

13.1.2 STRATEGIC REVIEW OF WASTE MANAGEMENT SERVICES

File Number: LEG/00182, D-21-25478
Author: Liz Ledger, Chief Executive Officer
Bree Websdale, Director Governance and People
Authoriser: Liz Ledger, Chief Executive Officer
Attachments: 1. Strategic Waste Review
2. Establishment Agreement - Confidential

PURPOSE

To provide Council with the review of the West Metropolitan Regional Council (WMRC) prepared by Hammond Woodhouse, and based on the outcomes in this review, present further information and a recommendation for the future provision of waste management services for the Town.

BACKGROUND

The Review

At its Ordinary Council Meeting on 16 March 2021, Council resolved that the CEO undertake a review of the Town's arrangements with the WMRC and present a report to Council.

Subsequently the CEO developed the terms of reference listed below and engaged external consultants with appropriate experience and knowledge to undertake the review.

Review - Terms of Reference

- Analysis of the WMRC financial position and trading performance.
- Analysis of the Town's membership role, obligations, and benefits.
- Strategic analysis of future waste opportunities including waste to energy technologies and other non-recycling options.
- Strategic exploration of the challenges and opportunities of alternative waste service governance structures including non-membership of the WMRC or direct trading relationships with major service providers.

The Review was completed in late July. Please refer to **Attachment 1: Strategic Waste Review**.

How the Town Currently Manages Waste

The Town currently uses Suez Waste Management to undertake the following services directly for the Town:

- Domestic Recycling Service.
- Domestic Refuse Service.
- Pool, Parks, Reserves, Depot and Street Bin Rubbish Service.
- Domestic Green Waste Service.
- Bin replacement and repair.

These services are subject to a tender process, which is done in conjunction with the Town of Cottesloe and Shire of Peppermint Grove to gain economies of scale.

Queries and issues related to these services are attended to by the Town's Customer Relations and Environmental Health team. These queries are significant in number.

As per the below extract from the Town's 21/22 Annual Budget, the total costs for waste management services for the Town is \$1,716,960. Please note that this does not include Town of Claremont employee or administration costs. Please refer to Table 1: 21/22 Annual Budget for Waste Management Services

Table 1: 21/22 Annual Budget for Waste Management Services

Collection

Domestic Recycling Service	\$225,000
Domestic Refuse Service	\$300,000
Bulk Rubbish Service	\$120,000
Claremont Aquatic Centre Rubbish Service	\$20,000
Parks & Reserves Rubbish Service	\$35,000
Depot & Street Bins Rubbish Service	\$60,000
Domestic Green Waste Service	\$115,000
Bin Replacement & Repair	\$50,000

Disposal

Domestic Refuse Service	\$225,000
Bulk Rubbish Service	\$80,000
Claremont Aquatic Centre Rubbish Service	\$1,000
Parks & Reserves Rubbish Service	\$10,000
Depot & Street Bins Rubbish Service	\$5,000
Domestic Green Waste Service	\$45,960
WMRC Fixed Cost	\$425,000

While the collection of the Town's waste is managed by external contractors and administered by the Town's employees, the transfer and processing of waste is then undertaken at the Brockway transfer station and managed by the WMRC. These costs for service are illustrated below.

1. Municipal household waste (**MHW**), public waste and the bulk rubbish are collected by the external contractors are taken to the transfer station operated by the WMRC. MHW is weighed, packaged and transported to Millar Road Landfill facility. The Town pays \$321,000 annually for this service to WMRC, which includes the gate fees at Millar Road.
2. Domestic green waste is processed at the transfer station at a cost of \$45,960.
3. The Town also pays a fixed cost fee to the WMRC of \$425,000 which contributes to the fixed operational costs of the business (salaries, governance, community education and administrative costs). Please refer to Table 4: Percentage Share for Member Councils.

About the WMRC

WMRC is a Regional Council with members being the Towns of Claremont, Cottesloe and Mosman Park, Shire of Peppermint Grove, and the City of Subiaco. Originally established by a Constitution Agreement in 1989, and later the Establishment Agreement (**EA**) from 2003, the WMRC was established for the purpose of:

- (a) the collection, treatment, and disposal of waste.
- (b) the recycling or reuse of Waste and other materials including but not limited to green waste and soil.

- (c) the provision of facilities for the collection, treatment, and disposal of Waste and/or recycling or reuse of Waste and other materials,
- (d) education and promotion regarding processes, industries or activities relating to the collection, treatment, and disposal of Waste and/or to the recycling or reuse of Waste and other materials.

Please refer to Attachment 2: Establishment Agreement

The WMRC’s vision is to provide innovative waste management, recycling and resource recovery services which are socially, environmentally, and economically sustainable.

The WMRC operates with a total 15 full time equivalent (FTE) staff; these employees operate in three distinct areas as follows:

Operations Staff	8.2 FTE
Finance and Governance	3 FTE
Communications and Education	3.8 FTE

By way of comparison the Town has an FTE of 72.

The organisation operates from two sites, the transfer station on Brockway Road (Operations Staff) and an office site on Churchill Avenue in Subiaco.

WMRC’s total annual expenditure for 2021-22 is an estimated \$6,109,018 with fixed and variable costs as detailed in Table 2 below and offset by an annual income of \$6,157,179 (including \$200,000 from Reserves for capital purchases) detailed in Table 3 below.

Table 2: WMRC Annual Expenditure 21-22

Costs 2021-22	Variable	Fixed	Total Expense	%
Silo Waste Services	1,637,615	487,827	2,125,442	35%
Bulk Waste	536,895	275,264	812,158	13%
Recycling & Probl. Waste	92,664	420,428	513,092	8%
Greenwaste	184,000	383,062	567,062	9%
C&E	-	305,665	305,665	5%
Governance	-	217,038	217,038	4%
Verge Valet	682,305	230,300	912,605	15%
FOGO	247,467	208,489	455,955	7%
Other	-	200,000	200,000	3%
	3,380,945	2,728,072	6,109,018	100%

Table 3: WMRC Annual Income 21-22

Income 2021-22	Member Council Fixed	Fees & Charges	Reserves	Total Income
Silo Waste Services	384,182	919,506		1,303,688
Bulk Waste	124,655	459,753		584,408
Recycling & Probl. Waste	315,428	796,716		1,112,143
Greenwaste	311,512	766,255		1,077,768
C&E	295,665	5,500		301,165
Governance	217,038	-		217,038
Verge Valet	128,243	784,361		912,604
FOGO	(11,511)	451,959		440,448
Other		7,917	200,000	207,917
	1,765,211	4,191,968	200,000	6,157,179

In terms of the members financial contribution, each pay a percentage of the annual fixed costs (of \$1,765,211 for 2021-22) based on population. Please refer to Table 4: Percentage Share for Member Councils.

