

CONFIDENTIAL ITEMS 2003 – AUGUST 2025

#	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.	8 Oct 24	Within 12 months	<i>Successful tenderer released 30 March 2022</i> <i>Report and Minutes released on website 26 August 2024</i> <i>Attachments released on website 13 October 2025</i>

Attachment 1

Hampden Road to WWTP Gravity Sewer Trunk Main & New Inlet Pump Station Location Map



DOC/20/138935

PROPOSED SEWERAGE TRUNK MAIN
HAMPDEN ROAD TO WWTP

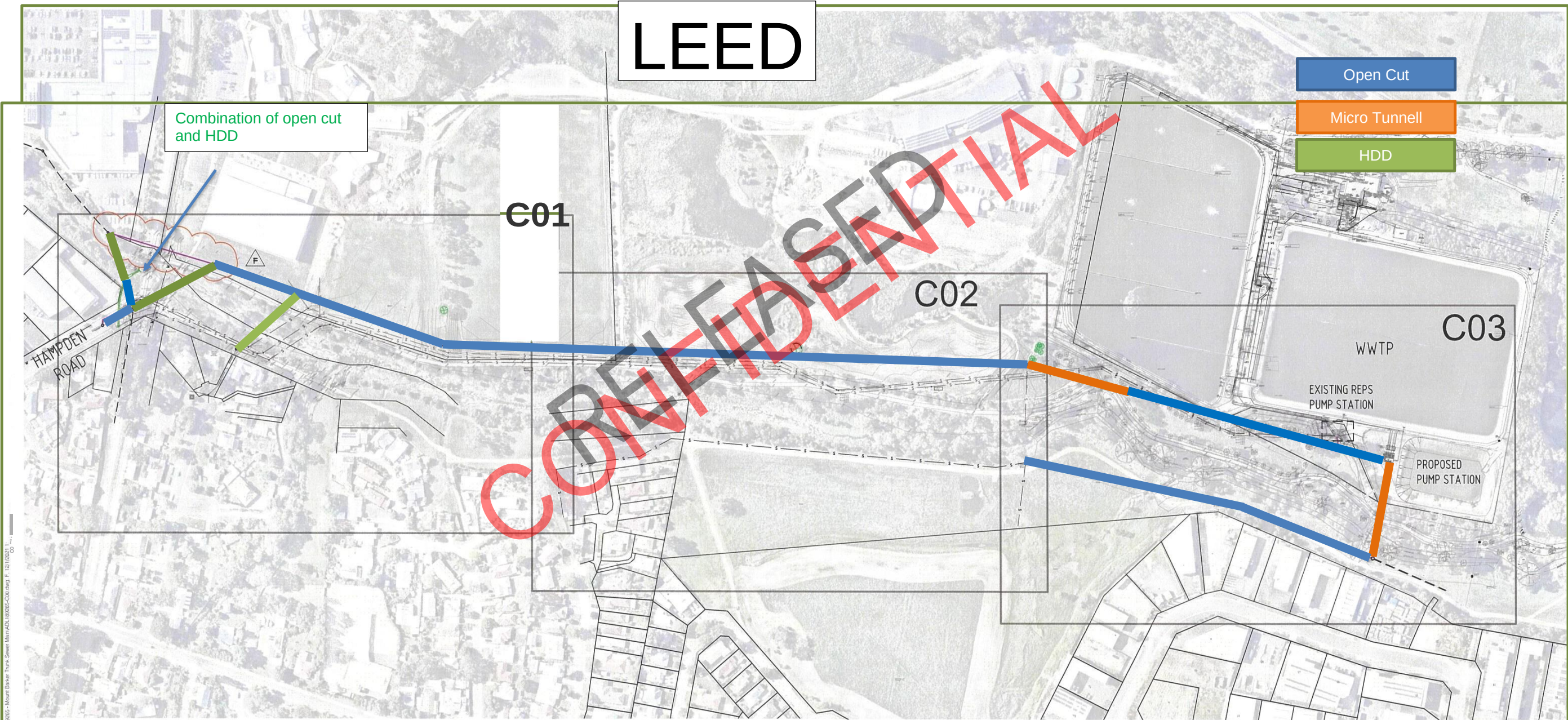
Attachment 2

SHEET DRAWING TITLE

- AOL189265-C00 OVERALL LAYOUT PLAN AND DRAWING INDEX
- AOL189265-C01 LAYOUT PLAN- Sheet 1 of 3
- AOL189265-C02 LAYOUT PLAN- Sheet 2 of 3
- AOL189265-C03 LAYOUT PLAN -Sheet 3 of 3
- AOL189265-C04 LONGITUDINAL SECTIONS
- AOL189265-C05 HAMPDEN ROAD CONNECTION DETAIL
- AOL189265-C06 MAINTENANCE HOLES/SHAFT DETAILS



- Open Cut
- Micro Tunnell
- HDD



LEED

Combination of open cut
and HDD

C01

C02

C03

WWTP

EXISTING REPS
PUMP STATION

PROPOSED
PUMP STATION

30 15 0 30 11
SCALE 9A R10

TENDER ISSUE
NOT FOR CONSTRUCTION

REV	DATE	DESCRIPTION	DRAFT	ENG	CHKD
A	03.01.18	ISSUE FOR R/C/H/ATIN	Cd1	t10	
e	24.01.	PRIMO,RY ISSUE	Cd1	t10	
C	25.09.18	ISSUE FOR CONSIDATION	LK	t10	
D	10.09	PRILCONCEPT DESIGN	CH	t10	
E	01.10.18	PRILCONCEPT DESIGN FOR TENDR	CH	t10	
F	12.01.1	LH 4 ADDED	Cd1	t10	

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PROPOSED SEWERAGE TRUNK MAIN
HAMPDEN ROAD TO WWTP, MOUNT BARKER
FOR MOUNT BARKER DISTRICT COUNCIL
OVERALL LAYOUT PLAN

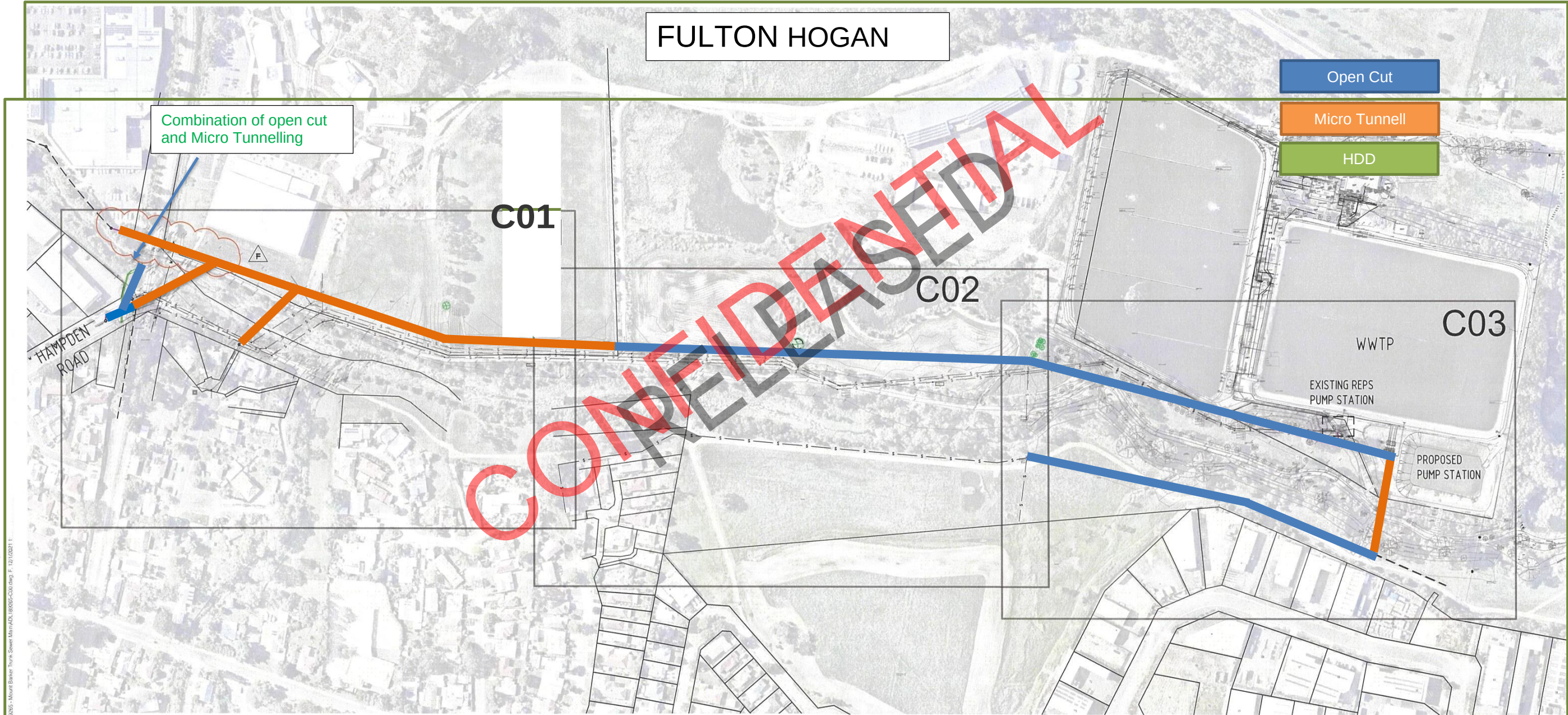
DRAWING NUMBER
AOL189265 C00

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PROPOSED SEWERAGE TRUNK MAIN
HAMPDEN ROAD TO WWTP

Attachment 3

SHEET	DRAWING TITLE
AOL189265-C00	OVERALL LAYOUT PLAN AND DRAWING INDEX
AOL189265-C01	LAYOUT PLAN - Sheet 1 of 3
AOL189265-C02	LAYOUT PLAN - Sheet 2 of 3
AOL189265-C03	LAYOUT PLAN - Sheet 3 of 3
AOL189265-C04	LONGITUDINAL SECTIONS
AOL189265-C05	HAMPDEN ROAD CONNECTION DETAIL
AOL189265-C06	MAINTENANCE HOLES/SHAFT DETAILS



WGA-101 (revised) 2018/08/01 - 189265 - Mount Barker Trunk Sewer Main (AOL189265-C00) Rev F, 12/02/21

