



17 MEMBERS' MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

17.1 NOTICE OF MOTION RECEIVED FROM CR STEVE WOLFF

In accordance with Clause 4.18 of the *EMRC Standing Orders Local Law 2013*, Cr Wolff has given notice of his intention to move the following motion at the Ordinary Meeting of Council to be held on 3 December 2020:

Motion

That Council:

1. *Notes resolution 2 made at the Ordinary Council Meeting on 17 September 2020 in relation to Item 15.2; Waste Advisory Committee (WAC) Item 11.1.*
2. *Agrees to not, at this time, proceed with issuing a request for tender to those parties identified as acceptable tenderers in response to the expression of interest 2019-007 for a permanent Food Organics and Garden Organics processing facility (FOGO Facility) to be developed at the Red Hill Waste Management Facility (Red Hill).*
3. *Directs the Chief Executive Officer of the EMRC (CEO) to:*
 - (a) *Immediately cause the preparation of the request for tender to cease; and;*
 - (b) *Not proceed with the preparation of the request for tender until further resolution of Council.*
4. *In the event that a request for tender has already been prepared, directs the Member Council Technical Officer Group not to proceed with consideration of the request for tender until further resolution of Council.*
5. *Notes resolution 3 made at the Ordinary Council Meeting on 17 September 2020 in relation to Item 15.2; WAC Item 11.1.*
6. *To the extent a Member Council has not yet confirmed its commitment to supply their Food Organic and Garden Organic waste, agrees that Council no longer requires a response from that Member Council in that regard.*
7. *Notes the provisions of the Establishment Agreement (EA) and Section 3.59 of the Local Government Act 1995.*
8. *Confirms that:*
 - (a) *It considers the development of the FOGO Facility to be a "New Project and Service" as that term is defined in the EA; and*
 - (b) *The FOGO Facility will be a "major trading undertaking" as that term is defined by Section 3.59 of the Local Government Act 1995.*
9. *Notes that:*
 - (a) *Clause 10.1 of the EA provides that the EMRC shall only undertake a New Project or Service in accordance with Clause 10 and provided that, amongst other things, the requirement for the preparation of a Business Plan under Section 3.59 of the Local Government Act 1995, if applicable, is complied with;*
 - (b) *Clause 10.2 of the EA provides that where the EMRC is considering a New Project or Service, it must prepare a "Project Plan";*
 - (c) *Clause 10.3 of the EA provides what a Project Plan shall include; and*
 - (d) *Section 3.59 of the Local Government Act 1995 provides that, before the EMRC commences a major trading undertaking, the EMRC is to prepare a Business Plan.*
10. *Directs the CEO to:*
 - (a) *Prepare and provide Council with a Project Plan in respect of the FOGO Facility, ensuring that the Project Plan includes the matters contained at Clause 10.3 of the EA; and*
 - (b) *Comply with Section 3.59 of the Local Government Act 1995, including the preparation of a Business Plan for the FOGO Facility.*



Item 17.1 Continued

11. *By absolute majority, in accordance with Section 6.16(3) of the Local Government Act 1995, agrees to cease, effective immediately, the imposition of the Secondary Waste Charge on the gate fee at Red Hill.*
12. *Directs the CEO to facilitate the immediate cessation of the imposition of the Secondary Waste Charge on the gate fee at Red Hill.*
13. *By absolute majority, in accordance with Section 6.11(2)(b) of the Local Government Act 1995, Council agrees that the funds held in the Secondary Waste Reserve Account (SWRA) be distributed to each of the Member Councils pursuant to and in accordance with their respective contributions to the SWRA.*
14. *Directs the CEO to give, in accordance with Section 6.11(2) of the Local Government Act 1995, one month's local public notice of Council's resolution that the funds held in the SWRA be distributed to each of the Member Councils pursuant to and in accordance with their respective contributions to the SWRA.*
15. *Directs the CEO to, after giving the one month's local public notice, facilitate the distribution of the funds held in the SWRA to each of the Member Councils pursuant to and in accordance with their respective contributions to the SWRA no later than 31 January 2021.*

Rationale provided by Cr Wolff

In progressing the development of the Food Organics and Garden Organics Processing Facility at Redhill, it appears the Eastern Metropolitan Regional Council has overlooked key elements of the Establishment Agreement and the *Local Government Act 1995* (1995 LG Act). It is therefore important that the EMRC resolves to immediately cease with the progression of the FOGO Project as currently planned.

