

CONFIDENTIAL ITEMS 2003 – AUGUST 2024

#	Date	Item Title	Confidential Order Details	Item being kept confidential - Agenda/ Attachment/ Minutes	Reason regarding retention or recommend-action to release	Resolution Regarding Action	Last Review Date	Next Review Date	Date Released
171	29 November 2021	Confidential Item – Sewer Main And Inlet Pump Station Tender	Section 90 (3) (k) Order 1. Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public except the Chief Executive Officer, Deputy Chief Executive Officer, Chief Financial Officer, General Manager Infrastructure, Program/Project Manager Wastewater, and the Risk & Governance Officer/Minute Secretary be excluded from attendance at the meeting for Agenda Item 4.1 Sewer Main and Inlet Pump Station Tender. The Council is satisfied that pursuant to Section 90(3)(k) of the Act, the information to be received, discussed or considered in relation to this agenda item is a tender for the provision of services and the carrying out of works. The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the information to be disclosed and discussed has the potential to impact adversely on the achievement by Council of best value for money through the release of commercially sensitive information. <u>Section 91(7) Order</u> 10. Pursuant to Section 91(7) having considered Agenda Item 4.1 Sewer Main and Inlet Pump Station Tender in confidence under 90(2) and 3(k) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Local Government Act orders that the agenda item plus attachments, tender documents and all minutes be retained in confidence until a contract for the design and construction for the Project has been executed by council and the contractor, at which time the identity of the successful tenderer, the reason for their selection and the amount of the contract will be made public as required by the Local Government Act.	Agenda item plus attachments, tender documents and all minutes	The Council is satisfied that pursuant to Section 90(3)(k) of the Act, the information to be received, discussed or considered in relation to this agenda item is a tender for the provision of services and the carrying out of works. The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the information to be disclosed and discussed has the potential to impact adversely on the achievement by Council of best value for money through the release of commercially sensitive information.	Retained in confidence until a contract for the design and construction for the Project has been executed by council and the contractor, at which time the identity of the successful tenderer, the reason for their selection and the amount of the contract will be made public as required by the Local Government Act.	3 Oct 23	Within 12 months	Successful tenderer released 30 March 2022 Report and Minutes released on website 26 August 2024

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			Order History 5 Sep 22 - 3 Oct 23 3 Oct 23 -						
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RELEASED

4. CONFIDENTIAL REPORTS

**4.1 REPORT TITLE: CONFIDENTIAL ITEM – SEWER MAIN AND INLET
PUMP STATION TENDER**

DATE OF MEETING: 29 NOVEMBER 2021

FILE NUMBER: 21/181876

ATTACHMENTS:

- 1) DOC/20/147893 PROJECT LOCATION PLAN
- 2) DOC/21/193467 PROPOSED CONSTRUCTION
METHODOLOGY PLAN – LEED
- 3) DOC/21/193466 PROPOSED CONSTRUCTION
METHODOLOGY PLAN – FULTON HOGAN
- 4) DOC/21/153344 TENDER ASSESSMENT PANEL
DRAFT RECOMMENDATION – 26 JULY 2021
- 5) DOC/21/193469 TSA REPORT
- 6) DOC/21/183905 TENDER ASSESSMENT PANEL
RECOMMENDATION – 2 NOVEMBER 2021
- 7) DOC/21/186402 FURTHER MATTERS FOR
COMMERCIAL NEGOTIATION WITH PREFERRED
TENDERER
- 8) DOC/21/195297 BEST AND FINAL OFFERS
SUMMARY

Key Contact/Project Sponsor

**Brian Clancey, Deputy CEO/General Manager
Wastewater/Recycled Water**

Manager

Andrew Stuart, Chief Executive Officer

Community Plan 2020-2035:

Community Wellbeing
Safety and Resilience

Objective 4.4 Provide wastewater treatment services to deliver public health.

Annual Business Plan 2021/2022:

Wastewater/Recycled Water Projects:

Mt Barker Wastewater Collection Network Expansion and Upgrade

Purpose:

To seek the adoption of a number of recommendations to enable the award of the tender for the sewer main and inlet pump station to be progressed and subsequently a contract finalised and executed; and in turn, for the required wastewater infrastructure to be delivered.

