



Agenda

Extraordinary Meeting of Council

Notice is hereby given that a Extraordinary Meeting of Council of Council will be held at Council Chambers, 1 Belgrave Street, Manly, on:

Tuesday 12 June 2007

Commencing at 7:30pm for the purpose of considering items included on the Agenda.

Persons in the gallery are advised that the proceedings of the meeting are being taped for the purpose of ensuring the accuracy of the Minutes. However, under the Local Government Act 1993, no other tape recording is permitted without the authority of the Council or Committee. Tape recording includes a video camera and any electronic device capable of recording speech.

*Copies of business papers are available at the Customer Services Counter at Manly Council, Manly Library and Seaforth Library and are available on Council's website:
www.manly.nsw.gov.au*

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<i>It is recommended that the Council resolve into closed session with the press and public excluded to allow consideration of this item, as provided for under Section 10A(2) (c) of the Local Government Act, 1993, on the grounds that the report contains information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.</i>	
General Managers Division Report No. 12	
Kimbriki Recycling and Waste Disposal Centre	
<i>It is recommended that the Council resolve into closed session with the press and public excluded to allow consideration of this item, as provided for under Section 10A(2) (d) of the Local Government Act, 1993, on the grounds that the report contains commercial information of a confidential nature that would, if disclosed (i) prejudice the commercial position of the person who supplied it; or (ii) confer a commercial advantage on a competitor of the council; or (iii) reveal a trade secret.</i>	
General Managers Division Report No. 13	
Balgowah Road - Council Depot - Improved Infrastructure and Rationalisation of Operational Requirements	
<i>It is recommended that the Council resolve into closed session with the press and public excluded to allow consideration of this item, as provided for under Section 10A(2) (c) of the Local Government Act, 1993, on the grounds that the report contains information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.</i>	

General Managers Division Report No. 14

Property Matters - Council Lands Associated with the Totem Development Being Balgowlah Baby Health Centre, Part Laneway 34 and Toilet Block in Condamine Street, Balgowlah

It is recommended that the Council resolve into closed session with the press and public excluded to allow consideration of this item, as provided for under Section 10A(2) (c) of the Local Government Act, 1993, on the grounds that the report contains information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.

General Managers Division Report No. 15

Tender for Supply of Materials and Services - The Corso Stage 2

It is recommended that the Council resolve into closed session with the press and public excluded to allow consideration of this item, as provided for under Section 10A(2) (d) of the Local Government Act, 1993, on the grounds that the report contains commercial information of a confidential nature that would, if disclosed (i) prejudice the commercial position of the person who supplied it; or (ii) confer a commercial advantage on a competitor of the council; or (iii) reveal a trade secret.

******* END OF AGENDA *******

TO: Extraordinary Meeting of Council - 12 June 2007
REPORT: Corporate Services Division Report No. 17
SUBJECT: Sustainable Investment for Local Councils - Funding Agreement
FILE NO:

SUMMARY

Council at the Extra-ordinary Meeting of 4 June 2007 considered a report regarding participating in a pilot program to develop a sustainable investment policy for local councils.

INTRODUCTION

Council at the Extra-ordinary Meeting of 4 June 2007 considered Corporate Services Division report No. 16 – **Sustainable Investment for Local Councils**, and resolved that:

- 1. The report regarding Sustainable Investment for Local Councils be received and noted.*
- 2. Manly Council confirm its participation in a pilot program to develop a sustainable investment policy.*

REPORT

Further to the above Report, Council has been in contact with Mr Simeon Michaels and the Australian Greenhouse Office, Department of Environment and Water Resources. The Department has now forwarded a copy of the draft Funding Agreement (attached for information) which has been reviewed by staff, with the actual Funding Agreement being posted. The Department has requested that Council sign and return the Funding Agreement prior to 15 June 2007.

There appears to be nothing in the Funding Agreement which binds Council other than participating in the pilot project. Council is able to withdraw, without penalty, from the project at any time if for any reason Council decides not to proceed to completion of the project.

RECOMMENDATION

THAT the information be noted.

