



AGENDA

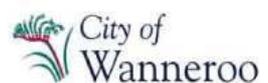
SPECIAL COUNCIL MEETING

28 MARCH 2012

TIME: 5.30PM

CITY OF VINCENT

Managing waste and recovering resources
Constituent Members: Cities of Perth, Joondalup, Stirling, Vincent and Wanneroo
Towns of Cambridge and Victoria Park



**MINDARIE REGIONAL COUNCIL
NOTICE OF MEETING**

21 March 2012

Councillors of the Mindarie Regional Local Government are advised that a Special Meeting of the Council will be held in the Council Chambers of the City of Vincent, 244 Vincent Street, Leederville, at 5.30pm on Wednesday 28 March 2012.

The agenda of pertaining to the meeting is attached.

Your attendance is respectfully requested.

**BRIAN CALLANDER
CHIEF EXECUTIVE OFFICER**

MINDARIE REGIONAL COUNCIL - MEMBERSHIP

Cr S Withers (Simon)	Town of Cambridge
Cr R Fishwick (Russ) - Chair	City of Joondalup
Cr K Hollywood (Kerry)	City of Joondalup
Cr R Butler (Rob)	City of Perth
Cr D Boothman (David)	City of Stirling
Cr S Cooke (Sharon)	City of Stirling
Cr J Robbins (Jason)	City of Stirling
Cr B Stewart (Bill)	City of Stirling
Cr J Bissett (John) – Deputy Chair	Town of Victoria Park
Cr A MacTiernan (Alannah)	City of Vincent
Cr L Gray JP (Laura)	City of Wanneroo
Cr D Newton JP (Dot)	City of Wanneroo

NB: Although some Councils have nominated alternate members, it is a requirement that a Council carries a specific resolution for each occasion that the alternate member is to act.

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1	DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS
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2	ATTENDANCE / APOLOGIES / LEAVE OF ABSENCE
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3	DECLARATION OF INTERESTS
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Declaration of Financial/Conflict of Interest to be recorded prior to dealing with each item.

Disclosure of Financial and Proximity Interests

- (a) *Members must disclose the nature of their interest in matters to be discussed at the meeting. (Section 5.65 of the Local Government Act 1995).*
- (b) *Employees must disclose the nature of their interest in reports or advice when giving the report or advice to the meeting. (Sections 5.70 and 5.71 of the Local Government Act 1995).*

Disclosure of Interest Affecting Impartiality

- (a) *Members and staff must disclose their interest in matters to be discussed at the meeting in respect of which the member or employee has given or will give advice.*

4	CHIEF EXECUTIVE OFFICER REPORT
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ITEM 4	CITY OF STIRLING WITHDRAWAL
File No:	LEG/14
Appendix(s):	Yes
Date:	21 March 2012
Responsible Officer:	CEO

SUMMARY

The purpose of this report is to obtain a decision on the value of the adjustment of the assets and liabilities as a result of the withdrawal of the City of Stirling from the Mindarie Regional Council (MRC) to enable an agreement to be reached with the City of Stirling for the approval of the Minister in accordance with s.699 (3)(a) of the repealed *Local Government Act 1960* (LGA60).

BACKGROUND

1. On 3 August 2010, the 7 Member Councils and the MRC signed a Heads of Agreement, which reads as follows:

“The plaintiff, first defendant and second defendants in Supreme Court Action CIV1620 of 2010 (Action) hereby agree to settle the plaintiff’s claim on the following terms:

