



**WARREN SHIRE COUNCIL**  
Report of the General Manager  
to the Ordinary Meeting of Council to be held in the  
Council Community Room, Warren on Thursday 27th May 2021

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**ITEM 5            NSW DEPARTMENT OF PLANNING, INDUSTRY AND ENVIRONMENT – CROWN  
LANDS PHASE 2C SHOWGROUND STIMULUS FUNDING PROGRAM GRANT FOR  
WARREN SHOWGROUND/RACECOURSE IMPROVEMENTS            CONTINUED**

**LEGAL IMPLICATIONS**

There are serious consequences if Council fails to use the funds in accordance with the Deed. Failing to submit progress and final reports will render Council ineligible for future funding from the Department.

**RISK IMPLICATIONS**

The biggest risk is that the existing facilities at the Showground/Racecourse will remain in a condition that is not compliant with 'best practice', for the members of the Community.

**STAKEHOLDER CONSULTATION**

The General Manager and the Showground/Racecourse Committee were consulted on the proposed projects.

**OPTIONS**

Nil.

**CONCLUSION**

The Grant Funding will enhance the security and safety plus modernise the infrastructure at the Warren Showground/Racecourse.

**LINK TO POLICY AND / OR COMMUNITY STRATEGIC PLAN**

- 1.1.2 Maintain high levels of community cohesion and community spirit
- 1.1.6 Co-ordinate and support community groups to promote events and activities within the local community
- 1.4.4 Help ensure safe and sustainable development
- 2.1.3 Implement updated activities of the Strategy's Action Plan
- 3.2.4 Maintain community facilities to an appropriate standard
- 5.1.1 Implementation of Council's Community Engagement Strategy
- 5.2.2 Timely and accurate reporting for efficient management and accountability

**SUPPORTING INFORMATION /ATTACHMENTS**

Email, letter and Funding Deed Warren Showground - Funding Offer Phase 2 C, NSW Showgrounds Stimulus Program 24 May, 2021.

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**Rebecca Christian**

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**From:** FREYA MUDIE <freya.mudie@crowland.nsw.gov.au>  
**Sent:** Monday, 24 May 2021 11:41 AM  
**To:** Kerry Jones  
**Cc:** Rebecca Christian  
**Subject:** Warren Showground - Phase 2C Showground Stimulus Funding Program  
**Attachments:** Warren Showground - Funding Offer Phase 2C, NSW Showgrounds Stimulus Program.pdf; Warren Showground - RCTI - Phase 2C, NSW Showgrounds Stimulus Funding Program.pdf

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Good morning Kerry,

Congratulations! Your organisation has been successful in securing funding under Phase 2C of the Showground Stimulus Funding Program, per the attached correspondence and Funding Deed.

As with previous funding rounds, please ensure the banking details are correct in the Details of the Deed, and then return your executed copy to [built.assets@crowland.nsw.gov.au](mailto:built.assets@crowland.nsw.gov.au) as soon as possible to allow payments to be made. **Please note that endorsed deeds must be returned within 14 days to ensure sufficient time for processing before the end of the financial year. If we do not receive the executed deed by this time, it may not be possible to provide the funding in the time remaining, and the offer may be withdrawn.**

As with previous rounds, funding is only for the projects specified in the Deed. If the funding amounts are greater than those applied for, this is due to GST being added. If the funding amounts are less than those applied for, this will likely be due to contingency or project management costs being removed.

Please note that the completion timeframe for these projects is also different from previous Phases. You will have 12 months from the date you receive the funding to complete these funded projects.

Progress reporting

The Department will be contacting funding recipients on a monthly basis for progress updates to gauge the effects of this funding for economic stimulus. In order to ensure that your funding can be processed quickly, **please confirm that you are up to date on your progress reporting for any ongoing projects, and that any final project reports have been filed if works were completed more than three months ago.**

If you have any queries or comments, please contact us on 1300 886 235 or via the [built.assets@crowland.nsw.gov.au](mailto:built.assets@crowland.nsw.gov.au) mailbox, and congratulations again on your successful funding bid.

Kind regards,  
Freya

**Freya Mudie**  
**A/Property Management Project Officer | Crown Lands WHS Secretariat**

Crown Lands | Department of Planning, Industry & Environment  
T: 02 8650 6151 | EXT: 176 151 | E: [freya.mudie@crowland.nsw.gov.au](mailto:freya.mudie@crowland.nsw.gov.au)  
6 Stewart Avenue, Newcastle West NSW 2302  
PO Box 2185, Dangar NSW 2309  
[www.crowland.nsw.gov.au](http://www.crowland.nsw.gov.au) | <https://www.dpie.nsw.gov.au>

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**ITEM 5 NSW DEPARTMENT OF PLANNING, INDUSTRY AND ENVIRONMENT – CROWN LANDS PHASE 2C SHOWGROUND STIMULUS FUNDING PROGRAM GRANT FOR WARREN SHOWGROUND/RACECOURSE IMPROVEMENTS CONTINUED**



Planning,  
Industry &  
Environment

Ref: 20/02412#04

Mr Kerry Jones  
Infrastructure Projects Manager  
Warren Shire Council  
kj@warren.nsw.gov.au

**Warren Showground - Funding Offer  
Phase Two, NSW Showgrounds Stimulus Program**

Dear Mr Jones,

Thank you for your application to the NSW Department of Planning, Industry and Environment – Crown Lands Showgrounds Stimulus Funding Program.

