



11 November 2024

Mr Sam Green
Chief Executive Officer
City of Playford
12 Bishopstone Road
Davoren Park SA 5113
E: sgreen@playford.sa.gov.au

Dear Mr Green,

RE: Northern Adelaide Waste Management Authority (NAWMA) Charter

NAWMA would like to thank City of Playford for your endorsement to amend the NAWMA Charter and further advise that this process is now complete.

A copy of the Charter was presented to the Hon. Joe Szakacs MP, Minister for Local Government on 25 October 2024. Additionally, and in accordance with Schedule 2, Sections 19(b) and 19(c) of the Local Government Act 1999, a copy of the Charter can be located on the 'About NAWMA' page of the NAWMA website; www.nawma.sa.gov.au.

A Notice of Amendment of Charter has been gazetted with the South Australian Government Gazette and published on 7 November 2024. Please see an extract from the Gazette below providing a copy of this:

No. 74 p. 4182 THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE 7 November 2024

PUBLIC NOTICES

NORTHERN ADELAIDE WASTE MANAGEMENT AUTHORITY
LOCAL GOVERNMENT ACT 1999

Amendment of Charter for Northern Adelaide Waste Management Authority (NAWMA)

The NAWMA Constituent Councils of City of Salisbury (on 26 August 2024), City of Playford (on 27 August 2024) and Town of Gawler (on 27 August 2024) have each agreed to the amended Charter for NAWMA. Consequently and in accordance with Clause 19(5) of Schedule 2 to the *Local Government Act 1999*, a copy of the amended Charter has been furnished to the Minister for Local Government and a copy is published on the NAWMA website and available for public inspection at www.nawma.sa.gov.au/about-nawma/.


Date: 31 October 2024

GRAHAM DOOLEY
NAWMA Independent Chairperson

A copy of the finalised NAWMA Charter is attached for your reference.

Yours faithfully,


Toby Terlet
Chief Executive Officer


Graham Dooley
Independent Chairperson

Enclosed: Finalised copy of NAWMA Charter (Gazetted Thursday 7 November 2024)

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LOCAL GOVERNMENT ACT 1999
NORTHERN ADELAIDE WASTE MANAGEMENT AUTHORITY
CHARTER

The Constituent Councils:

- City of Playford;
- Town of Gawler; and
- City of Salisbury

have established the Northern Adelaide Waste Management Authority (the **Authority**).

The Authority is a regional subsidiary established pursuant to section 43 and Parts 2 and 3 of Schedule 2 to the *Local Government Act 1999* (the **Act**) for the purposes of providing and exploring options to deliver waste management and recycling services to the Constituent Councils (and beyond in the circumstances provided for in this Charter) in accordance with the objects, functions and powers conferred by this Charter.

PART 1 - GENERAL

1. DICTIONARY

1.1 In this Charter:

Act means the *Local Government Act 1999*;

Annual Plan means an Annual Plan that conforms to Part 3 of this Charter and most recently adopted by the Board;

Authority means the Northern Adelaide Waste Management Authority;

Board means the Board of Management of the Authority;

Board Member means at any time a member of the Board;

Chief Executive Officer means the Chief Executive Officer (**CEO**) of the Authority and includes a person acting in that office;

Constituent Council means at any time a Constituent Council of the Authority, which, at the date of publication of the notice of amendment of the Charter in the Gazette means the City of Playford, the Town of Gawler and the City of Salisbury;

Deputy Board Member means a deputy for a Board Member, who may act in place of and will have the same powers as, that Board Member, if the Board Member is unable for any reason to be present at a meeting of the Board;

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

Independent Board Member (which includes the Chair) means a Board Member of the Authority who is not a member of a Constituent Council;

Majority means a majority of the Board Members present at a Board Meeting and entitled to vote, or a majority decision of the whole number of the Constituent Councils as the case may be;

Schedule of Constituent Councils Interest in Net Assets is the document that reflects the proportionate contribution each Constituent Council has made to the growth of the net assets of the Authority having regard to the proportionate contribution to subscriptions. The Schedule when updated by the Board at the end of each financial year will reflect the proportionate contribution of each Constituent Council since the commencement of the Authority and once accepted by each Constituent Council will be evidence of the agreed proportion of a Constituent Council's interests in the net assets as at 30 June in that year;

Special Decision is defined at clause 10.9 of this Charter; and

Unanimous Decision means a decision in the same terms made by the Constituent Councils (at any one time) voting in the same or substantially the same manner.

