

Catherine Wiltshire

From: Dan Gordon
Sent: Friday, 21 October 2022 3:36 PM
To: [REDACTED]
Subject: Request for Quote - 2 Bangaroo St, North Balgowlah
Attachments: RFQ - Bangaroo St - Cunninghams.pdf; RFQ Services T&C s.pdf

Hi Andrew,

Thanks for your time on the phone earlier.

Please see attached for some site background. Council are looking to appoint someone very soon so when you get a moment, please take a look and confirm your interest.

Once you have had a chance to review the attached I'd be happy to set up a time to chat next week to work through any questions.

Thanks,
Dan

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RFQ 2022/XXX

PART B CONDITIONS OF CONTRACT

PART B – CONDITIONS OF CONTRACT

TABLE OF CONTENTS

PART B CONDITIONS OF CONTRACT	1
B1. DEFINITIONS AND INTERPRETATION	4
B2. CONSTRUCTION OF CONTRACT	6
B3. JOINT AND SEVERAL LIABILITY.....	7
B4. RELATIONSHIP	7
B5. ASSIGNMENT	7
B6. NOTICE.....	7
B7. SUBCONTRACTING	8
B8. NOVATION	8
B9. WAIVER.....	8
B10. NATURE AND TERM OF CONTRACT	8
B11. CONTRACTOR’S RIGHTS AND OBLIGATIONS	8
B12. CONTRACTOR’S PERSONNEL.....	9
B13. CONTRACT MATERIALS.....	9
B14. SITE	9
B15. COMPLIANCE	10
B16. CONFIDENTIALITY	10
B17. CONFLICT OF INTEREST AND FAIR DEALING	10
B18. GIPA ACT	11
B19. PRIVACY ACT	11
B20. STATE RECORDS ACT.....	11
B21. PUBLICITY	11
B22. INTER-RELATIONSHIP WITH THE AUDITOR.....	11
B23. KPI.....	11
B24. WORK HEALTH AND SAFETY	11
B25. PRINCIPAL CONTRACTOR.....	13
B26. ENVIRONMENTAL MANAGEMENT AND PROTECTION.....	13
B27. PERSONS AFFECTED BY ALCOHOL OR DRUGS.....	14
B28. ACCESS TO THE SITE.....	15
B29. ACCESS TO INFORMATION.....	15
B30. CONSULTATION	16
B31. OBLIGATIONS OF BOTH PARTIES	17

PART B – CONDITIONS OF CONTRACT

B32.	TIME CONSIDERATIONS.....	17
B33.	ACCEPTANCE OF SERVICES.....	17
B34.	LIQUIDATED DAMAGES	18
B35.	SUSPENSION BY COUNCIL.....	18
B36.	BANK GUARANTEE	18
B37.	GUARANTEE.....	19
B38.	PAYMENT.....	20
B39.	CONDITIONS PRECEDENT	21
B40.	GST.....	21
B41.	INTELLECTUAL PROPERTY	21
B42.	INDEMNITY.....	22
B43.	INSURANCE	23
B44.	VARIATIONS	25
B45.	DISPUTE RESOLUTION.....	26
B46.	COUNCIL’S LIABILITY.....	26
B47.	TERMINATION FOR THE CONTRACTOR’S DEFAULT OR INSOLVENCY	26
B48.	TERMINATION FOR COUNCIL’S CONVENIENCE.....	27
B49.	TERMINATION BY FRUSTRATION	28
B50.	MODERN SLAVERY.....	29
B51.	EXTENSION OF CONTRACT TERM	29
B52.	FEE REVIEW	29
B53.	POLICIES.....	29

PART B – CONDITIONS OF CONTRACT

B1. DEFINITIONS AND INTERPRETATION

In the Contract the following terms are defined as:

- (a) **Bank Guarantee** means an irrevocable bank guarantee in a form approved by Council from a bank trading in New South Wales under which the bank agrees to pay to Council on demand an amount not less than the amount specified in the Schedule;
- (b) **Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney or 27, 28, 29, 30 or 31 December;
- (c) **Commencement Date** means the Services commencement date specified in the Schedule;
- (d) **Contract** means the Contract, including the Schedule, all parts and attachments;
- (e) **Contractor's Representative** means the person nominated in the Schedule or as otherwise nominated by the Contractor in writing from time to time to act as its representative in relation to the Contract;
- (f) **Council** means Northern Beaches Council (ABN 57 284 295 198) and where appropriate means Council's Representative;
- (g) **Council's Representative** means the person nominated in the Schedule or as otherwise nominated from time to time by Council to act as its representative in relation to the Contract;
- (h) **Data** means drawings, sketches, specifications, digital records and computer software, and all other data and information relating to the Contract or the Services performed under the Contract;
- (i) **Date for Completion** means the date for completion, if any, specified in the Schedule;
- (j) **Date of Contract** means the date of Contract specified in the Schedule;
- (k) **Environmental Law** means any act and regulation and all other statutory requirements of the local, state and federal governments pertaining to the environment, including but not limited to the *Protection of the Environment Operations Act 1997* (NSW);
- (l) **Fee** means the fee payable by Council to the Contractor for satisfactory performance of the Services in accordance with the requirements of the Contract as set out in the Schedule of Fees and means:
 - (i) where the agreement is for a lump sum, that lump sum;
 - (ii) where the agreement is for the Services to be measured and valued, the sum of the products ascertained by multiplying the relevant rates and prices in the Schedule of Rates by the corresponding measured quantities of the Services performed; and

PART B – CONDITIONS OF CONTRACT

- (iii) where the agreement is for a lump sum and some measured and valued work or services, the aggregate of the sums referred to in clauses B1(l)(i) and B1(l)(ii),

excluding any additions or deductions which may be required to be made under the Contract;

- (m) **GIPA Act** means *Government Information (Public Access) Act 2009 (NSW)*;
- (n) **GST** means Goods and Services Tax;
- (o) **Intellectual Property Rights** are all current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, know-how, confidential information, patents, inventions and discoveries and all other intellectual property as defined in article 2 of the Convention Establishing the World Intellectual Property Organisation 1967 (as amended from time to time);
- (p) **Key Personnel** means the Personnel nominated in the Schedule;
- (q) **KPI** means the standards of the Services, if any, set out in the Contract;
- (r) **Modern Slavery** means, as applicable, the *Modern Slavery Act 2018 (NSW)* and the *Modern Slavery Act 2018 (Cth)* and their respective regulations and codes from time to time, as well as any other Law [Confirm defined in Agreement] regulating or governing Modern Slavery, slavery or human trafficking in any applicable jurisdiction where a Related Body Corporate or any of its Personnel performs an obligation under this Contract or Statement of Work;
- (s) **Personnel** includes employees, agents, consultants and subcontractors of the Contractor;
- (t) **Safety Law** means the *Work Health and Safety Act 2011 (NSW)* and its subordinate legislation, including, but not limited to the *Work Health and Safety Regulation 2011 (NSW)* and any other statute, rule, regulation, proclamation, ordinance, by-law, industry code, Australian Standard, present or future, whether local, state, federal or otherwise in respect of work, health and safety issues as varied from time to time;
- (u) **Schedule** means the schedule to these Conditions of Contract;
- (v) **Schedule of Fees** means the schedule to these Conditions of Contract that sets out the fees or rates payable by Council for the Services;
- (w) **Services** means the supply and delivery of all services required to be performed by the Contractor pursuant to the Contract and all ancillary or other services whether or not mentioned in the Contract necessary for the Contractor to fully meet the requirements of the Contract, including services or works required to be performed by sub-contractors in order for the Contractor to meet the requirements of the Contract;

PART B – CONDITIONS OF CONTRACT

- (x) **Site** means the location where the Services are to be carried out or performed and includes the location in respect of which work or services required for the Services are performed; and
- (y) **Statutory Requirements** means the laws relating to the Services or the Site, or the requirements of any authority or provider of services having jurisdiction over the Services, the Site, or anyone or anything connected with the Services or the Site.