- 1 The plaintiff will resolve to make a written request to the Minister pursuant to section 699 of the Local Government Act 1960 to withdraw from the Mindarie Regional Council.*
 - 2 No later than 12 August 2010 the second defendants and the plaintiff will resolve to consent to the plaintiff’s proposed withdrawal from the Mindarie Regional Council and will thereafter negotiate in good faith for a period expiring on 30 April 2011 as to the adjustment of assets and liabilities between them as required by section 699 above.*
 - 3 Subject to resolutions as per paragraph 2 being made by each of the plaintiff and the second defendants, no later than 13 August 2010 the plaintiff will file a notice of discontinuance of the action with no order as to costs.*
 - 4 Subject to paragraph 5, and subject to the parties and Councils so resolving, each party will pay its own costs of the proceedings.*
 - 5 If by 30 April 2011 the plaintiff and the second defendants have not executed an agreement as to the matters in paragraph 2 and all other consequential matters flowing from the plaintiff’s withdrawal, and the Governor has not consented to the withdrawal by 30 June 2011, the plaintiff may commence fresh proceedings in the same terms as the Action but in that event, the costs of the parties in the Action shall be costs in the cause in the new proceedings”.*
2. The Heads of Agreement above expired on 30 April 2011 however the parties have continued to act in good faith to facilitate the withdrawal of the City of Stirling.
 3. In August 2010 the City of Stirling made a request to the Minister to withdraw from the MRC.
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4. The withdrawal from a Regional Council of a municipality is dealt with in Section 699 of the LGA60 and requires agreement of two main issues before the Minister can make a recommendation to the Governor. One being an agreement between the **retiring municipality and the regional council** to adjust the assets and liabilities of the MRC and the other being the alteration of the number of regional councillors of the MRC and/or the number of regional councillors to be appointed by one or more of the municipalities of the MRC. The LGA60 envisages a period of 12 months from the service of a withdrawal request for the two agreements to be reached.
5. If this has not been achieved to the satisfaction of the Minister within 12 months the Minister can grant an extension of time or waive the requirement for an agreement, or decline to make any recommendation to the Governor at all.
6. If there is no agreement as to the “adjustment of assets and liabilities between them” (i.e. between the City of Stirling and the MRC) then the Governor, on the recommendation of the Minister, may by Order make those adjustments.
7. The Minister must not make a recommendation to the Governor for an Order unless he has approved the two agreements or he has waived the need for those agreements.
8. The Member Councils with the assistance of the MRC have been developing a new Establishment Agreement to replace the current Constitution. The Strategic Projects Committee (SPC) of the MRC at its meeting on 16 March 2012 endorsed the final draft of the new Establishment Agreement, which has been distributed to the Member Councils for their consideration.
9. On 30 September 2011 the City of Stirling wrote to the Minister requesting an extension until 31 December 2011.
10. In correspondence dated 25 October 2011 the Minister advised that the request from the City of Stirling to extend the agreement was granted.
11. The MRC commissioned PricewaterhouseCoopers (PwC) to undertake a valuation of the assets and liabilities of the MRC. In a Stage 2 report dated 3 August 2011 (Reports Executive Summary appended) PwC valued the MRC using two scenarios (refer table below).

Calculation of City of Stirling’s prorata interest in the MRC

	Low (\$m)	High (\$m)	Preferred (\$m)
Value of MRC as a whole			
-Scenario A	30.1	47.8	39.0
-Scenario B	29.3	41.3	35.3

Value of City of Stirling pro rata one-third interest

-Scenario A	10.0	15.9	13.0
-Scenario B	9.8	13.8	11.8

PwC preferred scenario B as it was less speculative, in that scenario A made assumptions on the likely cost of a replacement landfill site and associated earthworks acknowledging that the real costs could be significantly different.

City of Stirling

In a letter dated 21 September 2011 the City of Stirling submitted a withdrawal “proposal” consisting of the following elements:

- (i) Receipt of a financial settlement of \$11.14M;
- (ii) Release from the BioVision Guarantee; and
- (iii) Retention of their share of the ownership in Tamala Park.

The \$11.14M settlement figure proposed was established by adding the averages of both Scenario A and B (\$12.38M) and applying a 10% discount.

12. The MRC is aware that the member councils have presented reports to their Councils on the PwC report. The following points 14 through to 23 provide details of the decisions made by each of the Councils.

13. City of Perth

- Agrees with PwC’s valuation methodology.
- Considers Stirling’s offer of \$12.38M less 10% discount (i.e. \$11.14M) “is a figure from which negotiations can progress”. The final figure is subject to Council approval.
- Suggests a discount of 35 – 40% would be more acceptable (i.e. net \$7.5 - \$8.0M).
- City of Perth will not accept any increase in financial exposure in relation to Stirling’s withdrawal from the BioVision Guarantee.
- Has no objection to Stirling’s ongoing shareholding of the Tamala Park site.

