



MINUTES OF THE SPECIAL COUNCIL MEETING

29 JANUARY 2025

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**MINUTES OF THE SPECIAL MEETING OF COUNCIL HELD IN COUNCIL CHAMBERS
ON 29 JANUARY 2025 COMMENCING AT 5:00PM.**

1.0 DECLARATION OF OPENING/ANNOUNCEMENT OF VISITORS

The Presiding Member, Cr GA Cosgrove opened the meeting at 5:00pm and noted, in accordance with r.14I of the *Local Government (Administration) Regulations* this meeting is being recorded.

2.0 RECORD OF ATTENDANCE/APOLOGIES/APPROVED LEAVE OF ABSENCE

Councillors

Cr GJ Cosgrove	Shire President
Cr HR McTaggart	Deputy President
Cr JD Bagley	Councillor <i>arrived at 5:04pm</i>
Cr JR Holmes	Councillor
Cr AT Pearse	Councillor (<i>by electronic means</i>)

Cr AT Pearse were authorised to attend by phone in accordance with r.14CA of the Local Government (Administration) Regulations 1996.

Apologies

Cr RA Starick	Councillor
Cr AR Smyth	Councillor

Staff

Mr Shane Noon	Acting Chief Executive Officer
Mrs Helen Sternick	Manager Corporate Services
Ms Erin Greaves	Manager Governance and Community

Gallery

Mr Damian Lesque	Terra Mining
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3.0 PUBLIC QUESTION TIME/PUBLIC STATEMENT TIME

Nil.

4.0 DECLARATIONS OF INTEREST

Nil.

5.0 CHIEF EXECUTIVE OFFICER

5.1 ROAD USER AGREEMENT VARIATION – TERRA MINING HAULAGE

Location/Address: Shire of Mingenew
Name of Applicant: Terra Mining
Disclosure of Interest: Nil
File Reference: RD.PER.1
Date: 30 January 2025
Author: Shane Noon, Acting Chief Executive Officer
Voting Requirements: Simple Majority

Summary

To consider a contract variation granting an extension of term (to 20 February 2025) to the existing Road User, Contribution and Upgrade Agreement for Terra Mining to utilise Eleanor Street and Boolinda Road, Mingenew for haulage of iron ore from mining operations at Extension Hill, to the Geraldton Port.

Key Points

- Terra Mining were granted 12-month approval from the Shire for haulage of iron ore in December 2023, to 31 January 2025
- Terra have recently contacted the Shire to gain interim approval to haul post-31 January until the February Ordinary Council Meeting
- Whilst Terra was initially satisfied with the agreement terminating 31 Jan and proposing a new Agreement to commence in Feb, they have indicated that due to resourcing constraints, haulage will now be required for this period
- Terra have indicated they wish to seek approval for haulage to March 2026, but the longer-term arrangements will be considered at the February Council meeting

OFFICER RECOMMENDATION AND COUNCIL DECISION – ITEM 5.1 - RESOLUTION#01290125

MOVED: Cr JR Holmes

SECONDED: Cr HR McTaggart

Council:

1. Endorses a variation to the current Road User, Contribution and Upgrade Agreement with Terra Mining Pty Ltd under clause 18, extending the term of the Agreement to 20 February 2025, subject to Terra Mining Pty Ltd paying all associated legal costs and other disbursements; and
2. Authorises the Chief Executive Officer and Shire President to execute the Deed of Variation.

VOTING REQUIREMENTS:

CARRIED BY SIMPLE MAJORITY 4/0

(FOR: Cr GJ Cosgrove, Cr HR McTaggart, Cr JR Holmes, and Cr AT Pearse. AGAINST: Nil)

Attachments

5.1.1 Correspondence from Terra Mining Pty Ltd seeking extension

Background

At the Special Council meeting in December 2023, Council considered a request from Terra Mining Pty Ltd (Terra) seeking a permit to utilise Eleanor Street and Boolinda Road for haulage of iron ore from their Extension Hill mine site to the Geraldton Port commencing in January 2024 for 12 months.