Table 4: Percentage Share for member Councils

Stakeholders	% Share
City of Subiaco	36.57
Town of Claremont	23.08
Town of Mosman Park	19.09
Town of Cottesloe	17.57
Shire of Peppermint Grove	3.69

Extract from WMRC Annual Budget 21-22

The Town of Claremont’s percentage share is 23.08%, which equates to \$425,000 for 21/22 for fixed costs. Over the last 4 financial years, the WMRC has run at a loss, with the main contributing factor to this being the legal fees associated with the DiCom litigation. The operations of the WMRC in recent years have shown an increase in income and a reduction in the annual loss, as illustrated below in Table 4: WMRC Annual Loss Figures

Table 5: WMRC Annual Loss Figures

Year	WMRC annual loss
2017-18	\$1,182,858
2018-19	\$796,968
2019-20	\$449,965
2020-21 (budget)	\$274,245

Changes to Waste Management

The industry and government policies for waste management are evolving, essentially from a landfill 'dump it and leave it' philosophy decades ago, to a mandated waste minimisation, reuse and recycle requirement,

Landfill is being faded out for the management of waste, being replaced by options such as waste to energy, container deposit scheme and FOGO.

This aligns with the purpose of the EA that the WMRC was established for.

DISCUSSION

Councils motion to review the WMRC was based on getting a better understanding of the costs and efficiencies, to provide Council with the knowledge that the current operation is providing them with an optimal service.

The Review has identified that while the current management of the WMRC is sound, there is a concern with the governance structure of a regional council and the associated risks. As stated by Hammond Woodhouse (2021 page 20):

"That issue is, put quite simply, that decisions can be made by the WMRC which can have an impact, including a potentially significant financial impact on the Town, and which can have the potential to expose the Town to risk, and those decisions are, ultimately, the sole province of the WMRC."

Under the current Establishment Agreement those decisions might include:

- *Entering a long-term supply contract with a waste to energy company.*
- *Refusing a request from a Participant to allow it to undertake a Regional Purpose such as recycling, kerbside pick or FOGO processing.*
- *Refusing a request from a Participant to "opt out" of a long-term waste supply proposal; or Taking out a loan for a significant sum to fund a capital project for a "regional purpose".*

As detailed in the attached Review, the structure of the regional council may have previously provided a highly effectual arrangement for the provision of waste management services. However, the structure of a regional council does not allow for each member Council to make their decisions on waste management individually, and with their financial capacity and level of risk appetite a weighing factor.

"The Establishment Agreement, in its current form, in effect, would prevent a Participant from undertaking a competitive, market driven procurement process for any waste related service provider, without the express approval of the WMRC, itself a potential service provider."

Recent events have also highlighted the potential risks to which a Participant might be exposed when dealing with litigation or entering into large "forward supply" contracts.

These changes and developments indicate that a strategic review of the establishment agreement would be timely, sensible and, indeed, necessary."

(Hammond Woodhouse, 2021, page 2 & 3).

This inability to affect individual member decision making poses high levels of risk for each member. An example of this is the recent decision of the WMRC Council to sign off on a 10+ year agreement to go to Waste to Energy; a long-term commitment for a decision on managing MHW by the member councils.

Risk Assessment

The Town has recently reviewed and updated its risk profile and reporting tools with assistance from LGIS. Membership of the WMRC has been identified as a risk to the Town. The Town has identified that WMRC poses a risk due mainly to its governance structure which means that the Town has no ability to influence decision making but is bound by financial decisions made by WMRC. The identifiable consequences to the Town include ‘financial’ and ‘compliance’ risk.

Overall, WMRC has a current risk rating of “High” based on:

- Consequence being **moderate**
- Likelihood being **likely**

This risk rating of high (orange), is rated as ‘Urgent Attention Required’. It is only deemed acceptable with “Excellent controls, managed by senior management/executive and subject to monthly monitoring”.

Risk Acceptance Criteria

Risk Rank	Description	Criteria	Responsibility
LOW	Acceptable	Risk acceptable with adequate controls, managed by routine procedures and subject to annual monitoring	Supervisor / Team Leader
MODERATE	Monitor	Risk acceptable with adequate controls, managed by specific procedures and subject to semi-annual monitoring	Service Manager
HIGH	Urgent Attention Required	Risk acceptable with excellent controls, managed by senior management / executive and subject to monthly monitoring	Executive Leadership Team
EXTREME	Unacceptable	Risk only acceptable with excellent controls and all treatment plans to be explored and implemented where possible, managed by highest level of authority and subject to continuous monitoring	CEO & Council

Reducing the Risk

The best way to eliminate the risk is to remove it completely which, in this case, would be the dissolution of the regional council. The options to reduce the risk to the Town (and the other member Councils) includes withdrawal from the WMRC, as well as to dissolve the regional council (s3.63 *Local Government Act 1995*).

Please refer to Table 6: Options for withdrawal / dissolution for greater detail.

Table 6: Options for withdrawal/dissolution

	Options
Immediate withdrawal by Town	Town gives notice that it withdraws from WMRC effective immediately pursuant to section 9 of the EA.
Withdrawal by Town pursuant to EA	<p>Pursuant to the EA, the Town provides written notice to the participants requesting to withdraw from WMRC before 31 December 2021.</p> <p>9. WITHDRAWAL OF A PARTICIPANT</p> <p>9.1 Circumstances in which withdrawal permitted</p> <p>A participant may only withdrawal from the Regional Local Government with the consent of at least half of the remaining Participants and only after giving the notice described in clause 9.2.</p>
Withdrawal by participants pursuant to EA	<p>Pursuant to the EA (section 8 detailed below), the participants agree to dissolve WMRC.</p> <p>8. WINDING UP</p> <p>8.1 Winding up by Agreement</p>

	The Participants may by agreement, wind up the Regional Local Government.
Dissolution of regional council	A regional local government is to be wound up at the direction of the Minister Section 3.63 of the <i>Local Government Act 1995 (WA)</i> .

There are pros and cons with the options, which have been listed in Table 8 under Financial Implications in this report.

Other Possible Structures for Waste Management

To provide waste management services as a cohort of local governments, there are 3 main structures for consideration. Please refer to Table 7.

