



AGENDA

ORDINARY COUNCIL MEETING

TIME: 5.30PM

6 DECEMBER 2012

TOWN OF VICTORIA PARK

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



**MINDARIE REGIONAL COUNCIL
NOTICE OF MEETING**

16 November 2012

Councillors of the Mindarie Regional Local Government are advised that an Ordinary Meeting of the Council will be held in the Council Chambers of the Town of Victoria Park, 99 Shepperton Road, Victoria Park at 5.30pm on 6 December 2012.

The agenda pertaining to the meeting is attached.

Your attendance is respectfully requested.

BRIAN CALLANDER
Chief Executive Officer

MINDARIE REGIONAL COUNCIL - MEMBERSHIP

Cr R Fishwick JP (Russ) - Chair	City of Joondalup
Cr J Bissett (John) – Deputy Chair	Town of Victoria Park
Cr S Withers (Simon)	Town of Cambridge
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 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

2 ATTENDANCE / APOLOGIES / LEAVE OF ABSENCE

Cr R Butler.

3 DECLARATION OF INTERESTS

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 PUBLIC QUESTION TIME

5 ANNOUNCEMENTS BY THE PRESIDING PERSON

6 APPLICATIONS FOR LEAVE OF ABSENCE

7 PETITIONS / DEPUTATIONS / PRESENTATIONS

8 CONFIRMATION OF MINUTES OF PREVIOUS MEETING

8.1 ORDINARY COUNCIL MEETING – 25 OCTOBER 2012

The Minutes of the Ordinary Council Meeting held on 25 October 2012 have been printed and circulated to members of the Council.

RESPONSIBLE OFFICER RECOMMENDATION

That the Minutes of the Ordinary Council Meeting of Council held on 25 October 2012 be confirmed as a true record of the proceedings.

9 CHIEF EXECUTIVE OFFICER REPORTS

9.1	PROJECT ADVISORY GROUP MEMBERSHIP
File No:	WST/112
Appendix(s):	Nil
Date:	5 November 2012
Responsible Officer:	CEO

SUMMARY

Council at its meeting on 19 April 2012 resolved that the Chief Executive Officer (CEO) discuss with BioVision the possibility of changing the membership of the Project Advisory Group (PAG) to comprise only MRC and BioVision senior management and report back to council within 6 months on the outcome of the discussions.

BACKGROUND

The CEO presented a report to Council at its meetings on 19 April 2012 reviewing the various committees and working groups that the Mindarie Regional Council (MRC) had and made recommendation on changes to the structure. The PAG was one such group that was subject of the review where the following was presented for Council's consideration.

Project Advisory Group (Resource Recovery Facility)			
Terms of Reference	Oversee the execution of the Resource Recovery Facility Agreement (RRFA), establish and maintain the Project culture, provide leadership and assist in resolving conflicts, review all procedures and policies not imposed under this RRFA.		
Membership	Mike Wadsworth (external – paid position), Brian Callander, Cr Gray, Chris Colyer, Emmanuel Vivant (BV), Nial Stock (BV), Craig Barker (BV)		
Attendees	Gunther Hoppe, Ian Watkins (Consultant)		
Frequency	Duration (Est.)	Staff Time	Councillors Time
Monthly	2 hours 1 Hour travel	MRC – 48 hours MC – 24 hours	24 hours
Established in accordance with s5.8 of LGA 1995			No
Established in accordance with the requirements of the RRFA			
CEO Comment			
This committee plays an important role in building strong relationships with BioVision. The CEO has attended two meetings since commencing and considers it to be a very useful forum for discussing how the facility is operating and finding out about any ongoing issues. It is questionable however whether the current meeting frequency is required and whether the composition of the current membership is correct.			
CEO Proposal			
The CEO has already gained approval to reduce the meetings to bi-monthly, which is considered to be more appropriate. It is also proposed to reduce the attendance of Ian Watkins over time and consideration should be given to replacing the representation from the member council and replacing it with MRC's Director Corporate Services. The CEO has also gained approval for the Chairperson's costs to be shared between the MRC and BioVision. The changes detailed above will be the subject of a further report to Council.			

DETAIL

Since the April council meeting the PAG has met on three occasions where various elements of the contract and operations of the Resource Recovery Facility (RRF) have been discussed. The purpose behind this report is to determine whether the committee structure should change in its membership to only comprise of MRC and BioVision senior management.

The three members of the group that are not either MRC or BioVision senior management are the Chairperson, Mike Wadsworth, MRC Councillor Gray and Ian Watkins. The following observations are made on the roles these three individuals play in the group.

The Chairperson, Mike Wadsworth

Mr Wadsworth has been the Chairperson for 4 years and has significant knowledge of the project's history and the contract but more importantly Mr Wadsworth has demonstrated a high level of independence as the Chair and has the respect of the parties involved.

Councillor Representation

Having a Councillor attend the meetings promotes discussion on certain items from a different angle. It is also beneficial when an item comes to Council on an issue of the contract that has been raised at the PAG meeting. The Councillor can give the Council confidence that the parties are working to the preferred culture.

Ian Watkins, IW Projects

Ian is no longer an in-house consultant for the MRC. However he still provides a significant amount of technical advice to the MRC based on his extensive experience and knowledge of the industry and the RRFA. Ian's role in the PAG is critical as he not only knows the contract in detail, but he also is aware of the intent and design of the contract clauses, which is significantly beneficial when interpretation of the clauses is required.

CONSULTATION

In line with the resolution of the Council BioVision (through Nial Stock) was contacted to discuss whether there should be a change to the PAG membership. Mr Stock advised that he considers the current membership to be appropriate as it encourages a positive culture and there is significant experience within the membership to allow informed discussion on the ongoing and new items presented at the meetings.

STATUTORY ENVIRONMENT

The PAG has been set up in accordance with the requirements of the RRFA.

