



Agenda

Finance, Policy, Operations and Legislation Committee

Wednesday 13 July 2022 - 6pm



Notice of Finance, Policy, Operations and Legislation Committee Meeting

Elected Members

A Finance, Policy, Operations and Legislations Committee meeting of the City of Fremantle will be held on **Wednesday 13 July 2022** in the Council Chamber, Walyalup Civic Centre, located at 151 High Street, Fremantle commencing at 6.00 pm.

A handwritten signature in black ink, appearing to read "M. Hammond".

Matt Hammond
Acting Director City Business

8 July 2022



Table of Contents

1.	Official opening, welcome and acknowledgement.....	4
2.	Attendance, apologies and leaves of absence.....	4
3.	Disclosures of interests by members.....	4
4.	Responses to previous questions taken on notice.....	4
5.	Public question time.....	4
6.	Petitions.....	4
7.	Deputations	5
7.1	Special deputations.....	5
7.2	Presentations	5
8.	Confirmation of minutes.....	5
9.	Elected member communication	5
10.	Reports and recommendations.....	6
10.1	Committee delegation	6
FPOL2207-1	SOLE SOURCE OF SUPPLY – CIVICA SPYDUS LIBRARY MANAGEMENT SYSTEM	6
FPOL2207-2	ACCEPTANCE OF TENDER - FCC605/22 - PROVISION OF TREE MAINTENANCE SERVICES	10
10.2	Council decision	16
FPOL2207-3	SOUTH FREMANTLE LANDFILL SITE – SOLAR FARM PROJECT	16
FPOL2207-4	FREMANTLE OVAL REDEVELOPMENT – BUSINESS PLAN	23
FPOL2207-5	REQUEST FOR APPROVAL OF PROPOSED SALE OF 8 POINT STREET (PREVIOUSLY 2 POINT ST) FREMANTLE.....	26
FPOL2207-6	BUDGET AMENDMENTS - JULY 2022	32
11.	Motions of which previous notice has been given	38
12.	Urgent business	38
13.	Late items.....	38
14.	Confidential business	38
15.	Closure.....	38



1. Official opening, welcome and acknowledgement

Ngala kaaditj Whadjuk moort keyen kaadak nidja Walyalup boodja wer djinang Whadjuk kaaditjin wer nyiting boola yeye.

We acknowledge the Whadjuk people as the traditional owners of the greater Fremantle/Walyalup area and we recognise that their cultural and heritage beliefs are still important today.

2. Attendance, apologies and leaves of absence

Mayor Hannah Fitzhardinge
Cr Doug Thompson

3. Disclosures of interests by members

Elected members must disclose any interests that may affect their decision-making. They may do this in a written notice given to the CEO; or at the meeting.

4. Responses to previous questions taken on notice

Nil

5. Public question time

Members of the public have the opportunity to ask a question or make a statement at council and committee meetings during public question time.

Further guidance on public question time can be viewed [here](#), or upon entering the meeting.

6. Petitions

Petitions to be presented to the committee.

Petitions may be tabled at the meeting with the agreement of the presiding member.



7. Deputations

7.1 Special deputations

A special deputation may be made to the meeting in accordance with the City of Fremantle Meeting Procedures Policy 2018.

There are no special deputation requests.

7.2 Presentations

Elected members and members of the public may make presentations to the meeting in accordance with the City of Fremantle Meeting Procedures Policy 2018.

8. Confirmation of minutes

Officer's recommendation

The Finance, Policy, Operations and Legislation Committee confirm the minutes of the Finance, Policy, Operations and Legislation Committee meeting dated 8 June 2022.

9. Elected member communication

Elected members may ask questions or make personal explanations on matters not included on the agenda.



10. Reports and recommendations

10.1 Committee delegation

FPOL2207-1 SOLE SOURCE OF SUPPLY – CIVICA SPYDUS LIBRARY MANAGEMENT SYSTEM

Meeting date: 13 July 2022
Responsible officer: Manager Information Technology
Decision making authority: Committee
Attachments: 1. Civica Correspondence.
Additional information: Nil

SUMMARY

The purpose of this report is to seek approval from Council to enter into a sole source of supply contract with Civica Pty Ltd (Civica) to continue to licence their product, Spydus Library Management System.

This report recommends that Council authorise the Chief Executive Officer to enter in to a three (3) year contract for the licence, maintenance and support of Spydus with an annual contract spend of \$60,000 (ex GST) and a Total Contract Value (TCV) of \$180,000 (ex GST).

BACKGROUND

In 2016, the City of Fremantle ran a competitive tender process for a Library Management System (LMS). The solution required a number of core service modules, interfaces, cash management, analytics and user support services.

In November 2016, the City of Fremantle entered in a five (5) years contractual agreement with Civica, for the provision of a Library Management Solution (LMS), Spydus, to deliver library circulation services. The implementation of the system, moving from the previous LMS AmLib, took approximately seven (7) months, for a "Go Live" date of 20 June 2017.

The Fremantle Library is heavily reliant on a management solution to run essential library services, including lending, cataloguing, membership services, circulation and inter-library loans, and the system integrates with the newly installed Radio Frequency Identification (RFID) hardware from FE Technology. Together these systems allow for a secure and efficient library service.



In early 2022, the Fremantle Library completed a complementary project on the move to the Walyalup Civic Centre, introducing the new RFID system from FE Technology, which is now successfully integrated with Spydus.

This included development of a custom patron app that allows staff and public to utilise the LMS via mobile devices with real-time data supplied by the two (2) systems, Spydus and FE Technology. The patron app aspect of the project was completed in May 2022, and to date the operations team and the community are highly satisfied with the experience to date with Spydus.

The City would like to engage Civica, on a sole source of supply basis, to continue to use their LMS solution, and have access to related maintenance and support.

The Solution

Spydus LMS solution, is a Civica exclusive product; Civica are the developer, IP owner and sole supplier of the Spydus LMS product (*Attachment 1 – Civica Correspondence*).

Contract

The current contract with Civica expired on 21 June 2022. The City of Fremantle is currently benefitting from a grace period agreed with Civica to ensure continuity of the service while a new contract is put in place.

The new proposed agreement will be for a period of three (3) years, with an annual subscription equal to \$60,000 (ex GST) and a Total Contract Value of \$ 180,000 (ex GST).

FINANCIAL IMPLICATIONS

This project is funded by the City of Fremantle in accordance with the [Framework Agreement Between State and Local Government for the Provision of Public Library Services in Western Australia](#) (revised in September 2020), stating the Local Government partner agrees to “provide physical and technological infrastructure, staffing and meet operating costs, to agreed standards.”