Table 7: Other Suitable Structures

	Structure	Purpose
Regional Council	The <i>Local Government Act 1995</i> refers to Regional Local Governments in Part 3 (Division 4) as 'two or more Local Governments, who may (subject to Minister's approval) establish a regional Local Government to do things, for the participants, for any purpose for which a Local Government can do things under this Act or any other Act.	Regional Local Governments or Regional Councils (as they are often known) may exist in specialist areas and are formed to oversee management of a particular function, traditionally waste management services. A landfill site, for example, may serve six Local Governments, rather than each of them having individual facilities. A Regional Council may then be established, consisting of members of each Council, to manage this facility. Some Regional Councils have extended the scope of services provided to their member Local Governments beyond the management of waste and waste facilities.
Regional Subsidiary	<p>A Regional Subsidiary is a semi-independent collaborative organisation established by two or more local governments to provide new or existing services that can be more effectively delivered together than by one local government alone. It is established under the <i>Local Government Act 1995</i> with the agreement of two or more local governments. Local Governments wishing to establish a Regional Subsidiary must develop a Charter and Business Plan and seek feedback from their respective communities. Each Local Government must approve the Charter and Business Plan before seeking the approval of the Minister for Local Government.</p> <p>The formation of a regional subsidiary is an exception to the general rule that local governments cannot acquire or form a corporation.</p> <p>However, a regional subsidiary can only be formed for non-commercial</p>	<p>A Regional Subsidiary can deliver one or more services currently delivered or functions performed by a local government. These could include rating services, records management, environmental health services, finance functions, procurement to name a few. It can also initiate new opportunities such as tourism, aged care, procurement, etc. The purposes of a Regional Subsidiary are captured in its Charter and Business Plan.</p> <p>A regional subsidiary is designed to be a convenient way for local governments to pool their resources and cooperate more closely with neighbouring districts.</p> <p>The process for establishing a regional subsidiary is set out in the <i>Local Government (Regional Subsidiary) Regulations 2017</i>.</p> <p>This process involves:</p> <ul style="list-style-type: none"> • preparing and advertising a business plan in each affected district • drafting a charter for the subsidiary

	<p>goals, such as providing services to the community or increasing the efficiency of existing local government operations.</p> <p>A regional subsidiary is:</p> <ul style="list-style-type: none"> • similar to a Voluntary Regional Association of Councils (VROC), but is more binding on the participants • similar to a regional council but has more flexibility and fewer reporting requirements. 	<ul style="list-style-type: none"> • submitting the charter and business plan to the minister for approval. <p>Once the minister's approval is obtained, the subsidiary will exist as a legal entity from the day specified in the approval.</p>
<p>Voluntary Regional Organisations of Councils</p>	<p>Governance arrangements can vary, but most operate under a Memorandum of Understanding (MOU) generally with administrative support provided by the members Councils on a rotational basis. Memorandums of Understanding commonly outline the scope of activities, membership arrangements, funding arrangements and administrative support.</p>	<p>VROCs are established to work collaboratively for regional planning and shared projects that benefit a region. Projects are often related to regional service delivery, environmental issues, regional facility planning, tourism projects, waste management and strategic issues in common. There are currently sixteen VROCs operating in Western Australia in both metropolitan, and more commonly, regional areas.</p>

The Voluntary Regional Organisation structure would be a plausible direction to take given they are a collaborative way to work (to create economies of scale), operating under a simplified structure of a MOU. This structure is not unlike many of the existing collaborations between the neighbouring local governments, which are effective and provide the level of oversight and regulation required to be effective.

PAST RESOLUTIONS

Ordinary Council Meeting, 16 March 2021, Resolution 001/21

That Council:

1. *Endorses the attached Town of Claremont Draft Waste Plan 2020-2025 for submission to the Department of Water and Environmental Regulation for approval by the Director General.*
2. *That the CEO undertake a review of the Town of Claremont's arrangements with WMRC and present a report to Council.*

FINANCIAL AND STAFF IMPLICATIONS

Regarding the financial implications if the Town were to leave the WMRC or the WMRC were to dissolve, there are different scenarios with differing impacts.

The WMRC owns all the infrastructure at the West Metro Recycling Centre / transfer station. The provisional value as of 30 June 2021 was as follows:

1. Infrastructure - \$966,700; and
2. Buildings, furniture, plant and equipment* - \$1,477,439.
(*this figure includes the Office furniture and equipment located at 317 Churchill Ave).

The land at the West Metro Recycling Centre / transfer station is not leased. It is Crown Land vested in the Western Metropolitan Regional Council for the purpose of a "refuse transfer station". The order states that WMRC contributed \$175,000 (20%) of total value towards acquisition of the refuse transfer station.

The vesting order refers to section 33(2) *Land Act 1933* (which is now repealed).

It appears that if a member council withdraws from WMRC, the impact of clause 9.5 of the EA is that that member in effect loses their share of the transfer station to the other remaining councils. However, if the WMRC is wound up (whether by agreement or by the minister), all assets of WMRC including the transfer station infrastructure are distributed.

The EA has a dispute resolution clause which refers to a party providing notice prior to institution proceedings and a party being able to elect to go to Arbitration.

Alternatively, to dissolution or winding up, the establishment agreement can be amended. Section 3.65 of the *Local Government Act 1995* provides:

- (1) The participants may amend the establishment agreement for a regional local government by agreement made with the Minister's approval, and a reference in this Division to the establishment agreement includes a reference to the establishment agreement as so amended.
- (2) The establishment agreement can be amended under subsection (1) to include another local government as a further participant if that local government is a party to the amending agreement.
- (3) Section 3.61(2) and (3) apply, with any necessary modifications, to an agreement amending the establishment agreement.

If the member councils agree to dissolve the WMRC. Section 8.2 and 8.3 of the EA advises:

8.2 Division of assets

If the Regional Local Government is wound up and there remains after satisfaction of all debts and liabilities any property and assets then such property and assets must, unless the Participants otherwise agree, be realised and the proceeds must be divided among the Participants in proportions which reflect all the financial contributions made by the Participants from time to time pursuant to clause 7 to the intent that such proceeds should be divided not having regard to the Populations of the Participants at the time but rather having regard to the equity of each Participant.

8.3 Division of Liabilities

- (a) *If the Regional Local Government is wound up and there remains any debt or liability in excess of the realised property and assets, then the debt or liability shall be met by the Participants.*
- (b) *Each Participant must pay a sum which bears the same proportion to that remaining debt or liability as the Population of that Participant bears to the total Populations of all Participants.*

The full financial implications of dissolution cannot be ascertained at this time, based on the information available. The current type of contracts that the WMRC has in play, and their length / implications are unknown, assuming there would be staff contracts, office equipment lease, office rental, and contracts with external suppliers.

The dissolution of the regional council will require a lawyer to prepare a deed which will be signed by all member councils and the WMRC. It would be appropriate that if this direction is supported, that the fees associated are borne by all member councils.

