



Local Land
Services

Participant Agreement

under the NSW Weeds Action Program 2020 - 2025

Local Land Services Region: Greater Sydney Local Land Services

Participating Organisation: Sydney Weeds Network Inc.

Project: Weeds Action Program 2020-2025 - Sydney Weeds
Network - Translated Weeds Materials

Subcontract Number: GS01680

Grant period: 2021/2022

Project ID: P-05462-22

Background

- The NSW Weeds Action Program 2020-2025 (“**WAP20-25**”) is a NSW Government initiative to reduce the impact of weeds. Further information about WAP1520 is included in **Annexure 1 - NSW Weeds Action Program 2020-25 Guidelines**.
- The NSW Department of Industry has provided WAP2025 funding for 2020-2025 to Local Land Services to coordinate eleven Regional sub-programs and engage regional weed coordinators.
- Under this Deed, Local Land Services wishes to engage the Participating Organisation to carry out a particular Project under a Regional sub-program.

Subcontract Details

LLS	Name	Local Land Services, a body corporate established by <i>Local Land Services Act 2013</i> (ABN 57 876 455 969).
	LLS Region	Greater Sydney Local Land Services

LLS' Project Manager	Name	Maddy Humphrys
	Office Address	Level 4, 2-6 Station St PENRITH NSW 2750
	Telephone	
	Mobile	0434 638 023
	Email	maddy.humphrys@lls.nsw.gov.au

Participating Organisation ('You')	Organisation	Sydney Weeds Network Inc.
	Address	
	ABN	32 801 615 966

Your Contact Person	Name	Ms Amanda Kotlash
	Telephone	02 4567 8117
	Mobile	0466 787 366
	Email	info@sydneyweeds.org.au

Regional sub-program Greater Sydney subprogram

Project Weeds Action Program (WAP 2025)
The detailed plan annexed at Schedule A - Project Plan sets out the activities to be undertaken by the Grantee in accordance with this Deed and may include details of budget, instalments of the Grant, any Grantee's Contributions and milestones, as approved by Local Land Services and the WAP 2025 - Greater Sydney subprogram steering committee.

Grant The maximum total amount of \$50,000 (GST exclusive) payable in accordance with **clause 4** and milestones in **Schedule A**.

This offer is valid for 30 days from the receipt of contract and accepted on signing of contract.

Commencement Date

05/06/2022

Grant Period

1 July 2021 to 30 June 2022

Terms and conditions

Definitions and Commencement

1. Definitions and interpretation

1.1 Unless the context requires otherwise, in this Deed:

- (a) the terms set out in the left hand column of the Details have the meaning ascribed to them in the right hand column of the Details;
- (b) where any time limit pursuant to this Deed falls on a day which is not a Business Day then the time limit will be deemed to have expired on the next Business Day;
- (c) a reference to a statute, regulation, ordinance or by-law will be deemed to include a reference to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing same from time to time;
- (d) the meaning of general words is not limited by specific examples introduced by “including” or “for example” or similar expressions;
- (e) references to persons include bodies corporate, government agencies and vice versa;
- (f) references to the parties include references to respective directors, officers, employees and agents of the parties;
- (g) nothing in this Deed is to be interpreted against a party solely on the ground that the party put forward this Deed or any part of it; and
- (h) where an expression is defined, any other grammatical form of that expression has a corresponding meaning.

1.2 Definitions

Business Day means any day other than a Saturday, Sunday or public holiday in New South Wales.

Claim means any cost, expense, loss, damage, claim, action, proceeding or other liability (whether in contract, tort or otherwise), however arising and includes legal costs on a full indemnity basis.

Confidential Information of a party means all trade secrets, financial information and other commercially or scientifically valuable information of whatever description and in whatever form (whether written or oral, visible or invisible) which:

- (a) is by its nature confidential;
- (b) has been designated as confidential by a party;
- (c) is capable of protection at common law or equity as confidential information; or
- (d) is derived or produced partly from the information in paragraphs (a), (b) or (c) above

but does not include information that:

- i. is in the public domain; or
- ii. is independently known or developed by the party receiving the information other than as a result of a breach of this Deed or any other obligation of confidentiality owed by or to any other person.

