

## Replacement Report

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### REPORTS FROM THE DIRECTOR CORPORATE SERVICES

#### 29 [CS-CM] Provision of Legal Services - Tender AC2014-015

SUBMITTED BY: Corporate Governance

Valid



### Civic Leadership

#### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

|       |   |
|-------|---|
| 1     | Civic Leadership  |
| 1.3   | Delivering the objectives of this plan  |
| 1.3.1 | Council's organisation will be resourced to provide the essential services and support functions to deliver the objectives of this Plan |

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#### SUMMARY OF REPORT:

Council's current contract for the provision of legal services expired on 31 March 2014. Advertisements were placed in the media in accordance with Council's Procurement Policy inviting tenders from legal service providers for appointment to a panel for a period of two years with an option for a further two years.

There are four categories to which legal provides are to be appointed to:

- Category 1:** Planning and Environmental Law (litigation and advice)
- Category 2:** Local Government Law (litigation and advice)
- Category 3:** Commercial/Property Law
- Category 4:** District and Local Court

At the close of tenders on Wednesday 26 February 2014, fourteen (14) tenders were received.

The submission of each tenderer has been evaluated by a group of three Council officers, against the assessment criteria that was contained in the tender specification. The Tender Evaluation Report has been included as a confidential attachment to this report.

It is recommended that Council appoint the panel as detailed in the recommendation.

#### RECOMMENDATION:

**That Council in accordance with Tender AC2014-015 Provision of Legal Services, for a period of two years with an option for a further two years:**

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1. Appoints a panel of legal service providers as follows:

**Category 1: Planning and Environmental Law (litigation and advice)**

|                                       |
|---------------------------------------|
| <b>Wilshire Webb Staunton Beattie</b> |
| <b>Marsdens</b>                       |
| <b>Sparke Helmore</b>                 |
| <b>Maddocks</b>                       |
| <b>Lindsay Taylor Lawyers</b>         |
| <b>HWL Ebsworth</b>                   |
| <b>DLA Piper</b>                      |

**Category 2: Local Government Law (litigation and advice)**

|                                |
|--------------------------------|
| <b>Marsdens</b>                |
| <b>Maddocks</b>                |
| <b>Lindsay Taylor Lawyers</b>  |
| <b>Prevention Partners NSW</b> |
| <b>Local Government Legal</b>  |
| <b>DLA Piper</b>               |

**Category 3: Commercial/Property Law**

|   |
|---|
| <b>Wilshire Webb Staunton Beattie</b>   |
| <b>Marsdens</b>                         |
| <b>Sparke Helmore</b>                   |
| <b>Maddocks</b>                         |
| <b>HWL Ebsworth</b>                     |
| <b>Stacks the Law Firm, Tweed Heads</b> |
| <b>Local Government Legal</b>           |

**Category 4: District and Local Court**

|   |
|---|
| <b>Marsdens</b>                         |
| <b>Stacks the Law Firm, Tweed Heads</b> |
| <b>DLA Piper</b>                        |

2. All documentation be executed under the Common Seal of Council; and
3. ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-
- (d) commercial information of a confidential nature that would, if disclosed:
    - (i) prejudice the commercial position of the person who supplied it, or
    - (ii) confer a commercial advantage on a competitor of the council, or

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### REPORT:

Council's current contract for the provision of legal services expired on 31 March 2014. Advertisements were placed in the media in accordance with Council's Procurement Policy inviting tenders from legal service providers for appointment to a panel for a period of two years with an option for a further two years to commence on 1 April 2014.

The tender invited applications from legal service providers for appointment to a panel with four categories:

- Category 1:** Planning and Environmental Law (litigation and advice)
- Category 2:** Local Government Law (litigation and advice)
- Category 3:** Commercial/Property Law
- Category 4:** District and Local Court

Category 2 is a new category added to the brief as this discrete area of law requires specialisation.

At the close of tenders on Wednesday 26 February 2014, the following fourteen (14) tenders were received:

- Wilshire Webb Staunton Beattie
- Marsdens
- Sparke Helmore
- Maddocks
- Lindsay Taylor Lawyers
- HWL Ebsworth
- Stacks the Law Firm Tweed Heads
- Thomson Lawyers
- Prevention Partners NSW
- Locale Consulting
- Local Government Legal
- Kells
- DLA Piper
- McCullough Robertson

The submission of each tenderer has been evaluated by a group of three Council officers, against the assessment criteria that was contained in the tender specification. The Tender Evaluation Report has been included as a confidential attachment to this report.