“5 Representatives and Project Advisory Group

5.1 Representatives

- (a) Each party must appoint a Representative to act on that party's behalf for the purpose of the MRC Project Agreements and exercise any of that party's rights or perform any of its obligations under the MRC Project Agreements subject to the delegation limits in subclause (c).*
 - (b) The identity and contact details of each party's Representative as at the Signing Date are set out in Annexure A. Each party must notify the other party in writing of a change to its Representative.*
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- (c) *MRC may assume (subject to any express statement to the contrary by the Contractor's Representative) that the Contractor's Representative is duly authorised to make decisions on behalf of the Contractor. MRC's Representative is authorised in respect of those matters delegated to it at a meeting of the council of MRC. MRC will notify the Contractor of the powers delegated to MRC's Representative upon a reasonable request for the same being made by the Contractor.*

5.2 Project Culture

Without limiting the operation of this agreement, and without altering the nature and extent of the Contractor's Obligations or the rights and obligations of MRC under this agreement:

- (a) *the parties are each committed to working together with the intention of producing outstanding and innovative results in the successful carrying out of the Project;*
- (b) *the parties each undertake and commit to establishing a culture based on positiveness, respect, openness, trust, and outcome-oriented thinking; and*
- (c) *in order to avoid Disputes, each party will endeavour to notify each other promptly of any issue of which such party becomes aware, which may amount to or result in a Dispute. This includes any perceived or real differences of opinion in relation to the MRC Project Agreements or the Contractor's Obligations, MRC's rights and obligations, any perceived or real problems with the execution of the Project, any conflicts of interest or any other matter which may be contrary or prejudicial to the project culture described in this clause 5.2. Following notification by a party of any issue which may amount to or result in a Dispute, the parties must meet and agree a rectification plan setting out the actions to be taken by the Contractor to rectify that issue (**Rectification Plan**). The parties must comply with the Rectification Plan.*

5.3 Project Advisory Group

- (a) **Establishment and responsibilities**
- (1) *The parties must establish a Project Advisory Group.*
- (2) *The primary function of the Project Advisory Group is to ensure that the MRC Project Agreements run as smoothly and as efficiently as possible for the benefit of the parties. The Project Advisory Group's role and responsibilities are more fully described in Annexure C.*
- (b) **Representation**
- (1) *The Project Advisory Group consists of 3 representatives appointed by MRC, 3 representatives appointed by the Contractor and an independent Chairperson, for a total of 7 representatives. The nominated representatives for each party as at the Signing Date are set out in Annexure C.*
- (2) *Prior to 1 July of each year, each party may nominate different representatives to replace its representatives on the Project Advisory Group. The new appointments take effect from 1 July of that year.*
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- (3) *The Contractor must ensure that at least one of its representatives is a person in a senior management position, such as the Senior Manager, Executive Director or Regional Director of the Asset Manager. The position of the MRC representatives is set out in Annexure C.*
- (c) **Chairperson**
- (1) *An independent Chairperson of the Project Advisory Group will be appointed by the parties from nominations made by the Contractor and MRC as soon as practicable after the Signing Date. The Contractor and MRC must nominate a person or persons with qualifications which are relevant to the role of the Chairperson, in its discretion.*
- (2) *The Chairperson's role is to:*
- (A) *convene and facilitate the Project Advisory Group meetings; and*
- (B) *evaluate and score the Contractor on the project culture KPI, in accordance with criteria specified in Annexure E.*
- (3) *For the avoidance of doubt, the Chairperson does not have a technical or advisory role.*
- (4) *The Chairperson must not vote in respect of any matter before the Project Advisory Group.*
- (5) *The Chairperson's costs of performing its role as described under this agreement will be borne by MRC.*
- (d) **Procedures**
- The procedures for the running of Project Advisory Group meetings are set out in Annexure C.*

5.4 Decisions of the Project Advisory Group

Decisions of the Project Advisory Group are not binding on the parties and serve only as a recommendation to the parties.

5.5 Meetings with MRC's Engineer

- (a) *At any time during the Construction Period and the Term, upon reasonable prior written notice from MRC, the Contractor or any or all of the Contractor's representatives on the Project Advisory Group must, from time to time, attend meetings held in Perth, Western Australia with MRC's consulting engineer (**MRC's Engineer**).*
- (b) *Any costs associated with the Contractor or the Contractor's representatives on the Project Advisory Group attending meetings with MRC's Engineer must be borne by the Contractor."*

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Nil

COMMENT

The CEO considers that the PAG membership does not require changing and considers that the representatives external to either BioVision or the MRC administration, being MRC Councillor Gray, Consultant Ian Watkins and Chairperson Mike Wadsworth, all significantly contribute to the meetings and play their respective roles thus ensuring that the contractual obligations placed on the parties as per the RRFA are fulfilled. Therefore it is recommended that there be no change to the membership.

VOTING REQUIREMENT

Simple Majority

RESPONSIBLE OFFICER RECOMMENDATION

That Council endorses the position of the Chief Executive Officer not to change the Membership of the Project Advisory Group.

9.2	COMMUNITY ENGAGEMENT ADVISORY GROUP – ROLES & FUNCTION STATEMENT REVIEW
File No:	WST/21-03
Attachment(s):	Attachment No.1
Date:	14 November 2012
Responsible Officer:	Geoff Atkinson

SUMMARY

Reporting on the formal review of the Community Engagement Advisory Group's (CEAG) Roles and Function Statement.

BACKGROUND

The Community Engagement Advisory Group (CEAG) was formed as an integral part of the community consultation process in regard to the development and ongoing monitoring of the Resource Recovery Facility. Roles and responsibilities for the group were developed in 2004 and after the commissioning of the RRF in 2009 a more formal Roles and Function Statement was produced. Included in this was an undertaking to revisit the Statement every two to three years to ensure the Group was acting according to its brief and that the Statement remained current.

