



Fleurieu Regional Waste Authority

REV 1

CHARTER

22 May 2012

*Approved
on the 22 May 2012
Gazetted: 2 August 2012*

Fleurieu Regional Waste Authority**CHARTER – 22 May 2012****1 INTRODUCTION****1.1 Name**

The name of the subsidiary is the Fleurieu Regional Waste Authority (referred to as 'the Authority' in this Charter).

1.2 Definitions

'the Act' means the Local Government Act 1999 and includes all regulations made thereunder;

'Administration Costs' has the same meaning as in the LGA Accounting Regulations and AAS27 accounting standards;

'Annual General Meeting' means an annual general meeting of the Board held pursuant to Clause 3.8;

'the Authority' means the Fleurieu Regional Waste Authority;

'the Board' means the Board of Management of the Authority set out at Clause 3;

'Board Member' includes a Constituent Council Board Member and the Independent Chairperson of the Board appointed pursuant to Clause 3.2.1;

'Constituent Council' means those councils identified at Clause 1.4;

'Business Plan' means the business plan adopted by the Authority pursuant to Clause 5.2;

'Constituent Council Board Member' means a member of the Board appointed to Clause 3.2.1.1;

'Date of Withdrawal' means the date a Constituent Council's withdrawal from the Authority becomes effective pursuant to Clause 8.2.2;

'Deputy Board Member' means a person appointed to act as a deputy to a Constituent Council Board Member pursuant to Clause 3.2.2;

'Deputy Executive Officer' means the person appointed pursuant to Clause 6.1.4.4 as Deputy Executive Officer;

'Executive Officer' means the person appointed pursuant to Clause 6.1 as the Executive Officer of the Authority;

'Financial Year' means 1 July in each year to 30 June in the subsequent year;

'Independent Chairperson of the Board' or 'Chairperson' means the member of the Board appointed pursuant to Clause 3.2.1.2;

'Long Term Financial Plan' means the long term financial plan prepared by the Authority and approved by the Constituent Councils pursuant to Clause 4.5.1;

'Minister' means the Minister for State/Local Government Relations;

'Net Assets' means total assets (current and non-current) less total liabilities (current and non-current) of the Authority as reported in the annual audited financial statements of the Authority;

'Operating Costs' means expenses incurred in the delivery of the Authority's services excluding Administration Costs;

'Region' means the collective areas of the Constituent Councils;

'Strategic Plan' means the strategic plan adopted by the Authority pursuant to Clause 5.1;

'Treasury Policy' means the treasury policy prepared by the Authority and approved by the Constituent Councils pursuant to Clause 4.5.2;

'Waste' has the same definition as in the Environment Protection Act 1993.

1.3 Interpretation

In this Charter, unless the context otherwise requires:

1.3.1 headings do not affect interpretations;

1.3.2 singular includes plural and plural includes singular;

1.3.3 words of one gender include any gender;

1.3.4 a reference to a person includes a partnership, corporation, association, government body and any other entity;

1.3.5 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;

1.3.6 an unenforceable provision or part of a provision may be severed, and the remainder of this Charter continues in force, unless this would materially change the intended effect of this Charter;

1.3.7 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions; and

1.3.8 a reference to a 'Clause' means a clause of this Charter.

1.4 Establishment

The Authority is a regional subsidiary established under Section 43 of the Act by the:

1.4.1 City of Victor Harbor;

1.4.2 Alexandrina Council;

1.4.3 Kangaroo Island Council; and

1.4.4 Yankalilla District Council.

1.5 Local Government Act 1999

This Charter must be read in conjunction with Parts 2 and 3 of Schedule 2 of the Act. The Authority shall conduct its affairs in accordance with Parts 2 and 3 of Schedule 2 of the Act except as modified by this Charter in a manner permitted by the Act.

1.6 National Competition Policy

The Authority does not undertake any commercial activities which constitute a significant business activity of the Authority to which the principles of competitive neutrality must be applied.

1.7 Objects and Purposes

1.7.1 The Authority is established for the following objects and purposes:

1.7.1.1 to educate, engage and motivate the Constituent Councils' communities to achieve the practical reduction of Waste through reuse and recycling initiatives;

- 1.7.1.2 to facilitate and co-ordinate the management of Waste on behalf of the Constituent Councils including collection, treatment, disposal and recycling within the Region;
 - 1.7.1.3 to facilitate and coordinate the management of Waste outside the Region for which the Authority is or may become responsible including the collection, treatment, disposal and recycling of Waste;
 - 1.7.1.4 to develop and implement policies designed to improve the management of waste and recycling programmes and practices within the Region;
 - 1.7.1.5 to regularly review the Region's management of waste and recycling practices and policies;
 - 1.7.1.6 to provide and operate a place or places in the Region or outside the Region for the treatment, recycling and disposal of waste collected by the Authority, including operating transfer stations;
 - 1.7.1.7 to develop further co-operation between the Constituent Councils in the collection, treatment, recycling and disposal of waste for which the Constituent Councils are or may become responsible;
 - 1.7.1.8 to minimise the volume of waste collected in the areas of the Constituent Councils which is required to be disposed of by landfill;
 - 1.7.1.9 to provide a forum for discussion and/or research for the ongoing improvement of the management of waste.
- 1.7.2 The Authority must in the performance of its objects and purposes and in all of its plans, policies, and activities give due weight to economic, social and environmental considerations.

