

<b>ORDINARY MEETING</b>	<b>4</b>
<b>6 MARCH 2024</b>	

## **DISASTER RECOVERY WORKS – HARD WASTE COLLECTION CONTRACT**

59/1/3\* | #7365524

### **RECOMMENDATION:**

That Council:

1. In accordance with Section 235(c) of the Local Government Regulation 2012 and the Ministerial exemption provided under s90(B) of the *Local Government Act 2009*, retrospectively approves the award of contract 2956, Hard Waste Collection, to Johns Lyng Group Disaster Management (QLD) Co Pty Ltd for \$3.7 Million excluding GST.
2. Delegates authority to the Chief Executive Officer in accordance with the *Local Government Act 2009* to enter into this contract, finalise and negotiate any and all matters relating to this engagement.

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### **INTERESTED PARTIES:**

- Johns Lyng Group Disaster Management (QLD) Co Pty Ltd

### **EXECUTIVE SUMMARY:**

In the immediate response to the devastation left by ex-Tropical Jasper and the subsequent flooding event, Council engaged Johns Lyng Group Disaster Management (QLD) Co Pty Ltd (Johns Lyng) to assist with emergency works under a Hard Waste Collection Contract.

This engagement is in accordance with the 'Emergencies' provisions within Councils Procurement Policy and Section 235(c) of the Local Government Regulation 2012 which provide exceptions to standard contracting procedures in the event of a genuine emergency.

Council officers entered into the hard waste collection contract to urgently address public health and safety concerns and public amenity requirements. Johns Lyng were responsible for establishing a temporary waste management facility, arranging hard waste collected from flood effected areas and the sorting and safe disposal of collected waste.

The value of the contract is \$3.7 Million. The costs incurred by Council collecting residential hard waste will be covered by the Disaster Recovery Funding Arrangements, which is a joint funding initiative of the Australian and Queensland governments. Some minor ineligible costs will also be incurred, however these are expected to be covered by other grant funding that is available.

Now that the immediate emergency has passed, Council's retrospective approval of this expenditure is required under Council's Procurement Policy and the relevant provisions within local government legislation.

As Council is currently under the Caretaker Period provisions of the *Local Government Act 2009*, approval can only be given for expenditure up to \$2.97M without Ministerial approval. Ministerial approval was therefore sought to allow Council to retrospectively review this procurement activity and approve this contract. Approval was received on 28 February 2024, refer Attachment 1.

### **BACKGROUND:**

Ex-Tropical Cyclone Jasper caused significant destruction and property loss within several local Cairns suburbs, most notably in Holloways Beach, Machans Beach, Lake Placid and Kamerunga.

Council deployed regular maintenance crews to priority areas to assist with restoring public amenities and ensuring roads and drains were cleared as quickly as possible to mitigate the impact of the event on residents, property, and the environment whilst prioritising safety. However, Council did not have sufficient internal resources available to adequately deal with the hard waste collection requirements and engaged Johns Lyng to undertake this work. The appointment of Johns Lyng was supported by the Queensland Reconstruction Authority (QRA) due to their experience and performance in responding to disaster recovery on a number of recent events across Australia.

### **COMMENT:**

Johns Lyng were initially engaged under the "Genuine Emergency" provision of S235 of the *Local Government Regulation 2012*. Council's Procurement Policy also allows the CEO to approve the emergency expenditure over her normal delegated authority of \$1M.

However, once the immediacy of the incident has passed, purchase orders must be raised to record the expenditure in the same way as they would have been in normal circumstances. As soon as practical upon cessation of the emergency, a report must be presented to Council to authorise the unapproved expenditure, where this expenditure exceeds delegation, and the methodology by which it was incurred. The Council Resolution must define the genuine emergency situation (such as natural disaster), as well as delegate authority.

As Council is currently under the Caretaker Period provisions of the *Local Government Act 2009*, approval can only be given for expenditure up to \$2.97M without Ministerial approval. Ministerial approval was therefore sought to allow Council to retrospectively review this procurement activity and approve this contract.

This approval was sort in accordance with s90(B) of the *Local Government Act 2009* in which a local government must not make a major policy decision during a caretaker period for the local government. However, if the local government considers that, having regard to exceptional circumstances that apply, it is necessary to make the major policy decision in the public interest, the local government may apply to the Minister for approval to make the decision. Ministerial approval was given on 28<sup>th</sup> February 2024 – refer to attachment 1.

Johns Lyng was selected as the most appropriate contractor to conduct these works due to their experience, past performance, resource availability and ability to commence work immediately. They mobilised with immediate effect upon appointment and have demonstrated great professionalism and commitment with quality outcomes to all deliverables as per contractual obligations.

It must also be noted that Johns Lyng are a Contractor already appointed to Council's Register of Pre-qualified Suppliers (ROPS) 2777 - Project Management – Disaster Recovery of Waste Services. Section 232 of the *Local Government Regulation 2012* enables a local government to enter into a contract without first inviting written quotes or tenders if the contract is entered into with a supplier from a register of pre-qualified suppliers.

