



**AGENDA
SPECIAL MEETING OF COUNCIL
2 MAY 2016**

Notice of Meeting

The next Special Meeting of the Murchison Regional Vermin Council will be held on Monday 2 May 2016 in Council Chambers commencing at 11:30am.

Warren Olsen
Chief Executive Officer
28 April 2016

Disclaimer

No responsibility whatsoever is implied or accepted by the Murchison Regional Vermin Council for Any act, omission, statement or intimation occurring during this meeting. It is strongly advised that persons do not act on what is heard at this meeting and should only rely on written confirmation of Council's decision provided within fourteen (14) days of this meeting.

TABLE OF CONTENTS

1.	DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS	2
2.	RECORD OF ATTENDANCE / APOLOGIES / LEAVE OF ABSENCE (PREVIOUSLY APPROVED)	2
3.	DECLARATIONS OF INTEREST	2
4.	REPORTS	2
4.1	Appointment of a CEO or Acting CEO	2
4.2	Clarification on Cost Pertaining to Engagements of Consultants	2
4.3	Review of the Draft Establishment Agreement	3
4.4	Presentation of the Latest Version of the Business Plan.	32
4.5	Presentation of Business Case.	32
5.	NEXT MEETING	32
6.	CLOSURE OF MEETING	32

1. **DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS**
2. **RECORD OF ATTENDANCE / APOLOGIES / LEAVE OF ABSENCE (PREVIOUSLY APPROVED)**
3. **DECLARATIONS OF INTEREST**
4. **REPORTS**

4.1 Appointment of a CEO or Acting CEO.

I, Warren Olsen – Chief Executive Officer of the Shire of Mount Magnet, have resigned as Chief Executive Officer of the Murchison Regional Vermin Council; a better solution needs to be found.

My view is that that solution should not rely on the resources of the Shire of Mount Magnet as that would be an unfair burden on the administration staff, and the work of the Shire of Mount Magnet has been suffering in the immediate past (including some important accounting work that has not been getting done).

As an observation, it is quite common in various regional associations local governments for the administration to transfer the chairmanship. There are probably good reasons for that related to avoiding conflicts among competing priorities et cetera.

There is also a need, in my opinion, to avoid actual or perceived conflicts between the role of the CEO and the role of those who have been engaged as suppliers (or consultants) to the Council.

I have discussed this matter President some weeks ago suggested that he may wish to have some alternate arrangements to present to the meeting; however, as at the time of issuing this agenda (on my last day in the role of CEO of the MRVC), I am not aware of what those alternative arrangements might be.

Obviously I will be happy to give my fullest cooperation to the transfer of information et cetera to the new Chief Executive Officer.

4.2 Clarification on Cost Pertaining to Engagements of Consultants

To undertake the following on behalf of the MRVC:

- (i) Business Plan
- (ii) Business Cases
- (iii) Other Studies and consultancies that the Regional Council was not previously informed.

4.3 Review of the Draft Establishment Agreement

Officer:	Chief Executive Officer, Mr Warren Olsen
Amended By:	Nil
Disclosure of Interest:	Nil
Meeting Date:	2 May 2016

Matter for Consideration

To consider, and to give feedback to the lawyers on the preferred options relating to, the draft Establishment agreement for the Murchison Regional Vermin Council.

Background

The Murchison Regional Vermin Council was established by Order in Council published on page 3839 of the *Government Gazette* of 13 December 1963.

A search of our own records and of the records of the Department of Local Government have failed to reveal any Constitution agreement, although it did turn up a “draft copy of proposed constitution” dating back to October 1985. I could not discover any evidence that the “proposed constitution” was adopted.

The transitional provisions in the Local Government Act 1995 deemed all “constitutions” of regional local governments under the previous Act to be “establishment agreements” of those continuing regional local governments for the purposes of the new Act.

However, as we are unable to locate any Constitution under the old Act, we currently seem to lack and “establishment Agreement” under the new Act.

Comment

In order to pass muster in terms of our business case and business plans in relation completion of the proposed Murchison Regional Vermin Cell project, it is essential to demonstrate that the MRVC is probably constituted with an establishment agreement that allows it to do all of those things included in the business plan.

Although the 1963 Order in Council addressed some of the issues required to be addressed by establishment agreements under the Local Government Act 1995, there are other matters that the act requires establishment agreements to address that were not covered by the 1963 Order in Council.

In addition, the Order in Council states that the sole purpose of the Murchison Regional Vermin Council is to maintain a section of the “No. 1 Vermin Fence”. At some stage, the MRVC has also started maintaining the No. 2 Fence - however, the purpose of the MRVC has never been expanded to additional function.

Clearly, an establishment agreement is now required and that establishment agreement needs to include purposes that are broad enough to include the construction and maintenance of all the fences required to complete the Murchison Regional Vermin Cell, and possibly other future fences in relation to vermin control.

It is suggested that it should also include ability to borrow money, so that funding can be obtained for the current or future projects.

It is further suggested that a vermin extermination purpose should be included as a reserve function. Currently, this function can be carried out/coordinated through a regional Biosecurity Association. Nevertheless, legislation and institutional arrangements can both change over time and we want the new establishment agreement to be sufficiently robust that the government agencies through whom we must steer our business case, business plan and funding application will be satisfied that the asset that we are seeking to create continue to be useful notwithstanding any future legislative or institutional changes.

A draft establishment agreement for the MRVC, prepared by Civic Legal, is attached to this report.

Civic Legal now requests feedback from the MRVC relation to certain matters in the draft establishment agreement, specifically those matters that are highlighted in yellow.

One of the critical issues will be how the precepts are to be levied among the member local governments. In order to maintain the MRVC as a unified body of 5 members, it will be important to have a funding model written into the establishment agreement that is fair to all of the member local governments, given that 3 of the members will have many more properties included within the proposed Vermin Cell than the other 2 members. A number of different models need to be explored in order to find the model that everybody can be comfortable with. The draft establishment agreement presents some different models, and others may also be available for consideration.

