



the bushland shire

creating a living environment

SUPPLEMENTARY BUSINESS PAPER

PLANNING MEETING

**Wednesday, 7 December, 2011
at 6.30pm**

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3 TERMINATION OF CONTRACT C20/2010B: GRASS CUTTING OF ROADSIDES FOR SITES IN ZONE 2 (SOUTH OF THORNLEIGH)

EXECUTIVE SUMMARY

This Report provides details to support a recommendation to terminate Contract C20/2010B: Grass Cutting of Roadsides in Zone 2 (sites south of Thornleigh) with Luhrmann Environment Management Pty Ltd (LEM) and to appoint House With No Steps (HWNS) to take-over the grass cutting of these sites.

In November 2010 Council awarded LEM a contract for sites in Zone 2 and HWNS a contract for sites in Zone 1.

There have been a number of breaches of the Contract and Council officers consider that Council has grounds to terminate the Contract with LEM. The reasons for recommending the termination of LEM's Contract are contained in a Confidential Memo No. WD16/11 (Attachment A).

The Local Government Act (LGA), provides that Council must invite tenders **except** where pursuant to s55 (3) (i) because of extenuating circumstances the Council decides by resolution (stating the reasons for the decision) that a satisfactory result would not be achieved by inviting tenders. There are sufficient extenuating circumstances to warrant Council awarding the Zone 2 grass cutting work to HWNS.

PURPOSE/OBJECTIVE

This Report provides details, based on LEM's performance, to support a recommendation to terminate Contract C20/2010B: Grass Cutting of Roadsides in Zone 2 (sites south of Thornleigh) with Luhrmann Environment Management Pty Ltd (LEM), and to appoint House With No Steps (HWNS) to take-over the grass cutting of sites in Zone 2.

DISCUSSION

Following an open tender, Council resolved at the Ordinary Meeting of 17 November 2010:

THAT Council accept the following tenders for Tender No. T20/2010: Grass Cutting of Roadsides:

- 1. "House With No Steps" for sites in Zone 1 (north of Thornleigh).*
- 2. "Luhrmann Environment Management" for sites in Zone 2 (south of Thornleigh)"*

On 24 November 2010 HWNS was awarded the tender to cut grass in Zone 1 for a period of two years commencing December 2010 plus an optional extra year subject to satisfactory performance.

On 24 November 2010 LEM was awarded the contract to cut grass in Zone 2 for a period of two years commencing December 2010 plus an optional extra year subject to satisfactory performance.

Council measures the performance of grass cutting by standards set in the Contract:

- frequency of cutting grass according to the program in the contract
- standard of workmanship
- labour and subcontractor resources
- appropriate traffic control systems for safety
- appropriate Occupational Health and Safety systems
- customer feedback
- the actual cost of the service to Council

Following issues with LEM performing its duty under its contract (see Confidential Memo WD16/11), Council wrote to LEM on 3 November 2011 requesting LEM to show cause why Council should not terminate its contract. LEM failed to show good cause.

Initial evidence of LEM's performance issues under the Contract became evident in December 2010. Since then a number of other performance issues with LEM have arisen resulting in delays to its monthly grass cutting program in Zone 2. As a consequence, Council has received many complaints about the long grass from concerned residents and a number of Council officers have spent excessive time monitoring LEM's performance issues.

Council must invite tenders except where pursuant to LGA s55 (3) (i) because of **extenuating circumstances**, the Council decides by resolution (stating the reasons for the decision) that a satisfactory result would not be achieved by inviting tenders.

Extenuating circumstances in this matter include;

- a) Mowing 127 sites in Zone 2 each month during the peak growing season needs to continue without delay and it would not be practical delaying grass cutting by approximately 5 months to call tenders during this time of year.
- b) Council recently tested the open market in calling tenders for grass cutting of Zone 1 and Zone 2. HWNS tendered for both but was awarded Zone 1. Council has found HWNS's performance in Zone 1 to be satisfactory. HWNS has confirmed that its rates tendered for Zone 2 in November 2010 would apply on condition that the rates are increased in line with CPI and that it be offered a two (2) year contract. The earliest HWNS could start cutting grass is February 2012.
- c) Contracting HWNS for the Zone 2 work would result in a satisfactory result which would otherwise not be achieved if tenders were invited because of the time delay.

If Council resolves to terminate LEM's Contract, LEM will be advised by Council in December 2011 that its last month of grass cutting will be January 2012.

BUDGET

There are budget implications due to the extra expense in selecting HWNS to take-over the Zone 2 works from LEM. The extra expense will be absorbed by the relevant maintenance budget. The additional expense is outlined in Confidential Memo WD16/11.

POLICY

There are no policy implications.

CONSULTATION

This report and the confidential memorandum were prepared in consultation with Council's solicitors.

TRIPLE BOTTOM LINE SUMMARY

Triple Bottom Line (TBL) attempts to improve Council's decisions by being more accountable and transparent on social, environmental and economic factors. It does this by reporting upon Council's Strategic Theme.

A TBL assessment is not required for this report.

RESPONSIBLE OFFICER

For further information, please contact Council's Project Engineer, Mr Edward Mieluk on 9847 6825.

RECOMMENDATION

THAT Council:

1. Notify Luhrmann Environment Management Pty Ltd of its decision to terminate Council's Contract C20/2010B - Grass Cutting of Roadsides in Zone 2.
2. Award House With No Steps (HWNS) a two (2) year contract to take-over the grass cutting of sites in Zone 2 commencing February 2012 rather than call fresh tenders on account of "extenuating circumstances" including:
 - a) Council recently tested the open market in calling tenderers for grass cutting of Zone 1 and Zone 2. HWNS tendered for both but was awarded Zone 1. Council has found HWNS performance in Zone 1 to be satisfactory.
 - b) It would not be practical to delay grass cutting by approximately five (5) months to call tenders during this time of year.
 - c) Contracting HWNS for the Zone 2 works would result in a satisfactory result which would otherwise not be achieved if tenders were invited.

ROBERT STEPHENS
Executive Manager
Works Division

SCOTT PHILLIPS
General Manager
General Manager Division

Attachments:

1. Refer to Confidential Attachment to WK71/11, located in the Confidential Section of Business Paper Confidential Memo WD 16/11 (circulated separately to Councillors). - *This attachment should be dealt with in confidential session, under Section 10A (2) (d) of the Local Government Act, 1993. This report contains commercial information of a confidential nature that would, if disclosed (i) prejudice the commercial position of the person who supplied it; or (ii) confer a commercial advantage on a competitor of the council; or (iii) reveal a trade secret.*

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