

# AGENDA

FOR THE  
GREATER SHEPPARTON CITY COUNCIL

## SPECIAL COUNCIL MEETING

TO BE HELD ON  
TUESDAY 26 FEBRUARY, 2019  
AT 1.00PM

IN THE COUNCIL BOARDROOM

**COUNCILLORS:**

Cr Kim O’Keeffe (Mayor)  
Cr Shelley Sutton (Deputy Mayor)  
Cr Seema Abdullah  
Cr Dinny Adem  
Cr Bruce Giovanetti  
Cr Chris Hazelman  
Cr Les Oroszvary  
Cr Dennis Patterson  
Cr Fern Summer

***VISION***

*A THRIVING ECONOMY IN THE FOODBOWL OF VICTORIA WITH  
EXCELLENT LIFESTYLES, INNOVATIVE AGRICULTURE  
A DIVERSE COMMUNITY AND  
ABUNDANT OPPORTUNITIES*



**A G E N D A  
FOR THE  
SPECIAL COUNCIL MEETING  
TO BE HELD ON  
TUESDAY 26 FEBRUARY, 2019 AT 1.00PM**

**CHAIR  
CR KIM O'KEEFFE**

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## RISK LEVEL MATRIX LEGEND

**Note: A number of reports in this agenda include a section on “risk management implications”. The following table shows the legend to the codes used in the reports.**

Likelihood	Consequences				
	Negligible (1)	Minor (2)	Moderate (3)	Major (4)	Extreme (5)
<b>Almost Certain (5)</b> Would be expected to occur in most circumstances (daily/weekly)	LOW	MEDIUM	HIGH	EXTREME	EXTREME
<b>Likely (4)</b> Could probably occur in most circumstances (i.e. Monthly)	LOW	MEDIUM	MEDIUM	HIGH	EXTREME
<b>Possible (3)</b> Reasonable probability that it could occur (i.e. over 12 months)	LOW	LOW	MEDIUM	HIGH	HIGH
<b>Unlikely (2)</b> It is not expected to occur (i.e. 2-5 years)	LOW	LOW	LOW	MEDIUM	HIGH
<b>Rare (1)</b> May occur only in exceptional circumstances (i.e. within 10 years)	LOW	LOW	LOW	MEDIUM	HIGH

- Extreme**      Intolerable – Immediate action is required to mitigate this risk to an acceptable level. Event/Project/Activity is not to proceed without authorisation
- High**         Intolerable – Attention is needed to treat risk.
- Medium**      Variable – May be willing to accept the risk in conjunction with monitoring and controls
- Low**            Tolerable – Managed by routine procedures

**PRESENT:**

**1. ACKNOWLEDGEMENT**

“We the Greater Shepparton City Council, begin today’s meeting by acknowledging the traditional owners of the land which now comprises Greater Shepparton. We pay respect to their tribal elders, we celebrate their continuing culture, and we acknowledge the memory of their ancestors.”

**2. PRIVACY NOTICE**

This public meeting is being streamed live via our Facebook page and made available for public access on our website along with the official Minutes of this meeting.

All care is taken to maintain your privacy; however as a visitor in the public gallery, it is assumed that your consent is given in the event that your image is broadcast to the public. It is also assumed that your consent is given to the use and disclosure of any information that you share at the meeting (including personal or sensitive information) to any person who accesses those recordings or Minutes

**3. APOLOGIES**

**RECOMMENDATION**

That the apology from Cr Oroszvary be noted and a leave of absence be granted.

**4. DECLARATIONS OF CONFLICT OF INTEREST**

In accordance with sections 77A, 77B, 78 and 79 of the *Local Government Act 1989* Councillors are required to disclose a “conflict of interest” in a decision if they would receive, or could reasonably be perceived as receiving a direct or indirect financial or non-financial benefit or detriment (other than as a voter, resident or ratepayer) from the decision.

**Disclosure must occur immediately before the matter is considered or discussed.**

## 5. COMMUNITY DIRECTORATE

### 5.1 Contract 1865 Principal Building Contractor Panel Recommendation and New SAM Budget Update

#### **Disclosures of conflicts of interest in relation to advice provided in this report**

Under section 80C of the *Local Government Act 1989* officers and persons engaged under a contract providing advice to Council must disclose any conflicts of interests, including the type and nature of interest.

No Council officers or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

#### **Council Officers involved in producing this report**

**Author: Project Manager SAM**

**Proof reader(s): Manager Projects**

**Approved by: Director Community**

#### **Executive Summary**

Greater Shepparton City Council conducted a two stage procurement process for the provision of a suitably qualified Contractor for the Construction of the new Shepparton Art Museum.

#### Stage 1 – Open market Expression of Interest (EOI)

The stage 1 process was to assess and prequalify suitable Contractors prior to conducting the extensive process of tendering for the works under contract.

#### Stage 2 – Shortlisted Request for Tender (RFT)

This report details stage 2, Short List RFT, from which five (5) submissions were received and evaluated by the Evaluation Panel. All submissions were evaluated against the evaluation criteria and risk assessed as set out in the RFT documents.

During evaluation it was identified that the tender bids were all above the adopted **build** budget of \$38.5M (including GST) and ranged from \$47.3M to \$51.7M (including GST). It was identified by the panel that a value management (VM) process, a process which identifies opportunities to reduce construction costs by selecting alternate materials and or removing components of work, was required to enhance the tender bids and bring the bids closer to the adopted build budget amount.

