

A Guide to an AUSPICE AGREEMENT

Introduction

From time to time MASG is asked to auspice projects of other organisations generally supported by DGR funding arrangements. The Committee of Management of MASG will consider such requests. However to protect MASG's DGR status two conditions must be satisfied before approval will be given. Firstly the project or projects covered by the auspice agreement must be compatible with MASG objectives. Secondly the agreement with MASG must be transparent in terms of the guidelines outlined below.

The objectives of MASG:

- To significantly reduce the region's contribution to greenhouse gas emissions.

- To target zero net emissions by 2025 in the Mt Alexander Shire.

- To encourage, support and partner with other organisations and business to help the shire reach this target

- To protect, and where necessary, enhance the built environment.

- To help build and nurture a community in which relationships, social justice and creativity are highly valued.

- To Seed, Support and Deliver projects which have aligned goals and are strongly supported by the local community.

- To have projects which optimise the use of local resources.

- To have financial, social and sustainability benefits realised in the local community and its economy.

As noted at the end of this document the guidelines below are taken from a template prepared for the Parramatta City Council.

General issues with auspicating a community project

Sometimes individuals, unincorporated groups or even incorporated associations with great community project ideas partner with existing non-profit organisations to help a project happen in our community. This type of relationship is often called 'auspicating'.

Auspicing can be a relatively quick and efficient way to secure funding and get a community project started, in some cases, without establishing your own organisation or seeking the tax or charity endorsements that you might need to attract funding. It also enables you and your community project to benefit from the skills, infrastructure, resourcing, legal and insurance protection and management of an existing organisation that, depending on what is agreed, can also benefit from the relationship.

Indeed, the auspicing body may benefit from charging an auspicing fee, from the experience of seeking and managing the grant funding, and even sometimes from tangibly helping the implementation of the community project by mentoring people involved. A lot of organisations that auspice gain satisfaction from doing so because their contribution builds community capacity, often in areas of community activity relevant to their own vision and mission.

As with any partnership, however, it's important to clarify the nature and expectations of the relationship from a legal perspective, such as who will be responsible for what aspects, and how it will progress.

This guide is designed to help you be more aware of the legal aspects of the auspicing relationship so you can build a strong partnership for the success of your community project. It highlights the need for a written agreement that can help avoid disputes by defining responsibilities and procedures for the relationship from the outset. Using a case study to illustrate issues, posing helpful questions for your and the Auspicing Body's consideration, and giving examples of Auspice Agreement provisions, this guide can help you look at the essentials you need to consider for any written agreement between you and the community organisation.

Getting the legal issues sorted can be a great start to a community project and can be the foundation of a successful auspice experience. We hope this guide will be helpful to you and in the achievement of your community objectives.

Finding a suitable Auspicing Body

As with any partnership, a critical factor is finding a partner that you can work with and can meet your auspicing needs. This usually involves some research and contact with possible auspicing bodies so you can make a proposal and see whether it's feasible for them.

In order to do this with confidence, you need to be clear:

- What your community project will involve.

- What auspicing the project will require.

- What outcomes or protections you need from the auspicing arrangement.

- Who you need to speak to. Often the board or management committee of a prospective Auspicing Body will need to give approval for auspicing arrangements, so it's important for you to be sure that you are dealing with people who have authority to represent the board or committee concerned, before you invest a lot of time and effort discussing a possible relationship.

- What the requirements of the funding body are. It is important for you to be aware of your likely funding sources and check their requirements as this may impact on the type of organisation you need the Auspicing Body to be. Some organisations providing grants for community projects can only give to community organisations with 'deductible gift recipient' (DGR) and 'tax concession charity' (TCC) endorsement. DGR endorsement allows a donor to claim a tax deduction for making their donation so long as the donation is \$2.00 or more. TCC endorsement allows a charity to access tax concessions such as income tax, fringe benefits tax and/or goods and services tax (GST) concessions because of their status as a charity.

