

# CITY OF JOONDALUP

## MINUTES OF STRATEGIC FINANCIAL MANAGEMENT COMMITTEE MEETING HELD IN CONFERENCE ROOM 1, JOONDALUP CIVIC CENTRE, BOAS AVENUE, JOONDALUP ON TUESDAY 12 SEPTEMBER 2006

### ATTENDANCE

#### Committee members:

Cr M (Michele) John	- <i>Presiding Person</i>	South-West Ward
Cr R (Russel) Fishwick	- <i>Deputy Presiding Person</i> <i>from 1750 hrs</i>	South Ward
Mayor T (Troy) Pickard		
Cr T (Tom) McLean		North Ward
Cr S (Steve) Magyar	<i>Absent from 1755 hrs to 1757 hrs</i>	North-Central Ward
Cr J (John) Park		Central Ward
Cr B (Brian) Corr		South-East Ward

#### Officers:

G (Garry) HUNT	Chief Executive Officer	
C (Chris) TERELINCK	Acting Director, Planning and Community Development:	<i>Absent from 1709 hrs to 1711 hrs</i>
M (Mike) TIDY	Director, Corporate Services:	
D (David) DJULBIC	Director, Infrastructure Services:	
L (Lesley) TAYLOR	Acting Administrative Services Co-ordinator:	

### DECLARATION OF OPENING

The Presiding Person declared the meeting open at 1635 hrs.

### APOLOGIES/LEAVE OF ABSENCE

Late Apology - Cr Fishwick

**CONFIRMATION OF MINUTES****MINUTES OF THE STRATEGIC FINANCIAL MANAGEMENT COMMITTEE HELD 4 JULY 2006**

**MOVED Mayor Pickard, SECONDED Cr McLean that the minutes of the meeting of the Strategic Financial Management Committee held on 4 July 2006 be confirmed as a true and correct record.**

**The Motion was Put and**

**CARRIED (6/0)**

**In favour of the Motion:** Mayor Pickard, Crs John, McLean, Park, Magyar and Corr

**ANNOUNCEMENTS BY THE PRESIDING PERSON WITHOUT DISCUSSION**

Due to other commitments, some committee members find it difficult to attend meetings at 4.30 pm. It was requested that future meetings of the Strategic Financial Management Committee commence at 5.00 pm.

**DECLARATIONS OF INTEREST**

Nil.

**IDENTIFICATION OF MATTERS FOR WHICH THE MEETING MAY SIT BEHIND CLOSED DOORS**

Nil.

**PETITIONS AND DEPUTATIONS**

Nil.

**REPORTS****ITEM 1            OPTIONS AND POTENTIAL ROLE OF THE CITY IN  
THE DEVELOPMENT OF THE JOONDALUP CENTRAL  
BUSINESS DISTRICT - [56593] [51567]**

**WARD:** All

**RESPONSIBLE** Mr Mike Tidy  
**DIRECTOR:** Corporate Services

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**PURPOSE**

The purpose of this item is to initiate some discussion about the parameters that Council may consider when looking at the options and development potential of the Joondalup Central Business District.

## EXECUTIVE SUMMARY

At the Strategic Financial Management Committee meeting of 4 July 2006 the recommendation passed included as part 1 -

- 1 *the options and potential goal of the City in the development of the Joondalup Central Business District as discussed be proposed to the Strategic Financial Management Committee for consideration at its next meeting;*

It is suggested that rather than simply submitting a report, a more productive way of dealing with this issue is to have a workshop/forum discussion session. Some brief background material and some seed ideas will be presented by Executive to set the context and initiate the discussion.

In order to facilitate the discussion the Committee should consider suspending Standing Orders for the duration of the discussion.

## BACKGROUND

At its meeting of 4 July 2006 the Strategic Financial Management Committee carried the following motion:

*“That it be recommended that Council requests a further report be submitted to the next meeting of the Strategic Financial Management Committee on:*

- 1 *options and potential role of the City in the development of the Joondalup Central Business District;*
- 2 *a framework and work plan for:*
  - *Alternative Revenue Streams;*
  - *Asset Management;*
  - *Portfolio;*
  - *Expenditure;*
  - *Strategic Financial Management Plan (Plan for the Future).*

## DETAILS

### Issues and options considered:

#### Options and Potential Role of the City in the Development of the Joondalup Central Business District

To be discussed.

