



**SHIRE OF CAPEL**

**SPECIAL COUNCIL MEETING – 24.08.18**

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## SHIRE OF CAPEL

MINUTES OF THE SPECIAL MEETING OF COUNCIL HELD IN THE COUNCIL CHAMBERS, SHIRE ADMINISTRATION BUILDING, FORREST ROAD, CAPEL ON MONDAY 24 AUGUST 2018, COMMENCING AT 4.31PM.

PRESENT:	President Councillor	MT Scott BW Bell BW Hearne DJ Kitchen PK McCleery SV Schiano JA Scott IJ McCabe S Stevenson MI Plume JM Gick
	Chief Executive Officer Executive Manager Corporate Services Executive Manager Community Services Executive Manager Engineering & Development Services	
APOLOGIES:	Councillor	DL Radisich MT Southwell
MEMBERS OF PUBLIC:		Nil

### **PURPOSE OF MEETING**

- To consider the report on the tender submissions for the construction of Capel Civic Precinct (Stage 4) - Youth & Community Facility.

**PUBLIC QUESTION TIME** Nil

**DEPUTATIONS** Nil

**25 / 2018 STANDING ORDERS**

Moved Cr M Scott, Seconded Cr Kitchen

That Standing Orders be suspended to allow debate.

Carried 7/0

**VOTING REQUIREMENTS**

Simple majority

**26 / 2018 STANDING ORDERS**

Moved Cr M Scott, Seconded Cr Kitchen

That Standing Orders be resumed.

Carried 7/0

**VOTING REQUIREMENTS**

Simple majority

**REPORTS**

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**27 / 2018 (5.1) Tender 18/02 – Construction of Capel Civic Precinct (Stage 4) – Youth & Community Facility**

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Location:	Forrest Road, Capel
Applicant:	Shire of Capel
File Reference:	LP.CP.9
Disclosure of Interest:	Nil
Date:	23.08.18
Author:	Strategic Project Officer, S Mahmud
Senior Officer:	Executive Manager Engineering & Development Services, J Gick
Attachments:	1 Capel Civic Precinct Development Plan 2 Artist's Impression 3 Capel Civic Precinct Stage 4 Layout Plan 4 Summary of Tender submissions (CONFIDENTIAL)

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**IN BRIEF**

The Council is requested to consider the report on the tender submissions for the construction of Capel Civic Precinct (Stage 4) - Youth & Community Facility and appoint BGC Construction Pty Ltd as the successful tenderer.

**RECOMMENDATION**

That Council accepts the tender from BGC Construction Pty Ltd for \$5,214,579 (including GST) as detailed in Tender No. 18/02 for construction of Capel Civic Precinct (Stage 4) - Youth & Community Facility.

## **BACKGROUND/PROPOSAL**

### **Background**

July 2008 (OC0714) - The formulation of a master plan for the Capel Civic Precinct (the 'Precinct') was identified as a 'High' priority action in the Capel Townsite Strategy

November 2011 (OC1113) - Council adopted the Capel Civic Precinct Master Plan for final approval as a guide to more detailed planning, development and use of the Precinct.

April 2013 (OC0410) - Council adopted the Capel Civic Precinct Detailed Landscape Design and Development Plan as an operational guide to future design, use and staged development of the Capel Civic Precinct for community and recreation purposes.

January 2015 – MPM Engineering consultants engaged to prepare design drawings and specifications for Stages 1 and 2.

August 2015 – Council included in the 2015/16 budget an allocation of \$2 million to be obtained through loan borrowings. The outcome of Council's ability to borrow the required amount was subject to the final audit of Council's 2014/15 year and the application to WA Treasury Corporation being approved.

September 2015 (OC0903) - Council delegated authority to the Chief Executive Officer to accept the tender from APH Contractors for \$1,266,066 (including GST) as detailed in Tender No. 15/04 for the Capel Civic Precinct Stage 1 and 2 Construction Works, subject to a \$2 million loan approval in principle being received from WA Treasury Corporation.

October 2015 - \$2 million loan approval received from the WA Treasury Corporation.

October 2015 – The (then) Department of Lands advised that the purpose of Reserve 7574 will need to change from "Recreation" to "Recreation and Community".

June 2016 - Capel Civic Precinct Stages 1 and 2 completed.

