

**RESOURCE RECOVERY GROUP
AGENDA PAPERS
SPECIAL MEETING OF COUNCIL**

**MONDAY 18 DECEMBER 2023
4.30pm**

**RESOURCE RECOVERY GROUP
9 Aldous Place BOORAGOON**

Our Mission: *We are leaders in maximising material recovery and minimising climate impacts by providing our communities with best practice resource recovery solutions with high recovery rates and ethical supply chains*

On behalf of our Participant Local Governments



Dear Members

In accordance with section 5.25(1)(g) of the Local Government Act 1995, the Resource Recovery Group gives notice that a Special Meeting of Council will be held at 9 Aldous Place Booragoon commencing at **4.30pm on Monday 18th December 2023** for the purpose of:

- **Establishment Agreement**
- **Transitional Planning – Review of RRG (Confidential)**

Brendan Doherty
ACTING CHIEF EXECUTIVE OFFICER

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1. DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

The Chairperson welcomed everyone in attendance and declared the meeting open at 4.33 pm.

"I respectfully acknowledge the traditional owners of the land on which this meeting is taking place today – the Nyungar people of Western Australia and pay our respects to their elders' past and present".

2. RECORD OF ATTENDANCE / APOLOGIES

PRESENT

Cr Karen Wheatland (Chairperson)	City of Melville
Cr Hannah Fitzhardinge (Deputy Chairperson)	City of Fremantle
Mr Graham Tattersall (REG Member)	City of Fremantle
Mr Nick King (REG Member)	Town of East Fremantle
Mr Paul Molony (Deputy REG Member)	City of Melville
Mr Brendan Doherty	RRG, Acting CEO
Ms Ann Johnson	RRG, Executive Manager Governance & Culture
Luke Stewart	RRG, Manager Communications & Marketing

APOLOGIES

Cr Andrew White	Town of East Fremantle
Mr Tim Youé	RRG, Chief Executive Officer
Mr Peter Kocian (REG Member)	Town of East Fremantle
Mr Mick McCarthy (REG Member)	City of Melville
Mr Keith Swift	RRG, Executive Manager Operations

3. DISCLOSURE OF INTERESTS:

Nil

4. PUBLIC QUESTION TIME

Nil

5. ANNOUNCEMENTS BY THE CHAIRMAN OR PRESIDING PERSON

Nil

6. PETITIONS / DEPUTATIONS / PRESENTATIONS

Nil

7. ANNOUNCEMENT OF CONFIDENTIAL MATTERS FOR WHICH MEETING MAY BE CLOSED TO THE PUBLIC

9.2 Transitional Planning – Review of RRG by Members

8. BUSINESS NOT DEALT WITH FROM PREVIOUS MEETING

Nil

9. REPORTS OF THE CEO

REPORT NO	9.1
SUBJECT	ESTABLISHMENT AGREEMENT
AUTHOR	A Johnson, Executive Manager Governance & Culture
RESPONSIBLE OFFICER	A Johnson, Executive Manager Governance & Culture
EMPLOYEE INTEREST	Nil
DATE OF REPORT	12 December 2023
FILE REFERENCE	F:\SMRC\Organisation\Establishment Agreement
ATTACHMENTS	1# Draft Establishment Agreement as approved by Member Participants 2# Letter Minister for Local Government – 27 November 2023

COUNCIL RESOLUTION

23.12-01 **Moved:** Cr H Fitzhardinge **Seconded:** Cr K Wheatland

CEO RECOMMENDATION:

1. **The amendments recommended by the Minister for Local Government to the draft Establishment Agreement be adopted and forwarded to the participants for comment and/or endorsement.**
2. **On endorsement by the Member Participants the Establishment Agreement be formally amended and forwarded to the Minister for approval.**

CARRIED UNANIMOUSLY 2/0

VOTING REQUIREMENT

Simple Majority

PURPOSE OF REPORT

To consider the further amendments recommended by the Minister for Local Government to the Establishment Agreement before providing to Member Participants for comment or endorsement.

NATURE OF COUNCIL'S ROLE IN THE MATTER:

Advocative

Not applicable

Executive

The role of the Council - is responsible for the performance of the local government's functions (*Local Government Act 1995* s2.7 (1)(b)).

Legislative

The *Local Government Act 1995* s3.65 Amendment of Establishment Agreement for Regional Local Governments.

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

- (3) *Section 3.61(2) and (3) apply, with any necessary modifications, to an agreement amending the establishment agreement.*

The *Local Government Act 1995* s3.61 establishing a Regional Local Government

- (2) *An application for the Minister’s approval is to be —*
- (a) *in a form approved for that purpose by the Minister; and*
 (b) *accompanied by a copy of an agreement between the participants to establish the regional local government (referred to in this Division as the establishment agreement).*
- (3) *The participants are to supply the Minister any further information about the application that the Minister asks for.*

IMPLICATIONS TO CONSIDER:

Consultative:

Participant local governments, Department for Local Government and the Minister for Local Government.

Strategic relevance:

Compliance requirement

Policy related:

Nil

Financial:

A provision for legal fees for the amendments to the Agreement are provided for in the 2023/2024 budget.

