

9.1.1 East Metropolitan Regional Council

Responsible Branch:	Office of the CEO
Responsible Directorate:	Office of the CEO
Authority/Discretion:	Executive/Strategic
Voting Requirement:	Simple Majority Required
Attachments:	<ol style="list-style-type: none"> 1. CONFIDENTIAL - Discussion Paper - Future of EMRC - 15 September 2024 [9.1.1.1 - 10 pages] 2. CONFIDENTIAL - Letter from City of Swan to EMRC Members [9.1.1.2 - 4 pages] 3. CONFIDENTIAL - EMRC Establishment Agreement [9.1.1.3 - 29 pages] 4. CONFIDENTIAL - Legal Advice - 26 September 2024 - EMRC Establishment Agreement [9.1.1.4 - 6 pages]

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;*
- (e) *a matter that if disclosed, would reveal —*
 - (ii) *information that has a commercial value to a person; or*
 - (iii) *information about the business, professional, commercial or financial affairs of a person,*

SUMMARY

At its meeting held on 24 September 2024 Council considered a report on the Eastern Metropolitan Regional Council, as a confidential item.

Prior to the Council meeting and following the Agenda Briefing Forum, additional information was provided to elected members (as an addendum) on 19 September 2024. As part of this additional information the EMRC provided additional information to the City, in terms of the the option of the City of Bayswater remaining in the EMRC with the Town of Bassendean (refer to **Confidential Attachment 1**).

As a result of this information and the subsequent deliberations of Council at its meeting held on 24 September 2024, the item was referred to a Special Council meeting to be held on 1 October 2024, to allow further discussion and consideration to occur.

FURTHER INFORMATION FOLLOWING COUNCIL MEETING – 24 SEPTEMBER 2024

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (see

Confidential Attachment 2).

[REDACTED]

Obtained legal advice and legal context

A regional council can be established under section 3.61 of the Act which includes the need for an Establishment Agreement that has been approved by the Minister. The Establishment Agreement must contain certain matters (section 3.64 of the Act) and can be amended with the Minister's approval (section 3.65 of the Act). The current Establishment Agreement of the EMRC is contained in Confidential Attachment 3.

In accordance with section 3.63(1) of the Act, a regional council is to be wound up:

- (a) at the Direction of the Minister; or
- (b) in accordance with the Establishment Agreement (as approved by the Minister).

To enable Council to be informed of the legal ramifications of the proposal from [REDACTED], and what winding up process the EMRC should follow, the Chief Executive Officer obtained preliminary high level legal advice (as contained in Confidential Attachment 4) in regard to:

- [REDACTED]
- the legal mechanisms to achieve a winding up in terms of the existing Establishment Agreement of the EMRC.

[REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In assessing all information currently available, City officers are of the view that it would be beneficial for the City to agree to participate in the orderly winding up of the EMRC and require

the EMRC itself to commence this process through a mechanism of a variation/ amendment to the current Establishment Agreement (and other processes). Any conditions that the City of Swan has highlighted would need to be considered by the EMRC in any such variation. Although this process is likely to take longer than what the City of Swan is proposing, it is believed that this is the proper and correct process for the winding up of the EMRC.

In view of the above developments that have occurred since the original report was presented to Council, a revised officer's recommendation is suggested below for Council's consideration.

The remaining information within this report presents the information that was contained in the original report submitted to Council for its meeting held on 24 September 2024.

OFFICER'S RECOMMENDATION

That Council:

1. Agrees to participate in an orderly winding up of the EMRC by the 30 June 2027;
2. Notes the City of Swan's draft Deed of Agreement conditions for an orderly winding up of the EMRC, as contained in its letter to the CEO dated 2 August 2024;
3. Expresses concern that a Deed of Agreement as proposed by the City of Swan may be beyond the power of the winding up provisions of the *Local Government Act 1995* and the EMRC Establishment Agreement;
4. Requests the EMRC to hold a special meeting of the EMRC Council as a matter of urgency to commence:
 - a) the orderly winding up of the EMRC as agreed by the EMRC Member Councils in accordance with the EMRC Establishment Agreement;
 - b) any required variation to the EMRC Establishment Agreement to better clarify and expedite the winding up process of the EMRC; and
 - c) any other matters needed to be resolved to ensure the orderly winding up of the EMRC occurs by 30 June 2027;
5. Advises the participating EMRC member Councils, and the EMRC of Council's decision, and that the decision remains confidential; and
6. Instructs the Chief Executive Officer to keep the terms of this resolution confidential, other than actioning limb 5 above, until such time that the EMRC Council resolves to commence the process of the orderly winding up of the EMRC.