July 2016 - Negotiations started with the Anglican Diocese of Bunbury (Bunbury Diocese) to gain tenure to land for the development of Capel Civic Precinct Stage 3A car park.

September 2016 - The (then) Department of Lands (DoL) recommended investigation of a long term lease, as the subject land is held by the Bunbury Diocese as freehold, with conditions and subject to section 75 of the Land Administration Act 1997. The State holds the equity of the land value.

December 2016 - McLeods Barristers & Solicitors were engaged to prepare the draft lease agreement with the Bunbury Diocese.

February 2017 – The Director General of (then) Department of Lands approved the recommended change of purpose on the Reserve Management Order.

May 2017 - Draft lease document was reviewed and approved by the Bunbury Diocese. The final draft was sent to Department of Lands for the consent of the Minister for Lands.

June 2017 – The final draft reviewed by the DoL and a copy of the Minister's consent attached with the lease agreement.

June 2017 - Cardno appointed as design consultant and superintendent to prepare tender and construction documentation, assist in tendering and delivery of the Capel Civic Precinct Stage 3 and 3A.

July 2017- Council included in the 2017-18 budget an allocation of \$943,964 for the development of Stage 3 and 3A.

July 2017 - (OCO708):

That Council:

1. Council enters into a lease for car parking – portion of Lot 3 (No. 88) Capel Drive, Capel with Bunbury Diocesan Trustees for the development and management of a car park for a period of 20 years commencing from the date of signing the agreement.
2. Council delegates authority to the Shire President and Chief Executive Officer to affix the common seal of the Shire of Capel to the lease for car parking – portion of Lot 3 (No. 88) Capel Drive, Capel.

October 2017 – the Minister for Lands signs the necessary documents for the change of purpose on the Reserve Management Order for Reserve 7574, for advertising.

October 2017 and November 2017 - \$2,361,900 funding from Building Better Regions Fund and \$2,300,000 funding from Royalties for Regions secured. Complementary funding from Lotterywest (\$1,533,260) and Department of Communities (\$50,000) was already secured in 2016.

November 2017 - The Shire advertised a public tender for the development of Capel Civic Precinct Stage 3.

December 2017 (OC1210) - Council delegated authority to the Chief Executive Officer to accept the tender from Perkins (WA) Pty Ltd for \$2,709,800 (including GST) as detailed in Tender No. 17/04 for Capel Civic Precinct Development Works.

February 2018 - July 2018 - Capel Civic Precinct Stage 3 was completed.

March 2018 – Minister for Lands signs documents for the change of purpose on the Reserve Management Order, ready for tabling in both Houses of Parliament.

June 2018 - Public tender advertised for the Construction of Capel Civic Precinct (Stage 4) Youth & Community Facility.

July 2018 – The proposed change of purpose for Reserve 7574 from “Recreation” to “Recreation and Community” is tabled in Parliament.

August 2018 – The Council decided:

*That Council delegates authority to the Chief Executive Officer to accept the tender from BGC Construction Pty Ltd for \$5,214,579 (including GST) as detailed in Tender No. 18/02 for construction of Capel Civic Precinct (Stage 4) - Youth & Community Facility.*

Following the meeting, it was determined that this decision was invalid, as explained in the Comments section below.

### **Location and Description**

The Precinct generally comprises the land between Forrest Road, Capel Drive, Buchanan Road and Roe Road, including Reserves 4621 and 7574, the Saint John’s Anglican Church site and the former service station site, as depicted in the Capel Civic Precinct Development Plan, attached.

Reserve 4621 comprises an area of 1.57ha and is vested for the purpose of ‘Municipal Offices and Community Purposes’ with a management order in the Shire of Capel.

Reserve 7574 comprises Erle Scott Reserve, an 'A' class reserve 1.62ha in area vested with the Shire of Capel for the purpose of 'Recreation' and with power to lease for 21 years subject to the Minister's consent. The Management Order is currently before Parliament.

Stage 3A is a carpark on land subject to the lease with the Bunbury Diocese.

### **Proposal**

To consider the tender submissions for the Construction of Capel Civic Precinct (Stage 4) -Youth and Community Facility. The development of Stage 4 includes the following works:

- A multipurpose community centre (955m<sup>2</sup> approximately);
- A youth space (285m<sup>2</sup> approximately);
- One electric car charge bay;
- A new car park area with 41 car bays including 2 acrod bays; and
- Multiuse path and landscaping.

