MINUTES

ORDINARY COUNCIL MEETING

TIME: 5.30PM

10 DECEMBER 2009

VENUE – TOWN OF VICTORIA PARK

Managing waste and recovering resources responsibly

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

MINDARIE REGIONAL COUNCIL

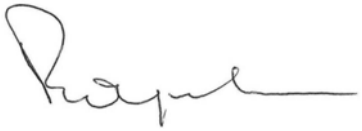
NOTICE OF MEETING

4 December 2009

Councillors of the Mindarie Regional Local Government are respectfully advised that an Ordinary Meeting of the Council will be held in the Council Chambers of the Town of Victoria Park, 99 Shepperton Road, Victoria Park, at 5.30pm on Thursday 10 December 2009.

The business papers pertaining to the meeting follow.

Your attendance is requested.



KEVIN POYNTON
Chief Executive Officer

MINDARIE REGIONAL COUNCIL - MEMBERSHIP

Cr J Bissett (John)	Town of Victoria Park
Cr D Boothman (David)	City of Stirling
Cr R Butler (Rob)	City of Perth
Cr S Cooke (Sharon)	City of Stirling
Cr S Farrell (Steed)	Town of Vincent
Cr R Fishwick (Russ)	City of Joondalup
Cr L Gray JP (Laura)	City of Wanneroo
Cr K Hollywood (Kerry)	City of Joondalup
Cr D Newton JP (Dot)	City of Wanneroo
Cr C MacRae (Corinne)	Town of Cambridge
Cr J Robbins (Jason)	City of Stirling
Cr B Stewart (Bill)	City of Stirling

NB: Although some Councils have nominated alternate members, it is a precursor to any alternate member acting that a Council carries a specific resolution for each occasion that the alternate member is to act, referencing Section 51 of the Interpretation Act. The current Local Government Act does not provide for the appointment of deputy or alternate members of Regional Councils. The DLGRD is preparing an amendment to rectify this situation.

MINUTES OF THE ORDINARY COUNCIL MEETING OF THE MINDARIE REGIONAL COUNCIL HELD IN THE COUNCIL CHAMBERS OF THE TOWN OF VICTORIA PARK, 99 SHEPPERTON ROAD, VICTORIA PARK WESTERN AUSTRALIA ON 10 DECEMBER 2009 COMMENCING AT 5.30PM.

PRESENT: Chairman	Cr R Fishwick	
	Cr J Bissett	
	Cr D Boothman	
	Cr R Butler	
	Cr S Cooke	
	Cr S Farrell	
	Cr L Gray JP	
	Cr K Hollywood	
	Cr C MacRae	
	Cr D Newton JP	
	Cr J Robbins	
	Cr B Stewart	
APOLOGIES:	Nil	
ABSENT:	Nil	
IN ATTENDANCE:		
Mindarie Regional Council Officers	K F Poynton	Chief Executive Officer
	K Dhillon	
	C Gibson	
	L Nyssen	
	M Tolson	
Member Council Officers	E Albrecht	
	J Bonker	
	K Caple	
	C Colyer	
	G Eves	
	D Forster	
	J Giorgi	
	M Glover	
	G Hunt	
	A Kyron	
	R Lotznicker	
	J Pritchard	
	M Tidy	
	A Vuleta	
Consultants	M Cave	L Gallop
	J King	J Woodhouse
VISITORS:	Nil	
MEDIA:	Nil	

Confirmed by resolution of the Council on 25 February 2010

…….Chairman

PUBLIC:	R Sebrechts

MINUTES

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1 OATHS/AFFIRMATIONS OF ALLEGIANCE AND DECLARATIONS OF OFFICE

All Councillors completed a Declaration of Office proforma.

Mr John Woodhouse explained to Councillors the preferential voting process of Chairman and Deputy Chair for Mindarie Regional Council.

Elections were then conducted by the CEO in accordance with the appropriate legislation, and the MRC Constitution. The CEO declared appointments as follows:

Chairman : Cr Fishwick
Deputy Chair : Cr Mac Rae

The Chairman and Deputy Chairman then completed their Declaration of Office proforma.

(a) Audit Committee : Chairman, Cr Butler, Cr Boothman

MOTION: (Moved: Cr Stewart Seconded: Cr Hollywood)

(Carried: 12/0)

(b) CEO Performance Review Group : Chairman, Deputy Chair

Cr Gray

MOTION: (Moved: Cr Hollywood Seconded Cr Butler)

(Carried: 12/0)

Cr Bissett

MOTION: (Moved: Cr Stewart Seconded Cr Cooke)

(Carried: 12/0)

(c) MWAC Representative : Cr Bissett

MOTION: (Moved: Cr Stewart Seconded: Cr Booth)

(Carried: 12/0)

(d) RRF Project Advisory Group Representative : Cr Gray

MOTION: (Moved: Cr MacRae Seconded Cr Newton)

(Carried: 12/0)

Notes:

- Appointments of Chairman, and Deputy Chair until 30 June 2010
- All other appointments until Local Government elections - 2011

2 QUESTION TIME

Nil.

