

ITEM NUMBER: 18.3

CONFIDENTIAL REPORT

LATE CONTRACT CLAIM
(Report No: 276/20)

Pursuant to Section 90(2) of the Local Government Act 1999 the Report attached to this agenda and the accompanying documentation is delivered to the Council Members upon the basis that the Council consider the Report and the documents in confidence under Part 3 of the Act, specifically on the basis that Council will receive, discuss or consider:

- b. Information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and would, on balance, be contrary to the public interest.**
- h. Legal advice**

Recommendation – Exclusion of the Public – Section 90(3)(b and d) Order

- 1** That pursuant to Section 90(2) of the *Local Government Act 1999* Council hereby orders that the public be excluded from attendance at this meeting with the exception of the Chief Executive Officer and Staff in attendance at the meeting in order to consider Report No: 276/20 - Late Contract Claim in confidence.
 - 2.** That in accordance with Section 90(3) of the *Local Government Act 1999* Council is satisfied that it is necessary that the public be excluded to consider the information contained in Report No: 276/20 - Late Contract Claim on the following grounds:
 - b.** pursuant to Section 90(3)(b) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council is

conducting business; and
could prejudice the commercial position of the Council

In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in the continued non-disclosure of the information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information.
 - h.** pursuant to Section 90(3)(h) of the Act, the information to be received, discussed or considered in relation to this Agenda Item includes legal advice
 - 3.** The Council is satisfied, the principle that the meeting be conducted in a place open to the public, has been outweighed by the need to keep the information or discussion confidential.
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Item No: **18.3**

Subject: **LATE CONTRACT CLAIM**

Date: 22 September 2020

Written By: Program Manager Project Delivery

General Manager: City Assets and Services, Mr H Lacy

SUMMARY

Mossop Group Construction + Interior (Mossop) undertook the construction of the hockey pitch and the Kauri Parade Sports and Community Centre building in May 2016 and October 2017 respectively for the City of Holdfast Bay.

In May 2018, Mossop raised two draft invoices (totalling \$108,158.33) and submitted these to the Mr Mal Wilkinson, an employee of Tonkin Consulting who had been engaged by Council to act as Project Manager and Contract Superintendent for the project. At that time, Mr Wilkinson advised Council that he did not support the payment of the invoices as he suggested that these invoiced amounts would be offset by potential claims to be issued by Council against Mossop and that he had an agreement with them that this quid pro quo would prevail.

In early 2020, Mossop restated their position that the unpaid invoices were valid, that they remained entitled to payment and that settlement was overdue. Council's lawyers wrote to Mossop setting out the position as advised by Mr Wilkinson that the invoiced amounts were to be offset against damages incurred by Council (ie removal of a significant tree and liquidated damages) and there was an (undocumented) agreement that the invoices would not be lodged by Mossop. A settlement where both parties "walked away" from their claims was proposed. Mossop did not respond to the letter and it appeared that they were content with the resolution and no further action ensued.

On 1 June 2020, Mossop, subsequently wrote to Council disputing this position and restating their claim that they were entitled to payment for works performed, that the late invoices remained live and that they were entitled to payment.

Council's lawyers have now re-interviewed Mr Wilkinson and undertaken a further detailed review of project documentation. On this basis, they have modified their original advice to be that Council should now seek a negotiated settlement as it would be:

- difficult to defend the non-payment of the claim as it relates to work undertaken under the contract, although the timeframe for issue of the invoices is outside the timelines envisaged by the contract;

- hard to substantiate a claim for liquidated damages against Mossop as it would be difficult for Council to define the extent of damages or losses due to the delayed completion of the project; and
- hard to substantiate a claim for damages against the loss of a significant tree as there is confusion about the instructions issued by the Mr Wilkinson on this matter.

Further complications that weaken Council's position are that:

- Mr Wilkinson is no longer engaged by the project or the Council; and
- No Certificate of Practical Completion was issued for the project and no formal request for final invoices was made to the contractor.

As indicated, current legal advice (Attachment 1) is that Council should seek to negotiate a settlement with Mossop, which in a worst case could result in Council having to pay the outstanding balance of the two (2) invoices, totalling \$108,158.33. This report therefore seeks council approval to enter into commercial negotiations with Mossop in an attempt to resolve the matter in a favourable manner.

