

**Supplementary Agenda**  
**Monday 28 May 2012**  
**Council Chambers**  
**126-138 Main Road Speers Point**  
**7.00pm**

<b>Notices of Motion:</b>	One Association Proposed Constitution	28 May 2012
<b>Special Reports:</b>	Director of City Strategy (1)	28 May 2012
<b>Matters Referred:</b>	T914 Design Of Cardiff Streetscape Master Plan Electrical Relocation, & Design Of New Street & Pedestrian Lighting System– Stage 1	28 May 2012

Brian Bell  
General Manager

**Note:** Council Meeting Agendas will be available for download from the City website by 5.00pm on the Tuesday prior to the meeting date ([www.lakemac.com.au](http://www.lakemac.com.au))

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## **Notices of Motion - Monday 28 May 2012**

### **12NM004          One Association Proposed Constitution**

Council Ref:        F2004/07344-03 - D02538776  
Report By:         Councillor - Phillipa Parsons

#### **Background:**

There are reasons we need an open debate about the proposed constitution for a single Local Government Association (LGA). Member Council's of the LGA should be aware that the current proposed constitution has never been debated at the LGA Conference or in any public forum.

The reasons we need further debate are as follows:

- 1) Regional disadvantage: the proposed constitution disadvantages some regional Council's in a profound and permanent way.
- 2) One size fits all: the proposed constitution does not allow for Council's west of the Great Dividing Range to have guaranteed representation.
- 3) Lack of transparent governance: the proposed constitution fails to provide for an open, transparent, and accountable peak local government body and thereby misses a historic opportunity to modernise local government.

#### **Why have these issues not been raised before?**

LGA Members should be aware that some concerned members of the Executive believe there had been a commitment to conduct detailed information sessions in a range of locations around NSW, and that the pros and cons of any proposed constitution would be discussed at those sessions. These sessions were never implemented.

Members should also be aware that a basic premise of this whole debate has been that a draft constitution would go through the safeguard of being debated openly at a conference.

The purpose of this 'no case' is not to argue against a single association for local government in NSW. It is to argue that before adopting any constitution, the members should have the right to debate the proposed constitution at our conference. The Constitution of the LGA of NSW currently requires any constitutional amendment to be put to the conference, and for the amendment to gain majority support. The current process will see the biggest constitutional change of all (merging of two associations) being decided by a secret ballot without the opportunity for debate to be had, and for questions to be asked on the floor of the conference.

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**Disadvantage - the proposed Constitution literally adopts a double standard.**

The proposed constitution provides for a voting system that disadvantage's 34 regional councils. Specifically this affects larger regional councils with more than 27,000 people. As currently proposed, regional councils of 27,000 people or more will receive less votes than a metropolitan Council of 27,000 people or more. Thirty-four regional councils will receive less votes than would a comparably sized council located in the metropolitan area. The list below details these councils, their population and votes as calculated by the LGSA - compared with a council of similar size in the metropolitan area and its respective proposed voting entitlement:

**Disadvantaged Regional Councils Council Population (as per LGSA)**

**Disadvantaged Regional Councils**

<b>Council</b>	<b>Population (as per LGSA)</b>	<b>Votes</b>	<b>Comparative Metro Council</b>	<b>Population</b>	<b>Votes</b>
Albury	51112	4	Leichhardt	55596	5
Ballina	42708	3	Manly	41925	4
Bathurst Regional	39915	3	Botany Bay	40463	4
Bega Valley	33925	3	Burwood	33803	4
Blue Mountains	77943	4	Willoughby	70008	5
Byron	32378	3	Lane Cove	33335	4
Cessnock	51706	4	Camden	56809	5
Clarence Valley	52592	4	Woolahrah	56005	5
Coffs Harbour	72827	4	North Sydney	64795	5
Dubbo	41763	3	Ashfield	42787	4
Eurobodalla	37714	3	Burwood	33803	4
Gosford	168188	7	Horsnby	164034	10
Goulburn Mulwarree	28702	3	Lane Cove	33335	4
Great Lakes	35924	3	Burwood	33803	4
Greater Taree	48955	3	Strathfield	36911	4
Hawkesbury	64030	4	Kogarah	59200	5
Kempsey	29442	3	Mosman	29232	4
Lake Macquarie	200849	7	Fairfield	196567	11
Lismore	45917	3	Manly	41925	4
Maitland	70296	4	Pittwater	59847	5
Newcastle	156112	7	Campbelltown	153222	10

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Orange	39329	3	Manly	41925	4
Port Macquarie	76323	4	Waverly	69420	5
Port Stephens	67825	4	North Sydney	64795	5
Queanbeyan	41430	3	Ashfield	42787	4
Shellharbour	67797	4	Pittwater	59847	5
Shoalhaven	96967	4	Hurstville	80823	6
Tamworth Regional	59461	4	Camden	56809	5
Tweed	90090	4	Hurstville	80823	6
Wagga Wagga	63500	4	Kogarah	59200	5
Wingecarribee	46960	3	Botany Bay	40463	4
Wollondily	44050	3	Mosman	29232	4
Wollongong	203487	7	Liverpool	185481	11
Wyong	151527	7	Randwick	133116	8

These 34 councils will be permanently disadvantaged so far as their number of voting delegates is concerned, by the proposed One Association Constitution in comparison with metropolitan councils of similar size. The proposed constitution has been developed to 'equal' the votes between country and city. There was some concern that in a merged organisation in which there are more 'country' councils than 'city' councils and the 'country' would dominate. However, that is not the reality.

Firstly, it relies on a perception that councils such as Wollongong, Newcastle, Gosford, Wyong and Lake Macquarie are 'country' councils rather than the large urban councils they are in reality. Secondly, it relies on a perception that somehow all councils outside the metropolitan basin would form 'factions' and vote as a 'bloc'. In reality, councils have different demographics and many different interests.

In developing a constitution for One Association, a choice has to be made between the 'one vote one council' system used by the Shires Association and a system which is scaled according to the population size of the council. With a range of differing population sizes in the proposed One Association (from Urana with 1,261 people right up to Blacktown with 307,816 people), it is not surprising that a scaled system based on the existing LGA model has been chosen. However to go further and designate a different system of scaling for regional councils than for metro councils is to adopt a double standard, literally. The proposed structure appears to be unethical and undemocratic. What does the double standard mean for city councils?

### **Will City Councils pay more fees?**

The question on which there has been no discussion, is who will pay the fees of the disadvantaged councils. Clearly, the inequitable voting rights will create resentment. It is hard to imagine Councillors at those tense budget meetings (when there is never enough money to go around) not asking why they are paying the same fees as another council with more votes.

Lake Macquarie City Council with 200,849 people and 7 votes, could object to paying similar fees to Fairfield Council (196,567 people) which will have 11 votes.

