

ATTACHMENT TO AGENDA ITEM

Ordinary Meeting

19 May 2020

Agenda Item 8.1	Australian National Piano Award - Funding Agreement 2023 to 2025
Attachment 1	Proposed Funding Agreement with Australian National Piano Award - 2023 to 2025..... 29

GREATER SHEPPARTON CITY COUNCIL

and

**THE AUSTRALIAN NATIONAL PIANO
AWARD SHEPPARTON INCORPORATED**

**FUNDING AGREEMENT (COUNCIL
FUNDING OF ACTIVITIES)**

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THIS AGREEMENT is made on _____ 2020

PARTIES

- 1 **GREATER SHEPPARTON CITY COUNCIL** having its municipal office at 90 Welsford Street, Shepparton, Victoria
("Council")
- 2 **AUSTRALIAN NATIONAL PIANO AWARD SHEPPARTON INCORPORATED**
of 46 Gordon Drive, KIALLA, Victoria 3631
("Organisation")

RECITALS

- A The Organisation wishes to conduct the Activities.
- B In consideration of the Organisation conducting the Activities, the Council has agreed to contribute to the costs of the Activities in accordance with the terms of this Agreement.

THE PARTIES AGREE THAT:

1 DEFINITIONS

In this Agreement, unless inconsistent with the context:

- 1.1 "**Activities**" means the activities described in Schedule 1;
- 1.2 "**Asset**" has the meaning ascribed to it by clause 6.1;
- 1.3 "**Business Day**" means any day (other than a Saturday or a Sunday) on which banks are open for general banking business in Melbourne;
- 1.4 "**Business Hours**" means the hours between 9.00 am and 5.00 pm on a Business Day;
- 1.5 "**Contributions**" means the amounts to be paid by the Council to the Organisation in accordance with clause 3;
- 1.6 "**GST**" means the goods and services tax within the meaning of the GST Act;
- 1.7 "**GST Act**" means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- 1.8 "**Involved Persons**" means all –
 - 1.8.1 employees of the Organisation;
 - 1.8.2 members of the Organisation;
 - 1.8.3 contractors to the Organisation; and
 - 1.8.4 other persons or entities –

who or which have any involvement in the conduct of the Activities for or on behalf of the Organisation;

-
- 1.9 “**Project Supervisor**” means the person nominated as such in Schedule 1 or any other person nominated for this purpose by the Council from time to time;
 - 1.10 “**Public Liability Insurance**” has the meaning ascribed to it by clause 7;
 - 1.11 “**Schedule**” means a schedule to this Agreement;
 - 1.12 “**Taxable Supply**” has the meaning set out in section 195-1 of the GST Act;
 - 1.13 “**Tax Invoice**” has the meaning set out in section 195-1 of the GST Act;
 - 1.14 “**Volunteers Insurance**” has the meaning ascribed to it by clause 9; and
 - 1.15 the term “**Organisation**” includes, where relevant, all Involved Persons.

2 THE ACTIVITIES

- 2.1 In consideration of the Council agreeing to pay the Contributions to the Organisation, the Organisation must conduct the Activities in full accordance with the terms of this Agreement.
- 2.2 The Organisation may only vary the Activities with the prior written consent of the Project Supervisor.
- 2.3 The Organisation must supply all work, materials and other things necessary for the proper conduct of the Activities in accordance with the terms of this Agreement.
- 2.4 The Organisation must ensure that all Involved Persons have the skill and experience required to conduct the parts of the Activities for which they are responsible in accordance with this Agreement, and that they are licensed, registered and insured as required by any applicable law to conduct the part of the Activities for which they are responsible.
- 2.5 The Organisation must only use the Contributions for the purpose of conducting the Activities and must not use the Contributions for any other purpose without the prior written consent of the Project Supervisor. For this purpose, the Organisation must keep the Contributions separate from any other funds of the Organisation.

