

Dated 2004

**TOWN OF CAMBRIDGE
and
CITY OF JOONDALUP
and
CITY OF PERTH
and
CITY OF STIRLING
and
TOWN OF VICTORIA PARK
and
TOWN OF VINCENT
and
CITY OF WANNEROO**

**ESTABLISHMENT AGREEMENT
OF THE
MINDARIE REGIONAL COUNCIL**

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- F. By a Deed of Amendment dated 20 October 1999, made between the City of Perth, City of Stirling, Town of Cambridge, Town of Vincent, Town of Victoria Park, City of Joondalup and City of Wanneroo, the Constitution Agreement was amended to include the City of Joondalup and City of Wanneroo as constituent municipalities.
- G. By virtue of transitional provisions of the Act, the regional council continues as a regional local government as if it had been constituted as a regional local government under the Act.
- H. The Participants have agreed to amend the Former Constitution Agreement by revoking it and substituting it with this Establishment Agreement.
- I. The Participants have resolved on the dates referred to in Schedule 1 to enter into this Establishment Agreement and to submit it to the Minister for approval.

OPERATIVE PART

1. FORMER CONSTITUTION AGREEMENT

The Former Constitution Agreement is revoked and substituted with this Establishment Agreement commencing on the Operative Date.

2. NAME

The name of the regional local government continues to be the Mindarie Regional Council.

Footnote:

- 1. Section 3.62(1) of the Act provides that a regional local government is a body corporate with perpetual succession and a common seal.
- 2. A regional local government has the same general function of a local government including its legislative and executive functions. See Part 3 and section 3.66 of the Act.
- 3. Except as stated in section 3.66, the Local Government Act 1995 applies to a regional local government as if:
 - (a) the participants' districts together made up a single district; and
 - (b) the regional local government were the local government established for that district.

3. REGION

The MRC is established for the Region.

4. REGIONAL PURPOSES

The regional purposes for which the MRC is established are:

- (a) to undertake the processing, recycling, treatment, sale and disposal of waste for the benefit of the communities of the Participants;
- (b) to investigate and assess the possibilities of, and the methodologies for, carrying out a range of services on a regional basis; and

- (c) to carry out and do all other acts and things which are reasonably necessary for the bringing into effect of the purposes referred to in paragraph (a) or (b) of this clause.

Footnote:

In certain circumstances, a proposal to undertake a Regional Purpose may require the preparation of a business plan under the Act – see section 3.59.

5. OBJECTIVES

- (1) The objectives of the MRC are:
- (a) to provide effective and cost efficient waste disposal, consistent with safeguarding all environmental elements, for the benefit of the Participants and the residents of the Region;
 - (b) to operate programmes to dispose of waste accepted by the MRC via landfill, recycling and reuse in accordance with best practice;
 - (c) to implement one or more preferred waste treatment methods, including landfill, and waste-to-energy either separately, or with others, for treatment of at least that waste generated within the Region;
 - (d) to support initiatives to minimise waste-at-source generation through interaction with government, industry groups and the community;
 - (e) to establish business systems necessary for the ongoing management of the MRC's business;
 - (f) to obtain the appropriate level of resources, financial and physical, for the operation of the MRC's business activities;
 - (g) to use best endeavours to operate profitably, to be self-funding and to be responsible for the raising of any necessary capital or loans to meet its needs independent of the Participants.
- (2) No failure or alleged failure of the MRC to meet any of the objectives set out in subclause (1) shall preclude any of the Participants from meeting its obligations under this Agreement or otherwise give rise to any claim or entitlement on its part.

6. DEFINITIONS

In this Establishment Agreement, unless the context requires otherwise:

“Act” means the Local Government Act 1995;

“Former Constitution Agreement” means the constitution agreement undated but stamped 21 December 1988 as amended by the subsequent deeds referred to in Recitals D, E and F;

“**Minister**” means the Minister of the Crown to whom the administration of the Act is for the time being committed by the Governor and includes a Minister of the Crown for the time being acting for or on behalf of the Minister;

“**MRC**” means the Mindarie Regional Council;

“**MRC Council**” means the council of the MRC.

