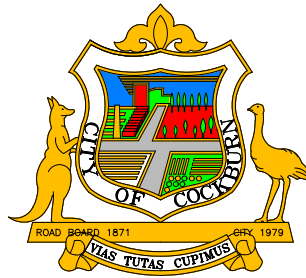


CITY OF COCKBURN



SPECIAL COUNCIL

AGENDA PAPER

FOR

MONDAY, 16 APRIL 2012

CITY OF COCKBURN

SUMMARY OF AGENDA TO BE PRESENTED TO THE SPECIAL COUNCIL MEETING TO BE HELD ON MONDAY, 16 APRIL 2012 AT 7:00 PM

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CITY OF COCKBURN

AGENDA TO BE PRESENTED TO THE SPECIAL COUNCIL MEETING TO BE HELD ON MONDAY, 16 APRIL 2012 AT 7:00 PM

1. DECLARATION OF MEETING

2. APPOINTMENT OF PRESIDING MEMBER (If required)

3. DISCLAIMER (To be read aloud by Presiding Member)

Members of the public, who attend Council Meetings, should not act immediately on anything they hear at the Meetings, without first seeking clarification of Council's position. Persons are advised to wait for written advice from the Council prior to taking action on any matter that they may have before Council.

4. ACKNOWLEDGEMENT OF RECEIPT OF WRITTEN DECLARATIONS OF FINANCIAL INTERESTS AND CONFLICT OF INTEREST (by Presiding Member)

5. APOLOGIES & LEAVE OF ABSENCE

6. PUBLIC QUESTION TIME

7. DECLARATION BY COUNCILLORS WHO HAVE NOT GIVEN DUE CONSIDERATION TO MATTERS CONTAINED IN THE BUSINESS

8 (SCM 24/10/2011) - PURPOSE OF MEETING

The purpose of the meeting is to consider the City of Cockburn's ongoing support of the Southern Metropolitan Regional Council.

9. COUNCIL MATTERS

9.1 (SCM 16/04/2012) - SOUTHERN METROPOLITAN REGIONAL COUNCIL (1054) (SC) (ATTACH)

RECOMMENDATION

That Council:

- (1) not seek to initiate the wind-up of the RRRC project at this time;
- (2) endorse the SMRC's application for an amended operating licence for the RRRC;
- (3) support the lodgement of an appeal to the new licence for the RRRC; and
- (4) provide ongoing financial support to the SMRC through the provision of income to meet its operating expenses, with the form of this payment being delegated to the City's Chief Executive to resolve, but not to exceed the amount of \$791,622.

COUNCIL DECISION

Background

The Southern Metropolitan Regional Council (SMRC) was established in 1999 with the specific purpose to:

*Plan, coordinate and implement the removal, processing, treatment and disposal of waste for the benefit of the communities of the Participants;
[Establishment Agreement cl 4 (a)]*

To complete these undertakings the member Councils; Cities of Cockburn; Fremantle; Melville and Rockingham and Towns of East Fremantle and Kwinana, entered into subordinate agreements called 'Projects' for individual waste project and the management of the SMRC. The key project is the Regional Resource Recovery Centre (RRRC), which manages green waste, municipal solid waste (MSW) and recyclable materials waste for Cockburn, East Fremantle, Fremantle and Melville.

In order to operate the RRRC facilities the SMRC requires a Licence from the Department of Environment and Conservation (DEC). The normal period is for a 3 year licence to be issued; however, the SMRC

had recently been operating with a 6 month licence as a result of odour management issues associated with its operations.

The SMRC was required to make a new licence application and provide the DEC with a number of reports by 17 March 2012. While these actions were undertaken by the due date, the new Licence subsequently issued does not allow the processing of green waste or MSW at the RRRC after 14 April 2012.