### **OPTIONS:**

#### **Option 1:**

That Council:

1. In accordance with Ministerial exemption provided under s90(B) of the *Local Government Act 2009*, retrospectively approves the award of contract 2956, Hard Waste Collection, to Johns Lyng Group Disaster Management (QLD) Co Pty Ltd for \$3.7 million excluding GST.
2. Delegates authority to the Chief Executive Officer in accordance with the Ministerial exception provided under S.90B of the *Local Government Act 2009* to enter into this contract, finalise and negotiate any and all matters relating to this engagement subject to normal procurement practices and policies.

Due to the emergency nature of the works Council officers had no other option but to engage an external contractor to manage the collection of hard waste after the effects of ex-Cyclone Jasper and the subsequent flooding as Council did not have sufficient internal resources available to adequately deal undertake the work.

### **CONSIDERATIONS:**

#### **Risk Management:**

The appointment of Johns Lyng was supported by the Queensland Reconstruction Authority (QRA) due to their relevant experience and recent performance in responding to disaster recovery for a number of similar events across Australia. This limited Council's exposure to risk regarding delivery of the works within the required timeframe.

#### **Council Finance**

The costs incurred by Council collecting residential hard waste will be covered by the Disaster Recovery Funding Arrangements, which is a joint funding initiative of the Australian and Queensland governments. Some minor ineligible costs will also be incurred, however these are expected to be covered by other grant funding that is available.

Local Economy:

A primary objective of Johns Lyng engagement was for them to engage and coordinate local trades and suppliers, fostering a cooperative effort to achieve a successful outcome for the community. This contributes to the local economy through local engagement and local spend.

Community:

These works have ensured the safe and efficient collection of hard waste for community members who have been severely affected by the effects of flooding and ex-Tropical Cyclone Jasper.

Natural Environment:

These works have assisted in the removal of hard waste that may otherwise have sat in-situ for long periods of time causing detrimental effects to the natural environment.

Corporate Plan 2021 to 2026:

The provision of these services relates to the following goals in Council's Corporate Plan:

- 01 - Robust Economy: Supporting a diversified and resilient economy.
- 02 - Natural Assets: Promoting, protecting and enhancing our iconic natural environment now and for generations to come.
- 03 – Design for Liveability – Creating a safe, sustainable and connected place that supports a quality life.

Statutory:

This engagement has been conducted in accordance with legislative requirements under the *Local Government Act 2009* and the *Local Government Regulation 2012*.

Policy:

The engagement and selection process was undertaken in accordance with Council's adopted Procurement Policy which has a provision for "Emergencies".

**CONSULTATION:**

Extensive consultation has been undertaken with internal stakeholders from within Resource Recovery, Service Delivery, Utility Services, Procurement and Payables, and Finance throughout the engagement and delivery phases.

There has also been a high level of community engagement to ensure the smooth delivery the hard waste collection requirements.

**ATTACHMENTS:**

1. Ministerial approval for Council to decide if it retrospectively approves the awarding of the contract for hard waste collection to Johns Lyng Disaster Management (QLD) Co Pty Ltd. #7367867.



Jason Ritchie  
Executive Manager Finance



Mica Martin  
Chief Executive Officer

**Attachment 1:** Ministerial approval for Council to decide if it retrospectively approves the awarding of the contract for hard waste collection to Johns Lyng Disaster Management (QLD) Co Pty Ltd. #7367867

Our reference: DEPBN24/275



28 February 2024

Department of  
**Housing, Local Government,  
Planning and Public Works**

Ms Mica Martin  
Chief Executive Officer  
Cairns Regional Council  
m.martin@cairns.qld.gov.au

Dear Ms Martin

Re: Making major policy decisions during caretaker period – Cairns Regional Council (the council).

Thank you for your email of 27 February, seeking an exemption to make major policy decisions during the 2024 local government caretaker period (caretaker period) under section 90B(2) of the *Local Government Act 2009* (the Act).

I have been delegated by the Honourable Meaghan Scanlon, Minister for Housing, Local Government and Planning and Minister for Public Works to assess the council's application for approval for a major policy decision during the caretaker period for the 2024 quadrennial election.

Section 90B of the Act provides that the Minister for Local Government, may give approval to an otherwise prohibited major policy decision during a caretaker period, if satisfied that having regard to exceptional circumstances that apply, it is necessary for the Local Government to make the major policy decision in the public interest.

I am required to determine whether there are exceptional circumstances that apply to the council's application and that any approval to allow a major policy decision to be made during a caretaker period is in the public interest. I have therefore taken these factors into account.

I have decided to approve the council's application based on the factors above.

The approval is to award a contract for the hard waste collection from flood effected areas under Disaster Recovery Funding Arrangements (DRFA) as identified in your email of 27 February 2024 application:

- Johns Lyng Group Disaster Management (QLD) Co Pty Ltd.

If you need further information, Ms Louisa Lynch, Director, Governance and Capability, Local Government Division in the Department of Housing, Local Government, Planning and Public Works can be contacted on (07) 3452 6747 or by email at Louisa.Lynch@dSDLGP.qld.gov.au.

Yours sincerely

Joshua Hannan  
**Deputy Director-General**  
**Local Government Division**