Consultation

Anthony Quahe, Civic Legal

Cr Neil Grinham, MRVC President

Dominic Carbone, Dominic Carbone & Associates

Statutory Environment

Section 3.62 of the Local Government Act 1995 provides that a regional local government is to have an establishment agreement and that the purpose for which a regional local government is established is to be set out in the establishment agreement.

Section 3.64 requires that the following matters be set out or provided for in the establishment agreement for a regional local government:

- (a) the name of the regional local government; and
- (b) a description of the region for which the regional local government is established; and
- (c) the number of offices of member on the council of the regional local government and, in respect of each participant, the number of members to be appointed by that participant; and
- (d) the appointment and tenure of members and deputy members of the council of the regional local government; and
- (e) the election or appointment of a chairman and deputy chairman of the regional local government from amongst members of its council and the term of office of a chairman and deputy chairman, which is not to exceed 2 years; and
- (f) the purpose for which the regional local government is established; and
- (g) a means of determining the financial contributions of the participants to the funds of the regional local government; and
- (h) procedures for the winding up of the regional local government or for the withdrawal of a participant from the regional local government; and

- (i) procedures for the division of assets and liabilities between the participants in the event of the regional local government being wound up or a participant withdrawing from the regional local government; and
- (j) a means of resolving disputes between participants as to matters relating to the regional local government.

Policy Implications

To be determined.

Financial Implications

The determination of how precepts are to be raised from members in the future will have some impact on the future finances of the MRVC; however, this is yet to be determined as it is not yet known which model is preferred.

Strategic Implications

Agreeing on our an establishment agreement be critical to the success of the proposed funding applications for the Murchison Regional Vermin Cell, as well as to the future financial sustainability of the MRVC.

Voting Requirements

Simple Majority

Date

2016

Establishment Agreement - Murchison Regional Vermin Council

Shire of Cue

Shire of Meekatharra

Shire of Mt Magnet

Shire of Sandstone

Shire of Yalgoo



Civic Legal Pty Ltd
ACN 603 564 889
Suite 2, Ground Floor
1 Havelock Street
West Perth WA 6005
T +61 8 9200 4900
F +61 8 9200 4901
www.civiclegal.com.au

Establishment Agreement - Murchison Regional Vermin Council

Contents

1	Definitions and interpretation	2
1.1	Definitions	2
1.2	Interpretation	4
1.3	Headings	4
2	Amendment of Constitution Agreement	5
2.1	Amendment	5
2.2	Existing Rights	5
3	Name	5
4	Region	5
5	Regional Purposes	5
6	Objectives	6
7	Rights and limitations of Participants	6
8	The MRVC Council	7
8.1	Appointment of members	7
8.2	Tenure of members of the MRVC Council	7
8.3	Election of chairman and deputy chairman	7
8.4	Tenure of chairman and deputy chairman	8
8.5	Role of chairman	8
8.6	Role of deputy chairman	8
8.7	Role of members of the MRVC Council	9
9	Existing Undertaking	9
9.1	Application of Clause	9
9.2	Contribution to Operating Expenditure	9
9.4	Manner of payment of contributions	10
9.5	Late payment of contributions	10
9.6	Winding up of Existing Undertakings	10
9.7	Division of Assets and Liabilities	10
10	Proposals, Projects and New Undertakings	11
10.1	Requirements	11
10.2	Absolute Majority to adopt Proposal	11
10.3	Business Plan for each Project	11
10.4	Decision to Participate in Project	12
10.5	Meeting of Project Participants	12
10.6	All Participants as Project Participants	12
10.7	Not all Participants as Project Participants	12
10.8	Unanimous agreement to terms of Project	12
10.9	Manner of payment of operating expenditure contributions	13
10.10	Late Payment	13
10.11	Participant desiring to join New Undertaking	13
10.12	Preparation of Amended Business Plan	13
10.13	Determination of Participation Date	14
10.14	Joining Participant to make participation decision	14

10.15	When Joining Participant's decision to take effect	14
10.16	Calculation of Joining Participant's contributions	14
10.17	Adjustment of equities	15
10.18	Winding up of New Undertaking	15
10.20	Indemnification by Project Participants	16
11	Winding-up	16
11.1	Winding up by agreement	16
11.2	Procedure on winding-up	16
11.3	Completion of winding-up	16
12	Withdrawal of a Participant	16
12.1	Withdrawal only by agreement	16
12.2	Acknowledgement of Participants	17
12.3	Notice of withdrawal	17
12.4	Negotiations in good faith	17
12.5	Requirements of agreement	17
13	Annual financial report	18
14	Borrowings	18
15	Dispute Resolution	18
15.1	No proceedings	18
15.2	Notification of dispute	18
15.3	Reasonable efforts to resolve Dispute	18
15.4	Dispute resolution process	18
15.5	Arbitration	19
	Schedule 1 – Contributions to Operating Expenditure (clause 9.2)	20
	Schedule 2 – Contributions to capital assets (clause 9.3)	21
	Execution page	22

Establishment Agreement - Murchison Regional Vermin Council

Date

2016

Parties

Shire of Cue

Name Shire of Cue
ABN 86 892 991 980
Address Lot 2 Austin Street
CUE WA 6640
Facsimile (08) 9963 1085

Shire of Meekatharra

Name Shire of Meekatharra
ABN 12 467 571 602
Address Main Street
MEEKATHARRA WA 6642
Facsimile (08) 9981 1505

Shire of Mt Magnet

Name Shire of Mt Magnet
ABN 14 556 214 295
Address 90 Hepburn Street
MT MAGNET WA 6638
Facsimile (08) 9963 4133

Shire of Sandstone

Name Shire of Sandstone
ABN 34 049 933 669
Address Hack Street
SANDSTONE WA 6639
Facsimile (08) 9963 5852

Shire of Yalgoo

Name Shire of Yalgoo
ABN 74 086 787 099
Address 37 Gibbons Street
YALGOO WA 6635
Facsimile (08) 9962 8020

Recitals

- A The Districts of the Participants were constituted as a regional district by virtue of an Order of the Governor made under the Former Act and published in the Government Gazette on 13 December 1963.
- B Pursuant to the Former Act and by virtue of the Order of the Governor, a regional council was then constituted.
- C Under the Constitution Agreement entered into in or about 1963, at the time of the constitution of the regional council, and made between the Participants, the regional council so constituted was named the Murchison Regional Vermin Council (**MRVC**).
-

- D By virtue of transitional provisions of the Act, among other things, the MRVC continues as a regional local government as if it had been constituted as a regional local government under the Act.¹
- E The Participants have agreed to amend the Constitution Agreement by:
- (a) revoking it and substituting it with; and
 - (b) extending the regional purposes of the MRVC in accordance with,
- this Establishment Agreement.