DETAIL

The current CEAG Roles and Function Statement, see Attachment 1, has been in operation since 2010 and was due to be reviewed.

In accordance with the requirements to review every two years, and in consultation with CEAG the following changes are being proposed:

Roles and Function Statement (R&FS)	
Existing	Proposed
Fixed membership of 9	Up to 9 members
Reference to Secondary Waste Treatment Facility Working Group	Reference deleted as group no longer exists
CEAG Members can be asked to leave by CEAG	Additional requirement to have this decision to be made by a majority of CEAG members
R&FS is only required to be on a regular basis	Clause to be amended to be reviewed Annually
CEAG dispute being referred to MRC	Clarify MRC's role, being as an arbitrator
Requires the R&FS to be reviewed every two or three years	Modify to only require the review every three years

CONSULTATION

The Roles and Function Statement was discussed and update at the CEAG meeting held 19 September 2012. The update version has been distributed to CEAG members.

STATUTORY ENVIRONMENT

Nil

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Nil

COMMENT

CEAG over the years has been very valuable in providing a link between the community and the Council and its RRF projects working groups. The updated Roles and Function Statement should enable the group to remain focussed and maintain their good work.

VOTING REQUIREMENT

Simple Majority / Absolute Majority

RESPONSIBLE OFFICER RECOMMENDATION

That Council endorse the changes to the Roles and Function Statement of CEAG as presented in the details section of the report.

<p style="text-align: center;">Revised Community Engagement Advisory Group (CEAG) Roles and Function Statement</p>

<p>Item 9.2</p>	<p style="text-align: center;">ATTACHMENT NO. 1</p>	<p>Item 9.2</p>
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**MINDARIE REGIONAL COUNCIL
COMMUNITY ENGAGEMENT ADVISORY GROUP
ROLE AND FUNCTION STATEMENT**

Origin

The Mindarie Regional Council Community Engagement Advisory Group was established in March 2003. It has up to 9 members, comprising 4 general community members from across the whole MRC region including specialists in environmental/conservation issues, 4 community members from the local community where the Resource Recovery Facility is sited, and a Chairperson. It will exist for the operating life of the Resource Recovery Facility, or until it believes its role is no longer required.

Purpose

This group has a regional and local focus, broadly providing a monitoring and community feedback role, which helps the MRC identify community views and values on aspects of Resource Recovery projects. Specific roles include:

- To be a forum where issues related to the project and/or community engagement process can be brought forward for discussion;
- To be a vehicle through which people can submit comments in relation to the project and the community engagement process;
- To identify interests and individuals whose views should be brought into this process;
- To help to ensure that the needs of the region are being addressed along with the needs of the local community where the facility is sited;
- To become advocates for the community engagement process, and a well-informed source of information on what's happening; and
- To monitor operator adherence to the Community Partnership Agreement.

Accountability

The Community Engagement Advisory Group is an independent group that provides its views to the Mindarie Regional Council. CEAG liaises as required with the MRC's RRF Project Manager and with the RRF operator and may recommend that the MRC follow-up on specific issues brought to CEAG by the community. Deliberations of the Community Engagement Advisory Group will be reported to the community, through its members and through the Mindarie Regional Council website.

Responsibilities

The Community Engagement Advisory Group will combine regional and local perspectives in its deliberations in relation to Resource Recovery projects. The Group will have the following responsibilities:

1. Identify and discuss regional and local impacts and issues of resource recovery projects.
2. Act as a vehicle for public comment in relation to Resource Recovery projects, and/or in relation to the community consultation process. Assess the relevance and importance of matters raised through this channel, and decide whether the matter should be referred to the MRC for information, follow-up and/or action. This may include recommending that the MRC follow up on specific issues that have been brought to the attention of the Community Engagement Advisory Group.

3. Monitor community feedback and identify issues for action and/or discussion.
4. Monitor operator performance on the CPA, the reporting of results to the community, and fulfil CEAG's role as specified in the CPA.
5. Support communication links with the community, in particular with local residents and residents associations.
6. Identify opportunities for improved communication at local and regional levels.
7. Identify and facilitate education of the community regarding waste management issues.

Term of appointment and replacement of members

CEAG members are not appointed for a specific term. Their involvement continues until they choose to resign or until they are asked to leave by CEAG (by majority vote).

The process for filling a vacancy is:

- The MRC will advertise the vacancy through local newspapers across the region, the MRC website, and other relevant means.
- Applicants download and complete an application form.
- All applicants are interviewed by phone.
- Applicant details are discussed at CEAG and the group itself determines the successful nominee.

CEAG membership is not a paid position. The MRC reimburses expenses for travel to and from meetings.

The MRC's commitment to CEAG

In establishing this group the MRC commits to listening to the views of CEAG and to using CEAG's comments and advice as a source of input in decision-making. In doing this, the MRC commits to:

- Keeping CEAG informed about project status and performance;
- Providing feedback to CEAG about the ways in which its input has been used in project decision-making;
- Upholding the CPA and its objectives and outcomes;
- Annually review of CEAG and MRC performance; and
- Continuing to provide opportunities for CEAG members to expand their knowledge about waste management and waste issues.

ROLE AND FUNCTION STATEMENT OF CEAG CHAIRPERSON

Role

The role of the chairperson is to facilitate meetings to ensure the views of all of the members of the group and MRC are represented. The chairperson will be independent and he/she will be able to chair meetings, instigate discussion within the group and represent the group with impartiality.

Accountability

The chairperson or nominated person will represent CEAG at a public level and at Mindarie Regional Council (MRC) meetings as required.