An Auspicing Body with DGR and TCC endorsement will need to be sure that your community project is consistent with what they already do for the community and would be compliant with the regulations and requirements for holding these endorsements.

What type of organisation you are looking for. You will also need to ensure that the Auspicing Body is the type of entity that you need to partner with. For example, usually funding bodies will want to contract with organisations that are legal entities in their own right, such as a company limited by guarantee, an incorporated association or a registered co-operative. It is also important for them to be legal entities in their own right because you may wish to rely on their insurances and limited liability.

Questions to be asked by the Auspiced Party

What are the funder's requirements for making a grant or other disbursement for your community project? Does the prospective Auspicing Body and your community project meet those requirements?

What will an auspicing arrangement mean to the way you operate your community project?

What benefits are you seeking from the auspice arrangement? Is the prospective Auspicing Body able to meet those requirements? Example issues are outlined later in this document.

What are the possible disadvantages of an auspice arrangement for your community project? Can you accept those disadvantages in proceeding with an auspicing arrangement?

Should you consider establishing your own legal entity, in preference to an auspicing arrangement?

Do you need legal, financial or strategic advice to be informed of your options for the best way to proceed?

Questions to be asked by the Auspicing Body

What are the funder's requirements for making a grant or other disbursement? Does the Auspiced Party's community project meet those requirements?

What impact will an auspicing arrangement have on your existing operations and is the community project consistent with your objects and purpose?

What benefits are you seeking from auspicing the community project? Are funding realities and conditions, as well as the Auspiced Party, able to meet those requirements?

What are the possible disadvantages and risk management issues for you of an auspice arrangement? Can you accept those disadvantages and risks?

Are there other options reasonably available to the Auspiced Party that might avoid the necessity of an auspice arrangement?

Do you need approval of the Board or Management Committee of the Auspicing Body to proceed with such an auspicing arrangement?

Do you need legal, financial or strategic advice to be informed of your options for the best way to proceed?

The process of the negotiation phase

Once you have identified the preferred Auspicing Body, then it's time to negotiate what the auspicing relationship will mean. It's a good start to look at the issues in this guide under 'The Auspice Agreement', starting on page 7, and simply talk with the Auspicing Body and work out issues to a point where both of you are satisfied. It's often a good idea to write a record of your meetings about the proposed auspicing arrangement, so it's clear what was discussed and agreed upon. Sometimes face-to-face negotiations don't really happen and the negotiation process is more about considering the draft Auspice Agreement, communicating what needs to be changed from your perspective, and asking the Auspicing Body to consider your changes.

You will also need to work out who will be primarily responsible for drafting the Auspice Agreement. Sometimes the Auspicing Body will have access to their own documents or legal advisers that can draft an agreement. Sometimes you may need to draft the agreement yourself and give it to the Auspicing Body for consideration. You may need to obtain legal advice for drafting the agreement, especially if the arrangement raises complex issues.

If you don't understand aspects of any agreement given to you, ask that it be explained to you and obtain your own legal advice. It's often a good step to set aside some resources for legal expenses and obtain legal advice about a contract before you sign it or to try and secure pro bono legal advice. Some Auspice Agreements are really simple and you may be confident to proceed without obtaining legal advice. Others can be quite complex and sometimes involve considerations that are not immediately obvious to people who are not used to dealing with contracts or where English is not their first language.

An agreement given to you by the Auspicing Body may not protect your interests in the same way it will protect theirs. Some provisions may have the interests of the Auspicing Body foremost in mind and a legal review of the agreement can contribute a lot to your confidence that your particular interests are taken into account. Some people worry that consulting a lawyer might suggest you don't trust the Auspicing Body and that this might affect your relationship with them. Getting legal advice is not about trust – it's about making sure you are aware of the nature, risks, and other implications of the relationship. This is especially important if you are an unincorporated group, in which you are operating without the benefit and protection of a separate identity (i.e. the limited liability of an incorporated association or a non-profit Company).

