



City of Nedlands

# ***Minutes***

## ***Special Council Meeting***

***1 October 2013***

### ***ATTENTION***

***These minutes are subject to confirmation.***

Prior to acting on any resolution of the Council contained in these minutes, a check should be made of the Ordinary Council Meeting next following this meeting to ensure that there has not been a correction made to any resolution.

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## City of Nedlands

Minutes of a special meeting of Council held in the Council chambers, Nedlands on Tuesday 1 October 2013 at 6.00 pm for the purpose of:

1. Appointment of successful tenderer for the City's Waste Management Services; and
- 2.
3. Giving consideration to the State Government's proposed model for establishing 14 local governments in the Perth metropolitan area.

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### Declaration of Opening

The Presiding Member declared the meeting open at 6.02 pm and drew attention to the disclaimer below.

(NOTE: Council at its meeting on 24 August 2004 resolved that should the meeting time reach 11.00 p.m. the meeting is to consider an adjournment motion to reconvene the next day).

### Present and Apologies and Leave Of Absence (Previously Approved)

<b>Councillors</b>	His Worship the Mayor, R M Hipkins	(Presiding Member)
	Councillor N B J Horley	Coastal Districts Ward
	Councillor L J McManus	Coastal Districts Ward
	Councillor I S Argyle	Dalkeith Ward
	Councillor W R Hassell	Dalkeith Ward
	Councillor S J Porter	Dalkeith Ward
	Councillor R M Binks	Hollywood Ward
	Councillor B G Hodsdon	Hollywood Ward
	Councillor J Wetherall	Hollywood Ward
	Councillor T James	Melvista Ward
	Councillor M L Somerville-Brown	Melvista Ward

<b>Staff</b>	Mr G Trevaskis	Chief Executive Officer
	Mr M Fletcher	Acting Director Corporate & Strategy
	Mr P Mickleson	Director Planning & Development
	Mr M Goodlet	Director Technical Services
	Ms M Granich	Manager Community Development
	Ms P Huigens	Policy & Projects Officer

**Public** There were 3 members of the public present including 2 members of staff.

**Press** The Post Newspaper and Western Suburbs Weekly representatives.

<b>Leave of Absence (Previously Approved)</b>	Councillor K E Collins	Coastal Districts Ward
	Councillor N Shaw	

**Apologies** Nil.

**Absent** Nil.

### **Disclaimer**

Members of the public who attend Council meetings should not act immediately on anything they hear at the meetings, without first seeking clarification of Council's position. For example by reference to the confirmed Minutes of Council meeting. Members of the public are also advised to wait for written advice from the Council prior to taking action on any matter that they may have before Council.

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#### **1. Public Question Time**

There were no public questions.

#### **2. Addresses by Members of the Public**

There were no addresses by members of the public.

#### **3. Disclosures of Financial Interest**

The Presiding Member reminded Councillors and Staff of the requirements of Section 5.65 of the *Local Government Act* to disclose any interest during the meeting when the matter is discussed.

There were no disclosures of financial interest.

#### **4. Disclosures of Interests Affecting Impartiality**

The Presiding Member reminded Councillors and Staff of the requirements of Council's Code of Conduct in accordance with Section 5.103 of the *Local Government Act*.

##### **4.1 Councillor McManus – Item 6 - Waste Management Service Tender 2013/14.014**

Councillor McManus disclosed an impartiality interest in Item 6 – Waste Management Service Tender 2013/14.014. He disclosed that he has an association with Mr Kim Gorey of PerthWaste, and as a consequence, there may be a perception that his impartiality on the matter may be affected. He declared that he would consider this matter on its merits and vote accordingly.

**5. Declarations by Members That They Have Not Given Due Consideration to Papers**

Nil.

**6. Waste Management Service Tender 2013/14.014**

<b>Committee</b>	N/A
<b>Council</b>	1 October 2013
<b>Applicant</b>	City of Nedlands
<b>Officer</b>	Chaminda Mendis – Waste Minimisation Officer
<b>Director</b>	Mark Goodlet – Director Technical Services
<b>Director Signature</b>	
<b>File Reference</b>	TEN/409
<b>Previous Item</b>	Item 13.3 Council Minutes – 11 December 2012 Report TS08.13 Council Minutes- 25 June 2013

**Councillor McManus – Impartiality Interest**

It was noted that Councillor McManus had previously declared an impartiality interest as advised earlier in the meeting at item 4.

**Regulation 11(da) – Not applicable – Recommendation adopted.**

Moved – Councillor Binks  
Seconded – Councillor Hodsdon

**That the Recommendation to Council is adopted.**  
(Printed below for ease of reference)

**CARRIED UNANIMOUSLY 11/-**

**Council Resolution / Recommendation to Committee**

**Council:**

- 1. agrees to award RFT2013/14.01, the residential and commercial waste, recycling and greenwaste collection service contract and the disposal of the City’s residential and commercial putrescible service, to Perthwaste Pty Ltd; and**
- 2. authorises the Chief Executive Officer to sign the acceptance of offer.**

## **Executive Summary**

The purpose of this report is to recommend appointment of a successful tenderer to provide:

- a) Residential and Commercial waste, recycling and greenwaste collection services; and
- b) Disposal of the City's putrescible (general) waste at landfill or alternative waste treatment facility;

for a period of five (5) years commencing on 2 December 2013 and expiring on 1 December 2018 with the option of extending the contract for two (2) additional years from 2 December 2018 to 1 December 2020 at the sole discretion of the City.