Summary – Key Issues:-

- Council is legally obliged to complete the sewer main (from Hampden Road to the wastewater treatment plant) and inlet pump station in order to cater for growth;
- Following an open tender call and the thorough assessment of tender submissions received, a recommendation of a preferred tenderer is now presented for consideration; and
- Endorsement of the recommendations below will enable the required wastewater infrastructure to be designed and constructed.

Recommendation:

That Council:

Section 90 (3) (k) Order

1. Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public except the Chief Executive Officer; Deputy Chief Executive Officer; Chief Financial Officer; General Manager, Infrastructure; General Manager, Planning and Development; Acting General Manager, Community Services; Program/Project Manager, Wastewater; and the Minute Secretary be excluded from attendance at the meeting for Agenda Item 4.1 Sewer Main and Inlet Pump Station Tender.

The Council is satisfied that pursuant to Section 90(3)(k) of the Act, the information to be received, discussed or considered in relation to this agenda item is a tender for the provision of services and the carrying out of works.

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the information to be disclosed and discussed has the potential to impact adversely on the achievement by Council of best value for money through the release of commercially sensitive information.

2. Has a short term suspension of normal council meeting proceedings to enable informal discussion of the matters that relate to decision making on this agenda item;
3. Ends the short term suspension of normal council meeting proceedings;
4. Endorses Leed Engineering and Construction Pty Ltd as the preferred tenderer for the design and construction of the sewer main from Hampden Road to the wastewater treatment plant and inlet pump station (for both portions A the pipeline and B the inlet pump station - tender reference 2020.007) for the provisional lump sum total amount of \$8,036,000 ex GST plus net adjustment of not more than 5% of this amount or minus a net adjustment following

commercial negotiation (see recommendation 6) noting that this total amount includes \$300,000 ex GST as a lump sum for contingency and \$100,000 ex GST as a Provisional Sum in relation to design;

5. Authorises the CEO or nominee to prepare and issue a letter of intent (non-binding) to the preferred tenderer Leed Engineering and Construction Pty Ltd advising that they are the preferred tenderer, subject to the BDO due diligence information (both financial and non-financial) being to the satisfaction of the CEO or nominee and resolution to the satisfaction of the CEO or nominee of the remaining contract related issues in the specified time-frame as outlined in attachment 7;
6. Authorises the CEO or nominee to negotiate and finalise a contract with the preferred tenderer Leed Engineering and Construction Pty Ltd that is consistent with the above recommendations i.e. Leed Engineering and Construction Pty Ltd is responsible for the full design and construction of the sewer main from Hampden Road to the wastewater treatment plant and inlet pump station, and the framework outlined in attachment 7;
7. In the unlikely event that council is unable to reach satisfactory resolution of the contract negotiations with Leed Engineering and Construction Pty Ltd within the specified timeframe in attachment 7:
 - a) authorises the CEO or nominee to then issue a letter of intent (non-binding) to Fulton Hogan (for both portions A the pipeline and B the inlet pump station - tender reference 2020.007) for the provisional lump sum total amount of \$13,448,582 ex GST plus net adjustment of not more than 5% of this amount or minus a net adjustment following commercial negotiation noting that this amount includes \$1,939,208 ex GST as a 'risk pool' that is held by council and claimed against by Fulton Hogan if the risk eventuates and that Fulton Hogan has nominated that the amount of the total 'risk pool' likely to be claimed is \$587,104; and
 - b) subject to the BDO due diligence (both financial and non-financial) being to the satisfaction of council and resolution to the satisfaction of council of all remaining contract related issues as referenced in attachment 7 (both technical and commercial), authorises the CEO or nominee to negotiate and finalise a contract with Fulton Hogan;
8. Authorises the CEO or nominee to approve payments to the appointed contractor that are recommended by the Project Manager and Superintendent of the contract;
9. Authorises a council budget provision of \$1.3 million ex GST for the purposes of contingency for the design and construction contract (over and above the contract amount) to be the responsibility of the CEO or nominee, including to make payment for agreed contract variations as recommended by the Project Manager and Superintendent of the contract;

Section 91(7) Order

Pursuant to Section 91(7)

10. Having considered Agenda Item 4.1 Sewer Main and Inlet Pump Station Tender in confidence under 90(2) and 3(k) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Local Government Act orders that the agenda item plus attachments, tender documents and all minutes be retained in confidence until a contract for the design and construction for the Project has been executed by council and the contractor, at which time the identity of the successful tenderer, the reason for their selection and the amount of the contract will be made public as required by the Local Government Act.