The general layout is depicted in the Capel Civic Precinct Stage 4 Layout Plan, attached.

### **STATUTORY ENVIRONMENT**

Local Government Act 1995 s3.57 requires Local Government to invite tenders and points to the Regulations.

Regulation 11(1) of the Local Government (Functions and General) Regulation requires all goods and services with a value in excess of \$150,000 to be subject to a public tender process.

### **POLICY IMPLICATIONS**

The following Council policies apply

1. Policy 2.8 – Purchasing;
2. Policy 2.9 - Budget Management - Capital Acquisitions & Works;
3. Policy 2.25 – Corporate Sustainability;
4. Policy 2.28 – Risk management Framework;
5. Policy 2.33 – Asset Management;
6. Policy 3.14 - Occupational Safety & Health;
7. Policy 6.13 – Capel Townsite Strategy; and
8. Policy 6.14 – Capel Town Public Open Strategy.

### **RISK IMPLICATIONS**

There are a number of risks that could be detrimental to this project. The concept of 'risk' is based on two parameters: the probability of an event occurring, and the consequences of that event, if it occurs. For this project, the most significant consequences for each of the risks listed below is the financial impacts to Council's budget.

### **Tender Acceptance**

The proposal to appoint BGC Construction Pty Ltd as the preferred tenderer for the construction of Capel Civic Precinct Stage 4 is itself a low risk, as BGC Construction Pty Ltd submitted a comprehensive tender document along with the lowest price submission. This represents good value for money, however, there is typically some risk associated with variations to contract, project time line, inclement weather etc.

## Contract Variations

Experience of four previous major projects in the last few years shows at least 5% contingency was required to manage contract variation risk. The risk of variations depends on a number of factors including tender documentation, contract control, project management and externalities. In an ideal world, all issues would be addressed through exceptional design and specifications. Experience demonstrates that this is unlikely in complex infrastructure projects.

The following table demonstrates a moderate level of project expenditure increases at construction stage, through contract variations.

Project	Tender Price (excl GST)	Actual Project Cost (excl GST)	Variance (%)	No. of Variations
Capel Administration Building	\$2,466,931	\$2,537,858	\$70,927 (3%)	unknown
Construction of East Dalyellup Sports Pavilion	\$926,002	\$987,314	\$61,311 (7%)	08
Development of Capel Civic Precinct Stage 1 and 2	\$1,150,969	\$1,339,426	\$188,457 (16%)	40
Development of Capel Civic Precinct Stage 3	\$2,463,455	\$2,663,455	\$104,840 (4.2%)	55

The budget for this project is \$4,751,949 (over two years), which includes this contract, superintendence and some contingency. Based on current budget and tender price (\$80,000 included as contingency), the project provides no further contingency, and will exceed budget in 2019/20.

## Project Time Line

The project timeline is critical in accordance with the Commonwealth Standard Grant agreement (Building Better Region Fund). As per the agreement, the project must be completed on, or before 1 November 2019. If the project fails to be completed within the specified date, recovery of a portion of grant fund will be in jeopardy.

Achieving completion of the project by November 2019 is a genuine risk as experience on project of this scale shows they typically require 15-18 months. However, discussion with the project architects indicates that delivery within 14 months is achievable. The preferred Tenderer's program shows completion of the project by 1 November 2019. This risk will need to be re-emphasised to the contractor upon appointment as non-delivery to the agreed timeline significantly increases the Council's financial exposure.

The preferred Tenderer has also submitted an estimated Monthly Value of Work Completion table that demonstrates anticipated expenditure on the project, commencing in October 2018 and concluding in December 2019. Commencement of the project in late September / early October will realise the initial invoice period of October 2019 following contract administration, possession of site and mobilisation. If, however, the project spills over to December 2019, the funding agreement with the Commonwealth (Building Better Regions Fund – Infrastructure Projects) may attract non-payment of funds that extend beyond the 1 November 2019 agreement completion date.