14. City of Vincent

The City has not responded to the specifics of Stirling’s withdrawal offer. They list 2 conditions under which the Mayor and CEO are authorised to negotiate the matter these being: “i) *that the MRC and all member councils jointly continue to participate in the negotiations in good faith, and ii) the City of Stirling give an undertaking that it will not recommence legal action in the Supreme Court during the negotiations.*”

15. City of Wanneroo

The City advised that a full report on the withdrawal offer will be going to the next Ordinary Council meeting scheduled for 13 December 2011. The City “*remains committed to the process and working in good faith with all parties, to seek a resolution to this matter.*”

- Does not approve Stirling’s request to withdraw from the RRF Deed of Guarantee and does not allow the proportional liability of the City of Wanneroo as a signatory to the Deed, to be increased in any capacity if requested;
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- Approved, in principle, subject to further analysis, Stirling's request to remain a land owner of the Tamala Park landfill site;
 - Does not accept the quantum of Stirling's cash settlement offer;
 - Authorised the CEO to continue to negotiate with the MRC and other participants in the MRC and to provide a further report for the consideration of Council on an alternative option or offer.

16. Mindarie Regional Council

At the MRC Council meeting of 8 December 2011, the Acting CEO's recommendation to appoint a committee authorised to negotiate the terms of withdrawal with Stirling was not accepted. Instead the Council resolved to establish a Working Group comprising the Mindarie Regional Council Chairman and CEO, and the participant local government mayors and/or their elected representatives, to consider options for the membership, structure and the operations of the Mindarie Regional Council. The meeting also resolved to request Stirling to seek from the Hon. Minister for Local Government a further 3 month extension to their current withdrawal request that was due to expire on 31 December 2011.

17. City of Stirling

The City of Stirling informed the MRC on 14 December 2011 that, at its meeting held on 13 December 2011, it was satisfied that:

- there were compelling financial and other benefits to the City withdrawing from the MRC;
- it was in the best interests of its electors, ratepayers and residents to withdraw;
- it has acted, and will continue to act, in good faith to effect the withdrawal.

The City also at that meeting resolved:

- to accede to the MRC's request to seek approval from the Hon Minister for Local Government a further 3 month extension (to 31 March 2012) to the withdrawal period;
- that it would not participate in the MRC Working Group established on 8 December 2011;
- to accept a payout based on a discount of 25% on the PwC averaged valuation; (i.e. 75% x \$12.38M = \$9.285M)
- to withdraw its requirement for ceasing to be a guarantor under the Deed of Guarantee with BioVision.

The City also advised that if the 2 agreements required to effect their withdrawal are not executed by 31 March 2012, the City will instruct its lawyers immediately to recommence the Supreme Court proceedings against the MRC and each of the other participants.

18. Mindarie Regional Council

After the Acting CEO conferred with the Chairman it was subsequently concluded that there was little point in persevering with the Working Group without Stirling and the Council members were advised that the MRC did not intend to initiate the actions arising from the 8 December 2011 MRC decision. At that time it was suggested a Special MRC meeting be held on 24 January 2012 to determine the next course of action.

19. City of Joondalup

On the 14 December 2011 a response was received from Joondalup, summarised as follows:

- Supported the establishment of the Working Group with the Mayor as the City's representative;
- Endorsed the PwC valuation as the basis for further negotiations;
- Supports each member council seeking their own funding mechanism;
- Does not accept any further exposure to the BioVision bank guarantee due to the Stirling withdrawal;
- Has no objection to Stirling retaining its share in the Tamala Park leased area from the Tamala Park Regional Council;
- Further investigation be undertaken on the post-closure liabilities of Tamala Park with respect to the future impacts of the groundwater pollution plume on the marine environment, the costs to mitigate these impacts and the legacy emissions from the Federal Government's carbon tax.

20. City of Wanneroo

On the 14 December 2011 a response was received from Wanneroo, summarised as follows:

- Does not support the City of Stirling's request to withdraw from the RRF deed of Guarantee;
- Approves in principle, subject to further analysis, the City of Stirling's retaining land ownership of Tamala Park;
- Does not accept the quantum of offer of settlement from the City of Stirling and authorises the CEO to continue to negotiate with the MRC and other participants in the MRC on an alternative option or offer.