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The eighty-two extra votes allocated to the metropolitan councils represents 14.5% of the total. It would therefore be reasonable for metropolitan councils to pay 14.5% more membership fees than regional councils. However, there has been absolutely no discussion of this issue.

### **Or, will Regional Councils be forced to permanently pay the same fees as Metropolitan Council's with more votes?**

The proposed constitution says at Cl.13 (b) that the Board can determine fees as it sees fit and may determine different subscriptions for different classes of members. The classes of members defined in the constitution are limited to 'ordinary' and 'associate' members. The most straightforward interpretation of this is that the Board may be prohibited by the constitution from allowing a lesser subscription rate to those disadvantaged councils.

### **Consequently, it may be that disadvantaged councils are constitutionally compelled to pay disproportionately higher fees permanently without any prospect of relief.**

There is an URGENT need to have this issue clarified and is just one example why the proposed constitution should be presented to a full debate at conference.

### **Higher cost of conferences for metropolitan councils and difficulty in sending delegates.**

The largest metropolitan councils will receive the most votes. For the first time large councils will receive more than seven votes. The proposed constitution (Cl.35) does not allow member councils to send proxies to the conference to vote on policy. It is acknowledged as an important safeguard for democracy, that a single person should not be able to cast votes for a large number of people. However, Cl. 23 of the proposed constitution outlines a complicated seven-step process for working out voting entitlement. Step 6 allows councils which have more votes than Councillors to allocate an extra vote to nominated delegates. This only applies if a council has more votes than delegates do. In some cases, large metropolitan councils will be forced to send all of their Councillors to every conference just to achieve their voting entitlement on motions and policy.

### **In the most extreme situations:**

- City of Sydney will be entitled to 11 votes but only has 10 Councillors
- Hornsby will have to send every one of its 10 Councillors to exercise its 10 votes.
- Liverpool will have to send each of its 11 Councillors to exercise its 11 votes.

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**The consequence of these rules for the largest councils are threefold:**

- 1) A large council in practice may not be able to use its voting entitlement. For example, a council entitled to 11 delegates may not have 11 delegates who can take that much time off work to attend the conference and consequently the council cannot use its voting allocation.
- 2) A significant increase in cost. A large council which manages to send 11 delegates will incur a higher cost than sending their current allocation of 7. A council sending 11 delegates to a conference in Dubbo could conservatively be expected to have costs of \$2000 per delegate and therefore a total cost of \$22,000 just to attend the annual conference.
- 3) If large metropolitan councils end up paying higher membership fees as well as higher conference costs, they will be hit with a double whammy.

**Large City Councils and proposed voting entitlement**

Bankstown	-	Number of votes	11	Number of Councillors	12
Blacktown			13		15
Campbelltown	-		10		14
Canterbury	-		8		10
Fairfield	-		11		13
Hornsby	-		10		10
Liverpool	-		11		11
Parramatta	-		10		15
Penrith	-		11		15
Randwick	-		8		15
Sutherland	-		11		15
City of Sydney	-		11		10
The Hills Shire	-		10		12
Warringah	-		8		10

**The proposed Constitution does not allow for councils west of the Great Divide to have guaranteed representation.**

The proposed constitution lumps all regional councils into the one area for representation on the One Association Executive. Previously the Shires Association has had nine specific geographic divisions with a single representative from each. The LGA has had a single regional area, but with most councils being coastal and only a few of the larger inland cities as members. It is apparent to everyone that life west of the Great Dividing Range is different in many respects than it is for those living on the coast. While it may not be appropriate to transfer the nine divisions of the Shires Association into a new organisation there has been NO debate about the merits of having a Western Division, which guarantees Executive membership from councils west of the Great Divide. The distances involved, the distinct nature of the rural economy, and the lack of public services for transport, health and education should merit having dedicated representatives from Western NSW.

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Given that a new association is likely to last at least as long as the current LGA and Shires have been operating separately (80 years), surely the least we could do is have an open debate on whether a Western Division is appropriate. Such a debate should do more than just assume there is only a choice between a Shires nine divisions structure and a single all-encompassing regional district.

**The proposed Constitution fails to provide for an open, transparent and accountable local government body, and thereby misses a historic opportunity to modernise local government.**

Such a historic occasion of merging the Shires and Local Government Association should not be rushed through. Any new organisation should be more open and transparent. For example, the following safeguards should be added to the constitution:

- The business papers and minutes (save for confidential components) should be automatically available to all member councils.
- Proposed increases in pay and remuneration for all Executive members should be reported to the Annual Conference for approval (currently proposed that 'Senior Executive' (see Cl.20 (vi)) recommend the rate of remuneration to be paid to President and others).
- The amount of annual payments to all individuals gained by virtue of their appointment by the association to external bodies to represent the association, should be reported on in the Annual Report to the conference.
- The powers of the President should be equivalent to those of a Mayor, and the broad power given in to the President via cl.17 (d) of the proposed Constitution should be modified.
- LGSA financial reports show the Presidents of the LGA and the Shires Association is each budgeted to receive \$103,683.00 in remuneration this financial year. The Scheme of Amalgamation should clarify if each proposed 'Interim Joint President' would continue to receive \$103,683.00 up until a new election is scheduled for October 2013.
- It should be clarified why an interim committee of 10 people is being put forward to have control of the organisation for an estimated 14 months when the proposed constitution provides for a board of 25 people.

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**Recommendation:**

Council resolves to:

- A. Write to Fair Work Australia and submit the view that when ballot papers are distributed they should include a 'No' case as well as a 'Yes' case;
- B. Designate the Councillors who will be given the secret ballot; and
- C. Debate the 'Yes' and 'No' cases at a full meeting of Council before those individual Councillors cast their votes.

**Attachments:**

*Nil.*

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**12SP089            Lake Macquarie Waste Strategy Project - T903P Tender for Organic  
Waste Processing Project and T903C Tender for Green & Organic  
Waste Collection and Bin Supply**

Council Ref:        F2011/00717 - D02534230  
Report By:         Director - City Strategy - Tony Farrell

**Précis:**

Council commenced the Waste Strategy Project in November 2009 following adoption of a Project Management Plan by Council's Waste Advisory Committee. The Waste Strategy Project has progressed through adoption of a favoured draft processing solution to the calling of tenders to implement the favoured solutions.

This report deals with the determination of the relevant tenders comprising;

T903P – Organic Waste Processing Project; and

T903C – Green & Organic Waste Collection and Bin Supply.

The two tenders being considered by Council, arising from this report, represent very substantial financial and service commitments for the City.

Adoption of the recommendations will facilitate the development of waste infrastructure and the implementation of waste services for the City that address our known existing, and emerging, waste management needs.

**Confidentiality:**

This report has not been recommended to be confidential. The report contains no "commercial-in-confidence" information supplied to Council as part of the request for tenders (RFT) process. If Council is able to discuss the matter without reference to tender content or assessment scoring and commentary, there is no need to close the meeting.

