



**SHIRE OF ASHBURTON
SPECIAL MEETING OF COUNCIL**

**AGENDA
&
ATTACHMENTS**

via electronic means

29 April 2021

7.00 pm

AGENDA
SPECIAL MEETING OF COUNCIL 29 APRIL 2021

Notice is hereby given that a Special Meeting of Council of the Shire of Ashburton will be held on 29 April 2021 via electronic means, commencing at 7.00 pm.

The business to be transacted is shown in the Agenda.



Kenn Donohoe
CHIEF EXECUTIVE OFFICER

DISCLAIMER

The recommendations contained in the Agenda are subject to confirmation by Council. The Shire of Ashburton warns that anyone who has any application lodged with Council must obtain and should only rely on written confirmation of the outcomes of the application following the Council meeting, and any conditions attaching to the decision made by the Council in respect of the application. No responsibility whatsoever is implied or accepted by the Shire of Ashburton for any act, omission or statement or intimation occurring during a Council meeting.

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1. DECLARATION OF OPENING

The Presiding Member declared the meeting open at _____ pm.

1.1 ACKNOWLEDGEMENT OF COUNTRY

As representatives of the Shire of Ashburton Council, we respectfully acknowledge the local Indigenous people, the traditional custodians of this land where we are meeting upon today and pay our respects to them and their elders past, present and emerging.

2. ANNOUNCEMENT OF VISITORS

3. ATTENDANCE

3.1 PRESENT

Elected Members:	Cr K White Cr D Diver Cr M Lynch Cr L Rumble Cr M Gallanagh Cr R de Pledge Cr J Richardson Cr D Dias	Shire President (Presiding Member) Onslow Ward Deputy Shire President Tom Price Ward Tom Price Ward Paraburdoo Ward Pannawonica Ward Ashburton Ward Tablelands Ward Paraburdoo Ward
Staff:	Mr K Donohoe Mr M Khosravi Mrs H Pickering Ms D Walkington	Chief Executive Officer Director Infrastructure Services Manager Waste Services Acting Governance Officer
Guests:		
Members of Public:	There were ___ members of the public in attendance at the commencement of the meeting.	
Members of Media:	There were ___ members of the media in attendance at the commencement of the meeting.	

3.2 APOLOGIES

3.3 APPROVED LEAVE OF ABSENCE

4. PUBLIC QUESTION TIME

4.1 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

4.2 PUBLIC QUESTION TIME

5. DECLARATION BY MEMBERS

5.1 DUE CONSIDERATION BY COUNCILLORS TO THE AGENDA

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Councillors are requested to give due consideration to all matters contained in the Agenda presently before the meeting.

5.2 DECLARATIONS OF INTEREST

Councillors to Note

A member who has an Impartiality, Proximity or Financial Interest in any matter to be discussed at a Council or Committee Meeting, that will be attended by the member, must disclose the nature of the interest:

(a) In a written notice given to the Chief Executive Officer before the Meeting
Or,

(b) At the Meeting, immediately before the matter is discussed.

A member, who makes a disclosure in respect to an interest, must not:

(c) Preside at the part of the Meeting, relating to the matter or;

(d) Participate in or be present during any discussion or decision-making procedure relative to the matter, unless to the extent that the disclosing member can do so under Section 5.68 or Section 5.69 of the *Local Government Act 1995*.

NOTES ON DECLARING INTERESTS (FOR YOUR GUIDANCE)

The following notes are a basic guide for Councillors when they are considering whether they have an interest in a matter.

These notes are included in each agenda for the time being so that Councillors may refresh their memory.

1. A Financial Interest requiring disclosure occurs when a Council decision might advantageously or detrimentally affect the Councillor, or a person closely associated with the Councillor and is capable of being measure in money terms. There are exceptions in the *Local Government Act 1995*, but they should not be relied on without advice, unless the situation is very clear.
2. If a Councillor is a member of an Association (which is a Body Corporate) with not less than 10 members i.e., sporting, social, religious etc), and the Councillor is not a holder of office of profit or a guarantor and has not leased land to or from the club, i.e., if the Councillor is an ordinary member of the Association, the Councillor has a common and not a financial interest in any matter to that Association.
3. If an interest is shared with a significant number of electors or ratepayers, then the obligation to disclose that interest does not arise. Each case needs to be considered.
4. If in doubt declare.
5. As stated in (b) above, if written notice disclosing the interest has not been given to the Chief Executive Officer before the meeting, then it **MUST** be given when the matter arises in the Agenda, and immediately before the matter is discussed.
6. Ordinarily the disclosing Councillor must leave the meeting room before discussion commences. The **only** exceptions are:

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- 6.1 Where the Councillor discloses the **extent** of the interest, and Council carries a motion under s.5.68(1)(b)(ii) or the *Local Government Act*; or
- 6.2 Where the Minister allows the Councillor to participate under s.5.69 (3) of the *Local Government Act*, with or without conditions.