3 COUNCIL CONTRIBUTIONS

- 3.1 The Council agrees to pay to the Organisation the amounts set out in Schedule 1 following the achievement of the specified milestones in the conduct of the Activities to the satisfaction of the Project Supervisor. Unless specified otherwise in Schedule 1, each amount is exclusive of any applicable GST.

If the Organisation’s performance of its obligations under this Agreement constitutes a Taxable Supply, the Organisation must deliver to the Council a valid Tax Invoice for each amount payable by the Council to the Organisation and each such amount shall be increased by the then prevailing rate of GST.

For the purposes of this clause 3.1, the Organisation must give notice to the Council of the achievement of each milestone. Subject to the Project Supervisor confirming that a milestone has been achieved to the Project Supervisor’s satisfaction, the Council must make payment to the Organisation of the relevant amount within 30 days of the Council’s receipt of a Tax Invoice or, if the Organisation’s performance of its obligations under this Agreement does not

constitute a Taxable Supply, within 30 days of the Council's receipt of a notice that a milestone has been achieved.

3.2 The Organisation must repay to the Council:

3.2.1 on demand; or

3.2.2 on termination of this Agreement under clause 12 –

any contributions which are not expended by the Organisation in accordance with the terms of this Agreement.

3.3 Subject to the Organisation's compliance with its obligations under this Agreement, the Council will provide the non-monetary assistance set out in Schedule 2 to the Organisation for the purposes of the Activities.

4 PRE-COMMENCEMENT

The Organisation must not commence or permit the commencement of the conduct of the Activities until:

4.1 this Agreement has been executed by the Organisation and the Council;

4.2 the Project Supervisor has approved the terms of the Organisation's Public Liability Insurance and been provided with a certificate of currency for the Public Liability Insurance in accordance with clause 7;

4.3 the Organisation has provided to the Project Supervisor any certificates of currency for WorkCover insurance in accordance with clause 8; and

4.4 the Project Supervisor has approved the terms of the Organisation's Volunteers Insurance (if required under Schedule 1) and been provided with a certificate of currency for the Volunteers Insurance in accordance with clause 9.

5 RESPONSIBILITIES OF THE ORGANISATION

5.1 The Organisation acknowledges and agrees that:

5.1.1 it is responsible for all costs and liabilities incurred by it in conducting the Activities or which arise from or in connection with the conduct of the Activities;

5.1.2 other than the Contributions, the Council will not make any payment to the Organisation with respect to or in connection with the conduct of the Activities;

5.1.3 nothing in this Agreement is intended to confer on the Organisation any right to occupy or use any land owned or under the control of the Council (including, without limitation, any road); and

5.1.4 it must obtain any permits, approvals and consents from the Council or any third party which are necessary to enable the Organisation to conduct the Activities.

5.2 The Organisation must provide all things and take all measures necessary in the conduct of the Activities to protect people and property, avoid unnecessary interference with the passage of people and vehicles and prevent nuisance and unreasonable noise and disturbance.

-
- 5.3 The Organisation must obey and must ensure that the Involved Persons obey any Acts, regulations, by-laws, local laws and Council policies in any way applicable to the conduct of the Activities, the site where the Activities are to be conducted or the subject matter of this Agreement.
- 5.4 The Organisation must provide to the Project Supervisor the information, reports and any other things specified in Schedule 3 on the dates stated or determined in accordance with Schedule 3.
- 5.5 The Organisation must provide the Activities in accordance with all relevant legal obligations with respect to human rights, privacy and equal opportunity.
- 5.6 The Organisation must comply with and ensure that the Involved Persons comply with any terms set out in Schedule 4 in the conduct of the Activities and the Organisation's performance of its obligations under this Agreement.