Questions to be considered in the negotiation phase

Do you need an Auspice Agreement and who will be responsible for drafting it? Are legal costs or other expenses of the agreement going to be shared?

Who will sign the Auspice Agreement for each party and, if the Auspiced Party is an unincorporated group and one person is to sign, have all the members agreed to give that person authority to do so?

Do you understand the draft Auspice Agreement given to you? Or do you need a lawyer to draft the Auspice Agreement?

Is the draft Auspice Agreement consistent with your discussions and/or previous correspondence?

Does it cover all the issues it needs to?

Do you need legal advice to understand the draft Auspice Agreement and/or to make it more appropriate or comprehensive?

Is there a need for a further meeting to discuss any questions or concerns?

Do you understand your obligations, are they acceptable to you and can you comply with them.
Are you personally liable if something goes wrong?

Do you understand your own and the other party's obligations and are they sufficient?

The Auspice Agreement: need to customised to the particular circumstances of the proposed project

It's important that the auspice relationship is well managed. Sometimes auspicings fail when one or both parties don't understand the implications of the relationship or take tangible steps to comply with their respective responsibilities. Auspicings are a legal relationship. It's not just a technical issue for grant funding or insurance coverage. Problems can occur when the Auspiced Party's expectations are different to the Auspicing Body. That's why an agreement can be so helpful. It should make everything clear from the start.

You will also need to decide when would be the best time to enter into a formal agreement with the Auspicing Body. Sometimes the parties leave formal agreement until funding is secured for the community project. However, that might not be the best approach as by that time the auspice relationship has clearly started and could already be based on different subjective understandings. Ideally, formal agreement should occur before steps are taken by the Auspicing Body to apply for funding.

The Auspice Agreement between you and the Auspicing Body should be catered to the needs of both parties and the overall auspice arrangement. It's therefore not possible to provide a standard agreement that can be used in all cases. However, it's helpful to point out some of the issues that should be addressed in coming to an agreement with the Auspicing Body which would be important reference points in the project implementation stage.

The parties

It's important that any Auspice Agreement correctly names the parties involved to ensure that it's binding on the right persons or entities. If the Auspiced Party is, for example, an incorporated association, the name of the association should be specified and the person who has authority to enter into contracts on behalf of the association should then be a signatory to the agreement. The same would apply to the Auspicing Body as it would normally be an incorporated association, a company (usually a company limited by guarantee), a registered co-operative or even a trust fund. Internet searches (e.g. an ABN or ASIC search) can be conducted to ensure that correctly named entities are specified.

The situation is not so clear, however, when the Auspiced Party is an unincorporated association because it is not a separate legal entity and does not have the capacity to enter into a contract on this basis. Any contract naming the unincorporated association is at risk of being unenforceable, so an Auspicing Body may not wish to enter into an agreement unless an individual or individuals from the unincorporated association accepts responsibility. The approach will depend on what risk the Auspicing Body is prepared to accept as some are not so concerned about this technical issue.

Also, depending on the nature of the agreement, there may also be risks for the Auspiced Party. For example, if the Auspiced Party is an unincorporated association, the individual members may bear personal liability if something goes wrong, particularly if the Auspice Agreement doesn't address or displace liability (see 'Insurance' below for further information about this). This is because the

unincorporated association doesn't benefit from the very advantage of operating as a separate legal entity like an incorporated association or company limited by guarantee, that is, the limitation of liability of its members to the value of their membership fee or a nominated amount as specified in their Constitution.

If there is a hesitancy to proceed to agreement because of the above, whether in the Auspicing Body or in members of the Auspiced Party, it may be better to incorporate first (e.g., become an incorporated association) before entering into the agreement. Whether this is an attractive option is a case-by-case decision and may impact on the very needs or motivations of entering into an Auspice Agreement in the first place. For example, some organisations that act as an Auspice Body have conditions on their insurance that prevents them from auspicing groups that are already incorporated. So, incorporating may limit the number and type of organisations who are able to auspice you.