An operational expenditure budget that will cover the annual cost of this agreement is already in place and is currently held by the Information Technology business unit.



LEGAL IMPLICATIONS

The ability for Council to enter into sole source of supply agreements is covered under Regulation 11(2)(f) of the Local Government (Functions and General) Regulations 1996, which states:

11. When tenders have to be publicly invited
 - (2) Tenders do not have to be publicly invited according to the requirements of this Division if –
 - (f) the local government has good reason to believe that, because of the unique nature of the goods or services required or for any other reason, it is unlikely that there is more than one potential supplier;

As the sum of this contract is above the delegation to CEO to enter into sole source of supply contracts, Council approval is required.

Civica is also recognised as a WALGA preferred supplier, qualified within the Library Management Systems (PSP005-002) sub-category.

CONSULTATION

Nil.

OFFICER COMMENT

The City believes Civica are a sole source supplier for the following reasons:

- i) Civica are the developers, IP owners and only resellers of Spydus LMS (Attachment 1 – Civica Correspondence).

In the case that an exemption is not granted and the software licence for Spydus removed, core library services would be disrupted for approximately 12 months. This is considering the timeframe to complete a tender process (4-5 months) and implement a new system (seven (7) months).

The impact to the community would be substantial with 500+ visitors to the library daily unable to utilise the collection, all member services offline including e-resources and the inability to complete services such as homebound delivery to vulnerable community members.

The City of Fremantle also has an agreement with the Town of East Fremantle to deliver library services, for which East Fremantle pay an annual amount to Fremantle of approximately \$150,000 (ex GST)



VOTING AND OTHER SPECIAL REQUIREMENTS

Simple majority required

OFFICER'S RECOMMENDATION

Council acknowledges the current library software known as Spydus is only provided by one potential supplier and accepts this as a sole source contract in accordance with Regulation 11 (2) (f) of the Local Government (Functions and General) Regulations 1996 and authorises the Chief Executive Officer to enter into a three (3) year contract, with Civic Pty Ltd (ACN 003 691 718) for total contract value of \$180,000 (ex GST).



FPOL2207-2 ACCEPTANCE OF TENDER - FCC605/22 - PROVISION OF TREE MAINTENANCE SERVICES

Meeting date: 13 July 2022
Responsible officer: Manager Parks and Landscape
Decision making authority: Committee
Attachment: Nil
Additional information: 1. Pricing Evaluation Matrix (Confidential)

SUMMARY

The purpose of this report is to consider tender number FCC605/22 for the Provision of Tree Maintenance Services on City managed land including road reserves, carparks and recreation reserves.

This report recommends, in accordance with the tender evaluation undertaken as per the selection criteria included in the tender document, Council accepts the tender for:

- 1. Category 1: Powerline Utility Management submitted by Pilack Pty Ltd as Trustee for The Hall Discretionary Trading Trust T/A Dependable Tree Services**
- 2. Category 2: Remedial Tree Surgery submitted by Trees of Eden Pty Ltd.**

BACKGROUND

The City of Fremantle is seeking to appoint a suitable Contractor or Contractors to service and respond to tree works requests throughout the eight suburbs of Fremantle, within the following two distinct service areas:

1. Category 1: Powerline Utility Management
2. Category 2: Remedial Tree Surgery

The successful respondent/s will be required to:

1. Provide a high-quality, professional and prompt tree service(s) that adheres to industry standards (AS4373-2007 Pruning of amenity trees)
2. Maintain clearances from infrastructure, property, and roads. Additional prescribed works to address tree health and site safety.



FINANCIAL IMPLICATIONS

The table below summarises the forecast annual budget (22/23 financial year pending budget adoption) allocation for the provision of tree maintenance services and associated expenses:

Description	Budget
IP100314 Maintain Natural Areas	\$10,000
IP100319 Maintain Trees Recreation reserves	\$100,000
IP100352 Maintain Trees - Road Reserves and Carparks	\$380,000
Total budget	\$490,000

Sufficient funding provision has been allocated in the 22/23 financial year budget, pending Council adoption, to deliver the service. This is a multi-year contract and suitable budget provision will need to be considered in future budgets to continue the service. The spend of this contract is not fixed and may be varied to match the City's operational needs and available budget.

LEGAL IMPLICATIONS

Tenders were invited in accordance with section 3.57 of the *Local Government Act 1995* and the tendering procedures and evaluation complied with part 4 of the *Local Government (Functions and General) Regulations 1996*.

CONSULTATION

Appropriate levels of communication will be used to inform residents where works may impact them or access to their property.

The WALGA Preferred supplier program was not used for this tender as officers wanted to test the broader market with the new, dual category structure of this service.

OFFICER COMMENT

Detail

Tender FCC605/22 for Provision of Tree Maintenance Services throughout the City of Fremantle was advertised on 4 May 2022 and closed on 2 June 2022.



Essential details of the contract are outlined below:

Contract type	Schedule of rates Contract
Contract duration	The contract is for a period of two (2) years with three (3), one (1) year extension options available.
Commencement date	On or around 25 July 2022
Completion date	24 July 2027 (subject to extension)

Tender evaluation

Tender submissions were received from the following contractors and evaluated by the tender evaluation panel:

Category 1: Powerline Utility Management

- Pilack Pty Ltd as Trustee for The Hall Discretionary Trading Trust T/A Dependable Tree Services [ABN: 20 071 759 915, ACN: 009 070 615] Oakford WA 6121
- Premier Tree Services WA Pty Ltd [ABN: 60 147 319 659, ACN: 147 319 659] Bassendean WA 6054.

Category 2: Remedial Tree Surgery.

- Pilack Pty Ltd as Trustee for The Hall Discretionary Trading Trust T/A Dependable Tree Services [ABN: 20 071 759 915, ACN: 009 070 615] Oakford WA 6121
- Premier Tree Services WA Pty Ltd [ABN: 60 147 319 659, ACN: 147 319 659] Bassendean WA 6054
- Trees of Eden Pty Ltd [ABN: 31 153 731 803, ACN: 153 731 803] Clarkson WA 6030.

The tender evaluation panel establishes whether the tender submissions conform to the conditions for tendering and selects a suitably qualified and experienced contractor.

The tender evaluation panel comprised:

- Manager Parks and Landscape
- Team Leader Natural Areas and Urban Forest
- Senior Urban Forest Officer
- Procurement Team Leader (non-voting).

