

Item 10.**Exemption from Tender to Appoint a Barrister for Compensation Proceedings Following the Compulsory Acquisition of Land within Sydney Park for the WestConnex Motorway****File No: S128247****Summary**

Roads and Maritime Services (RMS) have compulsorily acquired a number of parcels of land within Sydney Park under lease from the City for the purpose of the WestConnex project. The amount of compensation offered by RMS has been objected to by the City in the NSW Land and Environment Court. Proceedings were commenced by the City on 20 February 2017 and the matter is listed for hearing for 12 days between 20 August and 4 September 2018. The matter has significantly progressed, all experts and barristers have been briefed and preparation of evidence is underway.

The City had previously briefed a Senior Counsel. Due to extenuating circumstances the City was required to seek alternative Senior Counsel. Quotations were sought. Quotations are over the tender limit, and as such, the matter is being referred to Council. The preferred alternative Senior Counsel is available and has the required experience for a hearing in August and September 2018.

It is recommended to appoint the preferred Senior Counsel, in accordance with Confidential Attachment B, to represent the City in the final hearing of the matter.

Recommendation

It is resolved that:

- (A) Council note that, because of extenuating circumstances and the unavailability of competitive tenders, a satisfactory result would not be achieved by inviting tenders for barristers to represent the City in proceedings against the Roads and Maritime Services for compensation proceedings relating to the Westconnex project for the following reasons:
- (i) Roads and Maritime Services is undertaking a large volume of compulsory acquisitions in connection with WestConnex and other road projects in NSW. Many barristers represent Roads and Maritime Services in these matters and are unavailable to act for the City. As a result, there is a very limited number of suppliers who can provide the services required by the City;
 - (ii) generally, Senior Counsel are briefed at the time that proceedings are lodged, generally being 12 months before the hearing. Due to unexpected circumstances, the City has had to arrange alternative Senior Counsel on very late notice for this kind of matter. The preferred Senior Counsel has the appropriate experience and is the only one available for all of the required dates. For these reasons, the goods or services are urgently required and the need for expedition is able to be substantiated; and
 - (iii) the preferred Senior Counsel's fee estimate and daily rate represents value for money for the City when compared with other Senior Counsel's rates who work in this jurisdiction;
- (B) Council approve entering into a contract with the preferred Senior Counsel for compulsory acquisition court proceedings concerning Sydney Park, in accordance with the fee estimate contained in Confidential Attachment B to the subject report;
- (C) Council note and approve that it may be necessary to further engage the preferred Senior Counsel in accordance with the daily and hourly rate contained in Confidential Attachment A to the subject report, depending on the progress of the proceedings; and
- (D) authority be delegated to the Chief Executive Officer to negotiate, execute and administer the contract with the preferred Senior Counsel, and otherwise on terms acceptable to the City.

Attachments

- Attachment A.** Details of Fees and Availability of Barristers for the Compulsory Acquisition of Land within Sydney Park for the Westconnex Motorway (Confidential)
- Attachment B.** Preferred Senior Counsel Fee Estimate, City of Sydney v Roads and Maritime Services for Certain Land at Sydney Park, St Peters (Confidential)

Background

1. In September 2016 and July 2018, Roads and Maritime Services (RMS) acquired by compulsory process certain land within Sydney Park adjacent to Campbell, Euston and Sydney Park roads for the purpose of the construction of WestConnex. The monetary amount of compensation for the acquisition of land is being objected to by the City in the NSW Land and Environment Court.
2. At the request of the City, Sydney Park (No. 1) and Sydney Park (No. 2) will be jointly heard by the Court as the land subject of each acquisition is geographically related. All experts and barristers have been briefed.
3. The amount of compensation sought by the City is subject to evidence and finalisation of the City's claim, both of which are currently underway.
4. The matter is listed for hearing between 20 August and 4 September 2018.
5. The City had previously briefed a Senior Counsel in early 2017. However, the City was recently advised that this Senior Counsel would be unable to continue to represent the City due to unexpected circumstances.
6. The preferred Senior Counsel is the only Senior Counsel available for a hearing in August and September of this year and has the required experience. The quoted daily Court rates are also competitive and represent value for money for the City. A fee estimate for the work is provided at Confidential Attachment B, and details of the fees and availability of other suitable barristers is provided at Confidential Attachment A.
7. The City, through its external solicitors, approached a number of barristers with suitable experience, to ascertain availability and current rates. The preferred Senior Counsel holds the required experience to represent the City in this case and is well regarded by lawyers and barristers working within the jurisdiction of the Land and Environment Court.
8. The shortage of available barristers is due to:
 - (a) RMS is undertaking a large volume of compulsory acquisitions in connection with WestConnex and other road projects in NSW. Many barristers represent RMS in these matters and are unavailable to act for the City. As a result there are a very limited number of suppliers who can provide the services required by the City; and
 - (b) generally, Senior Counsel are briefed at the time that proceedings are lodged, generally being 12 months before the hearing. Due to the unexpected circumstances, the City has had to arrange alternative Senior Counsel on very late notice for this kind of matter.
9. The preferred Senior Counsel's fee estimate and daily rate represents value for money for the City when compared with other Senior Counsel's rates who work in this jurisdiction.

Financial Implications

10. There are sufficient funds allocated for this project within the current year's legal services budget and future years' forward estimates.

Relevant Legislation

11. Local Government Act 1993 and Local Government (General) Regulation 2005.
12. Attachments A and B contain confidential information which:
 - (a) if disclosed, would confer a commercial advantage on a person with whom the City is conducting (or proposes to conduct) business;
 - (b) if disclosed, would prejudice the commercial position of the person who supplied it; and
 - (c) would be privileged from production in legal proceedings on the ground of legal professional privilege.
13. Discussion of the matter in an open meeting would, on balance, be contrary to the public interest because it would compromise the City's ability to negotiate fairly and commercially to achieve the best outcome for its ratepayers.

Critical Dates / Time Frames

14. Valuation evidence is to be filed with the Court by 22 June 2018.
15. Points of claim are due to be filed with the Court by 27 July 2018.
16. Final hearing of the matter for 12 days between 20 August and 4 September 2018.

Options

17. If the City does not proceed with the engagement of the preferred Senior Counsel the City will not have an appropriate level of legal representation for the Court proceedings and may not achieve fair compensation for the compulsory acquisition of its assets within Sydney Park.

Public Consultation

18. No public consultation has been undertaken for this matter as it is a confidential Court matter.

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