



# MINUTES

ORDINARY COUNCIL MEETING

TIME: 5.30PM

THURSDAY 5 NOVEMBER 2015

MINDARIE REGIONAL COUNCIL

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



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**1 DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS**

*The Chairperson declared the meeting open at 5.46pm*

**2 ELECTION OF DEPUTY CHAIR**

The Chairperson advised Council that one nomination had been received from Cr Boothman nominating himself for the Deputy Chairperson's role. Cr Boothman confirmed acceptance of the nomination. The Chairperson asked if there were any further nominations. No further nominations were received.

Cr Boothman was declared elected as Deputy Chairperson unopposed.

**3 ATTENDANCE / APOLOGIES / LEAVE OF ABSENCE**

**Councillor Attendance**

Cr R Fishwick JP (Chairperson)	City of Joondalup
Cr D Boothman (Deputy)	City of Stirling
Cr J Adamos	City of Perth
Cr R Driver	City of Wanneroo
Cr A Guilfoyle	City of Stirling
Cr S Jenkinson	City of Stirling
Cr C MacRae	Town of Cambridge
Cr V Maxwell	Town of Victoria Park
Cr D Newton JP	City of Wanneroo
Cr M Norman	City of Joondalup
Cr S Proud	City of Stirling

**Apologies**

Cr J Carey	City of Vincent
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**Leave of Absence**

Nil

**Absent**

Nil

**MRC Officers**

Mr B Callander (Chief Executive Officer)  
Mr G Hoppe (Director Corporate Services)  
Ms L Nyssen (Executive Support)

**MRC Observers**

Nil

**Member Council Observers**

Mr N Ahern	City of Perth
Mr W Bow	Town of Victoria Park
Mr C Colyer	Town of Cambridge
Mr N Claassen	City of Joondalup
Mr M Littleton	City of Stirling
Mr R Lotznicker	City of Vincent
Mr A Murphy	City of Joondalup
Mr H Singh	City of Wanneroo

**Visitors**

Nil

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**Members of the Public**

Nil

**Press**

Nil

**4 DECLARATION OF INTERESTS**

Nil

**5 PUBLIC QUESTION TIME**

Nil

**6 ANNOUNCEMENTS BY THE PRESIDING PERSON**

*The Chairperson welcomed the new councillors who were elected to the MRC.*

**7 APPLICATIONS FOR LEAVE OF ABSENCE**

Nil

**8 PETITIONS / DEPUTATIONS / PRESENTATIONS**

Nil

**9 CONFIRMATION OF MINUTES OF PREVIOUS MEETING**

**9.1 ORDINARY COUNCIL MEETING – 8 OCTOBER 2015**

The Minutes of the Ordinary Council Meeting held on 8 October 2015 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 8 October 2015 be confirmed as a true record of the proceedings.**

**RESOLVED**

**Cr Proud moved, Cr Boothman seconded**

**That the recommendation be adopted.**

*CARRIED UNANIMOUSLY (11/0)*

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<b>10</b>	<b>REPORTS</b>
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<b>10.1</b>	<b>APPOINTMENT ON COMMITTEES AND OTHER GROUPS</b>
<b>File No:</b>	<b>GOV/1-04</b>
<b>Attachment(s):</b>	<b>1. Audit Committee Details; 2. CEO's Performance Review Committee Details; 3. RRF Project Advisory Group Details; and 4. Municipal Waste Advisory Council Details</b>
<b>Date:</b>	<b>21 October 2015</b>
<b>Responsible Officer:</b>	<b>Chief Executive Officer</b>

### **SUMMARY**

The purpose of this report is to provide guidance for the appointment of Councillors of the Mindarie Regional Council (MRC) to its committees and Groups.

### **BACKGROUND**

The MRC currently has two Committees, established in accordance with Part 5.8 of the *Local Government Act 1995*, and two advisory groups that require Councillor membership as follows:

- Audit Committee (established in accordance with the Local Government Act 1995)
- Chief Executive Officer's Performance Review Committee (established in accordance with the Local Government Act 1995)
- Project Advisory Group (established in accordance with the Resource Recovery Facility Agreement).
- Municipal Waste Advisory Council (established as part of the MRC's commitment to the Western Australia Local Government Association membership)

Attachments 1 to 4 to this agenda item provide details of the tenure, membership, duties and responsibilities associated with each of the Committees and Groups named above.

### **DETAILS**

The recently held Local Government Elections have resulted in the need for the MRC to swear in new Councillors and re-appoint Councillors to its Committees and other Groups. The following provides a brief explanation of the purpose of the Committees and Groups:

#### Audit Committee

The Audit Committee is established as a requirement of the *Local Government Act 1995* and has prescribed duties and responsibilities. This committee consists of at least three elected members and an appointed independent member and meets at least three times per year. The Administration provides secretarial support and both the Chief Executive Officer and the Director of Corporate Services attend the meetings to provide advice and guidance to the committee on the issues presented in the agendas.

#### Chief Executive Officer's Performance Review Committee

This committee was established to ensure that the Chief Executive Officer's (CEO) performance is reviewed annually. The committee is supported by an independent consultant who undertakes a survey of all the Councillors and assists in the review of the CEO's performance in the previous year against pre-set performance measures and the setting of performance measures for the next year. The consultant provides a performance report to assist the Councillors in assessing the performance of the CEO.

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#### Project Advisory Group

The MRC has entered into a build-own-operate contract with BioVision 2020 for a Resource Recovery Facility (RRF) that processes 100,000 tonnes of municipal solid waste into a mulch (soil enhancer) annually. The RRF's diversion rate from landfill is just over 50%. The RRF is managed through a contract entitled the Resource Recovery Facility Agreement (RRFA). The RRFA includes a requirement to have a Project Advisory Group consisting of an independent Chair, three representatives from the MRC and three representatives from BioVision, plus deputies for each party.

