

3 Presentation of officer reports

3.1 Contract No. 2021/187, North Balwyn Tennis Club Pavilion - Construction and Rectification Works

Executive Summary

Purpose

The purpose of this report is for Council to give consideration to the awarding of Contract No. 2021/187, North Balwyn Tennis Club pavilion rectification works.

Background

The North Balwyn Tennis Club pavilion underwent major refurbishment works in 2016. In the years following construction, Council was notified of issues by the tennis club of excessive moisture within the building, with a further increase in mould formation over the COVID19 lockdown periods due to reduced ventilation associated with closure of the building for almost 2 years. Since this initial report of issues in the building, Council has worked closely with the tennis club, various specialist consultants and contractors, and the original building designer and contractor, to investigate and resolve the issues.

The main cause of moisture has been assessed independently as a combination of architectural design and construction practices.

Following a period of inactivity, the building was deemed unsuitable for use by the tennis club in July 2020 due to excessive moisture and mould. To support the North Balwyn Tennis Club members' ongoing use of the courts and club activity, Council has provided temporary accommodation facilities.

A new lead consultant has independently reviewed all previous reports and documented a new scope of works to rectify the existing damage and address the building deficiencies to ensure that no further issues emerge.

Tenders have been invited and evaluated, and a recommendation to award Contract No. 2021/187, North Balwyn Tennis Club pavilion rectification works, is presented for Council's consideration. The works are expected to commence during February 2022 and be completed by mid-April 2022.

The total cost of this contract is \$542,235 (excluding GST). Council has not approved funding to undertake these works in the 2021/22 Budget.

Key Issues

Council, under guidance from its legal advisors, will seek reimbursement of all expenditure associated with this project, including works, consultant fees, disbursements and temporary accommodation costs for the North Balwyn Tennis Club from the parties responsible, through appropriate legal processes.

Next Steps

Upon award of the contract, Council will oversee the delivery of the rectification works. Officers will also continue working with Council's legal advisors to pursue reimbursement of costs via appropriate legal proceedings.

Confidential information is contained in **Attachments 1 and 2**, as circulated in the confidential section of the agenda attachments, in accordance with Section 66 (2)(a) and the definition of 'confidential information' in Section 3(1) of the Local Government Act 2020 as the information relates to private commercial information, being information provided by a business or commercial undertaking that if released, would unreasonably expose the business or commercial undertaking to disadvantage. This item has been included in the public agenda to facilitate transparency and accountability in Council's decision making.

Officers' recommendation

That Council resolve:

1. To award Contract No. 2021/187, North Balwyn Tennis Club pavilion rectification works to Stokes Rousseau Pty Ltd (ACN 119 165 623); for a total cost of \$596,459 (including GST). The cost to Council after the return of the GST Tax Input Credits is \$542,235.
2. To approve the allocation of a separate contract contingency, as detailed within the attached confidential Attachment 1, and delegate authority to the Contract Superintendent to expend this contingency to ensure the successful completion of the contract works
3. To authorise the Director Places and Spaces to execute the contract agreements with the above contractor.
4. To note that expenditure under this contract has not been included in Council's 2021/22 adopted budget, and that Council intends to recoup costs via appropriate legal action.

Responsible director: Daniel Freer, Director Places and Spaces

1. Purpose

The purpose of this report is for Council to give consideration to the awarding of Contract No. 2021/187, North Balwyn Tennis Club pavilion rectification works.

2. Policy implications and relevance to community plan and council plan

This contract aligns with the following themes and strategies in the Boroondara Community Plan (2021-31) and Council Plan (2021- 25):

Theme 1 – Community, Services and Facilities

Strategy 1.1

Neighbourhoods and community spaces facilitate social connections and belonging by providing, maintaining and activating places for people to meet, organise activities and celebrate events.

Strategy 1.3

Facilities and sports precincts encourage equal access through social planning, delivery, asset maintenance and renewal activities.

Strategy 1.4

Residents and visitors feel safe in public spaces through encouraging local activity and creating and maintaining civic areas.

Theme 7 – Leadership and Governance

Strategy 7.1

Decision-making is transparent and accountable through open governance processes with timely communication and reporting.

Strategy 7.2

Resources are responsibly allocated and used through sound financial and asset planning, procurement and risk management practices.

This procurement process has been carried out in accordance with the requirements of Council's Contracts and Tendering Probity Policy and Council's Procurement Policy

3. Background

The North Balwyn Tennis Club pavilion underwent major refurbishment works in 2016. A few years following construction, Council was notified of issues with excessive moisture within the building, with a further increase in mould formation over the COVID19 lockdown periods due to reduced ventilation associated with closure of the building for almost 2 years. Since this initial report, Council has worked closely with the tennis club, various specialist consultants and contractors, and the original building design and contractor, to investigate and resolve the issues.

Following a period of inactivity, the building was deemed unsuitable for use by the tennis club in July 2020 due to moisture and mould. To support the North Balwyn Tennis Club members' ongoing use of the courts, Council has provided temporary accommodation facilities.

The North Balwyn Tennis Club has unfortunately suffered adverse impacts to membership and participation due to the unavailability of the social pavilion. Council officers have prioritised actions to ensure that the building can be safely utilised again at the earliest opportunity and provided ongoing support to the Club throughout this period.

