

COMMUNITY GARDENS INCENTIVE AGREEMENT



**Lane Cove
Council**

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COMMUNITY GARDENS INCENTIVE AGREEMENT

THIS AGREEMENT is made on:

BETWEEN

Lane Cove Council of 48 Longueville Road, Lane Cove, New South Wales
(**Council**)

And

The Party Specified in [Item 1](#) of the Reference Schedule
(**Owner**)

RECITALS:

- A. The Council wishes to provide the Services and supply the Materials to the Owner for the benefit of Residents of the Property, to enable the establishment and ongoing use of a Community Garden at the Property on the terms set out in this Agreement.
- B. The Owner has agreed to accept the supply of the Materials from the Council and the provision of Services by the Council to the Owners and Residents at the Property on the terms set out in this Agreement.

OPERATIVE PROVISIONS

IT IS AGREED

1. DEFINITIONS AND INTERPRETATIONS

1.1. In this Agreement, the following terms have the following meanings:

- (a) **Agreement** means the agreement between the Council and the Owner as set out in this document.
- (b) **Annexure** means an annexure to this document and forming part of this Agreement.
- (c) **Commencement Date** means the date specified in [Item 2](#).
- (d) **Community Garden** means a place where Residents come together to grow food to eat and to enjoy the conviviality of good company.
- (e) **Community Garden Incentive Scheme** means the scheme pursuant to which the Council has invited expressions of interest from Owners and or Residents to participate in the establishment of a Community Garden in a residential apartment complex.
- (f) **Conditions** means the terms and condition of this Agreement.

- (g) **Council** means Lane Cove Council, a body politic as defined in the *Local Government Act 1993* and include its successors and assigns and shall include its servants, Officers, employees and agents.
- (h) **Council's Representative** means the person appointed by Council as its representative in accordance with this Agreement
- (i) **Materials** means all materials and equipment to be supplied by the Council to the Owner required to establish the Community Garden as specified in [Item 5](#) and capped at the Cost specified at [Item 6](#).
- (j) **GST** has the meaning given to it in A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth).
- (k) **Item** refers to the item in the Reference Schedule being the item number identified in the relevant clause of these Conditions.
- (l) **Offer** means the offer submitted by the Owner or Resident(s) to the Council to participate in the Community Garden Incentive Scheme.
- (m) **Owner** means the party specified in [Item 1](#) and its approved assigns and where appropriate, its employees, agents, contractors and invitees.
- (n) **Personnel** include the Owner's employees, agents, consultants and sub-Suppliers.
- (o) **Property / Site** means the common property in a strata plan or a lot in a deposited plan specified at [Item 4](#), being the place or places at which the Services are to be provided or are intended to be provided.
- (p) **Reference Schedule** means the reference schedule to this Agreement.
- (q) **Resident** means a person or persons residing at the Property.
- (r) **Services** means the services to be provided by the Council as specified in **clause 3.1**, including the supply of the Materials.

1.2. In these Conditions unless the context otherwise requires;

- (a) a reference to a particular Act, regulation, proclamation, by-law, standard, code or similar, includes any amendments, revisions, re-enactment or replacement thereof;
- (b) all measurements of physical quantities shall be in the metric system of measurement as defined in the *National Measurement Act, 1960*;
- (c) monetary references are references to Australian Currency;

- (d) a cross-reference to a clause number is a reference to all of its clauses and sub-clauses;
 - (e) headings and under-linings are for convenience only and do not affect the interpretation of the Agreement;
 - (f) a reference to a document includes an amendment, supplement, to, replacement or novation of that document;
 - (g) a reference to a party to a document includes that party's successors and permitted assigns;
 - (h) words importing gender includes all genders, and the singular includes the plural and vice versa; and
 - (i) a reference to a person includes contractor, corporation, partnership, joint venture, association, other body corporate and any governmental agency.
- 1.3. If there is any inconsistency between any of the several documents comprising the Agreement, then these Conditions will prevail to the extent of the inconsistency.
- 1.4. All prior statements, representations and agreements with respect to the subject matter of the Agreement and not contained in the Agreement are superseded by the Agreement.
- 1.5. If, under the provisions of these Conditions or under any notice or demand served pursuant to the provisions of the Agreement anything is required to be done on a day which is not a business day, then the day for compliance is deemed to be the business day immediately following that day.
- 1.6. The respective covenants and obligations of the parties whether positive or negative will be construed as if each obligation or covenant is a separate and independent covenant made by one party in favour of the other party.
- 1.7. Where a party covenants or agrees not to do, or not to omit to do, any act or thing, such covenant or agreement will be deemed to impose an obligation on that party not to permit or allow that act or thing to be done or that omission to occur.
- 1.8. Whenever a party is obliged or required to do or effect any act, matter or thing then the doing of such act, matter or thing will, unless this Agreement otherwise provides, be at the sole risk and expense of that party.
- 1.9. Where the doing or execution of any act, matter or thing is dependent upon the consent or approval of the Council such consent or approval may be refused or given conditionally or unconditionally by the Council in its absolute discretion unless this Agreement expressly states otherwise.

