



NOTICE OF MEETING

Dear Councillors

I respectfully advise that the ORDINARY COUNCIL MEETING will be held in Council Chambers, York Town Hall, York on Tuesday, 28 May 2024, commencing at 5:00pm.

MEETING LATE AGENDA ATTACHED

Alina Behan

ALINA BEHAN
ACTING CHIEF EXECUTIVE OFFICER
Date: 27 May 2024

☛ PLEASE READ THE FOLLOWING IMPORTANT DISCLAIMER BEFORE PROCEEDING ☚

Any plans or documents in agendas and minutes may be subject to copyright. The express permission of the copyright owner must be obtained before copying any copyright material.

Any statement, comment or decision made at a Council meeting regarding any application for an approval, consent or licence, including a resolution of approval, is not effective as an approval of any application and must not be relied upon as such.

Any person or entity who has an application before the Shire of York must obtain, and should only rely on, written notice of the Shire of York's decision and any conditions attaching to the decision and cannot treat as an approval anything said or done at a Council meeting.

Any advice provided by an employee of the Shire of York on the operation of a written law, or the performance of a function by the Shire of York, is provided in the capacity of an employee, and to the best of that person's knowledge and ability. It does not constitute, and should not be relied upon, as a legal advice or representation by the Shire of York. Any advice on a matter of law, or anything sought to be relied upon as a representation by the Shire of York should be sought in writing and should make clear the purpose of the request. Any plans or documents in Agendas and Minutes may be subject to copyright.

MISSION STATEMENT
"Building on our history to create our future"

Order Of Business

12	Business of an Urgent Nature Introduced by Decision of the Meeting.....	3
	SY001-05/24 RFT05-2324 Tree Pruning.....	3

12 BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF THE MEETING

SY001-05/24 RFT05-2324 TREE PRUNING

File Number:	4.5055
Author:	Claire Regent, Operations Administration Officer
Authoriser:	Lindon Mellor, Executive Manager Infrastructure & Development Services
Previously before Council:	26 March 2024 (100324)
Disclosure of Interest:	Nil
Appendices:	1. Evaluation Report - Confidential

NATURE OF COUNCIL'S ROLE IN THE MATTER

Legislative

PURPOSE OF REPORT

Council is requested to consider Request for Tender (RFT) 05-2324 and authorise the award of a contract to complete the pruning of roadside vegetation within the Shire of York. This work utilises Roads to Recovery (RTR) program funding which must be completed in 2023/24.

BACKGROUND

The management of roadside vegetation is a key maintenance item that provides for safe and efficient transport corridors within the Shire allowing for a range of traffic uses including the movement of agricultural machinery.

Council adopted new Asset Management Plans (AMP) for its Transportation assets at its June 2023 Ordinary Meeting (060623). The Roads AMP noted vegetation encroachment as a significant issue with high consequences for critical failure of the Shire's current road assets. The AMP recommended a need for on-going vegetation pruning to maintain the traffic envelope clear of vegetation, manage risks of falling branches, manage fire risk, and to maintain accessibility and mobility of roads.

Due to constraints on activity that can be carried out under the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* an ongoing vegetation management program is important to maintain a 'transport corridor'. Failure to regularly clear vegetation can cause further approvals to be required before clearing can be done due to the age of the vegetation and establishment of animal habitats. Regular maintenance ensures vegetation can continue to grow in road reserves without causing damage and interrupting road infrastructure.

At its March 2024 Ordinary Meeting, as part of the 2023/24 Budget Review, Council adopted a budget of \$132,000 towards road vegetation maintenance utilising RTR grant funding originally assigned to other road projects. These road projects have been delayed into 2024/25 due to the timing of design work and consideration of weather. Reallocation of the RTR funding was necessary as the RTR funding program has reached the end of the current five (5) year funding cycle meaning unspent funds would need to be returned.

As part of the same resolution, Council resolved to transfer surplus funds into the Bridge Reserve (item e). This will be discussed further in the body of this report. At its March 2024 Ordinary Meeting, Council resolved (100324):

“That, with regard to the Minutes and Recommendations of the Audit and Risk Committee Meeting held on 21 March 2024, Council:

- 1. Receives the Unconfirmed Minutes of the Audit and Risk Committee (the Committee) Meeting held on 21 March 2024, as presented in Appendix 1, and by adopting the following recommendations of the Committee, Council:***
 - a. Resolves to adopt the completed 2023 Compliance Audit Return for certification by the Shire President and the Chief Executive Officer in accordance with Regulation 15(2) of the Local Government (Audit) Regulations 1996.***
 - b. Requests the Chief Executive Officer to submit the 2023 Compliance Audit Return to the Departmental CEO of the Department of Local Government, Sport and Cultural Industries prior to 31 March 2024 in accordance with Regulation 15(1) of the Local Government (Audit) Regulations 1996.***
 - c. Resolves to adopt the Mid-Year Budget Review and supporting information.***
 - d. Requests the Chief Executive Officer to transfer \$100,000 from the Recreation Reserve to the Swimming Pool Reserve.***
 - e. Requests the Chief Executive Officer to transfer \$347,000 of surplus funds to the Bridge Reserve.***
 - f. Requests the Chief Executive Officer to transfer \$100,000 of surplus funds to the Road Reserve.***
 - g. Requests the Chief Executive Officer to transfer \$100,000 of surplus funds to the Swimming Pool Reserve.***
 - h. Requests the Chief Executive Officer to forward the adopted 2023/24 Mid-Year Budget Review to the Department of Local Government, Sport and Cultural Industries within thirty (30) days of Council’s adoption.***
 - i. Resolves to adopt the following meeting fees payable to independent committee members of the Audit and Risk Committee as follows: Meeting Fee – External Member (x2) \$172 per meeting.***
 - j. Receives the Auditor’s Audit Management Report from the Office of the Auditor General for the 2022/23 financial year.***
 - k. Notes the Management Comment and Actions taken to address the Findings contained in the Auditor’s Audit Management Report.***
 - l. Requests the Chief Executive Officer to submit a copy of the Significant Findings Report stating what action the Shire of York has taken or intends to take with respect to the Significant Findings to the Minister for Local Government prior to 25 June 2024.***
 - m. Requests the Chief Executive Officer to publish a copy of the Significant Findings Report stating what action the Shire of York has taken or intends to take with respect to the Significant Findings on the Shire’s website within fourteen (14) days of the report being provided to the Minister for Local Government.***
 - n. Requests the Chief Executive Officer to report back on the Significant Findings at the next Audit and Risk Meeting, with a risk assessment against each finding.***
 - o. Adopts Policy G19 – Risk Assessment & Management.***
 - p. Receives the Risk Management Framework.***
 - q. Authorises the Chief Executive Officer to make any minor formatting and typographical changes to the documents prior to publication.”***

COMMENTS AND DETAILS

Officers sought tenders from suitably qualified and experienced contractors for the pruning of overgrown trees on selected roads within the Shire of York. This work involves the pruning of trees, removing the leaves and branches from the site and clearing drains of regrowth leaving a 'clear' transport envelope.

The RFT was released on 18 April 2024 and closed on 9 May 2024. An evaluation of the responses was carried out by the Senior Project Manager, Project Manager and Operations Administration Officer on 22 May 2024. A copy of the evaluation report is presented in confidential Appendix 1.

The required scope of the works included:

1. Mobilising and demobilising of equipment
2. Undertake pruning of vegetation within the transport corridor in line with Department of Water and Environmental Regulation specification and guidelines
3. Comply with all Work Health and Safety requirements
4. Supply all traffic management required
5. Clear site of mulch and debris on completion of the works
6. Supply qualification certificates to complete the tree pruning
7. Provide evidence of required insurances

The following roads were included in the scope of works:

1. Ashworth Road
2. North Road
3. Marwick Road
4. Berrybrow Road
5. Northbourne Road
6. Station Road
7. Quellington Road
8. Doodenanning Road
9. Wambyn Road
10. Morris Edwards Road
11. Osnaburg Road

The preferred tenderer has quoted a total of \$283,542 excluding GST for the works. A current budget of \$132,000 is allocated for this work, funded through the RTR program.

Due to cost savings on other RTR projects there is a remaining balance of \$228,926 for the current five (5) year RTR funding cycle which is due to expire on 30 June 2024. This includes an additional \$27,609 of savings from previous year projects recently confirmed through the audit process. Officers are recommending allocating these remaining funds towards this project.

This would leave an RTR funding allocation of \$360,926 to complete the tendered works. Funds in excess of the quoted total would allow for additional work to be completed up to the remaining funding total and ensure that no RTR funding needs to be returned by the Shire. The benefit of this is the ability to complete works planned for next financial year early, saving future budget years funds which can be put toward the delayed projects. As noted, the funding must be spent before 30 June 2024 to meet the current funding guidelines. An extension of time is not expected to be available to complete the work.