21. Town of Cambridge

On the 21 December 2011 a response was received from the Town of Cambridge summarised as follows:

- The valuation of the MRC undertaken by PricewaterhouseCoopers not be accepted as a basis for determining the withdrawal payment to Stirling due to the flawed basis of the assumptions used to calculate the value, namely that the remaining members will incur a "commercial" surcharge to the tipping fees;
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- Stirling has offered no compensation for the increased tipping costs to the remaining members as a consequence of their withdrawal;
 - Stirling be paid no more than its paid-in capital contributions and its share of the Members Revenue Equalisation Reserve from the MRC's current accumulated funds;
 - Stirling not be released from its liabilities under the RRF Guarantee to BioVision;
 - Stirling retain its post-closure liabilities for the Tamala Park landfill in proportion to the tonnes tipped to the total tonnes over the life of the landfill;
 - Stirling retain its ownership share in the land at the Tamala Park landfill site.

The Town also resolved that *“in the event that Mindarie Regional Council agrees to pay the City of Stirling an amount greater than...(dot point 3 above)...this Council applies to the Minister for Local Government to withdraw from the Mindarie Regional Council in accordance with Section 699 of the Local Government Act 1960 at the same time and on the same financial terms as the City of Stirling...”* (followed by reasons justifying this decision).

In making the recommendation below the financial implications of the Town of Cambridge's resolution, that is, to withdraw from the MRC was considered. It is anticipated that the Town of Cambridge will provide approximately 10,350 tons to landfill at Tamala Park and the Resource Recovery Facility (RRF) combined in 2012/2013. The impact of Cambridge's withdrawal would be an estimated drop in the gate fee revenue of approximately \$950k for 2012/2013.

This shortfall can be recovered by the MRC in a number of ways, including an increase in the members' gate fee, an increase in the non-members' gate fee, a reduction in operating expenditures or a combination of the three.

The MRC has also given consideration to the capital cost of a potential exit by Cambridge and is comfortable that this can be met either through future surpluses or borrowings, based on whichever valuation methodology is finally applied to Stirling's exit.

22. Town of Victoria Park

On 9 February 2012 a response was received from the Town of Victoria Park, which is summarised as follows:

- Supports the valuation amount determined to be the City of Stirling's interest in the Mindarie Regional Council up to \$12.38M minus a minimum of 45% discount as the resultant settlement amount.
 - Confirms the Town will not increase its present financial risk in relation to the guarantee for the BioVision Resource recovery Facility.
 - Agrees to the City of Stirling remaining as a shareholder in the Tamala Park land.
 - Mindarie Regional Council Pay the cost of the agreed settlement amount from their funds.
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23. Mindarie Regional Council

On 13 March 2012 the Deputy Chairperson and the CEO of the MRC met with the Minister for Local Government to provide an update on the progress made on the withdrawal of City of Stirling and requested his consideration of a one month extension. The Minister was concerned about the length of time it has taken to have the agreements in place but indicated that he would support the request. The City of Stirling's CEO, Stuart Jardine agreed to support the extension. Correspondence dated 15 March 2012 was sent to the Minister by the MRC formally requesting the extension.

DETAILS

MRC Value and City of Stirling's Pro rata Interest

24. The valuation used by Stirling is the average of the valuations calculated under Scenarios A and B prepared by PwC (\$12.38M) using the 'preferred' scenario (refer table 11 above), discounted by 25%.
25. The current offer from the City of Stirling is not supported as its starting value (\$12.38M) does not reflect the preferred PwC scenario, which is less speculative.
- A more appropriate starting point is the average of the low and high values of Scenario B being \$11.8M as preferred by PwC.
26. Under the Cambridge proposal Stirling would only be entitled to \$1.51M, comprising \$0.84M from their paid-in capital and \$0.67M from their share of the Members' Revenue Equalisation Reserve (MRER) (as at 30 June 2011).
27. As mentioned in point 4 above, agreement needs to be reached on the adjustment of assets and liabilities **between the MRC and the City of Stirling**. It is reasonable to assume that this adjustment should include assets and liabilities as at the withdrawal date. Cambridge's proposal to pay out Stirling's paid-in capital contributions and its share of the Members Revenue Equalisation Reserve from the MRC's current accumulated funds values at \$1.51M under point 22 above, seeks to revert to asset and liability values as at the formation date. Such a proposal fails to recognise the increase in value in the underlying asset base since formation, as represented by the MRC's retained surplus amounting to \$17.4M (as at 30 June 2011) of which Stirling's share is estimated to be \$5.8M.