Operative provisions

1 Definitions and interpretation

1.1 Definitions

In this Establishment Agreement, unless the contrary intention appears:

Act means the *Local Government Act 1995* (WA).

Arbitration Referral Notice is defined in clause 14.5.

CEO means the Chief Executive Officer from time to time of the MRVC.

Commencement Date means the date of the Minister's approval of this Establishment Agreement.

Constitution Agreement means the original constitution agreement referred to in Recital C.

Dispute means any dispute between the Participants as to:

- (a) the construction of this Establishment Agreement;
- (b) any of its provisions;
- (c) the rights or obligations of a Participant; or
- (d) any other matter arising out of or relating to the contents of this Establishment Agreement.

District has the same meaning as given to the term 'district' in the Act.

¹ Section 10 of Schedule 9.3 of the Act provides as follows:

10. *Regional councils continued*

A regional council constituted under the former provisions that was in existence immediately before the commencement day continues in existence as a regional local government on and after that day as if —

- (a) it had been constituted as a regional local government under this Act; and*
- (b) the regional councillors had been appointed as members of the regional local government under this Act; and*
- (c) the constitution agreement included the provisions of sections 699 to 702, 704 to 707 and 709 of the former provisions and had been approved by the Minister as an establishment agreement under this Act.*

Existing Undertaking means:

- (a) an undertaking of the MRVC which is being carried out immediately before the Commencement Date, including the rehabilitation and maintenance of the No. 1 Vermin Fence; and
- (b) any other Project that the Participants agree, in accordance with clause 10.6(a), should be undertaken as an Existing Undertaking.

Former Act means the *Local Government Act 1960* (WA).

Government Agency means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

Interest Rate, in respect of any unpaid amount, means the rate of interest rate charged by the MRVC's bank on overdraft accounts for amounts of the same size as the unpaid sum.

Joining Participant is defined in clause 10.13.

Minister means the Minister of the Crown to whom the administration of the Act is for the time being committed by the Governor and includes a Minister of the Crown for the time being acting for or on behalf of the Minister.

MRVC means the Murchison Regional Vermin Council, being the body corporate originally established by the Constitution Agreement and which continues now as a regional local government by virtue of the Act.

MRVC Council means the council of the MRVC.

Murchison Region Vermin Cell means an area of lands, primarily comprising of pastoral lands, within the Region that is, or is to be, fully enclosed by a system of vermin proof fences designed to prevent or inhibit the entry of vermin into the cell area, and to increase the effectiveness of vermin control measures of pastoralists and other stakeholders within the cell area.

Negotiation Period is defined in clause 14.3(a).

New Participant is defined in clause 10.18(a).

Participants means the parties to this Agreement and **Participant** means any one of them.

Participation Date is defined in clause 10.13(a)(i).

Project means a project or undertaking defined in a business plan referred to in clause 10.3.

Project Participant, in relation to a Project, means:

- (a) a Participant which gives a notice under clause 10.4 stating that it intends to participate in the Project; or
- (b) a Participant which becomes a Project Participant in the Project in accordance with clause 10.15,

and Project Participants, in relation to a Project, means all of those Participants.

Proposal means a proposal to undertake a Project for a Regional Purpose.

Region means the Districts of the Participants.

Regional Purposes means the purposes specified in clause 5.

Remaining Participants is defined in clause 12.1.

1.2 Interpretation

In this Establishment Agreement, unless the contrary intention appears:

- (a) a reference to:
 - (i) a “fence” includes a reference to:
 - (A) strainer assemblies, intermediate posts, droppers, wire, gripples and all other components of the fence assembly; and
 - (B) gates, grids and other devices to allow for the passage of persons, vehicles and stock;
 - (ii) a clause, annexure or appendix is a reference to a clause of or annexure or appendix to this Establishment Agreement;
 - (iii) a document (including this Establishment Agreement) includes any variation or replacement of it;
 - (iv) a statute, ordinance, code or other law includes regulations and other instruments under it and amendments, consolidations, re-enactments or replacements of any of them;
 - (v) the singular includes the plural and vice versa;
 - (vi) a person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns; and
 - (vii) a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (b) the word “person” includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any Government Agency;
- (c) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (d) the verb “include” (in all its parts, tenses and variants) is not used as, nor is it to be interpreted as, a word of limitation; and
- (e) the words “including”, “for example” or “such as” when introducing an example do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

1.3 Headings

Headings are inserted for convenience and do not affect the interpretation of this Establishment Agreement.

2 Amendment of Constitution Agreement

2.1 Amendment

The Participants agree that the Constitution Agreement is amended with effect on and from the Commencement Date by being substituted with this Establishment Agreement.

2.2 Existing Rights

Except as otherwise provided in this Establishment Agreement, any rights, remedies, obligations or liabilities of any of the Participants with respect to any act, matter or thing done, or omitted to be done, or otherwise arising, prior to the Commencement Date are not diminished or otherwise affected.

3 Name

The name of the regional local government is the Murchison Regional Vermin Council.²

4 Region

The MRVC is established for the Region.

5 Regional Purposes

(a) The regional purposes for which the MRVC is established are:

(i) the:

(A) rehabilitation and maintenance of the No. 1 Vermin Fence;
and

(B) the construction, rehabilitation and/or maintenance of any other fence within the Region that the MRVC Council determines should be constructed, rehabilitated and maintained to form, or to form part of, the Murchison Region Vermin Cell,

for the purpose of assisting in the restriction of movement, and the control and eradication, of vermin within the Murchison Region Vermin Cell;

(ii) the control, prevention and eradication of vermin within the Region (whether within or outside of the Murchison Region Vermin Cell);

(iii) to provide advice, information and education to the Participants and the communities of the Participants in relation to the functions of the MRVC; and

²1. Section 3.62(1) of the Act provides that a regional local government is a body corporate with perpetual succession and a common seal.