2. **TERM**

- 2.1. This Agreement operates for the duration / term specified in [Item 3 \(Term\)](#) and commences on the Commencement Date.

3. **PROVISION OF SERVICES BY COUNCIL**

3.1. **General**

In consideration of the Owner's obligations set out in **clause 4**, the Council covenants with the Owner that it will perform the Services and provide the Materials as set out below.

3.2. **Scope of Services**

(a) **Educational Workshops**

The Council will provide two (2) educational workshops to Residents of the Property at the Property address. These workshops will cover garden planting, maintenance, pest management, and sustainable gardening practices..

(b) **Planning and Design of Community Garden**

Council will facilitate a collaborative approach to engage the Residents in the planning and design of the garden, including the provision of advice on gardening practices and suitable plant species.

(c) **Supply of Materials**

The Council will:

- (i) Supply the Materials to the Property at no cost to the Owner;
- (ii) Facilitate the construction of the Community Garden utilising the supplied Materials at the Property by the Residents, where the construction of the Community Garden is envisaged to include the preparation of the garden space, installation of garden beds, and any necessary infrastructure required for a functional garden.

3.3. **Performance of Services:**

- (a) The Council agrees to perform the Services strictly in accordance with the Agreement.
- (b) The Council will perform the Services within the time specified in the Agreement.

3.4. **Provision of Labour, Equipment and Materials**

- (a) In performing the Services, the Council must provide, at its own cost and expense, all labour, Materials and other things necessary for the proper execution and performance of the Services.
- (b) The Council will not be responsible for any loss or damage caused to the Materials supplied or any injury, loss of life or other loss suffered by the Owner's Personnel or Residents.
- (c) In supplying the Materials, the Council will take every reasonable precaution to ensure no damage to the Property occurs.

3.5. **Quality of Materials and Services**

- (a) The Services will be carried out by the Council in accordance with the Agreement and with due and proper care and skill.
- (b) Unless otherwise specified in the Agreement, any materials used, or goods supplied in connection with the Services will be of merchantable quality and fit for the purpose for which they are required under the Agreement.
- (c) Unless otherwise specified in the Agreement, the Services supplied will be suitable for the purposes for which they are required under the Agreement.
- (d) All Materials supplied by the Council will be of a high standard.

3.6. **No ongoing Council Obligation**

Once the Services and Materials have been supplied Council will have no ongoing obligation to the Owners or Residents.

4. **OWNER'S OBLIGATIONS**

4.1. **General**

In consideration of the Services and Materials provided by the Council to the Owner, the Owner covenants with the Council that it will observe its obligations as set out below.

4.2. **Site Access**

The Owners provides its consent to the Council for access to the Property to enable the establishment of the Community Garden in a location agreed to between the Owner and the Council.

4.3. **Maintenance of Community Garden**

Following the establishment of the Community Garden, the Owner will take on responsibility for overseeing the operation and maintenance of the Community Garden by the Residents and ensuring the Community Garden remains safe to Residents, for the Term.

4.4. **Owner to assume risk and responsibility**

The Owner accepts sole risk and responsibility for the establishment of the Community Garden at the Property and assumes all responsibility for any liabilities, costs or expenses related to the maintenance and operation of the Community Garden once Council has fulfilled its obligations specified in **clause 3.1**.

4.5. **Indemnity**

The Owner release and agrees to indemnify and keep indemnified the Council in respect of:

- (e) any liability or loss arising out of, and any costs incurred at any time whatsoever as a result (directly or indirectly) of a breach of any term or condition of this agreement; and
- (f) any claim, demand or liability for any loss or damage to anything or any injury to or death of any person occurring on or near the Premises, and for loss or damage to any property arising out of or as a consequence of the provision of the Services, unless caused by the negligence or a willful act or omission of the Council.
- (g) The indemnities specified in this clause will survive the expiration of this Agreement and will continue notwithstanding any earlier termination of this Agreement for any reason and will be available for the benefit of the Council until termination of all Statutes of Limitation which may affect the liabilities specified in this clause.

