9.3 Variation to the MRT contract - COVID-19 relief

REPORT BY THE CHIEF FINANCIAL OFFICER
TO 17 JUNE 2020 ORDINARY MEETING
GOV400087, F0770077

RECOMMENDATION

That Council:

1. receive the report by the Chief Financial Officer on the Variation to the MRT contract;

2. note the contract term is due to end on 30 June 2021;

3. authorise the following variations to the contract:

   Clause 2: The term of this agreement will be five (5) years, commencing on 1 July 2017 and ending on 30 June 2022, unless terminated earlier in accordance with Clause 3.

   Clause 4. B: the funding for the period 1 July 2020 – 30 June 2021 will be payable as a lump sum in July 2020; the funding for all other periods will be payable by twelve (12) instalments with each instalment to be paid monthly in advance and to be of equal amount subject to rounding off;

   Clause 4. C: MWRC will be entitled to deduct rent and other monies payable by MRT to MWRC under the Lease from the contract payments;

4. authorise the General Manager to negotiate any additional minor terms that may be impacted by the above variations, in line with the intent of the variations; and

5. authorise the General Manager to sign the variation to the contract.

Executive summary

MRT have requested payment of their tourism contract services for the financial year ended 30 June 2021 in full at the start of the financial year (July) in order to assist with cash flow and the ability to provide payment extensions to their member businesses as a response to the impact of the COVID-19 pandemic. At this time, it is also recommended to extend the term of the contract to again align with Councils election cycle.

Disclosure of Interest

Nil.

Detailed report

At the Council Meeting on 21 June 2017, the current four year term contract with MRT was adopted.
It was recommended at the time to extend the term of the contract from 3 years to 4 years to better align the outcomes of the four-year Delivery Program, as developed by the incoming Council, with MRTI’s contract requirements in acting as the tourism service provider for the Mid-Western Regional area, and to better align with the four year term of elected representatives.

In March 2020, the NSW Government announced the decision to postpone the September 2020 Local Government Elections due to the COVID-19 crisis. The local government elections are now set to be held in September 2021. However, there is a possibility that a further extension to 31 December 2021 may be enacted, should the need arise.

As a result, current councillors, popularly elected mayors and mayors elected by councillors in September 2019 will continue to hold office until September 2021 once the new election date is gazetted.

It is now proposed to extend the MRT contract period to again align with the council term, and extensions of the Delivery Program.

Further, MRT have requested payment of their tourism contract services for the financial year ended 30 June 2021 as a lump sum, at the start of the financial year (July) in order to assist with cash flow and the ability to provide payment extensions to their member businesses as a response to the impact of the COVID-19 pandemic. This request is assessed as reasonable for a period of 12 months, through this period of economic uncertainty.

It is not recommended to permanently change the payment terms to annually, as the risk to Council would increase unnecessarily (see Associated Risks).

Community Plan implications

<table>
<thead>
<tr>
<th>Theme</th>
<th>Good Governance</th>
</tr>
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<tbody>
<tr>
<td>Goal</td>
<td>Strong civic leadership</td>
</tr>
<tr>
<td>Strategy</td>
<td>Provide clear strategic direction through the Community Plan, Delivery Program and Operational Plans</td>
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Strategic implications

**Council Strategies**
- Draft 2020/21 Operational Plan and 2017/21 Delivery Program
- Economic Development Strategy

**Council Policies**
- Service Provider Management Policy

**Legislation**
- Not Applicable

Financial implications

Tourism Operations are allocated within the draft 2020/21 Operational Plan and 2017/21 Delivery Program, no additional budget allocation is required.
An exemption from Tendering was provided when Council initially entered this Tourism Service contract, which will remain valid as this is a variation to the existing contract.

**Associated Risks**

There is a risk to Council that the region will not obtain the tourism services it has paid for should MRT go into liquidation or cease to exist within the 12 month period funded, due to the prepayment nature of the contract. It is noted that there are controls for monitoring the financial viability of MRT through the board and the contract reporting requirements. These controls do not mitigate the risk of closure completely, but do provide a mechanism to address any concerns early. The risk is deemed low for the period between 1 July 2020 - 30 June 2021.