The cash flow table submitted by the preferred Tenderer anticipates an invoice of \$275,000 for November 2019 and another for \$385,000 for December 2018. If the project stays true to the tenderer's scheduled timelines, it is possible that the project will be 100% completed by 1 November 2019. If the program spills beyond that date, the Shire may forfeit all or a proportion of the outstanding invoice estimate of \$385,000 for works in December 2019. This figure may increase if there are delays beyond this time.

There are two means to mitigate this risk. Firstly, the Grant Agreement provides clauses to address project variation. However, the program guidelines advise that no project may be completed beyond 31 December 2019. It may therefore, be possible to explore a small extension of time to the agreement.

Secondly, the Shire has sought and received written confirmation from the preferred Tenderer, that it is satisfied with its submission documentation and that it contains 'no specific variations, substitutions, omissions or provisions not obvious in the bid'. If an intensification is to be achieved by methods that incur additional costs, those costs could reasonably be passed onto the Shire as variations. Examples may include provision to work extra hours on weekends, provision of overtime, fast tracking statutory approvals, scope reduction or Shire subsidised activities.

Ideally, an extension of time to the funding agreement could be achieved to reduce the risk of further costs.

**Inclement Weather**

Inclement weather can be a cause of delay to the project. To mitigate that risk, a provisional delay period is included in the tender documents and all tenderers were requested to allow the provisional delay period as per the below table in their work program.

Provisional Delay Period

Jan	0	May	3	Sep	2
Feb	1	Jun	4	Oct	1
Mar	1	Jul	5	Nov	1
Apr	1	Aug	4	Dec	0

The Contractor shall only be entitled to the inclement weather for delays specified, under the following conditions:

- Only in the month the day(s) relate to; and
- Following submission of relevant notices, claims and supporting information in accordance with the contract.

Instead of granting an extension of time for any such delay, the Superintendent shall issue to the Contractor a notice reducing the provisional period by the amount of the extension of time that would otherwise have been granted. Nonetheless, inclement weather, regardless of the contractual arrangements, can add real time delays to the whole schedule. If the roof of the building is in place before the 2019 winter rains come, it may be possible to redirect some works to avoid delays due to inclement weather.

**Risk of not proceeding with Stage 4**

Due to the co-dependence of funding arrangements, there is an expectation from external funding providers that Stage 4 will proceed. The co-dependence of funding links delivery milestones that, if not met, can trigger a breach of the funding agreement. As such, there may be a need to refund already spent funds to the grant provider, if the project does not proceed.

\$6,195,160 external funds has been granted from Commonwealth, Royalties for Regions and Lotterywest to implement Capel Civic Precinct Stages 3, 3A and 4. Some of these funds have already been used for the development of Stage 3.



As per the funding agreement with South West Development Commission and Commonwealth of Australia, the allocated grant amount must complete the Capel Civic Precinct Stages 3, 3A and 4. If Stage 4 does not proceed, there is a risk that \$1,361,654 will need to be refunded to the respective funding bodies, as tabled below.

<b>Funding Contributors</b>	<b>Amount already spent for Stage 3</b>
Royalties for Regions (R 4 R)	\$1,300,000
Building Better Regions Fund (BBRF)	\$61,654
<b>Total</b>	<b>\$1,361,654</b>

### **Cash flow**

The secured grants are typically agreed to be paid in arrears after completion of a nominated milestone, or evidence that payments have occurred. If there is a lag time between outgoing payments and incoming revenue, the Council cash flow may be affected.

The Royalties for Regions fund, administered through the SWDC, has two large payments of \$1.3M (received) and \$1.0M eligible at completion of the tender process and a Management Order being changed. This is a large sum that, if delayed, could place the Council's finances under pressure.

The Building Better Regions Fund is spread more uniformly, but includes large payments in arrears for completion of 33%, 50%, 80% of works (all in 2018/19) and 100% of works (eligible on 1 November 2019). The only claim eligible in 2019/20 is worth \$996,867.

LotteryWest has committed to provide two payments in arrears of \$1.03M in 2018/19 and another of \$674,000 in 2019/20. \$172,495 of the \$1.03M has already been received in 2017/18, leaving an outstanding amount of \$859,260.

The claims for these payments will need to be carefully managed to ensure that the Shire's cashflow is not detrimentally affected, particularly close to the end of the 2018/19 financial year.

