



**Shire of Busselton**  
*Geographe Bay*

## **Special Council Agenda**

*1 April 2009*

ALL INFORMATION AVAILABLE IN VARIOUS FORMATS ON REQUEST

SHIRE OF BUSSELTON

AGENDA FOR THE SPECIAL COUNCIL MEETING TO BE HELD ON 1 APRIL 2009

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**SHIRE OF BUSSELTON**

**MEETING NOTICE AND AGENDA – 1 APRIL 2009**

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**TO: THE SHIRE PRESIDENT AND COUNCILLORS**

**NOTICE** is given that a Special Council Meeting will be held in the Council Chambers, Administration Building, Southern Drive, Busselton, on Wednesday, 1 April 2009, commencing at 3:30 pm.

Your attendance is respectfully requested.

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**MATTHEW SMITH  
(FOR) CHIEF EXECUTIVE OFFICER**

27 March 2009

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**A G E N D A**

1. **ATTENDANCE, APOLOGIES & LEAVE OF ABSENCE**

2. **PURPOSE OF THE MEETING**

To consider:

- \* Contract Award for RFT TEN 05/08 - Busselton Jetty Refurbishment;
- \* Jetty Structural Report

3. **PUBLIC QUESTION TIME**

**4. DECLARATION OF DUE CONSIDERATION**

The Presiding Member will request Councillors to acknowledge, in accordance with Clause 8.1 of the Standing Orders, that they have given due consideration to the matters contained within the Agenda.

**5. DECLARATIONS OF INTERESTS****6. PRESENTATIONS BY PARTIES WITH AN INTEREST****7. BUSINESS OF THE MEETING****7.1 CONTRACT AWARD FOR RFT TEN 05/08 - BUSSELTON JETTY REFURBISHMENT**

<b>FILE NO:</b>	TEN05/08
<b>ATTACHMENT(S):</b>	<ul style="list-style-type: none"><li>A. McLeods Barristers and Solicitors Legal Advice regarding "minor variations"</li><li>B. Palassis Architects, "Busselton Jetty Interpretation and Design Plan – Preliminary Advice" (March 2009)</li><li>C. Heritage Council of Western Australia briefing paper and recommendation</li><li>D. Recent correspondence relating to heritage interpretation and heritage approvals</li><li>E. Cost Estimates and Comments on Heritage Timber Decking and Interpretation Options</li><li>F. GHD report, "Busselton Jetty Structural Design Check – Design Wave/Water Levels and Structural Check" (March 2009)</li><li>G. Recent correspondence relating to the design wave issue</li><li>H. BJECA Correspondence relating to contribution towards rebuild.</li></ul>

**PRÉCIS**

The Council is requested to again consider the tenders received in response to the Request For Tender (RFT) TEN 05/08, the Busselton Jetty Refurbishment, that was previously referred to the special meeting of the Council on 19 February 2009, in the light of further information now provided about the "design wave" issue, heritage interpretation considerations and other relevant matters.

The awarding of this tender represents a major milestone for the community's aspiration of securing a sustainable future for this iconic asset. All approvals are now in place and Officers believe that the Shire will gain a rebuilt Jetty that delivers a good heritage and tourism outcome for the future. The funding which has been secured, and that which Officers consider likely to secure, means this project is being delivered to the community at a cost to the Shire of \$1.61 million.

## BACKGROUND

At its special meeting of 19 February 2009 the Council considered a confidential report regarding the tenders received for contract RFT TEN 05/08, the Busselton Jetty Refurbishment. At that time the Council resolved (C0902/042):

1. *That the Council decline to adopt the Officer's Recommendation at this stage.*
2. *That a Special Meeting of the Council, preceded by a two hour Briefing Session, be held after all of the issues contained in Officer Recommendations 3 and 4 are resolved.*

Note that the original officer recommendations 3 and 4 related to:

- \* the "design wave" issue,
- \* the confirmation of the Busselton Jetty Environment Conservation Association (BJECA) funding commitment and
- \* the resolution of paint warranty requirements.

The Council also resolved (C0902/043):

*That the CEO obtain legal advice on what constitutes a minor variation under the Local Government Regulations in respect to the design wave issue.*

This report presents additional information arising from further work and consultation undertaken since 19 February 2009 in relation to:

- i) legal advice on "minor variations";
- ii) the design wave issue
- iii) GHD's work and recommendations, and
- iv) further consultation with State government agencies on this issue;
- v) Marine & Civil's tender submission – further clarification and refinement of corresponding project contingencies;
- vi) Heritage listing of the Busselton Jetty on the State Register of Heritage Places, associated heritage interpretation proposals and implications; and
- vii) Contribution from BJECA towards the project.

Additional background information to each item above, beyond the information contained in this report, is available by reference to the previous 19 February 2009 report to the Council.

## CONSULTATION

### Design Wave Issue

GHD Engineers as part of its work of reviewing and advising the Shire on appropriate design wave heights has contacted the following persons aiming to validate theoretical extreme wave heights against historical anecdote:

- \* Mr. Kevin Kealley – Shire of Busselton, Jetty Maintenance Officer;
- \* Mr. Darryl Green – Executive Officer, Busselton Jetty Environment and Conservation Association (BJECA);
- \* A works supervisor from the company that undertook the Underwater Observatory (UWO) installation, who was on site extensively through 2003); and
- \* Mr Roy Morris – BJECA committee member and long-time resident.

GHD and Shire Officers have further consulted with representatives from the Department for Planning and Infrastructure (New Coastal Assets) (DPI\_NCA) in regard to appropriate design standards to be adopted and the issues arising from GHD's work. During this process DPI confirmed their expectation that the structure should withstand a 1-in-200 year design wave (Attachments G.4 and G.5).

### Heritage

An extensive amount of consultation has occurred with a range of stakeholders in respect to Heritage Listing of the Jetty on the State Register of Heritage Places and the implications of this occurring.

This consultation has included:

- i) On 26 February, the Shire convened a meeting in Busselton with stakeholders. Attendees included:

#### Heritage Council WA

- \* Henry Zelones, member of the Register Committee
- \* Stephen Carrick, Acting Director
- \* Annabel Wills, Acting Manager of Conservation and Referrals
- \* Clare Savage, Heritage Tourism Officer

#### Shire Councillors

- \* Cr Bethwyn Hastie
- \* Cr Ross Bromell
- \* Cr Don Hanran-Smith
- \* Cr Jackie Emery

- \* Cr Anne Ryan

#### Staff members

- \* Paul Martin, Manager Economic Development
- \* Lorna Secrett, Cultural Planning Officer
- \* Oliver Darby, Director Community Infrastructure
- \* Steve Disley, Project Manager Jetty Rebuild Project
- \* Marilyn Rulyancich, Economic Development Officer

#### Busselton Jetty Advisory Committee

- \* Darryl Green, committee member
- Trevor Fitzgerald, committee member
- \* Roy Morris, committee member
- \* Terry Alder, committee member

#### Busselton Foreshore Development Committee

- \* Helen Shervington, Chair
- \* Matt Walker, General Manager, Geographe Bay Tourism Association

- ii) Shire staff met Heritage Council representatives on 27 February and correspondence was sent from the Shire to the Heritage Council on 6 March (Attachment D.2).
- iii) The Heritage Council conducted a meeting of that Council in Busselton on 13 March, with the primary agenda item being consideration of development approvals which would allow the contract to be potentially awarded by the Shire.
- iv) Shire Officers most recently met with Heritage Council representatives in Mandurah on 20 March.

#### **BJECA commitment**

Further liaison has occurred with the Executive Officer of BJECA on the funding commitment from BJECA towards the project.