The consideration included a Road User, Contribution and Upgrade Agreement (the Agreement) which provided a mechanism for monitoring and addressing road impacts from additional heavy vehicle movements and a contribution to the Community Infrastructure Fund.

An extract of the Council resolution is provided below:

AMENDED MOTION AND COUNCIL DECISION – ITEM 9.1 – RESOLUTION# 02151223	
MOVED: Cr JR Holmes	SECONDED: Cr RA Starick
Council	
1. Grants support for Terra Mining Pty Ltd to undertake haulage operations approved under the Restricted Access Vehicle (RAV) Network 7.3 on the following Shire-managed roads: <ul style="list-style-type: none">• Eleanor Street• Boolinda Road Noting that the RAV7.3 approval is conditional on all operators carrying written support from the road manager acknowledging the operator’s use of the road.	
2. Authorises the Chief Executive Officer to negotiate and enter into a road use agreement between the Shire of Mingenew and Terra Mining Pty Ltd for the period ending 31 December 2024 to facilitate mining operations at Extension Hill, based on the terms and conditions as outlined in the Draft Road User, Contribution and Upgrade Agreement (Attachment 9.1.1) and as follows; <ul style="list-style-type: none">- Negotiate minimum \$0.12 per tonne of product (including any byproduct) carted through the Shire of Mingenew from the mining operations at Extension Hill per annum which amount shall comprise the Community Infrastructure Fund Contribution.	
3. Authorises the Chief Executive Officer and Shire President to execute the final agreement and affix the Common Seal.	
VOTING REQUIREMENTS:	CARRIED BY SIMPLE MAJORITY 4/2 <small>(FOR: Cr GJ Cosgrove, Cr JD Bagley, Cr JR Holmes, and Cr AT Pearse, AGAINST: Cr HR McTaggart and Cr RA Starick)</small>

Terra’s initial long-term plan was to utilise the rail network via the siding at Perenjori or to construct a new siding during 2024 for use. However, this has not eventuated, and Terra have indicated they will likely be seeking approval to haul on the roads to March 2026.

Main Roads WA have granted a permit to Terra for haulage on State-managed roads until March 2025, and a further extension is anticipated to meet Terra’s request to March 2026.

Comment

Legal advice has been received indicating the current Agreement has no provision for renewal or an extension beyond 31 January 2025 however a minor variation to extend the Agreement for an additional 19 days (to 19 Feb 2025) has been advised as suitable.

A new Agreement will need to be developed for any longer-term arrangements, which should appropriately consider impacts of Terra’s activity from the last 12 months in relation to:

- Road and road user impacts
- Noise and other environmental impacts
- Compliance with agreement terms
- Main Roads WA considerations for extension of their permit approval
- New or amended terms from the existing Agreement
- Any other community impacts

As the Shire has not had sufficient time to collate and consider these matters to inform the decision for a further 12 month term, an interim approval is recommended. The approval to March 2026 will be a consideration for the 19 February 2025 Ordinary Council meeting.

Statutory Environment

Main Roads Act 1930
Road Traffic (Administration) Act 2008, section 132
Public Works Act 1902

Land Administration Act 1997, section 55(2)
Local Government Act 1995, section 3.57

Consultation

Terra Mining
McLeods Lawyers

Policy Implications

Nil.

Financial Implications

The proposed variation will incorporate all existing terms, including the requirement for compensation associated with maintaining the road to an acceptable standard, and contributions to the Community Infrastructure Fund.

The estimated legal costs and associated disbursements are expected to be around \$800, and it is proposed that these costs be borne by Terra.

Strategic Implications

Strategic Community Plan 2023-2033

1.4 Engage with industry stakeholders to ensure accountability for quality road standards

Corporate Business Plan 2024-2028

1.4a Negotiate road user agreements with relevant industry stakeholders, as required.

Cr JD Bagley entered the meeting at 5:004pm.