To streamline the VM process and ensure tenderers that were not in contention and did not need to participate unnecessarily, the panel shortlisted the RFT submissions from 5 to 2 tenderers and provided a VM list of a possible 140 items to price savings against. This process was successful in identifying some potential cost savings in the tender bids; however it was not successful in reducing the tender bids below the budgeted amount.

With the bids being greater than the pre tendered budgeted amount Council has been negotiating with the Federal and State Governments and the SAM Foundation requesting an increase in their Grant Agreements with Greater Shepparton City Council. Negotiations with the Federal Government and SAM Foundation were successful allowing Stage 1. Stage 2, landscaping and specialist equipment, will require an additional \$2.5m (ex GST) and Council will continue to negotiate with funding bodies to offset this capital requirement.

## 5. COMMUNITY DIRECTORATE

### 5.1 Contract 1865 Principal Building Contractor Panel Recommendation and New SAM Budget Update (continued)

The panel also determined, based on qualitative and best value assessment, with and without value management items, that Kane Construction is the recommended construction Contractor.

#### **RECOMMENDATION**

That the Council:

1. Acknowledge that Council has secured additional funding from the Federal Government and SAM Foundation to offset the increase in the Capital required for Stage 1 of the SAM Project.
2. Acknowledge and accept that Council will commence Stage 1 works with Stage 2 on hold until further funding is sourced from external funding bodies.
3. Endorse the revised Project Budget – Construction Phase of \$47.4m (ex GST) as detailed in the report to enable Stage 1 works to commence.
4. Accept the tender submitted by Kane Construction Pty Ltd for the lump sum Contract No. 1865 - Construction of the new Shepparton Art Museum with a value of \$45,975,954.00 (including GST) with \$2,750,000.00 (including GST) of the Contract sum conditional on funding gained for Stage 2.
5. Authorise the Chief Executive Officer to sign and seal the contract documents.
6. Authorise the Chief Executive Officer to sign off on monthly progress payments up to \$3,300,000.00 (including GST) for Contract 1865.

#### **Contract Details**

Greater Shepparton City Council invited tenders from shortlisted companies for the construction of the new Shepparton Arts Museum (SAM) under Contract 1865. The work to be performed under Contract 1865 is an architecturally designed five storey building that stands 26.5m tall and has a total gross floor area of 5,092sqm. The SAM will sit within Council's open space centre piece at Victoria Park Lake and will be an iconic regional cultural community centre.

The works under the contract include:

#### **Stage 1**

- a) Contract management and reporting
- b) Construction site management
- c) Community information/update sessions
- d) Demolition of services and existing infrastructure
- e) Foundation design of the new SAM building
- f) Site preparation and civil works
- g) Construction of the new SAM building
- h) Connection of services
- i) Commissioning

## 5. COMMUNITY DIRECTORATE

### 5.1 Contract 1865 Principal Building Contractor Panel Recommendation and New SAM Budget Update (continued)

#### Stage 2

- a) Landscaping
- b) Construction of car parking
- c) Specialist equipment

The Contract is a lump sum with noted provisional sums and the works are anticipated to be completed by October 2020.

Council officers conducted a two stage procurement process for the provision of a suitably qualified Contractor.

#### Tendering Process – Two Stages

Council utilised a two stage process, an Expression of Interest followed by a shortlist RFT, for procuring the Contractor for the Construction of new Shepparton Art Museum. This process enabled the Council to test the marketplace, conduct prequalification assessment to develop a shortlist of suitability qualified tenderers and efficiently negotiate with tenderers to achieve the desired outcome for Council.

#### Stage 1 – Open Market Expression of Interest (EOI) Completed July 2018

Stage 1 was to assess and prequalify suitable Contractors **prior** to conducting the extensive process of tendering for the works under contract.

#### Expressions of Interest

Respondents were received from:

Respondents
Hansen Yuncken Pty Ltd
Ireland Brown Constructions
Kane Constructions
Zauner Construction
ADCO Constructions (VIC) Pty Ltd
Fair Brother Construction Pty Ltd
Maben Group
Northern Hire Group Pty Ltd

No late Tenders were received and the eight expressions of interests were reduced to a shortlist of five for tendering.

#### Expressions of Interest Evaluation Panel

Respondents were evaluated by:

Title	Branch
Project Manager SAM	Infrastructure
Team Leader Statutory Planning	Sustainable Development
Manager Neighbourhoods	Community
Director Corporate Services	Corporate Services



## 5. COMMUNITY DIRECTORATE

### 5.1 Contract 1865 Principal Building Contractor Panel Recommendation and New SAM Budget Update (continued)

#### Expressions of Interest Evaluation Criteria

Expressions of Interest were evaluated on the following criteria:

Evaluation Criteria	Weighting
Experience, Cost Control and Time Control	50%
Local Content, Indigenous Employment and Community Skills Development	30%
Proposed Project Team	20%

Expressions of Interest were also assessed against risk using the following assessment criteria:

Evaluation Criteria	Assessment Criteria
OH&S	Risk Assessment
Quality Assurance	Risk Assessment
Environmental Management Systems	Risk Assessment
Financial Capacity	Risk Assessment
Current and Potential Workloads	Risk Assessment