If it is necessary for Council to discuss elements of any tender or the scoring values, it will be necessary to close the meeting to accord with undertakings and expectations generated through the RFT process. Most tenderers have indicated their tender material to be commercial in confidence and while Council will no doubt seek to make details of any eventual contract transparent, unsuccessful bidders would have a reasonable expectation of confidentiality arising from their tender bids.

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In the event a discussion of the content of any tender is necessary, the following precursor motion to close the meeting is recommended:

*As this report deals with commercial information of a confidential nature which, if disclosed, would confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business, and deals with commercial information of a confidential nature which, if disclosed, would confer a commercial advantage on a competitor of Council, and prejudice the commercial position of the person who supplied it, and reveal a trade secret, (Section 10A (2)(c) and (d) of the Local Government Act) Council closes the meeting in accordance with Clause 1.9 of Council's Code of Meeting Practice, as consideration of this matter in open Council would be contrary to the public's interest.*

**Recommendation:**

- A. In respect of T903P - Organic Waste Processing Project, Council;
- a. Decline to accept any tender for the reason that no tender fully addresses or delivers on Council's needs. Do not invite fresh tenders or applications as there is a high likelihood that one of the two highest ranked tenderers can address and satisfy Council's needs; and
  - b. Enter into negotiations with the highest ranked tenderer, as identified in confidential Appendix No. 1, Organic Waste Tenders – Tender Evaluation Panel Report, with a view to resolving the matters identified in appendix 1; and
  - c. If negotiations noted in 1.b. above are satisfactory, prepare contracts for the consideration of Council, to enter into an agreement to supply the service; and
  - d. If negotiations noted in 1.b. above are unsatisfactory, enter into negotiations with the second highest ranked tenderer, as identified in confidential Appendix No. 1, Organic Waste Tenders – Tender Evaluation Panel Report, with a view to resolving the matters identified in appendix 1; and
  - e. If negotiations noted in 1.d. above are satisfactory, prepare contracts for the consideration of Council, to enter into an agreement to supply the service; and
  - f. During negotiations referred to in 1.b and 1.d. above, a WHS verification be undertaken of the relevant tenderer to confirm implementation of the WHS Management System processes and procedures described in the submitted tender; and
  - g. During negotiations referred to in 1.b. and 1.d. above, a financial capability appraisal be undertaken of the relevant tenderer; and
  - h. If negotiations noted in 1.d. above are unsatisfactory, seek a further report from staff outlining options for addressing the waste issues identified in the

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Background section to this report.

- B. In respect of T903C - Green & Organic Waste Collection and Bin Supply, Council;
- a. Decline to accept any tender for the reason that no tender fully addresses or delivers on Council's needs. Do not invite fresh tenders or applications as there is a high likelihood that one of the two highest ranked tenderers can address and satisfy Council's needs; and
  - b. Enter into negotiations with the highest ranked tenderer, as identified in confidential Appendix No. 1, Organic Waste Tenders – Tender Evaluation Panel Report, with a view to resolving the matters identified in appendix 1; and
  - c. If negotiations noted in 2.b. above are satisfactory, prepare contracts for the consideration of Council, to enter into an agreement to supply the service; and
  - d. If negotiations noted in 2.b. above are unsatisfactory, enter into negotiations with the second highest ranked tenderer, as identified in confidential Appendix No. 1, Organic Waste Tenders – Tender Evaluation Panel Report, with a view to resolving the matters identified in appendix 1; and
  - e. If negotiations noted in 2.d. above are satisfactory, prepare agreements for the consideration of Council, to supply the service; and
  - f. During negotiations referred to in 2.b. and 2.d. above, a WHS verification be undertaken of the relevant tenderer to confirm implementation of the WHS Management System processes and procedures described in the submitted tender; and
  - g. During negotiations referred to in 1.b. and 1.d. above, a financial capability appraisal be undertaken of the relevant tenderer.
- C. Council record in the minutes of this meeting, the names of the first and second ranked tenderer for each tender.

**Background:**

Prior to the commencement of the current Waste Strategy Project, Council's previous long term waste strategy was to participate in a regional solution where all Mixed Solid Waste (MSW) from Maitland, Cessnock, Newcastle and Lake Macquarie LGAs would be delivered to a central point for processing. The process was modelled to achieve 70% diversion of waste from landfill, generate energy, and in addition to processing 100% of collected domestic waste, would have had capacity to receive and process commercial waste streams. To deliver this solution, the four Councils formed a company, Hunter Integrated Resources (HIR), to manage procurement and administration of the service.

The delivery of the service was delayed by the complexity of the solution, which at the time of conception would have been unprecedented in Australia. There was also significant difficulty in obtaining assurances from relevant State agencies about

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regulations that would govern the operation of the plant and the products emanating from the facility. Finally, the advent of the Global Financial Crisis led to a dramatic and unaffordable increase in the cost of delivering the processing facility. These barriers led to the project being abandoned by mutual agreement of the parties involved.

With the demise of a regional solution to waste management, the other pressures on Council's existing waste management services have become more pressing. The most critical issues driving the need for an urgent response include;

**Awaba Waste Management Facility (AWMF) Capacity:** Council's only active landfill at Awaba has limited capacity to continue accepting waste. Under the terms of the existing approval for the site, it has a maximum estimated life of 3 years and 8 months as at December 2011. This capacity is based on the most recent volumetric survey of the facility undertaken (December 2011) and assuming the full approved air space can be utilised. It is likely that practical limitations associated with the operation of the site will act against 100% of the approved capacity being realised.

**Waste Levy:** In order to discourage land filling, the NSW Government charges a levy, on a per tonne basis, for all material that is disposed of in a landfill. The levy for Lake Macquarie is set at \$78.60 per tonne for FY 2011/12 and is scheduled to increase by \$11.50 (plus CPI) per tonne, per year until 2015/16. In total, Council forfeited \$6.8 million to the NSW Government in waste levies in the 2010/11 financial year. The cost of the levy to the Lake Macquarie waste service is likely to be about \$18.7 million by 2016 if no increase in diversion away from landfill is achieved and the long term growth trends in waste generation continues.

**Carbon Tax:** Landfill operations generate greenhouse gases through the anaerobic decomposition of organic materials interred within them. Methane and nitrous oxide are two examples of gases considered to be very harmful greenhouse gases. Methane is targeted in the federal Clean Energy Futures Carbon Pricing Mechanism (CPM - the "Carbon Tax") legislative package.

The AWMF will be captured by the legislation as its current emissions exceeds the 25,000 tonnes CO<sub>2</sub>-e CPM liability threshold. Council is unlikely to be able to reduce emissions at AWMF below the tax liability threshold through reduction of its input volumes.

