



SPECIAL MEETING AGENDA

Thursday 26 September 2024
commencing at 9:00 AM
Quilpie Shire Council Boardroom
50 Brolga Street, Quilpie

Special Meeting of Council

25 September 2024

The Mayor and Council Members
Quilpie Shire Council
QUILPIE QLD 4480

Dear Members

Notice is given that the Special Meeting of the Quilpie Shire Council will be held at the Council Chambers, on **Thursday 26 September 2024**, commencing at **9:00 AM**.

The agenda for the special meeting is attached for your information

Yours faithfully

Julie Reitano
Chief Executive Officer (Acting)





SPECIAL MEETING OF COUNCIL AGENDA

Thursday 26 September 2024
Quilpie Shire Council Boardroom
50 Broлга Street, Quilpie

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- 1 OPENING OF MEETING**
- 2 ATTENDANCE**
- 3 APOLOGIES**
- 4 DECLARATIONS OF INTEREST**

5 FINANCE**5.1 TENDER CONSIDERATION PLAN - TCP02 24-25 FLOOD RESTORATION WORKS PINKENETTA ROAD****IX: 254307****Author: Sharon Frank, Manager Finance & Administration****Attachments:**

- 1. Tender Consideration Plan 02 24-25 Pinkenetta Road Package.pdf** [↓](#)
- 2. Schedule 1 Proposed Contract Terms - TCP02 24-25 Flood Restoration Works Pinkenetta Road Package.pdf** [↓](#)

KEY OUTCOME**Key Outcome:** 2. Flourishing Economy**Key Initiative:** 2.3 Maintain safe and efficient transport networks**Key Outcome:** 4. Strong Governance**Key Initiative:** 4.4 Long-term financial sustainability underpinned by sound financial planning and accountability**EXECUTIVE SUMMARY**

At the Ordinary Meeting of Council held on 17 September 2024, Council decided to prepare a Tender Consideration Plan for the Flood Restoration Works - Pinkenetta Road Package and authorised the Chief Executive Officer to prepare the Tender Consideration Plan - RESOLUTION NO: (QSC216-09-24).

This report presents the Tender Consideration Plan for Council's consideration.

RECOMMENDATION

That Council:

1. Adopt the Tender Consideration Plan – TCP02 24-25 Flood Restoration Works - Pinkenetta Road Package as presented.
2. Subject to successful negotiation on the final terms and conditions, award TCP02 24-25 Flood Restoration Works - Pinkenetta Road Package to S.A Travers & S.L Travers for an amount of \$166,996.36 excluding GST (\$183,696.00 including GST).
3. Pursuant to section 257 of the *Local Government Act 2009*, delegate to the Chief Executive Officer the power to negotiate, finalise and execute any and all matters associated with or in relation to this project and contract including without limitation any options and/or variations as per Council's procurement policy.

BACKGROUND

Council previously undertook a competitive request for quotation process identified as RFQL 01 24-25 for the procurement of the Flood Restoration Works – Pinkenetta Road (“**the Works**”) under which Council obtained and assessed quotations (“**RFQ Process**”).

Due to a process improvement Council is implementing, the recommendation for the RFQ Process was not adopted.

Section 230 of the *Local Government Regulation 2012* provides that a local government ‘*may enter into a medium-sized contractual arrangement or large-sized contractual arrangement without first inviting written quotes or tenders if the local government:*

- (a) decides, by resolution, to prepare a quote or tender consideration plan; and*
- (b) prepares and adopts the plan;*

Council considered a report on the matter of a Tender Consideration Plan for the Pinkenetta Road Flood Restoration Works Package at its Ordinary Meeting of Council on 17 September 2024 and resolved as follows.

RESOLUTION NO: (QSC216-09-24)

That:

- 1. Pursuant to section 230 of the Local Government Regulation 2012 (Qld), Council decides to prepare a tender consideration plan for the Pinkenetta Road Flood Restoration Works Package and authorises the Chief Executive Officer to prepare the tender consideration plan.*
- 2. In accordance with section 230 (2) of the Local Government Regulation 2012, this Tender Consideration Plan will include the following:*
 - the objectives of the plan; and*
 - how the objectives are to be achieved; and*
 - how the achievement of the objectives will be measured; and*
 - any alternative ways of achieving the objectives, and why the alternative ways were not adopted; and*
 - the proposed terms of the contract for the goods or services; and*
 - a risk analysis of the market from which the goods or services are to be obtained.*

Council has now prepared the Tender Consideration Plan to facilitate the engagement of a contractor to undertake the Works.

The primary objective of the Tender Consideration Plan is to procure a contractor to undertake the Works through a process which will allow the project to be delivered within the timeframe originally set for contract completion; also allowing sufficient time for funding acquittal requirements to be met.

Further objectives of the Tender Consideration Plan are to undertake that procurement without unnecessarily wasting the time and money of Council and potential contractors and whilst ensuring Council obtains value for money.

OPTIONSOption 1 – Recommended

That Council resolve to:

1. Adopt the Tender Consideration Plan – TCP02 24-25 Flood Restoration Works - Pinkenetta Road Package as presented.
2. Subject to successful negotiation on the final terms and conditions, award TCP02 24-25 Flood Restoration Works - Pinkenetta Road Package to S.A Travers & S.L Travers for an amount of \$166,996.36 excluding GST (\$183,696.00 including GST).
3. Pursuant to section 257 of the *Local Government Act 2009*, delegate to the Chief Executive Officer the power to negotiate, finalise and execute any and all matters associated with or in relation to this project and contract including without limitation any options and/or variations as per Council's procurement policy.

Option 2

That Council resolve not to adopt TCP02 24-25 Flood Restoration Works - Pinkenetta Road Package.

CONSULTATION (Internal/External)

Chief Executive Officer - Acting

Manager Finance and Administration

Procurement Officer

Project Management Services – Proterra Group Pty Ltd

LEGAL IMPLICATIONS

NIL

POLICY AND LEGISLATION

Local Government Act 2009

Local Government Regulation 2012 - Section 230 of the *Local Government Regulation 2012* provides that a local government may enter into a medium-sized contractual arrangement or large-sized contractual arrangement without first inviting written quotes or tenders if the local government:

- (a) decides, by resolution, to prepare a quote or tender consideration plan; and
- (b) prepares and adopts the plan.

Council Procurement Policy – adopted 20 February 2024 Resolution Number: QSC026-02-24

FINANCIAL AND RESOURCE IMPLICATIONS

The project is fully funded by the Queensland Reconstruction Authority (QRA) through the Disaster Relief Funding Arrangement (DRFA).

RISK MANAGEMENT IMPLICATIONS

Risk assessment undertaken as part of the tender consideration plan.



TENDER CONSIDERATION PLAN

TCP02 24-25 FLOOD RESTORATION WORKS-PINKENETTA
ROAD

CONTRACT NO: TCP02 24-25

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LGT: Tender Consideration Plan
Issue: LGT2.0
Effective Date: July 2023

Tender Consideration Plan

Background:

- A. Council previously undertook a competitive request for quotation process identified as RFQL 02 24-25 for the procurement of the Flood Restoration Works – Pinkenetta Road (“**the Works**”) under which Council obtained and assessed quotations (“**RFQ Process**”).
- B. Due to a process improvement Council is implementing, the recommendation for the RFQ Process was not adopted.
- C. Council has resolved to prepare a tender consideration plan to facilitate the engagement of a contractor to undertake the Works.
- D. Council has now prepared and will adopt this Tender Consideration Plan.

Operative Provisions:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Tender Consideration Plan, unless inconsistent with the context or subject matter:

- (a) **Council** means Quilpie Shire Council;
- (b) **Quilpie Shire Council - Local Government Area** means the area identified as such in the Regulation as at the date this Tender Consideration Plan is adopted by Council;
- (c) **Objective** means the objective set out in Clause 2 of this Tender Consideration Plan;
- (d) **RFQ Process** means the request for quotation process identified as RFQL 01 24-25 under which Council previously sought competitive quotations for the Works;
- (e) **Regulation** means the *Local Government Regulation 2012* (Qld);
- (f) **Tender Consideration Plan** means this tender consideration plan, which Council has prepared and will adopt pursuant to section 230 of the Regulation;
- (g) **the Works** has the meaning given in the Background of this Tender Consideration Plan;

1.2 Interpretation

In this Tender Consideration Plan, unless inconsistent with the context or subject matter:

- (a) a reference to a person includes any other legal entity;
- (b) a reference to a legal entity includes a person;
- (c) words importing the singular number include the plural number;
- (d) words importing the plural number include the singular number;
- (e) headings are for reference purposes only and must not be used in interpretation;
- (f) where any word or phrase is given a defined meaning any other part of speech or other grammatical form concerning the word or phrase has a corresponding meaning;
- (g) a reference to a statute includes all regulations and subordinate legislation and amendments; and

Tender Consideration Plan

- (h) references to writing include any mode of representing or reproducing words in tangible and permanently visible form and includes e-mail and fax.

2. OBJECTIVE OF THE TENDER CONSIDERATION PLAN

- 2.1 The primary objective of the Tender Consideration Plan is to procure a contractor to undertake the Works through a process which will allow the project to be delivered within the timeframe originally set for contract completion; also allowing sufficient time for funding acquittal requirements to be met:
- 2.2 Further objectives of the Tender Consideration Plan are to undertake that procurement without unnecessarily wasting the time and money of Council and potential contractors and whilst ensuring Council obtains value for money.

3. HOW THE OBJECTIVE IS TO BE ACHIEVED

- 3.1 The primary objective will be achieved by entering into a contract with the contractor who had the highest scoring tender in the RFQ Process, namely S.A Travers & S.L Travers.
- 3.2 Due to the competitive nature of the original process, awarding the works based on the previous quotation will enable the delivery of the project to happen within the timeframe, with due consideration given to the contracting principles set out in s106 of the *Local Government Act 2009*.
- 3.3 The further objectives will be achieved as the quotation has already been assessed as providing value for money in a competitive process and entering into a contract based on the original quotation will be efficient and not require further time or cost to be incurred by Council, the contractor, or any other contractor.

4. HOW THE ACHIEVEMENT OF THE OBJECTIVE WILL BE MEASURED

- 4.1 The achievement of the Objective will be measured by Council entering into a contract with S.A Travers & S.L Travers based on the quotation provided in the RFQ Process.

