

10.12.North Sydney Olympic Pool Redevelopment Project - Design Services Contract No: 34/2018

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ENDORSED BY	Marcelo Occhiuzzi, Acting Chief Executive Officer
ATTACHMENTS	1. CONFIDENTIAL - Confidential 2024 Legal Advice to NSC 17/7/2024 [10.12.1 - 27 pages]
CSP LINK	2. Our Built Infrastructure 2.1 Infrastructure and assets meet diverse community needs

PURPOSE:

The purpose of this report is to seek Council's approval to instruct Council's legal representatives to commence legal proceedings against Brewster Hjorth Pty Ltd, T/AS Brewster Hjorth Architects.

EXECUTIVE SUMMARY:

- Council entered into an agreement in or around August 2018 with Brewster Hjorth Pty Ltd T/AS Brewster Hjorth Architects (BHA) for design services on North Sydney Olympic Pool.
- Council has commenced a dispute resolution process, however, the dispute has been unable to be resolved.
- Council can now commence proceedings against BHA if it wishes to press its claims, as outlined within the confidential advice attached herein.
- Should Council wish to discuss this report it is noted that the attached confidential document includes advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege and because consideration of the matter in open Council would be, on balance, contrary to the public interest as it would affect Council's ability to manage legal matters effectively and in the best interests of the community. As such should this matter be discussed it should be considered in closed session.

RECOMMENDATION:

1.THAT Council resolves that the identified attachment to this report is to be treated as confidential in accordance with section 11(3) of the Local Government Act for the following reason under section 10A(2) of the Local Government Act:

(g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege

It is further noted that release of this information would be, on balance, contrary to the public interest as it would affect Council's ability to manage legal matters effectively and in the best interests of the community.

2. THAT Council note the contents of this report and the confidential advice attached herein in relation to the agreement between Council and Brewster Hjorth Pty Ltd T/AS Brewster Hjorth Architects (BHA) for design services related to the redevelopment of North Sydney Olympic Pool.

3. THAT Council authorise the Chief Executive Officer to instruct Council's legal representative Sparke Helmore, to commence legal proceedings against Brewster Hjorth Pty Ltd T/AS Brewster Hjorth Architects (BHA) as outlined within the confidential advice attached to this report.

Background

North Sydney Council (Council) entered into an agreement in or around August 2018 with Brewster Hjorth Pty Ltd T/AS Brewster Hjorth Architects (BHA), in or around August 2018 in respect of design services for the North Sydney Olympic Pool redevelopment project. A dispute under the contract has now arisen between Council and BHA.

Report

Council commenced the dispute resolution process outlined within the provisions of the agreement between Council and BHA.

The parties have been unable to resolve this dispute and Council can now commence legal proceedings against BHA if it wishes to press its claims, as detailed in the confidential attachment to this report.

Consultation requirements

Community engagement is not required for the purposes of this report.

Financial/Resource Implications

The financial implications for Council adopting the proposed recommendations of this report are outlined within the confidential legal advice attachment herein.

Legislation

- Australian Consumer Law contained in Schedule 2 to the Australian Competition and Consumer Act 2010 (Commonwealth)
 - Civil Liability Act 2002 (NSW)
 - Design and Building Practitioners Act 2020 (NSW)
 - Environmental Planning and Assessment Act 1979 (NSW)
 - Law Reform (Miscellaneous Provisions) Act 1965 (NSW)
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