Legal and statutory:

Establishment Agreement

Risk related:

Risk No	Risk Description	Potential Consequences	Controls Are Currently In Place,	Overall Risk Rating
A03	Non-Compliance (Corporate)	1. Infringement by relevant authority	<ul style="list-style-type: none"> Compliance Calendar/Register State Government Legislative Updates Annual Compliance Audit Return 	Low 6

BACKGROUND:

S3.61 of the *Local Government Act 1995* allows for the establishment of a regional local government by two or more local governments. s3.65 of the *Local Government Act 1995* sets out the requirements for amendment of an establishment agreement.

As an outcome of the 2021 strategic review workshop, it was agreed that a review of the current Establishment Agreement was to be undertaken to reflect modern practices and wording.

A workshop was held electronically on 30 March 2022 to discuss proposed amendments to the current Establishment Agreement, the workshop was attended by Regional Councillors, Regional Executive Officers and RRG Executive staff and facilitated by Mr Alex Lowe, Minister Elision Lawyers.

Mr Alex Lowe, Minter Ellison Lawyers, was engaged to undertake re-drafting of the establishment agreement. Prior to the workshop members were provided with a version of the establishment agreement with tracked proposed changes and a summary document of the key recommended changes.

In recent years a number of member local governments have withdrawn from the current agreement resulting in three local governments making up the Regional Council. One key proposal was to introduce the appointment of

two (2) Councillors per local government. This proposal is instead of appointed deputies and has cost implications for members due to the potential of increased Councillor payment fees.

In 2021 the regional local government has changed its name, which was approved by the Minister in 2022. The March 2022 workshop considered a suggestion to amend the Regional Purpose to incorporate or better reflect the Resource Recovery Group tag line of Recycle, Innovate, Educate.

The workshop also discussed the mechanisms for the joining or withdrawing from Projects.

It was also agreed during the workshop that a dispute resolution practice be incorporated into the document.

Mr Lowe was asked to summarised the changes discussed and present a further draft Agreement for members to consider.

On 26 May 2022 the draft agreement was submitted to members to consider. Cr White requested that clause 8 of the draft establishment agreement be amended or the item be deferred to the next meeting for further discussion.

COUNCIL RESOLUTION

Matter deferred to the special Council meeting of 14 July 2022.

22.05-05 MOVED: CR A WHITE SECONDED: CR K WHEATLAND

CARRIED 2/0

At the Special Meeting of Council on 14 July 2022 Cr White proposed an amendment to clause 8.1 of the Establishment Agreement removing the requirement to seek the Minister's permission for a Participant to withdraw from a Project. Council resolved:

SUBSTANTIVE MOTION AS AMENDED:

22.07-02 MOVED: CR K WHEATLAND SECONDED: CR D THOMPSON

- 1. CLAUSE 8.1 BE AMENDED BY DELETING "SUBJECT TO HAVING FIRST OBTAINED THE PERMISSION OF THE MINISTER" AND INSERTING "SUBJECT TO THE APPROVAL OF AN ABSOLUTE MAJORITY OF THE MEMBERS".**
- 1. THE AMENDMENTS IN THE DRAFT ESTABLISHMENT AGREEMENT BE RECEIVED AND FORWARDED TO THE PARTICIPANTS FOR COMMENT AND/OR ENDORSEMENT.**

CARRIED 2/1

**For: Cr Wheatland, Cr Thompson
Against: Cr White**

The Establishment Agreement was updated to reflect the above changes and forwarded to Member Participants for endorsement or further comment.

The draft Establishment Agreement was endorsed by:

- The City of Fremantle on 8 February 2023.
- The Town of East Fremantle on 21 February 2023.
- The City of Melville on 21 March 2023.

REPORT:

Following endorsement of the draft Establishment Agreement by all Member Participants on 22 May 2023 the Agreement was forwarded to the Department of Local Government, Sport & Cultural Industries seeking approval of the Minister to amend the Establishment Agreement for the Regional Council.

On 27 November 2023, the Minister for Local Government proposed the following further amendments to the Establishment Agreement:

Proposed Amendments

Clause	Comment
5.1	The Clause does not explicitly address the appointment of deputy members. Consider amending the clause to either expressly provide for either (a) the appointment of deputy members or (b) a confirmation that no deputy members are to be appointed.
5.4(c)	This clause is not required, may lead to instability in RRG and clashes with analogous provisions in the Local Government Act 1995. It is recommended it is removed.
6.3(b)	Consider amending the clause to clarify whether the business plan must be produced in accordance with section 3.59 of the LG Act on all occasions, or whether this only occurs when the requirement under the Act is enlivened.
	Consider including a formal mechanism for giving notice under the AEA.

Minor Edits

Clause	Comment
	The AEA provides that the Original EA was entered into on 22 January 1998, when the original EA was entered into on 13 December 1991. Consider amending the recitals to provide the complete history.
	Consider removing the definition of ' <i>Regional Purpose</i> '. The definition is not required as the term is only used in clause 4.
6.6	This clause could be merged with clause 6.7.
6.7(a)(iii)	Remove an unnecessary ')'
6.8	Consider replacing ' <i>Trade Practices Act 1974 (Cth)</i> ' with ' <i>Competition and Consumer Act 2010 (Cth)</i> ' (assuming the reference remains relevant).
16.45(h)(i)	Consider amending to state the value as '\$500,000 (<i>five hundred thousand dollars</i>)'.
16(5)(a)(i)	Consider amending to provide 'clause 16.3(b) and (c)', as both clauses operate together.