B2. CONSTRUCTION OF CONTRACT

B2.1 In the Contract:

- (a) references to days mean calendar days and references to a person include any individual, company, partnership, association, corporation or any other body corporate and any government authority;
- (b) unless otherwise stated, time for doing any act or thing under the Contract will, if it ends on a Saturday, Sunday or statutory or public holiday, be deemed to end on the day next following which is not a Saturday, Sunday or statutory or public holiday;
- (c) clause headings in these Conditions of Contract will not form part of these Conditions and will not be used in the interpretation of the Contract;
- (d) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context;
- (e) words importing a gender include every gender;
- (f) communications between Council and the Contractor will be in the English language;
- (g) measurements of physical quantities will be in the legal units of measurement of Australia;
- (h) unless otherwise stated, all obligations of the Contractor under the Contract are at the sole expense of the Contractor;
- (i) the words 'including', 'in particular', and 'for example' are to be read as if followed by the words 'without limitation'; and
- (j) unless otherwise provided, prices are in Australian currency and payments will be made in that currency.

B2.2 The law governing the Contract, its interpretation and construction, and any agreement to arbitrate, is the law of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

B2.3 The Contract supersedes all prior statements, representations, contracts, arrangements and undertakings between the parties in relation to the subject matter of the Contract.

PART B – CONDITIONS OF CONTRACT

B2.4 If the Contractor discovers any ambiguity or discrepancy in any document prepared for the purpose of providing the Services, the Contractor must notify Council in writing of the ambiguity or discrepancy.

B2.5 In the interpretation of the Contract, no rule of construction applies to the disadvantage of one party on the basis that that party put forward or drafted the Contract or any provision in it.

B3. JOINT AND SEVERAL LIABILITY

Where any party consists of more than one person, the liability as between such persons as comprise that party to the other party will be joint and several.

B4. RELATIONSHIP

B4.1 Nothing contained in the Contract will constitute the relationship of partnership, joint venture or employer and employee between the parties.

B4.2 Neither party may act nor has the authority to act as agent of, or to bind the other party to any obligation and neither party will hold itself out as being the agent of the other party or as having the authority to bind the other party.

B5. ASSIGNMENT

B5.1 The Contractor may only assign or transfer the Contract or any payment or any other right, benefit or interest under it, with the written approval of Council which can be withheld at Council's absolute discretion.

B5.2 Council may assign or transfer the Contract or any right, benefit or interest under it at its absolute discretion.

B6. NOTICE

B6.1 Subject to clause B6.4, a notice or other communication required or permitted to be given by one party to another must be in writing and:

- (a) delivered personally;
- (b) sent by pre-paid mail to the address of the addressee specified in this Contract;
or
- (c) sent by email to the email address of Council's Representative, if Council is the addressee or to the email address of the Contractor's Representative if the Contractor is the addressee.

B6.2 A notice or other communication is taken to have been given (unless otherwise proven):

- (a) if mailed, on the second Business Day after posting; or
- (b) if sent by email, once the receipt is acknowledged by the addressee.

B6.3 A party may change its address for service by giving notice of that change in writing to the other parties.

PART B – CONDITIONS OF CONTRACT

B6.4 A notice to Council must be addressed to Council's Representative.

B7. SUBCONTRACTING

B7.1 The Contractor will not without Council's prior written approval, which approval will not be unreasonably withheld, subcontract or allow a subcontractor to subcontract any part of the Services.

B7.2 Except where the Contract otherwise provides, the Contractor will be liable to Council for the acts, defaults and omissions of subcontractors and employees and agents of subcontractors as if such acts, defaults and omissions were those of the Contractor.

B7.3 Approval to subcontract will not relieve the Contractor from any liability or obligation under the Contract.

B8. NOVATION

When directed by Council, the Contractor, without being entitled to compensation, will promptly execute a deed of novation, such deed being between Council, the Contractor and the contractor for the particular part of (or the whole of) the Services.

B9. WAIVER

The terms of the Contract cannot be amended or waived unless both parties agree in writing.

B10. NATURE AND TERM OF CONTRACT

B10.1 The Contractor agrees to provide the Services in accordance with the Contract and directions of Council authorised by the Contract for the Fee.

B10.2 The Contract will commence on the Date of Contract and end on the earlier of:

- (a) expiration of the term of the Contract specified in the Schedule;
- (b) date of termination of the Contract under clause B47; or
- (c) the date both parties fully discharge all of their obligations under the Contract.

B11. CONTRACTOR'S RIGHTS AND OBLIGATIONS

The Contractor warrants that:

- (a) it is qualified and has the experience necessary to perform the Services in accordance with the Contract;
- (b) it will exercise due skill and care that would be expected of a professional contractor experienced in performing services similar to the Services;
- (c) the Services will be provided in accordance with the purpose specified in the Contract; and
- (d) it has or will obtain and maintain during the term of the Contract the approvals of any relevant authority or professional body required to carry out the Services.

PART B – CONDITIONS OF CONTRACT

B12. CONTRACTOR'S PERSONNEL

- B12.1 If Key Personnel are specified in the Schedule, the Contractor must ensure that the Key Personnel perform the Services on its behalf. If the Key Personnel are unable to perform the Services, the Contractor must notify Council immediately and provide replacement Personnel equivalent in qualification, competency, skill and experience to perform the Services at no additional charge and at the earliest opportunity.
- B12.2 Council may direct the Contractor to have removed, within a stated time, from the Site or from any activity of the Services, any person employed on the Services who, in Council's opinion, is incompetent, negligent or guilty of misconduct.
- B12.3 The Contractor's responsibility for the performance of the Services and for the performance of its Personnel is not altered in any way by clause B12.1.
- B12.4 In carrying out the Services, the Contractor must:
- (a) where reasonably required by Council, provide suitable on-the-job training for all its Personnel engaged in providing the Services and ensure that its Personnel participate in any training exercises relating to the Services; and
 - (b) ensure that its Personnel are suitably qualified, have an appropriate level of competence and efficiency and are appropriately licensed and hold all required permits for providing the Services.

B13. CONTRACT MATERIALS

- B13.1 Except where the Contract otherwise provides, the Contractor will supply everything necessary for the proper performance of the Contractor's obligations and discharge of the Contractor's liabilities.
- B13.2 Unless otherwise provided, the Contractor will use suitable new materials.
- B13.3 Upon completion or termination of the Contract, the Contractor must promptly return to Council all materials and documentation provided by Council.
- B13.4 If applicable, the Contractor must obtain in the name of Council, and deliver to Council, all available supplier's and manufacturer's warranties and other warranties for work, goods, plant and equipment delivered or handed over to Council as part of the Services.

B14. SITE

- B14.1 The Contractor acknowledges and agrees that although any information provided by Council concerning the Site and any surrounding or otherwise related land (including information provided at the time of Tender) has been provided in good faith, Council does not warrant, guarantee or make any representations about the accuracy, quality or completeness of the information provided.
- B14.2 The Contractor will observe all rules and regulations in force at the Site and will comply with all notices and instructions issued by Council in relation to such rules and regulations.

PART B – CONDITIONS OF CONTRACT

B15. COMPLIANCE

- B15.1 The Contractor will comply, at its own cost and expense, with all Statutory Requirements.
- B15.2 The Contractor will comply with all relevant Australian Standards (if any) or equivalent in performing and providing the Services.
- B15.3 The Contractor must obtain at its own cost all licences, approvals and consents necessary to carry out the Services in accordance with the Contract, and pay all fees and give all necessary notices arising out of Statutory Requirements, other than those Council has arranged.

