

All communications to be addressed to:

Head Office  
NSW Rural Fire Service  
Locked Mail Bag 17  
Granville NSW 2142

Head Office  
NSW Rural Fire Service  
15 Carter Street  
Homebush Bay NSW 2127

Telephone: (02) 8741 5555  
e-mail: jane.jemison@rfs.nsw.gov.au



General Manager  
Tweed Shire Council  
PO Box 816  
Murwillumbah NSW 2484

Att: Mr Michael Rayner

BUSHFIRE MANAGEMENT  
TWEED SHIRE COUNCIL  
FILE NO. BUSHFIRE PROTECTION  
Doc. No. ....  
RECD - 5 AUG 2008  
ASSIGNED TO: TURNBULL, J  
HARD COPY  IMAGE   
INGLIS, R 28/07/2008

Dear Mr Rayner,

**RE: ANNOUNCEMENT OF SUCCESSFUL APPLICATIONS FOR FUNDING THROUGH THE 2007/08 COMMONWEALTH BUSHFIRE MITIGATION PROGRAMME**

I refer to your application for funding for bush fire mitigation works through the Commonwealth Bushfire Mitigation Programme (BMP) for 2007/08.

The total dollar value of applications received in NSW was over \$9 million, which is approximately 6 times the nominal allocation, thus not all applications were able to be funded from the BMP.

I am pleased to inform you that the projects listed below have received funding approval through the BMP.

Trail Names	Detailed work tasks to be undertaken	Proposed treatment distance	Proposed treatment cost
Mt Nullum Fire Trail	Maintenance	5	\$34,500.00

Please find attached the funding agreement document for your review and endorsement.

**Please ensure that you return the funding agreement by the 12 September 2008 and that the following has been completed:**

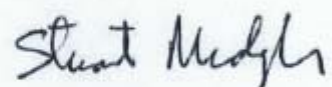
- An authorised representative signs the Agreement (found on page 21);
- Attachment C is completed;
- A tax invoice is raised and attached for your initial 50% commissioning instalment for the works.

The funding agreement must be returned to the NSW Rural Fire Service (Locked Mail Bag 17, Granville, NSW 2142) by no later than the **12 September 2008**.

If this is not received by the due date the NSW Rural Fire Service will consider reallocating the funding.

For further information or enquiries regarding this program, please contact Jane Jemison on (02) 8741 5425.

Yours faithfully,

A handwritten signature in black ink that reads "Stuart Midgley". The signature is written in a cursive style with a large initial 'S'.

Stuart Midgley AFSM  
**A/Manager**  
**Risk Management Performance**



**State of New South Wales,  
acting through the  
NSW Rural Fire Service  
and  
Tweed Shire Council  
ABN: 90 178 732 496**

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**2007/2008 year Bushfire Mitigation Programme**

**FUNDING AGREEMENT**

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# FUNDING AGREEMENT

## Parties

This Agreement is made between:

1. The State of New South Wales acting through the NSW Rural Fire Service, as described in Attachment A ("Principal"); and
2. The funding recipient as described in Attachment A ("Organisation").

## Background

- A. The Commonwealth and Principal have agreed a funding programme for bushfire mitigation projects, as described in the Programme Guidelines.
- B. The Principal has agreed to administer Commonwealth and Principal funding under this programme to approved local or State agencies.
- C. The Organisation has applied to the Principal for funding for the Project.
- D. The Principal agrees to provide to the Organisation, and the Organisation agrees to accept, the Funding for the Project on the terms of this Agreement.

## Operative provisions

### 1. Definitions and Interpretation

Defined terms and aids to interpretation of this Agreement are listed in section 16 *Dictionary*.

### 2. Term of Agreement

This Agreement commences on the Agreement Commencement Date and will continue for the Term.

### 3. Funding

#### Funding through Instalments

- 3.1 The Principal will provide to the Organisation the Funding in the Instalments as specified in Attachment A, in accordance with and subject to the terms of this Agreement.

**Conditions precedent to payment**

- 3.2 Payment of Funding or any part of the Funding under this Agreement is conditional on each and all of the following:
- (a) the New South Wales Parliament making the necessary appropriations; and
  - (b) the Principal receiving sufficient funds from the Commonwealth to make the payment.
- 3.3 In addition, unless otherwise specified in Attachment A, payment of each Instalment is conditional on:
- a) the Organisation submitting the relevant Funding Milestone report to the Principal in a form that is satisfactory to the Principal;
  - b) the Organisation meeting the Funding Milestone for that Instalment to the Principal's satisfaction;
  - c) the Organisation meeting each and every Condition of Funding to the Principal's satisfaction;
  - d) the Organisation demonstrating that it has spent 100% of the Funding paid under the previous Instalment; and
  - e) the Organisation demonstrating that it has spent the Organisation's Contribution on the Project to at least the amount specified in Attachment A for that Instalment.

**Right to withhold Funding**

- 3.4 Without limiting the Principal's rights under this Agreement, if the Organisation fails to comply with one or more of the conditions precedent to the Principal's satisfaction;
- a) the Principal has a reasonable basis to believe that a condition precedent will not be met; or
  - b) any other condition precedent to payment of the Funding is not, or ceases to be, met,
  - c) the Principal may, upon notice, withhold payment of the Funding (or any part of it) until:
  - d) the Organisation fully performs each and every condition precedent to the Principal's satisfaction;



- e) the Principal is otherwise satisfied with the conditions precedent will be met by the Organisation in accordance with this Agreement;
- f) all other conditions precedent to payment of the Funding are otherwise met to the Principal's satisfaction; or
- g) this agreement is terminated by the Principal

#### **4. Procedure for claiming payment**

- 4.1 Subject to the terms of this Agreement, the Principal will pay each Instalment to the Organisation within 20 Business Days of receipt of a correctly rendered Payment Request Form.
- 4.2 Claims for payment are to be submitted through the Principal's Representative.
- 4.3 A Payment Request Form is correctly rendered if:
  - (a) Each and every detail on the form has been accurately completed on the form;
  - (b) it is signed by a person duly authorised by the Organisation for this purpose; and
  - (c) it is accompanied by:
    - (i) the Supporting Documentation applicable for the Instalment; and
    - (ii) such other documentation as may be requested by the Principal, which evidences to the Principal's satisfaction that the Project Milestone for the Instalment has been achieved.