6 ASSETS

- 6.1 If the Organisation is authorised by the terms of this Agreement to utilise the Contributions to purchase any chattel or other item of personal property ("**Asset**"), ownership of the Asset shall vest in the Organisation, as against the Council, unless specified otherwise in this Agreement.
- 6.2 The Organisation must -
- 6.2.1 retain the ownership of; and
 - 6.2.2 maintain in good and workable condition -
- all Assets, unless agreed otherwise by the Project Supervisor.
- 6.3 Without limiting the Organisation's obligations under clause 6.2, the Organisation must register a security interest under the Personal Property Securities Register in any Asset with a purchase price in excess of \$1,000 (excluding GST).
- 6.4 If the Council terminates this Agreement in accordance with clause 12, the Project Supervisor may direct the Organisation to transfer ownership of any Assets to the Project Supervisor. If the Council gives a direction in accordance with this clause 6.4, the Organisation must:
- 6.4.1 do all things necessary to transfer ownership of the Assets, free of all encumbrances and security interests, to the Council; and
 - 6.4.2 promptly deliver the Assets, in good and workable condition, to the Council.

7 PUBLIC LIABILITY INSURANCE

The Organisation must, at all times while conducting the Activities be the holder of a public liability insurance policy for an amount in respect of any one occurrence of not less than the amount specified in Schedule 1 ("**Public Liability Insurance**"). The Public Liability Insurance must cover the Organisation and all Involved Persons in respect of liability to the Council and third parties in respect of any claim for loss of or damage to property or death or injury to any person arising from the acts or omissions of the Organisation or the Involved Persons, in the course of, or in connection with the conduct of the Activities.

The terms of the Public Liability Insurance and the insurer must be approved by the Project Supervisor. The Organisation must provide a certificate of currency for the Public Liability Insurance to the Project Supervisor prior to commencing the conduct of the Activities and within two days of any direction by the Project Supervisor to do so.

8 WORKCOVER INSURANCE

If required to do so under the *Accident Compensation Act 1985*, the Organisation must hold a WorkCover policy of insurance complying with the provisions of the *Accident Compensation Act 1985* in respect of all of its employees while conducting the Activities.

The Organisation must ensure that any Involved Person who or which is required to do so under the *Accident Compensation Act 1985* holds a WorkCover policy of insurance complying with the provisions of the *Accident Compensation Act 1985* in respect of all of its employees while conducting the Activities.

The Organisation must provide a certificate of currency for any WorkCover policy of insurance required to be effected under this clause 8 to the Project Supervisor prior to commencing the conduct of the Activities and within two days of any direction by the Project Supervisor to do so.

9 VOLUNTEERS INSURANCE

If required under Schedule 1, the Organisation must, at all times while conducting the Activities, be the holder of a volunteers insurance policy for an amount in respect of any one occurrence of not less than the amount specified in Schedule 1 ("**Volunteers Insurance**"). The Volunteers Insurance must provide cover for all Involved Persons who are volunteers with respect to death or personal injury arising from, in connection with or in the course of the conduct of the Activities.

The terms of the Volunteers Insurance and the insurer must be approved by the Project Supervisor. The Organisation must provide a certificate of currency for the Volunteers Insurance to the Project Supervisor prior to commencing the conduct of the Activities and within two days of any direction by the Project Supervisor to do so.

10 INDEMNITIES

The Organisation must indemnify, keep indemnified and hold harmless the Council and the Project Supervisor from and against loss of, or damage to, any property of the Council and any liability to any person or any claim by any person against the Council or the Project Supervisor, in respect of personal injury or death or loss of, or damage to, any property arising out of, as a consequence of, or in connection with the conduct of the Activities.

11 ACKNOWLEDGEMENT OF FUNDING

The Organisation must do all things specified in Schedule 1 to acknowledge the Council's provision of funding for the Activities.

The Organisation agrees that the Council may itself publicise the Activities and the Council's contributions to the Activities in any way considered appropriate by the Council.

12 DEFAULTS

12.1 The Council may terminate this Agreement immediately by notice to the Organisation if the Organisation commits a breach of this Agreement and the Organisation fails to remedy the breach, or provide assurance, to the satisfaction of the Council, that the breach will be remedied within a timeframe specified by

the Council, within seven days of the Organisation's receipt of notice of the breach from the Council.