Application of Discount

28. PwC consider it appropriate to discount the MRC value on the basis that the City of Stirling cannot force a sale of the business without the agreement of the other member councils. In correspondence from the City of Stirling dated 21 September 2011 the Acting CEO provided reasons why a discount should not apply but in order to resolve this matter a 10% discount was offered. In subsequent correspondence dated 14 December 2011 the City of Stirling, inter alia, increased its discount offer from 10% to 25%.
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29. PwC's methodology does not represent an exact science, however it follows sound principles and has generally been accepted by the member councils, apart from the Town of Cambridge. The City of Stirling does not agree that there is justification for a discount, however if the enterprise value outlined in the report is to be used as a basis for the settlement negotiation, all the principles of the valuation methodology need to be acknowledged, which includes the concept of a Lack of Control (LOC) discount.

It is also important to consider the financial risks associated with this type of business which were not all covered by the PwC report as some of these risks are by nature difficult to predict, and as a result, difficult to value accurately.

There are existing environmental issues such as polluted underground water plumes and methane gas leakage. These issues are being regularly monitored and appropriately managed however there is always a possibility of a major environmental event occurring in time that would require considerable costly remediation. As a result, MRC are of the view that these risks should be taken into account in determining Stirling's settlement value.

30. As mentioned under point 25 above, Stirling has proposed that a LOC discount of 25% be applied in calculating the settlement. MRC is of the view that a LOC discount of 35% should be applied in respect of Stirling's share. This recognises the fact that Stirling would be unable to unilaterally realise the commercial value of the business.

31. Given the nature of the business and the fact that there is not an active trading market for similar assets, it is likely that any sale process intended to realise the commercial value of the business as outlined in the PwC report, would take a significant period of time to arrange and complete. As a result, the MRC is of the opinion that a Lack of Marketability (LOM) discount of 15% should also be applied in respect of Stirling's share.

32. The LOC and LOM discounts are applied as multiplicative discounts using the formula $1 - ((1 - \text{LOC}) \times (1 - \text{LOM})) = \text{net discount}$. Based on the LOC and LOM discounts proposed above, this would equate to $1 - ((1 - 35\%) \times (1 - 15\%)) = 44.75\%$.

Applying the net discount of 44.75% to the enterprise value from point 33 above, the MRC is proposing the value of Stirling's interest should be calculated as $\$11.8\text{M} \times (1 - 44.75\%) = \6.52M , based on PwC's valuation report.

33. As discussed under point 29 above, PwC in presenting their valuation did not take into account any future liabilities relating to environmental events which may occur given the nature of the MRC's operations.

MRC have sought insurance cover for such an event and have been advised by LGIS that the cost would be in the vicinity of \$120k per year for cover of \$50M. If cover was obtained it is estimated it would be required for the life of the land fill and for a period of 15 years after the site is closed. In present value terms, \$120k per annum, for 27 years at a discount rate of 12%, the City of Stirling's share would be just over \$318k.

When this is taken into account, it further reduces Stirling's settlement to \$6.2M.

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34. The overall discount which would be applied is 47.45% which is within the range of discounting considered in the PwC report.

Other considerations with respect to future environmental liabilities

35. An alternative approach to dealing with the question of future environmental liabilities would be the use of a retention mechanism. This would see a portion of the \$6.52M calculated under point 32 being retained until the closure of the facility. Where required, these funds could then be used to settle Stirling's share of any future liability which may arise.

It is suggested that \$3M be set aside for the retention reserve. This money would be held in a separate interest bearing account and any funds not utilised to settle potential environmental liabilities would be repaid to Stirling on closure of the facility, together with any interest earned on the funds.

