



# AGENDA

ORDINARY COUNCIL MEETING

TIME: 6.30 PM

25 MARCH 2021

CITY OF WANNEROO

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*Constituent Members: Cities of Perth, Joondalup, Stirling, Vincent and Wanneroo  
Towns of Cambridge and Victoria Park*



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**MINDARIE REGIONAL COUNCIL  
NOTICE OF MEETING**

**12 MARCH 2021**

**Councillors of the Mindarie Regional Council are advised that an Ordinary Meeting of the Council will be held at the City of Joondalup at 6.30 pm on 25 March 2021.**

**The agenda pertaining to the meeting follows.**

**Your attendance is respectfully requested.**



**GUNTHER HOPPE  
CHIEF EXECUTIVE OFFICER**

**MINDARIE REGIONAL COUNCIL - MEMBERSHIP**

|   |                              |
|---|------------------------------|
| <b>Cr D Boothman, JP (David) - Chair</b>  | <b>City of Stirling</b>      |
| <b>Cr K Vernon (Karen) - Deputy Chair</b> | <b>Town of Victoria Park</b> |
| <b>Cr R Fishwick, JP (Russ)</b>           | <b>City of Joondalup</b>     |
| <b>Cr A Jacob, JP (Albert)</b>            | <b>City of Joondalup</b>     |
| <b>Cr R Gordon (Rebecca)</b>              | <b>City of Perth</b>         |
| <b>Cr J Ferrante (Joe)</b>                | <b>City of Stirling</b>      |
| <b>Cr K Sargent (Keith)</b>               | <b>City of Stirling</b>      |
| <b>Cr S Proud, JP (Stephanie)</b>         | <b>City of Stirling</b>      |
| <b>Cr E Cole (Emma)</b>                   | <b>City of Vincent</b>       |
| <b>Cr D Newton, JP (Dot)</b>              | <b>City of Wanneroo</b>      |
| <b>Cr F Cvitan, JP (Frank)</b>            | <b>City of Wanneroo</b>      |
| <b>Cr K Shannon (Keri)</b>                | <b>Town of Cambridge</b>     |

**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**

**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**

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| <b>8 CONFIRMATION OF MINUTES OF PREVIOUS MEETING</b> |
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**8.1 ORDINARY COUNCIL MEETING – 28 January 2021**

The Minutes of the Ordinary Council Meeting held on 28 January 2021 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 28 January 2021 be confirmed as a true record of the proceedings.**

**8.1 SPECIAL COUNCIL MEETING – 04 March 2021**

The Minutes of the Special Council Meeting held on 04 March 2021 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 04 March 2021 be confirmed as a true record of the proceedings.**

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**9.1 CHIEF EXECUTIVE OFFICER REPORTS**

|                             |   |
|-----------------------------|---|
| <b>9.1</b>                  | <b>FINANCIAL STATEMENTS FOR THE MONTHS ENDED<br/>31 DECEMBER 2020 AND 31 JANUARY 2021</b> |
| <b>File No:</b>             | <b>GF-21-00000008</b>   |
| <b>Appendix(s):</b>         | <b>Appendix No. 1<br/>Appendix No. 2<br/>Appendix No. 3</b>                               |
| <b>Date:</b>                | <b>9 March 2021</b>   |
| <b>Responsible Officer:</b> | <b>DIRECTOR CORPORATE SERVICES</b>  |

**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 for the months ended 31 December 2020 and 31 January 2021 are attached at **Appendix No. 1 and 2** to this Item. The Tonnage Report for the 7 months to 31 January 2021 is attached at **Appendix No. 3**.

The financial statements are pending external auditor approval of the 2019/2020 final accounts.

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.

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.

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Summary of results for the year to date period ended 31 January 2021

|                          | <b>Actual</b>      | <b>Budget</b>      | <b>Variance</b>  |
|--------------------------|--------------------|--------------------|------------------|
|                          | <b>t</b>           | <b>t</b>           | <b>t</b>         |
| Tonnes – Members         | 143,437            | 144,902            | (1,465)          |
| Tonnes – Others          | 9,767              | 7,577              | 2,190            |
| <b>TOTAL TONNES</b>      | <b>153,204</b>     | <b>152,479</b>     | <b>725</b>       |
|                          | <b>\$</b>          | <b>\$</b>          | <b>\$</b>        |
| Revenue – Members        | 29,440,586         | 29,704,947         | (264,361)        |
| Revenue – Other          | 2,725,054          | 2,326,187          | 398,867          |
| <b>TOTAL REVENUE</b>     | <b>32,165,640</b>  | <b>32,031,134</b>  | <b>134,506</b>   |
| Expenses                 | 32,234,214         | 33,089,545         | (1,144,670)      |
| Profit on sale of assets | 56,441             | -                  | 56,441           |
| Loss on sale of assets   | -                  | (7,963)            | 7,963            |
| Impairment of assets     | -                  | -                  | -                |
| <b>NET DEFICIT</b>       | <b>(2,012,134)</b> | <b>(1,066,374)</b> | <b>(945,760)</b> |

Commentary

Overall tonnages for the financial period ended 31 January 2021 were 725 tonnes more than budgeted, member councils bringing in more processable waste and less non processable waste than anticipated.

The net deficit result variance against budget of \$945,760 is mainly attributable to RRF expenditures, which is 3,546 tonnes ahead of budget, abated marginally by unbudgeted income received.