B16. CONFIDENTIALITY

Without the prior written permission of Council, the Contractor must and must ensure that its Personnel:

- (a) does not disclose or make public;
- (b) only use for the purpose of the Contract and return at the end of the Term of the Contract; and
- (c) does not appropriate, copy or in any way reproduce,

any information or material acquired or produced in connection with the Contract or in conjunction with anything relating to the internal affairs of Council.

B17. CONFLICT OF INTEREST AND FAIR DEALING

- B17.1 The Contractor represents and warrants that, as at the Date of Contract no actual or potential conflict of interest exists.
- B17.2 The Contractor will immediately notify Council in writing if it becomes aware of any actual or potential conflict of interest and will comply with all directions given by Council, which Council considers are necessary to address any actual or potential conflict of interest.
- B17.3 The Contractor agrees to comply and to act in accordance with the objectives, principles and requirements of Council's Statement of Business Ethics available at <https://files.northernbeaches.nsw.gov.au/sites/default/files/statement-of-business-ethics-mar21.PDF>

PART B – CONDITIONS OF CONTRACT

B18. GIPA ACT

The Contractor acknowledges that Council has obligations pursuant to the GIPA Act and warrants that it will at all times comply and will not do anything that may cause Council to be non-compliant with the provisions of the GIPA Act.

B19. PRIVACY ACT

The Contractor acknowledges that Council has obligations pursuant to the *Privacy and Personal Information Protection Act 1998 (NSW) (Privacy Act)* and:

- (a) warrants that it will at all times comply and will not do anything that may cause Council to be non-compliant with the provisions of the Privacy Act and any other statutory requirements relating to privacy including (but not limited to) in respect of retention, control, access, correction, use, disposal and information management; and
- (b) indemnifies Council against all and any costs, damage, actions and demands arising out of a breach of the Privacy Act and other statutory requirements relating to privacy regarding any information under the Contract.

B20. STATE RECORDS ACT

The Contractor must:

- (a) comply with its obligations under the *State Records Act 1998 (NSW)* to protect and manage State Records (as defined in the *State Records Act*); and
- (b) comply with all reasonable directions and requests from Council to facilitate Council's compliance with its obligations under the *State Records Act*.

B21. PUBLICITY

The Contractor must not furnish any information, make any statements or issue any documents or printed material about this Contract in any media without the prior written approval of Council.

B22. INTER-RELATIONSHIP WITH THE AUDITOR

Council may, at its absolute discretion, conduct, or engage an external agent to conduct auditing of the Services. The auditor may join the Contractor during provision of the Services as part of the auditing activities. The Contractor must fully cooperate with all such audits and must provide all assistance necessary.

B23. KPI

The Contractor must meet the KPIs.

B24. WORK HEALTH AND SAFETY

B24.1 The Contractor acknowledges and warrants that it is a 'person conducting a business or undertaking' (**PCBU**) as defined in the Safety Law.

PART B – CONDITIONS OF CONTRACT

- B24.2 The Contractor must:
- (a) comply with the obligations of a PCBU under the Safety Law;
 - (b) comply with Council's safety policies, procedures and requirements;
 - (c) ensure that all its employees and subcontractors engaged in the performance of the Services comply with the provisions of the Safety Law and Council's safety policies, procedures and requirements; and
 - (d) comply with the reasonable directions of Council's Representative regarding compliance with the Safety Law and the Principal's safety policies, procedures and requirements.
- B24.3 Upon request by Council's Representative, the Contractor must demonstrate that it has carried out, and will continue to carry out, its obligations under the Safety Law, including providing evidence of measures taken to achieve compliance.
- B24.4 The Contractor must immediately notify Council's Representative in writing of any **WHS Incident**, being any incident, event or circumstance that:
- (a) constitutes a breach of the Safety Law;
 - (b) is required to be reported under the Safety Law; or
 - (c) otherwise presents an actual or potential risk to life or a material risk to health and safety.
- B24.5 Where the Contractor notifies Council's Representative of a WHS Incident, the Contractor must:
- (a) provide the following information to Council's Representative in writing:
 - (i) particulars of the WHS Incident; and
 - (ii) the action that the Contractor proposes to take to remove or overcome the effects of the WHS Incident; and
 - (b) promptly remedy the breach or remove the effects of the WHS Incident.
- B24.6 If during the performance of the Contract, Council's Representative informs the Contractor that it is the opinion of Council's Representative that the Contractor is:
- (a) not carrying out the Services in accordance with the Safety Law or Council's safety policies, procedures and requirements; or
 - (b) carrying out the Services in a manner which may endanger the health and safety of any person on the Site, or in the vicinity of the Site,
- the Contractor must promptly remedy the breach or other problem identified by Council's Representative.

PART B – CONDITIONS OF CONTRACT

- B24.7 Where rectification of a non-conformance is required, Council's Representative may instruct the Contractor to suspend all or part of the Services until they can be safely resumed and the Contractor must comply with such an instruction at no cost to Council.
- B24.8 Failure by the Contractor to comply with any of the provisions of clauses B24 or B25 will entitle Council to take the following action:
- (a) Council may suspend payments due to the Contractor, notwithstanding any other provision of the Contract, until the 7th day after the required corrective actions have been carried out by the Contractor; and
 - (b) where the Contractor continues its failure to comply with the requirements of clause B24 or B25 (whichever is applicable), Council may immediately terminate the Contract by giving the Contractor notice in writing.
- B24.9 The Contractor must bear all costs and losses incurred in respect of:
- (a) compliance with the Safety Law and Council's safety policies, procedures and requirements; and
 - (b) the Contractor's breach of clauses B24 or B25, including but not limited to any reasonable costs or expenses arising out of suspension of the Services.

B25. PRINCIPAL CONTRACTOR

- B25.1 In this clause, Principal Contractor has the meaning set out in the *Work Health and Safety Regulation 2011 (NSW)* (**WHS Regulation**).
- B25.2 Council appoints and engages the Contractor as the Principal Contractor for the Services and authorises the Contractor to:
- (a) have the management or control of the workplace to the extent required by the *Work Health and Safety Act 2011 (NSW)*; and
 - (b) discharge the duties of the Principal Contractor under Chapter 6 of the WHS Regulation.
- B25.3 The Contractor may seek to engage another PCBU as Principal Contractor, in accordance with the procedure set out in the WHS Regulation, at no additional cost to Council and subject to the Contractor first obtaining Council's written consent.
- B25.4 Where the Contractor duly engages another PCBU as Principal Contractor, each party will remain responsible for performing all actions and discharging all obligations and responsibilities under the Safety Law and the Contract in respect of the Services. However, the Principal Contractor will be responsible for discharging additional duties in accordance with Chapter 6 of the WHS Regulation.

B26. ENVIRONMENTAL MANAGEMENT AND PROTECTION

- B26.1 The Contractor must carry out the Services in such a manner as to comply with all Environmental Laws and to avoid nuisance and damage to the environment.

PART B – CONDITIONS OF CONTRACT

- B26.2 If required by Council, the Contractor must prepare and implement a site-specific environmental Contractor management program for the Services, which must be submitted to Council's Representative prior to commencing any Services on the Site.
- B26.3 The Contractor must ensure that all its Personnel providing the Services on the Site are provided with environmental training to achieve a level of awareness and competence appropriate to their assigned activities. Personnel, without appropriate environmental training must not be permitted to provide the Services on the Site.
- B26.4 The Contractor must ensure that all Personnel providing the Services use plant and materials on the Site efficiently and so as to minimise all potential environmental impacts including noise, air quality, water quality, waste and contamination.
- B26.5 If required by Council, the Contractor must establish and maintain a register of environmental training carried out including names of persons trained, dates of training and trainer details.
- B26.6 Council's Representative may conduct audits on all aspects of the Contractor's management program and work activities.
- B26.7 Should any non-conforming work practices be detected or environmental controls fail to operate, the Contractor must immediately notify Council's Representative, and apply corrective and preventive action procedures to address any environmental management deficiencies.
- B26.8 Failure by the Contractor to comply with any provisions of clause B26 entitles Council to the following action:
- (a) Council may suspend payments due to the Contractor, notwithstanding any other provision of the Contract, until the 7^h day after the required corrective action has been carried out by the Contractor; and
 - (b) where the Contractor continues its failure to comply with the requirements of this clause, Council may terminate the Contract.
- B26.9 The Contractor bears all costs and losses incurred or sustained by it in the circumstances described in clause B26.

