



CONSULTANCY AGREEMENT



Araluen Creek Restoration Project

Offering Services to

Upper Deua Landcare Group Inc.

05 September 2022

Soil Conservation Service
Soil Conservation Commission of NSW
ABN 57 876 455 969

CONSULTANCY AGREEMENT

Area: Southern Office: Nowra File No:
SCS Contact Officer Name: Lyall Bogie Phone No: 0437 112 604

Agreement between the **Soil Conservation Commission of NSW** ("the Commission")

AND

Name: Upper Deua Landcare Inc. (the Client")

Contact Name: Penny Hayman

Contact Phone No. 0492 822 556

Property Address: Various See Attachment

Invoice to Address: phhayman@pcug.org.au

Project Name: Araluen Creek Restoration Project

CONTENTS

This CONSULT Agreement ("this Agreement") consists of three parts:

Part 1. Offer and Acceptance
Which confirms the offer by the Commission to complete the Consultancy Services outlined in Part 2 and the acceptance of that offer by the Client.

Part 2. The Consultancy Brief
Which details the Consultancy Services to be undertaken by the Commission under this Agreement.

Part 3. Standard Terms and Conditions of this Agreement.


CONSULT AGREEMENT PART 1

1. Offer and Acceptance

The Soil Conservation Commission of New South Wales agrees to provide the Consultancy Services described in the Consultancy Brief pursuant to the Standard Terms and Conditions of this Agreement for a Total Fee of \$174,565 exclusive of GST, to be paid in accordance with the Clauses 2.8 and 3.5 of this Agreement.

The provision of the Consultancy Services shall commence on a date to be fixed in accordance with Clause 2.7 of the Consultancy Brief after receipt of this signed Consultancy Acceptance by the Commission.

This offer remains current for a period of one month from the date of the signature by the Commission's representative.

OFFER		ACCEPTANCE	
Signed	 _____	Signed	_____
Name	<u>Lyall Bogie</u>	Name	_____
Position	<u>Senior Environmental Officer</u>	Position	_____
Date	<u>05 September 2022</u>	Date	_____
Signed for and on behalf of the Soil Conservation Commission		Signed for the Client	

CONSULT AGREEMENT PART 2 - THE BRIEF

2.1 Background

Araluen Creek has a history of instability leading to bed and bank erosion. Previous projects have focused on increasing stability through bed control and bank erosion treatments, and replanting / fencing to increase stability. Upper Deua Landcare Group has applied for and won Australian Government funding to build on past successes and further increase the stability of the creek .

2.2 Aim

To provide structural works design and implementation to further increase stability in Araluen Creek.

2.3 Objective

To address erosion concerns at priority sites in Araluen Creek and its tributaries.

2.4 Scope

Please see Attachment for full scope and costings.

2.5 Client Responsibilities

Coordinate access and landholder liaison for the project.

2.6 Output Required

The Commission will undertake the works listed under **2.4 Scope**.

2.7 Duration of the Consultancy

From date of signature to 30 June 2023.

2.8 Fee Payable (Terms of Payment - see Clause 3.5, Part 3)

The total fee of \$ 174,565 exclusive of GST will be invoiced on completion of the works.

2.9 Special Terms and Conditions

The Commission will make every effort to implement the task listed under **2.4 Scope** on this Agreement in a cost effective manner and to achieve the aims and objectives of the consultancy. However, adverse, environmental conditions, extended wet or dry weather periods beyond that normally applicable to the site, can adversely affect performance and the Service cannot be held responsible for the impact of such climatic or environmental abnormalities.

2.10 Contact Officers

Project Manager

Lyall Bogie

P: 0437 112 604

F:

M:

E: lyall.bogie@scs.nsw.gov.au

Area Manager

Kurt Laboyrie

P: 0439 620 372

F:

M:

E: kurt.laboyrie@scs.nsw.gov.au

CONSULT AGREEMENT PART 3

3. Standard Terms and Conditions

3.1 INTERPRETATIONS

- 3.1.1 “**Commission**” means The Soil Conservation Commissioner who is incorporated as a corporation sole with the corporation name Soil Conservation Commission of New South Wales under Section 4B of the Soil Conservation Act 1938.
- 3.1.2 “**Commissioner**” means the Soil Conservation Commissioner.
- 3.1.3 “**Consultancy Brief**” means the brief forming Part 2 of this Agreement.
- 3.1.4 “**Consultancy Services**” means the services to be performed by the Commission under this Agreement as specified in the Consultancy Brief.
- 3.1.5 “**Department**” means the Department of Industry.
- 3.1.6 “**Minister**” means the Minister administering the Soil Conservation Act 1938.
- 3.1.7 “**Intellectual Property**” is defined in clause 3.14.5 of this Agreement.
- 3.1.8 “**GST**” means any tax on goods and/or services, including any value-added tax, broad-based consumption tax or other similar tax introduced in Australia.
- 3.1.9 The headings used in this Agreement are for convenience and ease of reference only, and shall not be relevant to or affect the meaning or interpretation of this Agreement.