BACKGROUND

1. The sewer main from Hampden Road to the wastewater treatment plant and inlet pump station (the Project) as shown in attachment 1 has been the subject of numerous previous communications to council members including:
 - a) A powerpoint presentation on the tender assessment process at a confidential informal gathering for council members held on 1 November 2021 (this remains available to council members via the council members' extranet);
 - b) Confidential memos to council members on the Project dated 10 September, 13 August and 7 July 2021;
 - c) Consideration of the Project business case and prudential report at the Council meetings held on 3 May, 6 April and 1 March 2021;
 - d) Prior to that, informal gatherings for council members on the Project.
2. The tender assessment panel (TAP) comprised:
 - Phil Burton (Chairperson), General Manager, Infrastructure;
 - Chris Reynolds, Commercial Manager, Wastewater; and
 - Dan O'Connor from GHD.
3. The Project probity advisor has been Mr Hugh McPharlin, of Nexia Edwards Marshall. This agenda item has been reviewed by Mr McPharlin, who has indicated that he doesn't have any concerns from a probity perspective with the process undertaken to date and recommended.

DISCUSSION

Informal Discussion

4. The recommendation to have a short term suspension of normal council meeting proceedings to enable informal discussion has been included given the importance of council members having confidence that they have clarity and understanding of the information provided in this agenda item (and the attachments) for the purposes of decision making.
5. It is anticipated that council members may prefer to have the opportunity for informal discussion to ensure clarity on the process undertaken and proposed, and the associated implications.

Scope of Works

6. The Project scope of works/location is shown in attachment 1. In summary, it is for the design and construction of a new sewer main to run from Hampden Road to the wastewater treatment plant and an inlet pump station.

Procurement Strategy

7. To seek to ensure best value for money and maximum community benefit, the procurement strategy chosen was an open tender call for the design and construction of the Project.

Tender Process

8. Pursuant to Council's Procurement Policy an open market tender was called to secure a suitably qualified contractor to undertake the Project.
9. The request for tender ("RFT") was issued via VendorPanel on 2nd March 2021 and closed on 11th May 2021.

Evaluation Overview

10. The evaluation process undertaken by the TAP comprised of assessment of the following financial and qualitative criteria with pre-determined weightings (as shown below) applied to each:
 - a) Organisation Structure/Management & Technical Skills/Resources (15%)
 - b) Similar experience (22.5%)
 - c) Methodology (25%)
 - d) Local business support (7.5%)
 - e) Price (30%)
11. The assessment of the tenders by the TAP was supported by independent specialist advisor(s) engaged by council. This included:
 - WGA consulting engineers who prepared the reference design for the Project that council made available as part of the tender documentation;
 - GHD consulting engineers who supplied TAP member Dan O'Connor; and
 - Dalton Consulting Engineers who provided advice, including on the construction methodologies proposed.
12. The TAP reviewed the five tender submissions received using the above criteria. The TAP then established a short list of 3 tenderers and subsequently this was reduced to 2.
13. The TAP invited the 2 short listed tenders to make a presentation to the TAP.