#### **5. GST**

This Agreement is not intended to give rise to a taxable supply on the part of either party. However, and notwithstanding any other provision of this Agreement, the parties acknowledge and agree that:

- (a) If GST applies to any supply made by the Organisation to the Principal under this Agreement the amount of the Funding will not be increased by the amount of the Organisation's GST liability in respect of the supply.

- (b) If GST applies to any supply made by the Principal to the Organisation under this Agreement, the amount of the Funding may be reduced by the amount of the Principal's GST liability.

## **6. Conditions of Funding**

### **Use of Funding**

- 6.1 The Organisation must, at all time during the Term, use the Funding only for the Project and for no other purpose.

### **Compliance with law**

- 6.2 The Organisation must (and ensure any Agent must):
  - (a) comply with all applicable standards, laws and regulations.
  - (b) not do anything that would cause the Principal to breach its obligations under any such legislation.
  - (c) hold all rights and consents as required to conduct the Project and otherwise fulfil its obligations under this Agreement.
  - (d) ensure that any technical, environmental, heritage and risk assessment requirements of the Project are undertaken in accordance with legislation and best practice.
- 6.3 The Principal will make payments to the Organisation by cheque or direct credit to an account, as notified by the Principal from time to time.
- 6.4 The Principal may deduct from amounts otherwise payable to the Organisation under this Agreement any amount due from the Organisation to the Principal under this Agreement.

### **Conduct of the Project**

- 6.5 The Organisation must (and must ensure any Agent must) conduct the Project:
  - a) in accordance with the Project Plan;
  - b) in accordance with any Special Conditions applicable to the Project; and
  - c) in accordance with any reasonable directions given by the Principal from time to time.

#### **Registered Office**

- 6.6 The organisation must:
- (a) ensure that its registered office is registered in the Principal of New South Wales throughout the Term; and
  - (b) notify the Principal within 20 Business Days of any change of address of its registered office.

#### **Sub-Contracting**

- 6.7 The Organisation may sub-contract all or part of the conduct of the Project to an Agent subject to the prior written approval of the Principal's Representative. All Agents must be selected through a process agreed with the Principal's Representative.
- 6.8 Any approval to sub-contract given by the Principal pursuant to clause 6.7 does not relieve the Organisation from its liabilities or obligations under this Agreement and the Organisation will be responsible for ensuring that the Agent meets the requirements of this Agreement.

#### **Organisation's Contribution to Project costs**

- 6.9 The Organisation must make the Organisation's Contribution toward the costs of the Project at the Agreed Ratio and within the timeframes specified in Attachment A.

#### **Specified Personnel**

- 6.10 The Organisation must assign the Specified Personnel (if any) to work on the Project for the number of hours specified in Attachment A. If any member of the Specified Personnel is unable to work on the Project for the agreed hours, for any reason, the Organisation must notify the Principal immediately and provide, at its own cost, replacement personnel with comparable skill and experience, approved by the Principal, at the earliest opportunity.

#### **Reporting Requirements**

- 6.11 The Organisation must:
- a) comply with the reporting requirements as specified in Attachment B; and
  - b) on request, submit to the Principal within the timeframe stipulated by the Principal, any other information or reports that may be necessary

- c) to establish, to the Principal's satisfaction, that the Conditions of Funding have been or are being satisfied by the Organisation.
- 6.12 The Principal may use any report or information received from the Organisation subject to compliance with its confidentiality obligations as set out in this Agreement.
- 6.13 If the report or other information submitted by the Organisation is not satisfactory to the Principal, the Principal may, by notice, require the Organisation to submit a revised report or further information to the satisfaction of the Principal within 20 Business Days of receipt of notice.

**Publicity**

- 6.14 The Organisation will acknowledge the Principal and the Commonwealth as the source of the Funding in any public statements about the Project, including by:
- a) acknowledgment in any publication about the Project,
  - b) acknowledgment at Project-related events, and
  - c) advertising on all signs and posters about the Project
- that the Project is being conducted under the Bushfire Mitigation Programme and has received Commonwealth and Principal financial support.
- 6.15 The Organisation must invite Commonwealth and State representatives to any Project-related event and give reasonable prior notice of such events to the Principal to enable participation by these parties in any Project-related announcements.
- 6.16 The Organisation must provide the Principal with a copy of any publication about the Project.
- 6.17 The Principal may publicise the awarding of the Funding at any time after it is awarded, including:
- a) the name of the Organisation;
  - b) the amount of the Funding; and
  - c) the title and brief description of the Project.

#### **Free access to Project Material**

- 6.18 Title to and Intellectual Property Rights in and arising from any Project Material will be owned by the Organisation to the extent that they are not owned by a third party.
- 6.19 However, in providing Funding for the Project it is the Principal's expectation that the Organisation will give free access (without charge and without restriction as to its non-commercial reproduction and use) to the Project Material to all interested third parties, upon request, in order that the community as a whole may benefit from its creation in its efforts to mitigate bushfires. The Organisation acknowledges, and will use its best endeavours to honour, the Principal's expectation in this regard.
- 6.20 If the Principal requests it, the Organisation must deliver to the Principal complete copies of the Project Material upon expiry or earlier termination of this Agreement. Attachment E may provide more specific requirements.