2. A regional local government has the same general function of a local government including its legislative and executive functions. See Part 3 and section 3.66 of the Act.

3. Except as stated in section 3.66, the Local Government Act 1995 applies to a regional local government as if:

(a) the participants' districts together made up a single district; and

(b) the regional local government were the local government established for that district.

4. Section 3.66(2) provides that a regional local government can only do things for the regional purpose (see clause 4 below).

- (iv) to carry out and do all other acts and things which are reasonably necessary for the bringing into effect, and the promotion, of the purposes referred to in paragraphs (i) and (ii) of this clause.
- (b) The MRVC Council may determine that any Project to be undertaken for a Regional Purpose is to be undertaken as:
 - (i) an Existing Undertaking, on the terms set out in clause 9, provided that all of the Participants determine to participate in that undertaking; or
 - (ii) as a New Undertaking, on terms to be determined under clause 10, whether or not all of the Participants determine to participate in that undertaking.³⁴

6 Objectives

- (a) The objectives of the MRVC are:
 - (i) to construct, or facilitate the construction of, and maintain, a system of fences to create the Murchison Region Vermin Cell;
 - (ii) to re-establish and enhance the viability and productivity of pastoral activities within the Murchison Region Vermin Cell through the control, prevention and eradication of vermin;
 - (iii) [insert any other relevant Objectives]; and
 - (ii) to obtain the appropriate level of resources, financial and physical, for:
 - (A) the construction and on-going maintenance of the fences referred to in paragraph (a)(i); and
 - (B) the operation of the MRVC's activities and the achievement of the MRVC's objectives.
- (b) No failure or alleged failure of the MRVC to meet any of the objectives set out in paragraph (a) will preclude any of the Participants from meeting its obligations under this Establishment Agreement or otherwise give rise to any claim or entitlement on its part.

7 Rights and limitations of Participants

- (a) Subject to paragraph (b), nothing in this Establishment Agreement is intended, or is to be taken to operate, to limit the power of any Participant to do anything connected with a Regional Purpose in its District where, or to the extent that, the MRVC does not carry out that Regional Purpose.
- (b) Unless the MRVC Council resolves otherwise, a Participant must not, within its District:
 - (i) [insert any relevant restrictions on a Participant to act unilaterally].

³ Section 3.66(2) provides that a regional local government can only do things for the regional purpose.

⁴ In certain circumstances, a proposal to undertake a regional purpose may require the preparation of a business plan under the Act – see section 3.59.

8 The MRVC Council

8.1 Appointment of members

- (a) The MRVC Council is to have 10 members.⁵
- (b) Each Participant is to appoint two members of the council of the Participant to be members of the MRVC Council.
- (c) In respect of each member appointed by a Participant under paragraph (b), the Participant may appoint another member of the council of the Participant as an alternate member.
- (d) An alternate member may act temporarily in place of the member of the MRVC Council, for whom they were appointed an alternate member, during any period in which the member of the MRVC Council is unable, by reason of illness, temporary absence from the State, conflict of interest or for any other cause, to perform the functions of the office.

8.2 Tenure of members of the MRVC Council

A member of the MRVC Council is to hold office until:

- (a) the Friday prior to the ordinary local government election of the Participant which appointed that member is to be held under the Act;
- (b) the member ceases to be a member of the council of the Participant which appointed that member; or
- (c) the member is removed by the Participant which appointed that member, whichever occurs first.⁶

8.3 Election of chairman and deputy chairman

- (a) The members of the MRVC Council must elect a chairman and a deputy chairman:
 - (i) at the first meeting of the MRVC Council following the Commencement Date; and
 - (ii) thereafter, at the first meeting of the MRVC Council following the day on which biennial ordinary elections to elect councillors to the Participants are held.
- (b) If the office of chairman or deputy chairman becomes vacant then the members of the MRVC Council must elect a new chairman or deputy chairman, as the case requires.
- (c) Except as otherwise varied by this clause 8.3, the election of the chairman and deputy chairman is to be conducted in accordance with the procedure prescribed under the Act for the election of a mayor and a deputy mayor, respectively, by a council, and as if the references in the Act to:

⁵Section 3.62(b) of the Act provides that a regional local government is to have, as its governing body, a council established under the establishment agreement and consisting of members of the councils of the participants.

⁶Sections 2.32 and 2.33 of the Act set out circumstances in which the office of a member of a council becomes vacant, and section 4.4 of the Act deals with ordinary elections for local governments.

- (i) “office” were references to “office of chairman” or “office of deputy chairman” (as the context requires);
 - (ii) “council” were reference to the “MRVC Council”;
 - (iii) “councillors” were references to “members of the MRVC Council”; and
 - (iv) in respect of the election of the deputy chairman, “mayor or president” were references to “chairman”.⁷
- (d) The election required by paragraph (b) must take place at a meeting of the MRVC Council held not later than 4 weeks after the date on which the office became vacant.

8.4 Tenure of chairman and deputy chairman

The chairman and deputy chairman hold those offices from the date of their election under clause 8.3 until the first to occur of:

- (a) the election of a new chairman and deputy chairman pursuant to clause 8.3(a);
- (b) the date which is two years after the date on which they were elected to that office;
- (c) the chairman or deputy chairman (as the case may be) ceases to be a member of the MRVC Council;
- (d) the chairman or deputy chairman (as the case may be) is removed by resolution of the MRVC Council; or
- (e) the chairman or deputy chairman (as the case may be) resigns that office.

8.5 Role of chairman

The chairman:

- (a) presides at meetings of the MRVC Council;
- (b) carries out civic and ceremonial duties on behalf of the MRVC;
- (c) speaks on behalf of the MRVC;
- (d) performs such other functions as are given to the chairman by the Act, any other written law or this Establishment Agreement; and
- (e) liaises with the CEO on the MRVC’s affairs and the performance of its functions.⁸

8.6 Role of deputy chairman

- (a) The deputy chairman performs the functions of the chairman when authorised to do so under this clause.