I am pleased to advise that Warren Shire Council has been successful in obtaining a grant of \$841,500.00 (inc. GST) from additional funding made available from the NSW Government's COVID-19 Stimulus Package towards the following project/s at Warren Showground:

- Proposal 654: Replace male & female amenities in cattleman's and horse sports camping area (\$242,000.00 incl. GST)
- Proposal 656: Renovate male toilets at main pavilion (\$110,000.00 incl. GST)
- Proposal 657: Install new septic receival tank for main pavilion toilets (\$49,500.00 incl. GST)
- Proposal 658: Renovate toilet block at centre arena (\$176,000.00 incl. GST)
- Proposal 659: Install new septic receival tank at centre arena toilets with grease trap for canteen waste disposal (\$49,500.00 incl. GST)
- Proposal 661: Re-level all concrete and asphalt floors in all pavilions (\$99,000.00 incl. GST)
- Proposal 662: Re-fence showground perimeter with exclusion fencing (\$115,500.00 incl. GST)

This financial assistance is offered on the terms set out in the attached Funding Deed.

The funds will be paid electronically following your indication of acceptance and confirmation of banking details. **If the attached Deed is not signed, returned and received by the Department before close of business on Friday 4 June 2021, the offer will be considered as lapsed and be withdrawn.** However, it would be appreciated if an indication of acceptance is provided immediately to allow for expedited funding disbursement and works to commence.

If you require additional information or wish to discuss this matter further, please contact the Showgrounds Stimulus Funding Program team on 1300 886 235 (option 4) or via [built.assets@crowland.nsw.gov.au](mailto:built.assets@crowland.nsw.gov.au).

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Andrew Bell'.

**Andrew Bell**  
Director Regional Operations West  
Showgrounds Stimulus Funding Program Manager  
Department of Planning, Industry and Environment - Crown Lands  
24 May 2021

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 Council Community Room, Warren on Thursday 27th May 2021

**ITEM 5 NSW DEPARTMENT OF PLANNING, INDUSTRY AND ENVIRONMENT – CROWN LANDS PHASE 2C SHOWGROUND STIMULUS FUNDING PROGRAM GRANT FOR WARREN SHOWGROUND/RACECOURSE IMPROVEMENTS CONTINUED**



**Planning,  
Industry &  
Environment**

**RECIPIENT CREATED TAX INVOICE**

**RECIPIENT**

NSW Department of Planning, Industry & Environment  
 PO Box 2185  
 Dangar NSW 2309

**ABN: 20 770 707 468**

**SUPPLIER**

Warren Shire Council  
 Mr Kerry Jones  
 Infrastructure Projects Manager  
 kj@warren.nsw.gov.au

**ABN: 87 198 932 652**

**RCTI Number** P2171

**Amount** \$841,500.00

**Date of Issue** 24 May 2021

**Account reference** 20/02412#04

**ENQUIRIES**

E | [built.assets@crowmland.nsw.gov.au](mailto:built.assets@crowmland.nsw.gov.au)  
 W | [www.industry.nsw.gov.au/lands](http://www.industry.nsw.gov.au/lands)

**RECIPIENT CREATED TAX INVOICE**

**SUPPLIES MADE BY SUPPLIER TO RECIPIENT**

Description of taxable supplies	Value	GST	Price
Warren Showground:	\$765,000.00	\$76,500.00	\$841,500.00
Proposal 654: Replace male & female amenities in cattleman's and horse sports camping area			
Proposal 656: Renovate male toilets at main pavilion			
Proposal 657: Install new septic receival tank for main pavilion toilets			
Proposal 658: Renovate toilet block at centre arena			
Proposal 659: Install new septic receival tank at centre arena toilets with grease trap for canteen waste disposal			
Proposal 661: Re-level all concrete and asphalt floors in all pavilions			
Proposal 662: Re-fence showground perimeter with exclusion fencing			
<b>Amount deposited to your bank account</b>			<b>\$841,500.00</b>

**Warren Showground - RCTI - Phase Two, NSW Showgrounds Stimulus Funding Program**

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**RECIPIENT CREATED TAX INVOICE**

The GST shown will form part of the total GST payable by the supplier on the business activity statement (BAS) for the relevant tax period.

The recipient and the supplier declare that this agreement applies to supplies to which this tax invoice relates. The recipient can issue tax invoices in respect of these supplies. The supplier will not issue tax invoices in respect of these supplies. The supplier acknowledges that it is registered for GST and that it will notify the recipient if it ceases to be registered. The recipient acknowledges that it is registered for GST and that it will notify the supplier if it ceases to be registered. Acceptance of this RCTI constitutes acceptance of the terms of this written agreement. Both parties to this supply agree that they are parties to this RCTI agreement. The supplier agrees to notify the recipient if the supplier does not wish to accept the proposed agreement within 21 days of receiving this document.