EXECUTION OF Auspice Agreement:

By executing this Auspice Agreement, each signatory accepts all its terms and conditions and represents that he or she is duly authorised to sign on behalf of their entity. The date of this agreement will be the date it has been executed by both parties.

AUSPICING BODY

Signed by (Print name))
) Signature
)
and (Print name))
) Signature

As authorised representatives for and on behalf of:
.....

Witnessed by (Print name))
)
)
DATE:) Signature of Witness

AUSPICING PARTY

Signed by:
(Print name))
) Signature
)
(Print name))
) Signature
)
(Print name))
) Signature

As the membership of:
..... an unincorporated association

Witnessed by (Print name))
)
.....)
)
DATE:) Signature of Witness

Introductory statement

It is usual practice to have a statement at the beginning of the agreement to ensure that the purpose and background of the agreement is clear to the parties. This introductory statement is called the 'Recital' and is not the operative part of the agreement. It is an opportunity to express the context of the agreement, such as what led to the agreement being made, and establishes from the outset the intention of the parties.

Duration of the agreement

Defining the duration of the agreement is a good way to create clear boundaries for the relationship. Usually, an Auspice Agreement must have a commencement date and a termination date or, at the very least, clarify the circumstances in which the agreement may be terminated (which we'll discuss a little later). Usually, an auspice arrangement has a life cycle – the parties may co-operate to enhance/modify the community project, co-operatively work on funding applications, deal with funding bodies, co-operate as agreed on implementation and reporting, evaluate project implementation and outcomes, account for expenditure, and then undertake steps to disengage from the relationship. Depending on the community project, this process can take a long time. It's therefore very important to specify a term of agreement that is practical for the parties – for example, it would be problematic if the agreement concluded before the cessation of the Project or before funding obligations have been complied with. Indeed, some Auspice Agreements expressly link duration of the agreement to funding obligations and might specify that termination of the agreement occurs when funding acquittal documentation is submitted (which is usually the final obligation to the funding body). Finally, to account for the possibility of delays, some agreements contemplate how the agreement can be extended.

Questions to be considered by both parties in terms of the agreement

Are the right entities or persons mentioned as parties to the agreement? Do they have authority to sign the agreement?

Are the parties and the community project compliant with prospective funding requirements?

By signing the agreement, do you bear any personal liability if something goes wrong?

Is the background to the agreement accurate?

Is the intention of the agreement clear from the outset?

Should any additional details be included to clarify the intention of the parties?

Is the duration of the agreement practical, considering the nature of the community project and the logistics of funding and implementation?

Is duration of the agreement linked to the completion of funding obligations?

In case there are delays, is there provision for extension of the agreement?

Questions in terms of the agreement for the Auspiced Party

If an unincorporated association:

) Would it be better to establish an entity such as an incorporated association to contract with the Auspicing Body to limit liability?

) Are all members going to sign the agreement or is authority to be given to one member to sign?

Helpful questions for this issue for both parties

Is the duration of the agreement practical, considering the nature of the community project and the logistics of funding and implementation?

Is duration of the agreement linked to the completion of funding obligations?

In case there are delays, is there provision for extension of the agreement?

The community project

The community project to be auspiced needs to be well defined so it's clear what the auspice arrangement is about. Usually at the beginning of the Auspice Agreement there is a statement that describes the community project, sometimes referring to an attachment (i.e. an Annexure) that details the community project and its budget, outlining the milestones of the project and giving a timeline for their implementation. It's a good idea to specify in the implementation plan which party is responsible for specific implementation milestones, so boundaries and contributions are clear. It is also appropriate at this stage to indicate which of the parties authored the community project, or whether it was indeed a co-operative process, as this records the origins of the community project because sometimes this issue can be a source of disagreement if not settled from the outset.