1.8 Powers

- 1.8.1 The powers, functions and duties of the Authority are to be exercised in the performance and furtherance of the Authority's objects and purposes. The Authority has the following powers, functions and duties;
- 1.8.1.1 subject to Clauses 1.9 and 1.10 to purchase, sell, lease, hire rent or otherwise acquire or dispose of any real property or interests therein in or outside the Region;
 - 1.8.1.2 subject to Clause 1.9 to institute, initiate and carry out legal proceedings provided that any litigation is subject to an immediate urgent report to the Constituent Councils by the Executive Officer;
 - 1.8.1.3 subject to Clause 1.9 to enter into any kind of contract or arrangement;
 - 1.8.1.4 to borrow funds and incur expenditure in accordance with Clause 1.9;
 - 1.8.1.5 to enter into agreements with the Constituent Councils or any other person, body or council for the purpose of the collection, treatment, recycling and disposal of waste and operating and managing transfer stations and other sites in and outside the Region for the treatment, recycling and disposal of Waste;
 - 1.8.1.6 to raise finance for all purposes relating to the collection, treatment, recycling and disposal of waste;

- 1.8.1.7 to determine the types of waste which will be collected or received and the method of collection, treatment, recycling and disposal of waste;
- 1.8.1.8 to adopt and use a trading name provided that the Authority must first register the trading name with the Office of the Consumer and Business Affairs in accordance with the Business Names Act 1996;
- 1.8.1.9 subject to Clause 1.9 to agree to undertake a project in conjunction with any council or government agency or authority and in doing so to participate in the formation of a trust, partnership or joint venture with any council or government agency or authority to give effect to the project;
- 1.8.1.10 to employ, engage, determine conditions of employment/engagement, remunerate, remove, suspend or dismiss/terminate the Executive Officer of the Authority;
- 1.8.1.11 to open and operate bank accounts;
- 1.8.1.12 to make submissions for and accept grants, subsidies and contributions to further its objects and purposes;
- 1.8.1.13 to charge whatever fees the Authority considers appropriate for services rendered to any person, body or council (other than a Constituent Council) provided that such fees charged by the Authority shall be sufficient to at least cover the cost of the Authority of providing the services;
- 1.8.1.14 to charge the Constituent Councils fees for services that (as a minimum) cover the cost to the Authority of providing the services;
- 1.8.1.15 to accumulate surplus funds for investment purposes;
- 1.8.1.16 to distribute all or any surplus funds and/or make payment of a dividend to the Constituent Councils provided that such distribution or payment will be made to the Constituent Councils in the proportions of their equitable interest in the Authority as set out in Clause 8.4;
- 1.8.1.17 to invest any funds of the Authority in any investment authorised by the Trustee Act 1936 or with the Local Government Finance Authority provided that;
 - (a) in exercising this power of investment the Authority must exercise the care, diligence and skill that a prudent person of business would exercise in managed the affairs of other persons; and
 - (b) the Authority must avoid investments that are speculative or hazardous in nature;
- 1.8.1.18 to employ, engage or retain professional advisers to the Authority;
- 1.8.1.19 to establish a reserve fund(s) clearly identified for the upkeep and/or replacement of fixed assets of the Authority or meeting any deferred liability of the Authority;
- 1.8.1.20 to act outside the areas of the Constituent Councils for the purpose of collecting, treating, recycling and disposing of Waste including operating and managing transfer stations and other sites for the treatment, recycling and disposal of waste;

1.8.1.21 to do anything else necessary or convenient for, or incidental to, the exercise, performance or discharge of its powers, functions or duties;

1.8.1.22 to undertake all manner of things relating and incidental to the collection, treatment, recycling and disposal of waste;

1.8.1.23 such other powers, functions and duties as are delegated to the Authority by the Constituent Councils from time to time.

1.8.2 Notwithstanding any other clause or provision in this Charter, the Authority may not act outside the areas of the Constituent Councils unless the Constituent Councils have, prior to the Authority so acting, granted approval to the Authority to act outside the area of the Constituent Councils on the basis that the Constituent Councils consider it necessary or expedient to the performance of the Constituent Councils' or Authority's functions.

1.9 Borrowings and Expenditure

1.9.1 The Authority has the power to incur expenditure as follows:

1.9.1.1 in accordance with a budget adopted by the Authority and approved by the Constituent Councils as required by the Act or this Charter; or

1.9.1.2 with the prior approval of all the Constituent Councils; or

1.9.1.3 in accordance with the Act, and in respect of the expenditure not contained in the budget adopted by the Authority and approved by the Constituent Councils as required by the Act and this Charter, for a purpose of genuine emergency or hardship;

1.9.2 Subject to Clause 1.9.3 the Authority has the power to borrow money as follows:

1.9.2.1 in accordance with a budget adopted by the Authority and approved by the Constituent Councils as required by the Act or this Charter; or

1.9.2.2 in respect of borrowings not contained in a budget adopted by the Authority and approved by the Constituent Councils as required by the Act and this Charter, up to a maximum amount not exceeding the net financial ratio stated in the Authority's Long Term Financial Plan and supported within the Authority's Treasury Policy; or

1.9.2.3 with the prior approval of all the Constituent Councils.

1.9.3 Unless otherwise approved by all the Constituent Councils, all borrowings take out by the Authority;

1.9.3.1 must be used for the purpose of funding operational costs;

1.9.3.2 must be from the Local Government Financial Authority or a registered bank or financial institution within Australia; and

1.9.3.3 must be drawn down within a period of 24 months from the date of the approval.

1.10 Property

1.10.1 All property held by the Authority is held by it on behalf of the Constituent Councils.

1.10.2 No person may sell, encumber or otherwise deal with any property of the Authority without the approval of the Board by way of and evidenced by a resolution of the Board.

1.11 Delegation by the Authority

1.11.1 The Authority may, in accordance with this Charter and the Act, by resolution, delegate to any officer of the Authority any of its powers, functions and duties under this Charter but may not delegate:

1.11.1.1 the power to impose charges;

1.11.1.2 the power to enter into transactions on behalf of the Authority in excess of \$100,000;

1.11.1.3 the power to borrow money or obtain any other forms of financial accommodation;

1.11.1.4 the power to approve expenditure of money on the works, services or operations of the Authority not set out in a budget adopted by the Authority and approved by the Constituent Councils in accordance with the Act and this Charter;

1.11.1.5 the power to approve the reimbursement of expenses or payment of allowances to members of the Board;

1.11.1.6 the power to adopt budgets;

1.11.1.7 the power to adopt or revise financial estimates and reports; and

1.11.1.8 the power to make any application or recommendation to the Minister.