Tenderers were required to disclose information that might be relevant to an actual or potential conflict of interest and disclose if they had any relationship with City of Fremantle employees involved in the tender process. Members of the tender evaluation panel are required to disclose any actual or perceived interest with any of the tenderers. No disclosures were made.



To obtain the broadest possible comparison base, each of the tenders was evaluated against the following tender selection criteria and was in turn graded in the tender evaluation matrix for each of the categories.

Item No	Description	Weighting
1	• Relevant experience	20%
2	• Key Personnel, Skills and Resources	25%
3	• Demonstrated Understanding	25%
4	• Sustainability & Local Economic Benefit	10%
5	• Price	20%

For Category 1, one (1) tender submission received was conforming, and one (1) tender submission received was non-conforming due to no price schedule being submitted.

For Category 2, two (2) tender submissions received were conforming, and one (1) tender submission received was non-conforming due to no price schedule being submitted.

The non-conforming submissions were evaluated for completeness of the evaluation process.

For Category 1, the tender submitted by Dependable Tree Services scored the highest rating with 68 points, followed by Premier Tree Services with 29 points.

Overall Weighted Score Including Pricing	Relevant Experience of Delivering Similar Services	Key Personnel Skills & Resources	Demonstrated Understanding	Sustainability and Local Economic Benefit	Price	Total Score
Tenderer	20	25	25	10	20	100
Dependable Tree Services	16	14	14	4	20	68
Premier Tree Services WA	2	6	19	2	0	29

For Category 2, the tender submitted by Trees of Eden scored the highest rating with 83 points, followed by Dependable Tree Services with 68 points and Premier Tree Services with 38 points.

Overall Weighted Score Including Pricing	Relevant Experience of Delivering Similar Services	Key Personnel Skills & Resources	Demonstrated Understanding	Sustainability and Local Economic Benefit	Price	Total Score
Tenderer	20	25	25	10	20	100
Dependable Tree Services	16	14	14	4	20	68
Premier Tree Services WA	2	19	14	2	0	38
Tree of Eden	18	22	22	7	14	83



Environmental considerations

Tenderers were requested to submit qualitative criteria against sustainability. In Category 1, Dependable Tree Services provided information including an Environmental Management Plan with objectives, responsibilities and implementation.

A score of 4, which in accordance with the City's evaluation criteria is deemed acceptable, was awarded to Dependable Tree Services for their sustainability and local economic benefit, as their sustainability principles demonstrated were high level and strategic and not directly applied to the scope of works. They have an operations base in the City of Fremantle bringing local economic benefit to the City.

In Category 2, Trees of Eden provided information of strategies implemented to minimise emissions and waste including battery powered chainsaws and tree climbing, reducing the use of machinery such as EWP equipment. Green waste is recycled and large timbers are often sent to mills for re-use.

Risk consideration

There are no strategic or corporate risks within the City's existing risk registers which relate to the issues contained in this report.

Comment

Category 1

The offer from Dependable Tree Services provides the City with a high level of directly relevant experience, an excellent understanding of the City's requirements whilst having the personnel and capacity to undertake the works. The contractor also demonstrated a good understanding of the occupational health and safety requirements of the scope, particularly in relation to working in the City of Fremantle, while delivering the services in an environmentally responsible way. The offer also provides the City with good value for money.

Dependable Tree Services were the latest service provider for the City and provided a good level of service. Reference checks indicate they have also provided a high level of service delivery to their customers and will be a suitable supplier to the City of Fremantle.

Clarification was sought from Dependable Tree Services regarding Arboriculture certification and accreditation to ensure the necessary licenses were in place and current to undertake Category 1 works. This was provided to the satisfaction of the evaluation panel.



Category 2

The offer from Trees of Eden was assessed as being able to provide the City with the best value for money with a high level of directly relevant experience, an excellent understanding of the City's requirement and capacity to fulfil the services. The contractor also demonstrated an excellent understanding of the occupational health and safety requirements and placed great emphasis in delivering the services in an environmentally responsible way. Despite not having the lowest price, their high scores on the other qualitative criteria far outweighed the variation in price.

Reference checks obtained for Trees of Eden indicate they have provided a high level of service delivery to their customers and will be a suitable supplier to the City of Fremantle.

VOTING AND OTHER SPECIAL REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION

Council:

- 1. Accept tender FCC605/22 for the Provision of Tree Maintenance Services at the rates tendered for:**
 - a. Powerline Utility Management (category 1) - from Pilack Pty Ltd as Trustee for The Hall Discretionary Trading Trust T/A Dependable Tree Services [ABN: 20 071 759 915, ACN: 009 070 615] Oakford WA 6121, at the schedule of rates tendered, for a period of two years, commencing on or around 25 July 2022, with 3 further 12-month extension options available at the discretion of the Chief Executive Officer.**
 - b. Remedial Tree Surgery (category 2) - from Trees of Eden Pty Ltd [ABN: 31 153 731 803, ACN: 153 731 803] Clarkson WA 6030, at the schedule of rates tendered, for a period of two years, commencing on or around 25 July 2022, with 3 further 12-month extension options available at the discretion of the Chief Executive Officer.**



10.2 Council decision

FPOL2207-3 SOUTH FREMANTLE LANDFILL SITE – SOLAR FARM PROJECT

Meeting date:	13 July 2022
Responsible officer:	Director of Strategic Planning and Projects
Decision making authority:	Council
Attachments:	1. Exclusive Working Agreement between City of Fremantle and Epuron dated 30 August 2017 (Confidential attachment under separate cover)
Additional information:	Nil

SUMMARY

The South Fremantle landfill site is a registered contaminated site under the Contaminated Sites Act 2003. This constrains many forms of development and land use for the site. As the landowner, the City of Fremantle has since the mid-2000's been undertaking site investigation, monitoring and management works in consultation with the Department of Water and Environmental Regulation to meet its obligations as landowner under the above Act.

In 2014 the City recognised that a large solar panel array (solar farm) could be a suitable interim use of the site having regard to its contaminated status. The City called for expressions of interest from private sector solar farm developers/operators which eventually led to the City entering into an agreement with a company called Epuron Projects Pty Ltd (Epuron) to allow them an exclusive working period to undertake feasibility work, gain necessary approvals and confirm the commercial viability of the project, and enter into a lease over the site with the City.

The exclusive working agreement period was extended in 2017 for a further two years or until Epuron entered into a lease for the site with the City (whichever was the longer). To date Epuron have been unable to advance the project to the point of committing to a lease with the City and have recently requested the City to consider agreeing to a transfer of the project to another commercial entity, effectively indicating that Epuron no longer wish to proceed with the project. Given that in over five years Epuron has not been able to bring the project to fruition, City officers are not confident that another party would be more successful in progressing the project and executing a lease in a timely manner.