14. The TAP sought further information and clarification from the 2 short listed tenderers. Following which the TAP provided its draft recommendation to Brian Clancey as the Project Sponsor (see attachment 4). There are 17 attachments to the draft recommendation from the TAP which are listed but not included with attachment 4 as they total hundreds of pages. Any of the 17 attachments are available to Council Members on request.
15. The TAP identified a number of matters that would require clarification and negotiation to the satisfaction of council, prior to council being in a position to execute a contract for the Project, following the choice of a preferred contractor.
16. Council then retained TSA to undertake additional work on these matters to further inform the consideration of the 2 short listed tenderers, specifically in relation to risk and value for money.
17. TSA undertook this task under the umbrella of the tender assessment process with input from the TAP. TSA engaged with the 2 short listed tenderers which included the opportunity for both of them to present further information which they did in the presence of a member of the TAP.
18. The subsequent report from TSA (attachment 5) has been reviewed by the TAP.
19. The TAP provided a second Memo to the Project Sponsor dated 2 November 2021 (attachment 6) with the following recommendation:

That the Project Sponsor, Brian Clancey, receive the further advice of the TAP and note that the previous recommendation [of the TAP] remains unchanged.
20. The previous (draft) recommendation of the TAP dated 26 July 2021 (attachment 4) was:

That the Project Sponsor, Brian Clancey, recommend to Council the selection of Leed Engineering and Construction Pty Ltd ("Leed") as the Preferred Tenderer for contract 2020.007 Hampden Rd to WWTP Sewer Main and Inlet PS, for portions A (pipeline) and B (pump station), and seek delegation to the CEO to award the contract to the same subject to:

 - *further due diligence to be undertaken on Leed,*
 - *confirmation of stakeholder acceptance of the proposed methodology,*
 - *successful negotiations on the commercial terms of the contract to satisfactorily clarify the scope and management of risk.*
21. The TSA report (attachment 5) recommended:

TSA recommend selecting a single preferred Tenderer and entering detailed commercial negotiations immediately following endorsement with that tenderer.

22. Following the receipt of the TSA report and the TAP recommendation, reference checks were undertaken with both of the 2 short listed tenderers. This was undertaken by the Project Manager, Mark Harford from TSA.
23. Reference checks were undertaken on projects undertaken by Leed for the City of Port Adelaide Enfield and the City of Charles Sturt. In both cases the overall performance of Leed was reported to have been very good with no concerns raised.
24. Similarly, a reference check undertake on Fulton Hogan via SA Water was also very positive.
25. Council has retained BDO Australia Ltd to undertake due diligence on the preferred tenderer, once determined. This is expected to require about 1 week of advance notice from council (already provided) and around 2 weeks to be completed. This would include an assessment of the financial position/stability of the preferred tenderer.
26. In liaison with the TAP and council officers and with the knowledge of the Project probity advisor Hugh McPharlin, TSA was asked by council to engage further with Leed and this occurred on Monday 15 November 2021.
27. The purpose of this further engagement with Leed was to seek clarification on some key matters including council's desired adjustment to their program and timing so as to reduce risk; and council's expectation that should Leed be selected as the preferred tenderer, Leed is to be fully responsible for the design of all elements of the project to meet the specifications provided within the tender documentation.
28. Leed subsequently provided further information titled *New Sewer Trunk Main and New Inlet Pump Station: Post-tender responses 17 November 2021*.

Basis of Decision

29. As is evidenced in the TSA Report, the 2 short listed tenderers took very different approaches to the Project in a number of respects.
30. In relation to the choice of construction methodology this is reflected in attachments 2 (Leed) and 3 (Fulton Hogan).
31. For Council, the key considerations in summary are:
 - Risk management;

Leed placed more reliance than Fulton Hogan on the council supplied (with the tender documentation) reference design that was prepared by WGA. **In the further information provided to council by Leed on 17 November 2021 Leed has advised that they will accept the full design risk subject to council entertaining a \$100,000 ex GST provisional sum for design being included in the contract. This acceptance of full design risk by Leed is of high importance from a risk exposure to council perspective. The Leed condition of a \$100,000 ex GST provisional sum for design is recommended for acceptance by council.**

- Program and Timing for completion of the Project;

The preferred timing of council for completion of the Project is by the end of Autumn 2023. In the further information provided to council by Leed on 17 November 2021 Leed has provided an amended construction program to reduce project risk including the construction within St Francis de Sales College now being targeted for completion by April 2022 and full project (both elements) commissioning and testing being targeted for completion at the end October 2022. That timing is satisfactory relative to council's needs and enables provision of a buffer for slippage of some months should adverse weather impact for example. The program provided by Fulton Hogan would see actual construction scheduled to commence in February 2022 with a target for completion of October 2022 (9 months in total).

