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WTA:KLS WM.SP.3

WM-MEE-0215
ICR20224643

30 June 2022

Mr Mark Hook
Chief Executive Officer
Shire of Wickepin
PO Box 19
WICKEPIN WA 6370

Dear Mark

PROPOSED WINDING UP OF REGIONAL WASTE GROUP (WAGIN GROUP OF COUNCILS)

Council at its meeting of the 28th June 2022 resolved:

That subject to the concurrence of the Local Authorities who are the remaining signatories to the Regional Waste Site Agreement (Wagin Group of Councils) the Agreement be wound up and the funds being held for this project, be distributed back to member Councils accordingly.

The agenda report which provides the background to this matter is attached along with a copy of the Regional Waste Site Agreement referred to.

In order for this agreement to be wound up and the funds held on behalf of the group to be distributed back to participating Councils, the consent of all remaining Councils is required.

It would be appreciated therefore if you would place this matter before your Council at its next meeting for consideration and to advise of its decision on this matter.

Yours sincerely


BILL ATKINSON
CHIEF EXECUTIVE OFFICER

Heart of the Great Southern

12.1.2 PROPOSED WINDING UP OF REGIONAL WASTE GROUP (WAGIN GROUP OF COUNCILS)

PROPONENT:	Shire of Wagin
OWNER:	Shire of Wagin
LOCATION/ADDRESS:	N/A
AUTHOR OF REPORT:	Chief Executive Officer
SENIOR OFFICER:	Chief Executive Officer
DATE OF REPORT:	20 June 2022
PREVIOUS REPORT(S):	N/A
DISCLOSURE OF INTEREST:	N/A
FILE REFERENCE:	WM.SP.3
ATTACHMENTS:	<i>Regional Waste Site Agreement (Copy)</i>

OFFICER RECOMMENDATION/4803 COUNCIL RESOLUTION

Moved Cr G R Ball

Seconded Cr B L Kilpatrick

That subject to the concurrence of the Local Authorities who are the remaining signatories to the *Regional Waste Site Agreement* (Wagin Group of Councils) the Agreement be wound up and the funds being held for this project, be distributed back to member Councils accordingly.

Carried 8/0

BRIEF SUMMARY

This report recommends that the *Regional Waste Site Agreement* (Wagin Group of Councils) to which the Shire was a signatory and the lead agency, be wound up. This will enable the distribution of funds held by the Shire of Wagin to the remaining current member Shires in accordance with the provisions of the agreement.

BACKGROUND/COMMENT

In response to an enquiry from one of the current member Shires, some work has been done on determining the state of play with respect to the *Regional Waste Site Agreement* previously referred to. An (unsigned) copy of the agreement is attached. There is no in-house knowledge of the existence of any other agreement which may have encompassed a wider regional approach of the disposal of waste in the region, rather than being waste site specific.

Due to very limited documentation available which relates to this project, has been difficult to ascertain exactly where this has landed with respect to participant contributions. A number of assumptions will have to prevail unless one of the other participating local governments has kept some more accurate records. The understanding of the situation at present is as follows:

- 2011 – Eleven Councils became signatory to a *Regional Waste Site Agreement* with Wagin being the lead agency. (Wagin has an unsigned copy of the agreement without any record of it having been executed).
- All Councils (presumably) contributed funding towards the project.
- October 2011 – Woodanilling withdrew from the agreement.

- 2014? – It seems that Dumbleyung, Wandering and West Arthur withdrew from the agreement.
- It is assumed that in accordance with the provisions of clause 6 of the agreement, the Councils which withdrew did not receive (nor were entitled to) a rebate from any contributions that they might have made.
- This left seven remaining members. There does not appear to have been any redrawing or amendment of the *Regional Waste Site Agreement* reflecting the reduced membership to seven.
- 1st July 2016 The former Town and Shire of Narrogin commenced as a single entity as the new *Shire of Narrogin*, leaving six members. There does not appear to have been any redrawing or amendment of the *Regional Waste Site Agreement* reflecting the reduced membership to six.
- It would seem that in accordance with Clause 9 of the agreement (“Winding up”) that all participant Councils need to agree in writing for the group to be wound up. This would allow the residual funds to be equally distributed.
- The Shire of Wagin is holding \$37,071 on behalf of the group.
- There are currently six remaining members, however, given that there is no record of the former Town of Narrogin withdrawing from the agreement prior to the amalgamation of the former Town and Shire of Narrogin, it would seem that Narrogin should receive a double allocation of funds on disbursement.