2. INTERPRETATION

- 2.1 In this Charter a reference to the approval, consent or agreement of the Constituent Councils requires, unless specified otherwise in this Charter, a Unanimous Decision.
- 2.2 Despite any other provision in this Charter:
 - 2.2.1 the singular includes the plural and vice versa;
 - 2.2.2 words importing a gender include other genders;
 - 2.2.3 words importing natural persons include corporations;
 - 2.2.4 reference to a section(s) is to a section of the Act and includes any section that substantially replaces that section and deals with the same matter; and
 - 2.2.5 headings are for reference and do not affect the construction of this Charter.

3. ABOUT THIS CHARTER

- 3.1 This Charter is the constitution of the Authority.
- 3.2 This Charter binds the Authority and each Constituent Council.
- 3.3 Despite any other provision in this Charter:
 - 3.3.1 if the Act prohibits a thing being done, the thing may not be done;
 - 3.3.2 if the Act requires something to be done, the Board recognises this and the CEO is authorised to take the action necessary to achieve it; and
 - 3.3.3 if a provision of this Charter is or becomes inconsistent with the Act, the provision must, to the extent of the inconsistency, be read down or failing that, be considered to be severed from this Charter.

- 3.4 This Charter may not be amended except as agreed by a Unanimous Decision, evidenced by resolution. An amendment is not effective unless and until notice of it is published in the Gazette.
- 3.5 This Charter may be reviewed by the Constituent Councils at any time but must be reviewed as required by the Act.
- 3.6 This Charter must be read in conjunction with Parts 2 and 3 of Schedule 2 to the Act and the Authority shall conduct its affairs in accordance therewith, except as modified by this Charter (where such modification is permitted by Schedule 2 to the Act).

PART 2 – GOVERNANCE

4. THE AUTHORITY

- 4.1 The Authority is a body corporate in the nature of a regional subsidiary established under the Act.
- 4.2 The principal office the Authority is 71 – 75 Woomera Avenue, Edinburgh, or as the Board may determine otherwise.
- 4.3 If the Authority engages in any commercial activity which constitutes a significant business activity of the Authority, it will assess that activity as required and, as necessary, will apply relevant principles of competitive neutrality.

5. PURPOSE AND FUNCTIONS

- 5.1 The Authority is established for the purpose of managing waste, including by receiving, processing and disposing of recyclable and other waste materials collected, primarily, within the areas of the Constituent Councils and has the following functions in this regard:
 - 5.1.1 to operate or obtain services for the collection of waste on behalf of the Constituent Councils and/or other approved councils;
 - 5.1.2 to provide waste management services whether in or (so far as the Act and this Charter allows) outside the area of any of the Constituent Councils, including waste collection, recycling of organic and inorganic materials and disposal of waste;
 - 5.1.3 to undertake management and collection of waste (in accordance with regulatory approvals) and kerbside materials recovery, on behalf of the Constituent Councils (and/or other approved councils) in an environmentally responsible, effective, efficient, economic and competitive manner;
 - 5.1.4 to enter into or engage in any waste related project approved in the Business Plan, or otherwise as resolved by Unanimous Decision;
 - 5.1.5 to research, develop and facilitate activities and/or enterprises, of any waste related nature, where the objective is the beneficial and circular use of waste and other resources;

- 5.1.6 noting that any contract arrangement or other transaction which will incur expenditure by the Authority in excess of \$100, 000 and which is not referred to in an approved budget and the Business Plan requires a Unanimous Decision;
- 5.2 The following functions may be undertaken by the Authority, but only where required or directed by one or more Constituent Councils and charged directly to the Constituent Council(s) so requiring or directing:
- 5.2.1 promotion of the minimisation of waste;
 - 5.2.2 promotion of the recycling of recyclable materials;
 - 5.2.3 undertaking waste community education programs;
 - 5.2.4 in the common interest of the Constituent Council(s), liaising with other councils, the State of South Australia and the Commonwealth of Australia and their respective instrumentalities in relation to waste management;
 - 5.2.5 providing a representative to any statutory board or statutory committee concerned with waste;
 - 5.2.6 making application for grants and other funding from the State of South Australia and the Commonwealth of Australia and their respective instrumentalities for the purposes of the Authority;
 - 5.2.7 keeping the Constituent Councils informed about emerging opportunities, trends or issues in waste management;
 - 5.2.8 undertaking activities which result in a beneficial use of waste, including the investigation and preparation of a Business Plan with respect to alternative methods of disposing of waste;
 - 5.2.9 entering into or engaging in any waste related project where approved in the Business Plan;
 - 5.2.10 conducting all activities in a manner which complies with all regulatory requirements and minimises risks to the Constituent Councils;
 - 5.2.11 performing and/or monitoring the effectiveness and application of funding arrangements agreed by the Constituent Councils for waste management;
 - 5.2.12 being fully self-funding to the extent that this can be achieved; and
 - 5.2.13 providing a forum for discussion and consideration of topics relating to responsibilities to manage waste particularly in the area of the Constituent Councils and/or other approved councils;