When printed full size, the scale bar is 100mm

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TENDER ISSUE
NOT FOR CONSTRUCTION

REV	DATE	DESCRIPTION	DRAFT	ENG.	CHKD
A	03.01.18	ISSUE FOR INFORMATION	C.H.	110	
e	24.01.	PROHJURY ISSUE	C.H.	110	
C	25.09.18	ISSUE FOR CONSULTATION	L.H.	110	
D	10.09	PRELIMINARY DESIGN	C.H.	110	
E	11.10.18	REVISIONS FOR TENDER	C.H.	110	
F	12.01.21	Ltr 4 ADDED	C.H.	110	

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PROPOSED SEWERAGE TRUNK MAIN
HAMPDEN ROAD TO WWTP, MOUNT BARKER
FOR MOUNT BARKER DISTRICT COUNCIL
OVERALL LAYOUT PLAN

DRAWING NUMBER
AOL189265-C00-1

Attachment 4

Tender Award Recommendation



TO: Brian Clancey (Project Sponsor)

FROM: Phil Burton (Tender Assessment Panel Chair)

SUBJECT: 2020.007 New Sewer Trunk Main and New Inlet Pump Station

DATE: 26 July 2021

REFERENCE: DOC/21/111162 (FOL/20/2867)

ATTACHMENTS:

Pre-tender Documents:

- Tender Evaluation Plan (DOC/21/113522)
- Tender documentation (FOL/20/3094)

Submissions from Tenderers:

- All submissions (FOL/21/1200)
- Original submission by Leed (DOC/21/74986)
- Original submission by Fulton Hogan (DOC/21/75002)
- Presentation from Leed (DOC/21/105309)
- Presentation from Fulton Hogan (DOC/21/105364)
- Post-presentation response from Leed (DOC/21/111063)
- Post-presentation response from Fulton Hogan (DOC/21/111067)
- Comparison of construction methodology (DOC/21/97379)

Assessment by Panel:

- Summary of tender assessment (DOC/21/113172)

Information from Advisors/Others:

- Comments from Advisor - WGA (DOC/21/113189, DOC/21/79075, DOC/21/107721)
- Comments from Advisor - DCE (DOC/21/87165, DOC/21/107722, DOC/21/129942)
- Comments from Project Manager Representative - Gary Neave, TSA (ProManage) (DOC/21/113201)
- Comments from Hugh McPharlin, Nexia Edwards Marshall (DOC/21/118649 and others)

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- List of Clarifications to be Included in Contract – Mark Harford, TSA (DOC/21/126009)
 - Pre-tender Construction Cost Estimate – Supplied by Chris Reynolds (DOC/21/119760)
-

Purpose:

To recommend to Project Sponsor, Brian Clancey to proceed with negotiations and due diligence checks on Leed Pty Ltd (“Preferred Tenderer”) with the intent to award the contract 2020.007 New Sewer Trunk Main and New Inlet Pump Station to same subject to satisfaction.

Summary – Key Issues:

- An open tender process has been undertaken in accordance with the approved Tender Evaluation Plan (TEP)
- Five tenders were submitted and have been assessed by the endorsed Tender Assessment panel (TAP) with assistance from approved external advisers under a strictly confidential arrangement.
- Two shortlisted tenderers, Fulton Hogan Utilities (Fulton Hogan) and Leed Engineering and Construction Pty Ltd (Leed) provided outstanding submissions and were highly regarded by the TAP for their capability and experience and as result were invited to present their tender submissions to the TAP in greater detail.
- At the conclusion of the assessment process, and taking into consideration the advice received from others participating in the process, the TAP have recommended completing due diligence checks and proceeding to negotiate contractual terms with Leed before taking a report to Council recommending to award the contract.

Recommendation:

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:

1. further due diligence to be undertaken on Leed,
2. confirmation of stakeholder acceptance of the proposed methodology,
3. successful negotiations on the commercial terms of the contract to satisfactorily clarify the scope and management of risk.

Background:

1. The Council owns and operates a significant wastewater service that is second only in size to SA Water in the state.
2. In order to cater for future growth, the upgrade of critical network infrastructure is required.
3. The gravity sewer main from Hampden Rd to the Mount Barker WWTP has been previously identified as in need of urgent upgrade and as such has been included in Council's endorsed Long Term Financial Plan and Annual Business Plan (20/21 and 21/22) for delivery.
4. Walbridge Gilbert Aztec (WGA) have completed a reference design for the required infrastructure and this has been used for tendering purposes.
5. The endorsed project budget is \$15.5million and the latest pre-tender cost estimate for the project is \$11.8million (GST exclusive).
6. A business case has been prepared by WGA and Council staff (DOC/21/19097).
7. A prudential report has been completed by Dean Newberry and Associates and this was endorsed by Council on 6 April 2021.
8. Council does not have the resources nor expertise to deliver the project and so has chosen to tender for the design and construction of this infrastructure.
9. The procurement process has been managed by Council's internal resources with support from select external providers.
10. Probity advice has been provided by Hugh McPharlin, Nexia Edwards Marshall throughout the tender process.
11. Legal advice is being provided by Normans Waterhouse.
12. Separate tenders for Project Management and Superintendency have been issued and are not considered further in this memo.

Scope of Works

13. The scope of works is as outlined in the endorsed project charter (see DOC/21/82633)
14. In summary the works comprise of the design and construction of a new sewer main from Hampden Rd to the Mount Barker Wastewater Treatment plant and a new inlet pump station.

Procurement Strategy

15. To ensure the best value for money and maximum community benefit, the sewer main and inlet pump station were combined into a single tender as separable portions, with the preference to award to a single contractor due to the complex interfaces.
16. A design and construct tender was chosen as the preferred construction methodology was not clearly known and this enabled further innovation from the industry to be realised.

Tender Process

17. Pursuant to Council's Procurement policy, an open competitive tender process was selected to secure a suitably qualified Contractor to undertake the works.
18. The request for tender ("RFT") was issued via VendorPanel on 2 March 2021 with an online briefing via zoom held for potential tenderers on 23 March 2021.
19. The tender closed on 11 May 2021. Five (5) submissions were received from the following:
 - BMD
 - Diona Pty Ltd (Diona)
 - Fulton Hogan Utilities (Fulton Hogan)
 - Leed Engineering and Construction Pty Ltd (Leed)
 - SEM Civil

Evaluation Overview

20. The evaluation process comprised of assessment of the following non-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%)
21. The tenders were evaluated by an evaluation panel ("Panel") consisting of two Council staff (Chris Reynolds and Phil Burton) and an external consultant (Dan O'Connor, GHD). Council also engaged independent specialist advisor(s) in the evaluation process as mentioned earlier. The panel first met on 4 May 2021 for a pre meeting to discuss the evaluation process and confirmed that they did not have any conflict of interest.
22. The members of the TAP undertook an independent evaluation of tenders submission and scored against the pre-determined criteria. This scoring was recorded in Vendor Panel and the panel met on 24 May 2021 to discuss the assessment and review the scores. The scores were consolidated and the panel recommended shortlisting to three highest scoring tenderers; Leed, Fulton Hogan and Diona. SEM's submission was considered very poor and despite being the second lowest price, the panel had no confidence in them to deliver on this project. BMD's submission was quite good but their price was circa 30% more than the next highest and so were not considered further. A copy of the consolidated scoring is shown below.

Vendor / response	Indicated price	Score
BMD / VPR424105	\$20,142,788.34	64.01
DIONA PTY LTD / VPR425610	\$14,385,911.70	68.02
FULTON HOGAN UTILITIES / VPR425615	\$12,289,406.00	74.00
LEED ENGINEERING AND CONSTRUCTION PTY LTD / VPR425997	\$8,399,600.00	81.75
SEM CIVIL / VPR426476	\$8,428,421.28	57.65

23. The panel identified questions requiring further clarification and these were put to the shortlisted tenderers with roughly one week to respond.

24. The panel reviewed the responses and again met on 16 June 2021 to further shortlist to two tenderers. Diona was omitted from further consideration due to them having the highest price of shortlisted tenderers, having least local business support and showing least understanding of the local project complexities.
25. The panel agreed to invite the two shortlisted tenderers to present their submissions in greater detail.
26. The tenderers presented their submissions to the panel and other approved participants in confidence on 2 July 2021.
27. The panel sought final comment from internal and external advisors immediately proceeding the presentations and this was received on or before 7 July 2021.
28. The panel met again on 7 July 2021 to review the advice received and determine if further information was required before making a recommendation. The panel agreed that there was adequate information to shortlist further to the preferred tenderer for recommendation to the Sponsor.
29. Shortlisted tenderers were invited to reaffirm their submissions subsequent to the presentations and responses were received from both on or before 13 July 2021 through VendorPanel. This further information did not alter the panel's recommendation.
30. The panel recognise that this is an interim recommendation and that further assessment and negotiation with the preferred tenderer is recommended prior to awarding the contract. These outstanding matters include:
 - a. Financials/Due Diligence
 - b. Reference checking
 - c. Contractual terms and conditions
 - d. Construction and commercial tender assumptions and clarifications
31. The proposed contract form is Australian Standards 4300 – 1995 (as prescribed in the tender documentation and recommended from Norman Waterhouse).

32. Further consideration of the recommended contract terms and conditions should be undertaken to ensure adequate mitigation of risk is addressed. Advice on this matter will need to be sought from Norman Waterhouse. Although the program is largely acceptable and reasonable in comparison to other tender submissions, the risk of Extensions of Time (EOT) and other variations is high given the variable nature of the soils and climate, which could lead to the need to implement mitigation measures to cater for the lack of spare capacity in the current pipeline.
33. Flow monitoring (manual observations) has been occurring on the Hampden Rd to WWTP pipeline for a number of months now and the latest forecast for reaching capacity is sometime in the last quarter of 2022 (originally Feb 2022). This revised forecast is good news and allows some further consideration of the program and choices being made to deliver to a specific target date. For instance, offering incentives to accelerate a program. The programs provided by Leeds and Fulton Hogan appear to be able to deliver the required infrastructure before this critical date although any extensions of time could be problematic in the former case.