Expenditure on the project is more regulated. The cash flow projections offered by the preferred Tenderer range from \$127,000 in the lowest month (November 2018) to \$584,000 in the highest month (March 2019), with an average monthly expenditure of \$316,000 per invoice.

The project control group will need to work closely to ensure the cash flow risk is managed and mitigated over the life of the project.

### **Land Tenure**

Reserve 7574 is being considered by Parliament to change its use from "Recreation" to "Recreation and Community". This has been supported by officers at the Department of Lands, the Director General of the Department of Lands and the Minister for Lands. There is a very low risk that it may not pass through Parliament, but with this level of support, it is unlikely.

## **FINANCIAL IMPLICATIONS**

### **Budget**

The construction will run over two financial years, commencing in 2018/19 and will be completed in 2019/20.

The 2018/19 Council draft Budget XP08 includes \$2,971,799 for the construction of Capel Civic Precinct Stage 4. Another \$1,780,150 is allocated in 2019/20 to complete the project, totaling \$4,751,949.

The original cost estimate (September 2015) for the construction of the Stage 4 is \$4,603,892 excluding the detailed design cost, but includes a \$212,000 contingency sum.

The pre-tender cost estimate (last updated in June 2018) for the construction of Stage 4 is \$4,728,259 excluding the detailed design cost, but includes a \$80,000 contingency sum.

The price submitted by the recommended Tenderer is \$4,740,526 (ex GST), which is \$136,634 over the original cost estimate.

The construction of Stage 4 is a complex project which has the following cost breakdown:

<b>Stage 4 Item</b>	<b>Project Amount (\$)</b>	<b>Amount to be spent in 18/19</b>	<b>Amount to be spent in 19/20</b>
Recommended Tender (includes \$80,000 contingency)	\$4,740,526	\$2,934,249	\$1,806,279
Detailed Design & superintendence (\$207,000 already paid in 2017/18)	\$149,508 (Outstanding amount)	\$37,550*	\$111,956*
Additional Contingency (Typically 5%)	\$150,000	To be absorbed in \$80,000 contract provision	\$150,000
<b>TOTAL STAGE 4 COST</b>	<b>\$5,040,034</b>	<b>\$2,971,799</b>	<b>\$2,068,235</b>
<b>Budget</b>	<b>\$4,751,949</b>	<b>\$2,971,799</b>	<b>\$1,780,150</b>
<b>Difference</b>	<b>\$288,085</b>	<b>0</b>	<b>\$288,085</b>

\* The cost estimates for detailed design have been assumed to align with the 2018/19 budget allocation for the project to transfer project budget adjustment to the subsequent 2019/20 year.

If Council considers Tender 18/02 Construction of Capel Civic Precinct (Stage 4) - Youth and Community Facility and appoints BGC Construction Pty Ltd, project budget XP08 needs to be reviewed to increase Council's allocation to \$5,040,034 over 2018/19 and 2019/20. A further contingency amount of \$150,000 should be considered for the construction phase.

At the time of writing the estimated project increase based on tender value, outstanding design and an increased contingency is \$288,000. As the 2018/19 budget is to be considered at the same Council meeting, any financial adjustment will need to be addressed in the 2019/20 budget.

The funding source for the above budget is as follows:

<b>Year</b>	<b>Job No</b>	<b>Budget</b>	<b>Funding Source</b>	
			<b>Other Grants</b>	<b>Shire Funds incl. Reserved Grants</b>
2018-19	XP08	\$2,971,799	\$2,674,473	\$531,986
2019-20	XP08	\$1,780,150	\$1,119,367	\$426,123
	<b>Total</b>	<b>\$4,751,949</b>	<b>\$3,793,840</b>	<b>\$958,109</b>

This includes \$1,391,694 as the Shire's contribution to the project over three financial years (2017/18, 2018/19 and 2019/20) which is \$288,085 over the original allocation. Any increase in Council allocation will need to be supplied from a combination of reserve funds, surplus funds or general revenue.



### **Stage 3A**

Stage 3A is the northern carpark and is entirely funded by the Shire. The most recent cost estimate for Stage 3A is \$400,000, which has not been subjected to a detailed design quantity survey.

Stage 3A is included as a deliverable in the Building Better Regions Fund and the Royalties for Regions grant. It may be worthwhile investigating whether the Stage 3A portion of the project could be either deleted or deferred from the project overall.

