

# CITY OF COCKBURN

## SUMMARY OF MINUTES OF SPECIAL COUNCIL MEETING HELD ON THURSDAY, 16 APRIL 2012 AT 7:00 PM

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# CITY OF COCKBURN

## MINUTES OF SPECIAL COUNCIL MEETING HELD ON THURSDAY, 16 APRIL 2012 AT 7:00 PM

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### PRESENT:

#### ELECTED MEMBERS

Mr L Howlett	-	Mayor (Presiding Member)
Mr K Allen	-	Deputy Mayor
Mr Y Mubarakai	-	Councillor
Mr S Portelli	-	Councillor
Ms L Smith	-	Councillor
Mrs C Reeve-Fowkes	-	Councillor
Mr T Romano	-	Councillor
Mr S Pratt	-	Councillor
Mrs V Oliver	-	Councillor
Mr B Houwen	-	Councillor

#### IN ATTENDANCE

Mr S. Cain	-	Chief Executive Officer
Mr D. Smith	-	Acting Director, Engineering & Works
Mr G. Bowering	-	Acting Director, Planning & Development
Ms S. Seymour-Eyles	-	Manager Corporate Communications
Ms V. Viljoen	-	PA to Chief Executive Officer

#### 1. DECLARATION OF MEETING

The Presiding Member declared the meeting open at 7.02pm.

#### 2. APPOINTMENT OF PRESIDING MEMBER (If required)

Not applicable.



**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)**

Nil

**5. APOLOGIES & LEAVE OF ABSENCE**

Nil

**6. PUBLIC QUESTION TIME**

Note: Public questions may be asked only on the subject matter of the Special Council Meeting.

WRITTEN QUESTIONS

**Mr Mark Blundell, 9 Devinish Way, Leeming**

Q1 *Does Council accept the findings of the DEC 20 March 2012 COMP Report?*

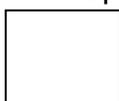
A1 For the record it should be noted that the City of Cockburn was not a party to the COMP report, we were not a commissioner to the study and therefore make no comment on the report.

Q2 *Does the Council have any report or findings of its own that contradict the COMP report?*

A2 See A1.

Q3. *On what basis does Council refute the conclusion of the COMP Report that the findings of odours attributable to the SMRC and triggering a high level of annoyance constitute ongoing breach of the licence?*

A3 As we have already answered, the City of Cockburn was not party to the report and did not contribute to it in any way, and therefore it is not appropriate to make any observations on it.



*Q4 What basis can Council have for committing ratepayers' funds to an appeal process challenging DEC's lawful decision?*

A4 A decision to appeal the licence has been made by the SMRC. A recommendation to support or otherwise this appeal is before Council this evening. The rationale for the City to continue its support of the SMRC has been outlined in the Officer's report.

#### QUESTIONS FROM THE GALLERY

##### **Mr Glen Diggins, 11 Nancy Way, Coogee**

*Q1 Is it possible that the proposed pilot torrefaction plant might, in the future, become another SMRC.*

A1 This matter is not before Council for consideration at this meeting and is therefore unrelated to tonight's agenda.

*Q2 In the report, it does mention the use of landfill as a possibility in the short term. At what stage would the amount of landfill trigger the Federal Government's carbon tax and have an impact on the Council?*

A2 Noting that this is somewhat hypothetical, the City's 2011 assessment of its carbon liability for Henderson was just below the 25,000 tonnes that would trigger the carbon tax. That was based last year on the City receiving no Municipal solid waste at all from its own sources or any other surrounding Councils, so it is entirely probable that based on receiving MSW as of today that we will trigger a carbon tax on all of that.

*Q3 In regard to providing additional funds to the SMRC as part of their appeal, at what stage would the Council consider whether they are putting good money after bad?*

A3 Noting this again is a hypothetical question because it is up to Council to resolve whether it continues to support the RRRRC project or not, so I am not sure I can say any more as it is a matter of Council.