The ongoing uncertainty over whether the solar farm will or will not proceed is unsettling for the local community and makes it difficult for the Council to consider other potential suitable uses for the site. Therefore, officers consider it is now an appropriate time to terminate any further work by the City on trying to facilitate development of a solar farm at the South Fremantle landfill site and for Council to have the opportunity to consider other options for the site.

This report recommends that Council:

- **Authorise the CEO to give notice to Epuron of the termination of any continuing informal extension of the exclusive working agreement.**
- **Agree to terminate any further work by the City on facilitating a solar farm development on the site.**
- **Request officers to prepare a further report on other options for potentially suitable uses for the site.**

BACKGROUND

The former South Fremantle landfill site (the SFLS) is located to the west of Cockburn Road and Hampton Road, South Fremantle, and covers a total land area of approximately 19.4 hectares. Approximately 88% of the total site area is owned by the City of Fremantle. The remainder of the site comprises of an unmade road reserve (Island Street) and freehold land owned by the Commissioner of Main Roads WA. The land owned by the City comprises two distinct parcels, separated from one another by the road reserve and Main Roads-owned land which forms a relatively narrow strip running east-west across the centre of the site. The site was operated as a waste disposal landfill site for most of the 20th Century up until 1991, and is a site registered under the Contaminated Sites Act 2003 with a current classification of 'contaminated – remediation required'. The City has since the mid-2000's been undertaking site investigation, monitoring and management works in consultation with the Department of Water and Environmental Regulation (DWER) to meet its obligations as a landowner under the above Act. The environmental and geotechnical constraints associated with the site due to its past use as a landfill site, and the very high costs of remediation, make it unsuitable for most forms of urban development at least in the short to medium term future (up to 25 years approximately)

In 2014 the Council resolved to call for Expressions of Interest (EOI) for the potential construction and operation of a large-scale solar electricity generation facility (solar farm) on part of the SFLS.

A solar farm was considered to be a potentially suitable interim use of the site having regard to its contaminated status, which precludes major disturbance to the current ground conditions without very expensive and complex remediation works.



A solar farm involves only lightweight structures being placed on the ground surface with minimal requirements for ground penetrating foundations or other excavations.

In the EOI invitation the City provided information on the extent of the site available and requirements with respect to environmental approvals and site management and monitoring. It also offered a lease term of up to 21 years. Proponents were asked to provide information regarding the part of the site they required, energy output, structures, constructional and operational phases and governance and funding arrangements.

In February 2015, after considering eight responses received through the EOI process, Council resolved that:

- First Solar be approved as the preferred proponent
- Epuron be approved as the second preferred proponent.
The City and preferred proponent enter an exclusive working period of 12 months to allow time for the proponent to undertake site testing, feasibility work, achieve DWER approvals and enter into a power purchasing agreement with an electricity retailer.
- The exclusive working period should have the option to be extended so long as reasonable efforts are being made to achieve project milestones.
- If the exclusive working period with First Solar does not result in the project proceeding within the agreed period, the City should have the right to terminate the relationship and move to the second proponent Epuron and establish an exclusive working period with them under similar conditions.

Later in 2015, prior to signing an Exclusive Working Agreement (EWA), First Solar advised the City that they wished to withdraw from the project and so in accordance with the above resolution the City entered into discussions regarding the project with Epuron.

The City granted Epuron an exclusive working period through an EWA which originally ended on 27 August 2016 and was extended to 27 August 2017 after Epuron demonstrated it was making reasonable endeavours to develop the project.

In June 2017 Council resolved to authorise the Chief Executive Officer to further extend the EWA on terms which included principles for negotiation of a long-term lease for the site based on a potential agreement between Epuron and a power retailer. Council also resolved that the City's next tender for the supply of electricity for contestable sites should give consideration to a preference for 'locally sourced green power', the preference being subject to the annual cost of procuring electricity being no more than 10% greater than the total expenditure by the City on electricity under its (then) current contestable power contract and the purchase of carbon offsets.



Part of the reasoning behind this resolution was that extending the EWA would allow Epuron sufficient time to develop the project to a stage where a final decision could be made on whether or not it could be implemented. It would also allow the City to investigate in more detail potential options for purchasing green power under its contestable sites power supply contract.

The extended EWA was signed by the City's CEO and Epuron in late August 2017. It included a clause stating the agreement would expire on execution of a lease or in 24 months, whichever is the longer but also stated that both parties would use their best endeavours during that period to meet a project timeline appended to the EWA. The project timeline set a date of April 2018 for lease execution and December 2018 for practical completion of the solar farm and commencement of commercial operations.

In 2018 Epuron obtained development approval for the construction of a solar farm at SFLS and in July 2019 the Department of Water and Environmental Regulation (DWER) accepted construction and site management plans for the building and operating of the project. The preparation and approval of these plans had been key conditions of the development approval. Around the same time the heads of terms of a prospective lease between the City and Epuron were generally agreed between the two parties, but no lease has been executed.

Since 2019 Epuron have continued to try to secure a commercial agreement with an electricity retailer to purchase the power that would be generated from a solar farm on the site. This is a critical requirement for the project to proceed as without certainty over a purchaser for the power, it is not financially viable for a solar farm operator to commit to the costs of building and operating such a facility. Due to market conditions in the wholesale and retail electricity markets Epuron have not to date been able to reach an agreement with any retail electricity supplier to purchase power from a solar farm facility at SFLS.

In March 2022 Epuron contacted City officers to inquire whether the City would consider agreeing to a transfer of the project to another commercial entity with whom Epuron had had some negotiations, effectively indicating that Epuron no longer wished to proceed with the project.

In November 2021 Council approved the City entering into a large-scale power purchase agreement with the WA Local Government Association (WALGA), through which the City will procure 100% of its contestable sites energy supply from already established WA renewable energy sources. This is a group power purchase agreement which amalgamates the contestable energy loads of multiple WA local governments into a single contract and allows the City to transition to 100% green power at an advantageous price. This is a three-year contract which commences in July 2022.



FINANCIAL IMPLICATIONS

Costs associated with the solar farm project have been borne by Epuron in accordance with the terms of the Exclusive Working Agreement referred to in the Background section of this report. Terminating the City's working relationship with Epuron and ceasing any further work to facilitate development of a solar farm at the SFLS as recommended by officers would have no financial implications for the City.