### Link to Strategic Plan:

Key Focus Area 3 - City Development 3.1

The City of Joondalup has well maintained assets and built environment.

Key Focus Area 4 - Organisational Development 4.1

The City of Joondalup is a sustainable and accountable business.

**Legislation – Statutory Provisions:**

Not Applicable.

**Risk Management considerations:**

Any action initiated by Council in relation to the development of the Joondalup CBD will carry risk. Until the specific actions are fleshed out, however, it is not practical to address them.

**Financial/Budget Implications:**

Any proposals that may be developed will invariably have impacts for the City's budget and for the setting of financial goals and objectives for the City. The specific financial requirements of developing the proposals themselves can at this stage be accommodated within existing budgets.

**Policy Implications:**

Not Applicable.

**Regional Significance:**

Not Applicable.

**Sustainability Implications:**

Financial sustainability is absolutely critical to the future growth and development of the City of Joondalup. The development of the Joondalup CBD will have significant implications for long term financial sustainability of the City.

**Consultation:**

Not Applicable.

**COMMENT**

The options and potential role of the City in the development of the Joondalup Central Business District is put forward for discussion.

**ATTACHMENTS**

Nil.

**VOTING REQUIREMENTS**

Simple Majority

**MOVED Cr Magyar, SECONDED Cr Park that the Committee SUSPENDS Standing Orders to allow a workshop/forum discussion on the potential role of the City in the development of the Joondalup Central Business District.**

**The Motion was Put and**

**CARRIED (6/0)**

**In favour of the Motion:** Mayor Pickard, Crs, John, McLean, Park, Magyar and Corr

Chief Executive Officer provided an overview and photographs of building complexes located in West Perth/East Perth – Appendix 1 refers.

Discussion ensued.

*During discussion, the following movements occurred:*

*Acting Director, Planning and Community Development left the Room at 1709 hrs and returned at 1711 hrs.*

*Cr Fishwick entered the Room at 1750 hrs.*

*Cr Magyar left the Room at 1755 hrs and returned at 1757 hrs.*

It was requested that a workshop be held, inviting all Elected Members to attend with a view to discussing various ideas/options for development with the Joondalup CBD.

#### **RESUMPTION OF STANDING ORDERS**

**MOVED Cr Magyar, SECONDED Cr Park that Standing Orders be RESUMED.**

**The Motion was Put and**

**CARRIED (7/0)**

**In favour of the Motion:** Mayor Pickard, Crs Fishwick, John, McLean, Park, Magyar and Corr

**MOVED Cr Magyar, SECONDED Cr Corr that it be recommended that:**

- 1 Council ENDORSES the proposition submitted to the Committee for the development within the CBD of the City of Joondalup;**
- 2 a workshop be organised to engage all Elected Members in the opportunities for development within the CBD;**
- 3 external parties, experts and those with interests in this particular field be invited to attend the workshop.**

**The Motion was Put and**

**CARRIED (7/0)**

**In favour of the Motion:** Mayor Pickard, Crs John, Fishwick, McLean, Cr Park, Cr Magyar and Cr Corr

## ITEM 2                      **FRAMEWORK AND WORK PLAN FOR EXAMINING COMMITTEE ISSUES - [56593] [51567]**

**WARD:**                      All

**RESPONSIBLE**      Mr Mike Tidy  
**DIRECTOR:**              Corporate Services

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### **PURPOSE**

The purpose of this report is to set out a framework and work plan to address part 2 of the resolution of the Strategic Financial Management Committee of 4 July 2006.

### **EXECUTIVE SUMMARY**

Having given consideration to part 2 of the resolution of the Strategic Financial Management Committee at its meeting of 4 July 2006, a framework and work plan has been prepared.

*It is recommended that the Strategic Financial Management Committee ENDORSES the framework and work plan for examining alternative revenue streams, asset management, property portfolio, expenditure and the Strategic Financial Plan (Plan for the Future) as proposed in Attachment 1 to this Report.*

### **BACKGROUND**

At its meeting of 4 July 2006 the Strategic Financial Management Committee carried the following motion:

*That it be recommended that Council requests a further report be submitted to the next meeting of the Strategic Financial Management Committee on:*

- 1        *options and potential role of the City in the development of the Joondalup Central Business District;*
- 2        *a framework and work plan for:*
  - *Alternative Revenue Streams;*
  - *Asset Management;*
  - *Portfolio;*
  - *Expenditure;*
  - *Strategic Financial Management Plan (Plan for the Future).*

Part 1 has been addressed in a separate report in this agenda. The issues listed in part 2 are those considered by the Committee to be the matters that should be addressed over the course of the next twelve months.