#### **Records and inspection**

- 6.21 The Organisation must:
- a) maintain proper records in relation to the Project, including such financial records and books of account as are necessary to provide a complete record of all receipts and expenditure of the Funding and of the Organisation's Contribution;
  - b) maintain all records and books of account relating to the Funding for 7 years from the date of receipt of payment from the Principal; and
  - c) upon the request of the Principal, arrange for all records relating to Project (including books of account, invoices and receipts, plans and approvals and other like documentation) to be made available for inspection by an authorised officer of the Principal (including, provision of copies of such records to the Principal if required) and must assist the authorised officer as required in carrying out the inspection.
- 6.22 Without derogation from any other rights under this Agreement, the Organisation must give the Principal, or any person authorised by the Principal, upon reasonable notice (at least 48 hours) and at any reasonable time, full and free access to inspect the implementation of the Project.
- 6.23 The Organisation must also permit a Commonwealth representative to visit the Project, upon reasonable notice by the Principal.

- 6.24 If at any time the Principal considers that the Project is not being conducted by the Organisation in accordance with the provisions of this Agreement, the Principal may request that the Organisation take such steps or make such changes as are specified in writing by the Principal to the Organisation to achieve compliance with the Agreement within a reasonable time.

#### **Monitoring and Evaluation**

- 6.25 The parties agree to monitor the Project against the Project Milestones and evaluate it against the Project Outcomes.
- 6.26 The Organisation acknowledges that the Principal's Representative will maintain regular contact with the Organisation to monitor the implementation of the Project and of this Agreement.
- 6.27 The Organisation agrees to co-operate with the Principal's Representative in their role.
- 6.28 Regular contact may be maintained through the Principal's Representative who may:
- a) assist with the preparation of briefs and review of proposals for studies;
  - b) carry out technical review of studies and designs for compliance with Government objectives and project aims and requirements;
  - c) assist with the preparation and review of specifications for works;
  - d) assist with the review of tenders for works;
  - e) assist with the management of consultants and contractors;
  - f) meet with the Organisation's staff, particularly at critical stages of the Project and/or on a quarterly basis;
  - g) provide support with administration of Funding; and
  - h) perform additional roles for the Principal's Representative as may be outlined in any Special Conditions.

#### **Project Timeframes**

- 6.29 The Organisation must:
- a) begin the Project no later than the Project Commencement Date or such later time as approved by the Principal;

- b) achieve Project Milestones within the timeframe, specified in the Project Plan or other documents agreed by the Principal; and
- c) complete the Project no later than the Project Completion Date or such late time as approved by the Principal.

**Project Delay**

- 6.30 The Organisation must give written notice to the Principal's Representative with reasons of any significant delay (actual or anticipated) in achieving a Project Milestone within an agreed timeframe or in achieving completion by the Project Completion Date.
- 6.31 On receipt of a notice of anticipated delay the Principal may, in its absolute discretion, approve a variation to this Agreement to facilitate implementation of the Project timeframes.

**Indemnity**

- 6.32 The Organisation shall at all times indemnify, hold harmless and defend the Principal and its officers, employees and agents ("those indemnified") from and against any liability or loss (including reasonable legal costs and expenses), which may be suffered or incurred by any of those indemnified by reason of any default or unlawful or negligent act or omission by the Organisation, its officers, employees, and/or any Agent in the performance of this Agreement, except to the extent that any act or omission of the Principal, the Principal's Representative and their officers, employees or agents caused or contributed to the claim.
- 6.33 The Organisation agrees to release those indemnified from liability for any liability or loss suffered or incurred by the Organisation in carrying out the Project, except where arising as a direct consequence of any unlawful or negligent act of omission of those indemnified.

**Insurance**

- 6.34 Without limiting the Organisation's obligations under this Agreement, the Organisation must effect and maintain, at its expense, with a reputable insurance company each of following insurance policies:
  - a) for the Term and for any additional period thereafter specified in Attachment A, a broad form public liability insurance (incorporating products liability insurance) in an amount of not less than the amount specified in Attachment A in respect of each and every occurrence

and unlimited in the number of such occurrences over any one period of cover;

- b) for the Term, workers' compensation insurance in accordance with applicable legislation in respect of all employees of the Organisation or its Agents; and
- c) for the Term and for any additional period thereafter specified in Attachment A, professional liability or "errors and omission" insurance (including but not limited to an extension of cover in respect of trade practices legislation and intellectual property) in an amount of not less than the insured amount specified in Attachment A in respect of each and every occurrence and unlimited in the number of such occurrences over any one period of cover.

6.35 The Organisation must ensure that:

- a) any entity (including the Organisation or any Agent) who constructs works as part of the Project holds contract works insurance, as specified in Schedule A; and
- b) all Agents hold workers compensation insurance in respect of its employees, as required by law.

6.36 The Organisation must produce to the Principal satisfactory evidence of the existence and currency of all or any of the required insurance policies under this Agreement:

- a) within 20 Business Days of execution of this Agreement, or as otherwise agreed; and
- b) if requested in writing at any time by the Principal or the Principal's Representative.

6.37 The Organisation must immediately notify the Principal of any lapse or suspension, or imposition of conditions on cover under any insurance policy required under this Agreement.

6.38 The Organisation must note the interest of the Principal under this Agreement on each insurance policy required under the Agreement when directed in writing to do so by the Principal.