1.11.2 A delegation is revocable at will and does not prevent the Authority from acting in a matter.

2 STRUCTURE

2.1 The Authority is a body corporate and is governed by the Act and this Charter. The Board is the Authority's governing body and has the responsibility for the administration of the affairs of the Authority ensuring that the Authority acts in accordance with this Charter and all relevant legislation including the Act.

2.2 All meetings of the Authority shall be meetings of the Board.

2.3 The Authority will be entitled to make decisions in accordance with the powers and functions of the Authority specified in this Charter.

3 THE BOARD OF MANAGEMENT

The Board is responsible for managing all of the activities and affairs of the Authority and ensuring that the Authority acts in accordance with this Charter and all relevant legislation including the Act.

3.1 Functions of the Board

3.1.1 In addition to the functions of the Board set out in the Act, the functions of the Board include:

3.1.1.1 the formulation of strategic and business plans in accordance with Clause 5 and the development of strategies aimed at improving the business of the Authority;

3.1.1.2 to provide professional input and policy direction to the Authority;

- 3.1.1.3 monitoring, overseeing and measuring the performance of the Executive Officer of the Authority;
- 3.1.1.4 ensuring that ethical behaviour and integrity is established and maintained by the Authority, the Board and the Board Members in all activities undertaken by the Authority;
- 3.1.1.5 exercising the care, diligence and skill that a prudent person of business would exercise in managing the affairs of other persons;
- 3.1.1.6 developing and giving effect to policies that reflect the Authority's responsibilities under the National Competition Policy (if applicable) and the Trade Practices Act (Cth) 1974;
- 3.1.1.7 ensuring that the Authority operates in accordance with this Charter and all relevant legislation.

3.2 Membership

3.2.1 The Board shall consist of nine Board Members appointed as follows:

3.2.1.1 Constituent Council Board Members

- (a) Each Constituent Council shall appoint on such conditions as the Constituent Council may determine one (1) elected member of the Constituent Council to be a Board Member and may at any time terminate or revoke this appointment and appoint another elected member of the Constituent Council to be a Board Member
- (b) Each Constituent Council shall appoint on such conditions as the Constituent Council may determine one (1) staff member of the Constituent Council to be a Board Member and may at any time terminate or revoke that appointment and appoint another staff member to the Constituent Council to be a Board Member;

3.2.1.2 Independent Chairperson of the Board

- (a) The Constituent Councils shall jointly and unanimously appoint on such conditions as the Constituent Councils may determine one (1) person with relevant professional expertise who is neither an elected member nor officer of any of the Constitutional Councils to be the Chairperson of the Board;
- (b) the Independent Chairperson of the Board shall be selected from a list of persons provided to the Constituent Councils with such list being determined by a panel comprising the Mayors and Chief Executive Officers of the Constituent Councils;
- (c) the Constituent Councils may, at any time by a joint resolution of all of the Constituent Councils, terminate or revoke the appointment of the Independent Chairperson of the Board and appoint another person to be the Independent Chairperson of the Board.

3.2.2 Each Constituent Council will appoint an elected member of the Constituent Council and a staff member of the Constituent Council to be Deputy Board Members who may act in place of the Constituent Council's Board Members if the respective Board Member for whom the elected member or staff member (as the case may be) is appointed as a deputy Board Member is unable for any reason to be present at a meeting of the Board and may at any time terminate or revoke that appointment and

appoint another elected member or officer (as the case may require) of the Constituent Council to be a Deputy Board Member.

- 3.2.3 In the absence of a Board Member, the Deputy Board Member of that Board Member will be deemed to be the Board Member any may exercise all rights, privileges and obligations of that Board Member during the absence of that Board Member.
- 3.2.4 Each Constituent Council must give notice in writing to the Authority of its appointment of Board Members and Deputy Board Members, the term of appointment if applicable and of any termination or revocation of those appointments. A notice in writing signed by the Chief Executive Officer of the Constituent Council will be sufficient evidence of an appointment, termination or revocation of an appointment and will constitute notice as required by this Clause 3.2.4.
- 3.2.5 The Independent Chairperson will be eligible for an allowance from the funds of the Authority as determined by the Constituent Councils.

3.3 Term of Office

- 3.3.1 Subject to Clause 3.3.3, the term of office of a Constituent Council Board Member and Deputy Board Member, shall be for a term determined by the Constituent Council appointing that Board Member. At the conclusion of a Constituent Council Board Member's term of office such Board Member will be eligible for re-appointment.
- 3.3.2 Subject to Clause 3.3.3, the term of office of the Independent Chairperson of the Board shall be for a period of two (2) years. At the conclusion of the term of office the Independent Chairperson of the Board, the Independent Chairperson of the Board will be eligible for re-appointment.
- 3.3.3 The office of a Board Member, including where applicable the office of Independent Chairperson of the Board, will become vacant:
- 3.3.3.1 if any of the grounds or circumstances set out in the Act as to when a Board Member's office becomes vacant arises; or
- 3.3.3.2 in relation to a Constituent Council Board Member, upon:
- (a) the Constituent Council who appointed the Board Member terminating or revoking the Board Member's appointment;
 - (b) the Constituent Council who appointed the Board Member ceasing to be a Constituent Council;
 - (c) the Board Member ceasing to be an elected member of the Constituent Council that appointed him or her;
 - (d) the Board Member ceasing to be a staff member of the Constituent Council that appointed him or her; or
 - (e) the conclusion of the next periodic local government election following their appointment;
- 3.3.3.3 in relation to the Independent Chairperson of the Board upon the Constituent Councils jointly and unanimously terminating or revoking Independent Chairperson of the Board's appointment;
- 3.3.3.4 upon the happening of any other event through which the Board Member would be ineligible to remain as a Board Member.
- 3.3.4 The office of a Deputy Board Member will become vacant in the same way as the office of a Board Member will become vacant as set out in Clause 3.3.3.