The MRC has historically appointed the CEO, the Director of Corporate Services and a Councillor as its representatives, as well as a deputy stand-in Councillor.

#### Municipal Waste Advisory Council

The Municipal Waste Advisory Council (MWAC) was established in December 1994 as a Standing Committee of the Western Australian Local Government Association (WALGA) with delegated authority to represent the Association in respect of matters relating to municipal waste issues. MWAC is established under a partnership agreement with WALGA, Eastern Metropolitan Regional Council, City of Geraldton/Greenough, Mindarie Regional Council, Rivers Regional Council, Southern Metropolitan Regional Council and Western Metropolitan Regional Council.

The objective of MWAC is to encourage and promote economically sound, environmentally safe waste management practices and to ensure that the shared interests of all Western Australian Local Governments, as they relate to waste management, are effectively managed. As MWAC is a standing committee of WALGA it requires councillor representation. An Officer Advisory Group (OAG) has been established as an advisory committee to the MWAC.

The MRC has historically appointed the CEO as its representative on OAG and a Councillor as its representatives on MWAC as well as a deputy stand-in Councillor.

#### **LEGAL COMPLIANCE**

Refer attachments 1 through to 4 to determine the varying compliance requirements of the Committees and the Groups.

#### **FINANCIAL IMPLICATIONS**

There is no remuneration attached to the positions on any of the MRC's Committees and/or Groups.

#### **COMMENT**

These Committees and Groups are an integral part of the operations of the Mindarie Regional Council and Councillor representation ensures that decisions made or input are provided from a Councillor perspective ensuring that the issues raised through these forums have input from a broad cross section of people, in line with good governance practices.

#### **VOTING REQUIREMENT**

Absolute/Simple Majority

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RESPONSIBLE OFFICER RECOMMENDATION

That the Council:

1. Appoint Cr \_\_\_\_\_, Cr \_\_\_\_\_ and Cr \_\_\_\_\_ on to the Audit Committee.  
(Absolute Majority Required)
2. Appoint Cr \_\_\_\_\_, Cr \_\_\_\_\_, Cr \_\_\_\_\_ and Cr \_\_\_\_\_ on to the Chief Executive Officer's Performance Review Committee.  
(Absolute Majority Required)
3. Appoint Cr \_\_\_\_\_ as a member and Cr \_\_\_\_\_ as a Deputy Member on to the Resource Recovery Facility - Project Advisory Group.
4. Appoint Cr \_\_\_\_\_ as a member and Cr \_\_\_\_\_ as a Deputy Member on to the Municipal Waste Advisory Council.

In accordance with section 5.10(4) of the *Local Government Act 1995* the Chairperson informed the council that he wished to be a member of both of the Committees and nominated himself accordingly.

Parts 1 through to 4 of the Responsible Officers Recommendation were put separately.

Audit Committee

Three nominations were received by Cr Fishwick, Cr Boothman and Cr Proud. The nominations were accepted.

**Cr Boothman moved, Cr Proud seconded**

**That the Council appoint Cr Fishwick, Cr Boothman and Cr Proud on to the Audit Committee.**

**(Absolute Majority Required)**

*CARRIED BY ABSOLUTE MAJORITY (11/0)*

Chief Executive Officer's performance Review Committee

Three nominations were received by Cr Fishwick, Cr Driver and Cr Norman.

**Cr Boothman moved, Cr Proud seconded**

**That the Council appoint Cr Fishwick, Cr Driver and Cr Norman on to the Chief Executive Officer's Performance Review Committee.**

*CARRIED BY ABSOLUTE MAJORITY (11/0)*

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Project Advisory Group

Cr Newton nominated to be the member of the Project Advisory Group and Cr Jenkinson nominated for the deputy member.

**Cr Norman moved, Cr Proud seconded**

**That Council appoint Cr Newton as a Member and Cr Jenkinson as a Deputy Member on to the Resource Recovery Facility – Project Advisory Group.**

*CARRIED UNANIMOUSLY (11/0)*

Municipal Waste Advisory Council

Cr Fishwick nominated to be the member of the Municipal Waste Advisory Council and Cr Guilfoyle nominated for the deputy member.

**Cr Norman moved, Cr Proud Seconded**

**That Council appoint Cr Fishwick as a Member and Cr Guilfoyle as a Deputy member on to the Municipal Waste Advisory Council.**

*CARRIED UNANIMOUSLY (11/0)*

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## ATTACHMENT 1

### AUDIT COMMITTEE

#### MEMBERSHIP/SUPPORT STAFF

Three Councillors (Minimum)  
One Independent Member (Sourced from the Community)  
MRC Chief Executive Officer (Support Staff)  
MRC Director Corporate Services (Support Staff)

#### MEETING FREQUENCY

The Committee shall meet as and when required. Normally three times a year being:

- November to review and make recommendations to Council on the previous year's audited financials;
- February/March to review the MRC's risk register and MRC's response to the Statutory Compliance Audit Return required by the State Government and make recommendations to Council; and
- July to review the MRC's risk register.