36. Given the complexity and workload associated with administering such a retention account and the limited cover it would provide in the case of an incident, this is not the MRC's preferred mechanism. The MRC favours the approach discussed under points 31 - 34.
37. Neither the PwC report, nor the discussion above covers the potential impact that a carbon tax may have on the MRC in the future. The tax is designed to commence on tonnes delivered to Tamala Park from 1 July 2012 (and is payable at that time if land fill sites exceed Carbon omissions of 25,000 CO₂e (Approx. 50,000 people). As Tamala Park significantly exceeds the threshold, MRC's classification as a taxable emitter is not impacted as a result of the Stirling withdrawal.

Funding Options

38. From a commercial perspective, the City of Stirling withdrawal settlement might be looked at as being akin to a buyout of an existing shareholder and this is usually funded by the shareholders themselves. However, given the position of the member councils, the following options are proposed for consideration:
- (i) Settlement is funded from funds available within the MRC; or.
 - (ii) Settlement is funded partially from funds available within the MRC, with the remainder being funded through external debt; or
 - (iii) Settlement is funded partially from funds available within the MRC, with the remainder being funded through new member contributions.
39. The options below are based on the projected final settlement being \$6.2M.

Option (i)

As at 30 June 2011, the MRC held \$13M in cash, of which \$8M was held in respect of cash backed reserves. Of the \$8M cash backed reserves, \$1.9M related to the MRER and \$5.2M related to the RRF Operational Requirements Reserve.

It is proposed to utilise the funds in these reserves to cover the \$6.2M payment. With \$1.5M from the MRER and \$4.7M from the RRF. The cash backed RRF Operational Requirements Reserve will be replenished with funds (up to \$1M per annum) from the profits of the non-member contributions.

As the drawdown's from these reserves are not in line with their purposes, prior to expending the funds from the reserves the MRC must provide a local public notice for a period of one month in accordance with s.6.11 of the *Local Government Act 1995*.

Option (ii)

As at 30 June 2011, the MRC held \$13M in cash, of which \$8M was held in respect of cash backed reserves. Of the \$8M cash backed reserves, \$1.9M related to the MRER.

It is proposed to utilise the funds in the MRER to cover \$1.5.M of the \$6.2M settlement value. The balance of \$4.7M would be funded from external debt, which would incur interest at between 6 – 8% per annum.

As the drawdown from the MRER is not in line with its purpose, prior to expending the funds from the reserve the MRC must provide a local public notice for a period of one month in accordance with s.6.11 of the *Local Government Act 1995*.

Option (iii)

As at 30 June 2011, the MRC held \$13M in cash, of which \$8M was held in respect of cash backed reserves. Of the \$8M cash backed reserves, \$1.9M related to the MRER.

It is proposed to utilise the funds in the MRER to cover \$1.5.M of the \$6.2M settlement value. The balance of \$4.7M would be funded through new contributions by members which would equate to \$587.5k per remaining 1/8th share.

As the drawdown from the MRER is not in line with its purpose, prior to expending the funds from the reserve the MRC must provide a local public notice for a period of one month in accordance with s.6.11 of the *Local Government Act 1995*.

Preferred option

The MRC's recommended funding option would be option (i) as it has the least impact on the business' profitability and gearing, and does not place any obligation on the Member Councils. Increasing levels of gearing for the MRC will over time negatively impact on the MRC's ability to raise finance and achieve competitive borrowing rates on funds for future capital expenditure projects.

Legislative Requirements:

If the City of Stirling settlement includes the use of funds set aside in reserves set up for other purposes then the *Local Government Act 1995* requires Local Public Notice (s.1.7) to be issued. The relevant sections of the Act are as follows:

“ 6.11. Reserve accounts

- (1) Subject to subsection (5), where a local government wishes to set aside money for use for a purpose in a future financial year, it is to establish and maintain a reserve account for each such purpose.*
 - (2) Subject to subsection (3), before a local government —*
 - (a) changes* the purpose of a reserve account; or*
 - (b) **uses* the money in a reserve account for another purpose, it must give one month’s local public notice of the proposed change of purpose or proposed use.***
- * Absolute majority required.*
- (3) A local government is not required to give local public notice under subsection (2) —*
 - (a) where the change of purpose or of proposed use of money has been disclosed in the annual budget of the local government for that financial year; or*
 - (b) in such other circumstances as are prescribed.*
 - (4) A change of purpose of, or use of money in, a reserve account is to be disclosed in the annual financial report for the year in which the change occurs.*
 - (5) Regulations may prescribe the circumstances and the manner in which a local government may set aside money for use for a purpose in a future financial year without the requirement to establish and maintain a reserve account.*