ATTACHMENTS

AT- 1 Draft Funding Document 10 Pages

OM120607CSD_1

***** End of Corporate Services Division Report No. 17 *****

ATTACHMENT 1

Corporate Services Division Report No. 17 - Sustainable Investment for Local Councils - Funding Agreement Draft Funding Document

The General Manager: Mr Henry Wong
Council Chambers
1 Belgrave Street
Manly NSW 2095

Manly Council

Dear Mr Wong
Council Chambers
1 Belgrave Street
Manly NSW 2095

FUNDING AGREEMENT FOR Sustainable Investment for Local Councils 2006/13829

1. On behalf of the Commonwealth of Australia ('us' or 'we' or 'our' as the case requires) acting through the Department of the Environment and Water Resources (the Department), ABN 34 190 894 983, I offer **Manly Council** ('you' or 'your' as the case requires) funding up to a maximum of **\$5,000** (GST inclusive) ("**the Funding**"), for the project described in Attachment A ("**the Project**").
2. Your and our entire agreement regarding the Funding is set out in this letter and Attachment A to this letter, which together form the "**Funding Agreement**". The Funding Agreement takes precedence over any prior correspondence regarding the Project.
3. This Funding offer is conditional upon you signing and returning the enclosed copy of the Funding Agreement within 30 days of the date printed at the top of this letter, or this Funding offer will lapse. The Funding offer will also lapse if you alter this Funding Agreement without our prior written approval. If you have any questions about the Funding Agreement, please contact the Department on **02 6274 2447**.
4. The Funding Agreement commences on the date we receive the unaltered signed and dated copy of the Funding Agreement.
5. The Project must be completed by **31 August 2008** ("**Project Completion Date**"). This Funding Agreement expires on the date when you have done all that it requires you to do ("**Expiry Date**").

PROJECT

6. You undertake to ensure that all necessary approvals and permits are obtained before commencing the Project.
7. You must undertake the Project in accordance with all relevant laws and in accordance with the requirements and guidelines, if any, specified in Attachment A.
8. You must immediately inform us of any delays in the performance of the Project.
9. This Funding Agreement may only be varied by a document signed by you and us.

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FUNDING

10. Subject to the other terms of this Funding Agreement, we will pay the Funding into your bank account specified at Attachment A.
11. You must spend the Funding solely on the Project and in accordance with this Agreement, including the Project budget (if any) specified in Attachment A.
12. Any income (including interest) earned by your use of the Funding forms part of the Funding for the purposes of this Funding Agreement.
13. Any unspent or misspent Funding is to be returned to us within 30 days of the earlier of the Project Completion Date or the date specified in a written notice of termination that we give you under clause 39. If you do not return the unspent or misspent funding within this time, you agree that we, or persons authorised by us, may audit your records and we may take action to recover the unspent or misspent funding from you.

TAXATION

14. Subject to clauses 18 to 22, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Funding Agreement must be borne by you.
15. Payment of the full amount of the Funding is dependent upon you providing your Australian Business Number ('ABN') to the Department. Failure to do so or to provide a completed "Statement by a Supplier" form claiming an exemption from lodging an ABN, will require the Department to apply withholding tax to any funding payments made under this Funding Agreement.
16. Until the Expiry Date of this Funding Agreement, you must immediately notify us if there is any change to your ABN or Goods and Services Tax ("GST") registration.
17. If you are registered or are required to be registered for the GST, You must give us a tax invoice in accordance with the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) ("GST Act") in relation to any taxable supply by you to us in connection with this Funding Agreement before we are required to pay any of the Funding under this Funding Agreement.
18. We will not pay you any part of the Funding for which you may claim an 'input tax credit' as defined in the GST Act.
19. Any refund of the Funding that you are required to make to us under subclause 13 must be inclusive of GST and must be accompanied by any adjustment note required under the GST Act relating to taxable supplies in respect of which you previously issued us a tax invoice.

RECORDS

20. You must create and maintain records, including GST returns, in relation to the Funding and show them to us upon our request.