6.39 If the Organisation fails to satisfy its obligations under this clause 6 dealing with insurance, the Principal is entitled to:

- a) take out and maintain such insurance policies;



- b) pay the premiums as necessary; and
- c) deduct such amounts from the amount of funding payable to the Organisation under this Agreement or otherwise recover such amounts from the Organisation as a debt due to the Principal.

## **7. Potential for Project Over Expenditure**

- 7.1 The Organisation must advise the Principal's Representative of any likely over-expenditure to the project in writing, as soon as possible.
- 7.2 The Organisation acknowledges and agrees that expenditure beyond the Total Project Value as per Attachment A is at the Organisation's risk. The Organisation should not presume that additional funding will be available.

## **8. Management of Agreement**

- 8.1 Each party's representative, as nominated in Attachment A, will be responsible for the management of this Agreement on behalf of that party.
- 8.2 Each party authorises its representative to receive and sign notices and correspondence for and on behalf of that party, and to accept any report or request and give any direction in relation to the Project.

## **9. Termination for convenience**

The Principal may, at any time, terminate this Agreement by giving 15 Business Days' notice to the Organisation, without the need to give reasons and without incurring any liability for such termination.

## **10. Termination for cause**

The Principal may, by giving written notice, immediately terminate this Agreement, if any one or more of the following occurs:

- (a) the Organisation breaches a provision of this Agreement in a manner that, in the Principal's opinion, is not capable of remedy;
- (b) in respect of a breach that in the Principal's opinion is capable of remedy, the Organisation fails to comply with a notice by the Principal to remedy a breach of this Agreement, within the period for compliance specified in that notice.
- (c) the Organisation enters administration or a deed of arrangement with creditors;

- (d) a liquidator is appointed to the Organisation;
- (e) the Organisation, if a natural person, is declared bankrupt or bankruptcy proceedings have commenced against the Organisation or it becomes subject to any form of insolvency administration;
- (f) the Organisation does not begin the Project within the financial year for which the Principal approves the Funding;
- (g) a conflict of interest arises in relation to the existence or subject matter of this Agreement and the Organisation fails to comply with its obligations under this Agreement in relation to the management of such a conflict;
- (h) the Organisation is subject to proceedings or investigations commenced or threatened by the Independent Commission Against Corruption, the police or a similar public body;
- (i) the Organisation breaches its confidentiality obligations (if any) under this Agreement; or
- (j) the Commonwealth withholds or otherwise suspends payment of any amount to the Principal.

## **11. Upon termination**

### **Refund of Organisation costs on termination for convenience**

#### **11.1 If the Principal terminates for convenience (but not for cause):**

- (a) the Principal may reimburse the Organisation its unavoidable costs and expenses directly incurred as a result of termination provided that any claim by the Organisation:
  - (i) is not greater than the amount of the Funding that remains unpaid as at the date of termination.
  - (ii) is supported by satisfactory written evidence of the costs claimed.
  - (iii) will be in total satisfaction of the liability of the Principal to the Organisation in respect of this Agreement and its termination.

### **Mitigation of loss**

#### **11.2 Upon termination of this Agreement the Organisation:**

- a) must do everything reasonably possible to immediately cease or minimise expenditure of the Funding; and
- b) must do everything reasonably possible to prevent or mitigate any losses resulting to the Organisation from the termination.

**Provision of reports**

- 11.3 Within 20 Business Days of termination or expiry of this Agreement the Organisation must deliver to the Principal any reports due to the Principal under this Agreement or otherwise requested by the Principal.

**Repayment of unspent Funding**

- 11.4 Unless the Principal waives its right to repayment, within 20 Business Days of termination or expiry of this Agreement the Organisation must repay to the Principal any Funding held by the Organisation that remains unspent.
- 11.5 The Principal may waive its right to require repayment under this clause if, and to the extent that, the Organisation can show to the Principal's satisfaction that the Funding has been unavoidably committed in accordance with this Agreement before the date of its termination or expiry.
- 11.6 The Organisation acknowledges that any amount that must be repaid under this clause will be a debt due and owing to the Principal.

**Retention of records**

- 11.7 The Organisation must, for a minimum period of 7 years following the expiration or termination of this Agreement, keep all operational records and data relating to the Project securely and in a form and manner as to facilitate any inspection and/or audit by the Principal.

**No Further Funding**

- 11.8 Upon termination or expiry of this Agreement the Principal will be relieved of any liability to pay any further amounts of the Funding to the Organisation.

**No prejudice to existing rights**

- 11.9 Termination of this Agreement by the Principal will be without prejudice to any other rights the Principal may have against the Organisation.

## **12. Dispute Resolution**

The parties must attempt to settle any dispute in relation to this Agreement in accordance with this clause before resorting to court proceedings or other dispute resolution process.

- (a) A party claiming that a dispute has arisen, must give written notice of the dispute to the other party. The parties must, within 10 Business Days of receipt of this notice, make every effort to resolve the dispute by negotiation.
- (b) If the dispute is not resolved within 10 Business Days following receipt of a notice of dispute or such further period as the parties agree in writing then the dispute is to be referred to the Australian Commercial Dispute Centre ("ACDC") for mediation.
- (c) The mediation shall be conducted in accordance with the ACDC Mediation Guidelines that set out the procedures to be adopted, the process of selection of the mediator and the costs involved.
- (d) If the dispute is not settled within 20 Business Days (or such other period as agreed to in writing between the parties) after appointment of the mediator, or if no mediator is appointed within 20 Business Days of the referral of the dispute to mediation, the parties may pursue any other procedure available at law for the resolution of the dispute.
- (e) If the Principal or the Principal's Representative requests it, the Organisation must continue performing this Agreement while a dispute is being dealt with in accordance with this clause, other than such obligations (or part thereof) which are the subject of the dispute, to the extent practicable to do so.
- (f) Nothing in this clause will prevent either party from seeking urgent interlocutory relief.