#### DUTIES AND RESPONSIBILITIES

The duties and responsibilities of the Committee will be –

- Provide guidance and assistance to Council as to the carrying out the function of the Council in relation to audits.
  - Develop and recommend to Council an appropriate process for the selection and appointment of a person as the Council's auditor.
  - Develop and recommend to Council –
    - a list of those matters to be audited; and
    - the scope of the audit to be undertaken.
  - Recommend to Council the person or persons to be appointed as auditor.
  - Develop and recommend to Council a written agreement for the appointment of the auditor. The agreement is to include –
    - the objectives of the audit
    - the scope of the audit
    - a plan of the audit
    - details of the remuneration and expenses to be paid to the auditor; and
    - the method to be used by the Council to communicate with, and supply information to, the auditor.
  - Meet with the auditor once in each year and provide a report to Council on the matters discussed and outcome of those discussions.
  - Liaise with the CEO to ensure that the local government does everything in its power to –
    - assist the auditor to conduct the audit and carry out his or her other duties under the *Local Government Act 1995*; and
    - ensure that audits are conducted successfully and expeditiously.
  - Examine the reports of the auditor after receiving a report from the CEO on the matters and –
    - determine if any matters raised require action to be taken by the Council; and
    - ensure that appropriate action is taken in respect of those matters.
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- (i) Review the report prepared by the CEO on any actions taken in respect of any matters raised in the report of the auditor and presenting the report to Council for adoption prior to the end of the next financial year or six months after the last report prepared by the auditor is received, whichever is the latest in time.
- (j) Review the scope of the audit plan and program and its effectiveness.
- (k) Review the appropriateness of special internal audit assignments undertaken at the request of Council or CEO.
- (l) Review the level of resources allocated to internal audit and the scope of its authority.
- (m) Review reports of internal audits and by monitoring the implementation of recommendations made by the audit and reviewing the extent to which Council and management reacts to matters raised.
- (n) Facilitate liaison between the internal and external auditor to promote compatibility, to the extent appropriate, between their audit programs.
- (o) Review Council's draft annual financial report, focusing on:
- accounting policies and practices;
  - changes to accounting policies and practices;
  - the process used in making significant accounting estimates;
  - significant adjustments to the financial report (if any) arising from the audit process;
  - compliance with accounting standards and other reporting requirements; and
  - significant variances from prior years.
- (p) Consider recommending adoption of the financial report to Council
- (q) Address issues brought to the attention of the Committee, including responding to requests from Council for advice that are within the parameters of the Committee's terms of reference.
- (r) Seek information or obtain expert advice through the CEO on matters of concern within the scope of the Committee's terms of reference following authorisation from the Council.
- (s) Review the annual Compliance Audit Return and report to the Council the results of that review.
- (t) Consider the CEO's biennial reviews of the appropriateness and effectiveness of the Council's systems and procedures in regard to risk management, internal control and legislative compliance, required to be provided to the Committee, and report to the Council the results of those reviews.
- (v) Monitor the progress of any major lawsuits facing the Council.
- (w) Perform a biannual review of the material risks identified in the Council's Risk Register.
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**APPOINTMENT/TENURE**

Extract from Local Government Act

1995 "5.10. *Committee members, appointment of*

- (1) *A committee is to have as its members —*
- (a) *persons appointed\* by the local government to be members of the committee (other than those referred to in paragraph (b)); and*
  - (b) *persons who are appointed to be members of the committee under subsection (4) or (5).*
- \* Absolute majority required.*
- (2) *At any given time each council member is entitled to be a member of at least one committee referred to in section 5.9(2)(a) or (b) and if a council member nominates himself or herself to be a member of such a committee or committees, the local government is to include that council member in the persons appointed under subsection (1)(a) to at least one of those committees as the local government decides.*
- (3) *Section 52 of the Interpretation Act 1984 applies to appointments of committee members other than those appointed under subsection (4) or (5) but any power exercised under section 52(1) of that Act can only be exercised on the decision of an absolute majority of the local government. If at a meeting of the council a local government is to make an appointment to a committee that has or could have a council member as a member and the mayor or president informs the local government of his or her wish to be a member of the committee, the local government is to appoint the mayor or president to be a member of the committee.*
- (4) *If at a meeting of the council a local government is to make an appointment to a committee that has or could have a council member as a member and the mayor or president informs the local government of his or her wish to be a member of the committee, the local government is to appoint the mayor or president to be a member of the committee.*
- (5) *If at a meeting of the council a local government is to make an appointment to a committee that has or will have an employee as a member and the CEO informs the local government of his or her wish —*
- (a) *to be a member of the committee; or*
  - (b) *that a representative of the CEO be a member of the committee,*
- the local government is to appoint the CEO or the CEO's representative, as the case may be, to be a member of the committee.*

**5.11. *Committee membership, tenure of***

- (1) *Where a person is appointed as a member of a committee under section 5.10(4) or (5), the person's membership of the committee continues until —*
- (a) *the person no longer holds the office by virtue of which the person became a member, or is no longer the CEO, or the CEO's representative, as the case may be; or*
  - (b) *the person resigns from membership of the committee; or*
  - (c) *the committee is disbanded; or*
  - (d) *the next ordinary elections day,*

*whichever happens first.*

- (2) *Where a person is appointed as a member of a committee other than under section 5.10(4) or (5), the person's membership of the committee continues until —*
- (a) the term of the person's appointment as a committee member expires; or*
  - (b) the local government removes the person from the office of committee member or the office of committee member otherwise becomes vacant;  
or*
  - (c) the committee is disbanded; or*
  - (d) the next ordinary elections day,  
whichever happens first."*

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## ATTACHMENT 2

### CHIEF EXECUTIVE OFFICER'S PERFORMANCE REVIEW COMMITTEE

#### MEMBERSHIP/SUPPORT CONSULTANT

Four Councillors  
One support HR Consultant

#### MEETING FREQUENCY

The Committee shall meet as and when required. Normally three or four meetings between February and June.