#### **Marine and Civil's Tender Clarifications and Contingencies**

Correspondence and negotiations have continued with Marine and Civil Construction Company Pty Ltd, to further clarify aspects of its tender submission for matters such as the extent of paint coatings on piles, paint warranty provisions and public access provisions.

As part of this work a three-way meeting/teleconference was held between Shire staff, Mr Darryl Green (Executive Officer of BJECA) and Marine and Civil representatives to review Marine and Civil Construction Company's proposed construction program in relation to likely disruption to access and operations of

the Underwater Observatory (UWO) in relation to an option in the tender offered by Marine and Civil to install a temporary walkway on weekends, at a cost of \$50,000, to mitigate loss of Saturday afternoon and Sunday access to the UWO.

More recently, consultations have continued with Marine and Civil to address the time and cost implications of contract work scope amendments likely to arise from design wave amendments and heritage interpretation proposals.

These negotiations have sought to resolve or otherwise refine project budget contingency provisions to a stage that is considered reasonable and sufficient to enable the award of the contract without a substantial financial risk remaining from unresolved matters.

## STATUTORY ENVIRONMENT

*Part 4 (Tenders) of the Local Government (Functions and General) Regulations 1996* applies in regard to the tendering process adopted for RFT TEN05/08 Busselton Jetty Refurbishment.

The provisions of sections 20 (1) & (3) of the regulations were previously advised to the special meeting of the Busselton Shire Council on 19 February 2009 to be of particular relevance to the "design wave" issue given that a substantive variation to the refurbishment design, the corresponding contract work scope and the tender price might be required in consequence of the design wave issue. The Council at that time resolved (C0902/043):

*That the CEO obtain legal advice on what constitutes a minor variation under the Local Government Regulations in respect to the design wave issue.*

Legal advice has subsequently been obtained from McLeods Barristers and Solicitors and is provided at Attachment A. McLeods conclude that,

*In my view, for the reasons set out –*

- (a) it is for the Council itself to determine whether any additional works required under Tender RFT 05/08, as a result of the anticipated design amendment, amount to a 'minor variation';*
- (b) that determination involves a comparison between –*
  - (i) the scope and scale of the works that were the subject of the tender documents and the tenders (that is, without the variation); and*
  - (ii) the scope and scale of those works with the variation included;*
- (c) as long as the variation is reasonably capable of being classified as 'minor' the Council's decision will not be open to legal challenge; and*

*(d) as a rule of thumb, it would be open to the Council to determine that a variation of up to 10% (between the components referred to in paragraph (b) above) would be a 'minor variation' for these purposes.*

In relation to point (d), McLeods also commented that,

*"A variation that resulted in a greater increase might also reasonably be classified as minor but the risk of a successful challenge would increase accordingly".*

McLeods' advice validates the previous officer advice provided to the 19 February 2009 meeting of the Council regarding the extent to which the Council might vary the tendered price and work scope prior to finally awarding a contract.

This "minor variation" advice is equally relevant to other substantive variations that are now proposed in relation to heritage decking and heritage interpretation proposals as discussed later in this report.

#### *Heritage of Western Australia Act 1990*

There are a number of statutory issues associated with the potential listing of the Jetty on the State Register of Heritage Places including:

- \* The Grant Agreement between the South West Development Commission and the Shire requires the Shire to secure all relevant approvals (including heritage). The South West Development Commission has indicated (see Attachment D.5) that this condition only relates to Statutory approvals required. If the Jetty is not listed on the State Register of Heritage Places no Heritage Approval is required.
- \* The Heritage Council of WA was not able to give development approval until such time as the Busselton Jetty is listed on the State Register of Heritage Places;
- \* Under its legislative framework, the Heritage Council could not impose or agree to a specific dollar value as a condition for approval, in relation to the \$250,000 limit specified in part (a) of Busselton Shire Council resolution CO811/341.
- \* Legal advice has been obtained (Attached at appendix D.6) which indicates the Minister for Heritage can impose a Conservation Order and a Stop Work order on projects whether they are listed on the State Register of Heritage Places or not.

The implications of these statutory issues are further discussed in the Officer Comment section of this report.

## POLICY IMPLICATIONS

The following Council Policies are relevant to the Busselton Jetty refurbishment proposals and the Officer Recommendations contained in this report:

### *Policy 239 – Purchasing:*

The procurement process for the Busselton Jetty Refurbishment contract (RFT TEN 05/08) complies with this policy.

### *Percent for Art Policy (2007) (Local Planning Policy):*

Details of the relevance of the Percent for Art Policy to this Busselton Jetty Refurbishment Project were provided in the earlier report to the 19 February 2009 special meeting of the Council.

## FINANCIAL IMPLICATIONS

All figures quoted in this section exclude GST unless otherwise noted.

### **Whole of Project Cost Estimate:**

The “whole of project” cost estimate of \$27.1M that was previously provided to the 19 February 2009 special meeting of the Council and the corresponding funding proposals are now updated in the following table:

### **Whole of Project Cost Estimate and Funding:**

Project Expense/ Funding Source	Whole Project Budget (\$M)	Anticipated Cash Flow of Project Costs		
		FY 08/09 Est. (\$M)	FY 09/10 Est. (\$M)	FY 10/11 Est. (\$M) (note 7)
<b>Expense:</b>				
RFT TEN 04/08 Timber Piles Supply (as previously varied)	0.46	0.46	0.00	0.00
RFT TEN 04/08 Timber Piles Supply: Contingency to supply 20 piles for sect.3	0.05 (note 1)	0.00	0.05	0.00
RFT TEN 05/08 Jetty Refurbishment (Marine & Civil tendered Price)	23.75	7.00	16.69	0.06
RFT TEN 05/08 – potential or likely contract variations:	(note 2)			
<u>Miscellaneous Contingencies:</u>				
1. Gantry crane (+ \$67,483)				
2. Steel piles surface treat (+ \$100,000)				
3. Temporary Walkway (+ \$50,000)	0.48	0.23	0.25	0.00
4. Not return all P.S. trusses (-\$90,000)				
5. M&C Delayed Award Claim (+ \$347,244)				
<u>Design Wave Amendments:</u>	0.20	0.00	0.20	0.00

Project Expense/ Funding Source	Whole Project Budget (\$M)	Anticipated Cash Flow of Project Costs		
		FY 08/09 Est. (\$M)	FY 09/10 Est. (\$M)	FY 10/11 Est. (\$M) (note 7)
6. Sections 7 & 10 stringer lateral bracing (+ \$200,000)				
<u>Heritage Timber Decking and Interpretation Contingencies (Palassis Amended Option 2):</u>				
7. Sect. 3 revert to timber piles (-\$51,096)	1.26	0.35	0.91	0.00
8. Sect. 1 deck, 100mx4.6m&4m (+ \$402,272)				
9. Sect. 7 deck, 50mx8m = (+ \$387,000)				
10. Skeleton Jetty Nodes (+ \$526,000)				
<u>Offset/ deduct: existing allowances already in the \$23.75M tender price for RFT TEN 05/08:</u>				
11. Delete Platform 2B (-\$78,000); and	-0.33	-0.25	-0.08	0.00
12. Deduct current heritage timber decking provisional sum (-\$250,000)				
Allowance for Percent for Art Policy and Other Heritage Interpretation	0.26 (note 3)	0.00	0.26	0.00
Allowance for Communications Strategy	0.03 (note 4)	0.01	0.02	0.00
Project Overheads	0.95 (note 5)	0.58	0.37	0.00
<b>Subtotal Project Expense</b>	<b>27.11</b>	<b>8.38</b>	<b>18.67</b>	<b>0.06</b>
General Contingency for supplementary works	nil (note 6)	nil	Nil	nil
<b>Whole of Project Expense</b>	<b>27.11</b>	<b>8.38</b>	<b>18.67</b>	<b>0.06</b>
<b>Proposed Funding:</b>				
State Government	24.0	8.38	15.62	0.0
BJECA	1.0	0.0	1.0	0.0
Federal Heritage Funding (note 8)	0.5	0.0	0.5	0.0
<b>Total External Funding</b>	<b>25.5</b>	<b>8.38</b>	<b>17.12</b>	<b>0.0</b>
<b>Nett Cost to the Shire of Busselton</b>	<b>1.61</b>	<b>0.00</b>	<b>1.55</b>	<b>0.06</b>