#### Assessment of Expressions of Interest for Compliance

Each Expression of Interest (EOI) was assessed for compliance with the EOI to determine if any EOIs were non-conforming:

Please Note: Respondents were assigned a random letter and the following list does not correspond to the Respondents table above

- 1) Respondent A – Conforming
- 2) Respondent B – Conforming
- 3) Respondent C – Conforming
- 4) Respondent D – Conforming
- 5) Respondent E – Conforming
- 6) Respondent F – Conforming
- 7) Respondent G – Conforming
- 8) Respondent H – Non conforming due to tenderer only tendering for labour hire

#### Assessment of Expressions of Interest

The Expression of Interest Evaluation Panel used the scoring guidelines included in the procurement plan for Contract 1865 to assist in determining scores for the seven conforming tenders. These scores were moderated at an Evaluation Panel Meeting held on 23 July 2018, when the Evaluation Panel reviewed the moderated scores and made the following determinations:

- 1) The Expression of Interest from Respondent G failed its financial assessment. The Panel assessed the Financial Report and its recommendations and accepted that the risks could be mitigated. The Panel noted to the Respondent on its notification letter that Greater Shepparton City Council would conduct a subsequent financial assessment on the Respondent during the Request for Tender, if the Respondent was to become a preferred supplier.

## 5. COMMUNITY DIRECTORATE

### 5.1 Contract 1865 Principal Building Contractor Panel Recommendation and New SAM Budget Update (continued)

- 2) The Procurement Plan identified the need to provide best value for Council while limiting a tender field to ensure maximum tenderer engagement (Short Listing). The Evaluation panel assessed the qualitative scores and recommended a short list of five as it captured the market depth and limited tender bid dilution. As a result of this assessment the respondents with the five highest qualitative scores were invited to tender. This eliminated respondents D and F from the process.

#### **Stage 2 – Shortlisted Request for Tender (RFT)**

This report details stage 2, Short List RFT, in which five (5) submissions were received and evaluated by the Evaluation Panel. All submissions were evaluated against the evaluation criteria and risk assessed as set out in the RFT documents.

Tenders were received from:

Tenderers
Hansen Yuncken Pty Ltd
Ireland Brown Constructions
Kane Constructions
Zauner Construction
ADCO Constructions (VIC) Pty Ltd

Council received five tenders and no late Tenders were received

Tender Evaluation Panel

Title	Branch
Project Manager SAM	Infrastructure
Team Leader Statutory Planning	Sustainable Development
Manager Neighbourhoods	Community
Director Corporate Services	Corporate Services

#### **Request for Tender Evaluation Criteria**

Tenders were evaluated on the following criteria:

Evaluation Criteria	Weighting
Local Content, Indigenous Employment and Community Skills Development	20%
Victorian Industry Participation Plan (VIPP)	10%
Piling Solution and Contractors Piling Experience	10%
Communication Plan	10%
Project Team	20%
Project Plan and Construction Schedule	30%

Tenders were also assessed against risk using the following assessment criteria:

Evaluation Criteria	Assessment Criteria
Departures from Contract	Legal Advice
Budget	Value
Price	*Best Value Assessment
Interview (if required)	Risk Assessment

## 5. COMMUNITY DIRECTORATE

### **5.1 Contract 1865 Principal Building Contractor Panel Recommendation and New SAM Budget Update (continued)**

\*Best value assessment is the total assessment of the qualitative assessment, the quantitative (tender bid) vs budget and risk assessment. The process of a best value assessment is recommended for a project of this value.

#### **Assessment of Tenders for Compliance**

Each tender was assessed for compliance with the RFT to determine if any tenders were non-conforming;

Please Note: Tenderers were assigned a random letter and this list does not correspond with the tenderers received table above.

- 1) Tenderer A – Conforming with No requested changes to the General Conditions of Contract.
- 2) Tenderer B – Conforming with No requested changes to the General Conditions of Contract.
- 3) Tenderer C – Three (3) changes requested to the General Conditions of Contract. Deemed conforming however negotiations required.
- 4) Tenderer D – Requested negotiations to the General Conditions of Contract if preferred supplier.
- 5) Tenderer E – Fourteen (14) changes requested to the General Conditions of Contract. Deemed conforming however negotiations required.

#### **Assessment of Tenders**

The Tender Evaluation Panel used the scoring guidelines included in the procurement plan to assist in determining scores for all five conforming tenders and the following determinations were made during evaluation:

- 1) All tender bids were greater than the budget amount.
- 2) All tender bids were moderated and Tenderer C and E were determined to have the highest qualitative score and two lowest bids.
- 3) Evaluation panel determined that a value management process was required and shortlisted Tenderer C and E pending departure and technical clarification assessment.
- 4) Tenderer C and E departures of Contract and Technical clarifications were assessed on a risk assessment basis and all deemed not high risk to the delivery of the project.
- 5) Tenderer C and E participated in the Value management process which resulted in savings but did not reduce the bid below the budgeted amount.
- 6) Panel Conducted best value assessment and determined Tenderer E provided best value for money as it had the highest qualitative score and a competitive price.

The highest score/competitive price Tenderer E was interviewed on

- 2.00pm, 5 December 2018 in regards to Contract Departures
- 11.00am, 13 December 2018 in regards to Value Management
- 2.00pm, 20 December 2018 in regards to Value Management – Structure Realisation
- 11.00am, 14 January 2019 in regards to Quality Assurance and Value Management Plans

Following consideration of the outcomes of the Meetings, Evaluation Panel members resolved to recommend the tender of Tenderer E.