Leed has nominated reduced risk exposure for them (relative to the tender documentation issued by council) in the form of liquidated damages in the event that completion of construction is delayed. Arising from the recent further engagement with Leed, it is anticipated that this can be negotiated to the satisfaction of council (see attachment 7). Fulton Hogan is accepting of what was specified within the tender documentation issued by council.

- Effective stakeholder engagement;

Leed has proposed resources to enable support for council taking ownership of stakeholder engagement. Fulton Hogan has proposed taking ownership of stakeholder engagement and submitted a higher resourcing allowance for this function than Leed. If Leed is appointed, council would need to make provision for some resource capacity for stakeholder engagement to supplement what Leed is proposing. That would be a minor impact on the overall Project budget.

As shown in attachment 2, Leed proposes to open trench the section of pipeline running through St Francis de Sales College. Council has an easement for wastewater infrastructure over portion of the College land and a licence to occupy additional land as during construction of the new trunk main, the area of the College land impacted would exceed the land within the easement. In previous communications with the College, council officers have made known that Council will connect all of the College wastewater outlets to the new trunk main at no cost to the College and in turn this will alleviate the need for the College to maintain a pump station on the College grounds presenting a cost saving to the College.

The contract will require the full reinstatement of the College land impacted but obviously there will be considerable disruption to the use of this portion of the playing fields including a lag time for the turf to fully re-establish post reinstatement.

- Environmental management;

The different construction methodologies as shown in attachments 2 and 3 present different impacts on the environment. Both of the short listed tenderers have demonstrated the need to employ sound environmental management practices.

- Overall value for money.

The TAP and TSA have both concluded that both Leed and Fulton Hogan have the capability and capacity to satisfactorily complete the Project. Leed has submitted a construction team that both the TAP and TSA view as having more experience in delivering projects of this nature than Fulton Hogan.

The objective of overall best value for money is able to be achieved with the engagement of Leed given the recent information provided by Leed to address council concerns regarding risk.

32. The best and final offers from both Leed and Fulton Hogan and the composition of their respective offers is contained in attachment 8.
33. As referenced above in recommendation 7 and in attachments 7 and 8, Fulton Hogan has proposed a 'risk pool'. This involves council holding the risk pool amount and Fulton Hogan claiming against that amount if the risk eventuates. Fulton Hogan indicated that they have used this approach with SA Water projects and in other states. It would involve the risk pool being administered by the two parties, the arrangements for which would need to be clarified as referenced in attachment 7. This is very different to the approach by Leed of proposing a contingency amount and a provisional sum for design.
- 34. Following the comprehensive evaluation process and consideration of the recommendations of the TAP and those contained in the TSA Report, the recommended Preferred Tenderer for the purposes of undertaking further commercial negotiations is Leed.**
35. The proposed process is for council to proceed as outlined in the above recommendations commencing with the issue a letter of intent (non-binding) to the recommended preferred tenderer Leed.
36. Should those remaining matters outlined in Attachment 7 not be able to be negotiated with Leed to the satisfaction of council within the time period of 2 weeks from when the council letter of intent is issued to Leed, then council would revert to progressing negotiations with Fulton Hogan as per recommendation 7 above. This is not anticipated but is included as a fall-back approach if required.

Community Engagement:

Informing only	Confidential until a contract has been executed. Preliminary stakeholder engagement with Steam Ranger and St Francis de Sales College has occurred via council officers. Further stakeholder engagement including users of the linear trail is to occur throughout the life of the Project.
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Policy:

The tender process has been undertaken in accordance with Council's Procurement Policy and associated procedures.

Long Term Financial Plan:

Capital expenditure for the Project is assumed in 2021/22 and 2022/23 with revenue from developers via the wastewater infrastructure fee to continue thereafter.

Funds in the Wastewater Infrastructure Fee Reserve (i.e. received from developers) will be used, with the current balance of that reserve as at 31 October 2021 being \$4.77 million.

Budget:

As of budget review 1, there is a budget in 2021/22 for the Project of \$6.528 million with the balance of the total cost of the Project to be required in 2022/23.