## **Strategic Plan**

KFA : Natural and Built Environment  
Governance and Civic leadership

The provision of the waste management service is a key focus area of the Strategic plan and authorisation of this tender by Council provides compliant governance.

## **Background**

The City's current waste and recycling service contract with Perthwaste Green Recycling (Perthwaste Pty Ltd) is due to expire on 1 December 2013. This contract commenced on 1 December 2006.

Currently, the waste and recycling collection services contract No. 2005/06.08 consists of the following components:

- household waste collection (120l and 240l)
- commercial waste collection (240l)
- residential and commercial recycling collection (240l)
- residential greenwaste collection (240l)

Each year the City collects approximately 5,200 tonnes of putrescible waste from residential, commercial premises and street litter bins within the City of Nedlands. Under the current waste and recycling contract, approximately 2500 tonnes of recyclable materials and 2400 tonnes of green waste are collected annually. Recyclable materials are currently being processed through PerthWaste's material recovery facility (MRF) located at Bunbury, and collected greenwaste is pre-sorted and processed at Bibra Lake Transfer station before being transported to Custom Compost facility at Nambeelup.

The putrescible (general) waste collected by the City's contractor is currently deposited at the JFR (JIM) McGeough Resource Recovery Facility and then transported to the Henderson Road Landfill facility.

The City introduced the three bin collection system in 2006. At present, residents are participating in weekly waste collections and alternating fortnightly greenwaste and recycling collection services.

The City's three bin system is currently diverting approximately 48% waste from landfill. The City is committed to developing effective solutions to achieve the 65% waste reduction target by 2020.

#### **Key Relevant Previous Council Decisions**

Council considered waste disposal options at its meeting of 11 December 2012.

This report presented the outcomes of negotiations for the City of Nedlands to join the Western Metropolitan Regional Council. At the 11 December 2012 meeting Council resolved to:

1. defer negotiations to join the Western Metropolitan Regional Council until after the State Government has responded to the Metropolitan Local Government Review; and
2. request Administration to call for expressions of interest for the disposal of waste.

Council at its meeting held on 25 June 2013 also resolved to undertake a tender process for the City's Waste Management Service in order to develop a tender to suit the City's current and future needs and to test the market to obtain value for money for its services in accordance with industry best practice.

## Discussion

A Request for Tender for the City of Nedlands' Waste Management Services was advertised on Monday, 5 August 2013 inviting suitably experienced organisations to tender for the provision of waste management services to the City. Tenders closed on Tuesday, 3 September 2013 at 2.00pm. This tender consists of two sections.

**Section 1** Residential and Commercial Waste, Recycling and Greenwaste Collection Service.

**Section 2** Disposal of the City's residential and commercial putrescible waste at a landfill site or Alternative Waste Treatment Facility (AWT).

There were twenty six (26) enquiries received from companies requesting tender documentation. At the closing date for submissions, two (2) tender submissions were received for each respective section in the Waste Management Service Tender.

The tender assessment has been undertaken in two (2) sections and evaluated according to the City of Nedlands' evaluation guide for tender documents. Tenders were received from the following companies:

Section 1 Residential and Commercial Waste, Recycling and Greenwaste Collection Service

- i) Perthwaste Pty Ltd
- ii) Solo Resource Recovery

Section 2 Disposal of the City's residential and commercial putrescible waste at a landfill site or Alternative Waste Treatment Facility (AWT)

- i) Perthwaste Pty Ltd
- ii) Western Metropolitan Regional Council

Tenderers were requested to submit evidence of their organisations preparedness to undertake the work based on each section's selection criteria including tender price. Furthermore, tenderers were invited to tender for either one section or both sections.

All tenders were evaluated in accordance with the selection criteria documented in the invitation to tender which included:

## Section 1 Residential and Commercial Waste, Recycling and Greenwaste Collection Service

<p><b>Tendered Price</b> In accordance with the City's Waste Management Service Tender.</p>	<p>Weighting 50%</p>
<p><b>Relevant Experience</b> a) Recent projects of similar size and scope completed; b) Details of project issues and resolutions; c) Membership to any professional or business association; d) Competency and proven track record of achieving outcomes; and e) Ability to adhere to the Principal's anticipated collection process.</p>	<p>Weighting 10%</p>
<p><b>Tenderer's Resource</b> a) Plant and equipment to be used in this Contract; b) Contingency measures or back up of resources including personnel; c) Proposed location of depot; and d) Capacity to resource the work.</p>	<p>Weighting 10%</p>
<p><b>Performance</b> a) Customer service; b) Accuracy and quality assurance in managing City's data; c) Customer service charter, policy or manual; d) Resource capability; e) Maintenance program - plant and equipment; f) Dispute resolution mechanism; and g) Emergency work requirements.</p>	<p>Weighting 20%</p>
<p><b>Environmental Management Plan and OSH management Plan and requirement</b> a) Details of OSH policies and procedures; b) Details of internal Safety information Procedure and Safety record; c) Emergency Response Procedure; d) OSH performance monitoring; and e) WorkSafe Improvement notice.</p>	<p>Weighting 10%</p>
<p><b>Environmental Management Plan</b> Information and details of Environmental Plan</p>	

**Section 2 Disposal of the City's residential and commercial putrescible waste at a landfill site or Alternative Waste Treatment Facility (AWT)**