Contract Material means material created as part of or in performance of the Project including any

reports, documents or data.

Deed means this Participant Agreement and includes the Details, Terms, Schedules and any other annexures or other documents cross-referenced in this deed.

Department means the Department of Industry, representing the Crown in right of the State of New South Wales.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999*.

Intellectual Property or IP includes:

- (a) all rights in relation to copyright, inventions, plant varieties, trademarks, designs, patents; and
 - (b) all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields including trade secrets and know-how,
- but does not include Moral Rights.

Moral Rights has the same meaning as in the *Copyright Act 1968 (Cth)*.

Notice means any approvals, consents, instructions, orders, directions, statements, requests and certificates, or other communication to be given under this Deed.

Objectives means the objectives detailed in Schedule A- Scope, which are the agreed results you must achieve and ensure your subcontractors achieve.

Payments means any part of the Grant which LLS pays to you.

Personal Information has the same meaning as in the *Privacy and Personal Information Protection Act 1998 (NSW)*.

Unexpended Grant means Payments that are unspent as at the earlier of termination of this Deed or the expiry of the Grant Period.

2. Commencement and duration of Deed

2.1 This Deed will commence on the Commencement Date.

2.2 Unless terminated earlier, this Deed will end once you have completed the Project to LLS's satisfaction and LLS has made all Payments due.

What you must do

3. Your general obligations

3.1 You must:

- (a) use the Grant or any part of it only for the Project;
- (b) complete the Project on time;
- (c) fulfil the Objectives set out in **Schedule A**;
- (d) carry out your role and responsibilities as set out in **Schedule A**;
- (e) comply with the reporting requirements set out in **Schedule B**;
- (f) comply with all Commonwealth, State and Local government laws that are relevant to the Project, this Deed, or your registration as an entity, including the NSW *Biosecurity Act 2015*; and
- (g) comply with all policies, guidelines and reasonable directions LLS provides to you.

3.2 You acknowledge that you must not use the Grant towards:

- (a) infrastructure costs;
- (b) general reserves, bushland, parks and garden management costs;
- (c) capital costs;
- (d) administration, management or other costs related to private works or contracting businesses; nor
- (e) costs of treating widespread weeds and local authority costs associated with control of weeds for road safety, fire or road maintenance.

About the Grant

4. Payment of Grant

4.1 LLS will make Payments of the Grant on the condition that:

- (a) it has received a grant from the Department to cover the Project; and
- (b) you provide LLS with correctly rendered invoices; and
- (c) an invoice is provided within 30 days of execution of the agreement.

4.2 An invoice is correctly rendered if:

- (a) it clearly identifies the Project and the Grant allocated; and
- (b) it is accompanied by any documentation which LLS requests relevant to the Project.

4.3 LLS will pay a correctly rendered invoice within 30 days after receiving it.

4.4 Notwithstanding **clause 4.3**, if LLS makes a Payment to you, this does not constitute an admission that your performance is in conformity with this Deed and no payment will be deemed to release you from your obligations under this Deed.

4.5 You acknowledge that LLS cannot guarantee that funding will be ongoing after the Grant Period.

5. Withholding, Suspension and Repayment

5.1 If you are not complying with this Deed, LLS may withhold or suspend payment until you comply with your obligations to LLS' satisfaction.

5.2 Where you have failed to comply with this Deed, LLS will calculate the amount of repayment you must make with regard to the extent you have failed to complete the Project.

5.3 LLS may set off the amount of any overpayment or claim for repayment against any future Payment to you.

5.4 Any repayment which LLS claims from you under this clause will be a debt due and owing by you to LLS.

5.5 If you anticipate that you will have Unexpended Grant at the end of the Grant Period, you must seek LLS' written consent by **30 April 2022**, or such later date as agreed with LLS, to carry over that Unexpended Grant to the next financial year to use on a different project. You acknowledge that all WAP2025 funding must be spent by **30 June 2022**.