## **13. Notices**

13.1 A notice under this Agreement must be:

- (a) in writing, directed to the representative of the other party as specified in Attachment A; and
- (b) forwarded to the address, facsimile number or the email address of that representative as specified in Attachment A or the address last notified by the intended recipient to the sender.

- 13.2 A notice under this Agreement will be deemed to be received:
- a) where delivered by hand – upon delivery to the recipient's address for service and a signature received as evidence of delivery.
  - b) where sent by post - three Business Days after deposit in the mail with postage prepaid.
  - c) where sent by facsimile – on receipt by the sender of a transmission report which confirms that the facsimile was sent in its entirety to the facsimile number of the recipient.
  - d) where sent by email - on receipt of confirmation by the sender that the recipient has received the email.
- 13.3 Notwithstanding the provisions of this clause, if delivery or receipt of a communication is on a day which is not a business day in the place to which the communication is sent or is later than 5 pm (local time in that place) it will be deemed to have been duly given or made at 9 am (local time at that place) on the next business day in that place.

#### **14. Variation**

This Agreement may only be varied by the written agreement of the parties.

#### **15. General**

##### **Waiver of rights**

- 15.1 A right may only be waived in writing, signed by the party giving the waiver, and:
- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right;
  - (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
  - (c) the exercise of a right does not prevent any further exercise of that right or any other right.

##### **Entire agreement**

- 15.2 This Agreement constitutes the entire agreement and understanding between the parties as to the subject matter of this Agreement. Any prior

arrangements, representations or undertakings as to the subject matter of this Agreement are superseded.

**Inconsistency**

15.3 In the event of an inconsistency between the terms of this Agreement, for the purpose only of resolving the inconsistency, the documents that comprise this Agreement are to be considered in the following order of decreasing priority:

- a) The operative provisions of this Agreement
- b) Attachment A
- c) Attachment B
- d) Attachment E
- e) The other attachments

**Conflict of interest**

15.4 The Organisation warrants that as at the date of this Agreement no conflict of interest exists or is likely to arise in relation to its performance of this Agreement.

15.5 The Organisation undertakes to notify the Principal immediately upon becoming aware of the existence or possibility of a conflict of interest and agrees to comply with any reasonable directions of the Principal to appropriately manage that conflict.

**Severability**

15.6 If any part of this Agreement is prohibited, void, voidable, illegal or unenforceable, then that part is severed from this Agreement but without affecting the continued operation of the remainder of the Agreement.

**Relationship**

15.7 Nothing in this Agreement is intended to create a partnership, joint venture or Organisation relationship between the parties.

15.8 All work performed by the Organisation and all contracts made by the Organisation to carry out the Project shall be performed and made by the Organisation as principal and not as agent for the Principal.

### **Representations**

- 15.9 The Organisation represents and warrants that:
- a) all information provided by the Organisation to the Principal including all information on a Payment Request Form, whether before or after the date of this Agreement is to its knowledge true and correct;
  - b) the Organisation is not aware of any circumstances which adversely affect or might adversely affect the Organisation's ability to fulfil its obligations under this Agreement; and
  - c) the Organisation has full power and authority to enter into this Agreement.

### **Survival**

- 15.10 Clauses in this Agreement dealing with retention of records, reports, intellectual property, indemnities, insurance, the consequences of termination, inspection rights, dispute resolution and any other provision of this Agreement which by its nature should survive termination shall survive termination, expiry or repudiation of this Agreement.

### **Counterparts**

- 15.11 This Agreement may be executed by counterparts by the respective parties, which together will constitute one agreement.

### **Applicable law and jurisdiction**

- 15.12 This Agreement is governed by, and must be construed in accordance with, the laws in force in the Principal of New South Wales.
- 15.13 Each party submits to the exclusive jurisdiction of the Courts exercising jurisdiction in the Principal of New South Wales and the courts of appeal from those courts.

## 16. Dictionary

16.1 In this Agreement, unless the contrary intention appears:

“**Agent** of an Organisation”, means any consultant, contractor, agent or other entity who is engaged by the Organisation to carry out all or part of a Project (such Agent to be approved by the Principal pursuant to clause 6.7);

“**Agreed Ratio**” means the ratio at which the Principal, the Commonwealth and the Organisation will contribute funds to the Project, as specified in Attachment A to this Agreement.

“**Agreement**” means this deed of agreement and includes any attachments.

“**Agreement Commencement Date**” means the date specified as such in Attachment A to this Agreement.

“**Business Day**” means a day which is not a Saturday, Sunday or public holiday in Sydney or in the place where the Organisation is located.

“**Commonwealth**” means the Commonwealth of Australia.

“**Condition of Funding**” means any condition specified in this Agreement and includes the Special Conditions (if any).

“**Financial Year**” means the period of 12 months beginning on 1 July in a calendar year or, where the context requires, a part of such period.

“**Funding**” means the funding specified in Attachment A.

“**Funding Milestone**” means the relevant trigger for payment of an Instalment, specified as such in Attachment A.

“**GST**” has the meaning as given in the GST Law.

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

“**Instalment**” means an instalment of the Funding as specified in Attachment A.

“**Intellectual Property Rights**” includes patent, know-how, copyright, moral rights, design, semi-conductor or circuit layout rights, trade mark, trade, business or company names or other proprietary rights and any rights to registration of such rights, whether created before or after the Commencement Date, in Australia or elsewhere.