## Notes:

- 1) This contingent amount allows further variation to the pile supply contract RFT TEN 04/08 for a change from steel piles to timber piles for jetty section 3 as sought by the Heritage Council of WA. The estimated variation cost is \$47,700 based on the original rates tendered for RFT TEN 04/08;
- 2) RFT TEN 05/08 potential or likely contract variations include miscellaneous contingencies, design wave amendments, heritage timber decking contingency items and related offset /deduct items numbered 1 to 12 in the table above (totalling \$0.48M + \$0.20M + \$1.26M - \$0.33M = +\$1.61M). All 12 items are further detailed in the Officer Comment. The

\$1.26M heritage decking allowance represents a \$0.93M nett increase to the project budget after offsetting the existing amounts (items 11 & 12) already included within the \$23.75M Jetty Refurbishment contract tender price.

- 3) The "Percent for Art Policy (and Heritage Interpretation)" amount of \$260,000 is reintroduced for reconsideration by the Council at this time, as discussed further in the Officer comment.
- 4) A nominal budget allocation of \$30,000 is introduced for the communications strategy as previously proposed to the 19 February 2009 special meeting of the Council. This amount is proposed to add to a \$25,000 BJECA contribution to yield a nominal communications strategy budget of \$55,000 pending receipt of quotations for providing and implementing the strategy. The \$25,000 BJECA amount does not appear in the whole of project cost estimate table above and is considered additional to the \$1,000,000 BJECA funding commitment that appears in the table; and
- 5) Project overheads have been increased a further \$30,000 from the \$0.92M reported on 19 February 2009 to account for additional wave modelling and design verification work referred at Attachments G.4 and G.5.
- 6) A "general contingency allowance of \$1.36M was previously included in the draft project budget reported to the 22 February 2009 special meeting of the Council, to be applied initially to resolve the "design wave" issue with the intent that any balance remaining thereafter be then applied towards supplementary works such as Swim Jetties, Boating Facilities and other "supplementary facilities" as are detailed further in the Officer Comment. The previous \$1.36M amount was arbitrary, based on maintaining the "Whole of Project Cost" estimate at the \$27.1M amount previously reported to the 12 November 2008 special meeting of the Council. That contingency is now reduced to nil on the same principle. Consequently, the provision of supplementary or enhancement works that are not already in the scope of the current contract for the jetty refurbishment, as further detailed under "Supplementary Works Proposals" in the Officer Comment would need to be funded by a separate grant or extra funding from the Shire's own resources, additional to the nett \$1.61M Shire contribution indicated in the table.
- 7) A small fraction of previously identified year two (financial year FY09/10) costs are now more accurately identified and separated as occurring in the third financial year (FY10/11).
- 8) The project funding now assumes a successful Federal heritage funding grant of \$0.5M as further detailed in the officer comment. This inclusion directly reduces the "nett cost to the Shire of Busselton" to \$1.61M as listed in the table, from the \$2.1M amount previously reported to the 22 February special meeting of the Council.

**BJECA Funding Contribution:**

BJECA was provided with a recent breakdown of the project costs (an earlier draft of the preceding table) together with additional information in respect to project management costs and other matters.

BJECA provided correspondence (Attachment H) indicating its agreement to provide \$1.6 million towards the rebuild as previously committed. This \$1.6 million comprises the following:

Materials provided in-kind (rail, trusses, decking)	\$350,000
Cash expended since 2004/2005	\$250,000
Cash contribution towards rebuild	\$1,000,000

This contribution comes with some conditions as outlined in the correspondence; however officers do not consider these matters to be significant. The timing of these funds would be in accordance with the table outlined above.

This figure has been determined based upon previous discussions with BJECA and Shire Officers and is considered a reasonable amount which provides BJECA with sufficient funds in reserve.

**2008/2009 Budget Amendments**

With the tender price now known Officers consider it appropriate for the Council to consider amending the 2008/2009 budget in respect to the Jetty Refurbishment. The following table outlines the current and proposed (amended) FY08/09 budget amounts in line with the table outlined earlier in the financial implications section of this report.

COA – Description	Current FY08/09 Budget \$	Proposed FY08/09 (as amended) \$
M844 Busselton Jetty Refurbishment	12,000,000	8,380,000
Loan Proceeds Busselton Jetty	11,000,000	Nil
State Government Grant	6,000,000	8,380,000
Contribution Busselton Jetty Committee	1,600,000	Nil

The subsequent 2009/2010 and 2010/11 budgets would also be reflective of the funding summary outlined in the table earlier. In determining the future annual budgets the Council will decide if its contribution towards the rebuild will be funded by municipal funds or borrowings.

## STRATEGIC IMPLICATIONS

This proposal is considered relevant to the Shire's Strategic Plan 2006 - 2011:

- 1. Strategic Focus:** **Built and Physical (Infrastructure) Well Being:**

Strategic Objective: To develop and maintain the Shire's assets and built environment to maximise public benefit now and into the future.

Strategic Initiative: Ensure community assets are effectively managed and maintained to capture both short term requirements and whole of life costs.
- 2. Strategic Focus:** **Business and Economic Well Being:**

Strategic Objective: To promote the Shire of Busselton as the preferred destination within Western Australia for visitors seeking to experience food and wine, recreation, culture, heritage and nature based attractions.

Strategic Initiative: Support and seek state integrated initiatives that assist in promoting tourism.
- 3. Strategic Focus:** **Community and Social Wellbeing:**

Strategic Objective: Foster vibrant cultural activities that celebrate diversity and a sense of community.

Strategic Initiative: Build and recognise the value of our cultural heritage.

## OFFICER COMMENT

### RFT TEN 05/08 – Miscellaneous Contingencies

A number of contingency items and amounts were detailed in the previous report to the special meeting of the Council held on 19 February 2009. Since that time further clarifications and refinements have been sought in relation to these contingencies as detailed under each subheading below. Note that item numbers and amounts where listed in some headings relate to item numbers and amounts listed in the whole of project budget provided in the Financial Implications section.

### Paint Products Selection:

A contingency of \$75,000 was included in the proposed project budget previously reported to the Council on 19 February 2009 in relation to paint products selection. This matter has since been satisfactorily resolved via negotiation and correspondence with Marine and Civil such that a suitable regime of conforming steelwork paint product selections intended for use on the project has now been

mostly determined with no cost variation appearing likely. The previous \$75,000 allowance is reduced to nil and this item is now removed from the miscellaneous contingencies list.

**Paint Warranty Provisions:**

A separate paint issue (warranty provisions) was reported to the Council meeting of 19 February 2009 regarding the ability of Marine and Civil Construction Company and its paint product suppliers to provide fundamentally conforming paint coating warranties in accordance with the specified requirements. This matter is not considered to have any bearing on the project budget, rather it is a contractual matter that needs to be further resolved and clarified prior to award of the contract. The matter has been significantly progressed since 22 February and it is expected this matter will be fully resolved to the point where a contract can be accepted on or about Thursday 2 April in accordance with the officer recommendations in this report.