3 ATTENDANCE AND APOLOGIES

Refer Page 3.

4 MINUTES

4.1 ORDINARY COUNCIL MEETING – 15 OCTOBER 2009

MOTION: (Moved: Cr MacRae Seconded: Cr Butler)

The Minutes of the Ordinary Council Meeting held on 15 October 2009 have been printed and circulated to members of the Council.

RECOMMENDATION

That the Minutes of the Ordinary Council Meeting of Council held on 15 October 2009 be taken as read, confirmed and the Chairman invited to sign same as a true record of the proceedings.

(Carried: 12/0)

5 ANNOUNCEMENTS

The Chairman, Cr Fishwick, thanked fellow Councillors for electing him to the position of Chair. He welcomed all Councillors – those returning to Mindarie Regional Council and those new to Mindarie Regional Council.

He made particular mention of the leadership of the former Chairman, Cr Rod Willox.

6 DEPUTATIONS

Nil

7 BUSINESS FROM A PREVIOUS MEETING TREATED AS AN ORDER OF THE DAY

Nil

8 REPORTS

Declaration of Financial/Conflict of Interest to be recorded prior to dealing with each item.

Disclosure of Financial and Proximity Interests

(a) Members must disclose the nature of their interest in matters to be discussed at the meeting. (Section 5.6B and 5.65 of the Local Government Act 1995).

(b) Employees must disclose the nature of their interest in reports or advice when giving the report or advice to the meeting. (Sections 5.70 and 5.71 of the Local Government Act 1995).

Disclosure of Interest Affecting Impartiality

(a) Members and staff must disclose their interest in matters to be discussed at the meeting in respect of which the member or employee has given or will give advice.

8.1 TECHNICAL WORKING GROUP – 27 NOVEMBER 2009

8.1.1 Tech Com. Item 1

SUBJECT: BUSINESS REPORT (FOR THE PERIOD 21 SEPTEMBER 2009 – 19 NOVEMBER 2009)

MOTION: (Moved: Cr Mac Rae Seconded: Cr Farrell)

TWG OFFICERS RECOMMENDATION

That Council receive this progress report for the period 21 September 2009 – 19 November 2009 against Annual Business Plan 2009/2010.

Nil discussion.

COUNCIL RECOMMENDATION

That Council receive this progress report for the period 21 September 2009 – 19 November 2009 against Annual Business Plan 2009/2010.

(Carried: 12/0)

8.1.2 Tech Com. Item 2

SUBJECT: RESOURCE RECOVERY FACILITY UPDATE REPORT (FOR THE PERIOD 16 OCTOBER 2009 – 10 DECEMBER 2009)

MOTION: (Moved: Cr Newton Seconded: Cr Farrell)

TWG OFFICERS RECOMMENDATION

That Council note the RRF update report.

The CEO was requested to provide electronic copies of the RRFA and User Manual to all Councillors.

COUNCIL RECOMMENDATION

That Council note the RRF update report.

(Carried: 12/0)

8.1.3 Tech Com. Item 3

SUBJECT: MINDARIE REGIONAL COUNCIL OFFICER FORUMS

MOTION: (Moved: Cr Stewart Seconded: Cr Gray)

TWG OFFICERS RECOMMENDATION

That Council:

(i) Endorse consultant recommendations as follows:

- **That two committees be established, with one to consider upcoming Mindarie Regional Council Meeting Agendas (the Agenda Review Committee) and the other committee established to deal with strategic projects as a planning group (Strategic Project Group)**
- **That the committee dealing with the agenda review not be established as a committee of the Council but rather an ad hoc group be convened by the Mindarie Regional Council CEO**
- **That the committee dealing with the strategic projects be established as a committee of the Council under s5.8 and s5.9(2)(e) (employees and other persons) of the *Local Government Act 1995***
- **That the Mindarie Regional Council CEO in convening a committee related to agenda review consider calling it the "Agenda Review Committee"**
- **That the name of the proposed project planning committee to be established under s5.8 of the *Local Government Act 1995* be called the Strategic Project Committee**
- **That the membership of the proposed Agenda Review Committee be determined by the Mindarie Regional Council CEO on the understanding that each member Council will be invited to have one representative on the Committee**
- **That the Mindarie Regional Council in establishing the proposed Strategic Project Committee appoint the Mindarie Regional Council CEO and the CEO or his/her nominee as the employee representative from each member Council**
- **That the Mindarie Regional Council in establishing the proposed Strategic Project Committee appoint a deputy to the Mindarie Regional Council CEO and member Council CEO of another employee as deputy representative by position title**
- **That employees, other than the member Council representative or deputy member Council representative, be permitted to attend meetings of the Strategic Project Committee to provide specialist knowledge and support**
- **That the Strategic Project Committee of the Council submit a report to each Mindarie Regional Council Meeting**
- **That the report of the Strategic Project Committee contain where appropriate recommendations and progress reports on matters under consideration by the Strategic Project Committee.**
- **That a Mindarie Regional Council Agenda contain a "stand alone" agenda item for the receiving and consideration of the minutes from meetings of the Strategic Project Committee**
- **That the Mindarie Regional Council CEO consider when establishing the Agenda Review Committee including the following roles and functions in the terms of reference:**

1) examine all the reports that are to be included on the MRC Meeting Agenda;

2) review the information provided in each agenda item to ensure that it is adequate for the MRC to make a decision;

3) ensure all matters have a recommendation or an explanation as to why no recommendation has been submitted; and

4) ensure the recommendations reflect the current policy and practice of the MRC and member Councils.

- **That the Strategic Project Committee prepare for consideration by the Mindarie Regional Council a draft terms of reference for the role and function of the Strategic Project Committee, having regard to the following:**

1) lead research and policy direction on key strategic issues for recommendation to the MRC;

2) address any cross organisational issues that would benefit from focussed effort and corporate attention and oversight;

3) address any issues that may have a high social, environmental and financial impact on the member Councils or the MRC;

4) consider the reports prepared on strategic projects and recommend to the MRC an appropriate course of action; and

5) assist the MRC CEO in developing strategies to respond to Government requirements as they affect the business operations of the MRC

(ii) Authorise Chief Executive Officer to develop a policy, including Terms of Reference for the Agenda Review Committee and Strategic Project Committee, for consideration by Council in February 2010

Nil Discussion.

COUNCIL RECOMMENDATION

That Council:

(i) Endorse consultant recommendations as follows:

- **That two committees be established, with one to consider upcoming Mindarie Regional Council Meeting Agendas (the Agenda Review Committee) and the other committee established to deal with strategic projects as a planning group (Strategic Project Group)**
- **That the committee dealing with the agenda review not be established as a committee of the Council but rather an ad hoc group be convened by the Mindarie Regional Council CEO**

- **That the committee dealing with the strategic projects be established as a committee of the Council under s5.8 and s5.9(2)(e) (employees and other persons) of the *Local Government Act 1995***
- **That the Mindarie Regional Council CEO in convening a committee related to agenda review consider calling it the "Agenda Review Committee"**
- **That the name of the proposed project planning committee to be established under s5.8 of the *Local Government Act 1995* be called the Strategic Project Committee**
- **That the membership of the proposed Agenda Review Committee be determined by the Mindarie Regional Council CEO on the understanding that each member Council will be invited to have one representative on the Committee**
- **That the Mindarie Regional Council in establishing the proposed Strategic Project Committee appoint the Mindarie Regional Council CEO and the CEO or his/her nominee as the employee representative from each member Council**
- **That the Mindarie Regional Council in establishing the proposed Strategic Project Committee appoint a deputy to the Mindarie Regional Council CEO and member Council CEO of another employee as deputy representative by position title**
- **That employees, other than the member Council representative or deputy member Council representative, be permitted to attend meetings of the Strategic Project Committee to provide specialist knowledge and support**
- **That the Strategic Project Committee of the Council submit a report to each Mindarie Regional Council Meeting**
- **That the report of the Strategic Project Committee contain where appropriate recommendations and progress reports on matters under consideration by the Strategic Project Committee.**
- **That a Mindarie Regional Council Agenda contain a "stand alone" agenda item for the receiving and consideration of the minutes from meetings of the Strategic Project Committee**
- **That the Mindarie Regional Council CEO consider when establishing the Agenda Review Committee including the following roles and functions in the terms of reference:**
    - **1) examine all the reports that are to be included on the MRC Meeting Agenda;**
    - **2) review the information provided in each agenda item to ensure that it is adequate for the MRC to make a decision;**
    - **3) ensure all matters have a recommendation or an explanation as to why no recommendation has been submitted; and**

4) ensure the recommendations reflect the current policy and practice of the MRC and member Councils.