#### DUTIES AND RESPONSIBILITIES

The duties and responsibilities of this committee is to review annually:

- the CEO's performance in accordance with the Key Performance Indicators set by the Committee in the previous year; and
- the outcome of a survey of the Councillors undertaken by the support HR Consultant

#### APPOINTMENT/TENURE

Extract from Local Government Act 1995

*"5.10. Committee members, appointment of*

- (1) *A committee is to have as its members —*
    - (a) *persons appointed\* by the local government to be members of the committee (other than those referred to in paragraph (b)); and*
    - (b) *persons who are appointed to be members of the committee under subsection (4) or (5).*

*\* Absolute majority required.*
  - (2) *At any given time each council member is entitled to be a member of at least one committee referred to in section 5.9(2)(a) or (b) and if a council member nominates himself or herself to be a member of such a committee or committees, the local government is to include that council member in the persons appointed under subsection (1)(a) to at least one of those committees as the local government decides.*
  - (3) *Section 52 of the Interpretation Act 1984 applies to appointments of committee members other than those appointed under subsection (4) or (5) but any power exercised under section 52(1) of that Act can only be exercised on the decision of an absolute majority of the local government.*
  - (4) *If at a meeting of the council a local government is to make an appointment to a committee that has or could have a council member as a member and the mayor or president informs the local government of his or her wish to be a member of the committee, the local government is to appoint the mayor or president to be a member of the committee.*
  - (5) *If at a meeting of the council a local government is to make an appointment to a committee that has or will have an employee as a member and the CEO informs the local government of his or her wish —*
    - (a) *to be a member of the committee; or*
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*(b) that a representative of the CEO be a member of the committee, the local government is to appoint the CEO or the CEO's representative, as the case may be, to be a member of the committee.*

*5.11. Committee membership, tenure of*

- (1) Where a person is appointed as a member of a committee under section 5.10(4) or (5), the person's membership of the committee continues until —*
- (a) the person no longer holds the office by virtue of which the person became a member, or is no longer the CEO, or the CEO's representative, as the case may be; or*
  - (b) the person resigns from membership of the committee; or*
  - (c) the committee is disbanded; or*
  - (d) the next ordinary elections day,*
- whichever happens first.*
- (2) Where a person is appointed as a member of a committee other than under section 5.10(4) or (5), the person's membership of the committee continues until —*
- (a) the term of the person's appointment as a committee member expires; or*
  - (b) the local government removes the person from the office of committee member or the office of committee member otherwise becomes vacant; or*
  - (c) the committee is disbanded; or*
  - (d) the next ordinary elections day,*
- whichever happens first."*

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## ATTACHMENT 3

### PROJECT ADVISORY GROUP

#### MEMBERSHIP

Three members from the Mindarie Regional Council consisting of;

- one Councillor;
- two staff members being the CEO and Director Corporate Services; and
- two deputy Members being one Councillor and one staff member.
- three members from BioVision 2020.
- one Independent Chairperson.

#### MEETING FREQUENCY

Bi-Monthly

#### DUTIES AND RESPONSIBILITIES

The Project Advisory Group will have the primary responsibility of overseeing the execution of this agreement and ensuring that this agreement runs as smoothly and as efficiently as is possible having regard to the undertakings, commitments and obligations of the parties set out in this agreement and will, subject to this agreement:

- (a) establish and maintain the Project culture;
- (b) assist the parties in fulfilling their obligations under this agreement;
- (c) provide visible leadership for the Project;
- (d) provide a forum through which the parties may discuss matters pertaining to, or to provide advice, guidance and support for, the implementation of the Project;
- (e) assist in resolving conflicts related to the MRC Project Agreements in a prompt, open and transparent manner including referring matters to MRC and the Contractor if required, and otherwise participate in the dispute resolution process as set out in clause 31.3;
- (f) inquire into and report to the parties upon any matter related to the operation, disclosure or performance of this agreement, including providing corporate governance to the parties for compliance with the MRC Project Agreements;
- (g) review all procedures and policies (but not Plans) which are not imposed under this agreement provided that those procedures and policies are not in any way inconsistent with the terms of this agreement, including procedures and policies for:
  - (1) financial matters such as accounts, reviews of finances and costs;
  - (2) the systems, including operating, accounting and IT systems;
  - (3) environmental matters;
  - (4) occupational health and safety issues;
  - (5) human resources and industrial relations matters;
  - (6) resourcing of the Project, including the need for sub-contractors and the necessary arrangements for staffing and labour;
  - (7) community and stakeholder liaison;
  - (8) programming the Project under this agreement;
  - (9) auditing the Project, including legal and financial audits;
  - (10) ensuring compliance with statutory obligations; and

- (11) obtaining and maintaining the Authorisations as set out in the MRC Project Agreements;
- (h) make recommendations to the parties with respect to:
  - (1) the parties' performance under this agreement;
  - (2) any existing provision of this agreement or any Law relating to the responsibilities of the parties and any changes to this agreement;
  - (3) any matter which affects or may affect the proper performance of the provisions of this agreement;
  - (4) the most appropriate methods for investigating and reporting issues, implementing the Innovation and Continuous Improvement Plan and apportioning the costs and benefits which would result from any proposed process or productivity improvement; and
  - (5) variations to this agreement from time to time in accordance with the variation clauses of this agreement (including Agreed Variations) to ensure that this agreement properly reflects the intentions of the parties;
- (i) disseminate Project information to relevant stakeholders in accordance with the MRC Project Agreements; and
- (j) consider any other matter that the parties may from time to time agree and or which may be referred to the Project Advisory Group by any of the parties.

For the avoidance of doubt, nothing in this clause 2 affects the rights and responsibilities of MRC's Representative and MRC.

#### **APPOINTMENT/TENURE**

Membership continues until notification is given to the other party advising of a change in the membership.

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## ATTACHMENT 4

### MUNICIPAL WASTE ADVISORY COUNCIL

#### MEMBERSHIP

One Councillor and a Deputy  
Supported by one staff member who is on a sub-group of MWAC entitled the Officers' Advisory Group.