Table 8:

Pros	Cons

<p>Immediate withdrawal by Town</p>	<p>Risk removed quickly Town can determine its own direction for waste management</p>	<p>Loss of transfer station assets. Impact on other members. Impact on relationship with other members. Potential for legal dispute with WMRC. Potential for negative publicity. Reputational damage. Town needs to identify an alternative packaging and disposal option for MHW and green waste.</p>
<p>Withdrawal by Town pursuant to EA</p>	<p>Risk is removed quickly. Town has more time to prepare taking over the role of WMRC than if the withdrawal was immediate. Takes effect from 30 June 2022. Town can determine its own direction for waste management.</p>	<p>Loss of transfer station assets. Impact on other members. Impact on relationship with other members - the Town needs the minimum support of 2 of the participants. Potential for legal dispute with WMRC (less than immediate withdrawal). Potential for negative publicity. Town needs to identify an alternative packaging and disposal option for MHW and green waste.</p>
<p>Withdrawal by participants pursuant to EA</p>	<p>Risk is removed. Transfer station assets available for distribution. Maintenance of relationship with other members. Reduced potential for legal dispute. Members have an opportunity to seek new options for packaging and disposal of MHW and green waste which may be more cost effective</p>	<p>Potential for legal dispute between members if not all in agreement. Participants meet to discuss the Notice and are required to make a decision by 31 May 2022. Members need to identify alternative option for packaging and disposal option for MHW and green waste.</p>
<p>Dissolution of regional council</p>	<p>Risk is removed. Member councils will be able to decide a new structure. Transfer station assets available for distribution or lease. Maintenance of relationship with other members. Reduced potential for legal dispute. Members have an opportunity to seek new options for packaging and disposal of MHW and green waste which may be more cost effective.</p>	<p>Possible impact on WMRC human resources. Members need to identify alternative option for packaging and disposal option for MHW and green waste, and the assets.</p>

POLICY AND STATUTORY IMPLICATIONS

Local Government Act 1995, Part 3 (Division 4) Regional Local Governments.

Town of Claremont Waste Plan.

COMMUNICATION / CONSULTATION

The leadership at the WMRC and member Councils are aware of WMRC review that the Town is conducting. Further consultation with the member councils and the WMRC would be required, pending Council's recommendation on the matter.

STRATEGIC COMMUNITY PLAN

Environmental Sustainability

We are a leader in responsibly managing the built and natural environment for the enjoyment of the community and continue to demonstrate diligent environmental practices.

- Take a leadership in the community in environmental sustainability.
- Aim for best practice in water usage and waste minimalisation in line with community expectations.

Leadership and Governance

We are an open and accountable local government, a leader in community service standards.

- Demonstrate a high standard of governance, accountability, management and strategic planning.
- Continually assess our performance and implement initiatives that drive continuous improvement.

URGENCY

The process for either withdrawal or dissolving the regional council will take several months. It is recommended that, if Council wishes to pursue either that it is done as a matter of priority to prevent any further risk to the Town.

VOTING REQUIREMENTS

Simple Majority decision of Council (*More than half the elected members present are required to vote in favour*).

OFFICER RECOMMENDATION

That Council

1. **Receives the Review of the WMRC by Hammond and Woodhouse, July 2021.**
2. **Requests the CEO to:**
 - a. **Approach the member Councils to discuss the contents of this report with the aim of reaching a decision to reduce the risk for the member Councils; and**
 - b. **Prepare a report to Council advising on the outcomes as soon as practical.**

The CEO notified the Elected Members of a minor amendment to the report.

On page 27 of the Agenda at the third line of the first paragraph replace the word 'no' with the word 'limited'. The report was amended as follows:

'The Town has identified that WMRC poses a risk due mainly to its governance structure which means that the Town has ~~no~~ limited ability to influence decision making but is bound by financial decisions made by WMRC.'

RESOLUTION 097/21

EXTENSION OF TIME TO SPEAK

Moved: Cr Peter Edwards

Seconded: Cr Sara Franklyn

That Cr Haynes be granted an extension of time to speak.

For: Mayor Jock Barker, Cr Jill Goetze, Cr Peter Browne OAM, JP, Cr Sara Franklyn, Cr Peter Edwards, Cr Bruce Haynes, Cr Paul Kelly, Cr Kate Main, Cr Annette Suann, Cr Peter Telford

Against: Nil

CARRIED 10/0

AMENDMENT

Moved: Cr Bruce Haynes

Seconded: Cr Sara Franklyn

That Item 2 of the Officer Recommendation be deleted and replaced with the words "refer the review to an Elected Members Forum."

Reason: to enable Council to consider the review.

For: Cr Sara Franklyn, Cr Peter Edwards, Cr Bruce Haynes

Against: Mayor Jock Barker, Cr Jill Goetze, Cr Peter Browne OAM, JP, Cr Paul Kelly, Cr Kate Main, Cr Annette Suann, Cr Peter Telford

LOST 3/7

RESOLUTION 098/21

That Council

- 1. Receives the Review of the WMRC by Hammond and Woodhouse, July 2021.**
- 2. Requests the CEO to:**
 - a. Approach the member Councils to discuss the contents of this report with the aim of reaching a decision to reduce the risk for the member Councils; and**
 - b. Prepare a report to Council advising on the outcomes as soon as practical.**

For: Mayor Jock Barker, Cr Jill Goetze, Cr Peter Browne OAM, JP, Cr Sara Franklyn, Cr Peter Edwards, Cr Bruce Haynes, Cr Paul Kelly, Cr Kate Main, Cr Annette Suann, Cr Peter Telford

Against: Nil

CARRIED 10/0



Hammond Woodhouse Advisory

STRATEGIC WASTE REVIEW

REVIEW REPORT FOR TOWN OF CLAREMONT

20 July 2021



1. EXECUTIVE SUMMARY

The waste and resource recovery sector landscape has changed significantly since the WMRC was first constituted in 1989 and the pace of change has increased since the current Establishment Agreement was entered into in 2003.¹

Originally, the 5 Participants² would have had enjoyed a, then common, weekly kerbside pick-up service for municipal solid waste subsequently delivered to a metropolitan landfill site. The fees paid by a Participant would typically have covered the cost of waste pick up and disposal and the comparatively low overheads of governing and administering a regional council of that era.

Presumably, this relatively unsophisticated business model represented a low financial risk for the Participants, notwithstanding that under the Establishment Agreement, any annual financial operating deficits would be required to be made good and shared by them on a population basis.

30 years on from the establishment of the WMRC, Federal and State Government policy on waste avoidance and resource recovery now demands significant reduction in land fill disposal and corresponding increases in resource recovery.

Along with this major shift in public policy, a competitive array of commercial service providers now exists across the waste and resource recovery supply chain. These companies compete amongst themselves and with regional local governments, such as the WMRC, for business from local governments.

The economies of scale and specialised expertise that the Participants sought and realised over 30 years ago when establishing the WMRC is now, in most part, readily available in the commercial sector.

The Establishment Agreement, in its current form, in effect, would prevent a Participant from undertaking a competitive, market driven procurement process for any waste related service provider, without the express approval of the WMRC, itself a potential service provider.

¹ We were advised that the current Establishment Agreement was executed by the Participants and is dated 23 December 2003 and that it replaced a Constitution Agreement dated 18 July 1989 (which constituted the WMRC).

² The "Participants" has the same meaning as that given in the Establishment Agreement and the 5 Participants are Town of Claremont, Town of Cottesloe, Town of Mosman Park, City of Subiaco and Shire of Peppermint Grove.



Recent events have also highlighted the potential risks to which a Participant might be exposed when dealing with litigation or entering into large "forward supply" contracts.