Mayor Filomena Piffaretti Moved, Cr Josh Eveson Seconded

MOTION

That Council:

1. Agrees to participate in an orderly winding up of the EMRC by the 30 June 2027;
2. Notes the City of Swan's draft Deed of Agreement conditions for an orderly winding up of the EMRC, as contained in its letter to the CEO dated 2 August 2024;
3. Expresses concern that a Deed of Agreement as proposed by the City of Swan may be beyond the power of the winding up provisions of the *Local Government Act 1995* and the EMRC Establishment Agreement;
4. Requests the EMRC to hold a special meeting of the EMRC Council as a matter of urgency to commence:
 - a) the orderly winding up of the EMRC as agreed by the EMRC Member Councils in accordance with the EMRC Establishment Agreement;

- b) any required variation to the EMRC Establishment Agreement to better clarify and expedite the winding up process of the EMRC; and
 - c) any other matters needed to be resolved to ensure the orderly winding up of the EMRC occurs by 30 June 2027;
5. Advises the participating EMRC Member Councils, and the EMRC:
- a) Of Council's decision and that the decision remains confidential; and
 - b) in the event an EMRC Member Council exercises its right under the EMRC Establishment Agreement to withdrawal from the EMRC prior to the 31 December 2024, the City of Bayswater automatically gives the EMRC notice of its intention to withdrawal in accordance with clause 9.6 of the EMRC Establishment Agreement; and.
6. Instructs the Chief Executive Officer to keep the terms of this resolution confidential, other than that actioning limb 5 above, until such time that the EMRC Council resolves to commence the process of the orderly winding up of the EMRC.
- Cr Dan Bull Moved, Cr Lorna Clarke Seconded

LOST: 3/7

For: Cr Sally Palmer, Cr Elli Petersen-Pik - Deputy Mayor and Cr Dan Bull.

Against: Mayor Filomena Piffaretti, Cr Assunta Meleca, Cr Steven Ostaszewskyj, Cr Josh Eveson, Cr Michelle Sutherland, Cr Lorna Clarke and Cr Giorgia Johnson.

As the motion was lost, debate returned to the substantive motion.

Cr Elli Petersen-Pik - Deputy Mayor proposed the following amendment:

AMENDMENT

That an additional limb be added as follows:

7. Requests the Chief Executive Officer and the Mayor to provide regular updates to elected members on any discussion with the EMRC participating member councils, the EMRC and the State government as to the progress of the winding up of the EMRC as it comes to hand and is able to be released

This was accepted by the Mover and Seconder and formed part of the substantive motion.

COUNCIL RESOLUTION

That Council:

1. Agrees to participate in an orderly winding up of the EMRC by the 30 June 2027;
2. Notes the City of Swan's draft Deed of Agreement conditions for an orderly winding up of the EMRC, as contained in its letter to the CEO dated 2 August 2024;
3. Expresses concern that a Deed of Agreement as proposed by the City of Swan may be beyond the power of the winding up provisions of the *Local Government Act 1995* and the EMRC Establishment Agreement;
4. Requests the EMRC to hold a special meeting of the EMRC Council as a matter of urgency to commence:
 - a) the orderly winding up of the EMRC as agreed by the EMRC Member Councils in accordance with the EMRC Establishment Agreement;

- b) any required variation to the EMRC Establishment Agreement to better clarify and expedite the winding up process of the EMRC; and
 - c) any other matters needed to be resolved to ensure the orderly winding up of the EMRC occurs by 30 June 2027;
5. Advises the participating EMRC member Councils, and the EMRC of Council's decision, and that the decision remains confidential; and
 6. Instructs the Chief Executive Officer to keep the terms of this resolution confidential, other than actioning limb 5 above, until such time that the EMRC Council resolves to commence the process of the orderly winding up of the EMRC.
 7. Requests the Chief Executive Officer and the Mayor to provide regular updates to elected members on any discussion with the EMRC participating member councils, the EMRC and the State government as to the progress of the winding up of the EMRC as it comes to hand and is able to be released

Mayor Filomena Piffaretti Moved, Cr Josh Eveson Seconded

CARRIED: 8/2

For: *Mayor Filomena Piffaretti, Cr Assunta Meleca, Cr Steven Ostaszewskyj, Cr Josh Eveson, Cr Sally Palmer, Cr Elli Petersen-Pik - Deputy Mayor, Cr Lorna Clarke and Cr Giorgia Johnson.*

Against: *Cr Michelle Sutherland and Cr Dan Bull.*

BACKGROUND

The Eastern Metropolitan Regional Council (EMRC) was established in August 1983 and originally comprised the City of Bayswater, Town of Bassendean, City of Swan, City of Belmont and Shire of Mundaring, with the City of Kalamunda joining in August 1995. When established each of the local governments contributed an equal amount of \$314,441. This investment into the establishment of the EMRC was repaid in full (with interest) within two years of its establishment.

The purpose of the EMRC was/is to provide regional waste management services to the members. The EMRC operates under an Establishment Agreement signed by all Member Councils.

In recent years the City of Kalamunda (2023) and the City of Belmont (2021) have both withdrawn from the EMRC, citing community value and governance concerns as the reasons for withdrawal.

The EMRC currently holds a range of waste related assets which includes the following:

- Hazelmere transfer facility site, which incorporates:
 - Transfer station
 - Timber recycling plant
 - Western Power pole recycling
 - Mattress recycling
 - Commercial and industrial waste sorting facility
 - Polystyrene baling
 - Woodwaste to Energy Plant (Syngas and Bio Char facility).
- Red Hill waste management facility, which incorporates:
 - Landfill class 1, 2, 3
 - Landfill class 4 (only licensed facility in Perth)

- Interim Food Organics Garden Organics (FOGO) processing
- Landfill gas power station
- Household hazardous waste collection.
- Ascot EMRC Administration facility (and vacant adjoining land).