⁷The procedure for the election of a mayor is set out in Schedule 2.3, Division 1 of the Act, and for the election of a deputy mayor is set out in Schedule 2.3, Division 2 of the Act.

⁸1. The role of the MRVC Council is set out in section 2.7 of the Act.

2. The functions of the CEO are set out in section 5.41 of the Act.

3. The chairman may agree to the CEO speaking on behalf of the MRVC - see section 5.41(f) of the Act.

- (b) If:
- (i) the office of chairman is vacant; or
 - (ii) the chairman is not available or is unable or unwilling to perform the functions of chairman,

then the deputy chairman may perform the functions of chairman.

8.7 Role of members of the MRVC Council

A member of the MRVC Council:

- (a) represents the interests of the ratepayers and residents of the Region;
- (b) facilitates communication between the community of the Region and the MRVC;
- (c) participates in the MRVC's decision-making processes at meetings of the MRVC Council and its committees; and
- (d) performs such other functions as are given to the member by the Act or any other written law.

9 Existing Undertaking

9.1 Application of Clause

This clause applies only to the Existing Undertaking and any other undertaking that the MRVC Council decides is to be undertaken as an Existing Undertaking.⁹

9.2 Contribution to Operating Expenditure

Where the MRVC Council determines that the Participants are to make contributions towards the amount necessary to meet the deficiency, if any, in the operating expenditure, including administrative expenses, relating to an Existing Undertaking as disclosed in the annual budget of the MRVC, then the Participants will make those contributions [insert mechanism for allocation of contributions – possible mechanisms might be:

in the proportions set out in Schedule 1 OR

in the same proportion as the Population of that Participant bears to the total Populations of all Participants OR

in the same proportion as the length of fence (which is maintained as an Existing Undertaking) within each Participant's District bears to the total length of all fences (which are maintained as an Existing Undertaking) within the District OR

other?]

9.3 Contributions to capital assets

Where the MRVC Council determines that the Participants will make any contribution towards the acquisition of any asset of a capital nature required for any Existing Undertaking, then the Participants will make those contributions [insert mechanism for allocation of contributions – possible mechanisms might be:

⁹The MRVC Council may only decide that a new undertaking is to be undertaken as an Existing Undertaking where that undertaking can, and is intended to, be undertaken on the terms of this clause 9.

in the proportions set out in Schedule 2 OR

in the same proportion as the Population of that Participant bears to the total Populations of all Participants OR

in the same proportion as the length of fence (which is maintained as an Existing Undertaking) within each Participant's District bears to the total length of all fences (which are maintained as an Existing Undertaking) within the District OR

other?]

9.4 Manner of payment of contributions

The contributions referred to in clauses 9.2 and 9.3 must be paid by each Participant to the MRVC in the manner determined by the MRVC, or failing such determination by equal and successive [quarterly/half-yearly] instalments in advance on:

- (a) the earlier of the first day of July and the day which is 30 days after service of a copy of the annual budget on that Participant;
- (b) the first day of October;
- (c) the first day of December; and
- (d) the first day of March,

in the financial year to which the annual budget relates.

9.5 Late payment of contributions

Unless otherwise agreed, if a Participant fails to pay to the MRVC a sum of money owing under this clause 9 on or before the due date for payment, that Participant must, in addition to the sum of money due and payable, pay to the MRVC interest at the Interest Rate, calculated from and including the due date of payment to but excluding the actual date of payment.

9.6 Winding up of Existing Undertakings

The MRVC Council may resolve, by absolute majority, to wind up an Existing Undertaking.

9.7 Division of Assets and Liabilities

If an Existing Undertaking is to be wound up:

- (a) any property and assets of the Existing Undertaking are to be realised and:
 - (i) the net proceeds of the realisation of any property and assets to which the Participants contributed in accordance with clause 9.3 are to be notionally allocated to the Participants in the proportions specified in clause 9.3; and
 - (ii) the net proceeds of the realisation of any property and assets which were not the subject of contributions under clause 9.3 are to be notionally allocated to the Participants in the proportions specified in clause 9.2;
- (b) any other surplus funds:

- (i) that were provided by the Participants, but not used, for the acquisition of assets of a capital nature under clause 9.3 are to be notionally allocated to the Participants in the proportions specified in clause 9.3; or
 - (ii) otherwise, are to be notionally allocated to the Participants in the proportions specified in clause 9.2; and
- (c) any unpaid liability or debt:
- (i) related to the acquisition of a capital asset is to be paid out of the proceeds and/or surplus funds referred to in clauses 9.7(a)(i) and (b)(i) and:
 - (A) any such proceeds and/or surplus funds which remain after payment of such liabilities and debts are to be allocated to the Participants in the proportions specified in clause 9.3; or
 - (B) to the extent that such proceeds and/or surplus funds are insufficient to pay all such liabilities and debts, then the remaining liabilities and debts are to be met by each of the Participants in the proportions specified in clause 9.3; and
 - (ii) otherwise, is to be paid out of the proceeds and/or surplus funds referred to in clauses 9.7(a)(ii) and (b)(ii) and:
 - (A) any such proceeds and/or surplus funds which remain after payment of such liabilities and debts are to be allocated to the Participants in the proportions specified in clause 9.2; or
 - (B) to the extent that such proceeds and/or surplus funds are insufficient to pay all such liabilities and debts, then the remaining liabilities and debts are to be met by each of the Participants in the proportions specified in clause 9.2.

10 Proposals, Projects and New Undertakings

10.1 Requirements

The MRVC may only adopt a Proposal and undertake a Project in accordance with the requirements of this clause.

10.2 Absolute Majority to adopt Proposal

The MRVC may only adopt a Proposal when authorised to do so by an absolute majority of the MRVC Council.

10.3 Business Plan for each Project

- (a) Where the MRVC has adopted a Proposal it must:
 - (i) prepare and adopt a business plan; and
 - (ii) provide a copy of the business plan to each of the Participants.
- (b) The contents of the business plan must meet the requirements of the Act relating to the content of a business plan (whether or not the Project is a trading undertaking for the purposes of the Act) and the business plan must clearly define the Project.

