



Shire of
Exmouth

Special Council Meeting
Minutes
3 January 2014

CONFIRMATION OF MINUTES

These minutes were confirmed by the Council on 20th February 2014 as a true and accurate record of the Special Council Meeting held on 3rd January, 2014.

.....
C (Turk) Shales
Shire President

All attachment items referred to in these minutes are available for public perusal at the Shire office

DISCLAIMER

The advice and information contained herein is given by and to the Council without liability for its accuracy. Before placing any reliance on this advice or information, a written inquiry should be made to the Council giving entire reasons for seeking the advice or information and how it is proposed to be used.

Please note this agenda contains recommendations which have not yet been adopted by Council.

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In particular and without derogating in any way from the broader disclaimer above, in any discussion regarding any planning application or application for a licence, any statement or limitation of approval made by a member or officer of the Shire of Exmouth during the course of any meeting is not intended to be and is not taken as notice of approval from the Shire of Exmouth. The Shire of Exmouth warns that anyone who has an application lodged with the Shire of Exmouth must obtain and should only rely on written confirmation of the outcome of the application.

Signed at Exmouth  (B Price), Chief Executive Officer Shire of Exmouth

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SPECIAL COUNCIL MEETING MINUTES

Our Vision

To support and develop a vibrant, welcoming community that embraces its past, values its present and plans for a sustainable future

Our Purpose

To responsibly provide governance for the whole community in the best interest of current and future generations

Our Strategic Objectives

- ❖ To provide sustainable management of the organisation
- ❖ To consistently apply the principles of Good Governance
 - ❖ To communicate effectively
 - ❖ To promote socioeconomic development
 - ❖ To value our environment and heritage

1. DECLARATION OF OPENING/ANNOUNCEMENT OF VISITORS

The Shire President declared the meeting open at 9.00am.

2. RECORD OF ATTENDANCE/APOLOGIES/APPROVED LEAVE OF ABSENCE

Councillor C (Turk) Shales	Shire President
Councillor S McHutchison	
Councillor G Thompson	
Councillor R (Bob) Todd	
Councillor R Winzer	
Mr R Mhasho	Acting Chief Executive Officer (EMTP)
Mr R Kempe	Executive Manager Community Engagement
Mr K Woodward	Executive Manager Engineering Services

GALLERY

Visitors:

Mr B Price	Chief Executive Officer (on Leave)
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APOLOGIES

Councillor M Hood	Deputy Shire President
Mrs J Kox	Executive Manager Aviation Services
Mrs S O'Toole	Executive Manager Corporate Services
Mr R Manning	Executive Manager Health & Building

LEAVE

Nil

3. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil

4. PUBLIC QUESTIONS TIME

In accordance with section 5.24 of the Local Government Act 1995, a 15 minute public question time is made available to allow members of the public the opportunity of questioning Council on matters concerning them.

Council Consideration Towards Public

When public questions necessitate resolutions of Council, out of courtesy and at the President discretion the matter is to be dealt with immediately to allow the public to observe the determination of the matter (obviates the need for the public to wait an undetermined period of time).

When a matter is listed on the Agenda and member/s of the public are in attendance to observe the determination of the matter, out of courtesy and at the discretion of the President the matter is to be brought forward on the agenda and dealt with immediately to allow the public to observe the determination of the matter (again this obviates the need for the public to wait an indeterminate period of time).

Nil

5 APPLICATIONS FOR LEAVE OF ABSENCE

The Local Government Act 1995 (Section 2.25) provides that a Council may, by resolution, grant leave of absence to a member for Ordinary Council Meetings. A member who is absent, without first obtaining leave of the Council, throughout three consecutive Ordinary meetings of the Council is disqualified from continuing his or her membership of the Council.

Disqualification from membership of the Council for failure to attend Ordinary Meetings of the Council will be avoided so long as the Council grants leave prior to the member being absent. The leave cannot be granted retrospectively. An apology for non-attendance at a meeting is not an application for leave of absence.

