



greater WELLINGTON
REGIONAL COUNCIL



Funding Deed
Greater Wellington Regional Council
Regional EDA Limited

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Parties

Wellington Regional Council trading as Greater Wellington Regional Council
(Council)

Regional EDA Limited (REDAL)

Background

- A The local authorities in the Wellington region have worked together to develop the Wellington Regional Strategy.
- B The WRS Committee is a committee of the Council, established to take responsibility for overall guidance and further development of the Wellington Regional Strategy.
- C REDAL is a council controlled organisation under the LGA 2002, established to deliver the economic development activities provided for in the Wellington Regional Strategy.
- D The Council has agreed to provide funding to REDAL to assist in its activities.
- E The Council and REDAL have agreed to enter into this deed to define their respective obligations to each other in respect of the funding, and the operation of REDAL.

Operative provisions

1. Council funding

- 1.1 The Council will provide funding to REDAL in each Financial Year during the term in the amounts set out in Schedule 1.
- 1.2 The Council will pay the funding to REDAL in each Financial Year during the term in the manner set out in clause 2.
- 1.3 The payment of the Council's funding to REDAL in each Financial Year is subject to REDAL carrying out its obligations and responsibilities set out in this deed.
- 1.4 The Council reserves the right to withhold all or part of its funding to REDAL on a temporary or permanent basis if the WRS Committee reasonably believes that REDAL has failed to carry out its obligations and responsibilities under this deed or a Default Event has occurred.

- 1.5 The Council agrees to pay GST on each instalment of its funding on receipt of a valid and complete tax invoice from REDAL.
- 1.6 REDAL acknowledges that the Council's maximum annual funding to REDAL in each Financial Year during the term is fixed in accordance with the amounts set out at Schedule 1. Funding not drawn in a Financial Year may be carried forward by REDAL to the following year. This will not reduce the annual funding for the following year as set out in Schedule 1.
- 1.7 The Council's funding under this deed is provided to assist REDAL deliver the Wellington Regional Strategy.
- 1.8 The Council's funding will not be used by REDAL for community facilities or events, as defined in Schedule 2.

2. Payment of funding

- 2.1 REDAL shall provide the Council with a statement of forecast revenue and expenditure, and cashflows, for the forthcoming Financial Year, by the last business day of May in each Financial Year. The first forecast following execution of this deed will be provided by 30 November 2007.
- 2.2 The payment of Council funding in each Financial Year during the term shall be made on the dates and in the amounts agreed by the Council and REDAL. In the absence of agreement, payments shall be made quarterly in advance, in accordance with the cashflow forecast.
- 2.3 At the time of payment, the Council may adjust the funding paid in a Financial Year in order that the actual funding reflects the actual expenditure in that Financial Year, and that REDAL does not produce an accounting surplus in any Financial Year.

3. Council controlled organisation

- 3.1 REDAL and the Council acknowledge that REDAL is a council controlled organisation and as such the Council and REDAL are required to comply with the governance and accountability requirements set out at Part 5 LGA 2002. The LGA 2002 requirements of REDAL include:
 - 3.1.1 An obligation to achieve the objectives of its shareholder as specified in its statement of intent, be a good employer, exhibit a sense of social and environmental responsibility having regard to the

interests of the community in which it operates, and conduct its affairs in accordance with sound business practice;

- 3.1.2 To prepare, and act in accordance with, a statement of intent;
- 3.1.3 To prepare and deliver half yearly and annual reports to its shareholder;
- 3.1.4 Being subject to Parts 1 to 6 of the Local Government Official Information and Meetings Act 1987 and the Ombudsman Act 1975.

3.2 Unless otherwise agreed, the parties acknowledge that it is their intention that REDAL will not be a council controlled trading organisation (CCTO) under the LGA 2002. REDAL shall use its best endeavours to structure its activities in a way that ensures that REDAL does not operate a trading undertaking for the purpose of making a profit, but rather that REDAL is managed as a not for profit company established for the benefit of the people of the Wellington region.

3.3 The Council as the sole shareholder of REDAL acknowledges that the Council has no desire or requirement to seek a dividend or any other financial return or distribution from REDAL in regard to its activities.

4. REDAL's obligations

4.1 REDAL must act at all times in accordance with its constitution, its approved statement of intent, the Companies Act 1993 and the provisions of the LGA 2002 relevant to council controlled organisations, and not inconsistently with this deed.

4.2 REDAL must submit Business Plans, financial statements and reports to the Council and the WRS Committee in accordance with this deed.

5. WRS Committee

5.1 The parties acknowledge that one of the functions of the WRS Committee is to oversee and monitor the performance of REDAL under this deed.

