

ORDINARY COUNCIL MEETING	5.3
24 JUNE 2014	

EVENT STRATEGY – RESOURCE AND PERFORMANCE AGREEMENT TEMPLATE

Kerrie Hawkes: Executive Officer (#422746)

Linda Cardew: Chief Executive Officer.

RECOMMENDATION:

That Council:

- 1. adopt the Resource and Performance Agreement template; and**
- 2. delegates authority to the Chief Executive Officer in accordance with the *Local Government Act 2009* to finalise any minor amendments in relation to the Agreement.**

EXECUTIVE SUMMARY:

A Resource and Performance Agreement is a formal document between Council and an organisation, or in limited instances a business, for the provision of an event or activity in the Douglas community.

Council enters into a number of Resource and Performance Agreements (the Agreement) with various organisations, or in limited instances business, with the understanding that the recipient of the Agreement will abide by conditions outlined in the Agreement.

To ensure consistency, this report proposes that the attached template be the standard on which Resource and Performance Agreements are based. Specific details and performance outcomes relevant to each recipient will then be inserted in this standard agreement.

BACKGROUND:

On 29 April 2014, Council adopted the Event Strategy 2014-2019, Event General Policy and Framework. These documents outline the opportunities for securing Council funding to support an event or project.

In the Event Strategy significant events that are drivers of community and economic development, and which have been approved for funding support by Council, are subject to a Resource and Performance Agreement.

Further to the Events General Policy, Resource and Performance Agreements are typically applied to all Significant Events and some Community Events (Major) for a period of three years.

There is a need to have a standard document in place that clearly outlines the obligations of both Council and the recipient of public funds, the measures of performance and the reporting requirements.

The adoption of a standard Agreement template offers recipients a consistent and clear set of terms and conditions and also provides event or project organisers with the necessary security to properly plan and budget for their event or project.

Specific information relevant to each individual event or project will then be inserted into the template.

PROPOSAL:

The Agreement contains conditions, generally applicable, that the proposed recipient must abide by to receive Council funding. These include but are not limited to;

- Specific information – detailing information that includes recipients contact details, commencement and expiry date of the agreement, description of the event or project and performance indicators or measures as negotiated with the recipient;
- Funding – amount of funding, expenditure and unexpended funds;
- Event or project – to complete the event or project in accordance with the details provided, promote the event or project to potential participants, conduct the event or project with professionalism and competence;
- Reporting – to provide reports detailing the success and opportunities arising from the event or project; financial reporting and completion of performance indicators;
- Publicity – ensuring Council is recognised as a sponsor in all promotional material and media;
- Insurance and liabilities – to provide evidence of all required insurance to Council prior to the event taking place and that the recipient indemnifies Council against all losses, claims or damages.

The Agreement will also contain performance indicators or required outcomes. These will be identified and negotiated with the recipient to ensure that the information is able to be captured and that it is pertinent to the future of the Agreement and the event or project.

As set out in the Event Policy, all recommendations for grant funding will be formally submitted to Council for its consideration. If this Resource and Performance Agreement template is adopted, it is proposed to insert the recipient's specific information into the body of the Council report, advising that the balance of the terms and conditions of the funding are provided by the standard template.

This will provide Council with certainty resulting from the use of a standard Agreement while providing the specific information regarding recommended funding and performance indicators. A sample is provided below.

Clause 1. **SPECIFIC INFORMATION**

ITEM NO.	DATA	DETAILS
Item 1	Recipient:	(INSERT INFORMATION)
	Address for Notices:	(INSERT INFORMATION)
	Email:	(INSERT INFORMATION)
	Telephone:	(INSERT INFORMATION)
Item 2	Commencement Date:	(INSERT INFORMATION)
	Expiry Date:	(INSERT INFORMATION)
Item 3	Funding:	(INSERT INFORMATION)
Item 4	Description of the Event or Project to be organised, promoted and delivered by the Recipient:	(INSERT INFORMATION)
Item 5	Performance Indicators or Required Outcomes:	(INSERT INFORMATION)

CORPORATE/OPERATIONAL PLAN, POLICY REFERENCE:

Douglas Shire Council Corporate Plan 2014 - 2019

- Celebrating our Communities
- Building a Sustainable Economic Base
- Planning, Partnering, Engaging

Douglas Shire Council Operational Plan January 2014 – June 2014

- Develop and implement an events strategy and policy

Proposed Douglas Shire Council Operational Plan July 2014 – June 2015

- Build the capacity of our communities to target and secure funding opportunities.