RRF

The Resource Recovery Facility residue tonnes have delivered 34,041 tonnes in total to Tamala Park year to date.

Trade & Casuals

The Casual and Trade tonnages are 2,190 tonnes higher than forecast for the financial year to date, 951 tonnes attributable to the discounted rate waste tender.

**VOTING REQUIREMENT**

Simple Majority

**RESPONSIBLE OFFICER RECOMMENDATION**

**That Council:**

**Receive the Financial Statements set out in Appendix No. 1 and Appendix No. 2 for the months ended 31 December 2020 and 31 January 2021.**

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|                             |  |
|-----------------------------|--|
| <b>9.2</b>                  | <b>LIST OF PAYMENTS MADE FOR THE MONTHS ENDED<br/>DECEMBER 2020 AND JANUARY 2021</b> |
| <b>File No:</b>             | <b>GF-21-00000008</b>  |
| <b>Appendix(s):</b>         | <b>Appendix No. 4 and 5</b>  |
| <b>Date:</b>                | <b>9 March 2021</b>  |
| <b>Responsible Officer:</b> | <b>Director Corporate Services</b>   |

### 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 month ended 31 December 2020 and 31 January 2021 are at **Appendix 4 and 5** to this Item and is presented to Council for noting. Payments have been made in accordance with the delegated authority to the CEO which allows payments to be made between meetings. At the Ordinary Council Meeting held on 24 September 2020, 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 the 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.

| <b>Months Ended</b> | <b>Account</b>    | <b>Vouchers</b>         | <b>Amount</b>         |
|---------------------|-------------------|-------------------------|-----------------------|
| 31 December 2020    | General Municipal | Cheques                 | \$14,168.12           |
|                     |                   | EFT                     | \$3,671,802.79        |
|                     |                   | DP                      | \$146,170.70          |
|                     |                   | Inter account transfers | \$0.00                |
|                     |                   | <b>Total</b>            | <b>\$3,832,141.61</b> |
| 31 January 2021     | General Municipal | Cheques                 | \$440.00              |
|                     |                   | EFT                     | \$6,356,847.85        |
|                     |                   | DP                      | \$152,369.69          |
|                     |                   | Inter account transfers | \$0.00                |
|                     |                   | <b>Total</b>            | <b>\$6,509,657.54</b> |

### VOTING REQUIREMENT

Simple Majority

### RESPONSIBLE OFFICER RECOMMENDATION

**That Council:**

**Note the list of payments made under delegated authority to the Chief Executive Officer, for the months ended 31 December 2020 and 31 January 2021.**

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|                             |   |
|-----------------------------|---|
| <b>9.3</b>                  | <b>ADOPTION OF THE 2020 ANNUAL REPORT</b> |
| <b>File No:</b>             | <b>GF-20-000119</b>                       |
| <b>Appendix(s):</b>         | <b>Appendix No. 6</b>                     |
| <b>Date:</b>                | <b>2 March 2021</b>                       |
| <b>Responsible Officer:</b> | <b>DIRECTOR CORPORATE SERVICES</b>        |

### **BACKGROUND**

The Mindarie Regional Council (MRC) is required to prepare an annual report in accordance with Section 5.53 of the Local Government Act 1995.

The annual audit of the Financial Statements for the financial year ended 30 June 2020 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. If the auditor's report is not available in time for the annual report for a financial year to be accepted by 31 December after that financial year, the annual report is to be accepted by the local government no later than 2 months after the auditor's report becomes available.

### **DETAIL**

The Annual Report includes the audited Financial Report for the financial year. 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. Under S7.9 of the Local Government Act 1995, the auditor must prepare and sign a report on the financial audit and present the report to the Chairperson, the CEO and the Minister.

The Auditor has completed the financial audit of the MRC and has issued an unqualified audit opinion in respect of the year ended 30 June 2020.

In addition, the Auditor has prepared an interim management letter and an audit completion letter which outline their observations in relation to the MRC's internal controls. These observations have been tabled with the Audit Committee for discussion.

The Audit Committee met on 25 February 2021 to consider the Financial Statements for the year ended 30 June 2020 and have recommended that these be adopted by the Council. The unconfirmed minutes of this meeting are included in the Members' Information Bulletin.

A copy of the Annual Report, including the Financial Statements, is included at **Appendix 6**.

The MRC, 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

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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.

### **STATUTORY ENVIRONMENT**

Relevant Extracts from the Local Government Act 1995

#### *“5.53. Annual reports*

- (1) The local government is to prepare an annual report for each financial year.*
- (2) The annual report is to contain —*
  - (a) a report from the mayor or president; and*
  - (b) a report from the CEO; and*
  - [(c), (d) deleted]*
  - (e) an overview of the plan for the future of the district made in accordance with section 5.56, including major initiatives that are proposed to commence or to continue in the next financial year; and*
  - (f) the financial report for the financial year; and*
  - (g) such information as may be prescribed in relation to the payments made to employees; and*
  - (h) the auditor’s report prepared under section 7.9(1) or s7.12AD(1) for the financial year; and*
  - (ha) a matter on which a report must be made under section 29(2) of the Disability Services Act 1993; and*
  - (hb) details of entries made under section 5.121 during the financial year in the register of complaints, including —*
    - (i) the number of complaints recorded in the register of complaints; and*
    - (ii) how the recorded complaints were dealt with; and*
    - (iii) any other details that the regulations may require;**and*
    - (i) such other information as may be prescribed.*

