

**ITEM 9. EXEMPTION FROM TENDER – HAROLD PARK PUBLIC OPEN
SPACE EMBELLISHMENT**

FILE NO: S111762

TENDER NO: 1534

SUMMARY

The Harold Park Public Open Space Embellishment and stormwater harvesting project is being undertaken at the former Harold Park Paceway site. The purpose of the project is to embellish the open public space transferred to the City as part of a Voluntary Planning Agreement (VPA) with Mirvac. Embellishment works are being completed by the City and are funded by a monetary contribution from the developer secured under a VPA agreement. The site includes 3.8 hectares of open space that will be used for recreation purposes, and community facilities with supporting infrastructure.

In October 2013, the quantity surveyor, Wilde and Woollard Pty Ltd (Wilde and Woollard), was engaged via a competitive quotation process to provide services throughout the early design and planning phases. This engagement included service provision throughout the concept design, design development, tender and construction phases of the project.

On 12 May 2014, Council resolved to endorse the project scope for the Harold Park new open space. On 14 September 2015, Council resolved to accept the tender offer of Ford Civil Contracting Pty Ltd (Ford Civil).

Construction works commenced in November 2015 and are now near completion. During construction and after a series of storm events earlier this year, it was identified that there were drainage issues created by latent on-site conditions which presented as excess water not moving through the site.

Additional works, scope and services are now required to implement drainage changes required to resolve identified issues. Hydraulic design work is currently underway to finalise the scope of these drainage changes. Additional consultancy advice and construction services are required to support these works.

This report seeks an exemption from tender to increase the contract contingency of the existing Quantity Surveyor due to the extended construction period and additional services required to complete the project.

This report also seeks to increase the overall project budget to fund the requested increase in contingency and to also fund a number of other additional project costs detailed within this report.

On finalisation and verification of the hydraulic drainage design, it will be necessary to submit a further report to Council. The subsequent report will seek Council approval for additional budget to implement the verified drainage design.

RECOMMENDATION

It is resolved that Council:

- (A) approve an exemption from tender, in accordance with section 55(3)(i) of the *Local Government Act 1993*, for the contracts for the construction and quantity surveyor services for the Harold Park Public Open Space Embellishment and stormwater harvesting project, noting that due to extenuating circumstances, a satisfactory result would not be achieved by inviting tenders;
- (B) note the reasons why a satisfactory outcome would not be achieved by inviting tenders are:
 - (i) a quantity surveying consultant for the project has already been appointed in accordance with the City's procurement processes; and
 - (ii) the additional time and costs required to establish another quantity surveyor consultant on site is not considered value for money. If the work were separately contracted, it is not considered that better value for money or suitable timeframes would be achieved for Council;
- (C) approve the increased contract value for the existing Quantity Surveyor services to cover the extended construction period as described in confidential Attachment A to the subject report;
- (D) note the financial and contractual implications detailed in confidential Attachment A to the subject report;
- (E) approve the increase in project budget and the source of funds to address budget shortfall as outlined in confidential Attachment A to the subject report; and
- (F) a further report be provided to a future Council meeting to request the additional budget required to implement the final verified design and procurement strategy.