As the quote from the preferred tenderer is above the budget allocation, Council is requested to make a budget amendment and authorise the Chief Executive Officer to award the contract, including

any variations, up to the budgeted amount of \$360,926 to allow for additional areas to be added to the scope of works.

During the Mid-Year Budget Review RTR grant funding income of \$344,000 was incorrectly identified as budget surplus and Council’s permission was sought to redirect these funds into Reserve accounts. This funding needs to be returned to the RTR GL for use on grant funded projects. The additional \$27,609 from previous years needs to be recognised into the grant income account.

To do this, a budget amendment will be required to increase the income and expenditure GL’s to recognise the additional funds being received. A budget amendment is requested as per the table below:

TABLE 1.

GL	DESCRIPTION	CURRENT BUDGET	AMMENDMENT (\$)	REVISED BUDGET (\$)	COMMENTS
122400	Roads to Recovery Muni	\$333,317	+\$371,609	\$704,926	Expenditure account
121202	Roads to Recovery	-\$677,317	-\$27,609	-\$704,926	Income account

All RTR expenditure funds allocated towards this and other projects are located in GL: 122400. The Administration is recommending updating the budget of GL: 122400 to \$704,926 to account for all RTR funds available (including previous year amounts) and recognise the grant income. The income account GL: 121202 will also need to be updated to \$704,926 to allow for the additional income of \$27,609 from previous years to be received. The project budget of \$360,926 being requested will sit within the total R2R funds under GL: 122400.

Reserve Funds

During the investigation into the budget, an error made during the Mid-Year Budget Review process was identified. Some of the unused RTR income funds were incorrectly attributed towards surplus funds. These funds need to be quarantined for expenditure related to RTR projects to be incorporated into the budget, so they cannot be used for funding other Shire programs.

To resolve this, the Administration is requesting that Council revoke item ‘e’ of Council resolution 100324 - Minutes and Recommendations of the Audit and Risk Committee Meeting held on 21 March 2024, which states “*That Council requests the Chief Executive Officer to transfer \$347,000 of surplus funds to the Bridge Reserve.*”

The Administration will look to find other means to increase funds into the Bridge Maintenance Reserve in the following budget utilising surplus that is untied to grant funding.

OPTIONS

Council has the following options:

Option 1: Council could choose to:

- Approve the requested budget amendments as per Table 1 and award the contract for \$283,542 to the preferred tenderer, Tree Tech Australia and authorise the Chief Executive Officer to award any contract variations up to the budgeted amount of \$360,926; and
- Revoke the existing Council resolution 100324-e requesting the Chief Executive Officer to transfer \$347,000 of surplus funds to the Bridge Reserve, recognising they are not surplus funds.

Option 2: Council could choose to:

- Award a revised scope of work as per the original budget of \$132,000, giving up the opportunity to utilise RTR funds; and

- Revoke the existing Council resolution 100324-e requesting the Chief Executive Officer to transfer \$347,000 of surplus funds to the Bridge Reserve, recognising they are not surplus funds.

Option 3: Council could choose to:

- Direct the Chief Executive Officer to undertake a budget amendment of their choosing; and
- Not revoke the existing resolution of Council requesting the Chief Executive Officer to transfer \$347,000 of surplus funds to the Bridge Reserve (see Risk Implications section).

Option 4: Council could choose to:

- Reject all tenders and direct the Chief Executive Officer to return all RTR; and
- Revoke the existing resolution of Council requesting the Chief Executive Officer to transfer \$347,000 of surplus funds to the Bridge Reserve.

Option 1 is the recommended option.

IMPLICATIONS TO CONSIDER

Consultative

Executive Leadership Team

Depot Works Supervisors

Strategic

Strategic Community Plan 2020-2030

Goal 4: Our Built Environment

To have a built environment which support community, economy and the environment, respects the past and creates a resilient future.

Policy Related

F2 Procurement

Financial

The financial implications of this request have been explored in detail in the Comments and Details section of this report.