These changes and developments indicate that a strategic review of the establishment agreement would be timely, sensible and, indeed, necessary.

20 July 2021

UNCONFIRMED



2. THE TERMS OF REFERENCE

On 3 June 2021, Hammond Woodhouse Advisory ("HWA") was engaged by the Town of Claremont (the "Town") to undertake a review of the Town's arrangements with the Western Metropolitan Regional Council (the "WMRC").

The terms of reference for the review are as follows:

- Analysis of the WMRC financial position and trading performance;
- Analysis of the Town's membership role, obligations, and benefits;
- Strategic analysis of future waste opportunities including waste to energy technologies and other non-recycling options; and
- Strategic exploration of the challenges and opportunities of alternative waste service governance structures including non-membership of the WMRC or direct trading relationships with major service providers.

The review was undertaken by HWA's Principal Consultants, Andrew Hammond and John M. Woodhouse.

3. METHODOLOGY

Interviews were conducted with:

- Ms. Liz Ledger, CEO of the Town; and
- Mr. Stefan Frodsham, CEO of the WMRC.

The following documents were reviewed:

- Establishment Agreement (undated and unexecuted copy);
- WMRC Annual Financial Statements of the WMRC for the years 2018/2019, 2019/2020 and 2020/2021;
- WMRC Annual Budget for 2021/2022;
- WMRC Corporate Business Plans for the years 2018/2019, 2019/2020 and 2020/2021;
- WMRC Strategic Community Plan 2019/2020 to 2029/2030;
- Contract between the Town and the WMRC entitled "Waste Delivery Agreement" dated December 2003 (now lapsed);
- National Waste Policy - Less Waste, More Resources – 2018;
- Waste Strategy 2030 – Western Australia's Waste Strategy;
- Local Government Act 1995;
- Waste Avoidance and Resource Recovery Act 2007;
- Local Government (Regional Subsidiaries) Regulations 2017.



4. ANALYSIS OF THE WMRC FINANCIAL POSITION AND TRADING PERFORMANCE

4.1 WMRC waste services

The 2021/2022 budget, and the preceding 3 years' financial statements, were analysed, together with further information sought from the CEOs and relevant staff from both the Town and the WMRC. All information was provided as requested and within an appropriate timeframe.

The analysis has been undertaken in 2 parts. Firstly, a review was undertaken of the last 3 years' financial performance of the WMRC. Secondly, a dissection was made of the different waste services provided by the Town, their cost (which is intrinsically linked to the WMRC overhead allocation) and their mode of delivery.

4.2 WMRC financial analysis

Table 1 on page 6 serves to represent a "business as usual" analysis of the "year in year out" financial performance of the WMRC. Non-cash items such as depreciation and amortization have been excluded, as have bank interest, and extraordinary legal costs and recoveries relating to the "DICOM litigation".



Table 1

	2018/2019	2019/2020	2020/2021	2021/2022
Revenue (\$000)				
Operating Grants Subsidies and Contributions	1117	1919	1954	1869
Fees and Charges	3932	3050	3354	4249
Other*	90	104	119	29
	5139	5073	5427	6147
Expenses (\$000)				
Employee Costs	1477	1570	1637	1634
Materials and Contracts	3299	3217	3349	3902
Other*	411	131	110	163
	5187	4918	5096	5699
Earnings Before Interest, Depreciation and Amortisation (EBIDA)	-48	155	331	448
% EBIDA on Revenue	-0.93%	3.06%	6.10%	7.29%
*Excludes DICOM legal fees and awarded costs				

In our view, earnings, and “year in year out” annual growth in profit indicated in Table 1 represents a relatively sound and sustainable trading performance.

Reserves have been depleted because of the DICOM legal proceedings. \$2.9 million has been spent on the matter to date with \$2.53 million coming from reserves. The 2021/2022 budget projects a closing combined reserve balance of \$1.44 million.

If the WRMC had not have the reserves that it did, at the beginning of proceedings, then the WMRC would have found itself in a parlous financial situation and the responsibility to fund the shortfall would have extended to the Town under the terms of the Establishment Agreement.



The shortfall would have been greater had the WMRC not been successful in recovering the court-awarded costs from DICOM which amounted to a payment of \$507,000 in the 2019 /2020 financial year.

The CEO of the WMRC has advised of the likelihood of the settlement of legal proceedings with DICOM in this financial year which, if correct, would create an opportunity to replenish reserve funds over the forthcoming years.

An improved financial position in future years would be dependent on many factors. We imagine that there would be potential risks associated with any long term contractual arrangement such as, we understand, the one under consideration with respect to the proposed East Rockingham Waste to Energy facility (the "Waste to Energy Proposal")

The WMRC does not have a large asset base. Nor does it have any long-term debt. We were advised that the Brockway Road facility is located on State Government reserve land and that, other than the preparation of materials for transport at the transfer station, the majority of services are undertaken utilising contractors with relatively few permanent employees.

This relatively low asset, debt and employment base suits the nature of the enterprise by keeping interest charges and fixed costs relating to plant, machinery, and buildings quite low.

Because of these low fixed costs, a significant increase in tonnage throughput could generate a disproportionately positive impact on either earnings or create the opportunity to decrease user charges and membership contributions.

Conversely, a significant decrease in tonnage throughputs (such as might result from a Participant withdrawing from the WMRC), would have a disproportionately negative impact on earnings and place upward pressure on either tonnage rates, user charges or the annual financial contribution.

The CEO of the WMRC, when interviewed, demonstrated a sound knowledge of the business, and expressed a desire to explore new revenue opportunities, but emphasised a need to carefully control fixed costs in order to maximise earnings.



4.3 Town of Claremont waste services

In order to assess the value the Town is receiving from its participation in the WMRC, all services have been individually analysed and costed where practical.

Table 2 illustrates the Town's current waste management commercial service providers and breaks down the commercial fee and unit cost for each activity.

Table 2

Activity	Contractor	Charges	Annual Cost
MSW Kerbside Pickup – weekly	Suez	120 L 3919 @ .90	\$183,400
		240L 1006 @.99	\$239,000
		660L 2912 @ 4.89	\$14,200
		1100L 2733 @ 8.51	\$23,300
MSW Disposal	WMRC	2275 @ \$145.45 Per tonne	\$330,900
Recycling Kerbside Pickup – fortnightly	Suez	240L 4575 @ \$1.15	\$136,800
		660L 3120 @ \$7.02	\$21,900
		1100L 577 @ \$9.43	\$5,400
Recycling Processing	Suez	2000 @ \$ 57.06 per tonne	\$114,100
Garden Organics (Kerbside Pickup)	Suez	240L 3136 @ \$1.05	\$85,600
Garden Organics Processing	WMRC	900 @ \$40 per tonne	\$36,000
Hard Waste Kerbside Pickup	B & B	2 @ \$46122 per year	\$46,100
Hard Waste Processing	WMRC	240 @ \$145.45 per tonne	\$34,900
Green Waste Kerbside Pickup	B & B	3 @ \$69183 per year	\$69,200
Green Waste Processing	WMRC	400 @ \$35 per tonne	\$14,000
Community Education	WMRC	Unspecified	
Tip Pass – Mixed Waste	WMRC	570 @ 36.36	\$20,700
Tip Pass – Green Waste	WMRC	490 @ 18.18	\$8,900
Compacting MSW for transport	WMRC	Unspecified	
			\$1,384,400



A brief summary of annual "service fees" paid by the Town, for 2019/2020, to its waste service providers is as follows:

• Suez	\$823,700
• WMRC	\$445,400
• B & B Waste Recyclers	\$115,300

The annual financial "contribution" of \$438,200 paid by the Town to the WMRC (as required by the Establishment Agreement) is a separate and additional expense to the annual fees summarised above.