Declarations of Interest provided:

Item Number/ Name	Type of Interest	Nature/Extent of Interest

- 6. ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION**
- 7. BUSINESS**

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7.1 ACCEPTANCE OF RFT 23.20 TOTAL WASTE MANAGEMENT SERVICES (INCLUDING PILBARA REGIONAL WASTE MANAGEMENT FACILITY)

FILE REFERENCE:	WM09
AUTHOR'S NAME AND POSITION:	Nathan Cain Director Corporate Services
AUTHORISING OFFICER AND POSITION:	Maz Khosravi Director Infrastructure Services
NAME OF APPLICANT/ RESPONDENT:	Not Applicable
DATE REPORT WRITTEN:	19 April 2021
DISCLOSURE OF FINANCIAL INTEREST:	The author and the authorising officer have no financial, proximity or impartiality interests in the proposal.
PREVIOUS MEETING REFERENCE:	Agenda Item 8.1 (Minute No. 41/2021) – Pilbara Regional Waste Management Facility Committee 20 April 2021

Summary

A Request for Tender was issued for Total Waste Management Services (including Pilbara Regional Waste Management Facility) (RFT 23.20) in January 2021.

The submission period closed late-March 2021, with submissions now having been fully assessed, and a probity audit undertaken.

Council is requested, with regards to Request for Tender RFT 23.20 Total Waste Management Services (including Pilbara Regional Waste Management Facility), to accept the tender submitted by Pilbara Environmental Services Pty Ltd (a Cleanaway and Kingkira Joint Venture), subject to satisfactory contract negotiations and any minor variations.

Background

In March 2019, Council considered a Business Plan for the establishment of the Pilbara Regional Waste Management Facility (to be in Onslow). This was viewed as a requirement due to the increase in industrial development and associated growth within the Shire, and the Pilbara Region, which has resulted in an increase in the volume of waste being generated. The complex and hazardous waste materials generated from mining and gas developments present challenges to current waste management infrastructure. As a result, the concept of a modern integrated waste management facility, situated in Onslow, able to accommodate municipal and hazardous materials from both Onslow and the broader Pilbara Region was born.

In May 2019 Council endorsed the Business Plan and, after a short period, commenced the process to construct the Pilbara Regional Waste Management Facility in Onslow.

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The facility was officially opened in March 2021, although as a facility only, with no designated operator identified at the time.

During the period between conception and construction finalisation, Shire officers and the Pilbara Regional Waste Management Committee have given due consideration to the preferred operating model to undertake the operation of the facility, and have advertised, seeking comment and submissions, a Business Plan for the operation of the facility.

The purpose of this item is to:

1. Endorse the advertised Business Plan (which includes the proposed operating model), and
2. Accept a successful tenderer to operate the facility.

Comment

Business Plan considerations

At the September 2020 Ordinary Council Meeting, Council resolved to endorse the Hybrid Alliance Model as the preferred contract model for the operation of the Pilbara Regional Waste Management Facility.

A Hybrid Alliance Model Contract takes the best qualities of a traditional services contract and an alliance agreement to form a 'hybrid agreement'.

Traditionally a services contract is used when engaging a waste facility operator. These service contracts have clear performance obligations and roles, however there is limited flexibility with service requirements established at the commencement of the contract, and strict processes in place for any amendments. Dispute resolution mechanisms have a significant role in service contracts.

Alliance agreements are less adversarial with risk allocation and collective obligation to deliver services shared by both parties. Additionally, the commercial nature of an alliance agreement incentivises exceptional performance whilst discouraging poor performance.

A hybrid agreement allows the payment model from an alliance agreement to be used whilst utilising the framework of a services contract as the basis for the obligations and remedies between the Shire and the operator. Further, the *Local Government Act 1995* section 6.17 (Setting of fees and charges) places some limitations on receiving profit from the setting of fees and charges, however under a major trading undertaking (which is what is being proposed) allows the Shire to carry out a commercial enterprise with a view to making a profit.