If the EMRC is to continue with the FOGO Project, it must do so in accordance with the Establishment Agreement and in particular, pursuant to the requirements of Clause 10 (of the Agreement) and Section 3.59 of the 1995 LG Act.

The definition of "Continuing Projects and Services" contained within Schedule 1 of the Establishment Agreement is a generic description of the activities that were being undertaken at the Operative Date of the Establishment Agreement – the Operative Date being the date of the Minister's consent of the Establishment Agreement in 1998. Any project started after that date is then by definition a "New Project or Service" and is subject to Clause 10.

With this interpretation of "Continuing Project and Service", any project commenced after 1998, including the FOGO Project, should be classified a "New Project or Service". To say otherwise in order to avoid the EMRC having to comply with the requirements of Clause 10 gives rise to a misconceived interpretation of the Establishment Agreement.

If the EMRC continues with the FOGO Project without due regard to Clause 10 of the Establishment Agreement and Section 3.59 of the 1995 LG Act, it could expose the EMRC and its member Councils to scrutiny from both the general public and the Department of Local Government with the potential for adverse findings of its operations, decision making processes and allocation of finances.

The Establishment Agreement was entered into by the Member Councils during 1998 to bring the EMRC (which had existed since 1983 under the *Local Government Act 1960* as a "regional council") up to date and in line with the provisions of the recently enacted 1995 LG Act, which provided the statutory basis for local governments to establish a "regional local government".



Item 17.1 Continued

Pursuant to sections 3.61(2) and 3.64, the 1995 LG Act required that a “regional local government” be established pursuant to an “establishment agreement” between the member councils (and approved by the Minister) setting out a number of matters, including:

1. the purpose for which the regional government was established;
2. a means of determining the financial contributions of the participants to the funds of the regional local government;
3. procedures for the winding up of the regional local government or for the withdrawal of a participant from the regional local government;
4. procedures for the division of assets and liabilities between the participants in the event of the regional local government being wound up or a participant withdrawing from the regional local government.

When the EMRC commenced in 1983 it carried out activities pursuant to the terms of its “Constitution Agreement”. Accordingly, the Establishment Agreement (which came into effect in 1998) needed to deal with these existing activities. In that regard, because the existing activities had already been approved by the Member Councils, it was not necessary for the Establishment Agreement to require the existing activities to go through another due diligence and approval process. Rather, the Establishment Agreement would simply allow the existing projects to “continue”.

In contrast to the EMRC’s existing activities, the Establishment Agreement had to deal with any “new” activities the EMRC might propose in the future.

The Establishment Agreement deals with the EMRC’s existing activities at Clause 9 (“Continuing Projects and Services”), and deals with future activities at Clause 10 (“New Project or Service”).

The generic description of a Continuing Project contained within Schedule 1 (a) causes some confusion when the definition of “New Projects and Services” is considered – because the definition of what constitutes a “New Project and Service” appears to say that a new project cannot be anything that falls within the generic description of the activities contained within Schedule 1 and which are defined as “Continuing Projects and Services”.

However, reading Clause 9 and Clause 10 makes clear that in fact a continuing project refers to anything that existed prior to the Operative Date (in 1998), and a new project refers to anything proposed after the Operative Date. Clearly, this interpretation of “Continuing Project” and “New Project” is what the Member Councils intended when the Establishment Agreement was drafted.

After all, how could any new project, no matter what its scale and cost, be allowed to proceed without a financial analysis and without a thorough project plan, simply because it apparently accords with an item in a list in the schedule?

Additionally, the Food Organics and Garden Organics Processing Facility Project has identified the potential, under the Draft Tender Specification, to consider Anaerobic Digestion, which as a result, will produce a Biogas and generate a renewable energy source.

Schedule 1 (a) does not include the concept of energy production and therefore the development of a Food Organics and Garden Organics Processing Facility at Redhill does not fall entirely within the definition of a “Continuing Project and Service”.

Consequently, in order for the Establishment Agreement to work properly and in accordance with how it was intended, the definition of “Continuing Projects and Services” should be interpreted to read: “Continuing Projects and Services means an undertaking of the EMRC which is being carried out immediately before the Operative Date in respect of the activities described in Schedule 1.”



Item 17.1 Continued

The effect of that interpretation is that the generic description of the activities contained within Schedule 1 are not carved out of the definition of “New Project and Service” such that any new project falling within one of those generic descriptions is not automatically deemed to be a “Continuing Project and Service”.