3.2 COMMENCEMENT

The Commission will commence the Consultancy Services on or after a date to be agreed upon by both parties in accordance with clause 2.7 of the Consultancy Brief.

3.3 PERFORMANCE

- 3.3.1 The Commission will perform the Consultancy Services in a professional and competent manner and where the Commission is required to provide and utilise equipment, such equipment will be suitable for the works to be performed and will be maintained by the Commission in a good working condition.
- 3.3.2 The Client agrees that the Commission may at its discretion engage contractors, servants and agents to carry out and complete the Consultancy Services.

3.4 COMPLETION

The Commission will notify the Client in writing when the Consultancy Services are considered to be complete and the Client may then inspect the works to be satisfied that the Consultancy Services have been performed in accordance with the Consultancy Brief. Within 10 working days or receipt of such written notice, the client must advise the Commission in writing of any items the client considers to be incomplete or defective. If the client does not so notify the Commission the Consultancy Services will be deemed to be complete.

3.5 TERMS OF PAYMENT

- 3.5.1 Prior to the Commission commencing the work, the Client will pay to the Commission a part payment, where required, specified in clause 2.8 of the Consultancy Brief.
- 3.5.2 The fee stated in Part 1 is inclusive or exclusive of GST as specified, at the GST rate applicable at the date of this Agreement. The Commission reserves the right to amend the fee if there is a change in the application or rate of GST to the services to be performed under this agreement.
- 3.5.3 In consideration of the Commission performing the Consultancy Services the Commission shall receive payment as provided for in clause 2.8 of the Consultancy Brief.
- 3.5.4 The Commission will invoice the Client as provided for in clause 2.8 of the Consultancy Brief and the Client will pay to the Commission the full invoiced amount within 21 days from the date of the invoice (“the due date”).
- 3.5.5 If the Client fails to pay the invoiced amount on or before the due date, the Client will be liable to pay penalty interest on the amount outstanding at the rate equivalent to the interest rate prescribed from time to time under the provisions of Section 148 of the Crown Lands Act, 1989.
- 3.5.6 Any alterations or additions to the Consultancy Brief which either party may suggest or require shall be of no effect unless evidenced in writing signed by each of the parties to the Agreement and including provision for any extra fees and expenses payable in relation thereto.

3.6 WARRANTY

- 3.6.1 The Commission warrants that its officers, employees, agents and servants are competent and have the necessary expertise to carry out the Consultancy Services and that all works conform to the accepted industry standards and practice.
- 3.6.2 The Client warrants that:
- (a) all the necessary consents under any relevant Act have been obtained and that all applicable environmental planning requirements have been complied with;
 - (b) the site will be accessible by the Commission at the date agreed to by both parties in accordance with clause 3.2;
 - (c) the Client will not hinder, obstruct or in any way or unreasonably prevent the Commission from performing its obligations under this Agreement;
 - (d) where the Client is a person other than the owner of land, the Client warrants that this Agreement has entered into with the written approval of the owner of the land.
- 3.6.3 The Client agrees to disclose to the Commission, its officers, employees, agents and servants before the commencement of the Consultancy Services, the existence of all pipes, cables and other such hazards known to the Client but not readily apparent to the Commission upon a visible inspection of the land.

3.7 DAMAGE AND INDEMNITY

The Commission will not be liable for and the Client agrees to indemnify the Commission against any liability, loss, claim or proceeding in respect of any injury loss or damage whatsoever to any person or property (real or personal) insofar as such injury loss or damage arises out of the negligence, omission or default of the Client including any failure by the Client to comply with a term of this Agreement.

3.8 UNAVOIDABLE DELAY ETC.

3.8.1 A party to this Agreement shall not be entitled to exercise its rights and remedies upon the default of the other party (whether at common law or under provision of this Agreement) if that default:

- (a) is caused by an act or event that is beyond the reasonable control of that other party;
- (b) continues for less than one (1) month; and
- (c) was not reasonably foreseeable at the time this Agreement was entered into.

3.8.2 In the event that sub-clause 3.8.1 applies then neither party shall be in breach of its obligations which it cannot fulfil as a result of that event. As soon as a party believes an occurrence of the type stated in sub-clause 3.8.1 occurs it shall notify the other party.

3.9 SERVICES

The Commission does not expressly or impliedly warrant that the Consultancy Services supplied will remain suitable and adequate for all or any of the purposes of the Client and it is hereby agreed by both parties that all risks associated with the suitability of the Consultancy Services to be performed are exclusively borne by the Client.

3.10 INSURANCE

The Commission is insured against any liability which may arise at common law or by virtue of any relevant workers' compensation legislation in connection with the performance of the services by the Commission's employees.

3.11 ASSIGNMENT, TRANSFER, VARIATION

This Agreement shall not be assigned, transferred or varied in any way except in writing signed by each of the parties to this Agreement.

3.12 STATUTORY FUNCTIONS

The entering of this Agreement shall not in any way restrict or limit the exercise of any powers or the performance of any duties or functions of the Commissioner or the Minister under any Act.