While some matters associated with the CPM on landfills are still being resolved, meaning that it cannot be predicted with certainty, the estimated impact of the CPM on Council due to AWMF is a liability of \$1.2 million in year 1 (2012/13), increasing to \$1.6 million in 2015/16. From 2012 to 2015, the carbon price is set at \$23.00 per tonne of CO<sub>2</sub>-e. In 2016, the fixed price tax will be replaced by a flexible pricing mechanism, with a floor price set at \$15.00 per tonne of CO<sub>2</sub>-e, and a ceiling of \$20.00 above the international average carbon price. From 2018, the price will be entirely determined by the market value (ie. scarcity value) of carbon permits and credits. Therefore, the medium to longer term prediction of carbon liability for Council cannot be made with accuracy.

Overlaying this potential liability from landfilling operation is the potential for Council to mitigate its liabilities through measures such as the "carbon farming" initiative. Such measures may or may not be available to Council's waste management activities and the extent of their effect remains unknown at this time.

It should be emphasised that the figures provided above relate to a liability that will not necessarily fall due in the year it is created. The liability is generated by the volume, and potentially the composition, of waste being landfilled. The payment to be made in any

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year will be driven by the degradation rates modelled for the interred waste and are currently being modelled. Of that liability generated in year 1 referenced above (\$1.2 million), it is thought likely that the payment to be made in year 1 will about \$600,000, with the remainder of the liability falling due in subsequent years.

**NSW Waste Diversion Policies:** The NSW Government has adopted a policy of diverting a minimum of 66% of domestic waste from landfill by 2014. There are also diversion targets for Commercial and Industrial Waste (C&I, 63%) and Construction and Demolition Waste (C&D, 76%), also by 2014. These are known as the WARR Targets (Waste Avoidance and Resource Recovery). There is no legislative enforcement of these diversion targets as yet, however the government has three measures in place to promote compliance.

The waste levy is the strongest incentive to achieve compliance. The financial impact of the Levy on Council is outlined above. The other financial motivator is the Government's Waste and Sustainability Improvement Payment (WaSIP) scheme. WaSIP returns a small portion of the waste levy receipts to local government for sustainability activities, provided programs are in place to pursue compliance with the WARR targets. In the current financial year, Council's WASIP payment was \$1,123,665 and is expected to grow to about \$1.5 million in 2016.

The third plank of the NSW Government's waste diversion incentives is the limitation on new landfill facility approvals. The NSW State Environmental Planning Policy Infrastructure 2007 (ISEPP), states in part that (bolding added);

*(1) In determining a development application for development for the purpose of the construction, operation or maintenance of a landfill for the disposal of waste, including putrescible waste, the consent authority must take the following matters into consideration:*

*(a) whether there is **a suitable level of recovery of waste**, such as by using alternative waste treatment or **the composting of food and garden waste**, so that the amount of waste is minimised before it is placed in the landfill,*

The effect of ISEPP is to wed any prospect of Council obtaining approval for any increased or new landfill capacity, to its performance against the NSW waste diversion targets. This policy recognises that landfilling is likely to be a part of the waste management solution into the future, but it cannot be used in isolation of diversion. Amongst the diversion solutions cited, Councils preferred strategy of composting food and green waste is specifically nominated.

**Community Expectations:** The work undertaken to formulate the 10 Year Community Plan identified a community expectation that Council, in its operations and services, should become more sustainable over time. In the 2009 community plan, the environment ranked very highly (2<sup>nd</sup> in importance) amongst Council's areas of responsibility. The current domestic waste management system does not maximise the City's contribution to environmental stewardship due to the large volumes of resources being discarded to landfilling. Though satisfaction with current waste management services ranks highly amongst residents, it would be reasonable to expect that satisfaction will fall away as costs rise (e.g. due to the waste levy & carbon tax) without a commensurate improvement in environmental performance.

Council surveyed its residents specifically on waste issues in November, 2009. The results of that survey included;

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- Limited support for the transfer of waste from Lake Macquarie to another LGA (38% 'would not' and 33% 'may' support).
- Concern about the volume of waste generated in the City (51% concerned and 25% very concerned).
- Significant support for the introduction of kerbside green waste collection service (82% 'would' support, 10% 'maybe would' support).

During consultation on the draft waste processing technology for the City in November 2010, majority support for a three bin, source separated organics system was received. The exhibition of the draft processing technology decision as well as a random telephone survey of residents resulted in the following feedback;

- 64% of submissions to the draft strategy exhibition preferred a third bin and 22% preferred two bins.
- 69% of telephone survey respondents preferred three bins as the best option for their household, 18% preferred a two bin system and 9% would be satisfied with either.

The main reasons offered in exhibition submissions for preferring a third bin were;

- Satisfaction and support for Council in taking an environmentally sustainable direction with waste management.
- Preference for the high quality compost from the three bin system and the community involvement in taking responsibility for sorting their own waste.
- Additional space to dispose of green waste.
- Some residents are unable to home compost or had been unsuccessful in their attempts to home compost or could not use all the compost generated, and so the three bin system allowed them to participate in this practice.
- It is the cheaper of the two preferred options (ie. three bin vs. two bin system)

The main reasons offered in the community survey for preferring a third bin were;

- Better for the environment
- Better management of green waste
- Better compost would be produced
- More cost effective/cheaper
- We need the green bin as we have a lot of green waste
- Good/great idea, would love it to go ahead
- Experienced with similar systems either at home or in other council areas
- Less waste going into landfill/Awaba tip
- More convenient way to recycle garden waste and food scraps
- Easier system, both for Council and residents

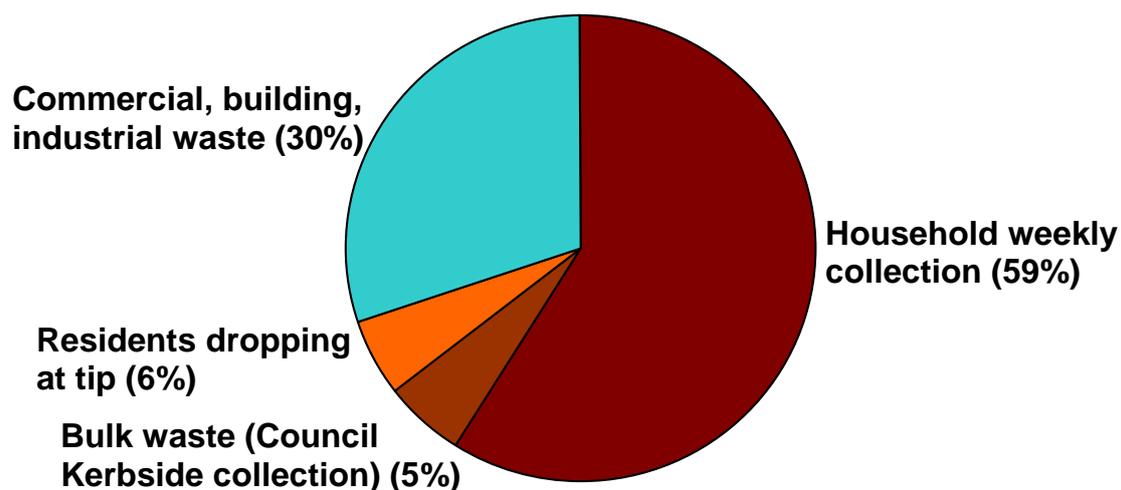
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**Prioritising the Response:** In responding to these drivers, Council has been informed by extensive knowledge of the waste streams being generated in the City. To minimise costs, achieve diversion targets, achieve environmental goals and meet community expectations, efforts have been targeted towards the most significant and responsive waste streams.