B27. PERSONS AFFECTED BY ALCOHOL OR DRUGS

- B27.1 The Contractor must fully inform itself and will comply with, and ensure that its Personnel engaged in providing the Services comply with, Council's Alcohol and Other Drugs Testing policy as detailed at <https://files.northernbeaches.nsw.gov.au/sites/default/files/alcohol-drug-testing-contractor-information-july2020.pdf>
- B27.2 The Contractor must ensure that Personnel engaged in providing the Services are not under the influence of any alcohol or drug when carrying out the Services.
- B27.3 The Contractor will ensure its Personnel performing the Services:
- (a) are aware of Council's Alcohol and Other Drugs Testing policy

PART B – CONDITIONS OF CONTRACT

- (b) agree to participate in random drug and alcohol testing by the Council when and if required by Council; and
- (c) consent to the results of any testing being disclosed to the Council and to the Council disclosing those results to the Contractor.

B27.4 If any of the persons undertaking the Services are:

- (a) affected by alcohol or drugs; or
- (b) refuse to consent to, or complete, drug and alcohol testing,

Council may direct the Contractor to have any Personnel or visitor of the Contractor who is under the influence of alcohol or drugs:

- (c) prevented from performing any of the Services; and
- (d) removed from the Site.

B27.5 The Contractor bears all costs and losses incurred or sustained by it in the circumstances described in clause B27.

B28. ACCESS TO THE SITE

B28.1 Council will give the Contractor sufficient access to the Site for the Contractor to provide the Services from the Commencement Date.

B28.2 Delay by Council in giving access to the Site will not be a breach of the Contract by Council. The Contractor may give notice under clause B32.5 if completion of the Services is likely to be delayed by any such delayed access to the Site.

B29. ACCESS TO INFORMATION

B29.1 The Contractor must keep all necessary records to ensure compliance with its obligations in clause B29.

B29.2 The Contractor must, within 7 days of receiving a written request by Council, provide Council with immediate access to all information that:

- (a) in any way relates to the Services; and
- (b) Council may require to comply with its obligations under the GIPA Act,

including any information:

- (i) collected by the Contractor from members of the public; or
- (ii) received by the Contractor from Council.

B29.3 For the purposes of clause B29.2, 'information' does not include information:

- (a) that discloses or would be likely to disclose the Contractor's financing arrangements, financial modelling, cost structure or profit margin;

PART B – CONDITIONS OF CONTRACT

- (b) the Contractor is prohibited from disclosing to Council by law; or
- (c) if disclosed to Council, could reasonably be expected to place the Contractor at a substantial commercial disadvantage in relation to Council, whether at present or in the future.

B29.4 The Contractor will provide copies of the information in clause B29.2, as requested by Council, at the Contractor's own expense.

B29.5 Any failure by the Contractor to comply with any request pursuant to clause B29.2 constitutes a Contractor's default and clause B47 will apply.

B30. CONSULTATION

B30.1 Council will take reasonably practicable steps to consult with the Contractor before providing any person with access to information relating to the Contract, in response to an access application under the GIPA Act, if it is apparent to Council that:

- (a) the information:
 - (i) includes personal information about the Contractor or its employees;
 - (ii) concerns the Contractor's business, commercial, professional or financial interests;
 - (iii) concerns research that has been, is being, or is intended to be, carried out by or on behalf of the Contractor; or
 - (iv) concerns the affairs of a government of the Commonwealth or another State (and the Contractor is that government); or
- (b) the Contractor may reasonably be expected to have concerns about the disclosure of the information and those concerns may reasonably be expected by Council to be relevant to the question of whether there is a public interest consideration against disclosure of the information.

B30.2 If, following consultation between Council and the Contractor, the Contractor objects to disclosure of some or all of the information, the Contractor must provide details of any such objection (including the information objected to and the reasons for any such objection) within 5 Business Days of the conclusion of the consultation process.

B30.3 In determining whether there is an overriding public interest against disclosure of government information, Council may take into account any objection received by the Contractor.

B30.4 If the Contractor objects to the disclosure of some or all of the information but Council nonetheless decides to release the information, Council will not release such information until it has given the Contractor notice of:

- (a) Council's decision; and
- (b) the Contractor's right to have Council's decision reviewed.

PART B – CONDITIONS OF CONTRACT

B30.5 Where Council has given notice to the Contractor in accordance with clause B30.4, Council will not release the information:

- (a) before the period for applying for review of the decision under Part 5 of the GIPA Act has expired; or
- (b) where any review of the decision duly applied for is pending.

B30.6 The reference in clause B30.5(a) to the period for applying for review of the decision under Part 5 of the GIPA Act does not include the period that may be available by way of extension of time to apply for review.

B31. OBLIGATIONS OF BOTH PARTIES

B31.1 The parties must co-operate in all matters relating to the Contract, but their rights and responsibilities under the Contract (or otherwise) remain unchanged unless the parties agree in writing to change them.

B31.2 Each party must ensure that at all times there is a person appointed to act with its full authority in all matters relating to the Contract, and must keep the other party informed of the name and contact details of that person.

B32. TIME CONSIDERATIONS

B32.1 The Contractor must commence the Services on the Commencement Date or on another date in writing required by Council.

B32.2 The Contractor must provide the Services, including supply of the deliverables, by the dates and in the manner required by the Contract.

B32.3 If a Date for Completion is specified in the Schedule, the Contractor must complete the Services before the Date for Completion.

B32.4 If no Date for Completion is specified in the Schedule, the Contractor must continue to provide the Services for the term of the Contract.

B32.5 In the event that the Contractor becomes aware of a matter that is likely to delay or affect the performance of the Services, the Contractor must give written notice to Council detailing the circumstances, extent or likely extent of the delay, and the effect on the performance of the Services.

B32.6 Should the completion of the Services be delayed by causes beyond the reasonable control of the Contractor, Council will amend or extend the Date for Completion for such delay. Any such amendment or extension of the Date for Completion is the sole remedy under the Contract for any such delay. The Contractor is not entitled to claim delay costs for any such amendment or extension of the Date for Completion.

B33. ACCEPTANCE OF SERVICES

B33.1 Council will, within 14 days of receiving the deliverables and on completion of the Services (or other time as agreed between the parties) notify the Contractor whether it accepts the deliverables and the Services.

PART B – CONDITIONS OF CONTRACT

B33.2 Council may reject the supply of the deliverables and provision of the Services that in Council's reasonable opinion do not comply with the Contract.

B33.3 Where Council rejects the supply of the deliverables or provision of the Services, the Contractor will promptly rectify any defects or re-perform any unsatisfactory Services at no additional cost to Council.

B34. LIQUIDATED DAMAGES

B34.1 If the amount of liquidated damages is specified in the Schedule, this clause B34 applies.

B34.2 If:

- (a) the Contractor does not complete the Services by the Date for Completion; or
- (b) Council rejects the supply of the deliverables or performance of the Services as per clause B33.2,

liquidated damages in the Schedule will be due and payable by the Contractor to Council for every day after the Date for Completion to and including the earlier of the date:

- (a) the deliverables and the Services are accepted by Council – in case of rejection; or
- (b) the Contract is terminated by Council.

B34.3 The parties agree that the amount of liquidated damages specified in the Schedule is a genuine and reasonable pre-estimate of the damage suffered by Council.

B34.4 Council's rights to liquidated damages in clause B34 are in addition to Council's right to terminate the Contract in accordance with clause B47.1.