*[Section 5.53 amended by No. 44 of 1999 s. 28(3); No. 49 of 2004 s. 42(4) and (5); No. 1 of 2007 s. 6.]*

#### *5.54. Acceptance of annual reports*

- (1) Subject to subsection (2), the annual report for a financial year is to be accepted\* by the local government no later than 31 December after that financial year.*

*\* Absolute majority required.*
- (2) If the auditor’s report is not available in time for the annual report for a financial year to be accepted by 31 December after that financial year, the annual report is to be accepted by the local government no later than 2 months after the auditor’s report becomes available.*

#### *5.55. Notice of annual reports*

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*The CEO is to give local public notice of the availability of the annual report as soon as practicable after the report has been accepted by the local government.*

5.55A *Publication of annual reports*

*The CEO is to publish the annual report on the local government's official website within 14 days after the report has been accepted by the local government.*

7.9. *Audit to be conducted*

- (1) *An auditor is required to examine the accounts and annual financial report submitted for audit and, by the 31 December next following the financial year to which the accounts and report relate or such later date as may be prescribed, to prepare a report thereon and forward a copy of that report to —*
- (a) *the mayor or president; and*
  - (b) *the CEO of the local government; and*
  - (c) *the Minister.”*

Relevant Extracts from the Local Government (Audit) Regulations 1996

“10. *Report by auditor*

- (1) *An auditor's report is to be forwarded to the persons specified in section 7.9(1) within 30 days of completing the audit.*
- (2) *The report is to give the auditor's opinion on —*
- (a) *the financial position of the local government; and*
  - (b) *the results of the operations of the local government.*
- (3) *The report is to include —*
- (a) *any material matters that in the opinion of the auditor indicate significant adverse trends in the financial position or the financial management practices of the local government; and*
  - (b) *any matters indicating non-compliance with Part 6 of the Act, the Local Government (Financial Management) Regulations 1996 or applicable financial controls in any other written law; and*
  - (c) *details of whether information and explanations were obtained by the auditor; and*
  - (d) *a report on the conduct of the audit; and*
  - (e) *the opinion of the auditor as to whether or not the following financial ratios included in the annual financial report are supported by verifiable information and reasonable assumptions —*
    - (i) *the asset consumption ratio; and*
    - (ii) *the asset renewal funding ratio.*
- (4A) *In sub regulation (3)(e) —*
- asset consumption ratio** *has the meaning given in the Local Government (Financial Management) Regulations 1996 regulation 50(2);*
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*asset renewal funding ratio* has the meaning given in the Local Government (Financial Management) Regulations 1996 regulation 50(2).

- (4) *Where it is considered by the auditor to be appropriate to do so, the auditor is to prepare a management report to accompany the auditor's report and to forward a copy of the management report to the persons specified in section 7.9(1) with the auditor's report."*

#### **POLICY IMPLICATIONS**

Not applicable.

#### **FINANCIAL IMPLICATIONS**

The MRC has a deficit from operations of \$2.3 million for the 2019/20 financial year, which will reduce retained earnings.

#### **COMMENT**

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

#### **AMENDMENTS**

There have been no amendments made to the Financial Statements presented to the Audit Committee.

#### **VOTING REQUIREMENT**

Absolute Majority

#### **RESPONSIBLE OFFICER RECOMMENDATION**

That the Council:

1. **notes the recommendation of the Audit Committee meeting held on 25 February 2021 to adopt the Financial Report for the year ended 30 June 2020;**
2. **adopts the Annual Report for the year ended 30 June 2020, which includes the Financial Report detailed in 1. above.**

***(Absolute Majority Required)***

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|-----------------------------|--|
| <b>9.4</b>                  | <b>LEASE AT TAMALA PARK – MARKET RENT REVIEW</b> |
| <b>File No:</b>             | <b>GF-20-0000170</b>                             |
| <b>Appendix(s):</b>         | <b>Appendix 7</b>                                |
| <b>Date:</b>                | <b>15 February 2021</b>                          |
| <b>Responsible Officer:</b> | <b>DIRECTOR CORPORATE SERVICES</b>               |

## SUMMARY

The purpose of this report is to brief the Council on the findings of the Market Rent Review on the Tamala Park lease, conducted by Landgate in line with the terms of the Lease Agreement between Mindarie Regional Council and the seven participating Member Councils.

## BACKGROUND

The land on which the Tamala Park Landfill Facility resides, is owned by the seven participating member Councils namely; Cities of Joondalup, Perth, Stirling, Wanneroo and Vincent and Towns of Cambridge and Victoria Park. The land was leased to Mindarie Regional Council (MRC) for an initial term from 1 July 1990 to 30 June 2011 with an option for extension of the term to 30 June 2032.

The option to extend the lease was exercised and the lease was extended by a Deed of Variation dated 25 September 2006, from 1 January 2006 to 30 June 2032.

Under this Deed of Variation, a Market Rent Review need to be conducted every five years with the first review to be conducted on 1 January 2011.

Landgate was appointed in November 2020 to conduct a market review of the leased area and the findings can be found in the report at **Appendix 7**.

## DETAIL

The Report has placed an annual Market Rental Value of \$816,000 on the lease of the land for the Tamala Park Landfill Facility. The lease rental, in accordance with the Deed of Variation, will be adjusted from 1 January 2021.

