

5.2.5 LATE ITEM: Deed of Variation to the Constitution Agreement of the Mindarie Regional Council – Further Report

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| Ward: | Both | Date: | 10 October 2016 |
| Precinct: | All | File Ref: | SC1161 |
| Attachments: | 1 – Proposed Deed of Variation by Mindarie Regional Council | | |
| Tabled Items: | - | | |
| Reporting Officers: | R Lotznicker, Director Technical Services J Paton, Director Corporate Services | | |
| Responsible Officer: | R Lotznicker, Director Technical Services | | |

RECOMMENDATION:

That Council:

1. NOTES:

1.1 that at its Ordinary Meeting held on 28 June 2016 it approved a variation to clauses 5.1(a) and 5.1(b) of the Mindarie Regional Council Constitution Agreement to enable the Mindarie Regional Council to pursue more sustainable waste treatment options; and

1.2 not all member Councils supported the proposed changes as recommended by the Mindarie Regional Council Administration;

2. APPROVES the 'revised' Deed of Variation Constitution Agreement of the Mindarie Regional Council between participants incorporating the following variation to the current Constitution Agreement (refer Attachment 1):

2.1 Clause 5.1(a) - At the end of clause 5.1(a), insert the words 'or such other building or place as agreed from time to time between the regional council and all municipalities'; and

2.2 Clause 5.1(b) - At the end of clause 5.1(b), insert the words 'or such other building or place as agreed from time to time by the parties to the contract'; and

3. AUTHORISES the Mayor and the Chief Executive Officer to sign and seal the Deed of Variation Constitution Agreement of the Mindarie Regional Council as per Attachment 1.

PURPOSE OF REPORT:

To consider proposed amendments to the Mindarie Regional Council Constitution Agreement, refer **Attachment 1** for the current constitution.

BACKGROUND:

MRC Constitution Agreement (CA):

As previously reported to Council in June 2016, the current Mindarie Regional Council (MRC) CA was originally made between the Cities of Perth, Stirling and Wanneroo (constituent municipalities) and over time, has been amended to include the Cities of Joondalup and Vincent and the Towns of Victoria Park and Cambridge as constituent municipalities along with other operational amendments.

The MRC is currently considering future plans to maximise recycling/recovery alternatives for its member councils.

Since the CA (referred to in the *Local Government Act 1995* as an 'Establishment Agreement') was created, the provision of waste management services, and the broader waste management industry has changed in complexity requiring a broader range of services to accommodate the varying needs of the constituent municipalities, and to meet State Government led targets for diversion from landfill. MRC has developed a strategic action plan to ensure it maintains pace with the developing waste industry whilst striving to meet these targets.

Mindarie Regional Council Meeting of 14 April 2016:

As previously reported to Council, the MRC endorsed a report by Hyder Consulting which included the recommendation to create a Waste Precinct at, or in close proximity to the existing Resource Recovery Facility (RRF) in the Neerabup Industrial Estate in the City of Wanneroo.

A dedicated Waste Precinct would enable the MRC to undertake the following:

- develop a Bulk Waste Sorting Shed (to cater for bulk verge waste),
- a Recycling Facility (yellow top bin); and
- potentially a Waste to Energy Facility (for the green and/or red top bins).

To this end, the MRC has included funding in its 2016/17 draft budget for the preliminary planning of the aforementioned proposed projects.

The MRC intends to fully test the market by openly tendering each of the projects. The tender will be flexible so as to obtain the strongest responses possible from the market. The MRC will require the facilities to be either constructed on land that it owns or alternatively allow the tenderer to nominate a preferred facility at another location. It is possible that the locations of facilities that are nominated by a tenderer could be outside the immediate region.

MRC Correspondence to Member Councils - 29 April 2016:

The MRC received legal advice stating that the current CA prohibits the provision of a number of critical future services currently being considered by MRC, namely the outsourcing of waste treatment and processing of waste on properties owned and operated by parties external to MRC.

The current restriction prevents the MRC from considering more sustainable waste treatment options that are, or will, become available in the private sector when MRC's current landfill and processing facilities at Tamala Park and Neerabup have reached their operational capacities.

Clauses 5.1 (a) and 5.1 (b) in the current CA are worded as follows:

5.1(a) – The orderly and efficient treatment and/or disposal of waste delivered to a building or place provided, managed or controlled for those purposes by the regional council;

5.1(b) – The entry into contracts with a municipality or municipalities for the treatment and/or disposal of their waste which is delivered to a building or place provided, managed or controlled for those purposes by the regional council;

Proposed 'Deed of Variation':

Included in the correspondence was a proposed 'Deed of Variation' to the CA to amend clauses 5.1(a) and 5.1(b) as follows (*shown in strikethrough*)

- In clause 5.1(a) *The orderly and efficient treatment and/or disposal of waste ~~delivered to a building or place provided, managed or controlled for those purposes by the regional council;~~ and*
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In clause 5.1(b) *The entry into contracts with a municipality or municipalities for the treatment and/or disposal of their waste ~~which is delivered to a building or place provided, managed or controlled for those purposes by the regional council;~~*

The correspondence requested that each of the member Councils support the minor amendment.