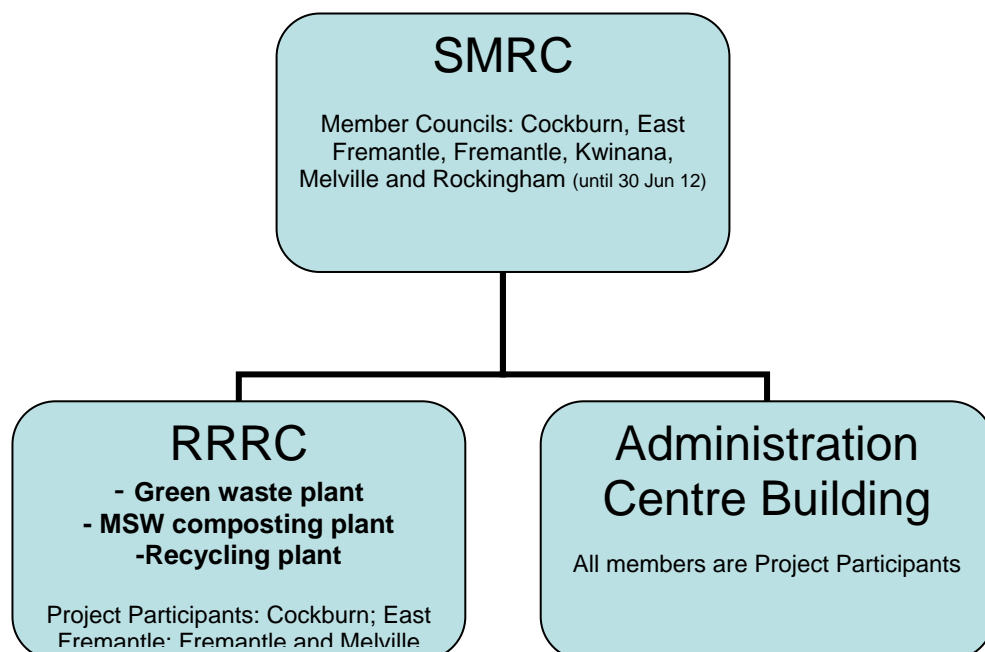
This decision has serious consequences for the SMRC, which are outlined in this report, the most pressing of which is whether it can continue to operate.

Submission

On 11 April 2012 the SMRC held a Special Council Meeting and resolved to seek the DEC's endorsement of an amended licence and seek funding support from the RRRC Project Participants to meet its operating costs up until 30 June 2012, to a maximum of \$1,965,479. While the Minutes of the SMRC meeting were only in draft at the time of writing this item, a copy of these is included as Attachment 1.

Report

The SMRC Establishment Agreement (as amended 1 December 2000) is the overarching legal arrangement between its members for the operation of the Council. This Agreement, along with the two Project Participants Agreements (PPA), sees the SMRC undertake its purpose of waste processing in the following way:



The RRRC is the major undertaking of the SMRC. The PPA dated 12 April 1999, which was varied by a Deed of Variation stamped 1 December 2000, covers both the Waste Composting operations (green waste and MSW) and the Materials Recovery Facility (MRF). In order to operate these facilities the Environmental Protection Act (the Act) requires the SMRC to hold a Licence, which is issued by the DEC Chief Executive Officer (CEO).

On 30 March 2012 the DEC CEO issued a new licence that only allows the RRRC to operate from 1 April 2012 until 9 June 2012. It also requires the SMRC to 'cease receiving putrescible waste by 14 April 2012' and to 'ensure all compost whether fully processed or not is removed from the site by 9 June 2012'.

This decision has serious consequences for the SMRC and its members, as detailed below.

Financial Viability. The SMRC's financial position is severely compromised by this outcome. The loss of income from gate fees for the Waste Composting Plant affects the primary source of income for that operation. Since the MRF was destroyed by fire and a new facility is still under construction, that operation generates no income and has a shortfall in funding for its completion. That shortfall was provisioned for by the SMRC use of reserve funds, but this outcome is problematic if the SMRC itself ceases to exist.

Without alternate income the RRRC and in turn the SMRC will become insolvent. As this is a realistic prospect, the question of wind-up must be considered. Clause 8.20 of the Establishment Agreement states:

The members of the Council appointed by the Project Participants of a Project may resolve, by absolute majority, to wind up the Project.

While in the first instance this is a decision for the SMRC Board, the City of Cockburn's member would need guidance from Council as to whether this course of action should be considered.

