



Merri-bek
City Council

SPECIAL COUNCIL MEETING AGENDA

Wednesday 19 April 2023

Commencing 6 pm

The meeting will be held online

Language Link

This is the Agenda for the Council meeting. For assistance with any of the agenda items, please telephone 9240 1111.

這是市政會會議的議程。您若在理解議程中有需要協助的地方，請打電話給“語言連接 (Language Link)”翻譯服務，號碼9280 1910。

Questo è l'ordine del giorno per la Riunione del consiglio Comunale. Se hai bisogno di aiuto sugli argomenti in discussione, sei pregato di telefonare al Language Link al numero 9280 1911.

Αυτή είναι η Ημερήσια Διάταξη για τη Συνεδρίαση του Συμβουλίου (Council Meeting). Για βοήθεια με οποιοδήποτε από τα θέματα της ημερήσιας διάταξης, παρακαλείστε να τηλεφωνήσετε στο Γλωσσικό Σύστημα (Language Link), στο 9280 1912.

هذا هو جدول أعمال اجتماع المجلس البلدي. للمساعدة بأي بند من بنود جدول الأعمال الرجاء الاتصال بخط Language Link على الرقم 9280 1913.

Belediye Meclisi Toplantısının gündem maddeleri burada verilmiştir. Bu gündem maddeleri ile ilgili yardıma ihtiyacınız olursa, 9280 1914 numaralı telefondan Language Link tercüme hattını arayınız.

Đây là Nghị Trình cuộc họp của Ủy Ban Quy Hoạch Đô Thị. Nếu muốn biết thêm chi tiết về đề tài thảo luận, xin gọi điện thoại cho Language Link qua số 9280 1915.

यह कौंसिल की बैठक का कार्यक्रम है। कार्यक्रम के किसी भी विषय के बारे में सहायता के लिए कृपया 9280 1918 पर फोन कीजिए।

这是市政府例会的议题安排，如果需要协助了解任何议题内容，请拨打9280 0750。

ਇਹ ਕੌਂਸਲ ਦੀ ਮੀਟਿੰਗ ਦਾ ਏਜੰਡਾ ਹੈ। ਏਜੰਡੇ ਦੀ ਕਿਸੇ ਆਈਟਮ ਬਾਰੇ ਮਦਦ ਲਈ, ਕ੍ਰਿਪਾ ਕਰਕੇ 9280 0751 ਤੇ ਟੇਲੀਫੋਨ ਕਰੋ।

1. **WELCOME**
2. **APOLOGIES/LEAVE OF ABSENCE**
3. **DECLARATIONS OF CONFLICTS OF INTERESTS**
4. **COUNCIL REPORTS**
 - 4.1 CONTRACT ST-2022-314 - 33 SAXON STREET
REDEVELOPMENT PROJECT

3

4. COUNCIL REPORTS

4.1 CONTRACT ST-2022-314 - 33 SAXON STREET REDEVELOPMENT PROJECT

Director City Infrastructure, Anita Curnow

Capital Works Planning and Delivery

Officer Recommendation

That Council:

1. Authorises the Chief Executive Officer to:
 - a) Amend the formal offer (\$24,967,260.00) previously made to McCorkell Constructions Pty Ltd (Contractor) for the contract ST-2022-314 for 33 Saxon Street Redevelopment Project (Contract) on the following terms and otherwise subject to and in accordance with paragraph 1(b) of this Resolution:
 - i. for a fixed price design and construction contract for the lump sum of \$25,147,116.00 being the revised value (excluding GST) and inclusive of any sum payable for Early Works as defined in the Letter of Intent dated 17 February 2023 and updated 6 April 2023; and
 - ii. approve any contract cost variation as delegated to the Chief Executive Officer in the Instrument of Delegation
 - b) Negotiate and finalise the terms of the Contract between Council and the Contractor provided that:
 - i. the terms specified in paragraph 1(a) of this Resolution shall not be altered without a further Resolution of Council; and
 - ii. other than terms referred to in paragraph 1(a) of this Resolution, the terms of the Contract are acceptable to the Chief Executive Officer;
2. Conditional on acceptance of the Contract by the Contractor in accordance with the terms of this Resolution:
 - a) Authorises the Chief Executive Officer to do all things necessary to execute the Contract and any required documentation for the Contract;
 - b) Authorises the Chief Executive Officer to exercise the option to extend the Contract in accordance with the provisions within the Contract.