### **Ongoing Costs**

There will be ongoing costs associated with the maintenance and management of the facility, which is not available at this time. Typically, infrastructure projects attract about 2% to 4% of the project cost for ongoing annual operating and maintenance. Based on the Stage 4 project costs, this is likely to increase the Shire's maintenance budget by \$105,000 to \$210,000 per annum. A more accurate cost estimate will be provided in the 2019/20 budget forecasts.

### **SUSTAINABILITY IMPLICATIONS**

The sustainability implications of this proposal can be considered in the context of their environmental, economic and social impacts.

The proposed building complies with Section J of the National Construction Code, which outlines the energy efficiency requirements of non-residential buildings. The main objective is to reduce the amount of energy a building requires for its normal operation. The project also requires removal of seven (7) trees, but these will be replaced with the landscaping aspects of the project.

Capel Civic Precinct Stage 4 also incorporates the following environmental characteristics:

- Retention of established native trees to provide shade, character and natural context;
- Provision for sustainable display gardens, providing vegetation that is attractive with low water usage requirements and a showcase for these outcomes; and
- Provision of drainage and native vegetation areas, including rain gardens, with the potential to significantly contribute to local water management and water harvesting outcomes.

The Project will also have a number of economic impacts including:

- Initial capital costs including grant contributions;
- Opportunity to attract of people to the town for business;
- The existing caravan/motor home parking area and sullage dump point combined with the new picnic areas, playground, Skate Park, amphitheatre and stage and public toilet is likely to attract additional visitors to the town; and
- Ongoing maintenance and operational expenses.

The social impacts of the facilities and improvements proposed in the Plan will provide the following benefits:

- Creation of a community hub;
- Improved community health (mental and physical) through use of quality infrastructure and open space;

- Provision of a community events venue;
- Employment opportunities through staffing requirements for current and new services;
- Development of an accessible open space for heritage, culture, art and recreation enjoyment and;
- Encouraging community groups to use the space.

The outcomes of the project will ultimately create high standard civic space that can be a focal point for the community, where recreation and cultural activities can be undertaken.

### **STRATEGIC IMPLICATIONS**

#### Shire of Capel Strategic Community Plan 2018 – 2028

The Leadership Experience, *'Open, transparent and effective good governance'*.

Community Objectives:

- 1.3 Creating a more connected community.
- 1.4 Building a culture of collaboration and a stronger, safer and happier community.
- 1.6 Council is effective and efficient in the financial management stewardship of community assets.

The Community Experience, *'Facilities and services that accommodate the diverse needs of the community and providing a safe place to live, work and visit'*.

Community Objectives:

- 2.1 Council works in partnership with the community in providing appropriate services and facilities.
- 2.3 The special characteristics of the Town Centres are fostered.

The Economic Experience, *'Responsible and progressive local economic development.'*

Community Objectives:

- 3.1 The community capitalises on its unique attributes and location.
- 3.3 Each Town Centre and its facilities meet the needs of residents and visitors and are presented to a welcoming standard.
- 3.4 Events, including arts, culture and sporting events are promoted to bring revenue into the Shire.
- 3.5 Activities, new business and developments are encouraged.

The Infrastructure Experience *'Ensure safe, sustainable and efficient infrastructure and transport networks.'*

Community Objectives:

- 5.2 As a community, we work to ensure our ongoing enjoyment of our quality of life.
- 5.3 Working together to meet the needs of changing infrastructure requirements.

#### **Capel Townsite Strategy 2008**

The Capel Townsite Strategy was adopted in 2008 and subsequently endorsed by the WA Planning Commission in October 2009. It forms the primary policy framework for land use and development in the town of Capel over strategic time frames.