Responsibilities

- Provide input, along with other CEAG members, to meeting agenda preparation
- Chair the meetings of CEAG, undertaking at least the following:
 - allow everyone to speak at meetings
 - Listen, without imposing own view on proceedings or decisions
 - Ensure all views are represented
 - Bring discussion to a conclusion, outcome or action
- Act as spokesperson for the CEAG
- Attend MRC Council and other meetings as necessary
- Liaise with MRC representatives, including project team members, on specific issues raised by CEAG

Governance

This position of Chairperson is an ongoing appointment by CEAG and removal from the role, should that become necessary, is by way of majority representation of the remaining CEAG members.

In the event of any dispute arising from this appointment, CEAG has the right of appeal to the MRC (by way of arbitration).

Review

This document will be formally reviewed every three years or as necessary.
This document has been reviewed and amended on this date.

19 September 2012

Council to endorse the reviewed document at the Ordinary Council Meeting, 6 December 2012.

9.3	MRC COUNCIL MEETING DATES FOR 2013
File No:	COR/10
Appendix(s):	Nil
Date:	5 November 2012
Responsible Officer:	CEO

SUMMARY

The purpose of this report is to provide the proposed meeting dates for Ordinary Council Meetings for 2013.

BACKGROUND

The Mindarie Regional Council (MRC) has previously considered, in December of each year, the Council meeting schedule for the forthcoming calendar year, and decided upon a schedule for these meetings.

DETAIL

The business rules used in the formulation of Council meetings scheduled for Year 2013 are as follows:

- The six Council meetings be held in the calendar year 2013.
- The third meeting be held in early July 2013 to accommodate the swearing in of Councillors, and the appointment of Chairman and Deputy Chairman. This assumes that current rules will still apply.
- The meeting scheduled for December be held relatively early in the month to accommodate other commitments of the festive season.
- The Tamala Park Regional Council meeting dates for 2013 be considered.
- The WALGA Metropolitan Zone meeting dates for 2013 be considered.
- The October meeting of the Council be held prior to Local Government Elections. The 2013 Local Government Elections will be held on Saturday 19 October.
- Meetings be scheduled at the Chambers of Member Councils. No meeting has been scheduled for the Chamber of the City of Stirling in anticipation of the Governor's order to remove the City of Stirling from the Mindarie Regional Council.

In addition to the above it is considered important that the councillors, member council representatives on the Strategic Working Group and MRC management have the ability to meet throughout the year on an informal basis to discuss strategic direction.

Programme of Meetings

The proposed schedule of Ordinary Council meetings for Year 2013 is as follows:

- 7 March 2013 (City of Joondalup)
 - 2 May 2013 (City of Wanneroo) (25th is Anzac Day)
 - 4 July 2013 (Town of Cambridge)
 - 5 September 2013 (City of Vincent)
 - 10 October 2013 (City of Perth)
 - 12 December 2013 (Town of Victoria Park)
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STATUTORY ENVIRONMENT

Part 12 (1) and (2) of the Local Government (Administration) Regulations 1996 requires local government to issue public notice of its meeting dates at least once per year stating:

- “12. Meetings, public notice of (Act s. 5.25(1)(g))
- (1) At least once each year a local government is to give local public notice of the dates on which and the time and place at which —
 - (a) the ordinary council meetings; and
 - (b) the committee meetings that are required under the Act to be open to members of the public or that are proposed to be open to members of the public,are to be held in the next 12 months.
 - (2) A local government is to give local public notice of any change to the date, time or place of a meeting referred to in subregulation (1).

S.1.7 of the Local Government Act 1995 prescribes local public notice as:

- “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; and
 - (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.

POLICY IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

COMMENT

The proposed schedule for Ordinary Council meetings for the Year 2013 is now submitted for approval. In addition it is recommended that the Council endorse the scheduling of

three strategic meetings throughout the year to allow Councillors, member council representatives on the Strategic Working Group and MRC management to discuss the strategic direction of the MRC.

VOTING REQUIREMENT

Simple Majority

RESPONSIBLE OFFICER RECOMMENDATION

That Council:

1. adopt the following schedule for Ordinary Council Meetings for the Year 2013:
 - 7 March 2013 (City of Joondalup)
 - 2 May 2013 (City of Wanneroo)
 - 4 July 2013 (Town of Cambridge)
 - 5 September 2013 (City of Vincent)
 - 10 October 2013 (City of Perth)
 - 12 December 2013 (Town of Victoria Park); and
 2. Public Notice be issued on the meetings detailed in (1) above in accordance with Part 12 (2) of the *Local Government (Administration) Regulations 1996* and the *Local Government Act 1995*.
 3. Endorse scheduling of three additional meetings throughout 2013 with the Councillors and the representatives from the member councils on the Strategic Working Group to the meeting, to discuss the strategic direction of the MRC.
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9.4	RESOURCE RECOVERY FACILITY AGEEMENT (RRFA) PERFORMANCE MEASURES – COMPOST MANAGEMENT
File No:	WST/173
Appendix(s):	Nil
Date:	21 November 2012
Responsible Officer:	Ian Watkins

SUMMARY

Council consider allowing a suspension of one of the Key Performance Indicators (KPIs) under the RRFA, being the pH level.

BACKGROUND

The recent RRFA Deed of Amendment approved by Council at the Council meeting on 5 July 2012 included a revised suite of compost targets. The Mindarie Regional Council (MRC) and BioVision agreed to commence interpreting the contract as per the Deed of Amendment from the start of the new Contract Year (16 July 2012) notwithstanding final approvals have not been issued by all parties concerned. This decision meant that BioVision/SITA were liable for a fee abatement based on non-conformance with the amended compost targets. This has subsequently raised concerns for BioVision/SITA as there have been test failings in the area of pH, which they claim is out of their control. BioVision, in correspondence dated 10 September 2012, requested an amendment to the Annexure in the RRFA as follows:

“It is acknowledged that the Contractor has no control over the inputs into the facility and that all inputs must be processed through the facility. The Contractor does have the ability to influence certain quality criteria through process control measures as designed. The scoring as contemplated in the table above will only be adjusted for test failures relating to the following quality criteria as defined in the revised table Annexure E Clause 4.4 being Moisture Content; Particle Size; Wettability and Physical Contaminants.”