## 5. COMMUNITY DIRECTORATE

### 5.1 Contract 1865 Principal Building Contractor Panel Recommendation and New SAM Budget Update (continued)

#### **Value Management Process (VM)**

As noted previously the evaluation panel agreed to short list the two tenderers to engage in the VM process. A VM list of a possible 140 items was forwarded to the short-listed tenderers to price potential savings against. The VM process identified a possible \$1.3m in savings without compromising deliverables or functionality.

During the VM process the following items were not removed due to the changes representing a significant deviation from the business case and the endorsed architectural design competition deliverables:

- Removal of Amphitheatre Structure
- Removal of Changing places fit out
- Removal of External wayfinding
- Removal of Operable walls in Multi-function space and SAM Shop
- Removal of fit out of multiple toilets throughout building
- Removal of house lighting separate to the lighting track
- Removal of AV screens in Kaiela Arts, wet workshop, viewing room and bar, infrastructure only
- Removal of solar panels, and only installing infrastructure
- Large portion of landscaping planting removed
- Reduction in Environmental Sustainable Design (ESD)

The VM process was followed by a further best value assessment

#### **Probity Advisor**

In compliance with clause 4.5, Table 5 of the Procurement Guidelines, Version 2, 2 June 2016, a Probity Advisor (Anne Larkins, Director, Dench McClean Carlson and Craig Geddes supporting) were appointed to advice and overview the tender evaluation process. This is also a recommended process for a project of this cost.

Anne Larkins attended the following meetings

- Pre - EOI Meeting, 4 July 2018
- EOI Moderation Meeting, 23 July 2018.
- Pre – Tender Meeting, 9 October 2018

Craig Geddes attended the following meetings

- Tender Moderation Meeting (1<sup>st</sup> Moderation Meeting), 24 October 2018.

Anne Larkins assessed notes and all available information to provide probity services for the following meeting

- Tender Moderation Meeting (2<sup>nd</sup> Moderation Meeting), 14 November 2018

A Probity Plan was prepared and approved by the Probity Advisor. The Probity Advisor has reviewed this Evaluation Panel report and provided advice of a staged contract approach. The Probity Advisor will submit a separate independent report to the Chief Executive Officer after Council endorses a direction.

## 5. COMMUNITY DIRECTORATE

### 5.1 Contract 1865 Principal Building Contractor Panel Recommendation and New SAM Budget Update (continued)

#### Council Plan/Strategic Links

Greater Shepparton City Council Plan 2017 – 2021

#### Social

- 2.4 Social and Cultural and employment opportunities are created to enable children, young people, individuals and families to actively participate in their community.
- 2.5 Creativity and participation in arts and culture is nurtured and encouraged.
- 2.8 Our Aboriginal culture and people are valued and celebrated, with collaborative actions undertaken to enable peaceful, healthy and productive lives in a safe environment.
- Social Key Capital Projects – Construction of a new SAM.

#### Economic

- 3.3 Greater Shepparton is a major destination for events and tourism.

#### Risk Management

Risks	Likelihood	Consequence	Rating	Mitigation Action
Reputation loss of Council due to non-functional building	A	2	Extreme	Build a functional building
Construction phase budget revision not adopted resulting in the build not proceeding	A	2	Extreme	Source additional external funding to limit additional costs to Greater Shepparton City Council
Council liquidity position will be stressed by the increased capital costs	B	4	Moderate	Source additional external funding to limit additional costs to Greater Shepparton City Council
Delay project causing further cost increases	A	2	Extreme	Award contract as soon as reasonably practicable

#### Consultation and negotiation

Council has conducted extensive and productive consultation with the following organisations to deliver the funding and project outcomes detailed in this report

- State Government - Regional Development Victoria
- State Government - Office of Victoria Government Architects (OVGA) – Independent Review of the Project
- Federal Government – Regional Infrastructure
- SAM Foundation
- Architect – Denton Corker Marshall
- Quantity Surveyor – Currie & Brown
- Probity Advisors

## 5. COMMUNITY DIRECTORATE

### **5.1 Contract 1865 Principal Building Contractor Panel Recommendation and New SAM Budget Update (continued)**

#### **Independent Review - Office of Victoria Government Architects (OVGA)**

The OVGA conducted an independent review of the following items:

- A review of the estimated projected delivery cost exceeding the available budget
- A review of the overall design
- A peer review of the VM process Greater Shepparton City Council undertook.

The initial findings noted that Denton Corker Marshall (DCM) design was of a standard expected for an institutional building of its size. DCM's design leveraged smart architectural practices and has a balanced approach. The procurement and value management process Greater Shepparton City Council undertook was extensive and commendable. The OVGA identified the significance of completing the new SAM project in a regional setting and suggested a multi-pronged and flexible approach to securing the additional funding to bridge the budget gap was required.

#### **Financial Implications**

The expected versus market value of the new SAM was significant and the following items have been determined to be the main cause of the cost disparity. An acute increase in construction materials, in particular concrete and steel, due to significant generational construction works currently underway within Victoria and the secondary costs of constructing a large building in a regional market setting.