- 3.3.5 The Board may by a majority vote of the Board Members present (excluding the Board Member subject to this Clause) make a recommendation to a Constituent Council that it terminate the appointment of a Constituent Council Board Member appointed by that Constituent Council or the Independent Chairperson of the Board in the event of any behaviour of that Board Member which in the opinion of the Board amounts to:
- 3.3.5.1 impropriety;
 - 3.3.5.2 serious neglect of duty in attending to the responsibilities as a Board Member;
 - 3.3.5.3 breach of fiduciary duty to the Board or a Constituent Council;
 - 3.3.5.4 breach of any of the legislative obligations and duties of a Board Member including the conflict of interest provisions of the Act;
 - 3.3.5.5 breach of the duty of confidentiality to the Board and/or the Constituent Councils; or
 - 3.3.5.6 any other behaviour which may discredit the Board, the Authority or the Constituent Councils.
- 3.3.6 Where, for any reason, the office of a Constituent Council Board Member becomes vacant the Constituent Council which appointed the Board Member will be responsible for appointing a replacement Board Member and in the case of the Independent Chairperson of the Board the Constituent Councils will jointly be responsible for appointing a replacement Board Member.
- 3.3.7 If any vacancy occurs in the membership of the Board it must be filled in the same manner as the original appointment under Clause 3.2.1. The person appointed to fill the vacancy will be appointed for the balance of the term of the original appointment and at the expiry of that term shall be eligible for reappointment.

3.4 Independent Chairperson of the Board

The Independent Chairperson of the Board shall preside at all meetings of the Board and in the event of the Chairperson being absent from a meeting the Board shall appoint a Board Member present to be the Chairperson for that meeting.

3.5 Proceedings of the Board

- 3.5.1 The provisions of Part 2 of the Local Government (Procedures at Meetings) Regulations 2000 shall, insofar as the same may be applicable and not inconsistent with this Charter, apply to proceedings at and conduct of meetings of the Board.
- 3.5.2 Ordinary meetings of the Board will be held at such times and places as determined by the Board except for the first ordinary meeting of the Board following the establishment of the Authority which shall be determined by the Executive Officer of the Authority. There must be at least one ordinary meeting of the Board every four months.
- 3.5.3 An ordinary meeting of the Board will constitute an ordinary meeting of the Authority. The Board shall administer the business of the Authority at the ordinary meeting.
- 3.5.4 For the purposes of this Clause 3.5, the contemporary linking together by telephone, audio-visual or other instantaneous means ('telecommunications meeting') of the Board Members provided that at least a quorum is present, is deemed to constitute a meeting of the Board. Each of the Board Members taking part in the telecommunications meetings, must at all times during the telecommunications meeting be able to hear and be heard by each of the other Board Members present.

At the commencement of the meeting, each Board Member must announce his/her presence to all other Board Members taking part in the meeting. A Board Member must not leave a telecommunications meeting by disconnecting his/her telephone, audio-visual or other communication equipment, unless that Board Member has previously notified the Chairperson of the meeting.

- 3.5.5 A proposed resolution in writing and given to all Board Members in accordance with proceedings determined by the Board will be a valid decision of the Board where a majority of Board Members vote in favour of the resolution by signing and returning the resolution to the Executive Officer or otherwise giving written notice of their consent and setting out the terms of the resolution to the Executive Officer. The resolution shall thereupon be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held.
- 3.5.6 Any Constituent Council, the Chairperson or three (3) Board Members may by delivering a written request to the Executive Officer require a special meeting of the Board to be held. The written request must be accompanied by the agenda for the special meeting and if an agenda is not provided the request has no effect.
- 3.5.7 On receipt of a written request pursuant to Clause 3.5.6, the Executive Officer must send a notice to all Board Members at least twenty four (24) hours prior to the commencement of the special meeting.
- 3.5.8 Subject to Clause 3.5.9, notice of an ordinary meeting of the Board will be given by the Executive Officer to each Board Member not less than three (3) clear days prior to the holding of the meeting.
- 3.5.9 The Executive Officer must, in relation to a notice of meeting of the Board for the purpose of considering the making of a recommendation to the Constituent Councils to wind up the Authority, provide the notice to all Board Members at least four (4) months before the date of the meeting.
- 3.5.10 Notice of meeting of the Board must:
- 3.5.10.1 be in writing;
 - 3.5.10.2 set out the date, time and place of the meeting;
 - 3.5.10.3 be signed by the Executive Officer; and
 - 3.5.10.4 contain, or be accompanied by, the agenda for the meeting.
- 3.5.11 The Executive Officer must, insofar as is reasonably practicable:
- 3.5.11.1 ensure that items on an agenda given to Board Members are described with reasonable particularity and accuracy; and
 - 3.5.11.2 supply to each Board Member at the time that notice of a meeting is given a copy of any documents or reports that are to be considered at the meeting (so far as this is practicable).
- 3.5.12 Notice of a meeting of the Board may be given to a Board Member:
- 3.5.12.1 personally;
 - 3.5.12.2 by delivering the notice (whether by post or otherwise) to the usual place of residence of the Board Member or to another place authorised in writing by the Board Member;