LEGAL IMPLICATIONS

The Exclusive Working Agreement (as extended under Council's resolution of 2017) had an expiry date of 24 months from 30 August 2017 or on execution of a lease, whichever is the longer. The project timeline appended to the EWA referred to best endeavours being used to execute a lease by April 2018. A reasonable legal interpretation, from a reading of the EWA as a whole, is that it cannot reasonably have been the intent of the parties to the EWA that, in the absence of a lease being executed, the obligations to use such reasonable endeavours should continue indefinitely.

Although the execution of a lease has not been achieved, the working arrangements set out in the EWA have continued to operate informally. However, it has never been the City's intention that this state of affairs should continue indefinitely, particularly in the event that either the City or Epuron forms the opinion that the purposes for which the EWA was entered into are no longer likely to be achieved.

As Epuron are now indicating that they no longer have a desire to enter into a lease with the City, and have requested the City to agree to another company taking over Epuron's role in the project, officers consider (taking account of legal advice obtained on the matter) there is a reasonable basis for the City to form the opinion that the purposes for which the EWA was entered into are no longer likely to be achieved, and therefore to give notice to Epuron of the termination of any continuing informal extension of the EWA.

CONSULTATION

None applicable

OFFICER COMMENT

It is now nearly five years since the City and Epuron entered into an extended Exclusive Working Agreement in relation to the solar farm project in August 2017. Under the EWA both parties agreed to use their best endeavours to meet a timeline for implementation of the project (set out in an appendix to the EWA) for a period of 24 months or until execution of a lease from the City to Epuron over the project site, whichever is the longer period.



Officers recognise that Epuron has used its best endeavours to bring the project to fruition, and there are good reasons why Epuron does not wish to continue to pursue execution of a lease over the site. However, in consideration that after five years Epuron has not been able to reach this milestone (primarily due to commercial market factors in the electricity generation and retailing industries), City officers are not confident that another party would be more successful in progressing the project and executing a lease in a timely manner. The ongoing uncertainty over whether the solar farm will or will not proceed is unsettling for the local community and makes it difficult for the Council to consider other potential suitable uses for the site.

Therefore, officers consider it is now an appropriate time to cease further work under the provisions of the EWA, and to terminate any other work by the City on trying to facilitate development of a solar farm at the SFLS.

As referred to in the Background section of this report, the City has recently entered into a large-scale power purchase agreement with WALGA, which the City will procure 100% of its contestable sites energy supply from established WA renewable energy sources. This contract allows the City to transition to 100% green power at an advantageous price, very similar to the price it was previously paying for 'black' power in 2021/22. Although the City had never made a firm commitment to purchase power (via a retailer) generated from a solar farm on the South Fremantle site, the possibility of this outcome had been to some degree a consideration in assessing the commercial viability of the project from a developer/operator's point of view. Officers consider the removal of this prospect due to the City's commitment to the WALGA power purchase contract (at least for the next three years) would be a further impediment to any solar farm developer/operator being able to secure a commercial arrangement with an electricity retailer to purchase power generated at the site, which is critical to the viability of a solar farm development.

If Council did support continuing with the project with an entity other than Epuron as the developer/operator of the solar farm, officers consider it would be necessary to undertake a further open market expressions of interest process, and a fresh business plan process in relation to a major land transaction (a lease) with a different party.

Officers recommend that Council authorise the Chief Executive Officer to give written notice to Epuron of the termination of any continuing informal extension of the EWA. Council is also recommended to agree to the termination of any further work by the City to try to facilitate development of a solar farm on the SFLS in conjunction with another party, and to request officers to prepare a further report on possible alternative suitable uses of the site for Council's future consideration.

VOTING AND OTHER SPECIAL REQUIREMENTS

Simple majority required



OFFICER'S RECOMMENDATION

Council:

- 1. Authorise the Chief Executive Officer to write to Epuron Projects Pty Ltd to give notice of the termination of any continuing informal extension of the Exclusive Working Agreement between the City of Fremantle and Epuron dated 30 August 2017.**
- 2. Terminate any further work by the City on facilitating development of a large-scale solar electricity generation facility (solar farm) on the former South Fremantle landfill site.**
- 3. Request officers to prepare a further report on options for potentially suitable alternative uses for the former South Fremantle landfill site for Council's consideration.**



FPOL2207-4 FREMANTLE OVAL REDEVELOPMENT – BUSINESS PLAN

Meeting date: 13 July 2022
Responsible officer: Manager Strategic Planning and City Design
Decision making authority: Council
Attachments: 1. Fremantle Oval Redevelopment Business Plan

Additional information:

SUMMARY

As part of the feasibility and masterplanning for a future redevelopment of the oval precinct, a business plan has been prepared investigating various aspects of the project in more detail, including:

- **Vision – broad economic and social benefits of the project.**
- **Masterplanning and concept development.**
- **Market analysis and financial modelling.**
- **Governance and future management options.**
- **Risk, legal and statutory considerations.**
- **Funding strategy.**

This work is considered to be sufficiently advanced to be presented to Council (as well as the board of directors of project partners) for endorsement and agreement to continue with moving the project forward.

BACKGROUND

A holistic approach to a future redevelopment of the Fremantle Oval precinct has been an aspirational project for many years and was clearly articulated as one of five key strategic projects in council's ***FREO2029 Transformational Moves*** (2015).

In 2020, in response to the complexities of the site, including the uncertainty around the nature and timing of neighbouring sites (for example: Hospital, Police HQ) the Council resolved to progress with some broad masterplanning work.

At its Ordinary Meeting 28 April 2021, Council:

1. *Adopted the Fremantle Oval Masterplan for the purposes of:*
 - a. *Enabling all project partners to advocate for the project and pursue funding opportunities.*
 - b. *Communicating the vision with the broader Fremantle community.*
 - c. *Developing and refining certain aspects of the project, in particular, the community facilities and programs that could be incorporated.*



- 2. Noted that other elements of the broader planning of Fremantle Oval precinct, such as development options for the former Dockers building and potential shared public road with the hospital site, will be developed at a later stage.*

FINANCIAL IMPLICATIONS

There will be approximately \$50,000 of approved, unspent project funding at the end of 2021/22 financial year that will be brought forward into 2022/23 to assist with project development.

LEGAL IMPLICATIONS

There are no legal implications associated with this report.

CONSULTATION

Following the endorsement by council of the masterplan in April 2021, the masterplan document has been shared with key project partners, stakeholders and government as well as made available for public comment on the City's website.