Legal advice does not support taking any legal action against Tonkin at this stage as we need their support to negotiate with Mossop.

RECOMMENDATION

That Council:

1. **authorise Administration to undertake commercial negotiations with Mossop on a without prejudice basis in an attempt to defray costs for outstanding claims lodged by Mossop in relation to construction of the Kauri Sports and Community Centre;**
2. **authorise the Mayor and Chief Executive Officer to approve any negotiated settlement on the basis of best value for Council;**
3. **approve new capital budget of up to \$108,158.33 (worst case scenario) in the 2020/21 Capital Works Program to allow payment of the negotiated settlement, such actual amount being set by the authorized settlement figure approved by the Mayor and CEO; and**

RETAIN IN CONFIDENCE - Section 91(7) Order

4. **that having considered Agenda Item 18.3 Report No: 276/20 Late Contract Claim in confidence under section 90(2) and (3)(b&h) of the *Local Government Act 1999*, the Council, pursuant to section 91(7) of that Act orders that the report, attachments and discussion be retained in confidence for a period of 24 months following resolution of the contractual dispute and the Chief Executive Officer is authorised to release the documents (excluding the Attachments) after that time and that this order be reviewed every 12 months.**

COMMUNITY PLAN

Placemaking: Creating lively and safe places

Placemaking: Developing walkable connected neighbourhoods

Placemaking: Building character and celebrating history

Community: Building a healthy, active and resilient community

Community: Celebrating culture and diversity

Community: Providing welcoming and accessible facilities

Community: Fostering an engaged and contributing community

Environment: Fostering an environmentally connected community

Culture: Supporting excellent, efficient operations

COUNCIL POLICY

Not Applicable.

STATUTORY PROVISIONS

Legal advice is presented in Attachment 1

Refer Attachment 1

BACKGROUND

In 2015, Council engaged Mossop to construct the Kauri Sports and Community Centre building and the hockey pitch under two separate contracts.

Prior to engaging Mossop, Council engaged Tonkin Consulting to manage the above projects and administer the related contracts. The contract with Tonkin (named *2014 C32 Project Management (Superintendent and Contract Administration)*) involved a Tonkin staff member (Mr Mal Wilkinson) acting as Project Manager and Contract Superintendent for both contracts. Mr Wilkinson's services as project manager and superintendent ended in April 2018.

REPORT

Difficulties at the end of Contract

The project components were expected to be completed by the end of 2016 but the completion was delayed due to various reasons. In 2017, the project had two significant issues:

- Significant delay in completing the community center building component; and
- Loss of a significant tree.

According to Mr Wilkinson, the two issues were caused by the contractor. However no formal action was taken to claim liquidated damages for delayed completion or damages for unapproved removal of a significant tree.

The Hockey Pitch contract was completed in May 2016 with the certificate of practical completion issued on 13 May 2016. For the Community Centre Contract, the works completed on 12 October 2017, but no certificate of practical completion was issued.

Late Claim

In May 2018 Mossop raised two draft invoices (totaling \$108,158.33) issued by email to Mr Mal Wilkinson as Contract Superintendent. Though these invoices were raised late, these amounts claimed were in accordance with the contract.

However, Mr Wilkinson advised Council at the time that he had discussions with Mossop and the invoice need not be paid due to amount being offset against potential liquidated and other damages suffered by the Council and also because Mossop raised the invoices outside the timeframe allowed in the contract. At the time it appeared that Mossop were content and no further action ensued.

Mossop's Subsequent Claim

However, after a few months, Mossop resubmitted the same claim. Council engaged HWL Ebsworth lawyers who supported the arguments provided by Mr Wilkinson and wrote to Mossop:

- stating the payment claims were not valid claims under the contracts;
- reserving Council's rights to claim against Mossop liquidated damages due to the delay in reaching practical completion and damages in respect of the removal of a significant tree; and
- outlining a settlement proposal where the parties would effectively resolve the matter on a "walk away" basis.

For some months there was no response from Mossop. However, Mossop has now come back and strongly restated their claims. They wrote back to our lawyer and Mr Wilkinson that their claims were genuine and provided substantiating advice. They also sought to meet with Council representatives.

