

TABLE OF CONTENTS

ITEM 37 UPDATE REPORT ON LOCAL ENVIRONMENTAL PLAN2

ANNEXURE ITEMS

ITEM 37 - UPDATE REPORT ON LOCAL ENVIRONMENTAL PLAN

REPORT IN BRIEF

Reason For Report	To update Councillors on the Local Environmental Plan
Policy Implications	Nil
Budget Implications	Nil
Area of Responsibility	Local Environmental Plan
Annexures	Nil
File Number	\My Workspace\Business Paper Report Directory\Working Reports InfoCouncil 2011 - 228265

DIRECTOR OF ENVIRONMENTAL SERVICES' REPORT

Letter of Offer for Funding

As stated in the Council Report, Cabonne Council (as part of the WBC Alliance) has received a Letter of Offer from the Department of Planning for 'In Kind Assistance' under the Local Environmental Plan ('LEP') Acceleration Fund. The Letter of Offer requires Council to reply within 14 days of receipt which is estimated to be Friday, 25 March 2011.

The Letter of Offer provides \$148,400 (excluding GST) in funding for the three Councils (shared in thirds). This money is designed to pay for consultants to undertake dedicated planning and GIS mapping services to prepare and revise the three (3) LEPs and must be completed by 31 December 2011.

Creation of a 'Conversion LEP'

Please note that this funding is based on the 'conversion' of our existing LEP across to the new Standard Instrument template ('conversion LEP'). It does not include the incorporation of any significant changes recommended by adopted or draft strategies that are/have been prepared which would be included in a 'comprehensive LEP'. Council still requires further consultation with the Department as to the limitations to changes that can be made.

In brief summary this means that the new LEP will retain:

- Village Zones for our settlements;
- Large lot residential zones for our rural small holdings;
- The existing Minimum Lot Size ('MLS') of 100ha for rural zones;
- Protection for the Molong Drinking Water Catchment.

Continued Strategic Land Use Preparation for a 'Comprehensive LEP'

Whilst the Department / Consultant is assisting with delivering the 'conversion LEP' to the community, it is proposed that Council's Strategic Planner continue to prepare the necessary land use strategies to support a 'comprehensive LEP'. Therefore, there will be only limited delay to the introduction of a 'comprehensive LEP' caused by this proposal.

Key Benefits & Challenges

The key benefits of moving to the 'conversion LEP' rather than a 'comprehensive LEP' are:

- The provision of funding and resources to assist with delivering the LEP to the community;
- The input of a qualified consultant to deliver consultation and administrative functions that currently consume a great deal of Council's Strategic Planner's time and resource;
- A reduced timeframe to deliver a new LEP in the form of the Standard Instrument;
- A simpler transition process where the community can adapt to the new Standard Instrument before having to provide input on a variety of potential amendments through the strategies;
- A staged process whereby Council achieves a new LEP in a quicker timeframe without rushing the strategic work necessary to ensure good planning outcomes.

The potential challenges of moving to the 'conversion LEP' rather than a 'comprehensive LEP' are:

- The risk that the process will be controlled by the Department of Planning/Consultant rather than Council (this is offset by our proposal that Council's Strategic Planner effectively prepare a 'conversion LEP' in the next 6-8 weeks so that the primary role of the consultant/Department is to 'deliver' our draft to the community);
- The additional resources that will be put into the 'conversion LEP' that could be spent on delivering the 'comprehensive LEP' (this is offset by the funding, the reduced load on Council's Strategic Planner which will release him to deliver the land use strategies and the simpler process of making amendments to the 'conversion LEP' as a Planning Proposal at a later time);
- A potential perception that a 'conversion LEP' will not address many of the amendments that people are looking for in the new LEP (this is offset by notifying the community that the land use strategies will be shortly finalised and will inform the necessary changes).

RECOMMENDATION

THAT: Council accepts the Letter of Offer from the Department and agrees to assistance to allow for the preparation of a 'conversion LEP' with an intended deadline of 31 December 2011.