The decision to follow a hybrid agreement gives rise to a significant trading undertaking, as defined by the *Local Government Act 1995* section 3.59 (Commercial enterprises by local governments).

A significant trading undertaking is defined as an activity carried on by a local government with a view to producing profit to it.

A requirement of this section is the production of a Business Plan, which is prepared and advertised in accordance with legislation.

Shire officers prepared the Business Plan, based on general direction from Council (via the

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Pilbara Regional Waste Management Committee), and this was advertised on Tuesday 23 February 2021.

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Members of the public were invited to make submissions in relation to the business plan and these were to be received no later than 4:00pm Tuesday 6 April 2021. At the close of the submission period no submissions had been received.

It is recommended Council proceed with the trading undertaking, as proposed.

Request for Tender considerations

Request for Tender RFT 23.20 for Total Waste Management Services (including Pilbara Regional Waste Management Facility) was advertised in *The West Australian* newspaper on Saturday 30 January 2021, and available via the Shire's e-tendering portal (Tenderlink). Advertising was also undertaken via social media and on local noticeboards.

ATTACHMENT 7.3

The tender submission period closed Thursday 25 March 2021.

Tenderers were requested to provide a schedule of rates for mandatory and discretionary services, including rates for other items, tasks, and activities to enable pricing of future works.

Mandatory services were summarised as the operation of a Class IV landfill facility at Onslow (referred to as the Pilbara Regional Waste Management Facility) and include the operations and maintenance of the weighbridge and gatehouse, and haulage of waste from Onslow Waste Transfer Station.

Discretionary services include, although are not limited to, the following services:

- Kerbside collection services and supporting services, and
- Operation of additional waste infrastructure at Tom Price and Paraburdoo.

The form of the proposed contractual agreement is a hybrid alliance contract, which includes traditional contractual obligations for certainty and an alliance-type commercial model, whereby the Operator may share in the revenue generated by the waste facility.

Under the terms of the Request for Tender, the Services will be provided for an initial term of twelve to twenty-four months (referred to as the "Ramp-up Stage" in the proposed contractual agreement). During the Ramp-up Stage the Operator's performance will be reviewed and assessed at regular intervals and feedback provided. The Operator's overall performance will be assessed at the end of the Ramp-up Stage at which point the decision whether to engage the Operator for a further term of eight years (referred to as the "Operating Stage" in the proposed contractual agreement) will occur.

If the decision to terminate the Ramp-up Stage early to progress to the Operating Stage is made, any residual time remaining in the Ramp-up Stage will be added to the Operating Stage. The Operating Stage may be extended once, for a further term of five years, subject to the terms of the proposed contractual agreement.

Due to the significant value of the tender an external probity audit was undertaken to provide probity oversight and compliance assessment with relevant legislation and the Shire's procurement policy and procedures. The probity assessment does not identify any areas of

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concern.

CONFIDENTIAL ATTACHMENT 7.4

At the tender submission close, three submissions were received. Two submissions were deemed compliant.

The assessment of the submissions was formally undertaken by a panel, and included:

- a) Director Infrastructure Services
- b) Manager Land and Asset Compliance
- c) Manager Waste Services
- d) External Waste Management Advisor (Talis Consultants).

An evaluation of submissions against the criteria was undertaken and conducted in accordance with the advertised evaluation specifications and with the following weightings:

Criteria		Weighting
(a)	Relevant Organisational Experience	20%
(b)	Key Personnel	10%
(c)	Tenderer's Resources	10%
(d)	Demonstrated Understanding	25%
(e)	Marketing Plan	25%
(f)	Environmental and Occupational Health and Safety	10%

Tenderers were advised of the fact, although price is considered, the Tender containing the lowest price will not necessarily be accepted. The tendered prices will be assessed together with qualitative and compliance criteria to determine the best value for money outcome for the Shire.

The evaluation of the submissions received against the quantitative and qualitative criteria resulted in the rankings shown below (where the number one submission is listed as number one), noting both submissions were acceptable:

- 1) Pilbara Environmental Services Pty Ltd (a Cleanaway and Kingkira Joint Venture).
- 2) Redmondis Pty Ltd.

It is recommended Council accepts the submission made by Pilbara Environmental Services Pty Ltd (a Cleanaway and Kingkira Joint Venture) and enters a contract, subject to satisfactory contract negotiations and any minor variations, to carry out the required works.

The Evaluation and Recommendation Report includes full details of the evaluation process and scoring. This report is attached as a confidential item.