Events Strategy 2014-2019

Events General Policy

FINANCIAL/RESOURCE IMPLICATIONS:

The awarding of funding is in line with the budget and measures that are included to assess performance and ability to successfully expend and acquit funding.

The adoption and implementation of a standard Agreement will assist with consistency and resource management as amendments will be made to the Specific Information not the conditions that form the Agreement.

RISK MANAGEMENT IMPLICATIONS:

Clear terms and conditions mitigate the risk of inappropriate use of public funds.

The provision of a standard Agreement ensures that both Council and prospective recipients of funding are aware of both parties obligations prior to Council approval of funding.

INTERNAL/EXTERNAL CONSULTATION:

External

The Event Strategy 2014-2019, Event General Policy and Framework were available for public consultation prior to adoption on 29 April 2014

Internal

Consultation regarding the Resource and Performance Template has taken place with the General Manager of Corporate Services, Manager of Finance and IT, the CEO unit and the Chief Executive Officer.

ATTACHMENTS:

Resource and Performance Agreement template document # 422675



EVENT STRATEGY

Resource & Performance Agreement

Douglas Shire Council

("Council")

and

(INSERT NAME)

("Recipient ")

Dated

Date, Month, Year

Parties

Douglas Shire Council PO Box 723 Mossman QLD 4873 ABN 71 241 237 800	("Council")
(INSERT NAME)	("Recipient ")

Background

- A. The Recipient intends to organise, promote and deliver the Event or Project described herein and has sought financial assistance from Council to do so.
- B. Council has agreed to provide Funding to the Recipient towards the Event or Project and the Recipient has agreed to accept the Funding on the terms and conditions set out in this Agreement.

The Parties Agree:

1. SPECIFIC INFORMATION

ITEM NO.	DATA	DETAILS
Item 1	Recipient:	(INSERT INFORMATION)
	Address for Notices:	(INSERT INFORMATION)
	Email:	(INSERT INFORMATION)
	Telephone:	(INSERT INFORMATION)
Item 2	Commencement Date:	Date Month Year
	Expiry Date:	Date Month Year

Item 3	Funding:	(INSERT INFORMATION)
Item 4	Description of the Event or Project to be organised, promoted and delivered by the Recipient:	(INSERT INFORMATION)
Item 5	Performance Indicators or Measures:	(INSERT INFORMATION)

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement unless inconsistent with the context or subject matter:-

"**Address for Service**" means the address of each party appearing in this Agreement or any other address nominated in writing by a party to the other party as its new address for notices or service;

"**Agreement**" means this Funding Agreement;

"**Application Form**" means the Recipient's application.

"**Approvals**" means any approvals required to be issued by any Authority in connection with the Event or Project and all changes to those Approvals which may need to be agreed to by that Authority;

"**Authority**" means any federal, state or local government or regulator which is required to approve all or any aspect of the Event or Project;

"**Business Days**" means a day (other than a Saturday, Sunday or public holiday) on which banks are open for business in Queensland;

"**Commencement Date**" means the date the Agreement commences;

"**Council Logo**" means the current graphic representation/symbol of Douglas Shire Council

"**Event or Project**" means the Event or Project referred to in Item 4;

"**Event or Project Milestones**" means the Event or Project Milestones;

"**Expiry Date**" means end date of the Agreement;

"**Force Majeure**" means an act, omission or circumstance over which Council could not reasonably have exercised control, including without limitation, cyclone, employee strike, terrorist incident, floods and the like;