10.4 **Decision to Participate in Project**

Within such period as is determined by the MRVC Council, or if no determination is made, within 60 days after the adoption of the business plan, each Participant must give notice to the MRVC stating whether the Participant intends to participate in the Project. If a Participant fails to give notice, it will be deemed to have elected not to participate in the Project.

10.5 **Meeting of Project Participants**

As soon as practicable after the period referred to in clause 10.4, the MRVC is to convene a meeting of all the Project Participants.

10.6 **All Participants as Project Participants**

If all of the Participants are Project Participants, then at the meeting convened under clause 10.5 the members of the MRVC Council must, by unanimous resolution, agree whether the Project should be undertaken:

- (a) as an Existing Undertaking on the terms of clause 9, in which case the following terms of this clause 10 will not apply to the Project; or
- (b) as a New Undertaking on the following terms of this clause 10.

10.7 **Not all Participants as Project Participants**

If not all of the Participants are Project Participants then the Project may only be undertaken as a New Undertaking on the following terms of this clause 10.

10.8 **Unanimous agreement to terms of Project**

Before the MRVC undertakes the New Undertaking, the Project Participants must, by unanimous resolution of the members of the MRVC Council who are appointed by the Project Participants, agree upon:

- (a) the proportion (and the basis of its calculation) in which the Project Participants will make contributions towards:
 - (i) the acquisition of any asset of a capital nature required for the New Undertaking; and
 - (ii) the operating expenditure, including administrative expenses, relating to the New Undertaking;
- (b) the manner of payment of the contributions referred to in paragraph (a);
- (c) the proportional entitlement or liability, as the case may be (and the basis of its calculation), of:
 - (i) a Project Participant when the withdrawal of that Project Participant from the New Undertaking takes effect; or
 - (ii) the Project Participants upon the winding-up of the New Undertaking; and
- (d) the manner of payment of the entitlement or liability referred to in paragraph (c).

The Project Participants may agree to more fully record their agreement as to the conduct of the New Undertaking, including as to the respective rights and obligations of the Project Participants with respect to the New Undertaking, in the form of a

project agreement (**Project Agreement**) on such terms as they may agree, provided that such terms are not in breach of, or inconsistent with, the requirements of the Act or any other written law. Subject to that proviso, to the extent of any inconsistency between the terms of this Establishment Agreement and the terms of the Project Agreement, this Establishment Agreement will prevail unless the Project Agreement expressly provides otherwise.

10.9 **Manner of payment of operating expenditure contributions**

Unless otherwise agreed, the contributions referred to in clause 10.8 towards operating expenditure must be paid by each Project Participant to the MRVC by equal and successive quarterly instalments:

- (a) the first of which is to be made within 42 days (or such greater period as may be determined by the MRVC) of service of a copy of the annual budget of the MRVC on that Project Participant; and
- (b) the subsequent instalments must be made in advance at the commencement of each quarter of the financial year.

10.10 **Late Payment**

Unless otherwise agreed, if a Project Participant fails to pay to the MRVC a sum of money owing under this clause 10 on or before the due date for payment, that Project Participant must, in addition to the sum of money due and payable, pay to the MRVC interest at the Interest Rate, calculated from and including the due date of payment to but excluding the actual date for payment.

10.11 **Participant desiring to join New Undertaking**

A Participant (**Joining Participant**) which is not a Project Participant in any New Undertaking may, at any time during the continuation of the New Undertaking, give notice of its desire to participate in the New Undertaking.

10.12 **Preparation of Amended Business Plan**

- (a) As soon as practicable after receipt of a notice under clause 10.11, the MRVC must:
 - (i) prepare an amended business plan for the New Undertaking having regard to the effect of the participation of the Joining Participant; and
 - (ii) provide a copy of the amended business plan to the Joining Participant and the Project Participants.
- (b) The amended business plan must include:
 - (i) the value of any existing assets of a capital nature acquired for the New Undertaking;
 - (ii) a description of any additional capital expenditure that will be required by the participation of the Joining Participant and an estimate of that additional capital expenditure;
 - (iii) an estimate of the operating expenditure, including administrative expenses, for the New Undertaking having regard to the participation of the Joining Participant;
 - (iv) the proportions (and the basis of its calculation) in which the Project Participants (including the Joining Participant) will make contributions

towards the assets and expenditures referred to in paragraphs (i), (ii) and (ii); and

- (v) the revised proportional entitlement or liability, as the case may be (and the basis of its calculation), of:
 - (A) a Project Participant (including the Joining Participant) when the withdrawal of that Project Participant from the New Undertaking takes effect; or
 - (B) the Project Participants (including the Joining Participant) upon the winding-up of the New Undertaking.
- (c) The Joining Participant must meet the cost of preparation of the amended business plan.

10.13 Determination of Participation Date

- (a) As soon as practicable after preparation and adoption of the amended business plan under clause 10.12:
 - (i) subject to paragraph (b), the Project Participants, acting reasonably, must determine the date on which the Joining Participant will join the New Undertaking (the **Participation Date**); and
 - (ii) the MRVC must advise the Joining Participant of the Participation Date.
- (b) Unless otherwise agreed by the Project Participants and the Joining Participant, the Participation Date must not be earlier than the commencement of the financial year after the financial year in which the notice under clause 10.11 was given by the Joining Participant to the MRVC.

10.14 Joining Participant to make participation decision

Within 60 days after receipt of the advice referred to in clause 10.13(a)(ii), the Joining Participant must give to the MRVC notice of its decision whether or not to participate in the New Undertaking.

10.15 When Joining Participant's decision to take effect

If the Joining Participant's notice under clause 10.14 states that the Joining Participant's decision is to participate in the New Undertaking then, with effect on and from the Participation Date, the Joining Participant becomes a Project Participant in the New Undertaking.

