

SHIRE
of
DANDARAGAN

MINUTES

of the

SPECIAL COUNCIL MEETING

held at the

COUNCIL CHAMBERS, JURIEN BAY

on

FRIDAY 26 MARCH 2021

COMMENCING AT 8.02AM

(THIS DOCUMENT IS AVAILABLE IN LARGER PRINT ON REQUEST)

MINUTES FOR SPECIAL COUNCIL MEETING HELD FRIDAY 26 MARCH 2021
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1 DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

1.1 DECLARATION OF OPENING

The presiding member declared the meeting open at 8.02am and welcomed those present.

2 RECORD OF ATTENDANCE / APOLOGIES / APPROVED LEAVE OF ABSENCE

Members

Councillor L Holmes	(President)
Councillor P Scharf	(Deputy President)
Councillor W Gibson	
Councillor A Eyre	
Councillor R Rybarczyk	
Councillor R Shanahun	

Staff

Mr B Bailey	(Chief Executive Officer)
Mr S Clayton	(Executive Manager Corporate & Community Services)
Mr B Pepper	(Executive Manager Infrastructure)
Mr D Chidlow	(Executive Manager Development Services)
Mr T O’Gorman	(Manager Economic Development)

Apologies

Councillor D Slyns
Councillor J Clarke

Approved Leave of Absence

Nil

3 PUBLIC QUESTION TIME

Nil

4 PURPOSE OF THE MEETING

The purpose of the meeting is to:

1. To consider appointing a preferred builder for the Jurien Bay Foreshore Pavilion
2. To consider appointing a preferred respondent for the operation of the Jurien Bay Foreshore Pavilion Kiosk/Café.

MINUTES FOR SPECIAL COUNCIL MEETING HELD FRIDAY 26 MARCH 2021**5 ORDER OF BUSINESS****OFFICER RECOMMENDATION**

Moved Cr Eyre, seconded Cr Shanhun

That the meeting be closed to members of the public at 8.02am in accordance with Section 5.23 (2) (c) of the Local Government Act 1995 and Regulation 4A of the Local Government (Administration) Regulations 1996 to allow Council to discuss Item 5.1.1 Jurien Bay Foreshore Pavilion & Item 5.1.2 Jurien Bay Foreshore Café / Kiosk Request for Proposals which involve contracts that may be entered into by the Shire.

CARRIED 6 / 0

COUNCIL DECISION

Moved Cr Shanhun, seconded Cr Rybarczyk

That Council suspend clauses 8.8 and 10.5 of the Shire of Dandaragan Local Government (Council Meetings) Local Law 2019 to facilitate open discussion on items 5.1.1 and 5.1.2.

CARRIED 6 / 0

5.1 GOVERNANCE & ADMINISTRATION

Cr Scharf declared an impartiality interest in Item 5.1.1 due to personally knowing Kim Whitlock (Coast Edge Developments) through his role in coordinating the construction of the Jurien Bay Catholic Church.

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5.1.1 JURIEN BAY FORESHORE PAVILION

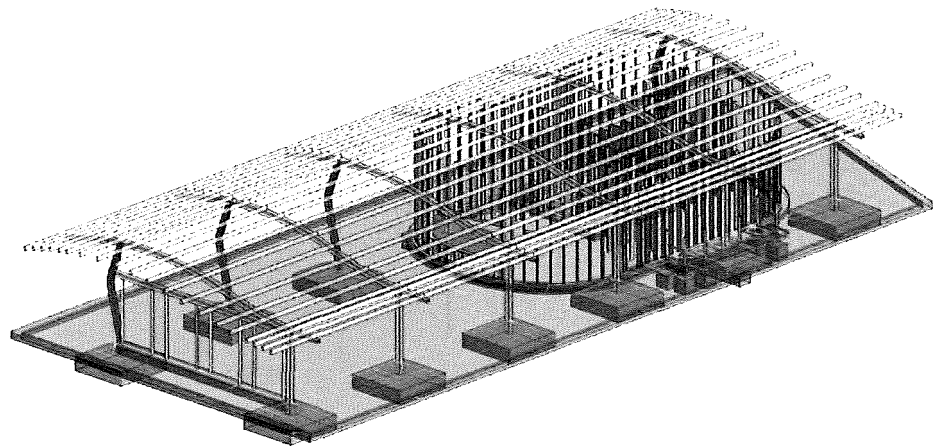
Location:	Reserve 28541 Jurien Bay Foreshore
Applicant:	N/A
Folder Path:	Tenders / 2021 / RFT 001-21
Disclosure of Interest:	None
Date:	23 March 2021
Author:	David Chidlow, Executive Manager Development Services
Senior Officer:	Brent Bailey, Chief Executive Officer

PROPOSAL

This item considers the appointment of a preferred builder for the Jurien Bay Foreshore Pavilion. It is recommended that Council authorises the CEO to undertake final negotiations and enter into a building contract with Elite Builders Jurien Bay.