Basis of Decision

34. Both of the shortlisted tenderers are respected operators with extensive experience and capability and were fairly even in the non-qualitative criteria.
35. Both tenderers provided excellent detailed submissions and participated in the tender process with enthusiasm and a strong desire to win the work.
36. There were some significant differences between the tender submissions, namely the price and the program duration.
37. Following the comprehensive evaluation process and consideration of the views of the Panel and advisors, the Preferred Tenderer, Leed, who had the highest non-price criteria assessment score and lowest price, has been chosen on the following basis:

Pricing/value for money

- Leed's tendered price was \$8,399,600 and Fulton Hogan \$12,289,406 for similar scope of works – a difference of approximately \$3.9m.
- Leed's pricing is within budget for this project and is approximately 28% below the independent QS pre-tender construction cost estimate of \$11.8m whereas Fulton Hogan's price exceeds the estimate.

- Both tenderers provided value management items for consideration and these were assessed by advisors for suitability. These included alternate pipeline construction methods, alternate materials, alternate pipe grades, alternate pump station design, etc. Some of these are considered worthy of pursuing whereas other have already been discounted through the development of the reference design. Fulton Hogan (\$2.65m) offered more items for consideration than Leed (\$490,000) but a large majority of these items have been ruled out by Council's Owners Engineer WGA and supported by the Wastewater team. Regardless the submissions have been assessed as tendered with acknowledgement that the design standards applied should be challenged with the successful tenderer through the detailed design phase as some significant cost savings could be realised. WGA commented on the Fulton Hogan tender:

If Council maintain their design standards then many of the suggested savings would not be realised. Their submission should be taken on face value and any savings a bonus for Council. A number of the savings come from Council relaxing their design standards and those same concessions could be granted to any of the tenderers. As such the tenders should be compared on their complying submissions and cost savings then realised once the preferred tenderer is selected.

- Further WGA commented on the proposed pump station changes:
The alternate pump station option i.e. precast package station was considered by Council during the optioneering stage and was not endorsed by Council. If the cost savings are significant Council could reconsider that option with the preferred tenderer but this option is a change of scope and as such in my opinion should not be considered as part of the tender assessment process.
- TSA reported that there are some discrepancies in pricing between contractors that while intriguing, are not material.
- The daily rates for Leed should be closely checked to determine impact of time extensions as, due to their program being tight, these are likely to be called upon. Significant project delays could see the costs escalate and so this will need to be closely managed.
- The Leed tender offers very good value for money but there are additional risks relating the quality of the outcome (e.g. being able to achieve the desired pipe grade), the impacts to stakeholders (from open trenching across area such as the school) and the impacts to the environment (from open trenching across the wetlands area and HDD under the creek). Fulton Hogan have minimised some of these risks by

choosing to micro tunnel in some areas. A key decision for the project is what methodology is acceptable in what areas. The Wastewater team have confirmed that the proposed methodology by Leed is acceptable although rates for additional drilling and tunnelling should be included in the contract in case they need to be called upon.

Methodology

- Both tenderers have adopted a different methodology but basically being a blend of open trenching, horizontal directional drilling (HDD) and tunnel boring for the installation of sewer mains., best described by WGA:

The main point of difference between the two proposed methodologies are:

- *FH are tunnelling through the main school area – Leed are trenching (at current price and methodology)*
- *FH and Leed are both open trenching across the oval and past the wetlands.*
- *FH are micro tunnelling under the creek and under the railway line, Leed are Directional Drilling.*
- The use of various technologies has been determined based on an assessment of risk, quality, cost and time.
- The reference design indicated a preference for micro-tunnelling but this was not prescribed. Some other tenderers (not shortlisted predominantly due to price) provided a methodology more aligned to micro-tunnelling.
- Leed has partnered with Pezzimenti and Fulton Hogan with Bothar for micro-tunnelling – both operators are from interstate so are subject to risks of interstate travel and significant establishment costs.
- Leed and Fulton Hogan have carefully considered local constraints in determining the appropriate methodology and have made allowances accordingly e.g. they have proposed a realignment of some pipe sections to mitigate risks of damage, disruption or conflict.
- Both tenderers chose open trenching over a significant portion of the alignment because it is faster and cheaper.
- Both gave confidence that they could manage local conditions and stakeholder impacts, which will be significant as it passes through a school, playing field and an established wetland environmental area.
- A point of difference here is the methodology through a portion of the school where Fulton Hogan have chosen to micro-tunnel and Leeds

open trench – the former doing so because of the impacts to the school grounds.

- Further, Fulton Hogan have chosen to micro-tunnel under the creek because of the inherent risks in doing so with HDD. Leed believed they could manage these risks with HDD.
- Both tenderers showed competence in managing and disposing of groundwater and slurry although the level of groundwater being encountered may have been under-estimated, particularly by Fulton Hogan who have less local knowledge.
- Both tenderers submitted a suitable design development process with adequate reviews, client engagement and value management. Fulton Hogan put a greater emphasis on value management and proposed an alternative approach being an Early Contractor Involvement (ECI). A ECI approach was considered pre-tender but was not supported at the time.
- Stakeholder engagement and communications was a clear priority for both tenderers with a good track record being reported by advisors on both. Fulton Hogan adopted an internal resourcing model for this whereas Leed was outsourcing this to a specialist company. Fulton Hogan provided greater emphasis on this aspect of the project and presented their methodology in some detail. Leed showed awareness for stakeholder concerns but did not present as confidently as Fulton Hogan on this criteria. TSA commented that community engagement *“... does not appear to have been given the same import, in the submissions, and in Leed’s case the presentation of methodology. A couple of key omissions in the cut and paste submission, and the lack of a presence at the presentation are flags; especially of concern, given that in my experience they generally do this well. The council team will need to be diligent to ensure their objectives are met here.”*
- Both tenderers acknowledged the impact of construction on linear trail users and Hampden Rd businesses/residents and were able to articulate how impacts could be minimised with alternative access arrangements being proposed through effective traffic management.
- Both tenderers committed to repairing/restoring local assets damaged during construction to ensure they are in better condition than at the start of the project e.g. they have allowed for reinstating roads/trails/turf in full where it is damaged.

Program

- Both tenderers provided a detailed breakdown of their work program enabling the panel to see what assumptions they had used.
- Both assumed a contract award of mid-July and confirmed that any delay to award would only delay the completion by the same amount of time, although FH recognised that there may be seasonal impacts if pushed out too far i.e. missing construction start during summer 21/22.
- Both tenderers identified the critical path and the need to order long lead time materials in advance to hit their schedule.
- Both tenderers are aware of the seasonal impacts of working in Mount Barker and the groundwater and creek conditions which will be worse in winter. Hence their excavation has preference for summer months.
- Both tenderers demonstrated suitable awareness of constraints such as school hours and SteamRanger operating times.
- Both tenderers chose a methodology to minimise the program duration i.e. preference for open trench as it is far quicker.
- Leeds program is approximately 5 months shorter than Fulton Hogan and is considered “bullish” by TSA – forecast practical completion of August 2022. Leeds have also sought a reduction in liquidated damages resulting from delays.
- Fulton Hogan reiterated that they weren’t going to promise something that they couldn’t deliver.

Experience and Capability

- Both contractors are highly regarded and have extensive experience and have partnered with highly competent and respected consultants and sub-contractors.
- Leeds provided numerous examples of their previous experience in delivering like works including the construction of a pipeline under the Adelaide to Melbourne rail line and through the Adelaide Park Lands.
- Fulton Hogan are currently on the panel with SA Water and have completed similar works at Angle Vale and Victor Harbour and their sub-contractor Bothar have extensive experience in tunnelling.
- Leeds has previously been a partner on SA Water’s framework contracts for delivery of similar infrastructure but this is no longer the case. The panel understands that this is due to commercial terms rather than performance but further due diligence in this regard would be worthwhile.
- Leeds are utilising and SADB are respected local service providers who have successfully completed numerous projects for Council previously.

- Leed have also nominated Pezzimenti who are not known to MBDC but are considered a respected medium sized company in the industry. Their role in the project is likely of a minor nature. Bothar (partnering with FH) are larger and have more experience reportedly. To note, Pezzimenti did not present with Leed at the presentation.

Local Business Support

- Both tenderers scored highly for local business support utilising local companies and keeping interstate resources to a minimum. Micro-tunnelling resources are only available from interstate.
- It is likely that local businesses will benefit from the jobs created during construction as workers relocate to the Mount Barker township.

Safety

- Both tenderers demonstrated a strong commitment to WHS showing that they had successfully completed similar works without reporting on any major incidents.
- The tenderers are large and experienced companies that have substantial WHS systems backing them. They have provided evidence of their safe work procedures.
- The panel are confident that both tenderers will perform well in this regard.

Risk

- There are a number of construction risks to be addressed in undertaking this project. Shortlisted tenderers demonstrated a very good level of understanding of risk and mitigation measures for reducing risk. A risk register for the project exists but this will need to be added to based on the methodology chosen by the successful tenderer and the experience they bring to the project. Some key risks identified through assessment include, but are not limited to:
 - Availability of resources – interstate resources are subject to impact by Covid restrictions and could lead to significant delays. All micro tunnelling must come from interstate.
 - Groundwater – excess groundwater infiltration and removal adding additional costs

- Groundwater Bypass – the construction of an open trench may impact groundwater flow and so engineering measures will be required
- Quality – ability to meet pipe grade tolerances
- Methodology – Impact on community, environment, stakeholders
- Creek crossing – frac out
- Approvals – for crossing third party land and disposing of water
- Stakeholder acceptance – making stakeholders aware of the impacts on them of the chosen methodology
- Delays to program – wet weather, delay in receiving materials, etc
- Variations – groundwater and rock is somewhat known but additional geotech would provide greater certainty and should form part of the design development.

Further Considerations and Next Steps

- The panel are available to discuss the content of this memo and recommendations further as required.
- The resourcing of the next steps needs to be carefully considered to ensure the right outcomes are achieved in a timely manner.
- The procurement model of D&C should be confirmed or otherwise assess the merits of an ECI which has been proposed by FH.
- The forecasting of the critical date when the current gravity sewer main reaches capacity needs to be reviewed through use of automated flow monitoring to determine if the proposed program is acceptable or if mitigation measures are required. For example, construction could be staged across two summer periods to mitigate risk if time permitted this approach.
- It is recommended that TSA be requested to finalise the contract terms, manage risk and prepare documentation for contract award, in line with their current engagement to project manage this project. A number of clarifications need to be documented.
- Incentives should be considered in the final contract to drive performance of the contractor and measures put in place to manage the acceptance of risks identified.
- The methodology proposed needs be carefully assessed and accepted or alternatively variations sought and agreed to before contract award. For example, if open trenching is not acceptable to the school then an

alternate approach needs to be considered and priced into the contract. Engagement with stakeholders should commence immediately.