Disagreements can also arise if the scope and specific responsibilities of the community project are not explained well and if it does not match details of the community project for funding purposes and/or its implementation budget. For example, a significant aspect of the community project not described in the Auspice Agreement or in funding applications may be considered by the Auspicing Body as outside the scope of the agreement and funding arrangements. Indeed, it may be a breach of funding agreements to use funds on activities that were not part of the original funding proposal without the permission of the funding body.

Funding the community project

The Auspice Agreement should

Specify expectations for funding the community project and how the parties will co-operate to submit applications for funding. Issues to clarify include:

-) who will do the research and drafting of funding applications
-) how many applications are to be made
-) how long should funding be sought
-) what the approval process is to before applications may be submitted to funding bodies.

Refer to the Auspicing Body's acceptance of funding for the community project and how it will deal with those funds to benefit the community project

Refer to the Auspiced Party's delivery of the project

Refer to the Auspicing Body's own contribution to the project, and what fee it will charge (if any) for the auspicing arrangement or, if applicable, deal with fees generated from the implementation of the project.

Some auspicing arrangements don't embrace co-operation for project delivery and focus exclusively on the financial aspects of project funding and how funding will be distribute and accounted for. It really depends on what your needs are for the community project and what you have been able to negotiate with the Auspicing Body. The nature of the arrangement is likely to impact on the auspicing fee that may be charged by the Auspicing Body and you should check the Auspice Agreement to be clear on the fee that is proposed, consider whether the fee is reasonable in the circumstances, and ensure that, if acceptable, it has been taken into account in funding applications and the community project budget.

Questions to be considered on funding arrangements

Is it clear what steps are to be taken to secure grant or other funding for the Project and who will undertake those steps?

Is it clear who will accept funding for the Project, how funds will be distributed, and who is responsible for compliance with grant funding conditions and applicable regulations for the funding?

Is an Auspicing Fee specified and, if so, is the fee reasonable in the circumstances?

Are financial administration standards well defined?

What happens if there is a budget shortfall and who will be responsible for it?

Are the parties bound to comply with, or enable compliance, of grant funding financial obligations?

Obligations of the Auspicing Body

It is essential that the particular obligations of the Auspicing Body be expressed in the Auspice Agreement. The scope of the Auspicing Body's obligations will depend on the funding body's requirements and the community project demands, what has been negotiated between the parties and simply what the Auspicing Body wishes or doesn't wish to contribute to the community project and the overall auspicing arrangement. Some auspicing bodies and Auspice Agreements are protective of auspiced parties, especially if they are unincorporated groups and the community project is consistent with their core work and services and there is a lot of existing infrastructure within the Auspiced Body to assume responsibility for certain obligations and to facilitate the sharing of resources. Sometimes Auspice Agreements specify significant sharing of resources (e.g., administrative capacity, fundraising capabilities, networks, human resources, accounting system etc.), and co-operation between the parties to achieve community project implementation. However, other auspicing bodies and Auspice Agreements seek to displace both obligation and liability onto the Auspiced Party, especially when the relationship is more about grant funding administration than community project co-operation and delivery. When reviewing the Auspice Agreement, it is important for you to take the time to fully understand the Auspicing Body's obligations and think what those obligations actually mean to the implementation of your community project and to your own obligations for the project. For example, one important issue for the Auspice Agreement is to clarify which party is responsible for the hiring, training, and supervision of employees to be engaged for the community project and who will pay their entitlements.

Questions to be considered on obligations by both parties

Are the obligations of the Auspicing Body appropriate and workable?

Are resources to be provided or other contributions to be made by the Auspicing Body clearly identified?

Is financial accountability and obligation to disburse funds for the benefit of the Project clearly explained?

If staff are to be employed by the Auspicing Body, is it clear that they are the employer and bear responsibility for that relationship? Are employees required to co-operate with the Auspiced Party in a productive manner?