<p><b>Tendered Price</b> In accordance with the City's waste management service tender</p>	<p>Weighting 40%</p>
<p><b>Capability/Relevant Experience</b> a) Scope of the tenderers involvement including details of outcomes; b) Details of project issues and resolutions; c) Sound judgment and discretion; and d) Competency and proven track record of achieving outcomes.</p>	<p>Weighting 5%</p>
<p><b>Key Personnel Skills and Experience</b> a) Personnel's role in the performance of the Contract; b) Curriculum vitae; c) Membership; d) Qualifications; and e) Any additional information.</p>	<p>Weighting 5%</p>
<p><b>Tenderer's Resources</b> a) Plant and equipment to be used in this Contract; b) Contingency measures or back up resources; c) Capacity to resource the work.</p>	<p>Weighting 5%</p>
<p><b>Demonstrated Understanding</b> a) A project schedule/timeline; b) the process for the delivery of goods and service; and c) Demonstrated understanding of the scope of work.</p>	<p>Weighting 10%</p>
<p><b>Performance</b> a) Environmental impacts; b) Evidence of environmental benefits; c) Proposed resources to be made available to provide level of service required; d) Recording of disputes and conflict resolution process; and e) Emergency work requirement.</p>	<p>Weighting 30%</p>
<p><b>Environmental Management Plan and OSH management Plan and requirement</b> a) Details of OHS management policies and procedure; b) Details of traffic management plan under OH&amp;S; c) Internal Safety Information Procedure; d) Emergency Response Procedure; e) OSH performance monitoring; f) WorkSafe Improvement notice.</p> <p><b>Environmental Management Plan</b> Information and details of Environmental Plan</p>	<p>Weighting 5%</p>

The tender assessment was conducted separately by two (2) officers from the City's administration and by one (1) external consultant. Administration employed the services of independent consultant Mr Giles Perryman in evaluating tender submissions, who has over sixteen (16) years experience in waste management consultancy and has accumulated significant knowledge and a wide understanding of the waste industry, particularly in the Local Government sector where he has conducted various large scale waste management projects.

Mr Perryman made a conflict of interest declaration confirming that he is currently not engaged in any business dealing or consultancy with;

- Perthwaste Pty Ltd;
- Solo Resource Recovery;
- Western Metropolitan Regional Council.

Furthermore Mr Perryman declared that he/his organisation have no ownership, shares or any financial interest whatsoever with any of the above stated companies.

A final tender evaluation scoring details of each tender is presented in Confidential Attachment 3.

The results of the three (3) assessor's scores was then averaged to obtain a single score of which then was given a percentage based on the weighting that was stated in the tender. These criteria were evaluated using predetermined weightings in a spreadsheet program to give each tender an overall score out of 100.

### **Section 1 Residential and Commercial Waste, Recycling and Greenwaste Collection Service**

The service assessment demonstrates two tenders, Perthwaste Pty Ltd and Solo Resource Recovery Services are clearly well placed to complete the tender contract service and the resulting score of the two tenders received were:

## **Section 2 Disposal of the City's residential and commercial putrescible waste at a landfill site or Alternative Waste Treatment Facility (AWT)**

Under this tender section, the City is seeking to appoint a successful waste management facility to dispose of putrescible waste in a cost effective and environmentally responsible manner.

The service assessment demonstrates two tenders, Perthwaste Pty Ltd and Western Metropolitan Regional Council, are clearly well placed to complete the tender contract service and the resulting score of the two tenders received were:

### **Consultation**

Required by legislation: Yes  No   
Required by City of Nedlands policy: Yes  No

### **Legislation**

The *Local Government Act 1995* requires public tenders to be called where the consideration of the value of the contract exceeds \$100,000.

The City of Nedlands following policies may affect selection:

- Sustainable Procurement Policy
- Occupational Health and Safety Policy
- Waste Avoidance and Resource Recovery Act 2007

### **Budget/Financial Implications**

Within current approved budget: Yes  No   
Requires further budget consideration: Yes  No

## Financial

### Section 1 Residential and Commercial Waste, Recycling and Greenwaste Collection Service

The table below provides a summary of the pricing for the Section 1 Collection services.

Description	Price (incl. GST)
Current (2013/14) budgeted arrangements	\$1.60m
Perthwaste – putrescible waste to JFR (JIM) McGeough Resource recovery centre at Shenton park - Recyclables and greenwaste to Perthwaste (Bibra Lake)	\$1.28m
Perthwaste – putrescible waste to Perthwaste landfill at North Bannister - Recyclables and greenwaste to Perthwaste (Bibra Lake)	<b>\$1.22m (Recommended Option)</b>
Solo Resource Recovery – putrescible waste to putrescible waste to JFR (JIM) McGeough Resource recovery centre at Shenton park - recyclables and greenwaste to Principal's nominated site.	\$1.26m*

\*Solo Resource Recovery only submitted a price schedule for collection and transport of recyclables and greenwaste to Principal's nominated site.

In order to compare the Solo bid to the Perthwaste bid and the current budget the cost of processing of greenwaste and recyclables is included in the table above, and is broken down below for clarity.