REPORT

Executive Summary

Council awarded Contract ST-2022-314 to McCorkell Constructions Pty Ltd on 19 December 2022, with the Chief Executive Officer to negotiate final terms of the Contract.

Negotiations have continued since that time, with complexity that has arisen from some of the Planning Conditions applied to the project (confirmed on 21 December 2022) causing some delay in finalisation of the contract before Execution.

In order to mitigate project delay resulting from this period of contract execution delay, under the authority of Council's resolution with respect to the Contract award, Council entered into a Letter of Intent with McCorkell Constructions Pty Ltd which authorised the Contractor to incur expenditure to a capped sum to progress detailed design and to begin procurement of long lead time items.

The Contract terms are very close to being finalised now, and parties are poised to execute the Contract before 21 April 2023.

Some of the matters that have come to light through the design process and the resolution of requirements to satisfy the town planning conditions and early works permitted by the Letter of Intent will add to the cost of the base contract. If the Contract had been executed these would have been managed as contingency items.

Legal advice has been provided that the Contract cannot be executed inclusive of amounts for additional work (for example, as pre-approved contingency items) as this effectively adds to the upfront contract sum contrary to Council's resolution the contract be executed for a fixed sum.

Accordingly, it is necessary to return to Council to seek approval to award the contract at a contract sum of \$25,147,116.00. The overall project budget remains the same, \$28,998,029.00.

Previous Council Decisions

Contract ST-2022-314 - 33 Saxon Street Redevelopment Project - 19 December 2022

That Council:

1. *Authorises the Chief Executive Officer to:*
 - a) *Make a formal offer to McCorkell Constructions Pty Ltd (Contractor) to award the contract ST-2022-314 for 33 Saxon Street Redevelopment Project (Contract) on the following terms and otherwise subject to and in accordance with paragraph 1(b) of this Resolution:*
 - i. *for a fixed price design and construction contract for the lump sum of \$24,967,260.00 (excluding GST)*
 - ii. *Approve a contingency sum for 10 per cent, being \$ 2,496,726.00 as provision for cost escalation, options proposed as part of Tender, and other unforeseen cost risk.*
 - iii. *Note additional sum of \$875,687 has been allowed for the costs associated with project management, building surveyor, Quantity Surveyor, legal matters etc.*
 - b) *Negotiate and finalise the terms of the Contract between Council and the Contractor provided that:*
 - i. *the terms specified in paragraph 1(a) of this Resolution shall not be altered without a further Resolution of Council; and*
 - ii. *other than terms referred to in paragraph 1(a) of this Resolution, the terms of the Contract are acceptable to the Chief Executive Officer;*
2. *Conditional on acceptance of the Contract by the Contractor in accordance with the terms of this Resolution:*
 - a) *Authorises the Chief Executive Officer to do all things necessary to execute the Contract and any required documentation for the Contract, subject to*
 - i. *the resolution of any town planning conditions that remain Council's responsibility as the applicant, and*
 - ii. *that the 28-day statutory period for appeals to VCAT has elapsed without appeal regarding the decision to grant a permit for the development*
 - b) *Authorises the Chief Executive Officer to exercise the option to extend contracts in accordance with the provisions within the Contract; and*
 - c) *Advises all tenderers of Council's decision in relation to the Contract.*

3. *Approves an increase in budget for 33 Saxon Street Redevelopment Project from \$23,295,356 to \$28,998,029 in the 4-year capital works program. The budget to support this increase is to be approved with the following adjustments by fund source: \$25,106,211 from the significant projects reserve (up from \$22,795,356); \$2,891,818 from the DCP Reserve (not included in previous budget); \$1,000,000 in Commonwealth Government pledge of grant funding (up from estimate previously of \$500,000). These sums are to be included and phased in the 2023-2027 4-year budget development.*

1. Policy Context

The tender complies with section 109(1) of the *Local Government Act 2020*.

2. Background

33 Saxon Street Redevelopment project is identified as a major project in Council's 2022-23, 2023-24 and 2024-25 capital works program. The scope of works is for a community facility that includes a creative production space, gallery exhibition, commercial café/hospitality and open space for events and recreation.

A two-step procurement process was adopted that started with a publicly advertised Expression of Interest (EOI) on 2 July 2022 that closed on 22 July 2022. Five Expressions of Interest were received and all were deemed suitable to be invited to tender. The request for tender (RFT) was issued to the selected tenderers on 26 August 2022 and closed on 28 October 2022 after approved extensions.