**Item 1 - Gantry Crane Allowance (+ \$67,483):**

As previously advised to the 19 February 2009 meeting of the Council, the "gantry crane" matter relates to Marine and Civil's tendered method of constructing new jetty sections 1 and 2 using a gantry crane supported on top of new section 1 and 2 timber piles just driven. Depending on further structural engineering checks a modification to Marine and Civil's gantry crane may be required at an already negotiated cost of \$67,483. The more likely outcome of the structural assessment is that the new piles will have adequate strength to support all gantry crane loads and no modification or cost variation will be required in relation to the gantry crane.

The final need for the modification will only be known upon further structural assessment work undertaken by both the Shire of Busselton and Marine and Civil. The additional structural assessment work cannot be reasonably required from Marine and Civil prior to award of a contract. Consequently there has been no further progression of this issue since 19 February 2009 and it is proposed that a contingency of \$67,483 remain in the project budget at this time in relation to "possible gantry crane modifications".

**Item 2 – Steel Piles Surface Treatment (Pile Painting and Cathodic Protection (CP)) (+ \$100,000)**

As previously advised to the 19 February 2009 meeting of the Council, this matter relates to Marine and Civil's reasonable assumption as the basis of its tender that sections of steel pile buried beneath the seabed need not be paint-coated for corrosion protection, as is common industry practice when steel pile driving.

However, the Shire is likely to ultimately require additional coating beyond that assumed by Marine and Civil, or a compensatory upgrade to the cathodic protection system or a combination of both. It has already been determined that a variation of the order of \$50,000 to \$100,000 to Marine and Civil's tendered price will most likely be required in relation to this issue. A basis for calculating the variation amount has been established. All that remains to clarify the additional cost is to resolve the final optimum extent of paint coatings and cathodic protection sacrificial anode sizes and locations required. This design work is to be done by the Shire's corrosion consultants, Corrotek/SVT. The work has not been progressed in recent weeks due to uncertainty that the steel pile sizes, numbers or layouts might vary as a consequence of "design wave" amendments and unresolved heritage timber interpretation issues, rendering any additional design work by Corrotek/SVT redundant and needing to be repeated. Note that the proposal to revert from steel piles to timber piles for jetty section 3 as discussed elsewhere in this report has direct bearing on the further work ultimately required from SVT consultants.

There remains adequate time for Corrotek/SVT to revise the pile coating coverage and CP provisions once there is absolute confidence of the steel pile design after resolution of all design wave amendments and heritage interpretation provisions. Therefore, it is recommended that the project budget retain a nominal \$100,000 contingency in relation to this item for the time being.

### **Item 3 - Temporary Walkway (+ \$50,000)**

Marine and Civil as part of its tender submission presented an option to provide a temporary walkway to mitigate loss of access to the Underwater Observatory during the contract period. The proposal has been progressed through further consultation with Mr Darryl Green, Executive Officer of BJECA, as referred in the consultation section of this report.

Having considered all of the implications of Marine and Civil's walkway proposal, BJECA wrote to the Shire on 10 March as follows:

*"Further to our meeting yesterday regarding the provision of temporary access to the UWO during construction.*

*Marine & Civil advised that the expenditure of \$50k would provide access to the UWO, that would not otherwise be provided, from late Saturday to Monday morning during May, September and October only. It would therefore be possible to open the UWO a maximum of 13 additional days but more likely only 7-10 days due to poor weather and poor visibility in May and September.*

*Given this scenario, I think, at best, BJECA would receive an additional \$50k revenue and therefore recommend the Shire not proceed with Marine & Civil's proposal.*

*I have also spoken to Kevin Kealley regarding other benefits that would be provided by providing the temporary access. We are both of the view that any additional benefits (other than financial) still do not justify the \$50k cost.*

*I think though that if advice is given to Marine & Civil that temporary access will not be required, it should be given on a "without prejudice" basis so that we can reserve the right to ask them to construct the platform at the quoted price, should we choose to at any time during the construction process. If construction is delayed, the timing of the additional access may be lengthened or transferred to peak summer months which will affect the financial viability of the proposal."*

In view of the final paragraph of BJECA's advice it is recommended that the project budget retain a \$50,000 contingency for "temporary walkway" notwithstanding that the contingency is unlikely to be used or incurred.

**Item 4 - Contractor Not Returning all Principal Supplied Trusses Fully Repaired. (- \$90,000)**

As previously advised to the 19 February 2009 meeting of the Council, Marine and Civil based its tender on utilising the Principal Supplied steel trusses to fabricate temporary works and allowed in their conforming tender price to return these to their original and refurbished condition at the end of the project. Marine and Civil therefore offered an alternative \$90,000 credit to avoid the obligation to return 10 trusses (the Principal would still be left with 42 spare trusses) at the end of the project.

It is recommended that the Shire accept the offer for the \$90,000 credit. This contingency is a negative amount that serves to offset the cost of the other positive contingencies and is worth accepting in any event.

**Item 5 – Marine & Civil Delayed Award Claim (+ \$347,244)**

Delays in awarding the contract for RFT TEN 05/08 Busselton Jetty Refurbishment in consequence of the protracted time required to further resolve the design wave issue, the heritage listing and related heritage timber decking and interpretation proposals has lead to the submission of a claim from Marine and Civil Construction Company Pty Ltd (the tender evaluation panels preferred tenderer), very recently on 26 March to vary its tendered price by + \$347,244 in relation to the delayed award. An extract from Marine and Civil's claim follows:

*"As per your explicit instructions Tender Addendum One, Marine and Civil based our program and risk profile calculations on an award of the contract 2 weeks following tender submissions, or an award date of 4 February 2009. Based on your comments..., award is not (sic) anticipated to be 2 April 2009, a two month delay. We attach a revised program based on the new date for award. The cost effects of this delay include, but are not limited to:*

- \* Christmas Shutdown - Our tender program showed completion of major works before the Christmas break with only furnishing works on Jetty Section Ten required to be completed in January. On this basis, no allowance was made for the two week standby period as the assumption was that demobilisation would occur before the Break. The revised award date results in a need to keep full project resourcing through to February hence additional costs over Christmas will be incurred. We estimate the value of these costs to be in the order of \$112,500.
- \* Revised Seastate Risk Assessment - As mentioned in earlier correspondence, Marine and Civil have allowed for 40 days of delay due to seastate within our tender submission. This was a calculation based on available meteorological data in the period of March to December. Key to seastate risk mitigation was the completion of a significant portion of marine works (predominantly piling works) before the winter storms which would allow productive works to continue without the need to rely on floating plant. Given the revised project period of May to February and the fact works will be commencing with the start of winter, a significant change to the project seastate risk profile has resulted. Marine and Civil estimate that this risk equates to a 7 day delay to completion of the works for which we would an extension of time with recovery of costs to the value of \$29,468 per day (full operational delay costs) or \$206,276.
- \* Public Events and Activities - Once a project timeframe was established, Marine and Civil made due allowance for Jetty related sporting events which would fall into the project period, ensuring that Barges are cleared of the jetty area and placed on moorings for the event. The revised project period would see both barges instead of only one at the jetty for the December 2009 Busselton Ironman event and one barge in attendance during the February 2010 Busselton Jetty Swim event. We estimate the nett affect of these activities will be a single day of lost time for which we would seek an extension of time and recovery of the above mentioned \$29,468 cost.

*In summary, Marine and Civil believe the revised project period will result in an additional cost to the Shire of \$347,244.*

*Please feel free to call should you wish to discuss*

The following initial advice is comment provided in relation to this claim:

The conditions of tendering for RFT TEN 05/08 nominated a tender validity period of 90 days from the deadline for close of tenders. Tenders closed on 22 January 2009; therefore the tender validity period expires on 22 April 2009. The requirement is that all tenders will remain valid and open for acceptance until this 22 April deadline, unless extended on mutual agreement between the Principal and the Tenderer in writing. A delay in contract award beyond the validity period

could often lead to a claim from a tenderer to increase its tendered price to reflect inflationary or delay costs arising in consequence of late award.