Nil

6. CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

Nil

7. ANNOUNCEMENTS BY THE PRESIDING PERSON WITHOUT DISCUSSION

Nil

8. PETITIONS/DEPUTATIONS/PRESENTATIONS/SUBMISSIONS

Nil

9. REPORT OF COUNCILLORS

Councillor Todd advised Council that the owners of Lot 164 Maidstone Crescent that submitted a planning application for a swimming pool which was subsequently refused by Council during the December 2013 OCM were required to obtain a planning approval for their business. However in 2007 Council did give planning approval to the previous business owners. Councillor Todd read the 2007 Council report and urged other Councillors to research matters before commenting on issues during public meetings.

Councillor Winzer advised Council that during the December 2013 OCM meeting he only raised the issue of lack of policing of the approval and did not in any way imply that the previous Council decision was incorrect. The CEO also advised Councillor Todd that reference to previous Council decision should only be made to the motion and not the body of the report. The Executive Manager Town Planning explained to Council that planning approvals are granted to the land and not to individuals; in this case although the previous owners sold the property, the previous approval automatically transfers to the new owners.

The President urged the Executive Manager Town Planning to look into the issue raised by Councillor Todd and to report to him outside the formal Council meeting

The Shire President declared an indirect financial interest in the following report and left the Chambers at 9:13am.

COUNCIL DECISION – 01-0114

Moved Councillor Todd, Seconded Councillor Thompson.

That Councillor Winzer assume the chair in absence of the Shire President.

CARRIED by 4/0

10. REPORTS OF OFFICER

10.1 EXECUTIVE MANAGER ENGINEERING SERVICES

10.1.1 TENDER 07/2013 EXMOUTH TOWN CENTRE REVITALISATION

Location: Exmouth
Applicant: Keith Woodward
File Reference: CM.TE.072013
Disclosure of Interest: Cr Turk Shales
Date: 30 December 2013
Author: Executive Manager Engineering Services, Keith Woodward
Signature of Author:



Senior Officer: Chief Executive Officer, Bill Price

SUMMARY

It is recommended that the Exmouth Shire Council:

1. Award Tender 07/2013 Exmouth Town Centre Revitalisation to Centrals and that prior to entering into contract, further negotiations with Centrals be undertaken to reduce the tendered rate down to the project budget of \$2,750,000. Should Centrals be unable or unwilling to enter into a contract to supply the varied requirement; or the Shire of Exmouth and Centrals not agree on any other variation to be included in the contract as a result of the varied requirement, that Centrals ceases to be the chosen tenderer.
2. Subsequently, Tender 07/2013 Exmouth Town Centre Revitalisation is awarded to Exmouth Civil and that prior to entering into contract, further negotiations with Exmouth Civil be undertaken to reduce the tendered rate down to the project budget of \$2,750,000.
3. Authorise the Chief Executive Officer to request a variation to the key deliverables required by the financial assistance agreement to reflect the final tendered prices.

BACKGROUND

The Shire advertised Tender 07/2013 Exmouth Town Centre Revitalisation in the West Australian Newspaper on 9 November 2013. The Tender 07/2013 closed on 3 December 2013 and 36 electronic tender sets were distributed to interested parties. 9 tender submissions were received at the office of JDSI Consulting Engineers.

At the November 2013 Council was advised that Tender 07/2013 Exmouth Town Centre Revitalisation had been advertised and that tender submissions would be assessed against a predetermined Tender Evaluation Criteria.

At the September 2013 Council was advised that the tender to re-construct the Town Centre road network and parking would be released within the next two months. The Town Centre re-development locations include Thew Street, Kennedy Street carpark and Learmonth Street. The road design accords with the Exmouth Town Centre and Foreshore Revitalisation Plan, Hassell April 2012. Additional design works had been undertaken regarding Thew Street, the general cut and fill levels and floodway drainage options. The draft preliminary Gantt Chart and Works Area plan were included.

COMMENT

JDSI Consulting Engineers were the design engineers associated with the development of the Exmouth Town and Foreshore Revitalisation plans in consultation with Hassel.

JDSI were engaged by the Shire to complete the detailed design for the civil roads and drainage works to manage the tender process and to provide superintendent representative services. This was considered a good fit taking into consideration JDSI formulated the original town centre revitalisation civil design as per the Exmouth Town Centre and Foreshore Revitalisation Plan, Hassell April 2012. Their intimate knowledge of the project would assist further with delivering this project which is highly complex and being located in a functioning town centre.