- A number of alternative options have been proposed and these need further assessment and acceptance by the Wastewater team (e.g. change in pipe grade). The design standards applied have been challenged by tenderers and should be reassessed with Council's Owners Engineer in light of potential cost savings.
- An informal gathering for the Council on this project should be scheduled prior to presenting a report to award the contract.

Recommended by Evaluation Panel

Dan O'Connor (GHD)

Chris Reynolds

Phil Burton (Chair)

Probity Certified

Hugh McPharlin

Procurement Noted

Mark Labaz

Approved / Not Approved

Signed:

Title:

Date:

Attachment 5



Report to
Mt Barker District Council
Procurement Review Services



Hampden Road Sewer Trunk Main and Inlet Pump Station Procurement Review Report

Smarter Solutions

Best for Project

October 2021

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TSA

We are a group of people who manage, consult and partner with industry pros to radically improve public and private utilities and infrastructure. Sometimes we help build, other times we advise. But we're always collaborating for an outcome with positive impact.

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Document Control

File location:	Mt Barker Council/ Hampden Road Procurement Review/4. Deliverables/TSA Report to MBDC		
Prepared for issue:	Yvonne Green	Date:	18 October 2021
Approved for issue:	Gary Neave	Date:	18 October 2021

Best for Project

Return to Order of Business



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Note: this report is commercial in confidence and is prepared for only the project Tender Assessment Panel, Council Executive and (in summary recommendation as required) elected members.

TSA

1. The Brief

Following identification of some misalignment in the overall risk management approach of the shortlisted tenderers, and a recommendation to further explore key aspects of the tenders of both tenderers in the Tender Assessment Report, Council requested TSA to provide independent review of the procurement of the design and construction services for the Hampden Road New Sewer Main and New Inlet Pump Station project; with a particular focus on value for money where directly related to risk and risk outcomes for Council and the Mount Barker Community.

The procurement had progressed to the stage of evaluation, and recommendation of a preferred (subject to caveats) when TSA were engaged. Council had shortlisted 2 of the 5 tenders received and the tenders significantly differed in their offering and pricing and there were some issues not resolved. There appears to be two totally different approaches on how the project should be delivered.

Based on the review of documents and information provided, there was sufficient justification for further evaluation of the tenders received for the following reasons:

- a. There are several credible tenders above the range of the initial estimate (one shortlisted).
- b. There is one credible tender substantially below the range of the initial estimate (shortlisted).
- c. Tenderers have assessed and have clearly valued and allocated risk differently.
- d. The approach of the shortlisted proponents appears very different with respect to the management and engagement outside of the core construction activities.
- e. There are wide discrepancies in certain core and variation pricing, that if left unresolved, potentially represents some risk for Council.

TSA offered specialist procurement and delivery support to provide independent review of tender documentation and facilitate clarifications from shortlisted Tenderers to assist the Tender Evaluation Panel to finalise the tender evaluation process, through a further risk-based evaluation step. Through mapping of this further phase of the evaluation process and facilitation of further engagement, exploring the Tenderer's understanding of key risks, commercial and other (cost and non-cost), associated with the procurement and detailed design, management and construction delivery of the project elements, a better appreciation of (and ability to manage) the overall risk outcomes for Council and the community could be assessed.

Further investigation could reasonably be justified (and is clearly contemplated) in accordance with Council's RFT Documents, in particular Conditions of Tendering clauses 3.7 Council's Rights and 3.8 Tender Evaluation.

It is clear that regardless of price (either initial contract or out turn), realisation of key risks whereby the public perception of Council, and the officers credibility, and the confidence that the community has in its representatives, is damaged by poor outcomes at a time when the Council is being trusted with its' largest ever developments. This is not something that can be accepted.

While the overall assessment outcome may ultimately be consistent with the current thinking of the assessment panel; the Council and the community would expect that its' officers use all tools available to identify, quantify and value those areas that represent the threat identified above before making a decision on their behalf.

The fact that one of the shortlisted tenderers have submitted a proposal that is substantially different to all others only reinforces this imperative.



2. The Process

TSA's approach was to review the tender documentation and facilitate clarifications from the shortlisted Tenderers to assist the Tender Evaluation Panel to finalise the tender evaluation process. Through mapping of a further phase of the evaluation process and facilitation of further engagement, exploring the Tenderer's understanding of key risks, commercial and other (cost and non-cost, technical and non-technical), associated with the procurement and detailed design, management and construction delivery of the project elements.

The process followed the agenda described below:

#	Activity	Action by	Date/s
1	Proposal formally accepted by Council.	Council	27-Aug-2021
2	Prepare letters to Tenderers for issue by the Chair of the Tender Evaluation Panel: a) Letter to short listed Tenderers to advise the next steps in the process. b) Letter to non-short-listed Tenderers to advise that the process is not yet finalised.	TSA – draft letters Council – issue letters	31-Aug-2021 1-Sep-2021 to 3-Sep-2021
3	Review Tender documentation and short-listed submissions.	TSA	27-Aug-2021 to 10-Sep-2021
4	Meet with Chair of the Tender Evaluation Panel to confirm approach, key objectives and format for reporting.	TSA and Council	10-Sep-2021
5	Engagement with short listed Tenderers: a) Prepare questions for each short-listed Tenderer b) Meet with each short-listed Tenderer to provide questions and frame agenda for workshop (1 hour each). c) Hold workshop with each Tenderer (2.5 hours each).	TSA TSA, Council, Probity Advisor TSA, Council, Probity Advisor	13-Sep-2021 to 1-Oct-2021
6	Receive and consider Tenderer responses	TSA	6-Oct-2021 to 14-Oct-2021
7	Prepare and issue report to Tender Evaluation Panel.	TSA	18-Oct-2021 (extended)

TSA

3. Presentations

Presentations were made by each of the short-listed Tenderers. Key observations from Tenderer presentation were:

Fulton Hogan 28-Sep-2021 10am-12.30pm

1. Attendance by 5 Fulton Hogan personnel:
 - a. Project Director – Mark Vince
 - b. Project Manager – Tom Playford
 - c. Commercial Manager – Mike Matthews
 - d. Stakeholder & Community Manager – Carole Littlefair
 - e. Bid Manager & Scheduler – James Hunter
2. Impression was a cohesive team (senior representation indicates importance).
3. Strong Commitment to build a long-standing partnership with Council.
4. Did not include a representative for design, either Fulton Hogan Design Manager or representative from design subcontractor WSP, in line with expectation.
5. Did not include a representative for Micro Tunnelling or boring (N/A).
6. Advised that residual risks for Council would be:
 - a. Delays to proposed Award Date (mid-Nov);
 - b. DA, DHW & EPA – Approvals & Conditions (management effort allowed);
 - c. St Francis de Sales Licence Conditions; and
 - d. Excepted Latent Conditions.
7. Fulton Hogan raised their concern with being able to deliver the Pump Station from both a constructability and program perspective.
8. They left the presentation and acknowledged they had a lot of work to do particularly around the pump station.
9. Fulton Hogan acknowledged the status of the reference design and have stated they will further develop this.
10. Fulton Hogan acknowledged that they would own the stakeholder engagement role with interface into Council for approvals and communications only.

Leed 1-Oct-2021 9am-11.30am

1. Attendance by 1 Leed representative and 3 subcontractors:
 - a. Project Manager – Jason Mitchell
 - b. Daniel Thorpe – Gould Thorpe Planning – Community/Stakeholder
 - c. Jeff Tyler – Tonkin Consulting - Designer
 - d. Michael DeVizio – SADB – HDD/Micro tunnelling
2. Presentation was from four independent Contractors which appeared to cover all aspects of the project.

TSA

3. Representative from Gould Thorpe Planning appeared to direct his presentation to Leed and not to the Council representatives (checking in).
4. Leed indicated that Gould Thorpe, in conjunction with the Project Manager would support Council in the stakeholder engagement role.
5. The SADB representative (Company Director) will not be working on the project, only involved in bid process.
6. Advised that Leed remains responsible only for risks within their control but did not identify the residual risks for Council.
7. When asked about approvals, advised that was the responsibility of Council i.e., DA/EPA etc. would sit wholly with Council. They have stated that they believe they have a valid dredging and earthworks license issued by the EPA that covers dewatering activities.

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4. Additional Information Received

Tenderers were provided a list of clarification questions and given the opportunity to present to Council and TSA and then provide a written submission regarding key risks and mitigations and to respond to clarification questions. It is clear that Fulton Hogan have committed significantly more effort to this exercise than Leed; and notably across a broader base of their business. The revised submissions were received via Vendor Panel, are held by Council and are available for review by the TAP:

Leed (this folder):

Name	Status	Date modified	Type	Size
leed clarifications 2_5 october 2021	✓	7/10/2021 3:57 PM	Microsoft Excel W...	65 KB
Email- Vendor Panel Submission 5-Oct-2021 - Leed	✓	7/10/2021 8:45 AM	Adobe Acrobat D...	316 KB
leed post-tender submission 5 october 2021	✓	7/10/2021 8:43 AM	Adobe Acrobat D...	15,049 KB
revised tender program - 5 october - leed	✓	7/10/2021 8:43 AM	Microsoft Project ...	487 KB

Fulton Hogan (all subsequent folders):

Name	Status	Date modified	Type	Size
00 BAFO Pricing & Risk Register	✓	15/10/2021 12:01 AM	File folder	
01 BAFO Program	✓	6/10/2021 8:36 PM	File folder	
02 Clarification Responses	✓	8/10/2021 7:37 PM	File folder	
03 Org Structure & CVs	✓	6/10/2021 8:36 PM	File folder	
04 Ref. Design Mark-Ups	✓	6/10/2021 8:36 PM	File folder	
05 Xylem Package PS Data	✓	6/10/2021 8:36 PM	File folder	
06 Workshop Presentation	✓	6/10/2021 8:36 PM	File folder	
FHU_Mt Barker New Sewer Trunk Main & Inlet Pum...	✓	6/10/2021 6:57 PM	Adobe Acrobat Docume...	1,599 KB

