

17 August 2023

Bioelektra Australia Pty Ltd (in Liquidation)
c/-Trent Andrew Devine
Liquidator of Bioelektra Australia Pty Ltd
Jirsch Sutherland
GPO Box 4256
SYDNEY NSW 2001

By Email: roberta@jirschsutherland.com.au

Shoalhaven City Council ABN 59 855 182 344 (Principal)
Bioelektra Australia Pty Limited ACN 619 263 473 (In Liquidation) (Contractor)
West Nowra Resource Recovery Park Stages 1 & 2(Project)

TERMINATION NOTICE (Clause 54.3.1)

The Principal and Contractor are parties to a contract dated 23 December 2020 in relation to the Project (Contract).

This is a notice in writing for the purposes of clause 54.3.1(a) of the Contract that the Principal hereby terminates the Contract with effect from the date of this letter because a Contractor Default Event has occurred.

Clause 54.1 sets out the Contractor Default Events for the purposes of the Contract.

Contractor Default Events

Pursuant to clause 54.1 of the Contract, the following Contractor Default Events have occurred:

1. Pursuant to clause 54.1.1. of the Contract, a Contractor Default Event occurs if an Event has not occurred or been achieved by the relevant Sunset Date despite any other provision of this Agreement.

Particulars

The Contractor has failed to achieve Completion by the Date for Construction Completion and the relevant Sunset Date being 4 months after the Date for Construction Completion.

The Contractor has failed to achieve Practical Completion by the Date for Practical Completion and the relevant Sunset Date.

The Contractor has failed to achieve Operation by the Date for Operation and the relevant Sunset Date.

2. Pursuant to clause 54.1.4 of the Contract, a Contractor Default Event occurs if the Contractor Abandons the Activities.

Particulars

In accordance with clause 1.1 of the Contract, Abandon is defined as being when the Contractor has not performed any significant part of the Activities for a continuous period of 45 days and the Principal has reasonably determined the Contractor has formed the intention not to continue the Activities.

The Contractor was last on site to conduct the Activities on or about 2 February 2023 (Last Activity Date). The Last Activity Date was over 45 days prior to the date of this Notice.

Given the above the Principal reasonably determines that Contractor has formed the intention not to continue the Activities.

3. Pursuant to clause 54.1.7 of the Contract, a Contractor Default Event occurs if the Contractor is in material breach of the Environmental Protection Licence and in material breach of the Contractor's Obligations under Clause 9.3.1. by failing to comply with all Environmental Law.

Particulars

Clause 9.3.1 requires the Contractor to comply with all Environmental Law in connection with the Project, including the Environmental Protection Licence issued by the NSW Environmental Protection Authority (EPA) on or about 19 June 2017 (EPL).

In or about July 2023, a Representative of the EPA contacted Council in respect of sediment controls at the Project site and substantial concerns with respect to contamination of the Project site and surrounding environment.

4. Pursuant to clause 54.1.8 of the Contract, a Contractor Default Event occurs if External Funding is cancelled or ceases to be available to the Contractor (whether in whole or in part) due to the fault of the Contractor and this materially adversely affects the Contractor's ability to comply with its obligations under the Project Documents.

Particulars

External Funding has been cancelled or ceased to be available to the Contractor and this materially adversely affected the Contractor's ability to comply with its obligations under the Project Documents.

As set out in clause 54.3.2, the Contractor is not entitled to any payment or other consideration and may not make any other Claim upon the termination of the Contract.

As set out in clause 54.3.3, the Principal's remedies and rights, and the Contractor's Liabilities, will be the same as they would have been under the Law governing this Agreement had the Contractor repudiated this Agreement and the Principal elected to treat this Agreement at an end and elected to recover damages.

Council reserves all of its rights.

Yours faithfully

A handwritten signature in black ink, appearing to read 'S. Dunshea', with a stylized flourish at the end.

Stephen Dunshea
Chief Executive Officer