6. POWERS

- 6.1 The powers, functions and duties of the Authority are to be exercised in the performance and furtherance of its objects and purposes.
- 6.2 The Authority has the following powers, functions and duties;

- 6.2.1 subject to clause 6.3, to purchase, sell, lease, hire rent or otherwise acquire or dispose of any real property or interests;
- 6.2.2 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 CEO;
- 6.2.3 subject to clause 6.3, to enter into any kind of contract or arrangement;
- 6.2.4 to borrow funds and incur expenditure in accordance with clause 6.3;
- 6.2.5 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 areas of the Constituent Councils for the treatment, recycling and disposal of waste;
- 6.2.6 to raise finance for all purposes relating to the collection, treatment, recycling and disposal of waste;
- 6.2.7 to determine the types of waste which will be collected or received and the method of collection, treatment, recycling and disposal thereof;
- 6.2.8 subject to clause 6.3, to engage in any waste related project and to research, develop and facilitate activities or enterprises, of a waste related nature, the objective of which is to result in a beneficial and circular use of waste and other resources;
- 6.2.9 subject to clause 6.3, 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;
- 6.2.10 to employ, engage, determine the conditions of employment / engagement, remunerate, remove, suspend or dismiss / terminate the CEO of the Authority;
- 6.2.11 to open and operate bank accounts;
- 6.2.12 to make submissions for and accept grants, subsidies and contributions to further its objects and purposes;
- 6.2.13 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;
- 6.2.14 to charge the Constituent Councils fees for services that (as a minimum) cover the cost to the Authority of providing the services;

- 6.2.15 to accumulate surplus funds for investment purposes;
- 6.2.16 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 18.12;
- 6.2.17 to invest any funds of the Authority in any investment authorised by 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 managing the affairs of other persons; and
 - (b) investments that are speculative or hazardous in nature are avoided;
- 6.2.18 to employ, engage or retain professional advisers to the Authority;
- 6.2.19 to establish reserve fund(s) clearly identified for the upkeep and/or replacement of fixed assets of the Authority or for meeting any deferred liability of the Authority;

Borrowings and Expenditure

- 6.3 The Authority has the power to incur expenditure:
 - 6.3.1 in accordance with a budget adopted by the Authority and approved by the Constituent Councils as required by the Act and/or this Charter; or
 - 6.3.2 with the prior approval of all of the Constituent Councils; or
 - 6.3.3 in accordance with the Act, and
 - 6.3.4 in respect of expenditure not contained in the budget adopted by the Authority and approved by the Constituent Councils as required by the Act and/or this Charter, for a purpose of genuine emergency or hardship;
- 6.4 Unless otherwise approved by all of the Constituent Councils, all borrowings by the Authority;
 - 6.4.1 must be from the Local Government Financial Authority or a registered bank or financial institution within Australia; and
 - 6.4.2 must be drawn down within a period of 24 months from the date of the approval; and
 - 6.4.3 must not be used for the purpose of funding operational costs.

7. ACTING OUTSIDE AREAS OF CONSTITUENT COUNCILS

For the avoidance of doubt, the Authority may undertake its activities outside the areas of the Constituent Councils but only where such activities have been approved by the Constituent Councils as being necessary, expedient and/or beneficial to the performance by the Authority of its functions and the activity is

included in the Business Plan of the Authority.