A request to vary a tendered price within the tender validity period would not normally be expected or entertained. However, in this case the basis (although possibly not the quantum) of Marine and Civil's claim has merit.

Time has always been of the essence for this proposed contract given the very seasonal nature of barge based works relative to seastate conditions. Tenderers were requested via tender addendum 1 issued on 9 December 2008 to submit a preliminary construction program based on an anticipated contract award date two weeks after close of tenders, being 5 February 2009. This was essential to obtain comparable and meaningful construction programs from all tenderers. A Tenderer could have been expected to accommodate some relatively minor delays to that award date however the current delay to contract award is now significant relative to the approaching winter such as to warrant a complete reassessment of Marine and Civil's proposed construction schedule, as would be also required for any of the three other tenderers.

The full cost implications of Marine and Civil's delay claim will take some time to assess in detail with further discussion and correspondence required with Marine and Civil. It is proposed that the resolution of this claim should not excessively delay the award of the contract. To do so would only compound the basis of the current claim. Therefore it is recommended that the Council resolve that the tender from Marine and Civil Construction Company Pty Ltd be accepted subject to the claim for delayed contract award being first negotiated and agreed in an amount to the satisfaction of the CEO that is within the upper limit of \$344,244 claimed by Marine and Civil. A contingency of this amount has therefore been included in the whole of project cost estimate.

#### **Item 5 - Design Wave Amendments (+ \$200,000)**

GHD Engineers has completed its review of the "design waves" indicated in the Worley Parsons Engineers' 16 February 2009 report, "Busselton Jetty – Design Waves and Water Levels" and has mostly completed its further review of the structural design of the jetty refurbishment developed by BG&E Engineers (refer to GHD's interim report at Attachment F).

At the previous 22 February 2009 Council meeting the financial implications of the design wave issue were largely unknown. Major design changes and a corresponding major variation to the Busselton Jetty Refurbishment contract value were seen as possible outcomes pending further design checks.

The further checks are now mostly completed to the point where it now appears likely that only "minor" design changes will be required; "minor" in the context of contract percentage value and interpretation of the Local Government Tendering Regulations. It is proposed that the project budget at this time include a reasonable and realistic contingency amount of + \$200,000 to implement "design wave amendments" as identified in the following discussion.

A synopsis of GHD's work and matters arising from that work follows:

#### Modelled Wave Heights

GHD has analysed and interpreted DPI wave data in Geographe Bay and developed statistical arguments to justify a reduced theoretical design wave Hmax/Hs ratio (of 1.55), a lesser value than was previously adopted in the Worley Parsons Engineers Report, "Busselton Jetty – Design Waves and Water Levels (February 2009).

GHD has applied this reduced Hmax/Hs parameter to the standard wave heights previously determined in the Worley Parsons model to establish lower theoretical design wave levels shown of Figure 8 of Attachment F. These lower wave heights can be compared to the previous levels suggested by Worley Parsons on Figure 2 of Attachment F. The lower "GHD levels" appear more realistic against historical anecdotes of jetty deck inundation frequency for lower recurrence interval waves in the range of 1-in-1 year waves to 1-in 20 year waves (refer also to Table 8 in Attachment F).

#### GHD Structural Assessment (GHD 1-in-100 year wave)

GHD advised that the "GHD 1-in-100 year wave" heights shown on Figure 8 would be a reasonable design basis to verify the structural adequacy of Busselton Jetty. (Note also that the original design brief issued to BG&E Engineers requested a 1-in-100 year wave as the basis for design).

GHD were directed to check the structure against this "GHD 1-in-100 year wave". GHD found that the structure as designed by BG&E performed adequately and required no upgrade or strengthening to survive this wave, despite BG&E having adopted a smaller design wave.

#### GHD Structural Assessment (Worley 1-in-100 year wave)

Consultation between GHD and DPI-NCA identified that DPI were not convinced of GHD's arguments to support a lower design wave height. DPI also clarified its opinion of the 1-in-200 year event being the appropriate interpretation of AS4997-2000 (Table 2 in Attachment F) in relation to which DPI was prepared to accept analysis of the conservative 1-in-100 year Worley wave level as an acceptable indication if the structure is shown to have adequate capacity for that design wave load, given that the wave heights determined by Worley (Figure 2 in Attachment F) were generally accepted by all parties (Worley, GHD & DPI) to be conservatively high (refer to correspondence at Attachments G.4 to G.6).

The additional prescriptive verification requirements from DPI in attachment G.5 appeared to be inconsistent with the approval that had been previously given and confirmed by DPI (refer to attachments G.1 and G.3) in which DPI confirmed that,

*"The DPI approval under the Jetties License remains valid. It puts the liability for the adequacy of the jetty design on the Shire".*

Upon objection by Shire Officers to the inconsistency, the South West Development Commission issued the correspondence at Attachment G.6 that clarified the Shire's obligation to re-obtain the approval required under the Jetty License Agreement and the grant agreement with the State Government.

GHD were directed to re-check the structure against this larger "Worley 1-in-100 year wave".

It is noteworthy that the Worley 1-in-100 year wave height is markedly higher than the GHD 1-in-100 year wave height more so towards the end of the jetty. For example, the GHD 1-in-100 year wave height at section 10 exceeds the deck level by 0.84 metres whilst the Worley 1-in-100 year wave height exceeds the section 10 deck level by 2.1 metres. It is doubtful the superstructure of the Underwater Observatory (UWO) would survive waves of these heights under either design event.

GHD found that the jetty structure as designed by BG&E performs adequately for the Worley 1-in-100 year wave and required no upgrade or strengthening to survive this wave, **except** that:

- a) Precast concrete deck planks from jetty sections 7 (widening) and 10 would most likely detach from the steel stringer beams, to end up on the seabed. This is likely to occur for:
  - i) new 200mm thick concrete planks currently designed for section 10;
  - ii) existing (spare) 125mm thick planks proposed to be installed on the section 7 deck widening;
  - iii) new 200mm thick deck planks, if installed on section 7 deck widening in lieu of the 125mm thick planks referred at note ii); and
- b) Stringer beams on sections 7 (widening) and 10 would fail due to inadequate lateral restraint when the precast concrete deck planks have detached.

#### Cost Implications of Under-Capacity Members

Upon considering the respective problems identified at notes a) and b) above Shire Officers and GHD agreed that:

- a) It is not unreasonable for section 7 and 10 deck panels to detach for such an extreme event as the Worley 1-in-100 year (conservative)

wave recognising that the deck panels survive the GHD 1-in-100 year wave. No upgrade or strengthening is proposed; and

- b) Steel cross bracing is proposed between stringer beams for the section 7 deck widening and section 10.

In regard to the additional steelwork proposed for item (b) an initial concept has been jointly developed in discussion between GHD, Shire Officers and Marine and Civil representatives which based on a nominal allowance of \$10,000 per tonne to supply, fabricate, coat and install this steelwork suggests indicative upgrade costs of:

- \* \$45,000 for section 7 widening; and
- \* \$50,000 for section 10.

Given the very coarse estimate at this point in time, it is considered reasonable to adopt a \$200,000 contingency within the project budget which, based on the work completed by GHD, is considered sufficient to fully resolve the "design wave issue" to the point where DPI-NCA should be prepared to reaffirm its previous approval issued pursuant to the current jetty license (refer to Appendix G.6), enabling the contract to be awarded.