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to the Ordinary Meeting of Council to be held in the  
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---

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LANDS PHASE 2C SHOWGROUND STIMULUS FUNDING PROGRAM GRANT FOR  
WARREN SHOWGROUND/RACECOURSE IMPROVEMENTS            CONTINUED**

## **Funding Deed**

For NSW Crown Land Showground Stimulus Program  
**Contents**

Background .....	2
Details .....	3
Terms and Conditions.....	4
Definitions and Term.....	4
2. Term.....	5
What you must do .....	5
3. Your obligations.....	5
4. Variation .....	6
5. Consent of land owner.....	6
About the Grant.....	7
6. Project costs .....	7
7. Paying the Grant.....	7
8. Withholding, Suspension and Repayment .....	7
9. Holding of Grant .....	8
10. GST .....	8
Material and Information.....	9
11. Reporting Requirements .....	9
12. Intellectual Property .....	9
13. Confidential Information .....	10
14. Public Announcements and Acknowledgement .....	10
15. Disclosure of Information.....	10
Dealing with Risk.....	10
16. Insurance .....	11
17. Indemnities .....	11
Terminating the Deed.....	11
18. Termination.....	11
Other Legal Matters.....	12
19. Dispute Resolution .....	12
20. Notices.....	13
21. General.....	13
Executed as a deed.....	15
Schedule A – Approved Project/s .....	17
Schedule B – Reporting Requirements .....	18

**WARREN SHIRE COUNCIL**  
Report of the General Manager  
to the Ordinary Meeting of Council to be held in the  
Council Community Room, Warren on Thursday 27th May 2021

---

**ITEM 5            NSW DEPARTMENT OF PLANNING, INDUSTRY AND ENVIRONMENT – CROWN  
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**Background**

- A. The NSW Government is supporting regional communities through a range of funding programs, including the NSW Showgrounds Stimulus Program.
- B. You have applied successfully for funding.
- C. The Department agrees to provide funding to you, and you agree to accept that funding, on the terms and conditions of this Deed.
- D. The Project must be completed, and all funding paid, within 12 months of receipt of the Grant funding or earlier as specified in this Deed.
- E. You acknowledge that there are serious consequences (including repayment of the Grant) if you fail to use the funds in accordance with this Deed.



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 to the Ordinary Meeting of Council to be held in the  
 Council Community Room, Warren on Thursday 27th May 2021

**ITEM 5 NSW DEPARTMENT OF PLANNING, INDUSTRY AND ENVIRONMENT – CROWN LANDS PHASE 2C SHOWGROUND STIMULUS FUNDING PROGRAM GRANT FOR WARREN SHOWGROUND/RACECOURSE IMPROVEMENTS CONTINUED**

**Details**

<b>Department</b>	Name	The Crown in right of the State of New South Wales acting through Crown Lands, Department of Planning, Industry and Environment
<b>Department Contact Person</b>	Name	Andrew Bell
	Position	Director Regional Operations West
	Address	PO Box 2185, Dangar NSW 2309
	Telephone	1300 888 235 (option 4)
	E-mail	built.assets@crowmland.nsw.gov.au
<b>Grantee ('You')</b>	Name	Warren Shire Council
	Address	PO Box 6, Warren NSW 2824
	ABN	87 198 932 652
<b>Your Contact Person</b>	Name	Mr Kerry Jones
	Position	Infrastructure Projects Manager
	Telephone	0428 477 021
	E-mail	kj@warren.nsw.gov.au
<b>Project</b>	NSW Showgrounds Stimulus Program, Phase 2 Schedule A – Approved Project/s	
<b>Site</b>	The land where the Project will be constructed, installed or otherwise delivered:  Warren Showground Warren Rd, Warren NSW 2824	
<b>Grant</b>	A maximum total amount of \$841,500.00 (GST inclusive)	
<b>Commencement Date (of the Deed)</b>	The date that the last party executes this Deed	

**WARREN SHIRE COUNCIL**  
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---

**ITEM 5 NSW DEPARTMENT OF PLANNING, INDUSTRY AND ENVIRONMENT – CROWN LANDS PHASE 2C SHOWGROUND STIMULUS FUNDING PROGRAM GRANT FOR WARREN SHOWGROUND/RACECOURSE IMPROVEMENTS CONTINUED**

**Terms and Conditions**

Definitions and Term

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**Definitions and Interpretation**

**1. Interpretation**

1.1 Unless the context requires otherwise, in this Deed:

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

1.2 Definitions

**Activity** means the activity(s) described in **Schedule A – Approved Project**

**Activity Period** means 12 months from the date funds are paid.

**Assets** means the infrastructure, facilities or improvements created by the Project.

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

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

**Confidential Information** of a party means all information of whatever description and in whatever form which:

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

above, but does not include information that:

- (e) is in the public domain; or
- (f) is independently known or developed by the party receiving the information other than because of a breach of this Deed or any other obligation of confidentiality owed by or to any other person.

**WARREN SHIRE COUNCIL**  
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---

**ITEM 5 NSW DEPARTMENT OF PLANNING, INDUSTRY AND ENVIRONMENT – CROWN LANDS PHASE 2C SHOWGROUND STIMULUS FUNDING PROGRAM GRANT FOR WARREN SHOWGROUND/RACECOURSE IMPROVEMENTS CONTINUED**

**Deed** means this funding deed document and includes the Details, Terms and Conditions, Schedule A – Approved Project, Schedule B- Reporting Requirements and any other documents referred to in this Deed.

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

**Intellectual Property or IP** includes:

- (a) all rights in relation to copyright, inventions, trademarks, designs, patents; and
- (b) all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields including trade secrets and know-how,

but does not include Moral Rights.