CONFIDENTIAL ATTACHMENT 7.5

The recommended Tenderer submission indicated a clear understanding of the work in the Pilbara and showcased an in-depth knowledge of the available waste market. The submission is free of any significant assumptions and the provided cost estimates are

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considered a true reflection of the operational cost of the facility, with the submission providing a clear marketing strategy aligned with Council's short-term and long-term objectives.

Other considerations

The Shire currently undertakes the management of waste management services in Tom Price, Paraburdoo and Onslow, with the operation of the Pilbara Regional Waste Management Facility (and other mandatory services within the Request for Tender) a separate consideration to the current service provision model.

Some confusion has occurred amongst members of the public and Shire waste services employees regarding the future provision of waste services and facilities, and the employment requirements involved in the supply of these.

The Request for Tender sought estimated prices regarding discretionary services for kerbside collection services and operation of the Tom Price and Paraburdoo waste facilities for comparative, due diligence purposes to determine market willingness regarding operation and management of these.

Prior to any departure from the existing service model consideration will need to be made regarding the costs and quality associated with another provider supplying these services, and Shire employee wellbeing and redeployment opportunities. This is not a current consideration for the purposes of accepting Request for Tender RFT 23.20.

Consultation

Evaluation Panel
Senior Procurement Officer
Technical Consultants
Legal Consultants
Probity Advisor

Statutory Environment

Local Government Act 1995

Section 3.57 – Tenders for providing goods or services

Council is required to invite tenders before it enters a contract of a prescribed kind under which another person is to supply goods or services.

Section 3.59 – Commercial enterprises by local governments

Before Council commences a commercial enterprise, it is to have prepared a business plan, which is to include an overall assessment of the commercial enterprise. This includes, as a minimum:

- a) Expected impact on the provision of facilities and services by the Shire.
- b) Expected impact on other person providing facilities and services in the district.
- c) Expected financial impact on the Shire.
- d) Expected impact on matters included in the Strategic Community Plan.
- e) The ability of the Shire to manage the undertaking of the performance of the transaction; and
- f) Any other matters legislated from time-to-time.

Additionally, there is a need to advertise the business plan and consider any submissions before proceeding (either as proposed or in a modified form). Council may choose not to proceed.

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Section 6.17 – Setting level of fees and charges

When determining the amount of a fee or charge, Council is required to take into consideration, amongst other things, the cost to provide the service of goods, the importance of the service or goods to the community, and the price at which the service or goods could be supplied by an alternate provider.

Local Government (Functions and General) Regulations 1996

Regulation 11 – Tender for providing goods or services

Tenders are to be publicly invited before entering a contract for another person to supply goods or services if the consideration of the contract is, or is expected to be, more than \$250,000 (conditions apply).

Regulation 18 – Rejecting and accepting tenders

Tenders are required to be rejected unless submitted in the manner stipulated in the invitation for tenders. Provisions permit the Shire to enter into negotiations with the recommended Tenderer and, if a contract cannot be formed within six months, the next most advantageous and accepted Tenderer.

Financial Implications

The price submitted by Pilbara Environmental Services Pty Ltd (a Cleanaway and Kingkira Joint Venture) (the recommended Tenderer) for mandatory services (operation of the Pilbara Regional Waste Management Facility), include the operations and maintenance of the weighbridge and gatehouse, and haulage of waste from Onslow Waste Transfer Station) is \$3.6 million per annum and aligns with forecasted financial obligations.

Full details of the annual costs are contained in the Evaluation and Recommendation Report (as previously referred). It is important to note, as outlined in the Evaluation and Recommendation Report, the recommended Tenderer has been assessed as being the most advantageous tenderer, and not necessarily the cheapest.

When considering the price variations between the two tender submissions, Shire officers were cognisant of the assumptions and departures applied by each Tenderer. As detailed in the Evaluation and Recommendation Report the Evaluation Panel identified the pricing variance was insignificant when analysed against the experience, qualifications, presence, and resources of the recommended Tenderer.

The form of the proposed contractual agreement, as a hybrid alliance contract, includes traditional contractual obligations for certainty and an alliance-type commercial model allowing the Operator to share in the revenue generated by the facility.

The recommended Tenderer has proposed departures to the proposed contractual agreement, which are explained in more detail in the Evaluation and Recommendation report.

Payment to the Operator, and any Shire costs, are first drawn from the revenue generated by the facility. Surplus revenue is to be shared on a percentage split, which will be based on the total surplus revenue as well as the contractor's performance against set performance measures. Any losses will be drawn from previous period surpluses or, if there are no surplus funds available, from municipal funds.