5. ALTERNATIVE WAYS OF ACHIEVING THE OBJECTIVE

- 5.1 Council could have adopted the following, but did not do so for the reasons noted:

Alternative ways of achieving the Objective	Why the alternative way was not adopted
1. Public tender	<p>This would not have achieved the Objective because the time required to conduct a further open request for tender process, would not have allowed enough time for the delivery of these works, plus administration time by all parties including the funding agency, by the time funding period expired.</p> <p>This would also not have achieved the further objectives, because Council had already conducted a competitive request for quotation process which produced a value for money outcome and conducting a request for tender process would be unlikely to produce a more favourable outcome to Council and would instead waste the time and money of Council and tenderers.</p>
2. LGA arrangement exemption	This would not have achieved the Objective because the time required to conduct a further request for quotation process under section 234 would not have allowed enough

Tender Consideration Plan

S234 <i>Local Government Regulation 2012</i> (Qld)	time for the delivery of these works, plus administration time by all parties including the funding agency, by the time funding period expired. This would also not have achieved the further objectives, because Council had already conducted a competitive request for quotation process which produced an acceptable outcome and conducting a further request for quotation process under section 234 would be unlikely to produce a more favourable outcome to Council and would instead waste the time and money of Council and tenderers.
3. Council's Register of Pre-qualified suppliers S234 <i>Local Government Regulation 2012</i> (Qld)	There are currently no suppliers that have been selected as pre-qualified suppliers under section 232 of the <i>Local Government Regulation 2012</i> (Qld) for the services required for this contract.

6. PROPOSED TERMS OF THE CONTRACT

6.1 The proposed terms of the contract are contained in Schedule 1.

7. RISK ANALYSIS OF THE MARKET

7.1 The market for these works has been tested multiple times by council, with the RFQ Process carried out under the pre-qualified contract T01 22-23. The market approach previously used encompassed Council's pre-qualified suppliers for wet and dry hire of mobile plant and equipment, this panel consists of majority locally owned business and few suppliers from outside of the region.

These suppliers, including S.A Travers & S.L Travers have proven experience of successfully completing the construction projects of this nature with an extensive knowledge of the region.

This very scope of works and the timeline required was planned with regard given to the ability to engage suppliers with an exemption under '*Part 3 Division 3 – Exemptions for medium-sized and large sized contractual arrangements*' of the *Local Government Regulations 2012*'. Therefore, a shorter timeframe given for the procurement process and the administrative actions required for the successful award of the contract. With the original consideration given to the shortened process, the timeline for project completion and cost allocation was forecast to action the high priority reconstruction as soon as practicably possible.

SCHEDULE 1 – PROPOSED CONTRACT TERMS



CONTRACT CONSTRUCT ONLY

TCP02 24-25 FLOOD RESTORATION WORKS PINKENETTA
ROAD PACKAGE

Contract No: TCP02 24-25

FORMAL INSTRUMENT OF AGREEMENT

Parties

Quilpie Shire Council ABN 53 680 434 639 of 50 Brolga St, Quilpie in the State of Queensland
(*the Principal*)

ACN of , in the State of
(*the Contractor*)

Recitals:

- A. The *Contractor* has submitted an offer to carry out and complete the *WUC* and has given the *Principal* warranties and made representations to the *Principal*.
- B. In reliance on the warranties given and representations made by the *Contractor*, the *Principal* has accepted the *Contractor's* offer.
- C. The parties wish to enter into this *Contract* to record the terms of their agreement.

The Parties Agree:

1. THE CONTRACT

- 1.1 The *Contract* shall comprise the following documents:
 - (a) this *Formal Instrument of Agreement*;
 - (b) Annexure Part A to AS4000-1997 General Conditions of Contract;
 - (c) Annexure Part B to AS4000-1997 General Conditions of Contract;
 - (d) AS4000-1997 General Conditions of Contract (which form a part of this *Contract* notwithstanding that a copy is not physically incorporated into this *Contract*);
 - (e) Annexure Part E – Specification;
 - (f) Annexure Part C – Approved Form of Unconditional Undertaking (which forms a part of this *Contract* notwithstanding that a copy is not physically incorporated into this *Contract*);
 - (g) Annexure Part D – Programme;
 - (h) Annexure Part F – Methodology ;
 - (i) Annexure Part G – Price Schedule;
 - (j) Annexure Part H – Variation Rates; and
 - (k) Annexure Part I – Contractor's Statutory Declaration.
- 1.2 The *Contract* constitutes the entire, final and concluded agreement between the parties. It supersedes all prior representations, agreements, statements and understandings between the *Contractor* and the *Principal* (whether oral or in writing).

- 1.3 Subject to subclause 8.1, if there is any ambiguity, inconsistency, conflict or discrepancy between any of the documents listed in clause 1.1 of this *Formal Instrument of Agreement* then the ambiguity, inconsistency, conflict or discrepancy shall be resolved by giving precedence to the document which places the highest or more onerous requirement on the *Contractor*. If that does not resolve the issue, then the documents will take precedence in the order set out in clause 1.1 of this *Formal Instrument of Agreement*, with the *Formal Instrument of Agreement* being the highest in the order.
- 1.4 Where any obligation described in the *Contract* has been carried out by the *Principal* or the *Contractor* prior to the date on which the *Contract* is executed, that obligation shall be taken to have been carried out pursuant to, and the carrying out of that obligation shall be governed by, the *Contract* as if the obligation had been carried out after the *Contract* was executed.

2. INTERPRETATION

- 2.1 Italicised terms used in this *Formal Instrument of Agreement* have the same meaning as defined in the documents listed in clauses 1.1(c) to 1.1(d) above.
- 2.2 The contra proferentem rule and other rules of construction will not apply to the *Contract* to disadvantage a party whether that party put the clause forward, was responsible for drafting all or part of it or would otherwise benefit from it.
- 2.3 To the extent permitted by law, if either party consists of two or more persons the *Contract* binds such persons and their respective executors, administrators, successors and permitted assigns jointly and severally.
- 2.4 Each indemnity provided in the *Contract* is a continuing indemnity which survives the expiration or termination of the *Contract*. The *Principal* need not incur any expense or make any payment in order to rely on an indemnity.
- 2.5 The rights and remedies of a party to the *Contract* are in addition to the rights or remedies conferred on the party elsewhere in the *Contract*, at law or in equity.
- 2.6 If a provision of the *Contract* is void or unenforceable it must be severed from this *Contract* and the provisions that are not void or unenforceable are unaffected by the severance.
- 2.7 In the *Contract* the words 'include', 'includes' and 'including' shall be read as if followed by 'without limitation'.
- 2.8 The *Contract* may be executed in any number of counterparts and communication of the fact of execution to the other party may be made by sending evidence of execution by email to the other party.
- 2.9 A reference to a *legislative requirement* means a reference to that *legislative requirement* as amended or replaced from time to time.
- 2.10 In Annexure Part A, items or words which have been struck through are deleted from Annexure Part A and items or words which have been underlined have been added to Annexure Part A.

EXECUTED AS AN AGREEMENT

EXECUTION BY THE PRINCIPAL

SIGNED for and on behalf of Quilpie Shire Council in accordance with the Council's local laws and in the presence of:

Signature of authorised officer
Signature of witness
Name of authorised officer
Name of witness (block letters)
Role of authorised officer
Date

EXECUTION BY THE CONTRACTOR (WHERE CONTRACTOR IS A CORPORATION)

SIGNED for and on behalf of the Contractor in accordance with its Constitution and Section 127 of the Corporations Act 2001 in the presence of:

Signature of witness
Name of witness (block letters)
Director
Director/Secretary
Date

EXECUTION BY CONTRACTOR (WHERE CONTRACTOR IS NOT A CORPORATION)

SIGNED for and on behalf of the Contractor by its authorised representative in the presence of:

Signature of witness
Name of witness (block letters)
Signature
Name of authorised representative
Date

Annexure Part A to AS4000 – 1997

ANNEXURE to the Australia Standard
General Conditions of Contract
AS4000-1997

PART A

This Annexure shall be completed and issued as part of the tender documents and, subject to any amendments to be incorporated into the *Contract*, is to be attached to the General Conditions of Contract and shall be read as part of the *Contract*.

Item

1	<i>Principal</i> (clause 1)	Quilpie Shire Council ABN 53 680 434 639
2	<i>Principal's address</i>	50 Brolga Street, Quilpie, QLD
3	<i>Contractor</i> (clause 1)	ACN ABN
4	<i>Contractor's address</i>	
5	<i>Superintendent</i> (clause 1)	Proterra Group ACN 82 626 886 771
6	<i>Superintendent's address</i>	2 Aubigny St, East Toowoomba QLD 4350
7*	a) <i>Date for practical completion</i> (clause 1)	23 November 2024
	OR	
	b) <i>Period of time for practical completion</i> (clause 1)	N/A
8	Governing law (page 5, clause 1(h))	Queensland If nothing stated, that of the jurisdiction where the <i>site</i> is located

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Annexure Part A to AS4000 – 1997

9	a) Currency (page 5, clause 1(g))	AUD If nothing stated, that of the jurisdiction where the <i>site</i> is located
	b) Place for payments (page 5, clause 1(g))	Payments will be made by electronic transfer into the bank account last notified in writing by the <i>Contractor</i> to the <i>Principal</i> .
	c) Not used	
10	Not used	
10A	<u>Contract sum</u> (clause 1 and clause 2A)	<u>The Contract is a:</u> <u>schedule of rates contract</u> <u>lump sum contract</u> If nothing stated, the <i>Contract</i> is a <i>lump sum contract</i> .
11	Quantities in <i>schedule of rates</i> , limits of accuracy (subclause 2.5(b) 2A.4(b))	Upper Limit 100% Lower Limit 25% If nothing stated, upper limit is 120%, lower limit is 80%
12	<i>Provisional sum</i> , percentage for profit and attendance (clause 3)	No profit and attendance is payable.
13*	<i>Contractor's security</i>	
	a) Form (clause 5)	N/A
	b) Amount or maximum percentage of <i>contract sum</i> (clause 5)	N/A If nothing stated, 5% of the <i>contract sum</i>
	c) If retention moneys, percentage of each <i>progress certificate</i> (clause 5 and subclause 37.2)	Nil If nothing stated, 10% until the limit in <i>Item 13(b)</i>
	d) Time for provision (except for retention moneys) (clause 5)	Within 10 <i>business days</i> after the <i>date of acceptance of tender</i> If nothing stated, within 28 <i>business days</i> after <i>date of acceptance of tender</i>
	e) Additional <i>security</i> for unfixed plant and materials (subclauses 5.4 and 37.3)	Not applicable \$0
	f) <i>Contractor's security</i> upon <i>certificate of practical completion</i> is reduced by (subclause 5.4)	N/A If nothing stated, 50% of amount held