B35. SUSPENSION BY COUNCIL

B35.1 Council may instruct the Contractor to suspend progress of the Services and the Contractor must comply.

B35.2 The Contractor must resume carrying out the Services when instructed to by Council.

B36. BANK GUARANTEE

B36.1 If the amount for the Bank Guarantee is specified in the Schedule, this clause B36 applies.

B36.2 Before the earlier of the Commencement Date and the date that the Contractor is given access to the Site, the Contractor must deliver the Bank Guarantee to Council.

B36.3 If for any reason the Bank Guarantee held by Council is for less than the amount required, the Contractor will within 7 Business Days of written notice from Council, provide to Council additional security by way of Bank Guarantee for such amount as is necessary to ensure that Council holds a Bank Guarantee for not less than the amount required.

B36.4 Council is entitled to recourse to the Bank Guarantee for any monies due but unpaid by the Contractor to Council under the Contract and for any damages due by the Contractor

PART B – CONDITIONS OF CONTRACT

to Council under the Contract or in connection with the Services or any failure to perform the Services in accordance with the requirements of the Contract.

B36.5 Subject to Council's rights to recourse to the Bank Guarantee as security for performance by the Contractor of the Services under clause B36.4, Council will deliver or return or release the Bank Guarantee (or so much of the Bank Guarantee as is then held by Council) to the Contractor on the later of the following dates:

- (a) date of termination or expiration of the Contract; and
- (b) the date that the Contractor completes performance of all the Contractor's obligations under the Contract and discharges all liabilities of the Contractor that are to be discharged.

B37. GUARANTEE

B37.1 If the Guarantor is specified in the Schedule, this clause B37 applies.

B37.2 In consideration of Council signing the Contract with the Contractor at the Guarantor's request, the Guarantor (as shown by the Guarantor signing the Contract):

- (a) guarantees to Council the punctual observance by the Contractor of all the Contractor's obligations under the Contract; and
- (b) unconditionally indemnifies Council in respect of any failure by the Contractor to perform any obligation under the Contract.

B37.3 Council and the Guarantor agree that this guarantee and indemnity

- (a) is a continuing guarantee and indemnity which is absolute and unconditional in all circumstances and will remain in force until all of the Contractor's obligations under the Contract are performed;
- (b) will not be discharged by the payment of any monies on account or by any concession given to the Contractor or to the Guarantor or to any other person or by any compounding, compromise, release, abandonment, waiver, variation, relinquishment or renewal of any of Council's rights against the Contractor or the Guarantor or any other person or by Council's failure to enforce any such rights or by any other thing whatsoever which but for this clause might abrogate, prejudice or affect this guarantee and indemnity or by any variation or addition to the Contract;
- (c) is in addition to any other rights which Council has under the Contract and can be enforced against the Guarantor without Council first having recourse to any other rights and without Council first taking any action against the Contractor; and
- (d) will not prejudicially affect or be prejudicially affected by any security held by Council under the Contract and that such security will be collateral and the Guarantor will not, as against Council, in any way claim the benefit or seek the transfer of any security.

B37.4 The Guarantor warrants that the Guarantor has full power and authority to enter into this guarantee and indemnity and that the Guarantor's obligations under this guarantee and

PART B – CONDITIONS OF CONTRACT

indemnity are in no way diminished, fettered or controlled by any deed or instrument including, but not limited to, any debenture trust deed relating to securities issued or given by the Guarantor.

B38. PAYMENT

B38.1 Within 10 days of the end of each milestone (if applicable) and, if milestones are not applicable, at the end of each month, the Contractor will prepare and submit a payment claim to Council for the Services satisfactorily performed in accordance with the requirements of the Contract in the previous milestone period or month. The payment claim must:

- (a) include detail sufficient to enable Council to identify:
 - (i) each deliverable or Service to which the payment claim relates;
 - (ii) the date on which each deliverable or Service is supplied or performed;
 - (iii) any Council reference including purchase order number (if relevant); and
 - (iv) the amount payable in respect of each deliverable or Service; and
- (b) be addressed to Council in accordance with the notice requirements in the Contract or as otherwise notified by Council in writing.

B38.2 Council will assess each payment claim within 10 Business Days of receipt of the payment claim and notify the Contractor of the amount assessed by Council as payable in respect of the payment claim. If the amount of Council's assessment of the payment claim is different from the amount claimed, the notice by Council must include a statement of Council's reasons for the difference.

B38.3 Upon receipt of Council's notice of assessment, the Contractor must issue a tax invoice that complies with the requirements in clause B38.5 (**Correct Valid Tax Invoice**) for the amount of Council's assessment.

B38.4 Council must pay the Contractor the Fee in the amount assessed by Council as payable under clause B38.2.

B38.5 A Correct Valid Tax Invoice:

- (a) includes detail sufficient to enable Council to identify:
 - (i) each deliverable or Service to which the invoice relates;
 - (ii) the date on which each deliverable or Service is supplied or performed;
 - (iii) any Council reference including purchase order number (if relevant); and
 - (iv) the amount payable in respect of each deliverable or Service;
- (b) is addressed to Council in accordance with the notice requirements in the Contract or as otherwise notified by Council in writing;
- (c) sets out any amount to be paid by Council as GST for any taxable supply; and

PART B – CONDITIONS OF CONTRACT

(d) is a valid tax invoice for the purposes of the GST law.

B39. CONDITIONS PRECEDENT

B39.1 The Contractor will not be entitled to a payment for the Services performed under the Contract until it has submitted:

- (a) a Correct Valid Tax Invoice;
- (b) proof of insurance in accordance with clause B43; and
- (c) if required by Council, a signed and completed 'Subcontractor's Statement regarding Workers Compensation, Pay-roll Tax and Remuneration' (**Subcontractor's Statement**). For the purposes of the Subcontractor's Statement the Contractor may be both a 'subcontractor' (to Council) and a 'principal contractor' (to the Contractor's contractors). The form may be downloaded from the Office of State Revenue website at:
<https://www.revenue.nsw.gov.au/help-centre/resources-library/opt011.pdf>

B39.2 If, for any reason, a payment by Council is less than the tax invoice amount or for any other reason an adjustment event occurs, the Contractor must issue an adjustment note as required under the GST law.

B39.3 If the Contractor disputes the payment by Council provisions of clause B45 will apply.

B40. GST

B40.1 The Fee is inclusive of GST. Where the Fee is described as excluding GST, the Fee under the Contract is that amount plus the GST payable for the taxable supplies to be provided in consideration for that Fee.

B40.2 Where supply is made and GST is included in the total amount payable by Council, the Contractor must provide a Tax Invoice (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) to Council with each claim for payment.

B41. INTELLECTUAL PROPERTY

B41.1 The Contractor acknowledges and agrees that all material, documents and Data (and all Intellectual Property Rights in such material, documents or Data) created or generated as a result of or in contemplation of the Contract vests in and is assigned to Council upon creation.

B41.2 The Contractor must include provisions in all subcontracts to ensure that Intellectual Property Rights in all materials, documents and Data created specifically for the Contract are vested in and assigned to Council upon its creation.

B41.3 Council grants to the Contractor and subcontractors a non-exclusive, non-transferable licence to use the Intellectual Property Rights, documents and Data owned by Council to the extent required for the Contractor and subcontractors to comply with their obligations under the Contract and related subcontracts and for no other purpose.

B41.4 For all Intellectual Property Rights, documents and Data owned by the Contractor, the Contractor grants to Council, upon payment by Council, a royalty-free, non-exclusive,

PART B – CONDITIONS OF CONTRACT

assignable, transferable, perpetual licence to use all of such Intellectual Property Rights, documents and Data which are in Council's reasonable opinion required for Council to adequately use the Services including sale, sub-licensing, maintenance, renewal, alteration and destruction.