**“Organisation’s Contribution”** means the amount of the Organisation’s own funds to be contributed to the costs of the Project, at the Agreed Ratio, up to the maximum amount specified in Attachment A to this Agreement.

**“Organisation’s Representative”** means the person named as such in Attachment A to this Agreement or such other person as the Organisation may, from time to time, nominate in writing by giving notice to the Principal.

**“Payment Request Form”** means a payment request in the form contained in Attachment C.

**“Personnel”** in relation to a party to this Agreement means the employees, agents and contractors of that party.

**“Project”** means the project described in Attachment A to this Agreement and more fully in the Project Plan.

**“Project Commencement Date”** means the date specified as such in Attachment A to this Agreement.

**“Project Completion Date”** means the date specified as such in Attachment A to this Agreement.

**“Project Material”** means all material created by or on behalf of the Organisation for the purpose of the Project, including documents, software and data stored by any means.

**“Project Milestone”** means a project milestone as identified in the Project Plan.

**“Project Outcomes”** means the expected outcomes of the Project as identified in the Project Plan.

**“Project Plan”** means the project plan in Attachment D to this Agreement, with any changes as may be approved by the Principal from time to time.

**“Programme Guidelines”** means the Bushfire Mitigation Programme Guidelines 2005 as amended from time to time.

**“Reporting Requirements”** means the reporting requirements specified in Attachment B.

**“Special Conditions”** means any additional conditions applicable to the specific class of Project, as described in Attachment E.

**“Specified Personnel”** means any persons specified as such in Attachment A to this Agreement.

**"Principal's Representative"** means the person named as such in Attachment A or such other person the Principal may, from time to time, nominate in writing by giving notice to the Organisation. The Principal's Representative is the authorised representative of the Principal for all purposes except for the rights and obligations of the Principal pursuant to: clause 6.24, clauses 6.28 and 6.31 (Project Delay); clause 7 (Potential for Over Expenditure); clause 9 (Termination for Convenience); clause 10 (Termination for cause); and clause 14 (Variation). Under Clause 6.24 the Principal may act through the Principal Representative in exercising its rights.

**"Supporting Documentation"** means the relevant supporting documentation, as specified in Attachment A to this Agreement.

**"Term"** means the duration of this Agreement as specified in Attachment A or until the date on which this Agreement is terminated in accordance with this Agreement, whichever is first.

**"Total Project Value"** means the sum total of the Funding and the Organisation Contribution as specified in Attachment A.

16.2 In this Agreement, unless the contrary intention appears:

- (a) **References to legislation.** A reference to legislation (including subordinate legislation) is a reference to that legislation as amended, consolidated, re-enacted or replaced, and includes any subordinate legislation issued under it.
- (b) **Reconstitution of a party.** A reference to a person or body which has ceased to exist or has been reconstituted, amalgamated or merged, or other functions of which have become exercisable by any other person or body in its place, will be taken to refer to the person or body established or constituted in its place by which its functions have become exercisable.
- (c) **Time Limits.** Where any time limit pursuant to this Agreement falls on a Saturday, Sunday or Public Holiday in the State of New South Wales then that time limit will be deemed to have expired on the next Business Day.
- (d) **Grammatical forms.** Where a word or phrase is given a defined meaning any other part of speech or other grammatical forms of that word have, unless the context otherwise requires, a corresponding meaning.

- (e) **Rules of Construction.** No rule of construction operates to the detriment of a party only because that party was responsible for the preparation of this Agreement or any part of it.
- (f) **Actions by the Principal.** Where there occurs a reference to the doing of anything by the Principal including giving any notice, consent, direction or waiver, this may be done by any duly authorised officer of the Principal.
- (g) **Joint Obligations.** Where the Organisation is comprised of more than one person, each obligation of the Organisation will bind those persons jointly and severally and will be enforceable against them jointly and severally.
- (h) **Headings.** The table of contents and headings in this Agreement are for convenience only and do not affect the interpretation of this Agreement.
- (i) **Reasonableness.** Where the Principal is required to act reasonably in the performance of this Agreement, that shall be read as a requirement to act as would a party in the position of the Principal which is acting reasonably in its own best interests.
- (j) **References to groups.** A reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually.
- (k) **References to persons.** Persons will be taken to include any natural or legal person.
- (l) **Monetary Amounts.** Monetary references are references to Australian currency.
- (m) **Clause numbering.** A reference to "this clause" is a reference to the whole clause as identified by the first level clause number such as X rather than X.X, unless specified otherwise.

The Agreement is executed as a deed on \_\_\_\_\_ **200** \_\_\_\_\_.

**Signed as a deed** for and on behalf of the State )  
of New South Wales, acting through the NSW )  
Rural Fire Service )

by .....

(Assistant Commissioner – NSW Rural Fire Service)

.....

(signature)

**Signed as a deed** for and on behalf of Tweed )  
Shire Council )

ABN: 90 178 732 496 )

by its duly authorised representative: )

.....

(print name and title of Organisation's Authority)

.....

(signature of Organisation's Authority)

## ATTACHMENT A AGREEMENT DETAILS

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**Item 1      Principal**

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Name            State of New South Wales, acting through the NSW Rural Fire Service

Address        15 Carter Street, Homebush Bay NSW 2127

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**Item 2      Organisation**

Name:                      **Tweed Shire Council**

ABN:                        **90 178 732 496**

Address:                 **PO Box 816, Murwillumbah NSW 2484**

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**Item 3      Term**

Commencement Date:    Date of execution of this Agreement

Term:                      Up to the Project Completion Date

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**Item 4      Project**

Project Description:        **07/08 BMP Tweed Shire Council Fire Trail Works**

Project Commencement Date:    **28 July 2008**

Project Completion Date:        **1 June 2009**

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**Item 5 Funding**

Total amount:

Comprising **\$11,500** Commonwealth funds and

**\$11,500** State funds

Payable in Instalments as follows:

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**First Instalment**

.....

