

13.2 Eastern Metropolitan Regional Council

Responsible Branch:	Governance and Strategy
Responsible Directorate:	Office of the CEO
Authority/Discretion:	Executive/Strategic
Voting Requirement:	Simple Majority Required
Attachments:	<ol style="list-style-type: none"> 1. CONFIDENTIAL - Correspondence between the City of Swan and the EMRC - December 2024 [13.2.1 - 2 pages] 2. CONFIDENTIAL - EMRC Establishment Agreement 1998 [13.2.2 - 29 pages]
Refer:	Item: 14.1.1 OCM: 19.11.2024 Item: 14.1.2 OCM: 24.09.2024 Item: 9.1.1 SCM: 01.10.2024

REASON FOR CONFIDENTIALITY

This is a CONFIDENTIAL REPORT in accordance with section 5.23(2) of the Local Government Act 1995 (WA), which permits the meeting to be closed to the public for the business relating to:

- (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;*
- (d) *legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting;*
- (e) *a matter that if disclosed, would reveal —*
 - (iii) *information about the business, professional, commercial or financial affairs of a person,*

SUMMARY

Following the Council meeting of 19 November 2024, whereby the Council resolved to an orderly windup of the Eastern Metropolitan Regional Council (EMRC), the City has received advice from the City of Swan (Member Participant) of its intention to withdraw from the EMRC effective from 1 July 2025.

The City is now unable to enact the previous resolution of the Council, due to the withdrawal of the City of Swan as a Member Participant to the Memorandum of Understanding (MOU).

Council will need to consider its options in relation to the EMRC and confirm its intentions going forwards. It is recommended that the Council gives notice to withdraw from the EMRC as this approach is consistent with Council’s previous resolution of wanting to achieve a windup and withdraw from the EMRC.

If all Member Participants now exercise their right to withdraw from the EMRC, the Member Participants could agree, through the EMRC, to seek Ministerial approval to allow their withdrawal dates to be extended beyond the date set aside within the Establishment Agreement (Clause 9.7 of the EMRC Establishment Agreement refers i.e. 30 June 2025). By seeking this approval from the Minister, it would allow the EMRC to dispose of its assets and pay its liabilities in an orderly manner without having to dispose of assets that may not be fully operational. This approach would enable the Member Participants to achieve the best market value and best return on its equity share.

If one of the Member Participants does not agree to seeking Ministerial approval to extend the withdrawal date of 30 June 2025 to a later date, then it is recommended that the City withdraws

in accordance with the existing EMRC Establishment Agreement (i.e. by 30 June 2025) to protect the City's equity share, and [REDACTED]

**COUNCIL RESOLUTION
(OFFICER'S RECOMMENDATION)**

That Council:

1. **authorises the Chief Executive Officer to give notice of the City of Bayswater's withdrawal from the EMRC, no later than 31 December 2024, in accordance with the provisions of the EMRC Establishment Agreement;**
2. **requests the Chief Executive Officer work with Member Participants and the EMRC to seek Ministerial agreement through either direct approval or a variation to the EMRC Establishment Agreement to allow the windup date to be extended from 30 June 2025 to a date not exceeding 30 June 2027;**
3. **agrees that should a Member Participant not agree to seeking Ministerial approval to extend the date then limb 2 above will no longer apply and the City will withdraw from the EMRC on 30 June 2025, in accordance with clause 9.7 of the EMRC Establishment Agreement;**
4. **authorises the Chief Executive Officer to advise the EMRC and Member Participants of its decision detailed in limbs 1 to 3 above;**
5. **instructs the Chief Executive Officer to keep this resolution confidential, other than actioning limb 4 above.**

Cr Josh Eveson Moved, Cr Dan Bull Seconded

CARRIED: 7/4

For: Cr Assunta Meleca, Cr Steven Ostaszewskyj, Cr Josh Eveson, Cr Nat Latter, Cr Elli Petersen-Pik - Deputy Mayor, Cr Dan Bull and Cr Lorna Clarke.

Against: Mayor Filomena Piffaretti, Cr Sally Palmer, Cr Michelle Sutherland and Cr Giorgia Johnson.

Cr Giorgia Johnson foreshadowed the alternative motion provided by the Mayor.

BACKGROUND

The Council, at its 19 November 2024 Ordinary Council Meeting, resolved to enter a MOU with the EMRC Member Participants, for the orderly windup of the EMRC by 30 June 2027. The Council resolution is provided for reference below:

"That Council:

1. *approves the City of Bayswater entering into a Memorandum of Understanding with the Eastern Metropolitan Regional Council's Member Councils in relation to the Orderly Winding Up of the Eastern Metropolitan Regional Council, as contained in Confidential Attachment 3 to this Report;*
2. *in accordance with section 9.49A(4) of the Local Government Act 1995 authorises the Chief Executive Officer to sign the Memorandum of Understanding as detailed in limb 1 above;*
3. *does not agree to an amendment of the Establishment Agreement of the Eastern Metropolitan Regional Council through a Deed of Variation between Eastern Metropolitan Regional Council's Member Councils as contained in Confidential Attachment 4 to this Report;*
4. *advises the Eastern Metropolitan Regional Council's Member Councils, and the Eastern Metropolitan Council of its decision detailed in limbs 1 and 3 above;*

5. *instructs the Chief Executive Officer to keep this resolution confidential, other than actioning limb 4 above.*"

[REDACTED]

[REDACTED]

[REDACTED]

Following the City of Bayswater Council meeting, the Chief Executive Officer (CEO) wrote to the EMRC and Member Councils to advise them of the Council’s resolution.