The City of Bayswater utilises a number of these services provided by the EMRC and in particular the City’s general waste, green waste and FOGO material is delivered to the Red Hill waste management facility for processing and disposal. The EMRC also operate the Baywaste Transfer Station on the City’s behalf and in accordance with this, polystyrene, mattresses and wood/timber waste are transferred to the Hazelmere Transfer Station for processing. In addition to the waste operations and facilities utilised, the City also receives support from the EMRCs Circular Economy team, with a focus on waste education and event support. Most recently this has included waste education at the Avon Descent Finish Line Festival, community tours of the Red Hill waste management facility, community clothes swap events, workshops with local schools, bin tagging programs and FOGO waste audits.

The City of Swan has corresponded with all Member Councils (**Confidential Attachment 2**) advising of its intention to seek an orderly wind up of the EMRC. As part of their correspondence the City of Swan has requested that all other Member Councils consider their request and if agreement is not achieved to the orderly wind up then the City of Swan intends to give its notice of withdrawal from the EMRC.

The City of Bayswater has been requested by the City of Swan to consider its request and subsequent conditions and respond by the end of September 2024.

EXTERNAL CONSULTATION

No consultation has yet occurred with the public. Informal consultation has occurred between the Member Council Chief Executive Officers on this matter.

OFFICER'S COMMENTS

[Redacted]

Under the Establishment Agreement a local government can provide its notice of intention to withdraw between July and December, giving it effect on 30 June the following year. In this instance the City of Swan providing notice before 31 December 2024 would result in their withdrawal from the EMRC by 30 June 2025. This would leave City of Bayswater, Town of Bassendean and Shire of Mundaring remaining in the EMRC.

[Redacted]

In seeking support for an orderly wind up, and as previously stated, the City of Swan has a number of conditions that it is seeking agreement on. These were discussed by the Council at a briefing that was held on 13 August 2024 and there was general agreement from the Council to not agree to proceed with an orderly wind up as per the conditions and request made by the City of Swan. There are also a number of variables to this request for Council to consider. These

being the position of the other member Councils (such as the Shire of Mundaring and the Town of Bassendean) which are now known.

In informal discussions with the Shire of Mundaring and the Town of Bassendean there does appear to be some options available to the member Councils, the first being an option to maintain the EMRC without the City of Swan. The most significant risk this represents if the City of Bayswater, Town of Bassendean and Shire of Mundaring were to remain in the EMRC without the City of Swan, is the exposure to the final payout figure which would be paid to the City of Swan around 1 July 2027 [REDACTED]

[REDACTED]

[REDACTED] Regional Councils are currently unable to borrow without guarantee from member local governments, but this may change under proposed regulatory changes. If the City, in agreement with the remaining member Councils, proceeds to explore paying out the City of Swan it would be recommended to engage an independent accounting firm to undertake a financial analysis of the EMRC to ascertain the financial viability of this option.

The second option available to the City would be to further explore the notion of an orderly wind up (as proposed by the City of Swan) however the difference here would be that the conditions surrounding an orderly wind up would be in negotiation and with agreement of all the member Councils.

LEGISLATIVE COMPLIANCE

The EMRC has been established in accordance with section 3.61 of the *Local Government Act 1995* (the Act). In accordance with the Act the EMRC has an Establishment Agreement in place and has a governing body, a council, established in accordance with the Agreement. This agreement has been in place since 1998.

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	High
Service Delivery	Medium	High
Environment	Low	Low
Governance and Compliance	Low	Low
Strategic Risk	SR06 - City does not have the adequate financial capacity to deliver planned services and maintain assets. SR08 - Business model fails to support an integrated and responsive delivery of services, facilities and infrastructure (Including leadership, structure and processes).	

FINANCIAL IMPLICATIONS

There are no immediate financial implications with advising the City of Swan on its request and associated conditions for a voluntary wind up.

[REDACTED]

[REDACTED] At this stage the administration would not be able to advise the Council of the financial viability of the EMRC without obtaining an independent detailed analysis of recent past and projected future financial performance of the EMRC.

STRATEGIC IMPLICATIONS

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

- 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 City of Swan has formally requested that all other member local governments of the EMRC consider their request for the orderly wind up of the EMRC by 30 June 2027 subject to conditions and the signing of a deed agreement. If not agreed to, the City of Swan will withdraw from the EMRC under the provisions of the Establishment Agreement, with the withdrawal effective 30 June 2025.

At a Council briefing on the matter, there was general agreement to not agree to proceed with an orderly wind up as per the conditions and request made by the City of Swan.

There does appear to be some options available to the member Councils, including the option of maintaining the EMRC without the City of Swan. This option has risks, particularly the exposure to the final payout figure to the City of Swan estimated at [REDACTED]. There is also an option to further explore the proposal for an orderly wind up, and in particular the conditions could be further negotiated and agreed by all Member Councils.

