

ITEM 2. TRIGENERATION NEGOTIATION - AUTHORITY FOR COMMITMENT OF EXPENDITURE**FILE NO: S101173****SUMMARY**

On 5 December 2011, Council endorsed Cogent Energy (Cogent) as the preferred trigeneration energy services provider and delegated authority to the Chief Executive Officer to progress negotiations. It is proposed to enter into a Heads of Agreement by March 2012, and final agreement in mid 2012.

Council was also advised that, due to the “non-binding” nature of the bids received, key detailed design studies must be completed to provide certainty of the business case costs for both parties prior to finalising a detailed contract. A number of these design studies have long lead times. It is essential they be commenced in early February 2012, prior to finalising a Heads of Agreement, to preserve the program required to meet Council’s obligations for provision of green infrastructure services to the Green Square development.

As the conduct of the studies is integral to Cogent’s design works, it is the most efficient and effective allocation of risk for Cogent to scope, procure and manage these studies as part of the development of their trigeneration schemes. It is proposed that costs for the studies be met by Cogent and form part of the overall project costs, should the project proceed. Should a detailed agreement not be reached and the project not proceed with Cogent, it is proposed that the City will reimburse Cogent for fees paid to external specialist engineering consultancies and for specific studies undertaken by Cogent’s own specialist design staff.

As part of its agreement with Cogent, the City would retain the right to use these studies for its own purposes and would own the intellectual property rights for information and reports. The City, or its alternative trigeneration service provider, would need to undertake the specialist studies to implement the Trigeneration Master Plan.

This report recommends, as part of the negotiation, that authority be delegated to the Chief Executive Officer to commit the City to reimburse Cogent Energy up to \$1 million for payments to external specialist engineering consultants and Cogent design staff incurred in the design of trigeneration systems, should the project not proceed with them.

The cost of this work has previously been factored into the City’s planning for this project. However, a Council resolution on this matter at this time is required to provide Cogent with the level of certainty it requires to undertake this work ahead of finalising an agreement.

In addition to these direct project costs, the City will also incur additional expenses to continue KPMG’s independent assessment to provide assurance on the overall financial viability, environmental benefits and value for money outcomes. This report seeks Council’s approval to extend KPMG’s existing engagement, and leverage off their involvement in the first phase of the trigeneration negotiation and existing knowledge, beyond the value that would normally require a separate tender procurement process.

RECOMMENDATION

It is resolved that:

- (A) authority be delegated to the Chief Executive Officer to commit the City to reimburse Cogent Energy up to \$1 million for payments to external specialist engineering consultants and Cogent design staff incurred in the design of trigeneration systems, should the project not proceed with Cogent Energy;
- (B) Council note that, due to the extenuating circumstances referred to in the subject report, a satisfactory result would not be achieved by the City tendering for these services directly;
- (C) Council approve the extension of KPMG's existing contract to provide independent financial assessment of the trigeneration service proposals, to the value identified in Confidential Attachment A to the subject report, without tendering for these services as the extenuating circumstances that arise from their involvement in the initial phase of this project would not allow a competitive tender process to provide a satisfactory result within the time constraints of delivering the required services; and
- (D) Provision of Commercial and Financial Advisory Services, Attachment A to the subject report, remain confidential in accordance with Section 10A(2)(d)(i) of the Local Government Act 1993.

ATTACHMENTS

Attachment A: Provision of Commercial and Financial Advisory Services
(Confidential)

(As Attachment A is confidential, it will be circulated separately from the business paper and to Councillors and relevant senior staff only.)

BACKGROUND

1. At its meeting of 4 April 2011, Council resolved to reject the tenders received for the provision of Trigenation systems for the City of Sydney Council's facilities and delegated authority to the Chief Executive Officer to enter negotiations with suitably qualified organisations.
2. At its meeting of 5 December 2011, Council resolved that it endorse Cogent Energy (Cogent) as the preferred trigenation energy services provider. Council delegated authority to the Chief Executive Officer to negotiate with Cogent Energy to seek to develop a Heads of Agreement by March 2012 for trigenation energy supply across the City of Sydney Local Government Area (LGA).
3. The City's Corporate Plan and Long Term Financial Plan contain provisional sums for the introduction of trigenation systems across the LGA over the next 10 years, although no authority for expenditure has been granted at this stage.
4. At the Council meeting on 5 December 2011, Council was also advised that both trigenation proposals received were "non-binding offers" and so the costs (capital contributions or connection fees and availability charges), energy generation quantities and carbon emissions abatement will be further developed prior to the signing of any agreement, particularly as assumptions will change during more detailed design of the system.
5. Council at that stage endorsed the continued use of KPMG to continue their financial and commercial assessment of the trigenation negotiation proposals, to provide assurance as to the financial viability and cost of carbon abatement to the City.

NEED FOR EARLY DESIGN STUDIES

6. Key detailed design studies must be completed by Cogent to provide certainty of the business case costs for both parties to complete the negotiation and to deliver Trigenation plants that can be operational by December 2013. A number of studies have long lead times. It is essential they be commenced as soon as possible in order to preserve the project delivery program and meet Council's obligations for provision of green infrastructure services to the Green Square development. This program must also be preserved to ensure the availability of foundation customers for Pymont/Broadway precinct including Frasers Property and UTS.
7. As the conduct of the studies is integral to Cogent's design works, it is the most efficient and effective allocation of risk for Cogent to scope, procure and manage these studies as part of the development of their trigenation schemes. The City would maintain oversight of this process as part of the negotiation.