5.2 The role of the Chief Executives' Group is to support and provide advice to the WRS Committee.

6. Relationship Management

6.1 The following values will guide how REDAL, the WRS Committee and the Council deal with each other under this deed. The Council and REDAL will:

- 6.1.1 Work in a collaborative and constructive manner recognising each other's view points and respecting differences;
- 6.1.2 Act towards each other honestly and always in good faith;
- 6.1.3 Communicate with each other openly, promptly and in a clear and timely manner; and
- 6.1.4 Recognise the accountabilities that each have to the other.

Representatives

6.2 The Council and REDAL, will each appoint a representative, who shall be the first point of contact between the parties in regard to all issues arising under this deed relating to the Council funding. The names and contact details of the initial representatives are set out in Schedule 1. Each party will provide the other with written notice of any change to their representative.

6.3 A REDAL representative shall attend the meetings of the Councils' Senior Officers' Resource Team.

Keeping each other informed

6.4 REDAL will use its best endeavours to comply with all reasonable directions, requests for information or monitoring requirements that the Council or the WRS Committee may make or require.

7. Performance monitoring

7.1 The Chair of the Board and Chief Executive of REDAL shall meet with the Chief Executives' Group at least quarterly during the term of this deed to discuss:

- 7.1.1 REDAL's progress towards meeting the targets set out in REDAL's Business Plan or recorded in the Statement of Intent; and
- 7.1.2 Any other performance targets and other measures agreed between the parties; and
- 7.1.3 Any departures from or amendments to REDAL's Business Plan or Statement of Intent; and

7.1.4 Any other relevant matters.

7.2 If the Chief Executives' Group considers REDAL is not meeting the identified performance targets, the Chief Executives' Group shall advise REDAL in writing. If the Chief Executives' Group is not satisfied with REDAL's response they may advise the WRS Committee. The WRS Committee may then direct the Council to discuss any short comings with REDAL. If required by the WRS Committee, the Council and REDAL will agree a plan to improve REDAL's performance. This plan will then be approved by the WRS Committee. If REDAL's performance does not improve to the satisfaction of the WRS Committee, the WRS Committee may recommend to the Council such action as the WRS Committee, in consultation with the Council and Chief Executive's Group, deems appropriate.

8. Statement of Intent

8.1 REDAL shall prepare a Statement of Intent for REDAL for each Financial Year, in accordance with the LGA 2002.

8.2 REDAL's Statement of Intent shall include an explicit statement to record the prohibition on REDAL providing capital or operational expenditure for community facilities or events in the terms set out in Schedule 2.

9. Business Plan

9.1 REDAL shall prepare a Statement of Intent for the management of REDAL for each Financial Year.

9.2 The Statement of Intent will be completed for REDAL and shall cover the Financial Year to which it relates, together with projections for the following two Financial Years. The Statement of Intent shall be completed in accordance with usual business practices. The Statement of Intent shall contain an appropriate level of financial information and detail prepared in accordance with generally accepted accounting standards and practice, together with the performance targets and other measures by which the performance of REDAL may be judged in relation to its objectives.

9.3 The Statement of Intent shall include an explicit statement to record the prohibition on REDAL providing capital or operational expenditure for community facilities or events in the terms set out in Schedule 2.

9.4 REDAL will provide the Council with a draft Statement of Intent for the forthcoming Financial Year by 1 March in each year, for Council and WRS Committee comment. The Council will provide any comments (including any

comments of the WRS Committee) within 28 days of receiving the draft Statement of Intent. The first draft Statement of Intent will be provided by 1 December 2007.

- 9.5 REDAL will adopt the first Statement of Intent by 31 December 2007 and subsequent Statement of Intent by 30 June in each year, for the Financial Year commencing 1 July that year.
- 9.6 REDAL will provide the Council and the WRS Committee with an executive summary of the Statement of Intent in each year immediately after it is adopted.
- 9.7 REDAL will manage and operate the business of REDAL in each Financial Year within the terms of the annual Statement of Intent adopted by it for that year. REDAL will not expend monies or incur liabilities outside the terms of the Statement of Intent to any Material Extent without the prior written approval of the WRS Committee.

10. Accounts and reports to the WRS Committee and the Council

- 10.1 Within two months after the end of the first half of each Financial Year during the term of this deed, REDAL must deliver to the Council a report on its operations during that half year, in accordance with the requirements of section 66 LGA 2002.
- 10.2 Within 25 business days after the end of each Financial Year during the term of this deed, REDAL shall prepare and deliver to the Council and the WRS Committee consolidated financial statements for that Financial Year (prepared in accordance with generally accepted accounting practice and including any requirements of the Council).
- 10.3 Within 35 business days after the end of each Financial Year during the term of this deed, REDAL shall deliver to the Council and the WRS Committee, in accordance with the requirements of section 67 LGA 2002:
 - 10.3.1 a report on REDAL's operations during the Financial Year;
 - 10.3.2 audited consolidated financial statements for that financial year (prepared in accordance with generally accepted accounting practice and including any requirements of the Council); and
 - 10.3.3 an auditor's report on the financial statements and the performance targets and other measures by which performance was judged in relation to REDAL's objectives.