Domestic Waste is being targeted because domestic waste currently comprises 70% of all material presenting at Awaba for filling. Council maintains detailed records of the source of the waste that enters the Awaba site for landfilling and domestic waste streams are the largest. The following graph depicts the sources:

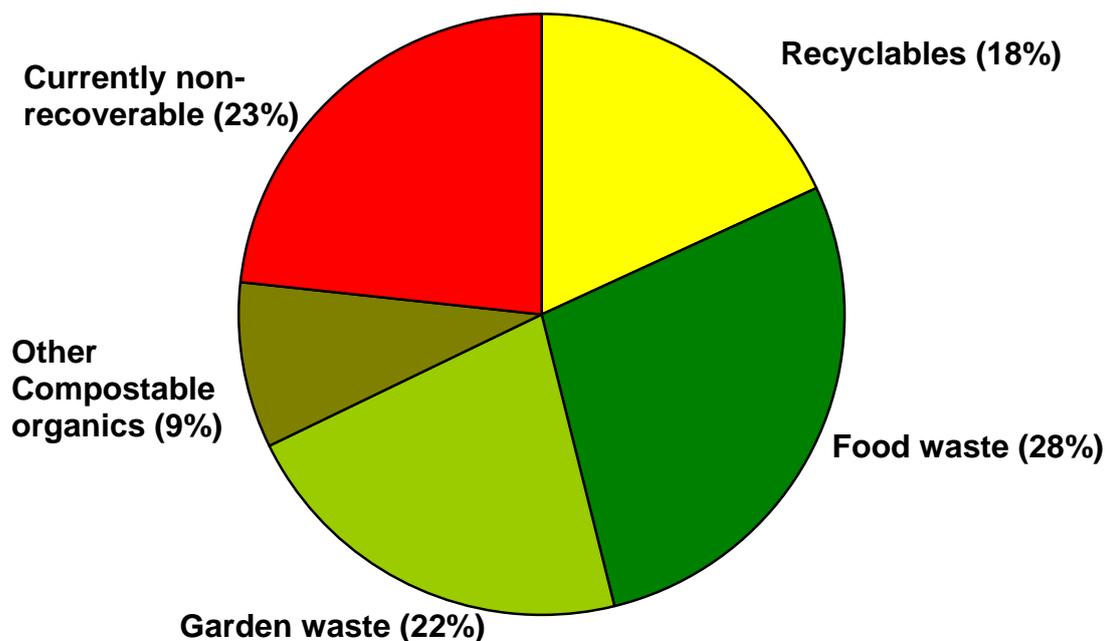
*Graph 1: Waste Presented at Awaba from audit – Lake Macquarie, May 2010*



As well as the volume of domestic waste that needs to be dealt with, the makeup of that waste within the domestic stream indicates where the best opportunities to divert waste are. In particular, only about 23% of what is typically deposited in a Lake Macquarie residential mobile garbage bin (MGB) cannot be readily diverted away from landfilling. The typical proportions are shown in the following graph:

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Graph 2: Bin contents from audit – Lake Macquarie, July 2010



The above graph shows the average contents of MGB's audited in Lake Macquarie in July 2010. The section of the graph coloured red and labelled "Currently non-recoverable (23%)" depicts that portion of the MSW Stream that can't be easily retrieved for reprocessing or reuse. The recyclables (18%) fraction of the waste stream can potentially be diverted through the existing kerbside recycling service. The three green shaded sections of the graph, compostable organics (9%), garden waste (22%) and food waste (28%) could be processed through the preferred processing technology adopted by Council in February 2011.

Due to the extent of the MSW and the organic fractions within it, solutions that target those particular waste components are key to devising an effective waste strategy.

**No Regrets Activities:** At the outset of the Waste Strategy Project, a number of no regrets activities were identified. These activities are considered *No Regrets* as they make a positive contribution to the City's waste management problem regardless of the eventual choice made by Council on a waste solution. Progress has been made on those activities and reported previously:

- EOI, Provision of Waste Processing and/or Disposal Project (Awaba Waste Diversion)
- Proposed Capacity Extension – Awaba Waste Management
- Awaba Alternative Waste Treatment Site Acquisition
- Home Composting Trial, Phase 1 and 2

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**Waste Strategy:** In addition to the No-Regrets activities, Council sought to involve the wider Community and promote transparency in its decision-making by developing a waste processing strategy through a consultative process and informed by expert opinion. This involved a detailed analysis of the available options, many community forums, community surveys and the preparation of a draft proposal that was exhibited in conjunction with the primary alternative. That process is documented in a previous report to Council's City Strategy Committee meeting of 21 February 2011 (11STRAT006).

That analysis and report resulted in Council, at its meeting of 28 February 2011, resolving (11STRAT006) as follows:

- A. *Council adopt a waste processing strategy comprising;*
  1. *A phased, three bin, source separated organics (SSO) system with phasing of;*
    - a) *Phase 1 – a source generated green (garden) (SSG), fortnightly collection commencing as soon as is practicable;*
    - b) *Phase 2 – a source separated organics (garden and kitchen) (SSO), weekly collection commencing as soon as practicable;*
  2. *A weekly Mixed Solid Waste (MSW) collection during Phase 1 of the SSO system and a fortnightly MSW collection during Phase 2 of the SSO system.*
  3. *Continuation of a fortnightly dry recyclables kerbside collection.*
- B. *Prepare appropriate specifications and tender for the staged implementation of a three bin SSO service. Allow for non-conforming AWT variants within that tender.*
- C. *Request a further report examining options for waste service delivery to multi-unit dwellings in the City.*
- D. *Request a further report examining options for practical waste service user pay systems in the City.*

This report and the tender process it examines, is the outcome of the implementation of part B. of the above resolution.

**Waste Tenders:** Following Council's resolution of 28/2/11, Council staff worked with relevant industry experts, lawyers, financial advisors, and a probity advisor to prepare documentation to facilitate the necessary Tenders. The tender documentation was presented to Councillors at a briefing session on 21 November 2011. The documents were then reviewed by Council's Waste Advisory Committee (WAC) at its meeting of 22 November 2011. The WAC referred the documentation to the Council meeting of 28 November and Council noted its content.