Solo Resource Recovery tender submission =	\$ 849,000
Processing greenwaste and recycling costs =	<u>\$ 411,500</u>
TOTAL =	\$1,260,500

**Based on the Perthwaste tendered price submission the City will save approximately \$380,298 per year (GST inclusive), and \$1.90 million dollars (GST inclusive) during the five year contract period for the Collection component of the contract.**

**This translates to a saving of approximately \$47 in the annual residents' waste charges for next year, excluding the City's annual price rises.**

It is noteworthy that Perthwaste have offered a 2% prompt payment discount. Solo has offered a \$0.01 discount for agreeing to their rise and fall formula. These discounts have not been included in the financial analysis, however they represent further savings of approximately \$37,000 per year in the case of Perthwaste's offer (overall, including disposal), and approximately \$9,000 per year in the case of Solo's offer.

A discussion on financial details of the tender is presented in Confidential Attachment 1.

## **Section 2 Disposal of the City's residential and commercial putrescible waste at a landfill site or Alternative Waste Treatment Facility (AWT)**

The table below provides a summary of the pricing for the Section 2 Disposal services.

<b>Description</b>	<b>Price (incl. GST)</b>
Current (2013/14) budgeted arrangements dispose at JFR (JIM) McGeough Resource recovery centre at Shenton park	\$1.03m
Perthwaste – disposal of putrescible waste to Perthwaste landfill at North Bannister	<b>\$0.67m (Recommended Option)</b>
WMRC - dispose at Alternative Waste Treatment (DICOM) JFR (JIM) McGeough Resource recovery centre at Shenton park	\$1.06m*

**Based on the Perthwaste tendered price submission the City will save approximately \$363,600 per year (GST inclusive), and \$1.82 million dollars (GST inclusive) during the five year contract period for the Collection component of the contract.**

**This translates to a saving of approximately \$45 in the annual residents' waste charges for next year, excluding the City's annual price rises.**

A discussion on financial details of the tender is presented in Confidential Attachment 1.

## Discussion

### Environmental

The City of Nedlands is committed to waste diversion from landfill. Therefore, it is essential that the City explores alternative waste disposal systems to achieve a 65% waste reduction target by 2020, while maintaining or improving environmental and financial benefits to the City's residents.

The consultant's findings and recommendation on environmental analysis for the Section 2 - Disposal of the City's residential and commercial putrescible waste at a landfill site or Alternative Waste Treatment Facility (AWT) is presented in Confidential Attachment 2.

### Assessment Scores

As discussed above the tender submissions were all considered suitable to carry out the collection and disposal contract requirements.

The Section 1 – Collection component yielded a virtually identical score for Perthwaste and Solo Resource Recovery, as shown below.

Company	Overall Score
Perthwaste	74.6
Solo Resource Recovery	74.8

The Section 2 – Disposal component yielded the following scores for Perthwaste and WMRC, as shown below.

Company	Overall Score
Perthwaste	53.5
WMRC	46.1

In considering the best overall value to the City it is administration's view that this is achieved through a single contract arrangement as provided for in the tender.

This achieves direct cost savings when the collection and disposal is paired together by Perthwaste. It also aligns with the tender documentation which stipulates that *the Principal has adopted a best value for money approach to this Request, that a scoring system will be used as part of the assessment of the selection criteria, and that a Contract may then be awarded to the Tenderer whose Tender is considered the most advantageous Tender to the Principal.*

## **Risk Management**

Risk is managed by appointing contractors through the City's Tender process and assessing against the compliance criteria. These include the financial viability, insurances and the appropriate company structures.

Appointing contractors via this tender process allows the City to clearly state the scope of works required and outcomes expected. It is also an opportunity to outline the responsibilities of both the City and the appointed contractors throughout the life of the contract, along with timelines and expected costs of the work requested. This process reduces the risk of the appointed contractor not fulfilling their obligations for the work required.

Dun & Bradstreet (risk assessment firm) reports were obtained for Perthwaste Pty. Ltd. and for Solo Waste Aust. Pty. Ltd. The assessments include risk evaluation, legal events, directors' information, payment information, financial summary and media special events. The reports provide a risk profile for both companies which would not preclude them from consideration for this tender.

## **Conclusion**

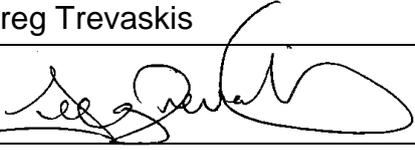
Council's decision to undertake a tender process for the City of Nedlands Waste Management Services has achieved positive economic outcomes projecting savings of approximately \$743,898 annually (including GST), placing the City's Waste management service in a financially strong position and enabling savings to be made for the City's residents. Therefore administration recommends that Council:

1. agrees to award RFT2013/14.01, the residential and commercial waste, recycling and greenwaste collection service contract and the disposal of the City's residential and commercial putrescible service, to Perthwaste Pty Ltd; and
2. authorises the Chief Executive Officer to sign the acceptance of offer.

## **Attachments**

1. Confidential Financial Analysis (not to be published)
2. Confidential 1317 – City of Nedlands Tender Evaluation (not to be published)
3. Final Tender Evaluation Scoring (not to be published)
4. Confidential Administrations's Comments (not to be published)

**7. Local Government Metropolitan Reform**

<b>Council</b>	1 <sup>st</sup> October 2013
<b>Applicant</b>	City of Nedlands
<b>CEO</b>	Greg Trevaskis
<b>CEO Signature</b>	
<b>File Reference</b>	CRS/073
<b>Previous Item</b>	Item – Council Meeting – 17 September 2009 Item 6 – Special Council Minutes – 2 March 2010 Item 6 – Special Council Minutes – 14 June 2011 Item 6 – Special Council Minutes – 7 July 2011 Item 13.3 – Council Minutes – 27 March 2012