"**Funding**" means the payment and/or other consideration to be provided by Council to the Recipient under this Agreement, as specified in Item 3;

"**GST**", "**Supply**", "**Supplier**" and "**Tax Invoice**" have the same meaning as given to these terms in *A New Tax System (Goods and Services Tax) Act 1999*;

"**Insolvency Event**" occurs if the Recipient becomes the subject of bankruptcy proceedings, winding up proceedings, is declared bankrupt, has a winding up order made against it, has a

receiver and/or manager or administrator appointed or enters into a scheme of arrangement with creditors;

"**Item**" means the item number in clause 1 Specific Information;

"**Laws**" means any statute, regulation or ordinance made by any Authority and where appropriate, includes the applicable common law;

"**Specific Information**" means the information table in clause 1 of this Agreement; and

"**Term**" means the term of this Agreement as specified in Item 2, calculated from and including the Commencement Date to and including the Expiry Date.

2. AGREEMENT

- 3.1 The Agreement will remain in full force and effect for the Term, unless the parties otherwise agree in writing.
- 3.2 The Agreement may not be varied other than by written agreement between the parties expressly stating that the terms of this Agreement are varied.
- 3.3 Any waiver or relaxation by Council partly or wholly of any provision of this Agreement is valid only if in writing and signed by Council. Any such waiver or relaxation is restricted to its written terms and unless expressly stated otherwise applies to that particular occasion only, is not continuing and does not constitute a waiver or relaxation of any other provision.
- 2.4 Reference to money is to Australian dollars.

3. FUNDING

- 3.1 Council will provide the Funding to the Recipient, and in consideration, the Recipient will comply with the conditions imposed by Council under this Agreement.
- 3.2 The Recipient must only use the Funding towards the operation of the Event or Project.
- 3.3 Council will provide the Funding to the Recipient subject to the Recipient:-
- (a) providing a valid Tax Invoice (unless GST is not applicable, upon which the Recipient will provide Council with an invoice) for the Funding of the Event or Project Milestones; and
 - (b) meeting the conditions contained in clause 1, item 3; and
 - (c) completing each of the Event or Project Milestones (if applicable) to Council's satisfaction and providing evidence to Council of same.
- 3.4 Notwithstanding clause 4.3:-

Where the Recipient's expenditure for a particular Event or Project Milestone is less than the amount of Funding allocated for that Event or Project Milestone:

- (a) Council will only provide the Recipient with the portion of Funding that is equal to the Recipient's expenditure for that Event or Project Milestone; OR
- (b) if Council has already provided the full amount of funding then Council may require the recipient to repay to Council unexpended funds.

- 3.5 Where the Recipient's expenditure for a particular Event or Project Milestone is more than the amount of Funding allocated for that Event or Project Milestone, the Recipient must bear the difference between these amounts.

4. EVENT OR PROJECT

- 4.1 The Recipient must complete the Event or Project during the Term and must:-
- (a) conduct the Event or Project in accordance with the details set out in the Recipient's Application (although the Recipient may make minor changes to the Event or Project without Council's consent if such changes do not alter the level of community benefit that the Event or Project will deliver compared to that contained in the Recipient's Application);
 - (b) use its best endeavours to promote the Event or Project to potential participants within a reasonable time before the Event or Project is held;
 - (c) conduct the Event or Project with professionalism and competence;
 - (d) conduct the Event or Project in compliance with all Laws and in accordance with the requirements of all applicable Authority; and
 - (e) comply with any reasonable requests or directions by Council in respect of the Event or Project.
- 4.2 The Recipient warrants to Council that the contents of the Recipient's Application, reports and all other information provided by it to Council is true and correct, and the Recipient must notify Council within 24 hours of any changes to the details of these.