Folder 00 BAFO Pricing & Risk Register

US-20-08 Mt Barker Trunk Main & Pump Station_Pricing Schedule_211005	✓	8/10/2021 9:12 AM	Microsoft Excel W...	79 KB
Mt Barker Risk Register_Final_2021.10.05	✓	7/10/2021 3:20 PM	Microsoft Excel M...	706 KB
US-20-08 Mt Barker Trunk Main & Pump Station_Pricing Schedule (Pkg A)_211005	✓	6/10/2021 6:57 PM	Adobe Acrobat D...	165 KB
US-20-08 Mt Barker Trunk Main & Pump Station_Pricing Schedule (Pkg B)_211005	✓	6/10/2021 6:57 PM	Adobe Acrobat D...	169 KB

Folder 01 BAFO Program

2021.10.05 - Mt Barker BAFO Program ...	✓	6/10/2021 6:57 PM	Adobe Acrobat D...	408 KB
2021.10.05 - Mt Barker BAFO Program...	✓	6/10/2021 6:57 PM	Adobe Acrobat D...	223 KB
Mt Barker Trunk Main & PS_BAFO Prog...	✓	6/10/2021 6:57 PM	Microsoft Project ...	1,086 KB

Folder 02 Clarification Responses

00 ITP&ITCs for MH Hydro & Vac Test	✓	9/10/2021 3:20 PM	File folder	
FHU Clarifications_Response 2021.10.0...	✓	6/10/2021 6:57 PM	Adobe Acrobat D...	267 KB
FHU Clarifications_Response 2021.10.0...	✓	8/10/2021 11:06 AM	Microsoft Excel W...	41 KB

Folder 03 Org Structure and CVs

Best for Project



00 Org Structure	✓	6/10/2021 8:36 PM	File folder
01 CVs	✓	6/10/2021 8:36 PM	File folder

Folder 04 Ref. Design Mark-Ups

2021.10.05_FHU_BAFO_Ref Design_Portion A (Trunk...	✓	6/10/2021 6:57 PM	Adobe Acrobat Docume...	11,357 KB
2021.10.05_FHU_BAFO_Ref Design_Portion B (Pump...	✓	6/10/2021 6:57 PM	Adobe Acrobat Docume...	3,112 KB

Folder 05 Xylem Package PS Data

00 VOLYM_PS_Std Dwg & Examples	✓	6/10/2021 8:36 PM	File folder
01 FLYGT_NP_330LT_Pump Data	✓	6/10/2021 8:36 PM	File folder

Folder 06 Workshop Presentation

MBDC New Sewer Trunk Main & Inlet ...	✓	6/10/2021 6:57 PM	Adobe Acrobat Do...	2,162 KB
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Table of Pricing Comparison - (refer to Attachment 1)

The attachment represents an aggregation of all pricing information received to date, and an assessment of where TSA believe the pricing for each party is likely to be finalised through pursuit of reasonable options and detailed design opportunities as represented in the collective submissions.

TSA

5. What's resolved and What's not resolved

TSA undertook to resolve as many of the matters as possible raised in the TAP Tender Award Recommendation (TAR) dated 26 July 2021. We note the TAR was an interim recommendation with further clarifications to be sought that may have an influence on the final outcome. It is recommended that the status (below) be considered in confirming the final recommendation.

TSA believe that the submissions received from both parties have clarified their positions sufficiently to confirm a single party to progress (noting TAR suggested ongoing interface with both parties to confirm Leed recommendation to progress).

Ref.	Issue Raised in TAR paper	Status	Resolved/ Not Resolved/ Partially Resolved (R/NR/PR)
1	30. Further assessment and negotiation with preferred tenderer is recommended prior to awarding the contract. These outstanding matters include:		
2	o Financials-/Due Diligence	Leed did not provide the requested financial information. Financial information to be requested from Leed and/or a comprehensive credit report could be requested from Council's preferred provider (not critical with Fulton Hogan)	NR
3	o Reference checking	Leed provided referees but there are no records that they had been contacted by the TAP yet. Referees to be contacted. (SA Water for Fulton Hogan)	NR
4	o Contractual terms and conditions	Leed's tender included departures for: - Liquidated Damages - Preliminary Design v Reference Design - All EOTs with costs - Inclement Weather Through the clarification process, Leed proposed alternative positions for these departures which are not able to be accepted. If Leed selected, TSA to make recommendations to Council for their consideration.	NR (Leed)/PR (Fulton Hogan)

TSA

Ref.	Issue Raised in TAR paper	Status	Resolved/ Not Resolved/ Partially Resolved (R/NR/PR)
		Further negotiation required with Leed to reach a position acceptable to Leed and acceptable to the Council – TSA feel this may not be achievable in the award timeframe with Leed, if at all. Council may need to concede with risk remaining. Fulton Hogan response suggests pathway to resolution with Council's intended risk transfer intact.	
5	Construction and commercial tender assumptions and clarifications		
6	32. Further consideration of the recommended terms and conditions should be undertaken to ensure adequate mitigation of risk is addressed. Advice on this matter will need to be sought from Norman Waterhouse.	As part of the TSA Procurement Review process, Tenderers were asked to review risks and mitigations and include this in their presentation to Council and their revised Tender submission. Risk mitigations will be included in the contract and included in negotiations of other contract terms and conditions.	R Note included in 4. above
7	32. Although the program is largely acceptable and reasonable, the risk of EOT and other variations is high given the nature of the soils and climate, which could lead to the need to implement mitigation measures to cater for the lack of spare capacity in the current pipeline.	As part of the TSA Procurement Review process, Tenderers were asked to review program and consider the revised award date of Nov 2021 and consider the impact of Completion by Nov 2022 and include this in their presentation to Council and their revised Tender submission. Revised schedule from Leed shows long design/ procurement timeline which will put construction start to May. If Leed selected TSA to make recommendations for acceleration to Council for their consideration. Further negotiation required with preferred tenderer to reach a position acceptable to the tenderer and acceptable to the Council. Designer (Tonkins)	NR (Leed)/PR (Fulton Hogan)

TSA

Ref.	Issue Raised in TAR paper	Status	Resolved/ Not Resolved/ Partially Resolved (R/NR/PR)
		appears resource availability challenged.	
8	33. The programs provided by Leeds and Fulton Hogan appear to be able to deliver the required infrastructure before this critical date although any extensions of time could be problematic in the former case.	As part of the TSA Procurement Review process, Tenderers were asked to review program and consider the revised award date of Nov 2021 and consider the impact of Completion by Nov 2022 and include this in their presentation to Council and their revised Tender submission. (Refer above) TSA to make recommendations to Council for their consideration. Further negotiation required with preferred tenderer to reach a position acceptable to the tenderer and acceptable to the Council.	NR
9	36. There were some significant differences between the tender submissions, namely the price and the program duration.	Clarifications were issued to Tenderers. Presentation and Revised submission including received which provided explanation of the differences.	R
10	Pricing/Value for money		
11	37. Leed's and Fulton Hogan's tendered price for similar scope of works was a difference of approx. \$3.9m. (Note TAP memo has Leed price incl GST, while Fulton Hogan excl GST)	Clarifications were issued to Tenderers. Presentation and Revised submission including clarification responses received which provided explanation of the differences.	R
12	37. Leed's pricing is within budget and is approx. 28% below the independent QS pre-tender construction cost estimate of \$11.8m whereas Fulton Hogan's price exceeds the estimate	Clarifications were issued to Tenderers. Presentation and Revised submission including clarification responses received which reduced the price difference between the tenderers. Further negotiation on scope, contract terms and price with preferred tenderer to achieve contractual final cost (refer schedule attached).	PR
13	37. Both tenderers provided value management items for consideration... Some of these are considered worthy of	As part of the TSA Procurement Review process, Tenderers were	NR

TSA

Ref.	Issue Raised in TAR paper	Status	Resolved/ Not Resolved/ Partially Resolved (R/NR/PR)
	pursuing whereas other have already been discounted through the development of the reference design... a large majority of these have been ruled out by Council's Owners Engineer WGA and supported by the wastewater team. Regardless the submissions have been assessed as tendered with acknowledgement that the design standards applied should be challenged with the successful tenderer through the detailed design phase as some significant cost savings could be realised.	asked to review methodology and value add items and include this in their presentation to Council and their revised Tender submission. TSA to make recommendations to Council for their consideration. Further negotiation required with preferred tenderer to reach a position acceptable to the tenderer and acceptable to the Council (note further reference to design standards) Items considered to be of benefit to pursue to be managed during design process, contract to allow innovation through detailed design.	
14	37. The daily rates for Leed should be closely checked to determine the impact of time extensions as due to their program being tight, these are likely to be called upon. Significant project delays could see the costs escalate and so this will need to be closely managed.	As part of the tender process, rates should remain fixed. If Leed are selected as preferred tenderer for further negotiations, their entitlement to EOTs and entitlement to costs will be further negotiated. This remains a significant risk with Leed given long design/procurement phase. Fulton Hogan have indicated a risk pool model to be managed by both parties. TSA to make recommendations to Council for their consideration.	PR
15	37. The Leed tender offers very good value for money but there are additional risks relating the quality of the outcome (e.g. being able to achieve the desired pipe grade), the impacts to stakeholders (from open trenching across area such as the school) and the impacts to the environment (from open trenching across the wetlands area and HDD under the creek).	Clarifications were issued to Tenderers. Presentation and Revised submission including clarification responses received. The revised proposals from both tenderers included changes to	PR