In our view, it can therefore be said that the elements which contribute to the "value proposition" for the annual contribution (payable by the Town under the Establishment Agreement) are as follows.

- Community education;
- Community access to a local waste transfer / recycling station;
- Collective bargaining power;
- Economies of scale;
- Specialized expertise in the waste supply chain.

It would be difficult, if not impossible, to quantify an individual value for each of the identified elements.

The potential risks related to participation in the WMRC are referred to later in this report.

Based upon the information provided, the total nominal expenditure on waste management, outside of the Town's direct costs and contract management overheads is \$1,822,600, comprising of \$1,384,400 for fee for service contracts and an annual financial contribution of \$438,200 paid to the WMRC.



5. ANALYSIS OF THE TOWN'S ROLE, OBLIGATIONS AND BENEFITS AS A MEMBER OF THE WMRC

5.1 Membership

The Town is a Participant of the WMRC by virtue of the Establishment Agreement.

For the purpose of this Report, we have assumed that the Establishment Agreement provided to us is a copy of the agreement executed by the parties and approved by the Minister in 2003 .

There are 5 Participants of the WMRC namely, Town of Claremont, Town of Cottesloe, Town of Mosman Park, Shire of Peppermint Grove and City of Subiaco.

According to the Establishment Agreement, it is a substitution for a constitution agreement made on 18 July 1989 between the parties under the then Local Government Act 1960.

The WMRC has therefore been in existence for over 30 years.

5.2 Establishment Agreement matters

The "Regional District" for which the WMRC is established is the districts of the Participants i.e. the combined districts of the 5 Participants.

Each of the Participants is entitled to appoint one member of its council to be a member of the council of the Regional Council.

Other matters dealt with by the establishment agreement, of note, include:

- The "Regional Purposes" for which the WMRC is established.
- The carrying out of Regional Purposes by the WMRC and by the Participants.
- The Participants' obligations to make "financial contributions" to the WMRC.
- Withdrawal from the WMRC by a Participant.
- Winding up of the WMRC by agreement.



5.3 Roles – entities

As to the nature of the parties, it is clear that:

- the Town is a local government; and
- the WMRC is a regional local government.

As such, the Town and the WMRC are separate bodies corporate.

The WMRC performs functions, but those functions must be for a Regional Purpose under the Establishment Agreement.

The Town performs functions, but it does so subject to the restrictions specified in the Establishment Agreement.

5.4 Appointment and role of a regional councillor

The Town is entitled to, and must, appoint a member of its council to the position of member of the council of the WMRC. See clause 5.1.

Appointment of a councillor, by the Town, is therefore both an entitlement and an obligation of the Town.

The Town is also entitled to “remove” the councillor it has appointed.

Although it is a matter of the role of the councillor, rather than the role of the Town, a number of points are worth making, in the context of this Review. Those points are as follows:

- The councillor must observe the requirements that apply to the position of a councillor of a regional council.
- The councillor’s role is not one of “representative” or “agent” of the Town.
- Rather, the councillor is an independent-minded member of the regional council.
- The Town’s council cannot direct the councillor appointed by it to vote in a particular way on matters considered by the regional council.
- As mentioned earlier, the Town’s council may remove and appoint a councillor, from time to time, but it cannot dictate a position to be observed by the councillor in that person’s role as regional councillor.



5.5 Performance of waste functions by the Town and the WMRC

In 2011, the Participants and the WMRC entered into a "Waste Delivery Agreement" under which the Participants agreed to deliver all Municipal Solid Waste ("MSW") to the WMRC to enable the WMRC to comply with its obligations to supply waste to DiCOM AWT Operations Pty Ltd ("DICOM") under a "Waste Supply Agreement".

We are advised by the Town that these agreements are no longer in effect.

We are also advised by the Town that it considers that the current position is that it is arguable whether the Town is obliged under the Establishment Agreement to deliver its waste collections to the WMRC.

The Town also advised us that it has, to date, delivered all waste. The Town is of the view that it is more than arguable that it is not required to deliver all waste but has been reluctant to deviate from delivery all waste.

5.6 Financial contributions by the Town

According to the information made available to us, the Town's obligations to make payments to the WMRC fall broadly into 2 categories, namely:

- financial contributions required to be paid under the Establishment Agreement; and
- payments required to be made by agreement such as for services rendered by the WMRC to the Town.

With respect to the first category, the Town has an obligation, under the Establishment Agreement, in common with the other Participants, to contribute towards any deficiency shown in the annual budget of the WMRC.

The Town is obligated to pay a proportion of any such deficiency. Each Participant's proportion is determined on a population basis.

With respect to the second category, the WMRC renders a number of services for which fees are payable. By way of example, and significant, in the context of this Review, is the fee per tonne payable for disposal by the Town of its collected MSW.

There are other fees payable by the Town to the WMRC for the acceptance of other forms of waste at the Brockway transfer station operated by the WMRC.



5.7 Summary of obligations and benefits

Table 3 below sets out a simplified summary of the obligations of, and benefits to, the Town.

Table 3

Topic	Nature of obligation	Nature of benefit
Regional Purpose	Where a Regional Purpose is undertaken by the WMRC, the Town must not do so.	Where a Regional Purpose is undertaken by the WMRC, the Town need not do so.
Financial contributions – establishment agreement	The Town must meet, annually, its proportion of any budget deficiency of the WMRC.	
Financial contributions – other	The Town must pay the WMRC's fees for services rendered to the Town.	
Regional councillor		The Town is entitled to, and must, appoint a regional councillor. The Town may remove, and replace, its regional councillor.

The obligations that the Town must honour under the Establishment Agreement expose the Town to potentially financial risks. Those risks are discussed later in the "Strategic Exploration of Alternative Waste Service Governance Structures" section of this report.



6. STRATEGIC ANALYSIS OF FUTURE WASTE OPTIONS

Exploring future opportunities and challenges, in the context of metropolitan local government waste avoidance and resource recovery, must recognise and be guided by government policy represented at a National and State level.

