



**Mosman Council
Consultancy Agreement for the**

Public Art Master Plan (2025 – 2035)
Contract No. MAGPA2526

Between:

Mosman Council ('the Principal')
573 Military Road, Mosman NSW 2088

and

('the Consultant')
ABN:
Address:

Table of Contents

Part A – General Terms and Conditions

1. Definitions and Interpretation
2. Background and Objectives
3. Engagement and Term
4. Scope of Services
5. Performance Standards and Warranties
6. Program and Meetings
7. Variations to Services
8. Change Control and Cost Plan
9. Reporting and Deliverables
10. Fee, Payment and GST
11. Expenses and Disbursements
12. Work Health and Safety
13. Insurance
14. Confidentiality and Privacy
15. Intellectual Property and Moral Rights
16. Indigenous Cultural and Intellectual Property (ICIP)
17. Data Security and Records
18. Subcontracting and Key Personnel
19. Council Responsibilities and Access
20. Community and Stakeholder Engagement Protocols
21. Non-Conforming Work and Rectification
22. Risk Management
23. Force Majeure
24. Conflicts of Interest
25. Anti-Bribery, Anti-Corruption and Modern Slavery
26. Publicity and Credits
27. Dispute Resolution
28. Termination, Suspension and Step-in
29. Limitation of Liability
30. Indemnities
31. Notices
32. General

Part B – Special Conditions

- Schedule 1 – Reference Details
- Schedule 2 – Fees and Milestones
- Schedule 3 – Insurance Requirements
- Schedule 4 – WHS Evidence and Compliance Checklist
- Schedule 5 – Key Personnel and Subconsultants
- Schedule 6 – Change Request Form
- Schedule 7 – Risk Register Template
- Appendix A – Scope of Services
- Appendix B – Consultation Plan Template
- Appendix C – Style and Submission Standards
- Appendix D – Conservation Assessment Methodology
- Execution

Part A – General Terms and Conditions

1. Definitions and Interpretation

1.1 In this Agreement, unless the context otherwise requires:

- ‘Agreement’ means this Consultancy Agreement including all Schedules and Appendices and any documents incorporated by reference.
- ‘Business Day’ means a day that is not a Saturday or Sunday or public holiday in NSW.
- ‘Change Request’ means a written request to vary the Services in accordance with clause 8.
- ‘Confidential Information’ means information of a party that is by its nature confidential or that is designated as confidential.
- ‘Consultancy Services’ or ‘Services’ means the services described in Appendix A and any related services reasonably necessary for the delivery of the Master Plan.
- ‘Consultant’ means the person partnership or company engaged by Council to perform the Services under this Agreement.
- ‘Council’ means Mosman Council and includes its officers and employees.
- ‘Council Representative’ means the officer nominated by Council to manage the Agreement on Council’s behalf.
- ‘Deliverables’ means the outputs described in Appendix A including drafts, final reports, maps, schedules, engagement materials, digital files and presentations.
- ‘Force Majeure Event’ has the meaning given in clause 23.1.
- ‘GST’ has the meaning given in the ‘A New Tax System Goods and Services Tax Act 1999 Cth’.
- ‘ICIP’ means Indigenous Cultural and Intellectual Property, described in clause 16.
- ‘Intellectual Property Rights’ means all present and future rights conferred by statute common law or equity in or in relation to inventions, designs, copyright, trade marks, moral rights, domain names, confidential information, circuit layouts and similar rights anywhere in the world whether or not registrable.
- ‘Key Personnel’ means the personnel nominated in Schedule 5.
- ‘Master Plan’ means the Mosman Public Art Master Plan 2025 – 2035 produced under this Agreement.
- ‘Program’ means the timeline for completion of Services as agreed under clause 6.
- ‘Site’ means the local government area of Mosman and related locations relevant to the Master Plan.
- ‘WHS Laws’ means the Work Health and Safety Act 2011 NSW and the Work Health and Safety Regulation 2017 NSW and applicable codes of practice.

1.2 Headings are for convenience only and do not affect interpretation.

1.3 A reference to a party includes that party’s permitted assigns and successors.

1.4 A reference to legislation includes regulations and amendments, reenactments or replacements.

1.5 If an example is given it is illustrative only and does not limit the scope of the relevant provision.

1.6 If there is inconsistency between documents the following order of precedence applies unless stated otherwise in Part A and Part B of the Contractual Conditions: this Agreement then Part B Special Conditions then Part A General Conditions then the Consultant's proposal then any other document.

2. Background and Objectives

2.1 Council seeks to engage the Consultant to prepare a Public Art Master Plan that sets a strategic and definitive framework for commissioning, placing and caring for public art across Mosman over the next decade.