- B41.5 Licences referred to in clauses B41.3 and B41.4 apply from the Date of Contract or upon payment or (if the Intellectual Property Rights, materials, documents and Data are not then available) from the date the Intellectual Property Rights, material, documents and Data become available (as applicable).
- B41.6 The Contractor indemnifies Council against any claims, actions and loss or damage arising out of any infringement of Intellectual Property Rights and moral rights in relation to the materials, documents and Data provided by or for the Contractor and used under the Contract or required to use the Services.
- B41.7 The Contractor must ensure that material, documents and Data (in its possession) created specifically for the Contract by or for the Contractor is only used by authorised parties for the purposes of the Contract.
- B41.8 The Contractor upon request of Council, will execute and procure the execution of all documents and do and procure the doing of all acts and things requested by Council for the purpose of giving effect to clause B41. The Contractor's obligations under this clause survive the expiration or earlier termination of the Contract.
- B41.9 The Contractor warrants that the Services will not cause Council to be in breach of any Intellectual Property Rights or moral rights of any third party.

B42. INDEMNITY

- B42.1 The Contractor indemnifies Council its members, employees, agents or contractors from and against all claims, actions, costs, expenses, loss or damage (including the costs of defending or settling any action or claim) including:
- (a) loss or damage to property of Council;
 - (b) loss or damage to any property of a third party;
 - (c) personal injury or death to any person; and
 - (d) any other liability, loss or damage and any claims, actions, suits, demands, expenses or proceedings of whatever nature in respect of breach of contract, breach of any warranties or representations, breach of a statutory duty, professional negligence or other error or omission arising out of or in connection with the Contractor's performance of the Contract.
- B42.2 The Contractor's responsibility to indemnify Council under clause B42.1 applies to the extent that an act or omission of the Contractor, its employees, agents or contractors causes or contributes to an injury, death, loss or damage is reduced proportionally to the extent that a negligent act or omission of the Council has contributed to the injury, death, loss or damage.
- B42.3 If urgent action is required to avoid death, injury, loss or damage, and the Contractor does not take the necessary action immediately when Council requests it, Council may

PART B – CONDITIONS OF CONTRACT

take the action (without relieving the Contractor of its obligations) and any costs so incurred by Council becomes a debt due and payable from the Contractor to Council on demand and may be set-off or reduced from the Fee or by recourse to any security for performance provided by the Contractor.

B42.4 Indemnities in clause B42 survive termination or expiration of the Contract.

B43. INSURANCE

Type, level and duration of cover

B43.1 The Contractor must take out and maintain the insurance policies detailed below (**Relevant Insurance Policies**) in relation to the Services:

Type of Cover	Level of Cover	Duration of Cover
Public Liability	Sufficient to cover the Contractor's potential liabilities under the Contract, minimum \$20 million for any one occurrence, unlimited as to the number of occurrences during each annual period of insurance.	Term of the Contract.
Professional Indemnity	Minimum \$10 million for any one claim and in the aggregate.	Term of the Contract plus 7 years.
Workers Compensation	In accordance with statutory requirements.	In accordance with statutory requirements.
If the Contractor is a sole trader or partnership: Either Personal Accident and Illness Insurance or Salary Continuance Insurance for the sole trader or partners.	Personal Accident and Illness Insurance – Death and Disability cover with a sliding scale of not less than 3 times the Contractor's average annual income. Salary Continuance Insurance – be at least 75% of the Contractor's average weekly earnings in the event of injury.	Term of the Contract.

PART B – CONDITIONS OF CONTRACT

Type of Cover	Level of Cover	Duration of Cover
Property Loss or Damage	Sufficient to cover loss or damage to property of Council, the Contractor and third parties if such loss or damage is caused by or contributed to by the Contractor or any of its Personnel.	Term of the Contract.

Contractor's general insurance obligations

B43.2 The Contractor must:

- (a) take out and maintain the Relevant Insurance Policies with a reputable and substantial insurer;
- (b) punctually pay all premiums and charges payable in relation to the Relevant Insurance Policies;
- (c) upon request, provide Council with a certificate of currency for the Relevant Insurance Policies;
- (d) do all things, and provide all documents, evidence and information necessary to enable Council to collect or recover any monies due or to become due in respect of any Relevant Insurance Policy;
- (e) not do, permit or omit anything that gives rise to the cancellation of, or a material change or reduction in, any Relevant Insurance Policy;
- (f) where Council considers that additional insurance may be necessary to cover liabilities that may arise during the performance of the Contract, consult with Council about these matters, including, in particular, about the level of premium payable; and
- (g) where, after consulting with the Contractor, Council requires the Contractor to take out a particular policy of insurance (in addition to the policies of insurance already held by the Contractor), or to increase the level of cover under an existing policy, do all things necessary to obtain that additional policy, or to take out that additional cover, as the case may be, in accordance with Council requirements (including, if required by Council, taking out the policy in the joint names of Council and the Contractor, or having the name of Council noted in the policy as a joint insured) and Council must reimburse the Contractor the extra premiums the parties agree are required to comply with Council request.

B43.3 Without limiting in any way the Contractor's obligations in clause B43.2, if the Contractor fails to comply with clause B43, Council may take out insurances required under this clause B43. Any amount paid by Council for such insurances will be payable by the Contractor to Council on demand as a debt due and payable or may be set-off or reduced from the Fee or by recourse to any security for performance provided by the Contractor.

PART B – CONDITIONS OF CONTRACT

B44. VARIATIONS

Variations by Council

B44.1 Council during the term of the Contract may direct, in writing, the Contractor to vary the Services by any one or more of the following:

- (a) increase, decrease or omit any part;
- (b) change the character or quality;
- (c) change the levels, lines, positions or dimensions;
- (d) carry out urgent or additional services; and
- (e) demolish or remove material or work no longer required by Council.

B44.2 Subject to clause B44.4, Council may direct the Contractor to give a detailed variation proposal for the proposed variation supported by measurements or other evidence of cost.

B44.3 The Contractor will as soon as practicable or within the specified timeframe after receiving a notice under clause B44.1 notify Council whether the proposed variation can be effected together with, if it can be effected, the Contractor's estimate of the:

- (a) effect on supply of the deliverables and performance of the Services; and
- (b) cost (including all time-related costs, if any) of the proposed variation.

B44.4 Any variation in the scope or services directed under this clause B44 will lead to an adjustment in the Fee for the varied work (either increased, decreased, omitted or removed services) and the amount of the Fee variation will be calculated using the following in order of precedence:

- (a) by prior written agreement;
- (b) by applying the rates in the Schedule of Fees;
- (c) by applying any rates or prices used as part of the tender process (if applicable) even though they are not contract documents, provided it is reasonable to use them; or
- (d) reasonable rates or prices having regard to the market and allowing a reasonable rate for profit but not allowing any additional amounts for on site or off site overheads.

Variations by Contractor

B44.5 The Contractor will not vary the Services except as directed in writing by Council.

B44.6 If the Contractor requests Council to direct a variation for the convenience of the Contractor, Council may do so at its sole discretion. The direction will be written and may be conditional. Unless the direction provides otherwise, the Contractor will be entitled to neither extra time nor extra money for any variation for the convenience of the Contractor

PART B – CONDITIONS OF CONTRACT

and Council may reduce the Fee if the variation causes any cost savings or reduction in the Services in any manner.