**Regulation 11(da) - \***

Moved – Councillor Hassell

Seconded – Councillor Binks (pro forma)

**Council:**

1. **advise the Minister for Local Government that after careful consideration the City of Nedlands is unable to make a submission by the 4th October 2013 to the Local Government Advisory Board as requested on the grounds that:**
  - a. **the City has initiated a process of independent survey to determine the specific wishes of the community on this matter;**
  - b. **the City needs to know whether there is going to be a change in the Local Government Act 1995 with respect to the removal of the community poll provisions that will have a material impact on the process by which changes are made;**
  - c. **the City does not know how much any proposed merger will cost and how much of this cost will be paid by the residents of the affected areas; and**
  - d. **the City is not satisfied the proposed creation of a new G7 local government for the Western Suburbs is in the best interests of the electors, ratepayers and residents of the City of Nedlands or the other affected districts;**
2. **whilst noting that the Council has stated its policy position and is not opposed to Council amalgamations as such (resolution of Council Ordinary Council Meeting 17 September 2009 re Town of**

**Claremont and Special Council Meeting 7 July 2011 re City of Subiaco) it is opposed to any alterations of boundaries which cannot ultimately be voted on by electors of the affected local authority and therefore reaffirms its opposition to forced amalgamations and the proposed removal of the community poll provisions from the Local Government Act 1995 in any form; and**

- 3. does not accept that there is any credible evidence that the merger of seven western suburbs councils into one large local government will deliver any improvements in terms of connectivity, services or governance for the communities they serve or create sustainable longer term rate reductions and may well in fact increase rates as has been experienced across Australia where similar local government changes have been made.**

Councillor Porter left the room at 6.22 pm and returned at 6.24 pm.

**CARRIED UNANIMOUSLY 11/-**

#### **Council Resolution**

##### **Council:**

- 1. advise the Minister for Local Government that after careful consideration the City of Nedlands is unable to make a submission by the 4th October 2013 to the Local Government Advisory Board as requested on the grounds that:**
  - a. the City has initiated a process of independent survey to determine the specific wishes of the community on this matter;**
  - b. the City needs to know whether there is going to be a change in the Local Government Act 1995 with respect to the removal of the community poll provisions that will have a material impact on the process by which changes are made;**
  - c. the City does not know how much any proposed merger will cost and how much of this cost will be paid by the residents of the affected areas; and**
  - d. the City is not satisfied the proposed creation of a new G7 local government for the Western Suburbs is in the best interests of the electors, ratepayers and residents of the City of Nedlands or the other affected districts;**

- 2. Whilst noting that the Council has stated its policy position and is not opposed to Council amalgamations as such (resolution of Council Ordinary Council Meeting 17 September 2009 re Town of Claremont and Special Council Meeting 7 July 2011 re City of Subiaco) it is opposed to any alterations of boundaries which cannot ultimately be voted on by electors of the affected local authority and therefore reaffirms its opposition to forced amalgamations and the proposed removal of the community poll provisions from the Local Government Act 1995 in any form; and**
- 3. does not accept that there is any credible evidence that the merger of seven western suburbs councils into one large local government will deliver any improvements in terms of connectivity, services or governance for the communities they serve or create sustainable longer term rate reductions and may well in fact increase rates as has been experienced across Australia where similar local government changes have been made.**

Recommendation to Council

Council:

1. advise the Minister for Local Government that after careful consideration the City of Nedlands will not be making a submission on the 4th October 2013 to the Local Government Advisory Board as requested on the grounds that the City is not satisfied the proposed creation of a new G7 local government for the Western Suburbs is in the best interests of the electors, ratepayers and residents of the City of Nedlands or the other affected districts;
2. reaffirms its opposition to forced amalgamations and the proposed removal of the community poll provisions from the *Local Government Act 1995* in any form; and
3. does not accept that there is any credible evidence that the merger of seven western suburbs councils into one large local government will deliver any improvements in terms of connectivity and governance for the communities they serve or create sustainable longer term rate reductions.

## **Executive Summary**

This report has been prepared to enable Council to consider whether it wishes to respond or not to the Minister for Local Government's invitation to make a submission by the 4<sup>th</sup> October 2013 in relation to the proposed amalgamation of the City of Nedlands with the City of Subiaco, the Towns of Mosman Park, Cottesloe, Claremont and Cambridge, the Shire of Peppermint Grove and parts of the City of Fremantle and the City of Stirling (the G7 Proposal).

## Strategic Plan

### Governance and Civic Leadership

#### Background

In July 2012, the Metropolitan Local Government Review Panel released its final report regarding the local government sector in the Perth Metropolitan region (commonly referred to as the “Robson Report”). It made 30 recommendations, the last of which was “The recommendations from the Panel should be considered as a complete reform package and be implemented in their entirety”. Unfortunately, the recommendation which has attracted the most consideration is number 15c, which reads “reduces the number of local governments in metropolitan Perth to 12...”.

On 30 July 2013, the Minister for Local Government released a response to the Robson Report. The response includes a proposed model of 14 local governments in the Perth Metropolitan Area each with a population of around 100,000 residents – a reduction from the current 30 metropolitan local governments. Some expected benefits which have been identified by the State Government include improved economies of scale and improved management of resources such as the Swan River. The proposed local governments are planned to take effect as of 1 July 2015.