The proposal to wind up the agreement will be forwarded to other member Councils and on receipt of their concurrence, the funds held by the Shire of Wagin on behalf of the group will be disbursed accordingly.

CONSULTATION/COMMUNICATION

CEO – Shire of Narrogin

STATUTORY/LEGAL IMPLICATIONS

Nil

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Nil

VOTING REQUIREMENTS

Simple Majority

SHIRE OF CUBALLING
AND
SHIRE OF DUMBLEYUNG
AND
SHIRE OF NARROGIN
AND
SHIRE OF PINGELLY
AND
SHIRE OF WAGIN
AND
SHIRE OF WANDERING
AND
SHIRE OF WEST ARTHUR
AND
SHIRE OF WICKEPIN
AND
SHIRE OF WILLIAMS
AND
SHIRE OF WOODANILLING
AND
TOWN OF NARROGIN

Regional Waste Site Agreement

RECITALS

- A. The Group is comprised of local governments each constituted pursuant to the provisions of the Local Government Act 1995 and is located in the Wheatbelt and Great Southern regions of Western Australia.
- B. The Shire of Cuballing, Shire of Dumbleyung, Shire of Narrogin, Town of Narrogin, Shire of Pingelly, Shire of Wandering, Shire of West Arthur, Shire of Wickepin, Shire of Williams, and Shire of Woodanilling have formed a voluntary organization of councils known as the Wagin Group of Councils ("WGOC"), to collectively carry out certain local government functions.
- C. The Group purchased, as tenants in common in equal shares, Lot 8 on Deposited Plan xxx being the whole of the land comprised in Certificate of Title Volume xxxx Folio XXX for the purpose of a regional refuse site ("the Land").
- D. The Land comprises of approximately 153 hectares, and the refuse site is located on a 16 hectare portion of the Land ("the Waste Site").
- E. The Shire of Cuballing, Shire of Dumbleyung, Shire of Narrogin, Town of Narrogin, Shire of Pingelly, Shire of Wandering, Shire of West Arthur, Shire of Wickepin, Shire of Williams, and Shire of Woodanilling enter into this Deed to record the terms, conditions of ownership and management of the Land and the Waste Site.

1. OBJECTIVES

The Shire of Cuballing, Shire of Dumbleyung, Shire of Narrogin, Town of Narrogin, Shire of Pingelly, Shire of Wandering, Shire of West Arthur, Shire of Wickepin, Shire of Williams, and Shire of Woodanilling ACKNOWLEDGE AND AGREE that the objectives of the Group in relation to the Waste Site and the Land are to:

- a) provide effective and cost efficient waste disposal consistent with legislative requirements and environmental standards for residents of the parties;
- b) operate programs to dispose of waste at the Waste Site in accordance with best practice;
- c) encourage upon a commercial basis and in accordance with agreed processes, other local governments in the region to deposit their refuse at the Waste Site; and
- d) establish and maintain the appropriate level of physical and financial resources, for the proper operation and management of the Waste Site.

2. MANAGEMENT OF WASTE SITE

Unless otherwise agreed by the parties in writing, The Shire of Cuballing, Shire of Dumbleyung, Shire of Narrogin, Town of Narrogin, Shire of Pingelly, Shire of Wandering, Shire of West Arthur, Shire of Wickepin, Shire of Williams, and Shire of Woodanilling COVENANT AND AGREE with each other that the Shire of Narrogin will be responsible for the day-to-day management of the Waste Site, such responsibilities to include the:

- a) supervision of the Contractor and other users of the Waste Site;
- b) establishment and maintenance of a separate account for the Waste Site and the Land identifying all transactions in relation to the Waste Site and make available annual copies to the other parties;
- c) compliance with any protocols, guidelines, rules and regulations determined by the Working Group for the Waste Site and the Land; and
- d) maintenance of adequate public liability insurance for the Land and the Waste Site in the name of each party jointly and severally.

3. PAYMENT OF COSTS AND SHARING OF INCOME

The parties AGREE that:

- a) all outgoings related to the Waste Site and the Land, including capital infrastructure, are to be shared equally by the Group, unless such outgoing is attributable to one particular party or parties in which case that outgoing is payable by that party or those parties;
- b) each party is responsible to pay the Contractor for transportation of waste to the Waste Site based on the tonnage measured at the Waste Site weighbridge pursuant to the contract with the Contractor; and
- c) any income or revenue received from the Waste Site or the Land is to be shared equally between the Group.

