CM13.6. Gas Reticulation - Nexus Industrial Precinct

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CONFIDENTIAL	No		
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Purpose of Report

To seek Council approval under section 55(3) of the Local Government Act 1993 to forego the requirement for an open market tender in relation to the reticulation of industrial gas supply (the 'Project') to the Nexus Industrial Precinct ('Nexus'), due to the incontestable nature of the works to be undertaken.

To seek Council endorsement for the expenditure of Council funds to cover the deficit of NSW Government funding in relation to the Project.

Background

Nexus is a 450ha master-planned industrial precinct to the city's north in the final phase of Stage 1 development. Reticulation of gas within the precinct is considered critical infrastructure to drive future private investment and jobs in the region.

Creation of a connection into the main gas transmission pipeline will provide reticulated supply to Stage 1 of Nexus, as well as affording the opportunity for natural gas reticulation to Stages 2 – 5 in the future. The main gas transmission pipeline is approximately 1km from the Stage 1 subdivision boundary.

Australian Gas Networks Limited ('AGNL') is the owner of the relevant gas network and APT O&M Services Pty Ltd ('APA') is the operator of that network. The relevant network spans from the Bass Straight gas fields to Wagga Wagga.

The scope of the works in relation to the project specifically includes the design and installation of:

a. Approximately 500m of 150mm diameter steel main;
b. Approximately 2,000m of 180mm diameter polyethylene main; and
c. A District Regulator Station

at the locations shown on the map set out in Attachment 1. This will enable the supply of gas to future gas customers at Nexus through delivery points to be installed on the mains (or future extensions of the mains).

The mains extension works will be designed to deliver gas pressures of up to and including 70kPa and will allow delivery of up to 200GJ/h to end consumers, subject to the load profile of future gas users within the precinct.

In 2018, Council sought an estimate from APA to undertake the works outlined in the above scope. An indicative commercial proposal was provided with the stipulation that more detailed costings and approval by AGNL would be required.

The estimated upfront charge was $2,090,000 and it is this sum that was included in Council's successful application to the NSW Government under the Growing Local Economies Fund.

In February 2019, Council entered into Funding Deed RNSW1839 ('Funding Deed') with the NSW Government to deliver both industrial gas supply to Nexus, and a 50% contribution towards the construction costs of the Davey Road Interchange southern access ramps on the Hume Freeway.

Since this time, Council have been assisting APA with a Front End Engineering and Design study. Due to the complexity of connecting to the transmission main and the detailed design of a regulator station, as well as the investigation of any work upstream of the connection point, the study was required to provide a detailed cost estimate capable of acceptance.

In January 2020, Council received a draft Mains Extension Works Agreement (the 'Contract') in relation to the project. The total capital contribution required for delivery of the project is $2,362,900 plus GST. The Contract states a requirement for upfront payment prior to commencement of works.

Where AGNL has reasonable certainty about future gas loads, and therefore the future revenue derived from transporting gas on its distribution network, it can invest in gas infrastructure in a manner consistent with the regulatory framework, in many instances without any up-front payment. In the case of industrial sub-divisions, such as Nexus, it is often not possible to be certain about future customer numbers and gas loads. As a result, upfront payment is required.

The quote provided under the Contract has resulted in a deficit of NSW Government funding of $272,900. Under the terms of the Funding Deed, Council are required to cover any funding shortfalls with respect to finalisation of funded projects. In order to manage the cash flow of the 2019/20 budget and accommodate the $272,900 deficit, the shortfall can be initially funded through the unspent forecast allocation for Council's Economic Development Incentive Program.

The Economic Development Incentive Program has been designed to drive private investment in the local region and it can be argued that creation of investment ready parcels at the city's premier industrial precinct aligns well with this objective.

It is proposed that the $272,900 will also be added to the schedule of development costs in relation to Nexus, which will be recovered in the longer term (nine years) as part of the projected land sales.

Under the provisions of Council's procurement policy and procedure, works in excess of $150,000 must be publicly advertised inviting vendors to provide a tender for the works. However, as the owner

and operator of the gas network, all works undertaken on the main gas transmission pipeline must be organised and managed by AGNL and as such these works are not publicly contestable.

An exemption from the public tender process is provided under section 55 the Local Government Act 1993, which sets out the circumstances in which a tender does not apply:

> *"s.55(3) This section does not apply to the following contracts:*
> *...*
> *(i) a contract where, because of extenuating circumstances, remoteness of locality or the unavailability of competitive or reliable tenders, a council decides by resolution (which states the reasons for the decision) that a satisfactory result would not be achieved by inviting tenders."*

In this instance there is an unavailability of competitive tenderers and as such the invitation of tenders for these works would not achieve a satisfactory result.