Since realisation of the capital requirements of the build of the new SAM, Greater Shepparton City Council has negotiated with the Federal and State Governments and SAM Foundation for an increase in their Grant Agreements. Negotiations with the Federal Government and SAM Foundation were successful allowing Stage 1. Stage 2, landscaping and specialist equipment, will require an additional \$2.5m (ex GST) and Council will continue to negotiate with funding bodies to offset this capital requirement.

**5. COMMUNITY DIRECTORATE**

**5.1 Contract 1865 Principal Building Contractor Panel Recommendation and New SAM Budget Update (continued)**

**Endorsed Project Budget – Design Phase vs Proposed Project Budget – Construction Phase**

	<b>Endorsed Project Budget – Design Phase – July 2018 (Ex GST)</b>	<b>Proposed Project Budget - Construction Phase (Ex GST)</b>
<b>TOTAL PROJECT COSTS</b>	<b>\$39,850,000.00</b>	<b>\$47,350,000.00</b>
<b>STAGE 1</b>		
<b>FUNDING BREAKDOWN</b>		
<b>Greater Shepparton City Council</b>	<b>\$15,350,000.00</b>	<b>\$15,350,000.00</b>
<b>Federal Government</b>	<b>\$10,000,000.00</b>	<b>\$15,000,000.00</b>
<b>State Government</b>	<b>\$10,000,000.00</b>	<b>\$10,000,000.00</b>
<b>SAM Foundation – Capital Contribution</b>	<b>\$4,500,000.00</b>	<b>\$7,000,000.00</b>
<b>STAGE 2 (Not included in Project Budget)</b>		
<b>Future Funding Body</b>		<b>\$2,500,000.00</b>

Please note that the construction cost index has continually usurped consumer price index annual increases for the past five years. With a further \$25 billion of works promised by the State Government Council should not expect any short or medium term easing in the construction cost increases.

**Social Implications and Economic Impacts**

Greater Shepparton is transitioning from an agricultural and manufacturing based economy to a services-based economy. Attracting new residents to Greater Shepparton to support the continuation of growth in the services-based economy, in a community with limited architectural form, against other key Victorian regional cities creates a significant challenge to attract and retain professional staff and external investors.

In this regard, the new SAM is likely to be pivotal. As a major, well regarded and widely recognised cultural institution will always play an important role in providing a cultural outlet and showpiece for those actively investigating relocation or investment to/in Greater Shepparton.

## 5. COMMUNITY DIRECTORATE

### **5.1 Contract 1865 Principal Building Contractor Panel Recommendation and New SAM Budget Update (continued)**

The new SAM's iconic and striking architectural design represents the punctuation mark in changing external perceptions and will act as a catalyst for economically re-positioning Greater Shepparton in much the same way, albeit on a smaller scale, as the Museum of Old and New Art (MONA) has in Hobart. That is, since MONA officially opened in 2011, Hobart has experienced an increase in population growth, visitor numbers and investment, particularly in new hotels and tourism associated infrastructure.

#### **Legal/Statutory Implications**

Tender process has been carried out according to the requirements of *Section 186* of the *Local Government Act 1989*.

#### **Conclusion**

Greater Shepparton was one of Victoria's most significant growth centres through much of the twentieth century. The rate of growth saw significant building occur during the post-World War Two period. During this period, many of Shepparton's more significant buildings were demolished and replaced with modern structures.

Consequently, the quality of Greater Shepparton's built form is limited in comparison with comparable Victorian regional cities. Although the city is located on a river setting with attractive native forest adjacent to Shepparton's city centre, the flat terrain and functional built form has resulted in a city that is not well regarded for its central urban landscapes. Combined with a number of economic setbacks in the early 21st century, Shepparton has lost some of the economic impetus it has long enjoyed.

Recent increases in government infrastructure funding into Greater Shepparton have injected a renewed sense of confidence into the city. These projects - some complete, some under construction, and some yet to begin – are important in providing the economic platform for the city as it enters its next phase of development.

The SAM project is a significant community project and with the additional funding secured from the Federal Government and the SAM Foundation, and a robust tender process completed it is recommended that Greater Shepparton City Council endorse.

1. The revised SAM Project Budget – Construction Phase of \$47.4m
2. The Evaluation Panel's assessment that Kane Construction tender bid of \$45,975,954.00 (including GST) represents best value for Council and award a staged Contract to Kane Construction.

To enable Greater Shepparton to experience the full economic and social benefit that this iconic project will deliver.

#### **Attachments**

Nil



## 6. SUSTAINABLE DEVELOPMENT DIRECTORATE

### 6.1 GV Link Solar Farm - Proposed Lease Agreement

#### **Disclosures of conflicts of interest in relation to advice provided in this report**

Under section 80C of the *Local Government Act 1989* officers and persons engaged under a contract providing advice to Council must disclose any conflicts of interests, including the type and nature of interest.

No Council officers or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

#### **Council Officers involved in producing this report**

**Author: Team Leader Business Industry Development**

**Proof reader(s): Manager Economic Development, Coordinator Property**

**Approved by: Acting Director Sustainable Development**

#### **Executive Summary**

Council has been in receipt of numerous renewable energy enquiries and in particular for the development of large scale solar farms within the Greater Shepparton region.

Council Officers recognised an opportunity to make the GV Link land east of Toolamba Road available for a large scale solar farm.

A lease proposal for the proposed solar farm at the GV Link site has been negotiated on the basis of the grant of a proposed lease to GVCE Mooroopna Solar Pty Ltd or other agreed nominated entity, being a 'Special Purpose Vehicle' (SPV) which consists of Goulburn Valley Community Energy (GVCE) and AKUO Energy.

