



**Shire of Derby /
West Kimberley**

AGENDA

Special Council Meeting Thursday, 21 March 2024

I hereby give notice that a Special Meeting of Council will be held on:

Date: Thursday, 21 March 2024

Time: 4:30 PM

**Location: Council Chambers
Clarendon Street
Derby**

Amanda Dexter

Chief Executive Officer



Our Guiding Values

We are **PROUD** of who we are and where we live.

We will create a **POSITIVE LEGACY** for our children and children's children.

We will go about our business with **INTEGRITY, TRANSPARENCY and AUTHENTICITY**.

We value and **RESPECT** what our community has to say and will strive to make things happen.

We are **PROUD** of and value the **KNOWLEDGE** of our diverse and strong people and cultures.

We value our **RELATIONSHIPS** and will work with others to achieve common goals and gain maximum impact.

We are **PROUD** of and **COMMITTED** to the responsible preservation of our unique natural environment and making sure our built environment reflects our current and future needs.

We are open for and encourage business, industry and all aspects of **COMMUNITY DEVELOPMENT**, particularly our thriving arts and cultural scene.

Disclaimer

No responsibility whatsoever is implied or accepted by the Shire of Derby/West Kimberley (Shire) for any act, omission or statement or intimation occurring during Council or Committee meetings.

The Shire disclaims any liability for any loss whatsoever and howsoever caused arising out of reliance by any person or legal entity on any such act, omission or statement or intimation occurring during Council or Committee meetings. Any person or legal entity who acts or fails to act in reliance upon any statement, act or omission made in a Council or Committee meeting does so at that person's or legal entity's own risk.

In particular and without derogating in any way from the broad disclaimer above, in any discussion regarding any planning application or application for a licence, any statement or intimation of approval made by any Council Member or officer of the Shire during the course of any meeting is not intended to be and is not taken as notice of approval from the Shire.

The Shire warns that anyone who has any application lodged with the Shire must obtain and should only rely on written confirmation of the outcome of the application and any conditions attaching to the decision made by the Shire in respect of the application.

Notes for Members of the Public

PUBLIC QUESTION TIME

The Shire of Derby/West Kimberley extends a warm welcome to you in attending any Shire meeting. The Shire is committed to involving the public in its decision making processes whenever possible. The ability to ask questions during 'Public Question Time' is of critical importance in pursuing this public participation objective. The Shire sets aside a period of 'Public Question Time' to enable a member of the public to put questions. Questions should only relate to the business of the Shire and should not be a statement or personal opinion. Upon receipt of a question from a member of the public, the Presiding Member may either answer the question or direct it to an officer to answer, or it will be taken on notice.

Any comments made by a member of the public become a matter of public record as they are minuted by Council. Members of the public are advised that they are deemed to be held personally responsible and legally liable for any comments made by them that might be construed as defamatory or otherwise considered offensive by any other party.

MEETING FORMALITIES

Local government Council meetings are governed by legislation and regulations. During the meeting, no member of the public may interrupt the meetings proceedings or enter into conversation. Members of the public shall ensure that their mobile telephone or audible pager is not switched on or used during any Shire meeting.

Members of the public are hereby advised that the use of any electronic, visual or audio recording device or instrument to record proceedings of the meeting is not permitted without the permission of the Presiding Member.

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Notes for Council Members

NATURE OF COUNCIL'S ROLE IN DECISION MAKING

Advocacy:	When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.
Executive/Strategic:	The substantial direction setting and oversight role of the Council such as adopting plans and reports, accepting tenders, directing operations, grants, and setting and amending budgets.
Legislative:	Includes adopting local laws, town planning schemes and policies.
Administrative:	When Council administers legislation and applies the legislative regime to factual situations and circumstances that affect the rights of people. Examples include town planning applications, building licences and other decisions that may be appealable to the State Administrative Tribunal.
Review:	When Council reviews a decision made by Officers.
Information:	Includes items provided to Council for information purposed only that do not require a decision of Council (that is for 'noting').

ALTERNATIVE MOTIONS

Council Members wishing to make alternative motions to officer recommendations are requested to provide notice of such motions in written form to the Chief Executive Officer prior to the Council meeting.

DECLARATIONS OF INTERESTS

Council Members should fill in Disclosure of Interest forms for items in which they have a financial, proximity or impartiality interest and forward these to the Presiding Member before the meeting commences. Section 5.60A of the *Local Government Act 1995* states;

"a person has a financial interest in a matter if it is reasonable to expect that the matter will, if dealt with by the local government, or an employee or committee of the local government or member of the council of the local government, in a particular way, result in a financial gain, loss, benefit or detriment for the person."