12.2 If the Organisation -

- 12.2.1 takes or has taken or instituted against it any action or proceeding, whether voluntary or compulsory, having as its object the winding up of the Organisation;
- 12.2.2 enters into a composition or other arrangement with its creditors, other than a voluntary winding up by members for the purpose of reconstruction or amalgamation;
- 12.2.3 has a mortgagee or other creditor take possession of any of its assets;
- 12.2.4 an administrator is appointed, or steps are taken for the appointment of an administrator, under Part 5.3A of the *Corporations Act 2001* (Cth) in respect of it;
- 12.2.5 a receiver or receiver and manager is appointed, or steps are taken for the appointment of a receiver or receiver and manager, in respect of it; or
- 12.2.6 is an incorporated association and it takes or institutes, or has taken or instituted against it, any action or proceeding having as its object the cancellation of the incorporation of the incorporated association -

the Council may terminate this Contract immediately.

13 OCCUPATIONAL HEALTH AND SAFETY

- 13.1 The Organisation must itself, and must ensure that any Involved Persons, at all times identify and take all necessary precautions for the health and safety of all persons, including the Involved Persons, staff of the Council and members of the public, who may be affected by the conduct of the Activities.
- 13.2 The Organisation must immediately comply with any and all directions by the Council relating to occupational health and safety ("**OH&S**").
- 13.3 The Organisation must -
 - 13.3.1 comply with; and
 - 13.3.2 ensure that the Involved Persons comply with -

any Acts, regulations, local laws, codes of practice and Australian Standards which are in any way applicable to OH&S and the conduct of the Activities.

14 WAIVER

- 14.1 No time or indulgence granted by the Council to the Organisation nor any failure on the part of the Council to take action in respect of any particular breach of default or series of breaches or defaults in the performance by the Organisation of its obligations set out in this Agreement constitutes a waiver of all or any of the provisions of this Agreement, despite any rule of law or equity to the contrary.

- 14.2 The failure, refusal or neglect by Council to exercise any right power or option given to it under this Agreement will not, unless otherwise agreed by the Council in writing, constitute a waiver by the Council of its right at any time after that to require exact and strict compliance with such provisions, despite any rule of law or equity to the contrary.

15 NOTICES

- 15.1 Any notice or demand to be given by a party ("**First Party**") to the other party ("**Second Party**") may be signed by the First Party or the First Party's solicitors and is deemed to have been duly given and served on the Second Party if given to the Second Party in the manner set out in clause 15.2.
- 15.2 Subject to clauses 15.1 and 15.3, any notice (which includes, without limitation, a demand, request, consent, approval and any other communication made, required or authorised under this Agreement) given under this Agreement must be:
- 15.2.1 in writing;
 - 15.2.2 directed to the recipient's address or facsimile number specified in Schedule 1, as varied by any notice; and
 - 15.2.3 hand delivered or sent by prepaid post to that address or sent by facsimile transmission to that number.
- 15.3 A notice given in accordance with clause 15.2 is taken to be received by the recipient:
- 15.3.1 if hand delivered, on delivery;
 - 15.3.2 if sent by prepaid post, two Business Days after the date of posting; or
 - 15.3.3 if sent by facsimile transmission, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice unless, within eight Business Hours after that transmission, the recipient informs the sender that it has not received the entire notice.

In all cases, a notice received after 5.00 pm in the place of receipt or on a day that is not a Business Day is taken to be received by the recipient at 9.00 am on the next Business Day.

- 15.4 The provisions of this clause are in addition to any other mode of service permitted by law.

16 SEVERANCE

- 16.1 The parties agree that a construction of this Agreement that results in all provisions being enforceable is to be preferred to any other construction.
- 16.2 If, despite the application of clause 16.1, a provision of this Agreement is illegal or unenforceable -
- 16.2.1 if the provision would not be illegal or unenforceable if a word or words were omitted, that word or those words are omitted; and

16.2.2 in any other case, the whole provision is omitted -
and the remainder of this Agreement will continue in force.