A new lead consultant has independently reviewed all previous reports and documented a new scope of works to rectify the existing damage and address the building deficiencies to ensure that no further issues emerge.

Council requires a suitably qualified organisation to undertake the rectification works in accordance with the requirements of the specification.

Invitation to tender

In accordance with Council's procurement procedures and Section 186 of the *Local Government Act 1989*, Council invited public tenders from suitably qualified organisations to undertake works to rectify the identified damage and address the cause of the moisture issues. An Invitation to Tender was issued via Council's eProcure electronic tendering system on 24 November 2021. The closing date for submissions was 4.00pm, 17 December 2021.

In response to the advertisement, Council received four submissions from the following tenderers:

- Bowden Corporation Pty Ltd;
- Neo Construct Pty Ltd;
- Rodine Australia Pty Ltd; and
- Stokes Rousseau Pty Ltd.

4. Outline of key issues/options

Several key issues will require ongoing consideration through the delivery of the rectification works.

Quality of work

Since the works to be undertaken are rectifying previous design and workmanship inadequacies, the quality of the works is required to be exemplary. Ongoing close supervision and numerous mandatory inspection points, by both Council officers and specialist independent consultants, will oversee the delivery of the works and ensure that a high standard of works is achieved.

COVID

The ongoing global COVID pandemic continues to present as a risk factor for many planned operational activities, including throughout the construction sector. The potential for staff and sub-contractor unavailability due to contraction of COVID or isolation requirements for close contacts remains high. The successful tenderer will be required to prepare and comply with a COVID Safe Plan for the project to ensure that reasonable measures are implemented to avoid spread of the coronavirus and minimise the risk of delay to the project program.

It is anticipated that some disruption to material supply and distribution networks may occur. To avoid delay to the delivery of the works, the successful tenderer will be requested place orders and secure supply of key materials as a priority action upon award of the contract.

Legal processes

Council officers have maintained close liaison with Council's legal advisors to ensure that Council's legal options and rights remain intact as new consultants and contractors are engaged to rectify the building issues. While Council has not approved funding through its 2021/22 adopted Budget for this project, it is the officers' intent that the costs associated with all previous investigations, works and temporary support measures, as well as the costs associated with Contract 2021/187, will be recouped via appropriate legal processes. Council's legal advisers have provided ongoing support and advice to officers as this project has progressed as outlined in Attachment 2.

5. Collaborative Procurement Opportunities

Due to the specialised nature of the works to be engaged, there is no opportunity for collaborative procurement for this contract.

6. Consultation/communication

Officers recognise the importance of the pavilion facilities to the North Balwyn Tennis Club and the broader local community and have diligently worked to expedite rectification works while ensuring that Council's legal interests remain intact. The North Balwyn Tennis Club has remained regularly updated on the progress and required steps being undertaken by Council to realise the reinstatement of the pavilion.

Due to the impact of the pavilion closure over many months, and likely disruptive impact of the rectification works, Council has offered further support to the tennis club in the form of basic temporary amenities, storage facilities, a marquee to provide a sheltered viewing space, and communications and graphic design support.

7. Financial and resource implications

Council's 2021/22 adopted budget does not include any allocation for rectification works to the North Balwyn Tennis Club pavilion. Council has expended \$272,950 since the original completion of the previous building works, prior to 2021/22. A further \$130,317 has been expended and committed in 2021/22. Council will need to fund these rectification works under Contract 2021/187 prior to planned legal action to return funds to Council.

Rectification and preparatory works	\$308,045
Independent consultant reviews	\$8,684
Lead consultant fees (re-documentation)	\$50,165
Legal fees	\$36,373

Funds spent or committed to date:	\$403,267
Total adopted budget allocation 2021-22:	\$Nil

Proposed project expenditure

Construction cost (Contract 2021/187)	\$542,235
Other project costs	\$75,000

Total project expenditure **\$1,020,502**

Funding for this project will be accounted for in the finalisation of Council's 2021/22 Capital Works Program at the conclusion of the financial year. As identified in this report, Council will use its best endeavours to recoup the costs associated with this project from the original contractors.

8. Governance issues

The implications of this report have been assessed in accordance with the requirements of the Victorian Charter of Human Rights and Responsibilities.

The officers responsible for this report have no direct or indirect interests requiring disclosure.

This tender process has been carried out in accordance with the requirements of Council's Contracts and Tendering Probity Policy and Council's Procurement Policy.

9. Social and environmental issues

Rectification of the North Balwyn Tennis Club pavilion will have a measurable and significant positive impact on the members of the North Balwyn Tennis Club who have endured a challenging period of hardship while maintaining the operations and morale of without key supporting infrastructure.

10. Evaluation and review

The tender evaluation report is provided as **Confidential Attachment 1.**

As a result of the tender evaluation, the evaluation panel recommends that Council award Contract No. 2021/187, North Balwyn Tennis Club pavilion rectification works to:

- Stokes Rousseau Pty Ltd

for a total cost of \$596,459 (including GST). The cost to Council after the return of the GST Tax Input Credits is \$542,235.

Manager: **Christine White, Manager Capital Projects**

Report officer: Jarrod Filosa, Coordinator Building Projects