Annexure Part A to AS4000 – 1997

14*	<i>Principal's security</i>		
	a) Form (clause 5)	Not applicable	
	b) Amount or maximum percentage of <i>contract sum</i> (clause 5)	Not applicable If nothing stated, nil	
	c) Time for provision (clause 5)	Not applicable If nothing stated, within 20 <i>business days</i> after the <i>date of acceptance of tender</i>	
	d) <i>Principal's security</i> upon <i>certificate of practical completion</i> is reduced by (subclause 5.4)	Not applicable If nothing stated, 50% of amount held	
15	<i>Principal-supplied documents</i> (subclause 8.2)	Document Copy of Contract	No. of copies 1
		If nothing stated, 5 copies of the drawings, specification, <i>bill of quantities</i> or <i>schedule of rates</i> (if any)	
16	Time for <i>Superintendent's direction</i> about documents (subclause 8.3)	If nothing stated, 10 <i>business days</i>	
17	Subcontract <i>work</i> requiring approval (subclause 9.2)	The whole or any part of <i>WUC</i>	
18	Novation (subclause 9.4)	Subcontractor	Particular part of <i>WUC</i>
		Not applicable	
		<i>Selected subcontractor</i>	Particular part of <i>WUC</i>
		Not applicable	
19	<i>Legislative requirements</i>		
	a) Those excepted (subclause 11.1)	None excepted	

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Annexure Part A to AS4000 – 1997

	b) Identified <i>WUC</i> (subclause 11.2(a)(ii))	
19A	<u>Portable long service</u> (subclause 11A.1)	<p>The:</p> <p><input checked="" type="checkbox"/> <u>Principal</u></p> <p><input type="checkbox"/> <u>Contractor</u></p> <p>is to make payments and give notices under the <u>Building and Construction Industry (Portable Long Service Leave) Act 1991 (Qld)</u></p> <p>If nothing selected the <i>Contractor</i> is to do so</p>
19B	<u>Work, health and safety</u> (Clause 12A) <u>Engagement as principal contractor</u>	<p>The Contractor:</p> <p><input checked="" type="checkbox"/> is engaged</p> <p><input type="checkbox"/> is not engaged</p> <p><u>as principal contractor under the Work Health and Safety Regulation 2011 (Qld).</u></p> <p>If nothing selected, the Contractor is not appointed as principal contractor.</p>
19C	<u>The Contractor's liability is limited to</u> (clauses 1 and 15A)	<p>_____</p> <p>If nothing stated, the <i>Contractor's</i> liability is not limited</p>
19D	<u>The Principal's liability is limited to</u> (clauses 1 and 15A)	<p>_____</p> <p>If nothing stated, the <i>Principal's</i> liability is limited to the amount of <u>contract sum</u> as adjusted pursuant to the <i>Contract</i>.</p>
20	Insurance of <i>the Works</i> (clause 16)	
	a) Alternative applying	<p>Alternative 1</p> <p>If nothing stated, Alternative 1 applies</p>
	If Alternative 1 applies	
	b) Provision for demolition and removal of debris	<p>N/A</p> <p>\$</p> <p>OR</p> <p>10% of the contract sum</p>
	c) Provision for consultants' fees	<p>N/A</p> <p>\$</p> <p>OR</p> <p>10% of the contract sum</p>
	d) Value of materials or things to be supplied by the <i>Principal</i>	<p>Nil</p>

Annexure Part A to AS4000 – 1997

e)	Additional amount or percentage	N/A \$ OR <i>10% of the total of paragraphs (a) to (d) in clause 16</i>						
21	Public liability insurance (clause 17)							
a)	Alternative applying	Alternative 1 If nothing stated, Alternative 1 applies						
	If Alternative 1 applies							
b)	Amount per occurrence shall be not less than	Twenty million dollars \$20,000,000 If nothing stated, then not less than \$20,000,000						
21A	<u>Key Personnel</u> (Clause 23A)	<table border="0" style="width: 100%;"> <tr> <td style="text-align: center;"><u>Name</u></td> <td style="text-align: center;"><u>Role</u></td> <td style="text-align: center;"><u>Period</u></td> </tr> </table>	<u>Name</u>	<u>Role</u>	<u>Period</u>			
<u>Name</u>	<u>Role</u>	<u>Period</u>						
22	Time for giving possession (subclause 24.1)	Within 10 <i>business days</i> after the <i>date of acceptance of tender</i> If nothing stated, within 10 <i>working days</i> after the <i>date of acceptance of tender</i>						
22A	<u>Working days and working hours</u> (clause 31)	<table border="0" style="width: 100%;"> <tr> <td style="text-align: center;"><u>Working days</u></td> <td style="text-align: center;"><u>Working hours</u></td> </tr> <tr> <td style="text-align: center;"><u>Monday to Friday</u></td> <td style="text-align: center;"><u>6am to 6pm</u></td> </tr> <tr> <td style="text-align: center;"><u>Saturday to Sunday</u></td> <td style="text-align: center;"><u>6am to 6pm</u></td> </tr> </table> <p><u>but shall not include:</u></p> <ul style="list-style-type: none"> a) <u>a public holiday, special holiday or bank holiday at the site; unless agreed to by Principal; or</u> b) <u>16 December 2024 to 5 January 2025; or</u> c) <u>any other day which the Contract elsewhere provides is a day on which work cannot be carried out.</u> 	<u>Working days</u>	<u>Working hours</u>	<u>Monday to Friday</u>	<u>6am to 6pm</u>	<u>Saturday to Sunday</u>	<u>6am to 6pm</u>
<u>Working days</u>	<u>Working hours</u>							
<u>Monday to Friday</u>	<u>6am to 6pm</u>							
<u>Saturday to Sunday</u>	<u>6am to 6pm</u>							
23	Qualifying causes of delay, causes of delay for which EOTs will not be granted (page 3, paragraph (b)(iii) of clause 1 and subclause 34.3)							
24*	Liquidated damages, rate (subclause 34.7)	Not Applicable						
25*	Bonus for early <i>practical completion</i>	Not applicable						

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Annexure Part A to AS4000 – 1997

	(subclause 34.8)		
	a) Rate	per day	
	b) Limit	\$	
		OR	
		% of <i>contract sum</i>	
		If nothing stated, there is no waiver	
26*	Delay damages, costs, other <i>compensable causes</i> (page 1, clause 1 and subclause 34.9)	No other <i>compensable causes</i>	
26A*	<u>Delay costs, limit per working day</u> (subclause 34.9)	Not applicable If nothing stated, \$500 per <i>working day</i>	
27	<i>Defects liability period</i> (clause 35)	N/A If nothing stated, 12 months	
27A	<u>Variations, percentage for profit and overheads</u> (subclause 36.4)	<u>Profit</u>	<u>5%</u> If nothing stated 5%
		<u>Overheads</u>	<u>5%</u> If nothing stated 5%
28	Progress Claims (subclause 37.1)		
	a) Times for progress claims	Fortnightly	
		OR	
	b) Stages of <i>WUC</i> for progress claims		
29	Unfixed plant and materials for which payment claims may be made (subclause 37.3)	Nil	
30	Interest rate on overdue payments (subclause 37.5)	3 % per annum If nothing stated, 18% per annum	
31	Time for <i>Principal</i> to rectify inadequate possession (subclause 39.7)	Not applicable If nothing stated, 25 <i>working days</i>	
32	Not used		

*If applicable, delete and instead complete equivalent Item in the separable portions section of the Annexure Part A.

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Annexure Part A to AS4000 – 1997

Separable Portions-Separable Portion Part A

Annexure to AS4000-1997

- This section should be completed only if the *Contract* provides for *separable* portions.
- Complete separate pages for each *separable portion*, which should be numbered appropriately. Any balance of *the Works* should also be a *separable portion*.

<i>Separable portion</i> (clause 1)		N/A
<i>Description of separable portion</i> (clause 1)		
<i>Item</i>		
7	a) <i>Date for practical completion</i> (clause 1)	N/A
	OR	
	b) <i>Period of time for practical completion</i> (clause 1)	N/A
13	<i>Contractor's security</i>	
	a) <i>Form</i> (clause 5)	N/A
	b) <i>Amount or maximum percentage value of this separable portion</i> (clause 5)	N/A If nothing stated, 5% of the value of this <i>separable portion</i>
	c) <i>If retention moneys, percentage of each progress certificate applicable to this separable portion</i> (clause 5 and subclause 37.2)	N/A If nothing stated, 10% until the limit in <i>Item 13(b)</i>
	d) <i>Time for provision (except for retention moneys)</i> (clause 5)	<i>Within 10 business days after the date of acceptance of tender</i> If nothing stated, within 10 <i>business days</i> after <i>date of acceptance of tender</i>
	e) <i>Additional security for unfixed plant and materials</i> (subclauses 5.4 and 37.3)	Not applicable \$

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Annexure Part A to AS4000 – 1997

	f) <i>Contractor's security upon certificate of practical completion is reduced by</i> (subclause 5.4)	Not applicable If nothing stated, 50% of amount held
14	<i>Principal's security</i>	
	a) Form (clause 5)	Not applicable
	b) Amount or maximum percentage value of this <i>separable portion</i> (clause 5)	Not applicable If nothing stated, nil
	c) Time for provision (clause 5)	Not applicable If nothing stated, within 10 <i>business days</i> after the date of <i>acceptance of tender</i>
	d) <i>Principal's security upon certificate of practical completion is reduced by</i> (subclause 5.4)	Not applicable If nothing stated, 50% of amount held
24	Liquidated damages, rate (subclause 34.7)	N/A
25	Bonus for early <i>practical completion</i> (subclause 34.8)	Not applicable
	a) Rate	per day
	b) Limit	\$
		OR
		% of value of this <i>separable portion</i> If nothing stated, there is no waiver
26	Delay damages, costs, <u>other compensable causes</u> (page 1, clause 1 and subclause 34.9)	No other <i>compensable causes</i>
26A	<u>Delay costs, limit per <i>working day</i></u> (subclause 34.9)	Not applicable <u>If nothing stated, \$500 per <i>working day</i></u>

Annexure Part A to AS4000 – 1997

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Annexure Part A to AS4000 – 1997

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Annexure Part B to AS4000 – 1997