The insolvency question relates to the income guarantee of the Participants. While the PPA requires the preparation of an annual budget for the RRRC in accordance with the Local Government Act, the two direct income streams for operating expenses are an 'annual contribution' to operating expenses (mainly covering fixed administration expenses) and 'gate fees' for each tonne of waste delivered to the plant.

Legal advice was provided to the SMRC that indicated the PPA did not specifically address the circumstances where an operating deficit for the project existed. While this could be accommodated year to year by way of variance to the quantum of the annual administrative

contribution or the gate fees, the PPA did not contemplate a circumstance where the RRRC could not 'receive' waste, as has been conditioned in the new licence.

The capacity for the SMRC to charge a gate fee for a service it cannot perform is, in the view of the City's Chief Executive Officer, highly questionable. There is also a precedent when the SMRC was unable to perform a recycling service due to the MRF fire, it advised its members that in these circumstances it could not; arrange an alternative service, receive material or charge a gate fee for alternative services.

Insolvency would follow if the SMRC could not meet its financial liabilities. This is not a question for repayment of the capital debt as the PPA requires participants to make contributions for this liability regardless. But with a shortfall in operating income, insolvency is an inevitable consequence.

Clause 8.23 of the Establishment Agreement states that:

If a Project is wound up pursuant to clause 8.20 the Project Participants shall indemnify the Regional Local Government ... with respect to that liability or debt

So, in the event of these circumstances, the City of Cockburn and other participants would still be liable for all costs incurred by the SMRC. But as the insolvency would only follow from the RRRC not being able to receive waste and there is a process by which the SMRC can appeal the conditions imposed by the RRRC's Licence, in turn allowing it to re-open, the question must be asked "do the participants really want the project to wind-up at this point in time?"

With all future liabilities of the SMRC ultimately guaranteed by its members, it is also open to the project participants (ie Cockburn, East Fremantle, Fremantle and Melville) to provide funding support to the RRRC project for other short term contingencies. Funding guarantee is essential if the RRRC and, in turn, the SMRC is able to meet its operating liabilities and appeal the licence conditions imposed by the DEC.

It is the view of the City's officers that the original intent of the Establishment Agreement remains unchanged. The City still seeks to have the SMRC receive and process its waste and does not support returning to disposal of MSW into landfill. This position is not a financial one as it would be cheaper to landfill, but it has always been the environmental position of the City that land-filling is not sustainable. The RRRC project minimises the amount of waste going into landfill and without this there is no alternative available to the City, other than landfill.

As an interim financial arrangement it is proposed that the RRRC participants continue to make payments to the SMRC. A simple option would be based on payment of a modified SMRC gate fee, being the current gazetted fees less disposal costs directly incurred by participants. It would be a payment as an 'operating contribution', until such time as the SMRC could again receive waste. There is a precedent for this arrangement as participants have previously paid the SMRC in the circumstances where waste had to be diverted from its facilities, with this based on the gate fees for the type of waste diverted (ie green or MSW).

In their 'submission' the SMRC has sought that the City provide them with funding support to the amount of \$791,622. While the request sought the funding up until 30 June 2012, it did not stipulate the timeframe for specific payments or individual sums. As this can be resolved by the administrative agreement, it is recommended that the specifics be left to the City's CEO to finalise with the SMRC management.

Licence. The City's officers also believe the decision of the DEC CEO with respect to the RRRC's new Licence is unduly harsh and did not fully understand the implications for the SMRC and its members.

Its harshness is reflected in the timelines imposed in the conditions. A two week period for the RRRC to stop receiving waste and a 10 week period for the removal of all waste by-products (ie compost) from site, leaves the participants to find alternative disposal sites to commence land-filling almost immediately. As well, the removal of part-processed compost may well see this also need to be disposed of at landfill, as it won't be sufficiently processed to go to the contracted processors of the finished compost. Both outcomes of this decision have poor environmental consequences.

Contrast this position to what the DEC would have been required to follow if an 'amended, revoked or suspended' licence was proposed. In these circumstances section 59B (2) of the Act would have required the DEC to provide the SMRC with a written notice prior to having invoked his decision, with such notice to:

- (a) state the details of the proposed action; and*
- (b) invite the holder to make representation to the CEO to show why the action should not be taken; and*
- (c) state the period (at least 21 days after the notice is given to the holder) within which representations can be made.*

In other words, the SMRC would have been allowed a reasonable period in which to respond to the conditions being proposed and make some representation on the impact that they would have.