8. POWER OF DELEGATION

- 8.1 The Authority may delegate a power or function conferred on it in accordance with clause 36 of Part 3 of Schedule 2 of the Act.
- 8.2 The Authority may not delegate the following powers or functions:
 - 8.2.1 to impose charges;
 - 8.2.2 to enter into transactions in excess of \$100,000 unless authorised in an Annual Plan;
 - 8.2.3 to borrow money or obtain any other form of financial accommodation unless authorised in an Annual Plan;
 - 8.2.4 to approve expenditure of money on the works, services or operations of the Authority not set out in a Budget approved by the Authority or, where required by this Charter, approved by the Constituent Councils;
 - 8.2.5 to approve the reimbursement of expenses or payment of allowances to members of the Board;
 - 8.2.6 to adopt or revise a Budget;
 - 8.2.7 to adopt or revise an Annual Plan;
 - 8.2.8 to adopt or revise a Business Plan (or any component thereof);
 - 8.2.9 to adopt or revise financial estimates and reports; and/or
 - 8.2.10 to make any application or recommendation to the Minister.

9. GUIDING PRINCIPLES

The Authority must, in the performance of its functions and in all of its plans, policies and activities, give due weight to economic, social and environmental considerations.

10. CONSTITUENT COUNCILS

Incoming Constituent Councils

- 10.1 A council may, subject to Ministerial approval, become a Constituent Council if:
 - 10.1.1 it makes written application to become a Constituent Council and agrees to be bound by this Charter; and
 - 10.1.2 subject to the Constituent Councils seeking and considering the views of the Board on the written application received; and
 - 10.1.3 by Unanimous Decision, evidenced by resolution, the Constituent Councils approve the application and agree to revise the proportionate contribution under the Schedule of Constituent Councils Interest in Net Assets
- 10.2 The incoming Constituent Council agrees to:

- 10.2.1 pay any joining fee or other payment as may be required by the Board; and
- 10.2.2 be jointly and severally liable with the other Constituent Councils for the debts and the liabilities of the Authority whether incurred before or after the date it becomes a Constituent Council or as otherwise agreed; and
- 10.2.3 be bound by any decision made or step taken by the Board in the affairs of the Authority before it became a Constituent Council.

Outgoing Constituent Councils

- 10.3 A Constituent Council may resign its membership of the Authority if and only if:
 - 10.3.1 it gives at least six (6) months written notice of resignation to each Constituent Council, which notice is effective on 30 June next after the expiry of that period; and
 - 10.3.2 the Board approves the resignation by Majority; and
 - 10.3.3 the Minister approves.
- 10.4 A former Constituent Council remains liable to contribute to the debts and liabilities of the Authority incurred while it was a Constituent Council including by contributing to the depreciated value of any asset acquired during that time and for a share of any future losses from any contract(s) entered into whilst it was a Constituent Council until the conclusion of the contract(s) in question.
- 10.5 A former Constituent Council:
 - 10.5.1 must indemnify the remaining Constituent Councils for all liabilities of the Authority caused or arising prior to its withdrawal taking effect; and
 - 10.5.2 the indemnity is in the same proportion as the withdrawing Council's interest in the Schedule of Constituent Councils Interest in Net Assets at the date the withdrawal takes effect; and
 - 10.5.3 upon withdrawal taking effect, will be entitled to be paid not more than 80% of its interest in the Schedule of Constituent Councils Interest in Net Assets. The withdrawing Constituent Council will be entitled to receive that sum by equal quarterly instalments to be paid over a period of two (2) years with the first instalment being due on 1 January following the date of the withdrawal taking effect.

No Transfer of Membership

- 10.6 Membership of the Authority is personal to the Constituent Council and is not transferable.

Evidence of Direction by Constituent Councils

- 10.7 To be effective, a direction of the Constituent Councils for the purposes

of clause 26 of Part 2 of Schedule 2 to the Act, must be evidenced by a minute signed by the Chief Executive Officer of each of the Constituent Councils as a true and accurate record of the applicable decision made by the delegate, or at a Council meeting.

Special Decisions of The Authority

- 10.8 Neither the Authority, nor any person on its behalf, may give effect to a Special Decision unless there is a Unanimous Decision of the Constituent Councils, evidenced by resolution, in favour of the Special Decision.
- 10.9 For these purposes, a Special Decision means any of the following:
- 10.9.1 to any extent not provided for in a Business Plan or Annual Plan and Budget:
- (i) a call on Constituent Councils to contribute funds;
 - (ii) to grant or to vary a guarantee/indemnity of the obligations of another person;
 - (iii) obtaining credit except in the ordinary course of the activities of the Authority;
 - (iv) acquiring (by purchase or finance lease) a capital asset; or
 - (v) disposal of a capital asset except at the end of its effective life.
- 10.10 The Authority must promptly give effect to a Special Decision made in accordance with this clause.