To reflect the above recommendations as made by the Minister for Local Government once endorsed by RRG Council we will need to also seek endorsement by all Member Participants.

COUNCIL RESOLUTION

23.12-02

MOVED: Cr H Fitzhardinge

SECONDED: Cr K Wheatland

That the meeting go behind closed doors to discuss confidential item 9.2 in accordance with section 5.23 (2) (a), a matter affecting an employee or employees, (c), a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting, (e) a matter that if disclosed, would reveal (i) a trade secret, or (ii) information that has a commercial value to a person, or (iii) information about the business, professional, commercial or financial affairs of a person.

CARRIED UNANIMOUSLY 2/0

9.2 TRANSITIONAL PLANNING – REVIEW OF RRG BY MEMBERS

COUNCIL RESOLUTION

23.12-03

Moved: Cr H Fitzhardinge

Seconded: Cr K Wheatland

CEO RECOMMENDATION:

1. Council receive the resolutions and associated correspondence from Member councils including:
 - City of Melville resolution made on 21 November 2023; and
 - City of Fremantle resolution made on 22 November 2023.
2. Council note the significant impact of the above resolutions on the RRG and request that the CEO seek further information and advice as outlined in the report to inform a decision at a future date.
3. Council note the proposed Memorandum of Understanding and in this context seek that the CEO:
 - (i) obtain legal advice regarding confidentiality, probity and any other relevant advice regarding engaging with third parties and sharing the operational aspects and contractual arrangements referred to in the MoU;
 - (ii) subject to the receipt of advice and agreement with the MoU Participants on confidentiality and a defined scope request that the CEO provide information to support the Due Diligence process outlined in the MoU; and
 - (iii) report back to Council to clarify the proposed way forward once the collaborative model is established.
4. Council note that no requests have been received to date from Member Councils for preparation of a business plan by the Town of East Fremantle as required to facilitate the withdrawal of the Town of East Fremantle.
5. Council adopt the amended Media Statements policy as presented.
6. Council endorse the Communication Strategy as presented.

Cr Fitzhardinge noted that the communications strategy required further development and requested that a holding statement be published in the interim. It was noted that the Cities of Fremantle and Melville had indicated a preference that they release statements at the same time as RRG and publishing a statement prior to Christmas could be problematic however Cr Fitzhardinge stated this was still the preference. As a result it was suggested item 6 be amended to reflect the publishing of a holding statement before 22nd December as well as forming a communications working group.

PROPOSED AMENDMENT:

23.12-03 Moved: Cr K Wheatland Seconded: Cr H Fitzhardinge

6. Council endorse the formation of a communication working group to continue to develop a communication strategy and report back to Council. An interim statement to be prepared by RRG prior to December 22nd 2023.

SUBSTANTIVE MOTION AS AMENDED

COUNCIL RESOLUTION:

23.12-03 Moved: Cr H Fitzhardinge Seconded: Cr K Wheatland

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| <ol style="list-style-type: none">1. Council receive the resolutions and associated correspondence from Member councils including:<ul style="list-style-type: none">• City of Melville resolution made on 21 November 2023; and• City of Fremantle resolution made on 22 November 2023.2. Council note the significant impact of the above resolutions on the RRG and request that the CEO seek further information and advice as outlined in the report to inform a decision at a future date.3. Council note the proposed Memorandum of Understanding and in this context seek that the CEO:<ol style="list-style-type: none">(iv) obtain legal advice regarding confidentiality, probity and any other relevant advice regarding engaging with third parties and sharing the operational aspects and contractual arrangements referred to in the MoU;(v) subject to the receipt of advice and agreement with the MoU Participants on confidentiality and a defined scope request that the CEO provide information to support the Due Diligence process outlined in the MoU; and(vi) report back to Council to clarify the proposed way forward once the collaborative model is established.4. Council note that no requests have been received to date from Member Councils for preparation of a business plan by the Town of East Fremantle as required to facilitate the withdrawal of the Town of East Fremantle.5. Council adopt the amended Media Statements policy as presented.6. Council endorse the formation of a communication working group to continue to develop a communication strategy and report back to Council. An interim statement to be prepared by RRG prior to December 22nd 2023. |
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CARRIED UNANIMOUSLY 2/0

COUNCIL RESOLUTION

23.12-04 Moved: Cr H Fitzhardinge Seconded: Cr K Wheatland

That the meeting no longer be held behind closed doors.

CARRIED UNANIMOUSLY 2/0

10. **QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN**
Nil

11. **DECLARATION OF CLOSURE OF MEETING**
There being no further business, the Chairperson thanked those present for their attendance and the meeting was declared closed at 5.37 pm.

I hereby certify that the Minutes of the Special Council Meeting held on 18 December 2023 were confirmed on 22 February 2024.