[REDACTED]

[REDACTED]

The EMRC has acknowledged this letter. A copy of the correspondence between the City of Swan and the EMRC is provided as **Confidential Attachment 1**.

EXTERNAL CONSULTATION

The City has corresponded and discussed this matter with the City’s legal advisors (McLeods) and other representatives from the Member Participants.

OFFICER’S COMMENT

Now that the City of Swan has given formal notice of its withdrawal from the EMRC, the other Member Participants need to consider their position and membership within the EMRC.

The main options available to the Council are:

1. To give notice to the EMRC of the City’s withdrawal; or
2. To remain as a member of the EMRC.

The implications of these two options are discussed below.

Option 1: Notice of the City’s withdrawal

Under the EMRC Establishment Agreement, the City has until 31 December 2024 to give notice of its withdrawal from the ERMC. A copy of the EMRC Establishment Agreement is provided in **Confidential Attachment 2**.

The Shire of Mundaring Council has previously resolved (at its meeting held September 2024) that if the orderly windup is not supported by all members of the EMRC, its CEO is authorised to

give notice of the Shire's withdrawal from the EMRC. The City has been advised that this resolution is currently subject to a rescission motion. The outcome of this rescission motion is not known at the time of drafting this report and it is understood that it will be considered on 10 December 2024.

If all Member Participants withdraw before 31 December 2024, it will force the windup of the EMRC by 30 June 2025 (rather than 30 June 2027 which was the original intention of Council's resolution of 19 November 2024 to achieve the 'orderly windup'). The financial implications are detailed in the financial implications section of this report below, but under this option all Member Participants will receive an equitable amount on withdrawal.

The City is unable to establish, in definitive terms, the financial viability of the EMRC due to uncertainty around:

- [REDACTED]

This option, therefore, exposes the City to the least amount of financial risk.

If the City chooses to withdraw from the EMRC by 31 December 2024, it may also be possible for all Member Participants, through the EMRC, to seek Ministerial approval to extend the windup date from 30 June 2025 to a date not exceeding 30 June 2027. This could be done, through either direct Ministerial approval or through a variation to the EMRC Establishment Agreement.

This approach would allow for an orderly windup of the ERMC, [REDACTED] as this may result in a better return on assets than if the EMRC is wound up by 30 June 2025.

If a Member Participant does not agree to seeking Ministerial approval to extend the withdrawal date of 30 June 2025, to a later date, then it is recommended that the City withdraws in accordance with the existing EMRC Establishment Agreement to protect the City's equity share, [REDACTED]

This is the recommended option.

Option 2: Remain as a member of the EMRC

It is open to the Council to remain as a member of the EMRC, as long as at least one other Member Participant remains. The Town of Bassendean has resolved to continue as part of the EMRC unless they are the only Member Participant willing to continue.

The Shire of Mundaring has resolved to withdraw from the EMRC if all Member Participants do not agree to the MOU for an orderly windup (which is now the case with the withdrawal notice from the City of Swan). As outlined above the Shire of Mundaring has a rescission motion in relation to its withdrawal which will be heard on the same evening as the City of Bayswater’s Ordinary Council Meeting (OCM) being 10 December 2024.

As noted in an earlier report to Council in relation to this matter, the option to remain in the EMRC presents unknowns financially. The financial implications are detailed in the financial implications section of this report below.

The City is not in possession of any up-to-date financial evaluation of the EMRC assets and liabilities, although its 2023-24 end of year financials have recently been audited.

[REDACTED]

[REDACTED]

If the City of Bayswater was to remain in the EMRC, this option would not preclude the City from continuing to work towards an orderly windup of the EMRC with the remaining Member Participants. The City could continue to work towards an orderly windup with the Town of Bassendean and the Shire of Mundaring, if they decide to stay. A copy of the draft MOU was provided to the Council at its 19 November 2024 Ordinary Council Meeting (Item 14.1.1 refers). This MOU would need to be updated if it was still to be used.

LEGISLATIVE COMPLIANCE

- *Local Government Act 1995*
- *EMRC Establishment Agreement*

The *Local Government Amendment Bill 2024* has recently progressed through the Legislative Council and is currently awaiting Royal Assent. This Bill introduces the ability for local governments (including regional local governments) to borrow against their freehold land, in addition to the general funds of the local government.