LEONIE JOHNSON
CHIEF FINANCIAL OFFICER

22 May 2020


APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER
THIS AGREEMENT made the 3rd day of July 2017

BETWEEN: MID-WESTERN REGIONAL COUNCIL of 86 Market Street, Mudgee (herein called "MWRC") of the first part.

AND: MUDGEE REGION TOURISM INC of 84 Market Street, Mudgee (herein called "MRTI") of the other part.

RECITALS

A. MRTI has agreed to provide Tourism and Visitor Information Services for the Mid-Western Regional Local Government Area (herein called "the LGA") with the primary objective of promoting the LGA as a tourism destination.

B. MRTI will provide the Visitor Information Services from:

(a) the Mudgee Visitors Information Centre at 84 Market Street, Mudgee.

(b) the Shanty 66 Herbert Street Guilgong.

(c) The Saffron Kitchen, Rylstone and Kandos Museum, Kandos.

(d) such other premises as MWRC and MRTI may agree.

C. MWRC has agreed to provide funding and at its discretion continue to provide in kind assistance to the community for tourism related activities (examples of in kind assistance may include traffic management plans and street closures)

D. MWRC has agreed to lease to MRTI the Mudgee Visitors Information Centre at 84 Market Street, Mudgee in accordance with Deed of Lease of even date between the parties (herein called "the Lease").

E. MRTI will provide Visitor Information Services as a principal and not as the agent or contractor of MWRC.

OPERATIVE PART

This Agreement witnesses as follows:

1. Definitions

"General Manager" means the General Manager of MWRC or any person acting in that capacity.

"Tourism and Visitor Information Services" means:

(i) the active marketing of the LGA as a tourist destination both within and outside the LGA.

(ii) the provision in whatever form of tourist information relating to the LGA to visitors and prospective visitors to the LGA and to tourism related service providers;

(iii) the production and distribution of visitor information publications and other promotional presentations in whatever form both within and outside the LGA; and
(iv) the carrying out of or involvement in such other tourist related activities as MWRC may approve from time to time with the intent of encouraging and stimulating tourism within the LGA and to otherwise comply with the conditions for entitlement to membership of the NSW Accredited Visitor Information Centres network.

(v) "Unexpected funds" means any of the funding provided by MWRC under this Agreement that remain unexpended at the date of the dissolution of MRTI pursuant to the Associations Incorporation Act 2009 Section 55 (4).

2. Term of Agreement

The term of this Agreement will be one (4) years commencing on the 1 July 2017 and ending on the 30 June 2021 unless terminated earlier in accordance with Clause 3.

3. Termination

(a) This Agreement will terminate in any of the following events:

(i) on close of business on 30 June 2021; or

(ii) on the expiry of one (1) month after service upon MRTI of written notice of termination by MWRC in the event that MRTI is in breach of any of its obligations under Clauses 8 and 9 without the prior approval of MWRC; or

(iii) on the expiry of one (1) month after service upon MRTI of written notice of termination by MWRC in the event that MRTI fails to pay to MWRC any monies properly payable by MRTI to MWRC under this Agreement or under the Lease without the prior approval of MWRC; or

(iv) immediately upon service on MRTI of written notice of termination by MWRC in the event that MRTI is in serious or persistent breach of this Agreement; or

(v) immediately upon service on MRTI of written notice of termination by MWRC in the event that in MWRC's determination MRTI is providing the Tourism and Visitor Information Services in a way that is detrimental to the position and standing of MWRC or to the LGA as a tourist destination; or

(vi) immediately upon service on MRTI of written notice of termination by MWRC in the event that in the determination of MWRC, MRTI is not delivering the Tourism and Visitor Information Services to a standard at least equivalent to the services offered previously by MRTI under the Funding and Performance Agreement for the period 1 July 2017 to 30 June 2021; or

(vii) immediately upon service on MRTI of written notice of termination by MWRC in the event that MRTI ceases to be a registered Association under the Associations Incorporation Act 2009 and/or a registered trading entity; or

(viii) immediately upon service on MRTI of written notice of termination by MWRC in the event that the Objects or Rules of MRTI are amended or otherwise changed without the prior written consent of MWRC.