PROJECT MATERIAL AND INFORMATION

21. Within 15 days of the Project Completion Date or the date specified in a written notice of termination that we give you under clause 39, you must provide us with a Final Report regarding the Project together with a completed Statutory Declaration in the form at Attachment B. The Final Report must fully describe the Project undertaken and include the information, if any, specified at Attachment A.
22. We own the Final Report and completed Statutory Declaration however we grant you and any persons or organisations that have provided Other Contributions, a permanent, irrevocable,

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- free, world wide, non-exclusive licence (including a right of sub-licence) to use, reproduce and disclose the Final Report.
23. You own all other material brought into existence for the purposes of the Project ("**Other Material**"), however you grant us a permanent, irrevocable, free, world wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt, disclose, exploit and deal with that Other Material for any Australian Government purpose (including, but not limited to, our publicising or reporting on the Project). You acknowledge that we may disclose any information or material relating to this Funding Agreement.
 24. We require the Statutory Declaration to verify your expenditure of the Funding on the Project in accordance with this Funding Agreement.
 25. The Final Report and Statutory Declaration must be signed by a person with the appropriate authority and knowledge to do so. If you do not complete and return the Statutory Declaration within the specified period, you must, if requested by us, immediately refund the Funding to us.
 26. Any material that we provide to you in connection with this Funding Agreement must only be used for the purposes of this Project. If requested, you must return all such material to us when you provide the Final Report.
 27. In relation to the *Privacy Act 1988* (Cth) you agree to:
 - (a) comply with the Information Privacy Principles contained in section 14 of that Act to the extent that the content of those principles apply to your Project activities as if you are an agency as defined in that Act; and
 - (b) cooperate with any reasonable demands or inquiries of ours on the basis of the exercise of the functions of the Privacy Commissioner under the Act including, but not limited to, a request from us to comply with a guideline concerning the handling of Personal Information (as defined in that Act).

ACKNOWLEDGEMENT AND PUBLICITY

28. You must give the Department at least 14 days prior notice if you intend to bring the Project to public attention. You must acknowledge the Australian Government's contribution through the **Sustainable Investment for Local Councils Project** verbally at any media event, or in writing in any publication produced as part of the Project in the manner specified in Attachment A or as otherwise specified by the Department.

INSURANCE

29. You must ensure that you and any subcontractors have or take out, and maintain, insurance coverage of the type and quantum specified in Attachment A in respect of the Project until the Expiry Date. We may request that you provide us with written evidence that you have complied with your obligations to insure under this Funding Agreement, and you must provide us with that evidence within 10 business days of our request.

INDEMNITY

30. You must indemnify us to the extent of any cost, loss or liability caused by an act or omission by you or your employees, officers, subcontractors, agents and volunteers ("**Personnel**") where there was fault on the part of, or a breach of this Funding Agreement by, the person whose conduct gave rise to the cost, loss or liability. 'Fault' means any negligent or unlawful act or omission or wilful misconduct.

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PERSONNEL AND SUBCONTRACTORS

31. You are responsible for the supervision and standard of work of your Personnel in respect of the Project. You agree that neither you nor your Personnel become our employees by virtue of this Funding Agreement and that we are not responsible for any acts or omissions by you or your Personnel in connection with this Agreement.
32. You must not engage a subcontractor to work on the Project unless the subcontractor is specified in Attachment A or we have given our prior written approval to their involvement in the Project.

ACCESS

33. You are required to give us, the Privacy Commissioner, the Auditor-General and any persons authorised by us (all of whom are referred in this clause as "**Those Permitted**") all reasonable access to the premises at which materials and records associated with this Funding Agreement are stored or at which Project work is undertaken.
34. You agree to grant us and Those Permitted the right, and all reasonable assistance, to inspect and copy the Project material and records in your possession or control for any Australian Government purpose (including to review the performance of this Project).
35. You must ensure that any subcontract entered into for the purpose of this Agreement contains clauses equivalent to clauses 36 and 37 permitting us and Those Permitted to have the access specified in those clauses.