8. Table 1 sets out the design work which would be subcontracted by Cogent to specialist consulting engineering services. Table 2 sets out work which would be undertaken in-house by Cogent's design team.

1	Electricity Network Study – Fault Current, Transient & Stability, Connection Design
2	Gas network capacity study and augmentation quotation
3	Exhaust emission plume dispersion study
4	High Voltage interconnection design
5	Energy Centre and Reticulation Network design review
	Estimated Cost \$500,000

1	Market Testing and Research of building owners/developers, Development and Assurance
2	Site system engineering
3	Electrical and mechanical design and cost estimation
4	Control and back office design and cost estimation including demand management
	Estimated cost \$500,000

9. Reports will be produced for each of the items in Tables 1 and 2 and the City will own the intellectual property rights.
10. In addition to the above design works, the City will procure the services of structural engineers to undertake detailed structural assessment of those of its own buildings which will host energy centres. Based on Cogent's assessment of the scope of these works, an expenditure allowance of up to \$60,000 is proposed.

PROPOSED ALLOCATION OF COST AND RISK FOR DESIGN WORKS

11. It is proposed that costs for the studies listed in Tables 1 and 2 would be met by Cogent and form part of the overall project costs, should the project proceed. This cost would ultimately be recovered by Cogent through service fees charged to the City and other customers.
12. Should the project not proceed with Cogent, the City or its alternative trigeneration service provider, would need to undertake the studies listed in Tables 1 and 2 to implement the Trigenation Master Plan. In these circumstances, it is proposed the City reimburse Cogent for the actual invoiced cost of the specialist engineering consultancies listed in Table 1 and Cogent's design costs listed in Table 2, up to a maximum of \$1 million. Cogent would grant the City rights to use these studies for its own purposes, should the project not proceed with Cogent.

13. Under the arrangement described above, Cogent will have an incentive to ensure they achieve value for money when procuring these specialist engineering services to maintain competitive energy service fees, maximising customer numbers and project returns. The City will participate in the procurement process and undertake a review of offers received by Cogent for the services.

CRITICAL DEADLINES

14. To ensure that trigeneration units in Green Square and Broadway are operational by December 2013, it is necessary to commence these detailed studies prior to the signing of a Heads of Agreement expected in March 2012, subject to successful negotiations. This is necessary to preserve the program required to meet Council's obligations for provision of green infrastructure services to the Green Square development and to ensure the availability of foundation customers for the Pyrmont/Broadway precinct, including Frasers Property and UTS.

BUDGET IMPLICATIONS

15. Should the City not enter into a detailed contract with Cogent, a payment of up to \$1 million would become payable to Cogent in the early part of the 2012/13 financial year. Funds are available in the Trigeneration City of Sydney program budget, subject to studies and reports being provided to Council.

PROCUREMENT REQUIREMENTS

16. Cogent procures these services as part of its day to day business and is in a better position to ensure that the services are value for money and of an appropriate standard than the City. It is therefore considered to be in Council's interests that Cogent, and not the City, procure them.
17. If the City was procuring these services directly, the Local Government Act 1993 would require it to tender any exceeding the \$150,000 limit. While the City is not directly procuring the contracts, these are services which will ultimately be paid for by the City. The relevant provisions of the Local Government Act do not provide for this situation.
18. To be prudent and for absolute transparency, it is therefore recommended that Council resolve to note that, due to the extenuating circumstances described in paragraph 15 above, a satisfactory result would not be achieved by Council calling tenders for these services.
19. It is also recommended that the ongoing engagement of KPMG as independent financial and commercial advisers, beyond the \$150,000 limit imposed by the Act, not be contested by calling tenders due to the extenuating circumstances that arise from their existing involvement, knowledge and contribution to the initial assessment phase of the trigeneration negotiations and the time constraints that the City has to deliver the project.

KEY IMPLICATIONS**Strategic Alignment - Sustainable Sydney 2030 Vision**

20. Sustainable Sydney 2030 is Council's plan to make Sydney green, global and connected by 2030 - reflecting our residents' aspirations for our local government area. Around 90 per cent of respondents to the Sustainable Sydney 2030 consultation survey said that they wanted urgent action on climate change.
21. Around 80 per cent of the City's greenhouse gas emissions are from centralised power generation, primarily coal-fired power stations, and this is where much of the cost-effective emissions reduction potential lies.
22. Objective 2.1 of Sustainable Sydney 2030 seeks to increase the capacity for local energy generation and water supply within City boundaries as part of:
 - (a) Green Transformers (co-location of trigeneration, recycled water treatment and waste collection/utilisation); and
 - (b) the Green Infrastructure Plan comprising decentralised energy, renewable energy, recycled water, alternative waste treatment facilities and automated waste collection.
23. Objective 2.4 seeks to demonstrate leadership in environmental performance through the City of Sydney's operations and activities.
24. Sustainable Sydney 2030 has a reduction target of 70 per cent in greenhouse gas emissions by 2030. A significant part of this target will be realised through the installation of around 330MWe of trigeneration within the City's LGA. This amount of trigeneration is estimated to supply 70 per cent of the LGA's electricity requirements by 2030.

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