

Warringah Council and Manly Vale Community Garden Incorporated Memorandum of Understanding

Background

Warringah Council (Council) is constructing a playground and community garden on Council owned land at 4-8 Innes Road, Manly Vale. It is Council's intent to give Manly Vale Community Garden Incorporated care and management of the community garden on the terms specified in this Memorandum of Understanding (MoU).

Purpose

The purpose of this MoU is to define the relationship, expectations, the requirements and responsibilities of both parties in relation to the partnership being established.

1. Preliminary information

- a. This agreement is between Warringah Council and Manly Vale Community Garden Incorporated (MVCGI), and provides the framework for management of the community garden being established on Council-owned land at 4 – 8 Innes Road, Manly Vale.
- b. This agreement does not seek to create a new entity but is intended to be legally binding upon the Council and MVCGI.
- c. Council will retain ownership of the land at 4 – 8 Innes Road, Manly Vale ("site") throughout the term of this agreement. For the purposes only of carrying out the obligations and exercising the rights accepted by, and given to, MVCGI in Clause 3 the members of MVCGI are granted a non-exclusive right to enter upon the area which will be made available to MVCGI to conduct community gardening activities ("designated area") referred to in Attachment A. However nothing in this clause shall prohibit such members from entering any part of the site (including the designated area) as members of the public at such times and for such purposes as the public is entitled to enter such areas.
- d. The site plan for this agreement is included as Attachment A. The site plan identifies:
 - i. The designated area, which will be made available to MVCGI to conduct community gardening activities (which is marked in yellow),
 - ii. The area to be maintained by Warringah Council, being:
 1. a children's playground, and
 2. common areas such as pathways, informal seating, entrance gates, site signage, central shelter, fencing, cycle bay and planting areas as marked in Attachment A(which are marked in white and in orange/hatching, respectively).
- e. Guidance for Council's management of those parts of 4 –8 Innes Road, Manly Vale for which it is responsible is in Council's Generic Parks Plan of Management.

2. Warringah Council agrees to:

- a. Make available to MVCGI the section of land at 4 – 8 Innes Road, identified in yellow on the site plan at Attachment A, for use as a community garden (being the designated area referred to in clauses 1.3 and 1.4 above).
- b. Construct and maintain basic infrastructure of the site, including pathways, play equipment, and perimeter fencing in accordance with Council's asset management principles.
- c. Install and maintain a shelter for use by all park users as a meeting area.
- d. Supply and install storage for use by MVCGI in the designated area – garden shed, 2 water-tanks to capture water from central shelter and garden shed, 3 aero-compost bins, locked cupboard (under work bench within central shelter), pergola extending from central shelter and vertical trellis.
- e. Maintain children's playground in accordance with Council's Playground Strategy and Playground Design Checklist.
- f. Maintain site signage in accordance with Council's Communication and Visual Standards guidelines as applicable from time to time.
- g. Provide initial planting of fruit forest and bush tucker trail.
- h. Undertake general maintenance of the site, **excluding** the designated area.
- i. Contribute seed funding to the value of:
 - \$5,000 (including GST) in 2010/2011;
 - \$3,000 (including GST) in 2011/2012; and
 - \$1,500 (including GST) in 2012/2013,
 to be used solely towards the cost of managing the community garden.
- j. Subject to MVCGI's obligations pursuant to clause 3, fund the reasonable cost of insurances necessary and applicable to the community garden that are not covered by Council, in relation to activities taking place on the community garden section of the site (ie, the designated area) and related to the function of the community garden, for a period of two years being the 2010/11 and 2011/12 financial years.
- k. Supply and cover the cost of water to the water taps and electricity to the central shelter.
- l. Conduct audits as appropriate to assess compliance with the terms of this MoU, all applicable statutory requirements and any other such agreement in place for the management of the community garden, including but not limited to an annual audit of both OHS and Site Management, to be held approximately six months apart.
- m. Provide key access to the toilets located within Manly Vale Community Centre on the condition that MVCGI has in place measures to ensure that no hirer of Manly Vale Community Centre is adversely affected by such use. Council's procedure for the issue of keys will apply including the applicable bond payments and fees for key replacement.

