

27/10/2023

Ms [REDACTED]
Director, Sector Performance and Intervention
NSW Office of Local Government
Locked Bag 3015
NOWRA NSW 2541

By email only: [REDACTED]@planning.nsw.gov.au, Olg@olg.com.au

Dear Ms [REDACTED]

Further Information – West Nowra Resource Recovery (Bioelektra) Project

I write to provide the OLG with additional information with respect to the inquiries undertaken by Council with respect to the West Nowra Resource Recovery (Bioelektra) Project.

1. Council refers to its responses to you dated:
 - (a) 9 June 2023 (**9 June Letter**);
 - (b) 7 July 2023 (**7 July Letter**);
 - (c) 10 August 2023 (**10 August Letter**);
 - (d) 20 September 2023 (**20 September Letter**); and
 - (e) 25 September 2023 (**25 September Letter**)(collectively, the **Letters**).

2. Council has now concluded all of its inquiries in connection with its contract with Bioelektra Australia in respect of the Shoalhaven Resource Recovery Facility. Unless there is any further request for information from you, this letter is intended to be a final update from Council to you on the issues arising out of the liquidation of Bioelektra Australia and the termination of the contract between Council and the company.

[REDACTED]

3. [REDACTED]
[REDACTED]
[REDACTED] determined that:

- (a) Council did not receive the Delivery Phase Bank Guarantee (to the value of \$2,000,000.00) which Bioelektra Australia was required to provide under the Contract as a precondition to gaining access to the site as defined in the Contract; and
- (b) Payment Milestone 2 had not been achieved. In October 2022, Council received a request from the Contractor for the payment of Payment Milestone 2, and the Principal's Representative's delegate, in administering the claim for payment of Payment Milestone 2, did not apply the strict definition of Payment Milestone 2 as set out in the Contract.

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] - Independent Certifier

6. The Contract required the Council and Contractor to engage an Independent Certifier (**IC**) on or about 23 December 2020 (**the Contract date**). This did not occur.

7. In August 2021 Bioelektra Australia provided Council officers with three IC proposals [REDACTED]
[REDACTED]
8. On 24 January 2022, it appears that a Council officer signed a deed proposed by [REDACTED]. We do not have a complete copy of that deed to confirm it was validly executed, nor the record of any exchange of such a deed.
9. On or about 10 March 2022, the Contractor notified Council that the deed with [REDACTED] had been terminated by the Contractor.
10. On or about 15 March 2022, Council and the Contractor appointed [REDACTED] as IC in the form of the Independent Certifier deed annexed to the Contract [REDACTED]
[REDACTED]
11. The engagement of the IC does not appear to have been compliant with the requirements of the Contract. The IC does not appear to have been included in the assessment of the claims for Payment Milestone 1 or 2. As at the date of the termination of the Contract, the IC was still engaged pursuant to the [REDACTED] Deed.
12. The [REDACTED] Deed was terminated by Council by letter dated 6 October 2023. No claims for payment or communications have been received by Council and Council considers the IC issue at a close.

Next Steps

13. [REDACTED] Council will implement. These include:
 - (a) As part of a comprehensive, dedicated project governance framework for use by Council and its staff include specific consideration of / develop policies relating to the engagement and role of an Independent Certifier in Council project agreements. This should include practical guidance on designing the requirements of the IC role, scrutinising IC proposals and administering a contract involving an IC.
 - (b) Review current Council procurement policies applicable to engaging an IC as a form of contractor to ensure efficacy and where an IC is engaged, mandate formal scheduled meetings between Council and the IC.

- (c) Conduct a review of Council's financial and asset management policies where it relates to funding decisions and risk management practices.
- (d) Create a comprehensive, dedicated project governance framework for use by Council and its staff, complete with robust oversight mechanisms and policies for efficiently and effectively administering capital projects. This should be conducted in conjunction with the development of the charter and governance of the Project Management Office which Council has already established in response to this matter.
- (e) Conduct a review of Council's Risk Management Policy and any relevant supporting material to improve efficacy and prescription in a procurement context.
- (f) [REDACTED]

14. Council will also be undertaking a review of Council's future waste management strategy. The initial steps in that review will include:

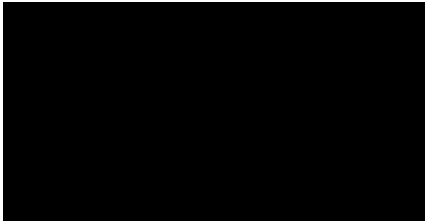
- (a) Executive and Senior Council Staff to consider green waste and red waste alternative waster technology solutions and undertake without prejudice discussions with possible providers and partners.
- (b) The outcome of those discussion and considerations to be the subject of a workshop with elected Councillors to understand broadly their appetite for further investigation, with that workshop to be proceeded by a further report to Council seeking a resolved direction on the City's red waste and green waste management in the future.

15. The process and progress of the implementation measures listed above will be monitored via regular reporting to Council's Audit Risk and Improvement Committee and Executive Management Team.

16. Council will provide regular updates to the OLG should it wish to be kept informed of Council's actions arising from this matter.

If you need further information about this matter, please contact [REDACTED] Director -
City Services on (02) 4429 3111.

Yours faithfully



Chief Executive Officer