“**Operative Date**” means the date upon which the Minister approves this Establishment Agreement;

“**Rate of Interest**” means, for the purpose of clause 9, means the rate of interest determined from time to time by the MRC Council as being the rate of interest which in the opinion of the MRC Council would be a reasonable rate of return on the surplus if invested;

“**Region**” means the districts of the Participants;

“**Regional Purpose**” means any regional purpose referred to in clause 4;

“**Surplus**”, for a financial year, means the amount, if any:

- (a) by which the revenue of the MRC exceeds the expenses of the MRC; and
- (b) which is shown as such in the annual financial report, for that year, prepared by the MRC in accordance with the Act and the regulations made under the Act.

Footnote:

The “Surplus” as so defined is described in the annual financial report of the MRC for the 2003/2004 financial year as “change in net assets resulting from operations”.

7. THE COUNCIL

7.1 Appointment of members

- (1) Each Participant is to appoint a member or members of the council of the Participant to be a member of the MRC Council, in the numbers set out in Schedule 2.
- (2) The existing members of the MRC Council appointed immediately prior to the Operative Date shall remain in office after the Operative Date.
- (3) A Participant may appoint a member of the council of the Participant who may act temporarily in place of each member of the MRC Council, appointed by the Participant during any period in which the member of the MRC Council is unable by reason of illness, temporary absence from the State, conflict of interest or for any other cause to perform the functions of the office.

Footnote:

Section 3.62(b) of the Act provides that a regional local government is to have, as its governing body, a council established under the Establishment Agreement and consisting of members of the councils of the participants.

7.2 Tenure of members of the MRC Council

A member of the MRC Council shall hold office until:

- (a) the Friday prior to the local government election held in May every 2 years after the Operative Date;
- (b) the member ceases to be a member of the council of the Participant; or
- (c) the member is removed by the Participant,

whichever is the earlier.

Footnote:

Sections 2.32 and 2.33 of the Act set out circumstances in which the office of a member of a councillor becomes vacant.

7.3 Election of chairman and deputy chairman

- (1) The members of the MRC Council shall elect a chairman and a deputy chairman:
 - (a) at the first meeting of the MRC Council following the Operative Date;
 - (b) at the first meeting of the MRC Council following the first Saturday:
 - (i) in May following the Operative Date; and
 - (ii) in May every 2 years thereafter.
- (2) If the office of chairman or deputy chairman becomes vacant then the members of the MRC Council shall elect a new chairman or deputy chairman, as the case requires.
- (3) The election referred to in subclause (2) shall take place at a meeting held at least 4 weeks after the date on which the office became vacant.

7.4 Tenure of chairman and deputy chairman

The chairman and deputy chairman shall hold those offices until the election of a new chairman and deputy chairman pursuant to clause 7.3(1).

7.5 Role of chairman

The chairman:

- (a) presides at meetings of the MRC Council;
- (b) carries out civic and ceremonial duties on behalf of the MRC;
- (c) speaks on behalf of the MRC;

- (d) performs such other functions as are given to the chairman by the Act, any other written law or this Agreement; and
- (e) liaises with the CEO on the MRC's affairs and the performance of its functions.

Footnotes:

- 1. The role of the MRC Council is set out in section 2.7 of the Act.
- 2. The functions of the CEO are set out in section 5.41 of the Act.
- 3. The chairman may agree to the CEO speaking on behalf of the MRC - see section 5.41(f) of the Act.

7.6 Role of deputy chairman

- (1) The deputy chairman performs the functions of the chairman when authorised to do so under this clause.
- (2) If:
 - (a) the office of chairman is vacant; or
 - (b) the chairman is not available or is unable or unwilling to perform the functions of chairman,

then the deputy chairman may perform the functions of chairman.