##### **Mr Rod Olson, Portcullis Drive, Willetton**

*Q1 In light of the enquiry and the appeal process that is just going through, I would like to ask the question of Mr Romano in his capacity of the head of the SMRC. The equipment and the hardware at the waste composting facility, is that suitable for relocation and have you considered moving it away from where it is to an area where there is no population?*

A1 This matter is not before Council for consideration at this meeting and



is therefore unrelated to tonight's agenda.

Q2 *I would like to draw a parallel to the live cattle export where there is some concern about downstream processing of the animals, and I just wondered if Council has ever considered doing a questionnaire of some of your ratepayers – do they know or do they care what happens to the rubbish that is picked up from the street side? I have asked a lot of people and they say they don't know, that it just goes into a bin and every now and then they read in the paper there is an odour over there in Melville or Canning Vale. Have you done any research of downstream responsibility of your waste once it is picked up?*

A2 Noting this response can only be given in the context of the item on the agenda, as that is what a Special Council Meeting is about; an agenda attachment to the item includes a community response where they looked specifically at ratepayers across the district, including Cockburn, and their views of waste processing and its diversion. The City also seeks answers each year on its Community Perceptions Survey about what ratepayers consider about its waste processing services, and that information is published on our website.

**Mr Phil Nixon, 11 Stenton Corner, Leeming**

Q1 *If the City of Cockburn actions support of the continuation of a facility found to have breached its lawful obligations under State licence, doesn't that in turn breach the City's due diligence requirements?*

A1 The SMRC is an independent, constituted body. It holds the licence in its own right and the licence conditions are specifically on the SMRC and not on the City of Cockburn.

Q2 *The Establishment Agreement signed by the City of Cockburn, at Section 5, (quote) requires the SMRC and each of its Councils without loss being incurred to carry out the regional services so that services and facilities are provided to the consumer at a reasonable cost with due regard to community needs (unquote). In light of the recent DEC decision is this condition being met now and how?*

A2 Noting the Establishment Agreement is not specifically part of tonight's agenda, the City of Cockburn entered this undertaking along with other Councils in regard to how it wished to have its waste treated, the specific position being the Council of the day and subsequent councils have always known that it would cost more to process the waste than simply tipping it in the ground, but from a long term environmental and social benefit it outweighed the economic costs.

Q3 *Is it not the City's obligation to take into account the needs of the SMRC communities, not just the City of Cockburn residents and*



*therefore act in the interests of other member Councils' residents directed affected by the odour?*

A3 The City of Cockburn can consider items that specifically relate to the City of Cockburn. Whilst it has a shared undertaking as part of the Project Participants Agreement, fundamentally it is the responsibility of the SMRC to act in the best interests of the Regional Council. The City of Cockburn can only consider specifically within its own remit those issues directly relating to this Council.

Q4 *As an SMRC member, is the City protected from possible claims by residents of any of the other Councils comprising the SMRC?*

A4 As premised in the first answer, the SMRC is an independent board and a body incorporated. All liability for its actions stay and rest with the SMRC.

**Mr Rod Skipworth, 6 Capill Corner, Leeming**

Q1 *Using the yearly breakdown over the past three years, how many times has the City of Cockburn waste been diverted away from the SMRC because of scheduled or unscheduled maintenance? SMRC breakdowns all because of the operational capacity of its plant has breached as described Part A and 11 of the licence.*

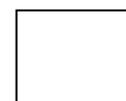
A1 This question is to be taken on notice to provide statistics over the last three years, however in the last 12 months the City of Cockburn waste has not been diverted from the SMRC.

Q2 *Does the City of Cockburn pay higher SMRC gate fees when this occurs and, if not, what fee is paid and what happens to the waste?*

A2 Under the Project Establishment Agreement there are two sources of income for the SMRC; firstly, all member Councils are required to provide a contribution to the annual administration costs which are determined and allocated proportionally across the year. In the event of a breakdown the City of Cockburn will continue to pay into the administration costs. In the circumstances where the SMRC would divert waste over a short period of time, the members are still obliged to deliver waste to the SMRC in the knowledge that it will be diverted, in which case it incurs the gate fee. The current circumstance is different where the SMRC does not have a licence to receive waste and therefore does not have the capability or capacity to charge a gate fee for waste.

