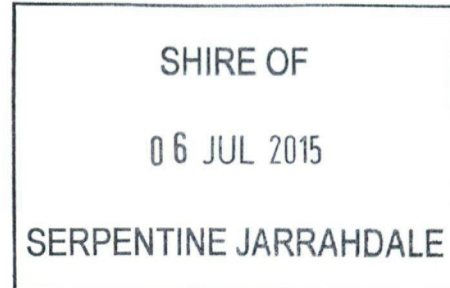


Our Ref: 77/3:PS:sjc

Mr Richard Gorbunow
Chief Executive Officer
Shire of Serpentine-Jarrahdale
6 Paterson Street
MUNDIJONG WA 6123



Dear Mr Gorbunow

RE: WITHDRAWAL FROM MEMBERSHIP IN RIVERS REGIONAL COUNCIL by the SHIRE OF WAROONA

As you know, the Rivers Regional Council (Rivers) on behalf of its member Councils has been progressing towards entering into a Resource Recovery Agreement (RRA) which, when operational, will assist in dealing with the member Councils' waste disposal requirements into the future.

The Shire of Waroona (the Shire) is fully supportive of the principle of such an agreement and of the waste to energy technology that will result from the RRA, and applauds the dedication, innovation and the initiative of Rivers and its member Councils in arriving at this juncture.

Amongst the Rivers member Councils, the Shire is unique in that it is a smaller rural Council which operates its own waste management facility including a landfill site with sufficient physical capacity to allow the Shire to take advantage of self-determined waste disposal solutions for many years into the future. For this reason, and others such as geographical distance and relatively small waste volumes etc, the Shire has never intended to be a participant in the RRA.

Initially, the Shire sought indemnity from Rivers to protect it from any legal and/or financial implications resulting from the establishment of the RRA and with such indemnity in place, was intending to remain as a member of Rivers without participation in the RRA. However, legal advice given to the Shire subsequent to this decision did identify possible circumstances in which the Shire as a member of Rivers would be required financially to meet the liabilities or debts of Rivers arising in connection with the Establishment Agreement or the RRA.

To remedy these concerns would therefore require the amending of both the RRA and the Establishment Agreement, or the withdrawal of the Shire.

The Shire, with respect, has determined that withdrawal is in the best interest of all parties and its Council resolved as such at its Ordinary Council meeting of August 2014.

The Establishment Agreement includes provisions (Clauses 11.1 – 11.6) for the withdrawal of a member Council as a Participant. In summary, a member Council wishing to withdraw must give notice in writing to the other member Councils of its intention, seeking agreement in writing. Any agreement must specify the date and the financial implications of withdrawal.

Following discussions with the CEO of Rivers and further legal advice it has been determined that this letter be both notice of the Shire's intention to withdraw and also contain a suggested framework as to how the withdrawal may proceed should the other member Councils agree to the Shire's request.

1. Date of Withdrawal

Local Government elections are to be held on 17 October 2015. The tenure of Rivers Council members ends on the Friday immediately before such elections; therefore it seems appropriate that the withdrawal date be set to coincide, i.e. 16 October 2015.

2. Financial Implications

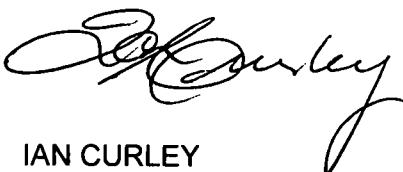
Clause 11.5 of the Establishment Agreement provides for the determination of the financial implications of a withdrawal, the determination of which hinges on whether Rivers has an excess of assets over liabilities, or an excess of liabilities over assets. Put simply, the former means Rivers may be liable for a payment to the withdrawing Council, while the latter may result in a payment by the withdrawing Council to Rivers. Following discussion with the CEO of Rivers, it has been confirmed that while Rivers has an excess of assets over liabilities, the excess is not significant in real terms. In light of this, the Shire respectfully suggests that, following payment of its membership fees as normal at the commencement of 2015/16 that it be reimbursed on a pro rata basis the balance as determined at the date of withdrawal, and that this be the full extent of the financial implications.

The Shire feels that this is a workable and equitable solution and has therefore taken the liberty of instructing McLeods Barristers & Solicitors, in consultation with the CEO of RRC, to create an agreement reflecting the principles stated above, which is enclosed. Should it meet with your approval, please complete the agreement as indicated and return it to the Shire.

The Shire of Waroona would like to take this opportunity to thank all involved and wishes nothing but the best for all parties in the future.

Should you have any queries regarding this matter please do not hesitate to contact the Director of Technical Services, Patrick Steinbacher, at the Shire offices or dts@waroona.wa.gov.au

Yours sincerely



IAN CURLEY
CHIEF EXECUTIVE OFFICER

1/7/15

Deed of amendment

City of Armadale
City of Gosnells
City of South Perth
City of Mandurah
Shire of Murray
Shire of Serpentine-Jarrahdale
Shire of Waroona



McLEODS

Barristers & Solicitors

Stirling Law Chambers | 220-222 Stirling Highway | CLAREMONT WA 6010

Tel: (08) 9383 3133 | Fax: (08) 9383 4935

Email: mcleods@mcleods.com.au

Ref: ND:WARO-35988

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Details

Parties

City of Armadale

of 7 Orchard Avenue, Armadale, Western Australia, 6992

City of Gosnells

of 2120 Albany Highway, Gosnells, Western Australia, 6110

City of South Perth

of cnr Sandgate Street and South Terrace, South Perth, Western Australia, 6151

City of Mandurah

of 3 Peel Street, Mandurah, Western Australia, 6210

Shire of Murray

of 1915 Pinjarra Road, Pinjarra, Western Australia, 6208

Shire of Serpentine-Jarrahdale

of 6 Paterson Street, Mundijong, Western Australia, 6123

Shire of Waroona

of 52 Hesse Street, Waroona, Western Australia, 6215

(collectively, the **Participants**).