Rather, a “Continuing Project and Service” is limited to those undertakings (i.e. activities) the EMRC was carrying out immediately before the Operative Date (i.e. 1998). Any new activities or projects after the Operative Date fall within the definition of a “New Project and Service”.

If the Establishment Agreement is not interpreted in the way described above, the generic definition of a “Continuing Project and Service” at sub clause (a) of Schedule 1 means that it would simply not be possible for any Project and Service that is associated with the removal, processing, treatment and disposal of waste to be classified as a New Project and Service. That is simply not a reasonable and rational interpretation having regard to the purpose the Establishment Agreement was drafted for.

With this “proper interpretation” of “Continuing” and “New” in the Establishment Agreement, the Waste to Energy facility at Rockingham is a “New Project and Service”, and subject to Clause 10. A consequence of that is that any Member can choose to participate or not, just as Bassendean and Bayswater chose not to participate.

And, with this “proper interpretation” of “Continuing” and “New” in the Establishment Agreement, the FOGO Project is a “New Project and Service”, and subject to Clause 10 as well. A consequence is that any Member can choose to participate or not, and can choose contribute their share of funds or not. And additionally, a Project Plan must be prepared.

The funds contained within the Secondary Waste Reserve have been identified as a funding source to construct the Food Organics and Garden Organics Facility at Redhill. However, to date the EMRC Council is yet to see a proper, fully developed Business Case or Project Plan for this facility and we should not be committing to the development and construction of a facility without undertaking our due diligence in accordance with Clause 10 of the Establishment Agreement.

This Project should not be classified as a Continuing Project and Service. It is, and should be, classified as a New Project and Service and be subject to clause 10 of the Establishment Agreement. This means that a Project Plan must be developed before this organisation commits significant funding to this project, not after it commits significant funding.

Being a “New Project”, and in accord with Clause 10, Member Councils have the option to participate or not, with those who do participate being responsible for the funding and costs associated with the project. Those who don’t participate would not have to contribute their share of the Secondary Waste Reserve to funding it. There is also a statutory requirement to comply with Section 3.59 of the 1995 LG Act. The Establishment Agreement of the EMRC cannot and does not override the requirements of Section 3.59 of the 1995 LG Act with regard to a “major trading undertaking”. Section 3.59 states that before it commences a major trading undertaking “a local government is to prepare a business plan”.

As it stands today, I do not have confidence that the EMRC has undertaken the necessary due diligence required to develop a Project Plan or Business Case. It is my opinion that by overlooking the provisions of the Establishment Agreement and Section 3.59 of the 1995 LG Act, the EMRC Council does not have sufficient information to make an informed decision on the development of a Food Organics and Garden Organics Processing Facility at Redhill.

If the EMRC applies the Establishment Agreement correctly and complies with Section 3.59 of the 1995 LG Act, it will give the EMRC Council (and its Member Councils) the confidence and the information required to make an informed decision about the FOGO Project.



Item 17.1 Continued

To facilitate confidence in the good governance and process of developing this project, it is recommended that the funds contained within the Secondary Waste Reserve be returned back to the Member Councils (in proportion to contributions made). This would not mean these funds would be unavailable for any future FOGO Processing Facility at Redhill, as those members wanting to participate can still contribute to the project. Should the Project Plan identify that the Project is a viable Project and particular Member Councils want to commit to the Project, those Member Council's would still have those funds available.

Together with returning the funds of the Secondary Waste Reserve to Member Councils, it is recommended that the Secondary Waste Levy on the Gate Fee at Redhill cease.

In summary, I believe the development of a Project Plan in accordance with not only Clause 10 of the Establishment Agreement, but Section 3.59 of the *Local Government Act 1995*, (which is a legislative requirement) will ensure the EMRC has undertaken its due diligence and Council will have all the information required to make an informed decision.

Returning the funds contained in the Secondary Waste Reserve to the Member Councils does not jeopardise the future development of a FOGO Processing Facility at Redhill, as Member Councils will still have the funds available to commit to the Project, if the Project Plan identifies the project to be viable.

Councillors, I trust that the reasons I have given clearly outline why I have moved this motion tonight. As Councillors we have a duty bestowed on us and that duty extends to ensuring we have sufficient information to make informed decisions.

We should not be progressing further until we have a fully developed Project Plan for this Project.