Annexure to the
Australian Standard General Conditions of Contract
AS4000 – 1997

PART B

Deletions, amendments and additions

1. The following clauses have been deleted from the General Conditions of Contract

See below
2. The following clauses have been amended and differ from the corresponding clauses in AS4000-1997

See below
3. The following clauses have been added to those of AS4000-1997

See below

1 INTERPRETATION AND CONSTRUCTION OF CONTRACT

Delete the definition of '*bill of quantities*' and replace with:

'bill of quantities means a *price schedule*;

Insert a new definition of '*building contract*':

'building contract has the same meaning as given to that term in section 67AAA of the *Queensland Building and Construction Commission Act 1991* (Qld);'

Insert a new definition of '*business day*':

'business day means:

- (a) when used in the definition of *payment period*, has the same meaning as given to that term in section 67W of the *Queensland Building and Construction Commission Act 1991* (Qld);
- (b) otherwise, has the same meaning as in the *security of payment legislation*;

Insert a new definition of '*claim*':

'claim includes any claim, action, demand, proceeding, suit, defence or set-off, however arising including pursuant to a provision of the *Contract* (including any claim for a *variation*, an *EOT* or other adjustment of the *contract sum*), at law (including a breach of contract), under statute, in equity, in tort (including for negligence), in quasi-contract, for unjust enrichment and to the extent permitted by law, pursuant to any other principle of law, in connection with the *Contract*, the *Works* or *WUC*;

Annexure Part B to AS4000 – 1997

Insert a new definition of '*claimable amount*':

'claimable amount means:

- (a) the value of *work* carried out by the *Contractor* in the performance of the *Contract* which the *Contractor* is entitled to include in a progress claim; and
- (b) amounts otherwise due from the *Principal* to the *Contractor* pursuant to the *Contract*;

Insert a new definition of '*compensable direction*':

'compensable direction means a *direction* pursuant to subclause 8.1 that is necessitated solely because of an inconsistency, ambiguity, discrepancy or error which is in a document prepared by or on behalf of the *Principal* for the purpose of carrying out *WUC* and which could not have been identified by a competent contractor at the time of the *Contractor's* tender if that contractor had inspected:

- (a) all written information made available by the *Principal* to the *Contractor* for the purpose of tendering;
- (b) all information influencing the risk allocation in the *Contractor's* tender and reasonably obtainable by the making of reasonable enquiries; and
- (c) the *site* and its near surrounds;

Insert a new definition of '*conflict of interest*':

'conflict of interest means any actual, potential or perceived conflict between the interests of the *Contractor* and the *Contractor's* obligations under the *Contract*,

Delete the definition of '*Contract*' and replace with:

'Contract has the meaning in clause 1.1 of the *Formal Instrument of Agreement*;

Delete the definition of '*contract sum*' and replace with:

'contract sum means

- (a) where *Item 10A* states that the *Contract* is a *lump sum contract*, the sum of the lump sums contained in the *price schedule*; or
- (b) where *Item 10A* states that the *Contract* is a *schedule of rates contract*:
 - (i) the sum of the products ascertained by multiplying the rates by the corresponding quantities in the *price schedule*; plus
 - (ii) any lump sums contained in the *price schedule*,

including *provisional sums* but excluding additions or deductions which may be required to be made under the *Contract*;

Insert a new definition of '*Councillor*':

'Councillor has the meaning given to that term in the *Local Government Act 2009* (Qld);

Annexure Part B to AS4000 – 1997

Delete the definition of '*date of acceptance of tender*' and insert:

'date of acceptance of tender' means the date which appears on the written notice from the *Principal* to the *Contractor* advising that the *Contractor's* tender or quotation (as the case may be) is successful or, where no such notice is issued means the date on which the *Contract* is executed by the last party to do so;'

Delete paragraph (a) of the definition of '*date of practical completion*' and replace with:

(a) the date stated in a *certificate of practical completion* as the date on which *practical completion* was reached (which may be a date earlier than the date on which the *certificate of practical completion* is issued); or

Insert a new definition of '*Formal Instrument of Agreement*':

'Formal Instrument of Agreement' means the document of that name forming part of the *Contract*;

Insert a new definition of '*improper conduct*':

'improper conduct' means:

- (a) engaging in misleading or deceptive conduct;
- (b) engaging in any collusive tendering, anticompetitive conduct, or any other unlawful or unethical conduct;
- (c) failing to declare a *conflict of interest* in breach of subclause 2B.2;
- (d) canvassing, attempting to improperly influence, offering any inducement to, or accepting or inviting improper assistance from, the *Principal's Councillors* or other *personnel* (or former *personnel*);
- (e) using any information improperly obtained, or obtained in breach of any obligation of confidentiality;
- (f) engaging in aggressive, threatening, abusive, offensive or other inappropriate behaviour or committing a criminal offence; or
- (g) engaging in conduct contrary to sections 199 and 200 of the *Local Government Act 2009* (Qld);'

Insert a new definition of '*informal variation direction*':

'informal variation direction' means a *direction* by the *Superintendent* for a *variation* which is either:

- (a) not in writing; or
- (b) in writing but which does not expressly state that it is a *direction* for a *variation* pursuant to clause 36;'

Insert a new definition of '*liability limit*':

'liability limit' means:

- (a) in respect of the *Contractor*, the sum of:

Annexure Part B to AS4000 – 1997

- (i) the amount specified in *Item 19C*; and
 - (ii) the amount of any excess payable under a policy of insurance required to be effected and maintained by the *Contractor* under the *Contract*; and
- (b) in respect of the *Principal*, the sum of:
- (i) the amount specified in *Item 19D*; and
 - (ii) the amount of any excess payable under a policy of insurance required to be effected and maintained by the *Principal* under the *Contract*;

Insert a new definition of '*lump sum contract*':

'lump sum contract' means a contract to which subclause 2A.3 applies;

Insert a new definition of '*payment period*':

'payment period' means:

- (a) if the *Contract* is a *building contract*, 15 *business days*;
- (b) otherwise, 25 *business days*,

after the progress claim or *final payment claim* (as the case may be) is given to the *Superintendent*;

Insert a new definition of '*payment schedule*':

'payment schedule' has the same meaning as in the *security of payment legislation*;

Insert a new definition of '*personal information*':

'personal information' has the same meaning as given to that term in the *Information Privacy Act 2009 (Qld)*;

Insert a new definition of '*personnel*':

'personnel' includes the officers, employees, agents, representatives, consultants and contractors (including, in respect of the *Contractor*, its subcontractors), of a party and any other person or entity for whom that party is vicariously liable and in respect of the *Principal* includes the *Councilors* of the *Principal* but does not include the *Contractor*;

Insert a new subparagraph at the end of the definition of '*practical completion*':

- (d) anything else which the *Contract* provides is to be done, provided or otherwise satisfied as a requirement of or prior to *practical completion* has been so done, provided or satisfied;

Annexure Part B to AS4000 – 1997

Delete the definition of '*prescribed notice*' and insert:

'prescribed notice means a written notice which contains:

- (a) details of the basis of the *claim*; and
- (b) a detailed itemised breakdown of the quantum of the *claim*, or, where the quantum cannot be itemised at the time that the *prescribed notice* is given because the costs are not yet known, an itemised breakdown of the estimated quantum of the *claim*;

Insert a new definition of '*price schedule*':

'price schedule the documents incorporated into Annexure Part G;

Insert a new definition of '*Principal's policies*':

'Principal's policies means the *Principal's* plans, policies, procedures, codes, standards and guidelines to the extent that these are made available by the *Principal* (whether to the public at large or to the *Contractor*) from time to time;

Insert a new definition of '*provisional work*':

'provisional work means:

- (a) any *work* or item to which a *provisional sum* relates; and
- (b) any other *work* or item which is identified in the *Contract* as 'provisional', 'if ordered', 'as directed' 'optional' or similar or which the *Contract* otherwise provides is not to be carried out or supplied by the *Contractor* unless the *Contractor* is given a *direction* to do so;

Delete the definition of '*qualifying cause of delay*' and insert:

'qualifying cause of delay means to the extent that they delay activities on the critical path of the *construction program*:

- (a) any of the following, which are beyond the control of the *Contractor* occurring on or before the *date for practical completion*:
 - (i) industrial action not exclusively directed at the *Contractor*;
 - (ii) inclement weather and the effects at the *site* of inclement weather;
- (b) any of the following which are beyond the control of the *Contractor* whether occurring before, on or after the *date for practical completion*:
 - (i) any act, default or omission of the *Superintendent*, the *Principal* or the *Principal's* consultants, agents or other contractors (not being employed by the *Contractor*);
 - (ii) *variations* (other than a *variation* for the convenience of the *Contractor*);
 - (iii) *latent conditions*;

Annexure Part B to AS4000 – 1997

- (iv) a change in a *legislative requirement* which comes into effect after the 10th *business day* before the closing of tenders and which could not have been reasonably anticipated by a competent contractor;
- (v) delays by municipal, public, or statutory authorities (including the *Principal* in its capacity as a local government authority);
- (vi) claims referred to in subclause 15.1(e);
- (vii) any breach of the *Contract* by the *Principal*,

but does not include any cause of delay identified in *Item 23*;

Insert a new definition of '*required deductions*':

'required deductions means:

- (a) amounts paid previously under the *Contract*;
- (b) retention moneys to be deducted pursuant to *Item 13*;
- (c) amounts which the *Superintendent* is required to certify pursuant to subclause 5.1A;
- (d) other amounts due from the *Contractor* to the *Principal* in connection with the *Contract*;
- (e) amounts due from the *Contractor* to the *Principal* otherwise than in connection with the *Contract*;
- (f) to the extent that such *work* has not yet been carried out by the *Contractor* and the cost of such *work* has not yet been incurred by the *Principal*, the estimated cost to the *Principal* of having any *work* of removal, demolition, reconstruction, replacement, correction or rectification the subject of a *direction* pursuant to subclause 29.3 or clause 35 carried out by a third party;
- (g) amounts in respect of *work* which is required by the *Contract* to be tested and for which any of the following conditions have not been met:
 - (i) all required *tests* have been completed;
 - (ii) the results of the *tests* do not reveal a failure of the *Contractor* to comply with the *Contract*; and
 - (iii) the *Contractor* has made good *WUC* and provided the results of the *tests* to the *Superintendent* and to the *Principal* in accordance with subclause 30.6;
- (h) other amounts which the *Contract* expressly provides are *required deductions* or which the *Contract* expressly entitles the *Principal* or the *Superintendent* to deduct from payments to the *Contractor*;