Cr Karen Wheatland
Presiding Member



Signature

TOWN OF EAST FREMANTLE

and

CITY OF FREMANTLE

and

CITY OF MELVILLE

ESTABLISHMENT AGREEMENT OF THE

RESOURCE RECOVERY GROUP

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AGREEMENT

THIS ESTABLISHMENT AGREEMENT dated

BETWEEN **TOWN OF EAST FREMANTLE** of 135 Canning Highway, East Fremantle,
Western Australia

AND **CITY OF FREMANTLE** of William Street, Fremantle, Western Australia

AND **CITY OF MELVILLE** of 10 Almondbury Road, Booragoon, Western Australia

RECITALS

- A On 22 January 1998, the City of Canning, City of Cockburn, Town of East Fremantle, City of Fremantle, Town of Kwinana, City of Melville, and City of Rockingham entered into the "Establishment Agreement of the Southern Metropolitan Regional Council" (**Original Establishment Agreement**).
- B On 30 October 1998 the Original Parties entered into the "Deed of Variation of the Establishment Agreement of the Southern Metropolitan Regional Council", which varied the Original Establishment Agreement.
- C City of Canning, City of Cockburn, Town of Kwinana and City of Rockingham have subsequently withdrawn from the Regional Local Government and this Agreement.
- D On 16 February 2022, the Southern Metropolitan Regional Council was formerly renamed Resource Recovery Group.

OPERATIVE PART

1. DEFINITIONS AND INTERPRETATION

In this Agreement unless the context requires otherwise:

'Act' means the Local Government Act 1995;

'Chairperson' means the Council Member elected to that office pursuant to clause 5.3;

'CEO' means the Chief Executive Officer of the Regional Local Government;

'Council' means the Council of the Regional Local Government as required by the Act;

'Council Member' means a member of the council of the Participant appointed pursuant to clause 5.1;

'Deputy Chairperson' means the Council Member elected to that office pursuant to clause 5.3;

'Dispute' means any dispute, question or difference arising between the Participants or between any of the Participants and the Regional Local Government at any time in connection with this Agreement or a Proposal or Project;

'Dispute Notice' means a written notice given by a party pursuant to clause 16.2;

'Existing Undertaking' means an undertaking of the Regional Local Government which is being carried out when this Agreement becomes operative including, without limitation;

- (a) research and education with respect to the removal, processing, treatment and disposal of waste; and
- (b) the administrative functions of the Regional Local Government related to any purpose other than a Project;

'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;

'Original Establishment Agreement' as the meaning given to it in the Recitals;

'Participants' means the Town of East Fremantle, the City of Fremantle and the City of Melville;

'Population' means the population of a Region as calculation in accordance with clause 14;

'Project' means a project or undertaking defined in a business plan referred to in clause 6.3;

'Project Participant' in relation to a Project, means a Participant which is participating in that Project under clause 6;

'Proposal' means a proposal to undertake a Project;

'Region' means the districts of the Participants declared under the Act;

'Regional Local Government' means the regional local government known as the Resource Recovery Group;

'Regional Purpose' means any regional purpose referred to in clause 4.

1.2 Interpretation

In this Agreement unless the context requires otherwise:

- (a) clause headings, subclause headings and footnotes are for convenience only and are not to be used in the interpretation or construction of this Agreement;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing any gender include all genders;
- (d) references to persons include corporations and bodies politic;
- (e) references to a person include the legal personal representatives, successors and assigns of that person;
- (f) a reference to a statute or statutory provision includes:
 - (i) a statutory provision which supplements, amends, extends, consolidates or replaces it; and
 - (ii) any applicable orders, regulations, instruments or other delegated legislation;
- (g) references to this or any other document include the document as varied or replaced, and notwithstanding any change in the identity of the parties;
- (h) references to a right or obligation of any two or more persons confers that right, or imposes that obligation, jointly and severally;
- (i) references to a person 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, must be taken to refer to the person or body established or constituted in its place or by which its functions have become exercisable;
- (j) 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 must end on the last day of the next succeeding calendar month;
- (k) references to this Agreement include its schedules;
- (l) references to time are to local time in Perth, Western Australia; and
- (m) where time is to be reckoned from a day or event, such day or the day of such event must be excluded.

2. NAME

The name of the Regional Local Government is the Resource Recovery Group.

3. REGION

The Regional Local Government is established for the Region.

4. REGIONAL PURPOSES

The purposes for which the Regional Local Government is established are:

- (a) to actively plan, coordinate and implement the removal, processing, treatment and disposal of waste, with the intention of implementing and advocating for the adoption of best practice processes and activities;

- (b) to lead and influence local, State and Federal Governments in the development of regional waste management policies and legislation;
- (c) to educate by providing tools to recycle right, reduce waste and live more sustainably; and
- (d) 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 clause 4(a) or 4(b),

5. THE COUNCIL

5.1 Appointment of Members

Each Participant must appoint two members of the council of the Participant as a Council Member.

5.2 Tenure of Council Members

Council Members hold office until:

- (a) the member ceases to be a member of the council of the Participant;
- (b) the member is removed by the Participant by written notice to the CEO; or
- (c) the member resigns or retires.

5.3 Election of Chairperson and Deputy Chairperson

- (a) The election of the chairperson and a deputy chairperson is to be conducted by the CEO in accordance with the procedure prescribed under the Act for the election of a mayor and a deputy mayor, respectively, by a council.
- (b) The Council Members must elect a chairperson and a deputy chairperson at the first meeting of the Council following:
 - (i) an ordinary election held under the Act;
 - (ii) the resignation or retirement of the Chairperson or the Deputy Chairperson; or
 - (iii) a vacancy in the office of the Chairperson or the Deputy Chairperson caused by the operation of clause 5.4(c)(i) or 5.4(c)(ii).

