

## 9.2 LANDFILL CONTRACT EXTENSION

**File Number:****Author:** Robert Hon, Environmental Waste Manager**Authoriser:** Doug Tate, Chief Executive**Attachments:** Nil

The Council is satisfied that, pursuant to s48(1)(a)(i) of the *Local Government Official Information and Meetings Act 2002*, the information to be received, discussed or considered in relation to this agenda item is:

- s7(2)(b)(ii) the withholding of the information is necessary to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information
- s7(2)(h) the withholding of the information is necessary to enable Council to carry out, without prejudice or disadvantage, commercial activities
- s7(2)(i) the withholding of the information is necessary to enable Council to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).

### PURPOSE

The matter for consideration by the Council is to determine whether to offer an extension to the contracts works period.

### RECOMMENDATION

**That having considered all matters raised in the report:**

1. **That Contract 556 – Landfill Management Contract be extended for three years from 1 December 2023 to 30 November 2026.**
2. **That the Chief Executive is granted delegation to carry out any extension negotiations and effect the extension.**
3. **That the minutes relating to this item be released as publicly available information on official notification to the relevant contractor.**

### EXECUTIVE SUMMARY

Contract 556 - Landfill Management Contract was awarded to Higgins Ltd in December 2018. This contract reaches the end of its first five-year period on 30 November 2023. It contains a specific 3-year extension clause, with a further extension in 2026. Having performed satisfactorily within the current limitations, this contract is presented to Council to approve the extension.

### BACKGROUND

In early 2018 Council sought to procure suppliers to operate its waste management and disposal services. After a robust tender process, Higgins was selected as the successful tenderer to manage and maintain the operations at the Farm Road landfill. The Contract commenced on the 1 December 2018.

A Section 17a Review followed in 2020, with the final report endorsing the current arrangement of outsourcing solid waste operations to suppliers under the direct management of the Council being the most appropriate structure. This was largely driven by the low landfill tonnages and local

community expectations making other options such as a public- private partnerships, less attractive. The contract currently has an annual value of \$453,000.

Subject to adequate performance Council is required to offer an extension to the incumbent supplier. There are three tests against which to measure performance:

- Adherence to specification and performance measures.
- Not in breach of obligation.
- No unpaid moneys (from Contractor to Principal).

Officers advise that all three tests are successfully met and that the contract should be extended.

## DISCUSSION

Best practice landfill management in 2023 differs from practice used when the contract was developed in late 2017. The Supplier has committed resource to the contract in accordance with the contract specification and in accordance with their original offer of service. The level of labour resourcing was adequate in 2018, but it is no longer adequate for best practice landfill management.

Since the contract was awarded in 2018, changes to the legislative background, consenting requirements, increased footprint of the landfill, the addition of new leachate management infrastructure and industry best practices have meant the landfill contract in its previous form is not fully fit-for-purpose.

In general, the Contractor has matched their level of service to the original offer of service rather than seeking variations to promote any change in services. As part of granting this extension, officers will be looking to formalise operational matters within the contract.

The following table highlights the changes and impact since contract inception.

Changes	When	Impact
Increasing areas of capped or closed area and drainage.	Ongoing.	Increasing maintenance requirements.
Health and Safety Policy changes.	Ongoing.	Minimum health and safety requirements are increasing, not decreasing.
Best practice improvements.	Ongoing.	Requires Council to consider how it is managing its landfill in accordance with best practice for landfill operation.
New leachate pond and irrigation methodology.	Commissioned in 2021.	New requirements to manage and maintain leachate pond and irrigation system.
Legislation and policy changes.	National Environmental Standards for Freshwater – Adopted 2020 guidelines.  Revision of the wasteminz technical guidelines for disposal to land and endorsement by MfE.	Increasing requirements to manage water on site and waste on site.

### **Contractor Performance**

The core performance outcomes of the contract are currently very simplistic and relate to operating the landfill within the conditions of its resource consents and various other legislation. No breaches have occurred since contract inception and there have been no wider performance issues noted.

Both parties have cultivated a collaborative partnership approach with the Contractor clearly demonstrating a willingness to improve operations although this has been limited by the contract limitations brought on by external factors as described above. If extended, the contractor has agreed to an extended set of formal KPIs to assist with contract performance visibility above and beyond the very basic performance measures that are available currently.