Section 5.60B states;

"a person has a proximity interest in a matter if the matter concerns –

(a) a proposed change to a planning scheme affecting land that adjoins the person's land;
or

(b) a proposed change to the zoning or use of land that adjoins the person's land; or

(c) a proposed development (as defined in section 5.63(5)) of land that adjoins the person's land."

APPLICATION FOR LEAVE OF ABSENCE

In accordance with Section 2.25 of the *Local Government Act 1995*, an application for leave requires a Council resolution granting leave requested. Council may grant approval for Leave of Absence for a Council Member for ordinary Council meetings for up to but not more than six consecutive meetings. The approval of the Minister is required for leave of absence greater than six ordinary Council meetings.

This approval must be by Council resolution and differs from the situation where a Council Member records their apologies for the meeting. A failure to observe the requirements of the Act that relates to absence from meetings can lead to a Council Member being disqualified should they be absent without leave for three consecutive meetings.

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1 DECLARATION OF OPENING, ANNOUNCEMENT OF VISITORS**2 ACKNOWLEDGEMENT OF COUNTRY**

In the spirit of reconciliation, the Shire of Derby/West Kimberley acknowledges the traditional custodians of country throughout the Shire and their connection to land, sea and community.

The Shire of Derby/West Kimberley would like to pay respect to the past, present and future traditional custodians and Elders of this nation and the continuation of cultural, spiritual and educational practices of Aboriginal and Torres Strait Islander peoples.

3 ATTENDANCE VIA TELEPHONE/INSTANTANEOUS COMMUNICATIONS

A Council Member may attend council or committee meetings by electronic means if the member is authorised to do so by the President or the Council. Electronic means attendance can only be authorised for up to half of the Shire's in-person meetings they have attended in total, in any rolling 12 months prior period. Authorisation can only be provided if the location and the equipment to be used by the Councillor are suitable to enable effective, and where necessary confidential, engagement in the meeting's deliberations and communications.

4 DISCLOSURE OF INTERESTS**4.1 Declaration of Financial Interests****4.2 Declaration of Proximity Interests****4.3 Declaration of Impartiality Interests****5 PUBLIC TIME**

Due to the nature of this meeting, being a Special Council Meeting, questions relating to matter relating to this agenda may be addressed.

5.1 Public Question Time**5.2 Public Statements****6 ANNOUNCEMENTS BY PRESIDING PERSON WITHOUT DISCUSSION**

REPORTS

7 TECHNICAL SERVICES

7.1 AWARD OF TENDER T02-2023/24 - CALWYNYARDAH NOOKANBAH AND MILLIJIDEE ROAD RESHAPING AND GRAVEL RESHEETING

File Number: 0481

Author: Bhavesh Modi, Manager of Infrastructure

Responsible Officer: Wayne Neate, Director Technical and Development Services

Authority/Discretion: Executive

SUMMARY

Council is to consider the award of Tender T02-2023/24 being the contract works required to undertake gravel reshaping and re-sheeting on the road pavement, shoulders, batters, and table drains for a total length of 5.25Km and 3.60Km, on the Calwynyardah/Nookanbah and Millijidee Roads, respectively. It is proposed that the Tender be awarded to Buckley's Earthworks and Paving (BEP).

DISCLOSURE OF ANY INTEREST

Nil by author; Nil by Responsible Officer.

BACKGROUND

As proposed in Council's 2023/2024 budget, funding has been allocated for improvement works to undertake gravel reshaping and re-sheeting on the road pavement, shoulders, batters, and table drains from Straight line Kilometre (measurements used on roads from a start point) (SLK) 31.50 to 32.00, SLK 39.30 to 39.65, SLK 55.25 to 56.95 and SLK 58.30 to 61.00 a total of 5.25Km for Calwynyardah/Nookanbah Roads and SLK 16.30 to 19.45, SLK 20.10 to 20.20 and SLK 21.50 to 21.85 a total of 3.60Km, for Millijidee Road. Following the tender advertisement, one request was made for the applicable tender documents.

At the close of tenders on the 8 February 2024, submitted tender documents were received from;

- Buckley's Earthworks and Paving

STATUTORY ENVIRONMENT

Local Government Act 1995 – 3.57 Tenders for the providing goods or services and *Local Government (Functions and General) Regulations 1996* Part 4 Tenders for providing goods or services.