An excerpt from the resolution resolved by Councillors at the 18 December 2018 Council Meeting states that the Council:

*'1. in accordance with Section 223 of the Local Government Act 1989, provide public notice in the Shepparton News of Council's intention to enter into a lease agreement with GVCE Mooroopna Solar Pty Ltd or other agreed nominated entity for the lease of the GV Link land east of Toolamba Road and the railway line, being part of the land in Certificate of Title Volume 12022 Folio 891 (formerly part of Volume 11071 Folio 144), known as Toolamba Road, Mooroopna (Land) for the purposes of construction and use as a solar farm.'*

The full resolution resolved by Councillors at the 18 December 2018 Council meeting is included within the background section of this report.

A public notice was featured in the Shepparton News on 4 January 2019 and 11 January 2019 and provided the public until 1 February 2019 to make a submission and offered an opportunity for objectors to be heard at a Special Council Meeting.

Council has been in receipt of two objections under Section 223 of the Act. Both objectors did not request an opportunity to be heard.

## 6. SUSTAINABLE DEVELOPMENT DIRECTORATE

### **6.1 GV Link Solar Farm - Proposed Lease Agreement (continued)**

Officers have considered the nature of both objections which are further detailed in the background section of this report and are recommending that Council authorise the Chief Executive Officer to sign and seal the lease agreement with GVCE Mooroopna Solar Pty Ltd. Further details in relation to the two objections are outlined within this report.

#### **RECOMMENDATION**

That the Council:

1. Note the objections received under section 223 of the Local Government Act 1989 pertaining to Council's intention to enter into a lease agreement with GVCE Mooroopna Solar Pty Ltd for the lease of the GV Link land east of Toolamba Road and the railway line, being part of the land in Certificate of Title Volume 12022 Folio 891 (formerly part of Volume 11071 Folio 144), known as Toolamba Road, Mooroopna (**Land**) for the purposes of construction and use as a solar farm.
2. Note that Council has reviewed and considered both objections under section 223 of the Local Government Act.
3. Grant the lease to GVCE Mooroopna Solar Pty Ltd on terms included within the proposed negotiated lease agreement.
4. Authorise the Chief Executive Officer to sign and seal all the documents necessary to facilitate the granting of the lease.

#### **Background**

Council has been in receipt of numerous renewable energy enquiries and in particular for the development of large scale solar farms within the Greater Shepparton region. Council had also been in receipt of a number of investment inquiries in relation to the leasing of land at the GV Link Site. Council Officers recognised an opportunity to make the GV Link land east of Toolamba Road available for a large scale solar farm.

A lease proposal for the proposed solar farm at the GV Link site has been negotiated on the basis of the grant of a proposed lease to GVCE Mooroopna Solar Pty Ltd, being a 'Special Purpose Vehicle' (SPV) which consists of Goulburn Valley Community Energy (GVCE) and AKUO Energy. The proposed lease agreement has been prepared by Russell Kennedy Lawyers on behalf of Council and negotiated with the proposed tenant's solicitors. All lease negotiations have been conducted on the basis that the lease proposal is subject to and conditional upon Council's compliance with sections 190 and 223 of the Local Government Act and Council's decision whether or not to grant the proposed lease.

Councillors resolved at the 18 December 2018 Council Meeting that the Council:

- '1. in accordance with Section 223 of the Local Government Act 1989, provide public notice in the Shepparton News of Council's intention to enter into a lease agreement with GVCE Mooroopna Solar Pty Ltd or other agreed nominated entity for the lease of the GV Link land east of Toolamba Road and the railway line, being part of the land in Certificate of Title Volume 12022 Folio 891 (formerly part of Volume 11071 Folio 144), known as Toolamba Road, Mooroopna (Land) for the purposes of construction and use as a solar farm.*

## 6. SUSTAINABLE DEVELOPMENT DIRECTORATE

### **6.1 GV Link Solar Farm - Proposed Lease Agreement (continued)**

2. *note the principal terms of the proposed lease, are as follows:*
- *Permitted use is construction and use for a major solar farm with a minimum capacity of 10MW;*
  - *Lease term of 25 years from the commencement date with the option to renew for a further 25 years;*
  - *The commencement date of the lease is conditional upon the tenant procuring all necessary approvals and finance for the proposed construction and operation of the solar farm and the requisite power purchase agreements to secure long term revenues for the sale of electricity;*
  - *The annual rental is to be \$30,000.00 plus GST, subject to CPI adjustments at regular intervals and a market review on exercise of the option;*
  - *The tenant is to be responsible for its share of outgoings in respect of the lease; and*
  - *The tenant is to provide Council with a security deposit for an agreed sum as security for the performance of the tenant's obligations under the lease.*
3. *stipulate in the public notice that persons may make a submission on the lease in accordance with section 223 of the Act*
4. *authorise the Chief Executive Officer to undertake the administrative procedures necessary to enable the Council to carry out its functions under section 223 of the Act in relation to this matter and, in particular:*
- (a) if submissions are received under section 223 of the Act:*
- i. a Special Council Meeting be convened at a date and time to be determined to hear from any person or persons who request to be heard in support of a section 223 written submission; and*
  - ii. a report on any section 223 submissions received by the Council, along with a summary of any hearings held, be provided to the Special Council.*
- (b) if no submissions are received under section 223 of the Act, a further report to be presented to Council for a final determination of the matter.'*

A public notice was featured in the Shepparton News on 4 January 2019 and 11 January 2019 and provided the public until close of business on 1 February 2019 to make a submission and in addition also offered an opportunity for objectors to be heard at a Special Council Meeting should they make this request as part of their submission.