In addition to providing technical service JDSI has provided professional a unbiased assessment of the tender submission. This tender process has been open, quantifiable and assessed by written evaluation in accordance with the Local Government Act 1995.

The tender 07/2013 Exmouth Town Centre Revitalisation tender assessment report has been included as **Attachment 1** and is **commercial in confidence**. This report is commercial in confidence. The JDSI Consulting Engineers tender assessment report assesses the qualitative assessment, weightings and costs assessment including recommendations. These processes effectively addresses the requirements of the Local Government Act 1995 (Functions and General) Regulation (s.3.57).

The JDSI Tender Assessment Report outlines the tender analysis process and provides a tender recommendation for the Exmouth Town Centre Revitalisation project. The report also details the negotiation process that has been undertaken and it is imperative that this report is read in its entirety prior to making a decision based on the information provided. It is important to note that Request for Tender released by the Shire of Exmouth documented a Qualitative Tender Process. Although 'tendered price' is a weighted component of the qualitative tender, the recommendation will not simply apply to the lowest bid. JDSI's objective by detailed investigation and comparison is to recommend the lowest price to safely and efficiently achieve a practical completion of the work to the specified quality.

JDSI has requested that based on their review of the tender rates, quantities and qualifications along with the supporting information provided in the tenders JDSI has recommend that the Shire give permission to negotiate with Centrals as the Preferred Contractor for the Exmouth Town Centre Revitalisation Works.

Should Council support the abovementioned negotiation request from JDSI the associated negotiation process is guided by the Local Government Act 1995.

1. Invite tenders
2. Chose a successful tender
3. Negotiate variations
4. Contract signing

It will be recommended that Tender 07/2013 Exmouth Town Centre Revitalisation be awarded to Centrals and that prior to entering into contract further negotiations with Centrals be undertaken to reduce the tendered rate down to the project budget of \$2,750,000. Should **Centrals** *the chosen tenderer be unable or unwilling to enter into a contract to supply the varied requirement; or the **Shire of Exmouth** and the chosen tenderer cannot agree on any other variation to be included in the contract as a result of the varied requirement, that tenderer **Centrals** ceases to be the chosen tenderer and the local government may, instead of again inviting tenders, choose the tenderer **Exmouth Civil** , if any, whose tender the local government considered it would be the next most advantageous to it to accept.*

CONSULTATION

JDSI Consulting Engineers
Centrals on site 20 December 2013
Exmouth Civil on site 20 December 2013

STATUTORY ENVIRONMENT

Section 3.57 of the Local Government Act (LGA) 1995 and the LGA Functions and General Regulations, 11 to 24G.

Regulation 18 (4) of the Local Government (Functions and General) Regulations states:

“Tenders that have not been rejected under sub regulation (1), (2), or (3) are to be assessed by the local government by means of a written evaluation of the extent to which each tender satisfies the criteria for deciding which tender to accept and it is to decide which of them it thinks it would be most advantageous to the local government to accept.”

All tenders were evaluated against the selection criteria by which each tender is assigned a score based on the tenderers capacity to meet the tender objectives.

The Contract will be awarded to a Tenderer who best demonstrates the ability to carry out the required service at a competitive price. The tendered prices were assessed via qualitative and compliance criteria to determine the most advantageous outcome to Council.

This means that, although price is considered, the Tender containing the lowest price will not necessarily be accepted, nor will the offer ranked the highest on the qualitative criteria.

Local Government Act 1995. Part 4 Division 2 section 20.

20. Variation of requirements before entry into contract

- (1) *If, after it has invited tenders for the supply of goods or services and chosen a successful tenderer but before it has entered into a contract for the supply of the goods or services required, the local government wishes to make a minor variation in the goods or services required, it may, without again inviting tenders, enter into a contract with the chosen tenderer for the supply of the varied requirement subject to such variations in the tender as may be agreed with the tenderer.*
- (2) *If—*
 - (a) *the chosen tenderer is unable or unwilling to enter into a contract to supply the varied requirement; or*
 - (b) *the local government and the chosen tenderer cannot agree on any other variation to be included in the contract as a result of the varied requirement,*

that tenderer ceases to be the chosen tenderer and the local government may, instead of again inviting tenders, choose the tenderer, if any, whose tender the local government considered it would be the next most advantageous to it to accept.