5.4 Term of Chairperson and Deputy Chairperson

The term of the Chairperson and Deputy Chairperson is not to exceed two (2) years and ends:

- (a) at the start of the first meeting of the Council following the next ordinary election held under the Act;
- (b) if the Chairperson or Deputy Chairperson resigns or retires by giving written notice to the CEO; or
- (c) if all Council Members unanimously agree that:
 - (i) the Chairperson is unable to fulfil the role of the Chairperson; or
 - (ii) the Deputy Chairperson is unable to fulfil the role of the Deputy Chairperson.

5.5 Role of Chairperson

The Chairperson:

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

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

5.6 Role of Deputy Chairperson

The Deputy Chairperson performs the functions of the Chairperson if:

- (a) the office of Chairperson is vacant; or
- (b) the Chairperson is not available, or unable or unwilling to perform the functions of the Chairperson.

5.7 Role of Council Member

A Council Member:

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

6. PROPOSALS

6.1 Requirements

The Regional Local Government must only adopt a Proposal and undertake a Project in accordance with the requirements of this clause.

6.2 Absolute Majority to Adopt Proposal

The Regional Local Government must only adopt a Proposal when authorised to do so by an absolute majority of the Council.

6.3 Business Plan for each Project

- (a) Where the Regional Local Government has adopted a Proposal it must:
 - (i) prepare and adopt a business plan; and
 - (ii) provide a copy of the business plan to each of the Participants.
- (b) The contents of the business plan must meet the requirements of the Act and the business plan must clearly define the Project.

6.4 Decision to Participate in Project

Each Participant must, within a reasonable period determined by the Council after the adoption of the business plan, decide whether to participate in the Project by giving notice of its decision to the Regional Local Government.

6.5 Meeting of Project Participants

As soon as practicable after the period referred to in clause 6.4, the Regional Local Government must convene a meeting of all the Project Participants.

6.6 Unanimous Agreement to Terms of Project

Before the Regional Local Government undertakes the Project, the Project Participants must, by unanimous resolution of the Council Members who are appointed by those Project Participants, agree upon:

- (a) the proportion (and the basis of its calculation) in which the Project Participants will make contributions towards:
 - (i) the acquisition of any asset of a capital nature required for the Project;
 - (ii) the operating expenditure, including administrative expenses, relating to the Project;
- (b) the manner of payment of the contributions referred to in clause 6.6(a);
- (c) the proportional entitlement or liability, as the case may be (and the basis of its calculation), of a Project Participant when the withdrawal of that Project Participant from the Project takes effect; and
- (d) the manner of payment of the entitlement or liability referred to in clause 6.6(c).

6.7 Basis on which contributions are Calculated

- (a) Where the contributions referred to in clause 6.6(a) are calculated on the basis of a unit of measurement (for example):
 - (i) number of tonnes of waste processed;
 - (ii) number of bins of waste collected;
 - (iii) numbers of hours of advice given),then that basis must be applied equally to all Project Participants.
- (b) This clause must not apply where, by unanimous resolution, the Project Participants decide otherwise with respect to a particular Project.

6.8 Project Participants Not to Provide Same Services by Agreement

- (a) Where the Regional Local Government undertakes a Project in accordance with this clause 6, the Project Participants may agree that, for an agreed term, none of them will provide any service or facility of the same kind as those the subject of the Project.
- (b) No Project Participants must provide any service or facility contrary to an agreement of the Project Participants made under clause 6.8(a).

Footnote:

The Participants envisage that in no circumstances, will any agreement reached pursuant to this clause 6.8 have an anti-competitive effect or otherwise contravene the *Trade Practices Act 1974*.

7. PROJECT PARTICIPANT PAYMENTS

7.1 Manner of Payment of Operating Expenditure Contributions

Unless otherwise agreed, the contributions referred to in clause 6.6 towards operating expenditure must be paid by each Project Participant to the Regional Local Government by equal and successive quarterly instalments:

- (a) the first of which must be made within 42 days (or such greater period as may be determined by the Regional Local Government) of service of a copy of the annual budget of the Regional Local Government on that Project Participant; and
- (b) the subsequent instalments must be made in advance at the commencement of each quarter of the financial year.

7.2 Late Payment

Unless otherwise agreed, if a Project Participant fails to pay to the Regional Local Government a sum of money owing under this clause 6 on or before the due date for payment, that Project Participant must, in addition to the sum of money due and payable, pay to the Regional Local Government interest at the overdraft rate charged by the Regional Local Government'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 for payment.

8. WITHDRAWAL FROM A PROJECT

8.1 Right to Withdraw

A Project Participant may at any time give notice of its intention to withdraw from a Project.

8.2 When Withdrawal to Take Effect

The withdrawal of a Project Participant must take effect:

- (a) from the end of the financial year after the financial year in which notice under this clause 8 has been given by the Project Participant to the Regional Local Government; or
- (b) on any earlier date agreed by the Project Participants.

9. JOINING A PROJECT

9.1 Participant Wishing to Join Existing Project

A Participant which is not a Project Participant may at any time after a Project is undertaken, give notice of its wish to participate in the Project.