11. BOARD OF MANAGEMENT

The Authority is governed by a Board of Management which is responsible for managing the business and other affairs of the Authority and ensuring that the Authority acts in accordance with the Act, this Charter and any delegations to it.

Functions of The Board

- 11.1 The functions of the Board are to:
- 11.1.1 formulate plans and strategies aimed at improving the business of the Authority;
 - 11.1.2 provide professional input and policy direction to the Authority;
 - 11.1.3 monitor, oversee and measure the performance of the CEO;
 - 11.1.4 assist in the development of the Business Plan and Strategic Plans, including Asset Management Plan and Long-Term Financial Plan;
 - 11.1.5 exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of other persons; and
 - 11.1.6 ensure that the Constituent Councils are advised, as soon as practicable, of any material development that affects the financial

or operating capacity of the Authority and/or gives rise to any significant financial risk to the Constituent Councils

Board Policies and Codes

- 11.2 The Board must prepare, adopt, ensure compliance with and thereafter keep under review policies on:
- 11.2.1 procedures for meetings of the Board;
 - 11.2.2 contracts and tenders in a manner that is consistent with section 49 of the Act;
 - 11.2.3 public consultation/engagement as would conform to section 50 of the Act;
 - 11.2.4 a Code of Conduct to be observed by Board Members;
 - 11.2.5 governance including as concerns:
 - (i) the operation of any financial account;
 - (ii) human resource management;
 - (iii) improper assistance to a prospective contract party;
 - (iv) unsolicited bids;
 - (v) improper offering of inducements to Board Members or to staff of the Authority; and
 - (vi) improper lobbying of Board Members or staff of the Authority; and
 - 11.2.5 workplace health and safety;
 - 11.2.6 protection of the environment.

Board Meetings

- 11.3 The Board will determine procedures to apply in relation to its meetings, which it will set out on in a document known as the *Code of Practice – Meeting Procedures*, as adopted and varied from time to time by resolution of the Board.
- 11.4 Chapter 6, Part 3 of the Act does not apply to the Authority. Meetings of the Board are not open to the public unless the Board otherwise resolves.
- 11.5 Chapter 6, Part 4 of the Act does not apply to the Authority. The Agenda, Agenda Reports and Minutes of all Board meetings will be confidential and not available for public inspection unless the Board otherwise resolves.

Quorum

- 11.6 The quorum for a meeting of the Board is one-half of the number of Board Members in office, ignoring any fraction, plus one.

12. BOARD MEMBERS

Appointment of Board Members –

- 12.1 The Board shall consist of ten (10) Board Members each of whom will be appointed for a two (2) year term as follows:

- 12.1.1 three (3) persons appointed by each Constituent Council and who, in the opinion of the Council, have Relevant Expertise and any of whom is an elected member or officer of the Council at the time of their appointment must remain an elected member or officer of the appointing Council for the duration of the term of their appointment; and
- 12.1.2 one (1) independent person appointed by resolution by Majority of the Constituent Councils (and at the expiration of the term, is eligible for re-appointment) who is not an officer or elected member of any Constituent Council, but who is considered by the Constituent Councils, to have expertise in a field or discipline relevant to the activities of the Authority and who, upon appointment, will be the Chair of the Authority.
- 12.2 Each Constituent Council must give to the Authority written notice of its appointment of its three (3) Board Members and written confirmation of its agreement (or otherwise) with the proposed appointment of the independent appointments under clauses 12.1.2.
- 12.3 Each Constituent Council must appoint two persons as Deputy Board Members for such term as determined by that Constituent Council.
- 12.4 The Deputy Board Members may act in place of and have the same powers as that Constituent Council's Board Members where the Board Member is unable for any reason to be present at a meeting of the Board.
- 12.5 If, at any time, a Deputy Board Member is removed from their office pursuant to this Charter, the Constituent Council must appoint another Deputy Board Member.
- 12.6 'Relevant Expertise' for the purposes of this clause is knowledge or experience in any one or more of:
- 12.6.1 waste management;
 - 12.6.2 marketing/public relations;
 - 12.6.3 finance;
 - 12.6.4 legal/governance; and/or
 - 12.6.5 business.