#### MEETING FREQUENCY

Bi-Monthly

#### DUTIES AND RESPONSIBILITIES

##### *General Functions of the MWAC*

- (a) The principal role of the MWAC in exercising its delegated authority is to govern the Municipal Waste Program and to represent the interests of the Parties and Local Government generally, in all matters relating to local government waste management.
- (b) Without limiting the MWAC's principal role, the broad functions and responsibilities of the MWAC include:
  - (i) defining policy and providing the overall strategic direction of the Municipal Waste Program to achieve the interests of the Parties to this Partnership Agreement;
  - (ii) maintaining the MWAC as a credible, active and effective peak body in the area of waste management;
  - (iii) facilitating and encouraging cooperative linkages between Local, State and Federal Government, Regional Councils, FORC, WMAA, Waste Authority, industry and the community;
  - (iv) representing the interests of the Association in all matters relating to local government waste management in accordance with the Association's policy statements and formal positions on an issue, and without prior reference to the Association where a formal Association position on an issue is not current or has not yet been developed PROVIDED THAT any such position is subsequently put to the Association as soon as practicable for confirmation;
  - (v) acting as an interface between the Parties to this Partnership Agreement and other local governments;
  - (vi) promoting economically sound, environmentally safe and socially acceptable waste management and minimisation strategies;
  - (vii) coordinating and initiating research on waste management issues;
  - (viii) through the WALGA Chief Executive Officer and the MWAC Chair, monitoring and evaluating the performance of the Executive Officer against established key performance indicators;
  - (ix) approving major operating plans, including the strategic plan;
  - (x) approving the Annual Budget in accordance with the terms of this Partnership Agreement; and
  - (xi) ensuring the Municipal Waste Program complies with the law and the Association's operational policies and procedures.

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- (c) Under the terms of the delegated authority, the MWAC may not make decisions:
- (i) concerning the acquisition, holding and disposition of real property or the borrowing of money or setting Association subscription levels;
  - (ii) that are inconsistent with an existing formal policy statement of the Association without prior reference to and the prior approval of the State Council; and
  - (iii) relating to operational matters as such matters remain the responsibility of the Executive Officer, reporting to the WALGA Chief Executive Officer or to their delegate.

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**APPOINTMENT/TENURE**

Membership continues until notification is given to the other party advising of a change in the membership.

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<b>10.2</b>	<b>LOCAL GOVERNMENT (FUNCTIONS AND GENERAL) AMENDED REGULATIONS 2015 – CONSEQUENTIAL CHANGES TO COUNCIL POLICY CP06 – PURCHASE OF GOODS AND SERVICES</b>
<b>File No:</b>	<b>COR/20-02</b>
<b>Appendix(s):</b>	<b>Marked up copy of the Local Government (Functions and General) Regulations 1996</b>
<b>Date:</b>	<b>8 October 2015</b>
<b>Responsible Officer:</b>	<b>Chief Executive Officer</b>

**SUMMARY**

This report seeks approval for changes to Council Policy CP06 – Purchase of Goods and Services as a result of changes to the *Local Government (Functions and General) Regulations 2015* (the Regulations) advertised in the Government Gazette on 18 September 2015 effective from 1 October 2015.

**BACKGROUND**

The Mindarie Regional Council (MRC) formally reviews its policies annually in or around August. The policies were last reviewed at the 20 August 2015 council meeting before the gazettal of the changes to the Regulations.

**DETAILS**

The amendment of the Regulations resulted in the MRC reviewing its current Council Policy CP06 – Purchase of Goods and Services to determine changes required to ensure conformity with the Regulations. The following table highlights only the changes in the Regulations that require an amendment to the Council Policy CP06 – Purchase of Goods and Services (CP06) and the wording changes to CP06. A copy of CP06 including the changes is attached to this agenda item and a marked up copy of all the changes to the Local Government (Functions and General) Regulations 1996 is appended to this agenda.

<b>Amendments to the Regulations</b>		<b>Amendments required to Council Policy CP06</b>
1	Part 11A amended as follows: Increase in threshold from \$100,000 to \$150,000	Parts 1 to 5 amended to address the increase as follows: 1. Value increased from \$999 to \$1,999 2. Values changed from \$1,000 to \$2,000 and from \$19,999 to \$39,999 3. Values changed from \$20,000 to \$40,000 and from \$39,999 to \$69,999 4. Values changed from \$40,000 to \$70,000 and from \$99,999 to \$149,999 5. Value increased from \$100,000 to \$150,000 5.a. Value increased from \$100,000 to \$150,000
<p><b>MRC Comment</b>                      On review of the descriptions of the policies tendering and quoting requirements it was considered that there was no need for these to change however there was considered a need to increase each of the values to even out the spread due to the tendering threshold increasing from \$100,000 to \$150,000.</p>		

2	<p>Part 21A Varying a contract for the supply of goods or services (new clause) allowing a variation/s to a contract after it has been entered into if it is:</p> <p>a) Necessary in order for the goods and services to be supplied and does not change the scope of the contract;</p> <p>b) a renewal or extension of the term of the contract as described in regulation 11(2) (j)</p>	<p>Part 5 k. amended as follows:</p> <ol style="list-style-type: none"> <li>1. Heading change from “ Minor Variation” to “Variation of a Contract”</li> <li>2. The existing clause to be identified as Section a. and a new Section b. be added as follows:                       A contract that has been entered into may only be varied if the variation is necessary for the supply of the goods and service and the variation does not change the scope of the contract or it is a renewal or a term extension of a contract required for emergency under 6.8(1)(c) of the Local Government Act 1995.</li> </ol>
<p><b>MRC Comment</b>                  This new clause has major implications on contracts the MRC enters into. The MRC is currently finalising an extension of time for the Amended and Restated Standstill Deed it has with BioVision as approved by Council. The MRC’s solicitor has advised that this clause prevents the parties from entering into such Deeds as they are necessary for the supply of the goods and services provided for in the Contract. A separate report is being prepared for Council on the amendment to the Deed.</p>		

Summary of changes to value thresholds

Old Policy Threshold	New Policy Threshold	Requirement
Goods less than \$999	Goods less than \$1,999	2 verbal quotes required
Between \$1,000 & \$19,999	Between \$2,000 & \$39,999	3 verbal quotes required
Between \$20,000 & \$39,999	Between \$40,000 & \$69,999	3 written quotes
Between \$40,000 & \$99,999	Between \$70,000 & \$149,999	3 written quotes & panel
Over \$100,000	Over \$150,000	Formal tender process