While the licence process allows the licence holder to initiate an appeal on the decision through an appeal to the Minister for Environment, this is a time consuming outcome and may not lead to resolution for at least six months. As noted in the Submission, the SMRC Board has resolved to proceed down this path and it is recommended that the City support this action, albeit with consideration of the discussion included in the Odour Management section of this report.

In the interim the SMRC has proposed seeking to use the section 59B provisions of the Act to seek an amended licence be issued by the DEC. It is open to the DEC to consider varying the new licence to allow re-processing of MSW, most probably under stringent conditions, but such an outcome would support the financial position of the SMRC in the interim, allowing it to continue trading while addressing concerns raised by the DEC.

Odour Management. A media statement issued by the DEC Director General, Mr Kieran McNamara, on 30 March included the following statement:

“a new licence would be considered if the centre installs new primary treatment or enclosure and secondary odour treatment equipment, and improves its quality assurance and monitoring systems.”

To understand the likely ramifications of this recommendation a brief commentary on the current odour management is included.

The RRRRC manages odours in the following ways:

- *Containment.* The plant has engineering systems to maintain negative pressure, a vacuum like operation to contain untreated air within the plant. Failure of negative pressure will allow fugitive emissions from the plant, as may have occurred in February 2012 when there was a disruption to the fan systems, when a spike in odours was recorded. The plant is also fitted with electronic doors and door alarms to ensure that any opening occurs for limited periods.
- *Processing.* Waste is received at the tipping floor, where larger contaminants are removed before it moves into one of four waste digesters, which breaks the product down through anaerobic action. The digesters are contained systems with their entry and exit points located within the plant enclosure. A ventilation system takes air from the tipping floor through a ‘scrubber’ before it is passed into biofilters 3 and 4. Neither of these biofilters has been identified as a source of unreasonable odour in any of the previous operational reviews. Following digester action, the waste is screened to remove contaminants

and the residual compostable waste moves into a processing shed. A separate ventilation system removes air from the composting shed into biofilters 1 and 2. This part of the operation has high concentrations of dust, which requires additional management treatment. Air is misted in the composting shed to reduce dust and increase humidity prior to it passing into the biofilters. But as this air is not 'scrubbed' prior to biofiltering, maintaining the right amount of humidity in the ambient air passing through the ventilation can be difficult. Biofilter 1 in particular has recently been identified to have 'hot spots' where the biofilter media has dried out. While water is sprinkled onto the biofilters, if the cells dry out they are less efficient at breakdown of odour.

Potential modifications to the plant would include additional 'primary' odour treatment of the composting room ventilation, via a scrubbing system similar to that fitted to the tipping floor. This action should also assist to maintain the humidity of the air moving to biofilters 1 and 2, thereby increasing their reliability.

Alternatively, 'secondary' management could be undertaken by enclosure of biofilters, but specifically filter 1, with this vented to improve odour dispersion. The biofilter air can also be better blended with clean air to reduce its concentration prior to venting.

One of the reasons the neighbouring suburbs of Leeming and Melville have a higher concentration of 'odour complaints', is that under certain environmental conditions air circulation and odour dispersion around the plant is more limited.

In times of high ambient temperature and low humidity biofilters 1 and 2 appear to have a greater capacity to 'dry out'. Under these circumstances where there is a weak south easterly or easterly breeze, any residual odours from the biofilters disperse more slowly and would drift towards these suburbs. This was precisely the set of circumstances that occurred in March 2012 when Perth experienced its hottest March on record. It also came on the back of the fan failure in February, these two outcomes resulting in increased odour complaints.

Should the SMRC proceed to install additional primary and / or secondary odour treatment, one sure way to minimise any localised amenity impacts would be for the SMRC to reduce or not receive waste when any of these systems required were off-line. This would help establish the timeline for system modifications as modified systems would have to be in place by mid December 2012, or the plant cease taking waste until at least the end of April 2013, as this is the time period which typically produces the adverse environmental conditions as can be seen in the 2011 odour complaints history (Attachment 2).

