

**ITEM 10. EXEMPTION FROM TENDER – ENGAGEMENT OF ROOT PARTNERSHIPS – GREENLAND TOWER CREATIVE HUB**

**FILE NO: X007224**

**SUMMARY**

On 4 June 2014, the City of Sydney entered into a Voluntary Planning Agreement (VPA) with the developer (Greenland) of the mixed use building at 115-119 Bathurst Street, Sydney, to provide a 'creative hub' comprising 2000 square metres of work space.

A performance brief was prepared, as an attachment to the VPA, detailing the fitout of the creative hub as rehearsal spaces, production rooms and artist's studios. Root Partnerships Pty Ltd assisted in the preparation of the performance brief.

Since then, City of Sydney has retained the services of Root Partnerships Pty Ltd to assist in reviewing progressive documentation submissions, identifying areas of concern or departures from the detailed performance brief, and to provide technical and strategic advice regarding any unforeseen issues that may arise.

The current engagement of Root Partnerships Pty Ltd has finished, however their services are still required for the remainder of the design and construction phases.

**RECOMMENDATION**

It is resolved that:

- (A) Council approve an exemption from tender, in accordance with Section 55(3)(i) of the *Local Government Act 1993*, for the engagement of Root Partnerships Pty Ltd, noting that due to extenuating circumstances, a satisfactory result would not be achieved by inviting tenders;
- (B) Council note the following reasons why inviting tenders would not achieve a satisfactory outcome:
  - (i) Root Partnerships Pty Ltd has an extensive and detailed knowledge of the requirements for the Creative Hub contained in the performance brief and the design development documentation to date. This knowledge is essential to the delivery of the services required for the remainder of the design and construction phases;
  - (ii) the additional costs and staff time required for a new consultant to acquire the extensive level of project knowledge would not provide Council value for money. It will be more efficient and cost effective to retain the existing consultant than for a new consultant to try to acquire this knowledge through review of existing documents;

- (iii) delays associated with engaging a new consultant would hinder the City of Sydney's ability to meet its program obligations under the project's Voluntary Planning Agreement (VPA) with Greenland. The need for expedition exists for the City of Sydney to respond to documentation and construction milestones agreed in the VPA; and
  - (iv) the continued engagement with Root Partnerships Pty Ltd represents value for money because the hourly rates and time allocation are in line with previous engagements with this consultant, and are in line with current market rates; and
- (C) Council note the financial and contractual implications detailed in confidential Attachment A to the subject report.

## **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. On 4 June 2014, the City of Sydney entered into a Voluntary Planning Agreement (VPA) with the developer (Greenland) of the mixed use building at 115-119 Bathurst Street, Sydney to provide a 'creative hub' of 2000 square metres. The creative work space is proposed to be on levels 2 to 6 of the development in the form of rehearsal spaces, production rooms and artists' studios including:
  - (a) the fitout of the creative hub by the developer in accordance with a detailed performance brief; and
  - (b) the granting of tenancy rights to the City for the use of the creative hub for a 99-year term.
2. Root Partnerships Pty Ltd (then trading as Root Projects Australia Pty Ltd) was engaged in February 2014 to provide technical advice to the City of Sydney during the VPA negotiations with Greenland, and to assist in the preparation of the detailed performance brief (including coordination of other technical consultants' input).
3. The VPA requires the City of Sydney to review and approve documentation within 21 days at agreed milestones during detailed design development and construction documentation to ensure the design is progressing satisfactorily in terms of quality and functionality.
4. The VPA also requires the City of Sydney to assess construction progress at agreed milestones and identify within 10 business days all items of the works requiring alteration, attention and rectification before completion is achieved.
5. The services of Root Partnerships Pty Ltd have been retained on hourly rates since June 2014 to assist the City of Sydney in:
  - (a) reviewing progressive design development documentation submissions;
  - (b) identifying areas of concern or departures from the detailed performance brief; and
  - (c) providing technical and strategic advice regarding any unforeseen issues.
6. Since 2014, the design period has been extended by approximately 12 months by the developer as they resolved a number of issues and also changed their main contractor. This has considerably extended the involvement of the City of Sydney project team, including Root Partnerships.
7. On 12 May 2017, 60 per cent of the detailed design development documentation was submitted for review.
8. The current engagement of Root Partnerships Pty Ltd will finish in June 2017, however the services identified above are still required for the remainder of the design and construction phases.
9. On 28 April 2017, a lump sum fee proposal was requested from Root Partnerships Pty Ltd to provide the identified services for the remainder of the design and construction phases.

10. The fee proposal provided by Root Partnerships Pty Ltd will increase the total value of their engagement over the value above which tenders are required by the Local Government Act 1993.

**FINANCIAL IMPLICATIONS**

11. There are sufficient funds within the draft 2017/18 operating budget to engage Root Partnerships Pty Ltd for the remainder of the design and construction phases. Details of budget status are outlined in confidential Attachment A.

**RELEVANT LEGISLATION**

12. In accordance with section 55(3)(i) of the *Local Government Act 1993*, exemption from tender is required because of extenuating circumstances. Extenuating circumstances exist on this project and a satisfactory result would not be achieved by inviting tenders. Those circumstances are:
- (a) Root Partnerships Pty Ltd has a detailed knowledge of the requirements for the creative hub contained in the performance brief and the design development documentation to date;
  - (b) this knowledge is essential to the delivery of the services required for the remainder of the design and construction phases;
  - (c) it will be more efficient and cost effective to retain the existing consultant than for a new consultant to try to acquire this knowledge through review of existing documents; and
  - (d) the need for expedition exists for the City of Sydney to respond at documentation and construction milestones agreed in the VPA.
13. Attachment A contains confidential commercial information regarding Council's budgets which, if disclosed, would confer a commercial advantage on a person with whom Council is conducting (or proposes to conduct) business.
14. 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**

15. Program Key Milestones:
- (a) 90 per cent design documentation issue – 17 June 2017;
  - (b) Construction commences – January 2018; and
  - (c) Construction completion – early 2020.

**AMIT CHANAN**

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