### *Financial Implications.*

The Financial impact of the increase in rental of the land for the Tamala Park Facility, in line with this Market Rent Review, relating to the period 1 January 2021 to 30 June 2021 is summarised below:

|   |                           |
|---|---------------------------|
| Finance Interest Charges (1 January 2021 to 30 June 2021) | \$995.20                  |
| Depreciation Charges (1 January 2021 to June 2021)        | <u>\$44,542.57</u>        |
|   | <u><b>\$45,537.77</b></u> |

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## **CONSULTATION**

Consultation was carried out with the following:

- Landgate

## **STATUTORY ENVIRONMENT**

Nil

## **POLICY IMPLICATIONS**

Nil

## **FINANCIAL IMPLICATIONS**

The shortfall in funding of approximately \$45,538 arising from the revision of the lease rental as a result of the Market Rental Review was reflected in the mid-year review.

## **STRATEGIC IMPLICATIONS**

Nil

## **VOTING REQUIREMENT**

Simple Majority

## **RESPONSIBLE OFFICER RECOMMENDATION**

**That Council:**

- 1. Receive the Landgate Report, pertaining to the Market Value Review in respect of the land leased to the Tamala Park Landfill Facility.**
  - 2. Approve the adoption of the revised Lease Rental, as recommended in the Landgate Report, effective from 1 January 2021, in accordance with the Deed of Variation for the lease dated 25 September 2006.**
-

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|                             |  |
|-----------------------------|--|
| <b>9.5</b>                  | <b>ADOPTION OF 2020 ANNUAL COMPLIANCE RETURN</b> |
| <b>File No:</b>             | <b>GF-20-1460</b>                                |
| <b>Appendix(s):</b>         | <b>Appendix 8</b>                                |
| <b>Date:</b>                | <b>19 February 2021</b>                          |
| <b>Responsible Officer:</b> | <b>Chief Executive Officer</b>                   |

### **SUMMARY**

The purpose of this report is to provide Council with information on the completed Compliance Audit Return (1 January 2020 – 31 December 2020).

### **BACKGROUND**

The 2020 Local Government Compliance Audit Return (CAR) covers the calendar year from 1 January to 31 December 2020.

The 2020 Compliance Audit Return is mandatory pursuant to the *Local Government (Audit) Regulations 1996* which requires all local governments to complete a Compliance Audit Return annually.

Local governments not only have to explain or qualify cases of non-compliance, but also provide details of any remedial action taken or proposed to be taken in regard to instances of non-compliance. The Administration has completed the Return.

The Return was placed on the agenda for the Audit Committee meeting on 25 February 2021 for consideration. The Return should be lodged with the Department of Local Government before 31<sup>st</sup> March, 2021.

### **DETAIL**

The Compliance Audit covers a range of matters that require specific actions to be completed by Local Government authorities in performing their functions.

The Compliance Audit Return requires the responsible officer to indicate against each item whether the required action is relevant to Mindarie Regional Council (MRC) and if it has been completed by either answering;

- (a) Yes; or
- (b) No; or
- (c) N/A – Not applicable

Local Governments are required to provide feedback or comments on areas of non-compliance. This assists the Department of Local Government to have a better understanding of any problems or issues relating to a Local Government's inability to achieve full compliance in a particular area.

The following table summarises the MRC's performance in each of the relevant categories and a comparison with the 2019 Return is also provided.

The Compliance Audit Return for calendar year 2020 is at **Appendix 8**.

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**Table of CAR Comparison & Compliance**

| Category                                    | 2020 Audit Questions | Compliant   | 2019 Audit Questions | Compliant   |
|---|----------------------|-------------|----------------------|-------------|
| Commercial Enterprises by Local Governments | 5                    | 100%        | 5                    | 100%        |
| Delegation of Power / Duty                  | 13                   | 100%        | 13                   | 100%        |
| Disclosure of Interest                      | 21                   | 100%        | 19                   | 100%        |
| Disposal of Property                        | 2                    | 100%        | 2                    | 100%        |
| Finance                                     | 11                   | 100%        | 14                   | 100%        |
| Integrated Planning and Reporting           | 3                    | 100%        | 7                    | 100%        |
| Local Government Employees                  | 6                    | 100%        | 5                    | 100%        |
| Official Conduct                            | 4                    | 100%        | 6                    | 100%        |
| Optional Questions                          | 10                   | 100%        | 4                    | 100%        |
| Tenders for Providing Goods and Services    | 24                   | 100%        | 27                   | 100%        |
| <b>TOTAL</b>                                | <b>99</b>            | <b>100%</b> | <b>102</b>           | <b>100%</b> |

The Local Government is to submit the Compliance Audit Return to its Audit Committee for consideration so that it has the opportunity to examine the Return and report to council the results of that review.

A joint certification is also required to be completed by the Chairperson and Chief Executive Officer to the effect that the information contained in the Return is true and correct to the best of their knowledge. Several other requirements must be met in the Return process and these include: -

- The particulars of all matters of concern raised by Council should be recorded in the minutes of the meeting and a copy of the relevant page(s) attached to the Compliance Audit Return as an appendix; and
- The completed Compliance Audit Return and appendices should be forwarded to the Director General of the Department of Local Government by 31 March 2021.

The Section dealing with the Joint Certification by the Chairperson and Chief Executive Officer requires inter alia that:

- each Councillor has had the opportunity to review the return and to make comment to the Council;
- particulars of any matters of concern relating to the return have been recorded in the minutes of the meeting; and
- a true and correct copy of the relevant sections of the minutes covering Council's consideration of the return must be attached to it.