Is there anything that should be mentioned as an obligation that is not specified?

Are the obligations of the Auspiced Party appropriate and workable?

Are there any restrictions on the Auspiced Party that of concern or you disagree with?

Are the Auspiced Party's contributions to the Project clearly identified?

Are financial accountability procedures for the Auspiced Party clearly explained and practical?

Is there anything that should be mentioned as an obligation that is not specified?

Obligations of the Auspiced Party

Your obligations under an Auspice Agreement can sometimes be greater than you would initially anticipate. It's therefore critical that you understand the scope of the obligations being created by the

Auspice Agreement, assess whether those obligations can be complied with and, if you have any concerns, discuss them with the Auspicing Body before signing the agreement. As the Auspicing Body is usually the party directly responsible to grant funding bodies, they will normally require that:

you provide information that will assist their compliance (e.g. provide drafts of progress and financial reports as required by grant funding bodies)

you follow certain procedures for reporting to the Auspicing Body (e.g. a monthly report to their Board of Management) and their disbursement of funds (e.g. provision of tax invoices for payment, no further release of petty cash unless prior petty cash disbursements are accounted for etc.). You will need to factor in those requirements as you implement the community project.

you contribute to the implementation of the community project and seek that you comply with their policies and procedures in doing so.

you refrain from dealing with grant funding bodies directly, or without including them in the correspondence.

It is also prudent to be mindful of what the practical effect of certain obligations might be for you as the Auspiced Party and what liabilities might flow from non-compliance. For example, if your community project involves giving a cash payment to disadvantaged persons for basic necessities, you may require recipients to sign a receipt in order to seek reimbursement from the Auspicing Body. If no receipt is obtained without reasonable justification, your Auspice Agreement may not permit reimbursement of the expenditure and the Auspiced Party may have to bear the cost.

Liability, insurance and indemnity

It is important for the Auspice Agreement to manage risk arising from the auspicing arrangement. For example, if a client of a community project injures themselves whilst visiting the premises of the Auspicing Body, who is responsible? If an employee working on the community project is injured, who will pay their medical expenses? If a member of the Auspiced Party accidentally damages premises leased for the Project, who is responsible for the repairs? If an employee of the Auspicing Body commits fraud and steals grant funding, who will make good the loss?

The following are essential matters for discussion between the parties and for possible clarification in the Auspice Agreement:

The liability of a party for any claims by third parties (i.e., parties other than the Auspiced Party or the Auspicing Body).

The necessity to secure insurance and to substantiate insurance coverage.

The confirmation of liability arising from contractual obligations entered into for the purposes of the community project.

The provision of an indemnity to protect or compensate a party for any loss or liability arising from the community project and the auspicing arrangement.

Often Auspice Agreements drafted in the interests of an Auspicing Body require the Auspiced Party to obtain insurances such as Public and Products Liability Insurance, Professional Liability Insurance, Workers Compensation insurance and Personal Accident (Volunteers) Insurance to provide what are called 'Certificates of Currency' from the relevant insurers to evidence coverage, to accept responsibility for all claims and losses arising from the implementation of the Project and the Auspice Agreement generally, and to indemnify the Auspicing Body from all claims and losses. This can be very expensive, so it is important to factor in the requirement to obtain insurances in grant funding applications and as an item of expenditure in the community project budget. Other auspicing bodies might absorb the risk of liability, pay for insurance coverage requirements or extend their existing

insurances to cover the risk of the Project, and provide indemnities to benefit the Auspiced Party, especially in circumstances in which the Auspiced Party is an individual or an unincorporated association and the Auspicing Body is already bearing the same risks for their usual operations and they are confident of effective supervision of the Project. However, sometimes the Auspice Agreement might include a 'liability cap' to ensure that total liability does not exceed the value of the auspicing fee, which may be so disadvantageous to the Auspiced Party to necessitate the procurement of their own insurance coverage.