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

**Notice** means any approvals, consents, instructions, orders, directions, statements, requests and certificates, or other communication one party gives to another party in writing under this Deed.

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

**Project Material** means material created as part of or in performance of the Project, including any documents or data.

### Term

- 1.3 This Deed will commence on the Commencement Date.
- 1.4 Unless terminated earlier, this Deed will end once you have completed the Activities to the Department's satisfaction.

### What you must do

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#### Your obligations

- 1.5 You must:
  - (a) ensure the Grant is used only for the approved Project;
  - (b) ensure each Activity is completed within the Activity Period in accordance with this Deed;
  - (c) comply with the reporting requirements set out in **Schedule B**;
  - (d) comply with all Commonwealth, State and Local government laws that are relevant to the Project (including obtaining all approvals e.g. environmental, planning, local Council prior to commencing the project), this Deed, or your registration as an entity;
  - (e) comply with any policies, guidelines and reasonable directions the Department provides to you;
  - (f) manage the Project with due skill and care including in relation to financial management, project planning and risk management; and
  - (g) not assign your obligations under this Deed to any other party without

**WARREN SHIRE COUNCIL**  
Report of the General Manager  
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Council Community Room, Warren on Thursday 27th May 2021

---

**ITEM 5 NSW DEPARTMENT OF PLANNING, INDUSTRY AND ENVIRONMENT – CROWN LANDS PHASE 2C SHOWGROUND STIMULUS FUNDING PROGRAM GRANT FOR WARREN SHOWGROUND/RACECOURSE IMPROVEMENTS CONTINUED**

the prior written consent of the Department.

- 1.6 You are responsible for the work undertaken for the Project until completion and are engaged as principal contractor for the work, in accordance with section 293 of the *WHS Regulation 2017* (NSW). You are authorised to exercise such control of the workplace as is necessary to discharge the duties of principal contractor under that Regulation.
- 1.7 You remain fully responsible for the performance of the project should you subcontract the delivery of any part of the project.
- 1.8 You must ensure that all details provided in the supporting funding proposal made to the Department of Planning, Industry and Environment – Crown Lands (Crown Lands) remain current, particularly that the project remains otherwise unfunded by any other Departmental or external grants program

### Variation

- 1.9 If you wish to vary the Project, including any Activity or other matter set out in **Schedule A** such as:
  - (a) changes to the nature of the Project or the scope of works, Site or revised priorities for the Project; or
  - (b) changes to the timeframe for delivery of the Project, including extensions to completion of Activities,you must first make a written request to the Department and provide any information reasonably required by the Department. Applications for extensions are to be lodged to [built.assets@crowmland.nsw.gov.au](mailto:built.assets@crowmland.nsw.gov.au) with details furnished outlining the current status of project delivery, including any receipts of previous payment to suppliers, and details of when the project is anticipated to be completed.
- 1.10 Following your request for a variation under **clause 4.1**, the Department will determine whether to approve your request in its sole discretion. No variation is approved until the Department approves the variation in writing.
- 1.11 You must advise the Department immediately:
  - (a) if you are unable to proceed with the Project;
  - (b) (where you own or lease the Site) if you propose to sell or lease any part of the Site; and
  - (c) (where you do not own or lease the Site) if you are notified or become aware of a proposal to sell or lease any part of the Site.

### Consent of land owner

- 1.12 If you are not the owner or Crown Land Manager of all or part of the Site, you warrant that you:
  - (a) have obtained the written approval and agreement of the land owner to deliver the Project at the Site; and
- 1.13 You indemnify and agree to keep indemnified the State from and against any loss

**WARREN SHIRE COUNCIL**  
Report of the General Manager  
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---

**ITEM 5 NSW DEPARTMENT OF PLANNING, INDUSTRY AND ENVIRONMENT – CROWN LANDS PHASE 2C SHOWGROUND STIMULUS FUNDING PROGRAM GRANT FOR WARREN SHOWGROUND/RACECOURSE IMPROVEMENTS CONTINUED**

(including legal costs and expenses on a solicitor/own client basis) or liability incurred or suffered by, or made against, any of those indemnified arising directly or indirectly from any Claim by the land owner as a result of or in connection with the Project.

#### About the Grant

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#### Project costs

- 1.14 The Grant is the maximum amount to be paid for the Project and you agree that:
- (a) you have prepared or reviewed the scope of works and costs estimate for the Project before signing this Deed;
  - (b) you are responsible for any costs that exceed the Grant for the Project (whether or not you expected to incur additional costs at any time before or after you signed this Deed) and you must obtain any additional funding necessary to carry out the Project; and
- 1.15 Project costs including, but not limited to, contingencies, project management, application fees, testing, planning or feasibility studies have been excluded from the grant funding.
- 1.16 Where the actual cost of the Project is less than the Grant:
- (a) you must notify the Department of any unspent Grant before the end of the Project; and
  - (b) you must return to the Department all Grant money paid to you that exceeds the actual cost of carrying out the Project (including any interest earned on such funds) within one month after completion of the Project (or termination of the Deed) or seek a Variation to the Project. Funds which are returned should include the land manager's name and the following reference: 20/02412#04.