17 WHOLE AGREEMENT

This Agreement -

17.1 constitutes the whole agreement between the parties; and

17.2 supersedes all prior representations, warranties, arrangements, understandings and agreements between the parties -

relating to the subject matter of this Agreement.

18 ASSIGNMENT

The Organisation must not assign any right under this Agreement without the prior written consent of the Council.

19 COUNTERPARTS

This Agreement may be executed in any number of counterparts and all the counterparts together constitute one and the same instrument.

20 ALTERATION

This Agreement may only be altered in writing signed by the parties.

21 FURTHER ACTS

Each party must, without further consideration, sign, execute and deliver any document and perform any other act that is necessary or desirable to give full effect to this Agreement.

22 PARTY PREPARING DOCUMENT NOT TO BE DISADVANTAGED

No rule of contract interpretation must be applied in the interpretation of this Agreement to the disadvantage of one party on the basis that it prepared or put forward this Agreement or any document or provision comprising part of this Agreement.

23 GOVERNING LAW

This Agreement is governed by and construed in accordance with the laws of Victoria.

24 INTERPRETATION

In this Agreement, unless the contrary intention appears:

24.1 the singular includes the plural and vice versa;

24.2 a reference to a document or instrument, including this Agreement, includes a reference to that document or instrument as novated, altered or replaced from time to time;

24.3 a reference to an individual or person includes a partnership, body corporate, government authority or agency and vice versa;

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- 24.4 a reference to a party includes that party's executors, administrators, successors, substitutes and permitted assigns;
- 24.5 words importing one gender include other genders;
- 24.6 other grammatical forms of defined words or expressions have corresponding meanings;
- 24.7 a reference to a statute, code or other law includes regulations and other instruments made under it and includes consolidations, amendments, re-enactments or replacements of any of them;
- 24.8 a recital, schedule, annexure or description of the parties forms part of this Agreement;
- 24.9 if an act must be done on a specified day that is not a Business Day, the act must be done instead on the next Business Day;
- 24.10 if an act required to be done under this Agreement on a specified day is done after 5.00 pm on that day in the time zone in which the act is performed, it is taken to be done on the following day;
- 24.11 all monetary amounts are in Australian dollars; and
- 24.12 headings and the provision of a table of contents are for convenience only and do not affect the interpretation of this Agreement.

25 NO RESTRICTION OF COUNCIL'S POWERS

This Agreement does not fetter or restrict the powers or discretions of the Council in relation to any powers, functions or obligations it has under any Act, regulation or local law that may apply to the Council, the municipal district of the Council or the conduct of the Activities.

26 RELATIONSHIP BETWEEN THE PARTIES

It is acknowledged and agreed that nothing in this Agreement or the conduct of the Activities is intended to create any employment, partnership or agency relationship between the Council and the Organisation or any of the Involved Persons. The Organisation must not represent itself or permit any of the Involved Persons to represent themselves as being employees, partners or agents of the Council.

SCHEDULE 1**PARTICULARS OF THE AGREEMENT**

- 1 The Activities (clause 1.1)** 2023 Australian National Piano Award (“ANPA”)
2025 Australian National Piano Award
- 2 The Project Supervisor (clause 1.9)** Ken Cameron, Manager Performing Arts and Conventions
- Address Riverlinks Venues, 70 Welsford Street
SHEPPARTON VIC 3630
- Facsimile number (03) 5831 8480
- 3 The Contributions and Milestones (clause 3)** This Agreement provides for Council funding towards two Piano Awards; one in **October 2023** and one in **October 2025**.
- The funding from Council to the Organisation is \$55,000 for each of these Piano Awards,
- The Funding is intended for the following purposes at each Piano Award:
- First Prize: \$28,000
 - Additional funding support: \$27,000
- Funding per Piano Award: \$55,000

TOTAL FUNDING \$110,000

Contribution	Milestone
\$24,000	January prior to each Piano Award Event dates, marketing materials and ticket prices provided to Riverlinks
\$18,000	September prior to each Piano Award Delivery of the official Launch of the Piano Award
\$13,000	Final delivery of each Piano Award Completion of the Piano Award competition and associated activities. Provision of a post Activity acquittal.