McCorkell Constructions Pty Ltd was approved by Council on 19 December 2022 to be awarded Contract ST-2022-314, for an approved sum of \$24,967,260.00 (representing McCorkell Constructions Pty Ltd's Best and Final Offer) and the Chief Executive Officer was authorised to exercise a 10 per cent contingency of \$ 2,496,726.00. The total project budget including costs outside of this Contract is \$28,998,029.00.

3. Issues

During the period of negotiation over the final terms of the Contract by the Chief Executive Officer as provided for in Council's resolution on 19 December 2022, Officers have been working with the Contractor, McCorkell Constructions Pty Ltd, under a Letter of Intent signed by the parties, which has authorised McCorkell to incur expenditure to a capped sum to progress design and to begin procurement of long lead time items. The Letter of Intent was also intended as a good faith indication by both parties of working to resolve Contractual matters and achieve Contract execution as quickly as possible. The first Letter of Intent was signed by the parties on 17 February 2023 with an expiry of 8 April 2023, this was updated on 6 April 2023 with an expiry of 21 April 2023.

In signing a Letter of Intent, the risk of project delays have been minimised as much as possible despite this delay in Contract signing. The Contract terms are very close to being finalised now, and parties are poised to execute the Contract before 21 April 2023.

Some of the matters that have come to light through the design process and the resolution of requirements to satisfy the town planning conditions and early works permitted by the Letter of Intent will add to the cost of the base contract. If the Contract had been executed these would have been managed as contingency items.

The effect of the additional cost to the contractors arising from the design process and the resolution of requirements to satisfy the town planning conditions has caused an increase in contract sum of \$179,856.00 to a revised value of \$25,147,116.00.

Legal advice has been provided that the Contract cannot be executed inclusive of amounts for additional work (pre-approved contingency items) as this effectively adds to the upfront contract sum and breaches Council's resolution the contract be executed for a fixed sum.

Accordingly, it is necessary to return to Council to seek approval to award the contract at the higher contract sum.

The overall project budget remains the same, \$28,998,029. The recommendation to amend the Contract amount is on the basis that non-construction related costs (for consultants) and contingency budget are adjusted to accommodate the Contract amount increase.

Social / Environmental / Local Implications

These matters were considered as part of the original Council report on Contract award. Environmental considerations continue to be part of the negotiations on the contract terms as outlined elsewhere in this report.

Human Rights Consideration

The implications of this report have been assessed in accordance with the requirements of the Charter of Human Rights and Responsibilities and it has been determined that no rights have been impinged through the process and outcomes discussed in the report.

4. Communications and Planning Approvals

The Planning Conditions applied to the project were resolved by Council at its meeting on 23 November 2022 and the appeal period for these conditions expired without being contested on 21 December 2022.

As the date of confirmation of Planning Conditions post-dated the Best and Final Offer from tenderers, the award of the Contract was subject to satisfactory incorporation of the Planning Conditions into the Contract. For most of the Planning Conditions, this was a straightforward matter. A number of the Conditions, related to the carriageway easement over 10 Dawson Street and the environmental overlay were subsequently reviewed by Planning Officers and amended.

- Amendment to Condition 28 altered the condition for the easement to be registered prior to occupancy permit rather than prior to commencement.
- Amendment to Condition 22 altered the condition for environmental Preliminary Risk Screen Assessment (PRSA) prior to commencement and accepted a Preliminary Site Assessment (PSA).

The original and updated Planning Permits are able to be viewed on Council's eServices website, with the following Application numbers:

- MPS/2022/194 (original permit)
- MPS/2022/194/A (updated permit)

5. Declaration of Conflict of Interest

Council Officers, external consultants and all other parties involved in the tender process completed and signed Conflict of Interest declaration forms. The forms were reviewed by the Probity Advisor and no material conflicts of interest were declared.

Conflicts of Interest continue to be managed through the life of the Saxon Street Redevelopment Project and the Contract ST-2022-314. No new conflicts of interest have been raised on the project since the 19 December 2022 Council Report.

6. Financial and Resources Implications

The proposed change in Contract Sum does not require variation of the Project Budget.

7. Implementation and Timeline

It is proposed, subject to this recommendation being resolved, that the revised Contract will be executed by 21 April 2023.

The delay in executing the contract has been relatively minor, it is now proposed that the project Practical Completion will be 23 August 2024.

Attachment/s

There are no attachments for this report.