TSA

Ref.	Issue Raised in TAR paper	Status	Resolved/ Not Resolved/ Partially Resolved (R/NR/PR)
	Fulton Hogan have minimised some of these risks by choosing to micro tunnel in some areas. A key decision for the project is what methodology is acceptable in what areas. The Wastewater team have confirmed that the proposed methodology by Leed is acceptable although rates for additional drilling and tunnelling should be included in the contract in case they need to be called upon.	methodology to be considered by the TAP. Pipeline methodology changes are as considered by TAP previously. Both tenderers have suggested alternate pump station methodologies, with savings banked in their offer. Leed have indicated the risk on approval lies with them (this may not be sustained contractually)	
16	Leed has partnered with Pezzimenti and Fulton Hogan with Bothar for micro-tunnelling – both operators are from interstate so are subject to risks of interstate travel and significant establishment costs.	Both tenderers have provided a lump sum price and once contracted will be committed to a price and a completion date.	R
17	Leed has previously been a partner on SA Water's framework contracts for delivery of similar infrastructure, but this is no longer the case. The panel understands that this is due to commercial terms rather than performance but further due diligence in this regard would be worthwhile.	Due diligence to be performed. SA Water (usually very accommodating of local businesses) have not been impressed by Leed's recent behaviours with respect to pricing and commercial challenge/outcomes.	NR Refer to 2 and 3
18	The procurement model of D&C should be confirmed or otherwise assess the merits of an ECI which has been proposed by Fulton Hogan. **Note at paragraph 37 Methodology it states: A ECI approach was considered pre-tender but was not supported at the time.	If Fulton Hogan are selected as preferred, then further discussion can be held regarding ECI behaviours captured within a D&C accountability framework.	NR
19	It is recommended that TSA be requested to finalise the contract terms, manage risk and prepare documentation for contract award, in line with their current engagement to project manage this project. A number of clarifications need to be documented.	It is noted that TSA have been recommended to progress the contract terms, negotiate the risk with the preferred contractor and prepare the final contract. While elements of this work are currently outside of our current scope, we suggest this additional work is supported ASAP so contract award is not delayed.	NR
20	Incentives should be considered in the final contract to drive performance of the contractor and measures put in place to manage the acceptance of risks identified.	The RFT did not contemplate incentives, but this can be negotiated with the preferred Tenderer.	NR
21	The methodology proposed needs be carefully assessed and accepted for alternatively variations sought and	Clarifications were issued to Tenderers. Presentation and	PR

TSA

Ref.	Issue Raised in TAR paper	Status	Resolved/ Not Resolved/ Partially Resolved (R/NR/PR)
	agreed to before contract award. For example, if open trenching is not acceptable to the school, then an alternate approach needs to be considered and priced into the contract. Engagement with stakeholders should commence immediately.	Revised submission including clarification responses received. The revised proposals from both tenderers included changes to methodology to be considered by the TAP. Council and Project Manager can commence engagement with Stakeholders. This can be accommodated within the detailed design phase. Fulton Hogan have suggested an options workshop to facilitate this opportunity.	
22	A number of alternative options have been proposed and these need further assessment and acceptance by the Wastewater team (e.g. change in pipe grade). The design standards applied have been challenged by tenderers and should be reassessed with Council's Owners Engineer in light of potential cost savings.	Clarifications were issued to Tenderers. Presentation and Revised submission including clarification responses received. The revised proposals from both tenderers included changes to methodology to be considered by the TAP.	NR

TSA

6. Summary of Findings

Both Tenderers have the capability and capacity to satisfactorily complete the Scope of Work. TSA have some concern as to the availability of Tonkin's design resources (note lengthy design/procurement phase).

Both Tenderers have relied on the information in the RFT. There are risks given the D&C contracting environment proposed for elements such as: the main line has been designed to flow at 50% capacity only ever/when? Both tenderers have said they will check the capacity of the pump station; and may use the contract to support a change if not locked away. Leed have indicated they wish to hold Council largely to account on the preliminary design, whereas Fulton Hogan have indicated acceptance of contractual clarity using the reference design as a basis for their design.

Both parties have question marks around the pump station timelines if their preferred methodology is not accepted. Leed have "banked" the opportunity in their initial submission and have indicated they will take risk on cost (may not be contractually sustainable), but not time. Fulton Hogan have indicated savings in the BAFO, based on a solution that is not yet proven as viable or acceptable.

Leed appear to have "banked" a significant opportunity on pipeline design/construction (potentially to be realised through detail design); noting that the preferred challenge to design standards (ref WGA tender assessment) has not been fully discounted/closed out. This remains an opportunity with Fulton Hogan, if Council has an appetite to pursue.

Fulton Hogan have indicated a risk pool approach to delay, administered by the two parties. Leed have suggested increase in lump sum to partially offset delay/EOT risk.

Fulton Hogan have increased their rates for the pipeline (likely 1 July general price increase), which will not be permitted under tender validity provisions.

The matters for consideration that would represent the key differentiators are:

Fulton Hogan

If Council select Fulton Hogan the following matters will have to be reconciled:

#	Description	Comments
1	Pump Station	Offered a twin package solution which appears to not be an optimal solution because: - does not appear to allow for the capacity in the design basis report - Does not appear to fit within the physical constraints - Proposed construction team haven't demonstrated experience in pump station construction. Return to reference design represents time/cost risk (as identified in initial tender submission. Further opportunity to optimise.
2	Shallower grade for DN1000	Reduced depth of pipeline – further cost saving opportunity.
3	Contract Terms and Conditions	• Warranties Indemnities and Liabilities inc.: Limit of Liability, Preliminary Design. • Risk, Variation, Bar, Delay and Extension of Time • Delay, Force Majeure, Extension of Time and Delay Damages and Liquidated Damages • License Agreement and Other Approvals (time and cost of management support included)

TSA

#	Description	Comments
		Suggest change of contract to remove status as “preliminary design” releasing Fulton Hogan to “own” their design.

Leed

If Council select Leed the following matters will have to be reconciled:

#	Description	Comments
1	Contract Terms and Conditions	- Liquidated Damages - Preliminary Design v Reference Design - All EOTs with costs - Inclement Weather Still not resolved with key differences in approach, risk profile and anticipated outcome. Partially resolved by lump sum allowance in BAFO, but still remains a significant cost risk.
2	Program	Construction commencing in May (schedule just shifted to the right) will result in issues with inclement weather and groundwater. (a start in May is unsustainable) Design resource constraints, and supply may reduce opportunities to accelerate.
3	Stakeholder	Appear to have allowed 1 FTE with 50% on site presence and balance of responsibility to Project Manager (roughly half of allowance from Fulton Hogan – support rather than ownership (still don’t quite get this aspect)
4	Approvals	Do not appear to have considered the impact or pathway for approvals in their program or contract price.

TSA

COUNTERPOINT: TSA opinions from the tenderer discussions: the following observations only have been made in our analysis of the original submissions, supporting collateral, and these subsequent representations. Note that this section is for information only and does not form part of the formal analysis and recommendation.

Fulton Hogan

For Fulton Hogan the below could be considered:

- Pump station design is not aligned with the current preferences of Council. Fulton Hogan have stated that to build the pump station as per the reference design, the program will be challenged. A better understanding of this is required including a methodology.
- If Council rejects the twin pump station, we will need a better understanding of why they can't build to the reference design. What would this do to the program and particularly budget.
- Further clarification regarding the construction management team noting there is an apparent lack of experience (specific to pump station construction) in the current advised team members
- Council will have opportunity to influence design without taking on additional risk. A collaborative approach to this, has been invited (initial workshop) which may mitigate some of the risk caused by the delay in tender award.
- Further clarifications sought regarding the BAFO pricing. TSA think through negotiation and a better understanding of what Fulton Hogan have allowed for in their price may see the final price reduced to in the order of \$9.5 to \$10.5 million (tbc) on an "apples for apples" basis. Note Leed have priced in all opportunity other than those specifically identified.
- Contract Terms which offer a pathway that can be negotiated within the proposed award time frame
- Discussion regarding the introduction of the risk pool. What risk is in Fulton Hogan base submission.
- They have acknowledged the reference design.
- The agreement on the departures removal and inclusion appears to be close to an agreement.
- Their program, although still needs some agreement, seems manageable especially if some of the recommendations below can be recognised. Could be open to acceleration.
- Price is well above commercial rates for what Council currently pay for similar work. Manholes are an example.
- The CVs presented for the construction team have very little Pump Station and deep sewer main experience. The BAFO suggest that their field staff would be made up of Local Subcontractors and Suppliers.
- Fulton Hogan seemed very concerned with the delivery of the Pump Station. The revised BAFO pump station design is very different to the reference design. There wasn't a construction methodology included in the BAFO. The revised BAFO price for the pump station didn't reflect the change in scope and risk.
- In the BAFO response there was question regarding trench stops item 5. Part of the Fulton Hogan innovation was to raise the main line to reduce the depth and if trench stops are required, they would be funded via the risk pool. They have also suggested that this innovation would reduce the risk of groundwater. Sheet C04 of the reference design show the ground water to be above the current invert so raising the pipe would more than likely put the new invert closer to the water table level.
- BAFO pricing had increased across the board. This sits outside of the tender validity period.
- Fulton Hogan have submitted a revised design for the work in Hamden Road. The drawing suggests that there will be a reduction in manholes and maintenance shafts. Their BAFO pricing doesn't reflect this.
- Item 6 of the clarifications was a question regarding rock i.e., lineal meter or cubic meter. The rate had previously been supplied have significantly increased their rock rates.
- There was a risk /cost sharing schedule submitted in the BAFO, but the BAFO pricing didn't reflect this

TSA

additional amount.

- Fulton Hogan had a good understanding of the Stakeholder requirements.
- They are taking the reference design and adopting their own innovations which best mitigate risk. They have stated in their clarifications item 24 that they are relying on the inputs and information set out or otherwise described in the Preliminary design and Specification Design basis report.

Leed Engineering

For Leed the below could be considered:

- There would need to be an immediate discussion regarding program as a construction start in May is not acceptable. Is it because Tonkin are too busy? The need to finalise design prior to ordering of manholes will influence this also. This is a major risk, and a potential “showstopper”. It is acknowledged that this additional assessment process may have contributed to this.
- Leed have a good understanding of the construction requirements. Their presentation had several similar projects.
- Their construction team nominated has a more experience in delivering this type of project.
- They closely align to the reference design, however, remain keen to hold Council to the Preliminary design position.
- Contract terms, unlikely to reach a position that is satisfactory to Council by the proposed award date.
- Additional Council resources may be required to manage the contract.
- Leed appear to have a good understanding of the construction requirements. Their presentation had several similar projects to Hampden Road.
- The alternative pump station construction methodology was well described by Tonkin.
- Their submitted program didn't seem to account for the challenges with the weather in Mount Barker during winter.
- BAFO price didn't change but various variation rates remain high.
- Leed didn't appear comfortable when challenged over the importance in the difference between preliminary /reference design. They have mentioned that they will advance the Council supplied design relying predominantly on the information provided in the RFT. There is some conflict here that may be difficult to address.
- Stakeholder had a good understanding of the requirements and offered a concise plan to support Council – not clear on ownership.
- Leed offered to remove various departures but only with the inclusion of a \$300,000 pool, which only provides partial coverage.