ATTACHMENTS

Attachment A: Financial and Contractual Implications (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 project involves the embellishment of Harold Park as well as the creation of a stormwater harvesting scheme to service the Johnstons Creek Parklands.
2. On 12 May 2014, Council endorsed the project scope for a new open space at Harold Park for progression to construction documentation and tender.
3. In November 2015, Ford Civil established site and commenced construction work at Harold Park. At the commencement of works, the date for practical completion was late May 2017.
4. In March 2017, there was a significant rain event that highlighted on site drainage problems. It became apparent that there are a number of issues impacting the site, resulting in significant ground water being retained in the new park. These issues are:
 - (a) ongoing surface flow and seepage from the Toxteth Estate generally, and cliff;
 - (b) uncontrolled stormwater from Boyce Road and Toxteth Lane, resulting in water sheeting from the cliff into the park and Rock Lane and stormwater egress from footpath works on Ross Street; and
 - (c) capping layer which limits water penetration.
5. The drainage issues exist in four key areas of the park – the Village Green, the playground, the southern portion of the park near Rock Lane and areas along the north/south path.
6. Additional drainage works are now required for project completion and to improve the useability and safety of the park.
7. A proposed design solution is currently being prepared to resolve the drainage issues. A specialist hydraulic and drainage consultant has been engaged to conduct a peer review of the proposed design solution and provide recommendations. Following establishment of a detailed and robust drainage design, the specifications will be costed by the existing Quantity Surveyor. Increased contingency is requested for the Quantity Surveyor, Wilde and Woollard, to provide these additional quantity surveying services.
8. The procurement method for execution of drainage remediation works will be determined after the finalised design has been verified. The existing contractor Ford Civil, will be asked to submit quotations to deliver the approved drainage design. This quotation will be tested for value for money against the Quantity Surveyor's report and, if verified, a report will be provided to Council. This report would seek an exemption from tender to increase the contract contingency and award the additional works to the existing contractor. Where the submitted quotation value received from the existing contractor is not deemed value for money against the Quantity Surveyor costings, an alternative procurement method will be undertaken. A Request for Tender process will be undertaken to ensure the recommended contractor for engagement is providing best value for money for the City.
9. A further report will be provided to a future Council meeting to request the additional budget required to implement the final verified design.

QUANTITY SURVEYOR SERVICES CONTRACT

10. In October 2013, subsequent to a competitive quotation process, Wilde and Woollard was engaged to provide cost planning services to the City. The consultant's engagement included quantity surveying services throughout concept design, design development, tender and construction phases of the Harold Park public open space embellishment project.
11. There is now a requirement for additional cost planning services beyond the original engagement to support the project until completion. The Quantity Surveyor's new scope includes costings of the final approved drainage design and construction support until project completion.
12. It is recommended that Council increase the value of the Quantity Surveyor contract.

ADDITIONAL FUNDS REQUIRED FOR OTHER WORKS

13. Under the Voluntary Planning Agreement (VPA, the City is obliged to allow Mirvac access to the public park to facilitate construction work (defined as License areas). Mirvac's last apartment block located along The Crescent is scheduled for completion in autumn 2018. Once complete, the park interface area will require remediation and embellishment. Costs for these works have increased due to escalation and increase in preliminary costs due to changed site conditions limiting construction access.
14. Paving works were required in Ross Street to integrate the footway area into the new park. These works were included in the head contractor's works, however were removed due to construction programming conflicts arising from Mirvac's underground power works. These works were carried out using an established City of Sydney schedule of rates contractor.
15. Park signage and line marking works are additional works required to complete the project.
16. Other design consultancy costs are required to complete the project. Environment engineering works have to be deferred, and an engineering peer review is required to resolve the drainage issue on site.
17. Due to the prolongation of the project, additional management fees and insurances are required to complete the project.

FINANCIAL IMPLICATIONS

18. The current project budget is insufficient to complete the required additional works as outlined in confidential Attachment A.
19. The requested source of funds to address the budget shortfall are outlined in confidential Attachment A.
20. It is recommended that Council approve these additional costs while mitigation options are reviewed, so that the works can be completed and the park opened to the public.

RELEVANT LEGISLATION

21. This exemption from tender is in accordance with Section 55 of the *Local Government Act 1993*.
22. In accordance with Section 55 of the *Local Government Act 1993*, exemption from tender is required due to extenuating circumstances. Extenuating circumstances exist on this project for the following reasons:
 - (a) the quantitative surveying consultant for the project has already been appointed in accordance with the City's procurement processes; and
 - (b) the additional time and costs to seek and establish another cost consultant through a tender is not considered value for money for Council. If the work were separately contracted, it is not considered that better value for money or suitable timeframes would be achieved for Council.
23. Attachment A contains confidential commercial information of the tenderers and details of Council's tender evaluation 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.
24. 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

25. Critical dates for the program are as follows:
 - (a) determine appropriate solution and procure services late July 2017;
 - (b) commence remedial works July/ August 2017;
 - (c) complete drainage remediation works November 2017;
 - (d) complete embellishment to license area May 2018.
26. The remediation works are estimated to take five months.

AMIT CHANAN

Director City Projects and Property

Kathleen Ng, Senior Project Manager