

11.1 Confidential - Lonsdale Landfill Lease Assignment

A request has been received from Lonsdale Landfill Pty Ltd for Council consent to assign the lease of Council land at Meyer Road, Lonsdale to Resourceco Pty Ltd.

This is information seeking Council direction.

General Manager: Bruce Williams, General Manager – Projects and Services

Report Author: Alison Hancock, Manager - Property Services
(alihan@onkaparinga.sa.gov.au)

Contact Number: 83480646

Attachments: 1. Site and Ground Floor Plan (1 page)
2. Map of Site (1 page)
3. Letter from Resourceco seeking assignment (2 pages)

1 Executive Summary

1.1 Topic

A request has been received from Lonsdale Landfill Pty Ltd for Council consent to assign the lease of Council land at Meyer Road, Lonsdale to Resourceco Pty Ltd.

1.2 Context

Lonsdale Landfill Pty Ltd operates a landfill operation on land owned by Council at Meyer Road, Lonsdale. The current six (6) year lease is due to expire on 30 June 2009. Operation of the site is controlled by a Landfill Environment Management Plan (LEMP) (which forms part of the lease) and a licence from the Environment Protection Authority (EPA).

We have received a request from Lonsdale Landfill Pty Ltd who is the current lessee of the landfill site to assign the remaining term of the lease to Resourceco Pty Ltd.

Clause 7 of the lease provides for such an assignment, on the condition that the current incumbent provides sufficient information to satisfy Council that the proposed lessee is of good standing and can carry out the obligations of the lease.

1.3 Suggested Outcome

It is suggested that Council consider this item in Confidence. Section (ii) 90(3)(d) of the Local Government Act 1999 is suggested as the most appropriate to use for this purpose.

This item is presented as a confidential item because the Applicant has requested that Council consider this matter in confidence to protect the commercial nature and competitive business practices of other industry providers.

The possible implications of not considering this item in Confidence is such that by the premature release of information Council may cause damage or loss of reputation to either of the private third parties.

It is recommended that Council grant its consent to the lease assignment subject to stringent conditions set out in the resolution relating to the obligations under the current lease and associated Landfill Environment Management Plan.

2 Recommendation(s)

1. That

- a. under the provisions of Section 90(2) of the Local Government Act 1999 an order be made that the public be excluded from attendance at the meeting in order to consider in confidence this item.**
- b. the Council is satisfied that it is necessary that the public be excluded to enable the Council to consider the matter at the meeting on the following grounds:**
 - (d) commercial information of a confidential nature (not being a trade secret) the disclosure of which -**
 - (i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and**
 - (ii) would, on balance, be contrary to the public interest;**
- c. That accordingly, on this basis the principle that meetings of the Council should be conducted in a place open to the public has been outweighed by the need to keep the information or discussion confidential.**

- 2. That Council gives its consent to the assignment of the lease (with the commencement date of 1 July 2003) over Council land over part Piece 50 Deposited Plan 47185, Certificate of Title Volume 5890 Folio 493 expiring on 30 June 2009 from the current lessee**
-

Lonsdale Landfill Pty Ltd to Resourceco Pty Ltd under the terms and conditions contained within the original lease, including but not limited to;

- a. **That the completion of the obligations outlined in the Landfill Environment Management Plan (as approved by the EPA) as annexed to the Lease must be fulfilled by Resourceco Pty Ltd on or prior to the 30 June 2009 without failure.**
 - b. **That Resourceco Pty Ltd must operate the site in accordance with the Permitted Use set out in the original lease.**
 - c. **That all other terms and conditions outlined in the above lease be the responsibility of Resourceco Pty Ltd.**
- 3. That the Mayor and Chief Executive Officer be authorised to sign and seal the necessary documentation to give effect to the Council's resolution to grant consent to the assignment.**
- 1. That an order be made under the provisions of Section 91(7) and (9) of the Local Government Act 1999 that the abovementioned document (or part of such document) including the minutes and the report of the Council relating to discussion of the subject matter of that document, having been dealt with on a confidential basis under Section 90 of the Act, should be kept confidential on the grounds of information contained in 90(3)(d) until 30 June 2009.**

3 Engagement

3.1 Others

We have spoken with the Environmental Protection Authority in relation to the request for assignment to ensure that the Authority, as regulator, has no major concerns with the proposed transfer of responsibility.

Whilst the EPA will not give any assurances to Council in relation to an entity's capacity to operate, they did advise that Resourceco Pty Ltd is a large waste management company that operated several sites and were generally compliant in their responsibilities.

4 Direction

4.1 Council's Role(s)

4.1.1 Owner/custodian

In our role as owner of the landfill site there are obligations surrounding the remediation of contaminated land.

We have been fortunate to find a provider in Lonsdale Landfill Pty Ltd that has operated a commercial enterprise from the site and in doing so has

provided a financial return to Council and facilitated the obligations of the Landfill Environment Management Plan.

5 Sustainability

The Landfill Environment Management Plan sets out the objectives, obligations and responsibilities in relation to landfill site management and remediation.

5.1 Economic

Lonsdale Landfill Pty Ltd operates a medium sized commercial enterprise from the leased site. In the application Resourceco Pty Ltd have stated that they will continue to operate this enterprise. Therefore it is anticipated that no job losses will be sustained through the assignment of this lease.

Council receives the benefit from a commercial operator taking on the responsibility of the landfill remediation.