The Audit Committee, at its meeting on 25 February 2021, considered the Return and resolved the following:

*“That the Audit Committee recommends that Council endorse the Compliance Audit Return for the 2020 calendar year, as presented.*

## **CONSULTATION**

Nil

## **STATUTORY ENVIRONMENT**

Regional Councils are required to carry out a Return in accordance with the Local Government (Audit) Regulations 1996. The requirements set for the Return are contained in s.14 and 15 of the Regulations, which read as follows:

### ***“14. Compliance audits by local governments***

- (1) A local government is to carry out a compliance audit for the period 1 January to 31 December in each year.*
- (2) After carrying out a compliance audit the local government is to prepare a compliance audit return in a form approved by the Minister.*
- (3A) The local government’s audit committee is to review the compliance audit return and is to report to the council the results of that review.*
- (3) After the audit committee has reported to the council under sub regulation (3A), the compliance audit return is to be —*
  - (a) presented to the council at a meeting of the council; and*
  - (b) adopted by the council; and*
  - (c) recorded in the minutes of the meeting at which it is adopted.*

### ***15. Certified copy of compliance audit return and other documents to be given to Departmental CEO***

- (1) After the compliance audit return has been presented to the council in accordance with regulation 14(3) a certified copy of the return together with —*
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- (a) *a copy of the relevant section of the minutes referred to in regulation 14(3)(c); and*
  - (b) *any additional information explaining or qualifying the compliance audit,*
- is to be submitted to the Departmental CEO by 31 March next following the period to which the return relates.*
- (2) *In this regulation —*
- certified*** *in relation to a compliance audit return means signed by —*
- (a) *the mayor or president; and*
  - (b) *the CEO.*

#### **POLICY IMPLICATIONS**

Nil

#### **FINANCIAL IMPLICATIONS**

Nil

#### **STRATEGIC IMPLICATIONS**

Nil

#### **COMMENT**

In order to comply with Regulations 14 and 15 of the *Local Government (Audit) Regulations 1996* it is necessary for the MRC to complete the Local Government Compliance Audit Return in the form approved by the Minister.

The results contained in the Compliance Audit Return required by the Department of Local Government for the period 1 January to 31 December 2020 indicates that the Council is continuing to operate within the Local Government Legislative requirements.

The Audit Committee, at its meeting held on 25 February 2021, recommended that the Council adopts the Compliance Audit Return.

It is recommended that the Return be adopted by the Council and that the component comprising the form approved by the Minister be certified by the Chairperson and Chief Executive Officer and be forwarded to the Director General, Department of Local Government.

#### **VOTING REQUIREMENT**

Simple Majority

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## RESPONSIBLE OFFICER RECOMMENDATION

### That Council:

1. adopt the Local Government Compliance Audit Return in the form approved by the Minister for the period 1 January to 31 December 2020 as contained within the Appendices in accordance with the provisions of *Regulation 14(3) of the Local Government (Audit) Regulations 1996* and in line with the recommendation from the Audit Committee;
  2. authorise the Chairperson and the Chief Executive Officer to complete the Joint Certification contained in the adopted Return detailed in (1) above; and
  3. authorise the Chief Executive Officer to submit the adopted Return detailed in (1) to the Director General, Department of Local Government.
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| <b>9.6</b>                  | <b>MODEL CODE OF CONDUCT FOR COUNCIL MEMBERS,<br/>COMMITTEE MEMBERS AND CANDIDATES</b> |
| <b>File No:</b>             | <b>GF-21-0000117</b>   |
| <b>Appendix(s):</b>         | <b>Appendix 9<br/>Appendix 10</b>  |
| <b>Date:</b>                | <b>10 March 2021</b>   |
| <b>Responsible Officer:</b> | <b>Chief Executive Officer</b>   |

### **SUMMARY**

The report seeks endorsement of the Model Code of Conduct for Council Members, Committee Members and Candidates, the Code of Conduct Alleged Breach Form and the appointment of a Complaints Officer.

### **BACKGROUND**

Section 5.103 of the *Local Government Act 1995* (the Act) requires every local government to prepare and adopt a code of conduct to be observed by council members, committee members and candidates that incorporates the mandatory Model Code of Conduct (the Model Code).

The Mindarie Regional Council's (MRC) Code of Conduct Employees, Elected Members and Committee Members was prepared in 2017 and has been review annually to meet legislative changes.

### **DETAIL**

On 3 February 2021, the Local Government (Model Code of Conduct) Regulations 2021 (included at **Appendix 9**) introduced the mandatory Model Code for council members, committee members and candidates.

The purpose of the Model Code is to guide decisions, actions and behaviours. It also recognises that there is a need for a separate code of conduct for council members, committee members and candidates to clearly reflect community expectations of behaviour and ensure consistency between local governments.

Each local government was previously required to develop their own code of conduct and manage behaviour in accordance with that code. These regulations replace those individual codes by introducing a Model Code that applies to all members and candidates. It also provides for a high-level process to deal with complaints to ensure a more consistent approach between local governments and across the sector. The intent of the Model Code is to address behaviour through education rather than sanctions.

If a Council Member does not comply with any action required by the local government following a breach of the Model Code, the local government may refer the matter to the Standards Panel as an alleged contravention of a rule of conduct. The Standards Panel has the authority to make binding decisions to resolve minor breaches.

Local governments will be required to prepare and adopt the Model Code within three months of these regulations coming into effect (by 3 May 2021). In adopting the Model Code, local

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governments can include additional behaviours under Division 3 provided these are consistent with the Model Code.

