



MINUTES

SPECIAL COUNCIL MEETING

TIME: 8.30 PM

19 AUGUST 2021

CITY OF STIRLING

*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 Chair declared the meeting open at 8.40 pm.

The Chair welcomed Mr David Hugo of Herbert Smith Freehills and Cr Thornton for City of Stirling.

2 ATTENDANCE/APOLOGIES

Councillor Attendance

Cr K Vernon (Chair)	Town of Victoria Park
Cr F Cvitan, JP (Deputy Chair)	City of Wanneroo
Cr A Jacob, JP	City of Joondalup
Cr R Fishwick, JP	City of Joondalup
Cr R Gordon	City of Perth
Cr J Ferrante	City of Stirling
Cr S Proud, JP	City of Stirling
Cr K Sargent	City of Stirling
Cr L Thornton	City of Stirling
Cr A Castle	City of Vincent
Cr D Newton, JP	City of Wanneroo
Cr K Shannon	Town of Cambridge

Apologies

Nil

Leave of Absence

Nil

Absent

Nil

MRC Officers

Mr G Hoppe (Chief Executive Officer)
Ms S Cherico (Manager Human Resources)
Ms D Toward (Executive Support)

Member Council Observers

Mr M MacPherson (City of Joondalup)
Mr Allan Mason (City of Perth)
Mr M Littleton (City of Stirling)
Mr R Bryant (City of Stirling)
Mr A Murphy (City of Vincent)
Ms Y Plimbley (City of Vincent)
Mr D Simms (City of Wanneroo)
Mr H Singh (City of Wanneroo)
Mr S Cairns (City of Wanneroo)
Mr K Hincks (Town of Cambridge)
Mr J Wong (Town of Victoria Park)

MRC Observers

Mr B Twine
Mr A Griffiths

Visitors

Mr David Hugo – Herbert Smith Freehills

3	DECLARATION OF INTERESTS
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Nil

4	PUBLIC QUESTION TIME
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Nil

5	ANNOUNCEMENTS BY THE PRESIDING PERSON
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Nil

In accordance with clause 10.1(h) of the Mindarie Regional Council Meeting Procedures Local Law 2020 and s5.23 of the Local Government Act 1995, the Chair requested the Council to meet “behind closed doors” to allow the Council to consider item 6.1 as the item is of a confidential nature.

The Chair invited MRC Officers, Member Council CEOs and Officers seated in the public gallery to remain in the gallery.

There were no members of the public present.

The MRC CEO, the Manager of Human Resources, the Governance Officer and Mr Hugo remained in the Council Chambers.

Moved Cr Vernon, seconded Cr Proud
To close the meeting to the public
(CARRIED UNANIMOUSLY 12/0)

Doors closed at 8.42pm

6 MATTERS FOR WHICH THE MEETING MAY BE CLOSED TO THE PUBLIC
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This report is Confidential and dealt with in a confidential session, under Section 5.23 (2) (c) of the <i>Local Government Act 1995</i> as the report deals with a matter where a contract is entered into, and where a contract may be entered into.

6.1 MRC MAJOR LAND TRANSACTION

File No:	GF-20-0001335
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Attachment(s):	1. MRC Final Letter 2. Letter of acceptance 3. Final draft Settlement Deed 4. Final draft Operating Agreement 5. Final draft ECMS Plan 6. Communication Plan
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Date:	17 August 2021
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Responsible Officer:	Chief Executive Officer
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RESPONSIBLE OFFICER RECOMMENDATION

That Council:

1. Authorises the Chief Executive Officer and the Chair to execute the Final Draft Deed of Settlement at Appendix 3, subject to:
 - a. any minor drafting changes that may be required, after consultation with the MRC's legal advisors, AND
 - b. confirmation of the final settlement amount on 31 August 2021, AND
 - c. the conditions precedent in the deed being met, and
2. Concurrent with the execution of point 1. above, authorises the Chief Executive Officer to proceed with the Major Land Transaction in respect of the re-acquisition of a leasehold interest in the land at 109 (Lot 801) Pederick Road, Neerabup, and
3. Subject to execution of point 1. above, authorises the Chief Executive Officer and the Chair to execute the Final Draft Operating Agreement at Appendix 4, subject to any minor drafting changes that may be required, after consultation with the MRC's legal advisors, with the costs reflected in the ECMS Plan at Appendix 5, being funded in the mid-year budget review, and
4. Subject to successful completion of the settlement transaction, approves the reduction in the MRC Members' Gate Fee from \$213 per tonne to \$162.50 per tonne (both excluding GST), effective from 1 September 2021, with the change to be reflected in the mid-year budget review.

Moved Cr Vernon, Seconded Cr Ferrante

The Chair invited the Chief Executive Officer, Mr Gunther Hoppe, to give a presentation on behalf of the Administration, Mr Hoppe gave a presentation to the Council.