TABLE OF CONTENTS

ITEM 26 LOCAL ENVIRONMENTAL PLAN ACCELERATION FUND1

ANNEXURE ITEMS

ANNEXURE 26.1 LETTER OF OFFER, LEP ACCELERATION FUND2

ITEM 26 - LOCAL ENVIRONMENTAL PLAN ACCELERATION FUND

REPORT IN BRIEF

Reason For Report	For the information of Councillors
Policy Implications	Nil
Budget Implications	Nil
Area of Responsibility	Environmental Services
Annexures	1. Letter of Offer, LEP Acceleration Fund
File Number	\My Workspace\Business Paper Report Directory\Working Reports InfoCouncil 2011 - 228257

DIRECTOR OF ENVIRONMENTAL SERVICES' REPORT

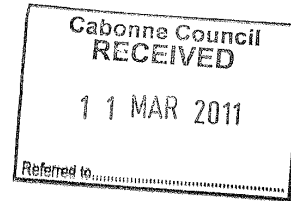
Council is in recent receipt of an offer from NSW Department of Planning for Acceleration Funding to complete the review of Council's LEP. A copy of the assistance offer is attached for the information of Council. The Department is seeking a response from Council to accept the funding offer by Friday 25 March 2011.

Further information will be provided at the Council meeting to discuss the benefits and opportunities of the funding offer.



Planning

Mr Graeme Fleming
 General Manager
 Cabonne Council
 PO Box 17
 MOLONG NSW 2866



LETTER OF OFFER – In-Kind Assistance

Local Environmental Plan Acceleration Fund

This Letter of Offer for in-kind assistance is between the Department of Planning, for and on behalf of the Crown in right of the State of New South Wales ("the Department", "We", "Us", "Our") and Cabonne Council ("the Council").

Terms and conditions of In-Kind Assistance

The provision of in-kind assistance funded from the Local Environmental Plan Acceleration Fund is subject to a number of terms and conditions that must be agreed to by the Council prior to provision of assistance.

Details of the terms and conditions are provided below. If the Council is prepared to accept these terms and conditions, please sign this letter and return it to Stephanie Schofield, Project Manager, LEP Acceleration Fund, GPO Box 39 Sydney NSW 2000 **within 14 days** of receipt.

Funded Project

1. The Council acknowledges that in-kind assistance has been approved to undertake Planning / GIS Mapping / related services ("the Funded Project") funded from the Local Environmental Plan Acceleration Fund (Cabonne, Blayney and Wellington Councils).
2. The Council acknowledges that the In-Kind assistance will be provided as follows ("the In-Kind assistance"):
 - Provision of two contractors to perform dedicated planning and GIS mapping services to prepare and revise your LEP for the period from 31 March 2011 to 31 December 2011 to an estimated equivalent value of \$148,400 (excluding GST) (shared in thirds).
3. The Council acknowledges that the Funded Project must be completed by 31 December 2011. If the Funded Project has not commenced or been completed by this date, We may withdraw the In-Kind assistance, at our discretion, and terminate this Agreement.
4. Any variation to the Funded Project, as detailed in the Council's application for assistance from the Local Environmental Plan Acceleration Fund, must be agreed to in writing by Us.
5. If, for whatever reason the Council is unable to proceed with the Funded Project, the Council will inform Us as soon as possible in writing.
6. The Council acknowledges that the In-Kind assistance is the total amount of assistance that will be provided by Us under this Agreement and any expenditure incurred by the Council on the Funded Project additional to the In-Kind assistance will be the responsibility of the Council and We will not reimburse You for such costs,

Bridge St Office 23-33 Bridge St Sydney NSW 2000 GPO Box 39 Sydney NSW 2001 DX 22 Sydney
 Telephone: (02) 9228 6111 Facsimile: (02) 9228 6191 Website planning.nsw.gov.au

or provide additional in-kind assistance or funding to cover such costs, under any circumstances.

7. The Council agrees that access to the In-Kind assistance can only be obtained by signing and returning these Terms and Conditions of In-Kind assistance ("the Agreement") (within 14 days).
8. The Council acknowledges and agrees that provision of the In-Kind assistance is subject to the New South Wales Parliament making all necessary appropriations and funds being available for the purposes of the Local Environmental Plan Acceleration Fund.