TERMINATION

36. We may immediately terminate this Funding Agreement by giving written notice to you if we request you to provide information to the Department about the Project and:
 - (a) you do not provide that information to the Department within 14 days of our request;
 - (b) the information you provide is not considered satisfactory by the Department; or
 - (c) the Department considers, on the basis of the information provided, that you have not performed or are unable to perform the Project in accordance with this Funding Agreement.
37. If we terminate this Funding Agreement under clause 39, you are not required to perform the remainder of the Project but you must comply with clauses 13, 25 and 28.

NOTICES

38. Our details for notices are as follows:

Danielle Carman
Community Partnerships Section
Australian Greenhouse Office
Department of the Environment and Water Resources
GPO Box 787
CANBERRA ACT 2601
Ph: (02) 6274 2447
Fax: (02) 6274 2823
Email: danielle.carman@environment.gov.au

39. Your details for notices are as follows:

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Name: **Ross Fleming**
Position: **Divisional Manager Corporate Services /CFO – Manly Council**
Postal Address: 1 Belgrave Street
MANLY NSW 2095
Telephone: (02) 9976 1530
Fax: (02) 9976 1400
Email: ross.fleming@manly.nsw.gov.au

OTHER CLAUSES

40. This Funding Agreement is governed by the laws of the Australian Capital Territory.
41. You acknowledge that under the Commonwealth *Criminal Code Act 1995* it is a serious offence to give false or misleading information.
42. You must immediately notify us if you become aware of any interest of yours that may conflict with or prevent you performing the Project fairly and independently.

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EXECUTION CLAUSES

Executed by the parties

Executed on behalf of «Applicant_org_name»
ABN «ApplicantABN»

by
print name sign here

(signatory) who by signing warrants that they have the
authority to bind «Applicant_org_name».

on
(date)

in the presence of

.....
print name of witness witness sign here

.....
print address of witness

SIGNED for and on behalf of the
COMMONWEALTH OF AUSTRALIA
as represented by the Department of the Environment
and Water Resources (ABN 34 190 894 983) by

[Insert name of DTEWR Officer]
sign here

on [insert date] 2007

in the presence of

.....
name of witness witness sign here

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ATTACHMENT A

PROJECT

Purpose

To assist three local governments incorporate environmental sustainability objectives into their investment portfolios and to collect reporting on this process and the outcomes. The reporting will provide us with three case studies for inclusion in a final report that will be distributed by us nationally.

Goals

That learning's from this Project will contribute to a report titled "Sustainable Investment for Local Councils" to be prepared for us by the project coordinator, Mr Simeon Michaels. This report will assist other Councils develop, implement and monitor a Sustainable Investment Strategy.

Activities

In performing the Project you will:

- Work with our project coordinator, Mr Simeon Michaels (the Project Coordinator), and a financial advisor to assess your current investment objectives and policies.
- Work with the Project Coordinator and a financial advisor (contracted by the Project Coordinator) to develop a sustainable investment policy consistent with your broader social and environmental objectives and incorporate it into their existing investment policy document (unless this has already been done).
- Formally adopt a sustainable investment policy if one does not exist.
- Work with the Project Coordinator to produce a form letter to your existing investment managers. The letter will explain your sustainable investment policy and enquire whether, and to what extent, the investment satisfies the criteria of the policy.
- Send the above letter to your investment managers.
- Work with a financial advisor to evaluate responses from your investment managers and assess your compliance with your sustainable investment policy.
- Consult with a financial advisor on possible changes that could be made to your investment portfolio and adjust the portfolio where you are satisfied with the risk/return parameters by 31 August 2007.
- Submit a report to us by 30th September 2007 if you decide that no changes will be made to the investment portfolio. The report will outline the reasons for this decision and alternative actions you will pursue.
- Work with the Project Coordinator and a financial advisor to monitor the performance of the portfolio for a period of twelve months if changes are made to the portfolio.
- Submit a case study of the Project and investment portfolio performance data to us no later than 30th May 2008. This information will be included in the Project Coordinator's progress report and the data made available to a financial advisor for analysis.
- Submit a final report on the project and investment portfolio performance data to us no later than 15th September 2008

Resources

The Project Coordinator will contract with financial adviser(s) which, in the Project Coordinator's opinion, specialise in socially responsible investment. Whilst you are under no obligation to use a financial adviser identified by the Project

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Coordinator, should you decide to do so, the services of the financial adviser(s) identified by the Project Coordinator will be available at no cost to you.

