

CL23.263 Considerations - Contract with Bioelektra Australia Pty Ltd for West Nowra Resource Recovery Facility

HPERM Ref: D23/314713

Department: Business Assurance & Risk

Approver: Kerrie Hamilton, Director City Performance

Attachments: 1. CONFIDENTIAL Legal Advice - Project Agreement - Bioelektra (Confidential - under separate cover)

Reason for Report

That Council consider its position with respect to the West Nowra Resource Recovery Park Stages 1 & 2 Project Agreement with Bioelektra Australia Pty Ltd (Bioelektra Australia) dated 23 December 2020 (the Contract).

Recommendation

That Council

1. Resolve to terminate, effective immediately, the West Nowra Resource Recovery Park Stages 1 & 2 Project Agreement with Bioelektra Australia Pty Ltd dated 23 December 2020 (the Contract) pursuant to Clause 54.3.1(a) of the Contract.
2. After the issuance of the Termination Notice, publish a copy on the Council website.

Options

1. Pursuant to Clause 54.3.1(a) of the Contract, Council exercises its right to terminate the Contract on the grounds that there have been a number of Contractor Default Events.

Implications: This would return the site to the care and control of the Council and provide the Council opportunity to progress consideration of options with regard to future waste management strategies.

2. Choose to take no further action at this time.

Implications: Further consideration would need to be taken by Council on receipt of advice of winding up or otherwise by the liquidator. This option is not recommended as advice from the liquidator may be delayed creating uncertainty with regard to the management of the site and delays in considering future waste management strategies.

Background

Council received a report entitled 'CL23.161 Bioelektra Update' at the Ordinary meeting of the Council held on 22 May 2023 which outlined information with respect to Bioelektra Australia appointing Trent Andrew Devine as Voluntary Administrator.

On 16 June 2023, Creditors of Bioelektra Australia voted to place the company into liquidation. Trent Andrew Devine is the appointed Liquidator.

Work on the project site ceased on or about February 2023.

As at 7 August 2023, no proposal has been received from the Liquidator of a potential purchaser of Bioelektra Australia or of any expression of interest in the assignment of the Contract.

Confidential legal advice has been received with respect to the options available to the Council. The legal advice is confidential in accordance with Section 10A (2)(g) of the *Local Government Act, 1993*. The has been provided to Councillors under separate cover for consideration.

It is recommended that the Council terminate the contract on the grounds that there have been a number of Contractor Default Events which entitle Council to exercise its right to terminate under the Contract. Termination would have the effect of returning the site to the care and control of the Council and provide the Council the opportunity to promptly consider options with regard to future waste management strategies.

It is important that the Council considers its options with a view to mitigating any potential future losses on this project and to take steps in the protection of Council's commercial interest.