A range of actions are designed to support and reinforce the land use and development strategies. One of the most significant actions from a community and administrative perspective is Action (iv) of the 'Community Facilities and Recreation' strategy (which is identified as a 'High' priority):

*"Prepare a master plan for the Civic/Town Centre Precinct incorporating the existing Shire Administration and Community Centre Site, Erle Scott Reserve and vacant Lot 243 (former Reserve for Police Station). This Master Plan should investigate the future use of the Precinct and aim to accommodate long term civic and community needs of the Shire including administration, town centre car parking and potential government uses (including a community policing facility)."*

#### Capel Town Public Open Space Strategy (2011-2021)

The Capel Town Public Open Space Strategy was adopted in 2011. The strategy recommended the following for the Capel Park/Erle Scott Reserve:

*"Recommendation 3:*

- 3.1 Investigate future use and management of Reserve 7574 (Capel Park) in conjunction with preparation of the Capel Civic Precinct Master Plan.*
- 3.2 Install additional shelter structures, seating, basketball hoop, bin surrounds and other park furniture in Reserve 7574 (Capel Park) subject to identification of a suitable theme linked to the Civic Precinct and 'Main Street'."*

#### **CONSULTATION**

Tender 18/02, Construction of Capel Civic Precinct (Stage) 4 Youth and Community Facility, was advertised in the "West Australian" on 27 June 2018 and the "South Western Times" on 28 June 2018. Submissions closed on 25 July 2018.

Considerable consultation with the community has been undertaken previously in relation to the formulation of the Master Plan and the proposed development/landscaping outcomes.

#### Project Management Plan

A Project Management Plan (PMP) has been prepared to provide an overall planning framework for the design and delivery of the project. The PMP is endorsed by the Executive and is used as an internal management tool for staff.

A Project Advisory Group was formed with representatives of all divisions of the Shire, to provide guidance and advice to the project consultants. The importance of the advisory group has been significant in view of the limited budget available for consultants and extensive knowledge and background of staff members on the relevant issues. The group continued to meet during 2016 and 2017 in relation to the preparation of the detailed design and implementation planning of the project.

A Tender Evaluation Group was formed to evaluate all tenders and quotations for the project.

July 2018 - South West Development Commission, in conjunction with the Shire of Capel, organised an Information Session in the Council Chambers for local suppliers to explore opportunities created by the project.

A Project Technical Group is now in place for the implementation of the project.

Consultation has been made with Department of Water and Environmental Regulation regarding clearing of some trees. The Department advised the clearing required for the proposed development would not require a clearing permit.

#### Notification

Four large signs have been erected on site advising of proposed works and contact details. Development updates will be available on the Shire Website.

Prior to the commencement of works, surrounding residents will be advised in writing of the proposed works.

#### Capel Civic Precinct Updates

A monthly project update is being posted regularly on the Shire website and Facebook pages to inform the community. Updates were also emailed to interested residents.

#### Tender Addendum

There were five (5) tender addenda issued in response to Tenderer's queries. All submitters acknowledged receipt of the addenda.

### **COMMENT**

#### Tender Assessment

As part of the tender assessment, 50% of the total score is based on the qualitative criteria which are the tenderer's ability to demonstrate previous experience on similar projects, outline available resources and personnel, proposed work methodology, company profile, occupational health and safety record and sustainability experience.

A Tender Assessment Working Group was convened to assess the tenders. The Working Group consisted of Manager Technical Services, Strategic Planning Officer, Senior Finance Officer and the Architect. The Assessment Working Group was overseen by Executive Manager Engineering and Development Services.

Members of the Working Group undertook individual assessments and scoring, which was then collated and averaged to generate a group score against the selection criteria. The Senior Finance Officer focussed only on the compliance aspect of the company profile. All scores were close to each other against each tenderer.

At the conclusion of the tender assessment process, all tenderers scored between 73 and 46 (out of a possible 100). The variation is due to the qualitative criteria as specified in the tender documents and based on the information provided by the tenderer. This information gives staff a better indication as to whether the Contractors are capable of performing the works and what success they have had in the past.

The remaining 50% of the total score is calculated as a percentage of the lowest price against the tenderers' price. Therefore, 100 points is allocated immediately to the lowest price, and the others recorded as a ratio of the lowest price.

Refer to the table below (Table C).