## **DETAILS**

### **Issues and options considered:**

#### Framework and Work Plan

Part 2 of the Committee's recommendation of 4 July 2006 related to developing a framework and work plan to look at a number of key issues. These are alternative revenue streams, asset management, property portfolio, expenditure and Strategic Financial Management (Plan for the Future).

To work through all of these issues progressively a work plan and framework for that examination has been drawn up and is at Attachment 1.

### **Link to Strategic Plan:**

Key Focus Area 3 - City Development 3.1

The City of Joondalup has well maintained assets and built environment.

Key Focus Area 4 - Organisational Development 4.1

The City of Joondalup is a sustainable and accountable business.

### **Legislation – Statutory Provisions:**

Not Applicable.

### **Risk Management considerations:**

The process of addressing all of the matters in the framework and work plan will have impacts for risk management and in particular the mitigation of risk.

### **Financial/Budget Implications:**

The matters in the framework and work plan will have impacts for the budget process and for the setting of financial goals and objectives for the City. The impact on the current budget of the investigations themselves will depend on the requirements for external assistance, but should be able to be accommodated within existing budget allocations.

### **Policy Implications:**

Not Applicable.

### **Regional Significance:**

Not Applicable.

### **Sustainability Implications:**

Financial sustainability is absolutely critical to the future growth and development of the City of Joondalup. The investigations into the matters in the framework and work plan, in particular the Strategic Financial Plan, will have implications for long term financial sustainability of the City.

**Consultation:**

Not Applicable.

**COMMENT**

The framework and work plan developed in response to item 2 of the Strategic Financial Management Committee's resolution of 4 July 2006 is put forward for endorsement by the Strategic Financial Management Committee. The framework and work plan proposes a simple methodical progressive process for working through the issues that need to be addressed and for reporting back to the Committee.

**ATTACHMENTS**

Attachment 1      Framework and Work Plan for Strategic Financial Management Committee Issues

**VOTING REQUIREMENTS**

Simple Majority

**OFFICER'S RECOMMENDATION:** That the Strategic Financial Management Committee ENDORSES the framework and work plan for examining alternative revenue streams, asset management, property portfolio, expenditure and the Strategic Financial Plan (Plan for the Future) as proposed in Attachment 1 to this Report.

**MOVED Cr Magyar, SECONDED Cr Fishwick that consideration of the framework and work plan for examining alternative revenue streams, asset management, property portfolio, expenditure and the Strategic Financial Plan (Plan for the Future) be DEFERRED.**

**The Motion was Put and**

**CARRIED (7/0)**

**In favour of the Motion:** Mayor Pickard, Crs Fishwick, John, McLean, Park, Magyar and Corr

*Appendix 1 refers*

### **ITEM 3            MEMBER COUNCIL GUARANTEES FOR THE RESOURCE RECOVERY FACILITY - [03149] [36958]**

**WARD:** All

**RESPONSIBLE  
DIRECTOR:** Mr David Djulbic  
Infrastructure Services

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**PURPOSE**

To inform the Strategic Financial Management Committee in relation to the contingent liability of the financial guarantees associated with the Mindarie Regional Council (MRC) proposed Resource Recovery Facility (RRF) noting that this matter will be formally presented to Council following the finalisation of the arrangements.



## EXECUTIVE SUMMARY

The arrangements are now being finalised with the preferred tenderer for the RRF Project being undertaken by MRC. The preferred tenderer has a business structure through a Special Purpose Vehicle called Biovision 2020. The shareholders include Macquarie Bank (70%)<sup>1</sup>, WorleyParsons (15%), the operators and builders and Conporec (15%) the technology providers.

In order for the RRF project to proceed (bankability of the Project), Biovision require a guarantee from the member councils. The financiers will not accept the MRCs guarantee because it does not have adequate financial reserves to cover obligations to make a termination payment if there is a Force Majeure, MRC default event under the RRFA or member councils default on paying the Gate Fee.