5. REPORTING

- 5.1 Prior to the Commencement Date, the Recipient must conduct, on terms satisfactory to Council, a thorough assessment of risks of any nature in respect of the Event or Project which could impose liability on the Recipient, and provide a report detailing these risks to Council.
- 5.2 The Recipient must maintain and retain for 5 years following the Event or Project accurate records of:-
- (a) the income, expenditure and any other details necessary to ascertain the financial performance of the Event or Project; and
 - (b) statistical data in respect of the participants and spectators at the Event or Project (including the number of and locality of these persons) and other pertinent details regarding the Event or Project.
- 5.3 Within 12 weeks of the completion of the Event or Project, the Recipient must provide, on terms satisfactory to Council, a final report to Council containing the following in respect of the Event or Project:-
- (a) a financial statement (including evidence of expenditure reports);
 - (b) a report quantifying the performance of the Event or Project (both financial and otherwise) against the projections and key performance indicators for the Event or Project contained in the Recipient's Application; and
 - (c) any other pertinent information in respect of the performance of the Event or Project (including but not limited to copies of media coverage, date list of television and radio interviews and publications regarding the Event or Project).

- 5.4 Council may at any time during the Term reasonably request that the Recipient provide to it other details in respect of the Event or Project and the Recipient must promptly comply with any such request.
- 5.5 Where Council has provided Funding to the Recipient which the Recipient has not expended on the Event or Project, the Recipient must refund this amount to Council within 14 days of the completion of the Event or Project.

6. PUBLICITY

- 6.1 In all advertising, signage and other promotional material in respect of the Event or Project, the Recipient must use the statement "*The (EVENT OR PROJECT NAME) is sponsored by Douglas Shire Council*" and Council's Logo is to be conspicuously displayed.
- 6.2 The Recipient must gain approval for use of Council's Logo on promotional material, advertising etc. prior to publication.
- 6.3 Council may use the Recipient's reporting information and any other details in respect of the Event or Project for any promotional and other purposes as Council considers appropriate.
- 6.4 The Recipient will promptly provide Council with copies of all promotional brochures, media material, notice of any awards and any other promotional information in respect of the Event or Project.

7. INSURANCE AND LIABILITIES

- 7.1 The Recipient must, prior to the Commencement Date, take out and maintain insurance for the Term for public liability to the value of \$20,000,000 per incidence and otherwise in respect of the Recipient's activities and potential liabilities to Council and third parties under this Agreement and the Recipient must cause Council's interests to be noted on its relevant insurance policies. The Recipient must provide Council with evidence of these insurances prior to the Commencement Date.
- 7.2 Council will not in any way be liable to the Recipient for loss or damage the Recipient suffers in connection with this Agreement.
- 7.3 The Recipient indemnifies Council against all losses, claims or damages Council incurs as a result of the Recipient's Event, negligence or failure to comply with the terms of this Agreement.

8. DEFAULT AND TERMINATION

- 8.1 The obligations set out in clauses 4 (Funding), 5 (Event or Project), 6 (Reporting), 8 (Insurance and Liabilities) and 10 (Assignment) are essential terms of this Agreement. The failure to label a clause as being essential does not in itself preclude that clause from being an essential term.

- 8.2 Where a party ("defaulting party") fails to:-

- (a) comply with an essential term of this Agreement; or
- (b) comply with any other term of this Agreement and fails to remedy that non-compliance within 48 hours of receiving notice from the other party ("non-defaulting party") to do so,

then the non-defaulting party may terminate this Agreement by giving written notice to the defaulting party.

- 8.3 Where:-

- (a) Council considers, acting reasonably, that this Agreement is no longer desirable having regard to adverse publicity relating to or associated with the Recipient;
- (b) the control or beneficial ownership of the Recipient changes; or
- (c) the Recipient becomes subject to any Insolvency Event during the Term,

then Council may terminate this Agreement by giving written notice to the defaulting party.

8.4 Upon termination of this Agreement, Council will not be required to provide any further Funding to the Recipient and may require the Recipient to refund Council all or part of the Funding (at Council's discretion) within 14 days of Council's request to do so.

8.5 The parties rights under this clause are in addition to that at Law.

9. ASSIGNMENT

This Agreement may not be assigned by the Recipient without Council's written consent, which consent may (at Council's sole discretion) be granted, granted with conditions or withheld.

