



# **BOGAN SHIRE COUNCIL**

## **Extraordinary Business Paper**

**I hereby give notice that an Extraordinary Council Meeting will be held  
on:**

**Date: Monday, 20 January 2025**

**Time: 5.30pm**

**Location: Bogan Shire Council  
Council Chambers  
81 Cobar Street  
Nyngan**

**Derek Francis  
General Manager**





### **Published Recording of Council Meeting**

This Council Meeting is being recorded for publishing on Council's website as a public record. By speaking at the Council Meeting, you agree to being recorded and for this recording to be published. Please ensure that if and when you speak at this Council Meeting that you are respectful to others and use appropriate language at all times. Bogan Shire Council accepts no liability for any defamatory or offensive remarks made during the course of this Council Meeting.



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- 1 OPENING PRAYER**
- 2 REMEMBERANCES**
- 3 APOLOGIES**
- 4 DISCLOSURE OF INTERESTS**

## 5 GENERAL MANAGER'S REPORTS

### 5.1 HOSKINS STREET SUBDIVISION TENDER

#### 1. Introduction

The purpose of this report is to make a recommendation to Council in relation to the tender for the development of a 33 Lot Residential Subdivision on Hoskins Street Nyngan.

#### 2. Background

Council considered a report at its meeting on 28 November 2024 for the construction of lead in infrastructure for the new residential subdivision on Hoskins Street.

Five tenders were received and Council resolved (250/24) as follows:

*That, subject to solvency and final checks including confirmation of the tenderer's ability to execute the construction contract within a timeframe acceptable to the funding body (NSW Government), the tender for construction of lead-in infrastructure on new residential subdivision, Lot 33 be awarded to WTC Group Australia Pty Ltd in the amount of \$1,707,618.80 including GST.*

#### 3. Discussion

Following Council's resolution, Lyons Project Management (Lyons) was appointed on 3 December 2024 to do solvency and final checks and resolve minor clarifications with WTC Group prior to entering into a contract with them.

A discussion was held between WTC Group (WTC) and Lyons on 6 December 2024, with positive results, during which WTC's General Manager of Civil confirmed their interest in the project and ability to provide clarifications in the week of 16 December.

Unfortunately, WTC's General Manager of Civil suffered a medical incident in the meantime. Their Managing Director, however, undertook to provide required clarifications by 8 January 2025. In an email dated 20 December he stated, "we would be available for induction early next year if necessary".

Lyons received an email from WTC's Managing Director on 8 January 2025, including a detailed project plan showing the project commencing in early January with completion by 21 May 2025, in line with Council's project deadline of 31<sup>st</sup> May 2025.

Final clarifications were obtained from WTC on 9 January and Lyons confirmed on 10 January that all information required from WTC was complete. A letter of Tender Award from Council was prepared with an instruction to Lyons to issue this once a satisfactory independent financial report had been obtained. Lyons received a preliminary financial report on 14 January 2025 and were then asked by Council to obtain a second, supplementary report. Lyons was also asked to convey the reason for the delay in issuing the letter of Award to

WTC. In doing so, on 15 January 2025, Lyons were verbally informed by WTC's Managing Director that they were no longer in a position to carry out the works for Council.

The General Manager confirmed this in a conversation with WTC's Managing Director later that day. WTC expressed an interest in some further involvement in the project but stated that they were no longer in a position to commit to project completion by 31 May 2025 due to other work opportunities.

This leaves Council in a very difficult position considering community expectations for this project and 30 June 2025 as a hard deadline for grant funding acquittal by the NSW Department of Primary Industries and Regional Development. Indications from officials of the Department are that no extension of time is possible.

If the General Manager had confidence that a substantial extension of time for grant acquittal would be forthcoming from the NSW Government then the recommendation to Council would be to re-start the tender process.

In the current circumstances however, starting the tender process over again is unlikely to achieve a satisfactory outcome within the grant funding deadline, given the long lead times necessary.

