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## 9.4 PROCUREMENT OPTIONS

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### EXECUTIVE SUMMARY

This report responds to the resolution at the Council Meeting on 18 December 2023 for a report at the next Ordinary meeting to 'explore options for Council to consider ending contracts with companies and suppliers that support the illegal occupation of Palestine or profit from it, especially companies which supply equipment to the Israeli Defence Force'.

At the December 2023 meeting, Council amongst other things also resolved:

- 'Boycotts, divestment, and sanctions are legitimate non-violent tactics used by individuals, organisations, and governments to pressure foreign governments over human rights abuses and war crimes, including the illegal occupation of Palestinian territories'.
- 'As a diverse, multi-cultural, and multi-faith community, Darebin City Council deplors and actively stands against all forms of racism, including Islamophobia and Anti-Semitism'.

This report responds to the requirements of the 18 December 2023 Council meeting.

<b>Officer Recommendation</b>
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**That** Council receives and notes the response to the Urgent Business Item from the Ordinary Council Meeting held on 18 December 2023 to explore options for Council to consider ending contracts with companies and suppliers that support the illegal occupation of Palestine or profit from it, especially companies which supply equipment to the Israeli Defence Force.

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### BACKGROUND / KEY INFORMATION

#### Occupational Health and Safety

This is a sensitive matter, with diverse community experiences and views. Discussions on this matter may impact the health, safety, and psychological safety of community members, particularly those with deep connections to Palestine and Israel, children and young people, Councillors, and staff.

Council is on notice regarding the psychosocial risks' community members, Councillors and staff experienced during the 18 December 2023 Council meeting. As such, Council resolved at a Special Meeting held on 19 February 2024 for the February Ordinary Council meeting to be held online. Other proactive safety measures have also been put in place.

### Research

Supply chains are complex and globally linked. Verifying the global supply chains that companies or suppliers may participate in, requires specialist skills and experience, resources, and time to undertake complex investigations.

A desktop assessment was undertaken and focused on researching companies which may have a contract with Council, and that may on initial assessment meet the 18 December 2023 Council resolution. For the purposes of this report, this research has relied on a report published by the Office of the United Nations Office of High Commissioner for Human Rights and three third-party websites to identify possible companies that may meet these criteria. This approach was taken as it was the only avenue available given the limited resources and expertise that Council has available for this type of specialist work, and the short time in which a response was requested by the Council resolution.

### Towards Equality: Equity, Inclusion and Human Rights Framework 2019 - 2029

Adopted in 2019, Towards Equality is Council's guiding framework to address barriers to equity and inclusion in the community and to support human rights. The Framework guides Council's approach to addressing the various barriers to equity and inclusion experienced by Darebin's citizens and stakeholders and seeks to strengthen their human rights. The Framework "recognises the current climate change and social justice challenges that we encounter both locally and globally".<sup>1</sup>

### Welcoming Cities

Many people have come from all over the world and made Darebin their home, as well as a place to work, study, worship and socialise, bringing a diversity of life experiences, knowledge, and skills. In addition, Darebin is home to many refugees and people seeking asylum who are making their first home and community in Australia.

Council is currently undertaking accreditation to become a Welcoming City with the aim of becoming a 'Mentoring' level.

Welcoming Cities outlines "local government is best placed to understand the complexity and diversity of their communities and facilitate a whole-of-community approach and building social cohesion requires contribution and collaboration from all community stakeholders and the role of local councils is to invite and facilitate this interaction".<sup>2</sup>

### **Previous Council Resolution**

At its meeting held on 18 December 2023, Council resolved (in part):

*'That Council....*

- (6) Notes that boycotts, divestment, and sanctions are legitimate, non-violent tactics used by individuals, organisations, and governments to pressure foreign governments over human rights abuses and war crimes, including the illegal occupation of Palestinian territories.*
- (7) Receives a report at the next Council meeting to explore options for Council to consider ending contracts with companies and suppliers that support the illegal occupation of Palestine or profit from it, especially companies which supply equipment to the Israeli Defence Force.*

## ALIGNMENT TO 2021-25 COUNCIL PLAN

Strategic Direction 4 Responsible, Transparent and Responsive

### DISCUSSION

Supply chains are complex, and to verify global supply chains requires specialist skills, experience, and dedicated resources to undertake detailed investigations.

Given the limited expertise that Council has available for this type of specialist work, and the short time in which a response was requested by Council resolution, a desktop assessment has been undertaken, focused on undertaking research as to whether there are any companies which Council may have a contract with that meet the requirements of the Council resolution in December 2023.

This research included reviewing:

- [United Nations Office of the High Commissioner Human Rights June 2023 Report](#) which provides a database of all known business enterprises involved in the activities detailed in paragraph 96 of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social, and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem.
- [The Boycott, Divestment and Sanctions \(BDS\) movement website](#)
- [The American Friends Service Committee \(AFSC\) website](#)
- [Who Profits Research Centre website](#).