TSA

7. Recommendation

In November 2020, Council undertook detailed risk assessment and established a risk register for the project. The key risks at that time were bundled roughly into technical, non-technical and commercial. This risk register, and the mitigation of the identified risks remains a priority for Council.

Both Leed and Fulton Hogan (and their respective teams) have the capacity and capability to address the technical issues associated with the project. The engagement of Contractor's of this calibre is risk mitigation in itself. Leed's on the ground team, as submitted, appear better experienced in this type of work.

The key differentiator between Leed and Fulton Hogan is in the trade off between the non-technical and the commercial; and the interface between the two. The final pricing for the minimum acceptable technical solution (this is what Council should be chasing on a value for money basis) will be much closer than initial pricing suggested. It appears that Leed have priced in available design and construction optimisation (potentially at some risk to themselves), whereas Fulton Hogan have indicated the opportunity to work with Council to explore opportunities.

Fulton Hogan have indicated a risk share opportunity whereas Leed have put a price on some elements and left the remainder with Council to generally manage and be accountable for.

The management of stakeholder engagement for the project will be owned (internally) by Fulton Hogan; and supported (albeit to a well-developed plan) by Leed, and the resourcing commitment, while increased by Leed in this process, still lags significantly. If conditions become challenging this may be material, with any gaps to be supported by Council.

Leed have been bold and made some key assumptions, applied innovations, and changed methodology to reduce costs, and time; and will likely deliver the project at an overall cheaper price. If these assumptions fail, and the schedule pressure we see become real, the cost will escalate and close the gap.

Fulton Hogan have taken a more conservative approach, while remaining open to an opportunities workshop coupled with a risk share conversation, that offers a clearer path to Contract, greater certainty and confidence, albeit at a price.

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

- While negotiations proceed consider an early works package to order pipe and fittings (detailed design independent to some degree) so the 1000 trunk main can commence in Early February (likely with Fulton Hogan, may not be possible with Leed).
- If any delay in assembling final contractual documentation, consider a letter of intent to progress the design of the 1000 trunk main in readiness for early February while the contract execution is facilitated. Any recommendation to elected members should reflect this intent.

Immediate actions required:

Fulton Hogan

- Explore the opportunity of receiving a key other CV for an individual site resource with greater experience in

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delivering the pump station element of the project. There wasn't any CVs submitted for the field staff.

- Challenge increase in pipe install rates.
- Finalise the view on the risk pool, including administration (\$300 000 included to match Leed).
- Finalise Contract. TSA believe a pathway has been established.
- Kick off pre-design opportunity workshop.
- Seek further information regarding the Pump Station design submitted in the BAFO and the possible price increase should Council want the Pump Station constructed closer to the reference design.
- Explore the opportunity of receiving early inputs for review the main sewer line with the possibility of starting construction in early February, by applying progressive design.
- Council needs to be comfortable in the Reference design produced by WGA as Fulton Hogan are relying on this information to further advance their detailed design, which they will still own.

Leed Engineering

- Showstopper: There needs to be a discussion regarding the Leed program. As it stands it would put the project into a high-risk area during winter. We suggest a discussion around providing additional design resources to design for the main sewer line in January for an early February start.
- There would need to be a discussion regarding their day rates. What would constitute a delay that would trigger these rates.
- In the BAFO Leed have suggest that Liquidated damages be \$2500/Day capped at 2.5% of the contact sum. Further negotiation required as this rate does not represent the risk to the Council of contractor delays.
- Leed have agreed to withdraw departures 40,42 and 43 should there be a contingency lump sum included in the contract of \$300,000. Additional risk beyond this needs to be assessed and quantified.
- Council needs to be comfortable in the Reference design, produced by WGA, being described as a preliminary design, as Leed are relying on this information and will hold Council to account on the design.
- Finalise Contract. TSA believe there will be difficulty in reaching resolution is a reasonable form or timeframe.
- Close out design standards conversation, and any built in opportunity realisation.
- Confirm intended pump station design (note segmental construction favoured by Leed).

Possible opportunities to mitigate some of the risk caused by the delay in contract award.

- Council explores the opportunity of procuring the 1000 GRP pipe and manholes and possibly free issuing these to the successful tenderer. Owners engineer to confirm the pipe size and finalise design on areas where the scope is unlikely to change (this discussion should occur in the pre-award period).
- A combination of in-situ and prefab manholes should be considered.
- Consider design options that remove high risk alignments (school grounds).
- Early engagement with Norman Waterhouse, and the Superintendent, to effect changes to the Contract where common themes exist.

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MELBOURNE | NEWCASTLE | PERTH

NEW ZEALAND

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hello@tsamgt.com | tsamgt.com

TSA

Attachment 6

MOUNT BARKER
DISTRICT COUNCIL

Tender Award Recommendation

TO: Brian Clancey (Project Sponsor)

FROM: Phil Burton (Tender Assessment Panel Chair)

SUBJECT: 2020.007 New Sewer Trunk Main and New Inlet Pump Station

DATE: 2 November 2021

REFERENCE: DOC/21/181789 (FOL/20/2867)

ATTACHMENTS:

1. TSA Assessment Report (DOC/21/182230)
2. Response from Tender Panel Member – Chris Reynolds (DOC/21/182241)
3. Response from Tender Panel Member – Dan O'Connor (DOC/21/182243)

Purpose:

To provide additional commentary from the Tender Assessment Panel taking into account the TSA report dated 18 October 2021.

Summary – Key Issues:

- At the conclusion of the assessment process, and taking into consideration the advice received from others participating in the process, the TAP have recommended completing due diligence checks and proceeding to negotiate contractual terms with Leed before taking a report to Council recommending to award the contract.
- A TSA report was commissioned by the Project Sponsor to undertake a further assessment of the two shortlisted tenderers and assist in clarifying unresolved matters identified in the TAP memo (and others) and is now complete.
- The TAP has reviewed the TSA report only and conclude that the additional information does not change the TAP's prior recommendation contained in its

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original memo to Project Sponsor to select Leed as the single preferred tenderer and to enter into detailed contractual negotiations with.

Recommendation:

That the Project Sponsor, Brian Clancey, receive the further advice of the TAP and note that the previous recommendation remains unchanged.

Background:

1. The TAP presented a recommendation to the Project Sponsor on 26 July 2021 to proceed with negotiations and due diligence checks on Leed Pty Ltd with the intent to award the contract.
2. The Project Sponsor subsequently engaged, with the support of the TAP, TSA to undertake a further tender assessment process with the two shortlisted tenderers which was endorsed by the probity officer.
3. The additional assessment commenced on 27 August 2021 and the final report was received from TSA on 18 October 2021.
4. All members of the TAP were not fully involved in the TSA assessment phase. Their involvement was limited to:
 - a. The Chair being present during the kick off meeting with TSA and Project Sponsor.
 - b. Chris Reynolds being present during the two tenderer presentations.
 - c. All members being advised of the process and being in receipt of the final TSA report only for review.
5. The TAP relies heavily on the final report from TSA and their assessment of the further information provided by the tenderers. The TSA report does not clearly identify a preferred contractor but rather has provided further information and commentary for TAP consideration.
6. The TSA report was issued to TAP members on 19 October 2021. Responses were received from panel members Chris Reynolds and Dan O'Connor on 22

October 2021 and 25 October 2021 respectively. A copy of these email responses is provided as an attachment.

7. The Chair considered the views of the panel members and the TSA report and delivered an interim email recommendation to the Project Sponsor on 27 October 2021. An extract of this email is provided below:

“Based on the information provided, the TAP is unified in its position that a single preferred Tenderer should be selected and detailed commercial negotiations commence immediately. Our previous recommendation to proceed with Leed remains applicable.”

8. Probity advice has been provided by Hugh McPharlin, Nexia Edwards Marshall and he has been satisfied with the process undertaken.
9. The Project Sponsor is targeting a mid-November award of contract by Council through a special Council meeting as required.
10. The purpose of this memo is to formalise the recommendation of the TAP and should be read in conjunction with the previous memo from the TAP.

Discussion:

11. The TAP previously recommended that further assessment and negotiation with the preferred tenderer be undertaken prior to awarding the contract. The outstanding matters included:
 - a. Financials/Due Diligence
 - b. Reference checking
 - c. Contractual terms and conditions
 - d. Construction and commercial tender assumptions and clarifications
12. The TSA assessment process sought to clarify some of these matters in pursuit of reaching a commercially acceptable position.
13. TSA have identified in their report matters that have been resolved, partially resolved or remain unresolved (see pgs. 7 to 12). The TAP note that there are still many matters that remain partially unresolved or not resolved for both shortlisted tenderers and the negotiation on these matters may alter the final outcome of the tender award. Regardless, the TAP is unified in its position to

commence detailed contract negotiations with a single preferred tenderer – a point clearly made in the TSA report on pg. 17 and 7 respectively:

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

And:

“TSA believe that the submissions received from both parties have clarified their positions sufficiently to confirm a single party to progress (noting TAR suggested ongoing interface with both parties to confirm Leed recommendation to progress).”

14. To clarify, the Tender Award Recommendation (TAR) referred above by TSA, recommended to commence negotiations with Leed only.
15. For the purposes of transparency, a few key matters identified in the TSA report are commented on below to assist the Project Sponsor in their decision making and assessment of value for money and risk appetite. There are a number of trade-offs to consider and to be reported to Council as part of the tender award.
 - a. **Price:** TSA sought a conforming tender price from both tenderers for comparison of ‘apples to apples’. The resulting difference was \$3.75 million – a small narrowing of the gap between the two with Leed being significantly lower. TSA also sought a best and final offer with the price difference between the two shortlisted tenderers remaining largely the same with Leed being \$3.91 million less than Fulton Hogan.
 - b. **Design Ownership:** The design provided as part of the Design and Construct tender package is a reference design by WGA. It is recommended that this remain as a reference design and ownership of the design rests with the contractor.
 - c. **Program:** The delay in the award of the contract has adversely impacted the program of both tenderers with construction likely to commence in Autumn 2022. Whilst this creates some additional risk of construction across winter, the Wastewater team have revised their forecast on the existing pipe reaching capacity to

November 2023. The Leed program submitted remains well within this timeframe however is still considered optimistic if not unrealistic.