In addition to the design and construction contractor and contingency/variations to that contract, other additional costs associated with the Project include:

- Project Management;
- Owner's Engineer;
- Contract Superintendent; and
- If Leed is appointed, some stakeholder engagement capacity.

Statutory/Legal:

Council has executed a Wastewater Commitment Deed with numerous developers in the Mount Barker growth area which obliges council to provide the required infrastructure for the provision of a sewer service.

Local Government Act – section 48 Prudential Requirements – completed.

Norman Waterhouse Lawyers has been retained to prepare the contract.

Easement and licence over portions of the St Francis de Sales College land as referenced above.

Staff Resource Requirements:

To supplement existing council staff capacity and capability, the following has occurred:

Project management has been outsourced to TSA.

The contract Superintendent role has been outsourced to North Projects.

The owner's engineer role is currently out to tender, this is yet to be awarded.

Environmental:

See above.

Social:

Delivery of the Project will ensure that council can continue as the provider of this essential public health service to the community.

Risk Assessment:

In addition to above, the Project risk register is being regularly monitored and reviewed and risk management can continue to feature in future reports to council meetings on the Project.

Asset Management:

Council will be responsible for the management of the assets that would result from the delivery of the Project.

These assets will be added to the wastewater asset management plan.

Conclusion:

Adoption of the above recommendations will enable the delivery of the Project and council meeting its legal obligations to provide this essential public health service.

Previous Decisions By Council

Meeting Date	3 May 2021	HPRM Reference	DOC/21/55696
Title	NEW SEWER MAIN AND INLET PUMPING STATION – MOUNT BARKER: PRUDENTIAL REPORT		
Purpose	For council to consider the attached prudential report prepared by Dean Newbery Consulting and the information subsequently prepared by council officers in relation to the key matters arising from the prudential report.		

Meeting Date	6 April 2021	Reference	DOC/21/37664
Title	Hampden Road to Mount Barker wastewater treatment plant sewer trunk main & new inlet pump station - prudential report		
Purpose	To consider and endorse recommendations from the Audit and Risk Committee meeting held on 18 March 2021		

Meeting Date	1 March 2021	HPRM Reference	DOC/21/22603
Title	New Sewer Trunk Main and Inlet Pumping Station – Business Case		
Purpose	For Council to endorse the recommendations of the ARC 11 February 2021.		

4. CONFIDENTIAL REPORTS

4.1	REPORT TITLE:	CONFIDENTIAL ITEM – SEWER MAIN AND INLET PUMP STATION TENDER
	DATE OF MEETING:	29 NOVEMBER 2021
	FILE NUMBER:	DOC/21/181876
	ATTACHMENTS:	1. DOC/20/147893 - PROJECT LOCATION PLAN 2. DOC/21/193467 - PROPOSED CONSTRUCTION METHODOLOGY PLAN – LEED 3. DOC/21/193466 - PROPOSED CONSTRUCTION METHODOLOGY PLAN – FULTON HOGAN 4. DOC/21/153344 - TENDER ASSESSMENT PANEL DRAFT RECOMMENDATION – 26 JULY 2021 5. DOC/21/193469 - TSA REPORT 6. DOC/21/183905 - TENDER ASSESSMENT PANEL RECOMMENDATION – 2 NOVEMBER 2021 7. DOC/21/186402 - FURTHER MATTERS FOR COMMERCIAL NEGOTIATION WITH PREFERRED TENDERER 8. DOC/21/195297 - BEST AND FINAL OFFERS SUMMARY

Moved Councillor Westwood that Council:

Section 90 (3) (k) Order

1. Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public except the Chief Executive Officer, Deputy Chief Executive Officer, Chief Financial Officer, General Manager Infrastructure, Program/Project Manager Wastewater, and the Risk & Governance Officer/Minute Secretary be excluded from attendance at the meeting for Agenda Item 4.1 Sewer Main and Inlet Pump Station Tender.

The Council is satisfied that pursuant to Section 90(3)(k) of the Act, the information to be received, discussed or considered in relation to this agenda item is a tender for the provision of services and the carrying out of works.