#### Paying the Grant

- 1.17 The Department will pay the grant funds within 28 days of signing this Deed
- 1.18 Notwithstanding **clause 7.1**, the payment is not an admission that the performance of the Project is in conformity with this Deed and will not release you from your obligations under this Deed.
- 1.19 Payment of funds will be made to the authorised showground manager's account.

#### Withholding, Suspension and Repayment

- 1.20 If the grant funds are to be paid by instalments:
- (a) The Department may change the amount of a payment made to you by issuing you with a Notice setting out the details of the changes.
  - (b) If you are not complying with this Deed the Department may withhold or suspend payment until you comply with your obligations to the Department's satisfaction.
  - (c) If the Department withholds or suspends payment you must continue to perform your obligations under this Deed.
- 1.21 If you fail to comply with this Deed, you must repay to the Department an amount determined at the Department's discretion, which may be a part of the Grant or the whole Grant. The Department may (but is not obliged to) calculate the amount of

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Report of the General Manager  
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Council Community Room, Warren on Thursday 27th May 2021

---

**ITEM 5 NSW DEPARTMENT OF PLANNING, INDUSTRY AND ENVIRONMENT – CROWN LANDS PHASE 2C SHOWGROUND STIMULUS FUNDING PROGRAM GRANT FOR WARREN SHOWGROUND/RACECOURSE IMPROVEMENTS CONTINUED**

repayment you must make having regard to the extent to which you have failed to complete the Activities.

- 1.22 You must repay within 28 days of a demand being sent:
- (a) the repayment amount calculated by the Department under **clause 8.2**
  - (b) any grant funding spent in breach of this Deed;
  - (c) all unspent grant funding;
  - (d) any overpayment; and
  - (e) any interest earned on any grant funding required to be repaid.
- 1.23 Any repayment the Department claims from you under this **clause 8** will be a debt due and owing by you to the Department.

#### **Holding of Grant**

- 1.24 The grant funding must be held in trust for the benefit of the Department from the date it is received into the authorised showground manager's account with sufficient accounting controls in place to track the expenditure of the Grant.
- 1.25 Interest earned on the Grant held in a bank account must be used solely for the purpose of the Project.
- 1.26 If the Project is delayed, payments already paid to you must be held in the bank account until:
- (a) they are applied solely for the purpose of the Project; or
  - (b) they are required to be returned or repaid to the Department in accordance with the terms of this Deed.

#### **GST**

- 1.27 Unless otherwise indicated, all consideration for any supply under this Deed is inclusive of any GST imposed in relation to the supply.
- 1.28 If:
- (a) despite any other provision of this Deed, GST is imposed on a supply you make to the Department under this Deed; and
  - (b) the Department is or will be entitled to receive an input tax credit (as defined in the GST law) in relation to that supply,
  - (c) the Department will pay you an additional amount equal to the GST imposed on that supply, at the time and in the manner payment is otherwise payable under this Deed in relation to that supply.
- 1.29 If you are registered under the GST Law you must agree to the issuance by the Department of Planning, Industry and Environment of a Recipient Created Tax Invoice (RCTI) in respect to this payment.
- 1.30 If you are not registered under the GST Law you will not be entitled to receive any additional amount as provided under this **clause 10**.
- 1.31 If for any reason the Department pays you an amount under this **clause 10** which is more than the GST imposed on the supply, you must repay the excess to the

**WARREN SHIRE COUNCIL**  
Report of the General Manager  
to the Ordinary Meeting of Council to be held in the  
Council Community Room, Warren on Thursday 27th May 2021

---

**ITEM 5 NSW DEPARTMENT OF PLANNING, INDUSTRY AND ENVIRONMENT – CROWN LANDS PHASE 2C SHOWGROUND STIMULUS FUNDING PROGRAM GRANT FOR WARREN SHOWGROUND/RACECOURSE IMPROVEMENTS CONTINUED**

Department on demand or the Department may set off the excess against any other amounts due to you.

**Material and Information**

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**Reporting Requirements**

*Progress reports*

- 1.32 You must provide the Department with written progress Reports at the times and containing information specified in **Schedule B – Reporting Requirements** (“Progress Reports”).
- 1.33 If any Progress Report contains information confidential to you, you should mark the relevant parts of the Report accordingly.

*Financial statements*

- 1.34 The Statements must include a definitive statement as to whether:
- (a) the financial information for the Project represents the financial transactions fairly and is based on proper accounts and records; and
  - (b) the Grant was expended for the Project and in accordance with this Deed.

*Accounts and records*

- 1.35 You must keep financial accounts and records relating to the Project so as to enable:
- (a) all receipts and payments related to the Project to be identified in your accounts and reported in accordance with this Deed;
  - (b) unless notified by the Department, the preparation of financial statements in accordance with Australian Accounting Standards.
- 1.36 The showground manager must keep complete and accurate records and books of account with respect to the grant funding and projects and must retain such records for a minimum of seven (7) years after the completion of the project.

*Other information*

- 1.37 You must also provide any other information the Department reasonably requires from time to time concerning the Project within the timeframe requested.
- 1.38 You authorise the Department and any State Government department that has provided moneys for the purposes of the project, to undertake audits, to examine and inspect, at reasonable times and on reasonable notice, any records held by the showground manager, and allow any such records to be copied.
- 1.39 This project may be the subject of an onsite audit following its completion. The showground manager must provide all reasonable assistance to the Department and its agents or any other State Government department that has provided moneys towards the project to carry out any inspections and audits.