Council's tenders were released on 30 November 2011 and closed on 3 April 2012. At the close of tenders, the following were received from the two RFT's:

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**T903P – Organic Waste Processing Project**

- Australian Native Landscapes Pty Ltd (ANL)
- EC Sustainable Environment Consultants (EC Sustainable)
- Remondis Australia Pty Ltd (Remondis)
- Thiess Services Pty Ltd (Thiess)
- Western Composting Technology Pty Ltd (Western Composting)
- Yeomans Engineering Pty Ltd (Yeomans)

A seventh processing tender was included within a collections tender, submitted within the provisions of the related Tender, 903C. That tender was ultimately excluded on the advice of Council's Probity Advisor:

*“on the basis that it was not correctly submitted under T903-P and could not fairly be evaluated under the evaluation criteria for T903-C.”*

Within the Australian Native Landscapes tender submission there were 6 distinct variants, and within the Thiess Services Pty Ltd tender there were 5 distinct variants. Other tenders included options or alternatives that do not require separate definition. That means Council received fifteen (15) tender proposals for its consideration.

A short description of Phase 2 (ultimate technology) for each follows;

Tenderer	Brief Description
ANL 1	Tunnel composting
ANL 2	Tunnel composting, higher volume, product packaging
ANL 3	Tunnel composting, off-site post treatment
ANL 4	Tunnel composting, split bin
ANL 5	Tunnel composting, split bin, higher volume
ANL 6	Tunnel composting, split bin, higher volume, off-site post treatment
EC Sustainable	Phase 1 only or decontamination trial
Remondis	Tunnel composting
Thiess 1	Open window, forced aeration, base fee option
Thiess 2	Open window, forced aeration, Council financing
Thiess 3	Open window, forced aeration, guaranteed volumes
Thiess 4	Sealed anaerobic, then open aerobic composting. Organic and MSW streams
Thiess 5	Manage LMCC sites. Contract to be negotiated

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Western Composting	Tunnel composting, including dry anaerobic processing
Yeomans	Bank of small scale, self-contained, composting machines. Food waste only

**T903C – Green & Organic Waste Collection and Bin Supply.**

- Solo Waste Pty Ltd (Solo)
- SMS Municipal Services Pty Ltd (SMS)
- SITA Australia (SITA)
- Remondis Australia Pty Ltd (Remondis)
- Waste Environment & Rangers Department (Operations Group) – Lake Macquarie City Council (WER)

Each tenderer submitted a bid providing for the bin and collections configurations specified in Council's tender documents. Within the SITA tender there was 2 distinct variants. One option being a third bin per the tender specification and a second option being a third green waste only bin and a split bin for MSW and food waste. That means Council received six (6) tender submissions for its consideration.

**Proposal:**

Under the regulations governing local government tendering, Council's options are limited to accepting a tender or declining all tenders. The proposal is to decline all tenders as there are minor shortcomings, relative to Council's needs, in all of the submitted tenders. At least four of the tenders (two for each tender) are extremely strong candidates and are likely to be able to meet Council's needs with additional explanation or minor modification. The proposal is to seek to achieve that satisfaction in negotiation with the highest ranked tender in each of the two RFT's, the subject of this report.

In the event negotiations with the highest ranked tender are not successful in satisfying Council's needs, it is proposed the second highest ranked tender be given the opportunity, through negotiation, to satisfy those needs.

During the negotiation phase, it would also be timely to undertake a due diligence audit incorporating the second stage of the WHS and Financial assessments of the relevant tenderers. This forms part of the recommendation.

The names of the specific tenderers, ranked highest and second highest, have not been included in the recommendation to this report. The purpose of doing that is to protect Council's options in the event it does not favour the course of action recommended. By not disclosing the ranking of the two preferred tenderers in the recommendation, Council would be able to revisit elements of the assessment, seek further analysis or information or negotiate in a different fashion without creating a perception of preference or obviating a commercial advantage.

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In the event Council does favour the recommendation, it is open to Council, and probably desirable from a transparency point of view, to identify the four preferred tenders by name in the resolution.

### **Consultation:**

Council undertook significant consultation with the community, special interest groups and the waste industry during formulation of its waste processing strategy. That consultation has been detailed in previous reports to Council, most comprehensively in the report on the Waste Strategy to the City Strategy Committee of 21 February 2011 (11STRAT006). That Committee Report includes a stand-alone appendix on the community consultation. That consultation demonstrated significant community support for the waste processing strategy adopted by Council.

In respect of the tender documentation, additional consultation occurred, including;

- Two industry forums and feedback sessions on key issues
- Circulation of draft documentation to registered prospective tenderers prior to the tender release;
- Lawyers engaged to advise on the contracts included in the tenders and schedules used in the tender documents to assess the tenders
- Financial advisor to advise on the tender return schedules
- Probity advisor
- A wide range of staff including those within the Waste Strategy Project Team, Executive, Finance and Administration, Mechanical Depot and Supply Services, Waste Environment and Rangers, Sustainability, Development Assessment and Compliance, Property, Corporate Solicitor's Office, Integrated Planning, and Customer Service and Communication Departments contributed to the tender.

### **Implications:**

#### ***Policy Implications:***

The recommendation to this report seeks to assist in implementing Council's adopted Waste Processing Strategy for the City. That being:

1. *A phased, three bin, source separated organics (SSO) system with phasing of;*
  - a) *Phase 1 – a source generated green (garden) (SSG), fortnightly collection commencing as soon as is practicable;*
  - b) *Phase 2 – a source separated organics (garden and kitchen) (SSO), weekly collection commencing as soon as practicable;*
2. *A weekly Mixed Solid Waste (MSW) collection during Phase 1 of the SSO system and a fortnightly MSW collection during Phase 2 of the SSO system.*

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*3. Continuation of a fortnightly dry recyclables kerbside collection.*

Council's preferred strategy was adopted at the culmination of an inclusive, transparent, and competent policy building exercise. The recommendation is consistent with that strategy.

Also relevant to Council's decision is the NSW Waste Avoidance and Resource Recovery Strategy which establishes a target 66% diversion of municipal waste from landfill by 2014. The recommendation to this report is unlikely to achieve the target within the timeframe, though may, but will almost certainly achieve that target in due course.

***Environmental Implications:***

Waste management is a major element of Council's environmental stewardship responsibilities with landfill operations being our largest greenhouse pollution risk and waste management overall a major element of our City's environmental impact.

Council's decisions around waste management have the potential to greatly affect the environmental footprint of the City as a whole. Resources consumed and preserved, local environmental impact, the generation of greenhouse gases, and influencing community knowledge and behaviour will all be affected by the City's waste strategy.

The determination of the tenders the subject of this report, facilitates a significant step towards the position Council has previously favoured for the City. In determining its preferences, Council acknowledged it was seeking a more environmentally sustainable waste management solution.