Annexure Part B to AS4000 – 1997

Insert a new definition of '*response period*':

'response period for a progress claim or *final payment claim* (as the case may be) means 15 *business days* after the claim is given to the *Principal*;

Delete the definition of '*schedule of rates*' and insert:

'schedule of rates means a *price schedule*;

Insert a new definition of '*schedule of rates contract*':

'schedule of rates contract means a contract to which subclause 2A.4 applies;

Delete paragraphs c) and d) of the definition of '*security*';

Insert a new definition of '*security of payment legislation*':

'security of payment legislation means the *Building Industry Fairness (Security of Payment) Act 2017* (Qld) and any associated subordinate legislation;

Insert a new definition of '*specified loss*':

'specified loss means:

- (a) any loss of, or loss of anticipated, profit, income, revenue, saving, production; business, good will, contract or opportunity (including access to markets); increase in financing or operating costs; liability for loss or damage suffered by third parties; legal costs (on a solicitor and client basis); fines levied; loss of reputation or embarrassment and the cost of abating or reducing such; damage to credit rating; any other financial or economic loss; and
- (b) any indirect, special or consequential loss, damage, cost, expense or penalty not expressly referred to in the preceding paragraph, howsoever arising;

Insert a new definition of '*variation rates*':

'variation rates means the rates included in Annexure Part H;

Insert a new definition of '*willful misconduct*':

'willful misconduct means an intentional act or omission by a party committed with reckless disregard for its foreseeable and potentially harmful consequences in circumstances where that party knows or ought to know that those consequences would likely result from the act or omission but which is not due to an honest mistake oversight, error of judgement, accident or negligence;

Insert a new definition of '*working day*':

'working day means a day identified as such in *Item 22A*;

Annexure Part B to AS4000 – 1997

2 NATURE OF CONTRACT

Delete clause 2.

2A PERFORMANCE AND PAYMENT

Insert a new clause 2A as follows:

2A PERFORMANCE AND PAYMENT

2A.1 **(General)** The *Contractor* shall carry out and complete *WUC* in accordance with the *Contract* and *directions* authorised by the *Contract* and shall otherwise comply with its obligations under the *Contract* at its expense.

Notwithstanding anything else in this clause, where the *price schedule* or the *Contract* elsewhere contains provisions for determining the *Contractor's* entitlement to payment for an item then the *Contractor's* entitlement to payment for that item shall be determined in accordance with such provisions.

2A.2 **(Price schedule)** Quantities in a *price schedule* are estimated quantities only. The *Superintendent* is not required to give a *direction* by reason of the actual quantity of an item required to perform the *Contract* being greater or less than the quantity shown in a *price schedule*.

The *Principal* gives no warranty and makes no representation as to the completeness, accuracy or adequacy of a *price schedule*. If a *price schedule* omits an item which should have been included, the item shall be deemed to have been allowed for in other items.

2A.3 **(Schedule of rates contract)** This subclause 2A.3 only applies where *Item 10A* states that the *Contract* is a *schedule of rates contract*.

The *Principal* shall pay the *Contractor* the sum of the products ascertained by multiplying the measured quantity of each section or item of *work* actually carried out under the *Contract* by the rate provided in the *price schedule* for the section or item adjusted by any additions or deductions made pursuant to the *Contract*. Where, otherwise than by reason of a *direction* to vary *WUC*, the actual quantity of an item required to perform the *Contract* is greater or less than the quantity shown in a *price schedule* and:

- (a) the *price schedule* contains a lump sum for the item, the difference shall be a deemed *variation*;
- (b) the *price schedule* contains a rate for the item, the rate shall apply to the greater or lesser quantities provided that where limits of accuracy for a quantity in a *price schedule* are stated in *Item 11*, the rate shall apply to the greater or lesser quantities within the limits, and quantities outside the limits shall be a deemed *variation*.

2A.4 (b) the *price schedule* contains a rate for the item, the rate shall apply to the greater or lesser quantities provided that where limits of accuracy for a quantity in a *price schedule* are stated in *Item 11*, the rate shall apply to the greater or lesser quantities within the

Annexure Part B to AS4000 – 1997

limits, and quantities outside the limits shall be a deemed *variation*.'

- 2A.5 **(Rise and fall)** The *contract sum* is not subject to adjustment for variations in the cost of labour and materials unless, and then only to the extent that, the *Contract* expressly elsewhere provides that such an adjustment is to be made and states the formula by which that adjustment is to be calculated.
- 2A.6 **(Inclusions)** Except to the extent that the *Contract* expressly allows an adjustment, the *Contractor* warrants and represents that the *contract sum*, and all rates, sums and prices included in the *contract sum* allow for:
- (a) all of the risks, contingencies and other circumstances which could have an effect on the *Contractor's* ability to carry out and complete *the Works* for the *contract sum*, except to the extent that the *Contract* expressly allows an adjustment;
 - (b) the provision of all materials, plant, labour and other services necessary for the proper completion of *the Works*, whether or not those items are expressly mentioned in the *Contract*;
 - (c) payment of all royalties, levies, fees, charges, costs, expenses, taxes or duties in connection with *WUC*; and
 - (d) compliance with all of the *Contractor's* obligations under the *Contract*, including compliance with *directions* of the *Superintendent*.'

2B CONDUCT OF CONTRACTOR AND PERSONNEL

Insert a new clause 2B as follows:

'2B CONDUCT OF CONTRACTOR AND PERSONNEL

- 2B.1 **(General)** The *Contractor* must, and must ensure that its *personnel*, at all times whilst engaged in *WUC* act professionally and treat all of the *Principal's* *personnel*, other contractors and the general public and comply with all of the *Principal's* *policies*.
- 2B.2 **(Conflict of interest)** The *Contractor* warrants and represents that as at the *date of acceptance of tender* the *Contractor* is not aware of any *conflict of interest*. The *Contractor* must not, and must ensure that its *personnel* do not, engage in any activity or obtain any interest which does, or is likely to, result in a *conflict of interest* during the *Contract* and must immediately notify the *Principal* in the event that a *conflict of interest* that has not previously been disclosed arises or is likely to arise.
- 2B.3 **(Improper Conduct)** The *Contractor* warrants and represents that neither the *Contractor* nor any of its *personnel* engaged in any *improper conduct* in connection with the procurement process pursuant to which the parties entered into the *Contract*. The *Contractor* must not, and must ensure that its *personnel* do not, engage in any *improper conduct* in connection with the *Contract*.

3 PROVISIONAL SUMS

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Annexure Part B to AS4000 – 1997

Insert the following at the end of clause 3:

'The *Superintendent* shall not be obliged to give a *direction* that any *provisional work*, or any particular part or quantity of *provisional work*, be carried out or supplied by the *Contractor*. The *Principal* may carry out or supply the whole or any particular part or quantity of *provisional work* itself or engage a third party to do so on its behalf. The *Contractor* shall not be entitled to any monetary compensation (whether for costs incurred, lost profit, lost overheads or otherwise) in connection with any *provisional work* (or any particular part or quantity of *provisional work*) which it is not directed to carry out or supply. Unless the *Contract* elsewhere provides how particular *provisional work* is to be valued, it shall be valued in accordance with this clause 3 as if it were identified as a *provisional sum*.'

5 SECURITY

Insert the following at the end of subclause 5.1:

'Where, due to adjustments made pursuant to the *Contract*, the *contract sum* is increased by more than 10%, the *Superintendent* may direct the *Contractor* to provide additional *security*. Unless the parties agree otherwise, the additional *security* shall be:

- (a) in the form stated in *Item 13*;
- (b) in an amount no more than is necessary to ensure that the total *security* held by the *Principal* is equivalent to the percentage stated in *Item 13(b)* of the *contract sum* as adjusted at the time of the *direction*; and
- (c) provided within 10 *business days* of the *Superintendent's direction*.'

Insert a new subclause 5.1A as follows:

5.1A Failure to provide security

Without limiting the *Principal's* other rights, unless and until the *Contractor* provides *security* (other than retention moneys) in accordance with subclause 5.1:

- (a) the *Superintendent* shall certify, as a *required deduction*, an amount equal to the value of the *security* which has not been provided; and
- (b) the *Principal* shall be entitled to hold that amount as *security*.

The *Principal* shall release and return any amounts held under this under this subclause 5.1A within 10 *business days* after *Contractor* provides the *security* in accordance with subclause 5.1.'

Delete the existing text of subclause 5.3 and replace with:

'The *Contractor* may at any time request the *Principal's* consent to substitute retention moneys or cash *security* with another form of *security*. The *Principal* may, at its absolute discretion, give or withhold consent or give consent subject to such conditions as the *Principal* sees fit. To the extent that another form of *security* is provided, the *Principal* shall not deduct, and shall promptly release and return, retention moneys and cash *security*.'

Annexure Part B to AS4000 – 1997

Delete the existing text of subclause 5.4 and replace with:

'To the extent permitted by law, upon the later of:

- (a) the issue of the *certificate of practical completion*; and
- (b) in respect of *security* under *Item 13* only, the rectification of all *defects* in respect of which the *Superintendent* has given the *Contractor* written notice either in, or prior to the issue of, the *certificate of practical completion*,

a party's entitlement to *security* (other than in *Item 13(e)*) shall be reduced by the percentage or amount in *Item 13(f)* or *14(d)* as applicable, and the reduction shall be released and returned within 10 *business days* to the other party.

The *Principal's* entitlement to *security* in *Item 13(e)* shall cease 10 *business days* after incorporation into *the Works* of the plant and materials for which that *security* was provided.

A party's entitlement otherwise to *security* shall cease 10 *business days* after the last of the following to occur:

- i) the issue of the *final certificate*;
- ii) in respect of *security* under *Item 13* only, compliance by the *Contractor* with all *directions* given under subclause 29.3 or clause 35 (other than *directions* which have been the subject of a *notice of dispute*); and
- iii) the resolution (whether pursuant to clause 42 or otherwise) of any *dispute* the subject of a *notice of dispute* referred to in subclause 37.4(d).'

6 EVIDENCE OF CONTRACT

Delete the existing text of clause 6 and replace with:

'Within the time reasonably required by the *Principal* (or where the *Principal* does not prescribe a time, 10 *business days*) after receiving a copy of a *Formal Instrument of Agreement* for execution ('*execution copy*'), the *Contractor* shall either:

- (a) properly execute the number of copies provided and return them; or
- (b) provide the *Principal* with written notice of any aspect of the *execution copy* which the *Contractor* considers is in error or which does not reflect the agreement between the *Principal* and the *Contractor*.