Removal of Board Members

- 12.7 Neither the Authority or the Board may remove a Board Member.
- 12.8 A Constituent Council which appointed a person as a Board Member under clause 12.1.1 may remove that person from office by giving to the Authority written notice of removal of the Board Member, signed by the Chief Executive Officer of the Constituent Council.
- 12.9 The Chair may be removed by a decision, evidenced by resolution, of a Majority of the Constituent Councils.
- 12.10 The Board may recommend to the Constituent Councils, that the appointment of a Board Member be terminated in the event of:

- 12.10.1 behaviour of the Board Member which in the opinion of the Board amounts to impropriety;
 - 12.10.2 serious neglect of duty in attending to the responsibilities of the Board Member;
 - 12.10.3 breach of fiduciary duty to the Board;
 - 12.10.4 breach of the duty of confidentiality to the Board;
 - 12.10.5 breach of the conflict of interest provisions of the Act or the rules of the Board; or
 - 12.10.6 any other behaviour which may discredit the Board.
- 12.11 The office of a Board Member will become vacant:
- 12.11.1 in accordance with clause 20(3) of Part 2 of Schedule 2 to the Act; or
 - 12.11.2 in the case of a Board Member appointed by a Constituent Council under clause 12.1.1, where that Constituent Council resolves to remove the Board Member from the Board; or
 - 12.11.3 was appointed by a Constituent Council, which ceases to be a Constituent Council.
- 12.12 Where a casual vacancy arises in the office of a Board Member, it will be filled in the same manner as the original appointment to that office, for the balance of the term.

Remuneration and Expenses of Board Members

- 12.13 The Chair is entitled to remuneration, as set by the Board.
- 12.14 In its absolute discretion, the Board may determine to pay any Board Member's travelling and other expenses incurred in connection with the Authority's business.

Board Members Conflict of Interest

- 12.15 By operation of section 75D of the Act, the conflict of interest provisions at Chapter 5, Part 4, Division 1 of the Act apply to Board Members as if they were a member of a council.

Board Members Duties of Care

- 12.16 Clause 23 (*care and diligence*) of Part 2 and clause 34 (*honesty, use of information, use of position*) of Part 3 of Schedule 2 to the Act, set out the statutory duties that apply to a Board Member.

Board Duties to the Authority

- 12.17 The Board must ensure:
 - 12.17.1 that the Authority acts in accordance with applicable laws, mandatory codes of practice, this Charter, policies of the Authority, the Business Plan, Annual Plan and any Strategic Plans and achieves the financial outcomes projected in its Budget;

- 12.17.2 that the Authority acts ethically and with integrity;
- 12.17.3 that the activities of the Authority are conducted efficiently and effectively and that any assets of the Authority are appropriately managed and maintained; and
- 12.17.4 that, subject to any duty of confidence, the affairs of the Authority are undertaken in an open and transparent manner.

Committees of Board Members

- 12.18 The Board may establish a committee, the membership of which will be at the absolute discretion of the Board, for the purpose of enquiring into and reporting to the Board on any matter within the Authority's functions and powers and as detailed in the terms of reference adopted by the Board for the committee.
- 12.19 At the absolute discretion of the Board, and subject to clause 8 of this Charter, the committee may be delegated power to make certain decisions, on behalf of the Board, for matters that fall within the powers and functions of the Authority.
- 12.20 Any such delegated authority of the committee to make decisions will be set out in the terms of reference adopted by the Board for the committee.
- 12.21 A member of a committee established under this clause holds office at the pleasure of the Board.
- 12.22 For the avoidance of doubt, a Board Member, Deputy Board Member or nominee of the CEO of a Constituent Council may be appointed by the Board as a member of a committee established under this clause.

13. CHAIR

- 13.1 At all times, the Authority must have a Chair, who will be the independent Board Member appointed under subclause 12.1.2.
- 13.2 The Chair's functions are:
 - 13.2.1 to preside at all meetings of the Board; and
 - 13.2.2 as an *ex officio* member and chair of all committees established by the Board; and
 - 13.2.3 to represent the Authority in relations with the media and the public generally; and
 - 13.2.4 to exercise other functions as the Board determines.

14. DEPUTY CHAIR

- 14.1 At all times, the Authority must have a Deputy Chair, who must be a Board Member.
- 14.2 The Board appoints the Deputy Chair and may at any time remove the Deputy Chair and appoint a replacement Deputy Chair.
- 14.3 The Deputy Chair's functions are:
 - 14.3.1 to assist the Chair; and

14.3.2 to exercise the Chair's functions whenever the Chair is unable to do so.