5.2 Environmental

The facilitation of the closure and remediation works undertaken by the Lessee will benefit the community through addressing the contamination of the land whilst beautifying the site.

6 Risk Analysis

Key risks	How it is proposed to be managed
Legal	The Deed of Assignment has been viewed by Council's legal advisors and the issues that they have raised will be incorporated into the final document.
Compliance with LEMP	Continuation of monitoring of compliance by independent third party geotechnical company.
Financial viability of Resourceco Pty Ltd	This risk is already carried by Council through the assignment of responsibility of the LEMP to Lonsdale Landfill Pty Ltd, however we will continue to monitor the financial capacity of Resourceco Pty Ltd in accordance with the Lease.
Operational capacity	Resourceco Pty Ltd is a large, well established waste resource enterprise which has operated various sites for several years. From the Resourceco Pty Ltd perspective the proposed lease assignment complements their existing operations at the adjacent former

	Mitsubishi engine foundry site.
Environmental compliance	The EPA is the regulator for waste and resource entities, which continues to monitor performance against the approved Licence and LEMP.

Key Factors

6.1 Site

The leased land comprises a parcel of approximately 21 hectares lying between Dyson Road and Meyer Road, Lonsdale. A large part of the site was used as a Council rubbish tip during the 1970s and 1980s and accordingly is now considered to be contaminated. The legal description of the land is part Piece 50 Deposited Plan 47185, Certificate of Title 5890 Folio 493 (Attachment 1).

6.2 Lease conditions

Clause 7 of the lease allows for assignment. Council, as Lessor cannot unreasonably withhold consent to the assignment if the Lessee has established to the satisfaction of the Lessor that the proposed assignee:

- is likely to meet the financial obligations of the lessee under this lease
- has skills equal to or superior to those of the lessee
- does not intend to change the use to which the land is put.

Assignment of a lease is a normal part of commercial leasing practice. The Assignee (the incoming lessee) is required to continue to act in accordance with the conditions of the lease and to take on the responsibilities of the outgoing Lessee under a Deed of Assignment. There are usually financial arrangements between the two parties to address the commercial aspects of the transaction. The commercial arrangements do not play any part in relation to Council's decision to grant its consent which can only be based on the lease provisions set out above.

Under the terms of the lease, the Council receives a lease income of \$41,110 per annum which will continue to be the responsibility of any new Lessee.

7 Discussion

The Lonsdale landfill site was operated as a Council rubbish tip from about 1971 to 1983. It is currently leased to Lonsdale Landfill Pty Ltd for a six (6) year term which expires on 30 June, 2009. Lonsdale Landfill operates a landfill operation on the site. Operation of the site is controlled by a Landfill Environmental Management Plan (which forms part of the lease) and a licence from the Environment Protection Authority (EPA).

Lonsdale Landfill Pty Ltd as the current lessee is responsible for undertaking these works outlined in the LEMP which would historically otherwise be the responsibility of the Council. Essentially, the LEMP requires the lessee to undertake closure, capping and remediation works as approved and to the satisfaction of the EPA.

The lease provides that the Lessee may assign the lease to another party subject to the grant of consent by the Lessor (Council). Lonsdale Landfill Pty Ltd has requested Council consent to the assignment of the lease to Resourceco Pty Ltd.

The lease requires that by 30 June 2009 operations are to be completed and the site profiled and capped in accordance with the Landfill Environmental Management Plan (LEMP). The LEMP envisages that the end use of the site will be vegetated open space (though current thinking links it to use as part of the 'Carbon Park' concept previously reported to Council).

We undertaken due diligence investigations into the information provided by Lonsdale Landfill Pty Ltd and Resourceco Pty Ltd about the financial viability and the operational capacity of Resourceco to assess whether this adequately demonstrates that the company is capable of meeting the requirements set out in Clause 7 of the lease. Resourceco has also given an undertaking to adhere to the conditions of the lease. Resourceco is a well known operator in the recycling and recovery industry and has entered into a commercial arrangement with Lonsdale Landfill to continue landfill operations, closure and post closure activities on the land.

Whilst undertaking our due diligence, we discovered that Resourceco Pty Ltd has two prosecutions brought against it by the EPA. Discussions with the EPA confirmed these prosecutions, but they have advised that Resourceco Pty Ltd generally have been compliant over time. Resourceco Pty Ltd, when questioned about these prosecutions have provided information to us that these instances are generally due to particular site specifics of their Wingfield site.

The assignment of the lease will not alter Council's lease arrangements for the site and will not affect current investigations into the suitability of the site to be developed in accordance with the 'Carbon Park' concept.

There are inherent risks to Council which are derived from any assignment of responsibility for a LEMP to a private third party. Should an occurrence arise whereby any third party responsible for the completion of a LEMP fails in their obligation to fulfil that LEMP, in the first instance the EPA will pursue the Licensee. However, should the Licensee not be able to fulfil, there is an implied risk that this responsibility may fall upon Council as landowner. In this proposal, it has been determined that the risk is no more heightened by this assignment, than if the current lessee had continued operations on the site.

To mitigate risk (to the fullest extent possible) the proposed Deed of Assignment contains a warranty on the part of the Assignee that Council be indemnified for any losses suffered by the Assignee and the Assignee's obligations under the lease to the extent of the current relationship between Council and the current lessee.