In terms of obligations and liabilities the MRC is structured in such a way that the member councils have always had ultimate responsibility for these matters.

Events that will trigger the guarantee payment are MRCs default on payment of the gate fee, failure to reimburse the costs of the Contractor obtaining water due to the bore being unavailable, disposal from the RRF due to Tamala Park being unavailable and an uninsurable Force Majeure event. An uninsurable Force Majeure event includes (among other things) war, nuclear attack, sea damage, radiation and Tsunami. Other insurable Force Majeure events will be insured to mitigate exposure.

The financial guarantee the City will be liable for is:

- Where the MRC is in default for non-payment of the gate fee, depending on when this event occurs during the term of the RRFA the MRC is liable, in the worst case for \$82M reducing to \$12M in the last year of the term. **The City's liability will be one-sixth based on its equity share in the MRC, being in the first year of the term of the Resource Recovery Facility Agreement (RRFA), \$13.66M reducing to \$2M in the last years of the term;**
- If an uninsurable event of Force Majeure occurs, the MRC depending on the year that it happens, will be liable for a worst case scenario of \$77M, reducing to \$5M if the event of Force Majeure occurs in the final years of the term of the RRFA. The City's liability, based on its equity share in the MRC, will be a worst-case scenario of \$12.8M reducing to \$0.83M in the final years of the contract.

It is worth noting that the nature of the City's risk under the guarantee is similar if such an uninsurable Force Majeure event were to happen to one of the City's own assets, say the City's Administration building was destroyed.

It is recommended that the strategic Financial Management Committee *NOTES the financial guarantees required by the Mindarie Regional Council to progress the Resource Recovery Project and the identified associated risks.*

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<sup>1</sup> Macquarie has indicated that it may be seeking the approval of MRC under the RRFA to assign its shareholding in BioVision to an RAC company.

## BACKGROUND

The Cities of Joondalup, Wanneroo, Stirling, Perth and the Towns of Cambridge, Vincent and Victoria Park are members of the MRC. The MRC has completed an exhaustive tender process for the selection of a tenderer to Build Own and Operate an RRF.

Milestones achieved during the project include:

- The adoption of a land requirements plan, which includes a decision to site any secondary waste treatment facility at locations other than Tamala Park.
- The identification of potential sites for such a facility within the priority one area – Wangara.
- The recognition of community concerns with relation to the establishment of such a facility at Wangara, and the revision of the plan to enable investigation of other sites.
- The confirmation of Neerabup as the preferred area for a facility, with two alternative sites identified (February 2003).
- The elimination of gasification and incineration processes (October 2003).
- The development and issue of a Community Partnership Agreement (CPA) (October 2003).
- The issue of a public environmental review (PER) document (mid 2004).
- The decision to purchase land from the Trandos family (March 2004).
- The approval of a Probity Plan (February 2005).
- The finalisation of Draft Tender Specification and Agreement (April 2005).
- Approve the approach for a proposed site visit as part of the tender process and approve the participation of the Chairman, Deputy Chair, Chair of the SWTF WG and CEO (July 2005).
- Execute the purchase of the Trandos family land in Neerabup (July 2005).
- The acceptance of the potential for the Mindarie Regional Council to provide security provisions as part of the contractual arrangements should the preferred tenderer so request (August 2005).
- Acknowledge the responses on the draft tender documentation submitted from the tenderers and endorse the approach of using a Term Sheet and Resource Recovery Facility Agreement as the basis for the tender package (August 2005).
- The approval of the tender evaluation model (August 2005).
- The approval of participation of councillors, officers and others on the overseas tour to visit similar resource recovery facilities (August 2005).
- Approval of the Tender package for distribution to the preferred tenderers (October 2005).
- The acceptance of the proposed tender assessment process (October 2005).
- Agreement to transfer environmental responsibilities to the successful tenderer (October 2005).
- The approval for a party of 10 on the overseas tour to visit similar resource recovery facilities (December 2005).

- Authorise the Chief Executive Officer to issue addendums to the Request for Tender package on all matters other than amendment to criteria for evaluation, after consultation with the probity auditor and legal adviser (December 2005).
- The rejection of all three submitted tenders in accordance with section 3.6. (b) of the Request for Tender on grounds of material inconsistencies with the Term Sheet.
- In accordance with regulation 11(2)(c) of the Local Government Regulations 1996, the companies that submitted tenders be invited to negotiate with the Mindarie Regional Council.
- The terms of negotiations, based on agreed principles, was resolved by the CEO based on advice from the Project Director.
- The Tender Evaluation Committee and its advisors have negotiated with the companies that submitted tenders for the purpose of preparing documentation to be presented to the Mindarie Regional Council for consideration.