7.7 Role of members of MRC Council

A member of the MRC Council:

- (a) represents the interests of the ratepayers and residents of the Region;
- (b) facilitates communication between the community of the Region and the MRC Council;
- (c) participates in the MRC's decision-making processes at meetings of the MRC Council and its committees; and
- (d) performs such other functions as are given to the member by the Act or any other written law.

8. FINANCIAL CONTRIBUTIONS**8.1 Annual contributions**

Where the MRC Council determined that the Participants shall make contributions towards the amount necessary to meet the deficiency, if any, as disclosed in the annual budget of the MRC, then the Participants will make those contributions in the proportions set out in Schedule 4.

8.2 Other contributions

Where the MRC Council determines that the Participants will make any contribution for a Regional Purpose (other than an annual contribution referred to in clause 8.1)

including, without limitation, any contribution towards the acquisition of any asset of a capital nature, then the Participants will make those contributions in the proportions set out in Schedule 4.

8.3 Manner of payment of contributions

The contributions referred to in clauses 8.1 and 8.2 shall be paid by each Participant to the MRC in the manner determined by the MRC Council.

8.4 Late payment of contributions

Unless otherwise agreed, if a Participant fails to pay to the MRC a sum of money owing under this clause on or before the due date for payment, that Participant shall, in addition to the sum of money due and payable, pay to the MRC, interest at the overdraft rate charged by the MRC's bank on amounts of the same size as the unpaid sum, calculated from and including the due date of payment to but excluding the actual date of payment.

8.5 Annual financial statements

When submitting the same to the MRC's auditor each year, the MRC shall give to each Participant a copy of the MRC's annual financial statements including details of all assets and liabilities.

9. SURPLUSES

9.1 Basis for distribution of any Surplus

If the MRC Council determines at any time that, a Surplus for a financial year or any portion of the Surplus is to be distributed to the Participants, then:

- (a) firstly, calculations are to be made of the amount of interest which would have accrued on the respective capital contributions of each of the Participants, as set out in Schedule 3, for that financial year, as if interest had been accruing on those contributions at the Rate of Interest; and
- (b) to the extent that the Surplus or portion of the Surplus is sufficient to do so, the respective amounts calculated in accordance with paragraph (a) are payable by the MRC to each Participant;
- (c) secondly, the balance, if any, of the Surplus or portion of the Surplus is payable by the MRC to the Participants in the respective proportions set out in Schedule 4.

9.2 Manner of distribution of any surplus

Any Surplus or portion of a Surplus to be distributed under clause 9.1 shall be paid in the manner and at the times determined by the MRC in its discretion and the MRC may have regard to the prudent management of its cash flow and financial requirements.

10. WINDING UP**10.1 Winding up by agreement**

The Participants may, by agreement, wind up the MRC.

10.2 Division of assets

- (1) If the MRC is to be wound up and there remains, after satisfaction of all its debts and liabilities, any property and assets of the MRC then the property and assets shall be realised and:
 - (a) the proceeds, along with any surplus funds, shall be used to repay to the Participants their respective capital contributions; and
 - (b) the balance, if any, shall be divided among the Participants in the proportions set out in Schedule 4.
- (2) For the avoidance of doubt, for the purposes of subclause (1), the capital contributions set out in Schedule 3 do not accrue interest.

10.3 Division of liabilities

If the MRC is to be wound up and there remains any liability or debt in excess of the realised property and assets of the MRC then the liability or debt is to be met by each of the Participants in the proportions set out in Schedule 4.

11. WITHDRAWAL OF A PARTICIPANT**11.1 Withdrawal**

A Participant may, at any time between 1 July and 31 December in any year, give to the MRC notice of its intention to withdraw from the MRC.

11.2 When withdrawal to take effect

The withdrawal of a Participant shall take effect from the end of the financial year, after the financial year in which notice of withdrawal under clause 11.1 is given.