Two remedies suggest themselves:

1. Seek assistance from Local Member Roy Butler to petition the Minister for Regional NSW – and any other relevant Ministers – to extend the grant funding deadline by at least 3 months to allow Council to deliver this project.
2. Invoke provisions in the Local Government Act and Regulation which allows Council to not accept any tenders and to enter into negotiations with any of the tenderers or another person to try and have the project delivered as soon as possible.

The reasons for this decision must be incorporated into a resolution and must obviously, be valid and withstand audit and public scrutiny bearing in mind that the objective of tendering is to ensure the best value for money in the best interests of Council. Attachment 1 details the Local Government Regulation applicable to this situation.

An alternative approach to (2) above would be to rely on Section 55(k) of the Local Government Act which allows councils to enter into contracts "in a case of emergency" without seeking tenders. This situation could constitute a financial emergency for Council.

Subject to Council's decision on this matter, it is the General Manager's intention to appoint Lyons Project Management to contact existing tenderers, starting with the next highest ranked, and any other contractors they believe appropriate to determine their capacity and timeframe to do the work and then to prepare a recommendation on how best to proceed. Any recommended solution would have to be within Council financial means as already defined using remaining grant funds and the borrowings approved at the November Council meeting.



It is expected that, regardless of how successful negotiations with other parties are, Council will still require the Local Member's assistance to obtain an extension of time within which to complete the project and acquit grant funds.

#### **4. Attachments**

1. Tender Legislation

#### **5. Recommendation**

It is recommended that:

1. Council decline to accept any of the tenders submitted to the Council meeting on 28 November 2024 for the construction of lead in infrastructure for the 33 Lot Residential Subdivision on Hoskins Street.
2. The General Manager enter into negotiations with the remaining tenderers and other parties, starting with the next best ranked tenderer according to the report provided to the meeting on 28 November 2024, to undertake the project in the best interests of Council subject to financial constraints, being the remaining grant funds and borrowings authorised at Council's November meeting.
3. It be noted that Council's reason for not inviting fresh tenders is that it does not believe that a satisfactory result can be obtained from re-tendering. This is based on Council's grant funding deadlines and the long lead times necessary for the tender process.
4. It be noted that Council's reason for determining to enter into negotiations with all of the remaining tenderers is the urgent need to explore all practical avenues to achieve the project outcome within the current grant funding deadline or as soon as practicable thereafter.
5. It be noted that Council could also rely on the provisions of Section 55(k) of the Local Government Act to not call for tenders before entering into a contract as the current situation constitutes a financial emergency.
6. A panel comprising the Deputy Mayor, General Manager, Director Infrastructure Services and Director Finance and Corporate Services be delegated the authority to determine the appointment of suitable contractors to undertake the project in the best interests of Council, based on recommendations from Lyons Project Management, and subject to financial constraints - being the remaining grant funds and borrowings authorised at Council's November meeting.
7. The General Manager be authorised to enter into the required contracts accordingly.

**Extract from the Local Government (General) Regulation, 2021****178 Acceptance of tender submissions**

- (1) After considering the tender submissions for a proposed contract, the council must either—
  - (a) accept the tender submission that, having regard to all the circumstances, appears to it to be the most advantageous, or
  - (b) decline to accept any of the tender submissions.
- (3) A council that decides not to accept any of the tender submissions for a proposed contract or receives no tender submissions for the proposed contract must do one of the following—
  - (e) by resolution of the council, enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender,
- (4) If a council resolves to enter into negotiations as referred to in subsection (3)(e), the resolution must state the following—
  - (a) the council's reasons for declining to invite fresh tender submissions or applications as referred to in subsection (3)(b)–(d),
  - (b) the council's reasons for determining to enter into negotiations with the person or persons referred to in subsection (3)(e).

**Extract from the Local Government Act, 1993****55 Requirements for tendering**

- (1) A council must invite tenders before entering into any of the following contracts—
  - (a) a contract to carry out work that, by or under any Act, is directed or authorised to be carried out by the council,
- (3) This section does not apply to the following contracts—
  - (k) a contract made in a case of emergency,

**6 MEETING CLOSURE**