Federal waste policy is driven through the National Waste Policy – Less Waste, More Resources – 2018. The Policy applies circular economy principles which endorse retention of the value of materials in the economy for as long as possible, reducing the unsustainable depletion of natural resources and impacts on the environment.

The Policy contains 7 key strategies, 3 of which have relevance to local government as follows

Strategy 1 – Waste avoidance

Deliver coordinated actions that help the community and businesses avoid and minimise waste, including through better design, reuse, repair, and sharing of products and services.

Strategy 3 – Knowledge sharing education and behaviour change

Implement coordinated knowledge sharing and education initiatives, focused on the waste hierarchy and the circular economy, that address the needs of governments, businesses, and individuals, and encourages the redesign, reuse, repair, resource recovery, recycling and reprocessing of products.

Strategy 7 – Increasing industry capacity

Identify and address opportunities across municipal solid waste, commercial and industrial waste, and construction and demolition waste streams for improved collection, recycling, and energy recovery, to deliver ongoing improvements in diversion from landfill, improved quality of recycled content and use of the waste hierarchy.

The Western Australian Government policy on waste is driven through the "Waste Strategy 2030 – Western Australia's Waste Strategy.



This Strategy, as with the Federal Policy, advocates circular economy principles. However, the Strategy takes a more prescriptive approach in setting key strategic objectives and targets. Table 4 sets out 7 key targets under the objective headings of "Avoid, Recover and Protect". All targets are relevant to local governments, generally, whilst the "Recover and Protect" objectives have a more specific impact on the Town and the WMRC.

By 2025, all local governments will be required to provide a food organics and waste organics (FOGO) kerbside collection service. By 2030, the State's policy is that there is to be no more than 15 % of the waste generated in the Perth and Peel Region going to landfill, and that materials recovery is to be increased to 75%.

The emergence of a clear and cogent strategy for waste management in Australia has provided the catalyst for large scale commercial investment in the downstream processing of waste.

Table 4

Key strategy elements

VISION	Western Australia will become a sustainable, low-waste, circular economy in which human health and the environment are protected from the impacts of waste.		
OBJECTIVES	Avoid Western Australians generate less waste.	Recover Western Australians recover more value and resources from waste.	Protect Western Australians protect the environment by managing waste responsibly.
TARGETS	<ul style="list-style-type: none"> 2025 – 10% reduction in waste generation per capita 2030 – 20% reduction in waste generation per capita 	<ul style="list-style-type: none"> 2025 – Increase material recovery to 70% 2030 – Increase material recovery to 75% Recover energy only from residual waste 	<ul style="list-style-type: none"> 2030 – No more than 15% of waste generated in Perth and Peel regions is landfilled. 2030 – All waste is managed and/or disposed to better practice facilities
HEADLINE STRATEGIES	<ul style="list-style-type: none"> Deliver a harmonised kerbside collection system, which includes food organics and garden organics (FOGO), in all Perth and Peel regions by 2025 – provided by local governments with funding support from the state. Implement local government waste plans, which align local government waste planning processes with the Waste Strategy 2030. Implement sustainable government procurement practices that encourage greater use of recycled products and support local market development. Provide funding to promote the recovery of more value and resources from waste with an emphasis on focus materials. Review the scope and application of the waste key to ensure it meets the objectives of the Waste Strategy 2030. Develop state-wide communications to support consistent messaging on waste avoidance, resource recovery and appropriate waste disposal behaviours. Review and update data collection and reporting systems to allow waste generation, recovery and disposal performance to be assessed in a timely manner. Undertake a strategic review of Western Australia's waste infrastructure (including landfills) by 2020 to guide future infrastructure development. 		
	Supporting documents Other documents which align with or support this strategy Waste Strategy 2030 include the: <ol style="list-style-type: none"> 1. Waste Strategy 2030 Action Plan 2. Waste Authority position and guidance statements 3. State Waste Infrastructure Plan 4. Annual Business Plan 5. Waste Data Strategy 		



Whereas over the last 2 decades, a typical municipal supply chain might have involved a weekly MSW and fortnightly recycling kerbside pickup (perhaps with a green waste component) being delivered to a local government owned and operated landfill and Materials Recovery Facility (MRF), future supply chains are, and will continue to be, very different.

Domestic waste at source will be reduced by FOGO and recycling separation with residue MSW being delivered to commercial waste to energy facilities or other approved non-land fill solutions.

In our view, it is expected that a key to these changes will be significant increases in private investment into the municipal waste supply chain. This investment is providing, and will continue to provide, a competitive array of large corporate service providers within the sector operating across all areas of activity including:

- MSW landfill;
- MSW to energy;
- MSW to other approved processes;
- Recycling processing;
- Food and organics processing;
- Green waste processing;
- Transport and logistics from kerbside to processing source.

Along with these commercial service providers, some local governments and regional local governments continue to provide access to MSW disposal landfills, green waste processing and other more specialised recovery functions.

Over time, with the strategic imperative of reduction of MSW to landfill, regional local governments and local governments owning and operating these strategic waste assets may need to adapt to much lower volumes.

The facility operated by the WMRC is not a landfill facility or a waste processing facility. Rather the facility is a waste transfer station. The WMRC contracts out to achieve what it considers are transport and waste recovery and disposal "solutions".

The Participants are obliged, subject to any exemption given by the WMRC, to deliver all of their kerbside waste (MSW, FOGO, recyclables, green waste) to the WMRC.

Given the broad range of commercial service providers established within the supply chain, the current role of the WMRC needs to be carefully considered. National waste policy and waste and resource recovery is virtually unrecognisable from what it was some 30 years ago, when the WMRC was originally established.



It is worthy of note, when considering the current position, that:

- (1) the Town currently expends more money in dealing directly with service providers (\$939K) than it does with the WMRC (\$445,400 in fees plus the \$438,200 financial contribution); and
- (2) the direct labour costs and overheads applied to employing suitably qualified officers to manage these arrangements are borne directly by the Town.

It appears that the Town may well have developed the internal capacity and professional expertise to manage all of its waste functions under alternative governance arrangements, whilst reducing costs and mitigating the inherent risks to be discussed later in this report.

7. STRATEGIC EXPLORATION OF ALTERNATIVE WASTE SERVICE GOVERNANCE STRUCTURES

7.1 Important note

The following commentary should be taken in a wholly strategic context and not as a reflection on the performance of the WMRC, past or present.

The Establishment Agreement guiding the governance of the WMRC was initiated some 17 years ago. Our commentary is focussed on the effect and influence of the Establishment Agreement on the Town. It is not intended to be a reflection on the current Council or Administration of the WMRC.

7.2 Alternative governance models

In our view, there are 3 different governance "models", under which the Town could conceivably deliver waste services in accordance with its statutory obligations.

They are:

- (1) The Town, itself, could provide the waste services utilising contractors, its own employees or a combination of those ("In-house").
- (2) The Town could be a "participant" under an establishment agreement with the waste services being undertaken by the regional local government ("Regional Council").