Q3 *In 2010/11 financial year, in tonnage how much waste received at the SMRC was taken for landfill?*

A3 That is not a question we could answer and suggest you approach the SMRC.



**Mr Dean Porter, 8 Brice Close, Leeming**

Q1 *What was the City of Cockburn's understanding of the landfill diversion rate as a percentage of the SMRC waste composting facility actually achieved and does the SMRC currently meet this expectation?*

A1 In broad terms only, because the specifics of this question should be put to the SMRC. The overall diversion rate is approximately 45% from the facility. Of the 84,000 tonnes of waste going in, approximately 25,000 tonnes comes back out as compost. There is a breakdown of loss of water from the process which makes up the balance of that outcome. The specifics of the waste diversion vary by Council. The City of Cockburn introduced, this year, a weekly recycling collection. That weekly recycling collection reduced our Municipal solid waste collection by 6% and increased our recycling rates by 23% - that is a balance based on weight. The City of Cockburn's waste is, therefore, cleaner when it goes into the SMRC and contains less recyclables that typically end up being diverted. So I would suspect on the 45% we are at the lower end rather than the higher end of that outcome.

Q2 *Just to re-hash that last question, so is the SMRC currently meeting the expectations of Council.*

A2 Yes.

Q3 *What is the City of Cockburn's understanding of how its proportion of the SMRC loan, how was that going to be paid?*

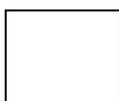
A3 There are separate loans for the three different projects which comprise the City of Cockburn's obligations to the SMRC:

- There is a loan which is held as an interest only loan for the office accommodation of the project, for its head office.
- There is a loan held by the SMRC for the materials recovery facility which is recoverable against the materials recovery facility only.
- There is a loan that is specifically for the waste composting plant which, again, is held against that asset.

Is your question specific to one individual loan or the collective loans?

*The waste composting primarily but probably all three loans.*

The waste composting loan is funded by a levy on all Cockburn ratepayers and that is recovered through the Waste Management Levy that we charge our ratepayers.



*Was there no consideration taken into gate fees to bolster up, so you are saying the levy is the whole loan for the waste recovery facility?*

The SMRC charge the City a per tonne rate to deliver the rubbish to the Canning Vale plant. In addition, the City pays a loan repayment as per the prescribed schedule that the WA Treasury Corporation has issued, and that is basically all the City pays to the SMRC.

*So that loan was underwritten purely from the levy?*

The Waste Management Levy that we charge our ratepayers covers the cost of meeting the gate fee and the cost of the loan, and then obviously the cost of running our truck fleet and staff. Our Waste Management charge is \$365 per ratepayer this year, and covers the gate fee for every time we take something to the SMRC and also the loan that we have to repay to the Treasury via the SMRC for the compositing facility.

*Q4 We talk about the 25,000 tonnes of CO<sub>2</sub> emissions which will exempt landfill from carbon tax. Is there any consideration because of the extracts of methane from landfill that these are taken into the consideration in these calculations? With these methane extractions, is that likely to tip the landfill into the carbon tax threshold?*

*A4* The City's operations already includes a 3 megawatt power plant to extract the maximum authorised under legislation offset against it, so the additional waste coming in will automatically start to tip us over the threshold.

**Mr Andrew Mullins, 21 Careening Way, Coogee**

*Q1 About the ratepayers' contribution to the landfill, at a local ratepayers meeting it was indicated to us that our rates will increase by \$100 per year due to the SMRC closing. Is this true?*

*A1* The simple answer is, no. The budget is currently being prepared at the present time. The City has been in discussions with the SMRC about potential increases in fees and charges and our initial discussions all indicate maybe an increase of between 3-5% depending on what happens with the carbon tax and the impact on electricity, which we will all have to bear, but a 3% increase on the gate fee is something in the order of \$6 to \$8 per year. That is my understanding of what the gate fee will increase by if and when it gets its licence back and given that depends on what happens with electricity prices, as it is a fairly intensive business and takes a lot of electricity to run that business. That is what we have been told and that is all we expect the increase to be. Our levy to ratepayers is at \$365 and Officers preparing the budget at the moment think it will make an increase of 3% to 5%, maybe \$15 to \$20 and certainly not \$100 due to the closure of the SMRC.