The selection of the preferred tenderer by the MRC and the conclusion of satisfactory contractual arrangements has resulted in the achievement of a significant milestone in this project.

Notwithstanding this extensive work, some matters have emerged which require the consideration of Member Councils. Specifically, these matters relate to the provision of financial security arrangements by Member Councils in support of the Mindarie Regional Council, to the satisfaction of the preferred tenderer and, ultimately, the agreed contractor and its financiers.

Council consideration of not only the rationale for the continuation of the project but also matters related to the provision of financial security by Member Councils is now appropriate. This consideration has been recognised by officers of the Member Councils at recent events, including a financial workshop, where the group, which included CEOs, their representatives and financial directors, concluded that any Member Council consideration of the matter of financial security arrangements could only occur within the context of some information about the overall project.

## **DETAILS**

### **Characteristics of Preferred Tenderer**

Council has selected a preferred tenderer after an exhaustive process. The characteristics of the preferred tenderer WorleyParsons are as follows:

#### Business Structure

WorleyParsons have proposed to undertake the project through a Special Purpose Vehicle company, Biovision 2020. Biovision will have shareholding as follows:

(i)	Macquarie Bank nominated investor	70%	(\$5.06 million)
(ii)	WorleyParsons Services Pty Ltd	15%	(\$1.08 million)
(iii)	Conporec Inc	15%	(\$1.08 million)

Macquarie Bank has recently advised that its equity holding may be transferred to the RAC (WA). The Council of the MRC resolved that any transfer must have the prior written consent of the MRC, before it can take place. Therefore, MRC approval will be required before the transfer can occur.

WorleyParsons are a publicly listed Australian company providing engineering services within Australia and internationally and has experience on long-term relationships and projects. The equity holding in BioVision 2020 will be held by a subsidiary of WorleyParsons, being WorleyParsons Services Pty Ltd.

Conporec are listed on the Canadian Stock Exchange, provide composting technology and operate composting facilities in North America.

The Board of Biovision 2020 will comprise three nominees from Macquarie Bank (or RAC (WA) if an application for a transfer is forthcoming and is approved by MRC), one nominee from WorleyParsons and one nominee from Conporec.

The services under the Resource Recovery Facility Agreement will be provided through subcontracts as follows:

- (1) Concept design and technology licence – Conporec
- (2) Design and construction – Kerman Contracting Limited
- (3) Operation and maintenance – Worley Parsons Infrastructure

Each of the subcontractors will undertake their services for a lump sum fee (in the case of Kerman Contracting Limited) and (in the case of all subcontractors) will take full responsibility for the risks associated with their services.

A parent company guarantee is not being offered for Biovision 2020. Security is being provided through allocating some project risk to subcontractors, a \$2.5 million Development Security for the construction period up to the end of the Initial Operating Period, \$1.5 million Performance Guarantee for the remaining 18 years of the contract term (the Development Security and the Performance Guarantee will be capped, in aggregate, to the limit on liability with the Contractor [**to be confirmed**]), appropriate insurance and limits of liability and risk mitigation processes built into the Agreement.

#### **Issues and options considered:**

The tender process started with an Expression of Interest over five years ago and culminated in a tender process of national, local and international bidders. WorleyParsons were nominated as the preferred tenderer on 26 June 2006.

#### Fee Structure

The proposed gate fee payable to the Contractor comprises the following components:

- (i) Capital Cost Rate, which covers the repayment of the capital cost of the RRF and profit, plus
- (ii) Fixed and Variable Operating Cost Rates, which cover the cost of operating the RRF, minus
- (iii) Revenue share from the sale of products.

The gate fee can vary as a result of the performance of the Contractor and the RRF and the revenue obtained from the sale of products.

Worley have proposed two methods for providing capital to the project. The first is bank financing with a fixed Capital Cost Rate. The other option raises the capital through Indexed Annuity Bonds under which the Capital Cost Rate component of the gate fee starts at a lower rate and increases in line with CPI during the Term.