### ***Contract Extension***

The contract provides for two (2) three (3) year extensions. Unlike other contracts such as the Land Transport contracts that have recently been renewed by Council where the extension was at the ultimate discretion of Council, the form of contract for the Landfill operation does not give this provision. In short, Council is contractually bound to extend the contract on the basis that the contract has adhered to the specification and achieved the minimum operating expectations, is not in breach of contract, and there are no unpaid moneys from the Contractor to the Principal.

On this basis, while an option is to not grant the extension, it carries high legal and reputational risk to Council.

### ***Solid Waste Services into the future***

As part of activity management planning for the Long Term Plan 2024, the proposed approach to landfill and wider waste management activities is proposed to be considered in a cohesive and integrated way in Year 1. This includes addressing wider long-term issues relating to the solid waste activity including:

- The future lapse date of the Landfill resource consent and the long-term future of the landfill.
- Ministry for the Environment Reform programmes, requiring differing collection methods (i.e. food and greenwaste) and how these are integrated into future service offerings.
- A proposed regional approach to managing the regional approach to reform, including waste streams and priorities.

Through this negotiation and as solid waste services are reviewed into the future, further consideration to this contract during the extension term will need to be given, which the Supplier is willing to work through. These include:

- Changing health and safety and operational expectations
- Potential changes in the legislative landscape
- Increasing operational requirements.

### **RISK ASSESSMENT AND MITIGATION**

The key risk of not extending this contract and heading to the market is the lack of competition or tenderers resulting in either a single supplier cornering the market and resulting in a higher than anticipated price or the sudden disruption to the service until a plan can be formulated.

There are also relative risks to Council around Contractor capacity and Council's own ability to successfully deliver a procurement process with existing resource, on top of an already strained resource pool.

Extending the contract will give the Council some time to consider the future of the landfill as new central government waste diversion policies take hold over the medium term.

## DELEGATIONS OR AUTHORITY

Specific delegation is sought to allow the Chief Executive to carry out the extension process. Approval is sought from the Elected Council due to this extension being over the Chief Executive's Financial delegation.

## SIGNIFICANCE AND ENGAGEMENT

In accordance with the Council's Significance and Engagement Policy, this matter has been assessed as not significant.

## OPTIONS ANALYSIS

The strictures of the contract give rise to few available options. Three have been identified as detailed below.

	<u>Option 1</u>	<u>Option 2</u>
	<b>Do not offer the contract extension</b>	<b>Provide for the Contract Extension.</b>
<b>Financial and Operational Implications</b>	Credible suppliers are relatively few. Retendering takes time and costs money. An operational gap would likely occur. Current supplier may seek damages.	Modest operational cost increase anticipated. This has been included in the 2023/2024 Annual Plan.
<b>Long-Term Plan and Annual Plan Implications</b>	There could be cost implications in the current year if the current Supplier chose not to continue, requiring Council to seek new pricing.	There are no implications at this time, other than the extension does extend into the new Long Term Plan for 2024.
<b>Achievement of Community Outcomes</b>	No certainty of continued or enhanced local outcomes for employment and the advancement of local expertise in the waste disposal field as this is dependent on the outcome of the procurement process.	Current local outcomes to continue and likely enhanced with the potential for increased employment opportunities for local staff and subcontractors as well as advancing local expertise in the waste disposal field.
<b>Statutory Requirements</b>	Likely to be in breach of current contract.	At lesser risk of statutory breach – leachate, consent conditions, off-site effects.
<b>Consistency with Policies and Plans</b>	Consistent	Consistent

## Recommended Option

This report recommends Option 2 – Offer the contract extension.

## NEXT STEPS

Upon Council formally agreeing to the extension, the next steps are to finalise the extension with the Supplier and to ensure that extension appropriately captures areas of the contract that require further work.

Ongoing work will also continue to measure and monitor the performance of the contractor, above the minimum operating expectations that currently are in place.

**RECOMMENDATION**

**That having considered all matters raised in the report:**

- 1. That Contract 556 – Landfill Management Contract be extended for three years from 1 December 2023 to 30 November 2026.**
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