5.6 If LLS requires, you must repay to LLS any Unexpended Grant within 30 days of a written demand from LLS.

6. GST

6.1 Unless otherwise indicated, all consideration for any supply under this Deed is exclusive of any GST imposed in relation to the supply.

6.2 If:

- (a) despite any other provision of this Deed, GST is imposed on a supply you make to LLS under this Deed; and
 - (b) LLS is or will be entitled to receive an input tax credit (as defined in the GST Law) in relation to that supply,
- LLS will pay you an additional amount equal to the GST imposed on that supply, at the time and in the manner payment is otherwise payable under this Deed in relation to that supply.

6.3 You must be registered under the GST Law at the time of making any supply under this Deed on which GST is imposed.

6.4 If you are not registered under the GST Law as required under **clause 6.3**, you will not be entitled to receive any additional amount as provided under this **clause 6**.

6.5 If for any reason LLS pays you an amount under this clause which is more than the GST imposed on the supply, you must repay the excess to LLS on demand or LLS may set off the excess against any other amounts due to you.

Material and Information

7. Reporting Requirements

7.1 You must provide LLS with written reports at the times and containing the information specified in **Schedule B - Reporting Requirements**.

7.2 You must keep financial accounts and records relating to the Project so as to enable:

- (a) all receipts and payments related to the Project to be identified in accounts and reported in accordance with this Deed;
- (b) unless notified by LLS, the preparation of financial statements in accordance with Australian Accounting Standards; and
- (c) generation of an income and expenditure statement for each financial year of the Project including a comparison of the income and expenditure in each financial year against the budget; and

(d) the audit of those records in accordance with Australian Auditing Standards.

7.3 If any report contains information confidential to you, you should mark the relevant parts of the report accordingly.

8. Intellectual Property

8.1 Intellectual Property in all Contract Material vests in LLS (or the Department).

8.2 LLS grants you a transferable, royalty free licence to use the IP in the Contract Material for the purposes of the Project.

9. Confidential Information

9.1 Each party must keep the other party's Confidential Information confidential, including the amount of the Grant, except in accordance with **clause 10** (Public Announcements), **clause 11** (Disclosure of information) or as otherwise agreed in writing.

10. Privacy

10.1 You must:

- (a) ensure that Personal Information that is provided by LLS or collected by you under or in connection with this Deed is used only for the purposes of this Deed and is protected against loss, unauthorised access, use, modification and disclosure, or against other misuse;
- (b) not disclose any Personal Information without the written consent of:
 - (i) the individual to whom the Personal Information relates; or
 - (ii) LLS, unless otherwise required or authorised by law;
- (c) comply with the Information Protection Principles applying to NSW public sector agencies under the *Privacy and Personal Information Protection Act 1998 (NSW)* when doing any act or engaging in any practice in relation to Personal Information as if you were an agency directly subject to that Act; and
- (d) include equivalent requirements regarding Personal Information (including this clause) in any subcontract you entered into in relation to the Project.

11. Public Announcements and Acknowledgement

11.1 You must:

- (a) seek the consent of LLS prior to any public announcement about the Grant or the Project;
- (b) acknowledge the support of LLS and the Department :
 - (i) in any public statements about the Project;
 - (ii) on the home page of any website established in connection with the Project;
 - (i) on any equipment or other facility funded wholly or in part by the Grant;
- (c) use the NSW Government logo and NSW Weeds Action Program logo (as set out on the NSW Weeds Extranet) when acknowledging the Department's support of the Project.

11.2 LLS may publish the title and brief description, including outcomes, of the Project and the amount of the Grant.

Dealing with Risk

12. Disclosure of Information

12.1 You acknowledge that, under the *Government Information (Public Access) Act 2009*, LLS may be required to publicly disclose information about this Deed at <<https://tenders.nsw.gov.au/>>. None of the disclosure obligations require the disclosure of:

- (a) the commercial-in-confidence provisions of a contract;
- (b) any matter that could reasonably be expected to affect public safety or security; or
- (c) information which would be exempt from disclosure if it were the subject of an application under the *Government Information (Public Access) Act 2009*.