While there are several other potential desktop sources that could be used, these have not been listed as they tended to refer to one of the above sites as a primary reference source.

The desktop research was then used as a basis to compare companies listed against Darebin's 295 contracts and the finance system 4934 active supplier's database. As a result of this work, Council may have one contract with a company listed from the initial desktop research.

In undertaking due diligence, initial independent legal advice was obtained. The initial independent legal advice recommended while there is some evidence from some of the above sources that a company may meet the criteria outlined in the Council's December 2023 resolution; an email should be sent to this company asking whether it has the characteristics referred to in the resolution. The initial independent legal advice outlined it remains possible that this company will advise that it does not and cast doubt on the evidence from some of the sources listed above.

Initial correspondence from Council to a company has been attached in **confidential Appendix A**.

A response from the company was received by Council. A review was conducted to see whether this information was publicly obtainable on the company's website, it was not. As such this response has been attached in **confidential Appendix B**.

Details of the contract that may meet this criteria, and associated implications were provided to Council in confidence as they relate to Council business information that would prejudice the Council's position in commercial negotiations if prematurely released and private commercial information as outlined in **confidential Appendix C**.

Council’s Procurement Policy

In undertaking procurement, Council must comply with all relevant legislation, including the *Competition and Consumer Act 2010* and *Equal Opportunity Act 2010*.

Council’s Social and Sustainable Procurement Policy 2021 - 2025 vision is to achieve social, economic, and environmental value and benefit for our community in line with the *Local Government Act 2020* (LGA 2020).

To achieve this vision, evaluation criteria is established for each procurement process and considers opportunities to ensure Council procurement decisions incorporate social, environmental, and local business considerations.

The Policy includes the social outcome principle: “Respect for human rights the rule of law and international norms of behaviour”<sup>3</sup>. The Policy does not provide detailed guidance on how to operationalise this principle.

*Note: As outlined in the LGA 2020, once a new Council is elected in late 2024, a Council must review its Procurement Policy at least once during each four-year term.*

Options for Consideration

Three options are put forward for Council consideration: -

<b>Options</b>	<b>Implications</b>
Option 1 (default): a) Acknowledge Council does not have definitive data to determine if any contracts support the illegal occupation of Palestine or profit from it, especially companies which supply equipment to the Israeli Defence Force. b) Continue contract until expiry.	Financial implications <ul style="list-style-type: none"> <li>The cost remaining for the contract is budgeted.</li> </ul> Legal implications <ul style="list-style-type: none"> <li>Ensures Council complies with all relevant legislation.</li> </ul> Operations and business continuity implications <ul style="list-style-type: none"> <li>No impact on service delivery for the community</li> </ul>
Option 2: a) Acknowledge Council does not have definitive data to determine if any current contracts support the illegal occupation of Palestine or profit from it, especially companies which supply equipment to the Israeli Defence Force. b) Review and update Council’s Social and Sustainable Procurement Policy to provide detailed guidance on the process to operationalise the social outcome principle, which is currently contained in this policy. c) As part of the review of the Social and Sustainable Procurement Policy, undertake significant consultation including with relevant Advisory Committees. d) Continue contract until expiry.	Financial implications <ul style="list-style-type: none"> <li>The cost remaining for the contract is budgeted.</li> <li>Legal costs to prepare for a review of the Social and Sustainable Procurement Policy approximately \$20,000 but potentially more (unbudgeted).</li> <li>Staff time to review the Social and Sustainable Procurement Policy (unscheduled work, other work would need to be re-prioritised).</li> </ul> Legal implications <ul style="list-style-type: none"> <li>Ensures Council complies with all relevant legislation.</li> </ul> Operations and business continuity implications <ul style="list-style-type: none"> <li>No impact on current service delivery for the community*</li> <li>Staff time to review the Social and Sustainable Procurement Policy and undertake community engagement (unscheduled work, other work would need to be re-prioritised).</li> <li>Reviewing the Social and Sustainable Procurement Policy would take resources away from other projects within the Council Plan 2021-2025.</li> </ul> * dependant on a Council decision at a future meeting before September 2024 and/or Council statutory governance rules applicable to Council caretaker period.
Option 3 a) Close the contract through early	Financial implications <ul style="list-style-type: none"> <li>Payout the contract (budgeted)</li> </ul>