- (3) *In subregulation (1) —*
minor variation means a variation that the local government is satisfied is minor having regard to the total goods or services that tenderers were invited to supply.

POLICY IMPLICATIONS

Procurement accords with Shire Purchasing Policy 2.10, 15 November 2013.

FINANCIAL IMPLICATIONS

The project budget is \$2,750,000 Civil and \$100,000 Landscape. Changes to the specification and standards will need to occur to proceed with the project.

Both Centrals and Exmouth Civil did not include a set rate for the removal of rock throughout the development. JDSI attained a set rate from both contacts to remove rock in the service utility trenches. These rates are in Table 5, Item 4 within the attached tender assessment report.

The removal of rock associated with road and car park construction are extra costs at provisional rates. The associated cost would be in addition to the project budget of \$2,750,000. A project variation at 4% \$110,000 for provisional rates would be a reasonable estimation.

As a result of the changes to specifications and standards and subsequently the financial assistance agreement Council will be requested to authorise the Chief Executive Officer to request a variation to the key deliverables required by the financial assistance agreement to reflect the final tendered prices.

STRATEGIC IMPLICATIONS

Economic

Objective 1: To be a diverse and innovative economy with a range of local employment opportunities.

- Outcome 1.5: Maintain & Improve Shire Infrastructure

Environment

Objective 2: To have a balanced respect for our environment and heritage, both natural and built.

- Outcome 2.5: To make Exmouth an attractive town that is a comfortable and welcoming place to live and visit, and reflects the lifestyle values and unique natural environment

Social

Objective 3: To be a dynamic, passionate and safe community valuing natural and cultural heritage.

- Outcome 3.2: Excellent lifestyle, recreational and cultural facilities.

VOTING REQUIREMENTS

Absolute Majority

OFFICER'S RECOMMENDATION – 10.1.1

That the Council of the Shire of Exmouth:

- 1. Award Tender 07/2013 Exmouth Town Centre Revitalisation to Centrals and that prior to entering into contract, further negotiations with Centrals be undertaken to reduce the tendered rate down to the project budget of \$2,750,000. Should Centrals be unable or unwilling to enter into a contract to supply the varied requirement; or the Shire of Exmouth and Centrals not agree on any other variation to be included in the contract as a result of the varied requirement, that Centrals ceases to be the chosen tenderer.*
- 2. Subsequently, Tender 07/2013 Exmouth Town Centre Revitalisation is awarded to Exmouth Civil and that prior to entering into contract, further negotiations with Exmouth Civil be undertaken to reduce the tendered rate down to the project budget of \$2,750,000.*
- 3. Authorise the Chief Executive Officer to request a variation to the key deliverables required by the financial assistance agreement to reflect the final tendered prices.*

COUNCIL DECISION – 02-0114 – 10.1.1

Moved Councillor Todd, Seconded Councillor Thompson.

That the Council of the Shire of Exmouth:

- 1. Award Tender 07/2013 Exmouth Town Centre Revitalisation to Centrals and that prior to entering into contract, further negotiations with Centrals be undertaken to reduce the tendered rate down to the project budget of \$2,750,000. Should Centrals be unable or unwilling to enter into a contract to supply the varied requirement; or the Shire of Exmouth and Centrals not agree on any other variation to be included in the contract as a result of the varied requirement, that Centrals ceases to be the chosen tenderer.*
- 2. Subsequently, Tender 07/2013 Exmouth Town Centre Revitalisation is awarded to Exmouth Civil and that prior to entering into contract, further negotiations with Exmouth Civil be undertaken to reduce the tendered rate down to the project budget of \$2,750,000.*

3. *Authorise the Chief Executive Officer to request a variation to the key deliverables required by the financial assistance agreement to reflect the final tendered prices.*

CARRIED by ABSOLUTE MAJORITY 4/0

The Shire President re-entered the Chambers at 9:40am and resumed the chair.

11. ELECTED MEMBERS MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil

12. NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING

Nil

13. MATTERS TO BE CONSIDERED BEHIND CLOSED DOORS

Nil

14. CLOSURE OF MEETING

The Shire President declared the meeting closed at 9:40am.