12.2 You may nominate any items you consider are confidential and why, to assist LLS in determining what items to disclose.

13. Insurance

13.1 You must maintain, during the term of this Deed:

- (a) a broadform public liability policy of insurance to the value of at least \$10 million in respect of each claim and unlimited in the aggregate as to the number of occurrences in the policy period ; and
- (b) workers' compensation insurance as required by all relevant laws of Australia relating to workers compensation.

13.2 You must not do, permit or suffer any act, matter or thing or omission whereby any of the policies referred to in this clause may be vitiated, rendered void or voidable.

13.3 On request by LLS, you must provide a copy of valid and current certificates of currency for each or any of the policies described above.

13.4 Without limitation to this clause, each party warrants that it has and will maintain appropriate insurance to cover any liability it may incur in relation to this Deed.

14. Indemnities

14.1 You must indemnify and keep indemnified LLS, the Crown in right of the State of New South Wales and their officers, employees and agents from and against any loss (including legal costs and expenses on a solicitor/own client basis) or liability incurred or suffered by, or made against, any of those indemnified arising directly or indirectly from any Claim by any person as a result of or in connection with:

- the Grant or the use of any outcomes from the Project;
- your breach of this Deed;

any unlawful or negligent act or omission by you, your employees or your subcontractors in connection with this Deed;

any illness, injury or death of any person caused or contributed to by you, your employees or your subcontractors in connection with this Deed;

any loss or damage to real or personal property caused or contributed to by you, your employees or your subcontractors in connection with this Deed; or

any act or omission by you or your employees or your subcontractors in connection with this Deed that is in infringement of any Intellectual Property, or privacy rights of LLS or any third party.

14.2 Your liability to indemnify LLS under this clause will be reduced proportionately to the extent that any negligent or unlawful act or omission by LLS, its officers, employees or agents contributed to the relevant loss or liability.

14.3 Your liability to indemnify LLS under this clause does not exclude or reduce the liability of, or benefit to, a party that may arise by operation of the common law, statute or the other terms of this Deed.

Terminating the Deed

15. Termination

15.1 Where a party has breached this Deed:

the other party may give a Notice to that party requiring it to rectify that breach within 30 days of receiving that Notice; and

if the party which received the Notice fails to rectify that breach in time, the other party may terminate this Deed immediately by giving a further Notice.

15.2 LLS may terminate this Deed immediately by written Notice if you breach a provision of this Deed in a manner that, in LLS' opinion, is not capable of remedy.

15.3 LLS may terminate this Deed, by giving you 30 days' Notice, if any one or more of the following occurs: in LLS' opinion you are not carrying out the Project diligently and competently; or LLS considers that there has been a material change in circumstances in your financial position, your structure or your identity.

Other Legal Matters

16. Dispute Resolution

16.1 If a dispute arises in relation to this Deed ("a Dispute"), a party must comply with this **clause 16** before starting arbitration or court proceedings except proceedings for urgent interlocutory relief.

16.2 A party claiming that a dispute has arisen must notify the other party in writing giving details of the dispute (Dispute Notice) in accordance with the requirements of **clause 17** (Notices).

16.3 Following receipt of a Dispute Notice, each party must refer the Dispute to a senior representative, who:

(a) does not have prior direct involvement in the Dispute; and

(b) has authority to negotiate and settle the Dispute.

- 16.4 If the Dispute is not resolved within 10 Business Days from the date the Dispute Notice is received by the party to whom the Dispute Notice is given, the party which gave the Dispute Notice under **clause 16.2** must refer the Dispute for mediation by the Australian Disputes Centre (ADC) for resolution in accordance with the mediation rules of the ADC.
- 16.5 If the Dispute is not resolved within 40 Business Days after referral to mediation either party may initiate proceedings in court.
- 16.6 Each party must pay its own costs of complying with this clause and split the costs of the mediator evenly.