**Ms Mandy Clark, 9 Capill Corner, Leeming**

Q1 *Has Council, as an SMRC Member, been informed of what other odour treatments are planned? Given the SMRC has had 9 years to examine odour treatments, why have any alternatives presently being considered not previously been recommended?*

A1 That is a question that needs to be put to the Board of the SMRC.

Q2 *How much putrescible waste does the City of Cockburn dispose of at the SMRC each year?*

A2 In the 2011/12 financial year we have budgeted to dispose of approximately 28,500 tonnes. It is slightly over that figure.

Q3 *What is the City of Cockburn paying per tonne to dispose of MSW at the SMRC?*

A3 We are charged a gate fee of \$194 (ex GST) to dispose of materials at the SMRC WCF.

**Ms Jodie Ross, 46 Merrifield Circle, Leeming**

Q1 *What is the current gate fee charged for MSW at the City of Cockburn landfill site?*

A1 It is approximately \$105 (ex GST) per tonne.

Q2 *How much money could the City of Cockburn save its ratepayers each year by using its landfill site as permitted by law, instead of the SMRC facility that has breached the law?*

A2 We estimate, just on simple arithmetic, around \$60 per ratepayer each year if we just dump everything in a big hole.

It is the philosophy of diverting waste from landfill that the Council has considered over the last several years and the message we are portraying to our community is that we want to divert waste from landfill, and that is what we have been endeavouring to do.

Q3 *Based on the MSW gate fees of the SMRC and City of Cockburn over the past 9 years how much extra money has been spent by the City of Cockburn ratepayers to use the SMRC Facility?*

A3 None, and the reason being is that the Council of the day decided it would have all its waste go to the SMRC and Council has chosen, since 1999, to be a member through the Projects Participants Agreement which requires it to take all its waste to the SMRC. In accordance with the legally binding arrangement, the City of Cockburn has spent nothing beyond that requirement.



**Mr Graeme Clark, 6 Noreatt Place, Leeming**

*Q1 Is the SMRC presently considering a further enhancement to the odour filtration system by putting a large chimney stack and, if so, is that not recognition that all the attempts to date to control the offensive odour have failed when the idea was first conceived and why has it not been implemented previously?*

A1 That is a question you should put to the SMRC Board as the City of Cockburn is not aware specifically of the issue or the technology you are referring to.

*Q2 On page 8, paragraph 1 of the Agenda it states "Biofilter 1 in particular has recently been identified to have 'hot spots' where the biofilter media has dried out." How does the term "hot spots" differ from dry tracking as the issue of the biofilter inefficiency when drying out has been identified in around 2007?*

A2 The term "hot spots" would be a colloquialism referring to the same outcome and it comes from the fact that as the warmer air, that is drawn from the composting shed, is taken into the biofilters it has the propensity to dry those filters out. You can get disproportional air dispersion through those biofilters which, in some circumstances, if the moisture is not maintained they get what you term dry tracking or a hot spot on the overall affect.

*Q3 As described on page 8 paragraph 1 of the Agenda, when did the SMRC first commenced to sprinkle water in front of the biofilters to stop them drying out?*

A3 That question should be put to the SMRC for a specific date.

*Q4 In 2000 when the initial meeting was held regarding the SMRC, their design was not an issue and the only disturbance we would get was the noise from the grass recycling place. A \$40M start-up turnkey cost was discussed at that time. After 9 years the information I have is that the SMRC is now \$49M in debt, so after 9 years they still have all these issues yet to be resolved. The question is, how much more funding will the City of Cockburn put into this project before they believe they are putting good money after bad?*

A4 This is a matter before Council tonight for consideration and it will be determined by this Council in terms of the Officer's recommendation, by debate and consideration by the Elected Members who will vote on the matter.