BACKGROUND

Council endorsed the design of a pavilion/café/ablutions facility on the Jurien Bay Foreshore to proceed to tender at the October 2020 Council meeting. The architect's design is shown below and was developed in consultation with the Foreshore Working Group with the allocated construction budget guiding the size and scale of the development.



Following the finalisation of the detailed design process in January 2021, which included electrical design components coordinated with other projects being completed on the foreshore, tenders were invited for the construction activities. 5 tenders from builders based outside of the Shire were received.

Council rejected tenders due to the prices being submitted being significantly in excess of the allocated budget and sought further engagement with builders to identify opportunities for cost savings. The lowest conforming tender was \$969,233. The construction industry has been impacted by a range of factors which have driven up demand and prices across most components. Builders have also advised that the level of finish, curved design and specifications have also had a significant bearing on the cost of the build.

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COMMENT

Since tenders were rejected staff have been in discussions with local builders and select tenderers to progress the project. Provided as a confidential attachment to this item is a report evaluating the outcomes of these discussions to assist Council consider building proposals and select a preferred builder. The document is marked as confidential due to the commercial in confidence nature of the submissions. Should Council seek to debate the content or details of the evaluation document the meeting should be closed to the public.

In addition to price being the primary quantitative consideration the key qualitative criteria used for the assessment were:

- Relevant Experience
- Local Content
- Demonstrated Understanding
- Key personnel skills and experience
- Tenderer's resources

Once Council has selected a preferred builder and executed a building contract, the process for leasing the café and kiosk will be able to progress.

CONSULTATION

The original tender was advertised in State and regional Newspapers, Social Media and Shire website, as well as directly to ten builders operating in this region.

Consultation has also been undertaken on the broader project through the Foreshore master planning process and with the Foreshore Working Group.

STATUTORY ENVIRONMENT

Local Government Act 1995 s3.57 – Tenders for providing goods or services

3.57. Tenders for providing goods or services

- (1) *A local government is required to invite tenders before it enters into a contract of a prescribed kind under which another person is to supply goods or services.*
- (2) *Regulations may make provision about tenders.*

Local Government Regulations 1996 s11(1)

11. When tenders have to be publicly invited

- (1) *Tenders are to be publicly invited according to the requirements of this Division before a local government enters into a contract for another person to supply goods or services if the consideration under the contract is, or is expected to be, more, or worth more, than \$250 000 unless sub-regulation (2) states otherwise.*

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Local Government Act 1995 s5.23(2)(e)(iii)

(2) *If a meeting is being held by a council or by a committee referred to in subsection (1)(b), the council or committee may close to members of the public the meeting, or part of the meeting, if the meeting or the part of the meeting deals with any of the following — (e) a matter that if disclosed, would reveal — (iii) information about the business, professional, commercial or financial affairs of a person,*

Local Government Regulations 1996 s18(5)

18. Rejecting and accepting tenders

(5) *The local government may decline to accept any tender.*

POLICY IMPLICATIONS

Policy 1.1 C-1PAT01 – Purchasing and Tender

\$250,000+ Public tender process to be undertaken unless excluded under Exemptions listed below. Prior to any documentation being issued a Request for Tender (RFT) number must be obtained from the Executive Manager of Corporate and Community Services, as applicable provided to maintain the Shire's Tender Register.

FINANCIAL IMPLICATIONS

As outlined in the budget review document provided to Council at the March Ordinary meeting, if construction progresses, the project, inclusive of sewer extension and drainage works is to be financed from the following sources:

Local Roads and Community Infrastructure Grant: \$590,929

Loan Funds: Up to \$750,000

The Local Roads and Community Infrastructure Grant was originally budgeted for use on the East West Runway in Jurien Bay. These funds are not able to be used on this project due to land tenure delays associated with Native Title. To ensure these grant funds are spent in accordance with the grant guidelines the funding has been reallocated to the Foreshore Pavilion. A second round of Local Roads and Community Infrastructure Grants have been announced and can be redirected back to the East West Runway project in the coming budget cycle.