As a result, the current MRC Code of Conduct Elected Members and Committee Members will be superseded by the new Model Code.

The Model Code, as drafted, provides a template for local governments to adopt the code as their own by inserting their local government name. To adopt the code, a resolution needs to be passed by an absolute majority. Once the code is adopted, it must be published on the local government's website.

Clause 11 of the Regulations requires the local governments to approve the Model Code of Conduct Alleged Breach Form (**Appendix 10**), which must then be published on the local government's website for access by complainants.

Clause 11 (3) of the Regulations requires the local governments, in writing, to authorise 1 or more persons to receive complaints and withdrawals of complaints regarding members and candidates.

Clause 12 of the Regulations outlines the process for dealing with complaints and leaves it open for local governments to determine the most appropriate and effective process for this to be undertaken. The MRC administration will be seeking assistance from the Department of Local Government in developing a process and will seek the approval of the process by Council at a later date.

## CONSULTATION

Nil

## STATUTORY ENVIRONMENT

Extract from the Local Government Act

*5.103. Model code of conduct for council members, committee members and candidates*

*(1) Regulations must prescribe a model code of conduct for council members, committee members and candidates.*

*(2) The model code of conduct must include —*

- (a) general principles to guide behaviour; and*
- (b) requirements relating to behaviour; and*
- (c) provisions specified to be rules of conduct.*

*(3) The model code of conduct may include provisions about how the following are to be dealt with —*

- (a) alleged breaches of the requirements referred to in subsection (2)(b);*
- (b) alleged breaches of the rules of conduct by committee members.*

*(4) The model code of conduct cannot include a rule of conduct if contravention of the rule would, in addition to being a minor breach under section 5.105(1)(a), also be a serious breach under section 5.105(3).*

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*(5) Regulations may amend the model code of conduct.*

*5.104. Adoption of model code of conduct*

*(1) Within 3 months after the day on which regulations prescribing the model code come into operation, a local government must prepare and adopt\* a code of conduct to be observed by council members, committee members and candidates that incorporates the model code.*

*\* Absolute majority required.*

*(2) Within 3 months after the day on which regulations amending the model code come into operation, the local government must amend\* the adopted code of conduct to incorporate the amendments made to the model code.*

*\* Absolute majority required.*

*(3) A local government may include in the adopted code of conduct requirements in addition to the requirements referred to in section 5.103(2)(b), but any additional requirements —*

*(a) can only be expressed to apply to council members or committee members; and*

*(b) are of no effect to the extent that they are inconsistent with the model code.*

*(4) A local government cannot include in the adopted code of conduct provisions in addition to the principles referred to in section 5.103(2)(a) or the rules of conduct.*

*(5) The model code is taken to be a local government's adopted code of conduct until the local government adopts a code of conduct.*

*(6) An alleged breach of a local government's adopted code of conduct by a candidate cannot be dealt with under this Division or the adopted code of conduct unless the candidate has been elected as a council member.*

*(7) The CEO must publish an up-to-date version of a local government's adopted code of conduct on the local government's official website.*

*5.105. Breaches by council members*

*(1) A council member commits a minor breach if the council member —*

*(a) contravenes a rule of conduct; or*

*(b) contravenes a local law under this Act, contravention of which the regulations specify to be a minor breach.*

*(1A) Subsection (1) extends to the contravention of a rule of conduct that occurred when the council member was a candidate.*

*(1B) Regulations cannot specify that contravention of a local law under this Act is a minor breach if contravention of the local law would, in addition to being a minor breach under subsection (1), also be a serious breach under subsection (3).*

*(2) A minor breach is a recurrent breach if it occurs after the council member has been found under this Division to have committed 2 or more other minor breaches.*

*(3) A council member who commits any offence under a written law, other than a*

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*local law made under this Act, of which it is an element that the offender is a council member or is a person of a description that specifically includes a council member commits a serious breach.*

Extract from the Local Government (Model Code of Conduct) Regulations 2021

*Clause 11. Complaint about alleged breach*

*(1) A person may make a complaint, in accordance with subclause (2), alleging a breach of a requirement set out in this Division.*

*(2) A complaint must be made —*

- (a) in writing in the form approved by the local government; and*
- (b) to a person authorised under subclause (3); and*
- (c) within 1 month after the occurrence of the alleged breach.*

*(3) The local government must, in writing, authorise 1 or more persons to receive complaints and withdrawals of complaints.*

*Clause 12. Dealing with complaint*

*(1) After considering a complaint, the local government must, unless it dismisses the complaint under clause 13 or the complaint is withdrawn under clause 14(1), make a finding as to whether the alleged breach the subject of the complaint has occurred.*

*(2) Before making a finding in relation to the complaint, the local government must give the person to whom the complaint relates a reasonable opportunity to be heard.*

*(3) A finding that the alleged breach has occurred must be based on evidence from which it may be concluded that it is more likely that the breach occurred than that it did not occur.*

*(4) If the local government makes a finding that the alleged breach has occurred, the local government may —*

- (a) take no further action; or*
- (b) prepare and implement a plan to address the behaviour of the person to whom the complaint relates.*

*(5) When preparing a plan under subclause (4)(b), the local government must consult with the person to whom the complaint relates.*

*(6) A plan under subclause (4)(b) may include a requirement for the person to whom the complaint relates to do 1 or more of the following —*