Thank you Councillors.

Officer Comments

Continuing Project Vs New Project

The first element of the Notice of Motion is whether the Food Organics and Garden Organics Project should be considered or classified as being a project or service within the meaning of:

- (a) the definition of "Continuing Projects and Services"; or
- (b) the definition of "New Project or Service";

as those terms are defined in the Establishment Agreement entered into between the Participants in 1998 for the purposes of establishing the EMRC under the *Local Government Act 1995* (the Act) as a Regional Council.

The expression "Continuing Projects and Services" is defined in the Establishment Agreement as follows:

"means the activities described in Schedule 1".

Per *Schedule 1 of the Establishment Agreement*, 'Continuing Projects and Services' means the following activities:

- (a) the removal, processing, treatment and disposal of waste;
- (b) risk management, training and advisory services;
- (c) environmental services;
- (d) regional, economic and community development.



Item 17.1 Continued

The expression “New Project or Service” is defined in the Establishment Agreement as follows:

“means any activity for a Regional Purpose other than Continuing Projects and Services”.

As per the *Waste Avoidance and Resource Recovery Strategy 2030*, achieving the avoidance target will require an emphasis on the waste materials that make up more than 90% of the waste Western Australian’s generate including organics. The Strategy focuses on the reuse, reprocessing and recycling of the waste with the greatest potential for increased recovery. This includes Food Organics and Garden Organics (FOGO).

While the Establishment Agreement does not clearly define Continuing Projects and Services to include FOGO, the fact remains that FOGO is a waste generated by municipal households. The difference is that it is now separated at source into a third bin (FOGO).

As such, FOGO falls under the definition of “waste” and the processing, treatment and disposal of waste by the EMRC is consistent with the definition in Schedule 1 of the Establishment Agreement as ‘Continuing Projects and Services’.

We have also sought legal advice to provide clarity on this matter which is as follows:

“In our view, the definition of “Continuing Projects and Services” is prima facie clear in its application. By this we mean that a plain reading of the definition incorporates projects and services of a particular character which involve specific types of activity and is not restricted to a project or service that predates formation of the EMRC in 1998.

In our view the language is clear and unambiguous. The definition of “New Projects or Services” correspondingly incorporates projects or services that are of a character or type that are not identified in Schedule 1 to the Establishment Agreement.

We note that this advice is consistent with earlier advice provided by Kott Gunning in February 2009 relating to the Resource Recovery Facility Tender.

In our view the proposed development of the FOGO Facility is appropriately covered by the “Continuing Projects and Services” definition. Put simply it is of the character or type of activity described in the Schedule 1 definition as:

“(a) the removal, processing, treatment and disposal of waste”.

The proposed Notice of Motion suggests that: “Schedule 1(a) does not include the concept of energy production and therefore the development of a Food Organics and Garden Organics Processing Facility at Redhill does not fall entirely within the definition of a “Continuing Project or Service”.

We do not consider that this contention is correct. The primary purpose of the FOGO Facility is consistent with Schedule 1(a). Energy production is only a consequence of the primary purpose and it being only a consequence of the primary purpose does not, in our view, take it outside of the definition.

It is also noted that the definition in Schedule 1(a) does not restrict itself to ‘disposal’ but also refers to “processing” and “treatment” These concepts do not exclude energy production if one considers their plain and ordinary meaning.”



Item 17.1 Continued

Major Trading Undertaking

In terms of what constitutes what constitutes a “major trading undertaking” within the meaning of section 3.59 of the Act, it defines “major trading undertaking” as follows:

“means a trading undertaking that —

- (a) in the last completed financial year, involved; or
- (b) in the current financial year or the financial year after the current financial year, is likely to involve,

expenditure by the local government of more than the amount prescribed or the purposes of this definition, except an exempt trading undertaking.”

Section 3.59 (1) also defines “trading undertaking” as follows:

“means an activity carried on by a local government with a view to producing profit to it, or any other activity carried on by it that is of a kind prescribed for the purposes of this definition, but does not include anything referred to in paragraph (a) or (b) of the definition of land transaction.”

Regulation 9 of the *Local Government (Functions and General) Regulations 1996* contains particulars of the threshold amount of expenditure that would trigger the compliance requirements of section 3.59. Regulation 9(1) provides the threshold of expenditure to be:

- (a) \$5,000,000 or 10% of the lowest operating expenditure described in regulation 9(2) for local governments whose district is in the metropolitan area or a major regional centre; or
- (b) \$2,000,000 or 10% of the lowest operating expenditure described in regulation 9(2) for other local governments.