**Intellectual Property**

- 1.40 Intellectual Property in all Project Material vests in you.

**WARREN SHIRE COUNCIL**  
Report of the General Manager  
to the Ordinary Meeting of Council to be held in the  
Council Community Room, Warren on Thursday 27th May 2021

---

**ITEM 5 NSW DEPARTMENT OF PLANNING, INDUSTRY AND ENVIRONMENT – CROWN LANDS PHASE 2C SHOWGROUND STIMULUS FUNDING PROGRAM GRANT FOR WARREN SHOWGROUND/RACECOURSE IMPROVEMENTS CONTINUED**

- 1.41 You grant the Department a permanent, non-exclusive, irrevocable, royalty-free licence to use, modify, communicate, publish, adapt and sub-licence any report you provide to the Department in connection with this Deed for the Department's purposes.

#### Confidential Information

- 1.42 Each party must maintain the confidentiality of all commercially sensitive information it receives from the other party, except if disclosure is required in accordance with **clause 14** (Public Announcements) or **clause 15** (Disclosure of Information) or as otherwise agreed in writing.

#### Public Announcements and Acknowledgement

- 1.43 You must:
- (a) seek the consent of the Department prior to any public announcement about the Project;
  - (b) acknowledge the support of the Department as directed from time to time:
    - i. in any publications and public statements about the Project;
    - ii. on the home page of any web site established in connection with the Project;
    - iii. on any equipment or other facility funded wholly or in part by the Department; and
    - iv. on any signage at the Site.
  - (c) You must acknowledge the Department's support of the Project and comply with the applicable NSW Government Funding Acknowledgement Guidelines
- 1.44 The Department may issue public communications and publish information about you, the Project, outcomes and the Grant (including the amount) in the media, including in the form of press releases, case studies, promotional material and in response to media enquiries.
- 1.45 You must provide the Department with at least 15 Business Days' notice of any proposed announcements, launches or public events relating to the Project and provide an opportunity for a representative of the NSW Government to attend and speak at any launch or public event for the Project.

#### Disclosure of Information

- 1.46 You acknowledge that, under the *Government Information (Public Access) Act 2009*, the Department may be required to publicly disclose information about this Deed. None of the disclosure obligations require the disclosure of:
- (a) the commercial-in-confidence provisions of a contract;
  - (b) any matter that could reasonably be expected to affect public safety or security; or
  - (c) information which would be exempt from disclosure if it were the subject of an application under the *Government Information (Public Access) Act 2009*.
- 1.47 You may nominate any items you consider are confidential and why, to assist the Department in determining what items to disclose.



**WARREN SHIRE COUNCIL**  
Report of the General Manager  
to the Ordinary Meeting of Council to be held in the  
Council Community Room, Warren on Thursday 27th May 2021

---

**ITEM 5 NSW DEPARTMENT OF PLANNING, INDUSTRY AND ENVIRONMENT – CROWN LANDS PHASE 2C SHOWGROUND STIMULUS FUNDING PROGRAM GRANT FOR WARREN SHOWGROUND/RACECOURSE IMPROVEMENTS CONTINUED**

Dealing with Risk

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**Insurance**

- 1.48 You must maintain, during the term of this Deed:
- (a) a broadform public liability policy of insurance to the value of at least \$20 million in respect of each claim and in the aggregate as to the number of occurrences in the policy period; and
  - (b) workers' compensation insurance as required by all relevant laws of Australia relating to workers compensation.
- 1.49 You must ensure these policies remain current and valid and are not rendered void or voidable as a result of your actions.
- 1.50 On request by the Department, you must provide a copy of valid and current certificates of currency for each or any of the policies described above.
- 1.51 Without limitation to **clause 16.1**, each party warrants that it has and will maintain appropriate insurance to cover any liability it may incur in relation to this Deed.

**Indemnities**

- 1.52 To the maximum extent permitted by law, you must indemnify and keep indemnified the Department, the Crown in right of the State of New South Wales, and their officers, employees and agents from and against any loss (including legal costs and expenses on a solicitor/own client basis) or liability incurred or suffered by, or made against, any of those indemnified arising directly or indirectly from any Claim by any person as a result of or in connection with:
- (a) the Grant or the use of any outcomes from the Project;
  - (b) your breach of this Deed;
  - (c) any unlawful or negligent act or omission by you, your employees or your subcontractors in connection with this Deed;
  - (d) any illness, injury or death of any person you, your employees or your subcontractors cause or contribute to, in connection with this Deed;
  - (e) any loss or damage to real or personal property you, your employees or your subcontractors cause or contribute to, in connection with this Deed; or
  - (f) any act or omission by you, your employees or your subcontractors in connection with this Deed that is in infringement of any Intellectual Property, or privacy rights of the Department or any third party.
- 1.53 Your liability to indemnify the Department under this clause will be reduced proportionately to the extent that any negligent or unlawful act or omission by the Department, its officers, employees or agents contributed to the relevant loss or liability.