9.2 Preparation of Amended Business Plan

- (a) As soon as practicable after receipt of a notice under this clause 9, the Regional Local Government must:
 - (i) prepare an amended business plan for the Project in respect of the current financial year having regard to the effect of the participation of the Participant giving the notice; and
 - (ii) provide a copy of the amended business plan to the Participant and the Project Participants.
- (b) The amended business plan must include details of any additional capital expenditure necessitated by the participation of the Participant giving the notice under this clause 9 and an estimate of that additional capital expenditure.
- (c) The Participant giving the notice under clause 9 must meet the cost of preparation of the amended business plan.

9.3 Determination of Participation Date

- (a) As soon as practicable after preparation and adoption of the amended business plan under clause 9.2:
 - (i) the Participating Local Governments acting reasonably, must determine the date upon which any decision by the Participant to participate in the Project is to become effective;
 - (ii) the Regional Local Government must advise the Participant of that date.
- (b) The date determined under clause 9.3(a) must not be earlier than:

- (i) the commencement of the financial year after the financial year in which the notice was given by the Participating Local Government to the Regional Local Government;
- (ii) unless otherwise agreed by the Project Participants and the Participant.

9.4 Participant to Decide

Within 35 days after receipt of the advice referred to in clause 9.3, the Participant may give to the Regional Local Government notice of its decision to participate in the Project.

9.5 When Decision to Take Effect

A Participant which gives notice under clause 9.4 is to become a Project Participant in that Project with effect on the date referred to in clause 9.3.

9.6 Calculation of New Member's Contributions

- (a) As soon as practicable after a Participant becomes a Project Participant in a Project under clause 9.5 ("**the New Member**"), the Regional Local Government must:
 - (i) calculate the amount of the contribution of that New Member towards:
 - (I) the value of any existing assets of a capital nature acquired for the Project; and
 - (II) the operating expenditure for the current financial year in respect of the Project; and
 - (ii) ascertain the amount of the additional capital expenditure referred to in the amended business plan prepared under clause 9.2; and
 - (iii) give notice to the Project Participant and the New Member of the calculation referred to in clause 9.6(a)(i) and the amount referred to in 9.6(a)(ii).
- (b) In calculating the amounts of the contributions under clause 9.6(a)(i), the Regional Local Government must use the proportions referred to in clause 6.6(a) which have been agreed for the Project.
- (c) Unless the Project Participants agree upon another method of payment, the New Member must pay the amounts:
 - (i) in the case of the contribution towards capital assets – immediately after receipt of the notice of the calculation referred to in clause 9.6(a)(iii);
 - (ii) in the case of the contribution towards operating expenses – in the same manner as has been agreed in respect of the Project pursuant to clause 6.6(a) or as specified in clause 7 (whichever is applicable); and
 - (iii) in the case of the amount for additional capital expenditure immediately after receipt of the notice of the amount referred to in clause 9.6(a)(iii).

9.7 Adjustment of Equities

As soon as practicable after payment of the contribution referred to in clause 9.6(a)(i), the Regional Local Government will pay to the Project Participants other than the New Member any amount due in respect of their equities in the capital assets which results from the participation of the New Member in the Project.

10. WINDING UP OF A PROJECT

10.1 Winding up of Project by Resolution

The Council Members appointed by the Project Participants of a Project may resolve, by absolute majority, to wind up the Project.

10.2 Division of Assets

If a Project is to be wound up and there remains, after satisfaction of all its debts and liabilities, any property and assets of the Project then the property and assets must be realised and the proceeds along with any surplus funds must be divided among the Project Participants in the agreed proportions referred to in clause 6.6(a).

10.3 Division of Liabilities

If a Project is to be wound up and there remains any liability or debt in excess of the realised property and assets of the Project then the liability or debt is to be met by the Project Participants in the agreed proportions referred to in clause 6.6(a).

10.4 Indemnification by Project Participants of the Regional Local Government

If a Project is wound up pursuant to this clause 10, the Project Participants must indemnify the Regional Local Government (in the agreed proportions referred to in clause 6.6(a)) with respect to that liability or debt.

11. EXISTING UNDERTAKINGS

11.1 Application of Clause

This clause only applies to an Existing Undertaking.

11.2 Contribution to Operating Expenditure

The annual contribution of each Participant towards the operating expenditure, including administrative expenses, relating to an Existing Undertaking as disclosed in the municipal fund budget of the Regional Local Government for that financial year must be an amount which bears the same proportion to that operating expenditure as the Population of that Participant bears to the total of the Populations of all Participants.

11.3 Contributions to Capital Assets

The contribution of each Participant towards the acquisition of any asset of a capital nature required for and Existing Undertaking must be an amount which bears the same proportion to the cost of the acquisition disclosed in the municipal fund budget of the Regional Local Government for that financial year as the Population of that Participant bears to the total of the Populations of all Participants.

11.4 Manner of Payment of Contributions

Unless otherwise agreed, contributions referred to in clauses 11.2 and 11.3 must be paid by each Participant to the Regional Local Government by equal and successive quarterly instalments:

- (a) the first of which must be made within 42 days (or such greater period as may be determined by the Regional Local Government) of service of a copy of the annual budget of the Regional Local Government on that Participant; and

- (b) the subsequent instalments must be made in advance at the commencement of each quarter of the financial year.

11.5 Late Payment

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

11.6 Winding up of Existing Undertakings

The Council may resolve, by absolute majority, to wind up an Existing Undertaking.