Considering the provisions of s.55(3)(i) of the Local Government Act 1993, acceptance of the quote to undertake the reticulation of industrial gas supply to Nexus is permissible.

Contract Assessment

The Contract has been evaluated in accordance with Council's procurement policy and guidelines with input provided by Executive, Engineering, Economic Development, Procurement, Risk and Land Management teams within Council. The draft Contract has been reviewed by Kell Moore Lawyers and wording amendments proposed to ensure that Council's liability under the Contract is acceptable and its discretion as a statutory body is not fettered.

Qualitative Assessment

A qualitative assessment considered a range of issues including:

- Past performance – AGNL is responsible for all gas reticulation extensions within its network. At present it has a number of major projects underway or planned including: Merrifield (37,000 homes over 20 years), Heathcote/Wandong Junction ($4.94 million), Koo Wee Rup ($5.3 million).
- Program – the project timeframe is 48 weeks and aligns with the milestones set out in the Funding Deed. AGNL will undertake all project management of the project;
- Capacity – AGNL have confirmed they have capacity for delivery of the project and clauses within the Contract stipulate remedy for delays and suspension of work.
- Capability – AGNL is a national company with assets collectively worth $3.4 billion. AGNL operates natural gas networks in key population centres in Victoria, South Australia, NT and Queensland, as well as Albury and Wagga Wagga in NSW. AGNL has approximately 1,124km of transmission pipelines across Australia with 373km in Victoria and 84km in NSW.
- Benefit to local region – while Council will not have control over the subcontracting, purchasing and/or employment provisions of the Contract, the wider benefit to the local region will be delivered through the establishment of investment-ready parcels at Nexus and the subsequent

job creation and economic growth anticipated with the expansion and/or establishment of new businesses within Nexus.

Albury 2030
Themes and actions identified in Albury 2030 relevant to this matter include:

1.3 Plan and cater for increased population growth
1.3.1 Support and promote sustainable growth through planning and infrastructure to provide employment opportunities, housing choice and community facilities.

1.5 Promote Albury for business and industry
1.5.1 Promote Albury as a major regional economy and the regional city of choice for lifestyle, career and investment opportunities.
1.5.5 Support and promote business and business opportunities across all sectors to continue to foster economic diversity.
1.5.6 Advocate and explore the provision of incentives to encourage business expansion and job creation.

Two Cities One Community
The project aligns with the following Two Cities One Community Strategic Plan goals:

1. Our economy.
1.1 We have managed growth and development for the betterment of all.
1.3 We promote business, investment and jobs.

Albury Wodonga Regional Economic Development Strategy (REDS)
The Albury Wodonga REDS identifies manufacturing as a key sector providing significant impacts to regional employment, value add and exports, with a high location quotient score and core competencies analysis. The project will deliver the enabling infrastructure required to support growth in this sector.

Albury Industrial Hub (Nexus) Masterplan
The objective is to create a visionary plan for the development and promotion of Nexus Albury at Ettamogah that maximises the development potential of the land for large scale 24/7 heavy industrial use, encourages utilisation of the intermodal terminal and supports the attraction of new investment to the city.

Section 5.4 Infrastructure Requirements – Gas – There will likely be increased gas loads as additional industries develop on site. To address the masterplan additional supply will need to be negotiated with Envestra (now known as AGNL).

Options

Option 1:
a. Resolve not to invite tenders for the reticulation of industrial gas supply to the Nexus Industrial Precinct, due to the following:

i. The works required to be undertaken by AGNL are non-contestable; and
ii. It is not possible to receive quotes for those works from alternate suppliers and therefore there is an unavailability of competitive tenderers.

b. Authorise the Chief Executive Officer to finalise negotiations and arrangements in relation to the Mains Extension Works Agreement with AGNL;
c. Authorise its seal to be affixed to the Mains Extension Works Agreement with AGNL and any other documents deemed necessary in the presence of two signatories authorised to affix the Seal pursuant to Regulation 400 of the Local Government (General) Regulation 2005 and Council's associated procedure; and
d. Authorise the use of the Council funds to remedy the deficit in funding provided by the NSW Government with respect to the project completion.

Recommended

Option 2:
Not enter into a Mains Extension Works Agreement with AGNL thereby forfeiting the installation of gas at the Nexus Industrial Precinct and negotiate the return of funds committed by the NSW Government under Funding Deed RNSW1839 for the Project.

Not Recommended

Risk

- Business Risk – Without the provision of multiple tender submissions, it is difficult to ascertain the value proposition of the Contract provided by AGNL. However, AGNL utilises standard rates for construction activities as set out in the National Gas Law. Additionally, the National Gas Rules provide a framework for the regulation of gas pipeline services and the Australian Energy Regulator oversees pipeline services in NSW, providing checks and balances for the industry.