- (a) engage in mediation;*
  - (b) undertake counselling;*
  - (c) undertake training;*
  - (d) take other action the local government considers appropriate.*
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*(7) If the local government makes a finding in relation to the complaint, the local government must give the complainant, and the person to whom the complaint relates, written notice of*

*(a) its finding and the reasons for its finding; and*

*(b) if its finding is that the alleged breach has occurred — its decision under subclause (4).*

**STRATEGIC/COMMUNITY AND CORPORATE/BUSINESS PLAN IMPLICATIONS**

Nil

**FINANCIAL IMPLICATIONS**

Nil

**COMMENT**

Nil

**VOTING REQUIREMENT**

Absolute/Simple majority

**RESPONSIBLE OFFICER RECOMMENDATION**

**That Council:**

- 1. Endorse the adoption of the Local Government (Model Code of Conduct) Regulations 2021 at Schedule 1 of Appendix 1, as the Mindarie Regional Council's Model Code of Conduct for Elected Members and Committee Members.**

(Absolute majority)

- 2. Endorse the Model Code of Conduct Alleged Breach Form at Appendix 2.**

(Simple Majority)

- 3. Appoint the Mindarie Regional Council Chief Executive Officer to be the Complaints Officer to receive complaints and withdrawals of complaints.**

(Simple Majority)

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| <b>9.7</b>                  | <b>APPOINTMENT OF AN INDEPENDENT PERSON ON TO THE CEO RECRUITMENT AND PERFORMANCE REVIEW COMMITTEE</b>                |
| <b>File No:</b>             | <b>GF - 21 – 0001615</b>  |
| <b>Appendix(s)</b>          | <b>Appendix 11: Guidelines for Local Government CEO Recruitment and Selection, Performance Review and Termination</b> |
| <b>Date:</b>                | <b>23 February 2021</b>   |
| <b>Responsible Officer:</b> | <b>Chief Executive Officer</b>  |

*At the Special Council Meeting held on 4 March 2021, a procedural motion was carried to hold this item over to the Ordinary Council meeting on 25 March 2021.*

#### **SUMMARY**

The purpose of this report to seek the appointment of an Independent Person to the Mindarie Regional Council Chief Executive Officer Recruitment and Performance Review Committee.

#### **BACKGROUND**

The MRC Chief Executive Officer (CEO) Recruitment and Performance Review Committee (“the Committee”) has been established in accordance with the LG Act. This committee was established in 2017 to combine recruitment and performance into one single committee consisting of a minimum of 4 Councillors.

At the Ordinary Council Meeting on 21 November 2019, Council resolved to appoint Cr Boothman, Cr Newton, Cr Cole, Cr Cvitan and Cr Shannon onto the committee. On 20 August 2020 Council resolved to accept Cr Cole’s withdrawal and to appoint Cr Vernon.

#### **DETAIL**

On 2 February 2021 an amendment to the *Local Government (Administration) Regulation 1996* (“the regulation”) was passed. The regulation includes requirements for model standards covering the recruitment and selection, performance review and termination of employment of local government CEO’s. The accompanying guidelines the “*Guidelines for Local Government CEO Recruitment and Selection, Performance Review and Termination*” (Appendix 1) will assist local governments to meet the model standards.

The regulation requires the Committee to be made up of council members and at least one independent person.

On 18 February 2021 the Committee met electronically by Zoom to discuss the Independent Person appointment. Given the CEO recruitment process has commenced an appointment is required swiftly to comply with the regulations. The Committee nominated three (3) persons for consideration for the role as follows:

1. Dr Genevieve Armson (Leadership Consultant)
  2. Mr Phillip Draber (Current Independent Member of the MRC Audit Committee)
  3. Mr Geoff Glass (Retired CEO of the City of South Perth)
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On 19 February 2021, the MRC Administration contacted all nominees to seek acceptance of the role, their responses were as follows:

1. Dr Genevieve Armson responded by respectfully declining and wished to thank the Committee for the offer.
2. Mr Phillip Draber accepted the nomination to assist the Committee pending Council approval of appointment.
3. Mr Geoff Glass accepted the nomination to assist the Committee pending Council approval of appointment.

The Committee recommends the Council appoints one of the accepting nominees.

There is no mandated period for the Independent person, it would be appropriate for the period to be the duration of the current recruitment process. A letter of appointment will be provided to the appointed Independent Person which will include the primary functions of the committee and the period of appointment.

## **CONSULTATION**

Nil

## **STATUTORY ENVIRONMENT**

*Extract from the Local Government Act 1995*

*“5.36. Local government employees*

- (1) A local government is to employ —*
  - (a) a person to be the CEO of the local government; and*
  - (b) such other persons as the council believes are necessary to enable the functions of the local government and the functions of the council to be performed.”*

*Local Government (Administration) Regulations 1996*

*18A. Vacancy in position of CEO or senior employee to be advertised (Act s. 5.36(4) and 5.37(3))*

- (1) If a position of CEO, or of a senior employee, of a local government becomes vacant, the local government must give Statewide public notice of the position unless it is proposed that the position be filled by —*
    - (a) a person who is, and will continue to be, employed by another local government and who will fill the position on a contract or contracts for a total period not exceeding 5 years; or*
    - (b) a person who will be acting in the position for a term not exceeding one year.*
  - (2) The Statewide public notice must contain —*
    - (a) the details of the remuneration and benefits offered; and*
    - (b) details of the place where applications for the position are to be submitted; and*
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- (c) *the date and time for the closing of applications for the position; and*
- (d) *the duration of the proposed contract; and*
- (da) *a website address where the job description form for the position can be accessed; and*
- (e) *contact details for a person who can provide further information about the position; and*
- (f) *any other information that the local government considers is relevant.*