**Ms Loretta McBride, 9 Allard Place, Leeming**

*Q1 What steps has the SMRC taken so far to compile the odour reports that the new licence conditions 4 and 5 require including, in particular,*

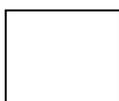


*details of all odour complaints.*

- A1 Obviously this is not a question the City of Cockburn can answer and should be put to the SMRC.
- Q2 *As described in the Officer's Report to Council on page 8 paragraph 6 of the Agenda, "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." How is that different to what is being proposed by the current DEC (unknown) that effectively advises the SMRC to stop receiving waste until it has permanently fixed the odour problem?*
- A2 Obviously this is a matter that is currently between the DEC and the SMRC so we cannot comment on that fully. The report from the Officer's perspective recognises that odour profiling is affected by the volume of waste going through the plant but where there are some operating concerns with the plant, minimising the amount of waste going through will naturally have an effect on the odour. The DEC's licence requires the plant to stop taking all waste, as it did as of last week. Specifically, beyond that, you would need to ask the rest of your question of the SMRC.
- Q3 *Should the SMRC WCF continue to operate, how does Council plan to repay the WAT loan by 2023 other than, for example, by raising the SMRC gate fees which will have a direct impact on ratepayers?*
- A3 The loan has already been factored into the Waste Management Levy that we currently have and has been for the last 9 years, and will be for the next 11 years.

**Ms Christina Manes, 6 Capill Corner, Leeming**

- Q1 *What has the SMRC delivered to the City of Cockburn ratepayers financially or environmentally that warrants the City of Cockburn's continued support of this operation?*
- A1 The Project Establishment Agreement which was the Agreement by which all of the Councils in the region, specifically for the RRRC Project – being the City of Fremantle, the City of Cockburn, the City of Melville and the Town of East Fremantle, is meeting a range of environmental initiatives specific to them. By taking all of our Municipal solid waste it avoids a carbon liability that comes from that by processing it. It also seeks to strip off those parts of the process which can be returned back to the environment. The 25,000 tonnes of compost which comes out the other end is currently going to beneficial use right now to the farmers of the South West Region. Incidentally, the City of Cockburn purchased part of that output to bring back and use in its parks and gardens.



- Q2 *Can the green waste and recycling arms of the SMRC operation continue should the WCF be closed? If not, are there opportunities to have green waste (grass, trees, etc) and recycling performed elsewhere with the continued diversion of those inoffensive wastes used for landfill, i.e. other than the green bins?*
- A2 There are three components to the current Project Establishment Agreement as you have noted, the green waste, Municipal solid waste and recycling. The SMRC currently only takes two of those waste streams. The recycling stream is currently not with them as a result of a fire that destroyed the facility but it would be back with them by July of this year. All three waste streams contribute income to the general operation of the SMRC so that question would really need to be depended upon the financial position of the SMRC at the time.
- Q3 *We live less than 700 metres from the SMRC and as the DET report shows, which I believe you have not seen, 60 out of 100 days we were bombarded by the odour. There has been a Parliamentary enquiry, there has been dozens of odour complaints, there has been a lot of residents saying their health is declining because of the SMRC odours. My question is does the City of Cockburn do their own research or do they take it as gospel all what the SMRC are telling you? My question pertains to the potential financial liability of the odour, the affect it has on residents, I don't believe that the SMRC through the last 9 years of dealings it has been shown they have been misleading residents and I wonder if they have been misleading Council. I am sorry if that sounds a bit rude but it has been going on a long time.*
- A3 The City of Cockburn and other Project Participants do not rely entirely on the staff of the SMRC for advice. One of the reasons the SMRC arranged an organisation called the odour unit to undertake sampling of the area and to produce air models of the odours going through the park was to have an independent source that we could verify that the SMRC was operating within its licence conditions. It is certainly not a position of the City that a negative impact of the SMRC should impact on any of the amenity of surrounding residents. That was not the basis by which the various Project Participants entered into. So from a financial perspective we are aware there is a direct cost in using the facility but we acknowledge that as a benefit in the long term and the City of Cockburn and other Project Participants are committed to see the SMRC operate within its licence requirements, and that is not to have a negative impact on the amenity of the surrounding residents.
- Q4 *Nine years and everything, all what I have said, is showing that it is impacting on the residents of Canning Vale, Leeming and Willetton. Also, when you mention the odour units, if you are listening to the results of the odour unit as a participating Council why were you not given a copy of the DET Report, which is the "police" of the SMRC?*



A4 The City of Cockburn was not invited to be part of the study and therefore was not given copies of the DET Report. I understand that neither was the SMRC given a copy. That question should be put to the Department of Environment and Conservation directly for them to answer.