**CONSULTATION**

Nil

**STATUTORY ENVIRONMENT**

The changes proposed to CP06 bring it in line with the amendments to the Regulations advertised in the Government Gazette on 18 September 2015

**POLICY IMPLICATIONS**

Refer above

**FINANCIAL IMPLICATIONS**

Nil

**STRATEGIC IMPLICATIONS**

Nil

**COMMENT**

Nil

**VOTING REQUIREMENT**

Simple Majority

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## RESPONSIBLE OFFICER RECOMMENDATION

That the Council endorse the following amendments to Council Policy CP06 – Purchase of Goods and Services:

1. Increase the values of the tendering and quoting requirements as follows:
  - a) Part 1 - Increased lower value from \$999 to \$1,999;
  - b) Part 2 – Increase lower value from \$1,000 to \$2,000 and higher value from \$19,999 to \$39,999;
  - c) Part 3 - Increase lower value from \$20,000 to \$40,000 and higher value from \$39,999 to \$69,999;
  - d) Part 4 – Increase lower values from \$40,000 to \$70,000 and higher value from \$99,999 to \$149,999;
  - e) Part 5 - Increase value from \$100,000 to \$150,000; and
  - f) Part 5.a - Increase value from \$100,000 to \$150,000.
2. Amend Part 5k. as follows:
  - a) Delete heading “Minor Variation” and replace it with “Variation of Contract”
  - b) Existing Part be split into 1) and 2) with:
    - (i) New part 1) having a heading “Minor Variation” and retaining the existing clause; and
    - (ii) New part 2) with a heading of “Contracts Entered Into” with the following additional words “A contract that has been entered into may only be varied if the variation is necessary for the supply of the goods and service and the variation does not change the scope of the contract or it is a renewal or a term extension of a contract required for emergency under 6.8(1)(c) of the Local Government Act 1995.”

## RESOLVED

**Cr Newton moved, Cr Norman seconded  
That the Recommendation be adopted.**

Cr Boothman proposed an amendment to modify the recommendation as follows:

- Amend Item 1.b) Part 2 by retaining the higher value at \$19,999; and
- Amend Item 1.c) Part 3 by retaining the lower value from at \$20,000.

Both the Mover and the Seconder of the Recommendation agreed to include the proposed amendments by Cr Boothman in the recommendation. The Chairperson then put the amended recommendation as follows:

**That the Council endorse the following amendments to Council Policy CP06 – Purchase of Goods and Services:**

1. **Increase the values of the tendering and quoting requirements as follows:**
    - a) **Part 1 - Increased lower value from \$999 to \$1,999;**
    - b) **Part 2 – Increase lower value from \$1,000 to \$2,000 and retain higher value at \$19,999;**
    - c) **Part 3 - Retain lower value at \$20,000 and higher value from \$39,999 to \$69,999;**
    - d) **Part 4 – Increase lower values from \$40,000 to \$70,000 and higher value from \$99,999 to \$149,999;**
    - e) **Part 5 - Increase value from \$100,000 to \$150,000; and**
    - f) **Part 5.a - Increase value from \$100,000 to \$150,000.**
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**2. Amend Part 5k. as follows:**

- c) Delete heading “Minor Variation” and replace it with “Variation of Contract”**
- d) Existing Part be split into 1) an 2) with:**
  - (iii) New part 1) having a heading “Minor Variation” and retaining the existing clause; and**
  - (iv) New part 2) with a heading of “Contracts Entered Into” with the following additional words “A contract that has been entered into may only be varied if the variation is necessary for the supply of the goods and service and the variation does not change the scope of the contract or it is a renewal or a term extension of a contract required for emergency under 6.8(1)(c) of the Local Government Act 1995.”**

*CARRIED UNANIMOUSLY (11/0)*

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**Policy No: CP 06**

**TRIM Reference: D/13/400**

**Policy Title: Purchase of Goods and Services**

**Policy Statement:**

To ensure that goods and services are purchased competitively in accordance with the Local Government Act and associated regulations.

**Policy Procedure:**

The following requirements shall be observed before entering into a contract or placing an order for the purchase of goods or services:

**1. Goods or services not exceeding \$1,999 (excluding GST)**

No quotations are required to be obtained however it is recommended that at least two (2) verbal quotations be obtained, where possible. Periodic market testing with a greater number or more formal forms of quotation should be undertaken to ensure best value is maintained.

Notes: The general principles for obtaining verbal quotations are:

- a. Ensure that the requirements/specifications are clearly understood by the person seeking the quotation.
- b. Ensure that the requirements/specifications are clearly, accurately and consistently communicated to each of the suppliers being invited to quote.
- c. Read back the details to the supplier contact person to confirm their accuracy.
- d. Written notes detailing each verbal quotation must be recorded.

**2. Goods and services between \$2,000 and \$19,999 (excluding GST).**

At least three (3) verbal or written quotations (or a combination of both) are required. Where this is not practical, e.g. due to limited suppliers, an explanation must be noted on the purchase requisition form.

Notes: Refer to (1) above for details on obtaining verbal quotes.

The general principles relating to written quotations are:

- a. An appropriately detailed specification that communicates the requirement(s) in a clear, concise and logical fashion.
- b. The request for a written quotation should include as a minimum:
  - (i) Written specification
  - (ii) Price Schedule
  - (iii) Any conditions relating to the submission of the quotation.
  - (iv) The period or date until which the offer remains valid.
- c. Invitations to quote should be separately issued to suppliers at the same time.
- d. Any subsequent new or amended requirements for the goods or service during the quotation period must be communicated to all invitee suppliers as soon as the new or amended requirement is determined. Such communication must be made to all invitee suppliers at the same time and if made verbally, confirmed in writing (email, fax, letter) immediately thereafter.

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- e. Responses should be assessed for compliance, in order:
    - (i) against the selection criteria, and
    - (ii) value for money.All evaluations must be documented.
  - f. Invited suppliers should be advised of the outcome of their quotations as soon as possible after the final determination is made and approved.