Questions to be considered on liability issues

What are the risks and potential liabilities of the Project? Who bears the cost of any loss, damage or claim?

What insurances will be necessary for the Project and who is to bear the cost and burden of those policies?

Are there any provisions that intend to exclude liability? In whose favour are the provisions operating? Is the exclusion of liability adequate?

Is any indemnification required from you or being offered by the agreement? Is it extensive? Is it in your interests? Does a 'liability cap' apply?

Intellectual property and confidentiality

Another essential issue to consider for the Auspice Agreement is the ownership of 'intellectual property', which basically refers to the ownership of copyright, original publications, names and logos, marketing collateral such as pamphlets and posters, designs and images, program and training design and content, records and databases, original website design and content, confidential information, original computer software, whether ownership was purchased and assigned or the material created specifically for the purposes of the community project by either party. The important issue for clarification in any Auspice Agreement is who owns this property while the agreement is in force and after it has ended? Without clarification, this issue can potentially be a real source of disagreement. Sometimes grant funding agreements seek to affect the intellectual property rights of parties involved in the implementation of a community project, so the Auspice Agreement may require the Auspicing Body's agreement not to enter into such agreements. The Auspice Agreement should also cover the necessity for confidentiality of information, be it in relation to the parties or beneficiaries of the project.

Questions to be considered on intellectual property issues

What is the intellectual property of the project? What are your rights in that property?

What contributions are being made by other parties that may impact your intellectual property rights?

What intellectual property rights are required to be maintained, confirmed or assigned by the Auspice Agreement?

Are there any obligations or concerns about confidentiality that require inclusion in the agreement?

Acknowledgement and public relations

The Auspice Agreement should canvass how the parties and grant funding bodies are to be recognised in published material of the Project, during community project events, and in media releases. Often grant funding bodies require the display of certain logos and statements to acknowledge the source of funding. This obligation, usually of the Auspicing Body, should be reproduced in the Auspice Agreement to ensure the Auspiced Party is aware of the requirement and complies accordingly. The parties to the auspice arrangement may also wish to agree on how their relationship and co-operation is to be described and promoted.

Questions to be considered on acknowledgement issues

What are the requirements of grant funding bodies with respect to acknowledgment and public relations and are they reflected in the agreement?

Are exchange of information and approval procedures optimal for timely finalisation of acknowledgement and public relations matters?

Is co-operation and exchange of information necessary for acknowledgement and public relations matters after the agreement's expiry or termination?

Termination and non-completion

The Auspice Agreement must deal with the issue of termination and the circumstances in which a party may terminate at its option. The termination clause can be quite extensive and it's important to take the time to review all the justifications for termination of the agreement and determine whether they are acceptable to you. The termination clause, or another part of the agreement, may also prescribe what will happen if, for example, the Auspiced Party cannot complete the Project or an aspect of it, and the circumstances in which the Auspicing Body can withhold funds or complete the Project itself when the Auspiced Party is unable to do so.

Questions to be considered on termination issues

Are the circumstances and consequences of termination fair and satisfactory?

Is refunding of grant money required on termination or non-completion? What risks does this pose?

Is a party permitted to proceed with the Project if the other party is unable to complete its obligations and what are the implications for you if that occurs?

Dispute resolution

Disagreements can arise in auspice arrangements from time to time. One way to establish a mutually acceptable approach to resolving disputes at an early stage, and avoid adversarial, expensive and time consuming options like Court proceedings, is to have a dispute resolution clause in the Auspice Agreement. The intention of the clause is to establish an understanding that the parties should apply their best efforts to resolve the dispute and, at least in the first instance, proceed to mediation or other alternative dispute resolution methods to see if the disagreement can be resolved. Sometimes dispute resolution clauses specify the mediation process to be followed and where mediation is to be undertaken. The clause does not prevent the parties from commencing Court action, but requires them to consider mediation or other means to resolve the dispute before asserting their rights in this way. This requirement does not apply, however, if a party needs to commence Court action urgently to protect their interests.