In terms of the current EMRC process for this project, the following timelines are relevant.

At its 21 March 2019 meeting of Council, it was unanimously resolved (D2019/05266):

“THAT:

1. **THE EMRC BEGIN THE PROCESS OF DEVELOPING A LONG-TERM FOOD ORGANIC & GARDEN ORGANIC (FOGO) STRATEGY INCLUDING, IF REQUIRED, SEEKING EXPRESSIONS OF INTEREST FOR THE APPROPRIATE TECHNOLOGY TO IMPLEMENT LONG-TERM FOGO PROCESSING SOLUTIONS TO CATER FOR ALL MEMBER COUNCIL WASTE STREAMS.**
2. **IN THE INTERIM, THE EMRC PROCEEDS WITH THE PROCUREMENT PROCESS AND LICENCE APPROVAL FOR THE ADDITION OF A TRIAL MOBILE AERATOR FLOOR (MAF) COMPOSTING SYSTEM FOR THE PROCESSING OF UP TO 10,000 TPA OF FOGO WASTE AT THE RED HILL WASTE MANAGEMENT FACILITY.**
3. **APPROVES THE EXPENDITURE OF UP TO \$400,000 EX GST FOR THE PURCHASE AND INSTALLATION OF A SUITABLE MAF SYSTEM, INCLUDING HARDSTAND INSTALLATION AND THAT THE FUNDS BE ALLOCATED FROM THE SECONDARY WASTE RESERVE.**
4. **NOTES THAT INTERIM ARRANGEMENTS ARE AVAILABLE WITH SEVERAL THIRD PARTY PROCESSORS OF FOGO WASTE IF THE INSTALLATION OF A PROCESSING FACILITY OR THE LICENCE APPROVAL IS DELAYED FOR WHATEVER REASON BEYOND PLANNED START DATES FOR FOGO COLLECTIONS BY MEMBER COUNCILS.**
5. **ADVISE THE TOWN OF BASSENDEAN AND THE CITY OF BAYSWATER OF THE COUNCIL RESOLUTION AND AUTHORISE THE CEO TO ENTER INTO NEGOTIATIONS WITH THESE MEMBER COUNCILS FOR A SUITABLE PROCESSING ARRANGEMENT**
6. **SEEK FUNDING SUPPORT FROM THE WASTE AUTHORITY FOR THE FOGO TRIAL AT THE RED HILL WASTE MANAGEMENT FACILITY.**
7. **THAT THE EMRC EXPLORE ALL MARKETING OPPORTUNITIES FOR THE COMPOST PRODUCT DURING THE FOGO TRIAL PERIOD.”**



Item 17.1 Continued

Following the draft Food Organics and Garden Organics (FOGO) Waste Strategy (Ref: D2019/14024) being presented to WAC on 5 September 2019 it was subsequently endorsed by Council at its 19 September 2019 meeting where it was unanimously resolved (D2019/14022):

“THAT COUNCIL ENDORSES THE DRAFT FOOD ORGANICS AND GARDEN ORGANICS (FOGO) RECOVERY STRATEGY SUBJECT TO THE LAST DOT POINT UNDER ‘PRINCIPLES’ ON PAGE 9 BEING AMENDED TO STATE “THE FUNDING OF BINS, CADDIES AND INITIAL EDUCATION/PRODUCT MARKETING FOR MEMBER COUNCILS WILL BE FUNDED THROUGH THE SECONDARY WASTE RESERVE.”

At the 17 September 2020 meeting of Council, it was unanimously resolved (D2020/13852):

“THAT:

- 1. COUNCIL ENDORSES THE FEASIBILITY STUDY FOR A PERMANENT FOGO FACILITY FORMING THE CONFIDENTIAL ATTACHMENT TO THIS REPORT.*
- 2. COUNCIL APPROVES THE PREPARATION OF A REQUEST FOR TENDER FOR A PERMANENT FOGO FACILITY TO BE ISSUED TO THE ACCEPTABLE TENDERERS AFTER ENDORSEMENT OF THE TENDER DOCUMENTS BY THE MEMBER COUNCIL TECHNICAL OFFICER GROUP AND REQUESTS THAT A BUSINESS CASE BE PREPARED BASED ON THE TENDER SUBMISSIONS FOR ENDORSEMENT BY COUNCIL BEFORE THE TENDER IS AWARDED.*
- 3. COUNCIL REQUEST ITS MEMBER COUNCILS TO CONFIRM THEIR COMMITMENT TO SUPPLY THEIR FOGO WASTE, AT AN INDICATIVE COST IN THE RANGE AS REFERRED TO IN THE CONFIDENTIAL ATTACHMENT TO THIS REPORT, TO THE PERMANENT FOGO PROCESSING FACILITY FOR A 20-YEAR PERIOD FROM THE COMMENCEMENT OF OPERATIONS.*
- 4. COUNCIL BY ABSOLUTE MAJORITY IN ACCORDANCE WITH S.6.8 OF THE LOCAL GOVERNMENT ACT 1995 APPROVES UNBUDGETED EXPENDITURE OF \$400,000 FOR THE 2020/2021 TO PROGRESS THE IMPLEMENTATION OF THE FOGO RECOVERY STRATEGY.*
- 5. THE ATTACHMENT REMAINS CONFIDENTIAL AND BE CERTIFIED BY THE CHAIRMAN AND CEO.*

As noted in the resolution 2 of the 17 September 2020 decision, a business case has always been envisaged to be prepared based on the tender submissions for endorsement by Council before the tender is awarded. It has been contemplated that the financial figures from the tender submissions will be required to finalise the business case.



Item 17.1 Continued

Secondary Waste Reserve

The Secondary Waste Reserve was established to accumulate and to make provision for Secondary Waste Treatment Technology in the future.

At the 16 April 2020 Special Meeting of Council, it was resolved unanimously not to adjust the Secondary Waste Reserve charge (D2020/07499):

THAT COUNCIL:

1. NOT ADJUST THE SECONDARY WASTE RESERVE CHARGE APPLIED TO LANDFILL TONNAGES FROM MEMBER COUNCILS FOR THE 2020/2021 FINANCIAL YEAR.
2. BY ABSOLUTE MAJORITY, THE EMRC DECLARE A DIVIDEND OF \$5M TO BE FUNDED BY \$2.5M FROM MUNICIPAL FUND BASED ON ESTIMATED 2019/2020 OPERATING SURPLUSES, AND IN ACCORDANCE WITH S.6.11(2)(B) OF THE *LOCAL GOVERNMENT ACT 1995*, A DISTRIBUTION OF \$2.5M FROM THE FUTURE DEVELOPMENT RESERVE.
3. THE DIVIDEND IS PAYABLE TO EACH MEMBER COUNCIL ON OR BEFORE JUNE 30 2020 BASED ON THE COUNCILS SHAREHOLDING AS PER THE LAST AUDITED ACCOUNTS BEING 30 JUNE 2019.
4. CONFIRMS, IN ACCORDANCE WITH R.18(C) OF THE *LOCAL GOVERNMENT (FINANCIAL MANAGEMENT) REGULATIONS 1996*, THAT THE EMRC IS NOT REQUIRED TO GIVE LOCAL PUBLIC NOTICE OF A PROPOSED CHANGE OF USE OF MONEY IN A RESERVE ACCOUNT DUE THE SATISFACTION OF THE FOLLOWING CONDITIONS:
 - a. A DECISION TO CHANGE THE USE OF THE MONEY IS MADE WHILE THERE IS IN FORCE A STATE OF EMERGENCY DECLARATION APPLYING TO THE DISTRICT, OR PART OF THE DISTRICT, OF THE LOCAL GOVERNMENT;
 - b. THE EMRC CONSIDERS THAT THE CHANGE OF USE IS REQUIRED TO ADDRESS A NEED ARISING FROM THE HAZARD, OR FROM THE IMPACT OR CONSEQUENCES OF THE HAZARD, TO WHICH THE STATE OF EMERGENCY DECLARATION RELATES;
 - c. THE DECISION AND THE REASONS FOR IT ARE TO BE RECORDED IN THE MINUTES OF THE MEETING AT WHICH THE DECISION IS MADE.
5. NOTE THE REASON FOR CHANGING THE ORIGINAL RECOMMENDATION IS TO RESPOND TO THE CURRENT GLOBAL COVID-19 PANDEMIC BY PROVIDING FINANCIAL AND ECONOMIC BENEFIT TO MEMBER COUNCILS, THEIR RATEPAYERS AND COMMUNITIES.