11.3 Entitlement or liability of withdrawing Participant

As soon as practicable after the withdrawal of a Participant takes effect, the MRC shall:

- (a) distribute to the Participant an amount equal to that which would have been payable to the Participant if the MRC had been wound up; or
- (b) be entitled to recover from the Participant an amount equal to the liability or debt which would have been payable by the Participant if the MRC had been wound up,

as the case may be.

Footnote:

An example of the operation of clauses 11.1, 11.2 and 11.3 is as follows:

- | | | |
|-----|--|-----------------|
| (a) | Participant gives notice to withdraw on - | 31 August 2004; |
| (b) | Notice takes effect from - | 30 June 2006; |
| (c) | MRC pays entitlement or Participant pay liability on | 30 June 2006. |

11.4 Participants may be required to pay distribution

If the MRC is unable to meet the distribution referred to in clause 11.3(a) from funds on hand then, unless the MRC Council decides otherwise, the Participants (other than the Participant which has withdrawn) shall pay the distribution in the proportions set out in Schedule 4.

12. BORROWINGS

Part 6, Division 5, Subdivision 3 of the Act is to apply.

Footnote:

1. Section 3.66(4) of the Act provides that Part 6, Division 5, Subdivision 3 does not apply in relation to a regional local government unless the Establishment Agreement provides that it does.
2. Part 6, Division 5, Subdivision 3 of the Act deals with borrowings and includes the power to borrow and restrictions on borrowings.

13. DISPUTE RESOLUTION**13.1 No proceedings**

A party must not start arbitration proceedings in respect of a dispute arising out of this Agreement (“**Dispute**”) unless it has complied with this clause.

13.2 Notification of dispute

A party claiming that a Dispute has arisen must notify the other parties to the Dispute giving details of the Dispute.

13.3 Reasonable efforts to resolve Dispute

- (1) During the 14 day period after a notice is given under clause 13.2 (or longer period agreed in writing by the parties) (“**Negotiation Period**”), the parties must use their reasonable efforts to resolve the Dispute.
- (2) Within the first 7 days of the Negotiation Period, if the Dispute continues, the chief executive officers of the parties and the chief executive officer of the MRC, must meet, and use their reasonable endeavours to resolve the Dispute.

13.4 Dispute resolution process

If the Dispute is not resolved within the Negotiation Period, the parties shall meet and endeavour to agree on:

- (a) a process for resolving the Dispute other than by litigation or arbitration (such as by further negotiations, mediation, conciliation or expert determination);

- (b) the procedure and timetable for any exchange of documents and other information relating to the Dispute;
- (c) the procedural rules and timetable for the conduct of the selected mode of proceeding;
- (d) a procedure for the selection and compensation of any independent persons engaged by the parties to assist in resolution of the Dispute; and
- (e) whether or not the parties should seek the assistance of a dispute resolution organisation.

13.5 Arbitration

If the Parties are unable to agree on a process for resolving the Dispute in accordance with clause 14.4 within 21 days after the Negotiation Period then any party may notify the others in writing (“**arbitration notice**”) that it requires the dispute to be referred to arbitration and the dispute (unless meanwhile settled) shall upon receipt of the arbitration notice by the recipients then be and is hereby referred to arbitration under and in accordance with the provisions of the Commercial Arbitration Act 1985.

13.6 Legal representation

For the purposes of the Commercial Arbitration Act 1985, the Participants consent to each other and to the MRC being legally represented at any such arbitration.