STRATEGIC IMPLICATIONS

Strategic Community Plan – Envision 2029

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01 Infrastructure	The Shire will sustain a dynamic infrastructure network responsive to usage demand that attracts and retains residents and businesses.
Priority Outcomes	Our Roles
Our communities contain vibrant, activated public open space and buildings with high levels of utilisation and functionality.	To manage and facilitate community assets that are flexible, vibrant, adaptable and enjoyable places to occupy employing the principals of place making and design thinking.

ATTACHMENTS

Circulated with the agenda is the following item relevant to this report:

- Confidential 01/2021 Tender Evaluation (Doc Id: 173300, 173301 & 173302)

(Marked 5.1.1)

VOTING REQUIREMENT

Simple Majority

OFFICER RECOMMENDATION

That Council:

1. Endorse the ranking of preferred builders for the Jurien Bay Foreshore Pavilion as follows:
 - a. Elite Builders Jurien Bay
 - b. Coast Edge Developments
2. Authorise the Chief Executive Officer to finalise negotiations with the 1st preferred builder, and if there are no material adverse changes to the submitted component pricing, execute a final building contract.
3. Authorise the CEO to negotiate a building contract with the 2nd preferred builder if an agreement is not able to be reached with the 1st preferred builder, and if there are no material adverse changes to the submitted component pricing, execute a final building contract.

COUNCIL DECISION

Moved Cr Scharf, seconded Cr Shanhun

That Council:

1. **Endorse the ranking of preferred builders for the Jurien Bay Foreshore Pavilion as follows:**
 - a. Coast Edge Developments**
 - b. Elite Builders Jurien Bay**
2. **Authorise the Chief Executive Officer to finalise negotiations with the 1st preferred builder, and if there are no material adverse changes to the submitted component pricing, execute a final building contract.**
3. **Authorise the CEO to negotiate a building contract with the 2nd preferred builder if an agreement is not able to be reached with the 1st preferred builder, and if there are no**

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material adverse changes to the submitted component pricing, execute a final building contract.

CARRIED 5 / 1

Note: The Officer's Recommendation was not adopted as Council decided to proceed with the materially lower priced submission.

Scott Clayton entered at meeting at 8.13am

5.1.2 JURIEB BAY FORESHORE CAFÉ / KIOSK REQUEST FOR PROPOSALS

Location:	Shire of Dandaragan
Applicant:	Not Applicable
Folder Path:	Business Classification Scheme / Parks & Reserves / Design & Construction / Jurien Bay & Cervantes Foreshore Recreation
Disclosure of Interest:	Nil
Date:	23 March 2021
Author:	Brent Bailey, Chief Executive Officer
Senior Officer:	Not Applicable

PROPOSAL

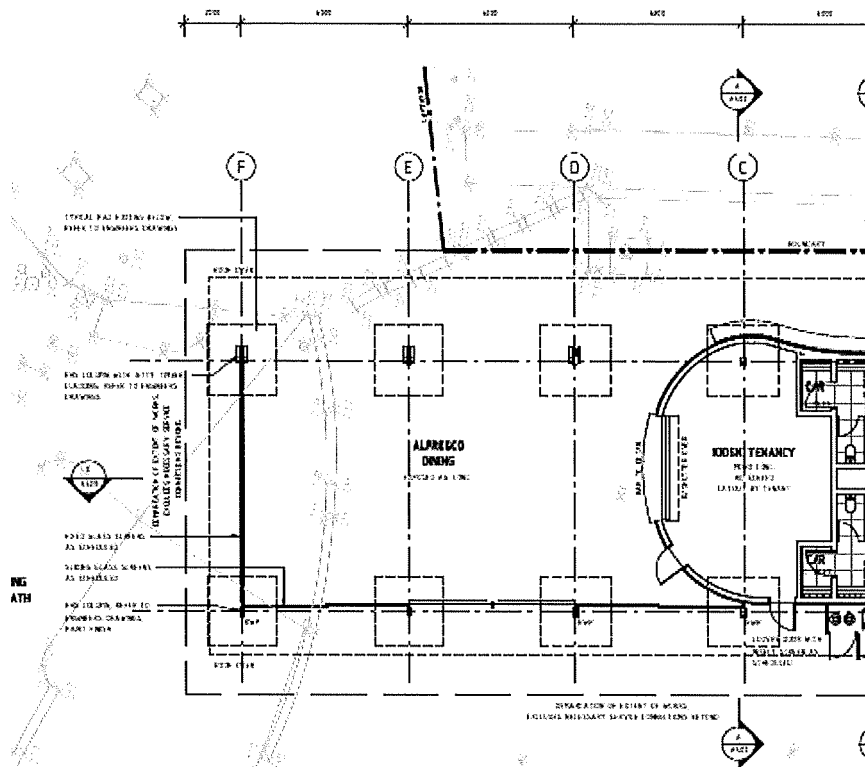
The purpose of this report is for Council to consider ranking preferred responses for a lessee of the Jurien Bay Foreshore Café / Kiosk.