- **That the Strategic Project Committee prepare for consideration by the Mindarie Regional Council a draft terms of reference for the role and function of the Strategic Project Committee, having regard to the following:**

  1) lead research and policy direction on key strategic issues for recommendation to the MRC;

  2) address any cross organisational issues that would benefit from focussed effort and corporate attention and oversight;

  3) address any issues that may have a high social, environmental and financial impact on the member Councils or the MRC;

  4) consider the reports prepared on strategic projects and recommend to the MRC an appropriate course of action; and

  5) assist the MRC CEO in developing strategies to respond to Government requirements as they affect the business operations of the MRC

(ii) Authorise Chief Executive Officer to develop a policy, including Terms of Reference for the Agenda Review Committee and Strategic Project Committee, for consideration by Council in February 2010

(Carried: 12/0)

8.1.4 Tech Com. Item 4

SUBJECT: ANNUAL BUDGET PROCESS AND FEE SETTING MECHANISM

MOTION: (Moved: Cr MacRae Seconded: Cr Butler)

TWG OFFICERS RECOMMENDATION

That Council approves the Draft Budget Process and the Fee Setting Mechanism detailed under "Budget Process and Fee Setting Mechanism" above.

The CEO advised, in response to a question, that the process of establishment of a revised pricing model was dependent on Member Councils establishing positions on various options, prior to the next workshop.

Some Councils have yet to advise the completion of this work to establish a position, although advice has been received to the effect that this work will be completed by end December 2009.

COUNCIL RECOMMENDATION

That Council approves the Draft Budget Process and the Fee Setting Mechanism detailed under "Budget Process and Fee Setting Mechanism" above.

(Carried: 12/0)

8.1.5 Tech Com. Item 5

SUBJECT: MINDARIE REGIONAL COUNCIL RESOURCE RECOVERY STAGE TWO OUTLINE PLAN

MOTION: (Moved: Cr Hollywood Seconded: Cr Boothman)

TWG OFFICERS RECOMMENDATION

That Council:

(i) Approve the proposed 'way ahead' with respect to resource recovery related issues, namely progress of tasks as follows:

- **Authorisation for CEO MRC to seek formal advice from City of Stirling on that Council's 'post Atlas' plans, including plans for ongoing commitment to a co-mingled collection system**
- **Completion of the regional integrated waste plan**
- **Confirmation of the State Government's waste strategy, including the approach to Advanced Waste Treatment (AWT)**
- **Confirmation of MRC policy regarding exemptions, following completion of the revised pricing model**

(ii) Review progress on these tasks in April 2010, with a view to potentially revising the 'wait and see' approach for Resource Recovery Stage Two

The Mover and Seconder agreed to a Council decision to amend (i) as follows:

- Final dot point
  - Delete : Confirmation
  - Insert : Development

COUNCIL RECOMMENDATION

That Council:

(i) Approve the proposed 'way ahead' with respect to resource recovery related issues, namely progress of tasks as follows:

- **Authorisation for CEO MRC to seek formal advice from City of Stirling on that Council's 'post Atlas' plans, including plans for ongoing commitment to a co-mingled collection system**
- **Completion of the regional integrated waste plan**

- **Confirmation of the State Government's waste strategy, including the approach to Advanced Waste Treatment (AWT)**
- **Development of MRC policy regarding exemptions, following completion of the revised pricing model**

(ii) Review progress on these tasks in April 2010, with a view to potentially revising the 'wait and see' approach for Resource Recovery Stage Two

(Carried: 12/0)

8.1.6 Tech Com. Item 6

SUBJECT: ANNUAL REPORT 2008/2009

MOTION: (Moved: Cr MacRae Seconded: Cr Butler)

TWG OFFICERS RECOMMENDATION

That Council:

(i) note the Auditors Report (provisional to Mindarie Regional Council's signing the Statement of Declaration on the Financial Statements)

(ii) adopt the Annual Report, including The Financial Statements for Year Ended 30 June 2009

(iii) authorise the Chairman and Chief Executive Officer to sign the Statement of Declaration on behalf of Mindarie Regional Council

Cr Stewart queried why the audit statement was unsigned. Mr Dhillon advised that, in his view, the appropriate process was as follows:

- Council to adopt the Annual Report and sign the Statement of Declaration
- Auditor to sign Auditors Report

Recommendation was put to the vote and lost.

MOTION: (Moved: Cr Bissett Seconded: Cr Boothman)

The CEO is to deal with this matter under delegated authority prior to the next Ordinary Council Meeting by ensuring that the Auditor signs the Audit report prior to the Annual Report being submitted to the Minister.