18B. *Contracts of CEOs and senior employees, content of (Act s. 5.39(3)(c))*

*For the purposes of section 5.39(3)(c), a contract governing the employment of a person who is a CEO, or a senior employee, of a local government is to provide for a maximum amount of money (or a method of calculating such an amount) to which the person is to be entitled if the contract is terminated before the expiry date, which amount is not to exceed whichever is the lesser of —*

- (a) *the value of one year's remuneration under the contract; or*
- (b) *the value of the remuneration that the person would have been entitled to had the contract not been terminated.*

18FA. *Model standards for CEO recruitment, performance and termination (Act s. 5.39A(1))*

*Schedule 2 sets out model standards for local governments in relation to the following —*

- (a) *the recruitment of CEOs;*
- (b) *the review of the performance of CEOs;*
- (c) *the termination of the employment of CEOs.*

18FB. *Certification of compliance with adopted standards for CEO recruitment (Act s. 5.39B(7))*

- (1) *In this regulation —*  
*adopted standards means —*
    - (a) *the standards adopted by a local government under section 5.39B; or*
    - (b) *if the local government has not adopted standards under that section, the standards taken under section 5.39B(5) to be the local government's adopted standards.*
  - (2) *This regulation applies if —*
    - (a) *a local government employs a person in the position of CEO of the local government; and*
    - (b) *the local government's adopted standards in relation to the recruitment of CEOs apply to the employment.*
  - (3) *As soon as practicable after the person is employed in the position of CEO, the local government must, by resolution\*, certify that the person was employed in accordance with the local government's adopted standards in relation to the recruitment of CEOs.*
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*\* Absolute majority required.*

- (4) *The local government must give a copy of the resolution to the Departmental CEO within 14 days after the resolution is passed by the local government.*

*18FC. Certification of compliance with adopted standards for CEO termination (Act s. 5.39B(7))*

- (1) *In this regulation —  
adopted standards has the meaning given in regulation 18FB(1).*
- (2) *This regulation applies if a local government terminates the employment of the CEO of the local government.*
- (3) *As soon as practicable after the CEO's employment is terminated, the local government must, by resolution\*, certify that the CEO's employment was terminated in accordance with the local government's adopted standards in relation to the termination of the employment of CEOs.*

*\* Absolute majority required.*

- (4) *The local government must give a copy of the resolution to the Departmental CEO within 14 days after the resolution is passed by the local government."*

#### **FINANCIAL IMPLICATIONS**

There is no remuneration attached to the position.

#### **COMMENT**

Nil

#### **VOTING REQUIREMENT**

Absolute

#### **ORIGINAL RESPONSIBLE OFFICER RECOMMENDATION**

That Council:

Appoint \_\_\_\_\_ as the Independent Person to the Chief Executive Officer Recruitment and Performance Review Committee.

(Absolute majority)

#### **Moved Cr Proud, seconded Cr Cvitan**

That Council:

Appoint Mr Draber as the Independent Person to the Chief Executive Officer Recruitment and Performance Review Committee.

LOST 6/3 – an absolute majority was not reached

*For: Cr's Boothman, Cvitan, Ferrante, Newton, Proud and Sargent*

*Against: Cr's Gordon, Shannon and Vernon*

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**ALTERNANATIVE MOTION**

**Moved Cr Vernon, Seconded Cr Shannon**

That Council:

Appoint Mr Glass as the Independent Person to the Chief Executive Officer Recruitment and Performance Review Committee.

**PROCEDURAL MOTION**

**Moved Cr Sargent, seconded Cr Ferrante**

**To hold the item over to the Ordinary Council Meeting to be held on 25 March 2021 so that the Council can review the qualifications of the 2 nominees.**

(CARRIED 6/3)

*For: Cr's Boothman, Cvitan, Ferrante, Gordon, Newton, Proud, Sargent*

*Against: Cr's Proud, Shannon and Vernon*

The qualifications of each of the candidates has been sent to Member Council Councillors by confidential email.

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**10 MEMBERS INFORMATION BULLETIN – ISSUE NO. 59**

**RESPONSIBLE OFFICER RECOMMENDATION**

**That the Members Information Bulletin Issue No. 59 be received.**

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

**12 URGENT BUSINESS**

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

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

**This report is Confidential and dealt with in a confidential session, under Section 5.23 (2) (c) of the *Local Government Act 1995* as the report deals with a matter where a contract is entered into.**

**14.1 Tender to Landfill Capacity Financial Year 2021/22**

**File No: GF-21-0000114**

**Attachment(s):**

**Date: 11 March 2021**

**Responsible Officer: Chief Executive Officer**

LATE ITEM

THIS REPORT IS CONFIDENTIAL AND NOT FOR PUBLIC VIEWING

TO BE SENT UNDER SEPARATE COVER TO MEMBER COUNCIL COUNCILLORS,  
MEMBER COUNCIL CHIEF EXECUTIVE OFFICERS AND MEMBERS OF THE  
MINDARIE REGIONAL COUNCIL STRATEGIC WORKING GROUP

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**15 NEXT MEETING**

The next Ordinary Council meeting to be held on Thursday 27 May 2021 at the City of Stirling commencing at 8.30 pm.

**16 CLOSURE**

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