***Social Implications:***

The selection of a waste strategy will have social implications. The cost of Council services, the relative convenience of the services Council offers, the flexibility of services to meet individual needs, the generation of new employment opportunities, and the extent of education and community interaction are all elements of the service that can be characterised as social parameters.

The determination of the tenders the subject of this report, will facilitate a significant step towards the position Council has previously favoured for the City. In determining its preferences, Council acknowledged it was seeking a more socially engaged and responsive waste management solution that also represents the least cost option for City residents, increases local employment, the accommodation of some service customisation and continuation of the existing high convenience of the City's waste systems..

***Financial Implications:***

The recommendations to this report, if adopted, will result in a nominal financial commitments to Council. Specifically those costs will be related to the further investigations and negotiations nominated.

The eventual entering into contracts for the delivery of the services identified in the two RFTs will have much more significant financial implications for the City. A very positive

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outcome from the tenders has been the range of tender responses tending to the low side of previously modelled costs. This indicates the tender has been successful in generating financially competitive bids.

Proposals submitted under T903P - Organic Waste Processing have been quantified in the KPMG report, which forms part of attachment 1 to this report. The cost of the available solutions varies significantly, reflective of the range of options available for Council's consideration. The cost range of the most viable options are in the order of \$3.4 to \$5.8 million annually.

Proposals submitted under T903C – Collections and Bin Supply have also been quantified in the KPMG report. The range of costs for the most viable options under the collections contract are in the order of \$4.1 to \$4.8 million annually.

### ***Risk and Insurance Implications:***

The determination of the Waste Tenders represent a high risk activity. There is a significant financial exposure given the length of the terms that need to be offered and the scale of the services needed for a city of Lake Macquarie's size. As noted elsewhere in this report, expert financial advisors were engaged by Council to assist in the preparation of the tender documents and review the tender submissions. Their analysis has been comprehensive as evidenced by the TEP report (appendix 1). Further, the tender process outlined in the tender evaluation plan prescribes additional analysis by the finance expert of the financial capability of preferred tenderers and advice on the outcomes of any negotiation phase. This combination of analysis and advice provides mitigation of the financial risks arising from the tender.

There are risks associated with the successful performance of the contracts. These risks have been mitigated through the drafting of performance criteria, financial security, and resolution procedures into the tender documents (contracts). The tenders also require the successful tenderer(s) to work to a schedule in preparing for the delivery of their contracted service. This ensures that progress towards the agreed services can be tracked and problems identified and corrected as early as possible.

Finally, arising from the tenders, and the services sought, is exposure to work health and safety risks. The collection and processing of waste products includes inherent risks associated with the machinery used, the public places material is collected from, potential contamination within that waste and the processing of a non-homogenous material (organic waste). It was an important element of the assessment process that the capability of the WHS systems used by tenderers was evaluated. Tenderers who were not able to document acceptable standards of WHS have been highlighted by the TEP and are not recommended for the contracts. Council's expert WHS advisor has also recommended that a verification procedure for preferred tenderers be undertaken to confirm performance against submitted documentation. This is included in the recommendation.

In respect of insurance, tenderers were required to submit information regarding the currency of existing insurance coverage and commit to maintenance of that cover. Insurance is also prescribed in the contracts prepared for the tenders and forms part of the tender documentation.

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**Options:**

Council's options are prescribed in Clause 178 of the *Local Government (General) Regulation 2005* which states;

*178. Acceptance of tenders*

*(1) After considering the tenders submitted for a proposed contract, the council must either:*

*(a) accept the tender that, having regard to all the circumstances, appears to it to be the most advantageous, or*

*(b) decline to accept any of the tenders.*

*(1A) Without limiting subclause (1), in considering the tenders submitted for a proposed contract for the performance of domestic or other waste management services, the council must take into account whether or not existing workers (within the meaning of clause 170) will be offered employment or engagement on terms and conditions comparable to those applicable to the workers immediately before the tender was submitted.*

*(2) A council must ensure that every contract it enters into as a result of a tender accepted by the council is with the successful tenderer and in accordance with the tender (modified by any variation under clause 176). However, if the successful tender was made by the council (as provided for in [section 55](#) (2A) of [the Act](#)), the council is not required to enter into any contract in order to carry out the requirements of the proposed contract.*

*(3) A council that decides not to accept any of the tenders for a proposed contract or receives no tenders for the proposed contract must, by resolution, do one of the following:*

*(a) postpone or cancel the proposal for the contract,*

*(b) invite, in accordance with clause 167, 168 or 169, fresh tenders based on the same or different details,*

*(c) invite, in accordance with clause 168, fresh applications from persons interested in tendering for the proposed contract,*

*(d) invite, in accordance with clause 169, fresh applications from persons interested in tendering for contracts of the same kind as the proposed contract,*

*(e) enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender,*

*(f) carry out the requirements of the proposed contract itself.*

*(4) If a council resolves to enter into negotiations as referred to in subclause (3) (e), the resolution must state the following:*

*(a) the council's reasons for declining to invite fresh tenders or applications as referred to in subclause (3) (b)-(d),*

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*(b) the council's reasons for determining to enter into negotiations with the person or persons referred to in subclause (3) (e).*

The recommendation is that Council take one of the two options available to it, and that is to decline all tenders. In declining tenders, Council is obliged to nominate the reason and also state why it chooses to negotiate with a specific party. That reasoning has been incorporated into the recommendation. In particular is proposed to decline all tenders as no tender fully meets Council's needs as set out in the RFT or contains risk, perceived or adjudged, that requires further analysis. It is further recommended that fresh tenders are not called as the nature of the shortcomings and risks are not so fundamental that they are not likely to be repaired in direct discussion with the highest ranked tenderers.

The alternative is for Council to accept a tender for each, or one, of the RFT contracts from the pool of submissions.

While there are at least two submissions to each tender that represent a strong case for acceptance, they each do include an element or elements that require further explanation or modification in order to satisfy Council's needs, or address a requirement specified in the Council's original tender documentation. Accepting any tender as submitted would require Council to accept that elements of its original RFTs would be foregone. It is for that reason it is recommended that all tenders be declined.

**Conclusion:**

Endorsement of the recommendation will allow Council staff to continue to work towards a long-term waste management solution for the City. A solution that represents best value, community support, and environmental sustainability.

General Manager - Brian Bell

**Attachments:**

1. CONFIDENTIAL: Organic Waste Tenders – Tender Evaluation Panel Report  
Under separate cover.

## Placeholder for Attachment 1

Lake Macquarie Waste Strategy Project - T903P  
Tender for Organic Waste Processing Project and  
T903C Tender for Green & Organic Waste Collection  
and Bin Supply

CONFIDENTIAL: Organic Waste Tenders – Tender  
Evaluation Panel Report / Under separate cover.