- 3.5.12.3 in the case of a Constituent Council Board Member by leaving the notice for the Board Member at an appropriate place at the principal office of the Constituent Council which appointed the Board Member; or
- 3.5.12.4 by a means authorised in writing by the Board Member as being an available means of giving notice.
- 3.5.13 A notice that is not given in accordance with Clause 3.5.12 is taken to have been validly given if the Executive Officer considers it impracticable to give the notice in accordance with that Clause and takes action the Executive Officer considers reasonably practicable in the circumstances to bring the notice to the attention of the Board Member.
- 3.5.14 The Executive Officer must maintain a record of all notices of Board meetings given under clause 3.5.10 to Board Members.
- 3.5.15 Subject only to the special provisions of this Clause, a meeting of the Board must not commence until a quorum of Board Members is present and a meeting must not continue if there is not a quorum of Board Members present. A quorum of Board Members will comprise one half of the Board Members in office, ignoring any fraction, plus one.
- 3.5.16 Meetings of the Board must be open to the public unless the Board resolves to consider a matter in confidence in accordance with the provisions of Chapter 6, Part 3 of the Act in which case the provisions of Chapter 6 Part 3 of the Act will apply as though the Authority were a council. Where an order is made under this Clause 3.5.16, a note must be made in the minutes of the meeting of the making of the order and of the grounds on which it was made.
- 3.5.17 Where the Board has considered any information or matter in confidence under Clause 3.5.16 it may subsequently resolve to keep the minutes and/or documents considered during that part of the meeting confidential in accordance with Section 91 of the Act.
- 3.5.18 All matters for decision at a meeting of the Board will be decided by a simple majority of the Board Members present and entitled to vote on the matter. All Board Members including the Chairperson present and entitled to vote on a matter are required to vote. All Board Members including the Chairperson are entitled to a deliberative vote and if the votes are equal the Chairperson or other Board Member presiding at the meeting does not have a second or casting vote.
- 3.5.19 All Board Members must at all times keep confidential all documents and any information provided to them for their consideration prior to a meeting of the Board.
- 3.5.20 The Executive Officer must cause minutes to be kept of the proceedings at every meeting of the Board and ensure that the minutes are presented to the next ordinary meeting of the Board for confirmation and adoption. Where the Executive Officer is absent or excluded from attendance at a meeting of the Board pursuant to Clause 3.5.16, the person presiding at the meeting shall cause the minutes to be kept.
- 3.5.21 The Executive Officer must, within five (5) days after a meeting of the Board provide to each Board Member a copy of the minutes of the meeting of the Board.
- 3.6 Propriety of Members of the Board**
- 3.6.1 All provisions governing the propriety and duties of elected members of a council and public officers under the Act and other South Australian legislation apply to Board Members.
- 3.6.2 Board Members will not be required to submit returns under Chapter 5, Part 4, Division 2 of the Act.

- 3.6.3 The provisions regarding conflict of interest described in the Act apply to all Board Members as if they were elected members of a council and the Authority were a council.
- 3.6.4 A Board Member must at all times act in accordance with their duties of confidence and confidentiality and individual fiduciary duties, including honesty and the exercise of reasonable care and diligence with respect to the performance and discharge of official functions and duties as required by Part 4, Division 1, Chapter 5 of the Act and Clause 23 of Schedule 2, Part 2 of the Act.

3.7 Committees

- 3.7.1 The Authority may from time to time as it sees fit establish committees for the purpose of assisting it in the performance of its functions. A committee established by the Authority under this provision may be comprised of such persons that the Authority determines.
- 3.7.2 The Authority will determine the procedure, terms of reference, reporting requirements and other matters applicable to a committee at the time of establishing the committee.

3.8 Annual General Meeting

- 3.8.1 An Annual General Meeting of the Board must be held on or before 31 October in each year at a place and time determined by a resolution of the Board.

3.8.2 The business to be conducted at the Annual General Meeting shall be of a general nature aimed at reviewing the progress and direction of the Authority and shall include the following:

3.8.2.1 Chairperson's report;

3.8.2.2 receiving the audited financial statements for the preceding financial year;

3.8.2.3 consideration of any other matters or business as determined by the Board.

4 BUDGETS AND CONTRIBUTIONS

4.1 Annual Budget

- 4.1.1 The Authority must by March 31 of each year prepare and submit to the Constituent Councils a draft annual budget for the ensuing financial year in accordance with the Act and the Local Government (Financial Management) Regulations 2011 for approval by the Constituent Councils.
- 4.1.2 The Authority must adopt after 31 May and before 30 June of each year an annual budget in accordance with the Act and the Local Government (Financial Management) Regulations 2011 for the ensuing financial year as approved by the Constituent Councils pursuant to Clause 4.1.1.
- 4.1.3 The Authority must provide a copy of its annual budget to each Constituent Council within five (5) business days after the annual budget is adopted by the Authority.
- 4.1.4 The Authority must reconsider its annual budget at least three times at intervals of not less than three months between 30 September and 31 May (inclusive) in the relevant financial year and may with the unanimous approval of the Constituent Councils amend its annual budget for a financial year at any time before the year ends.
- (See Clause 25, Part 2, Schedule 2 to the Act for the contents of the budget)
- 4.1.5 Reports summarising the financial position and performance of the Authority against the annual budget shall be prepared and presented to the Board at each ordinary

meeting of the Board and copies provided to the Chief Executive Officer of each Constituent Council.

4.2 Financial Contributions

The Authority will determine annually and will include within the annual budget provided to the Constituent Councils the funds required by the Authority to enable the Authority to operate and to fulfil its objects and purposes.

4.3 Administration Contributions

4.3.1 The Authority will determine annually and will include within the budget provided to the Constituent Councils for approval the administrative funds required by the Authority to enable it to function ('Administration Costs').

4.3.2 Each of the Constituent Councils will contribute monies equally to the Administration Costs required by the Authority as set out in the adopted budget of the Authority.

4.3.3 The Administration Costs will be paid by each Constituent Council in advance by monthly instalments.

4.3.4 The Authority may during any Financial Year for purposes of genuine emergency or hardship determine that additional contributions to the Administration Costs are required for the continuing function of the Authority.