**3. Goods or services between \$20,000 and \$79,999 (excluding GST)**

At least three (3) written quotes are required.

Note: Refer to (2) above for details on obtaining written quotes.

**4. Goods or services between \$80,000 and \$149,999 (excluding GST).**

At least three (3) written quotes are required.

Note: In addition to the requirements for obtaining written quotes detailed in (2) above, qualitative factors such as quality, stock availability, accreditation, time for completion or delivery, warranty conditions, technology, maintenance requirements, the organisation's capability, previous relevant experience and any other relevant factor should be considered as part of the assessment.

An evaluation panel consisting of at least three members shall be established prior to the advertising for goods or services. The panel should include a mix of skills and experience relevant to the nature of the purchase.

Where it is considered beneficial, tenders may be called in lieu of seeking quotations for purchases under the \$100,000 threshold (excluding GST). If a decision is made to seek public tenders for the Contracts of less than \$100,000, a Request for Tender process that entails all the procedures for tendering outlined in this procedure must be followed in full. The procurement of goods and/or services available from only one private sector source of supply (Monopoly Supplier), (i.e. manufacturer, supplier or agency) is permitted without the need to call competitive quotations provided that there is genuinely only one source of supply. Every endeavour to find alternative sources must be made. Written confirmation of this must be kept on file for later audit.

Note: The application of "sole source of supply" provision should only occur in limited cases and procurement experience indicates that generally more than one supplier is able to provide the requirements.

**5. Goods or services over \$150,000 (excluding GST).**

The following minimum requirements must be met:

**a. Anti-Avoidance**

Officers shall not divide a tender or quotation for goods or services into two or more contracts for the purpose of reducing each component contract to below \$150,000.

**b. Tender Criteria**

The officer authorised to manage a public tender shall, before tenders are publicly invited, determine in writing the criteria and criteria weightings for deciding which tender should be accepted.

An evaluation panel consisting of at least three members shall be established prior to the advertising of a tender and include a mix of skills and experience relevant to the nature of the purchase.

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c. **Advertising Tenders**

Tenders are to be advertised in a state wide publication e.g. “The West Australian” newspaper, Local Government Tenders section, preferably on a Wednesday or Saturday.

The tender must remain open for at least 14 **full** days after the date the tender is advertised.

The notice must include:

- (i) A brief description of the goods and services required;
- (ii) Information as to where and how tenders may be submitted;
- (iii) The date and time after which tenders cannot be submitted;
- (iv) Particulars identifying the person from whom more detailed information on the tender may be obtained;
- (v) Such information as the CEO decides should be disclosed to those interested in submitting a tender;
- (vi) Detailed specifications of the goods and services required;
- (vii) The criteria for deciding which tender should be accepted;
- (viii) Whether or not the MRC has decided to submit an in-house tender; and
- (ix) Whether or not tenders can be submitted by facsimile or other electronic means, and if so, how tenders may so be submitted.

d. **Issuing Tender Documentation**

The issuing of tender documentation, whether by counter, mail, internet, referral or other means, to an interested potential tenderer is conditional upon the potential tenderer disclosing the name, contact person and contact details of the entity he or she owns or represents.

These details must be recorded and will be used for the purpose of any subsequent clarifications, addendums or further communication that may be required prior to the close of the tenders.

The Council reserves the right to charge a non-refundable ‘documents fee’ for large construction projects comprising voluminous specifications and design drawings.

e. **Tender Deadline**

A tender that is not received in full and/or in the required format by the advertised closing time and date shall be disqualified and will not be evaluated.

f. **Opening of Tenders**

No tenders are to be removed from the tender box, opened, read or evaluated prior to the Tender Deadline.

Tenders are to be opened in the presence of the Chief Executive Officer’s delegated nominee along with at least one other Council Officer. The details of all tenders received and opened shall be recorded in the Tenders Register.

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Tenders are to be opened in accordance with the advertised time and place. There is no obligation to disclose or record tendered prices at the tender opening, and price information should be regarded as *commercial-in-confidence* to the MRC. Members of the public are entitled to be present at opening of tenders.

The Tenderer's Offer Form, Price Schedule and other appropriate pages from each tender shall be date stamped and initialled by at least two MRC Officers present at the opening of tenders.

**g. No Tender Received**

Where the MRC has invited tenders but no compliant submissions were received, direct purchases can be arranged on the basis of the following:

- (i) A sufficient number of quotations are obtained;
- (ii) The process follows the guidelines for seeking quotations between \$40,000 and \$99,999 (listed above);
- (iii) The specification for goods and/or services remains unchanged;
- (iv) Purchasing is arranged within six (6) months of the closing date of the lapsed tender.

**h. Tender Evaluation Panel**

A minimum of four members should be selected for the panel. The members are to be selected based on their knowledge of the subject matter being considered or based on their contract experience.

Each member of the panel is to sign a declaration acknowledging their responsibility to keep the tender information confidential and noting any potential conflicts of interest that they may have.

Where a member has a significant conflict of interest, they are to be excused from the panel and replaced by another suitable member.

**i. Tender Evaluation**

Each tender that has not been disqualified shall be assessed by a tender evaluation panel. The panel must provide a written evaluation against the pre-determined criteria.

**j. Addendum to Tender**

If, after a tender has been publicly advertised, any changes, variations or adjustments to the tender document and/or the conditions of tender are required, the MRC may vary the initial information by taking reasonable steps to give each person who has sought copies of the tender documents notice of the variation.

**k. Variation of a Contract**

(1) **Minor Variation**

If after the tender has been publicly advertised and a successful tenderer has been chosen, but before the MRC and tenderer have entered into a Contract, a minor variation may be authorised by the CEO. A minor variation is deemed to be one where the scope and price does not vary by more than 10% of the original scope

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and price. Variations in price alone, i.e. without a change in scope or variation in specification, will not be authorised.