#### Further clarifications:

In the limited time available, GHD's verification work has focused on assessing all new jetty sections including section 1 (widening), 2, 3, 5, 7 widening and 10. The following jetty sections and members have not been checked to date on the basis

- \* Existing sections 1, 4, 6, 7, 9 and existing lower level platforms that include the existing section 2 swimming/fishing platform and Allies Landing on section 6. These sections are scheduled for repair works only as part of the proposed refurbishment. Given that they already exist, if an upgrade is warranted to contemporary standards it should be undertaken in future when the sections or members are due for capital replacement;
- \* Proposed additional low level swimming platforms 5A & 5B. These are considered minor in the context of the overall project and can be further checked as time permits and any upgrade deemed necessary could be most likely completed within the \$200,000 contingency proposed above.

#### **Heritage Timber Decking and Interpretation**

Deferral of consideration of the tender award, to allow further resolution of all design and contingency issues, provided an opportunity to finalise the conditions of development approval from the Heritage Council and to reach agreement on the extent of the curtilage area with respect to the proposed interim listing. This has been an invaluable exercise as it has identified and resolved some major issues

through an extensive amount of negotiation between the Shire and Heritage Council.

Shire staff have approached these negotiations with three objectives being:

- \* a timely award of the tender;
- \* a good long term heritage outcome; and
- \* financial considerations of the Shire

The South West Development Commission was advised in April 2007 that the Heritage Council supported the scope and materials of the Jetty Rebuild as the Council had resolved, subject to inclusion of an appropriate amount of timber decking. Detailed discussions between Shire staff and the Heritage Council since October 2008 have supported this position as they have centred on the extent and location of timber decking.

Previous background on the issues of interim listing of the Busselton Jetty on the State Register of Heritage Places and associated development approval has been provided to the 19 February 2009 Special Meeting of the Council.

The Special Meeting of the Council held on 12 November 2008 resolved (C0811/341):

*That the Council support the interim listing of the Busselton Jetty on the State Heritage Register, subject to:*

- (a) Heritage Council approval of the structural concept and general materials schedule as proposed in the existing plans for the Jetty refurbishment and subject to the costs of heritage interpretation works not exceeding \$250,000; and*
- (b) amendment of the 'Description of Place Included in this Entry' in 'Documentation of Places for Entry in the Register of Heritage Places' to include only the actual jetty structure and land on which it is located, acknowledging that the listing of the curtilage area can be considered once plans for the foreshore development are further developed.*

This Resolution created an impasse for resolution of the heritage approval and therefore the award of contract in accordance with the Grant Agreement, as outlined in the Statutory Implications section of the report.

To resolve this impasse, the Shire agreed to support the interim listing of the Jetty without condition (a), whilst reserving the right to negotiate the final extent and cost of timber decking. The Heritage Council agreed to the Council's condition regarding the reduced curtilage area, as specified in (b). This decision was based on the goodwill which had built up during negotiations and the premise that Heritage Council staff understood the need for the contract to be awarded and for

immediate works to be undertaken. A copy of this letter is attached at Attachment D.2.

To facilitate achievement of the tender award and a good long term heritage outcome, Shire officers suggested that the Heritage Council conduct a meeting in Busselton on 13 March, with the primary agenda item being consideration of development approvals which would allow the contract to be potentially awarded by the Shire. The Heritage Council supported this suggestion and arrangements were made.

On 9 March Shire staff received preliminary advice and recommendations from the Shire's independent heritage interpretation consultant, Palassis Architects, proposing three options for the extent and location of the timber decking (Attachment B), referred hereafter as Palassis Options 1, 2 & 3. The financial and other implications of Palassis Options 1, 2 & 3 are discussed further in Attachment E.

On 10 March, Shire staff forwarded the Palassis report to Heritage Council staff for review and subsequent discussion of the options in advance of the Heritage Council meeting on 13 March.

On 11 March a teleconference was held between staff members of the Shire of Busselton and the Heritage Council of WA to discuss the options proffered by Palassis Architects.

In the course of these discussions, Shire staff were informed that a separate briefing paper and recommendation (Attachment C) had been prepared on behalf of the Heritage Council and forwarded to Heritage Councillors in advance of the meeting on 13 March. The briefing paper recommended a fourth heritage interpretation option that differed from all three of the Palassis Architects options. The financial and other implications of this fourth option, referred hereafter as the Heritage Council Option are also detailed in Attachment E.

Shire staff attended the Heritage Council meeting on 13 March, and delivered a presentation on a heritage interpretation approach that was based on Palassis Option 2, being selected by Shire staff as the preferred option of the four options presented, notwithstanding that none of the options had yet been considered by the Busselton Shire Council and ultimately might not be supported by the Council. The presentation was immediately preceded by a site visit to the Busselton Jetty and a briefing on project proposals by Shire staff.

The subsequent Heritage Council resolution, confirmed in writing later that same day, 13 March is contained at Attachment D.3.

From this resolution two main points of difference emerged, being:

- a. the alignment of the rebuilt skeleton jetty
- b. use of timber piles in section 3 as opposed to the use of steel piles as contained in the Council's tender.

It was considered by Shire staff that these elements of the Heritage Council's conditions constituted a major change and significant risks to the project work scope and budget and that it would not be responsible to act on the Heritage Council resolution without a significant redesign and examination of project parameters. This had the potential to significantly delay the tender award and substantially increase the project cost to the Shire.

As a result, Shire staff sought advice on the status of the Heritage Council resolution with regard to the State Government Grant Agreement. Advice was provided by Mr Don Punch of SWDC (Attachment D.5) which stated in part that,

*"I understand the Busselton Jetty is not currently listed on the heritage register and as such any comment by the Heritage Council could be regarded as advice. The Shire should make its own determination in respect of approvals to be obtained but unless there is a statutory requirement and the shire has failed to obtain such approval then I would expect that claims on the agreement made by the shire for payment will be met."*

Based upon this advice, correspondence was sent to the Minister for Local Government, Heritage, Citizenship and Multicultural Interests withdrawing the Shire's previously given support for the heritage listing of the Jetty (Attachment D.4).

The Heritage Council subsequently contacted Shire Officers and expressed their extreme disappointment with the withdrawal of support for the listing and confirmed they would be asking the Minister to list the Jetty in an effort to impose their conditions.

Legal advice was obtained from McLeods Barristers and Solicitors in respect to awarding the tender with a specification different to the Heritage Council's. A copy of this advice is attached at Attachment D.6.

Recognising the potential risk to the organisation resulting from inconsistency between the Shire's agreed scope of works and the Heritage Council's recommendations both parties agreed to meet and determine if an agreed position could be reached.

Officers prepared a summary of the issues associated with the Heritage Council recommendations which formed the basis for discussion at a meeting in Mandurah on 20 March. Staff presented the view that the Shire's preferred interpretation option, as had been presented to Heritage Councillors and staff, adequately addressed the heritage principles contained in the Heritage Council option and allowed the tender to be awarded without delay.

The negotiations resulted in:

- a. agreement from the Heritage Council on the Shire preferred alignment and interpretation of the skeleton jetty as outlined in Palassis Option 2 (Amended).

- b. an agreed timeline which would allow the Heritage Council to convince DPI to approve the use of timber piles for Section 3 without causing delay to the awarding of the contract

Advice has been received from DPI (Attachment D.8) which provides the Council with the flexibility to choose either timber or steel piles for Section 3 notwithstanding that DPI continue to recommend against the use of timber piles for section 3.