In parallel with the masterplanning work, the City has commissioned the preparation of an updated Conservation Management Plan. As part of this, the City has reached out to the community through its MySay website to invite people to share stories and personal histories associated with Fremantle Oval. This will add depth to the understanding of the social significance of the place as part of the new Conservation Management Plan.

Given the current status of the project feasibility, it is considered premature to commence focussed community engagement on specific aspects of the project.

Broad consultation should continue by making project documents available via the City's MySay website.

OFFICER COMMENT

Project Update

Since the Council decision in April 2021 to adopt the Fremantle Oval masterplan, the following actions and activities have occurred:

1. On-going **collaboration** and project planning with key partners:
 - South Fremantle Football Club
 - Fremantle Football Club
 - WA Football Commission



2. **Concept development**, led by COX architecture.
3. **Cost planning**, quantity surveying.
4. Preliminary **approaches to Government** around funding.
5. Preparing an up-dated **Conservation Management Plan** (80% complete).
6. Development of a **Business Plan** (focus of this report), including:
 - Vision – broad economic and social benefits of the project.
 - Masterplanning and concept development.
 - Market analysis and financial modelling.
 - Governance and future management options.
 - Risk, legal and statutory considerations.
 - Funding strategy.

Next Steps

To maintain project momentum, the following is a summary / sequence of activities to be considered:

1. Seek **short-term funding options** for advancing the project planning, design and business case – including Commonwealth and State governments, project partners and city funding.
2. Develop an **advocacy plan** for promoting the project and securing financial commitments for the delivery of the project.
3. **Promote** the broad potential benefits of the project on the City's website together with sharing up-to-date project information with the community and providing opportunities to receive feedback.

VOTING AND OTHER SPECIAL REQUIREMENTS

Simple majority required

OFFICER'S RECOMMENDATION

Council endorses the Fremantle Oval Redevelopment Business Plan, dated June 2022, for project advocacy purposes with a focus on approaching Commonwealth and State governments to seek project support and funding commitments.



FPOL2207-5 REQUEST FOR APPROVAL OF PROPOSED SALE OF 8 POINT STREET (PREVIOUSLY 2 POINT ST) FREMANTLE

Meeting date: 22 June 2022
Responsible officer: Chief Executive Officer
Decision making authority: Council
Attachments: 1. SKS letter – Confidential attachment
2. Original Purchase Contract
Additional information: Nil

SUMMARY

SKS Land Pty Ltd (SKS) have advised the City they have been in discussion with a private entity for the possible transfer and sale of 8 Point Street (previously 2 Point St), Fremantle, and have agreed commercial terms for such. SKS now seek Council approval to undertake the sale.

This report recommends that Council approve the proposed sale of 8 Point Street, Fremantle, by SKS to the new entity, Point Street Partners (PSP), with conditions set out in two separate Deeds of Covenant.

BACKGROUND

After an open tender process, the City of Fremantle approved the sale of the property formerly described as 2 Point Street (now 8 Point Street), Fremantle to SKS Land Pty Ltd (SKS) in November 2012. The sale provisions included specified timeframes where certain outcomes needed to be achieved by SKS. These sale provisions include (to):

- a) Commence construction of the development within 3 years after receiving the planning approval.*
- b) Continue to carry out construction of the development once it has been commenced; and*
- c) Complete construction of the development within 5 years after receiving the planning approval.*

Planning approval was received from Joint Development Assessment Panel (JDAP) in January 2014, to fulfil the original sale provisions, SKS originally had until January 2017 to commence development and until January 2019 to complete development.



In September 2016, SKS advised the City it will not meet these conditions and sought a one-year extension to the sale agreement. On 26 October 2016, Council resolved to approve an extension to the agreement between SKS and City of Fremantle on the following terms:

- i. An extension of the time to commence development after receiving planning approval to three years and six months being July 2017, and*
- ii. A further extension of the time to commence development after receiving planning approval to four years being January 2018 subject to the placement of a sales office for the residential component of the development within Fremantle.*

In April 2017, SKS advised the City that, due to additional unforeseen circumstances, it will not meet these modified conditions of October 2016 and requested a further extension beyond January 2018, until January 2020. Council resolved at its meeting on 26 April 2017, to provide a further extension of time to SKS of two years to commence development from January 2018 to January 2020.

As a condition of the extension of time provided by council in 2017, the City took over management of the existing multi-deck car park (car park 6) and the undeveloped portion of land adjacent to it in order to build an at-grade car park (car park 6a).

In 2018, SKS requested early termination of the two agreements for car parks 6 and 6a, in order to commence excavation and construction of the two-level basement car park and ground level slab (stage 1) and, if it reaches its apartment pre-sales targets, immediate commencement of the entire development (stage 2). As a result, Council adopted the following resolution at its meeting dated 27 June 2018:

Council accept SKS's request for early termination of the two agreements for Car Park 6 and the area used for Car Park 6a at 2 Point Street, Fremantle on the following conditions:

- a) SKS acknowledge in writing that the original conditions of the contract of sale are still applicable, including the requirement to continue to carry out construction of the development once it has been commenced, unless otherwise approved by a decision of council.*



- b) *In the event that Council approve a break in construction after; demolition of Carpark 6 or the construction of the two-level basement car park and ground level slab, (stage 1);*
 - (i) *the City has the right to use the site for the purpose of paid public parking in the period before re-commencement of the remainder of the development,*
 - (ii) *SKS to use its best endeavours to ensure the (stage 1) site can be used for paid public parking including the installation of parking infrastructure, and*
 - (iii) *the use of the site for public parking by the City does not incur any fee or charge by SKS.*
- c) *Should there be a significant break in construction after demolition, where there is no usable carpark, the city reserves the right to recoup costs associated with the construction of the temporary carpark and the revenue forgone.*

FINANCIAL IMPLICATIONS

The sale was awarded to SKS after a tender process managed by Colliers International for a sale price of \$10 million. The property settled in the fourth quarter of the 2013/14 financial year and the City received the full \$10 million payment from SKS at that time.

The original sale conditions intended to provide a development achieved on this site by now. In this circumstance the City would have also been receiving rate revenue for the completed development. It is anticipated that the rate revenue for the completed development to be between \$45,000 and \$60,000 per year. If original conditions were met the City would have received up to \$135,000 rate revenue to date.

The City received a bond of \$200,000 as part of the sale conditions as assurance that any costs for the City could be recovered if the conditions were not met. Discussion has been held between the City and SKS to consider whether any, part or all of this bond would be claimable by the City.