One of these proposed local governments is an amalgamated “Western Suburbs” council comprising the Cities of Subiaco and Nedlands, the Towns of Mosman Park, Cottesloe, Claremont and Cambridge, the Shire of Peppermint Grove and parts of the City of Fremantle and the City of Stirling. UWA and the QEII medical centre are proposed to be part of the expanded City of Perth.

On 8 August 2013 the Department of Local Government and Communities provided metropolitan Chief Executive Officers with the implementation plan for the proposed Metropolitan Reform. Local Governments were invited to submit proposals to the Local Government Advisory Board between 26 August 2013 and 4 October 2013. Grants are available for local governments who develop a proposal in accordance with the State Government model.

The State Government also intends to make a number of changes to the *Local Government Act 1995* (the Act). The proposed amendments include:

- Removing the provisions in Schedule 2.1 of the Act which are concerned with the holding of a poll in the metropolitan area
- Amendments to Section 2.44 of the Act which relates to the membership of the Local Government Advisory Board. The proposed amendment intends to add two additional members to the Board, who represent the interests of the broader community.
- Amendments to allow the Local Government Advisory Board to determine the length of time of the submission period during an inquiry in to a proposal.

- Amendments to allow the Local Government Advisory Board to consider multiple proposals at the same time; and
- Amendments to require the Local Government Advisory Board to have regard to State Government policy when considering proposals.
- Amendment to Clause 11(4) of Schedule 2.1 to impose a maximum of 1 year's remuneration for any agreed compensation in the case of Orders made under Section 2.1 of the Act.

After 4 October 2013, the Local Government Advisory Board will consider any proposals. It is estimated that the Local Government Advisory Board will conclude its enquiry period by June 2014, and that the Governor will issue an order in August 2014.

**Key Relevant Previous Council Decisions:**

Council Meeting 17 September 2009

Council Resolution

Council:

1. Notes the community engagement feedback report results;
2. Advises the Minister for Local Government of its preference to pursue amalgamation with the Town of Claremont;
3. Advises the Minister for Local Government of its preference for minor amendments to the amalgamated boundaries as shown on the (updated) map at Attachment 1;
4. Advises the Minister for Local Government of its preference for the total number of elected members to be 12 Elected Members plus the Mayor, rather than 9 or 6, effective from October 2011, recognizing the joint decision nature of this recommendation;
5. Advises the Minister for Local Government of the intention to continue to work collaboratively within a regional grouping comprising the local governments of the City of Subiaco, Town of Cottesloe, Shire of Peppermint Grove and Town of Mosman Park as they are currently constituted; and
6. Endorses the draft local government structural reform submission with additional section 3.4.9 dealing with the Nedlands status quo option; an addition section 3.4.10 dealing with the option for amalgamation of the whole Western Suburbs and an additional section 4.5.4 dealing with the economic development potential.
7. Examine additional amalgamation opportunities in the Western Suburbs in the future.

Special Council Meeting 2 March 2010

Council Resolution

Council informs the Minister for Local Government:

1. The City is willing to participate in the Regional Transition Group (RTG) process; and
2. Council's preference is to have RTG partners from the Western Suburbs (WESROC) to explore all options which could result in increased value and improved service provision to residents and ratepayers.

Special Council Meeting 14 June 2011

Council Resolution

Council:

1. Continues the extensive community consultation process that is currently underway regarding the possible amalgamation between the City of Nedlands and the City of Subiaco;
2. Makes no further decision relating to an amalgamation between the City of Nedlands and the City of Subiaco until the community's feedback currently being conducted by Catalyse and which involves focus groups, interviews with key decision makers, telephone polls, online surveys and written responses received through the mail has been received, compiled and presented to Council for further analysis; and
3. Requests that the State Government fund a poll, as part of further Community Consultation on the proposed amalgamation, to be conducted by the WA Electoral Commission as soon as possible to determine Community views on the amalgamation in which there must be a turnout of at least 50% of electors (in line with the processes normally conducted by the LGAB when conducting such polls) for the survey to be considered valid and truly representative.

Special Council Meeting 7 July 2011

Council Resolution

Council:

1. The Minister for Local Government be advised that the City of Nedlands resolves to refer a proposal to the Local Government Advisory Board to assess the viability of a merger between the Cities of Nedlands and Subiaco under clause 2 of Schedule 2.1 of the *Local Government Act 1995*;

2. The Local Government Advisory Board be advised that any amalgamation with the City of Subiaco should be subject to the following conditions:
  - a. Full public consultation and engagement and an ensuing poll of the Electors;
  - b. That, in developing the full business plan for the merged entity, there being no major errors or deviation from the substantive findings of the regional business plan prepared by KPMG;
  - c. Financial Assistance Grants being maintained to at least the minimum level of their existing combined levels for a period of 5 years;
  - d. The amalgamation process commences on 1st July 2012;
  - e. The costs of transitioning to a merged local government entity (not including capital expenditure) being met in a large part by the State Government;
  - f. The Minister being encouraged to appoint three commissioners following consultation with Council together with the establishment of a local advisory panel to the Commissioners consisting of one existing Councillor from each ward;
  - g. The Minister being encouraged to defer Council elections until such time as the Commissioners and panel are appointed and have established a business case for the amalgamated Cities;
  - h. The two local governments being quarantined from the recently announced Review of Perth Metropolitan Boundaries and Governance Models and the implementation of any recommendations arising from it;
  - i. The undergrounding of power be expedited and the funding arrangements for the maintenance of the City's River wall continue;
  - j. The State Government being encouraged to prepare an implementation plan for the provision of light rail for the area, and, in the interim, provide a high frequency shuttle bus link to service the UWA and QEII sites; and
3. The Local Government Advisory Board forwards all work undertaken and recommendations made to date by the City of Nedlands relating to structural reform, to the recently created Panel (and any subsequent panels) tasked with reviewing the structure of local government, for their information and due consideration.