In the future, regional local governments will be allowed to borrow with the Member Participants’ agreement to secure the borrowing against their general funds and/or freehold land.

This change has not yet come into effect and will not come into effect on Royal Assent. It will come into effect on proclamation, which the Department of Local Government, Sport and Cultural Industries (DLGSC) advises will not be until the 2025/26 financial year at the earliest.

RISK MANAGEMENT CONSIDERATION

The table below shows the level of risk for each impact category, if the Officer’s recommendation is not adopted by the Council.

Impact Category	Appetite	Risk Rating
Workplace, Health and Safety	Low	Low
Financial	Medium	High
Reputation and Stakeholders	Medium	Medium
Service Delivery	Medium	Medium
Environment	Low	Medium
Governance and Compliance	Low	Medium
Strategic Risk	SR03 - Council plans, decision making process and/or activities fail to invest in the management, protection and improvement of its natural environment. SR06 - City does not have the adequate financial capacity to deliver planned services and maintain assets.	

FINANCIAL IMPLICATIONS

The financial implications associated with each option are explored below.

The following table, as extracted from the EMRC’s 2023/24 Annual Financial Report reflects the equity balances of the Member Participants:

The following table shows the total interest in the EMRC as at year end:

Member Council	2024		2023	
	%	\$	%	\$
Town of Bassendean	5.56	8,821,409	4.69	8,328,620
City of Bayswater	24.44	38,741,912	20.37	36,194,706
City of Kalamunda	0.00	0	17.29	30,718,215
Shire of Mundaring	13.55	21,485,320	11.43	20,305,412
City of Swan	56.45	89,490,827	46.22	82,126,789
Total Equity	100.00	158,539,468	100.00	177,673,742

Based on Member Participant equity balances, and without making assumptions regarding impairments (discounted value), the EMRC will need to finance up to \$141.7M to payout the City of Kalamunda, the Shire of Mundaring and the City of Swan. This amount will be reduced if exiting Member Participants were to accept a discount. However, any discount is arbitrary and likely to lead to a prolonged negotiation process.



The following table reflects surplus funds as of 30 June 2024 available to the EMRC:

Current Assets	94,271,356
* Current Liabilities	<u>(40,583,440)</u>
Net Current Assets	<u>53,687,916</u>
Less Reserve Funds	<u>(45,552,164)</u>
Available Surplus Funds	<u>8,135,752</u>

* Includes \$21M Belmont Payment

[REDACTED]

[REDACTED]

Option 1: Notice of the City’s withdrawal

Pros

- All Member Participants receive an equitable amount on withdrawing
- The assets can be jointly sold as a going concern, which may result in a better return than selling as individual components/assets
- The option exposes the City to the least financial risk as it better protects the City’s equity, currently valued at \$38.7M

Cons

- [REDACTED]

Option 2: Remain as a Member of the EMRC

Pros

- Potential that the long-term financial return could be better than option 1
- Opportunity for EMRC to increase long term supply contracts
- Under the recent Local Government Amendment Act 2024, there is an option for the EMRC to borrow against their own general funds and freehold land (once proclaimed in 2025/26)
- Opportunity for the EMRC to seek additional Member Participants

Cons

- [REDACTED] g
[REDACTED] ts

[REDACTED]

If the City was to remain in the EMRC, but continue to work towards an orderly windup, the pros and cons would be similar. It is possible that the remaining Member Participants may be able to achieve a better sale price on assets if more time was available. However, there are too many unknowns to make a reasonable judgement on its feasibility.

In summary, Option 1 is the more risk averse approach that better protects the City's \$38.7M equity interest. The other alternatives have many unknowns that cannot be reliably quantified.

STRATEGIC IMPLICATIONS

In accordance with the City of Bayswater Strategic Community Plan 2021-2031, the following applies:

Theme: Environment and Liveability

Goal E4: Lessen the City's Impact on the environment through its buildings, infrastructure, services and targets, such as zero emissions by 2040, and empower the community to live sustainably.

Theme: Leadership and Governance

Goal L2: Plan and deliver projects and services in a sustainable way.
Work together to deliver the best outcomes for the community by managing our resources in a financially sustainable way.

CONCLUSION

The Council has previously resolved to work towards an orderly windup of the EMRC. Now that the City of Swan has given notice of its withdrawal from 30 June 2025, but without entering a memorandum of understanding for an orderly windup, the Council has until 31 December 2024 to formally decide whether to give notice of its withdrawal from the EMRC.

Consistent with the previous resolutions of the Council, City officers recommend that the Council gives notice of its withdrawal to the EMRC, but works with Member Council's to see whether or not Ministerial approval could be given to extend the windup date from 30 June 2025 to a date not exceeding 30 June 2027, to ensure a more orderly windup can be achieved and all member participants have the best opportunity to realise their equity share through a considered and orderly disposal process.

