

Please note: These minutes are yet to be confirmed as a true record of proceedings

SHIRE OF BUSSELTON

MINUTES OF A SPECIAL COUNCIL MEETING HELD ON 1 APRIL 2009

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SHIRE OF BUSSELTON**MINUTES OF A SPECIAL COUNCIL MEETING HELD IN COUNCIL CHAMBERS,
ADMINISTRATION BUILDING, SOUTHERN DRIVE, BUSSELTON, ON WEDNESDAY,
1 APRIL 2009 AT 3:30 PM**

The Presiding Member opened the meeting at 3.47 p.m.

1. ATTENDANCE, APOLOGIES & LEAVE OF ABSENCE

Presiding Member:	Cr Wes Hartley	Shire President
Members:	Cr Bethwyn Hastie Cr David Binks Cr Ian Stubbs Cr Ross Bromell Cr Anne Ryan Cr Tom Tuffin Cr Jackie Emery Cr Bernie Masters Cr Rob Underdown Cr Bev Clarke Cr Don Hanran-Smith Cr David Reid	
Officers:	Mr Andrew Macnish Mr Oliver Darby Mr Paul Martin Ms Cathryn Hutton Ms Lorna Secrett Ms Jenny Mathies	Chief Executive Officer Director, Community Infrastructure A/Director, Community and Organisational Development Executive Manager, Systems and Information (from 4.03 p.m. onwards) Cultural Planning Officer Admin. Officer - Governance
Consultant:	Mr Steve Disley	
Apologies:	Nil	
Leave of Absence:	Nil	
Media:	"Busselton-Dunsborough Times" "Busselton-Dunsborough Mail"	
Public:	9	

2. PURPOSE OF THE MEETING

To consider:

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

3. PUBLIC QUESTION TIME

Nil

4. DECLARATION OF DUE CONSIDERATION

The Presiding Member requested 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.

Declared Due Consideration	No Declaration
Councillor Wes Hartley	
Councillor Bethwyn Hastie	
Councillor David Binks	
Councillor Ian Stubbs	
Councillor Ross Bromell	
Councillor Anne Ryan	
Councillor Tom Tuffin	
Councillor Jackie Emery	
Councillor Bernie Masters	
Councillor Rob Underdown	
Councillor Bev Clarke	
Councillor Don Hanran-Smith	
Councillor David Reid	

5. DECLARATIONS OF INTERESTS

Nil

6. PRESENTATIONS BY PARTIES WITH AN INTEREST

- 6.1 Mr Darryl Green addressed the Council in accordance with Section 9 of the Standing Orders as a party with an interest in Item 7.1, Contract Award for RFT TEN 05/08 - Busselton Jetty Refurbishment. Mr Green, representing the Busselton Jetty Environment and Conservation Association Inc., (BJECA) was in agreement with the Officer Recommendation.
- 6.2 Ms Marion Fulker addressed the Council in accordance with Section 9 of the Standing Orders as a party with an interest in Item 7.1, Contract Award for RFT TEN 05/08 - Busselton Jetty Refurbishment. Ms Fulker, Chair of the Heritage Council Board, was in agreement with the Officer Recommendation.

7. BUSINESS OF THE MEETING**7.1 CONTRACT AWARD FOR RFT TEN 05/08 - BUSSELTON JETTY REFURBISHMENT****FILE NO:** TEN05/08**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.

4.03 p.m. At this time the Executive Manager, Systems and Information entered the meeting.

MOTION / OFFICER RECOMMENDATION

Moved Councillor Hanran-Smith, seconded Councillor Binks:

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:

COA – Description	Current FY08/09 Budget	Amended FY08/09 Budget
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.

AMENDMENT MOVED

AMENDMENT

Moved Councillor Stubbs, seconded Councillor Ryan:

That the Motion be amended by:

- (a) in Clause 2(a) deletion of the repetition of the words "to further vary" in the third line;
- (b) in Clause 2(d) addition at the end of the words "Further that only \$125,000 be authorised at this stage. Additional funding authorisation is to be considered only after a report is submitted to the Council detailing external funding secured.";
- (c) in Clause 4, deletion of the words "Chief Executive Officer be delegated authority to" in the first line and inclusion of the words "the Council"; and
- (d) in Clause 4, inclusion after the word "Refurbishment" in the second line of the words "to Marine and Civil".