This request was not considered acceptable and after further discussions with BioVision it was agreed that the main issue was the inability for BioVision to influence the pH level to comply with the KPI. Council at its meeting on 25 October 2012 considered this request and resolved the following:

“That Council agree to suspend the fee abatement mechanism relating to the Compost Quality KPI until the Ordinary Council Meeting of 6 December 2012 to allow the parties time to address the compost quality issues and the MRC administration to report back to Council.”

DETAIL

On 7 November 2012, BioVision provided additional technical information relating specifically to the pH within the compost. This included a letter setting out BioVision’s preferred position, commentary from C-WISE (formerly Custom Compost) on the possible impact of a higher pH in the compost, third party technical information pertaining to the pH cycle in the composting process and some RRF compost test results.

A summary of the BioVision documentation includes:

- BioVision’s position:
 - The RRF compost occasionally exceeds the target pH of 8.0 because:
-

-
- pH cycle within the composting process is such that after 28 to 30 days the pH is at the high point.
 - The process water that is added has a relatively high pH (8.4).
 - What are the potential fixes:
 - It is not possible to mature the product longer on-site due to insufficient space availability.
 - Not to add process water (which is at an elevated pH) and only add fresh water to the process. This would incur an additional \$210,000 to dispose of the process water liquid waste.
 - Add sulphur at 0.5 kg per cubic metre of compost to lower the pH by about 1. This cost is estimated at approximately \$100,000 per annum and unquantified additional capital works. There would also be the additional OH&S aspects of handling sulphur.
 - What would be the benefit to the market value of the compost:
 - C-WISE advise that a pH between 8.0 and 8.5 has no consequence on the current sale price of compost.
 - The conclusion of the above is that:
 - A high pH results from the designed short composting time.
 - Cost of potential remedy is upwards of \$200,000 per annum.
 - Remedy gives no benefit to the price of compost sold.
 - BioVision preferred position:
 - Not to pursue a change to process in order to lower current pH levels.
 - Request that the upper limit for pH be raised from 8.0 to 8.5 in the Quality Criteria table in the Deed of Amendment.
 - C-WISE Position (emphasis added):
 - The recent review of the Australian Standard relating to compost increased the pH level from 7.5 to 8.0. This reflects the reality that many compost products nationally exceed the old standard of pH 7.5.
 - The RRF process is constrained by a limit of only 28 days available composting time; hence, limits its ability to obtain a lower pH. In addition there is a need to reduce moisture levels sufficiently towards the end of the process to facilitate screening of physical contaminants (especially glass) before delivery. This dryer process also slows down the maturation process and hence slows down the reduction in pH.
 - ***The presence of glass in the compost is the factor that limits the marketability of the product and not the pH level.***
 - ***A pH between 8.0 and 8.5 has no consequence on the current sale price of compost. This is because glass is the limiting factor.***
 - In the long term, it is hoped to see significant reductions in physical contaminants at source and ongoing improvements in compost quality as part of the shared determination to optimise community benefits in closing the loop.
 - Third-party technical information – Information Sheet No. 5-8 Composting Science for Industry pH
 - The optimum pH range for composting is somewhere in the range of 5.5 to 9.
 - It is important to note that composting is likely to be less effective at 5.5 or 9.0 than it is at a pH near neutral (pH 7).
 - pH does become important with raw materials that have a higher percentage of nitrogen (e.g. manure and biosolids).
 - High pH, above 8.5, encourages the conversion of nitrogen compounds into ammonia gas, resulting in nitrogen loss from the compost.
-

-
- Loss of nitrogen in the form of ammonia to the atmosphere not only causes nuisance odours, but also reduces the nutrient value of the compost.
 - Adjusting the pH downward below 8.0 reduces ammonia loss. This can be achieved by getting the right balances of materials in the compost recipe, or by adding an acidifying agent, such as superphosphate or elemental sulphur.

BioVision has provided information to demonstrate that pH levels are impacted by the incoming waste mix and the composting process. Due to the lack of maturation time there is an inability for the pH to consistently drop below the KPI limit. To artificially lower the pH would come at significant expense without achieving any improved value in the resulting compost product. The elevated pH level is currently not impacting on the marketability of the compost product. The main issue, as emphasised (in bold and italics) above is that the marketability of the compost is affected more by other contaminants such as glass content than the pH level and as such, at least at this point in time, it is considered reasonable to suspend imposing the abatement if it is caused by non-compliance with the pH level. This will allow the MRC to reinstate pH as a KPI if the other contaminants are resolved and it is the pH that is reducing the value and/or the marketability of the compost.

CONSULTATION

Consultation was held with the following parties:

- BioVision/SITA
- Freehills

LEGAL/COMPLIANCE

The RRFA sets out the Compost Target to be achieved with the KPI and also the fee abatement mechanism applicable to any associated non-compliance.

Based on the RRFA, the MRC is within its rights to abate the BioVision fee if there is a non-compliance with any of the KPI targets.

If there was a non-compliance with the compost KPI and the MRC was to insist on the fee abatement being implemented (as is the MRC's contractual entitlement), it is possible that BioVision, through the dispute mechanism could request that the MRC demonstrate that it has incurred losses equivalent to the abated fee. In addition, the RRFA provides a mechanism for either Party to request an Agreed Variation to amend any part of the RRFA. This mechanism could also be used by BioVision if it felt that the KPI target mechanism and/or fee abatement mechanism was inappropriate. The request for an Agreed Variation would need to be fully substantiated by BioVision and given due consideration by the MRC.