Proposed Course of Action. If the SMRC is to remain viable it needs to return to operations as quickly as possible. Given the environmental conditions that typically impact its operations are largely over, the following 'amendments' to the new Licence could be recommended to the DEC:

- The RRRC reduces its waste input only receiving the waste of the members. The operation receives 84,000 tonnes of MSW per annum, but only 60,000 tonnes of which comes from the members. The reduction in throughput will reduce activity in the plant and odour generation.
- The Environmental Improvement Plan initiatives contained in the licence submission to the DEC need to proceed. The SMRC had identified a range of actions that it intended to take to the biofilters (particularly biofilter 1) and pressure management systems that are crucial to odour management.
- To allow independent scrutiny the SMRC should make operating data from these systems available to the public via its websites. Officers from the SMRC have advised that this is possible. A similar approach was adopted by Cockburn Cement Limited, where live monitoring of the emissions from its kilns was made available via the internet. Such an outcome would allow for community oversight and should reduce distrust between the community action groups and the SMRC about data accuracy.
- Prior to initiating capital improvements odour modelling for each option be undertaken. This data should be shared with the community and project participants so that everyone understands the beneficial improvements and establish measurable baselines for these initiatives.

Conclusion. The new Licence issued for the RRRC has serious consequences for the SMRC. The EPA's decision will have the effect of making the SMRC insolvent if the participants don't agree to providing alternative income arrangements for the SMRC.

Paying the SMRC via a 'modified gate fee' would guarantee the SMRC could remain financial avoiding a requirement to seek the RRRC to be wound up at this point in time. This does not mean the Participants would be signing a blank cheque, but it would allow time for the DEC to consider an application for licence amendments, or an appeal against the current licence to be determined by the Minister.

Determining what additional odour management systems are required as well as the capital costs of each option will require detailed engineering design and costing. The project participants will need this information prior to making any further decisions on the future of the SMRC.

Any modifications to the plant will also require approval from the DEC and probably the City of Canning, who are the relevant Local Government Authority for actions required under the Planning and Development Act. Each of these actions will be subject to public scrutiny, a further way the DEC can ensure the public and local community of interest is intimately involved in this review process.

Strategic Plan/Policy Implications

Governance Excellence

To provide effective monitoring and regulatory services that administer relevant legislation and local laws in a fair and impartial way.

Budget/Financial Implications

Under the proposed modified waste charges arrangement, the cost of income support to the SMRC can be accommodated within the current budget allocations.

Proposals for additional capital expenditure will need to be fully costed and submitted to the participants for future consideration. Indicative costs for additional primary odour treatment, e.g. gas scrubbers, are in the range of \$2.0M.

Legal Implications

Section 3.63 of the Local Government Act, 1995 provides the mechanism for the dissolution of a Regional Local Government. This is reflected in the Establishment Agreement as referred to in the report (as Clause 8.20).

Community Consultation

The City has not commissioned specific community consultation in the preparation of this report. However, a community attitude survey was commissioned by the SMRC in November 2011 and the results of that are attached. The report found strong support for the functions being performed by the SMRC on behalf of its member Councils, but also found that sections of the population have specific concerns about the management of odours.

Attachment(s)

1. Unconfirmed copy of SMRC Minutes 11 April 2012.
2. DEC licence.
3. Odour complaint history.
4. SMRC Community Survey.

**4.
Advice to Proponent(s)/Submissioners**

N/A

Implications of Section 3.18(3) Local Government Act, 1995

Nil.

10. (SCM 16/04/2012) - RESOLUTION OF COMPLIANCE (SECTION 3.18(3), LOCAL GOVERNMENT ACT 1995)

RECOMMENDATION

That Council is satisfied that resolutions carried at this Meeting and applicable to items concerning Council provided services and facilities, are:-

- (1) integrated and co-ordinated, so far as practicable, with any provided by the Commonwealth, the State or any public body;
- (2) not duplicated, to an extent Council considers inappropriate, services or facilities as provided by the Commonwealth, the State or any other body or person, whether public or private; and
- (3) managed efficiently and effectively.

COUNCIL DECISION

11. CLOSURE OF MEETING