4.3.5 Any additional contributions to the Administration Costs will be paid in equal proportions by each Constituent Council in the manner and at the time determined by the Board.

4.4 Operating Contributions

4.4.1 The Authority may fix fees, charges, imposts or levies payable for services provided by the Authority, including the collection, treatment, disposal and recycling of waste.

4.4.2 The Board will determine annually and include in the adopted budget the Operating Costs. The Constituent Councils shall contribute monies towards the Operating Costs on a 'user pays' basis as agreed between the Authority and the Constituent Councils as part of the annual budget process. The Authority will adopt appropriate procedures and policies to ensure transparency and fairness among the Constituent Councils in the setting of fees, charges, imposts or levies payable for services provided by the Authority.

4.4.3 The Board may during any year for purposes of genuine emergency or hardship determine that additional contributions to the Operating Costs are required for the continuing function of the Authority. The Constituent Councils shall contribute additional monies to the additional Operating Costs in such amounts as may reasonably be determined by the Authority.

4.4.4 Any contributions to Operating Costs shall be made by each Constituent Council within sixty (60) days of notice in writing being given by the Authority to the Chief Executive Officer of the Constituent Council, provided that if the Board so decides such payments must be made in advance by monthly instalments.

4.5 Long Term Financial Plan and Treasury Policy

4.5.1 The Authority must prepare and submit to the Constituent Councils for their approval a Long Term Financial Plan covering a period of at least ten (10) years.

4.5.2 The Authority must prepare and submit to the Constituent Councils for their approval a Treasury Policy.

5 MANAGEMENT

5.1 Strategic Plans

The Authority must:

- 5.1.1 subject to Clause 5.1.3 prepare and adopt a Strategic Plan covering a ten (10) year period for the conduct of its business which will identify its objectives over the period of the Strategic Plan and the principal activities that the Authority intends to undertake to achieve its objectives;
- 5.1.2 in consultation with the Constituent Councils, review the Strategic Plan at any time but must undertake a comprehensive review at least once every four years; and
- 5.1.3 submit the Strategic Plan to the Constituent Councils for their approval.

5.2 Business Plans

The Authority must:

- 5.2.1 subject to Clause 5.2.3 prepare and adopt a Business Plan covering the period of three (3) years in accordance with the Act linking the core business activities of the Authority to strategic, operational and organisational requirements with supporting financial projections setting out the estimates of revenue and expenditure as necessary for the period of the Business Plan;
- 5.2.2 in consultation with the Constituent Councils review the Business Plan annually; and
- 5.2.3 submit the Business Plan to the Constituent Councils for their unanimous approval prior to being adopted by the Authority.

(See Clause 24, Part 6, Schedule 2 of the Act for the contents of the Business Plan)

5.3 Reporting

- 5.3.1 The Authority must submit to the Constituent Councils, by 30 September in each year a report on the work and operations of the Authority for the preceding financial year detailing achievement of the aims and objectives of its Business Plan and incorporating the audited financial statements of the Authority for the relevant financial year and any other information or reports as required by the Constituent Councils or prescribed by the Act.

6 ADMINISTRATIVE MATTERS

6.1 Executive Officer and Staff

- 6.1.1 The Authority must appoint an Executive Officer on such terms and conditions as determined by the Board. The Executive Officer will be appointed in accordance with Section 98 of the Act as though the Authority were a council and the Executive Officer a Chief Executive Officer of a council.
- 6.1.2 The Executive Officer is responsible for the implementation of decisions of the Authority in a timely and efficient manner for the efficient and effective management of the affairs of the Authority.
- 6.1.3 The Authority shall delegate responsibility for the day-to-day management of the Authority to the Executive Officer, who will ensure that sound business and human resource management practices are applied in the efficient and effective management of the operations of the Authority.
- 6.1.4 The functions of the Executive Officer will be specified in the terms and conditions of employment and will include but are not limited to:

- 6.1.4.1 carrying out such duties as the Board may direct;

- 6.1.4.2 attending to all meetings of the Board unless excluded by resolution of the Board;
- 6.1.4.3 providing information to assist the Board to assess the Authority's performance against its Strategic and Business Plans;
- 6.1.4.4 appointing, managing, suspending and dismissing all other employees of the Authority including with the concurrence of the Board, a Deputy Executive Officer;
- 6.1.4.5 determining the conditions of employment of all other employees of the Authority, within budgetary constraints set by the Board;
- 6.1.4.6 providing advice and reports to the Board on the exercise and performance of its powers and functions under this Charter or any Act;
- 6.1.4.7 ensuring that the assets and resources of the Authority are properly managed and maintained;
- 6.1.4.8 ensuring that records required under the Act or any other legislation are properly kept and maintained;
- 6.1.4.9 exercising, performing or discharging other powers, functions or duties conferred on the Executive Officer by or under the Act or any other legislation or this Charter, and performing other functions lawfully directed by the Board;
- 6.1.4.10 achieving financial and other outcomes in accordance with adopted plans and budgets of the Authority; and
- 6.1.4.11 efficiently and effectively managing the operations and affairs of the Authority.
- 6.1.5 The Executive Officer shall comply with Section 107 of the Act as though the Authority were a council and the Executive Officer were a Chief Executive Officer of a council.
- 6.1.6 In the absence of the Executive Officer for any period exceeding three (3) weeks the Deputy Executive Officer will act in the office of the Executive Officer and in the absence of the Executive Officer and Deputy Executive Officer, the Executive Officer may after consultation with the Authority appoint a suitable person to act in the position of Executive Officer for the period of absence of the Executive Officer or Deputy Executive Officer.
- 6.1.7 The Executive Officer may delegate or sub-delegate to an employee of the Authority or a committee comprising employees of the Authority, any power or function vested in or delegated to the Executive Officer. Such delegation or sub-delegation may be subject to any conditions or limitations as determined by the Executive Officer.
- 6.1.8 Where a power or function is delegated to an employee, the employee is responsible to the Executive Officer for the efficient and effective exercise or performance of that power or function.
- 6.1.9 A written record of all delegations and sub-delegations must be kept by the Executive Officer at all times.