POLICY IMPLICATIONS

F1 Procurement of Goods and Services

F7 Regional Price preference Policy

FINANCIAL IMPLICATIONS

Funds for the undertaking of this contract are contained within the proposed 2023-2024 budget for gravel reshaping and re-sheeting on the road pavement, shoulders, batters, and table drains on Calwynyardah Nookanbah and Millijidee Road.

Each road is comprised of the following funding;

Calwynyardah Nookanbah Road – RC014

- Roads to Recovery – \$50,000 propose to increase to \$100,000
- Remote Access Road – \$250,000
- Road Project Grant – \$100,000
- Total - \$400,000 – proposed to change to budget to \$450,000

Millijidee Road – R2R165

- Roads to Recovery – \$50,000 propose to increase to \$100,000
- Remote Access Road – \$75,000
- Road Project Grant – \$100,000
- Total - \$225,000 – proposed to change to budget to \$275,000

Roads to Recovery (R2R) funds are funds from a five-year program running from financial year 19/21 to 23/24 and these funds are Federal government controlled. With the additional allocations as proposed above there will be approx. \$92,000 left to allocate as the current program ends on the 30 June 2024. These R2R grants are stand alone and can be used for a complete or part of a project.

Remote access road grants are made up of funds from Main Roads Western Australia (MRWA) and Special road grants from the Federal Assistance Grant (SFAGS) on a 33.3% and 66.6% basis respectively. The amounts shown above for the Remote access road grants is the combined total of the MRWA and SFAGS grants. These grants are road specific grants.

Road project grants are funds administered by MRWA and are funded in a manner that 66.6% of the grant is from MRWA and the rest of the grant is Shire funds making up the final 33.3%. In the amounts shown above we are only listing the 66.6% from MRWA we are using R2R grant to make up Councils 33.3%. These grants are road specific grants.

The Tender price submission from BEP is attached as a confidential attachment.

STRATEGIC IMPLICATIONS

GOAL	OUR PRIORITIES	WE WILL
4. Environment	4.2 Liveable Communities	4.2.3 Encourage and facilitate the maintenance and development of infrastructure that connects our communities

RISK MANAGEMENT CONSIDERATIONS

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
Community: Access to communities restricted.	Likely	Moderate	High	Maintain roads to industry standard.

CONSULTATION

Tender T02-2023/24 Calwynyardah/Nookanbah and Millijidee Road Reshaping and Gravel Resheeting, was advertised in local and state-wide newspapers, with the tender closing 2.00pm (WST) on 8 February 2024. The advertised Tender allowed for a minimum of fourteen days for individuals or companies to submit tenders, which included the opportunity to view and inspect the construction site. Council officers have carried out several inspections on the section of road concerned to ascertain the most appropriate locations for treatment.

COMMENT

For the purposes of the project the scope of works was split into separate components as follows;

- Project – Reshape/Re sheet shoulders, batters, table drains and road pavement from SLK 31.50 to 32.00, SLK 39.30 to 39.65, SLK 55.25 to 56.95 and SLK 58.30 to 61.00 a total of 5.25Km on Calwynyardh/Nookanbah, and SLK 16.30 to 19.45, SLK 20.10 to 20.20 and SLK 21.50 to 21.85 a total of 3.60Km, Millijidee Roads.

It is recommended that the tender be awarded to the contractor with the highest average score given by three assessors, using the Approved Tender Scoring Criteria that falls within the allocated budget. The Regional Price Preference Policy AF33 was applied to the prices submitted by Buckley's Earthworks and Paving.

The criteria and weighting for this tender were as follows;

Criteria	%
Company History & Track Records	10
Key Personnel and Experience	15
Tenderer's Capacity & Resources	10
Demonstrated Understanding	25
Local Supplier Details	20
Quality Management Systems	15
Risk	5

A score summary is shown below;

Buckleys Earthworks and Paving	C1
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		C1
Company History & Track Records	10%	9.0
Key Personnel Skills & Experience	15%	13.0
Tenderer's Capacity & Resources	10%	8.7
Demonstrated Understanding	25%	11.0
Local Supplier Details	20%	12.3
Quality Management System	15%	12.7
Risk	5%	4.0
Totals	100%	70.7

As seen in the table above, Buckley's Earthworks and Paving score reflects the business's capability in each area in the Assessment Criteria for T02-2023-24 Calwynyardah/Nookanbah and Millijidee Road Reshaping and Gravel Re-sheeting.