3.13 TERMINATION OF AGREEMENT

3.13.1 The Commission may at any time by notice in writing terminate this Agreement as from the date of service of such notice or such later date as may be stated in such notice if the Client commits a material breach of the terms or conditions of this Agreement, and fails to commence to remedy such breach within one (1) month of receipt of notice to do so.

3.13.2 The Client may at any time by notice in writing terminate the Agreement as from the date of service of such notice (or such later date as may be stated in such notice) if the Commission commits a

material breach of the terms and conditions of the Agreement and fails to remedy such breach within one (1) month of receipt of notice to do so.

3.13.3 If any one of the following events take place:

- (a) the Client becomes bankrupt or insolvent; or
- (b) the Client (being a natural person) dies; or
- (c) the Client has a receiver appointed; or
- (d) the Client compounds with its creditors; or
- (e) the Client commences to be wound up, (except in the case of a member's voluntary winding up for the purpose of reconstruction or amalgamation); or
- (f) the Client carries on its business under a receiver or liquidator or administrator for the benefit of its creditors or any of them;

then the Commission shall be at liberty either:

- (i) to terminate the Agreement forthwith by notice to the Client or to the receiver or liquidator or to any persons in whom the Agreement may become vested in; or
- (ii) to give such receiver, liquidator, or other person the option of carrying out the Agreement subject to them providing a guarantee for the due and faithful performance of the agreement up to amount to be agreed.

3.13.4 Provided always that such determination or remedy as aforesaid shall not prejudice or affect:

- (a) any right of action or remedy which shall have accrued or shall thereafter accrue under the Agreement;
- (b) recovery of any monies paid by or due to either party under the Agreement.

3.14 INTELLECTUAL PROPERTY

3.14.1 All Intellectual Property which vested in the Commission prior to the entering into of this Agreement shall at all times remain vested in the Commission and shall not be used or dealt with by the Client except where expressly permitted by the terms of this Agreement.

3.14.2 All Intellectual Property produced by the Commission in the course of performance of the Consultancy Services specified in the Consultancy Brief shall vest in the Commission, and shall not be used or dealt with by the Client except where expressly permitted by the terms of this Agreement.

3.14.3 The Client is granted a non-exclusive and non-transferable licence to use the documents, information and materials produced pursuant to this Agreement:

- (i) to permit the completion by the Client of works and projects intended for the use of the Client; and
- (ii) for the personal or internal use of the client for the purposes of reference, research and education.

3.14.4 The licence granted by this clause does not permit the Client to publish, publicly broadcast, sell or market the documents, information and materials produced pursuant to this Agreement, except;

- (i) in accordance with a clause of this Agreement which expressly states that the Client's licence permits such use; or
- (ii) with the written consent of the Commission.

3.14.5 For the purpose of this clause "Intellectual Property" means:

- (i) copyright in all document, information and materials;
- (ii) all rights in relation to designs, patents and trademarks (including the right to registration of a design, patent or trademark);
- (iii) all rights in relation to inventions, discoveries, designs and novel techniques.

3.15 MEETINGS

The Client or the Client's nominated representative shall attend all meetings as scheduled in writing by the Commission or by an officer employed by the Commission to discuss any matters arising from the Commission's obligations under this Agreement.

3.16 STAMP DUTY

The Client shall be liable for and shall pay all stamp duty assessed on this Agreement.

3.17 EMPLOYMENT

Nothing contained herein shall constitute the relationship of partnership or employer and employee between the parties hereto and it is the express intention of the parties that any such relationships are denied.

3.18 REPRESENTATIONS

Each party acknowledges that no representation has been relied upon in entering into this Agreement which has not been expressed herein.

3.19 WAIVER AND SEVERABILITY

- 3.19.1 No waiver by the Commission of any breach of any provisions of this Agreement by the Client shall operate as a waiver of any other breach of the same or any other provisions of this Agreement, whether expressed or implied.
- 3.19.2 If any provision of this Agreement is held to be invalid, unenforceable or illegal for any reason, this Agreement shall remain otherwise in full force apart for such provision which shall be deemed deleted.

3.20 DISPUTE RESOLUTION PROCEDURE

In the event that the Commission and the Client are in dispute regarding any matter relating to or arising out of this Agreement the dispute will be referred for determination to two persons being appointed by each party for these purposes. Any determination made will be final and binding on the Commission and the Client. The cost of such a determination will be borne equally by the parties. The provisions of the Commercial Arbitration Act, 1984 do not apply to this Agreement.

3.21 GOVERNING LAW

This Agreement shall be construed and take effect in accordance with the laws of New South Wales and the

parties hereby consent to the jurisdiction of the New South Wales Courts and Tribunals.

3.22 NOTICE

All notices required or permitted under this Agreement shall be in writing and may be served by hand delivery or prepaid certified post to the addresses specified below or such other addresses notified by that party for the purposes of this clause.

(a) Commission:

General Manager
Soil Conservation Service
Level 12
10 Valentine Avenue
PARRAMATTA, NSW 2150
(PO Box 3935 Parramatta, NSW 2124)

or :

Area Manager
Soil Conservation Service

(b) Client:

Invoice to Address on the front page of this Agreement