10. FORCE MAJEURE

10.1 If Council is rendered unable, wholly or in part, by Force Majeure to carry out or observe any of its obligations under this Agreement, it shall give to the Recipient prompt written notice providing full details of the Force Majeure.

10.2 Subject to sub-clause 11.1 the obligations of the parties under this Agreement, to the extent affected by Force Majeure, will be suspended and no claim by either of the parties against the other party will avail by reason of such Force Majeure provided that Council must, to the extent practicable, take all reasonable steps to remove the Force Majeure as soon as possible. Such reasonable steps will not require Council to settle any reasons for the Force Majeure on unfavourable terms.

11. APPLICABLE LAW

11.1 This Agreement is governed by, and is to be construed in accordance with, the law of the State of Queensland, Australia.

11.2 The parties agree that the courts of the State of Queensland will have exclusive jurisdiction to hear disputes arising out of or relating to either this Agreement or the formation of this Agreement.

12. NOTICES

A notice will be deemed to be served on a party if it is addressed to that party at its Address for Service (and if the notice is to be served on Council, marked to the attention of the Chief Executive Officer) and it is delivered by hand to that address or sent by registered mail to that address.

13. ENTIRE AGREEMENT

This Agreement contains the entire Agreement between the parties in relation to the Funding.

14. FURTHER ASSURANCES

Each party must promptly execute all documents and do all things necessary or desirable to give full effect to the arrangements set out in this Agreement.

15. LEGAL FEES

- 15.1 Each party is responsible for its own legal fees in relation to the negotiation, preparation and execution of this Agreement.
- 15.2 Unless specified otherwise, the Recipient must comply with its obligations under this Agreement at its own cost.

16. DUTY

Any duty on this transaction is payable by the Recipient.

17. DISPUTE RESOLUTION

- 17.1 If a dispute arises in connection with this Agreement then a party may only deal with that dispute in the manner set out in this clause.
- 17.2 A party to a dispute which arises in connection with this Agreement may give to the other party or parties to the dispute a notice specifying the dispute and requiring its resolution under this clause.
- 17.3 Within 14 days after a notice is given under clause 18.2 of this clause (or such longer period as is agreed in writing by the parties to the dispute) each party to the dispute must use its best efforts to resolve the dispute in good faith.
- 17.4 If the dispute is not resolved within 14 days, any party may take legal proceedings to resolve the dispute.
- 17.5 The provisions of this clause do not prevent any party from obtaining any injunctive, declaratory or other interlocutory relief from a Court which may be urgently required.

18. RELATIONSHIP OF PARTIES

Unless otherwise stated:

- (a) nothing in this Agreement creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

19. GOODS AND SERVICES TAX

- 19.1 The amounts payable by Council under this Agreement are inclusive of GST unless otherwise provided. If GST is to be assessed on the provision of goods, services or any other Supply under this Agreement, then the Supplier must provide the Recipient with a Tax Invoice.

20. DISCLOSURE OF INFORMATION

- 20.1 Other than as provided in this Agreement, the Recipient must not disclose the terms of this Agreement to any third party without Council's written consent.
- 20.2 Council may disclose the terms of this Agreement as it sees fit.
- 20.3 This clause survives the termination of this Agreement.

Executed As An Agreement

SIGNED for and on behalf of **DOUGLAS SHIRE COUNCIL** by its duly authorised representative,

)

)

) _____

in the presence of:

) Linda Cardew

) Chief Executive Officer

)

) Signature Dated: _____ / _____ / _____

)

)

Witness

(Please Print Full Name)

)

) _____

) Witness Signature

)

) Signature Dated: _____ / _____ / _____

EXECUTED on behalf of the Recipient by its
Chairperson and Secretary

)
)
) _____

) Chairperson

)
) Signature Dated: ____/____/____

in the presence of:

)
)
) _____

Witness

) Secretary
)
) Signature Dated: ____/____/____

(Please Print Full Name)

)
)
) _____
) Witness Signature
)
) Signature Dated: ____/____/____