We sought further information from Mr Wilkinson and updated the advice from our lawyer to deal with the Mossop's claim. After consideration re-interviewing Mr Wilkinson, considering detailed substantiating materials from Mossop and further reviewing information from Mr Wilkinson, our lawyer's advice has been modified. Current advice from our lawyer, including a chronological listing of events is presented in Attachment 1.

Refer Attachment 1

The essence of the legal advice is that council would find it:

- difficult to defend the non-payment of the claim as it relates to work undertaken under the contract, although the timeframe for issue of the invoices is outside the timelines envisaged by the contract;

- hard to substantiate a claim for liquidated damages against Mossop as it would be difficult for Council to define the extent of damages or losses due to the delayed completion of the project; and
- hard to substantiate a claim for damages against the loss of a significant tree as there is confusion about the instructions issued by the Mr Wilkinson on this matter.

Proposed next step

Our lawyer advised that we should meet with Mossop to broker a deal to resolve the claim commencing initially with an offer of 50/50 split of the claim – making the amount due as \$54,079. In worst case, Council's full liability could be \$108,158.33.

Claim against Tonkin

Administration and Council's lawyers have considered whether there is a potential non-performance claim against Tonkin for failing to issue a Certificate of Practical Completion certificate under the contract, for failing to certify/reject invoices as required under the contract whilst acting as Superintendent and/or reasonably discharge the duties of Superintendent in relation to the alleged (undocumented) agreement with Mossop to defray outstanding invoices against potential claims that may have been available to Council under the contract.

Council's lawyers have advised that in the first instance council should avoid proceeding with any possible legal or contractual claim against Tonkin as they are an important source of information in Council's negotiations with Mossop. Once the Mossop negotiation is resolved, council may wish to consider what action may be available against Tonkin.

Consultation

Not applicable

BUDGET

Any amount payable under a negotiated settlement is unfunded. No budget is available towards this project.

LIFE CYCLE COSTS

Not applicable.

Attachment 1



15 July 2020

Advice for City of Holdfast Bay

To: Rajiv Mouveri
Program Manager, Project Delivery

Confidential and privileged

Mossop Payment Claims - Seacliff Sports Complex Projects

1. Instructions and background

1.1 We have been asked to provide an advice to the City of Holdfast Bay (**Council**) in relation to two invoices issued by Mossop Group Pty Ltd (**Mossop**) under the following construction contracts:

- (i) Contract 2015 C06 (being for the Seacliff Community Centre). The amount invoiced under this contract is \$85,345.39 (inc GST).
- (ii) Contract 2015 C22 (being for the Hockey Pitch). The amount invoiced under this contract is \$22,812.94 (inc GST).

1.2 We have set out below our understanding of the relevant background facts:

- (a) On 29 May 2018, Mossop issued two draft invoices by email to the Superintendent (Mr Mal Wilkinson of Tonkin).
- (b) On 20 June 2018, Mr Wilkinson responded noting that the claims did not meet the timeframe nominated in the contract and asking for Mossop to comment.
- (c) On 20 December 2018, Mossop responded stating that "*the claim was issued within 3 weeks of when the Certificate of PC was issued.*"
- (d) On 16 January 2019, Mossop sent copies of "outstanding" invoices issued on 28 May 2018 to Mr Wilkinson. The date for payment noted on the invoices was 31 January 2019. We understand that discussions subsequently took place between Mossop and Mr Wilkinson regarding the invoices.
- (e) On 12 June 2019, HWL Ebsworth sent a letter to Mossop on behalf of Council:
 - (i) stating the payment claims were not valid claims under the contracts;

- (ii) reserving Council's rights to claim against Mossop liquidated damages due to the delay in reaching practical completion and damages in respect of the removal of a significant tree; and
 - (iii) outlining a settlement proposal where the parties would effectively resolve the matter on a "walk away" basis.
- (f) No response to that letter was received until 29 April 2020, when Mossop sent an email to Council following up the invoices.
- (g) On 15 May 2020, HWLE sent a further letter to Mossop restating the position in its letter dated 12 June 2019.
- (h) On 1 June 2020, Mossop wrote to HWLE:
 - (i) stating that the invoices were properly issued in accordance with the provisions of the contract and the claims related to the balance of the contract price and minor approved variations;
 - (ii) refuting Council's entitlement to liquidated damages and loss in respect of the removal of the significant tree.