AMENDMENT LOST 5/8**Dissenting Voters:**

Councillor Bethwyn Hastie
Councillor Don Hanran-Smith
Councillor Ross Bromell
Councillor Bev Clarke
Councillor Wes Hartley
Councillor Bernie Masters
Councillor Rob Underdown
Councillor David Binks

COUNCIL DECISION / OFFICER RECOMMENDATION

C0904/102 Moved Councillor Hanran-Smith, seconded Councillor Binks:

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 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:

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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.

CARRIED 13/0
BY ABSOLUTE MAJORITY

Note: The duplicated words "to further vary" in Clause 2(a) have been removed from the Council decision, as this was clearly a typographical error and their removal has no impact on the effect of the Motion.

7.2 JETTY STRUCTURAL REPORT**FILE NO:** 12244**PRECIS**

This report is to highlight the safety concerns with respect to the structural integrity of the Busselton Jetty and the recommendation, based on a report from an independent consulting engineer, for the Council to endorse closing of the Jetty as soon as is practicable .

MOTION / OFFICER RECOMMENDATION

Moved Councillor Hanran-Smith, seconded Councillor Binks:

1. That the Council endorses closing of the jetty from the fisherman's platform, located at pier 41.
2. That the Council endorse night time security call outs be implemented to ensure that public access is restricted beyond the closure point.

AMENDMENT MOVED

AMENDMENT

Moved Councillor Stubbs, seconded Councillor Underdown:

That the following new Clause 3 be added to the Motion:

3. That Shire staff meet with BJECA to discuss and review BJECA's contribution to the Jetty Refurbishment and their ability to remain financially viable as a consequence of the earlier closure of the Jetty.

AMENDMENT CARRIED 8/5

Dissenting Voters:

Councillor David Binks

Councillor Bev Clarke

Councillor Wes Hartley

Councillor Don Hanran-Smith

Councillor Bethwyn Hastie

AMENDMENT

Moved Councillor Masters:

That the Motion be amended by replacing Clauses 1 and 2 with the following:

That the Council instructs the CEO to:

1. urgently have erected on the landward side of pier 58 an illuminated sign warning of the danger to persons using the jetty beyond this point and recommending against public access
2. seek legal advice on the Shire's responsibilities to physically prevent public access to the Jetty to and beyond pier 58 if:
 - a. appropriate signage is provided; and/or
 - b. a physical barrier is constructed with or without night-time security personnel being employed to ensure public access is restricted;
3. once this legal advice is received and should this advice indicate that the Council faces significant public liability risk, to erect a physical barrier as soon as practicable to restrict public access to and beyond pier 58; and
4. as soon as practicable, to provide advice to the Council on the practicality and indicative costs of short-term measures that may improve the safety of the section of jetty at pier 58.

**AMENDMENT LAPSED
FOR WANT OF A SECONDER**

MOTION (PROCEDURAL)

Moved Councillor Hanran-Smith, seconded Councillor Binks:

That the Motion be put.

LOST 5/8

Dissenting Voters:

Councillor Tom Tuffin
Councillor Bernie Masters
Councillor Ian Stubbs
Councillor Anne Ryan
Councillor Rob Underdown
Councillor Jackie Emery
Councillor David Reid
Councillor Wes Hartley

AMENDMENT

Moved Councillor Binks:

That Clause 1 of the Motion be amended by inclusion in the first line following the word "endorses" of the words "the immediate".

**AMENDMENT LAPSED
FOR WANT OF A SECONDER**

FORESHADOWED MOTION

During debate on this matter, Councillor Tuffin foreshadowed his intention to move the following motion:

That the Jetty be closed until further notice from the northern side of the Interpretive Centre and that this action be implemented immediately.