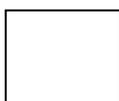
**Mr Glen Diggins, 11 Nancy Way, Coogee**

Q1 *I believe the carbon tax is something we should avoid at any cost. Is it possible that in actual fact if the SMRC cannot continue and rubbish goes down to landfill at Henderson - I presume there is no equivalent to Henderson in the Cities of Melville and Fremantle and the Town of East Fremantle, and the Henderson facility belongs to the City of Cockburn – Is it possible that the City of Cockburn can use the Henderson site for landfill for its purposes only and refuse to accept waste coming from the other three Municipalities, and therefore protect itself from triggering costs associated with the carbon tax?*

A1 The simple answer is, no, because any additional MSW, regardless of which source it comes from, is likely to put us across the threshold. Note too, the Henderson landfill has a natural life. Currently, the City is spending \$7.0M on building an additional cell. That waste cell is designed to take predominantly commercial waste, not Municipal household waste. There are only two landfills operating in our southern region, one at Rockingham and one in Cockburn. Each have a natural life and the State Government's policy not to allow additional landfill on the Swan River Plain already sees waste from other areas, such as Canning, being taken outside the metropolitan area and dumped in the country. You are going to end up with a situation that landfill simply cannot keep going in the metropolitan area and it has got to go somewhere. There are only three operating waste plants in the Perth area – the SMRC which is almost at capacity when operating with all the waste it gets, one at the City of Stirling which is at complete capacity, and one at Mindarie which cannot take all the waste it gets from all the other Council. There is nowhere else for waste to go. If it had to go to landfill it is going to cause a problem for someone.

Q2 *In terms of the carbon tax, what would that cost?*

A2 That is something the City of Cockburn is currently modelling as to what its full impact will be, but at \$23.00 per tonne that is paid on all tonnes that push us across the threshold it is a fairly considerable burden that would need to be paid as a result of the tax. We do not have the modelling, as yet, so it would be impossible to give a specific answer.



**7 (SCM 29/03/2012) - DECLARATION BY COUNCILLORS WHO HAVE NOT GIVEN DUE CONSIDERATION TO MATTERS CONTAINED IN THE BUSINESS**

Nil.

**8 (SCM 29/03/2012) - PURPOSE OF MEETING**

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

**DEPUTATIONS**

- Mr Rod Petterson – Canning Melville Community Action Group re financial aspects of the SMRC
- Mr Tim Youe – Acting CEO of SMRC re issues surrounding SMRC's current licence for the RRRC at Canning Vale.
- Mr Norm Holtzman – Deputy Chairman, Community Advisory Group re community perspective of the issues surrounding the SMRC's current licence for the RRRC at Canning Vale.

**9. COUNCIL MATTERS**

**9.1 (MINUTE NO 4754) (SCM 16/04/2012) – SOUTHERN METROPOLITAN REGIONAL COUNCIL (1054) (S CAIN) (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**

MOVED Cllr B Houwen SECONDED Cllr V Oliver that Council adopt the recommendation with the following additional sub-clauses:

- (1) to (4) as recommended;
- (5) the SMRC be requested to review its Strategic Plan to include 'Community Health' first as the key issue when this document is reviewed later this year; and
- (6) the SMRC be requested to seek the support of a consultant to provide training to assist the Board in its management responsibilities, specifically in the areas of waste and odour management with regard to community health.

**CARRIED 9/1**

CLR SMITH REQUESTED THAT HER VOTE AGAINST THE DECISION BE RECORDED.