3. Manly Vale Community Garden Incorporated, agrees to:

- a. Induct all members and guests to explain that all their activities are to be conducted in the spirit of co-operation, tolerance and inclusion with other users of the site, in particular children visiting the site and their use of and interaction with, the playground, community garden and all common areas, and to have in place measures to address any breaches of this spirit.
- b. Provide at least two free community education events, which relate to the community garden, per year for Warringah residents.

- c. Care for, maintain and manage the community garden, including installed structures – water tanks, garden shed, locked cupboard, pergola, vertical trellis and exotic trees forming fruit forest.
- d. Operate on a not-for-profit basis, according to the Manly Vale Community Garden Rules, as lodged with the Department of Fair Trading in 2010.
- e. Not make any modifications or alterations to the approved site design at Attachment A unless so authorised by Council in writing.
- f. Coordinate and resolve all member concerns and issues, including all internal disputes and garden security issues. All garden supervision will be the responsibility of MVCGI.
- g. Prioritise the allocation of individual plots to all Warringah residents who are members of MVCGI without discriminating against any Warringah resident who is a member on the basis of where they reside within Warringah.
- h. Maintain the designated area in fair order and contribute to the upkeep of the area that is marked in orange/hatching on Attachment A in accordance with the directions of Council, acting reasonably.
- i. Keep from the site, any prohibited plants as decreed by law, or any plants that are unsafe, such as those to which a significant proportion of the population is allergic or those with attributes likely to cause harm, such as thorns.
- j. Manage composting practices to ensure that vermin are not attracted to the site and to have in place, and to effect as necessary, a system for the management of vermin.
- k. Keep allocated storage areas (cupboard and toolshed) locked when not in use. NB: Council will not be responsible for theft or loss of tools or materials.
- l. Remove from the designated area, weeds and other rubbish generated through community gardening activities at its own cost.
- m. Sprinklers or irrigation equipment will not be used in the community garden. Hand held trigger nozzle hoses or watering cans will be used for watering.
- n. MVCGI will
 - i. Produce and abide by a Code of Practice Manual, or other named instrument that has:
 1. OH&S Management System in place
 2. Complies with legislation
 3. Recommendations for safe use of tools and equipment
 4. Processes to undertake risk assessments of gardening related activities, specifically including measures to ensure the safety of any child's interaction with those garden related activities including their travel through the community garden's physical space
 5. Orientation/Induction process for new members
 6. Site management plan (eg recommending organic gardening practices, avoidance or management of invasive species, supervision of community gardeners)
 7. Complaints resolution mechanism
 8. Working with children check
 9. Equitable access for all members, including people with disabilities
 - ii. Minimise their impact upon neighbours
 - iii. Report all graffiti for removal to Council

- o. Comply with the provisions of the Associations Incorporation Act 2010.
- p. Take out and maintain at its own cost all insurances necessary and applicable to the community garden in relation to activities taking place on the community garden section of the site (being the designated area) and related to the function of the community garden (including, without limitation, public liability insurance in the amount of not less than \$20 million for any one claim and volunteers' insurance), at the conclusion of Council's agreement to fund those insurances which concludes in the 2011-12 financial year.
- q. At all times, both during and after the period during which Council has agreed to fund the cost of certain insurances pursuant to clause 2:
 - i be responsible for and pay, at its own cost, any excess applying to any claim under the relevant insurances, whether or not the cost of those insurances have been funded by Council; and
 - ii take out and maintain, at its own cost, workers compensation insurance in accordance with law in the event that such a legal obligation arises by reason of its employment of any persons or contractors covered by such law.
- r. Recognise Council's ongoing role in the care, control and management of the whole site and support Council's employees, volunteers, contractors and any other such authorised representatives in the work they are required to undertake on-site.
- s. Supply Council a copy of the annual audited accounts and an audited financial acquittal of how the seed funding has been spent by 1 November each year.
- t. Make available any reasonable resources as may be required to enable Council to undertake its audit process (as specified in clause 2(o)) including but not limited to, providing physical access, access to documentation, and access to specified individuals where appropriate.
- u. Have in place, implement and monitor measures to ensure use of the Manly Vale Community Centre toilets by members and guests of MVCGI does not adversely affect hirers of Manly Vale Community Centre in any way. Such measures should include guidelines on eliminating excessive noise, contact or unnecessary communication. Failure to adhere to this condition, and/or mismanagement of any key provided to MVCGI may result in access to the Manly Vale Community Centre toilets being withdrawn.
- v. Pay the relevant fees and charges as applicable from time to time for any keys issued, noting that the relevant fees for 2010/2011 include a bond of \$50 and an issue fee of \$50.
- w. MVCGI indemnifies and will keep indemnified Council and its officers, employees, servants, sub-contractors and agents against any loss, damage, expense (including legal costs), claim, demand, action, suit or proceedings arising from:
 - i any negligence by MVCGI;
 - ii any breach of this MOU by MVCGI; and
 - iii personal injury to or the death of any person or loss of or damage to property whatsoever arising in connection with this MOU.