**TABLE C: Tenders – Tender Criteria Weighting**

Tenderer	Qualitative Criteria 100% weighting (Relevant Experience of Company and Personnel, Methodology, Company Profile, Tenderer's Resources, Occupational Safety and Health & Sustainability Experience)	Price (100% weighting)	SCORE TOTAL (Average of Quality and Price)
BGC	94.08	100	<b>97.04</b>
Pindan	97.09	96.04	<b>96.56</b>
Firm	80.66	98.79	<b>89.73</b>
Metrocon	70.25	98.39	<b>84.32</b>
Mitie	66.74	96.88	<b>81.82</b>
Civilcon	68.16	92.26	<b>80.21</b>
Innovest	63.66	90.15	<b>76.91</b>

Pindan submitted a comprehensive tender document, which addressed all of the areas of plant, personnel and experience required to successfully complete the works and score the highest (97 out of 100) under the qualitative criteria, but price affects the total scoring.

BGC Construction Pty Ltd scored the second highest (94 out of 100) under the qualitative criteria and submitted the lowest price. A summary of Tender Submissions (CONFIDENTIAL) is attached.

Based on price and qualitative criteria, the tender evaluation group considered the first ranked tender from BGC Construction Pty Ltd to represent best value for money. BGC's bid also represents the only affordable bid, with respect to budget allocation.

After considering the project budget, points allocated and the information provided by the tenderers and relevant referees, staff supports award of the tender to BGC construction Pty Ltd who has the experience and resources to complete the works.

#### Invalid Council Decision of 22 August 2018

At its Ordinary Meeting of Council of 22 August 2018, the Council voted on the following recommendation:

***That Council delegates authority to the Chief Executive Officer accepts the tender from BGC Construction Pty Ltd for \$5,214,578 including GST as detailed in Tender 18/02 Construction of Capel Civic Precinct Stage 4 Youth and Community Facility.***

As the recommendation included a 'delegation', as described by s5.42 of the Local Government Act 1995, any decision must be made by an absolute majority, as described under section s1.4 of the Act. The vote on the recommendation was split 4/4. In accordance with s5.21(3), 'if the votes of members present at a council or committee meeting are equally divided, the person presiding is to cast a second vote. The Shire President cast a second vote to effect a decision, in favour of the recommendation, to make the vote a 5/4 vote in favour.

Unfortunately, subsequent advice received from the Department of Local Government and Communities, confirmed that, whilst a second vote must be cast, it cannot be used to achieve an absolute majority. This situation renders the decision of the Council at the meeting invalid.



That being the case, the Council is faced with an unusual situation where its decision effectively falls away and leaves the matter unresolved.

In discussions with the Department of Local Government and Communities, the need for the Council to delegate the appointment of a preferred tenderer was discussed. The Department advised that unless there are specific reasons for the Council delegating, it is possible for the Council to 'accept' a tender bid, with the intent of subsequent appointment of the preferred tenderer. This method has been used by the Council for other tenders so the use of the delegation for this particular project has created an unusual and confusing situation.

The reason the recommendation included provision for delegation to the Chief Executive Officer (CEO) is unclear, other than this function has been included in two previous Council decisions for the previous stages of the Capel Civic Precinct (September 2015, OC0903, Stages 1 & 2; December 2017, OC1210, Stage 3). Its inclusion in the 22 August 2018 agenda is a symptom of copying the previous Council agenda reports, without correction.

Typically, other than these three tenders, the Council is asked to 'accept' a preferred tender, which requires a simple majority under s3.57 of the Act, and r11(1) of the Local Government (Functions and General) Regulations 1996. Advice from the Department confirms that this approach is acceptable, and that subsequent appointment of the preferred tenderer can be administered by the CEO (and support staff) in accordance with the Council decision and intent.

In order to resolve this matter, a new recommendation reflecting the advice from the Department of Local Government and Communities, and the Shire's typical methods is included. As the Council decision from the 22 August 2018 meeting is invalid, a new decision is required to resolve this matter.

<b>27 / 2018 OFFICER'S RECOMMENDATIONS – 5.1/COUNCIL DECISION</b>
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**Moved Cr Schiano, Seconded Cr Kitchen**

**That Council accepts the tender from BGC Construction Pty Ltd for \$5,214,578 including GST as detailed in Tender 18/02 Construction of Capel Civic Precinct Stage 4 Youth and Community Facility.**

Lost 1/6

**VOTING REQUIREMENTS**

Simple majority

**MEETING CLOSURE**

The meeting closed at 4.52pm.

These minutes were confirmed at an Ordinary Council meeting on 26 September 2018.

Signed

Presiding Person at the meeting at which time the minutes were confirmed.

Date