4. RESTRICTIONS ON DISPOSAL

The parties COVENANT AND AGREE with each other that no party may sell, transfer, assign or otherwise dispose of or encumber its share of the Land, the Waste Site or the Waste Site assets.

5. WORKING PARTY

The parties each COVENANT AND AGREE with each other:

- a) to each allocate at least one senior officer of its staff to form a Working Group;
- b) the members of the Working Group shall elect a chairman and deputy chairman;
- c) if the office of chairman or deputy chairman becomes vacant then members of the WGOC shall elect a new chairman or deputy chairman as the case requires;
- d) the members of the Working Group are to meet on a regular basis to facilitate the purpose and terms of this Agreement ("the Working Party");
- e) such meetings are to be held at each Shire/Town on a rotational basis in accordance with the meetings for the WGOC and the WGOC Chairman shall chair the meetings; and
- f) each member Shire/Town shall have one vote in the decision making process.

6. WITHDRAWAL FROM AGREEMENT

- a) Notwithstanding clause 4, a party may withdraw from this Agreement by giving twelve months notice to the other parties of its intention to withdraw from this Agreement.
- b) A withdrawing party is not entitled to any rebate for any fees or costs paid in advance.

7. LODGEMENT OF CAVEAT

Each member of the Group CHARGES the Land in favour of each other member of the Group with the performance of its obligations undertaken hereunder and with the payment of all or any moneys payable or which may become payable by the Group to any other member of the Group and for the purpose of securing the same authorizes each member of the Group to lodge an absolute caveat at Landgate against the Certificate of Title to the Land in order to protect the rights and interests of each member under this Deed.

8. ADDITIONAL LOCAL GOVERNMENTS

Where another local government or similar body wishes to utilise the Waste Site, it may do so only with the consent in writing of all of the parties to this Agreement and on the terms and conditions agreed.

9. WINDING UP

- a) The Shire of Cuballing, Shire of Dumbleyung, Shire of Narrogin, Town of Narrogin, Shire of Pingelly, Shire of Wandering, Shire of West Arthur, Shire of Wickelbin, Shire of Williams, and Shire of Woodanilling may, by agreement of all councils in writing, wind up the WGOC;
- b) If the WGOC is to be wound up and there remains, after satisfaction of all its debts and liabilities, any property and assets of the WGOC then the property and assets shall be realized and the proceeds along with any surplus funds shall be divided among the Participants in equal proportions;
- c) If the WGOC is to be wound up and there remains any liability or debt in excess of the realized property and assets of the WGOC then the liability or debt is to be met by the Participants in equal proportions.

10. DISPUTE RESOLUTION

- a) Subject to subclause (e) before resorting to external dispute resolution mechanisms, the parties to this Agreement shall attempt to settle by negotiation any dispute in relation to this Agreement.
- b) If a dispute is not settled by the parties within ten (10) days of one party first sending to the other parties written notice that they are in dispute, the dispute shall be submitted to external dispute resolution mechanism.
- c) For the purpose of this clause "external dispute resolution mechanism" means dispute resolution in accordance with the following provisions:

- i. A dispute may be referred by any of the parties to a single arbitrator in accordance with and under the provisions of the Commercial Arbitration Act 1985 and costs of the arbitration are to be paid in accordance with the award of the arbitrator; and
 - ii. In any arbitration each party shall be entitled to be represented by a duly qualified legal practitioner. This clause shall be deemed to be the agreement in writing referred to in Section 20 of the Commercial Arbitration Act 1985 in respect of the representation.
- d) Notwithstanding the existence of a dispute each party shall continue to perform its obligations under this Agreement.
 - e) A party may commence court proceedings relating to any dispute arising from this Agreement at any time where that party seeks urgent interlocutory relief.

11. CONFIDENTIALITY

- a) Subject to compliance with any other provisions of this Agreement dealing with confidentiality, each party undertakes and agrees not to use in any way confidential information of another party without the prior written approval of the other party except for the purposes contemplated by this Agreement;
- b) Except as required by law, each party agrees not to disclose to any person (other than a party's employees, directors, Councilors, consultants or advisors) or allow or assist to make it possible for any person to observe or copy any confidential information of another party, without the prior written approval of the other parties; and
- c) Each party agrees not to do any act, matter or thing which constitutes a breach of obligations pursuant to the Privacy Act, Local Government Act 1995, Freedom of Information Act 1992 or any other written law.