- 10.4 REDAL shall provide quarterly information to the Council in a form and timing to be agreed between the parties.
- 10.5 REDAL shall provide any additional information the Council may reasonably request, within the timeframe requested, to enable the Council to produce its own annual report under the LGA 2002 and to complete the regular performance monitoring required by section 65(1) LGA 2002.

11. Term

- 11.1 The term of this deed shall be deemed to commence on 1 July 2007 and, subject to the Council's approval of any extension under clause 11.2 or anything else in this deed, shall expire on 30 June 2012.
- 11.2 The term of this deed may be extended for a period determined by the Council if:
 - 11.2.1 The Council has undertaken the appropriate LGA 2002 processes to authorise, and is continuing to undertake, responsibility for regional economic development activity; and
 - 11.2.2 REDAL will continue to undertake that activity.
- 11.3 If the term of this deed is extended under clause 11.2, the parties shall execute a deed of variation recording the extension, including:
 - 11.3.1 the amount of funding for the extended term; and
 - 11.3.2 the duration of the extended term.

12. Indemnity

- 12.1 REDAL indemnifies the Council and its officers against all actions, suits, proceedings, costs, claims and demands whatsoever which may be made or brought against the Council by reason of any act, or omission, or negligence of REDAL or its servants, agents or customers or invitees.

13. Regulatory position

- 13.1 The Council's ability to act under this deed shall in all things be subject to any and all statutory and regulatory requirements establishing or recording powers or functions or delimiting the same and/or the exercise thereof by the Council. Nothing in this deed shall be read or construed as abrogating, delimiting or

otherwise affecting the proper or valid undertaking or exercise of any such power or function by the Council.

14. No partnership

14.1 Nothing in this deed or in the relationship of the parties to this deed shall be construed as creating a partnership or as conferring upon either of the parties any of the rights, or subjecting either of them to any of the liabilities, of a partner.

15. No assignment

15.1 Neither the Council nor REDAL shall, without the prior consent in writing of the other (which shall not be unreasonably withheld), assign, charge or sublicense any of the rights granted in this deed.

16. Termination

16.1 The Council has the right to terminate this deed at any time after the happening of any of the following events (**Default Event**):

16.1.1 Failure by REDAL to pay its debts when due and owing, or failure to satisfy within 30 days any levy or execution in excess of \$50,000

16.1.2 If an encumbrancer takes possession or receiver, manager or administrator is appointed of any of the property or assets of REDAL.

16.1.3 REDAL proposing to make any arrangement or composition with creditors or ceasing or threatening to cease to carry on business of REDAL.

17. Notices

Giving notices

17.1 Any notice or communication given to a party under this deed is only given if it is in writing and sent in one of the following ways:

17.1.1 Delivered or posted to that party at its address and marked for the attention of the relevant department or officer (if any) set out below.

17.1.2 Faxed to that party at its fax number and marked for the attention of the relevant department or officer (if any) set out below.

Name: Greater Wellington Regional Council
Address: 142 Wakefield Street, Wellington
Fax number: 04 384 5023
Attention: Chief Financial Officer or Divisional Manager
Regional Strategy

Name: Regional EDA Limited
Address: Level 9, Baldwins Centre, 342 Lambton Quay,
Wellington
Fax number: 04 494 2569
Attention: Chief Executive

Change of address or fax number

17.2 If a party gives the other party three business days' notice of a change of its address or fax number, any notice or communication is only given by that other party if it is delivered, posted or faxed to the latest address or fax number.

Time notice is given

17.3 Any notice or communication is to be treated as given at the following time:

17.3.1 If it is delivered, when it is left at the relevant address.

17.3.2 If it is sent by post, two (or, in the case of a notice or communication posted to another country, nine) business days after it is posted.

17.3.3 If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

17.4 However, if any notice or communication is given, on a day that is not a business day or after 5pm on a business day, in the place of the party to whom it is sent it is to be treated as having been given at the beginning of the next business day.

18. Miscellaneous

Approvals and consents

18.1 Unless this deed expressly provides otherwise, a party may give or withhold an approval or consent in that party's absolute discretion and subject to any conditions determined by the party. A party is not obliged to give its reasons for giving or withholding a consent or approval or for giving a consent or approval subject to conditions.

- 18.2 Where this deed refers to a matter being to the 'satisfaction' of a party, this means to the satisfaction of that party in its absolute discretion.

