECT PARTICULARS

Item 1 - Program Guidelines		Major Facilities Program
Item 2 Project Details (Clause 1)		
Project	Ballymore Redevelopment incorporating the construction of a 25 metre indoor heated swimming pool and an additional rugby union field.	
Project Site	91 Clyde Road Herston Lot 1RP189805	
Project Commencement Date	31 July 2008	
Project Completion Date	30 June 2011	
Item 3 - Funding (Clause 1)		
Maximum Amount of Funding	\$4,200,000 (exclusive of GST)	
Approved Funding Percentage	100%	
Approved Funding withheld until project compliance conditions are satisfied.	5%	
Submission of Claims for Funding	The Organisation must forward to the State a completed Recipient Created Tax Invoice Agreement.	
Payment Schedule	<p>The State will make payments by way of electronic transfer on the basis of the following agreed milestones/dates:</p> <p>Payment 1 on execution of the Project Funding Agreement; Payment 2 on 1 August 2009; Payment 3 on 1 August 2010; Payment 4 on receipt of Project Compliance material.</p> <p>Payment amounts will be as follows:</p> <p>Payment 1 \$1.4 million (plus GST) Payment 2 \$1.4 million (plus GST) Payment 3 \$1.2 million (plus GST) Payment 4 \$200,000 (plus GST)</p>	
Item 4 - Address for Notices (Clause 1)		
State	Department of Local Government, Sport and Recreation Attn: Program and Facilities Development Branch Box 15187 City East Qld 4002	
Organisation	Chief Executive Officer Queensland Rugby Union Ltd PO Box 205 Kelvin Grove DC QLD 4059	
Item 5 – Reports (Clause 4)		
Report	Description	Date Due
Elite Facility Profile Form	The information requested is used to update the organisation's details on the (SRQ) Elite Training Facilities Directory. Refer to website: http://www.sportrec.qld.gov.au/funding/majorfacilitiesprogram.cfm	As per Schedule C
Project Progress Report	A monthly report which establishes the status and progress of the Approved Project. Refer to Schedule D. The Department to provide an electronic copy as required.	By 10 th business day of the next month.

SCHEDULE B – ELIGIBLE AND INELIGIBLE ITEMS

ELEMENT	ELIGIBLE ITEMS	INELIGIBLE ITEMS
General		<ul style="list-style-type: none"> Any works incurred outside of the Funding Period.
Preliminaries	<ul style="list-style-type: none"> Demolition Geotechnical 	<ul style="list-style-type: none"> Site remediation
Earthworks	<ul style="list-style-type: none"> Preparation of building platform Laying of track or field Excavation for pools 	
Construction	<ul style="list-style-type: none"> Building works Internal finishes Services Mechanical extraction Pool filtration/component parts Safety fencing Synthetic surface – fields Water course marketing equipment Fencing required for activity Lighting for activity space Irrigation system – fields Canteens / kiosks Cold rooms Commercial kitchens, kitchen fixtures and fittings including catering equipment Pool heating 	<ul style="list-style-type: none"> Air-conditioning (unless it can be demonstrated that this is essential in undertaking sport and recreation activity at the venue) Bars, bar fixtures and fittings Areas for licensed gaming machines Areas designated for smoking Window treatments IT and telephones Security systems Temporary structures
Site works		<ul style="list-style-type: none"> Road works Access ways Footpaths Car parks Landscaping/ Sound buffers Fencing including perimeter fencing Retaining walls
Works external to site		<ul style="list-style-type: none"> Electrical Water IT and telephones Drainage
Professional fees/charges	<ul style="list-style-type: none"> Incurred within Funding Period Plans – business, management, marketing etc. 	<ul style="list-style-type: none"> Incurred outside Funding Period Legal and leasing fees Studies – feasibility, environmental etc.
Statutory fees/charges	<ul style="list-style-type: none"> Incurred within Funding Period 	<ul style="list-style-type: none"> Incurred outside Funding Period
Other	<ul style="list-style-type: none"> Artistic design component of State (SRQ) signage Hire of plant 	<ul style="list-style-type: none"> In-kind works In-house labour costs Contractual works which were not

ELEMENT	ELIGIBLE ITEMS	INELIGIBLE ITEMS
	<ul style="list-style-type: none"> • Testing/Commissioning • Fit-out furniture fixed, non-portable 	<p>tendered or part of a comprehensive bidding process</p> <ul style="list-style-type: none"> • Temporary accommodation • Relocation • Fit-out/furniture/portable equipment • Bank fees and charges • Insurances • Advertising including tenders • Promotion and marketing • Development costs of models • Indirect costs including photocopying, postage and courier charges • Signage construction/erection • Recurrent/operational costs • 'In-kind works' (i.e. assessed cost of volunteer labour, free goods and services) • in-house labour costs; including those provided by local governments, private contractors and individuals where the proposed work is to be undertaken by existing salaried staff as a component of their usual duties (Note: Local governments may use their internal construction workforce where value for money can be demonstrated. It is not the intention of the State to subsidise existing local government labour resources, however the State recognises in some instances value for money can be achieved through using an internal workforce or in limited circumstances it is the only option reasonably available.