**AMENDMENT TO PARTS 1 AND 3 OF THE OFFICER RECOMMENDATION.
PARTS 1 AND 3 PUT SEPARATELY**

Moved Cr Jacob, seconded Cr Fishwick

That Council:

1. ***Authorises the Chief Executive Officer and the Chair to execute the Final Draft Deed of Settlement at Appendix 3, subject to:***
 - a. ***minor drafting changes that may be required, after consultation with the MRC's legal advisors, and***
 - b. ***the conditions precedent in the deed being met, and***
 - c. ***inclusion of a new clause including associated drafting in the Deed of Settlement with the intent to specifically address the Contractor's release in respect of the local government parties, ensuring that on completion, the Contractor:***
 - i) ***releases and discharges the Local Government Parties from any claim, action, demand, suit or proceeding for damages, debt, restitution, equitable compensation, account, injunction, specific performance or any other remedy that Contractor has or may have against the Local Government Parties under or in in respect of the Deed of Guarantee or its termination in accordance with this document, whether arising at common law, in equity, or under statute or otherwise (the Local Government Released Matters); and***
 - ii) ***covenants with the Local Government Parties not to claim, sue or take any action against the Local Government Parties in respect of the Local Government Released Matters, and***

(CARRIED BY AN ABSOLUTE MAJORITY 8/4)

For: Crs Castle, Cvitan, Fishwick, Gordon, Newton, Jacob, Shannon, Vernon

Against: Crs Ferrante, Proud, Sargent, Thornton

3. ***Subject to execution of point 1. above, authorises the Chief Executive Officer and the Chair to execute the Final Draft Operating Agreement at Appendix 4, subject to:***
 - a. ***minor drafting changes that may be required, after consultation with the MRC's legal advisors;***
 - b. ***costs to undertake the works as reflected in the ECMS Plan at Appendix 5 be reduced by the value equal to the amount already paid for by the MRC through the RRF gate fee for the processing and disposal of the waste delivered to the RRF up to settlement date which has not yet been fully processed and/or disposed of;***
 - c. ***funded in the mid-year budget review, and***

(LOST 3/9)

For: Crs Fishwick, Jacob, Shannon

Against: Crs Castle, Cvitan, Ferrante, Gordon, Newton, Proud, Sargent, Thornton, Vernon

OFFICERS RECOMMENDATION AS AMENDED:

That Council:

1. **Authorises the Chief Executive Officer and the Chair to execute the Final Draft Deed of Settlement at Appendix 3, subject to:**
 - a. *minor drafting changes that may be required, after consultation with the MRC's legal advisors, and*
 - b. *conditions precedent in the deed being met, and*
 - c. *Inclusion of a new clause including associated drafting in the Deed of Settlement with the intent to specifically address the Contractor's release in respect of the local government parties, ensuring that on completion, the Contractor:*
 - i) *releases and discharges the Local Government Parties from any claim, action, demand, suit or proceeding for damages, debt, restitution, equitable compensation, account, injunction, specific performance or any other remedy that Contractor has or may have against the Local Government Parties under or in in respect of the Deed of Guarantee or its termination in accordance with this document, whether arising at common law, in equity, or under statute or otherwise (the Local Government Released Matters); and*
 - ii) *covenants with the Local Government Parties not to claim, sue or take any action against the Local Government Parties in respect of the Local Government Released Matters, and*
2. **Concurrent with the execution of point 1. above, authorises the Chief Executive Officer to proceed with the Major Land Transaction in respect of the re-acquisition of a leasehold interest in the land at 109 (Lot 801) Pederick Road, Neerabup, and**
3. **Subject to execution of point 1. above, authorises the Chief Executive Officer and the Chair to execute the Final Draft Operating Agreement at Appendix 4, subject to any minor drafting changes that may be required, after consultation with the MRC's legal advisors, with the costs reflected in the ECMS Plan at Appendix 5, being funded in the mid-year budget review, and**
4. **Subject to successful completion of the settlement transaction, approves the reduction in the MRC Members' Gate Fee from \$213 per tonne to \$162.50 per tonne (both excluding GST), effective from 1 September 2021, with the change to be reflected in the mid-year budget review.**

(CARRIED BY AN ABSOLUTE MAJORITY 10/2)

For: Crs Castle, Cvitan, Ferrante, Fishwick, Gordon, Newton, Proud, Sargent, Thornton, Vernon
Against: Crs Jacob, Shannon

Moved Cr Vernon, seconded Cr Proud

To re-open the meeting to the public
(CARRIED UNANIMOUSLY 12/0)

Doors re-opened at 10.02 pm, the Chair declared the meeting reopened.

No one entered the gallery and there were no members of the public present.

The Chair noted the resolutions passed behind closed doors.

7 NEXT MEETING

The next Ordinary Council meeting to be held on Thursday 16 September 2021 in the Council Chambers at the City of Vincent commencing at 6.30 pm.

8 CLOSURE

The Chair closed the meeting at 10.03 pm and thanked the City of Stirling for their hospitality and use of their meeting facilities.

Signed.....*Almon*.....Chair

Dated*16TH*.....day of*SEPTEMBER*.....2021