## **Matters Referred - Monday 28 May 2012**

**12SP090            T914 Design Of Cardiff Streetscape Master Plan Electrical Relocation, & Design Of New Street & Pedestrian Lighting System– Stage 1**

**Tenders Panel at its meeting on 22 May 2012 resolved that the matter be referred to the Ordinary Council Meeting to be held on 28 May 2012.**

Council Ref:        F2012/00439/02 - D02538606  
Report By:         Project Management Coordinator - Kirrily Vincer

### **Précis:**

To recommend to Council that the Tender for the T914-Design of Cardiff Streetscape Master Plan electrical relocation and design of new street and pedestrian lighting system not be accepted.

Council invited tenders from suitably qualified organisations for the design of Cardiff Streetscape Master Plan electrical relocation and design of new street and pedestrian lighting system and one (1) tender was received. The received tender failed to comply with the specifications and did not provide sufficient information for evaluation to occur, and as such was deemed to be non-conforming. This report details the tender received, the assessment of the tender and makes a recommendation that tender for contract T914 be declined and that Council enter into negotiations with the organisation who submitted the tender with a view to formulation of a contract to complete the works.

### **Recommendation:**

- A. Council declines to accept T914 for the Design of Cardiff Streetscape Master Plan electrical relocation and design of new street and pedestrian lighting system and;
- B. Council enter into negotiations with the organisation who submitted the tender (Department of Finance and Services-NSW Public Works ) with a view to entering into a contract in relation to the subject matter of the tender in accordance with clause 178 3(e), of the *Local Government (General) Regulation 2005*.
- C. *In accordance with clause 178 4(a) of the Local Government (General) Regulation 2005: The reasons Council declines to invite fresh tenders is that:*
  - (a) *the initial tender process indicates there are limited persons willing to undertake the work, and*
  - (b) *the tender price received was well below the tender threshold and as such a tender process would not be required*

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D. *In accordance with clause 178 4(b) of the Local Government (General) Regulation 2005, the reason Council proposes to enter into negotiations with the Department of Finance and Services-NSW Public Works is because they are a reputable organisation, have the expertise and capacity to undertake the work as required, and it will result in a timely outcome for the overall project.*

### **Background:**

Council has prepared a Streetscape Master Plan for Cardiff and has received funding from the State Government to advance the implementation of the Master Plan.

The electrical design works are essential to the commencement of the work proposed in the Cardiff Streetscape Master Plan.

Tender T914 for the design of Cardiff Streetscape Master Plan closed at 2.00pm on Tuesday 1 May 2012.

One (1) Tender was received from:

- Department of Finance and Services- NSW Public Works 2-24 Rawson Place Sydney 2000.

The submitted Tender failed to provide a price for all of the work specified and as such is considered to be non-conforming.

Clarification was sought from the Tenderer as to why the price did not include all work specified. The advice received was that they did not have the time to price the second component of the specified work but can provide a price, and are able to undertake the work as specified.

It is also noted that the Tender price received was significantly lower than the tender threshold of \$150,000.00. The component not quoted is not likely to extend the total value of works above the \$150 000 threshold.

### **Proposal:**

That Council declines to accept the Tender from the Department of Finance and Services-NSW Public Works, and as per Clause 178 3(e) of the *of the Local Government (General) Regulation 2000*, enter into negotiations with them with a view to entering into a contract in relation to the Design of Cardiff Streetscape Master Plan electrical relocation and design of new street and pedestrian lighting system.

This course of action is due to the one received tender being considered non-conforming as it failed to supply sufficient information to allow detailed assessment to occur. The tenderer does however possess the ability to undertake this work and is a State Government entity. The Local Government regulation allows Council to decline to award tender and instead to approve the entry into negotiations with the view to formulation of a contract for these works. Due to the lack of other tenderers for this project, we do not believe that any benefit can be gained by readvertising of this tender.

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### **Consultation:**

Council Officers from City Projects, Purchasing, Sustainability, Safety Management and Property were consulted during the tendering and evaluation process.

### **Implications:**

#### ***Policy Implications:***

There are no policy implications from the recommendation of this report as the tender process and the recommendation are in accordance with the Local Government regulations, Council's Procurement Policy and other relevant procedures.

#### ***Environmental Implications:***

There are no environmental implications from the recommendation in this report.

#### ***Social Implications:***

Entering into discussions with the Department of Finance and Services - NSW Public Works with a view to entering into a contract for these works, will assist in meeting the time-frames of this project and provide vital design information to facilitate delivery of an improved streetscape for Cardiff town centre.

#### ***Financial Implications:***

Funds have been allocated by the State Government for this work, and entering into discussions with the tenderer will allow timely expenditure of these funds.

#### ***Risk and Insurance Implications:***

There are no insurance issues associated with this recommendation. The risk of not proceeding as per the recommendation is of potential future delays to this project.

### **Options:**

*As per Part 7, Division 4, Clause 178 of the Local Government (General) Regulation 2005 (Acceptance of tenders)*

1. After considering the tenders submitted for a proposed contract, the council must either:
  - (a) accept the tender that, having regard to all the circumstances, appears to it to be the most advantageous, or
  - (b) decline to accept any of the tenders.
2. A council must ensure that every contract it enters into as a result of a tender accepted by the council is with the successful tenderer and in accordance with the tender (modified by any variation under clause 176). However, if the successful tender was made by the council (as provided for in section 55 (2A) of the Act), the council is not required to enter into any contract in order to carry out the requirements of the proposed contract.
3. A council that decides not to accept any of the tenders for a proposed contract or receives no tenders for the proposed contract must, by resolution, do one of the

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following:

- (a) postpone or cancel the proposal for the contract,
  - (b) invite, in accordance with clause 167, 168 or 169, fresh tenders based on the same or different details,
  - (c) invite, in accordance with clause 168, fresh applications from persons interested in tendering for the proposed contract,
  - (d) invite, in accordance with clause 169, fresh applications from persons interested in tendering for contracts of the same kind as the proposed contract,
  - (e) enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender,
  - (f) carry out the requirements of the proposed contract itself.
4. If a council resolves to enter into negotiations as referred to in subclause (3) (e), the resolution must state the following:
- (a) the council's reasons for declining to invite fresh tenders or applications as referred to in subclause (3) (b)–(d),
  - (b) the council's reasons for determining to enter into negotiations with the person or persons referred to in subclause (3) (e).

**Note:** Where “tender” referred to above may be substituted with ‘quote’ if required.

### **Conclusion:**

Given that only one non-conforming submission was received for these works, it is recommended to decline to accept the tender.

As per the Local Government regulations, Council may, by resolution, enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender.

Given the time constraints on this project, the reputable nature of the Department of Finance and Services-NSW Public Works, and their ability and capacity to undertake the work, it is also recommended to resolve to enter into negotiations with them with a view to entering into a contract in relation to the subject matter of the tender.

### **Attachments:**

*Nil.*