**Payment trigger**

Project Commencement Date

(50% of the Funding in advance)

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**Quarterly Instalment**

balance of outstanding funds for completed projects for the period specified.

**Payment trigger**

1st Quarterly Instalment for works completed up to *1 December 2008*  
2<sup>nd</sup> Quarterly Instalment for works completed up to *1 March 2009*

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**Final Instalment**

balance of outstanding funds for completed projects .

**Payment trigger**

Completion of all project works.

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**Item 6 Organisation contribution:**

**\$11,500**

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**Item 7 Agreed Ratio:**

Commonwealth:      Principal:      Organisation:

**33%**                      **33%**              **33%**

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**Item 8 Total Project Value:**

The sum total of the Funding and the Organisation Contribution.

**\$34,500**

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**Item 9 Supporting Documentation**

Documentation in support of claim for:

- (a) first Instalment: Proof of Project Commencement
- (b) Quarterly Instalments as per requirements of Item 5 (and any other supporting documents reasonably requested by the Principal).
- (c) Final Instalment on completion of project works (and any other supporting documents reasonably requested by the Principal).

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**Item 10 Specified Personnel**

Name of Specified Personnel	Position	Hours	Cost/Hr \$	Total Cost \$

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**Item 11 Principal's Representative**

Name **Stuart Midgley**  
Title **A/Manager Coordinated Risk Management**  
**NSW Rural Fire Service**  
Address **15 Carter Street, Homebush Bay NSW 2127**  
Telephone **02 8741 5436**  
Facsimile **02 8741 5433**  
Email **Stuart.midgley@rfs.nsw.gov.au**

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**Item 12 Organisation's Representative**

Name  
Title **General Manager**  
Address **Tweed Shire Council**  
**PO Box 816**  
**Murwillumbah NSW 2484**  
Telephone

Facsimile

Email

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**Item 13 Insurance**

Type of Insurance	Insured amount (\$)	Additional period after termination or expiry of this Agreement
Public Liability Insurance	\$10 million	7 years
Professional indemnity insurance	\$5 million	7 years
Contract works insurance	<b>To the value of contract works</b>	
Workers Compensation Insurance		



## ATTACHMENT B REPORTING REQUIREMENTS

The Organisation must prepare and submit to the Principal the reports meeting the description and requirements specified below, at the times and frequency specified below. The Principal may prescribe the form of reports and manner of submission by written notice to the Organisation from time to time.

Report Name	Description	Special Requirements	Reporting Period and frequency of submission
<b>Project &amp; Funding Milestone Report</b>	<p>The Funding Milestone Report must include:</p> <ul style="list-style-type: none"> <li>- a textual commentary on the progress of the Project to date, and progress against completion of the relevant Project Milestone.</li> <li>- a Progressive Expenditure Certificate:               <ul style="list-style-type: none"> <li>(a) listing expenditure of the Funding to date, itemised against estimated costs in the Project Plan, and</li> <li>(b) certifying that:                   <ul style="list-style-type: none"> <li>(i) 100% of the previous Instalment of Funding, and</li> <li>(ii) part of the Organisation Contribution, in to at least the amount specified for the particular Instalment</li> </ul> </li> </ul> </li> </ul> <p>has been expended for the purpose of the Project.</p>	This report is to be signed by the Organisation's authorised delegate.	Upon completion of each Project Milestone.
<b>Financial Report</b>	<p>The Financial Report is to be prepared consequent upon an audit of the Organisation's records of receipts and expenditure of the Funding and the Organisation's Contribution and must incorporate:</p> <ul style="list-style-type: none"> <li>(a) a financial statement of those receipts and expenditure in respect of that Financial Year.</li> </ul>	This report is to be prepared and endorsed by a qualified auditor (registered as an auditor in accordance with the Corporations Act, a	Within 3 months of the end of each Financial Year during the Term.

Report Name	Description	Special Requirements	Reporting Period and frequency of submission
	(b) a statement confirming that the Funding and the Organisation Contribution have been expended for the purpose of the Project.	member of the Institute of Chartered Accountants in Australia or the Australian Society of Certified Practising Accountants).	
<b>Final Acquittal Report</b>	<p>A final report on the Project, reporting on achievement of Project Outcomes and incorporating:</p> <p>(a) – a Financial Report as described above, as at the Project Completion Date.</p> <p>(b) - a declaration by the Organisation certifying:</p> <p>(i) the correctness of the particulars provided in the Financial Report.</p> <p>(ii) that 100% of the Funding provided, and the Organisation Contribution, has been expended on the Project.</p>	<p>The Financial Report to be prepared and endorsed by a qualified auditor.</p> <p>The Final Acquittal Report to be signed by the Organisation CEO unless otherwise agreed</p>	<p>Within 20 Business Days of expiry or earlier termination of this Agreement.</p>

## ATTACHMENT C PAYMENT REQUEST FORM

This payment request is submitted by Tweed Shire Council (the Organisation) ABN 90 178 732 496 to the Principal pursuant to the Funding Agreement between the Organisation and the Principal dated ..... ("Funding Agreement"). Capitalised terms in this Payment Request Form have the meaning given to these terms in the Funding Agreement.

