

Subject: ES - Late Report - Approval to Complete Private Works for the NSW DECC
Index: Private Works - Construction by Council
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SUMMARY OF REPORT:

Operations Section have been negotiating undertaking a private works contract for pavement rehabilitation works on Mungo Brush Road in Myall Lakes National Park with the NSW Department of Climate Change (DECC). The total value of works is approximately \$140,000. This report seeks approval for these works to proceed with Council receiving a profit margin less than that outlined within the Sundry Debtor/Private Works Procedure.

SUMMARY OF RECOMMENDATION:

That Council:

In accordance with section 67 (2)(b) of the Local Government Act 1993:

1. Approve an amount less than the prescribed 25% profit margin in the Sundry Debtor/Private Works Procedure.
2. Undertake pavement rehabilitation works on Mungo Brush Road for the NSW DECC, with profit to be calculated as follows:
 - 5% profit margin on subcontractor works and materials supply costs
 - 25% profit margin on day labour and plant costs

FINANCIAL/RESOURCE IMPLICATION:

Works are proposed to be undertaken on a cost plus basis. This means that profit will be calculated from actual costs, not estimated costs as is done at present with sundry debtor works in accordance with the Sundry Debtor/Private Works Procedure. 5% profit margin is proposed to be received from subcontractor works and 25% profit margin is proposed to be received from day labour and plant used on the project. Based on estimated costs for the project, profit for the works will be approximately \$15,000 - \$17,000. All expenses and income received from the project will be allocated to Council's Sundry Debtor cost centre within the General Fund.

POLICY IMPLICATIONS:

In accordance with section 67 (2)(b) of the Local Government Act 1993, a Council must not carry out private work unless:

- (a) It proposes to charge an approved fee for carrying out the work as determined by the council in accordance with Division 2 of Part 10 of Chapter 15.
- (b) If it proposes to charge an amount less than the approved fee, the decision to carry out the work is made, and the proposed fee to be charged is determined, by resolution of the council at an open meeting before the work is carried out.

As the proposed works are planned to have a fee charged less than that in the Sundry Debtor/Private Works Procedure, then a resolution of the Council is required before the work can be carried out.

LEGAL IMPLICATIONS:

The proposed works will be undertaken under a minor works contract with the NSW DECC.

LIST OF ANNEXURES:

Nil

ATTACHMENTS

Nil

REPORT

The NSW DECC approached Operations Section staff in March 2009 regarding the possibility of undertaking pavement rehabilitation works on Mungo Brush Road in the Myall Lakes National Park. This was because the NSW DECC did not have the capacity to undertake the works internally and they did not have sufficient time (June 30 2009 deadline for completion of works) to put any contracts in place with suppliers and contractors for the works involved.

Mungo Brush Road runs north from Hawks Nest toward Bombah Point in the Myall Lakes National Park area. The works planned to be undertaken on the pavement rehabilitation of the 800m section of Mungo Brush Road include the following:

- Preparation of road shoulders
- Gravel overlay of existing pavement to improve overall gravel quality
- Stabilisation of pavement to 250mm depth.
- Sprayed seal of reconstructed pavement

The value of these works is estimated to be approximately \$140,000.

As Council have in-house capacity to undertake the works through Operations day labour, Council plant and contracts in place for the major components of the works to be undertaken (gravel supply, pavement stabilisation & sprayed seal), Operations Section expressed interest to the NSW DECC to undertake these works. In addition, based on the remaining maintenance and project works within the 2008/09 budget for the Tea Gardens Depot area and the current availability of a Council grader, the works are able to be scheduled within the program for the Tea Gardens Depot Operations staff.

In April and May 2009 Operations undertook pavement testing work on a sundry debtor basis for the NSW DECC. This allowed analysis of the current road pavement condition and the selection of the treatment that would be necessary to rehabilitate the road pavement.

Operations staff also began negotiating with NSW DECC regarding the conditions that the works would be undertaken under. The two options discussed were:

Option 1 - Council undertake the works under a minor works contract with NSW DECC with profit on all works to be calculated at 25% on top of estimated costs including 10% contingency. This would mean that Council would take on all risk associated with the work and a set amount of profit could not be guaranteed.

Option 2 - Council undertake the works under a minor works contract with NSW DECC with profit on subcontracted works and materials supply to be 5% of actual costs and profit on day labour and plant costs to be 25% of actual costs. This would mean that NSW DECC would take on the financial risk associated with the work and Council would receive a set amount of profit margin.

Option 1 as described above is in accordance with Council's Sundry Debtor/Private Works Procedure. However, option 2 was considered to be the preferred option by both Operations staff and NSW DECC for the following reasons:

- Option 1 would mean Operations would not provide a competitive price for the works when compared with industry standards.
- Option 1 would result in the works not being permitted to proceed due to the NSW DECC having insufficient budget. Option 2 however, would allow works to proceed immediately.
- Under option 1, should the estimate for the work underestimate the time or materials to undertake the works, or should inclement weather occur during the works, then there is a high risk that Council could incur a net deficit (loss) for the works.
- Option 2 allows Council to transfer all financial risk, including damage to partially completed works and lost time from wet weather, to the NSW DECC.
- Option 2 guarantees Council a set amount of profit from the works.

Whilst the Sundry Debtor/Private Works Procedure is suited to smaller sundry debtors style works for rural landowners, larger scale works such as this would generally need a variation from this procedure to enable Operations to maintain competitiveness within the construction industry and hence be awarded such works. These works provide Council with an alternative income source and also provide Operations section with the opportunity to supplement existing works programmes where capacity is available.

If option 2 is not approved as outlined by this report then Council will not be awarded the works and it is unlikely that the NSW DECC will have sufficient time to source an alternative contractor to undertake the works. As a result the works would be unlikely to proceed.

Mungo Brush Road is within the Myall Lakes National Park and it is a popular tourist route in the Great Lakes Local Government area. Should works proceed then Council would receive direct benefit from the road upgrade. Mungo Brush Road is also an important access to tourism businesses operating within the National Park in the Bombah Point area and it is an alternative route to the Pacific Highway between Tea Gardens/Hawks Nest and Bulahdelah.

Given the need for Operations Section to be able to provide a cost competitive service for private works it is recommended in this instance that the works be undertaken with Council receiving 5% profit on subcontractor works and materials supply, and 25% profit on day labour and plant costs. As the NSW DECC have agreed to the profit calculation to be based on actual costs, the risk in Council undertaking these works will be absorbed by the NSW DECC. The road upgrade works also provide a direct benefit to the access to facilities and businesses within the Bombah Point area.

RECOMMENDATION:

That Council:

In accordance with section 67 (2)(b) of the Local Government Act 1993:

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