In the Worley tender the Indexed Annuity Bonds option provides a preferred solution to the Mindarie Regional Council. The fee payable to the Contractor would commence in year 1 at \$111.61 per tonne. This would escalate over the life of the project.

### Other Issues

Worley and Conporec have demonstrated, through the performance of the Conporec facility in Tracey Canada, that the RRF proposed in their tender will be able to meet the performance standards required by the Mindarie Regional Council. The proposed facility will be essentially the same process as operating at Tracey, with some improvements and at a larger scale. The Tracey facility has been operating since receiving its certificate of compliance in May 1993.

### Estimated Costs to Member Councils

The Mindarie Regional Council had previously agreed a gate fee model, for implementation upon the establishment of the Resource Recovery Facility, which comprised the categorisation of waste as follows:

- Processable Waste
- Non Processable Waste

The philosophy associated with this model recognises that not all processable material will be delivered to the Resource Recovery Facility initially. Therefore, an equitable charging model was required, in order to manage, in a fair manner, all processable material, with respect to charges. This model is important because it provides a clear picture to Member Councils of the impact of Resource Recovery Facility Gate Fee charges on the overall charges to Member Councils.

The fee arrangements associated with the preferred tenderer are as follows:

- Year 1 gate fee estimate of \$112.00/tonne
- The gate fee is dependent on various facility operating performances and market forces
- The gate fee estimate is based on a compost revenue of \$0/tonne and 100% achievement of all Key Performance Indicators (KPIs)
- Reduction in the revenue from compost below \$0 per tonne will not impact on the gate rate as WorleyParsons/Contractor have guaranteed a minimum revenue of \$0/tonne
- A reduction in the achievement of the KPIs will reduce the gate fee paid to the contractor
- The gate fee will be increased in line with various cost escalation indices throughout the term of the contract

The translation of these fee arrangements into processable and non processable fees results in the following:

- There will be a Mindarie Regional Council Resource Recovery Facility Management cost associated with facility development costs, infrastructure costs, operation and maintenance costs, Mindarie Regional Council governance and administration costs, community engagement and bush-forever costs. This Mindarie Regional Council Resource Recovery Facility Management cost is estimated at \$9.29/tonne
- The non-processable fee is the Tamala Park Landfill fee (2006/2007 = \$43.00/tonne)
- The processable fee, based on the previously accepted formula, is calculated as \$95.89/tonne

The estimated financial impact on Member Councils for the first complete financial year of Resource Recovery Facility operation, with a comparison of existing arrangements ie. Disposal to landfill versus proposed arrangements ie. some disposal to Resource Recovery and the balance to landfill, the current tonnages are described in the table below.

**INDIVIDUAL MEMBER COUNCIL COSTS  
RESOURCE RECOVERY FACILITY v NON RESOURCE RECOVERY FACILITY  
Calculation Using 2005/2006 tonnage up to 26/5/6 and then annualised.**

<b>Council</b>	<b>Annual Processable Tonnage</b>	<b>Total Disposal without Resource Recovery Facility \$</b>	<b>Annual Cost with Resource Recovery Facility \$</b>
City of Perth	15,358	661,418	1,473,670
City of Wanneroo	39,745	2,792,385	4,894,442
City of Joondalup	58,287	3,065,694	6,148,388
Town of Cambridge	9,524	497,023	1,000,723
Town of Vincent	13,070	562,855	1,254,111
Town of Victoria Park	12,045	555,588	1,192,628
City of Stirling	-	4,297,382	4,297,382
<b>Total</b>	<b>148,029</b>		

**Financial Guarantee Requirements**

Notwithstanding the case for the introduction of a resource recovery capability within the Mindarie region, some financial security requirements have been identified by all Tenderers through the tender process. Also, these requirements are a product of the current approved Business Model for Mindarie Regional Council, which seeks to operate on the lowest possible cost recovery basis (which requires the use of loans rather than the creation of reserves). These requirements, as requested by all tenderers, relate to the need for any appointed contractor to have some certainty about the source and availability of funds to cover potential risks albeit with some low probability, should certain circumstances arise.

The financial obligations and exposure of the Member Councils are no more than what it would be under the current Constitution and the financial guarantee is merely formalising the obligations to provide comfort to the prospective contractor (and its financiers) by providing a direct contractual relationship between each Member Council and the contractor.