The funds in the Secondary Waste Reserve is also utilised for the existing FOGO project and earmarked for the development of the Hazelmere Resource Recovery Park in contemplation and satisfaction of the requirements for the Resource Recovery Facility (RRF) Project, particularly the development of the waste transfer station.

Accordingly, the motion(s) as it currently stands with respect to the Secondary Waste Reserve will require correction to recognise the cost of meeting the existing EMRC and participating member Councils' to meet our collective contractual obligations.



Item 17.1 Continued

In accordance with Clause 4.18 of the *EMRC Standing Orders Local Law 2013*, Cr Wolff has given notice of his intention to move the following motion:

MOTION(S)

That Council:

1. Notes resolution 2 made at the Ordinary Council Meeting on 17 September 2020 in relation to Item 15.2; Waste Advisory Committee (WAC) Item 11.1.
2. Agrees to not, at this time, proceed with issuing a request for tender to those parties identified as acceptable tenderers in response to the expression of interest 2019-007 for a permanent Food Organics and Garden Organics processing facility (FOGO Facility) to be developed at the Red Hill Waste Management Facility (Red Hill).
3. Directs the Chief Executive Officer of the EMRC (CEO) to:
 - (a) Immediately cause the preparation of the request for tender to cease; and
 - (b) Not proceed with the preparation of the request for tender until further resolution of Council.
4. In the event that a request for tender has already been prepared, directs the Member Council Technical Officer Group not to proceed with consideration of the request for tender until further resolution of Council.
5. Notes resolution 3 made at the Ordinary Council Meeting on 17 September 2020 in relation to Item 15.2; WAC Item 11.1.
6. To the extent a Member Council has not yet confirmed its commitment to supply their Food Organic and Garden Organic waste, agrees that Council no longer requires a response from that Member Council in that regard.
7. Notes the provisions of the Establishment Agreement (EA) and Section 3.59 of the *Local Government Act 1995*.
8. Confirms that:
 - (c) It considers the development of the FOGO Facility to be a “New Project and Service” as that term is defined in the EA; and
 - (d) The FOGO Facility will be a “major trading undertaking” as that term is defined by Section 3.59 of the *Local Government Act 1995*.
9. Notes that:
 - (e) Clause 10.1 of the EA provides that the EMRC shall only undertake a New Project or Service in accordance with Clause 10 and provided that, amongst other things, the requirement for the preparation of a Business Plan under Section 3.59 of the *Local Government Act 1995*, if applicable, is complied with;
 - (f) Clause 10.2 of the EA provides that where the EMRC is considering a New Project or Service, it must prepare a “Project Plan”;
 - (g) Clause 10.3 of the EA provides what a Project Plan shall include; and
 - (h) Section 3.59 of the *Local Government Act 1995* provides that, before the EMRC commences a major trading undertaking, the EMRC is to prepare a Business Plan.
10. Directs the CEO to:
 - (c) Prepare and provide Council with a Project Plan in respect of the FOGO Facility, ensuring that the Project Plan includes the matters contained at Clause 10.3 of the EA; and
 - (d) Comply with Section 3.59 of the *Local Government Act 1995*, including the preparation of a Business Plan for the FOGO Facility.



Item 17.1 Continued

11. By absolute majority, in accordance with Section 6.16(3) of the *Local Government Act 1995*, agrees to cease, effective immediately, the imposition of the Secondary Waste Charge on the gate fee at Red Hill.
12. Directs the CEO to facilitate the immediate cessation of the imposition of the Secondary Waste Charge on the gate fee at Red Hill.
13. By absolute majority, in accordance with Section 6.11(2)(b) of the *Local Government Act 1995*, Council agrees that the funds held in the Secondary Waste Reserve Account (SWRA) be distributed to each of the Member Councils pursuant to and in accordance with their respective contributions to the SWRA.
14. Directs the CEO to give, in accordance with Section 6.11(2) of the *Local Government Act 1995*, one month's local public notice of Council's resolution that the funds held in the SWRA be distributed to each of the Member Councils pursuant to and in accordance with their respective contributions to the SWRA.
15. Directs the CEO to, after giving the one month's local public notice, facilitate the distribution of the funds held in the SWRA to each of the Member Councils pursuant to and in accordance with their respective contributions to the SWRA no later than 31 January 2021.

COUNCIL RESOLUTION(S)

MOVED CR

SECONDED CR