4.6. **Reporting**

Participants of the Planting Resilience Program agree to be contacted by Council for the purposes of surveys and reporting.

5. **VARIATIONS TO SERVICES**

The Council may at its discretion vary the nature and time for the performance of the Services.

6. **REPRESENTATIVES**

6.1. **Appointment**

- (a) Within seven (7) days of the Commencement Date the Owner must appoint and notify Council of the name of the Owner's Representative.
- (a) Council may from time to time appoint a representative for the purpose of this Agreement and notify the Owner of the name of such representative.
- (b) Council's Representative may from time to time appoint persons to act as representatives of Council's Representative. Council's Representative must notify the Owner, of any person so appointed and the limitations on the extent of the powers, duties and discretions exercisable by the appointee (if any).

6.2. Power of Owner's Representative

The Owner's Representative will:

- (a) be lawfully entitled to exercise, for the purposes of the Agreement, the powers, duties, discretions and authorities of the Owner;
- (b) bind the Owner by his decisions and acts or omissions; and
- (c) administer the Agreement.

7. ACCESS TO AND SECURITY OF SITE

7.1. Security of Site

Where the Site or any part thereof is the Property of, or is under the control of the Owner the Council must ensure that:

- (a) the Site is properly secured after the completion of the Services;
- (a) where keys are supplied to the Council, for any purpose, all necessary precautions are taken to secure the keys;
- (b) no duplicate keys are made without the prior written permission of the Owner's Representative; and
- (c) any loss of keys is reported immediately to the Owner's Representative. Any replacement or re-keying costs will be at the Council's expense.

7.2. Care and Access to Site

- (a) From the Commencement Date until the date that the Services are performed by the Council and Materials supplied (**Completion Date**), the Council will be solely liable for the care of and will bear the risk of the Services.

- (b) The Council must ensure that when accessing the Site that it is kept clean and tidy as work progresses and the Site is left clean and tidy. The Council must take all steps reasonably available to it to reduce any nuisance to others arising from the provision of the Services.
- (c) The Council will be liable for any loss or damage to any part of the Services, or any Materials associated with the Services until the Owner takes delivery of the Services and or Materials.

8. WARRANTIES

8.1. Owner's Warranties

The Owner warrants that:

- (a) it will not do or permit to be done anything which might damage the name or reputation of Council or reasonably invite adverse public criticism or result in Council being the subject of any official investigation; and
- (b) it will carry out its obligations for the duration of the Term of this Agreement.

8.2. Benefit of Manufacturer's Warranty – Defects Liability Period

Where any goods or services supplied under this contract are subject to a manufacturer's warranty, the Council must provide details of these warranties to the Owner and ensure that the Owner has the benefit of these warranties.

9. DEFAULT AND TERMINATION

9.1. Council may terminate this Agreement immediately if the Owner:

- (a) If, an individual is declared bankrupt;
- (b) ceases or proposes to cease carrying on business;
- (a) is unable or is deemed pursuant to the Corporations Law to be unable to pay its debts as and when they fall due;
- (b) resolves that it be wound up;
- (c) has an administrator or a provisional liquidator appointed;
- (d) enters into a scheme of arrangement or composition with its creditors;
- (e) passes a resolution at a meeting of creditors to place it under official management;
- (f) is placed under official management;