The Contractors

9. The Council acknowledges and agrees:
 - (a) the Contractors will be an independent contractor engaged by Us under our Professional Services Contractor Agreement ("the Contract");
 - (b) We engage the Contractors as principal and not as agent of the Council, and We will manage the Contract and be responsible for the Contractor's compliance with the terms of Our contract of service with the Contractors;
 - (c) the Contractors will report directly to Us in accordance with the terms of the Contract;
 - (d) the Contractors will perform the In-Kind assistance at Council's Offices;
 - (e) the Council agrees to provide, at its own cost, all day-to-day operational support, facilities, direction, advice, information and assistance to the Contractors as necessary to enable the Contractors to perform the In-Kind assistance;
 - (f) copies of any time sheets, claims for payment, and all other administrative matters concerning the Contractors should be supplied to Us for appropriate action; and
 - (g) the Contractors must work solely on the Funded Project.

Intellectual Property

10. In this Agreement "Funded Project Materials" means all material created by the Contractors, or by or on behalf of Us, for the purpose of the Funded Project, including reports, software, documentation, information, maps, plans, software or data stored by any means.
11. Any intellectual property in all Funded Project Materials will be retained by Us, or relevant third parties, as the case may be.
12. We grant, and will use best efforts to ensure that relevant third parties grant to the Council, without cost, a non-exclusive licence to use, reproduce, communicate to the public and adapt for the Council's own purposes all intellectual property in those Funded Project Materials.
13. We will hold, or obtain, consents from all authors of the Funded Project Materials to the Council's use and Our use and adaptation, without restriction and without any requirement to attribute the Project Materials to its authors.
14. Where intellectual property rights in any materials created by, or on behalf of, the Council for the purposes of the Funded Project are owned by the Council or relevant third parties ("Council Project Material's") the Council grants to Us, without cost, a non-exclusive, irrevocable, royalty free and transferable licence (including the right to sub-license) to use, reproduce, communicate to the public and adapt for Our own purposes all intellectual property rights in those Council Project Materials.
15. The Council must hold, or obtain, consents from all authors of the Council Project Materials to Our use and adaptation, without restriction and without any requirement to attribute the Project Materials to its authors.
16. This Agreement does not affect the intellectual property rights that the Council or third parties may have in any material that exists at the date of this Agreement and that is incorporated with the Funded Project Materials ("Existing Materials"), however, the Council grants to Us, and must ensure that relevant third parties grant to Us,

without cost, a non-exclusive, irrevocable, royalty free and transferable licence (including the right to sub-license) to use, reproduce, communicate to the public and adapt for Our own purposes all those intellectual property rights as part of the Funded Project Materials and any development of those materials.

17. Subject to clause 40, if Funded Project Materials are produced as part of the Funded Project we will provide one hard copy and one electronic copy of these Funded Project Materials to the Council on completion of the Funded Project.
18. If Council Project Materials are produced as part of the Funded Project, the Council will provide one hard copy and one electronic copy of any Council Project Material to us on completion of the Funded Project, or at an earlier time during the Funded Project if requested by Us.

Monitoring and reporting requirements

19. The Council will provide Us with:
 - (a) progress reports on the Funded Project, provided regularly and in any event on request by Us.
 - (b) a brief written report on the achievements of the project against agreed objectives within one month of completion of the Funded Project.

Public Acknowledgement

20. The Council will ensure that all public statements relating to the Funded Project or the In-Kind assistance acknowledge the provision of the In-Kind assistance by Us funded from the NSW Government's Local Environmental Plan Acceleration Fund.
21. We may publicise the awarding of the In-Kind assistance at any time after it is awarded, including:
 - (a) the Council's name;
 - (b) the value of the In-Kind assistance; and
 - (c) the title and brief description of the Funded Project and the Funded Project results.