**WARREN SHIRE COUNCIL**  
Report of the General Manager  
to the Ordinary Meeting of Council to be held in the  
Council Community Room, Warren on Thursday 27th May 2021

---

**ITEM 5 NSW DEPARTMENT OF PLANNING, INDUSTRY AND ENVIRONMENT – CROWN LANDS PHASE 2C SHOWGROUND STIMULUS FUNDING PROGRAM GRANT FOR WARREN SHOWGROUND/RACECOURSE IMPROVEMENTS CONTINUED**

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

#### Terminating the Deed

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#### Termination

- 1.55 Where a party has breached this Deed:
- (a) the other party may give a Notice to that party requiring it to rectify that breach within 30 days of receiving that Notice; and
  - (b) if the party which received the Notice fails to rectify that breach in time, the other party may terminate this Deed immediately by giving a further Notice.
- 1.56 The Department may terminate this Deed by Notice, with effect on the date stated in the Notice, if:
- (a) the Department considers that you have provided intentionally misleading or incorrect information as part of the application for grant funding or as part of this Deed;
  - (b) you use the Grant for purposes other than the Project;
  - (c) the Department considers that it is necessary to terminate this Deed to protect the reputation of the Department or the NSW Government;
  - (d) you breach any of the following provisions: **clause 3** (Your Obligations), **clause 9** (Holding of Grant), **clause 11** (Reporting Requirements), **clause 16** (Insurance) or **clause 21.9** (Assignment);
  - (e) the Department considers the Project no longer viable;
  - (f) the Department considers that there has been a material change in circumstances in your financial position, structure or identity; or
  - (g) you become insolvent, are the subject of a debtors or creditors petition under the *Bankruptcy Act 1966*, resolve to go into administration or liquidation, or if a summons for your winding up is presented to a Court or you enter into any scheme of arrangement with your creditors.
- 1.57 This **clause 18** does not exclude or reduce the rights of a party to terminate the Agreement arising by operation of the common law or statute or the other terms of this Agreement.
- 1.58 On termination or expiry of this Deed accrued rights and obligations are not affected.

#### Other Legal Matters

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#### Dispute Resolution

- 1.59 If a dispute arises in relation to this Deed ("a Dispute"), a party must comply with this **clause 19** before starting arbitration or court proceedings except proceedings for urgent interlocutory relief.
- 1.60 A party claiming that a dispute has arisen must notify the other party in writing giving details of the dispute (Dispute Notice) in accordance with the requirements of **clause 20** (Notices).

**WARREN SHIRE COUNCIL**  
Report of the General Manager  
to the Ordinary Meeting of Council to be held in the  
Council Community Room, Warren on Thursday 27th May 2021

---

**ITEM 5 NSW DEPARTMENT OF PLANNING, INDUSTRY AND ENVIRONMENT – CROWN LANDS PHASE 2C SHOWGROUND STIMULUS FUNDING PROGRAM GRANT FOR WARREN SHOWGROUND/RACECOURSE IMPROVEMENTS CONTINUED**

- 1.61 Following receipt of a Dispute Notice, each party must refer the Dispute to a senior representative, who:
- (a) does not have prior direct involvement in the Dispute; and
  - (b) has authority to negotiate and settle the Dispute.
- 1.62 If the Dispute is not resolved within 10 Business Days, from the date the Dispute Notice is received by the party to whom the Dispute Notice is given, the party which gave the Dispute Notice under **clause 19.2** must refer the Dispute for mediation by the Australian Disputes Centre Limited (ADC) for resolution in accordance with the mediation rules of the ADC.
- 1.63 If the Dispute is not resolved within 40 Business Days after referral to mediation either party may initiate proceedings in court.
- 1.64 Each party must pay its own costs of complying with this clause and share the costs of the mediator evenly.

**Notices**

- 1.65 Unless otherwise stated in this Deed, all Notices to be given under this Deed must be in writing, and hand-delivered or emailed to the Contact Person specified in the Details.
- 1.66 The receiving party will be deemed to have received the Notice as follows:
- (a) if hand delivered, on the day on which it is delivered or left at the relevant address;
  - (b) if sent by email before 5.00pm on a Business Day, the first of the following occurring:
    - i. when the sender receives an automated message confirming delivery; or
    - ii. four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.
  - (c) if sent by email after 5pm on a Business Day or on a day that is not a Business Day, then it will be deemed to be received on the next Business Day.
- 1.67 The above mode of service will be valid notwithstanding any other matter or event whatsoever.

**General**

- 1.68 **Survival:** The following clauses survive termination or expiry of this Deed: **clause 11** (Reporting Requirements), **clause 13** (Confidential Information), **clause 16** (Insurance), **clause 17** (Indemnities), **clause 18** (Termination), **clause 21.3** (Keeping of records), this **clause 21.1** and any other clause which by its nature is intended to survive this Deed.
- 1.69 **Subcontractors:** You remain fully responsible for the performance of the Project if you subcontract the performance of any part of the Project.
- 1.70 **Keeping of records, audit and rights of access to such records:** You:
- (a) must keep complete and accurate records and books of account with respect to your performance of the Project (the "Records"), and must retain the

**WARREN SHIRE COUNCIL**  
Report of the General Manager  
to the Ordinary Meeting of Council to be held in the  
Council Community Room, Warren on Thursday 27th May 2021

---

**ITEM 5 NSW DEPARTMENT OF PLANNING, INDUSTRY AND ENVIRONMENT – CROWN LANDS PHASE 2C SHOWGROUND STIMULUS FUNDING PROGRAM GRANT FOR WARREN SHOWGROUND/RACECOURSE IMPROVEMENTS CONTINUED**

- Records for a minimum of seven (7) years after the end of this Deed;
- (b) authorise the staff and authorised representatives of the Department and of any department or agency that has provided funds for the purposes of the Project (the "Auditors") to: undertake audits; examine and inspect, at reasonable times and on reasonable Notice, any records held by you; and copy any Records; and
  - (c) must provide all reasonable assistance for the Auditors to properly carry out the inspections and audits referred to in this clause.