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Strategic Implications

Shire of Ashburton 10 Year Strategic Community Plan 2017-2027 (Desktop Review 2019)

Goal 04 Quality Services and Infrastructure

Objective 1 Quality public infrastructure

Risk Management

Risk has been assessed based on the Officers Recommendation.

Risk	Risk Likelihood	Risk Impact / Consequence	Risk Rating	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
There is no operator for the Pilbara Regional Waste Management Facility, and it remains idle.	Possible (3)	Moderate (3)	Moderate (9)	Reputation – Substantiated, public embarrassment, moderate impact on community trust or moderate media profile	Follow appropriate process and provide quality information for Council to make an informed decision to appoint an operator.
Mismanagement of the Facility leading to damage to the constructed environmental safeguards resulting in environmental damage to local surrounds.	Unlikely (2)	Major (4)	Moderate (8)	Natural Environment – Uncontained, reversible impact managed by a coordinated response from external agencies	Due diligence in the proposal to appoint a suitably experienced and qualified operator to manage the facility to Best Practice Standards and comply with operational and environmental management requirements.
Failure to manage contractual matters in a manner leading to contract complications	Possible (3)	Major (4)	High (12)	Financial – \$1,000,000 to \$5,000,000	Due diligence in proposing a suitably experienced and qualified operator and the appointment of a legal advisor to manage contract negotiations.

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The following Risk Matrix has been applied.

Risk Matrix						
Consequence Likelihood		Insignificant	Minor	Moderate	Major	Catastrophic
		1	2	3	4	5
Almost Certain	5	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

Adoption of this item has been evaluated against the Shire of Ashburton's Risk Management Policy CORP5 Risk Matrix. The perceived level of risk is moderate to high risk. The successful management of the Pilbara Regional Waste Management Facility represents a significant investment by Council, with significant risk exposure (environmentally, reputationally and financially) if operation is delayed and a suitable operator (via acceptance of tender) is not appointed.

Policy Implications

FIN12 – Purchasing Policy

Council is committed to delivering best practice in the purchasing of goods, services and works, which align with the principles of transparency, probity, and good governance, whereby establishing efficient, effective, economical, and sustainable procedures in all purchasing activities. Council commits to achieving best value for money considering sustainable benefits, including environmental, social, and local economic factors.

Council delegation 1.1.17 – Tenders for goods and services

Council has delegated to the Chief Executive Officer the authority to call and manage tenders, including the authority to negotiate minor variations. Additionally, the Chief Executive Officer is authorised to deal with the next most advantageous tenderer if unable to for a contract with the recommended tenderer.

Voting Requirement

Absolute Majority Required

Officers Recommendation

That with respect to acceptance of Request for Tender RFT 23.20 Total Waste Management Services (including Pilbara Regional Waste Management Services), Council:

1. In accordance with the *Local Government Act 1995 section 3.59*, proceeds to commence the Pilbara Regional Waste Management Facility, and associated services, as a trading undertaking as per the attached Business Plan (as advertised and without modification);
2. In accordance with the *Local Government Act 1995 section 3.57*,
 - a. accepts the tender provided by Pilbara Environmental Services Pty Ltd (a Cleanaway and Kingkira Joint Venture); and
 - b. authorises the Chief Executive Officer to negotiate and engross, via an appointed legal advisor, a hybrid-alliance contract, with or without minor variation, with Pilbara Environmental Services Pty Ltd (a Cleanaway and Kingkira Joint Venture)

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based on their submitted and acceptable tender.

3. In accordance with the *Local Government (Functions and General) 1996 regulation 18*, authorises the Chief Executive Officer to negotiate and engross, in the event the Chief Executive Officer and Pilbara Environmental Services Pty Ltd (a Cleanaway and Kingkira Joint Venture) cannot form a contract within six months and via an appointed legal advisor, a hybrid-alliance contract, with or without minor variation, with Redmondis Pty Ltd based on their submitted and acceptable tender.

8. CONFIDENTIAL ITEMS

Nil.

9. CLOSURE OF MEETING

There being no further business to discuss the Presiding Member closed the meeting at _____ pm.

10. NEXT MEETING

The next Ordinary Meeting of Council will be held on 18 May 2021, at the Onslow Multi-purpose Centre, Cnr Hooley Avenue and McGrath Avenue, Onslow commencing at 1.00 pm.