(Carried: 12/0)

8.1.7 Tech Com. Item 7

SUBJECT: CONSTRUCTION OF AN EXTENSION TO EXISTING WORKSHOP BUILDING AT TAMALA PARK WASTE MANAGEMENT FACILITY

MOTION: (Moved: Cr Bissett Seconded: Cr Newton)

TWG OFFICERS RECOMMENDATION

That Council:

(i) accept the tender (Tender No. 13/102) offered by Devco Builders of $329,991.35 excluding GST for the construction of the workshop extension at Tamala Park

(ii) approve an additional expenditure of $100,000.00 for construction of the workshop extension

The CEO tabled Supplementary Information to Item 8.1.7 with revised recommendation.

REVISED RECOMMENDATION

That Council:

(i) accept the tender (Tender No. 13/102) offered by Devco Builders of $329,991.35 excluding GST for the construction of the workshop extension at Tamala Park subject to demonstration by Devco Builders of a satisfactory financial position

(ii) approve an additional expenditure of $100,000.00 for construction of the workshop extension

(iii) approve allocation of additional funds of $100,000.00 which will be funded from savings expected on "Excavation – Phase 3 Stage 2"

Council, upon a suggestion from Cr Bissett, requested the CEO to investigate alternatives to the title 'Tamala Park Waste Management Facility' in light of the potential for confusion with Tamala Park Regional Council.

Cr Stewart indicated support for the bid by Western Australian Building Group.

COUNCIL RECOMMENDATION

That Council:

(i) accept the tender (Tender No. 13/102) offered by Devco Builders of $329,991.35 excluding GST for the construction of the workshop extension at Tamala Park subject to demonstration by Devco Builders of a satisfactory financial position

(ii) approve an additional expenditure of $100,000.00 for construction of the workshop extension

(iii) approve allocation of additional funds of $100,000.00 which will be funded from savings expected on "Excavation – Phase 3 Stage 2"

(Voting Requirement – Absolute Majority)

(Carried: 9/3)

8.2 CHIEF EXECUTIVE OFFICER

8.2.1 File No: FIN/5-02

SUBJECT: FINANCIAL STATEMENTS FOR THE PERIODS ENDED 30 SEPTEMBER 2009 AND 31 OCTOBER 2009

MOTION: (Moved: Cr Stewart Seconded: Cr Robbins)

MRC OFFICER RECOMMENDATION

That the Financial Statements as attached at Attachment One and Two for the months ended 30 September 2009 and 31 October 2009 be noted.

Nil Discussion.

COUNCIL RECOMMENDATION

That the Financial Statements as attached at Attachment One and Two for the months ended 30 September 2009 and 31 October 2009 be noted.

(Carried: 12/0)

8.2.2 File No: FIN/5-02

SUBJECT: LIST OF PAYMENTS MADE FOR THE MONTHS ENDED 30 SEPTEMBER 2009 AND 31 OCTOBER 2009

MOTION: (Moved: Cr Robbins Seconded: Cr Newton)

MRC OFFICER RECOMMENDATION

That Council endorse the list of payments made, as per the delegation made to the Chief Executive Officer, for the months ended 30 September 2009 and 31 October 2009.

Nil Discussion.

COUNCIL RECOMMENDATION

That Council endorse the list of payments made, as per the delegation made to the Chief Executive Officer, for the months ended 30 September 2009 and 31 October 2009.

(Carried: 12/0)

8.2.3 **File No: COR/1**

SUBJECT: DELEGATED AUTHORITY : 2009/2010 CHRISTMAS NEW YEAR RECESS

MOTION: (Moved: Cr Farrell Seconded: Cr Stewart)

MRC OFFICER RECOMMENDATION

That in accordance with Section 5.42 of the Local Government Act 1995, the Chief Executive Officer be delegated authority by an ABSOLUTE MAJORITY to exercise the powers and duties of the Council, other than those referred to in Section 5.43 of the Act from 10 December 2009 to 25 February 2010:

(i) in relation to general matters, where the recommendation is for an item of business of a general nature, a majority of all Elected Members are in agreement

(ii) a report summarising the items of business dealt with by delegated authority is submitted for information to the Council meeting to be held on 25 February 2010

Nil Discussion.