2.2 The Master Plan will align with Council's (draft) cultural pillars Cultivate and Connect, Inspire and Engage, Create and Build, and Show and Celebrate, and will support community identity and participation.

2.3 The objectives include identification and prioritisation of key locations, development of narratives and themes, conservation, and review of existing artwork locations and suitability.

3. Engagement and Term

3.1 The Agreement commences on the date of execution and continues until 1 June 2026 unless extended or terminated in accordance with this Agreement.

3.2 Council may extend the term by written agreement.

3.3 Time is of the essence for all obligations that refer to dates, milestones, or time periods.

4. Scope of Services

4.1 The Consultant must deliver the Services and Deliverables set out in Appendix A to the satisfaction of the Council Representative.

4.2 The Consultant must provide professional advice, drawings, schedules, and data necessary to achieve the intent of the Master Plan.

4.3 The Consultant must integrate feedback from Council and stakeholders and present drafts and finals in Word and PDF as specified in Appendix C.

5. Performance Standards and Warranties

5.1 The Consultant warrants that it has the skills, experience, resources, and capacity to perform the Services to a standard expected of a professional expert in public art master planning.

5.2 The Consultant must ensure that all Deliverables are accurate, complete, coherent and fit for their intended purpose.

5.3 The Consultant warrants that Deliverables will not infringe any third party Intellectual Property Rights and that all third party materials are properly licensed.

5.4 Council enters into this Agreement in reliance on the warranties in this clause.

6. Program and Meetings

6.1 Within ten Business Days of commencement the Consultant must propose a Program with key activities, milestones and submission dates.

6.2 The Program must include an inception meeting, monthly progress meetings and workshops listed in Appendix B.

6.3 The Consultant must attend meetings as reasonably required by the Council Representative and provide agendas, minutes and action logs.

7. Variations to Services

7.1 Council may request changes to the Services by issuing a written Change Request.

7.2 Within ten Business Days of a Change Request, the Consultant must submit a written response outlining scope, time, and fee implications, and any assumptions.

7.3 No variation is binding without written approval by the Council Representative.

7.4 The Consultant must not unreasonably refuse a variation that is within the general scope of the Services.

8. Change Control and Cost Plan

8.1 The Consultant must maintain a cost plan for the Services aligned to the milestones in Schedule 2.

8.2 If costs are likely to exceed the agreed Fee the Consultant must promptly notify Council and propose cost-neutral options before seeking additional funds.

8.3 Where a variation is approved, Council will adjust the Fee and Program as appropriate.

8.4 The Consultant must not incur additional costs without prior written approval.

9. Reporting and Deliverables

9.1 The Consultant must provide monthly progress reports summarising activities, risks, engagement, and planned work for the next period.

9.2 Deliverables must comply with Appendix C including file formats, accessibility and naming conventions.

9.3 Draft Deliverables must allow a minimum of ten Business Days for Council review unless otherwise agreed.

9.4 The Consultant must maintain a live issues register and decision log.

10. Fee Payment and GST

10.1 The Fee is a fixed lump sum inclusive of all costs and disbursements and exclusive of GST.

10.2 Payment occurs upon completion of milestones in Schedule 2 against valid tax invoices that reference the milestone, and summarise deliverables accepted.

10.3 Council may withhold payment for incomplete or nonconforming deliverables.

10.4 The parties must comply with GST law. If a taxable supply is made, the receiving party must pay the GST amount upon receipt of a valid tax invoice.

11. Expenses and Disbursements

11.1 The Fee includes all travel, printing materials, and incidental expenses unless specifically listed as reimbursable in Schedule 2.

11.2 Any approved reimbursable expenses must be pre-authorised in writing and supported by tax receipts.

12. Work Health and Safety

12.1 The Consultant must comply with WHS Laws and implement a WHS management system commensurate with the Services.

12.2 The Consultant must prepare safe work method statements when delivering onsite workshops or site visits and must ensure first aid and emergency procedures are in place.

12.3 The Consultant must report any notifiable incidents to the Council Representative immediately, and in writing within 24 hours.

13. Insurance

13.1 The Consultant must hold and maintain for the term, and seven years after completion: Public Liability not less than \$20,000,000 per occurrence, Professional Indemnity not less than \$10,000,000 per claim, and Workers Compensation as required by law.

13.2 Certificates of currency must be provided before commencement and on renewal.

13.3 If the Consultant is a sole trader, they must hold appropriate personal accident or salary continuance insurance.

14. Confidentiality and Privacy

14.1 Each party must keep Confidential Information secure and only use it for the purpose of this Agreement.

14.2 Disclosure may occur where required by law or to professional advisers who are bound by confidentiality.

14.3 The Consultant must comply with applicable privacy laws and ensure that personal information collected during engagement is handled lawfully.