The other factor which was considered by staff was the impact on the contractor's timing. The Shire's timber pile supplier has advised that, if 20 additional timber piles now required for section 3 are ordered when the Council awards the main refurbishment contract, then delivery is expected within 10 – 12 weeks. Marine and Civil has advised that, if the timber piles for section 3 are delivered in 3 months, this will delay the commencement of section 3 works by one month, but this delay can be accommodated without overall delay to the project and without associated delay costs by rescheduling other work components in lieu (commencing section 5 earlier in lieu of section 3 if needed). Clearly there remains a risk that delayed delivery of Principal supplied timber piles beyond the 3 months indicated may lead to entire project delay and associated cost penalties potentially of the order of \$30,000 to \$100,000 per week to the Shire from the contractor, Marine and Civil. However, officers consider that this is a reasonable risk to take given the benefits which include:

- \* Approval gained from Heritage Council;
- \* Continuous line of timber piles through Sections 1, 2, 3 and 4; and
- \* Whole of life costs for section 3 (82 m long), in the context of the entire Jetty maintenance (1.8km) is not expected to be significant, however Officers have not had the time available to calculate these cost implications.

The Heritage Council has since supported these new recommendations which are outlined in Attachment D.7.

In forming the recommendations regarding heritage timber decking and interpretation, Shire officers have considered a number of issues, including the statutory environment, long term heritage outcome, financial implications and a timely award of the tender to enable the works to commence without impediment.

**Items 7 to 12 inclusive - Officer Recommendation for Heritage Timber Decking and Interpretation - Palassis Amended Option 2 (+ \$1.26M)**

Palassis Option Two, the subject of recommendation 7, will provide:

- \* Item 8 - A 100m long x 4.0m (approx.) wide area of timber decking commencing from the jetty abutment and extending past the Interpretive Centre along the section 1 widening. Note that existing concrete decking on jetty section 1 at the entrance to the Interpretive Centre will remain as concrete;

- \* Item 9 – A 50m long x 8.0m wide area of timber decking to the proposed section 7 deck widening at the train disembarkment point; and
- \* Item 10 - A publicly accessible platform (skeleton jetty interpretation node), of approximate area 45m x 4m built in original (new) materials and construction methods abutting new jetty section 2, which allows a view of the original alignment through retention of selected (inaccessible) portions of the existing Skeleton Jetty.

The additional cost of item 10 is offset by an estimated amount of \$78,000 (Item 11) already included in the RFT TEN 05/08 tendered price for an additional low level platform of approximate area 10m x 4m (Platform 2B) that was previously approved by the Council for inclusion in the works in the general area that will now be occupied by the item 10 interpretation node.

The heritage interpretation proposal includes the provision of new timber piles for section 3 as previously described. An additional estimated cost of \$47,700 to purchase 20 additional timber piles for this purpose by variation to the existing Ridolfo RFT TEN 04/08 timber piles supply contract will be offset by a negative variation to Marine and Civil's tendered price of -\$51,096 identified as item 7 in the whole of project cost estimate, such that the nett cost impact of this design change (in capital costs) will be approximately cost neutral.

The extent of timber decking identified in Palassis Option Two is consistent with a previous officer recommendation to the Council to include \$800,000 for timber decking. The interim listing of the Jetty on the State Register of Heritage Places provides eligibility for an application of up to \$500,000 of Federal heritage funding, which could be pursued towards construction of the accessible platform. Given the state significance of the Jetty and the positive feedback provided to Officers from both the Heritage Council and the Federal Government previously, Officers consider that there is a strong case for the success of an application of this nature. Therefore, subject to the success of a grant application, the Council's heritage interpretation commitment is approximately \$800,000.

This option, although costed at significantly more than the Council's previously resolved sum, provides both a good heritage outcome and a way forward for the project. The decking can be incorporated into the existing work program without significant delay, whilst the accessible platform (item 10) can be added at a later stage of the project.

Interim Listing of the Jetty on the State Register of Heritage Places, the subject of Recommendation 11, will allow formal agreement of development conditions to enable the tender to be awarded without delay and mitigate the potential risk of a Stop Work or Conservation Order, as outlined under the Statutory Implications section of this report.

### **Percent for Art Policy and Heritage Interpretation**

Whilst a revised allowance of \$1,260,000 for heritage timber decking and interpretation has been included in the proposed project budget, this doesn't capture the full range of opportunities available for heritage interpretation. The Council has requested through resolution CO811/339 that a Heritage Interpretation and Design Plan make recommendations on such items as rain shelters, memorial plaques and seating, opportunities for new and improved interpretive features along the length of the jetty and supplementary funding for interpretive works. Without a dedicated budget allowance to facilitate these works, it will not be possible to include these items within the existing budget and therefore heritage opportunities which require to be built within the structure and fabric of the Jetty, over and above the basic heritage decking, will be unable to be incorporated within the Jetty Rebuild project.

The Shire of Busselton Percent for Art Policy (2007) requires that development projects, in a range of zones and definitions, provide public art at a rate of no less than 1% of the construction works. The Policy is an appropriate mechanism for the funding of interpretation works as listed above, which comply with the provisions and definition of public art contained in the Policy. An allocation of \$250,000 has been included in the proposed project budget, in compliance with the provisions of the Policy, and forms part of the Officer Recommendation.

Council support for this strategy provides the only opportunity to integrate the immediate interpretation works and designs which are able to be incorporated into the structural fabric of the Jetty, where appropriate, with potential time and cost efficiencies for the rebuild project. There is also increased potential for additional external funding to be leveraged as a result of these initial works as, in addition to this, the Heritage Interpretation and Design Plan will also recommend further works and supplementary funding avenues which will be added after the Jetty Rebuild project is complete. These could include signage and interpretive plaques at the entrance to the jetty, sculptures along the jetty and multimedia tours which take the visitor on a discovery of the history of the jetty and its importance to the past and present communities of the Shire.

An imaginative and functional interpretation experience has the potential to introduce a significant income stream for the future financial sustainability of the Jetty through heritage tourism and increased visitation. Ultimately, the Jetty Rebuild project will be greatly strengthened and enhanced by a rich layer of heritage interpretation which tells residents and visitors the story of the development of the Jetty, through significant events and themes.

### **Supplementary Works – Swimming Jetties, Boating Facilities etc**

The Council at its special meeting of 12 November 2008 resolved (CO811/337):

*That concept designs and costings for:*

- (a) *the proposed section 2 (existing) fishing platform disabled access ramp and platform extension; and*
- (b) *an additional section 7 low level diving platform with or without disabled access shall be further developed by the project manager and the designers in consultation with BJECA and the Community Audit Group established under the Shire of Busselton's "Access and Inclusion Plan (30 June 2006)" and returned for consideration by BJAC and the Council.*

and

Resolution C0811/340:

*That the Project Manager report to Council as early as possible on the cost and associated issues involved to repair and or reconstruct the two swimming jetties at the Busselton Beachfront in association with the Busselton Jetty refurbishment project.*

Resolutions C0811/337 and C0811/340 reflect a desire to extend the project work scope, taking opportunity of economies of scale and the momentum of contracts in place, to provide supplementary works or enhancements beyond the fundamental refurbishment works to enhance the jetty/foreshore based tourism and recreation values and opportunities to the broader benefit of the Busselton Community.

Community groups in recent times have sought the inclusion of other "supplementary works" such as boat mooring facilities that were referred for the information of the Council to the previous special meeting of the Council held on 19 February 2009, at attachments E, F and G to that previous report.

On 21 November 2008, the Rudd Government announced details in the media of its \$300 million Regional and Local Community Infrastructure Program (RLCIP). Part of the program was to allocate \$50 million for strategic projects on a competitive basis, for projects seeking a minimum Commonwealth contribution of \$2 million or more.