11.7 Division of Assets

If an Existing Undertaking is to be wound up and there remains, after satisfaction of all its debts and liabilities, any property and assets of the Existing Undertaking then the property and assets must be realised and the proceeds along with any surplus funds, must be divided among each of the Participants in the same proportion as the contributions of a particular Participant to the assets of that Existing Undertaking bear to the total of the contributions of all Participants.

11.8 Division of Liabilities

If an Existing Undertaking is to be wound up and there remains any liability or debt in excess of the realised property and assets of the Existing Undertaking then the liability or debt is to be met by each of the Participants in the same proportion as the contributions of a particular Participant to the assets of that Existing Undertaking bear to the total of the contributions of all Participants.

12. WINDING UP OF THE REGIONAL LOCAL GOVERNMENT

12.1 Winding Up by Council Resolution

The Council may resolve, by absolute majority, to wind up the Regional Local Government.

12.2 Procedure on Winding up

If the Council resolves to wind up the Regional Local Government then:

- (a) each Project is to be wound up separately;
- (b) each Existing Undertaking is to be wound up separately;
- (c) the provisions of clauses 10.2, 10.3 and 10.4 must apply to the winding up of each Project; and
- (d) the provisions of clauses 11.7 and 11.8 must apply to the winding up of each Existing Undertaking.

13. WITHDRAWAL OF A PARTICIPANT FROM THE REGIONAL LOCAL GOVERNMENT

13.1 Withdrawal

A Participant may, at any time, give notice of its intention to withdraw from the Regional Local Government.

13.2 When Withdrawal to Take Effect

The withdrawal of a Participant must take effect from the end of the financial year after the financial year in which notice of the withdrawal has been given by the Participant to the Regional Local Government.

13.3 Entitlement or Liability of Withdrawing Participant

As soon as practicable after the withdrawal of a Participant takes effect, the Regional Local Government must:

- (a) distribute to the Participant an amount equal to the proceeds and any surplus funds which would have been payable if the Regional Local Government was wound up; or
- (b) be entitled to recover from the Participant an amount equal to the liability or debt which would be payable by the Participant if the Regional Local Government was wound up,

as the case may be.

14. POPULATION

The Population of a Participant means the estimated resident population of that Participant as set out in Table 5 (Estimated Resident Population, Local Government Areas, Western Australia) of the statistics last published by the Australian Bureau of Statistics titled "Regional Population" or any substitute therefor accepted by the Government of the Commonwealth of Australia from time to time as a measure of resident population provided that if at any time the statistics are discontinued or suspended or if in the opinion of the Regional Local Government the method of computation thereof is substantially altered there must be substituted therefor such alternative method of establishing resident populations of the Participant as the Regional Local Government may resolve.

15. 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 this 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.

16. DISPUTE RESOLUTION

16.1 Dispute

- (a) The parties agree that any Dispute will be resolved in accordance with this clause 16.
- (b) It is a condition precedent to the commencement of proceedings for the resolution of a Dispute under clause 16.5 that the parties have first complied with clauses 16.2 and 16.3.
- (c) Nothing in this clause 16 prevents the parties from agreeing to implement an alternative dispute resolution procedure, such as mediation, in addition to the requirement of this clause 16.

16.2 Notice of Dispute

If any Dispute arises then the party raising the Dispute must deliver by hand or send by certified mail to the other parties a written Dispute Notice which:

- (a) adequately identifies and provides details of the Dispute; and
- (b) states that the notice is a Dispute Notice given under this clause.

16.3 Conferences

- (a) If the Dispute is not resolved within 10 business days after a Dispute Notice is given to the other parties, each party must nominate one representative from its management to confer to resolve the Dispute.
- (b) If the Dispute is not resolved within 15 business days after a Dispute Notice is given to the other parties, each party must nominate one representative from its senior management to confer to resolve the Dispute.
- (c) If the Dispute is not resolved within 20 business days of the conference held in accordance with clause 16.3(b):
 - (i) if this Agreement requires it, or the parties otherwise agree, a party may refer the Dispute to expert determination in accordance with clause 16.4; or
 - (ii) a party may refer the Dispute to arbitration in accordance with clause 16.5.

16.4 Expert Determination

- (a) An **Expert** is a person, having the qualification set out in clause 16.4(b):
 - (i) selected by the parties within 10 Business Days after the Expert Determination Notice is given by the party wishing to progress the relevant Dispute to the other party; or
 - (ii) if the parties fail to agree as to the Expert, a person nominated by the President at the time of the Resolution Institute (WA Chapter) who must choose the expert on the basis of the type of Dispute and the nature of the expertise necessary to consider the relevant issues.
- (b) An Expert must:
 - (i) have suitable and reasonable qualifications as well as commercial and practical experience in the area of the Dispute;
 - (ii) be independent of each party and not be, or have been, an employee, agent, contractor, advisor or consultant of either party; and
 - (iii) have no interest or duty which conflicts or may conflict with the Expert's function as an expert.
- (c) If an Expert Determination Notice is given:
 - (i) the parties must, within 5 Business Days after an Expert is selected or nominated, arrange for the Expert to be appointed; and
 - (ii) each party must use its reasonable efforts to provide the Expert with any information reasonably required by the Expert (within the time period identified by the Expert) and in any event each party must provide the Expert with its preferred position in relation to the Dispute based on its understanding of the relevant facts.
- (d) The Expert acts as an expert and not as an arbitrator.
- (e) The Expert will have no power to apply or to have regard to the provisions of any proportionate liability Legislative Requirements which might, in the absence of this clause 16.4(e), have applied to any Dispute referred to the Expert under this clause 16.4
- (f) The parties agree that:
 - (i) the Dispute is to be resolved according to the rules of the Resolution Institute (WA Chapter), current as at the date the Expert Determination Notice is given (**Expert Determination Rules**); and

