

# SUBMISSION ON THE DISCUSSION PAPER AS PART OF REVIEW OF THE WASTE AVOIDANCE AND RESOURCE RECOVERY ACT 2007



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## **INTRODUCTION**

The Rivers Regional Council (RRC) would like to thank the Department of Environment Regulation (DER) for the opportunity to comment on the WARR Act Review, in particular, the Discussion Paper – 1 December 2014.

The RRC has resolved to support the submission by the Forum of Regional Councils, with a couple of very minor changes.

Until recently twenty nine (29) out of the thirty (30) metropolitan Local Governments were members of a Regional Council. The City of Nedlands is not and never has been a member of a Regional Council, however, that Local Government over the years has participated with the Western Metropolitan Regional Council for management of its waste. More recently the City of Canning has withdrawn from the Southern Metropolitan Regional Council (SMRC) and also the City of Rockingham has given notice to withdraw from SMRC in July 2012. The other 27 Local Governments are currently members of a Regional Council. There are six metropolitan Regional Councils, Eastern Metropolitan Regional Council (EMRC), Mindarie Regional Council (MRC), Western Metropolitan Regional Council (WMRC), Southern Metropolitan Regional Council (SMRC), Rivers Regional Council (RRC) and Tamala Park Regional Council (TPRC). The first five broadly deal with waste management and the TPRC deals with land development for its member Councils which coincidentally are the same as MRC.

## **RIVERS REGIONAL COUNCIL**

At this point it is important to note and reflect on particularly the growth of RRC over the past few years and obviously the need for change. RRC extends from the Swan River (City of South Perth) to the southern boundary of the Shire of Waroona, 4,400 sq kilometres in area and a population of approximately of 347,795. It should be noted that the RRC is quite unique in that three of its member Councils are from outside the metropolitan Region, those being the City of Mandurah and the Shires of Murray and Waroona. Those other RRC members within the metropolitan Region are the Cities of Armadale, Gosnells, South Perth and the Shire of Serpentine Jarrahdale.

### ***Governance***

RRC is a Local Government established under the Local Government Act 1995 and works in partnership with its seven (7) member Councils. Paragraph Section 3.62 (1) of the Local Government Act provides that a Regional Local Government is a corporate body with a perpetual succession and a common seal. Key features of a Regional Local Government:

- Independent Local Government
- Decision making by the Council itself, not by the member Local Governments
- Limited only by the Regional Purposes as specified in the Establishment Agreement
- Establishment Agreement agreed by the Participants, not the Regional Council
- Participants determine the Regional Purposes

The two most critical factors are why the Regional Council was delayed in its quests for an Alternative Waste Treatment Facility were:

- 1) The Global Financial Crises caused a change in the approach by State Treasury and the banking sector that required all Local Governments to include guarantees for Force Majeure events as part of their "liabilities" and not as previously allowed, a "contingent liability. This has seriously limited the financing options available to Regional Councils and their members. State Government intervention/assistance is required to overcome this obstacle.
- 2) The Metropolitan Local Government Review which has cast doubt onto the very existence of this and other Regional Councils, however, the most recent decision of the State Government is to abandon Local Government reform other than for the City of Perth and any other Councils who wish to amalgamate i.e. no forced amalgamations.

During this hiatus, however, the Council has taken the opportunity to review past decisions on technology selection and financing options, so that it would be well positioned to proceed with a suitable project when the Local Government reform process was complete. It should be noted that this could involve the private sector in the treatment and disposal of Municipal Solid Waste (MSW).

In September 2013 a Tender was advertised for "Receipt and Processing of Waste for Resource Recovery".

In December 2014, Council resolved to accept the Tender from Phoenix Energy for a Waste to Energy facility to be built in the Industrial strip in the City of Kwinana.

### ***Education***

The Rivers Regional Council is significantly involved in educating the community and has developed a Regional Waste Education Program which provides a range of waste education services to the RRC member Councils. The program has played an important role in educating the community about the importance of waste reduction and recycling, and changing behaviour in the lead up to the development of an Alternative Waste Treatment (AWT) facility and a Materials Recovery Facility (MRF) for the Region. In summary, the Waste Education Program's aim is to foster a 'zero waste environment within the member Councils'.

In addition to the Strategy, there are a number of State and Federal Government initiatives that are supported and administered by RRC, such as the Household Hazardous Waste Program, the WA Transitional E-waste Program (WATEP) and the National TV and Computer Recycling Scheme under the Product Stewardship legislation.