Goods and Services Tax

22. For the purposes of this part (GST), "GST Law" has the meaning defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* as amended from time to time. Where a word or phrase is defined under the GST Law, it has the same meaning in this Agreement.
23. The consideration expressed in this Agreement (unless otherwise specified) is GST exclusive and does not include any amount for GST.
24. Subject to clause 26, if anything supplied under or in connection with this Agreement constitutes a taxable supply made for GST exclusive consideration, the supplier may, subject to issuing a tax invoice, recover from the recipient of the supply an amount on account of the GST payable in respect of that taxable supply ("GST Amount").
25. The GST Amount will be:
 - (a) equal to the "value" of the supply calculated in accordance with GST Law multiplied by the prevailing GST rate; and
 - (b) subject to clause 26, payable at the same time and in the same manner as any monetary consideration for the supply concerned but no later than the end of the tax period to which the relevant taxable supply is attributable under the GST Law.
26. If either the Department or the Contractors makes a supply to the other for consideration which is wholly non-monetary consideration then:
 - (a) the supply will for the purposes of this clause be styled a "Consideration in Kind Supply";
 - (b) the consideration for the Consideration in Kind Supply is GST inclusive;
 - (c) the Department and the Council agree that the GST inclusive market value of each of the Consideration in Kind Supply and the consideration for that supply (being in turn, a Consideration in Kind Supply) are equal;

- (d) the Department and the Council will each include in any "tax invoice", issued by it in respect of a Consideration in Kind Supply made by it in return for a Consideration in Kind Supply by the other, the same amount on account of the GST inclusive market value of the supply to which the "tax invoice" relates being the "price" for that supply;
 - (e) prior to the issue of the tax invoices referred to in sub-paragraph (d) of this sub-clause, the Department will determine the GST inclusive market value of the reciprocal Consideration in Kind Supplies by reference to the GST-inclusive market value of the Contractor's services.
27. The parties agree to exchange tax invoices for any taxable supplies made under this Agreement within 21 days of expiry or termination of the In-Kind assistance, but no later than the end of the tax period to which the relevant taxable supply is attributable under the GST Law.
 28. If in relation to a taxable supply under or in connection with this Agreement an adjustment event occurs that gives rise to an adjustment, then the GST Amount will be adjusted accordingly and, where necessary, a payment will be made to reflect the change in the GST Amount (by the recipient to the supply in respect of an increase in the GST Amount and by the supplier to the recipient in respect of a decrease in the GST Amount). If a payment is required, it will be made within 10 business days of the issue of an adjustment note by the payee who must issue an adjustment note immediately upon becoming aware of the adjustment event concerned.
 29. Any amount on account of GST payable by the Department to the Council under this part (GST) will be limited to the amount of an input tax credit to which the Department is entitled in respect of the relevant supply which the Department acquires.
 30. The Council warrants that it is registered under the GST Law as at the date of this Agreement and will continue to be registered at the time of making any supply under this Agreement on which GST is imposed.

Insurance, Indemnity and Release

31. The Council must maintain (at its expense) appropriate insurance policies for broad form liability insurance (including public liability insurance and products liability insurance), professional liability and workers compensation insurance for the duration of the Funded Project.
32. The Council will at all times indemnify, hold harmless and defend Us and Our officers, employees, agents and contractors, including the Contractors, ("Those Indemnified") from and against all liability, damage or loss (including reasonable legal costs and expenses), which may be suffered or incurred by any of those indemnified by reason of or in connection with:
 - (a) any unlawful, wrongful, wilful or negligent act or omission of the Council or the Council's officers, employees, agents, contractors or volunteers (in this clause "the Council's Personnel");
 - (b) any inaccuracy, defect or error in materials, including reports, software, documentation, information, maps, plans, software or data, that is provided to Those Indemnified by the Council, or the Council's Personnel;
 - (c) any facilities, direction, advice, information or assistance provided by the Council or the Council's Personnel to the Contractors;
 - (d) any claim made or threatened against Those Indemnified in which it is alleged that any material provided by the Council or the Council's Personnel, to Those Indemnified (including the use of such material by Those Indemnified) infringes the intellectual property rights or moral Rights of a third party; or
 - (e) any act or omission of the Council or the Council's Personnel, resulting in loss of, or damage to, property, or personal injury to, or death of, any person.
33. The Department accepts the full benefit of any indemnities in clause 32 in favour of the Contractors as agent for the Contractors for the purposes of these indemnities only, and these are indemnities on behalf of the Contractors. The Council agrees that the Contractors may enforce these indemnities directly or alternatively, if the

Department so elects, the Department may enforce such indemnities on behalf of the Contractors.