FOR NOTING:

The Shire Administration has undertaken negotiations with Buckley's in an effort to provide an increased social benefit across works carried out in the Fitzroy Valley. The tender received did not adequately meet the minimum specification of both Item's D & E.

Demonstrated Understanding	25%	11.0
Local Supplier Details	20%	12.3

The Shire and other Government Agencies have led recovery operations to ensure that there is local social and economic benefit experienced directly in the Valley. The Shire has demonstrated its commitment to Aboriginal empowerment through its draft Aboriginal Empowerment Strategy – endorsed by Council 22 July 2021.

All Agencies have been committed over the last 12 months to actioning jobs creation in the Valley, with a focus on local Aboriginal procurement where possible and a local employment first strategy. The Shire has modified its tendering specifications and employment practices to enable local jobs and business creation in an effort to contribute to balanced and sustainable economic development across the region in an effort to impact abject poverty.

The Tenderers have embraced the discussions and have submitted the attached ADDENDUM (see **Attachment 2**) to the initial tender submitted.

Officers believe that the tender, even though the only tender:

- provides value for money as a comparison has been made to previous works on these roads and there have been only slight increases in the rates of work.
- meets the Shires outcomes in regards to the engagement of local Indigenous business development, engagement and employment.

It is recommended that this contract be awarded to Buckley's Earthworks and Paving.

VOTING REQUIREMENT

Absolute majority

ATTACHMENTS

1. **BEP Price submission - Confidential**
2. **Addendum - Tender T02-2023/24 - Confidential**

RECOMMENDATION

That Council by ABSOLUTE MAJORITY;

1. **Award Tender T02-2023/24 Calwynyardah/Nookanbah and Millijidee Road Reshaping and Gravel Resheeting to Buckley's Earthworks and Paving; and**
2. **Agree to the increase in the budget for both works by \$50,000 in each account RC014 and RC165 for a total of \$100,000 to be allocated from unspent Roads to Recovery funds.**

7.2 AWARD OF TENDER T03-2023/24 - FAIRFIELD LEOPOLD DOWNS ROAD RESHAPE AND RESHEET

File Number: 0481

Author: Bhavesh Modi, Manager of Infrastructure

Responsible Officer: Wayne Neate, Director Technical and Development Services

Authority/Discretion: Executive

SUMMARY

Council to consider the awarding of Tender T03-2023/24 being the contract works required to undertake gravel reshaping and re-sheeting on road pavement, shoulders, batters, and table drains for a total of length of 7.83Km, on the Fairfield-Leopold Road. It is proposed that the Tender be awarded to Buckley's Earthworks and Paving (BEP).

DISCLOSURE OF ANY INTEREST

Nil by Author; Nil by responsible Officer.

BACKGROUND

As proposed in Council's 2023-2024 budget, funding has been allocated for improvement works to undertake gravel reshaping and re-sheeting on shoulders, batters, table drains and road pavement from Straight Line Kilometre (measurements used on roads from a start point) (SLK) 35.07 to 36.80, SLK 39.50 to 41.20, SLK 41.60 to 42.00, SLK 42.10 to 44.10 and SLK 46.00 to 48.00, a total of 7.83Km, on the Fairfield-Leopold Road. Following the tender advertisement, one request was made for the applicable tender documents.

At the close of tenders on the 8 February 2024, submitted tender documents were received from;

- Buckley's Earthworks and Paving

STATUTORY ENVIRONMENT

Local Government Act 1995 – 3.57 Tenders for the providing goods or services and *Local Government (Functions and General) Regulations 1996* Part 4 Tenders for providing goods or services.

POLICY IMPLICATIONS

F1 Procurement of Goods and Services

F7 Regional Price preference Policy

FINANCIAL IMPLICATIONS

Funds for the undertaking of this contract are contained within the proposed 2023-2024 budget for Reshaping and Re-sheeting of shoulders, batters, table drains and road pavement on Fairfield-Leopold Road.

The funding on the Fairfield-Leopold Road is made up of the following funds;

Fairfield-Leopold Road – RC025

- Council funds – \$173,333
- Federal Assistance Grants (FAGs) – \$466,667
- Total – \$640,000

Federal Assistance Grants (FAGs) has a roads component of approximately \$1.3 million each year, these funds are used in the road maintenance and upgrade works, they are untied grant funds and therefore not project specific funds. Council Funds come from Councils allocation to roads.