14. INTERPRETATION

14.1 Interpretation

In this Establishment Agreement, unless the context requires otherwise:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include the other genders;
- (c) references to persons include corporations and bodies politic;
- (d) references to a person include the legal personal representatives, successors and assigns of that person;
- (e) a reference to a statute, planning scheme, or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- (f) references to this or any other document include the document as varied or replaced, and notwithstanding any change in the identity of the parties;
- (g) references to writing include any mode of representing or reproducing words in tangible and permanently visible form;
- (h) an obligation of two or more parties shall bind them jointly and severally;

- (i) if a word or phrase is defined other parts of speech and grammatical forms of that word or phrase have corresponding definitions;
- (j) references to a person or body which has ceased to exist or has been reconstituted, amalgamated, reconstructed or merged, or the functions of which have become exercisable by any other person or body in its place, shall be taken to refer to the person or body established or constituted in its place or by which its functions have become exercisable;
- (k) an obligation incurred in favour of two or more parties shall be enforceable by them jointly and severally;
- (l) reference to any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (m) reference to a month and cognate terms means a period commencing on any day of a calendar month and ending on the corresponding day in the next succeeding calendar month but if a corresponding day does not occur in the next succeeding calendar month the period shall end on the last day of the next succeeding calendar month;
- (n) includes means includes without limitation;
- (o) references to this Establishment Agreement include its schedules.

14.2 Headings and footnotes

Headings and footnotes shall be ignored in construing this Establishment Agreement.

14.3 Time

- (a) References to time are to local time in Perth, Western Australia;
- (b) where time is to be reckoned from a day or event, that day or the day of that event shall be excluded.

Footnotes:

Amendment of Establishment Agreement

1. The Participants may amend this Establishment Agreement by agreement made with the Minister's approval - see section 3.65(1) of the Act.

Admission of Other Local Governments

2. This Establishment Agreement can be amended to include another local government as a party to the amending agreement - see section 3.65(2) of the Act.

SCHEDULE 1

Participant	Date of resolution to enter into this establishment agreement
Town of Cambridge	
City of Joondalup	
City of Perth	
City of Stirling	
Town of Victoria Park	
Town of Vincent	
City of Wanneroo	

SCHEDULE 2

Participant	Number of Councillors
Town of Cambridge	1
City of Joondalup	2
City of Perth	1
City of Stirling	4
Town of Victoria Park	1
Town of Vincent	1
City of Wanneroo	2

SCHEDULE 3

Participant	Capital Contribution to the Existing Undertaking
Town of Cambridge	\$100,541.00
City of Joondalup	\$274,287.50
City of Perth	\$246,952.00
City of Stirling	\$548,576.00
Town of Victoria Park	\$100,541.00
Town of Vincent	\$100,541.00
City of Wanneroo	\$274,287.50

SCHEDULE 4

Participant	Proportion
Town of Cambridge	$\frac{1}{12}$
City of Joondalup	$\frac{1}{6}$
City of Perth	$\frac{1}{12}$
City of Stirling	$\frac{1}{3}$
Town of Victoria Park	$\frac{1}{12}$
Town of Vincent	$\frac{1}{12}$
City of Wanneroo	$\frac{1}{6}$

EXECUTED by the Parties

THE COMMON SEAL of TOWN OF CAMBRIDGE was hereunto affixed in the presence of:)
)
)

Mayor

Chief Executive Officer

THE COMMON SEAL of CITY OF JOONDALUP was hereunto affixed in the presence of:)
)
)

Mayor

Chief Executive Officer

THE COMMON SEAL of CITY OF PERTH was hereunto affixed in the presence of:)
)
)

Lord Mayor

Chief Executive Officer

THE COMMON SEAL of CITY OF STIRLING was hereunto affixed in the presence of:)
)
)

Mayor

Chief Executive Officer

THE COMMON SEAL of TOWN OF VICTORIA PARK was hereunto affixed in the presence of:)
)
)

Mayor

Chief Executive Officer

THE COMMON SEAL of TOWN OF VINCENT)
was hereunto affixed in the presence of:)
)

Mayor

Chief Executive Officer

THE COMMON SEAL of CITY OF WANNEROO)
was hereunto affixed in the presence of:)
)

Mayor

Chief Executive Officer