- (ii) they must abide by the Expert Determination Rules and must procure the Expert's agreement to resolve the Dispute according to those rules.
- (g) The parties must use their best efforts to enable the Expert to give the parties a written decision within 30 Business Days after the Dispute is referred to the Expert.
- (h) The Expert's decision is final and binding except where:
 - (i) the monetary value of the claim or the monetary value of the determination is greater than \$5 (five) hundred thousand and neither party has issued a notice under clause 16.2; or
 - (ii) there has been manifest error.
- (i) Each party must pay an equal proportion of the Expert's costs and the costs of the Expert's advisers unless the Expert, in its absolute discretion, decides otherwise.

16.5 Arbitration

- (a) If:
 - (i) a dispute is not able to be resolved under 16.3(b); or
 - (ii) a matter is referred to an Expert under clause 16.4 and:
 - (A) the monetary value of a claim or the monetary value of a determination is greater than \$5 (five) hundred thousand; and
 - (B) within 20 Business Days of the Expert making its determination a party notifies the other party that it does not accept the Expert's determination,
 either party may commence arbitration proceedings.
- (b) The arbitration will be conducted in accordance with the provisions of the *Commercial Arbitration Act 2012* (WA) and the ACICA Rules and will be final and binding.
- (c) The arbitral tribunal will (unless otherwise agreed) consist of a single arbitrator appointed in accordance with the ACICA Rules.
- (d) The place of arbitration is Perth, Western Australia.
- (e) The arbitration will be conducted in English.

16.6 Legal Representatives

The Participants consent to each other and to the Regional Local Government being legally represented at any arbitration.

Footnotes:

Amendment of Agreement

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

Admission of Other Local Governments

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

EXECUTED by the Participants

**THE COMMON SEAL of TOWN OF EAST
FREMANTLE** was hereunto affixed by authority of
a resolution of the Council in the presence of

Mayor

Chief Executive Officer

THE COMMON SEAL of CITY OF FREMANTLE
was hereunto affixed by authority of a resolution of
the Council in the presence of

Mayor

Chief Executive Officer

THE COMMON SEAL of CITY OF MELVILLE was
hereunto affixed by authority of a resolution of the
Council in the presence of

Mayor

Chief Executive Officer



**Minister for Ports; Local Government; Road Safety;
Minister Assisting the Minister for Transport**

Our Ref: 83-01503

Mr Tim Youe
Chief Executive Officer
Resource Recovery Group

Email: admin@resourcerecoverygroup.com.au

Dear Mr Youe

Thank you for your correspondence dated 22 May 2023 regarding the approval of the Resource Recovery Group Amended Establishment Agreement (AEA) pursuant to section 3.61 of the *Local Government Act 1995*.

A copy of the AEA was forwarded to the Department of Local Government, Sport and Cultural Industries (DLGSC) for assessment. Consequently, DLGSC has recommended a number of amendments be made to the AEA to ensure its effective operation and minimise the potential for future disputes.

A list of the proposed amendments is enclosed for your consideration.

It is important to note that if those amendments are made, the AEA should be provided to the participant local government councils for approval.

Yours sincerely



HON DAVID MICHAEL MLA
MINISTER FOR LOCAL GOVERNMENT

27 NOV 2023

Enc.

Department of Local Government, Sport and Cultural Industries

Proposed amendments

Clause	Comment
5.1	The clause does not explicitly address the appointment of deputy members. Consider amending the clause to either expressly provide for either (a) the appointment of deputy members or (b) a confirmation that no deputy members are to be appointed.
5.4(c)	This clause is not required, may lead to instability in RRG and clashes with analogous provisions in the <i>Local Government Act 1995</i> . It is recommended it is removed.
6.3(b)	Consider amending the clause to clarify whether the business plan must be produced in accordance with section 3.59 of the LG Act on all occasions, or whether this only occurs when the requirement under the Act is enlivened.
	Consider including a formal mechanism for giving notice under the AEA.

Minor edits

Clause	Comment
	The AEA provides that the Original EA was entered into on 22 January 1998, when the original EA was entered into on 13 December 1991. Consider amending the recitals to provide the complete history.
	Consider removing the definition of ' <i>Regional Purpose</i> '. The definition is not required as the term is only used in clause 4.
6.6	This clause could be merged with clause 6.7.
6.7(a)(iii)	– remove an unnecessary ')
6.8	Consider replacing ' <i>Trade Practices Act 1974 (Cth)</i> ' with ' <i>Competition and Consumer Act 2010 (Cth)</i> ' (assuming the reference remains relevant)
16.4(h)(i)	Consider amending to state the value as '\$500,000 (<i>five hundred thousand dollars</i>)'.
16(5)(a)(i)	Consider amending to provide 'clause 16.3(b) and (c)', as both clauses operate together.