A minor variation must not alter the nature of the goods and/or services procured, nor materially alter the specification or structure provided for by the initial tender; and

(2) **Contracts Entered Into**

A contract that has been entered into may only be varied if:

- (a) the variation is necessary for the supply of the goods and service and the variation does not change the scope of the contract; or
- (b) it is a renewal or a term extension of a contract required for an emergency under 6.8(1)(c) of the Local Government Act 1995

**I. Notification of Outcome**

Each tenderer shall be notified of the outcome of the tender following Council resolution. Notification shall include:

- (i) The name of the successful tenderer;
- (ii) The total value of consideration of the tender as detailed in the Council resolution;
- (iii) The details and total value of consideration must also be entered into the Tender register at the conclusion of the tender process.

**m. Records Management**

All records associated with the tender process or a direct purchase must be recorded and retained in accordance with the minimum requirements of the State Records Act.

**6. When public tenders or quotations are NOT required**

In the following instances public tenders or quotation procedures are not required (regardless of the value of expenditure):

- a. An emergency situation as defined by the Local Government Act 1995;
- b. The purchase is under a contract of WALGA (Preferred Supplier Arrangements **or E-Quotes**), Department of Treasury and Finance (permitted Common Use Arrangements), Regional Council, or another Local Government;
  - (i) Notwithstanding the above, where there are multiple WALGA Preferred Suppliers and the contract value is in excess of \$39,999, the requirements of 4. above are to be complied with;
- c. The purchase is under auction which has been authorised by Council;
- d. The contract is for petrol, oil, or other liquid or gas used for internal combustion engines;
- e. Any of the other exclusions applicable under Regulation 11 of the Functions and General Regulations.

**7. Recording Quotations**

All quotations, whether verbal or written, must be recorded in compliance with the Record Keeping Act.

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**8. Local supplier**

If a local supplier is invited to quote and provides a quotation which, on evaluation, is either equal or better than a non-local supplier, then preference must be given to that local supplier.

<b>Legislation</b>	1. Local Government Act 1995 s.3.57. 1. Local Government (Functions & General) Regulations 1996 – Part 4
<b>Responsible Officer</b>	Chief Executive Officer
<b>Council Meeting Date</b>	20/08/2015
<b>Review History</b>	28/02/2008; 05/09/2013; 04/09/2014, 20/08/2015
<b>Next Review Date</b>	31/08/2016
<b>Revision History</b>	04/09/2014 – Part 5 to include “h”. Part 6b reworded to clarify use of WALGA preferred suppliers.
<b>Delegation to the Chief Executive Officer</b>	Yes

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**11 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

Nil

**12 URGENT BUSINESS**

Nil

**13 QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN**

Nil

**14 MATTERS FOR WHICH THE MEETING MAY BE CLOSED TO THE PUBLIC**

The Chairperson requested that in accordance with clause 7.9(3) of the Mindarie Regional Council Standing Orders Local Law 2010 and s5.23 of the Local Government Act 1995, Council proceed to meet “behind closed doors” to allow the Council to consider Item 14.1 as the report was of a confidential nature.

**Cr Proud moved, Cr Boothman seconded**

*CARRIED UNANIMOUSLY (11/0)*

*No visitors in attendance. Member Council Officers and Mindarie Regional Council Officers were invited to stay for Confidential Item 14.1. Doors were closed at 6.00pm.*

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<b>14.1</b>	<b>TENDER ASSESSMENT – PICK UP AND DROP OFF OF GREEN WASTE TO BE RECYCLED – 13/129</b>
<b>File No:</b>	<b>WST/28-02</b>
<b>Appendix(s):</b>	<b>Nil</b>
<b>Date:</b>	<b>19 October 2015</b>
<b>Responsible Officer:</b>	<b>CHIEF EXECUTIVE OFFICER</b>

#### **RESPONSIBLE OFFICER RECOMMENDATION**

**That the Council:**

- 1. Award the Tender for the collection of raw green waste from Tamala Park and Wangara Recycling Centre and processing it into a compost complying with Australian Standard AS 4454 (2012) Compost, Soil Conditioners and Mulches to Western Tree Recyclers for a period of five (5) years with two (2) by one (1) year options.**
- 2. Award the Tender for the collection of processed raw green waste from Tamala Park and Wangara Recycling Centre and further processing it into a compost complying with Australian Standard AS 4454 (2012) Compost, Soil Conditioners and Mulches to Western Tree Recyclers for a period of five (5) years with two (2) by one (1) year options.**
- 3. Award the Tender for the raw green waste being dropped off by the Principal or its agents at a facility nominated by the Contractor for processing into a compost complying with Australian Standard AS 4454 (2012) Compost, Soil Conditioners and Mulches to the joint venture between Community Green Waste Recycling and Soils Aint Soils for a period of five (5) years with two (2) by one (1) year options.**

#### **RESOLVED**

**Cr Proud moved, Cr MacRae seconded  
That the Recommendation be adopted.**

*CARRIED UNANIMOUSLY (11/0)*

NOTE: The Chief Executive Officer has NOT released Report 14.1 for Public information as Councils decision may result in a contract being entered into.

The Chairperson sought that the meeting be reopened.

**Cr Fishwick moved, Cr Boothman seconded**

*CARRIED UNANIMOUSLY (11/0)*

*The meeting was reopened at 6.06pm.*

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No members of the public entered the meeting after it was reopened. The resolution and the votes, made behind closed doors, of the Council Item 14.1 as detailed above was taken as being read.

**15 NEXT MEETING**

*Next meeting to be held on Thursday 3 December 2015 in the Council Chambers at the Town of Victoria Park commencing at 5.30pm.*

**16 CLOSURE**

*The Chairperson closed the meeting at 6.08pm.*

*These Minutes were confirmed by the Council as a true and accurate record of the Ordinary Meeting of the Council held on 5 November 2015.*

*Signed .....Chairperson*

*Dated this ..... day of .....2015*

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