

10 August 2023

██████████
Director, Sector Performance and Intervention
NSW Office of Local Government - Nowra
Locked Bag 3015
Nowra NSW 2541

By email only: olg@olg.nsw.gov.au

Attention: ██████████

Dear ██████████,

Bioelektra Australia Pty Ltd

1. Council refers to your letter of 16 May 2023 received on 17 May 2023.
2. Council also refers to its responses to you dated:
 - a. 9 June 2023 (**9 June Letter**); and
 - b. 7 July 2023 (**7 July Letter**).
3. Following the 7 July Letter, Council has now concluded its inquiries with the assistance of its external solicitors. This letter is an update as foreshadowed in paragraph 28 of the 7 July Letter.

Delivery Phase Bank Guarantee

4. As set out in the 7 July Letter, Council did not receive the Delivery Phase Bank Guarantee (to the value of \$2,000,000) which the Contractor was required to provide under the Contract as a precondition to access to the site.
5. On the basis of a review of relevant documents and interviews with project staff conducted by Council's external solicitors, Council's external solicitors have concluded that:
 - a. In January 2022 and March 2022, Council staff requested that the Contractor provide the Delivery Phase Bank Guarantee as required under the Contract.
 - b. The Contractor advised the Principal's Representative's delegate at some time after March 2022, that the Delivery Phase Bank Guarantee was to be provided by its financier (Cerberus), however it would not be in a position to provide the

Delivery Phase Bank Guarantee until a later date, namely when material construction activities were to commence on site.

- c. The Principal's Representative's delegate consented to the Contractor providing the Delivery Phase Bank Guarantee at a later date than required under the Contract, namely at the point that material construction activities were to commence on site.
- d. At the time of the administration of the Contractor, the Delivery Phase Bank Guarantee had not been provided.

Payment Milestone 2

- 6. As set out in the 7 July Letter, the Payment Milestone 2 (as defined in the Contract) was not achieved.
- 7. On the basis of a review of relevant documents and interviews with project staff conducted by Council's external solicitors, Council's external solicitors have concluded that:
 - a. In October 2022, the Contractor made a claim for payment of Payment Milestone 2.
 - b. After receiving the claim for payment of Payment Milestone 2, the Principal's Representative undertook an assessment of the value of the work undertaken by the Contractor and formed the view that it had undertaken works in excess of the cumulative value of the Payment Milestones 1 and 2. On this basis, the Principal's Representative's delegate authorised the payment of Payment Milestone 2.
 - c. 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.

Quantity Surveyor Report

- 8. Council engaged independent consultants, MIEngineers to undertake a project progress value assessment. MIEngineers have provided their report dated 8 August 2023 (**QS Report**), which we **enclose**. The QS Report has determined the value of the project works to date to be in the order of between \$2.2 million to \$2.8 million.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Council considers that it has answered all of the matters raised in your correspondence. If you need further information about this matter, please contact [REDACTED], City Performance on (02) 4429 [REDACTED]

Yours faithfully

[REDACTED]

[REDACTED]

Chief Executive Officer (Acting)