



## Sydney Weeds Committees

• Sydney Central • Sydney South West  
• Sydney North • Sydney West – Blue Mountains

### Sydney Weeds Committees Incorporated

ABN 32 801 615 966

## Board Teleconference

Via Chorus call  
Please call 9007 4041  
PIN No 6616335  
Time: 2.00  
Date: Tues 16 Feb 2016

### Minutes

**Present:** Jillian MacIntyre (President), Michael Pattison (Vice President), Matt McNaughton (Treasurer), Alex Burgess-Buxton, Steve Smith.

**Apologies:** Chris Stanfield, Leanne Bunn (on leave), Rachael Buzio

1. Previous teleconference minutes (Attachment A)

Minutes of Board teleconference held on 9<sup>th</sup> December 2015 were accepted.

Proposed: Michael Pattison

Seconded: Matt McNaughton.

All in favour.

Actions Arising:

It was noted that the correspondence to Frank Cherry re his invoice had been actioned.

2. Agenda paper (Attachment B) – Weeds Action Program 1520 (WAP) Funding Deed contract (Attachments C and D were provided with the agenda)

All members confirmed that they had read the agenda paper.



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### Attachment B

Agenda Paper No	1516-003 (OOS)
Agenda Paper Title	WAP Funding Deed Contract
Sponsor(s) for Paper	Vice President, Michael Pattison and Treasurer, Matt McNaughton
Agenda Summary	<p><i>Caveat on the preparation of this paper:</i></p> <p>The agenda paper has been prepared in good faith, but is subject to express understanding that in preparing this paper the Vice President, Treasurer and Executive Officer are not legally qualified practitioners and any decision by the Board on this matter should be subject to qualified legal advice.</p> <p><i>Background:</i></p> <p>SWC received a letter of offer on 21 October 2015 for a grant to receive funding to facilitate member training (\$11,264), and contribute to the SWC field event (\$5,000) as part of the WAP (Attachment C). The Deed of Offer (Attachment D) was sent via email on the 3<sup>rd</sup> Dec just prior to the AGM and it was considered appropriate by the former President for the new Board to action this documentation.</p> <p><i>Issues:</i></p> <p>The Funding Deed Contract has a number of aspects that require careful consideration by the Board as part of it due diligence. These include (but are not necessarily limited to):</p> <ol style="list-style-type: none"><li>1. The terms of the Funding Deed Contract;</li><li>2. Past performance of the Lead Agency proposing the Deed, the Hawkesbury River County Council (HRCC) in relation to execution of previous contracts of a similar nature; and</li><li>3. The cost to the SWC of undertaking the work relative to the likely benefits</li></ol>



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	<p>and outcomes taking into account any identified project risks.</p>
<p>Consideration</p>	<p><i>The terms of the Deed Contract</i></p> <p>There are a number of terms within the Deed Contract that warrant careful consideration. These include (but are not necessarily limited to) the following:</p> <ul style="list-style-type: none"> <li>• Section 6 allows the Lead Agency to withhold or suspend payment or part of it <u>for any reason</u>, and <u>they may change the total amount</u>, and <u>notwithstanding this, the grantee remains obligated to meet their commitments under the contract</u>.</li> <li>• Section 7 allows that if for any reason the grantee is required to repay a grant, the Lead Agency may require them to pay interest on the amount to be repaid, at the corporate overdraft reference rate, from the date when the repayment was sought by the Lead Agency.</li> <li>• Section 19.5: The Lead Agency can terminate a grant at any time <u>without need to specify a reason</u>.</li> <li>• Section 2.1d): The Lead Agency provides the funding to the grantee subject to meeting <u>any other requirement</u> of the Lead Agency.</li> <li>• In addition, the Funding Deed Contract appears to lack a dispute resolution clause.</li> </ul> <p>The contract clauses may put the SWC at serious risk of being the subject of arbitrary action and direction by the HRCC.</p> <p>The implications of such terms, for example would appear to suggest there is potential for SWC to execute the work and/or commit to expenditure under the contact - but then have funds withdrawn. There is also potential that under the contract SWC directors, the Executive Officer, or its agents may be subject to direction by HRCC (with consequential pecuniary costs and/or insurance coverage issues).</p> <p>Provisions such as those in this contract are not known to be found in other grant contracts, such as those used by the National Landcare program.</p> <p>Most contracts allow for change/termination but based on some kind of</p>



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reasonable grounds together with the provision of reasonable dispute resolution clauses, in most cases based in principle on third party arbitration.