**Reason for Decision**

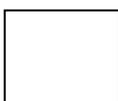
The DEC and a section of the local community have ongoing concerns over the impact of odour management and its effect on the health and amenity of the local community. The SMRC needs to recognise this and address these concerns as part of the review of the organisation's Strategic Plan.

The SMRC has a specific purpose to provide a regional waste management function. While the Project Establishment Agreement can not condition requirements for being a Board member, such as requiring expertise in waste management, the SMRC should be encouraged to provide more training for Board Members to assist them in their leadership responsibility in this field.

**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.

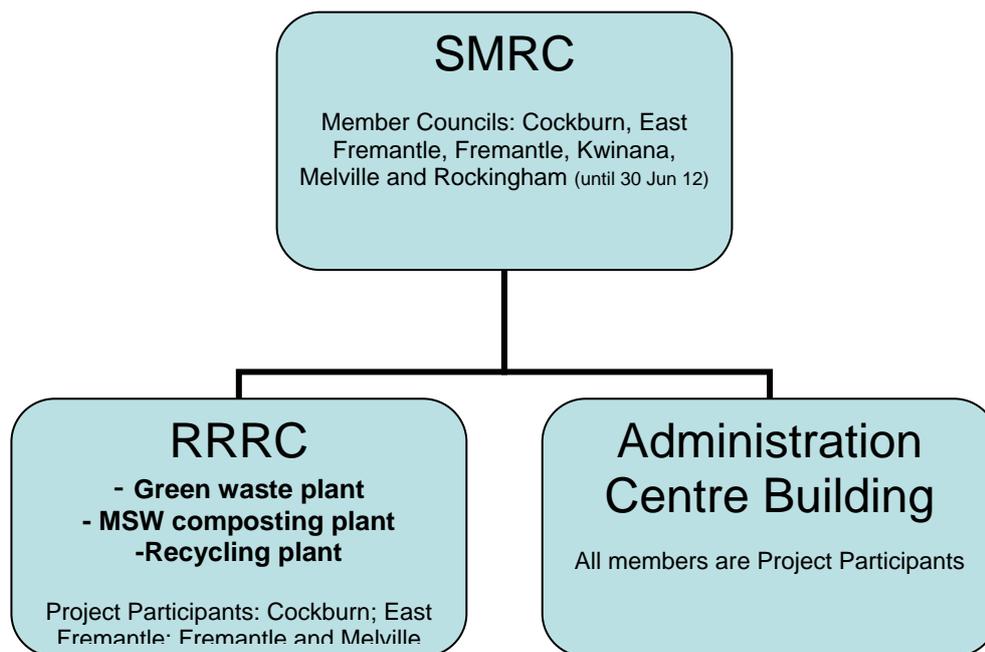
### **Submission**

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:





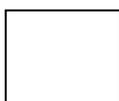
The RRRC is the major undertaking of the SMRC. The PPA dated 12 April 1999, which was varied by a Deed of Variation stamped 1 December 2000, covers both the Waste Composting operations (green waste and MSW) and the Materials Recovery Facility (MRF). In order to operate these facilities the Environmental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

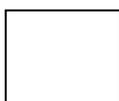
It is the view of the City’s officers that the original intent of the Establishment Agreement remains unchanged. The City still seeks to have the SMRC receive and process its waste and does not support returning to disposal of MSW into landfill. This position is not a financial one as it would be cheaper 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.



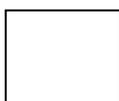
The RRRC manages odours in the following ways:

- *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.*

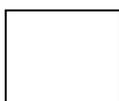
### **Budget/Financial Implications**

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.

### **Advice to Proponent(s)/Submissioners**

N/A

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

Nil.

## **10. (MINUTE NO 4755) (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**

MOVED Clr V Oliver SECONDED Clr C Reeve-Fowkes that the recommendation be adopted.

**CARRIED 10/0**

**11 (SCM 29/03/2012) - CLOSURE OF MEETING**

THE MEETING CLOSED AT 8.59PM

**CONFIRMATION OF MINUTES**

I, ..... (Presiding Member) declare that these minutes have been confirmed as a true and accurate record of the meeting.

Signed: ..... Date: ...../...../.....