2. Summary of advice and recommendations

- 2.1 The following sets out a summary of our advice and recommendations. We have also set out below a more detailed analysis in respect of the validity of Mossop's payment claims and the availability of a set-off in respect of Council's claims against Mossop.
- 2.2 **Summary**
- 2.3 **Community Centre Invoice:** While the invoice was not issued within the timeframe for a progress claim, it was within the timeframe for a final payment claim. The Contract requires a final payment claim to be endorsed as such. That did not occur. However, we think that this is an issue of form over substance which a court may not accept disentitles Mossop to payment. Further, if Mossop was not entitled to claim under the contract, it may make an equitable claim for payment in circumstances where it has completed the works and the invoices relate only to the agreed contract price plus approved variations. In those circumstances, we consider that Council is on risk for this invoice (but may be able to set this amount off by claiming liquidated damages; see further below).
- 2.4 **Hockey Pitch Invoice:** The invoice relating to the Hockey Pitch was issued outside the contractual timeframe for progress claims and final payment claims. Accordingly, we would not recommend Council accept that claim at this stage. However, there is the possibility that Mossop could make an equitable claim for payment as noted above.
- 2.5 In respect of Council's claims against Mossop:
 - (a) Based on Council's instructions, Council is entitled to claim liquidated damages from Mossop under the Community Centre Contract due to the delays in achieving practical completion. That said, the liquidated damages should have been certified

and reflected in the final certificate. That was not issued by the Superintendent in the contractual timeframe. As such, there is a question as to whether the liquidated damages claim can be made good. That said, if Mossop's claim is premised on claims that do not meet contractual requirements, it would be difficult for Mossop to argue that the Council is also held out of making its claim due to time limitations.

- (b) Council has also raised with Mossop that it is entitled to damages in respect of the removal of a significant tree. Mossop has now provided evidence that the removal of the tree was part of the original plans for the works. As we understand that the direction to remove the tree was made orally, it may be difficult for Council to make good that claim.

2.6 Next Steps

- 2.7 Mossop has indicated that it is prepared to attend a without prejudice meeting with Council to discuss these matters. We consider that is an appropriate next step, and that we should attend together with the relevant Council officers and the Superintendent to seek to resolve the matter on a without prejudice basis.
- 2.8 However, prior to any without prejudice meeting with Mossop, we recommend that Council seek further information from the Superintendent regarding the issues raised by Mossop in its recent correspondence. In particular:
 - (a) Council should clarify the position in respect of the delay of part of the landscaping works under the Hockey Pitch Contract until after practical completion had been achieved for that contract.
 - (b) Council should clarify how the directions were made to Mossop to preserve the significant tree, and obtain copies of any written variations or records of oral directions relating to the tree from the Superintendent.
- 2.9 We also recommend that Council ascertain whether it suffered actual loss as a consequence of the delay for which liquidated damages will be claimed and, if so, approximately how much. Please mark any document in which you compile that information "Confidential - Subject to Legal Professional Privilege" and provide it to us for the purposes of our legal advice.
- 2.10 Practically, we think that Mossop is unlikely to agree to a walk away offer. That has been put twice and not accepted. Given the factual and legal complexity associated with the claims, we think it is likely that the cost of defending the claims justify a commercial offer being made to resolve the matter early. We would recommend that Council consider making an offer of up to \$50,000. This recommendation assumes that Council did not suffer any significant loss as a consequence of the delay to the completion of the Project and is also based on the fact that the final payment claims relates to the agreed contract price and not some other claim.