(b) Upon termination of this Agreement for whatever reason MWRC's obligations to provide funding under Clause 4 will immediately cease in respect of future instalment payments but the parties' obligations with regard to audit will continue to be enforceable.
In the event of the termination of this Agreement for whatever reason MWRC will not be prohibited or otherwise restricted from providing Tourism and Visitor Information Services for the LGA or providing funding to another entity to assist it to provide Tourism and Visitor Information Services for the LGA.

4. Funding Agreement

(a) MWRC will subject to MRTI's strict compliance with its obligations under this Agreement provide funding to MRTI of $396,000 plus GST for the term of this agreement.

(b) The funding will be payable by twelve (12) instalments with each instalment to be payable monthly in advance and to be of equal amount subject to rounding off.

(c) MWRC will be entitled to deduct from each monthly payment rent and other monies payable by MRTI to MWRC under the Lease.

(d) MWRC will be entitled to appoint a registered Auditor with at least 10 years' relevant experience to carry out an independent audit of the financial affairs of MRTI and of the financial contents of the reports provided to MWRC pursuant to Clauses 8 and 9 should it determine at its absolute discretion that such audit is warranted and for the purpose of the audit:

(i) MRTI will co-operate with the Auditor in the carrying out of the audit and will provide access to the Auditor to all of its financial records promptly upon request.

(ii) The Chairperson and the Treasurer of MRTI will provide such explanation as may be required by the Auditor to better understand the financial affairs of MRTI.

(iii) In the event that the audit report reveals what are regarded by the Auditor to be serious breaches by MRTI in its obligations under Clauses 8 and 9 then at MWRC's election the reasonable costs of the audit will be payable by MRTI.

(iv) Except as provided in (iii) above the costs of the audit will be payable by MWRC.

(f) MWRC will give one month's written notice to MRTI if in Council's opinion that MRTI are not complying with its obligations under this Agreement. If after that one month period MWRC is not satisfied with the response MWRC will be entitled at its absolute discretion to suspend payment of any funding otherwise payable under this clause whilst ever MRTI is not complying strictly with its obligations under this Agreement and or under the Lease and or whilst an audit is being carried out pursuant to sub clause (d) and in respect of any suspended payments MWRC will at its absolute discretion determine whether such payments are to be paid to MRTI on MRTI rectifying its non-compliance or whether such payments are to be forfeited.

5. Provision of the Tourism and Visitor Information Services

(a) MRTI will provide the Visitor Information Services in a proper and efficient manner from the Mudgee Visitors Information Centre at 84 Market Street, Mudgee on a seven (7) day a week basis between the hours of 9.00am to 5.00pm, in Gulgong from premises known as "The Shanty" on a three (3) day a week basis (Friday to Sunday) between the hours of 10.00am and 3.00pm Friday to Saturday and between 10am and 1pm Sundays, in Rylstone at The Saffron Kitchen between the hours of 10am
and 4pm on a three (3) days a week basis Friday to Sunday, and in Kandos at the Kandos Museum between the hours of 10am and 4pm Wednesday to Sunday or from such other premises in those respective towns as MWRC and MRTI may agree.

(b) During the continuance of this Agreement MRTI must

(i) Measure tourism numbers to the LGA and where they are from

1) VIC visitation (post codes)
2) Overnight visitation via accommodation members representing at least 30% of region’s total room inventory (visitor nights x LGA average per visitor spend NVS data)

(ii) Provide all tourism related businesses in the LGA whether a member of MRTI or not, with the opportunity for promotion

1) Provide a business listings page on website (for all tourism members and non-members) at no cost. Web page acknowledge sponsorship by MWRC (logo).