6.0 CORPORATE SERVICES

6.1 RFT02 24-25: INFORMATION AND COMMUNICATION TECHNOLOGY (ICT) CONTRACTOR (MANAGED SERVICES PROVIDER)

Location/Address: Shire of Mingenew
Name of Applicant: Shire of Mingenew
Disclosure of Interest: Nil
File Reference: IT.TEN.24.25
Date: 30 January 2025
Author: Jack Smith, Senior Finance Officer
Authorising Officer: Helen Sternick, Manager Corporate Services
Voting Requirements: Absolute Majority

Summary

The Shire's contract with our current Information and Communication Technology (ICT) provider is due to expire in mid-March. Due to the monetary value and multi-year nature of the engagement, the Shire is required to undergo a formal Request for Tender (RFT) process, for which the Chief Executive Officer does not have delegated authority to call for tenders under the tender exempt banner over the \$250,000 threshold.

To ensure operational continuity, delegate authority to the Chief Executive Officer to award the contract to a limit of \$320,000 for the full term of the contract. Awarding the tender promptly will meet the expiry date of the current contract and transition to a potential new provider.

Key Points

- Our current ICT contract ends in March with no further option to extend or renew; the Corporate Services team would like to release a Request for Tender package via the WALGA Preferred Supplier Panel as soon as possible to minimise disruption.
- Both the decision to handle the engagement under the Tender Exempt procurement stream, and the decision to award the contract to the successful tenderer, would ordinarily sit with Council; the Corporate Services team would like to take proactive steps to eliminate delays and compliance roadblocks in relation to the selection of, and contract negotiation with, the successful tenderer.

OFFICER RECOMMENDATION AND COUNCIL DECISION – ITEM 6.1 - RESOLUTION#02290125

MOVED: Cr HR McTaggart

SECONDED: Cr JR Holmes

Council:

1. Authorises the release of RFT 02 24-25 Information and Communication Technology (ICT) Contractor (Managed Services Provider) as a Tender Exempt procurement in accordance with r.11 of the *Local Government (Functions and General) Regulations 1996* via the WALGA Preferred Supplier Panel; and
2. Delegates to the Chief Executive Officer, in accordance with section 5.42(1) of the *Local Government Act 1995*, by Absolute Majority, authority to award the contract for RFT 02 24-25 Information and Communication Technology (ICT) Contractor (Managed Services Provider) to the most advantageous tenderer, to a limit of \$320,000 ex GST for the term of the contract (\$64,000 ex GST per year).

VOTING REQUIREMENTS:

CARRIED BY ABSOLUTE MAJORITY 5/0

(FOR: Cr GJ Cosgrove, Cr HR McTaggart, Cr JD Bagley, Cr JR Holmes, and Cr AT Pearse. AGAINST: Nil)

Attachments

- 6.1.1 Request for Tender Package – ICT Managed Services
- 6.1.2 *Confidential: Appendix A Proposed Draft Contract (provided to Councillors under separate, confidential cover)*

Background

The current Managed Service Agreement (MSA) was awarded on to Infinitum Technologies Pty Ltd (“Infinitum”) in March 2020, and after a twelve month review the agreement was extended until March 2024. A clause in the agreement included the option for a further two (2) year term but neither party initiated this process, resulting in defaulting to the automatic extension of 12 months. This extension is due to expire on 17 March 2025.

Council staff have been actively working to compile the tender and contract management documents since February 2024. It is essential for effective contract management that the tender and contract is well-researched and comprehensively planned to ensure best outcomes for Council, and the tender provides adequate detail and flexibility for negotiating contract terms. With competing workloads this has been a significant undertaking by the Corporate Services team.

Since the commencement of the current MSA, the ICT environment has changed substantially, such as Cloud technology infrastructure and software, increased cybersecurity requirements and cybercrime. The proposed RFT includes day-to-day technical and operational support but also ongoing consultancy/advisory services in relation to ICT asset management, cyber security including training, network administration and bespoke projects. Broadening of the scope will allow for future improvements to meet the ever-changing ICT environment and proactive management of the successful tenderer by the supply of monthly reporting and quarterly meetings.

An initial discovery phase will need to be undertaken to properly catalogue our ICT assets and map the existing network, and to facilitate the handover from Infinitum to the new Managed Services Provider (MSP) - should that eventuate - laying the groundwork for future projects.