15. Intellectual Property and Moral Rights

15.1 Upon payment Council owns the Intellectual Property Rights in the Deliverables excluding pre-existing materials and ICIP.

15.2 The Consultant grants Council a perpetual royalty-free licence to use any pre-existing materials embedded in the Deliverables to the extent necessary for Council to use the Deliverables.

15.3 The Consultant asserts moral rights and will be credited as the author where reasonable.

15.4 The Consultant warrants that Deliverables do not infringe third party rights and will indemnify Council for breach of this warranty.

16. Indigenous Cultural and Intellectual Property (ICIP)

16.1 ICIP means the rights that Indigenous people have to protect traditional knowledge stories, images, designs, and cultural expressions.

16.2 Where ICIP is included, the Consultant must ensure informed consent, cultural safety, and appropriate attribution and must document permissions obtained.

16.3 ICIP ownership remains with the relevant custodians. Council's use of ICIP in the Deliverables is limited to the purposes of the Master Plan and associated promotion with proper attribution.

16.4 Council will not use ICIP in a manner that is derogatory, misleading, or inconsistent with cultural protocols.

17. Data Security and Records

17.1 The Consultant must store project data securely and protect it from loss, unauthorised access, or disclosure.

17.2 The Consultant must maintain orderly records and provide editable files and raw data upon request.

17.3 Records must be retained for seven years from completion unless otherwise required by law.

18. Subcontracting and Key Personnel

18.1 The Consultant must not subcontract without Council's prior written consent.

18.2 The Consultant remains responsible for acts and omissions of subcontractors.

18.3 The Consultant must not replace Key Personnel without Council's approval which must not be unreasonably withheld.

19. Council Responsibilities and Access

19.1 Council will provide reasonable access to information, and stakeholders and will coordinate internal approvals as needed.

19.2 Council will provide timely feedback and decisions to avoid delay.

20. Community and Stakeholder Engagement Protocols

20.1 The Consultant must deliver the engagement activities described in Appendix B using methods that are inclusive, accessible and culturally safe.

20.2 The Consultant must ensure that children and young people are only engaged with appropriate safeguards and permissions.

20.3 A consultation report must summarise methods, participation, findings, themes, and how feedback shaped recommendations.

21. Non-Conforming Work and Rectification

21.1 Council may direct the Consultant to rectify non-conforming work within a reasonable period at no additional cost.

21.2 If the Consultant fails to rectify, Council may arrange rectification and recover reasonable costs from the Consultant.

22. Risk Management

22.1 The Consultant must maintain a risk register in the format of Schedule 7 and update it monthly.

22.2 Material risks must include budget schedule quality stakeholder approval cultural sensitivities and data security.

23. Force Majeure

23.1 A Force Majeure Event is an event beyond a party's reasonable control that prevents performance including natural disaster, epidemic, or government action.

23.2 The affected party must notify the other promptly and use reasonable endeavours to mitigate impact.

23.3 If a Force Majeure Event continues for more than sixty days either party may terminate without fault.

24. Conflicts of Interest

24.1 The Consultant warrants that no conflict of interest exists at the date of this Agreement.

24.2 The Consultant must promptly notify Council if a conflict arises and propose mitigation.

25. Anti-Bribery Anti-Corruption and Modern Slavery

25.1 The Consultant must not engage in bribery, corruption, fraud or facilitation payments, and must comply with applicable laws.

25.2 The Consultant must take reasonable steps to ensure its supply chains are free from modern slavery and must provide information on request.

26. Publicity and Credits

26.1 Council may promote the project and use images, excerpts, and summaries from the Deliverables with appropriate credit to the Consultant.

26.2 The Consultant must not issue public statements without Council's written approval.

27. Dispute Resolution

27.1 A party may give written notice of a dispute, describing the issues and the outcome sought.

27.2 Senior representatives must meet within seven days to negotiate in good faith for at least fourteen days.

27.3 If unresolved the parties must attempt mediation before commencing proceedings except for urgent relief.

27.4 During a dispute, the Consultant must continue to perform the Services.

28. Termination, Suspension and Step in

28.1 Council may suspend all or part of the Services by written notice with reasons.

28.2 Council may terminate immediately for an un-remedied breach, insolvency, or serious WHS or legal contravention.

28.3 Upon termination Council will pay for Services properly performed up to the termination date subject to setoff.

28.4 Council may step in to perform critical obligations if the Consultant fails to act and may recover reasonable costs.

29. Limitation of Liability

29.1 To the extent permitted by law, the Consultant's aggregate liability under this Agreement is capped at the amount of the Fee or two million dollars, whichever is higher, excluding liability for personal injury, death, property damage, willful misconduct, or breach of IP and confidentiality obligations.