B45. DISPUTE RESOLUTION

- B45.1 All disputes must be resolved in accordance with clause B45 and, subject to clause B45.9, the parties will not attempt litigating until the dispute resolution procedures in this clause B45 are exhausted.
- B45.2 Either party may give written notice to the other party of an issue in connection with the Services or the Contract, within 14 days after becoming aware of the issue.
- B45.3 The notifying party is to provide particulars, including the factual and legal basis of any claimed entitlement.
- B45.4 Notwithstanding the existence of a dispute, the parties will, subject to clauses B45, B47 and other termination provisions in the Contract, continue to perform the Contract, but Council may, at its sole discretion, withhold the payment of money for the matter that is the subject of the dispute until the dispute is resolved.
- B45.5 Within 7 days of receipt of a notice, the parties will meet to attempt to resolve the dispute via negotiations.
- B45.6 If the negotiations fail and the dispute remains unresolved within 14 days from the date of the notice given under clause B45.2, that dispute will be referred to mediation. The mediation will be conducted in accordance with the Mediation Rules set out by the Institute of Arbitrators & Mediators Australia (**IAMA**) current at the time of mediation.
- B45.7 If within a further 14 days the parties have not agreed upon a mediator, Council will nominate the mediator.
- B45.8 The parties must act in good faith in any dispute resolution procedures under the Contract.
- B45.9 Nothing in clause B45 will prejudice the right of a party to seek injunctive or urgent declaratory relief.

B46. COUNCIL'S LIABILITY

Notwithstanding any other provision of the Contract, the liability of Council under the Contract is limited to the amount of the Fee as calculated under the Contract.

B47. TERMINATION FOR THE CONTRACTOR'S DEFAULT OR INSOLVENCY

- B47.1 Council may terminate the Contract for Contractor's default or Contractor's insolvency by giving notice, as set out in this clause B47.
- B47.2 In the case of Contractor's default, Council must first give notice to the Contractor that it has 7 days to remedy the Contractor's default.
- B47.3 If the Contractor fails to:
- (a) remedy the default within 7 days from the receipt of the notice; and

PART B – CONDITIONS OF CONTRACT

- (b) provide Council clear evidence that the Contractor has remedied the Contractor's default,

Council may give the Contractor a notice terminating the Contract.

B47.4 Nothing in this clause B47 affects or negates Council's common law rights to terminate or for damages.

B47.5 In the case of Contractor's insolvency, Council may give the Contractor a notice terminating the Contract.

B47.6 If Council terminates the Contract, it may retain others to complete the Services and all the following will apply:

- (a) the Contractor must leave the Site as soon as reasonably practicable and remove everything it has brought onto the Site for carrying out the Services, but must leave any specialist or other materials owned by the Contractor required by Council to have the Services completed;
- (b) the Contractor must assign to Council its rights and benefits in all contracts concerning the Services, warranties and undertakings, bank guarantees and retention held by the Contractor, with effect from the date of termination of its retainer under the Contract;
- (c) the Contractor must consent to a novation to Council of all its contracts concerning the Services, as required by Council. Council may at any time make payments and may deduct, withhold or set off any amounts to be paid under the novated contracts from amounts otherwise due to the Contractor or from any security or undertaking given on the Contractor's behalf, or both;
- (d) the Contractor must do everything and sign all documents necessary to give effect to this clause B47 and it irrevocably appoints Council as its attorney to do this in its name if it fails to do so;
- (e) if, on completion of the Services, the cost to Council of completing the Services exceeds the amount that would have been paid to the Contractor to complete them, then the difference is a debt payable due by the Contractor to Council upon reasonable verifiable documentary evidence of the amount claimed; and
- (f) Council may make provisional assessments of the amounts payable to Council under clause B47.6(e) and may demand them under the security or undertakings provided.

B48. TERMINATION FOR COUNCIL'S CONVENIENCE

B48.1 Council may terminate the Contract, by giving notice with effect from the date stated in the notice, for its convenience and without the need to give reasons.

B48.2 The Contractor must comply with any instructions of Council to wind down and stop work.

B48.3 The Contractor must leave the Site by the date stated in the termination notice and remove all plant, equipment and amenities it has brought onto the Site for performing the Services.

PART B – CONDITIONS OF CONTRACT

- B48.4 After termination under clause B48.1, Council must pay the Contractor:
- (a) the value of all Services carried out to the date the termination notice takes effect, taking into account all previous payments;
 - (b) the cost of materials, services and equipment reasonably ordered by the Contractor for the Services which it is legally liable to accept, but only if on payment for the materials, services and equipment they become the property of Council, free of any encumbrance;
 - (c) the reasonable, direct costs of removal from the Site incurred by the Contractor, but only if the Contractor complies with a strict duty to mitigate costs;
 - (d) an amount of 2% of the unpaid portion (taking into account clause B48.4(a)) of the Fee; and
 - (e) costs reasonably incurred by the Contractor in the expectation of completing the Services and not included in any other payment by Council.
- B48.5 Council must release the security and undertakings given, subject to its rights under the Contract.
- B48.6 The payments referred to in clause B48.4 are full compensation for termination under this clause B48, and the Contractor has no claim for damages or other entitlement whether under the Contract or otherwise in respect of such termination, but this is without prejudice to any antecedent rights arising from the performance of the Contract.
- B48.7 The Contractor must, wherever possible, include in all subcontracts and supply agreements an equivalent provision to this clause B48.

B49. TERMINATION BY FRUSTRATION

If the Contract is frustrated:

- (a) the Contractor will issue a Correct Valid Tax Invoice for Services carried out to the date of the frustration;
- (b) Council will pay the Contractor:
 - (i) the amount due to the Contractor evidenced by all unpaid Correct Valid Tax Invoices as assessed by Council; and
 - (ii) the cost of materials, services and equipment reasonably ordered by the Contractor for Services and cancellation charges which the Contractor is liable to accept, but only if they will become Council's property upon payment; and
- (c) each party will promptly release and return all security and undertakings provided by the other.

PART B – CONDITIONS OF CONTRACT

B50. MODERN SLAVERY

- B50.1 The Contractor must not, and must procure that each other Related Body Corporate and each member of their respective Personnel do not, engage in any activity that constitutes or involves Modern Slavery and comply with all applicable anti-slavery and human trafficking Laws in force from time to time including the Modern Slavery Laws;
- B50.2 The Contractor must, and must ensure that each other Related Body Corporate, and each member of their respective supply chains do, implement procedures to identify and eliminate Modern Slavery relating to their supply chains;
- B50.3 The Contractor must give Council all information relating to the due diligence procedures described in this clause B50 any other information requested by Council (acting reasonably) for the purposes of complying with the Modern Slavery Laws or any directions of a government agency, as an when required by Council (acting reasonably);
- B50.4 The Contractor represents and warrants that as at the date of this Contract:
- a) it does not, and will not, engage in any activity that constitutes or involves Modern Slavery in the performance of obligations under this Contract; and
 - b) it has investigated its practices and those of its Related Body Corporate's and is satisfied that there are no activities that constitute or could constitute or involve Modern Slavery engaged in anywhere in its business, operations or supply chain;
- B50.5 The Contractor indemnifies Council in respect of any claim, loss or damage suffered or incurred by Council arising out of or in connection with any breach of Council's obligations and warranties as set out in this clause B50.

B51. EXTENSION OF CONTRACT TERM

At any time and at least 28 days before the conclusion of the term of the Contract, Council may, in its absolute and unfettered discretion, exercise an option to extend the Contract by a further period of up to **<insert term>** by notifying the Contractor of its intention in writing.

B52. FEE REVIEW

Each year of the Contract occurring 12 months from the Commencement Date the Fee will be varied in accordance with the annual increase or decrease in the Consumer Price Index (Sydney All Groups) (**CPI**) published by the Australian Bureau of Statistics, as measured from the preceding year, if such a variation is requested in writing by either party at least one month prior to each anniversary of the Commencement Date.