3. The validity of Mossop's payment claims

- 3.1 Both the Hockey Pitch and Community Centre contracts are governed by AS4000/1997 General Conditions of Contract (the **General Conditions**). Council does not have a copy of the General Conditions that were attached to the Contract and, as such, we have had to assume that the relevant version is unamended. Relevantly, the General Conditions provides for both:
- (a) progress claims, which are to be issued at the end of each calendar month, for work undertaken in that month (clause 37.1); and
 - (b) final payment claims, being a progress claim together with all other claims whatsoever in connection with the contract, which must be given within 28 days after the expiry of the last defects liability period and must also be endorsed "Final Payment Claim" (clause 37.4).
- 3.2 It is unclear from the face of the invoices whether Mossop intended the invoices to be progress claims or final payment claims. While the letter from Mossop dated 1 June 2020 is also unclear, it appears that Mossop considers that the invoices are final payment claims.
- 3.3 In any event, we understand that the invoices were submitted months after the work was completed and accordingly, not within the time frame for progress claims.
- 3.4 As to whether the invoices can be properly considered a final payment claim, the position is different under each contract.
- 3.5 **Community Centre**
- (a) For the Community Centre Contract, the works achieved practical completion on 12 October 2017 and the defects liability period expired on 12 October 2018. The invoice was therefore submitted within the time frame for a final payment claim. That said, there remains an issue for Mossop, as the invoice was not endorsed as a final payment claim as required by clause 37.4. In these circumstances, it is certainly open to Council to argue that the payment claim is invalid.
 - (b) However, we think there is a risk that a Court would consider this an issue of form over substance, and not disentitle Mossop to the claim. Accordingly, we think Council is on risk for this payment.
- 3.6 **Hockey Pitch**
- (a) The situation for the Hockey Pitch contract is different. A certificate of practical completion was issued on 13 May 2016. This triggered the commencement of the defects liability period of 52 weeks. From the documents reviewed, it appears that the defects liability period expired on 13 September 2017. This means the invoice was submitted well outside the contractual timeframe for a final payment claim. Further, the invoice was similarly not endorsed as a final payment claim as required by clause 37.4. In those circumstances, Mossop's claim does not comply with the Contract and this is a basis for Council to reject it at this stage. However,

this does not mean that a Court will ultimately find that Mossop is not entitled to any payment at all.

- (b) Mossop has now suggested that part of the works for the Hockey Pitch (being the landscaping and sundry works) was postponed and delivered concurrently with the practical completion of the Community Centre, and this was at the time known to all parties. Mossop's position appears to be that the defects liability period for both contracts therefore expired on 12 October 2018. However, the difficulty for Mossop is that a certificate of practical completion was issued with respect to the Hockey Pitch on 13 May 2016. It appears that there was no formal extension of time or variation to the contract.
- (c) However, for completeness, and given Mossop suggests that the relevant circumstances were known to all parties, we recommend that we ask the Superintendent if there is any written record of an extension of time or variation relating to the postponement of the landscaping works under the Hockey Pitch contract. Council should also check its records to identify whether any documents indicate that such an agreement was in place.

3.7 Other considerations

3.8 There are also some further considerations that would apply to both contracts:

- (a) Firstly, a final certificate has not yet been issued for either contract. A final certificate should have been issued by Tonkin 42 days after the expiry of the defects liability period and would have set out the final account between the parties. That would have assisted Council in denying the payment claims, as the final certificate generally precludes further claims by the contractor (subject to some exceptions, for example where an amount has been accidentally omitted from the final certificates). Even though this time frame has now expired, there is case law that supports that a final certificate can still be valid even if it is issued late. As such, there may still be an opportunity for the Superintendent to issue it under the Contract.
- (b) Further, in circumstances where the invoices are also claiming the balance of the contract price plus approved variations, and Council has agreed to pay the contract price for the works, even if the payment claims do not comply with the contract and requirements as to form, Mossop may be able to rely on an equitable remedy in order to recover the costs from Council. Further, Mossop may also argue that, to the extent that the timeframes in the Contract disentitle it to a payment for failure to comply, those contractual provisions constitute a penalty. A court may decline to enforce a penalty provision.

4. Council's claims against Mossop

- 4.1 In our letters to Mossop dated 12 June 2019 and 15 May 2020, we raised two further issues in relation to the contracts:

- (a) Firstly, that Council is entitled to claim liquidated damages in respect of the delay in achieving practical completion for the Community Centre Contract; and
- (b) Secondly, that Council is entitled to damages from Mossop as a result of the removal of a significant tree in the course of completing the works.

4.2 Our further advice in respect of each of these issues is set out below.

4.3 Liquidated damages

4.4 As Mossop failed to achieve Practical Completion by the Date for Practical Completion provided for in Community Centre Contract (being 11 November 2016), Council is entitled to liquidated damages pursuant to clause 34.7 of the General Conditions. We understand that Council has calculated the liquidated damages payable pursuant to clause 34.7 as being \$113,400, which exceeds the amount of the invoices issued by Mossop.