<p>termination.</p> <p>b) Note a further report to Council would be required before this option could be implemented.</p> <p>c) In preparing this report significant legal advice, a detailed risk assessment and community engagement including with relevant Advisory Committees would be required prior to this option being at a point where it could be implemented by Council.</p> <p>Additional risk implications shared in Appendix C</p>	<ul style="list-style-type: none"> <li>• Unknown early termination costs (unbudgeted)</li> <li>• Additional legal advice to prepare the report would be required of approximately \$30,000 but potentially more (unbudgeted)</li> </ul> <p>Legal implications</p> <ul style="list-style-type: none"> <li>• A range of possible legal actions may be undertaken by multiple parties.</li> </ul> <p>Reputational implications</p> <ul style="list-style-type: none"> <li>• Council decision would be based on information which is not conclusive and subject to change.</li> </ul> <p>Operational implications</p> <ul style="list-style-type: none"> <li>• Staff time to develop the additional report for this option based on legal advice and to undertake complex community engagement (unscheduled work, other work would need to be re-prioritised).</li> </ul>
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**CONSIDERATION OF LOCAL GOVERNMENT ACT (2020) PRINCIPLES**

**Financial Management**

There was an unbudgeted cost for the initial independent legal advice and an opportunity cost of report preparation by officers as this was unscheduled work and required other activities, including progressing Council Plan actions, to be re-prioritised to meet the timelines requested by Council on 18 December 2023.

Partial costs are outlined above, and full costs associated with the options, and associated implications were provided to Council in confidence as they relate to Council business information that would prejudice the Council’s position in commercial negotiations if prematurely released and private commercial information as outlined in **confidential Appendix C**.

**Community Engagement**

No community engagement was undertaken to prepare the report to respond to the Urgent Business Item from December 2023. Complex community engagement requirements are outlined against relevant options.

Frequently Asked Questions will be updated post any decision made by Council.

**Other Principles for consideration**

**Overarching Governance Principles and Supporting Principles**

(a) Council decisions are to be made and actions taken in accordance with the relevant law;

**Public Transparency Principles**

(a) Council decision making processes must be transparent except when the Council is dealing with information that is confidential by virtue of this Act or any other Act;

## COUNCIL POLICY CONSIDERATIONS

### Environmental Sustainability Considerations (including Climate Emergency)

There are no environmental sustainability considerations in this report.

### Equity, Inclusion, Wellbeing and Human Rights Considerations:

As Council resolved on 18 December 2023:

- Darebin City Council mourns the tragic and horrific loss of civilian lives in the current conflict and condemns all attacks that target Palestinian and Israeli civilians.
- Darebin City Council recognises the ongoing bombing total siege of Gaza is traumatising for many Darebin residents who have relatives in the region or have come from war-torn countries. We express our sympathy and solidarity with these communities.
- Darebin City Council notes that many global human rights organisations and institutions, including Amnesty International, United Nations Special Rapporteurs, and the UN's Independent International Commission of Inquiry on Occupied Palestinian Territory, have expressed deep concern about the sustained bombing of residential neighbourhoods in Gaza; the bombing of schools, health facilities, mosques and churches where civilians are sheltering and the denial of food, water, fuel, electricity, internet, and medical supplies to the people of Gaza.

### Economic Development and Cultural Considerations

In recent weeks, the media has reported antisemitic activities targeting some local businesses including vandalism, boycotting and/or doxxing. The media has also reported some community members who are supportive of Palestine are receiving threats and have been subject to complaints.

There has also been an increase in graffiti, bill postering and 'stickering' on public and private land across Darebin in relation to this matter.

On 18 December 2023, Council resolved boycotts, divestment, and sanctions are legitimate non-violent tactics used by individuals, organisations, and governments to pressure foreign governments over human rights abuses and war crimes.

But there is no place for people to undertake deliberate and disruptive actions in Darebin or anywhere in Melbourne, that interfere with the ability of community members to safely live their lives or for local businesses to trade.

### Operational Impacts

Financial and business continuity impacts are outlined in **confidential Appendix C**.

In the wider context, certain teams may experience increased operational impacts such as increased customer and media queries and possibly an increase in OHS issues experienced by staff.

### Legal and Risk Implications

In response to the resolution, initial independent legal advice was sourced. Further legal advice may be required following Council's consideration of this report.

**IMPLEMENTATION ACTIONS**

Subject to Council decision based on options presented.

**RELATED DOCUMENTS**

- Council's Towards Equality: Equity, Inclusion and Human Rights Framework 2019 - 2029
- Council's Social and Sustainable Procurement Policy 2021 - 2025

**Attachments**

- Confidential Appendix A (**Appendix A**) Confidential - enclosed under separate cover
- Confidential Appendix B (**Appendix B**) Confidential - enclosed under separate cover
- Confidential Appendix C (**Appendix C**) Confidential - enclosed under separate cover

**DISCLOSURE OF INTEREST**

Section 130 of the *Local Government Act 2020* requires members of Council staff and persons engaged under contract to provide advice to Council to disclose any conflicts of interest in a matter to which the advice relates.

The Officer reviewing this report, having made enquiries with relevant members of staff, reports that no disclosable interests have been raised in relation to this report.

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