B53. POLICIES

The following policies, procedures and plans must be complied with by the Contractor:

SCHEDULE – GENERAL CONDITIONS OF CONTRACT

PARTIES		
Council	Name ABN Address Telephone Email Council's Representative	Northern Beaches Council 57 284 295 198 1 Belgrave Street Manly NSW 2095 1300 434 434 Council@northernbeaches.nsw.gov.au
Contractor	Name ABN Address Telephone Email Contractor's Representative	
Guarantor	Name ABN Address Telephone Email Guarantor's Representative	
SITE		
SERVICES		
TERM OF THE CONTRACT		
SERVICES COMMENCEMENT DATE		

SCHEDULE – GENERAL CONDITIONS OF CONTRACT

DATE FOR COMPLETION <i>(indicate if not applicable)</i>	
KEY PERSONNEL <i>(indicate if not applicable)</i>	
BANK GUARANTEE <i>(specify the required amount or indicate as not applicable)</i>	
PAYMENT TERMS <i>(specify the terms of payment)</i>	

Quotation Request Form

To: Lachlan Yeates

A written quotation is sought to supply Northern Beaches Council with the following:

Title: EOI for Lot 1 DP 130467, Lot 2 DP 873792 Bangaroo St North Balgowlah

Background:

Lot 1 DP 130467 and Lot 2 DP 873792, Bangaroo St North Balgowlah are both owned by Northern Beaches Council. The land is known as 2 Bangaroo Road, North Balgowlah. Council has development consent to subdivide the land into three (3) residential blocks and a creekline public reserve under development consent DA2015/1156, valid until 6 June 2023 (see Appendix 1 - Additional Information).

The size of the land is 4,003sqm comprising Lot 1 - 2,517m² sqm and Lot 2 - 1,486m². Any sale would be subject to subdivision of the creekline corridor reducing the total saleable land to 3,011sqm. The majority of the land is zoned R2 – Low Density Residential under the Warringah LEP 2011 while the creekline corridor is zoned RE1 (Image 2 shaded in green).

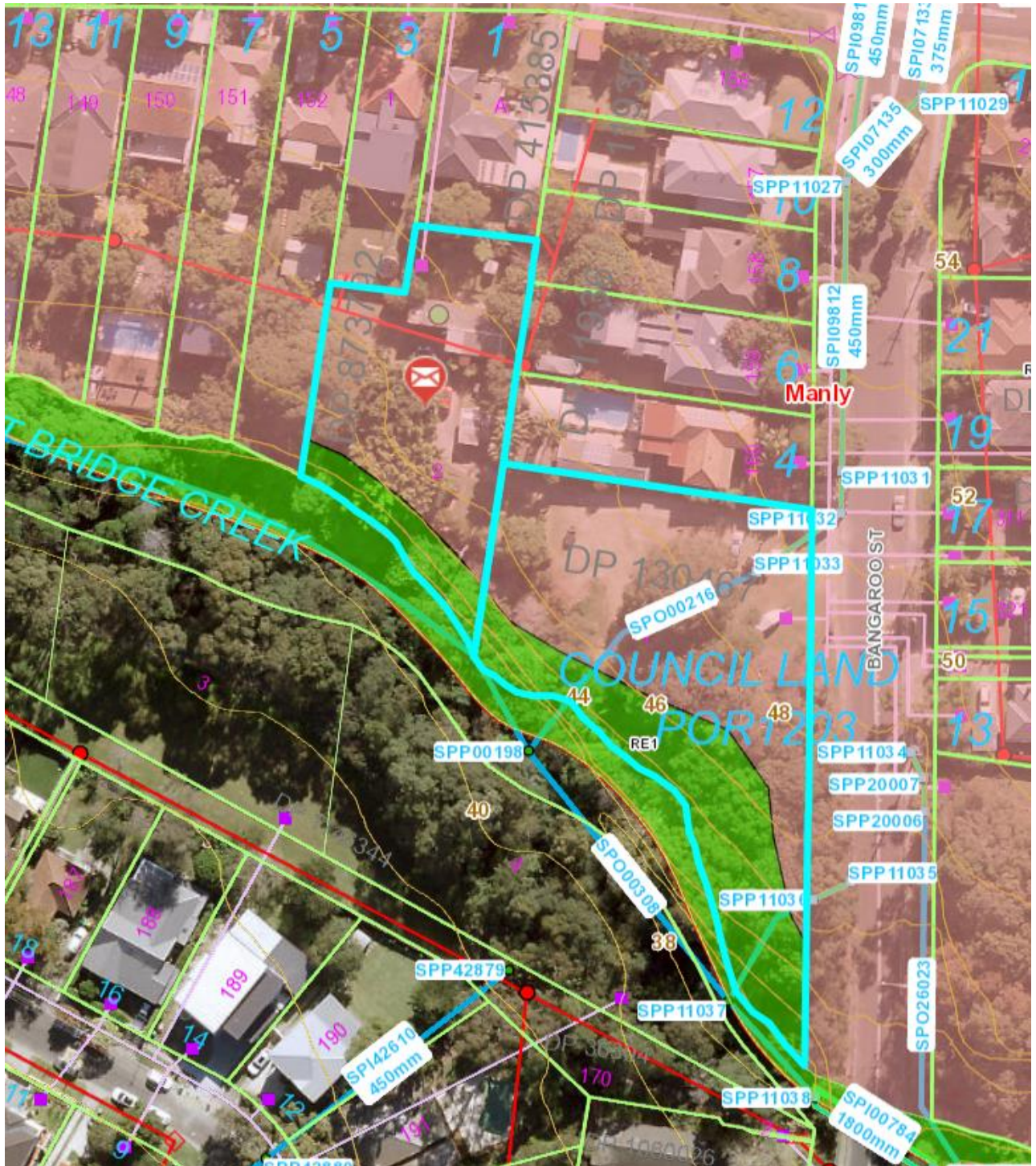
The two existing lots are located behind one another. Lot 1 in DP 130467 has a wide frontage to Bangaroo Street, while Lot 2 in DP 873792 is a battle-axe lot with a driveway access off Bangaroo Street. Both lots have a reasonably level building shelf situated at the northern end of the respective lots. The southern side boundary is formed by Burnt Bridge Creek. A significant portion of each lot falls away steeply to the creek. This rear land is heavily timbered with a large number of established trees and shrubs. Lot 1 is vacant and Lot 2 has a single story 3 bedroom dwelling erected upon it is in the vicinity of 50-60 years old and is currently rented.

Image 2 – Aerial Image of Lot 1 and Lot 2 hatched in red



Image 2 – Creekline Corridor

Green area bottom of Lot 1 and Lot 2 required to be subdivided and Council ownership maintained




Scope of Work:

Council is seeking a suitably qualified agent to run an EOI campaign for the freehold sale of the above lots in one line (excluding the creekline corridor).

Council has high pricing expectations that will be discussed with the appointed agent, however it should be known that if expectations are not met, the site will not transact. Respondents should factor this into their fee proposal.

<p>Should pricing expectations not be met Council may consider holding onto the land or progression of the subdivision and sale of the individual lots at a later time.</p> <p>Council is seeking to market the site as soon as possible however, your submission should consider and outline optimal campaign timing. Commencement and Completion dates will be discussed with the appointed agent.</p>	
<p>Location of Services / Delivery Point: N/A</p>	
<p>Terms and Conditions to apply: Council's standard terms and conditions apply, please see attached draft</p>	
<p>Required Commencement Date: TBC</p>	<p>Required Completion Date: TBC</p>
<p>Submissions to include:</p> <ul style="list-style-type: none"> • Details of agency team to be assigned to the project • Team track record (with particular reference to land/comparable development site sales) • Proposed commission structure should property transact • Proposed fee structure should the property fail to transact • Brief outline of marketing strategy • Proposed campaign timing • Opinion of value 	
<p>Quote to be submitted via: Email</p>	<p>By: 28/10/2022</p>

Requested By:	
<p>Name: Dan Gordon</p>	
<p>Position Title: Team Leader, Property</p>	
<p>Telephone: 0468 544 109</p>	<p>E-mail: dan.gordon@northernbeaches.nsw.gov.au</p>
<p>Address: 1 Boondah Rd, Warriewood</p>	
<p>Signature: </p>	<p>Date: 21/10/2022</p>