Legal and Statutory

Section 3.57 of the *Local Government Act 1995* is applicable and states:

3.57. Tenders for providing goods or services

- (1) *A local government is required to invite tenders before it enters into a contract of a prescribed kind under which another person is to supply goods or services.*
- (2) *Regulations may make provision about tenders.*

Regulation 18 of the *Local Government (Functions and General) Regulations 1996* provides the requirements for the rejection and acceptance of tenders and states:

“18. Rejecting and accepting tenders

- (1) *A tender is required to be rejected unless it is submitted at a place, and within the time, specified in the invitation for tenders.*
- (2) *A tender that is submitted at a place, and within the time, specified in the invitation for tenders but that fails to comply with any other requirement specified in the invitation may be rejected without considering the merits of the tender.*
- (3) *If, under regulation 23(4), the CEO has prepared a list of acceptable tenderers for the supply of goods or services, a tender submitted by a person who is not listed as an acceptable tenderer is to be rejected.*
- (4) *Tenders that have not been rejected under subregulation (1), (2), or (3) are to be assessed by the local government by means of a written evaluation of the extent to which each tender satisfies the criteria for deciding which tender to accept and it is to decide which of them (if any) it thinks it would be most advantageous to the local government to accept.*
- (4a) *To assist the local government in deciding which tender would be the most advantageous to it to accept, a tenderer may be requested to clarify the information provided in the tender.*
- (5) *The local government may decline to accept any tender.*
- (6) *If a local government has accepted a tender but acceptance of the tender does not create a contract and within 6 months of the day on which the tender was accepted the local government and the successful tenderer agree not to enter into a contract in relation to the tender, the local government may accept from the other tenders the tender which it thinks it would be most advantageous to the local government to accept.*
- (7) *If a local government has accepted a tender and acceptance of the tender creates a contract and within 6 months of the day on which the tender was accepted the local government and the successful tenderer agree to terminate the contract, the local government may accept from the other tenders the tender which it thinks it would be most advantageous to the local government to accept.”*

Regulation 10 of the *Local Government (Administration) Regulations 1996* is applicable and states:

“10. Revoking or changing decisions (Act s. 5.25(1)(e))

- (1) *If a decision has been made at a council or a committee meeting then any motion to revoke or change the decision must be supported —*
 - (a) *in the case where an attempt to revoke or change the decision had been made within the previous 3 months but had failed, by an absolute majority; or*
 - (b) *in any other case, by at least $\frac{1}{3}$ of the number of offices (whether vacant or not) of members of the council or committee,*
inclusive of the mover.
- (1a) *Notice of a motion to revoke or change a decision referred to in subregulation (1) is to be signed by members of the council or committee numbering at least $\frac{1}{3}$ of the number of offices (whether vacant or not) of members of the council or committee, inclusive of the mover.*
- (2) *If a decision is made at a council or committee meeting, any decision to revoke or change the decision must be made by an absolute majority.*
- (3) *This regulation does not apply to the change of a decision unless the effect of the change would be that the decision would be revoked or would become substantially different.”*

Risk Related

If the works are delayed it could result in reputational risk and poor community perception of the Shire regarding the quality of road maintenance. Backlog of vegetation maintenance activity could lead to barriers to completing future works due to budget and clearing legislation.

The current works are funded under the RTR grant program which requires the completion of works by 30 June 2024. No extension will be approved.

There is a financial risk if Council choose not to revoke the existing resolution and instead continue to allocate RTR income funds to Reserve. There will likely be a gap in the budget as funds from RTR need to be tied to expenditure on an approved project. This would cause a deficit in the 2023/24 Budget.

There is a reputational and legislative compliance risk associated with not returning the funds to the RTR GL account. This would likely be an audit finding as it is not an appropriate recognition or use of grant funds.

Workforce

The scope of this report can be managed with current operational capacity.

VOTING REQUIREMENTS

Absolute Majority: Yes

RECOMMENDATION					
That, with regard to the RFT05-2324 Tree Pruning, Council:					
1. Authorises an amendment to the 2023/24 Budget as per the below table:					
GL	DESCRIPTION	CURRENT BUDGET	AMMENDMENT (\$)	REVISED BUDGET (\$)	COMMENTS
122400	Roads to Recovery Muni	\$333,317	+\$371,609	\$704,926	Expenditure account
121202	Roads to Recovery	-\$677,317	-\$27,609	-\$704,926	Income account
2. Awards the contract for Tender RFT 05-23/24 to the preferred tenderer, Tree Tech Australia, for the amount of \$283,542.					
3. Authorises the Shire President and Chief Executive Officer to affix the Common Seal to all relevant contract documentation between the Shire of York and the preferred tenderer, subject to any variations.					
4. Authorises the Chief Executive Officer to approve any variations up to the new budgeted amount towards the project of \$360,928.					
5. Authorises the Chief Executive Officer to make any minor formatting or typographical changes to the contract documentation prior to signing.					
6. Revokes item ‘e’ of Council resolution 100324 - Minutes and Recommendations of the Audit and Risk Committee Meeting held on 21 March 2024, which states “Requests the Chief Executive Officer to transfer \$347,000 of surplus funds to the Bridge Reserve.”					