If the *Contractor*:

- (i) does not give the *Superintendent* the written notice required by subclause 6(b) within the time required by that subclause; or
- (ii) the *Contractor* commences *work* after receiving the *execution copy* and before giving the *Principal* the written notice required by subclause 6(b),

then the *Contractor* shall be deemed to have accepted and agreed to, and shall be legally bound by, the terms of the contract as evidenced by the *execution copy*.

Annexure Part B to AS4000 – 1997

Otherwise, until a *Formal Instrument of Agreement* is executed by the parties, documents evidencing the parties' consensus shall constitute the *Contract*.

Within 25 *business days* after receiving executed copies of the *Formal Instrument of Agreement* from the *Contractor*, the *Principal* shall execute both copies and send one copy to the *Contractor*.

The *Superintendent* may extend the time under this clause by written notice to the parties.'

7 SERVICE OF NOTICES

Insert an additional subclause 7(b)(iv) (together with any consequential amendments) at the end of subclause 7(b) as follows:

(iv) the time at which an email comprising or attaching the notice or other document becomes capable of being retrieved and read by the addressee at the addressee's email address.

Notwithstanding anything else in this clause 7, where the *Contract* elsewhere prescribes the manner in which a particular notice is to be given, then such a notice shall only be deemed to have been given and received if given in the prescribed manner.'

8 CONTRACT DOCUMENTS

Delete the existing text of subclause 8.1 and replace with:

'Figured shall prevail over scaled dimensions in a discrepancy. Otherwise, if either party discovers any inconsistency, ambiguity or discrepancy in or between any document prepared for the purpose of carrying out *WUC* (including the documents incorporated into Annexure Parts D and E), that party shall give the *Superintendent* written notice of it. The *Superintendent*, thereupon, and upon otherwise becoming aware, shall direct the *Contractor* as to the interpretation and construction to be followed.

The *Principal* shall not be liable upon any *claim* for compliance with a *direction*, under this subclause 8.1 unless the *direction* is a *compensable direction* and either:

- (a) the *direction* expressly states that it is a *compensable direction* pursuant to this subclause 8.1; or
- (b) the *Contractor* gives the *Superintendent* a written notice which identifies the *direction* and states that the *Contractor* considers that the *direction* is a *compensable direction* within 5 *business days* after the *direction* is given to the *Contractor*.

The *Contractor* must promptly give the *Superintendent* such additional information as the *Superintendent* reasonably requires in relation to a notice given under paragraph (b).

Subject to the *Contractor's* compliance with this clause and clause 41, if compliance with a *compensable direction* causes the *Contractor* to incur more cost than otherwise would have been incurred had the *direction* not been given, the difference shall be assessed by the *Superintendent* and added to the *contract sum*.

If compliance with any *direction* under this subclause 8.1 (including a *compensable direction*) causes the *Contractor* to incur less cost than otherwise would have been

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incurred had the *Contractor* not been given the *direction*, then the difference shall be assessed by the *Superintendent* and deducted from the *contract sum*.'

Delete subclause 8.5 and insert:

'The parties shall ensure that there are kept confidential such documents, samples, models, patterns and other information as are supplied and clearly identified as confidential or which are, of their nature, confidential.

If required in writing by the *Principal*, the *Contractor* shall enter into a separate agreement not to disclose to anyone else any confidential matter even after issue of the *final certificate* or earlier termination of the *Contract*.

Notwithstanding anything else in this subclause 8.5 or elsewhere in the *Contract*, documents and information provided on behalf of a party to the other party in connection with the *Contract* may be used, copied, modified or disclosed as required or permitted by any *legislative requirement* or other law and otherwise:

- (a) by the *Principal*, as the *Principal* considers to be reasonably necessary to:
 - i) carry out its obligations and exercise its rights under the *Contract*;
 - ii) obtain legal, accounting or other professional advice in connection with the *Contract*; and/or
 - iii) otherwise properly carry out its functions as a local government authority;
- (b) by the *Contractor*, as is reasonably necessary to enable the *Contractor* to:
 - i) carry out its obligations and exercise its rights under the *Contract*;
 - ii) obtain legal, accounting or other professional advice in connection with the *Contract*; and
 - iii) comply with the *Contractor's* corporate governance requirements.

If the *Contractor* is required by law to disclose confidential information of the *Principal*, the *Contractor* must notify the *Principal* of this prior to making such disclosure and must only disclose the minimum amount of information required to meet its obligation to disclose.

If the *Contractor* collects or has access to *personal information* in order to carry out its obligations under the *Contract*, the *Contractor* must comply with Parts 1 and 3 of Chapter 2 of the *Information Privacy Act 2009* (Qld) in relation to the discharge of its obligations under this *Contract* as if the *Contractor* was the *Principal*. Where the *Principal* consents to the *Contractor* subcontracting the whole or part of the *Contractor's* obligations under this *Contract*, the *Contractor* must ensure that any subcontract with a subcontractor that will collect or have access to *personal information* contains a clause requiring the subcontractor to acknowledge and agree that it is a 'bound contracted service provider' as that term is defined in the *Information Privacy Act 2009* (Qld).

The *Principal* collects *personal information* and non-personal information in connection with the *Contract* so that it can properly administer the *Contract* and otherwise carry out its functions as a local government authority. The *Principal* is authorised to collect this information under the *Local Government Act 2009* (Qld) and the *Local Government Regulation 2012* (Qld) and other law. The information

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will be accessible by employees of the *Principal* and third-party personnel engaged to assist the *Principal* in connection with the *Contract* or otherwise carrying out the functions of the *Principal*. Information may also be disclosed as otherwise permitted under the *Contract* or at law, including under the *Local Government Regulation 2012* (Qld) and the *Right to Information Act 2009* (Qld).'

Insert the following at the end of subclause 8.6:

'The *Principal* may organise official media releases for publication in relation to the *Works*. The *Contractor* shall provide any assistance that may be reasonably requested by the *Principal* to facilitate the production of any such media releases.'

9 ASSIGNMENT AND SUBCONTRACTING

Insert the following at the end of subclause 9.2:

'For the purposes of this subclause 9.2, the subcontractors which the *Contractor* nominated in its tender (as amended by post-tender negotiation) are approved by the *Superintendent*. In considering whether to approve a request by the *Contractor* to use other subcontractors, the *Superintendent* may, in addition to any other matter which the *Superintendent* is entitled to consider, also take into account whether the proposed subcontractor is:

- (a) a local supplier (as defined in the *Principal's* procurement policy as published at the *date of acceptance of tender*); or
- (b) at least 50% owned by Aboriginal or Torres Strait Islander persons,

and if not, whether such a supplier is available to undertake the *work* which is proposed to be subcontracted.'

11A SPECIFIC LEGISLATION AND OTHER REQUIREMENTS

Insert new clause 11A as follows:

'11A SPECIFIC LEGISLATION AND OTHER REQUIREMENTS

- 11A.1 (**Portable Long Service Leave**) The party identified in *Item 19A* shall pay any levy payable and give any relevant notices pursuant to the *Building and Construction Industry (Portable Long Service Leave) Act 1991* (Qld) in relation to *WUC*.
- 11A.2 (**Goods and Services Tax**) If GST, as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), is imposed on any supply made pursuant to this *Contract*, the amount payable for the supply is to be increased by the amount of that GST.
- 11A.3 (**Local Government**) Nothing in the *Contract* shall be taken to fetter the power, rights or authority of the *Principal* as a local government authority under the *Local Government Act 2009* (Qld), the *Local Government Regulation 2012* (Qld) or any other *legislative requirement*.

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11A.4 (**Compliance**) The *Contractor* must, and must ensure that to the extent relevant to them its *personnel*, in carrying out the *Contractor's* obligations under the *Contract*:

- (a) hold, maintain and are compliant with all requirements of, all necessary competencies, licences, accreditations, certifications, permits, clearances and other authorisations which are required:
 - (i) under contract;
 - (ii) pursuant to a *legislative requirement* or the *Principal's policies*; or
 - (iii) otherwise at law,

for the *Contractor* to carry out its obligations under the *Contract*,

- (b) act consistently with, and do all things reasonably necessary to enable the *Principal* to comply with, applicable *legislative requirements* and the *Principal's policies*;
- (c) not do, or permit to be done, anything which would cause the *Principal* to be in breach of any *legislative requirements* or the *Principal's policies*;
- (d) notify the *Principal* immediately if it becomes aware of any breach of this subclause 11A.4; and
- (e) when directed to do so by the *Superintendent*, provide the *Superintendent* with such information and documentation evidence as the *Superintendent* reasonably requests to satisfy the *Superintendent* that the *Contractor* has complied with this subclause 11A.4.

11A.5 (**Indemnity**) The *Contractor* shall indemnify and keep indemnified the *Principal* against any *claim* which may be brought against the *Principal* and any cost, expense, fine, penalty, damages or loss which may be imposed upon, suffered or incurred by the *Principal* in connection with:

- (a) the *Contractor's* failure to comply with this clause 11A or to satisfy a *legislative requirement* as required by subclause 11.1;
- (b) any breach by the *Contractor* of its obligations under any *legislative requirement*; and/or
- (c) any enforcement of obligations imposed on the *Contractor* under any *legislative requirement*,

but the indemnity will be reduced to the extent that the act or omission of the *Principal* or the *Superintendent* caused or contributed to the *claim* or loss.

11A.6 (**Interpretation**) In the event of any inconsistency, ambiguity, discrepancy or conflict in or between any obligation of the *Contractor* under subclauses 11A.1 to 11A.4, the *Contractor* must promptly notify the *Superintendent* who shall direct the *Contractor* as to the interpretation to be followed. In the absence of such a *direction*, the *Contractor* shall adopt the

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interpretation which places the higher or more onerous obligation on the *Contractor*.’

12A WORK HEALTH AND SAFETY

Insert new clause 12A as follows:

12A WORK HEALTH AND SAFETY

12A.1 **(Interpretation)** In this clause:

- (a) ‘*Act*’ means the *Work Health and Safety Act 2011* (Qld);
- (b) ‘*WHS authority*’ means any government authority having jurisdiction under the *WHS Laws*;
- (c) ‘*Regulation*’ means the *Work Health and Safety Regulation 2011* (Qld);
- (d) ‘*inspector*’, ‘*notifiable incident*’, ‘*regulator*’, ‘*structure*’ and ‘*workplace*’ have the same meanings as in the *Act*;
- (e) ‘*principal contractor*’ has the same meaning as in the *Regulation*;
- (f) ‘*statutory notice*’ means any:
 - (i) infringement notice, prohibition notice, improvement notice or non-disturbance notice; and
 - (ii) any electrical safety protection notice or unsafe equipment notice,

issued by an *authority* pursuant to the *WHS Laws*;
- (g) ‘*WHS*’ means work, health and safety;
- (h) ‘*WHS Laws*’ means the *Act*, the *Regulation*, *Electrical Safety Act 2002* (Qld) and all other applicable work health and safety legislation, regulations, rules, Codes of Practice and Australian Standards.