The tender price submission from BEP is attached as a confidential attachment.

STRATEGIC IMPLICATIONS

GOAL	OUR PRIORITIES	WE WILL
4. Environment	4.2 Liveable Communities	4.2.3 Encourage and facilitate the maintenance and development of infrastructure that connects our communities

RISK MANAGEMENT CONSIDERATIONS

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
Community: Access to communities restricted.	Likely	Moderate	High	Maintain roads to industry standard.

CONSULTATION

Tender T03-2023/24 Fairfield-Leopold Downs Road Reshape and Re-sheeting, was advertised in local and state-wide newspapers, with the tender closing 2.00pm (WST) on 8 February 2024. The advertised tender allowed for a minimum of fourteen days for individuals or companies to submit tenders, which included the opportunity to view and inspect the construction site. Council officers have carried out several inspections on the section of road concerned to ascertain the most appropriate locations for treatment.

COMMENT

For the purposes of the project the scope of works was split into separate components as follows;
Project – Reshape/Re sheet shoulders, batters, table drains and road pavement from SLK 35.07 to 36.80, SLK 39.50 to 41.20, SLK 41.60 to 42.00, SLK 42.10 to 44.10 and SLK 46.00 to 48.00, a total of 7.83Km, on Fairfield-Leopold Road.

It is recommended that the tender be awarded to the contractor with the highest average score given by three assessors, using the Approved Tender Scoring Criteria that falls within the allocated budget. The Regional Price Preference Policy AF33 was applied to the prices submitted by Buckley's Earthworks & Paving.

The criteria and weighting for this tender were as follows;

Criteria	%
Company History & Track Records	10
Key Personnel and Experience	15
Tenderer's Capacity & Resources	10
Demonstrated Understanding	25
Local Supplier Details	20
Quality Management Systems	15
Risk	5

A score summary is shown below;

Buckley's Earthworks and Paving	C1
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Company History & Track Records	10%	9.0
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Demonstrated Understanding	25%	11.0
Local Supplier Details	20%	12.3
Quality Management System	15%	12.7
Risk	5%	4.0
Totals	100%	70.7

As seen in the table above, Buckley's Earthworks and Paving score reflects the business's capability in each area in the Assessment Criteria for T03-2023/24 Fairfield-Leopold Downs Road Reshape and Re-sheeting.

FOR NOTING:

The Shire Administration has undertaken negotiations with Buckley's in an effort to provide an increased social benefit across works carried out in the Fitzroy Valley. The tender received did not adequately meet the minimum specification of both Item's D & E.

Demonstrated Understanding	25%	11.0
Local Supplier Details	20%	12.3

The Shire and other Government Agencies have led recovery operations to ensure that there is local social and economic benefit experienced directly in the Valley. The Shire has demonstrated

its commitment to Aboriginal empowerment through its draft Aboriginal Empowerment Strategy – endorsed by Council 22 July 2021.

All Agencies have been committed over the last 12 months to actioning jobs creation in the Valley, with a focus on local Aboriginal procurement where possible and a local employment first strategy. The Shire has modified its tendering specifications and employment practices to enable local jobs and business creation in an effort to contribute to balanced and sustainable economic development across the region in an effort to impact abject poverty.

The Tenderers have embraced the discussions and have submitted the attached ADDENDUM (see **Attachment 2**) to the initial tender submitted.

Officers believe that the tender, even though the only tender:

- provides value for money as a comparison has been made to previous works on these roads and there have been only slight increases in the rates of work.
- meets the Shires outcomes in regards to the engagement of local Indigenous business development, engagement and employment.

It is recommended that this contract be awarded to Buckley's Earthworks and Paving.

VOTING REQUIREMENT

Simple majority

ATTACHMENTS

1. **BEP Price submission - Confidential**
2. **Addendum - Tender T03-2023/24 - Confidential**

RECOMMENDATION

That Council award Tender T03-2023/24 Fairfield Leopold Downs Road Reshape and Resheeting to Buckley's Earthworks and Paving.

8 NEW BUSINESS OF AN URGENT NATURE

9 CLOSURE

9.1 Date of Next Meeting

The next ordinary meeting of Council will be held Thursday, 28 March 2024 in the Karrayili Adult Education Centre - Fitzroy Crossing.

9.2 Closure of Meeting