  Due to the high cost of energy network establishment, a single supplier of network services in a particular geographic area is standard industry practice, however this leads to a monopoly industry structure. The Australian Energy Regulator sets the amount of revenue that network businesses can recover from customers as well as benchmarks in terms of price, quality, safety, reliability and security of supply.

  Council must respond to the Mains Extension Works Agreement offer by no later than 28 February 2020.

  Council is in ongoing discussions with potential investors about establishment of business at Nexus. Three of the four companies considering the site will require gas infrastructure. Without the timely reticulation of gas this investment will be lost to competing locations.

- Corporate Risk – Failure to enter into a contract with AGNL for the project will result in the inability to supply gas to Nexus. Council has made ongoing representations to the public and potential investors about its intention to pursue gas infrastructure for Nexus as detailed in the

Albury Industrial Hub Masterplan. Abandoning the key objectives of the Masterplan will arguably result in negative public perception as well as loss of private investment.

In addition, any decision not to progress with the installation of natural gas to Nexus in line with the Funding Deed will have a significant negative impact on our reputation and potentially our ability to attract funding for other major infrastructure projects in the future.

- WHS and Public Risk – WHS risks due to the construction works will be controlled in accordance with AlburyCity procedures. The contractor will be WHS registered by AlburyCity and will be required to implement relevant Safe Work Method Statements and safety inspections.

- Environmental Risk – Environmental risks will be managed as part of the approvals process for the construction process. An Aboriginal Heritage Impact study has previously been undertaken for Nexus and the findings will be supplied to AGNL as part of the Contract.

- Delivery Program Risk – The Funding Deed has provision for $2,090,000 in relation to the Project. It is proposed that the $272,900 deficit can be initially funded through the unspent 2019/20 budget allocation for Council's Economic Development Incentive Program. This cost will be added to the schedule of development costs to be recovered in the longer term as part of the projected land sales at Nexus, as outlined in the report for noting provided as part of this Council meeting agenda.

Community Engagement

Considerable community engagement was undertaken in the development of the Albury 2030 Community Strategic Plan. This plan clearly articulates the importance of job creation and economic prosperity for Albury residents.

The Albury Industrial Hub (Nexus) Masterplan prepared in 2009, was subject to extensive stakeholder and community consultation prior to its adoption and incorporation in the Albury Local Environment Plan 2010.

Conclusion

The development of Nexus is a key requirement to the ongoing prosperity of the region and the creation of jobs for a growing population. Critical infrastructure required to transform the precinct into an investment-ready opportunity includes the reticulation of industrial gas to the site.

As the owner and operator of the gas network in the Albury region, AGNL has provided a Contract for Council's consideration to undertake the project. This tender was uncontested due to the monopoly nature of energy infrastructure provision nationally.

Under exceptional circumstances such as this, the Local Government Act 1993 allows for Council to forego the requirement to seek competitive tenders.

While funding has already been secured from the NSW Government to fund 89% of the project, Council will be required to fund the deficit. Provisions are available in the 2019/20 operating budget to cover this cost in the short term, with long term plans to recover the costs as part of forecast land sales at Nexus.

Importantly, any failure to deliver on the initiatives and commitments in the Funding Deed has the potential to negatively impact on AlburyCity's reputation and ability to secure major project infrastructure funding in the future.

AGNL has been assessed as capable to deliver on the scope of works as part of the qualitative assessment and the timeline for project completion considered appropriate.

Failure to enter into a contract with AGNL for the project will result in the inability to deliver on the Albury Industrial Hub (Nexus) masterplan developed in consultation with landowners, stakeholders and the community. The absence of an industrial gas supply will also see investment lost to the region and with it, growth in the manufacturing industry and the economy more broadly.

Council must respond to the Mains Extension Works Agreement offer by no later than 28 February 2020.

Recommendation

That Council:

a. Not invite tenders for the reticulation of industrial gas supply to the Nexus Industrial Precinct, due to the following:
    i) The works required to be undertaken by AGNL are non-contestable; and
    ii) It is not possible to receive quotes for those works from alternate suppliers and therefore there is an unavailability of competitive tenderers; and
b. Authorise the Chief Executive Officer to finalise negotiations and arrangements in relation to the Mains Extension Works Agreement with AGNL;
c. Authorise its seal to be affixed to the Mains Extension Works Agreement with AGNL and any other documents deemed necessary in the presence of two signatories authorised to affix the Seal pursuant to Regulation 400 of the Local Government (General) Regulation 2005 and Council's associated procedure; and
d. Authorise the use of the Council funds to remedy the deficit in funding provided by the NSW Government with respect to the project completion.