- (g) has a receiver or a receiver and manager appointed in relation to the whole or any part of its property; or
 - (h) is wound up.
- 9.2. Council will be entitled to terminate this Agreement by giving the Owner seven (7) days' notice if:
- (a) the Owner commits a material breach of this Agreement; and
 - (b) that breach is not remedied to the satisfaction of Council within seven (7) days of Council giving the Owner a notice requiring the breach to be remedied.
- 9.3. Without limiting the provisions of **Sub-Clause 9.2**, the following will be deemed to be material breaches of this Agreement by the Owner unless as a direct consequence of a Force Majeure Delay described in **Clause 10**:
- (a) a suspension or abandonment of the use of the Community Garden;
 - (b) a failure to maintain the Community Garden as required under **clause 4.3** any material respect.
- In this **Sub-Clause 9.3 (a)** the Community Garden will be taken to have been abandoned if the falls into disrepair and is not maintained for a period of 30 days without reasonable explanation or as a result of a Force Majeure Delay.
- 9.4. Termination of this Agreement will be without prejudice to any rights or obligations or causes of action which have accrued or arisen prior to the date of termination.
- 9.5. Termination of this Agreement does not relieve either party from complying with any duties or obligations with which they must comply consequent upon termination of this Agreement.
- 9.6. Upon termination of this Agreement by Council the Owner must allow the Council to take possession of any Materials, is the Council so elects, and grants the Council a right of access to the Property to collect such Materials if collection is deemed appropriate by the Council.
10. **FORCE MAJEURE**
- 10.1. In this Clause "Force Majeure Delay" means any delay by a party in carrying out its obligations under this Agreement resulting directly from:
- (a) any act of God;
 - (b) war or other civil commotion; or

- (c) strikes, lock-outs, stoppages or restraints of labour.
- 10.2. A party that is affected by a Force Majeure Delay must use its best endeavours to remedy or overcome the effect of the Force Majeure Delay and comply with its obligations under this Agreement.
- 10.3. If a party is prevented from carrying out any part of its obligations under this Agreement by reason of a Force Majeure Delay, that party must give to the other party a notice of the occurrence of the Force Majeure Delay and the obligations of the party affected by the Force Majeure Delay will be suspended during the continuation of the Force Majeure Delay.
11. **GOVERNING LAW**
- 11.1. The Agreement shall be governed by, and be construed in accordance with, the law of the State of New South Wales and the Commonwealth of Australia.
- 11.2. Each party submits to the jurisdiction of the Courts of New South Wales and the Commonwealth of Australia.
12. **SEVERABILITY**
- Should any part of the Agreement be or become invalid that part will be severed from the Agreement and that invalidity will not affect the validity of the remaining provisions of the Agreement.
13. **ENTIRE AGREEMENT**
- The Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties in respect of the Services.
14. **DISPUTE RESOLUTION**
- 14.1. Unless a party to this Agreement has complied with sub-clauses 14.1 to 14.4, that party may not commence court proceedings or arbitration relating to any dispute arising from this Agreement except where that party seeks urgent interlocutory relief in which case that party need not comply with this clause before seeking such relief. Where a party to this Agreement fails to comply with **clauses 14.1 to 14.4** the other party to this Agreement need not comply with this clause before referring the dispute to arbitration or commencing court proceedings relating to that dispute.
- 14.2. Where one party to this Agreement claims that a dispute has arisen under this Agreement it must designate in writing to the other party a representative with authority to negotiate a settlement of the dispute. The other party must promptly reply in writing designating a representative with similar authority to represent it in the negotiations to settle.

- 14.3. The designated persons must, within ten (10) days of the last designation required by **clause 14.2**, following whatever investigations each deems appropriate, seek to resolve the dispute.
- 14.4. If the dispute is not resolved within the following ten (10) days (or within such further period as the representatives may agree is appropriate) the parties in dispute shall within a further ten (10) days (or within such further period as the representatives may agree is appropriate) seek to agree on a process for resolving the whole or part of the dispute through means other than litigation or arbitration such as further negotiations, mediation, conciliation, independent expert determination or mini-trial and on:
- (a) The procedure and timetable for any exchange of documents and other information relating to the dispute;
 - (b) Procedural rules and a timetable for the conduct of the selected mode of proceeding;
 - (c) A procedure for selection and compensation of any neutral person who may be employed by the parties in dispute; and
 - (d) Whether the parties should seek the assistance of a dispute resolution organisation.
- 14.5. The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process established by this clause for any purpose other than in an attempt to settle a dispute between that party and other parties to this Agreement.
- 14.6. After the expiration of the time established by or agreed under sub-clause 14.4 for agreement on a dispute resolution process, any party which has complied with the provisions of **clauses 14.1 to 14.4** may in writing terminate the dispute resolution process provided for in that sub-clause and may then refer the dispute to arbitration or commence court proceedings relating to the dispute.
- 14.7. Nothing in this Clause will prevent the parties from agreeing to resolve their dispute by a binding method of alternative dispute resolution including arbitration or independent expert determination. In such event either party will have the right to invoke the benefit of **clause 14.5** during the conduct of such method of dispute resolution.
- 14.8. The cost of non-binding alternative dispute resolution will in all instances be borne equally by the parties.
- 14.9. Notwithstanding the existence of a dispute, each party must continue to perform the Agreement.