10.16 Calculation of Joining Participant's contributions

- (a) As soon as practicable after a Joining Participant becomes a Project Participant in the New Undertaking under clause 10.15 (the **New Participant**), the MRVC must:
 - (i) calculate the amount of the contribution of the New Participant towards:
 - (A) the value, as at the Participation Date, of any existing assets of a capital nature acquired for the New Undertaking; and
 - (B) the operating expenditure for the financial year current as at the Participation Date in respect of the New Undertaking; and

- (ii) ascertain the amount of the additional capital expenditure referred to in the amended business plan prepared under clause 10.14; and
 - (iii) give notice to the New Participant and the other Project Participants of the calculation referred to in paragraph (a)(i) and the amount referred to in paragraph (a)(ii).
- (b) In calculating the amounts of the contributions under clause 10.18(a)(i), the MRVC must use the proportions referred to in clause 10.12(b)(iv), or such other proportions as may be unanimously agreed by the Project Participants.
- (c) Unless the Project Participants agree upon another method of payment, the New Participant must pay the amounts:
- (i) in the case of the contribution towards capital assets – within 28 days after receipt of the notice of the calculation referred to in clause 10.16(a)(iii);
 - (ii) in the case of the contribution towards operating expenses - in the same manner as has been agreed in respect of the New Undertaking pursuant to clause 10.8(b) or as specified in clause 10.9 (whichever is applicable); and
 - (iii) in the case of the amount for additional capital expenditure - within 28 days after receipt of the notice of the calculation referred to in clause 10.16(a)(iii).

10.17 Adjustment of equities

As soon as practicable after payment of the contribution referred to in clause 10.16(a)(i)(A), the MRVC must:

- (a) pay to the Project Participants (other than the New Participant) any amount due in respect of their equities in the capital assets which results from the participation of the New Participant in the New Undertaking; and
- (b) record the adjusted capital contributions of all Project Participants in the records of the Murchison Regional Vermin Council relating to the New Undertaking.

10.18 Winding up of New Undertaking

The members of the MRVC Council appointed by the Project Participants of a New Undertaking may resolve, by absolute majority, to wind up a New Undertaking.

10.19 Division of Assets and Liabilities

If a New Undertaking is to be wound up:

- (a) any property and assets of the New Undertaking are to be realised;
- (b) all its debts and liabilities are to be satisfied (to the extent to which the net proceeds from the realisation of its property and assets, and any surplus funds of the New Undertaking are sufficient to do so); and
- (c) to the extent that:
 - (i) the net proceeds from the realisation of its property and assets and any surplus funds of the New Undertaking exceed those debts and liabilities, the excess must be divided among each of the Project Participants in accordance with the proportional entitled agreed under

clause 10.8(c)(ii) or the revised proportional entitlement specified in accordance with clause 10.12(b)(v)(B) (as the case may be); or

- (ii) debts and liabilities exceed the net proceeds from the realisation of its property and assets and any surplus funds of the New Undertaking, the shortfall must be contributed by each of the Project Participants in accordance with the proportional liability agreed under clause 10.8(c)(ii) or the revised proportional liability specified in accordance with clause 10.12(b)(v)(B) (as the case may be).

10.20 Indemnification by Project Participants

The Project Participants in any New Undertaking must indemnify the MRVC and the other Participants (who are not Project Participants in that New Undertaking) against all debts and liabilities of the New Undertaking in the agreed proportions referred to in 10.8(c)(ii) or the revised proportional liability specified in accordance with clause 10.12(b)(v)(B) (as the case may be) with respect to those liabilities or debts.

11 Winding-up

11.1 Winding up by agreement

The MRVC Council may resolve, by absolute majority, to wind up the MRVC.

11.2 Procedure on winding-up

If the MRVC Council resolves to wind up the MRVC then:

- (a) each Existing Undertaking is to be wound up separately;
- (b) each New Undertaking is to be wound up separately;
- (c) the provisions of clauses 9.6 and 9.7 apply to the winding up of each Existing Undertaking; and
- (d) the provisions of clauses 10.18, 10.19 and 10.20 apply to the winding up of each New Undertaking.

11.3 Completion of winding-up

The MRVC will be deemed to be wound-up upon:

- (a) completion of all of the activities required by clause 11.2; and
- (b) fulfilment of all other legal requirements for the winding-up of the MRVC.

12 Withdrawal of a Participant

12.1 Withdrawal only by agreement

A Participant (**Withdrawing Participant**) may only withdraw from:

- (a) the MRVC or any Existing Undertaking; or
- (b) any New Undertaking in which it is a Project Participant,

by agreement in writing between the Withdrawing Participant and the other Participants, or the other Project Participants, as the case may be, (**Remaining Participants**).

12.2 Acknowledgement of Participants

The Participants acknowledge that:

- (a) the participation:
 - (i) of all of the Participants in each Existing Undertaking; and
 - (ii) of all of the Project Participants in each New Undertaking,is of fundamental importance to the continuing integrity of the Murchison Region Vermin Cell and the achievement of the Objectives of the MRVC;
- (b) the withdrawal of:
 - (i) any Participant from any Existing Undertaking; or
 - (ii) any Project Participant from any New Undertaking,which either:
 - (iii) diminishes or disrupts the maintenance of any fence within the Withdrawing Participant's District is likely to compromise the integrity of the Murchison Region Vermin Cell to the detriment of the Districts of all of the Participants (including the Withdrawing Participant); or
 - (iv) increases the commitment of the Remaining Participants in the continuing maintenance any fence within the Murchison Region Vermin Cell (including a fence within the Withdrawing Participant's District) will confer a benefit on the Withdrawing Participant and its District to which it has ceased to contribute; and
- (c) accordingly, each Remaining Participant is entitled to withhold its agreement to the withdrawal of the Withdrawing Participant at its absolute discretion.

12.3 Notice of withdrawal

A Withdrawing Participant must give written notice to each of the Remaining Participants and to the MRVC of its desire to withdraw from the MRVC, any Existing Undertaking or any New Undertaking (as the case may be).

12.4 Negotiations in good faith

The Withdrawing Participant and the Remaining Participants must negotiate in good faith with a view to reaching agreement as to the basis on which the Withdrawing Participant may so withdraw, and the Withdrawing Participant and the Remaining Participants must do so:

- (a) as soon as practicable following receipt of a notice under clause 12.3; and
- (b) from time to time when reasonably requested to do so by the Withdrawing Participant or any of the Remaining Participants.