(iii) Attend and promote the region at four (4) events outside the region

Identify 4 key trade and/or consumer shows annually (within identified target markets) to promote the LGA. For example (may vary from year-to-year):

1) Sydney Cellar Door (Feb)
2) Pyrmont Food + Wine Festival (May)
3) Balmoral Mudgee Food + Wine Festival (Aug)
4) Sydney Food + Wine Show (Oct)

(iv) Provide monthly marketing communication to subscriber database, report on social media reach and website visitation statistics

1) Annual subscriber database health check
2) Increase subscribers year on year
3) Distribute monthly subscriber emails (maintain brand and membership activation integrity)
4) Distribute weekly member news
5) Prepare monthly digital media statistics (social media and website), track trends, increase engagement and followers

(v) Promote all tourism-related council and major regional events

Promote MWRC and major events through Visitor Guide, subscriber database, digital channels, MRTI stalls (e.g. Flavours of Mudgee) and other promotional channels (e.g. radio, Mudgee Guardian articles, etc).

(vi) Develop an annual marketing plan which provides the specific details of all marketing and promotional activities planned to be undertaken to promote LGA as a tourism destination and provide quarterly updates

1) Review and update Mudgee Region Tourism’s Destination Management Plan on a 3-yearly basis (to incorporate attractions and hero assets in Gulargambone, Kandos and Rydstone)
2) Develop an annual Marketing Campaign Strategy, with measurable KPIs
3) Prepare report and meet MWRC quarterly to discuss KPI tracking and results

(c) In performing the Tourism and Visitor Information Services MRTI will operate as a principal and will not hold itself out as being the agent or contractor of MWRC or purport to bind MWRC under any contract or agreement with third parties or otherwise incur any liability on behalf of MWRC.

6. Visitor Centres

(a) MWRC will provide the Mudgee Visitors Information Centre at 84 Market Street, Mudgee to MRTI for the delivery of Visitor Information Services under the terms of the Lease.

(b) MRTI will be responsible for the payment for all services consumed in the operation of the Mudgee, Rylstone, Kandos and Gulgong Visitors Information Centres including electricity and cleaning.

(c) MWRC's staff will be allowed reasonable access to the Mudgee Visitors Information Centre to maintain computer networking connections for neighbouring buildings as may be required from time to time.

7. Computer Software

(a) Software on computers in the Mudgee Visitors Information Centre which is licensed to MRTI will be retained by MRTI and MRTI will be responsible for all servicing and updating of software and computers used in the Centre.

8. MRTI reports to MWRC

(a) It is an essential condition of MWRC continuing to provide funding in accordance with Clause 4 that MRTI must deliver all reporting requirements as provided for under this Clause and Clause 9 without exception and within the time table specified in sub Clause (c) unless otherwise agreed by MWRC.

(b) MWRC may require changes and additions to the format and content of reports as determined by MWRC from time to time.

(c) Reports must be presented to MWRC on a quarterly basis by no later than the last day of the month immediately following the end of the relevant quarter after presentation of the report to MRTI's Board and such reports must accurately reflect the true position of MRTI for the relevant quarter.

(d) A member of the MRTI Board must be present at MWRC's meetings as may be required to respond to any questions from MWRC. MRTI will receive reasonable notice of the scheduling of the meetings.

(e) MRTI will provide MWRC with such additional operational information as MWRC may reasonably require from time to time.

(f) MRTI will appoint an independent and qualified company auditor to perform an annual audit for each financial year.
(g) A copy of the annual audit and of the annual accounts of MRTI will be supplied to the General Manager within one month of the adoption of MRTI's annual accounts.

(h) MRTI will prepare an annual Budget and Destination Management Plan for the next financial year in consultation with MRTI's members and the community and will submit it to MWRC within 7 days of its approval by the MRTI Board, but no later than 30 June. The Budget and Plan will include:

(i) an outline of the projects to be undertaken in the next financial year.

(ii) a month by month budget for the next financial year.

(iii) identified key performance indicators that will provide a measure for the achievement of all projected targets and details of how the outcome of these indicators will be reported to MWRC.

(iv) details of services and projects that will specifically promote the LGA and details of the services that will be targeted to promote individual localities in the area including but not limited to Mudgee, Gulgong, Rylstone and Kandos.

(i) MWRC may use components of the MRTI's Budget and Strategic Management Plan in the MWRC's Management Plan each year.

(j) MRTI accepts for the General Manager or his/her representative to have full Board Status, should the elected council representative be unable to attend any board meeting as Council's representative.