- d. **Commercial terms:** Liquidated damages will need to be negotiated to acceptable terms – likely \$5k per day and capped to a suitable % of contract sum. TSA note that additional time may be required to negotiate terms but time is available to do this.
- e. **Stakeholder Engagement:** There are differences in approach – no right or wrong – but allowance should be made in the overall project budget for Council to provide additional support if Leed are chosen – a small price penalty to pay.
- f. **Capability:** Both shortlisted tenderers are highly regarded with similar previous experience but it is considered that Leed bring a stronger team to this project. TSA commented *“The engagement of Contractor’s of this calibre is risk mitigation in itself. Leed’s on the ground team, as submitted, appear better experienced in this type of work”*.

16. In summary, the TAP concur that Leed appear very capable to undertake these works and present excellent value for money assuming the risk assignment, schedule and other commercial terms can be adequately negotiated. The assignment of a highly experienced PM from TSA will help ensure Leed deliver on the commitments made under contract.

Recommended by Evaluation Panel

Dan O’Connor (GHD)

Accepted as per email received 3 Nov 2021 8.35pm

Chris Reynolds

Chris
Reynolds

Digitally signed by Chris
Reynolds
Date: 2021.11.04 11:53:46
+10'30'

Phil Burton (Chair)

Phillip Burton

Digitally signed by Phillip Burton
Date: 2021.11.04 11:34:55 +10'30'

Approved / Not Approved

Signed:

Title:

Date:

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Attachment 1

Refer to Attachment 5 of this Council Report

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Paula Overy

Attachment 2

From: Chris Reynolds
Sent: Friday, 22 October 2021 1:45 PM
To: Phil Burton; Daniel O'Connor
Cc: Paula Overy; Dean Hurford; Damian Lethbridge
Subject: RE: Hampden Road New Sewer Main and Inlet Pump Station - Procurement Review

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Phil,

My recommended Contractor remains unchanged from our previous recommendation of LEED.

LEED provide a more experience team on the ground with similar reference projects behind them.
LEED are also commercially more competitive and have a good understanding of the scope and associated risk.
LEED Schedule has been highlighted as a risk however the WW team firmly believe this is with the respective project teams.

As before, we still require commercial and technical clarification step to finalize the contract with the preferred contractor of any outstanding issues to be closed out or included in the contract.

Additional comments from the WW team.

- LD's are mentioned as an issue for Leed and I agree. I originally estimated \$5k but procurement advised that it was too low. The attached email has some detail around how the LD's were calculated noting the \$5k for impact on the wastewater treatment plant contractor. I don't believe there will be any issue with the WWTP contractor so back to \$5k is a reasonable LD in my opinion.
- Page 15 dot point 14 – FH's response to trench stops is to reduce grade (and depth) and any construction risk is borne by a risk pool. This is effectively a design, performance and financial risk that Council will ultimately wear.
- Page 16 dot point 10 – BAFO price didn't change for Leed but variation rates remain high – seek an opinion from Mark Harford as he has a good understanding of contractor rates
- Summary of findings on page 13 & 14 suggests to me that FH are our risk. The items in the Leed summary are not show stoppers and the main issue being the program should have been addressed prior to the BAFO. Taking into consideration Leed's potential VO's, \$4m is a lot of contingency
- It was always made clear that the design was a Reference Design, that would be novated over to the successful contractor. Having said that, I don't have any issues or reservations with Council accepting responsibility for the design (it is well-researched, developed and is a solid design). This is a decision that we cant make alone – suggest we approach WGA to see if they are happy to back it as such and if they are, this will support executive making that decision?
- There are other alternatives to the Leed program (it is not a show stopper), it just needs to be confirmed during discussions with Leed as the preferred tenderer. I have read numerous references to Leed's program which was stated in TSA's report as simply being 'moved to the right'. I don't think it is ethical to hang leed out to dry for simply shifting their program out proportionally and it should not be seen as a show stopper given Council created this delay. How could Council consider going from recommended preferred to losing a bid because of this process and their program. At the very least, Leed should have be consulted further in terms of investigation options for opportunities and innovations with regards to their program prior to presenting this report regardless of the tender status of BAFO.
- Major changes to the pump station design should not be accepted and both companies need to understand this, this is a show stopper and would result in major issues and additional costs for Council. Did both Leed &

FH provided compliant bids in terms of the PS design? (I cant remember) – if not, has this been challenged? I support Damian's comment of no change to the PS design

- There is a substantial variance in the pricing that would only become larger if Fulton Hogan were awarded the contract.
- Mark Harford (TSA) is very aware of the key stakeholders and the need to keep them informed. If Leed are awarded the contract then Stakeholder Management will be well covered between Mark and Leed, I don't see any issues here.
- Leed clearly have more experience in both the pipeline and the pump station construction.
- The door was closed on the ECI approach due to time constraints, the Fulton Hogan proposal would add unacceptable additional time to an already severely threatened/possibly unachievable timeline.
- We should definitely consider the early procurement of key items to assist with shortening product lead times (pumps, pipe, manholes etc).
- The panel should amend the original recommendation to reference the TSA report and in the strongest words possible, recommend the award of Hampden Rd to Leed.

Happy to discuss further.
Chris

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Paula Overy

Attachment 3

From: Daniel O'Connor <Daniel.OConnor@ghd.com>
Sent: Monday, 25 October 2021 9:53 PM
To: Phil Burton; Chris Reynolds
Cc: Paula Overy; Dean Hurford; Damian Lethbridge
Subject: RE: Hampden Road New Sewer Main and Inlet Pump Station - Procurement Review

Hi Phil,

Apologies for not getting to this last week (or earlier today). I have received and reviewed the TSA report.

The additional information provided does not change my opinion of the two proposals. I note that I was not asked to attend the TSA meetings.

Leed have offered a significantly cheaper option which may or may not suit Council. This ranges from the use of HDD instead of pipe jack as the main trenchless technology, to only supporting council with 0.5 FTE in stakeholder engagement, their document management system and their approach to LDs, EOTs, etc. The Leed designer does not seem to be able to meet the current schedule.

FH are offering a more costly option which again, may or may not suit council. FH is offering to take on significantly more risk and responsibility by opting to "own" the design, "own" the stakeholder engagement, etc. They are also providing a more expensive trenchless excavation method – pipe jack over HDD. FH have raised issues with the program.

On the face of it, I am in agreement with the tenders (and others) that a 12 month program to design, acquire permits/stakeholder approval and construct is tight if not unachievable. Council should be very careful in their deliberations around LDs, EOTs, and any clauses that may impact on these items, i.e. responsibility for approvals/permits, reliance on reference design and tender documents, design change/acceptance, construction method acceptance, inclement weather, travel restrictions, etc.

With this in mind, I note the outcome of the due diligence performed on Leeds - *SA Water (usually very accommodating of local businesses) have not been impressed by Leed's recent behaviours with respect to pricing and commercial challenge/outcomes.*

In any case, Council will need to be more involved in the project implementation process if you choose to proceed with Leed. Is this cost considered in the price assessment at all?

However, reading the TSA, I am surprised that FH displayed such limited experience. Perhaps this is a by product of COVID lock downs? If this is the case, while we race towards opening the nation, Leed have an obvious advantage.

Finally, I would generally not support Council purchasing long lead time items unless they are off the shelf or standard items, at which point they are probably not long lead time items. Design will need to be completed on each individual item that is to be procured. Sorting out the requirements of each tender will be a significant task in and of itself. If this is really considered to be an option, perhaps shifting the pump station on to a Construct Only for of Contract would be a viable time saving alternative?

Again apologies for the delay in my response.

Regards,

DAN O'CONNOR | A GHD ASSOCIATE
BEng(Hons)
Technical Director – Tunnels and Hydropower

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FURTHER MATTERS FOR COMMERCIAL NEGOTIATION WITH THE PREFERRED TENDERER

A. Leed:

1. Penalties for being late:

- a) Liquidated damages to be capped at preferably 5% of the total contract sum and the daily amount to preferably be \$5,000 ex GST – the Leed submission proposed 2.5% and \$2,500 per day; and
- b) The qualifications related to time delays as proposed by Leed to be modified in recognition of council's acceptance of Leed's proposal for inclusion of a contingency amount of \$300,000 ex GST.

2. Other:

There are some other matters that will require negotiation to enable a contract to be finalised. Based on communications with Leed to date, these matters are not anticipated to be significant.

All of the above points will need to be to the satisfaction of council to enable a contract for the design and construction of the Project to be finalised and executed with Leed.

Required to be to the satisfaction of council is to be within no longer than 2 weeks from the issue by council of a letter of intent to Leed. This does not mean that it will be essential for a contract to be executed by that time. That may take more time, allowing for review by legal service providers and insurers.

B. Fulton Hogan:

Points of both a technical and commercial nature will require negotiation and resolution to the satisfaction of council e.g. seek further clarity on the design of the pump station submitted and arrangements for the administration of the proposed 'risk pool'.

Required to be to the satisfaction of council is to be within no longer than 2 weeks from the issue by council of a letter of intent to Fulton Hogan. This does not mean that it will be essential for a contract to be executed by that time. That may take more time, allowing for review by legal service providers and insurers.

Attachment 8

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Best and Final Offers

The independent pre –tender cost estimate provided to council was \$11.8 million ex GST.

The best and final offers submitted to council and the composition of same are as follows with all amounts being ex GST:

Fulton Hogan

Portion A Pipeline	\$6,899,448.73
Portion B Inlet Pump Station	\$4,609,925.27
Risk Pool	\$1,939,208.00
Portion of Risk Pool likely to be required as nominated by Fulton Hogan.	\$587,104.00
Total A - includes entire risk pool amount	\$13,448,582.00
Total B - includes portion of risk pool as nominated by Fulton Hogan	\$12,096,478.00

LEED

Portion A Pipeline	\$3,813,365
Portion B Inlet Pump Station	\$3,822,635
Contingency	\$300,000
Provisional Sum for possible design changes	\$100,000
Total	\$8,036,000