Questions to be considered on dispute resolution issues

Are dispute resolution mechanisms clear and appropriate for the parties, considering the nature of their relationship?

Are there any additional obligations for the resolution of disputes that you would wish to include?

General provisions and survival of obligations

Auspice Agreements, as with any other form of contract, include some general provisions that assist the operation of the agreement, like the procedure for the serving of notices, clarification of what in fact constitutes 'the entire agreement' and the jurisdiction that applies to the agreement, who bears the costs of the agreement, and what provisions of the agreement continue to bind the parties even after it has ended (i.e., which obligations 'survive' the end of the agreement whether because the community project has ended or the agreement terminated). These provisions usually include

- The keeping of confidential information
- Access to financial records
- Protection of intellectual property
- Insurance coverage and indemnity for claims and losses
- Co-operation for public relations purposes
- Dispute resolution procedures.

It is essential that each party be aware of their continuing obligations to avoid problems in their relationship even after the formal agreement has ended.

Proceeding with the agreement

After you have raised amendments to any draft Auspice Agreement for the Auspicing Body's consideration, it will decide whether to agree, to compromise with an alternative suggestion or to reject your request. It's then a matter for you to decide whether you are prepared to accept the response or not proceed with the agreement and the auspicing arrangement. Often the Auspicing Body

is in a stronger bargaining position and it might simply say you must accept the agreement without amendment or not proceed. Once again, legal or financial advice can be of considerable assistance to you in arriving at a decision that's in your interests.

Final general questions for both parties

Do you have policies and procedures in place for your activities that help you to comply with the Auspice Agreement?

Are all persons working with you aware of the legal obligations of the Auspice Agreement and the consequences of non-compliance?

Is there a routine established to exchange necessary information and talk over issues that need to be addressed so that the auspicing arrangement is most effective?

If you sign and proceed with the Auspice Agreement, both the Auspicing Body and Auspiced Party should communicate regularly and establish procedures to ensure that the routine of their relationship complies with their respective obligations. It's good practice to regularly review how the arrangement is progressing independently and together and to raise any issues of concern at an early stage to prevent problems in the relationship from getting worse and becoming a formal dispute.

In most cases, auspicing arrangements go well and achieve considerable benefit for the community projects concerned, for the participating people and organisations and for the community generally. Unfortunately, sometimes things don't go well, but with a formal agreement there are usually clear procedures for dispute resolution, termination or other consequences of a failed relationship.

It's not unusual to seek changes to the auspice arrangement because of how the community project progresses or for other practical reasons. Usually the Auspice Agreement will specify how the agreement can be changed – amendments are normally required in writing and need the consent of both parties. If you maintain a good standard of communication with the Auspicing Body, show you have met your obligations so far, and demonstrate how changes can be of benefit, the Auspicing Party may be open to enhancing or modifying the arrangement and consent to your changes.

Words and terminology used in this guide

'ABN' means Australian Business Number.

'ASIC' means the 'Australian Securities & Investments Commission'.

The individual, unincorporated group (which the law may consider an "unincorporated association"), incorporated association or other entity undertaking a community project to be auspiced is called **'THE AUSPICED PARTY'**.

The incorporated community organisation auspicing the project is called the **'AUSPICING BODY'**.

'DGR' means 'deductible gift recipient'.

'FUNDING BODY' means the giver of a grant.

'LIABILITY' is a legal responsibility, duty or obligation to provide compensation or other consideration to a person or entity that has suffered damage or harm by the doing or not doing of something by another party (e.g., failure to comply with a requirement of a contract or failing to do something reasonable to satisfy a duty of care to prevent injury to a person).

'TCC' means 'tax concession charity'.

Source: The guide below is taken from a template prepared by Sparke Helmore Lawyers for the Parramatta City Council.