BACKGROUND

The Jurien Bay Foreshore Masterplan included provision for a new Café / Kiosk within the new foreshore pavilion. The pavilion is due for development in 2021 and Council is concurrently considering the selection of a preferred builder for the construction activities.

Concurrent with this construction contract, the Shire has called for Proposals for a lease of the café / kiosk space which includes provision for a license over a negotiated portion of the alfresco area underneath the pavilion. The lease and license area is indicated in the plans below:

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The Request for Proposals (RFP) process closed on 15 February 2021 and 2 submissions were received. The consideration of these proposals has been delayed while Council consider options for the construction of the Pavilion.

COMMENT

The RFP process is the preliminary step in this disposal of land process. A full assessment of the responses was undertaken by the CEO and the Executive Manager Corporate and Community Services and has been provided to Council as a confidential attachment. The document is marked as confidential due to the commercial in confidence nature of the submissions. Should Council seek to debate the content or details of the evaluation document the meeting should be closed to the public.

Subject to final lease negotiations and clarifications, the successful respondent and the finalised lease will be endorsed by Council for public advertising in accordance with Section 3.58(3) of the Local Government Act 1995. If an agreement cannot be established with the 1st preferred respondent, negotiations will progress with the 2nd preferred respondent. Once a finalised lease document is negotiated with a preferred respondent, details of the successful proposal including key lease terms will be made public via the proceeding Council meeting agenda and advertising requirements outlined in the Local Government Act 1995.

Within the RFP process respondents were asked to address a number of key criteria including:

- 1) Provision of a detailed outline of the business model that

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would deliver environmental outcomes, social benefits and economic benefits.

- 2) Provision of information covering the respondent's relevant experience.
- 3) Provision of an outline of local content and local benefit expected from their business model.

A pricing component was also included providing opportunity for respondents to state their annual lease fee offer. RFP documents outlined Council's preference was for a full market based rental across an initial 3 year lease with a 3 year option. The RFP document also stated that all outgoings (electricity, water etc.) would be the responsibility of the lessee.

The ongoing provision of a café/kiosk at the Jurien Bay Foreshore is seen as a vital piece of economic and social infrastructure for the town. The timeline for implementation will be dependent on the construction and subsequent fit out of the building.

CONSULTATION

- Jurien Bay Foreshore Working Group
- MCG Architects

STATUTORY ENVIRONMENT

Local Government Act 1995 S3.58 – Disposing of Property
Local Government (Functions and General) Regulations 1996
Section 30

3.58. Disposing of property

(1) *In this section —*

dispose *includes to sell, lease, or otherwise dispose of, whether absolutely or not;*

property *includes the whole or any part of the interest of a local government in property, but does not include money.*

(2) *Except as stated in this section, a local government can only dispose of property to —*

(a) *the highest bidder at public auction; or*

(b) *the person who at public tender called by the local government makes what is, in the opinion of the local government, the most acceptable tender, whether or not it is the highest tender.*

(3) *A local government can dispose of property other than under subsection (2) if, before agreeing to dispose of the property —*

(a) *it gives local public notice of the proposed disposition —*

(i) *describing the property concerned; and*

(ii) *giving details of the proposed disposition; and*

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- (iii) *inviting submissions to be made to the local government before a date to be specified in the notice, being a date not less than 2 weeks after the notice is first given;*
 - and*
 - (b) *it considers any submissions made to it before the date specified in the notice and, if its decision is made by the council or a committee, the decision and the reasons for it are recorded in the minutes of the meeting at which the decision was made.*
- (4) *The details of a proposed disposition that are required by subsection (3)(a)(ii) include —*
- (a) *the names of all other parties concerned; and*
 - (b) *the consideration to be received by the local government for the disposition; and*
 - (c) *the market value of the disposition —*
 - (i) *as ascertained by a valuation carried out not more than 6 months before the proposed disposition; or*
 - (ii) *as declared by a resolution of the local government on the basis of a valuation carried out more than 6 months before the proposed disposition that the local government believes to be a true indication of the value at the time of the proposed disposition.*
- (5) *This section does not apply to —*
- (a) *a disposition of an interest in land under the Land Administration Act 1997 section 189 or 190; or*
 - (b) *a disposition of property in the course of carrying on a trading undertaking as defined in section 3.59; or*
 - (c) *anything that the local government provides to a particular person, for a fee or otherwise, in the performance of a function that it has under any written law; or*
 - (d) *any other disposition that is excluded by regulations from the application of this section.*