30. Indemnities

30.1 The Consultant indemnifies Council against claims, losses, damages, costs, and expenses arising from negligence, breach of contract or infringement of rights by the Consultant or its subcontractors, except to the extent caused by Council's negligence.

31. Notices

31.1 Notices must be in writing and delivered by hand, post or email to the addresses in Schedule 1.

31.2 A notice is taken to be received when delivered in person three Business Days after posting or when an email is shown as sent without system error.

32. General

32.1 Entire Agreement: this Agreement constitutes the entire agreement and supersedes prior representations and proposals.

32.2 Assignment: the Consultant must not assign or novate without Council's consent. Council may assign within the NSW public sector.

32.3 Waiver: failure to exercise a right is not a waiver.

32.4 Severability: invalid provisions are severed without affecting the remainder.

32.5 Counterparts: this Agreement may be executed in counterparts including electronic signatures.

Part B – Special Conditions

Schedule 1 – Reference Details

Principal: Mosman Council

Address: 573 Military Road Mosman NSW 2088

Council Representative: Steven Alderton

Email: gallerydirector@mosman.nsw.gov.au

Consultant:

ABN:

Address:

Key Personnel: As listed in Schedule 5

Term: Execution to 1 June 2026

Schedule 2 – Fees and Milestones

Total Contract Sum: \$_____ + GST

- Appointment of consultant 12 December 2025
- Within ten Business Days of commencement the Consultant must propose a Program with key activities, milestones and submission dates
- Monthly progress reports
- Risk Register
- Consultation Plan and then reports from consultation meetings
- Draft Master Plan delivered 18 May 2026
- Final Master Plan submitted 1 June 2026

Schedule 3 – Insurance Requirements

The Consultant must provide current certificates of currency for:

- Public Liability, not less than \$20,000,000 for any one occurrence.
- Professional Indemnity not less than \$10,000,000 for any one claim and maintained for seven years after completion.
- Workers Compensation as required by law plus personal accident or salary continuance if applicable.

Schedule 4 – WHS Evidence and Compliance Checklist

The Consultant will provide the following evidence as attachments:

- WHS policy and management plan.
- First aid arrangements and incident reporting form.
- Recent WHS training records.
- Evidence of ongoing WHS consultation.
- Schedule 5 – Key Personnel and Subconsultants

Schedule 6 – Change Request Form

If a change request form is to be issued, the following information is to be included:

- Change Request No: ____ Date: ____ Requested by: ____
- Description of change and rationale:
- Impact assessment: scope, time, cost, risks and quality:

- Revised Program and milestone impact:
- Budget adjustment requested:
- Approvals: Consultant signature and Council Representative signature.

Schedule 7 – Risk Register

The Consultant must prepare and maintain a Risk Register for the duration of the project. The register should identify and describe all material project risks, assess their likelihood and consequence, nominate an owner, and document mitigation or control measures. It must be updated twice during the project and submitted with monthly progress reports. Typical categories include schedule, budget, stakeholder engagement, cultural sensitivities, health and safety, data integrity, and reputational risk. Each entry should demonstrate proactive management actions to reduce both impact and likelihood of occurrence.

Appendix A – Scope of Services

- **A1 Research and Mapping:**
Review relevant strategies, policies, and plans and compile a source register.

Map public art assets and public realm opportunities including parks, paths, waterfront, and civic locations.
- **A2 Site Prioritisation and Narratives**
Identify and prioritise six to eight strategic sites using agreed criteria such as visibility, relevance, cultural relevance, connection to community, and audience potential.

Draft narratives and thematic frameworks for each site including Indigenous and local histories where appropriate.
- **A3 Public Art Collection Review and Conservation**
Assess existing public artworks and prepare conservation, significance, and location statements.

Recommend maintenance relocation or deaccession options with rationale and priorities.
- **A4 Engagement**
Deliver stakeholder engagement as per Appendix B and document outcomes and influence on recommendations.
- **A5 Draft and Final Master Plan**
Draft Master Plan for review then final Master Plan in accessible design with maps, visuals and appendices.
- **A6 Handover**

Appendix B – Consultation Plan

For the consultation phase, please provide a consultation plan that outlines:

B1 Objectives and Audiences:

- Objectives, themes, and success measures.
- Stakeholder list including First Nations representatives, local artists, businesses, schools, Council and community groups.

B2 Methods and Schedule:

- Workshops, interviews, surveys, site walks and online engagement.
- Indicative schedule and roles.

B3 Inclusion and Cultural Safety:

- Accessibility considerations, language, and consent protocols.

Execution

Signed for and on behalf of Mosman Council by its authorised representative:

Name: _____ Title: _____

Signature: _____ Date: _____

Signed for and on behalf of [Consultant Name] by its authorised representative:

Name: _____ Title: _____

Signature: _____ Date: _____