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the information to be disclosed and discussed has the potential to impact adversely on the achievement by Council of best value for money through the release of commercially sensitive information.

Seconded Councillor Seager

CARRIED
OM20211129.02

7.12pm Moved Councillor Minett that Council:

2. has a short term suspension of normal council meeting proceedings to enable informal discussion of the matters that relate to decision making on this agenda item.

Seconded Councillor Jones

CARRIED
OM20211129.03

7.34pm Moved Councillor Seager that Council:

3. ends the short term suspension of normal council meeting proceedings.

Seconded Councillor Jones

CARRIED
OM20211129.04

Moved Councillor Leach that Council:

4. endorses Leed Engineering and Construction Pty Ltd as the preferred tenderer for the design and construction of the sewer main from Hampden Road to the wastewater treatment plant and inlet pump station (for both portions A the pipeline and B the inlet pump station - tender reference 2020.007) for the provisional lump sum total amount of \$8,036,000 ex GST plus net adjustment of not more than 5% of this amount or minus a net adjustment following commercial negotiation (see recommendation 6) noting that this total amount includes \$300,000 ex GST as a lump sum for contingency and \$100,000 ex GST as a Provisional Sum in relation to design.
5. Authorises the CEO or nominee to prepare and issue a letter of intent (non-binding) to the preferred tenderer Leed Engineering and Construction Pty Ltd advising that they are the preferred tenderer, subject to the BDO due diligence information (both financial and non-financial) being to the satisfaction of the CEO or nominee and resolution to the satisfaction of the CEO or nominee of the remaining contract related issues in the specified time-frame as outlined in attachment 7.
6. Authorises the CEO or nominee to negotiate and finalise a contract with the preferred tenderer Leed Engineering and Construction Pty Ltd that is consistent with the above recommendations i.e. Leed Engineering and Construction Pty Ltd is responsible for the full design and construction of the sewer main from Hampden Road to the wastewater treatment plant and inlet pump station, and the framework outlined in attachment 7.
7. In the unlikely event that council is unable to reach satisfactory resolution of the contract negotiations with Leed Engineering and Construction Pty Ltd within the specified timeframe in attachment 7:
 - a) authorises the CEO or nominee to then issue a letter of intent (non-binding) to Fulton Hogan (for both portions A the pipeline and B the inlet pump station - tender reference 2020.007) for the provisional lump sum total amount of \$13,448,582 ex GST plus net adjustment of not more than 5% of this amount or minus a net adjustment following commercial negotiation noting that this amount includes \$1,939,208 ex GST as a 'risk pool' that is held by council and claimed against by Fulton Hogan if the risk eventuates and that Fulton Hogan has nominated that the amount of the total 'risk pool' likely to be claimed is \$587,104; and
 - b) subject to the BDO due diligence (both financial and non-financial) being to the satisfaction of council and resolution to the satisfaction of council of all remaining contract related issues as referenced in attachment 7 (both technical and commercial), authorises the CEO or nominee to negotiate and finalise a contract with Fulton Hogan.

8. authorises the CEO or nominee to approve payments to the appointed contractor that are recommended by the Project Manager and Superintendent of the contract;
9. authorises a council budget provision of \$1.3 million ex GST for the purposes of contingency for the design and construction contract (over and above the contract amount) to be the responsibility of the CEO or nominee, including to make payment for agreed contract variations as recommended by the Project Manager and Superintendent of the contract;

Seconded Councillor Minett

CARRIED
OM20211129.10

Moved Councillor Seager that Council:

Section 91(7) Order

10. Pursuant to Section 91(7) having considered Agenda Item 4.1 Sewer Main and Inlet Pump Station Tender in confidence under 90(2) and 3(k) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Local Government Act orders that the agenda item plus attachments, tender documents and all minutes be retained in confidence until a contract for the design and construction for the Project has been executed by council and the contractor, at which time the identity of the successful tenderer, the reason for their selection and the amount of the contract will be made public as required by the Local Government Act.

Seconded Councillor Westwood

CARRIED
OM20211129.11

MEETING DECLARED CLOSED AT 7.36PM

MAYOR

DATE