12. RELATIONSHIP BETWEEN PARTIES

Nothing contained or implied in this Agreement constitutes any party the partner, agent or representative of any other party or creates any partnership, agency or trust and no party has the authority to bind any other party in any way.

13. GOVERNING LAW

This Agreement is governed by and is to be interpreted in accordance with the laws of Western Australia and, where applicable, the laws of the Commonwealth of Australia.

14. DEFINITIONS

In this Agreement, unless otherwise required by the context of the subject matter;

Contractor means xxxx contracted upon an individual basis with each Shire/Town for the transportation of rubbish from each Shires/Towns Transfer Station to the Waste Site.

Costs for the avoidance of doubt, includes establishment and capital costs as well as operating costs.

Party means Shires of Cuballing, Dumbleyung, Narrogin, Pingelly, Wagin, Wandering, West Arthur, Wickopin, Williams, Woodanilling and Town of Narrogin

15. INTERPRETATION

In this Agreement:

- a) a reference to the parties means the parties to this Deed;
- b) The single includes the plural and vice versa;
- c) A reference to a matter connected with the Claim includes a reference to all matters alleged in, connected with or arising out of the Claim and all matters connected with matters alleged in the Claim;
- d) A reference to a party includes a reference to that party's successors and permitted assigns and any person claiming under or through the party;
- e) Every agreement or obligation expressed or implied in this Deed by which two or more persons agree or are bound shall bind such persons jointly and each of them severally and any provision expressed or implied in this Deed which applies to two or more persons shall apply to such persons jointly and each of them severally; and
- f) headings used in this Deed are for convenience only and shall not affect its construction, interpretation or meaning and do not form part of this Deed.

PARTIES TO INITIAL

PARTICIPANT	DATE OF RESOLUTION TO ENTER INTO THIS ESTABLISHMENT AGREEMENT
Shire of Cuballing	2011
Shire of Dumbleyung	2011
Shire of Narrogin	2011
Shire of Pingelly	2011
Shire of Wagin	2011
Shire of Wandering	2011
Shire of West Arthur	2011
Shire of Wickelup	2011
Shire of Williams	2011
Shire of Woodanilling	2011
Town of Narrogin	2011

EXECUTED BY THE PARTIES as a Deed:

THE COMMON SEAL of the SHIRE OF
CUBALLING was hereunto affixed in
the presence of:

SHIRE PRESIDENT

Print name

CHIEF EXECUTIVE OFFICER

Print name

THE COMMON SEAL of the SHIRE OF
DUMBLEYUNG was hereunto affixed in
the presence of:

SHIRE PRESIDENT

Print name

CHIEF EXECUTIVE OFFICER

Print name

THE COMMON SEAL of the SHIRE OF
NARROGIN was hereunto affixed in
the presence of:

() SHIRE PRESIDENT

Print name

CHIEF EXECUTIVE OFFICER

Print name

THE COMMON SEAL of the SHIRE OF
PINGELLY was hereunto affixed in
the presence of:

() SHIRE PRESIDENT

Print name

CHIEF EXECUTIVE OFFICER

Print name

THE COMMON SEAL of the SHIRE OF
WAGIN was hereunto affixed in
the presence of:

SHIRE PRESIDENT

Print name

CHIEF EXECUTIVE OFFICER

Print name

THE COMMON SEAL of the SHIRE OF
WANDERING was hereunto affixed in
the presence of:

SHIRE PRESIDENT

Print name

CHIEF EXECUTIVE OFFICER

Print name

()
THE COMMON SEAL of the SHIRE OF
WEST ARTHUR was hereunto affixed in
the presence of:

SHIRE PRESIDENT

Print name

CHIEF EXECUTIVE OFFICER

Print name

()
THE COMMON SEAL of the SHIRE OF
WICKEPIN was hereunto affixed in
the presence of:

SHIRE PRESIDENT

Print name

CHIEF EXECUTIVE OFFICER

Print name

THE COMMON SEAL of the SHIRE OF

WILLIAMS was hereunto affixed in
the presence of:

SHIRE PRESIDENT

Print name

CHIEF EXECUTIVE OFFICER

Print name

THE COMMON SEAL of the SHIRE OF
WOODANILLING was hereunto affixed in
the presence of:

SHIRE PRESIDENT

Print name

CHIEF EXECUTIVE OFFICER

Print name

THE COMMON SEAL of the TOWN OF
NARROGIN was hereunto affixed in
the presence of:

SHIRE PRESIDENT

Print name

CHIEF EXECUTIVE OFFICER

Print name

(Referred to collectively as the "Group")