COUNCIL RECOMMENDATION

That in accordance with Section 5.42 of the Local Government Act 1995, the Chief Executive Officer be delegated authority by an ABSOLUTE MAJORITY to exercise the powers and duties of the Council, other than those referred to in Section 5.43 of the Act from 10 December 2009 to 25 February 2010:

(i) in relation to general matters, where the recommendation is for an item of business of a general nature, a majority of all Elected Members are in agreement

(ii) a report summarising the items of business dealt with by delegated authority is submitted for information to the Council meeting to be held on 25 February 2010

VOTING REQUIREMENT - Absolute Majority

(Carried: 12/0)

Closure of meeting to the Public.

MOTION: (Moved: Cr MacRae Seconded: Cr Butler)

That in accordance with Local Government Act 1995 Section 5.23 (2) (c) and (d) the meeting be closed to the public.

(Carried: 12/0)

8.2.4 **File No: WST/119**

SUBJECT: RESOURCE RECOVERY FACILITY – ISSUES RE REDUCED AVAILABILITY OF PROCESSING CAPABILITY

MOTION: (Moved: Cr Butler Seconded: Cr Gray)

MRC OFFICER RECOMMENDATION

That Council:

(i) approves the Rectification Plan at Attachment One to this Item , as a basis for development of a "Standstill Agreement"

(ii) authorises the Chief Executive Officer to work with BioVision 2020 Pty Ltd to develop a "Standstill Agreement" for the implementation of the Rectification Plan referred to in this Item, and to refer the Standstill Agreement back to Council for approval

Suspension of Standing Orders

MOTION: (Moved: Cr MacRae Seconded Cr Gray)

That Standing Orders be suspended so as to allow general discussion on all matters associated with Item 8.2.4.

(Carried: 12/0)

The Chairman advised Council that the Supplementary Information dossier associated with this Item would be included with the Minutes.

Mr John King, former Project Director for the Resource Recovery Facility (RRF), from JK Consultants, who had been appointed to assist the administration on this matter, addressed the meeting. Key points were as follows:

- The process being followed for dealing with the Forced Outage is in accordance with the Resource Recovery Facility Agreement (RRFA)
- A major principle followed in establishing the RRFA as a Build Own and Operate contract was that Mindarie Regional Council should not have greater liability than it would have if it was the owner of the RRF (such as would have happened if a Design and Construct model was adopted for the project)
- Insurance is a primary mechanism for covering the costs of BioVision (BV) and the Mindarie Regional Council associated with the Forced Outage. Claims will be made against either the Industrial and Special Risk Insurance or the Professional Indemnity Insurance, depending on the outcome of a detailed investigation currently being undertaken by the insurers
- Details of the Fee payable to BioVision by Mindarie Regional Council during the Forced Outage were provided, together with the potential total liability of Mindarie Regional Council under various scenarios that could eventuate as a result of Mindarie Regional Council agreeing to the Rectification Plan

- The means available to BioVision to meet its obligation to reimburse Mindarie Regional Council for payments made in accordance with the Rectification Plan were identified as insurance payments received, damages claimed by BioVision from the subcontractor(s) responsible for the fault, additional equity provided by the BioVision shareholders and from the Development Security of $2,500,000 being held by Mindarie Regional Council
- The options available to the Mindarie Regional Council in the event that BioVision fails to restore the RRF to an Availability of greater that 92% and other grounds for Mindarie Regional Council to call a Default were explained, together with the likely implications of Mindarie Regional Council calling a Default under these circumstances

Mr King, the CEO and Ms Melanie Cave then answered Councillor questions.

Councillors agreed that careful consideration needed to be given to any alteration to the Council's risk, as established in the RRFA, in any further work.

Resumption of Standing Orders.

MOTION: (Moved: Cr Boothman Seconded: Cr Bissett)

(Carried: 12/0)

Adjournment.

MOTION: (Moved: Cr Stewart Seconded: Cr MacRae)

That, in accordance with Standing Orders Clause 16.1, the meeting be adjourned for five minutes. (8.10pm)

(Carried: 12/0)

Re-commencement of meeting.

MOTION: (Moved: Cr Butler Seconded: Cr Cooke)

That, in accordance with Standing Orders Clause 16.1, the meeting be re-commenced. (8.15pm)

(Carried: 12/0)

The Mover and Seconder agreed to two (2) amendments from Council to the Recommendation as follows:

- At (i)
  - Delete 'approve' insert 'endorse'
  - Delete the comma after "item"
- At (ii)
  - Delete 'for approval'

Cr Farrell requested that his suggestion for inclusion of a reason for the amendment be recorded.

Council requested that the structure of any future meeting on this matter include a briefing from BioVision, as a pre-curser to the meeting.