MVCGI's responsibility to indemnify Council under this clause is reduced to the extent that a wrongful or negligent act or omission of Council contributes to an injury or death or loss of or damage to property.

This indemnity is in addition to and will not be taken to be exclusive of any other rights Council may have against MVCGI. The indemnity in this clause survives the termination or expiration of this MOU.

4. Term of Agreement:

1. This Memorandum of Understanding will commence on [insert date] for a period of 5 years. MVCGI will provide an annual report to Council and agrees to open their financial records to Council staff upon request.
2. Warringah Council reserves the right to vary, withhold or withdraw the seed funding should MVCGI breach any of its responsibilities under this MOU.

5. Dispute Resolution

If a dispute arises out of or relates to the MoU or its subject matter, the parties shall settle the dispute in accordance with the following dispute resolution procedure:

1. A party claiming that a dispute has arisen must give written notice to the other party identifying the dispute.
2. Within seven days of the delivery of the notice, the parties must attempt in good faith to settle the dispute.
3. If the dispute is not resolved within seven days or such further notice period as the parties agree, then the dispute may be referred by either party for mediation by an agreed external party.
4. The mediation shall be conducted in accordance with the relevant guidelines of the person to whom the dispute is referred.
5. If the dispute has not been settled within twenty-eight days after the referral for mediation, either party may by notice of referral require that the dispute be resolved by arbitration.
6. The arbitrator shall not be the same person as the mediator unless both parties agree in writing within two days after the date of referral to arbitration.

6. Variation

Any variation to this agreement is subject to mutual agreement between the parties to the agreement.

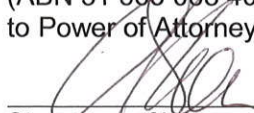
7. Termination

This MoU can be terminated where:

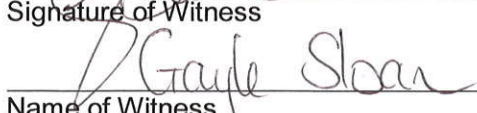
1. Mutual agreement is reached between the parties; or
2. In the opinion of a party there has been a significant breach of this MoU by the other party and/or the breaching party has failed to comply with written notice seeking remediation of the breach within a reasonable timeframe ; or
3. There exists any dispute relevant to this MoU and despite best endeavours the parties are unable to resolve that dispute.

EXECUTED AS A DEED

Signed by Warringah Council
(ABN 31 566 068 406) by its Attorney pursuant
to Power of Attorney Book 4580 No 889



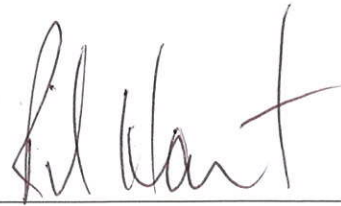
Signature of Witness



Name of Witness



Address of Witness



Signature

RIK Hart

Name of Attorney

Name of Attorney

**Executed by Manly Vale Community Garden
Incorporated [INC 9893402] in accordance with
its Rules and in the presence of**

SOZANNE JEWELL

Name of Witness [BLOCK LETTERS]



Signature

DAVID SAWYER

Name [BLOCK LETTERS]



Signature