The tender specification noted that for the purpose of the assessment of the tenders received, the Council would apply the following weightings:

|  |     |
|--|-----|
| Cost and suitability of fees and charges                                     | 40% |
| Experience of service provider   | 40% |
| Ability to meet specific requirements contained in the tender specifications | 10% |
| Local content  | 10% |

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### Cost and suitability of fees and charges

It can be difficult to objectively compare costs as an evaluation criterion, because hourly rates alone do not determine cost. However, the assessment process considered the range of hourly rates for the specified partners that the legal service provider could be likely to charge during the delivery of the service and cost of disbursements and travel costs.

### Experience of service provider

The assessment process examined the experience of the practitioner who will be responsible for overseeing and managing Council's legal work, the relevant experience of the service provider, the lawyers and support staff who would be dealing with, and responsible for the Council matters and the legal service provider's clients and service to clients.

### Ability to meet specific requirements contained in the tender specifications

The assessment process for this criteria examined the tenderer's response to undertake not to act against Council, providing training and legal updates, meeting with Council's Executive Management Team three times a year, the engagement of counsel, providing additional information through regular email updates, the conducting of seminars and the cost of one-off ad hoc advice.

### Conclusion

It is recommended that Council retain the legal service providers currently on the panel of providers with the addition of 3 new firms to the overall panel.

The panel is to be comprised of the following, new provider additions to the panel are marked with an \*:

#### Category 1: Planning and Environmental Law (litigation and advice)

|                                |
|--------------------------------|
| Wilshire Webb Staunton Beattie |
| Marsdens                       |
| Sparke Helmore                 |
| Maddocks                       |
| Lindsay Taylor Lawyers         |
| HWL Ebsworth                   |
| *DLA Piper                     |

#### Category 2: Local Government Law (litigation and advice)

|                          |
|--------------------------|
| Marsdens                 |
| Maddocks                 |
| Lindsay Taylor Lawyers   |
| *Prevention Partners NSW |
| *Local Government Legal  |
| *DLA Piper               |

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### Category 3: Commercial/Property Law

|                                  |
|----------------------------------|
| Wilshire Webb Staunton Beattie   |
| Marsdens                         |
| Sparke Helmore                   |
| Maddocks                         |
| HWL Ebsworth                     |
| Stacks the Law Firm, Tweed Heads |
| *Local Government Legal          |

### Category 4: District and Local Court

|                                  |
|----------------------------------|
| Marsdens                         |
| Stacks the Law Firm, Tweed Heads |
| *DLA Piper                       |

During the course of the contract, the service provider's performance will be monitored and discussed by Council's Executive Management Team at any of the three required meetings per year.

Quarterly reports will also be presented to Council relating to updates and actions relating to matters on foot.

#### OPTIONS:

1. That Council appoints the service providers to a panel for the 4 different categories as approved and described in the recommendation; or
2. That Council does not appoint the service providers to a panel for the 4 different categories as approved and described in the recommendation and makes any appropriate additions or deletions.

#### CONCLUSION:

The procurement process for the tender has been conducted in accordance with Council's Procurement Policy and Procedure. The assessment of the tenders received has resulted in a proposal to retain the current providers and expand the current panel by the addition of three firms. It is anticipated this addition will consolidate the panel and provide Council with access to specialist advice in a broad range of law affecting Council and its operations.

It is recommended that Council appoint the panel as proposed.

#### COUNCIL IMPLICATIONS:

##### a. Policy:

Procurement Version 1.5.

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**b. Budget/Long Term Financial Plan:**

No financial or budgetary implications arise from this report, excepting those arising from the engagement of the legal service providers as they occur, with appropriate expenditures allocated for legal expenses within the budget.

**c. Legal:**

The Legal Services Contract provides a basis of engagement in accordance with the tenders received from the successful tenderers.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*(Confidential)* Attachment 1. Tender Evaluation Report dated 12 March 2014  
(ECM 3320127)

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