12A.2 **(Appointment as principal contractor)** Where *Item 19B* states that the *Contractor* is appointed as *principal contractor*, then from the *date of acceptance of tender*:

- (a) the *Principal* engages the *Contractor* to be the *principal contractor* under the *Regulation* in relation to *WUC* and authorises the *Contractor* to:
 - (i) have management and control of the *site* and any other *workplace* at which *WUC* is carried out; and
 - (ii) discharge the duties of the *principal contractor*;
- (b) the *Contractor* accepts the engagement as *principal contractor* from the *Principal* and agrees to fulfil all requirements and give effect to that engagement prior to the commencing any *WUC*; and

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- (c) the *Contractor* will comply with and discharge all obligations imposed on the *Contractor*, as *principal contractor*, by the *WHS Laws*.

If *Item 19B* states that the *Contractor* is not engaged as *principal contractor*, the *Contractor* must comply with all *directions* of the *Superintendent* relating to *WHS*.

12A.3 (**Contractor's primary obligations**) From the *date of acceptance of tender*, the *Contractor* must:

- (a) comply with and discharge all obligations imposed on the *Contractor* as a person who conducts a business or undertaking and otherwise, by the *WHS Laws*;
- (b) consult with the *Principal* and consult with the designers of the whole or any part of a structure to be constructed under the *Contract*, about how to ensure that risks to health and safety arising from the design are eliminated during construction of *WUC* or, if it is not reasonably practicable to eliminate the risks, minimise, so far as is reasonably practicable;
- (c) in performing its obligations under the *Contract*, take into account and take appropriate action having regard to any information given to the *Contractor* by the *Principal* or any other person, about hazards and risks at or in the vicinity of the *workplace* where *WUC* is being carried out, and
- (d) without limiting paragraph 12A.2(c) ensure its officers, workers and agents, subcontractors and its subcontractors' officers, workers and agents, discharge their respective duties under the *WHS Laws* in connection with *WUC*.

12A.4 (**Contractor's WHS systems and documentation**) The *Contractor*:

- (a) must ensure, and warrants and represents, that it has adequate *WHS* systems in place having regard to the nature of its obligations under the *Contract* and any hazards specific to any *workplace* at which an obligation under the *Contract* is to be carried out;
- (b) must inform the *Principal* of all its *WHS* policies, procedures or measures implemented for the performance of its obligations under the *Contract*;
- (c) must prepare and adopt a *WHS* plan and other documentation which:
 - (i) addresses all the specific *WHS* hazards and issues relevant to the *Contractor's* obligations under the *Contract* which can be reasonably anticipated or ascertained from time to time during the performance of the *Contractor's* obligations under the *Contract*;
 - (ii) documents the system and control methods to be implemented for the performance of its obligations under the *Contract*,

and must update such documentation as required from time to time to ensure that it complies with this subclause 12A.4(c) at all times during the performance of its obligations under the *Contract*;

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- (d) must:
- (i) unless otherwise directed by the *Principal*, prior to commencing *WUC*, submit the *Contractor's WHS* plan and other documentation (including the documentation required elsewhere under the *Contract*) to the *Principal* for review; and
 - (ii) within the time directed by the *Principal*, submit to the *Principal* for review any other *WHS* documentation that the *Principal* directs it to prepare,
- and if the *Principal* notifies the *Contractor* that all or part of the *WHS* documentation is not suitable, at its cost amend and resubmit the relevant *WHS* documentation;
- (e) must, if the *Principal* at any time during the performance of the *Contractor's* obligations under the *Contract* requests the *Contractor* to review any of the *WHS* documentation, promptly and within the time required by the *Principal*, review any or all of the *WHS* documentation in accordance with the *Principal's* request and either:
- (i) submit revised documentation to the *Principal*; or
 - (ii) provide written confirmation that the *WHS* documentation is appropriate to manage the risks associated with the *Contractor's* obligations under the *Contract*,

12A.5 **(Notices and reports)** The *Contractor* must:

- (a) if a *notifiable incident* occurs at the *workplace* at which *WUC* is being undertaken:
 - (i) immediately notify the *regulator* and the *Superintendent* of the *notifiable incident*; and
 - (ii) take all reasonably practicable steps to secure the *site* where the *notifiable incident* occurred until an *inspector* arrives at the *site* or any earlier time that an *inspector* directs;
- (b) provide a copy of every *statutory notice* received from an *authority* in connection with *WUC* to the *Principal* and the *Superintendent* within 1 *business day* after the notice is received; and
- (c) within the time directed by the *Superintendent* make available to the *Superintendent* and the *Principal* all project *site* accident data which must include injuries and damage resulting from accidents or any incidents involving harm to a third party, particularly where legal action may be taken against them or the *Principal*.

12A.6 **(Site specific induction)** The *Contractor* must ensure that all *personnel* of the *Contractor* working at the *site* receive a site-specific induction and that each person visiting the *Contractor* or its *personnel* at that *site* receives a site-specific induction or is accompanied by someone who has received such an induction.

12A.7 **(Safety compliance)** If during the performance of *WUC* the *Superintendent* informs the *Contractor* that it is of the opinion the *Contractor* is:

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- (a) not conducting *WUC* in compliance with the *Act, Regulation*, codes of practice or relevant policies and procedures; or
- (b) conducting *WUC* in such a way as to endanger the health and safety of the *Contractor's personnel*, the *Principal's personnel* or the general public,

the *Superintendent* may direct the *Contractor* to promptly remedy the breach or take any other action permitted by the *Contract*, including suspending the whole or part of *WUC* pursuant to clause 33 until such time as the *Contractor* satisfies the *Superintendent* that *WUC* can be resumed in a safe manner.'

15 DAMAGE TO PERSONS AND PROPERTY OTHER THAN WUC

Delete clause 15.2.

15A LIABILITY

Insert a new clause 15A as follows:

15A LIABILITY

15A.1 **(Limit and exclusion of liability)** Subject to subclause 15A.2, to the extent permitted by law:

- (a) the total aggregate liability of each party to the other in connection with the *Contract* (including in respect of any *claims*) shall not exceed that party's *liability limit*; and
- (b) neither party shall be liable to the other upon any *claim* for any *specified loss* unless and then only to the extent that the *Contract* expressly provides for that liability.

15A.2 **(Application of clauses)** Subclause 15A.1 does not apply to:

- (a) liability of the *Principal* to pay the *contract sum* as adjusted pursuant to the *Contract*;
- (b) liability of the *Contractor* for liquidated damages pursuant subclause 34.7;
- (c) liability of either party in connection with personal injury or death or damage to property;
- (d) liability of a party arising as a result of:
 - (i) a breach of any *legislative requirement*;
 - (ii) an infringement of confidentiality or *intellectual property rights*;
 - (iii) a deliberate breach or abandonment of the *Contract*;
 - (iv) *wilful misconduct*; or
 - (v) fraud or other criminal conduct,

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by that party;

- (e) liability of the *Contractor* which the Contractor:
- (i) is entitled to recover under any insurance policy required to be effected under the *Contract* (up to the monetary limits for that insurance stated in the *Contract*) unless, and then only to the extent that, the *Contractor* uses all reasonable endeavours to, but does not actually, recover that liability; or
 - (ii) would have been entitled to recover under any insurance policy required to be effected under the *Contract* (up to the monetary limits for that insurance stated in the *Contract*) but for any act or omission of the *Contractor*,

and amounts referred to in paragraphs (a), (b), (c) (d) and (e) shall not be included in calculating whether the *liability limit* of a party has been reached.'

16 INSURANCE OF THE WORKS

In the third paragraph of Alternative 1, delete 'The insurance cover shall be for an amount not less than the aggregate of the:' and insert:

'The insurance cover shall be for an amount per occurrence of not less than the aggregate of the:'

In the second last paragraph of Alternative 1, delete 'be in the joint names of the parties' and insert 'be in the name of the *Contractor* and shall note the *Principal* as an interested party'.

17 PUBLIC LIABILITY INSURANCE

In Alternative 1, delete the existing text of subclause 17(a) and replace with:

'(a) be in the name of the *Contractor* with the *Principal* noted as an interested party;'

19 INSPECTION AND PROVISIONS OF INSURANCE POLICIES

Delete subclauses 19.3 and 19.6.

20 SUPERINTENDENT

Delete the first paragraph of clause 20 and insert:

'The *Principal* shall ensure that at all times there is a *Superintendent*, and that the *Superintendent*, when acting as certifier, valuer or assessor, fulfils all aspects of the role and functions honestly, independently, and in accordance with the *Contract*. The *Contractor* acknowledges and accepts that the *Superintendent* and individuals appointed as *Superintendent's Representatives* under clause 21 may

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be employees of the *Principal* or may have a general commercial relationship with the *Principal* beyond the performance of the appointed roles under this *Contract*.'

23A KEY PERSONNEL

Insert a new clause 23A as follows:

'23A KEY PERSONNEL

Unless the *Superintendent* approves a change in key *personnel* in writing, the *Contractor* must provide the key *personnel* (if any) identified in *Item 21A* to perform the roles during the period or periods stated in *Item 21A* or where no period is stated, until the end of the last *defects liability period*. The *Contractor* may seek the approval of the *Superintendent* to change the role of any key *personnel* or to engage additional persons as key *personnel*.

The *Contractor* must promptly arrange a replacement approved by the *Superintendent* to replace any key *personnel*. The *Contractor* must provide any information reasonably required by the *Superintendent* in connection with the replacement. The *Superintendent* cannot unreasonably refuse to approve a replacement person that is of equal or greater skill, experience and competency to the person being replaced.'

24 SITE

Delete the first sentence of subclause 24.1 and insert:

'The *Principal* shall give the *Contractor* possession of sufficient of the *site* for commencement of *WUC* on *site* on the later of:

- (a) the expiry of the time in *Item 22*; and
- (b) 10 *business days* after the *Contractor* has:
 - (i) complied with subclause 19.1; and
 - (ii) given the *Superintendent* all other information and documentation and done all other things which the *Contract* elsewhere requires to be given or done before possession of the *site* is given.