34. The Council's liability to indemnify Those indemnified under clause 32 will be reduced proportionately to the extent that any unlawful, wrongful, wilful or negligent act or omission of Those Indemnified contributed to the loss or liability.
35. The Council acknowledges and agrees that use of the Funded Project Materials is at its own risk and the Council releases Those Indemnified from liability for any loss or damage suffered by the Council arising from or in connection with use of the Funded Project Materials by the Council, the Council's Personnel or any other person.

Ending this Agreement

36. We may terminate this Agreement (by giving the Council 14 days notice) at any a time if:
 - (a) in Our opinion the Council is not carrying out the Funded Project diligently and competently;
 - (b) We consider that there has been a material change in the Council's financial position or structure; or
 - (c) We consider the Funded Project is no longer viable.
37. We may (by giving the Council written notice) immediately terminate this Agreement if:
 - (a) the Council breaches a provision of this Agreement in a manner that in Our opinion is not capable of remedy;
 - (b) the Council breaches a provision that in Our opinion is capable of remedy and fail to comply with a notice from Us to remedy the breach within the period specified; or
 - (c) all necessary appropriations are not made by the New South Wales Parliament, or funds are no longer available for any reason for the purposes of the Local Environmental Plan Acceleration Fund.

Consequences of Termination or Expiry

38. If We terminate this Agreement, the Council will not be entitled to any further In-Kind assistance.
39. On termination or expiry of this Agreement the Council must, except to the extent agreed between Us and the Council in writing, provide to Us within seven (7) days of termination or expiry of this Agreement:
 - (a) any reports due to Us under this Agreement or otherwise requested by Us;
 - (b) two copies of all Council Project Materials created or produced up to the date of termination or expiry of this Agreement, whether finalised or not, one in hard copy and one in electronic format.
40. If this Agreement is terminated by Us:
 - (a) We may in Our sole discretion, by notice in writing, revoke the licence and any sub-licence granted by Us to the Council under this Agreement in respect of Funded Project Materials;
 - (b) We will be under not obligation to provide any further copies of Funded Project Materials to the Council; and
 - (c) the Council must, if requested by Us, return to Us all copies of Funded Project Materials in Council's possession.
41. Any termination of this Agreement by Us is without prejudice to any accrued rights or remedies of the Department.
42. Clauses in this Agreement dealing with intellectual property, insurance, indemnities and release, GST, ending this agreement, consequences of termination, public acknowledgement, dispute resolution and any other provision of this Agreement which by its nature should survive termination will survive termination, expiry or repudiation of this Agreement.

Disputes

- 43. The parties must attempt to settle any dispute in relation to this Agreement according to this part (Disputes) before resorting to court proceedings or other dispute resolution process.
- 44. A party claiming that a dispute has arisen must give written notice of the dispute to the other party. The parties must, within 14 days of receipt of the notice, seek to resolve the dispute.
- 45. If the dispute is not resolved within this 14-day period, or within any other period the parties agree, then the dispute is to be referred to the Australian Commercial Disputes Centre ("ACDC") for mediation.
- 46. The parties agree to the conduct of the mediation according to the then current ACDC Mediation Guidelines, which set out the procedures to be adopted, the process of selection of the mediator, and the costs involved.
- 47. If the dispute is not settled within 28 days (or any other period the parties agree) after appointment of the mediator, or if no mediator is appointed within 28 days of the referral of the dispute to mediation, the parties may pursue any other procedure available at law to resolve the dispute.
- 48. Nothing in this part (Disputes) prevents either party from seeking urgent interlocutory relief.

Executed as a Deed;

Signed, sealed and delivered by:
[Signature of authorised signatory for Council]: _____

Name: _____

Position in Council: _____

Name of Council: _____

ABN of Council: _____

Date: _____

Note: This letter must be signed by the General Manager or officer delegated with authority to bind the Council.

Sign and date two copies of this letter of offer and return it to the Department. The Department will then sign both original copies and return one to you. In-kind assistance will commence only after the Letter of Offer has been signed by both parties.

Signed, sealed and delivered by:
[Signature of authorised signatory for Department]: _____



Name: Neil McGaffin

Position title: Executive Director,
Planning Operations

ABN: 38 755 709 681

Date: 4/3/2011