

**ITEM 25. EXEMPTION FROM TENDER - RELOCATION OF FIBRE CABLES
BY OPTUS FOR NEW INTERSECTION OF GEDDES AVENUE AT
BOTANY ROAD**

FILE NO: S105612

SUMMARY

This report seeks an exemption from inviting tenders for works associated with the relocation of fibre cables by Optus Billing Services Pty Ltd (Optus) for the creation of a new intersection of Geddes Avenue at Botany Road between Bourke Street and Hansard Street.

The proposed essential infrastructure and public domain works for the Green Square Town Centre are part of the Green Square Urban Renewal program. The Town Centre is primarily located in the suburb of Zetland that covers an area of 13.74 hectares and includes land bounded by Botany Road, Bourke Street, Joynton Avenue and Hansard Street.

The development of the Town Centre involves the construction of a new road called Geddes Avenue that runs east-west and joins the existing Portman Street and Botany Road, thus creating a new intersection at Botany Road between Bourke Street and Hansard Street.

The creation of this new intersection requires the relocation of existing kerbs and utilities along Botany Road, including the relocation of existing local and international underground fibre cables. Local fibre cables are owned and operated by Optus, whereas the trans-Pacific submarine internet and content services cable network - which connects Australia, New Zealand, Fiji and Hawaii to the internet backbone on the United States West Coast - is owned and operated by Southern Cross Pty Ltd, an entity which is partly owned by Optus Billing Services Pty Ltd.

Optus, as the owner of the assets, has prohibited any other entity to carry out the subject works. Accordingly, this report requests approval to appoint Optus Billing Services Pty Ltd due to the extenuating circumstances set out in this report.

RECOMMENDATION

It is resolved that:

- (A) Council approve an exemption from inviting tenders for the relocation of fibre cables by Optus for the new intersection of Geddes Avenue at Botany Road, in accordance with section 55(3)(i) of the local Government Act 1993, as a result of following extenuating circumstances:
 - (i) Optus Billing Services Pty Ltd, as the asset owner of the subject cables, has determined the works to be non-contestable and prohibited any other entity to carry out the works;

- (ii) Optus Billing Services Pty Ltd has detailed knowledge of the risks involved in carrying out their relocation and ability to mitigate them by carrying out the works through their accredited contractors under their direct supervision; and
 - (iii) Optus Billing Services Pty Ltd has informed that, even though the subject works are non-contestable, Optus invited quotes from the pool of their accredited contractors and have selected the most competitive contractor to perform the works;
- (B) Council approve funds to be brought forward from the future years' estimates for the project as outlined in Confidential Attachment A to the subject report;
- (C) authority be delegated to the Chief Executive Officer to negotiate, execute and administer a contract with Optus; and
- (D) authority be delegated to the Chief Executive Officer to negotiate, execute and administer variations to the contract with Optus, if required.

ATTACHMENTS

Attachment A: Financial Implications for Optus Quotation (Confidential)

(As Attachment A is confidential, it will be circulated separately from the agenda paper and to Councillors and relevant senior staff only.)

BACKGROUND

1. The proposed essential infrastructure and public domain works for the Green Square Town Centre are part of the City's Green Square Urban Renewal program. The Green Square Town Centre is primarily located in the suburb of Zetland that covers an area of 13.74 hectares and includes land bounded by Botany Road, Bourke Street, Joynton Avenue and Hansard Street.
2. On 8 March 2013, the Central Sydney Planning Committee provided conditional consent to a Development Application (D/2012/1175) for Green Square Town Centre Essential Infrastructure.
3. The development of the Town Centre involves the construction of a new road called Geddes Avenue that runs east-west and joins the existing Portman Street and Botany Road, thus creating a new intersection at Botany Road between Bourke Street and Hansard Street.
4. Creation of this new intersection requires the relocation of existing kerbs and utilities along Botany Road.
5. The existing utilities include local and trans-Pacific internet and content services cable network which connect Australia, New Zealand, Fiji and Hawaii to the internet backbone on the United States West Coast.
6. Local fibre cables are owned and operated by Optus, whereas the trans-Pacific submarine cable network that runs along Botany Road and Bourke Street is owned and operated by Southern Cross Pty Ltd, an entity which is partly owned by Optus.
7. Due to the following extenuating circumstances, a satisfactory result would not be achieved by inviting tenders:
 - (a) Optus, as the asset owner of the subject cables, has determined the works to be non-contestable and prohibited any other entity to carry out the works;
 - (b) Optus has detailed knowledge of the risks involved in carrying out their relocation and ability to mitigate them by carrying out the works through their accredited contractors under their direct supervision; and
 - (c) Optus has informed that, even though the subject works are non-contestable, Optus invited quotes from the pool of their accredited contractors and have selected the most competitive contractor to perform the works;

FINANCIAL IMPLICATIONS

8. The total funds allocated within the current year's capital works budget and future years' forward estimates are sufficient to carry out the works.
9. Funds will need to be brought forward into the current year from the future years' estimates for the project as outlined in Confidential Attachment A.

RELEVANT LEGISLATION

10. Local Government Act 1993 and the Local Government (General) Regulation 2005 and the City's Contracts Policy.

11. The exemption from tender is sought in accordance with section 55(3)(i) of the Local Government Act 1993.
12. Attachment A contains confidential commercial information of the quotations and details of evaluations and contingencies which, if disclosed, would:
 - (a) confer a commercial advantage on a person with whom Council is conducting (or proposes to conduct) business; and
 - (b) prejudice the commercial position of the person who supplied it.
13. Discussion of the matter in an open meeting would, on balance, be contrary to the public interest because it would compromise Council's ability to negotiate fairly and commercially to achieve the best outcome for its ratepayers.

CRITICAL DATES / TIME FRAMES

14. The main works for construction of new streets within the Green Square Town Centre - involving Geddes Avenue, Paul Street (north of Geddes Avenue), new intersection of Geddes Avenue/Botany Road including road, kerbing and footpath works along eastern side of Botany Road (between Bourke Street and Hansard Street) - are scheduled to commence in the 2nd quarter of 2016.
15. Hence, it is important that the works for the relocation of fibre cables are completed prior to the commencement of abovementioned works.
16. The works for the relocation of fibre cables are scheduled to commence in February 2016 and completed within approximately two months of the works commencement.

AMIT CHANAN

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