SKS has provided information that in achieving a development approval and construction planning they have expended a considerable amount above the original purchase price which clarifies their genuine intent to develop. They have also agreed to cover any of the City's legal costs in undertaking this agreement. As such the City recommends releasing the bond post settlement.

LEGAL IMPLICATIONS

Currently, the City has the options to approve the request to transfer, buy the property back or take action under the agreement for the conditions to be met.



If Council approve the recommendation of this report, two Deeds of Covenant between the City, SKS and PSP will be finalised to reflect the council resolution.

CONSULTATION

To comply with the Local Government Act 1995, the City prepared and advertised a business plan for the sale of the property in the 2012/13 financial year. Members of the community were invited to comment on the sale as part of that process.

OFFICER COMMENT

SKS have formally written to the City advising they have agreed commercial terms with another entity for the transfer and sale of 8 Point Street, Fremantle and seek Council consideration on the following:

- 1) The City will consent the sale of this property to Point Street Partners Pty Ltd and/or its nominee.
- 2) The City will not trigger the buyback provisions in the contract and the sale of this property with Sirona will happen at the agreed price between Point Street Partners and SKS;
- 3) SKS's bank guarantee of \$200,000 with the City will be returned to SKS upon the sale of this property and upon replacement of Sirona's bank guarantee or equivalent of the same value; and

In addition, Point Street Partners have also requested the following conditions be considered by Council:

- 1) Maintain the obligation to secure a new Development Approval within two (2) years from the date of acquisition with option to extend by 12 months if a scheme rezoning is required;
- 2) Commencement of construction must occur within three (3) years of obtaining Development Approval, with no condition of final completion of the development;
- 3) The removal of the requirement for personal guarantees or bonds and;
- 4) Maintain the provision for a buy-back of the property if conditions are not met.

In order for this transaction to occur, the City need to respond to the above requests and provide confirmation of our agreed terms for the release of SKS from their current contractual arrangement with the City. These terms will be provided through a formal Deed of Covenant between the City, SKS and Point Street Partners.



It is recommended that Council release SKS from their current contractual arrangement with the City, subject to Deed conditions identified above. All other previous contractual conditions will be maintained through the Deeds.

VOTING AND OTHER SPECIAL REQUIREMENTS

Simple majority required

OFFICER'S RECOMMENDATION

Council approves the transfer of 8 Point Street, Fremantle, subject to the below Deed of Covenant main terms;

Deed of Covenant – Main terms	
City's consent	<ul style="list-style-type: none"> The City consents to SKS Land Pty Ltd (Seller) selling 8 Point Street, Fremantle (Land) to Point Street Partners Pty Ltd (Buyer).
Buyer's Covenants	<ul style="list-style-type: none"> (Plans for Development and Planning Approval) The Buyer must obtain development approval within 2 years of the settlement of the acquisition of the Land. Option of 12 months extension if LPS rezoning required. (Time for commencement of construction of Development) The Buyer must commence the construction of the development within 3 years of obtaining development approval. (Restriction on Dealings) Clause 24 of the Acquisition Contract will apply to the Buyer. (Insolvency) Clause 25 of the Acquisition Contract will apply to the Buyer.
City's Option to Repurchase	<ul style="list-style-type: none"> The City will have a right to repurchase the Land from the Buyer if the Buyer fails to commence construction within 3 years of receiving the development approval. The repurchase price is to be determined based on purchase price paid by the Buyer, or Market Value, whichever is the lesser. The 2022 General Conditions to apply to the repurchase (as opposed to the 2011 General Conditions).



Caveat N908854	<ul style="list-style-type: none"> The City must withdraw Caveat N908854 prior to or at settlement.
Security	<ul style="list-style-type: none"> (Caveat) Immediately after settlement, the City can lodge a caveat against the Land to secure the Buyer’s obligations under the Deed of Covenant. (Guarantee) The directors of the Buyer will not be required to guarantee the obligations of the Buyer. (Bank Guarantee) The Buyer will not be required to provide the City with a bank guarantee.
Charge	<ul style="list-style-type: none"> The Deed of Covenant will charge the Land in favour of the City to secure the Buyer’s obligations.
Release of Seller	<ul style="list-style-type: none"> (Guarantee) On and from settlement, the City forever releases the guarantee given by Windi Sims for the benefit of the City under the Acquisition Contract. (Bank Guarantee) The City will return the Bank Guarantee to the Seller (propose that this occur within 7 days of the date of the Deed of Covenant). (Indemnity) On and from settlement, the City releases the Seller from the indemnity given for the City’s benefit under clause 16 of the Acquisition Contract. (General Release) On and from settlement, the City releases the Seller from any and all obligations it would have owed to the City under the Acquisition Contract had it not disposed of the Land.
Costs	<ul style="list-style-type: none"> The Buyer will bear its own costs. The Seller will bear its own costs and will cover the City’s costs.



FPOL2207-6 BUDGET AMENDMENTS - JULY 2022

Meeting date: 13 July 2022
Responsible officer: Manager Financial Services
Decision making authority: Council
Agenda attachments: Nil
Additional information: Nil

SUMMARY

To adopt various budget amendments to the 2021/22 budget account numbers as detailed below in accordance with the Budget Management Policy.

This report recommends that Council approves the required budget amendments to the adopted budget for 2021/22 as outlined in the report.

BACKGROUND

In accordance with the Budget Management Policy, this report provides details of proposed amendments to the 2021/22 budget on a monthly basis to Council (via FPOL) to adopt budget amendments to:

1. Consider an additional purpose or grant acceptance or release of quarantined funds;
2. Reflect any expenditure exceeding the budget amount agreed by the CEO in the previous month and adjust other accounts to accommodate the value of these.
3. Make amendments to the carried forward budget to reflect the final position at the end of the financial year.

FINANCIAL IMPLICATIONS

The financial implications are detailed in this report.

LEGAL IMPLICATIONS

Local Government Act 1995:

Section 6.2 (1)

The Council is required to prepare and adopt, by Absolute Majority, an annual budget for its municipal fund by 31st August each year.



Section 6.8 (1) and (2)

The Council cannot incur expenditure from its municipal fund for a purpose for which no expenditure estimate is included in the annual budget (known as an 'additional purpose') except where the expenditure –

- (a) is incurred in a financial year before the adoption of the annual budget by the local government;
- (b) is authorised in advance by resolution by Absolute Majority; or
- (c) is authorised in advance by the mayor or president in an emergency.