Examples of the community information, projects and programs include:

- Development of a 'Guide to Waste Wise Community Events 2011'
- Preparation of a Regional Waste Calendar
- Development of a Waste Education DVD
- Preparation of a series of information brochures for Composting and Worm Farming, E-waste Recycling and Green Cleaning and Gardening.
- Delivery of a regional advertising campaign
- Provision of a School Education Program

The above is provided by a Regional Waste Education Coordinator and a Waste Services Officer.

### **FORUM OF REGIONAL COUNCILS (FORC)**

FORC comprises the five Metropolitan Regional Councils and the City of Greater Geraldton which together have agreed to promote areas of common interest associated with the management of MSW disposal and processing, and other commercial waste delivered to FORC member disposal and processing facilities.

The previous Minister for the Environment; Water the Hon Bill Marmion, in correspondence dated 27 July 2011, stated and charged FORC with the following:

*"After giving careful consideration to the establishment of a Strategic Waste Infrastructure Planning Committee in the Environment portfolio, I have decided it is more appropriate that Local Government takes the lead and manages waste infrastructure planning work in Western Australia.*

*As such, I support the intention of the Forum of Regional Council (FORC) to establish a Municipal Waste Steering Group to put in place a program to provide access to a resource recovery facility to every household in Perth within the next 10 years."*

The Steering Group submitted its final report to Minister Marmion in mid 2012.

FORC have also presented to the Premier a case for waste to be classified as an Essential Service which would eventually lead to waste management being allocated to a Ministerial portfolio with access to commercial/business and engineering expertise as FORC believes that the Department of Environment and Conservation should not be both administrator and regulator.

### **RRC COMMENT**

The RRC does not agree that Regional Local Governments are inefficient in their operations. Regional Local Governments, under their Establishment Agreement, are accountable to their member Councils. The member Councils have to endorse the Establishment Agreement and any Deeds of Amendment to it, and the member Councils are accountable to their community.

Rivers Regional Council endorses the submission by the Forum of Regional Councils (FORC) with a couple of very minor changes as highlighted.

RRC would like to comment on its recent Tender and acceptance of Phoenix Energy's Tender to provide a Waste to Energy facility for the "Receipt and Processing of Waste for Resource Recovery". This 'World Wide Best Practice' Tender i.e. inclusive of a Draft Waste Services Agreement and Draft Participant Agreement is the first in Australia ensuring that there is virtually no risk to the 'Participant Councils' other than delivering the 'waste' that they have committed.

The Rivers Regional Council is not an inefficient Council.

## **FORC SUBMISSION (with yellow highlighted minor changes)**

A discussion paper has been issued by the DER (Department of Environmental Regulation) entitled "Review of the Waste Avoidance and Resource Recovery Act 2007" The DER invite written submissions by 23 February 2015 responding to the reform proposals set out in Part 3 of the paper.

Since the publication of the discussion paper the President of WALGA established "The WARR Act Review and Policy Forum" The Regional Councils are represented on this forum which held its first meeting on 19 December 2014. ~~FORC supports the policy position adopted by WALGA.~~

FORC has previously issued two significant papers on the issue of Regional Council Operation and Governance namely:

- Submission – "Metropolitan Local Government Review Panels Final Report"
- Support Statement – "Vision for Waste Management in the Metropolitan Area" (WALGA)

The comments in these papers continue to be supported by FORC as substantive information to the contrary has not emerged.

The WALGA paper entitled "Vision of Waste Management in the Metropolitan Area" includes all the significant matters raised by FORC in the submission on Metropolitan Review Panels Final Report. FORC continues to support the 'Vision of Waste Management in the Metropolitan Area'.

Key matters previously agreed between WALGA and FORC set out in the "Vision of Waste Management in the Metropolitan Area" with supporting evidence and comment are:

- Greater Role for the State Government with an independent and strengthened Waste Authority
- Regional Council Consolidation from Five to Three
- Compulsory Membership of Regional
- Improved Governance Processes
- Work in a framework of an Integrated Waste Management System

FORC wishes to focus on Part 3: WARR ACT reform proposals and therefore will not detail what it sees as errors and deficiencies in the rest of the paper.