4.5 By letter dated 1 June 2020, Mossop has refuted that Council is entitled to claim liquidated damages. Mossop claims that its ability to handover the new building was *"impaired due to a latent condition and issue outside the boundaries of the contract"*.

4.6 However, the difficulty for Mossop is that it does not appear that it ever obtained an Extension of Time under the contract.

4.7 There has also been some suggestion from Council that there may have been a "walk away" agreement in place at the time that the works were completed such that Council would not pursue liquidated damages if no further payment claims were made by Mossop. However, we have not been provided with any evidence of that agreement. If Council has made representations that it would not enforce liquidated damages, Mossop may have grounds to defend that claim.

4.8 Mossop has also raised that the time frames and mechanisms in the contract for claiming liquidated damages have not been complied with. If practical completion is not reached in the timeframe, clause 34.7 of the General Conditions requires the Superintendent to certify as due and payable the liquidated damages. While there is no specific timeframe for this, considerable time has now passed. Further, the Superintendent failed to issue a final certificate, which should have contained the liquidated damages. That said, it is certainly arguable that the Superintendent can certify the liquidated damages now. There is court authority which suggests that a final certificate can be issued late. Further, it would be difficult to Mossop to argue that liquidated damages cannot be certified due to lateness, but its payments claim must be accepted despite a failure to comply with the terms of the Contract.

4.9 There is a risk that a Court will not enforce a liquidated damages clause if it is not a genuine pre-estimate of the loss that will be suffered as a consequence of a delay (i.e. the amount payable is more than what the actual damages were likely to be). Accordingly, Council should consider whether it, in fact, suffered any loss as a result of the delays to the completion of the Community Centre works. If the amount payable for liquidated damages is disproportionate to the amount of loss that the Council did, or was likely to, suffer, then Council's ability to recover liquidated damages may be at risk. This is a factor that should be considered by Council in determining whether to make a

commercial offer. As noted above, we recommend that Council check its records to identify the quantum of loss that it suffered so that we can assess this further.

- 4.10 Strategically, Council may consider asking the Superintendent to certify the liquidated damages as due and payable now and proceed to issue the final certificate. That will require the Superintendent to either certify the payment claims as payable and set them off, or reject them. If the latter, Mossop will owe \$113,400 to Council and this will be a debt that the Council will need to manage (or ultimately write off). Accordingly, we recommend seeking to resolve the issue commercially prior to taking that step.
- 4.11 If the liquidated damages are certified by the Superintendent, arguably, Council would also be able to set off the liquidated damages against any sum payable under by Council under the Hockey Pitch contract. This arises because clause 37.6 of the General Conditions allows Council to elect that moneys due and owing to it otherwise than in connection with the subject matter of the relevant contract can also be due to the Council under that particular contract.
- 4.12 **Significant Tree**
- 4.13 We also raised that, in the course of completing the work pursuant to the contracts, a significant tree was destroyed, despite a verbal variation to the works which directed Mossop to preserve that tree. Council engaged a third party to value the tree, and given its size and significance, it was estimated to be valued at approximately \$100,000.
- 4.14 Mossop has now raised that the tree was never identified as significant and documented to be removed, and no direction to the contrary was ever received.
- 4.15 If the direction to preserve the tree was only made orally (which are our current instructions), that presents a difficulty for Council as the General Conditions requires directions to vary the contract to be made in writing. In particular:
 - (a) clause 36.1 provides that the Contractor shall not vary the works except as directed in writing; and
 - (b) clause 20 of the General Conditions also provides that "*except where the contract otherwise provides, the Superintendent may give a direction orally but shall as soon as practicable confirm it in writing*".
- 4.16 We recommend that Council make further enquiries with the Superintendent in order to confirm whether the direction to preserve the tree was confirmed in writing. However, based on the information currently available, we do not consider that Council has a sufficient basis to make good this claim.
- 4.17 In any event, we understand that Council never intended to make a claim in respect of the tree, and in those circumstances Council may be prepared to not pursue this claim at this stage.

5. Benefit

5.1 Benefit

This advice is given for the sole benefit of Council.

Please contact me if you have any questions or would like to discuss this advice further.

Kate Brandon

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