1.7. Local public notice

- (1) Where under this Act local public notice of a matter is required to be given, a notice of the matter is to be —*
 - (a) published in a newspaper circulating generally throughout the district;*
 - (b) exhibited to the public on a notice board at the local government’s offices; and*
 - (c) exhibited to the public on a notice board at every local government library in the district.*
 - (2) Unless expressly stated otherwise it is sufficient if the notice is —*
 - (a) published under subsection (1)(a) on at least one occasion; and*
 - (b) exhibited under subsection (1)(b) and (c) for a reasonable time, being not less than —*
 - (i) the time prescribed for the purposes of this paragraph; or*
 - (ii) if no time is prescribed, 7 days.”*
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SUMMARY

It is clear that the Member Councils have varying views on the methodology required to determine the adjustment of assets and liabilities as required by the *Local Government Act 1960*. The Town of Cambridge consider that the MRC was set up by the Member Councils to manage their waste on a cost recovery basis and therefore the adjustment to the assets and liabilities would be limited to a withdrawing Council's paid in capital and its share in the Members' Revenue Equalisation Reserve. The City of Perth agrees with the PwC methodology and that it should be used as the basis for negotiations with the City of Stirling.

On review of the options available and the fact that the MRC and the City of Stirling may not reach agreement, thus requiring the Minister to settle the matter before making a recommendation to the Governor, it is considered appropriate to base the adjustment of assets and liabilities on the PwC methodology, adjusted to take into account the potential future environmental liabilities associated with the site.

CONSULTATION

Limited to member councils.

STATUTORY ENVIRONMENT

The statutory instruments relating to this item are:

- the Constitution Agreement made under the Local Government Act 1960,
- the transitional sections applicable from the 1960 Act, and
- the current Local Government Act 1995.

VOTING REQUIREMENT

Simple Majority / Absolute Majority

RESPONSIBLE OFFICER RECOMMENDATION

1. **The PricewaterhouseCoopers Stage 2 (Report in relation to the City of Stirling's withdrawal from the MRC) dated 3 August 2011 be received.**
 2. **The City of Stirling be advised that:**
 - a. **its resolution of 13 December 2011 as presented in correspondence from its CEO dated 14 December 2011 is acknowledged and that its resolution "*to withdraw its requirement that any agreement must be accompanied by the City of Stirling ceasing to be a guarantor under the Deed of Guarantee with BioVision made on 21 November 2011*" is supported.**
 - b. **its offer of settlement for withdrawing from the MRC of \$12.38M discounted by 25% is not supported.**
 - c. **the MRC is prepared to settle its withdrawal by paying \$6.2M being \$11.8M (PwC preferred value – Scenario B) discounted by 47.45% and adjust its assets and liabilities accordingly.**
(Absolute Majority Required)
-

- 3. The \$6.2M payment detailed in (2)(c) above be funded from the restricted cash contained in the RRF Operational Requirements Reserve (up to \$4.5M) and the Members' Revenue Equalisation Reserve (up to \$1.7M) subject to Local Public Notice being issued in accordance with s.1.7 of the Local Government Act 1995.
(Absolute Majority Required)**
 - 4. Prior to withdrawing the funds from the reserves detailed in (3) above a Local Public Notice be issued in accordance with s.1.7 of the Local Government Act 1995 advising of Council's intention to use the funds for a purpose other than that designated for the Reserves.**
 - 5. The Chairperson and the CEO be authorised to negotiate deferred payment terms at an annual interest rate the equivalent of the Treasury for borrowings in March of each year with the City of Stirling.**
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5 NEXT MEETING

6 CLOSURE

These Minutes were confirmed by the Council as a true and accurate record of the Special Meeting of the Council held on 28 March 2012.

Signed Chairman

Dated this day of 2012

PricewaterhouseCoopers
Executive Summary

Item
4.1

APPENDIX 1

Item
4.1