17. Notices

- 17.1 Unless otherwise stated in this Deed, all Notices to be given under this Deed must be in writing, and hand-delivered, posted or emailed to the Authorised Officer specified in the Details or as otherwise notified in writing.
- 17.2 The receiving party will be deemed to have received the Notice as follows:
- (a) if hand delivered, on the day on which it is delivered or left at the relevant address;
 - (b) if sent by post within Australia:
 - i. if posted using Express Post, the priority letter service option of regular post, or the priority service option for Registered Mail, on the fourth Business Day after the day on which it is posted;
 - ii. if posted using the regular post option, on the tenth Business Day after the day on which it is posted;
 - (c) if sent by email before 5.00pm on a Business Day, the first of the following occurring:
 - i. when the sender receives an automated message confirming delivery; or
 - iii. four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not be delivered.
 - (d) if sent by email after 5pm on a Business Day or on a day that is not a Business Day, then it will be deemed to be received on the next Business Day.
- 17.3 Any such mode of service will be in all respects valid notwithstanding that the party on whom service is affected may be in liquidation, bankruptcy or wound up and notwithstanding any other matter or event whatsoever.

18. Notices

- 18.1 **Survival:** The following clauses survive termination or expiry of this Deed: **clause 7** (Reporting Requirements), **clause 9** (Confidential Information), **clause 10** (Privacy), **clause 12** (Insurance), **clause 14** (Indemnities), **clause 15** (Termination), this **clause 18.1** and any other clause which by its nature is intended to survive this Deed.
- 18.2 **Subcontractors:** You remain fully responsible for the performance of the Project if you subcontract the performance of any part of the Project.
- 18.3 **Keeping of records, audit and rights of access to such records:** You:
- (a) must ensure complete and accurate records and books of account are kept with respect to your receipt of the Grant (the "Records"), and must retain such Records for a minimum of seven (7) years

after expiry or termination of this Deed;

- (b) authorise LLS, the Department and any other State or Commonwealth Government department or agency (the "Auditors") that has provided moneys for the purposes of the Project, to undertake audits, to examine and inspect, at reasonable times and on reasonable Notice, any records held by you, and allow any such Records to be copied; and
- (c) provide all reasonable assistance in order for the Auditors to properly carry out the inspections and audits referred to in this clause.

18.4 **Conflict of Interest:** You must not carry on or be involved in any capacity in an activity or business, which may conflict with, or adversely affect, your ability to carry out your obligations under this Deed, and you will immediately notify LLS in writing if such a conflict or risk of such a conflict arises.

18.5 **Entire Deed:** This Deed states all the express terms agreed by the parties as to the matters referred to in this Deed. It supersedes all prior contracts, obligations, representations, conduct and understandings between the parties relating to the subject matter of this Deed.

18.6 **Variation:** This Deed may only be varied by agreement in writing including by an exchange of emails confirming the agreed variation.

18.7 **Inconsistency:** If there is any inconsistency between provisions of this Deed then the order of precedence will be:

- (a) the Details; then
- (b) these Terms and Conditions; then
- (c) any Schedules.

18.8 **Negation of employment, partnership or agency:** This Deed does not create a relationship of agency, partnership, and/or employment between the parties. You must not represent yourself as being an employee or agent of LLS or as otherwise able to bind or represent LLS.

18.9 **Waiver:** If a party fails to exercise any of its rights under this Deed, or delays exercising those rights, that failure or delay will not operate as a waiver of those rights or any future rights or in any respect estop a party from relying on the terms of this Deed to their full force and effect. Any waiver by a party of a breach of this Deed must be in writing and will not be construed as a waiver of any further breach of the same or any other provision.

18.10 **Assignment:** You must not assign or novate your obligations or interests under this Deed, without the prior written consent of LLS.

18.11 **Counterparts:** This Deed may be signed in any number of counterparts which taken together will constitute one instrument.