9. Quarterly report contents

(a) MRTI must submit its quarterly reports to MWRC with a minimum content of the items listed in Appendix 1.

(b) The quarterly reports must be approved by the MRTI Board and signed by the Chairperson or Treasurer of the Board.

(c) MRTI will provide all necessary additional information as may be required to enable MWRC to understand the operations and performance of MRTI in each quarterly report so that MWRC may provide details to its constituents on the use of MWRC expenditure.

10. Liabilities and Indemnity

(a) MWRC is not liable and will not assume liability or take responsibility for any debts or liabilities whether actual or contingent of MRTI at any time of its operation or on its dissolution.

(b) MRTI will hold current public and private liability insurance policies at all times during the continuance of this Agreement and will advise MWRC of the policy details and provide an annual currency statement in respect of such policies to MWRC within 7 working days of policy renewals.

(c) MRTI will indemnify and keep indemnified MWRC from and against all claims demands actions proceedings suits judgments costs and accounts whatsoever that may be made brought or recovered against MWRC whether directly or indirectly arising out of or in relation to the operation by MRTI of the Visitor Information Services AND this obligation will continue notwithstanding the termination of this Agreement.
11. MRTI Dissolution

(a) MRTI will advise MWRC in writing of its cessation of trading within 7 days of its decision to dissolve and MRTI will return to MWRC any property and any unexpended funding provided by MWRC to it as referred to in Section 65 (4) of the Associations Incorporation Act 2009.

(b) In the event of the dissolution of MRTI, MWRC may assume responsibility for the provision of Visitor Information Services or provide funding to another entity to assist it to provide Visitor Information Services to meet the needs of tourists and visitors to the LGA.

12. Complaints and Dispute Resolution

(a) The parties will use their best endeavours to avoid and resolve any disputes in relation to this Agreement.

(b) MWRC and MRTI will appoint an independent mediator in the event that a dispute cannot be resolved and mediation costs will be equally shared between the parties and kept to a reasonable level.

13. Governing Law

This Agreement is governed by the laws of New South Wales

14. Entire Agreement

This Agreement and the Lease form the entire agreement between the parties in respect of their subject matter for the period from the 1 July 2017 to the 30 June 2021 and no earlier agreement or understanding, verbal or written in relation to the same subject matter for that period will have any effect from the date of this Agreement unless expressly preserved by this Agreement.

15. Severability

In the event that any part or all of any clause of this Agreement is held to be illegal or unenforceable it will be severed from this Agreement and such severance will not affect the continued operation of the remaining provisions of this Agreement.

16. Goods and Services Tax

(a) Amounts payable under this Agreement are exclusive of GST. If GST is imposed on any supply made under or in connection with this Agreement then the recipient of the supply will in addition to any monies payable for such supply pay the GST payable upon receipt of a proper tax invoice.

(b) For clarity in the event that MRTI is found to be making a supply for GST purposes in the provision of the Tourism and Visitor Information Services in consideration for the funding payable by MWRC, MWRC will upon receipt of a proper tax invoice from MRTI pay the GST payable on the funding.

(c) GST and tax invoice have the meaning given to those terms under the New Tax System (Goods and Services Tax) Act 1999.
17. **Procurement of Goods and Services**

In order to ensure MRTI procurement activities are legal, ethical and reflect best value for money, MRTI are to develop a Procurement Policy in line with Councils Procurement Policy, in particular, purchasing requirements for different value contracts. The MRTI Procurement Policy is to be developed and approved by the MRTI Board before 30 September 2017. The Procurement Policy is to be provided to Council within 7 days of approval by the Board. Council’s General Manager is to ensure it meets the “spirit” of Councils Procurement Policy, and is tabled at the next Council meeting for transparency.

18. **Prohibition against assignment**

MRTI will not be entitled to assign its interest under this Agreement without the prior written consent of MWRC which consent may be refused at its absolute discretion.

19. **Prohibition against contracting out Visitor Information Services**

MRTI will not be entitled to contract out to third parties the right to provide Tourism and Visitor Information Services within the LGA without the prior written consent of MWRC which consent may be refused at its absolute discretion.