30. Dispositions of property excluded from Act s. 3.58

- (1) *A disposition that is described in this regulation as an exempt disposition is excluded from the application of section 3.58 of the Act.*
- (2) *A disposition of land is an exempt disposition if —*
 - (a) *the land is disposed of to an owner of adjoining land (in this paragraph called the **transferee**) and —*
 - (i) *its market value is less than \$5 000; and*
 - (ii) *the local government does not consider that ownership of the land would be of significant benefit to anyone other than the transferee;*
 - or*

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(b) *the land is disposed of to a body, whether incorporated or not —*

- (i) *the objects of which are of a charitable, benevolent, religious, cultural, educational, recreational, sporting or other like nature; and*
- (ii) *the members of which are not entitled or permitted to receive any pecuniary profit from the body's transactions;*

POLICY IMPLICATIONS

There are no policy implications relevant to this item.

FINANCIAL IMPLICATIONS

A market rental valuation of \$21,000 per annum was obtained from a Certified Valuer. Revenue generated from this venture will offset other costs associated with the broader operations and maintenance on the Jurien Bay Foreshore.

STRATEGIC IMPLICATIONS

Strategic Community Plan – Envision 2029

02 – Prosperity	The Shire will experience broad economic and population growth with decreasing economic barriers, diversified agriculture and fisheries output and vibrant visitor economy.
Priority Outcomes	Our Roles
Jurien Bay continues to grow as a regional centre that services and delivers benefits throughout the Shire	Develop and implement a modern economic growth plan which harnesses the economic potential of existing and emerging industries. This plan will contain initiatives that are relevant across the whole Shire Leverage public and private sector partnerships to deliver new infrastructure required to achieve sustainable economic and population growth.

This project is included in Council's Corporate Business Plan as a component of the Jurien Bay Foreshore development.

ATTACHMENTS

Circulated with the agenda is the following item relevant to this report:

- Request for Proposals Evaluation – Confidential (Doc Id: 173190)
- RFP Submissions (Doc Id: 170841 & 170842)
(Marked 5.1.2)

VOTING REQUIREMENT

Simple Majority

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OFFICER RECOMMENDATION

That Council:

- 1) Endorse the ranking of preferred respondents for the Foreshore Café/Kiosk lease as follows:
 1. Bayview Jurien Bay Pty Ltd
 2. Lobster Hut Hospitality Group
- 2) Authorise the CEO to negotiate a lease document with the 1st preferred respondent for Council consideration in accordance with Section 3.58(3) of the Local Government Act 1995.
- 3) Authorise the CEO to negotiate a lease document with the 2nd preferred respondent for Council consideration in accordance with Section 3.58(3) of the Local Government Act 1995 if an agreement is not able to be reached with the 1st preferred respondent.

Scott Clayton left the meeting at 8.36am

Scott Clayton re-entered the meeting at 8:40am

COUNCIL DECISION

Moved Cr Scharf, seconded Cr Eyre

That Council:

- 1) **Endorse the ranking of preferred respondents for the Foreshore Café/Kiosk lease as follows:**
 1. **Lobster Hut Hospitality Group**
 2. **Bayview Jurien Bay Pty Ltd**
- 2) **Authorise the CEO to negotiate a lease document with the 1st preferred respondent for Council consideration in accordance with Section 3.58(3) of the Local Government Act 1995.**
- 3) **Authorise the CEO to negotiate a lease document with the 2nd preferred respondent for Council consideration in accordance with Section 3.58(3) of the Local Government Act 1995 if an agreement is not able to be reached with the 1st preferred respondent.**

CARRIED 6 / 0

Note: The Officer Recommendation was not adopted as Council's opinion differed to that of the Officers' in the comparative assessment of the "Sustainable Business Model" elements resulting in preference being given to the proposal from Lobster Hut Hospitality Group.

Cr Eyre left the meeting at 8.54am

COUNCIL DECISION

Moved Cr Rybarczyk, seconded Cr Shanhun

That Council resume clauses 8.8 and 10.5 of the Shire of Dandaragan Local Government (Council Meetings) Local Law 2019.

CARRIED 5 / 0

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COUNCIL DECISION


Moved Cr Gibson, seconded Cr Shanhun that the Meeting be reopened to the public at 8.55am.

CARRIED 5 / 0

6 CLOSURE OF MEETING

The presiding member declared the meeting closed at 8.56am.

These minutes were confirmed at a meeting on 22 April 2021

Signed 

Presiding person at the meeting at which the minutes were confirmed

Date 22 April 2021