AMENDED MOTION AS FOLLOWS PUT TO THE VOTE

That Council:

(i) endorse the Rectification Plan at Attachment One to this Item as a basis for development of a "Standstill Agreement"

(ii) authorises the Chief Executive Officer to work with BioVision 2020 Pty Ltd to develop a "Standstill Agreement" for the implementation of the Rectification Plan referred to in this Item, and to refer the Standstill Agreement back to Council

(Carried: 12/0)

Meeting Open to the Public

MOTION: (Moved: Cr Stewart Seconded: Cr Butler)

That the meeting now be opened to the public.

(Carried: 12/0)

Council took Motion 8.2.4 as read.

9 NOTICE OF MOTION FOR CONSIDERATION AT THE FOLLOWING MEETING

Nil

10 GENERAL BUSINESS - SEE NOTE (1)

Letter of Appreciation – Cr Willox

Council resolved that a letter of appreciation be forwarded to Cr Willox.

MOTION: (Moved: Cr MacRae Seconded: Cr Gray)

(Carried: 12/0)

Chairman Closing Remarks

The Chairman thanked outgoing Town of Victoria Park CEO, Mr John Bonker, for his support to Mindarie Regional Council, and welcomed Mr Arthur Kyron, incoming CEO, Town of Victoria Park.

The Chairman issued best wishes for the festive season to all.

11 NEXT MEETING

11.1 Ordinary Council Meeting

- **25 February 2010**
- **5.30pm**
- **City of Joondalup**

12 CLOSURE - MEETING DECLARED CLOSED AT 8.40PM

Notes

(1) Under this item, members have the opportunity to:

(a) make a statement providing information related to the Council's business;

(b) to ask a question relevant to the Council's business.

Under this item a member shall not raise any matter directly related to any other item on the agenda and shall not foreshadow any motion for consideration at another meeting.

Committee Membership

The current membership of the Working Group is of one employee representative from each member Council that generally meets every two months. The Working Group is chaired by the MRC CEO with support from other MRC staff.

Membership of the proposed Agenda Review Committee will be determined by the MRC CEO. Whilst it is likely to contain a representative of each member Council there is no formal position that needs to be decided by the MRC as to who should be the representative.

The key value of the member Council representative having direct involvement in the review of the agenda is that the member Council representative involved will be able to brief and respond to questions from the elected member(s) of the MRC. There could also be the opportunity to give additional background information to the material that has been outlined in the agenda.

It is preferable that the member Council representative is familiar with the issues listed on the agenda. For example, if the matter relates to the annual MRC Budget the involvement of the finance specialist from the member Council may be helpful. At other times different specialist input may be beneficial to the determination of the most appropriate recommendation.

With regard to the membership of the proposed Strategic Project Committee, based on the establishment of a the committee under s5.9(2)(e) of the Act it is proposed that each member Council would have one employee representative and a deputy representative, who are classed as “other persons” within the terms of the Act. The member Council representative and in the representatives absence the deputy representative would have formal voting rights.

The member Council representative is generally the employee with overall responsibility for waste management within the member Council. Attendance at meetings of the Strategic Project Committee would be limited to the member Council representative or deputy member Council representative.

In regard to appointing member Council participants to committees Clause 17.3 of the Mindarie Regional Council Standing Orders Local Law 2000 (Standing Orders) reads as follows:

17.3 Appointment of Members from Participants to Committees

(1) Where the Council establishes a committee with members from participants, the appointment of those members shall be made according to the wishes of the participants.
(2) Where the members of a committee established by the Council are to be employees of participants, those employees are to be the CEO of the respective participants or employees appointed by the CEO of the respective participants

Establishing a committee under the Act places some responsibility on the member Council CEO to ensure that an appropriate person is appointed by the MRC as

this is a formal process and once appointed the CEO is the only person who can terminate and reappoint. BHW is of the opinion that this clause should be carefully considered when the Standing Orders are next reviewed to ensure that there is a level of consistency as to the member Council representative and that the representative is not changed unnecessarily. The establishment of the committee under the Act also requires a level of commitment on the part of the representative to attend the meetings of the committee.

In relation to appointing a person or a position holder s53 of the *Interpretations Act 1984* should be noted which states:

Where a written law confers a power or imposes a duty upon a person to appoint or designate a person to —

(a) perform any function;

(b) be a member of any board, tribunal, commission, committee, council, or other similar body, whether corporate or unincorporate; or

(c) be or do any other thing,

that person may make the appointment or designation either by appointing or designating a person by name or by appointing or designating the holder of an office by the term designating his office; and any such appointment or designation of the holder of an office shall be construed as the appointment or designation of the person from time to time holding, acting in, or lawfully performing the functions of the office.