- | | | |
|---|--|---|
| 4 | Amount of cover under the Public Liability Insurance (clause 7) | \$20 million |
| 5 | Volunteers Insurance required (clause 9) | Yes <input checked="" type="checkbox"/> No <input checked="" type="checkbox"/> |
| | Amount of cover under the Volunteers Insurance (if required) | \$ 20 million |
| 6 | Acknowledgement of Council funding (clause 11) | <p>The Organisation will provide recognition of Council as a major sponsor of The Activity and as key donor of ANPA's First Prize. Council and Riverlinks logos are to be included in all promotional materials including online promotion.</p> <p>The Organisation will provide invitations for the Mayor, Councillors, CEO, Director Community and/or their delegates from Council to attend ANPA and special functions including any official Launch of the Piano Award.</p> |
| 7 | Notices (clause 15) | |
| | The Council | |
| | Contact Person | Ken Cameron, Manager Performing Arts and Conventions |
| | Address | Riverlinks Venues, Locked Bag 1000
SHEPPARTON VIC 3632 |
| | Facsimile number | (03) 5831 8480 |

The Organisation

Contact Person	Judith A Longley
Address	46 Gordon Drive, Kialla, Victoria 3631
Facsimile number	0438 532 621

SCHEDULE 2**NON-MONETARY ASSISTANCE**

Council will provide a range of initiatives as marketing support to an approximate in-kind value of \$9,000:

Promotion of ANPA as part of the performing arts and cultural event program including representation in:

- Riverlinks annual calendar of events,
- Riverlinks quarterly leaflet,
- Inclusion on Riverlinks website,
- Inclusion on Riverlinks electronic newsletters
- Inclusion on Riverlinks social media,
- Electronic direct mail to suitable addresses on Riverlinks database,
- Production and distribution of posters based on suitable images supplied by the Organisation,
- Display of posters in Riverlinks Eastbank foyer,
- At least one media press advertisement in the Shepparton News.
- Production and installation of town entry flags.

This does not preclude either the Organisation or Council from engaging in additional promotional activities as appropriate.

Riverlinks will ensure that any promotion follows consultation with the Secretary and/or Publicist of the Organisation prior to publishing.

Council Tourism and Events will provide support and advice regarding ANPA promotion with respect to cultural tourism.

Council will also assist the Organisation, where possible, with advice regarding further funding opportunities or ways to raise the profile of ANPA.

SCHEDULE 3**INFORMATION REQUIREMENTS**

[Insert details of any information, reports and other things to be provided by the Organisation to the Project Supervisor (including the dates by which such things must be provided or any mechanisms for determining such dates)]

The provision of funding for Additional Support in Schedule 1, clause 3 is intended to cover the costs of the Organisation renting the venue at Riverlinks Eastbank for the purpose of staging the Activities.

The provision of funding under this Agreement is conditional upon the Organisation holding the key activities and recitals of ANPA at Riverlinks Eastbank.

SCHEDULE 4

OTHER TERMS

This Funding Agreement should be read in conjunction with the Steinway Piano Care Memorandum of Understanding, drawn up in 2014 between the Organisation and Council.

EXECUTED as an agreement.

SIGNED for and on behalf of **GREATER
SHEPPARTON CITY COUNCIL**)
)

Signature

Name

Title

SIGNED for and on behalf of)
THE AUSTRALIAN NATIONAL PIANO)
AWARD SHEPPARTON INCORPORATED

Signature

Name

Title