18.12 **Governing Law:** The laws of New South Wales govern this Deed and the parties submit to the non-exclusive jurisdiction of the courts in that State.

Executed as a deed

Local Land Services

Signed, sealed and delivered for and on behalf of **Local Land Services** by its authorised signatory but not so as to incur personal liability:

Name

Signature

Title

Date

Participating Organisation

Signed by:

Before:

Name

Name of Witness

Signature

Signature of Witness

Address

Address of Witness

Date

Date

Schedule A - Scope

Project

This contract is for the delivery of translated weeds resources for the culturally and linguistically diverse community. The aim is to improve engagement and information sharing with non-English speaking community members around plant trading.

Sydney Weeds Network will oversee the management of this project on behalf of Greater Sydney Local Land Services. This project is funded through the Weeds Action Program 2020-25 and Greater Sydney Land Services.

Milestones and Payment Schedule

Date	Description of Services - Milestones	Fee (excluding GST)
10/06/2022	Participant agreement signed and tax invoice submitted to GS LLS	\$50,000
30/06/2022	Contract translation services to conduct works	
02/09/2022	Works complete and materials supplied to the Sydney Weeds Network members and GSLLS	

Budget

Activity	Description (Target)	Grant	In-kind labour
Media, Communications and Awareness Raising	GS LLS contribution towards printing costs		\$8,000
	Sydney Weeds Network project management tasks including: administration, contract management and collaboration with Sydney Weeds Network members on the materials	\$3,000	
	Translation of materials by contractor	\$47,000	

Priorities for WAP2025

The priorities for WAP2025 include:

- prevent the establishment of new weed species
- eliminate or prevent the spread of new weed species
- reduce the impact of widespread weed species (although see **Clause 3.2**)
- ensure that NSW has the ability and commitment to manage weeds.

Aims of the Regional Sub-program

A: Aims of all Regional Sub-programs

The Regional sub-programs aim to include the following:

- The Regional sub-program must contribute to the weed component of the NSW Invasive Species Plan either directly or through a Regional Strategic Weed Management Plan.
- The Regional sub-program must be part of an integrated and coordinated approach across each LLS region. It is to be species and tenure-neutral as possible. It must involve engagement with multiple stakeholders, to create productive

partnerships that deal with weed risk and impacts.

- The Regional sub-program must, as a minimum, include a representative from each participating Local Control Authority. However, as the new legislative arrangements are tenure-neutral, each Regional sub-program must clearly show a commitment to including public land managers where practicable.
- LLS encourages further contribution from you or other partners to supplement the funding from LLS.

B: Objectives of this project

The Objectives of the project also include:

- Reduce the impact of weeds through implementation of the NSW Invasive Species Plan and Greater Sydney Regional Strategic Weed Management Plan.
- Prevent weed species from establishing through the delivery of surveillance and inspection activities.
- Eradicate or reduce the extent of high risk weeds through targeted on-ground risk mitigation.
- Prevent ongoing spread of weeds with limited distribution in the region.
- Prevent the spread of weeds to key sites or assets of high economic, environmental and social value, or to reduce their impact on these sites if spread has already occurred;
- Improve the knowledge base for weed management, in particular to influence the community, industry and other stakeholders.

Other information

Schedule B - Reporting Requirements

(Refer to **clause 7**)

You must provide the following reports to the Regional Weed Coordinator:

1. The Grantee must provide to LLS:
 - a) Progress and annual reports according to the timeline set out in Schedule A, prepared using the format advised by LLS. The reports must be signed by an authorised person of the Grantee or other person approved by LLS
 - b) Evidence within reports and associated documentation (photos, invoices, activity plans etc.) that can be used to independently verify expenditure of funds, as well as evidence of the achievement of milestones and project outcomes as set out in schedule A.

2. The Grantee also acknowledges and agrees that:
 - a) LLS will maintain regular contact with the Grantee to monitor implementation of this Project including site visits as required; and
 - b) In addition to any other reporting obligations, the Grantee must, if requested by LLS, provide additional information concerning the project.