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

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

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

- (a) the **Details**; then
- (b) the **Special Conditions**; then
- (c) these **Terms and Conditions**;
- (d) any **Schedules**; then
- (e) any **attachments** or documents referenced in this Deed.

1.74 **No of employment, partnership or agency**

- (a) This Deed does not create a relationship of agency, partnership, and/or employment the parties.
- (b) You must not represent yourself as being an employee or agent of the Department or as otherwise able to bind or represent the Department.

1.75 **Waiver**

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

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

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

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

**WARREN SHIRE COUNCIL**  
Report of the General Manager  
to the Ordinary Meeting of Council to be held in the  
Council Community Room, Warren on Thursday 27th May 2021

---

**ITEM 5 NSW DEPARTMENT OF PLANNING, INDUSTRY AND ENVIRONMENT – CROWN LANDS PHASE 2C SHOWGROUND STIMULUS FUNDING PROGRAM GRANT FOR WARREN SHOWGROUND/RACECOURSE IMPROVEMENTS CONTINUED**

**Executed as a deed**

**Department**

Signed, sealed and delivered for and on behalf of the Crown in right of the State of New South Wales acting through the **Department** by its authorised signatory but not so as to incur personal liability

_____	_____
Signature of Authorised Signatory	Signature of Witness
_____	_____
Name of Authorised Signatory	Name of Witness
_____	_____
Position of Authorised Signatory	Address of Witness
	_____
	Date

**You (Council)**

Signed, Sealed and delivered for on and on behalf of Warren Shire Council by its authorised delegate in accordance with section 377 and/or 378 of the *Local Government Act 1993* (NSW) by:

_____	_____
Signature of authorised delegate	Signature of witness
_____	_____
Name of authorised delegate	Name of witness
_____	_____
Date	Date

**WARREN SHIRE COUNCIL**  
Report of the General Manager  
to the Ordinary Meeting of Council to be held in the  
Council Community Room, Warren on Thursday 27th May 2021

---

**ITEM 5            NSW DEPARTMENT OF PLANNING, INDUSTRY AND ENVIRONMENT – CROWN  
LANDS PHASE 2C SHOWGROUND STIMULUS FUNDING PROGRAM GRANT FOR  
WARREN SHOWGROUND/RACECOURSE IMPROVEMENTS            CONTINUED**

**Schedule A – Approved Project/s**

- Proposal 654: Replace male & female amenities in cattleman's and horse sports camping area (\$242,000.00 incl. GST)
- Proposal 656: Renovate male toilets at main pavilion (\$110,000.00 incl. GST)
- Proposal 657: Install new septic receival tank for main pavilion toilets (\$49,500.00 incl. GST)
- Proposal 658: Renovate toilet block at centre arena (\$176,000.00 incl. GST)
- Proposal 659: Install new septic receival tank at centre arena toilets with grease trap for canteen waste disposal (\$49,500.00 incl. GST)
- Proposal 661: Re-level all concrete and asphalt floors in all pavilions (\$99,000.00 incl. GST)
- Proposal 662: Re-fence showground perimeter with exclusion fencing (\$115,500.00 incl. GST)

**WARREN SHIRE COUNCIL**  
Report of the General Manager  
to the Ordinary Meeting of Council to be held in the  
Council Community Room, Warren on Thursday 27th May 2021

---

**ITEM 5            NSW DEPARTMENT OF PLANNING, INDUSTRY AND ENVIRONMENT – CROWN  
LANDS PHASE 2C SHOWGROUND STIMULUS FUNDING PROGRAM GRANT FOR  
WARREN SHOWGROUND/RACECOURSE IMPROVEMENTS            CONTINUED**

**Schedule B – Reporting Requirements**

1. The Department will contact the showground manager and you must provide to the Department monthly Progress Reports on the status of all on-going and completed Activities for the period to which the report relates, consisting of:
  - (a) all Activities undertaken during the reporting period;
  - (b) the status of results achieved to date from the Project;
  - (c) the amount of the funding from the Grant and what has been expended on the Activity so far;
  - (d) including but not limited to commencement dates, engagement of local trades and services, moneys spent and expected completion dates; and
  - (e) any other Project information which the Department requests.
2. You must provide the Department with a final project report within 3 months of the completion of all projects.
3. The final project report must demonstrate that the works have been satisfactorily completed and the funds fully expended or surplus funds returned.
  - (a) Documentation in the form of before and after photos (wherever relevant) and proof of expenditure must be submitted with the report.
4. The showground manager is responsible for seeking prior written approval from the department if an extension for provision of the final project report is required.
5. Failure to submit this report will render the showground manager ineligible for future funding from the Department.
6. If the Department requires, you must use a standard Progress Report template via an online funding portal.
7. The Department may undertake site visits from time to time to ascertain progress of the Activities on providing reasonable notice to you.