AMENDMENT

Moved Councillor Reid, seconded Councillor Tuffin:

That Clause 1 of the Motion be amended by addition at the end of the words "as from 5.00 p.m. on Thursday, 2 April 2009".

AMENDMENT CARRIED 11/2**Dissenting Voters:**

Councillor Bernie Masters

Councillor Wes Hartley

PERSONAL EXPLANATION

Councillor Masters advised that he wished to make the following Personal Explanation, in accordance with Clause 17.1 of the Standing Orders.

"At no stage did I suggest that we should ignore the recommendations of the Officers or those contained in the report."

Note: At this juncture, Councillor Stubbs sought to move a further amendment. The Presiding Member advised that the Council had already amended the motion twice. In accordance with the provisions of Clause 18.9 of the Standing Orders, a motion can only be amended twice unless the Presiding Member, at the request of the Members present, determines a final (third) amendment to the motion will be allowed. As such, Members requested that Councillor Stubbs be permitted to move a third amendment to the Motion.

AMENDMENT

Moved Councillor Stubbs, seconded Councillor Hanran-Smith:

That Clause 1 of the Motion be amended by deletion of the words "from 5.00 p.m. on Thursday, 2 April 2009" and inclusion of the words "soon as practicable".

Note: At this juncture, Councillor Stubbs sought to further amend the amendment by inclusion of the words "or by 5.00 p.m. tomorrow, whichever is earliest" at the end of Clause 1. The Presiding Member advised that Clause 18.8 of the Standing Orders provides that only one amendment shall be discussed at a time and once that amendment has been determined another amendment

may be moved. Further, Clause 18.9 of the Standing Orders provides that a motion can only be amended twice unless the Presiding Member, at the request of the Members present, determines a final (third) amendment to the motion will be allowed. The Presiding Member had allowed the final (third) amendment as requested by Members and that Amendment had been moved and was in the process of being debated. Further, as only one amendment at a time is permitted to be discussed, the Presiding Member advised that he was unable to accept the fourth amendment.

5.38 p.m. At this time the Chief Executive Officer left the meeting.

5.43 pm. At this time the Chief Executive Officer returned to the meeting.

MOTION (PROCEDURAL)

Moved Councillor Tuffin, seconded Councillor Ryan:

That the Council dissent from the Presiding Member's ruling and a fourth Amendment be accepted.

Note: At this juncture, the Chief Executive Officer advised that the Standing Orders provide that a Motion may be amended a maximum of three times and as such, the motion of dissent was not competent in that it was not a ruling of the Presiding Member but a specific requirement of the Standing Orders. The Standing Orders is a Local Law and the Presiding Member (and/or the Council) cannot contravene a Local Law.

MOTION RULED OUT OF ORDER

AMENDMENT PUT

Moved Councillor Stubbs, seconded Councillor Hanran-Smith:

That Clause 1 of the Motion be amended by deletion of the words "from 5.00 p.m. on Thursday, 2 April 2009" and inclusion of the words "soon as practicable".

AMENDMENT CARRIED 8/5

Dissenting Voters:

Councillor Tom Tuffin
Councillor Anne Ryan
Councillor Ross Bromell
Councillor David Reid
Councillor Rob Underdown

COUNCIL DECISION

C0904/103 Moved Councillor Hanran-Smith, seconded Councillor Binks:

1. That the Council endorses closing of the jetty from the fisherman's platform, located at pier 41 as soon as practicable.

- 2. That the Council endorse night time security call outs be implemented to ensure that public access is restricted beyond the closure point.
- 3. That Shire staff meet with BJECA to discuss and review BJECA's contribution to the Jetty Refurbishment and their ability to remain financially viable as a consequence of the earlier closure of the Jetty.

CARRIED 12/1

Dissenting Voter:

Councillor Bernie Masters

Note: As the motion was carried, Councillor Tuffin was unable to move the motion that he had previously foreshadowed.

8. CLOSURE

The meeting closed at 5.48 p.m.

THESE MINUTES CONSISTING OF PAGES 1 TO 13 WERE CONFIRMED AS A TRUE

AND CORRECT RECORD ON _____

DATE: _____

PRESIDING MEMBER: _____