Where expenditure has been incurred;

- (a) under S 6.8 (1) (a) it is required to be included in the annual budget for that financial year; and
- (b) under S 6.8 (1) (c), it is to be reported to the next ordinary meeting of the council.

Local Government (Financial Management) Regulations 1996:

Regulation 33A

A formal review of the annual budget is to be presented and adopted by Council, by Absolute Majority, between 1st January and 31st March each year.

CONSULTATION

There are no community engagement implications as a result of this report.

OFFICER COMMENT

The following amendments are proposed to be made to the adopted/revised budget for 2021-22.

1. Budget amendments for proposed expenditure for an additional purpose or release of quarantined funds.

The proposed budget amendments below are for expenditure for an additional purpose to be determined by the Council as required by S6.8 (1) (b) of the Act. The decision will amend the budget by creating a new budget account number to accommodate that proposed expenditure, and by transferring the required funds from one or more existing accounts to the new account.



Item	Account Details	Account #	2021/22 Amended Budget	Revenue Income / (Decrease)	Expenditure (Increase)/ Decrease	2021/22 Proposed Budget
				Income	(Expenditure)	
1.1	City received a grant from the Department of Industry, Science and Resources for tree planting for the Queens Jubilee. These funds are proposed to be allocated to the Arthur Head Wall Stabilisation project.					
Inc	300168.4218	P-10260 Program - Arthur Head Wall Stabilisation- Non Operating Grant- Federal	-	7,100		7,100
Exp	300168.1606	P-10260 Program - Arthur Head - Wall Stabilisation - Capital WIP	(525,744)		(7,100)	(532,844)

2. Budget amendments for proposed expenditure for a purpose identified within the budget for which there are insufficient funds allocated.

Chief Executive Officer (CEO) has the delegated authority under the Budget Management Policy to incur expenditure for a purpose identified within the budget for which there are insufficient funds allocated, where:

- a) The proposed expenditure is a maximum of 5% or \$50,000 (whichever is the lesser) above the budgeted amount; and
- b) There are sufficient funds equivalent to the value proposed to be spent allocated to other budget line items within the overall budget, and which, in the opinion of the CEO, are not expected to be spent during that financial year.

The budget amendments below are to reflect any expenditure above the budget amount agreed by the CEO during the previous month, and to adjust other accounts to accommodate the value of those.



Item	Account Details	Account #	2021/22 Amended Budget	Revenue Income / (Decrease)	Expenditure (Increase)/ Decrease	2021/22 Proposed Budget
				Income	(Expenditure)	
2.1	<p>This request is to recognise a reduction in planned expenditure for grant acquittal purposes. Initially, a budget of \$150,000 was allocated for the Design & Construct - Frank Gibson - Lighting 2 project which was fully funded by Fremantle Netball Association. Upon finalisation of the scope and receiving quotations for the project, the costs was estimated at approximately \$100,000. This proposal is to reduce the budget for this item by \$52,205 to align with actual expenditure.</p>					
Inc	300276.4214	P-12065 Design & Construct - Frank Gibson - Lighting 2 - Non Operating Grant - Other Organisation	150,000	(52,205)		97,795
Exp	300276.1606	P-12065 Design & Construct - Frank Gibson - Lighting 2 - Capital WIP	(150,000)		52,205	(97,795)
2.2	<p>The following budget request is to correct an accounting error. The budget amendment outlined below was approved in December 2020 (Council decision item C2012-07) for an additional allocation of budget to the Fire Services Upgrade works for the Town Hall building to reflect the proposed tender and allowed contingency budget. While approval from Council was received at that time, the prior year budget was not updated, and the project therefore currently gives the appearance of being overspent. This budget adjustment is now re-submitted for approval so that the adjustment can be made in the current year.</p>					
Reserve	300166.3923	Transfer from reserve (Capital Projects)	530,000	50,000		580,000
Exp	300166.1606	P-11943 Town Hall Fire Upgrade Works	(530,000)		(50,000)	(580,000)



3. Carried forward projects estimate budget amendments.

There are no proposed budget amendments to the FY 2021/22 budget.

VOTING AND OTHER SPECIAL REQUIREMENTS

Absolute Majority Required

OFFICER’S RECOMMENDATION

Council approves the required budget amendments to the adopted/amended budget for the 2021/22 financial year as outlined below:

Item	Account Details	Account #	2021/22 Amended Budget	Revenue Income / (Decrease)	Expenditure (Increase)/ Decrease	2021/22 Proposed Budget
				Income	(Expenditure)	
1.1	City received a grant from the Department of Industry, Science and Resources for tree planting for the Queens Jubilee. These funds are proposed to be allocated to the Arthur Head Wall Stabilisation project.					
Inc	300168.4218	P-10260 Program - Arthur Head Wall Stabilisation- Non Operating Grant- Federal	-	7,100		7,100
Exp	300168.1606	P-10260 Program - Arthur Head - Wall Stabilisation - Capital WIP	(525,744)		(7,100)	(532,844)



<p>2.1 This request is to recognise a reduction in planned expenditure for grant acquittal purposes. Initially, a budget of \$150,000 was allocated for the Design & Construct - Frank Gibson - Lighting 2 project which was fully funded by Fremantle Netball Association. Upon finalisation of the scope and receiving quotations for the project, the costs was estimated at approximately \$100,000. This proposal is to reduce the budget for this item by \$52,205 to align with actual expenditure.</p>						
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<p>2.2 The following budget request is to correct an accounting error. The budget amendment outlined below was approved in December 2020 (Council decision item C2012-07) for an additional allocation of budget to the Fire Services Upgrade works for the Town Hall building to reflect the proposed tender and allowed contingency budget. While approval from Council was received at that time, the prior year budget was not updated, and the project therefore currently gives the appearance of being overspent. This budget adjustment is now re-submitted for approval so that the adjustment can be made in the current year.</p>						
Reserve	300166.3923	Transfer from reserve (Capital Projects)	530,000	50,000		580,000
Exp	300166.1606	P-11943 Town Hall Fire Upgrade Works	(530,000)		(50,000)	(580,000)



11. Motions of which previous notice has been given

A member may raise at a meeting such business of the City as they consider appropriate, in the form of a motion of which notice has been given to the CEO.

12. Urgent business

In cases of extreme urgency or other special circumstances, matters may, on a motion that is carried by the meeting, be raised without notice and decided by the meeting.

13. Late items

In cases where information is received after the finalisation of an agenda, matters may be raised and decided by the meeting. A written report will be provided for late items.

14. Confidential business

Members of the public may be asked to leave the meeting while confidential business is addressed.

15. Closure