Ordinary Meeting of Council 28 June 2016:

Council considered the request for the Deed of Variation by Mindarie Regional Council (MRC) where the following decision was made:

That Council:

1. *NOTES the Mindarie Regional Council's request for the City of Vincent to approve the Deed of Variation to the Constitution as outlined in the report;*
2. *APPROVES the Deed of Variation to the Constitution Agreement of the Mindarie Regional Council as shown in Attachment 1; and*
3. *ADVISES the Mindarie Regional Council of its decision.*

Note: MRC's Constitution Agreement can only be amended if all seven member Councils are in agreement. Administration subsequently notified the MRC of Council's decision on the 29 June 2016.

DETAILS:

MRC Strategic Working Group Meeting 24 August 2016:

This group consists of directors and/or executives from each of the constituent municipalities and has for a number of years been developing a new Establishment Agreement (EA) to address the shortfalls of the existing CA, however further negotiations and modifications are required before it can be finalised.

At this meeting, it was advised that the Cities of Joondalup and Wanneroo had raised concerns that the proposed changes to the Constitution were too broad and that further changes were needed before they would seek approval for a Deed of Variation to the CA, from their respective Councils.

Following the request from the Cities of Joondalup and Wanneroo, the MRC requested its solicitors to make further changes to the amendments previously drafted to address the issues raised by both the Cities of Joondalup and Wanneroo

The amendment sought is noted below (*underlined*):

- Clause 5.1(a) – The orderly and efficient treatment and/or disposal of waste delivered to a building or place provided, managed or controlled for those purposes by the regional council or such other building or place as agreed from time to time between the regional council and all municipalities.
- Clause 5.1(b) – The entry into contracts with a municipality or municipalities for the treatment and/or disposal of their waste which is delivered to a building or place provided, managed or controlled for those purposes by the regional council or such other building or place as agreed from time to time by the parties to the contract.

CONSULTATION/ADVERTISING:

Administration is represented on the MRC Strategic Working Group, where all MRC member Councils and MRC have been party to discussions surrounding the development of the proposed amendments.

LEGAL/POLICY:

An amendment to MRC's constitution entitled "*Regional District and Regional Council Constitution Agreement*" requires agreement of all seven constituent municipalities to agree to the changes before being sent on to the Minister for Local Government for approval. The seven constituent municipalities are the Cities of Wanneroo, Joondalup, Stirling, Perth and Vincent and the Towns of Victoria Park and Cambridge.

RISK MANAGEMENT IMPLICATIONS:

High: Reducing the quantity of waste to landfill is of paramount importance and mandated by State legislation. The Deed of Variation to the Constitution is necessary to evaluate the MRC to progress with further planning to establish a dedicated waste precinct, for the benefit of the City of Vincent and the six other member Councils.

STRATEGIC IMPLICATIONS:

In accordance with the City's *Strategic Plan 2013-2023*, Objective 1 states:

"1.1: *Improve and maintain the natural and built environment and infrastructure.*

1.1.3: *Take action to reduce the City's environmental impacts and provide leadership on environmental matters."*

SUSTAINABILITY IMPLICATIONS:

The proposal is to provide a more sustainable service which will take into account and try to address the many issues associated with waste generation/collection/disposal.

FINANCIAL/BUDGET IMPLICATIONS:

There are no financial implications directly associated with the endorsement of these amendments at this time; given the need for a unanimous decision by all MRC member councils prior to involvement in any future applicable project/processing option. Any financial implication would be reviewed and subject to endorsement of any particular project proposals at that time.

COMMENTS:

Council previously approved a requested Deed of Variation to the MRC CA however endorsement of the amendments by all seven Member Councils is required to allow the MRC to formally seek the Minister's approval to amend the CA.

As mentioned in the report both the Cities of Joondalup and Wanneroo raised some concerns that the proposed changes to the Constitution were too broad and that further changes were required before they would seek approval for a Deed of Variation to the CA from their respective Councils. In effect, the amendment seeks to increase flexibility in the management of waste to include facilities not owned or managed by the MRC, but only if all participant Councils have formally approved each proposal.

All member Council officers have indicated that they support the Cities of Joondalup and Wanneroo changes and the changes are supported by the MRC Administration.

It is therefore recommended that the proposed changes be supported in lieu of what was previously approved by Council on 28 June 2016 as they more clearly define the intent of the amendment.