### Payment Request Particulars

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Project title: **2007/2008 Bushfire Mitigation Programme (BMP)**

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Instalment requested: **\$11,500**

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Funding Milestone against  
which the payment is claimed:

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**Attachments:** Supporting  
Documentation attached to this  
request in accordance with the  
Agreement (as applicable):

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I, the undersigned, being a person duly authorised by the Organisation, certify that:

- (a) the applicable Project & Funding Milestone has been achieved as at the date of this Payment Request.
- (b) expenditure of the Funding received to date has been solely on the Project and the requested Instalment will also be used only for the Project.
- (c) there is no matter or circumstance, of which I am aware, that would constitute a breach by the Organisation of any term of the Funding Agreement or would otherwise entitle the Principal to withhold payment of the Instalment that has not been notified to the Principal in writing.

.....  
Signature of authorised signatory

.....  
Date

.....  
Printed name and title of authorised signatory

## ATTACHMENT D PROJECT PLAN

### 07/08 BMP Fire Trail Project Plan.

Summary:

Trail Names	Detailed work tasks to be undertaken	Proposed treatment distance	Proposed treatment cost	Proposed commencement & completion dates
Mt Nullum Fire Trail	Maintenance	5	\$34,500	Commence: Completion:

*Guidance to Agencies:*

*The Project Plan should include:*

- 1. Detailed description of Project and tasks required to be undertaken.*
- 2. Project estimated timeframes for completion.*
- 3. Itemised list of estimated expenditure. Note that funding can only be used for costs directly associated with the Project. Funding cannot be used for administrative overheads, ongoing running costs or other core activities of the Organisation. Costs associated with ongoing maintenance and support of the Project are also excluded.]*

## **ATTACHMENT E SPECIAL CONDITIONS OF FUNDING**

### **Surveys and Investigations, Studies, Design Work or Creation or Acquisition of Documentation or Software Projects**

- 1 All work is to be undertaken by a consultancy awarded after competitive tendering unless otherwise approved by the Principal's Representative.
- 2 If approved, "in kind" work contributes to the Project, detailed time sheets and reasonable rates must be set and documented as approved by the Principal.
- 3 Where the Organisation wishes to undertake the work (including survey, investigations, design and/or documentation of works) "in-house" a detailed cost estimate is to be provided to the Principal and approval sought from the Principal's Representative. Only the Organisation's internal costs directly incurred in undertaking the Project, together with administrative on-costs of 10% of salaries, are eligible for Funding. Work is not to commence until approval is given. Organisation core services (including preparation of study briefs, review of proposals and tenders, researching and copying the Organisation's records, attending meetings, contract administration, accounting costs, and liaising with the public and Government agencies) are excluded.
- 4 The Organisation is to seek approval from the Principal's Representative to the Project brief prior to tender.
- 5 Review of proposals will be in accordance with the Association of Consulting Engineers of Australia guidelines and with agreed weightings for assessed items. The Principal's Representative will be supplied with full copies of proposals for review.
- 6 Unless the Principal's Representative states otherwise, the written approval of Principal's Representative will be obtained prior to engagement of a consultant.
- 7 All progress reports, draft reports and papers on investigations and associated model data files will be offered to the Principal's Representative for technical review. Comments may be provided to the Organisation for submission to the consultant.
- 8 The Principal's Representative may require approval prior to finalisation of any draft reports or working papers or designs, specifications and asset management plans or software.
- 9 Seven (7) printed and electronic (in an agreed format) copies of final reports and adequately documented model data files and reports and final works designs and

specifications are to be provided to Principal's Representative at the completion of the Project.

### **Construction Projects**

- 1 Plans, specifications, estimates and an asset management plan/operations and maintenance manual for the agreed works are to be approved by the Principal's Representative in writing before tenders are called.
- 2 Unless otherwise stated by the Principal's Representative, tenders (under this funding process) are to include a requirement that works will be carried out in accordance with the NSW Government Code of Practice for the Construction Industry 1996 and the associated Implementation Guidelines. The Project is receiving Commonwealth funding and a similar requirement that the works are also to be undertaken in accordance with the National Code of Practice for the Construction Industry is to be included.
- 3 The Organisation is to seek approval from the Principal's Representative before accepting any tenders. The Organisation will be to submit a written report on tenders as part of the approval.
- 4 All construction work is to be carried out by contract awarded after competitive tendering unless otherwise approved by the Principal's Representative.
- 5 Where the Organisation proposes day labour, a day labour component or other "in-house" work, sound economic or practical reasons must be demonstrated. Where the Principal's Representative has approved day labour or other "in-house" work, only the Organisation's direct costs, together with administrative on-costs of up to 10% of salaries, are eligible for funding. Organisation core services (including preparation of study briefs, review of proposals and tenders, researching and copying the Organisation's records, attending meetings, contract administration, accounting costs, and liaising with the public and Government agencies) are excluded.
- 6 Full time construction supervision is to be undertaken by external contract unless otherwise approved in writing by the Principal's Representative.
- 7 If the Organisation seeks approval to undertake construction supervision "in-house" it must demonstrate that it has staff with the necessary skills and experience that can be committed to the Project in order to provide the appropriate level of supervision. Approval by the Principal's Representative may be conditional.
- 8 Where the Principal's Representative has approved the Organisation undertaking the construction supervision "in-house", the Organisation's direct internal costs, together with administrative on-costs of up to 10% of salaries, are eligible for funding. Organisation core services (including preparation of study briefs, review of

proposals and tenders, researching and copying the Organisation's records, attending meetings, contract administration, accounting costs, and liaising with the public and Government agencies) are excluded.

- 9 The works are to be constructed in strict accordance with the approved plans and specifications. No variations to the approved works are to be undertaken without the prior approval of Principal's Representative.
- 10 The Organisation is to maintain the works in good order and condition in accordance with the approved asset management plan. Maintenance of the constructed works is at the Organisation's expense