6.2 Auditor and Other Professionals

- 6.2.1 The Authority must appoint an Auditor in accordance with the Local Government (Financial Management) Regulations 2011 on such terms and conditions as determined by the Authority.

- 6.2.2 The audit of financial statements together with the accompanying report from the Auditor shall be submitted to both the Board and the Constituent Councils.
- 6.2.3 The Authority may engage professional consultants and it may authorise the Executive Officer to so engage professional consultants to provide services to the Authority to ensure the proper execution of its decisions, the efficient and effective management of the operations and affairs of the Authority, and for giving effect to the general management objectives and principles of personnel management prescribed by the Charter.
- 6.2.4 The Authority will establish an audit committee as required by Clause 30, Schedule 2 of the Act unless exempted in accordance with Clause 30(2) of the Act.

6.3 Common Seal

- 6.3.1 The Authority shall have a common seal which may be affixed to documents and must be attested by the signatures of two Board Members.
- 6.3.2 The common seal must not be affixed to a document except in pursuance of a decision of the Board. The Executive Officer will maintain a register which records the resolutions of the Board giving authority to affix the common seal and details of the documents to which the common seal has been affixed with the particulars of the person who attested the fixing of the seal and the date thereof.

7 FINANCE

7.1 Financial Management

- 7.1.1 The Authority shall keep proper books of accounts in accordance with the requirements of the Local Government (Financial Management) Regulations 2011.
- 7.1.2 The Authority's books of accounts must be available for inspection by any Board Member or authorised representative of any Constituent Council at any reasonable time.

7.2 Banking

- 7.2.1 The Authority must establish and maintain a bank account(s) in such banking facilities and at a bank to be determined by the Board.
- 7.2.2 The Executive Officer must act prudently in the handling of all financial transactions for the Authority and must provide quarterly financial and corporate reports to the Board and the Constituent Councils.

8 MISCELLANEOUS MATTERS

8.1 Alteration to Charter

- 8.1.1 Subject to the Act, a Constituent Council, a Board Member, or the Executive Officer may be the giving of not less than two (2) month's notice of the proposed changes to all Constituent Councils and the Board request that this Charter be amended.
- 8.1.2 Before the Constituent Councils vote on a proposal to amend the Charter they must take into account any recommendations of the Board.
- 8.1.3 This Charter may only be amended with the unanimous agreement of the Constituent Councils expressed by resolution.

8.2 Withdrawal of a Constituent Council

- 8.2.1 A Constituent Council may with the Minister's consent withdraw from the Authority by giving not less than six (6) months written notice of its intention to do so, subject to Clause 8.2.2, to the Board and to the other Constituent Councils.

- 8.2.2 In any event, a withdrawal will not become effective until 30 June following the expiry of the six (6) months written notice period referred to in Clause 8.2.1. Until a withdrawal becomes effective the Constituent Council proposing withdrawal from the Authority will remain liable for all financial contributions up to the Date of Withdrawal, and through its Board Members and Deputy Board Members retains responsibility for ensuring the continued proper conduct of the affairs of the Authority during that time.
- 8.2.3 Upon withdrawal taking effect and subject to Clause 8.2.4 a Constituent Council will be entitled at the discretion of the Board to be paid not more than 80% of the Constituent Council's equity interest in the Net Assets of the Authority as at the Date of Withdrawal. The withdrawing Constituent Council will be entitled to receive that sum by quarterly instalments to be paid over a period of two (2) years with the first instalment being due on the 1st day of January following the Date of Withdrawal.
- 8.2.4 A Constituent Council withdrawing from the Authority will not be entitled to be paid any amount in respect of any reserve fund established under Clause 1.8.1.19.
- 8.2.5 The withdrawal of any Constituent Council does not extinguish the liability of that Constituent Council for the payment of its contribution towards any actual or contingent deficiency in the Net Assets of the Authority at the end of the Financial Year in which such withdrawal occurs.
- 8.2.6 The withdrawal of any Constituent Council does not extinguish the liability of that Constituent Council to contribute to any loss or liability incurred by the Authority at any time before or after the Date of Withdrawal in respect of any act or omission by the Authority prior to such date.
- 8.2.7 Any payment to be made by the Withdrawing Council to the Authority pursuant to Clause 8.2.2 must be made within twelve months of the Date of Withdrawal.

8.3 **Addition of New Member**

Subject to the provisions of the Act and in particular to obtaining the Minister's approval a council may become a constituent council by agreement of all the Constituent Councils and this Charter may be amended to provide for the admission of a new constituent council(s).

8.4 **Equitable Interest**

8.4.1 The equitable interest of the Constituent Councils in the Authority is agreed as follows:

- (i) Victor Harbor Council 35%
- (ii) Alexandrina Council 35%
- (iii) Kangaroo Island Council 15%
- (iv) Yankalilla Council 15%

8.4.2 The equitable interest of the Constituent Councils in the Authority as set out in Clause 8.4.1 may be varied by agreement of the Constituent Councils.

8.5 **Winding Up**

8.5.1 The Authority may be wound up in accordance with the Act.

8.5.2 In the event of there being Net Assets upon dissolution and after realisation of all assets and meeting all liabilities, the Net Assets will be distributed to the Constituent Councils at that time on the basis of their equitable interest in the Authority at the date of dissolution.

8.5.3 In the event of there being any unfunded liabilities of the Authority at the time of a winding up or otherwise the Constituent Councils acting in accordance with their obligations under the Act will be responsible to meet those liabilities on the basis of their equitable interest in the Authority at the date of dissolution.