In Part 3: WARR Act Reform Proposal the headings effectively identify by their name the areas in which reform is sought. Namely:

- Performance and Co-ordination of Waste Flows
- Waste Group Membership
- Alignment of Waste Planning Across Government
- Infrastructure Capacity
- Governance
- Statutory Infrastructure Planning

These reform proposals refer to statutory waste groups and not regional councils. FORC notes the reform proposals set out in “Vision of Waste Management in the Metropolitan Area” are largely the same except they refer to Metropolitan Regional Councils. This is discussed further in the body of this paper. In the absence of an explanation as to the advantage of statutory waste groups over Metropolitan Regional Councils FORC supports the reforms set out in the Discussion Paper, however supports retaining Metropolitan Regional Councils **rather than the formation of statutory waste groups**. The “WARR Act Review and Policy Forum” established by WALGA has prepared a more detailed submission which FORC supports. The only point of difference being that FORC supports Regional Councils as opposed to Regional Subsidiaries, however these will be considered should Regional Subsidiaries legislation be passed in the future.

## **RECOMMENDATIONS**

**That FORC:**

- 1. Strongly supports the consolidation and retention of Regional Councils (from 5 to 3)**
- 2. Subject to more detailed analysis supports the Part 3: WARR Act Reform Proposals with the exception of Statutory Waste Groups as described**

### **Review of Part 3 WARR Act Reform Proposals**

#### **Performance and Coordination of Waste Flows**

The drafting of this section is extraordinarily negative and ignores the point that Metropolitan Regional Councils have advocated all of the points made at different times over a number of years. Metropolitan Regional Councils consider there is no need to establish Statutory Waste Groups. Instead Metropolitan Regional Councils can be consolidated and can work to new operating rules.

Consequently FORC would be happy with powers or arrangements for Metropolitan Regional Councils to:

- Co-ordinate Waste Collection and direction to suitable processing plants and provide waste management services where appropriate
- Re-adjustment of regional boundaries to encourage economies of scale in waste management activities
- Align with state strategy in these matters

#### **Waste Group Membership**

Metropolitan Regional Governments have been supporting many of the elements of this section for many years but again the section omits the important point that some Metropolitan Regional Councils have not been able to proceed with development of AWT's due to the need to raise loans from member councils who whilst local government reform was around were unwilling to do so.

FORC would be happy with powers or arrangements for Metropolitan Regional Councils that:

- Provided compulsory membership of Metropolitan Regional Councils
- Comply with State Strategies
- Develop Waste Plans and operate in a manner consistent with the Statutory Model on page 15 of the discussion paper
- Made funding easier

However the proposal that Metropolitan Regional Councils be limited to the procurement of waste processing services begs the question of what happens to landfills, AWTs and MRFs etc currently run by two Metropolitan Regional Councils.

In addition the proposed financial model for acquisition of MSW may cost more and most probably will have to operate on the principle 'deliver or pay'.

### **Alignment of Waste Planning Across Government**

This repeats much of the previous section. Nevertheless it is worth reiterating that FORC has supported a model where there is government leadership in setting standards and a strategic direction. Subject to Metropolitan Regional Councils remaining in place albeit with a changed format it would be most inconsistent of FORC not to generally support this section and the State Government leadership as envisaged.

### **Infrastructure Capacity**

This section is noted by FORC who also note that obtaining correct data is still an issue despite there being a lack of will to accept there are issues that still need correction.

### **Governance**

This section makes the point that waste ownership can be an impediment to effective management and that ineffective use is made of existing infrastructure, transport and land use. FORC considers the case for this is not at all made and notes that no real solution is promoted in the discussion paper. Accordingly this situation reinforces the need for State strategic direction. In general terms FORC has supported additional State Direction

### **State Infrastructure Planning**

In brief this section proposes to strengthen waste planning and require all local government and Metropolitan Regional Councils (and Statutory Waste Groups) to align to waste services and contracts within a State Waste Infrastructure plan, waste strategy or codes of practice.

These proposals are really just a repeat of previous sections and are something FORC and MWAC has promoted for many years.

### **CONCLUSION**

The proposals in Part 3: WARR Act Reform Proposals in the discussion paper issued by the DER are virtually the same in intent as the positions that FORC and MWAC have promoted for many years.

There is however one very significant proposal which has not been heard previously and that is the introduction of **Statutory Waste Groups**. This has not been sufficiently explained except by saying what they can do. However Metropolitan Regional Councils can also perform these functions. It is also not explained what is intended for Metropolitan Regional Councils. This leaves a huge gap and the door is open for speculation on many scenarios that might be assigned to Metropolitan Regional Councils. Without Regional Councils the future of good waste management is certainly not assured and their role needs to be positively supported and promoted.