- (3) The Town, together with one or more other local governments, could form a regional subsidiary which would undertake the waste services ("Regional Subsidiary").

Currently, the Town ensures that waste services are provided to its community, in part via the Regional Council, and, in part via its own In-house efforts.

The Regional Council (i.e. the WMRC) operates a transfer station conveniently located to the Participants, and it provides community education and other services. The Regional Council contracts with transport operators and waste receivers for the transport and disposal of waste to various facilities throughout the metropolitan area.

The In-house effort procures and manages contracts (jointly with 2 other local governments) for the kerbside pickup of MSW, food and organics and hard waste all delivered to the local transfer station. Recyclables are also collected under contract and transported direct to the contractor's processing facility.

In our view, on the information provided, this current mix of Regional Council and In-house service provision provides a satisfactory level of service at a unit cost that reflects prevailing market conditions.

The annual financial contribution paid by the Town to the WMRC covers the provision of community education, the preparation of waste at the transfer station for transport to its ultimate processing point and the professional expertise and industry knowledge necessary to facilitate cost-effective contracts for transport and waste receipt.

We note that a similar level of professional expertise and knowledge (that forms part of the value derived from the WMRC) probably also exists at the Town. This appears to be so given that the Town itself procures, manages and reviews the significant waste contracts currently in place between Suez and the Town.

Earlier in this report, we expressed the view that the "business as usual" trading figures, excluding the negative impact of the DICOM proceedings, represented a relatively sound and sustainable trading performance on the part of the WMRC. We also expressed a view that the CEO of the WMRC showed a sound knowledge of the business and a good understanding of the financial drivers of the WMRC.

In normal circumstances therefore, when all of the Participants are in agreement with the WMRC and there are no compelling decisions or serious or potentially catastrophic risks facing the WMRC, business would be expected to carry on as usual without concern by the Participants.



In our view, the dispute between the WMRC and DICOM and the WMRC's recent consideration of the Waste to Energy Proposal, provide examples of how decisions made by the WMRC, under the existing governance framework, might expose the Town to potential risk including financial risk.

To add context to this part, the following key points, discussed earlier, are repeated:

Although it is a matter of the role of the councillor, rather than the role of the Town, a number of points are worth making, in the context of this Review. Those points are as follows:

The councillor must observe the requirements that apply to the position of a councillor of a regional council.

The councillor's role is not one of "representative" or "agent" of the Town.

Rather, the councillor is an independent-minded member of the regional council.

The Town's council cannot direct the councillor appointed by it to vote in a particular way on matters considered by the regional council.

As mentioned earlier, the Town's council may remove and appoint a councillor, from time to time, but it cannot dictate a position to be observed by the councillor in that person's role as regional councillor.

To better understand the nature of the relationship between the Town and the WMRC, it may be helpful to refer to similarities in the relationship between a ratepayer and the relevant local government.

A ratepayer may seek to influence decisions made by the council of the local government or to influence the way in which a councillor may vote on a given decision. There might, or might not, be an opportunity for the ratepayer to make a submission to the council or to canvass a councillor. In order to influence the decision.

Ultimately, however, it is for the council to decide on the matter and it is for the councillor to determine how to vote on a matter. Those decisions are not constrained or restricted by the views of any given ratepayer.

Those decisions can have an impact on the ratepayer. In some cases, it may be a financial impact.

It remains the case, however, that the council is entitled to make the decision, including a decision which may not be supported by one or more ratepayers.



In the case of the DICOM matter, the WMRC would have made decisions with respect to the original contract, the subsequent dispute and litigation and the settlement of the dispute, which decisions could (and, in fact, did) have implications, including significant financial implications, for the Town.

The Establishment Agreement did not constrain those decisions by the WMRC. The Establishment agreement does not, for example, require the Participants to be consulted, or require the agreement of the Participants.

In our view, the effect of the "regional purpose" provisions of the Establishment Agreement is that, unless an exemption is conferred by the WMRC (as a result of a majority decision of its councillors), the Town has no option other than to be part of a procurement process undertaken by the WMRC. This would be the case in the event that the WMRC entered into a contract guaranteeing the supply of MSW to a waste to energy facility. In our view, this illustrates a potential risk.

In relation to the Waste to Energy Proposal under consideration by the WMRC, the Town has advised us that, the Town made a request to the WMRC for a copy of the draft proposed contract. The Town wished to undertake a risk analysis of the Proposal. We are told that the Town's request was declined and, rather, the WMRC permitted the Town's CEO to view the proposed contract at the WMRC's offices (but not to take a copy).

We should make it clear that we do not say that anything done by the WMRC in either example was not something that the WMRC was not entitled to do.

The 2 matters do illustrate, however, an issue inherent in the relationship as it stands under the current Establishment Agreement.

That issue is, put quite simply, that decisions can be made by the WMRC which can have an impact, including a potentially significant financial impact on the Town, and which can have the potential to expose the Town to risk, and those decisions are, ultimately, the sole province of the WMRC.

Under the current Establishment Agreement those decisions might include:

- Entering a long-term supply contract with a waste to energy company;
- Refusing a request from a Participant to allow it to undertake a Regional Purpose such as recycling, kerbside pick or FOGO processing;
- Refusing a request from a Participant to "opt out" of a long-term waste supply proposal; or
- Taking out a loan for a significant sum to fund a capital project for a "regional purpose".



Whilst the Town cannot constrain a decision of that nature, the Town (and the other Participants), will be impacted by that decision and the Town would be required to meet its obligations under the Establishment Agreement including the obligation to make good any financial deficiencies.

In our view, it would be reasonable for the Town to consider whether the Establishment Agreement, in its current form, serves the Town's best interests.

It would also be reasonable to consider whether the Establishment Agreement, as it stands, appropriately addresses or accommodates contemporary public policy or the commercial options and opportunities that now exist in the waste avoidance and resource recovery supply chain.

The Establishment Agreement is an agreement of the 5 Participants, and it follows that any change would require the agreement of the 5.

Any review would therefore, sensibly, involve all 5 of the Participants. The Town cannot effect change alone.

In our view, there are good reasons for the Town to request that the Participants together with the WMRC, undertake a strategic review of the current Establishment Agreement.

Topics for consideration, as part of any strategic review, might include:

- Mitigation of financial and legal risk to Participants;
- Better access to competing commercial service providers;
- The relevance or benefits of "Regional Subsidiaries";
- The use of "participation agreements" for discrete projects between Participants;
- Alternatives to the current withdrawal arrangements; and
- Alternatives to the current "Regional Purpose" arrangements.

We believe that governance arrangements for any strategic review of the Establishment Agreement might be best served by representation from the 6 entities involved, that is the 5 local governments (i.e. the 3 Towns, the City and the Shire) and the WRMC.

Therefore we suggest that any forums or workshops convened for the purpose of a review be independently facilitated and attended by elected members (from the councils of the 5 local governments) who do not sit on the WRMC Council, together with elected members from the WMRC.