In considering this matter there are also questions about whether the HRCC as lead agency (or agent) on behalf of the NSW Department of Primary Industries for WAP 1520 projects is complying with NSW Government policies and protocols in relation to contracting to SME's.

*Past performance of the Deed proposer.*

In considering the matter of the risk of HRCC exercising these clauses (or not), the Board needs to be aware past actions of the HRCC on WAP matters. These include a number of failed weeds funding partnerships over several years, which are part of the SWC record (for example, AGM Minutes of 2013).

Most recently, in relation to a WAP GIS project (value \$20,000) SWC sought to undertake in early 2015 as part of Year 5 WAP 10-15. Considerable SWC Executive Officer time was spend in seeking to establish the GIS project reaching the point that staff were ready to be engaged. At that point the HRCC General Manager without cause refused to fund the project, notwithstanding the project being developed with, and having the strong support of the then WAP Project Manager, Mr Rod Ensbey of the Department of Primary Industries and GS LLS. The HRCC then chose to engage the LLS to deliver the project. GS LLS then sought SWC to sub-contract the funds to SWC with more time spend on that process. In the end GSLLS are managing the project funds and are now managing and partially undertaking the works itself. Overall it is estimated in the order of \$5000 in SWC resources were spent on development work to establish this project for no result.

*The cost to the SWC of undertaking the work relative to the likely benefits and outcomes taking into account any identified project risks.*

There are clearly significant risks in terms of the matters outlined above.



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	<p>The proposed contract works include \$5000 to contribute the SWC field day and \$11,264 for training. It is a matter of judgement for the Board as to whether potential costs and risk of taking on this work will achieve reasonable outcomes at reasonable costs.</p> <p>Given the above considerations at the very least there is a need for further legal investigation and subject to that advice, possibly of re-negotiation of the terms of the contract.</p> <p>It is noted that not executing the contract could result in the HRCC withdrawing the offer for this financial year.</p>
Options	<p><i>Option 1</i></p> <p>The Board ignores any concerns raised by this paper and proceeds to sign the Deed as it is presented. This is not considered an appropriate course of action as it is considered that this would place SWC at risk of committing the organisation to a liability to execute works without certainty of funds for these works being available to meet the liability.</p> <p><i>Option 2</i></p> <p>The Board decides to</p> <ol style="list-style-type: none"><li>1. Seek legal advice;</li><li>2. On the basis of the advice either:<ol style="list-style-type: none"><li>(a) accept the contract's current terms and execute the contract;</li><li>(b) seek to renegotiate the terms of the contract;</li><li>(c) reject the contract.</li></ol></li></ol> <p><i>Option 3</i></p> <p>Write to the Director-General of the Department of Primary Industry as principal authority to:</p> <ol style="list-style-type: none"><li>(a) advise of SWC concerns about the proposed Funding Deed Contract on offer by the HRCC as lead agency for the Department of Primary Industry;</li><li>(b) seek their advice on whether the terms of this contact are consistent with NSW Government policies and practices; and</li><li>(c) should the Director-General believe it appropriate, they appoint and</li></ol>



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	<p>independent agent to negotiate terms that are commercially fair and comply with NSW Government policies and protocols.</p> <p><i>Option 4</i> A combination of Options 2 and 3.</p> <p><i>Option 5</i> Do not sign the Deed and refuse the grant, advising the HRCC as lead agency that the terms of the agreement are not acceptable.</p>
Recommendation	Option 4 is the recommended option, noting the risk of HRCC withdrawing the funding offer.
Decision	<p>It was noted that SWC had already received ~ \$20,000 value in training through the Smart and Skilled program this year.</p> <p>It was agreed that legal advice should be sought, as this could prove useful for all WAP recipient members if it resulted in contract improvements next year.</p> <p>It was also agreed that it would be useful to write to DPI and find out whether this contract was standard in its approach.</p> <p>It was agreed that the contract should preferably be signed so that the funds were made available to SWC members. However it was noted that this should be reviewed on the basis of legal advice, once available.</p> <p>Proposed: Steven Smith Seconded: Matt McNaughton</p>
Other Business	<p><i>Field Day:</i> The proposed Field Day was discussed. Possible sites included: EMMI at Menangle; SOPA, Mt Annan BG. Topics included integrated weed management, Chemical free weed management. It was agreed that an agenda item should be prepared for discussion at the next meeting.</p>



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*Crown Lands PFRMP:*

It was suggested and agreed that there be a arranged held for those who might be interested in developing partnerships for this program. EO to send out meeting request.

**Office location:**

The desirability of seeking alternative office location to Parramatta was discussed. It was agreed that the EO approach GSLLS re possible location at their Penrith office.