**IN WITNESS WHEREOF** the parties hereto have hereunto subscribed their hands and affixed their seals the day and year first hereinbefore written.

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**SIGNED** (for and on behalf of)  
MID-WESTERN REGIONAL  
COUNCIL by its authorised officer  
whose signatures appear below:

Signature of authorised person  

Bradley Allan Cam  
Name of authorised person  
General Manager  
Office held

**SIGNED** (for and on behalf of)  
MUDGEE REGION TOURISM  
INC by its authorised officers  
whose signatures appear below:

Signature of authorised person  

Jessica Carcen  
Name of authorised person  
Chairperson  
Office held

Signature of authorised person  

Cara George  
Name of authorised person  
CEO  
Office held
## APPENDIX 1: Contents of quarterly report from MRTI to MWRC

| Financial                                                                 | • Balance Sheet/Financial Statement approved by MRTI Board and signed by the Chairperson or Treasurer of MRTI.  
|                                                                          | • Profit and Loss – reflecting comparison year to date, to budget and compared to the same period in the previous year approved by MRTI Board.  
|                                                                          | • Commentary on the financial performance of MRTI and any items that are outside budget or showing significant variance to previous year or to budget and actions as approved by the MRTI Board to address variance.  
|                                                                          | • Commentary on financial trends including a revised forecast that may affect MRTI’s performance.  
| Partnership                                                              | • Partnership numbers by type of partnership.  
|                                                                          | • Partnership numbers and revenue compared to same quarter in the previous year.  
|                                                                          | • Number of partners by industry sector (e.g. motel, B & B, restaurant etc).  
| Projects                                                                 | • Outline promotional activities carried out during the quarter to promote the LGA including the locations outside of Mudgee at which the activities are undertaken the type of promotion undertaken for each location and the duration and cost of each promotion.  
|                                                                          | • Outline specific projects including participation in tourist trade shows.  
|                                                                          | • For each project, project current status and activity and time line assessment with reference to the Key Performance Indicators (KPIs) and milestones established in the MRTI Destination Management Plan and other project plans for each item.  
|                                                                          | • Achievement/slippage of itemised milestones in individual projects and commentary provided.  
| Statistics                                                               | All statistics listed below shown compared to same quarter in the previous year.  
|                                                                          | • Number of visitors attending each visitors centre and where they were from.  
|                                                                          | • Number of phone enquiries at each centre.  
|                                                                          | • Number of subscribers - loyalty building program.  
|                                                                          | • Digital media statistics (i.e. unique website visitors, unique page views, social media followers).  
|                                                                          | • Responses to advertising campaigns – visitation as a result of the campaigns, occupancy rates of accommodation operators when supplied to MRTI and impact of campaigns on occupancy etc.  
|                                                                          | • Responses to web based surveys as required.  
|                                                                          | • Supporting information on distribution of Visitor Information guides and other promotional material outside the LGA.  
| Funding                                                                  | • Sources for funding and applications made.  
|                                                                          | • Details of applications, funding sought, funding received, projects to be funded.  
|                                                                          | • Date when funding applications determined.  
|                                                                          | • Follow up of funding applications undertaken in the quarter.  
| Communication                                                            | • All MWRC Councillors to receive the monthly email to the subscriber database  
| Public Relations                                                         |
• Summary of public relations activity and EAV (estimated advertising value), including press release distributed and coverage for the entire region (both digital + print), showcasing newsworthy stories such as new businesses, innovation in region, campaign activity and towns of Gulgong, Kandos + Rylstone (a minimum of 15% total media coverage must reflect Gulgong, Kandos & Rylstone, and a minimum of 2 pitches to the media must cover new and different businesses per annum).

Additional items and reports to be provided:

• Annually updated and Board approved MRTI Budget and three-yearly Destination Management Plan to be delivered to MWRC within 7 days of its approvals described in clause 8(h).

• Copy of the annual audit report and annual accounts for MRTI as specified in Clause 8(g).

• Annual currency statements of insurance policies held and/or as renewed to be supplied to MWRC as specified in Clause 10(b).

• Copies of other policy documents relating to MRTI as may be required by MWRC.