Other than supporting the Shire’s day-to-day ICT needs, it is also envisaged that our MSP will play a key role in future projects, including a staged transition away from our current legacy systems to a more integrated, cloud-based solution. Such advisory work and hands-on support with respect to asset management and network administration has been historically out-of-scope.

Comment

Due to the aggregated cost of the proposed RFT being greater than \$250,000 and the use of the tender exempt process under the WALGA Preferred Supplier Panel, the CEO does not have delegated authority to call for tenders, therefore is being presented to Council.

To provide assurances to Council in relation to the second part of this recommendation re: the delegated authority of the CEO to award the tender and execute the related contracts, the following internal controls have been implemented:

- The RFT contains transparent disclosures that set out the evaluation criteria to be used, with weighting given to each element, ensuring a fair and objective assessment process;
- The assessments will be conducted and recorded by staff other than the CEO;
- The RFT supplies the proposed (draft) contract in its entirety, which solidifies and sets the limits for the Scope of the final contract, which the CEO must work within.

After careful review, staff are satisfied that the proposed contract addresses the observed deficiencies with the previous arrangement; it quantifies the qualitative aspects of service delivery in an ICT-specific context, and maps deliverables to the remedies and enforcement mechanisms available to the Shire. Including this information with the RFT should also deter submissions from respondents who are not prepared to be held

accountable for performance and/or may be unwilling or unable to absorb costs in relation to the Shire's ongoing compliance activities (i.e. audits, insurance reviews, and cyber security testing).

If the RFT is not awarded prior to the expiry of the extended MSA or timing issues occur with handover, a monthly agreement with Infinitum might be an option to ensure continuance of business operations until the successful tenderer has sufficient time to complete the transition.

Should no suitable tenders be received that have a monetary value within the delegated limit, the decision will be referred to Council, potentially at a Special Council meeting in March 2025, to reduce any business continuity risk.

Consultation

Internal staff, LGIS's risk and cyber specialists, and WALGA's procurement specialists, to ensure the structure and content of the request and contract documents, jointly and severally, would be fit for purpose, and adequately address the Shire's operational and financial risks.

Statutory Environment

To the best of our knowledge, this recommendation is consistent with the Local Government Act 1995 and the Local Government (Functions and General) Regulations 1996. Specifically, we refer to Part 4 – Provision of Goods & Services, Division 2 – Tenders for providing for goods or services, Section 11 – When tenders have to be publicly invited, Subsection 2(b), which states:

Division 2 — Tenders for providing goods or services (s. 3.57)

11. When tenders have to be publicly invited

(1A) In this regulation —

COVID-19 declaration has the meaning given in the *Emergency Management Act 2005* section 77C(1);

state of emergency declaration has the meaning given in the *Emergency Management Act 2005* section 3.

(1) Tenders are to be publicly invited according to the requirements of this Division before a local government enters into a contract for another person to supply goods or services if the consideration under the contract is, or is expected to be, more, or worth more, than \$250 000 unless subregulation (2) states otherwise.

(2) Tenders do not have to be publicly invited according to the requirements of this Division if —

(a) the supply of the goods or services is to be obtained from expenditure authorised in an emergency under section 6.8(1)(c) of the Act; or

(aa) the supply of the goods or services is associated with a state of emergency or a COVID-19 declaration; or

(b) the supply of the goods or services is to be obtained through the WALGA Preferred Supplier Program;

Policy Implications

1.3.1 Purchasing Policy (Oct 2024) applies to this activity, with the relevant provisions outlined below:

1.4 PURCHASING THRESHOLDS AND PRACTICES

1.4.1. Defining the Purchasing Value

The Shire will apply reasonable and consistent methodologies to assess and determine Purchasing Values, which ensure:

- a) The appropriate purchasing threshold and practice is applied in all purchasing activities; and

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- b) *Wherever possible, purchasing activity for the same category of supply is aggregated into single contract arrangements to achieve best value and efficiency in future purchasing activities where the requirements are able to be provided by a single supplier.*

A category of supply can be defined as groupings of similar goods or services with common: supply and demand drivers; market characteristics; or suppliers.