Recitals

- A By the First Establishment Agreement, City of Armadale, City of Gosnells and City of South Perth agreed to establish a regional local government named the South East Metropolitan Regional Council.
- B The Minister approved the First Establishment Agreement and, in the Government Gazette dated 3 July 2001, the Minister declared the establishment of the South East Metropolitan Regional Council pursuant to section 3.61 of the Act.
- C By the Second Establishment Agreement, City of Armadale, City of Gosnells and City of South Perth agreed to amend the First Establishment Agreement by revoking it and substituting it with the Second Establishment Agreement. The Minister approved the Second Establishment Agreement. Under the Second Establishment Agreement the name continued as the South East Metropolitan Regional Council.
- D By the Third Establishment Agreement, City of Armadale, City of Gosnells and City of South Perth agreed to amend the Second Establishment Agreement by revoking it and substituting it with the Third Establishment Agreement. Under the Third Establishment Agreement the name was changed to the Rivers Regional Council.

E By the First Deed of Amendment:

- (a) City of Armadale, City of Gosnells and City of South Perth agreed to amend the Third Establishment Agreement to include City of Mandurah, Shire of Murray and Shire of Serpentine-Jarrahdale as "Participants"; and
- (b) City of Mandurah, Shire of Murray and Shire of Serpentine-Jarrahdale agreed to be bound by the Third Establishment Agreement as 'Participants'.

The Minister approved the First Deed of Amendment.

F By the Second Deed of Amendment:

- (a) City of Armadale, City of Gosnells, City of South Perth, City of Mandurah, Shire of Murray and Shire of Serpentine-Jarrahdale agreed to amend the Third Establishment Agreement to include Shire of Waroona as one of the Participants; and
- (b) Shire of Waroona agreed to be bound by the Third Establishment Agreement as one of the Participants.

The Minister approved the First Deed of Amendment.

G By the Third Deed of Amendment, the Participants agreed to amend the Third Establishment Agreement by deleting clause 6.1(2) and inserting a new clause 6.8.

The Minister approved the Third Deed of Amendment.

H The Participants have agreed to amend the Third Establishment Agreement to provide for the withdrawal of the Shire of Waroona as a Participant, and the Participants have resolved on the dates referred to in the Schedule to enter into this Deed.

Operative provisions

1. Interpretation

1.1 Definitions

In this Deed, unless the contrary intention appears:

- (a) **Remaining Participants** means all the Participants except the Shire of Waroona;
- (b) **Third Deed of Amendment** means the deed effecting the amendments described in Recital G;
- (c) **Withdrawal Date** means 16 October 2015; and
- (d) words and expressions defined in the Third Establishment Agreement have the same meanings where appearing in this Deed.

1.2 Interpretation

The rules of interpretation set out in the Third Establishment Agreement apply to this Deed.

2. Agreement to withdrawal

(1) In this clause:

- (a) **Proportion** means $\frac{259}{366}$, being the proportion of 2015/16 (in days) when the Shire of Waroona is a Participant;
- (b) **Shire of Waroona's 2015/16 Contribution** means the amount paid by the Shire of Waroona to the RRC in respect of 2015/16 by way of its annual contribution as a Participant; and
- (c) **Withdrawal Amount** means:
Shire of Waroona's 2015/16 Contribution \times Proportion.

(2) The Participants agree:

- (a) to the withdrawal of the Shire of Waroona as a Participant;
- (b) that the withdrawal is to take effect on the Withdrawal Date; and
- (c) within 30 days of the Withdrawal Date, the RRC is to pay to the Shire the Withdrawal Amount.

3. Amendment of the Third Establishment Agreement

The Remaining Participants agree to amend the Third Establishment Agreement, with effect from the Withdrawal Date, by deleting the Shire of Waroona as a party to the Third Establishment Agreement.

Schedule

Participant	Date of resolution to enter into this Deed
City of Armadale	[add date] 2015
City of Gosnells	[add date] 2015
City of South Perth	[add date] 2015
City of Mandurah	[add date] 2015
Shire of Murray	[add date] 2015
Shire of Serpentine-Jarrahdale	[add date] 2015
Shire of Waroona	[add date] 2015

Signing page

EXECUTED as a Deed

THE COMMON SEAL of the **City of Armadale** was affixed pursuant to a resolution of the Council in the presence of -

Mayor

Chief Executive Officer

THE COMMON SEAL of the **City of Gosnells** was affixed pursuant to a resolution of the Council in the presence of -

Mayor

Chief Executive Officer

THE COMMON SEAL of the **City of South Perth** was affixed pursuant to a resolution of the Council in the presence of -

Mayor

Chief Executive Officer

THE COMMON SEAL of the **City of Mandurah** was affixed pursuant to a resolution of the Council in the presence of -

Mayor

Chief Executive Officer

THE COMMON SEAL of the **Shire of Murray** was affixed pursuant to a resolution of the Council in the presence of -

Shire President

Chief Executive Officer

THE COMMON SEAL of the **Shire of Serpentine-Jarrahdale** was affixed pursuant to a resolution of the Council in the presence of -

Mayor

Chief Executive Officer

THE COMMON SEAL of the **Shire of Waroona**
was affixed pursuant to a resolution of the
Council in the presence of -

Shire President

Chief Executive Officer

Approved

Hon Anthony (Tony) James Simpson MLA
Minister for Local Government; Community Services;
Seniors and Volunteering; Youth

Date

Signature