Council has been in receipt of two objections under section 223 of the Act. Both objectors have not requested to be heard in their submissions.

A summary of objection number 1 is as follows:

- It has been outlined by the objector that such a solar development will 'change the climate in the district' and affect their farming operations due to increased heat, thunderstorms, and rain shadows causing below average rainfall.
- It is alleged that the solar farm will attract insects and birdlife and will impact what is grown on the property and increase the cost of chemicals and pesticides.
- It is alleged that the solar farm will compromise the status of the Greater Shepparton region as being the 'Food Bowl' and as a flow on effect, have negative impact on opportunities in the area in relation to employment.
- The solar farm will reduce their land value.
- The development of a solar farm will result in them terminating their expansion plans.
- The solar proposal has too many risks 'of climate change'

## 6. SUSTAINABLE DEVELOPMENT DIRECTORATE

### **6.1 GV Link Solar Farm - Proposed Lease Agreement (continued)**

A summary of objection number 2 is as follows:

- The solar farm it is alleged will have likely adverse impacts on the Rumbalara facility to the north east of the proposed site.
- 'The opposition of the GBCMA to development of the land' Note: it is assumed that the objector is making reference to the flood overlay in relation to the site.
- It is alleged that there are likely adverse impacts to the land immediately north of the proposed site which is currently used for grazing horses.

#### **Council Officers review of both objections**

##### Objection Number 1

The submission articulates concerns in relation to climate change. Such concerns in relation to increased heat, thunderstorms, and rain shadows causing below average rainfall are factors that will be considered as part of the Council Planning Permit process.

The submission also outlines a concern regarding increased insects and birds being attracted to the site. These factors will also be considered as part of the Council Planning Permit process along with the impact on land values which was also outlined as a concern to the objector.

##### Objection Number 2

The submission articulates concerns pertaining to three parties. The three parties include Rumbalara, Goulburn Broken Catchment Management Authority and the owner of the property north of the proposed solar farm.

None of the above mentioned three parties have objected to the intention of Council entering into a lease with GVCE Mooroopna Solar Pty Ltd.

#### **Proposed Lease Agreement - Summary**

A proposed lease agreement for the proposed solar farm at the GV Link site has been negotiated with GVCE Mooroopna Pty Ltd, being a SPV consisting of GVCE and AKUO Energy. The proposed lease agreement has been prepared by Russell Kennedy Lawyers.

The proposed lease identifies that the SPV will pay to Council rent in the amount of \$30,000 per annum plus GST; the lease is for 25 years with an option to extend the lease for an additional 25 years; and the lease is subject to a number of conditions relating to the planning and development of the solar farm, which include but are not limited to; obtaining approvals and finance and entering into Power Purchase Agreements (PPA) with relevant parties to purchase the electricity generated by the solar farm.

Payable rates pertaining to the solar farm are detailed within the financial section of this report.

The lease will not commence until the SPV has received all approvals and secured PPAs and obtained the required finance for the project with a financial institution. Rent will not be payable until the lease commences on the commencement date following compliance with these lease conditions.

The proposed lease contains a sunset date of four years which means that should the tenant not have approvals by the sunset date, the lease can be terminated. The tenant must also ensure that the solar farm is operational no later than 24 months after the lease commencement date.

## 6. SUSTAINABLE DEVELOPMENT DIRECTORATE

### 6.1 GV Link Solar Farm - Proposed Lease Agreement (continued)

It is a requirement of the *Local Government Act 1989* that any lease for a period of ten years or more be advertised under section 223 to allow for any public submissions.

#### **Council Plan/Key Strategic Activity**

Greater Shepparton Council Plan 2013 – 2017: Goal 2 - Enhancing the Environment. Ensure the environment is a major priority in planning for the future. Council will facilitate decision making to carry out development with due consideration given the natural environmental, social, political, economic factors and provide a governance framework that will achieve sustainable outcomes.

#### **Risk Management**

Risks	Likelihood	Consequence	Rating	Mitigation Action
Relevant approvals for a Solar Farm are not granted	Unlikely	Moderate	Low	Maintain regular communication with tenant
Solar Farm is never constructed	Unlikely	Moderate	Low	Maintain regular communication with tenant
Tenants vacate property post construction	Unlikely	Major	Medium	Council would be entitled to utilise the \$200k cash security deposit in accordance with proposed lease should the tenant breach the lease by vacating the premises post works/construction. In this case, the security deposit may be used to remediate the land.

#### **Policy Considerations**

Current policies identify GV Link as having a major strategic role within Greater Shepparton and the wider region. Such policies and strategies include:

- Council Plan 2017-2021
- Electricity Industry Act 2000
- Hume Strategy for Sustainable Communities
- Hume Regional Growth Plan
- Northern Victoria Regional Transport Strategy

## 6. SUSTAINABLE DEVELOPMENT DIRECTORATE

### 6.1 GV Link Solar Farm - Proposed Lease Agreement (continued)

#### Financial Implications

Rent associated with the lease of the land as per the lease agreement is \$30,000 per annum plus GST.