12.5 Requirements of agreement

Without limiting the matters which may be the subject of negotiation and agreement between the Withdrawing Participant and the Remaining Participants for the purposes of clause 12.4, any agreement as to the withdrawal of the Withdrawing Participant must specify:

- (a) the agreed date on which the withdrawal is to take effect; and

- (b) one of the following outcomes:
 - (i) an amount that is to be paid:
 - (A) to the Withdrawing Participant by the MRVC or the Remaining Participants; or
 - (B) by the Withdrawing Participant to the MRVC or the Remaining Participants; or
 - (ii) the agreed methodology for determining the amount to be paid to or by the Withdrawing Participant; or
 - (iii) that no amount is payable by to or by any Participant or the MRVC in respect of the withdrawal of the Withdrawing Participant.

13 Annual financial report

When submitting the MRVC's annual financial report to the MRVC's auditor each year, the MRVC must give to each Participant a copy of the MRVC's annual financial report, including details of all assets and liabilities.¹⁰

14 Borrowings

Part 6, Division 5, Subdivision 3 of the Act applies in relation to the MRVC.¹¹

15 Dispute Resolution

15.1 No proceedings

A Party must not start arbitration proceedings in respect of a Dispute unless it has complied with this clause 15.

15.2 Notification of dispute

A party claiming that a Dispute has arisen must notify the other parties to the Dispute giving details of the Dispute.

15.3 Reasonable efforts to resolve Dispute

- (a) During the 14 day period after a notice is given under clause 15.2 (or such longer period as is agreed in writing by the parties) (**Negotiation Period**), the parties must use their reasonable efforts to resolve the Dispute.
- (b) Within the first 7 days of the Negotiation Period, if the Dispute continues, the chief executive officers of the parties and the CEO, must meet and use their reasonable endeavours to resolve the Dispute.

15.4 Dispute resolution process

If the Dispute is not resolved within the Negotiation Period, the Parties must meet and endeavour to agree on:

¹⁰Section 6.4 of the Act requires a local government to submit its annual financial report to its auditor by 30 September following each financial year or such extended time as the Minister allows.

¹¹1. Section 3.66(4) of the Act provides that Part 6, Division 5, Subdivision 3 does not apply in relation to a regional local government unless the Establishment Agreement provides that it does.

2. Part 6, Division 5, Subdivision 3 of the Act deals with borrowings and includes provisions granting the power to borrow and placing restrictions on borrowings.

- (a) a process for resolving the Dispute other than by litigation or arbitration (such as by further negotiations, mediation, conciliation or expert determination);
- (b) the procedure and timetable for any exchange of documents and other information relating to the Dispute;
- (c) the procedural rules and timetable for the conduct of the selected mode of proceeding;
- (d) a procedure for the selection and compensation of any independent persons engaged by the parties to assist in resolution of the Dispute; and
- (e) whether or not the parties should seek the assistance of a dispute resolution organisation.

15.5 Arbitration

If the Parties are unable to agree on a process for resolving the Dispute in accordance with clause 15.4 within 21 days after the Negotiation Period then any party may notify the other Parties in writing (**Arbitration Referral Notice**) that it requires the Dispute to be referred to arbitration and, upon receipt of the Arbitration Referral Notice by the other Parties, the Dispute is referred to arbitration under and in accordance with the provisions of the *Commercial Arbitration Act 2012*.¹²

EXECUTED as an agreement

¹²

1. Amendment of Establishment Agreement

The Participants may amend this Establishment Agreement by agreement made with the Minister's approval - see section 3.65(1) of the Act.

2. Admission of Other Local Governments

This Establishment Agreement can be amended to include another local government as a party to the amending agreement - see section 3.65(2) of the Act.

Schedule 1 – Contributions to Operating Expenditure (clause 9.2)

The proportions in which the Participants will contribute to operating expenditures are:

Participant	Proportion
Shire of Cue	%
Shire of Meekatharra	%
Shire of Mt Magnet	%
Shire of Sandstone	%
Shire of Yalgoo	%

Schedule 2 – Contributions to capital assets (clause 9.3)

The proportions in which the Participants will contribute to capital assets are:

Participant	Proportion
Shire of Cue	%
Shire of Meekatharra	%
Shire of Mt Magnet	%
Shire of Sandstone	%
Shire of Yalgoo	%

Execution page

THE COMMON SEAL of the **SHIRE OF CUE** is duly affixed in the presence of:

.....
Signature of President

.....
Name of President (block letters)

.....
Signature of Chief Executive Officer

.....
Name of Chief Executive Officer (block letters)

THE COMMON SEAL of the **SHIRE OF MEEKATHARRA** is duly affixed in the presence of:

.....
Signature of President

.....
Name of President (block letters)

.....
Signature of Chief Executive Officer

.....
Name of Chief Executive Officer (block letters)

THE COMMON SEAL of the **SHIRE OF MT MAGNET** is duly affixed in the presence of:

.....
Signature of President

.....
Name of President (block letters)

.....
Signature of Chief Executive Officer

.....
Name of Chief Executive Officer (block letters)

Execution pages (continued)

THE COMMON SEAL of the **SHIRE OF SANDSTONE** is duly affixed in the presence of:

.....
Signature of President

.....
Name of President (block letters)

.....
Signature of Chief Executive Officer

.....
Name of Chief Executive Officer (block letters)

THE COMMON SEAL of the **SHIRE OF YALGOO** is duly affixed in the presence of:

.....
Signature of President

.....
Name of President (block letters)

.....
Signature of Chief Executive Officer

.....
Name of Chief Executive Officer (block letters)

Approval of the Minister

Approved by the **Honourable Tony Simpson MLA**, Minister for Local government

.....
Signature of the Minister

.....
Date

4.4 Presentation of the Latest Version of the Business Plan.

To be presented by Mr Dominic Carbone and/or Dr Karen Cosgrove of Dominic Carbone and Associates.

4.5 Presentation of Business Case.

To be presented by Mr Bruce Lorimer of Core Business Australia.

5. NEXT MEETING

6. CLOSURE OF MEETING