8.6 Insurance and Superannuation Requirements

- 8.6.1 The Authority shall register with the Local Government Mutual Liability Scheme and the Local Government Workers Compensation Scheme and comply with the Rules of those Schemes.
- 8.6.2 The Authority shall advise the Local Government Risk Management Services of its insurance requirements relating to the Local Government Special Risks including buildings, structures, vehicles and equipment under the management, care and control of the Authority.
- 8.6.3 The Authority shall register with the Local Government Superannuation Scheme and comply with the Rules of that Scheme (where applicable).

8.7 Non-Derogation and Direction by Constituent Councils

- 8.7.1 The establishment of the Authority does not derogate from the power of any of the Constituent Councils to act independently in relation to a matter within the jurisdiction of the Authority.
- 8.7.2 Provided that the Constituent Councils have all first agreed to the action to be taken, the Constituent Councils may direct and control the Authority.
- 8.7.3 For the purpose of Clause 8.7.2, any direction given by the Constituent Councils must be given in writing to the Executive Officer of the Authority.
- 8.7.4 Where the Authority is required pursuant to the Act or this Charter to obtain the approval of one or more of the Constituent Councils that approval must only be granted and must be evidenced by a resolution of the Constituent Council granting such approval.
- 8.7.5 Unless otherwise stated in this Charter where the Authority is required to obtain the consent or approval of the Constituent Councils this means the unanimous consent or approval of all the Constituent Councils.

8.8 Review of Charter

- 8.8.1 This Charter will be reviewed by the Constituent Councils acting in concurrence at least once in every four years.
- 8.8.2 This Charter may be amended with the unanimous approval of all the Constituent Councils.
- 8.8.3 The Executive Officer must ensure that the amended Charter is published in the Gazette and a copy of the amended Charter provided to the Minister.
- 8.8.4 Before the Constituent Councils vote on the proposal to alter this Charter they must take into account any recommendation of the Board.

8.9 Disputes Between Constituent Councils

- 8.9.1 *General*
 - 8.9.1.1 Where a dispute arises between the Constituent Councils which relates to this Charter or the Authority, ('the Dispute') the Constituent Councils will use their best endeavours to resolve the Dispute and to act at all times in good faith.
 - 8.9.1.2 If the Constituent Councils are unable to resolve the Dispute within seven (7) days, any Constituent Council may notify, in writing, the other Constituent Councils of the Dispute giving details of the Dispute ('the Notice').

8.9.1.3 Within seven (7) days of the Notice the Constituent Councils must refer the Dispute to the Chief Executive Officer of the Constituent Councils.

8.9.1.4 The Chief Executive Officer of the Constituent Councils must meet to resolve the Dispute within seven (7) days of the Dispute being referred to them in accordance with Clause 8.9.1.3, or, if the Dispute is not referred to them within fourteen (14) days of the Notice and must be sufficiently authorised to resolve the Dispute without detailed reference to any other person.

8.9.2 *Mediation*

8.9.2.1 A Constituent Council is not entitled to initiate arbitration or court proceedings (except proceedings seeking urgent equitable or injunctive relief) in respect of a Dispute unless it has complied with this Clause 8.9.2.

8.9.2.2 If the Constituent Councils or the Chief Executive Officers of the Constituent Councils are unable to resolve the Dispute the Constituent Councils must refer the Dispute for mediation in accordance with the Mediation Rules of the Law Society of South Australia Incorporated, within seven (7) days of a written request by any Constituent Council to the other Constituent Councils that the Dispute be referred for mediation, to:

(a) a mediator agreed by the Constituent Councils; or

(b) if the Constituent Councils are unable to agree on a mediator within five (5) days after the initial period, a mediator nominated by the then President of the Law Society or the President's successor.

8.9.2.3 In the event the Constituent Councils fail to refer the matter for mediation in accordance with Clause 8.9.2.2, one or more Constituent Councils may refer the matter for mediation in accordance with the Mediation Rules of the Law Society of South Australia Incorporated to a mediator nominated by the then President of the Law Society or the President's successor.

8.9.2.4 The role of any mediator is to assist in negotiating a resolution of the dispute. A mediator may not make a decision that is binding on a Constituent Council unless that Constituent Council has so agreed in writing.

8.9.2.5 If mediation does not resolve the Dispute within twenty eight (28) days of referral of the Dispute for mediation or such longer period agreed unanimously by the Constituent Councils as evidenced by resolutions of each of the Constituent Councils, any Constituent Council may then refer the Dispute to Arbitration in accordance with Clause 8.9.3.

8.9.3 *Arbitration*

8.9.3.1 An arbitrator may be appointed by agreement between the Constituent Councils.

8.9.3.2 Failing agreement as to an arbitrator the then Chairperson of the South Australian Chapter of the Institute of Arbitrators or his successor shall nominate an Arbitrator pursuant to these conditions.

8.9.3.3 A submission to arbitration shall be deemed to be a submission to arbitration within the meaning of the Commercial Arbitration Act 1985 (South Australia).

8.9.3.4 Upon serving a notice of arbitration the Constituent Councils serving the notice shall lodge with the arbitrator a deposit by way of security for the cost of the arbitration proceedings.

8.9.3.5 Upon each submission to arbitration, the costs of and incidental to the submission and award shall be at the discretion of the arbitrator who may in his or her sole discretion determine the amount of costs, how costs are to be proportioned and by whom they are to be paid.

8.9.4 Whenever reasonably possible performance of the obligations of the Constituent Councils pursuant to this Charter shall continue during the mediation or arbitration proceedings and no payment by either Constituent Council shall be withheld on account of the mediation and arbitration proceedings.

8.10 **Circumstances Not Provided For**

8.10.1 If any circumstances arise about which this Charter is silent, incapable of taking effect or being implemented according to its strict provisions, the Chairperson may decide the action to be taken to ensure achievement of the objects and purposes of the Authority and its effective administration..

8.10.2 The Board shall report any such decision to the Constituent Councils.