Strategic Purchasing Value Assessments

The Shire will periodically review recent past purchasing activity across its operations to identify categories of supply for which the Shire will have continuing need and which can be aggregated into single contract arrangements in order to achieve best value for money and efficiency in future purchasing activity.

The assessment of aggregated expenditure for the same category of supply capable of being supplied by a single supplier will determine the Purchasing Value threshold applicable to future purchasing activity...

...The calculated estimated Purchasing Value will determine the applicable threshold and purchasing practice to be undertaken.

The sum of invoices from Infinitum since they were first engaged in 2018 came to \$410,698.41 (inc. GST) as at 31 October, 2024. Some of this expenditure relates to the purchase of physical assets, some to subscription-based software, and the balance to Managed Services, including remote technical support. It is envisaged that the Shire's next MSP will take ownership of all functions relating to our ICT assets and third-party licensing, including procurement.

Similarly, it is envisaged that the new Agreement will span a similar timeframe, with built-in options to extend the relationship beyond the initial term.

It is therefore appropriate to aggregate these amounts for the purpose of determining the relevant Purchasing Threshold that should apply to this engagement.

1.4.2. Table of Purchasing Thresholds and Practices

Supplier Order of Priority

The Shire will consider and apply, where applicable, the following Supplier Order of Priority:

Priority 1

Existing Prequalified Supplier Panel or other Contract

Current contracts, including a Panel of Prequalified Suppliers or contracted supplier, must be used where the Shire's supply requirements can be met through the existing contract.

If the Shire does not have a current contract relevant to the required supply, then a relevant WALGA PSA may be used.

There is no option to further renew or extend the service under our existing contract with Infinitum.

Priority 2

Local Suppliers

Where the Purchasing Value does not exceed the tender threshold and a relevant local supplier is capable of providing the required supply, the Shire will ensure that wherever possible quotations are obtained from local suppliers permanently located within the District as a first priority, and those permanently located within surrounding Districts as the second priority.

If no relevant local supplier is available, then a relevant WALGA PSA may be used.

Since the estimated value of the contract far exceeds the tender threshold of \$250,000, Priority 2 does not apply to this activity.

Priority 3:

Tender Exempt - WALGA Preferred Supplier Arrangement (PSA)

Use a relevant WALGA PSA regardless of whether or not the Purchasing Value will exceed the tender threshold.

However, if a relevant PSA exists but an alternative supplier is considered to provide best value, then the CEO, or an officer authorised by the CEO, must approve the alternative supplier.

Reasons for not using a PSA may include:

- i. Local supplier availability (that are not within the PSA); or,*
- ii. Social procurement – preference to use Aboriginal business or Disability Enterprise.*

If no relevant WALGA PSA is available, then a relevant State Government CUA may be used.

ICT Services fall under category PSP001 of the WALGA Preferred Supplier Panel, with 206 pre-qualified suppliers listed as at 31 October 2024. We believe this pool of candidates should be of sufficient size and depth to attract a number and diversity of responses that will meet our requirements and ensure a competitive tender process.

Financial Implications

Until the responses are received, we cannot quantify the extent of the budgetary impact to Council, if any. The current budget has accounted for the same services and licences to be provided, under the same schedule of rates, up to 30 June, even though our contract with Infinitem expires sooner.

Managed Service Agreement expenditure is included within the Long Term Financial Plan 2025-2036, over the next five (5) years it has an allocation of \$308,614 (an average of \$61,723 per year). Although the limit set in the recommendation is above the LTFP allocation, this is allowing for the increases from the wider scope in the RFT from the original MSA.

Strategic Implications

Strategic Community Plan 2023-2033:

14 Operating with a high standard of good governance and transparency

15 Financial practices are responsive to compliance requirements and revenue needs

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7.0 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil.

8.0 NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING

Nil.

9.0 CONFIDENTIAL ITEMS

Nil.

10.0 TIME AND DATE OF NEXT MEETING

Next Ordinary Council Meeting to be held on Wednesday, 19 February 2025 commencing at 5.00pm.

11.0 CLOSURE

The meeting was closed at 5:09pm.

These minutes were confirmed at an Ordinary Council meeting on 19 February 2025

Signed _____
Presiding Officer

Date: _____