Should you decide to use the services of a financial adviser(s) identified by the Project Coordinator you acknowledge that we have not selected the financial adviser(s) nor does the Commonwealth accept any responsibility or liability in relation to any advice provided by the financial adviser(s).

BANK ACCOUNT

The Funding will be paid into the following bank account:

Account Name: Manly Council General Fund
Bank: Commonwealth Bank
Branch: Manly
Bank/BSB: 062 197
Account No.: 00000109

BUDGET

Funding for your engagement in the Project is to be appropriated for your staff time and expenses relating to the Project.

We agree to pay to you \$3,000 (GST inclusive) upon signing of the contract.

In addition, if you agree to change your investment portfolio based on the recommendations of the financial adviser, we will pay to you an additional \$2,000 (GST inclusive) upon the delivery of a progress report to us by no later than 30 May 2008.

REPORTING

If you change your investment portfolio based on the recommendation of the financial adviser(s), you must provide to us a progress report by 30th May 2008 and a final report submitted by 15th September 2008.

Alternatively, if you do not change your investment portfolio based on the recommendations of the financial adviser, you must provide us with a final report by 30 September 2007.

You should include in each report:

- Your name and the name of the Project;
- The amount of the Funding and the total cost of the Project;
- A full description of the Project undertaken by you;
- Any receipts or other documents to verify your spending of the Funding;
- Any aspects of the Project that you did not complete;
- The outcomes of the Project;
- Investment portfolio financial performance data;
- Problems encountered in the Project;
- Any other information that we notify you that it requires is included.

ACKNOWLEDGEMENT AND PUBLICITY

None specified.

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INSURANCE

You must maintain the following types of insurance:

- a. workers' compensation insurance as required by law;
- b. public liability insurance to the value of not less than \$10,000,000 (any volunteers involved in the project must be covered by this public liability insurance); and
- c. in respect of any volunteers involved with the project, separate personal accident and volunteer-workers' cover unless loss or injury to volunteers is covered by your workers' compensation or public liability insurance.

SUBCONTRACTORS

None specified

DRAFT

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ATTACHMENT B

STATUTORY DECLARATION
Statutory Declarations Act 1959

I, **[insert name, address and occupation of person making the declaration]** make the following declaration under the *Statutory Declarations Act 1959*:

1. I am authorised to make this Statutory Declaration on behalf of **[insert name, ABN and address of funding recipient]** ('Recipient') and do so after making diligent inquiry and on the basis of my own knowledge.
2. The Recipient received **[insert \$ amount of funding]**, inclusive of the Goods and Services Tax, described in the Department of the Environment and Water Resources' letter of offer of **[insert date]** for **[insert brief description of purpose of funding and outputs/goals required]** ('purpose'), which formed its Funding Agreement with the Commonwealth of Australia. Under the Funding Agreement the Recipient agreed to spend the funding for the purpose.
3. The Recipient has spent the funding for the purpose in accordance with the Funding Agreement. Attached are receipts and other supporting documentation to verify that the Recipient has spent the funding for the purpose stated in the Funding Agreement.
4. The Recipient has returned to the Department any funding not spent for the purpose.
5. I am aware that under the *Criminal Code Act 1995* (Cth) section 137.1 giving false or misleading information is a serious offence.

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the *Statutory Declarations Act 1959*, and I believe that the statements in this declaration are true in every particular.

[Signature of person making the declaration]

Declared at **[insert place]** on **[insert day]** of **[insert month and year]**

Before me,

[insert full name, qualification, and address of person before whom the declaration is being made (in printed letters)]

Note 1: A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years – see section 11 of the *Statutory Declarations Act 1959*.

Note 2: Chapter 2 of the Criminal Code applies to all offences against the *Statutory Declarations Act 1959* – see section 5A of the *Statutory Declarations Act 1959*.

The persons authorised to witness a Statutory Declaration are listed in the Schedule to the *Statutory Declarations Regulations 1993* (Cth).

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