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

By suspending the fee abatement the MRC is waiving its right to the penalty associated with that abatement, which is a maximum of approximately \$60,000 if all four test failures occur in a single month. It is unlikely that all tests would fail in the month therefore the amount would be less.

STRATEGIC IMPLICATIONS

Nil

COMMENT

Having pH as a KPI is not a significant issue as long as other contaminants such as glass are the limiting factor in the value or marketability of the compost product.

It is recommended that the pH KPI be suspended until such time as the other higher order contaminants, such as glass, are resolved and then potentially the elevated pH could be a product marketability restricting factor.

With regards to the other compost KPI targets that BioVision has raised as points of concern (those that they are unable to influence), there has been no technical information provided by BioVision to support these requests; hence, no fee abatement relating to these compost KPI targets should be considered.

VOTING REQUIREMENT

Simple Majority

RESPONSIBLE OFFICER RECOMMENDATION

That Council:

- 1. suspend the pH Target for compost as detailed in Annexure E, Clause 4.4 of the RRFA until other higher order compost product contaminants such as glass are resolved; and**
 - 2. be provided with a further report to consider reinstating the pH KPI when it is deemed that the elevated pH is reducing the marketability and/or value of the compost product.**
 - 3. advise BioVision that it does not intend to alter, or suspend, any other elements of the KPIs included in the current RRFA.**
-

9.5	STAGE 2 PHASE 1 SECTION 2 CAPPING WORKS
File No:	WST/191/03
Attachment(s):	Nil
Date:	15 October 2012
Responsible Officer:	CEO

SUMMARY

This report is seeking retrospective authorisation from the Council for a variation to the contract for the Capping Works on Stage 2 Phase 1 Section 2 and to utilise \$366,000 of the cash surplus for 2011/12 financial year to conform to Council's resolution of 19 April 2012 as the funds were not carried forward from last year's budget.

BACKGROUND

The Council at its meeting on 19 April 2012 resolved to award the tender for the Capping Works on Stage 2 Phase 1 Section 2 to Mine Site Construction Services as follows:

"That Council:

- 1. Accepts the tender from Mine Site Construction Services submitted in response to Tender No. 13/119 for the Stage 2, Phase 1 Capping Works to the value of \$799,650 (excluding GST) acknowledging that it is \$366,000 over the funds set aside in the 2011/12 Budget;*
- 2. Approve a total project cost of \$880,000 excluding GST, comprising \$799,650 construction cost, \$40,000 superintendence and quality control and \$40,350 project contingency;*
- 3. Fund the shortfall of \$366,000 being \$285,650 for the Tender detailed in (1) above and a further \$80,350 for superintendent and contingency costs detailed in (2) above from the remaining funds retained in the 2011/12 Budget for the Vehicle Wash Facility (\$459,622)."*

The project was anticipated to be finalised prior to the 30 June 2012 however the appropriate lining could not be sourced delaying its commencement to this financial year. The funds set aside in the original 2011/12 budget (\$514,700) were carried forward to this year's budget but due to the transition process of reallocating responsibilities for projects as part of the restructure the additional funds approved by Council (\$366,000) were not carried forward.

Additionally the project has exceeded the contract price of \$799,650 by \$109,881 due to a variation resulting from the actual site conditions being different from the tendered documents, which were based on the latest aerial survey (January 2012) resulting in the need for addition liner. Council approved a contingency of \$40,350 hence the shortfall is \$69,531.

DETAIL

Mine Site Construction Services (MSCS) was awarded the contract on 30 April 2012 to construct Stage 2 Phase 1 Section 1 Capping. The works were anticipated to be completed by 30 June 2012. The start date of the project was delayed due to the unavailability of the imported liner.

An initial site meeting was held at Tamala Park on 14 June 2012 where MSCS indicated they envisaged a likely project start date 2 July 2012 because of further delays delivering

the liner to Perth and that they would deploy to site commencing preparatory works late June. At the subsequent site meeting held at Tamala Park the project start date of 2 July 2012 and a completion date of 8 September 2012 were agreed. At this meeting MSCS advised that the liner would be delivered to port 24 July 2012 with installation of the liner commencing 30 July 2012. Also at this meeting MSCS indicated that there was a potential shortfall of the quantity liner required.

The net quantity of liner required in the design was 16,200m²; the ground survey revealed the actual quantity required was 16,340m². The reason for the difference was determined to be because the geometry of the slope changed since the aerial survey used in the design was carried out.

In discussions between MRC, MSCS and the Superintendent two options were explored:

- Source additional liner, which would meant a 8 – 12 week project delay causing MSCS to demob their equipment from site then return when the addition liner arrived in Perth.
or
- Alter the liner layout by shortening the liner at the eastern end of Phase II to compensate for the extra liner required to extend top section to reach to top anchor trench, overlays and wastage.

MRC's supervisor endorsed the Works Instruction (variation) in line with the second option above without the variation being costed. The cost to the variation for the additional works of \$109,881 was not known until the invoice was received at the end of the project therefor there was no ability to seek Council's endorsement of the variation prior to this meeting. In addition to this the variation amount of \$69,531 (when you exclude the contingency) is outside the delegated authority provided by Council to the Chief Executive Officer, which is limited to \$50,000.

It is proposed to address the \$366,000 that was not carried forward by funding it from the surplus achieved in the 2011/12 Financial Year.