Council Meeting 27 March 2012

Council Resolution

Council:

1. Advise the Premier of the State of Western Australia, the Minister for Local Government, the Leader of the National Party, the Leader of the Opposition, the Shadow Minister for Local Government, our local members of the Legislative Assembly and Legislative Council, the Metropolitan Local Government Review Panel, and the President of the Western Australian Local Government Association, that this Council calls upon the Parliament of Western Australia to forever uphold and not dilute our constituents' right to self-determination as embodied in clauses 8, 9 and 10(2) of Schedule 2.1 of the *Local Government Act 1995*;
2. Request the recipient of each such letter to notify our Council by written reply as to whether they do support and will continue to support the preservation without dilution of our constituents' right to self-determination as embodied in clauses 8, 9 and 10(2) of Schedule 2.1 of the *Local Government Act 1995*; and
3. Provide to the Secretariat of the Councils for Democracy a copy of each of our above letters and any responses that our Council receives, for use in demonstrating the collective support for our constituents' right to self-determination as embodied in clauses 8, 9 and 10(2) of Schedule 2.1 of the *Local Government Act 1995*.

### Consultation

Required by legislation: Yes  No   
Required by City of Nedlands policy: Yes  No

### Legislation / Policy

Section 2.1 of the *Local Government Act 1995* relating to the State divided into districts

Schedule 2.1 of the *Local Government Act 1995* relating to Provisions about creating, changing the boundaries of, and abolishing districts

### Budget/Financial Implications

Within current approved budget: Yes  No   
Requires further budget consideration: Yes  No

There is no credible evidence that local government amalgamations provide rate reductions or financial benefits to ratepayers. The cost of merging councils will inevitably involve building or expanding administration centres, higher staff salaries, expanded statutory responsibilities, increased community expectations and new services will be significant. Initial staff redundancies and other costs associated with executive recruitment, commissioners and council elections etc are to be expected.

The pre-eminent expert in Australia on local government amalgamations, Professor Brian Dollery of the University of New England (NSW) holds the view that extravagant claims of benefits from council mergers have rarely been achieved. Furthermore, recent research by UWA economist Assistant Professor Fogarty, whose analysis of 98 WA councils showed there is no evidence that merging councils leads to economies of scale, or that bigger councils delivered better services.

## **Risk Management**

The most significant risk to the community is that the creation of a large new local government for the western suburbs (G7) and the many millions of dollars to complete the program over 2 to 5 year period will be funded by affected ratepayers with little if any financial support from the State Government. The recently publicized financial difficulties of the State Government is also a further indication that no provision has been made in forward estimates to assist local government with its reform agenda for the industry.

Other risks would include major projects that the City has identified as priorities for the community and systematic improvements to road, footpath and reserves to be completed over the next 2 to 10 years may not be completed as scheduled in the City's 10 year financial plan.

## **Discussion**

Legal Opinion:

Council's solicitor's' "McLeods - Barristers and Solicitors" provided the following recent advice as part of its regular Updates to local government on current issues. This particular advice (September 2013) provides relevant information on the legal framework and difficulties facing councils when considering whether any response should be made to the Minister's invitation to provide a submission by the deadline of 4<sup>th</sup> October 2013.

*Mandatory amalgamations - a view on governance issues*

### **Executive summary**

*This article emphasises that council members when considering their response to the minister's 'direction' for metropolitan local government amalgamations must make their decisions in what they perceive to be the best interests of the electors, ratepayers and residents of their district. Succumbing to an express or implied threat of undesirable consequences may be a betrayal of council members' duties to their district. It may even be open to Court challenge as a decision improperly made under dictation or direction of another.*

### **Local government - a creature of State Government?**

*It is often said by prominent members of the current State Government that local governments are the creatures of State Government, and the inference from that observation is that they should obey the directions or dictates of their political masters. The limited truth in those propositions is that local governments are given their powers by State legislation, but they are not invented by State Governments. Municipal government is more ancient than the Westminster tradition of parliamentary democracy which applies to the operation of the State Government, and in many ways local governments more truly represent democratic traditions than the party aligned State Parliaments and Governments.*

### **Local governments are not agencies which are subject to direction**

*BUT, local governments are not the creatures of State Government in the same sense as State departments and agencies, of which the Western Australian Planning Commission (**WAPC**) and the Metropolitan Redevelopment Authority (**MRA**) are examples. A critical feature of such agencies is that they are commonly subject to direction by their responsible ministers (eg. for the WAPC, see the power of ministerial direction in s.17 of the Planning and Development Act 2005 (WA); and for the MRA, see s.115 of the Metropolitan Redevelopment Authority Act 2011 (WA)). It is significant that there is no provision in the Local Government Act 1995 (WA) (**LG Act**) giving the minister a general power to direct local governments on any aspect of their powers and functions under the LG Act. The specific power to make directions under s.9.63 is a special case that is not relevant to the present context. It would be wrong at law for local governments to act as if the minister, or the State Government for that matter, had the power to direct them in the performance of their LG Act functions.*