Council rates and fee per MW amounts are guided by government policy and legislation. The below calculations are guided by gazetted order G41, 11 October 2018 under section 94 of the Electricity Industry Act 2000. The calculations below are made on the assumption that the maximum output of the solar farm will be 23MW or less.

	23MW Community (20% or more Community owned)	23MW Commercial (less than 20% Community owned)
Nameplate capacity MWH	23	23
Fixed Charge 18/19	nil	nil
Per MW Rate 18/19	nil	nil
Average Capacity Factor*	22%	22%
Hours per year	8,760	8,760
Generation estimate	23 x 22% x 8,760 = 44,325	23 x 22% x 8,760 = 44,325
Per MWh rate	\$0.56 or \$5k – whichever greater	\$1.12 or \$7.5k – whichever greater
Total Rate Payable per annum	44,325 x \$0.56 = \$24,822	44,325 x \$1.12 = \$49,644

\* Estimates based on assumptions outlined in EY 2017, Modelling of the Victorian Renewable Energy Target scheme scenarios

Discounts pertaining to amounts owed to Council are relevant to solar farms under various scenarios pertaining to energy output and community status. The calculation applicable to GVCE Mooroopna Solar Pty Ltd or other agreed nominated entity will be determined once they have undertaken a process to invite community participation. The above table is to be used as a guide only given the factors that can influence the final fixed and variable charges owed to Council. As articulated above, all calculations and final amounts payable to Council will be guided by legislation.

#### Legal/Statutory Implications

This procedure is being undertaken in compliance with Section 190 of the *Local Government Act 1989* which provides Council with the power to lease the land. The Land is part of the overall GV Link land located east of Toolamba Road and requires a planning permit for solar farm use.

#### Environmental/Sustainability Impacts

As part of the planning permit that will need to be obtained for solar farming use, the applicant will need to comply with the environmental requirements in clause 52.42-2 of the Greater Shepparton Planning Scheme. This project also aims to reduce Greater Shepparton's greenhouse emissions.

#### Social Implications

This project will strengthen community awareness surrounding sustainable energy as well as increase environmental values and behaviours.

## 6. SUSTAINABLE DEVELOPMENT DIRECTORATE

### 6.1 GV Link Solar Farm - Proposed Lease Agreement (continued)

#### **Economic Impacts**

The large scale solar farm will generate a long term stream of income from the lease. The project development will also generate employment opportunities for local contractors and businesses and has the potential to reduce energy costs for the community.

#### **Consultation**

Council is required under Section 190 (lease) of the *Local Government Act 1989* to advertise the lease of the Land and to consider all submissions received under section 223.

Under section 190 of the *Local Government Act 1989*, Council is required to publish a public notice of Council's proposal to enter into a lease and to allow a period of not less than 28 days for submissions to be received before considering any submissions received in respect of the lease proposal. It is noted that the terms of the lease proposal contained in the tender from GVCE needed to be the subject of further negotiation before there was a sufficiently formed proposal to be the subject of a public notice and Council's further consideration. All lease negotiations have been conducted on the basis that the lease proposal is subject to and conditional upon Council's compliance with sections 190 and 223 of the Local Government Act and Council deciding whether or not to grant the proposed lease.

Officers have undertaken the process to advise the public of Council's intent to enter into a lease agreement pertaining to the development of a solar farm at the GV Link site. Council Officers have provided comment in respect of both objections received and are recommending to Councillors that Council resolve, having considered the submissions and comments of Council Officers in respect of both submissions, that Council enter into the proposed lease and that the Chief Executive Officer be authorised to sign the lease agreement between Greater Shepparton City Council and GVCE Mooroopna Solar Pty Ltd.

#### **Strategic Links**

##### a) Greater Shepparton 2030 Strategy

Topic: Economic Development

Theme – Industry

Topic: Infrastructure

Theme – Traffic and transport system

##### b) Other strategic links

Council Plan 2017 -2021

Greater Shepparton Environmental Sustainability Strategy 2014-2030 Strategic theme 3 – Using our Resources Wisely – Climate Change and Energy Efficiency

#### **Conclusion**

Council has been in receipt of numerous renewable energy inquiries and in particular for the development of large scale solar farms within the Greater Shepparton region on the GV Link land.

Post a public process of a request for expressions of interest followed by a limited tender process, a lease agreement for the proposed solar farm at the GV Link site has been negotiated between Council and GVCE Mooroopna Solar Pty Ltd as the SPV which consists of GVCE and AKUO Energy.

## 6. SUSTAINABLE DEVELOPMENT DIRECTORATE

### **6.1 GV Link Solar Farm - Proposed Lease Agreement (continued)**

It is a requirement of the *Local Government Act 1989* that any proposed lease for a period of ten years or more be advertised under section 223 to allow for any public submissions.

Officers have undertaken the process to advise the public of its intent to enter into a lease agreement pertaining to the development of a solar farm at the GV Link site. Council Officers have provided comment in respect of both objections received and are recommending to Councillors that Council resolve, having considered the submissions and the comments of Council Officers in respect of those submissions, that the proposed lease be entered into and that the Chief Executive Officer be authorised to sign and seal the proposed lease agreement between Greater Shepparton City Council and GVCE Mooroopna Solar Pty Ltd.

#### **Attachments**

Nil.