The RLCIP program was identified as an opportunity by which to fund the repair or reconstruction of swimming jetties referred in resolution C0811/340 together with other "supplementary works" by defining a combined package of jetty and foreshore related supplementary works of sufficient size to meet the \$2,000,000 threshold requirement. The Council at its special meeting of 17 December 2008 considered a project proposal for "Busselton Swim Jetties and Associated Works" amongst other candidates projects for application to the RLCIP grant program and resolved (C0812/388):

*That the CEO make application for the Busselton Swimming Jetties and Associated Jetty Works project for funding of \$3,244,000 under the Regional and Local Community Infrastructure Program – Strategic Projects*

*with Infrastructure Australia (noting that the total value of the project is \$4,571,000 and that the Shire will contribute an amount of \$1,327,000).*

The grant application effectively sought to source \$3,244,000 of additional funds toward the Swimming Jetties and other Supplementary Works to add to the current project scope that, at that time, already incorporated a commitment of \$1,327,000 to similar types of supplementary or enhancement works. In effect, the grant application was structured to fund the following supplementary sub-projects:

Item	"Supplementary Works" Sub-Project	Relates to:	Amount Applied For
1	Swim Jetty No. 1 Reinstatement	Resolution	\$427,000
2	Swim Jetty No. 2 Reinstatement	C0811/337(b)	\$427,000
3	Additional Heritage Timber Decking and Heritage Interpretation Features		\$750,000
4	Additional (fishing/swimming) Platform 2C		\$110,000
5	Additional work to Access Platform 5B to provide disability Access		\$230,000
6	Jetty Section 6 Small Boat Landing/Mooring Facility (located to access old Section 6 train turning deck)	Attachments F, G & H to the 19 February 2009	\$250,000
7	Section 7 Diving/Snorkelling Access Platform with disability access	Resolution C0811/337(b)	\$400,000
8	Section 10 Café/ Kiosk		\$250,000
9	Public Artwork for Busselton Foreshore and/or Jetty		\$260,000
10	Jetty Abutment walling and underside improvements		\$140,000
	<b>TOTAL</b>		<b>\$3,244,000</b>

Note – if successful, items 3 and 9 would serve to directly offset Shire of Busselton expenses already recommended within the latest project budget proposal in the financial implications section of this report.

The grant application was lodged in December 2008 and receipt was subsequently acknowledged by the (Federal) Department of Infrastructure, Transport, Regional Development and Local Government with advice given that Minister Albanese expects to announce the successful projects by the end of February 2009. To date no advice on the success or otherwise of the grant application has been received.

It should be noted that individual component cost estimates listed above were coarse estimates at the time and in some cases quite arbitrary, given the limited time offered in which to prepare the grant submission, the limited design concepts established at that time, and certainly no detailed designs to support accurate estimating.

Nonetheless, a successful grant application coming together with the benefit of having a contractor already engaged and undertaking equivalent works at the site will provide a solid basis on which to further progress these types of proposals.

In the event of the RLCIP grant application (and other similar grant applications) being unsuccessful the Council would need to consider additional funding from its own resources to pursue the implementation of supplementary works such as the subprojects listed above. It is proposed that focus be turned to these facilities once other priorities of design wave issues, heritage timber decking and interpretation and contract award have been fully resolved together with a confirmation having been received regarding the success or otherwise of the RLCIP grant application.

#### **VOTING REQUIREMENT**

1. Simple majority is required for Officer Recommendations 1, 2, 3, 5, 6, 7, 8, 9 and 11.
2. Absolute majority is required for Officer Recommendations 4 and 10.

#### **OFFICER RECOMMENDATION**

1. That all tenderers be advised that Marine and Civil Construction Company Pty Ltd (Marine and Civil) is the preferred tenderer for RFT TEN 05/08 Busselton Jetty Refurbishment based on its tender submission of 22 January 2008, including its tendered lump sum price of \$23,745,569.
2. That the Council endorses the Whole of Project Cost Estimate in the amount of \$27.11M to include:
  - a. The \$0.46M contract price (as varied) for the Ridolfo Group of Companies contract RFT TEN 05/08 for the supply of timber piles together with a \$50,000 contingency to further vary to further vary this contract to include the supply of additional timber piles proposed for new jetty section 3;
  - b. The \$23.75M tender price submitted by Marine and Civil Construction Company Pty Ltd for the major Busselton Jetty Refurbishment contract RFT TEN 05/08;
  - c. A contingency allowance of \$1.61M for RFT TEN 05/08 contract variations that may be required in relation to gantry crane amendments, steel pile surface treatments, temporary walkways, non-return of Principal Supplied Steel Trusses, Marine and Civil's delayed contract award claim, design wave amendments and heritage timber decking and interpretation proposals based on "Palassis Option Two";
  - d. An allowance of \$250,000, being approximately one percent of the Jetty Rebuild project budget, for the implementation of heritage

interpretation works that are identified in the Heritage Interpretation Plan, in compliance with the Percent for Art Policy.

- e. An allowance of \$30,000 as the Shire of Busselton's contribution towards the communications strategy; and
  - f. A project overheads (project management, design, contract administration, consultancies, staff and miscellaneous costs) allowance of \$0.95M;
3. That the Heritage Interpretation and Design Plan be brought back to the Council, when received by the Shire, for consideration of the final items and expenditure of the funds referred at Part 2d.
  4. That the Chief Executive Officer be delegated authority to award the contract for RFT TEN05/08 Busselton Jetty Refurbishment in accordance with and subject to the following prerequisite requirements:
    - a. The potential variations referred at item 2c) being negotiated with Marine and Civil to a stage that the CEO at his discretion is confident that all of those variations can be further resolved and finalised within the overall \$1.61M contingency amount indicated in Part 2c;
    - b. The Department for Planning and Infrastructure reconfirming its approval of the proposed refurbishment works as required under the Jetty License Agreement upon further consideration of GHD's design verification work and consequential design amendments.
  5. In the event that the potential contract variations referred at Part 2c appear in the judgement of the CEO to be unlikely to be resolvable within the respective budget allocations, then a report shall be returned to the Council for its further consideration of options available at that time.
  6. That the steelwork paint coating warranty provisions be further addressed and resolved to the satisfaction of the CEO ideally, but not necessarily, prior to the issue of a Letter of Acceptance to award the contract (if any) to Marine and Civil Construction Company Pty Ltd for the Busselton Jetty Refurbishment Work.
  7. That the Council endorse Palassis Option Two (with the reconstruction of one publicly accessible platform of the Skeleton Jetty and retention of selected portions for interpretation) as the location and extent of the timber decking.
  8. That Marine and Civil be advised that the Shire of Busselton will not be accepting or further considering Marine and Civil's alternative tender proposal for "Alternative 2 – Entire New Jetty" or the variants of that option that involved the replacement of section 4 only and the replacement of section 6 only.

9. That the CEO make application to the Federal Government seeking funding to assist with the construction of the publicly accessible platform within the existing Skeleton Jetty alignment.
10. The current financial year FY08/09 budget be amended as follows:

<b>COA – Description</b>	<b>Current FY08/09 budget</b>	<b>Amended FY08/09 budget</b>
M844 Busselton Jetty Refurbishment	12,000,000	8,380,000
Loan Proceeds Busselton Jetty	11,000,000	Nil
State Government Grant	6,000,000	8,380,000
Contribution Busselton Jetty Committee	1,600,000	Nil

11. That the Council support the interim listing of the Busselton Jetty on the State Heritage Register, subject to:
- a. development approval conditions as resolved by Heritage Council and contained in correspondence dated 24 March 2009.
  - b. amendment of the 'Description of Place Included in this Entry' in 'Documentation of Places for Entry in the Register of Heritage Places' to include only the actual jetty structure and land on which it is located, acknowledging that the listing of the curtilage area can be considered once plans for the foreshore development are further developed.

**7.2**      JETTY STRUCTURAL REPORT

The Shire has received a structural report on the Busselton Jetty that will require consideration by the Council. This information will be provided to the Council via an Addendum to this Agenda, as it was being assessed at the time of Agenda finalisation.

**8.**      CLOSURE