Further acts

- 18.3 Each party must at its own expense promptly execute all documents and do or use reasonable endeavours to cause a third party to do all things that another party from time to time may reasonably request in order to give effect to, perfect or complete this document and all transactions incidental to it.

Variation

- 18.4 No variation of this deed will be of any force or effect unless it is in writing and signed by each party to this document.

Waivers

- 18.5 A waiver of any right, power or remedy under this deed must be in writing signed by the party granting it. A waiver is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 18.6 The fact that a party fails to do, or delays in doing, something the party is entitled to do under this deed does not amount to a waiver.

19. Definitions and interpretation

Definitions

- 19.1 In this deed the following definitions apply:

Board means the board of directors of REDAL from time to time.

Business Plan means the Business Plan referred to in clause 8.

Chief Executives' Group means the chief executives of the local authorities of the Wellington region.

deed means this funding deed.

Financial Year means the year commencing on 1 July and ending on 30 June.

LGA 2002 means the Local Government Act 2002.

Material Extent means any expense or liability outside the terms of the Business Plan that exceeds 15% of the total annual Council funding.

Wellington region means the region administered by the Council.

Wellington Regional Strategy means the strategy for sustainable growth adopted in February 2007 by the local authorities in the Wellington region.

WRS Committee means the Committee of the Council established under Schedule 7 of the LGA 2002 for the purposes of the Wellington Regional Strategy.

Interpretation

- 19.2 In the interpretation of this deed, the following provisions apply unless the context otherwise requires:
- 19.2.1 Headings are inserted for convenience only and do not affect the interpretation of this deed.
 - 19.2.2 A reference in this deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Wellington, New Zealand.
 - 19.2.3 If the day on which any act, matter or thing is to be done under this document is not a business day, the act, matter or thing must be done on the next business day.
 - 19.2.4 A reference in this deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
 - 19.2.5 A reference in this deed to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced.
 - 19.2.6 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this deed.
 - 19.2.7 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
 - 19.2.8 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
 - 19.2.9 A word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders.

- 19.2.10 A reference to the word 'include' or 'including' is to be construed without limitation.
- 19.2.11 A reference to this deed includes the agreement recorded in this deed.
- 19.2.12 Any schedules and attachments form part of this deed.

Execution and date

Executed as a deed.

Date: 2007

The common seal of
Wellington Regional Council
was affixed in the presence of:

Authorised Signatory

Signed by) _____
Regional EDA Limited) Director
in the presence of:) _____
Director/Authorised signatory

Witness signature:

Witness name:

Occupation:

Address:

Schedule 1

Amount of Council funding

Financial Year	Maximum amount of Council funding
2007/08	\$4 million plus GST
2008/09	\$4.5 million plus GST
2009/10	\$5 million plus GST
2010/11	\$5 million plus GST increased by the CPI increase over the previous year
2011/12	The cap amount for 2010/11 calculated as set out above, increased by the CPI increase over the previous year

Representatives

Council and WRS Committee's representative

	For funding issues:	For other matters:
Name	Barry Turfrey	Jane Davis
Title	Chief Financial Officer	Divisional Manager, Regional Strategy
Address	Greater Wellington Regional Council 142 Wakefield Street Wellington	Greater Wellington Regional Council 142 Wakefield Street Wellington
Telephone	04 384 5708	04 384 5708
Fax	04 384 5023	04 384 5023
Email	barry.turfrey@gw.govt.nz	jane.davis@gw.govt.nz

REDAL's representative

Name

Title

Address

Telephone

Fax

Email

Schedule 2

Community facilities and events

REDA may not provide operational or capital expenditure for community facilities or events as defined as:

“Community facilities” are activities that provide services, entertainment or education to the public generally. Examples include Te Papa, the Karori Wildlife Sanctuary, libraries, galleries (e.g. The New Dowse) and the proposed Marine Education Centre.

“Events” are activities that are operated for the purposes of entertainment, sport, tourist attraction or cultural/community celebration and are open to the public generally. Examples include festivals, concerts, sporting competitions, movie premières.

Notwithstanding this, REDA may facilitate (including providing financial or other support for) activities that are integral to its role of achieving sustainable long-term economic growth in the region defined by the Statement of Intent, including activities that meet the following criteria:

- Create or facilitate the success of the region’s Centres of Excellence programme
- Assist to attract and retain high value individuals in the region
- Facilitate access to international markets for businesses in the region
- Boost the innovative and competitive image of the region internationally
- Assist to attract investment into the region
- Provide an opportunity to grow the skills base in the region;

provided that, before REDA agrees to facilitate and/or sponsor conferences, seminar or symposia, it ensures that such activities meet at least two of the criteria set out above. In addition, REDA must ensure an appropriate cost/benefit/risk assessment process is completed prior to funding any such activity.