This allows the member Council representative to be appointed by title of their position. This would allow a smooth transition should a new employee be appointed to the position.

Technical employees other than the member Council representatives and member council deputy representatives have the opportunity to be invited to attend meetings on an ad hoc basis to give their specialist knowledge to the committee but would have no formal voting rights.

Recommendations

6. **That the membership of the proposed Agenda Review Committee be determined by the Mindarie Regional Council CEO on the understanding that each member Council will be invited to have one representative on the Committee.**

7. **That the Mindarie Regional Council in establishing the proposed Strategic Project Committee appoint the Mindarie Regional Council CEO and the CEO or his/her nominee as the employee representative from each member Council.**

8. **That the Mindarie Regional Council in establishing the proposed Strategic Project Committee appoint a deputy to the Mindarie**

Regional Council CEO and member Council CEO of another employee as deputy representative by position title.

9. **That employees, other than the member Council representative or deputy member Council representative, be permitted to attend meetings of the Strategic Project Committee to provide specialist knowledge and support.**

Committee Reporting Framework

With the establishment of the proposed Strategic Project Committee as a committee of the MRC under s5.9(2)(e) of the Act it is necessary to develop a framework to formalise the process by which the Working Group report to the MRC.

S5.17 of the Act limits the powers that can be delegated to a committee established under s5.9(2)(e) of the Act to the proper management of the local government's property and an event in which the local government is involved. In effect this means that the committee would have limited opportunity to act under delegation.

As a committee of the MRC appointed under the Act it is a requirement for the proposed Strategic Project Committee to prepare minutes of each meeting (s5.22 of the Act). The minutes are then presented to the MRC and can take the form of a report of the committee to the MRC or simply the presentation of the minutes to the MRC so that it may be received and for any recommendations that may be included to be considered by the MRC for adoption. The method used to submit the minutes to the MRC is dependent on the preference of the MRC.

The minutes of the committee must also be submitted to the next meeting of the committee for confirmation.

The minutes of the Strategic Project Committee meeting provide the opportunity for the Strategic Project Committee, to present reports and recommendations for consideration by the MRC. It is likely that projects, which the Strategic Project Committee is developing, may not have a formal recommendation at each meeting however the minutes provide an opportunity to submit a progress report.

The MRC Agenda would include a specific agenda item for the receipt and consideration of the minutes of the Strategic Project Committee.

Recommendations

10. **That the Strategic Project Committee of the Council submit a report to each Mindarie Regional Council Meeting.**

11. **That the report of the Strategic Project Committee contain where appropriate recommendations and progress reports on matters under consideration by the Strategic Project Committee.**

12. **That a Mindarie Regional Council Agenda contain a "stand alone" agenda item for the receiving and consideration of the minutes from meetings of the Strategic Project Committee.**

Role and Function of Committee

In discussions BHW had with members of the current Working Group on 21 August 2009, it would appear that the role and function of the Working Group is twofold.

In looking at the role and function of the proposed Agenda Review Committee it is considered the role should be as follows:

- examine all the reports that are to be included on the MRC Meeting Agenda;
- review the details to ensure that the information is adequate for the MRC to make a decision;
- ensure all matters have a recommendation or an explanation as to why no recommendation has been submitted; and
- ensure the recommendations reflect the current policy and practice of the MRC and member Councils.

Whilst difficult to develop a comprehensive statement of the role and function of the Strategic Project Committee, it is BHW's opinion that the committee should consider the following when determining its role and function:

- lead research and policy direction on key strategic issues for recommendation to the MRC;
- address an cross organisational issues that would benefit from focussed effort and corporate attention and oversight;
- address any issues that will have a high social, environmental and impact on the member Councils or the MRC;
- consider the reports prepared by technical support on strategic projects and recommend to the MRC an appropriate course of action; and
- assist the MRC CEO in developing strategies to respond to Government requirements as they affect the business operations of the MRC.

The role and function is best to be developed by the Strategic Projects Committee itself taking account of the requirements of the MRC and member Councils.

Recommendations

13. **That the Mindarie Regional Council CEO consider when establishing the Agenda Review Committee including the following roles and functions in the terms of reference:**
    a) **examine all the reports that are to be included on the MRC Meeting Agenda;**
    b) **review the information provided in each agenda item to ensure that it is adequate for the MRC to make a decision;**
    c) **ensure all matters have a recommendation or an explanation as to why no recommendation has been submitted; and**
    d) **ensure the recommendations reflect the current policy and practice of the MRC and member Councils.**

This clause allows the MRC to signify the number of member Council employee representatives to be appointed and for the representative to be the CEO or for the CEO to appoint another employee.