The characteristics of these tenderer requirements are as follows:

- The contractor is seeking a Financial Guarantee and this would crystallise if:
  - MRC does not meet its payments due under the agreement and, therefore, there is a MRC default under the RRFA. The specific payments are the monthly gate fee (and any interest owing for late payment), reimbursement of costs of obtaining water if water is not able to be provided from the bore and reimbursement of costs if residue is not able to be disposed of at Tamala Park.
  - There is an uninsurable Force Majeure event which prevents performance for more than 12 months and, as a result, the MRC seeks to terminate the agreement.

The trigger events for the access to these requirements can be described as follows:

- Non-payment of the Monies due by MRC which constitutes a MRC default
- MRC obligation to settle debt due to the agreement being terminated because of the occurrence of an uninsurable Force Majeure event

Mindarie Regional Council would share the burden of the cost only if there is an uninsured event. In the case of insured events the cost should be covered by the payout from the Insurers but, in any event, would not result in a liability of MRC to pay the Contractor the termination payment. Examples of events that would be uninsurable and would have a material impact on the RRF include the following:

- War risks, confiscations, nationalisation
- Nuclear attack, radiation, contamination by radio activity from nuclear waste etc
- Sea damage, tidal wave or high water or storm surge  
**Storm risks can be insured at an additional premium**
- Spontaneous combustion, fermentation or any process involving application of heat  
**These can be mitigated by including clauses in the insurance policy**
- Earthquake  
**This risk can be covered at an additional premium and with a reasonable excess**
- Terrorism is now covered by the Australian Federal Government's Insurance Industry Fund

**It is important to note that only MRC can terminate the agreement due to extended Force Majeure and, therefore, trigger the potential payout by MRC.**

**The MRC has two further alternatives if there is an extended Force Majeure. It can continue paying the Contractor the Capital Costs and the Fixed Operating Costs whilst the Force Majeure is continuing, regardless of whether the Contractor is able to operate the RRF. It can also negotiate with the Contractor to determine whether the terms of the RRFA (for example, the increasing the gate fee or the Term) can be amended to enable the necessary investment to be made to rectify the effect of the Force Majeure.**

The financial characteristics of the preferred tenderer for the establishment of this resource recovery capability have enabled the quantification of the extent of financial security requirements. This extent can be described, in dollar terms as follows:

- Force Majeure
  - Construction period  
Up to \$77 million approximately
  - Operational period  
\$77 million approximately at practical completion and reducing to around \$5 million in the last year of operation
- MRC Default  
\$82 million approximately in the first year of the term of the agreement and reducing to about \$12 million in the last year of operation

The relative impact on Member Councils, in terms of financial security commitments are as follows:

- The financial guarantee would not directly impact on the individual Member Council's borrowing capacity
- The financial guarantee would not be reflected as a liability in the individual member Council's Financial Statements as the liability has not crystallised.

Additional information in relation to this financial security dimension is as follows:

- The committal to such financial security is unlikely to impact on the borrowing power of Member Councils
- All Member Councils would be required to sign off on the financial security prior to satisfaction of the First Tier Conditions Precedent (which is when the operative part of the agreement comes into effect, approximately 12 weeks after signing)
- The guarantee document is at Attachment One to this Item
- The relative apportionment of responsibility between the Member Councils for these items would be:
  - for a payment on termination of the agreement for MRC Default or prolonged Force Majeure, in the proportion of equity holdings in the MRC;
  - for a claim for other moneys owed under the agreement, in the proportion of waste delivered by that Member Council to the RRF in the preceding 6 months.



**Link to Strategic Plan:**

Review and further development of the City's Waste Management Strategy is consistent with the Strategic Plan. Under the Key Focus Area 'To care for the Environment' the City has a strategy to effectively and efficiently manage the waste by:

- Further develop and implement recycling strategies;
- Plan for the development of waste management.

**Legislation – Statutory Provisions:**

Not Applicable.

**Risk Management considerations:**

Risks of the City being called upon to provide the guarantees are detailed in the above under Force Majeure events and where the MRC is in default for non-payment of the gate fee or other amounts owing under the agreement. Default by the MRC for non-payment of the gate fee is considered a low risk.

Steps will be taken to insure all Force Majeure events where possible.