15. **CONFIDENTIALITY**

- 15.1. The Owner must not at any time during the currency of this Agreement, or at any time thereafter, unless required in the proper course of its duties under this Agreement or authorised by the Council, reveal to any person whatsoever any confidential strategies, operations, processes, dealings or other information relating to the Council or its organisation structure, finances, transactions or affairs which may come to the knowledge of the Owner during the term of this Agreement and shall keep with complete secrecy all or any of the said information which may come to the knowledge of the Owner.
- 15.2. The Owner agrees and undertakes not to use or attempt to use any or all of the said information in any manner whatsoever which may cause or be calculated or likely to cause injury or loss either directly or indirectly to the Council.
- 15.3. The Owner must take all reasonable steps to ensure that its Personnel do not make public or disclose any of the information referred to in **Sub-Clause 15.1**.
- 15.4. This **clause 15** shall survive termination of the Agreement.

16. **WAIVER**

No forbearance, delay or indulgence by a party in enforcing the provisions of the Agreement will prejudice or restrict the rights of that party nor will any waiver of those rights operate as a waiver of any subsequent breach.

17. **RELATIONSHIP OF PARTIES**

Nothing in this Agreement will render the Owner or any of its Personnel the servant, agent or employee of Council for any purpose. The Owner and its Personnel must not by any act or omission hold out or represent that the Owner is authorised to represent or act on behalf of Council in any way or has any relationship with Council other than that of an independent Owner.

18. **DUTIES, TAXES AND COSTS**

- 18.1. All duties, taxes or other imposts payable on this Agreement or payable in the course of fulfilling this Agreement will be borne by the Owner.
- 18.2. The parties will bear their own legal costs in connection with this Agreement.

19. **NOTICES**

- 19.1. Any notice, demand, consent or other communication under the Agreement:
- (a) must be in writing addressed to the address of the parties as follows:

Council: The Council's Administration Building marked to the attention of Council's appropriate Officer or such other officer as Council may advise in writing to accept service of notices under these Conditions of Agreement.

Owner: The address specified in the Offer.

- (b) must be signed by an officer or under the common seal of the sender;
- (c) will be deemed to be duly received by or served on the addressee:
 - (i) if by delivery in person, one hour after delivery is effected;
 - (ii) if by post, three (3) business days from and including the date of postage;
 - (iii) If by Electronic email on dispatch of the transmission.

19.2. Any party may, by giving the other fourteen (14) days written notice, amend the provisions of Sub-Clause 19.1(a) by nominating an alternative person, address, telephone or facsimile number. Upon service of that notice, the amended provisions will be deemed to be substituted for the then existing provisions.

20. **NON-FETTER**

The provisions of this Agreement shall at all times be read and construed subject to the provisions of the *Local Government Act 1983* and nothing contained in this Agreement shall be interpreted or construed so as to fetter the discretion of the Council acting in its capacity as a local government authority whether as a regulatory or consent authority.

REFERENCE SCHEDULE

ITEM 1	OWNER
	Name and ABN:
	Address:
ITEM 2	COMMENCEMENT DATE
	[INSERT COMMENCEMENT DATE FOR SERVICES]
ITEM 3	TERM
	COMMENCEMENT DATE to 30/06/2026
ITEM 4	PROPERTY
	[INSERT THE ADDRESS AND FOLIO IDENTIFIER FOR THE PROPERTY] Note this may be a reference to the common property in a strata plan or a lot in a deposited plan).
ITEM 5	MATERIALS
	<ul style="list-style-type: none"> • planter box • bedding materials (including bed walls, soil, plants, and other necessary materials to establish the garden).
ITEM 6	CAPPED COST OF MATERIALS
	[\$[INSERT AMOUNT] plus GST

Executed as an Agreement

Dated:

Executed by the Council:

Executed on behalf of **Lane Cove Council ABN 42 062 211 626** by its authorised representative in the presence of:

.....
Signature of Witness

.....
Signature of Council's Authorised Representative

.....
Name of Witness

.....
Name of Authorised Representative

Executed by the Owner:

Signed for by the persons authorised to sign on its behalf in the presence of:

.....
Signature of Authorised person

.....
Signature of Authorised person

.....
Name of Authorised person

.....
Name of Authorised person