CONSULTATION

Nil

STATUTORY ENVIRONMENT

The Council at its meeting on 23 August 2012 resolved to approve a list of delegations to the Chief Executive Officer in accordance with s.5.42 of the *Local Government Act 1995*. Delegation 2.8 relates to variations to contracts as follows:

Delegation No	Reference	Delegation	Condition(s)	Assignee(s)
2.8	LG(Functions & General) Regs.14(2a) and 20	Vary contracts up to \$50,000 or 10% of the contract value, whichever is the lesser	1. For the RRFA only if it incurs no additional risk or liability to the MRC; 2. Variations approved for significant contracts, including all contracts awarded following public tenders, to be reported to the next following council meeting	NO

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

The shortfall of \$69,531 will be funded from savings in the 2012/13 Budget as follows:

Account Number	Account Type (Capital)	Amount Transferred (\$)
14410 AE001 1010 6100	Truck Purchase	10,685
14410 AF001 1010 6100	CEO Vehicle	6,188
14720 C1020 1010 6100	Revegetation Phase 1	20,000
14720 C1027 1010 6100	Compressor Purchase	24,654
5225 00201 1005 2125	Limestone Cover	8,004
TOTAL		69,531

The audited financials for the 2011/12 financial year resulted in the MRC having a cash surplus of \$1,349,620 (refer table below). This report seeks to use \$366,000 of this surplus to facilitate Council's resolution of 19 April 2012 referred to in the background section of this report.

	Actual 2012 (\$)	Variance (\$)	Budget 2012 (\$)
Net loss for the year	(445,001)	(268,252)	(176,749)
<i>Add back non cash opex:</i>			
Depreciation	913,826	3,926	909,900
Amortisation	3,445,454	52,550	3,392,904
<i>Deduct cash capital items:</i>			
Repayment of debt	(2,135,242)	479,175	(2,614,417)
Capital expenditure	(432,417)	614,083	(1,046,500)
Cash Surplus for 2012	1,349,620	881,482	465,138

STRATEGIC IMPLICATIONS

Nil

COMMENT

The variations to the project were required to ensure that the works provided the MRC with a quality outcome. The management of the project, especially how the project variation was supervised, was unacceptable. Management have since put in place more stringent reporting requirements on the individuals responsible for supervising projects including timeliness and financial accountability. Reports on the progress of projects are standard items on the agendas of management team meetings (held fortnightly).

VOTING REQUIREMENT

Absolute Majority

RESPONSIBLE OFFICER RECOMMENDATION

That the Council:

1. Retrospectively approves the increase in the contract price of \$109,881 for the Capping Works on Stage 2 Phase 1 Section 2 and that the increase be funded as follows:
 - a. \$40,350 contingency set aside for the project; and
 - b. \$69,531 from the savings in the 2012/13 budget as described in the Financial Implications Section of this report.

2. **Acknowledges that the funds of \$366,000 set aside for the project at its meeting on 19 April 2012 were not carried forward from the 2011/12 financial year and that the \$366,000 be funded from the surplus created in the 2011/12 financial year.**
(Absolute Majority Required)
-

9.6	FINANCIAL STATEMENTS FOR THE PERIODS ENDED 30 SEPTEMBER 2012 AND 31 OCTOBER 2012
File No:	FIN/5-02
Appendix(s):	Appendix No. 1 Appendix No. 2 Appendix No. 3
Date:	14 November 2012
Responsible Officer:	Gunther Hoppe

SUMMARY

The purpose of this report is to provide financial reporting in line with statutory requirements which provides useful information to stakeholders of the Council.

BACKGROUND

Reporting requirements are defined by Financial Management Regulations 34 of the Local Government (Financial Management) Regulations 1996.

The financial statements presented for each month consist of:

- Operating Statement by Nature – Combined
- Operating Statement by Nature – RRF Only
- Operating Statement by Function
- Statement of Financial Activity
- Statement of Reserves
- Statement of Financial Position
- Statement of Investing Activities
- Information on Borrowings
- Tonnage Report

DETAIL

The Financial Statements attached are for the months ended 30 September 2012 and 31 October 2012 and are attached at **Appendix 1 and 2** to this Item. The Tonnage Report for the 4 months to 31 October 2012 is attached at **Appendix 3**.

The complete suite of Financial Statements which includes the Operating Statements, Statement of Financial Position, Statement of Financial Activity and other related information are reported on a monthly basis.

These Statements include:

- Accruals
- Provisions for Amortisation of Cell Development, Capping and Post Closure expenditure

to provide meaningful reporting to Stakeholders.

The estimates for Provisions for Amortisation of Cell Development, Capping and Post Closure expenditure are based on the estimated rates per tonne calculated with reference to estimated excavation cost of various stages of the landfill and the life of the landfill. An adjustment is made (if necessary) at the end of the year based on actual tonnages on a survey carried out to assess the “air space” remaining and other relevant information.

Summary of results for the year to 31 October 2012

	Actual	Budget	Variance
	t	t	t
Tonnes – Members	79,149	83,132	(3,983)
Tonnes – Others	13,202	17,681	(4,479)
TOTAL TONNES	92,351	100,813	(8,462)
	\$	\$	\$
Revenue - Members	10,435,646	11,028,868	(593,222)
Revenue – Other	2,753,404	2,853,492	(100,088)
TOTAL REVENUE	13,189,050	13,882,360	(693,310)
Expenses	13,223,699	13,963,571	739,872
Loss on sale of assets	6,387	(9,238)	(15,625)
NET DEFICIT	(41,036)	(71,973)	30,937

VOTING REQUIREMENT

Simple Majority

RESPONSIBLE OFFICER RECOMMENDATION

That the Financial Statements set out in Appendix 1 and 2 for the months ended 30 September 2012 and 31 October 2012, respectively, be received.

9.7	LIST OF PAYMENTS MADE FOR THE MONTHS ENDED 30 SEPTEMBER 2012 AND 31 OCTOBER 2012
File No:	FIN/5-02
Appendix(s):	Appendix No. 4 Appendix No. 5
Date:	14 November 2012
Responsible Officer:	Gunther Hoppe

SUMMARY

The purpose of this report is to provide details of payments made during the periods identified. This is in line with the requirement under the delegated authority to the Chief Executive Officer (CEO), that a list of payments made from the Municipal Fund since the last Ordinary Council meeting be presented to Council.