Possession of the *site* may be non-exclusive.'

25 LATENT CONDITIONS

Delete '28 days' from subclause 25.3 and insert '5 *business days*'.

29 QUALITY

Delete the first paragraph of subclause 29.3 and insert:

'If the *Superintendent* becomes aware of *work* done (including material provided) by the *Contractor* which does not comply with the *Contract*, the *Superintendent* may direct the *Contractor* to do any one or more of the following (including times for commencement and completion):'

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Delete the existing text of subclause 29.4 and insert:

'Instead of a *direction* pursuant to subclause 29.3 or clause 35, the *Superintendent* may direct the *Contractor* that the *Principal* elects to accept the subject *work*. Where the *Contract* elsewhere provides for an applicable reduced level of service for the subject *work*, then the *contract sum* shall be adjusted in accordance with such provisions. Otherwise, there shall be a deemed *variation*.'

31 WORKING HOURS

Delete the first sentence of clause 31 and replace with:

'The working hours and *workings days* for *work* on the *site* are stated in *Item 22A*.'

32 PROGRAMMING

In the fifth paragraph, delete 'It shall be deemed a *Contract* document'.

34 TIME AND PROGRESS

Delete '28 days' from paragraph (b) of subclause 34.3 and replace with '10 *business days*'.

Delete the first paragraph of subclause 34.4 and replace with:

'To the extent that delays caused by *qualifying causes of delay* overlap with delays caused by other causes of delay, the *Contractor* shall not be entitled to an *EOT*.'

Insert the following at the end of subclause 34.4:

'To avoid doubt, all *EOTs* shall be claimed and granted in *working days*.'

Delete the existing text of subclause 34.5 and replace with:

'Within 20 *business days* after receiving the *Contractor's* claim for an *EOT*, the *Superintendent* shall give to the *Contractor* and the *Principal* a written *direction* evidencing the *EOT* so assessed.

Notwithstanding that the *Contractor* is not entitled to or has not claimed an *EOT*, the *Superintendent* may at any time and from time to time before issuing the *final certificate*, in its absolute discretion and without any obligation to do so for the benefit of the *Contractor*, direct an *EOT*. The *Contractor* shall not be entitled to any monetary compensation (whether under subclause 34.9 or otherwise) in connection with an *EOT* granted by the *Superintendent* pursuant to this paragraph.

Neither:

- (a) a delay caused by a *compensable cause*; nor
- (b) a failure by the *Superintendent* to grant a reasonable *EOT* or to do so within the time required under subclause 34.5,

will set the *date for practical completion* at large or render subclause 34.7 unenforceable. Nothing in subclause 34.5 shall affect the *Contractor's* right to damages for a breach of contract.'

Delete subclause 34.9 and replace with:

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'34.9 Delay costs

For every *working day* the subject of an *EOT* for a *compensable cause* and for which the *Contractor* gives the *Superintendent* a claim for delay costs pursuant to subclause 41.1, the *Superintendent* shall, under subclause 41.3, certify as due and payable to the *Contractor*, such extra costs as are reasonably and necessarily incurred by the *Contractor* by reason of the delay up to a maximum per *working day* of the amount stated in *Item 26A*.

Nothing in this subclause 34.9 shall oblige the *Principal* to pay extra costs for delay –

- (a) which have already been included in the value of a *variation* or any other payment under the *Contract*;
- (b) caused by inclement weather or its effects, even if that inclement weather or those effects would not have delayed the *Contractor* but for an earlier delay caused by a *compensable cause*;
- (c) to the extent that the *Contractor* has failed to take all reasonable steps to mitigate the delay or the extra costs incurred.'

36 VARIATIONS

At the end of subclause 36.1, insert:

'The *Principal* may itself perform or engage others to perform any *work* which is omitted pursuant to this subclause 36.1 without payment of monetary compensation to the *Contractor* for doing so. No *variation* shall invalidate or amount to a repudiation of the *Contract*.'

Delete the last sentence of subclause 36.2.

Delete the existing text of subclause 36.4 and replace with:

'The *Superintendent* shall, as soon as possible, price each *variation* using the following order of precedence:

- (a) prior agreement;
- (b) rates or prices in a *price schedule* to the extent that it is reasonable to use them;
- (c) *variation rates* (or where no applicable *variation rates* are included in the *Contract*, other applicable rates or prices in the *Contract*);
- (d) reasonable rates or prices, which shall include the percentage stated in *Item 27A* for profit, and if the *Superintendent* considers it reasonable to do so, the percentage stated in *Item 27A* for overheads,

and any deductions shall include the full value of the deducted *work* (including profit and overheads) unless the *Superintendent* considers it reasonable to exclude an amount for overheads, in which case the amount so excluded shall not exceed the percentage stated in *Item 27A* for overheads.

That price shall be added to or deducted from the *contract sum*, as the case may be.

5.2 TENDER CONSIDERATION PLAN - TCP01 24-25 FLOOD RESTORATION WORKS MILO ROAD PACKAGE

IX: 254306

Author: Sharon Frank, Manager Finance & Administration

Attachments: 1. Tender Consideration Plan 01 24-25 Flood Restoration Works Milo Road Package.pdf [↓](#)
2. Schedule 1 Proposed Contract Terms - TCP01 24-25 Flood Restoration Works - Milo Road Package.pdf [↓](#)

KEY OUTCOME

Key Outcome: 2. Flourishing Economy

Key Initiative: 2.3 Maintain safe and efficient transport networks

Key Outcome: 4. Strong Governance

Key Initiative: 4.4 Long-term financial sustainability underpinned by sound financial planning and accountability

EXECUTIVE SUMMARY

At the Ordinary Meeting of Council held on 17 September 2024, Council decided to prepare a Tender Consideration Plan for the Flood Restoration Works – Milo Road Package and authorised the Chief Executive Officer to prepare the Tender Consideration Plan - RESOLUTION NO: (QSC215-09-24).

This report presents the Tender Consideration Plan for Council's consideration.

RECOMMENDATION

That Council resolve to:

1. Adopt the Tender Consideration Plan – TCP01 24-25 Flood Restoration Works Milo Road Package as presented.
2. Subject to successful negotiation on the final terms and conditions, award TCP01 24-25 Flood Restoration Works Milo Road Package to S.A Travers & S.L Travers for an amount of \$946,042.50 excluding GST (\$1,040,646.75 including GST).
3. Pursuant to section 257 of the *Local Government Act 2009*, delegate to the Chief Executive Officer the power to negotiate, finalise and execute any and all matters associated with or in relation to this project and contract including without limitation any options and/or variations as per Council's procurement policy.

BACKGROUND

Council previously undertook a competitive request for quotation process identified as RFQL 01 24-25 for the procurement of the Flood Restoration Works – Milo Road (“**the Works**”) under which Council obtained and assessed quotations (“**RFQ Process**”).

Due to a process improvement Council is implementing, the recommendation for the RFQ Process was not adopted.

Section 230 of the *Local Government Regulation 2012* provides that a local government 'may enter into a medium-sized contractual arrangement or large-sized contractual arrangement without first inviting written quotes or tenders if the local government:

- (a) decides, by resolution, to prepare a quote or tender consideration plan; and
- (b) prepares and adopts the plan;

Council considered a report on the matter of a Tender Consideration Plan for the Milo Road Flood Restoration Works Package at its Ordinary Meeting of Council on 17 September 2024 and resolved as follows.

RESOLUTION NO: (QSC215-09-24)

That:

1. Pursuant to section 230 of the *Local Government Regulation 2012 (Qld)*, Council decides to prepare a tender consideration plan for the Milo Road Flood Restoration Works Package and authorises the Chief Executive Officer to prepare the tender consideration plan.
2. In accordance with section 230 (2) of the *Local Government Regulation 2012*, this Tender Consideration Plan will include the following:
 - the objectives of the plan; and
 - how the objectives are to be achieved; and
 - how the achievement of the objectives will be measured; and
 - any alternative ways of achieving the objectives, and why the alternative ways were not adopted; and
 - the proposed terms of the contract for the goods or services; and
 - a risk analysis of the market from which the goods or services are to be obtained.

Council has now prepared the Tender Consideration Plan to facilitate the engagement of a contractor to undertake the Works.

The primary objective of the Tender Consideration Plan is to procure a contractor to undertake the Works through a process which will allow the project to be delivered within the timeframe originally set for contract completion; also allowing sufficient time for funding acquittal requirements to be met.

Further objectives of the Tender Consideration Plan are to undertake that procurement without unnecessarily wasting the time and money of Council and potential contractors and whilst ensuring Council obtains value for money.

OPTIONS

Option 1 – Recommended

That Council resolve to:

1. Adopt the Tender Consideration Plan – TCP01 24-25 Flood Restoration Works Milo Road Package as presented.

2. Subject to successful negotiation on the final terms and conditions, award TCP01 24-25 Flood Restoration Works Milo Road Package to S.A Travers & S.L Travers for an amount of \$946,042.50 excluding GST (\$1,040,646.75 including GST).
3. Pursuant to section 257 of the *Local Government Act 2009*, delegate to the Chief Executive Officer the power to negotiate, finalise and execute any and all matters associated with or in relation to this project and contract including without limitation any options and/or variations as per Council's procurement policy.

Option 2

That Council resolve not to adopt TCP01 24-25 Flood Restoration Works Milo Road Package.

CONSULTATION (Internal/External)

Chief Executive Officer - Acting

Manager Finance and Administration

Procurement Officer

Project Management Services – Proterra Group Pty Ltd

LEGAL IMPLICATIONS

NIL

POLICY AND LEGISLATION

Local Government Act 2009

Local Government Regulations 2012 - Section 230 of the *Local Government Regulation 2012* provides that a local government may enter into a medium-sized contractual arrangement or large-sized contractual arrangement without first inviting written quotes or tenders if the local government:

- (a) decides, by resolution, to prepare a quote or tender consideration plan; and
- (b) prepares and adopts the plan.

Council Procurement Policy – adopted 20 February 2024 Resolution Number: QSC026-02-24

FINANCIAL AND RESOURCE IMPLICATIONS

The project is fully funded by the Queensland Reconstruction Authority (QRA) through the Disaster Relief Funding Arrangement (DRFA).

RISK MANAGEMENT IMPLICATIONS

Risk assessment undertaken as part of the Tender Consideration Plan.

6 CEO UPDATE / VERBAL REPORT