SCHEDULE C – PROJECT COMPLIANCE CONDITIONS

These conditions must be submitted to the Department by the Due Date. All conditions must be completed to the satisfaction of the Department.		
Item	Compliance Description	Due Date
4	<p>Funding</p> <p>The Organisation must provide written confirmation that any funding required to complete the project in excess of the estimated total project cost (plus GST) will be met from the Organisation's resources. The Department may request particular details concerning the source, amount, and immediate availability of funds at any time.</p>	30-OCT-2008
5	<p>Program</p> <p>The Organisation must provide a program for the project including key milestones such as the design stages, tender stage, construction stage and defects liability period.</p>	30-OCT-2008
9	<p>Project Management Agreement</p> <p>The Organisation must provide:</p> <ul style="list-style-type: none"> • a copy of the proposed Project Managers Curriculum Vitae; • a copy of the proposed agreement to engage the Project Manager. This contract should clearly identify the duties and responsibilities of the Project Manager and the respective public liability and professional indemnity insurances; and • a letter from the Project Manager stating that they have read the funding agreement and understand the terms and conditions contained within it and understand the roles and responsibilities of the Project Manager in relation to this project. 	30-OCT-2008
10	<p>Land Tenure</p> <p>The Organisation must provide written evidence that it has either freehold tenure or a leasehold arrangement with a minimum ten-year renewable lease.</p>	30-OCT-2008
13	<p>Development Approval</p> <p>The Organisation must provide a copy of the Development Application Decision Notice from the relevant authority approving the proposed project.</p>	31-JAN-2009
14	<p>Building Approval</p> <p>The Organisation must provide a copy of the final approved plans (this set must be stamped and signed by council or other relevant building authority, and as a minimum include the site plan, floor plans, elevations and a typical section) for the project. If the Project is a design and construct contract the Organisation must provide building approval prior to commencement of construction.</p>	31-MAR-2009
15	<p>Tender Document</p> <p>The organisation must provide a copy of the documentation prepared for tender and as issued to the tenderers for approval by the Department prior to advertising. This documentation should include design drawings, general conditions of contract and the specification.</p>	30-APR-2009
16	<p>Pre-Tender</p> <p>The Organisation must provide a pre-tender estimate of cost by a qualified Quantity Surveyor. This detailed estimate will be derived from the finalised tender documentation.</p>	30-APR-2009

17	Community Use The Organisation must provide written evidence of the arrangements to ensure ongoing community use and access to the facilities documenting how this will be established and maintained for a period of at least 10 years from project completion.	30-APR-2009
18	Tendering The Organisation must confirm that works will be procured in line with the State Procurement Policy. In particular the Organisation must provide evidence of three (3) written quotes for works less than \$150,000 and /or evidence that public tenders have been called for works greater than or equal to \$150,000. The Organisation must provide: <ul style="list-style-type: none"> • a copy of the advertisement; • a copy of the completed tender evaluation including explanations; and • a copy of the Executive approval of the tender. 	30-JUN-2009

Once the above conditions have been approved, the State will provide written approval to the Organisation to proceed to construction for the Approved Project.

POST CONSTRUCTION

These conditions must be submitted to the Department by the Due Date. All conditions must be completed to the satisfaction of the Department.		
Item	Compliance Description	Due Date
1	Certificate of Practical Completion. The Organisation must provide a signed copy of the Certificate of Practical Completion for the Approved Project.	30-JUN-2011
2	Certificate of Classification The Organisation must provide a signed copy of the Certificate of Classification for the appropriate use of the Approved Project (if applicable).	30-JUN-2011
3	Final Gross Project Cost The Organisation must provide a final gross project cost for the Approved Project.	30-JUN-2011
4	Proposed Name The Organisation must advise the Department of and seek the Department's approval for the proposed name of the completed project.	30-JUN-2011
5	Elite Facility Profile Form The Organisation must complete and submit the Elite Facility Profile Form provided, listing contact and program details and activities undertaken.	30-JUN-2011
6	Management Plan The Organisation must provide a copy of the management plan for the venue demonstrating public access, pricing strategies, asset management strategies and marketing strategies.	30-JUN-2011
7	Building Insurance The Organisation must obtain general building insurance to cover the Approved Project and provide a certificate of currency to the Department.	30-JUN-2011
8	Signage The Organisation must obtain approval of all permanent signage prior to development and erection including placement of the signage at the facility.	30-JUN-2011

INTENTIONALLY BLANK

Major Facilities Program Monthly Project Report Form

SCHEDULE D REPORT PROFORMA

KEY PROJECT CONTACTS

Organisation	Contact Name	Project Role	Contact Details
Project		Client	
G2 Number		Project Manager	
File Number			

Approved Project Budget

Sources of Funding

DSR (Approved Funding)		
	Total Amount paid to date	\$
	Expenditure to date	\$
	Total percentage of works completed	%
Total Project Cost		\$

SECTION 1: SUMMARY REPORT

CONSTRUCTION MILESTONES

Planned Date

Forecast / Actual Date PROMOTIONAL OPPORTUNITIES

	Event	Date
Obtain Development Approval		
Obtain Building Approval	Sod Turning	
Complete Tender Documents	Official Opening	
Advertise Tenders		
Tender Close		
Letter to Proceed (SRQ)		
Award Building Contract		
Building Works Complete		
Achieve Handover		
Practical Completion Date		
Certificate of Classification (If Applicable)		

INTENTIONALLY BLANK