COMMENT

The lists of payments for the months ended 30 September 2012 and 31 October 2012 are at **Appendix 4 and 5** to this Item and are presented to Council for noting. Payments have been made in accordance with the delegated authority to CEO which allows payments to be made between meetings. At the Ordinary Council Meeting held on 5 July 2012, the Council delegated to the CEO the exercise of its power to make payments from the Municipal Fund. In order to satisfy the requirements of Clause 13(2) of the Local Government (Financial Management) Regulations, a list of payments made must be submitted to the next Council meeting following such payments.

It should be noted that generally all payments are GST inclusive and Mindarie Regional Council is able to claim this tax as an input credit when GST remittances are made each month to the Australian Tax Office.

Months Ended	Account	Vouchers	Amount
30 September 2012	General Municipal	Cheques	\$100,770.28
		EFT	\$3,043,616.20
		DP	\$338,694.23
		Total	\$3,483,080.71
31 October 2012	General Municipal	Cheques	\$160,926.30
		EFT	\$3,841,044.02
		DP	\$494,882.65
		Total	\$4,496,852.97

VOTING REQUIREMENT

Simple Majority

RESPONSIBLE OFFICER RECOMMENDATION

That the list of payments made under delegated authority to the Chief Executive Officer, for the months ended 30 September 2012 and 31 October 2012 be noted.

9.8	MINDARIE REGIONAL COUNCIL ANNUAL REPORT 2012 AND MINUTES OF THE AUDIT COMMITTEE MEETING OF 21 NOVEMBER 2012
File No:	COR/9-02/05
Appendix(s):	Appendix No. 6 Appendix No. 7
Date:	22 November 2012
Responsible Officer:	Gunther Hoppe

BACKGROUND

The Mindarie Regional Council, in accordance with the Local Government Act 1995 Section 5.53, is required to submit an Annual Report. The Local Government Act specifies that the Annual Report is to contain:

- A report from the Chairman.
- A report from the Chief Executive Officer.
- A report of the principal activities commenced or continued during the Financial Year.
- An assessment of the Local Government's performance in relation to each principal activity.
- An overview of the principal activities that are proposed to commence or to continue in the next Financial Year.
- The Financial Report for the Financial Year.
- Such information as may be prescribed in relation to the payments made to employees.
- The Auditor's Report for the Financial Year.
- Such other information as may be prescribed.

The annual audit of the Financial Statements for the financial year ended 30 June 2012 has been completed and the Financial Report has been considered by the Audit Committee.

The Annual Report, which includes the Financial Statements, is presented for consideration by Council.

The Annual Report for a Financial Year is to be accepted by the Local Government no later than 31 December after that Financial Year.

DETAIL

Annual Audit Process

The Auditor, in accordance with the Local Government (Audit) Regulations 1996 Sections 10.2 and 10.3 is required to issue an audit report after the completion of the annual audit that expresses an opinion on the financial position and results of the operations of the local government for each financial year.

The Auditor has completed the audit of the Mindarie Regional Council and has issued an unqualified audit opinion in respect of the year ended 30 June 2012.

The Audit Committee met on 21 November 2012 to consider the Financial Statements for the year ended 30 June 2012 and have recommended that these be adopted by the Council. The minutes of this meeting are attached at **Appendix 6**.

The Annual Report of the Mindarie Regional Council (excluding artwork), which includes the Financial Statements considered by the Audit Committee as mentioned above, has been prepared and is attached at **Appendix 7**.

The Mindarie Regional Council, in accordance with the Local Government (Financial Management) Regulations 1996 Section 51.1, is required to include in the annual Financial Statements a signed Statement of Declaration by the Chief Executive Officer after this report has been audited in accordance with the Local Government Act 1995. This declaration is included in the Annual Report (**Appendix 7**).

STATUTORY ENVIRONMENT

The submission of the Annual Report for 2011/12 is in conformity with the requirements of the Local Government Act 1995 and the Local Government (Financial Management) Regulations 1996. The Auditor's Report for 2011/12 conforms with the requirements of the Local Government (Audit) Regulations 1996.

POLICY IMPLICATIONS

Not applicable.

STRATEGIC IMPLICATIONS

Not applicable.

COMMENT

The Annual Report for the Mindarie Regional Council has been prepared in accordance with the requirements of Local Government Act 1995 and applicable Australian Accounting Standards.

VOTING REQUIREMENT

Absolute Majority

A. AUDIT COMMITTEE RECOMMENDATIONS

That the Council:

- i. receive the Unconfirmed Minutes of the Audit Committee dated 21 November 2012; and**
- ii. adopt the Financial Report for year ended 30 June 2012.**
(Absolute Majority Required)

B. RESPONSIBLE OFFICER RECOMMENDATION

That the Council adopts the Annual Report for year ended 30 June 2012, which includes the Financial Report detailed in A. ii. above.
(Absolute Majority Required)

11 MEMBERS INFORMATION BULLETIN – ISSUE NO. 8

RESPONSIBLE OFFICER RECOMMENDATION

That the Members Information Bulletin Issue No. 8 be received.

12 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

13 URGENT BUSINESS

14 QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN

15 MATTERS FOR WHICH THE MEETING MAY BE CLOSED TO THE PUBLIC

CITY OF STIRLING WITHDRAWAL – SUBMISSION TO THE MINISTER FOR LOCAL GOVERNMENT	
File No:	LEG/14
Attachment(s):	
Date:	23 November 2012
Responsible Officer:	CEO

THIS ITEM IS CONFIDENTIAL, NOT FOR PUBLIC VIEWING.

DISTRIBUTED UNDER SEPARATE COVER TO

ELECTED MEMBERS

16 NEXT MEETING

17 CLOSURE