If the RRF does not proceed and landfill continues to be the disposal option. In this case, the risks are far greater to Council because landfill events like slow seepage to ground is uninsurable and therefore the MRC and ultimately the members, would bear the full risk and financial impact of such an event.

In terms of uninsurable events like war, sea damage or tidal wave, it is worth noting the City would have the same risk for all of its assets.

**Financial/Budget Implications:**

- Where the MRC is in default for non-payment of the gate fee, depending on when this event occurs during the term of the RRFA the MRC is liable, in the worst case for \$82M reducing to \$12M in the last year of the term. **The City's liability will be one-sixth based on its equity share in the MRC, being in the first year of the term of the RRFA, \$13.66M reducing to \$2M in the last years of the term;**
- If an uninsurable event of Force Majeure occurs, the MRC depending on the year that it happens, will be liable for a worst-case scenario of \$77M, reducing to \$5M if the event of Force Majeure occurs in the final years of the term of the RRFA. The City's liability, based on its equity share in the MRC, will be a worst-case scenario of \$12.8M reducing to \$0.83M in the final years of the contract.

**Policy Implications:**

Not Applicable.

**Regional Significance:**

The RRF will divert up to 70% of waste delivered to it from landfill. All local authorities in the region will be diverting a portion of their waste from landfill. This assists in achieving Local, State and National goals.

**Sustainability Implications:**

The State Government through the Statement of Strategic Direction for Waste Management in Western Australia, September 2004, has set an action agenda for moving forwards towards a waste-free society, embracing the vision of *'Towards zero waste in Western Australia'*.

To achieve this requires a shift toward a closed loop system, where wastes from one part of society become the raw materials for another. Programs will also be needed to support waste avoidance initiatives and develop markets for recycled materials. State policies 'Hope for the Future: the Western Australian' state sustainability strategy and the Federal Government's initiative - the National Packaging Covenant shows a broad Government commitment to a vision of 'Towards Zero Waste'.

Consistent with this strategic direction for the management of waste, the City of Joondalup is implementing the adopted Waste Strategy 2005 to maximise recovery of the organic waste stream through the RRF and improve the recycling collection service to collect and recover more tonnes of packaging materials.

**Consultation:**

The MRC has had an exhaustive public liaison with the community on the RRF including the land purchase. It also has been responsible for the establishment of the Community Education and Advisory Group (CEAG) where community members have expressed their views and concerns. The CEAG has been influential in the development of community and environmental issues in the tender documentation and has also had input into the environmental consultation process with the State Government.

**COMMENT**

The preferred tenderer of the RRF project and its financiers require a financial guarantee of the MRCs payment obligations for the project. This is necessary for the project to be bankable. Legally, the MRC is not a signatory to its own existence (through the Constitution) and ultimately its liabilities rest with the member councils. Also, the MRC does not have the capital reserve to fund a call in the case of being required to purchase the RRF if the agreement is terminated due to the occurrence of a prolonged uninsurable Force Majeure or a default due to MRCs non-payment of amounts owing under the agreement. The MRC is now seeking members' agreement to guarantee its payment obligations under the agreement.

This report details the unlikely events that could trigger a call on the guarantee and the risks involved. Risks have been identified through a risk analysis and mitigated where possible with insurances. Significantly, the report details the landfill disposal option and the uninsurable risks associated with slow seepage into ground.

All member Councils have been requested to meet the guarantee requirements in order for the project to proceed.

**ATTACHMENTS**

Nil.

**VOTING REQUIREMENTS**

Simple Majority

**MOVED Cr Fishwick, SECONDED Cr McLean that the Strategic Financial Management Committee NOTES the financial guarantees required by the Mindarie Regional Council to progress the Resource Recovery Project and the identified associated risks.**

Director, Corporate Services provided an explanation in relation to the provision of financial guarantees.

Discussion ensued.

**The Motion was Put and**

**CARRIED (7/0)**

**In favour of the Motion:** Mayor Pickard, Crs John, Fishwick, McLean, Park, Magyar and Corr

It was suggested that the next committee meeting be held within the next month, from 5.00 pm onwards.

**CLOSURE**

There being no further business, the Presiding Person declared the Meeting closed at 1808 hrs; the following Elected members being present at that time:

Cr M John  
Cr R Fishwick  
Mayor T Pickard  
Cr T McLean  
Cr S Magyar  
Cr J Park  
Cr B Corr