### **Council members' duty to constituencies**

*Taking that point a little further, local governments are constantly reminded that they must exercise their LG Act powers in the best interest of the government of their districts (note s.3.1 of the LG Act). For council members to exercise their powers either:*

- *in accordance with the direction of any other (including the minister, the Premier or the State Government); or*
- *to accede to a threat by another, of unpleasant consequences if they don't act as directed, would arguably be contrary to their duty to their constituencies, and the local governments they serve.*

### **A review of Local Government Law in Western Australia**

*It is common for local governments to be hammered over probity, governance, and due process obligations. The case of the minister's published proposals for local government amalgamations and boundary changes must be subject to the same principles. For council members to resolve to propose amalgamations or boundary changes, in accordance with the minister's published wishes, if the council members do not think it would be in the best interest of their local governments, would arguably be a flagrant breach of their avowed duty to their local governments.*

*That is the situation under the common law, as to which note the comments in Halsbury's Laws of Australia, Vol 10 at [10-2225] referring to - 'The common law principle that a public authority entrusted with a discretionary power must exercise that power independently and not at the dictation of some other decision-maker ...'*

*To act contrary to that common law principle may open a council's resolution to a Court challenge by affected persons, such as electors, ratepayers or residents of the affected local government district.*

### **Statutory support of the common law obligation**

*There is statutory support here for the common law obligation. Ss.2.8(2) and 2.10 of the LG Act require all council members to represent the interests of electors, ratepayers and residents of their districts. S.2.8(2) applies s.2.10 to elector mayors and presidents, and s.2.10(a) provides:*

*'A councillor -*

*(a) represents the interests of electors, ratepayers and residents of the district; ...' (Emphasis added).*

*It is nowhere said that council members represent the interests of the minister, or the State Government. That must more particularly be the case if the minister's or State Government's interests appear to be in conflict with the interests of the electors, ratepayers and residents of the relevant district.*

### **Duty of council when considering amalgamation**

*When faced with a vote on amalgamation of their own district with another, or some other change of boundaries, council members would arguably be acting in breach of their duties if they sought to obey a direction of the minister which they believe to be contrary to the interests of the electors, ratepayers or residents of their districts.*

*Council members might wish to weigh up the 'punishment' which the minister threatens, directly or indirectly, for a failure to make a proposal by 4 October in accordance with the minister's published proposals. The following might be considered relevant in that regard:*

- 1. The local government might not get the share of the \$200,000 funding offered for each amalgamation. That might come down to \$100,000 if both threatened amalgamation candidates make compliant proposals. In the real world, that is a pitifully small sum.*
- 2. But to act against what might otherwise be the best interest of the district, or against the best interest of the electors, ratepayers and residents of the district, would not only be an administrative irregularity open to challenge in the Courts, it might border on corruption, in that it involves the acceptance of a financial incentive (bribe) to act contrary to the duties of the council members and the local government.*
- 3. Furthermore, the costs of amalgamations are likely to so much exceed the trifling sum offered by the minister, that the incentive may not be seen as sufficient to change the balance from perceived disadvantage to one of advantage for compliance.*
- 4. There may be a fear of some other negative consequence for local governments which don't conform with the minister's published proposals. Consider what such other consequence might be. If the local government does conform, the affected local government having proposed the amalgamation, will be required to bear the administrative and financial burden of the reform. On the other hand, if the affected local government does not conform, the worst the minister can do is force the amalgamation through special legislative powers (yet to be published, and if they can be achieved) and the consequence for the affected local governments is once again that they could be required to bear the administrative and financial burden of amalgamation. It would be entirely unthinkable that the State Government would impose some other punishment on the electors, ratepayers and residents of non-compliant districts. Consequently, there is in fact no likely ultimate negative consequence for non-compliance with the minister's proposals, beyond the \$100,000/\$200,000 grant. The worst that can happen for the local government is that it bears the administrative and financial burden of amalgamation, and that would certainly happen even if it makes a compliant proposal.*

### **Conclusion**

*There is a strong arguable case that it would be improper for council members to vote in favour of the minister's recommendation of amalgamation unless they are satisfied that it would be in the best interest of the electors, ratepayers and residents of their districts. If they are so satisfied, then their duty would be clear. If they are not so satisfied, then an opposite duty would seem to apply, and they should vote against the minister's recommendations."*

**Additional Comment:**

It is unclear at this time whether the State Government will be able to amend the Local Government Act to remove the rights of the community to be polled on the question of support for any amalgamation proposal. In any event, the City of Nedlands long standing view is that any merger or amalgamation proposal should not proceed unless the community has demonstrated its support for such change. Without any details of the proposed legislation to remove the poll provisions it is extremely difficult for Council to make any decision on reform without all the relevant information being available.

**Conclusion**

The State Government has not provided any reasonable evidence or argument that the proposed creation of a large local government authority for the western suburbs (G7) will be in the best interest of the electors, ratepayers and residents of their districts.

The Minister may request, but is not empowered by the Local Government Act to force the City, or any other local government, to submit a proposal for amalgamation to the LGAB before the 4<sup>th</sup> October 2013. There is simply no statutory provision which gives the Minister the power to do so.

It is suggested that Council advise the Minister that it will not be making a submission and that the City reaffirms its opposition to forced mergers and the removal of community poll provisions from the Local Government Act 1995.

**Attachments**

Nil.

**Declaration of Closure**

There being no further business, the Presiding Member declared the meeting closed at 6.50 pm.