The case for Metropolitan Regional Councils being retained is strong. Namely:

- They can undertake everything a Statutory Waste Group can
- They can continue to own and operate landfills a point not mentioned in Part 3.
- They can provide non waste services



- If Regional Councils were to be wound up as a result of being replaced by Statutory Waste Groups it will involve splitting up of assets and liabilities. This is a time consuming process and carries the risk that it may result in adversely affecting waste management operations.

Metropolitan Regional Councils bring effective and modern waste management to the community. There are misconceptions in Parts 1 and 2 of the discussion paper about Metropolitan Regional Council Performance. The following notes make a number of pertinent points in this regard which FORC considers should be taken on board by the DER.

1. *The statement in the Department of Environment Regulation's "discussion paper" that there have been no new commitments to AWTs by Regional Councils in the past 5 years is refuted. This not because of insecure membership of Regional Councils, it is because these facilities require a 20-30 year investment decision and you don't build new ones every few years. Having said that EMRC has obtained environmental approval for a RRF at Red Hill and has an environmental approval for a wood waste to energy facility at Hazelmere with the EPA at the moment. Rivers Regional Council has been to tender and has accepted, for its waste, Phoenix Energy's Tender for a WtE facility. All other Regional Councils have or are in various stages of development of AWTs/RRF's.*
2. *Statements in support of Vision of Waste Management in the Metropolitan Area" preferred model include:*
  - a. *EMRC has recently briefed the Waste Authority on its current plans, which are progressing, for a Resource Recovery Park at its facility in Hazelmere. The facility will include mattress recycling, wood waste processing, public drop off facility, C&I recycling, green waste processing, waste education centre and MRF. They stated that this was EXACTLY the sort of facility they were trying to encourage.*
  - b. *Waste is an essential service and best provided by local government/regional councils. The private sector is profit driven and maximises profits by minimising costs. Local government/regional councils provided sustainable and value for money services in response to community aspirations and demands. EMRC for instance has a dedicated waste environmental team monitoring its Red Hill Waste Management Facility on an ongoing basis to identify and issues and address them in a proactive rather than reactive basis. EMRC and MRC have post closure management plans in place for their facilities and cash reserve strategies to fund the required post closure management. There is no requirement for the private sector operators to do the same thing.*
  - c. *Metropolitan Regional councils are progressive and lead the way in waste management. SMRC was the first organisation to have an AWT, well before the current private sector interest. EMRC had the first landfill gas power station in the state, the first mattress processing facility, the first wood waste processing facility and carpet tile recycling collection centre etc. The DiCOM Project in the WMRC is developing new technology for combined anaerobic and aerobic digestion of organics.*
  - d. *Metropolitan Regional councils have at times had to take on various functions as a result of private sector failures e.g. SMRC running their MRF.*
  - e. *Local government can ride out market fluctuations whereas the private sector will just pack up and leave when recycling commodity prices drop e.g. Colmax glass recycling.*

- f. *Metropolitan Regional councils provide flexibility e.g. they can provide cost effective services and are able to compete commercially but where the private sector can do it more economically they can contract out the services e.g. EMRC landfill run by the regional council and RRC contracting out to Phoenix Energy.*
  - g. *Metropolitan Regional Councils have reciprocal arrangements with each other in case of emergency, redundancy etc. e.g. EMRC and MRC have arrangements to divert waste to each other in the case of closure due to emergency situations such as total fire bans. EMRC and WMRC previously had a formal agreement for the provision of waste service and participation in the EMRC RRF Project prior to WMRC becoming involved in the DiCOM project.*
  - h. *Metropolitan Regional councils already work collaboratively on waste education initiatives*
  - i. *Metropolitan Regional councils have assisted non metro councils and overseas organisations in addressing their waste issues e.g. EMRC sent its Director Waste Services to assist the Shire of Cocos Island solve their waste issues and have a multitude of country and overseas councils through their Red Hill Waste Management Facility*
3. *Under the WALGA preferred model, Councillors can represent the view and aspirations their ratepayers in the performance of the waste services provided by each council, however this will be vastly diminished or non-existent in the “statutory waste groups” model proposed in the DER discussion paper*

## **RECOMMENDATIONS**

### **That FORC:**

1. **Strongly supports the consolidation and retention of Regional Councils (from 5 to 3)**
2. **Subject to more detailed analysis supports the Part 3: WARR Act Reform Proposals with the exception of Statutory Waste Groups as described.**