14.4 The Chair shall preside at all meetings of the Board. Where the Chair is not present at a meeting of the Board for any reason, the Deputy Chair shall preside. Where the Deputy Chair is absent, the other Board Members present shall choose a person from amongst them to chair the meeting or until the Chair or the Deputy Chair are in attendance.

15. CHIEF EXECUTIVE OFFICER (CEO)

15.1 The Board must appoint a CEO of the Authority on a fixed term performance-based employment contract, which does not exceed five (5) years in duration, to manage the business of the Authority on terms agreed between the CEO and the Board.

15.2 The CEO is responsible to the Board for the execution of all lawful decisions made by the Board and for the efficient and effective management of the Authority.

15.3 The CEO is responsible (within budgetary constraints set by the Board and with regard to Awards, standards and requirements appropriate to the position) for employing, remunerating, managing, suspending and dismissing other staff of the Authority.

15.4 The CEO is subject to the same legislative responsibilities and duties as a chief executive officer of a council including, but not limited to those matters set out at Parts 1 - 3 of Chapter 7 of the Act and must comply with the *Employee Integrity* provisions, including but not limited to the submission of a primary and ordinary return under Part 4 of Chapter 7.

15.5 The Board may delegate to the CEO any of the powers and functions that the Board can exercise, where they are not restricted from delegation by the Act or this Charter.

16. STAFF

16.1 In addition to a CEO, the Authority may employ other staff, subject to the Board making appropriate financial provision.

16.2 The Board and any Constituent Council may arrange for staff of the Constituent Council to be available in connection with the Authority's affairs for such remuneration (if any) as those parties may agree.

16.3 All staff of the Authority (including any persons made available by a Constituent Council) are subject to the direction and control of the CEO.

PART 3 – FINANCIAL AND BUSINESS REQUIREMENTS

17. MANAGEMENT

Financial Management

17.1 The Authority shall keep its financial statements in accordance with the requirements of the *Local Government (Financial Management) Regulations 2011*.

- 17.2 The Board will, at the end of each financial year prepare a schedule of assets and liabilities. In addition, the Board must maintain the record known as the *Schedule of Constituent Council's Interest in Net Assets* which will reflect the proportionate contribution that each Constituent Council has made to the growth of the net assets of the Authority having regard to the proportionate contribution to subscriptions.
- 17.3 The Schedule, when updated by the Board at the end of each financial year, will reflect the proportionate contribution of each Constituent Council since the commencement of the Authority and once accepted by each Constituent Council will be evidence of the agreed proportion of a Constituent Council's interests in the net assets as at 30 June in that year.

Common Seal

- 17.4 The Authority shall have a common seal which may be affixed to documents and must be attested to by the signatures of two Board Members.
- 17.5 The common seal must not be affixed to a document except in pursuance of a decision of the Board. The CEO will maintain a register which records the resolutions of the Board giving authority or providing support for the affixation of the common seal and details of the documents to which the common seal has been affixed with the particulars of the Board Members who attested to the fixing of the seal and the date thereof.

Audit

- 17.6 The Authority shall appoint an auditor in accordance with the *Local Government (Financial Management) Regulations 2011*, on terms and conditions set by the Board.
- 17.7 The Auditor will have the same powers and responsibilities as set out in the Act, in relation to a council.
- 17.8 The Authority must establish an Audit Committee which will comprise of five (5) members as follows:
- 17.8.1 a person, who will be the Chair, appointed by Majority of the Constituent Councils, evidenced by resolution, and who is not an officer or member, of a Constituent Council or a Member of the Board,
 - 17.8.2 two (2) persons appointed by Majority of the Constituent Councils, evidenced by resolution, and who is an officer or member, of a Constituent Council or a Member of the Board; and;
 - 17.8.3 two (2) persons appointed by Majority of the Constituent Councils, as evidenced by resolution, and who are not an officer or member of a Constituent Council or a Member of the Board and who are; considered to have experience relevant to the functions of the Authority or, financial experience relevant to the functions of the Audit Committee.

Business Plan

17.9 The Authority must:

- 17.9.1 prepare a ten (10) year Business Plan, in consultation with the Constituent Councils which cannot be in conflict with this Charter; and
- 17.9.2 prepare a ten (10) year Long-Term Financial Plan (which must include principles detailing the actual distribution of overheads between the Constituent Councils and any other matter required by the Constituent Councils or determined by the Board to be included); and
- 17.9.3 prepare an Asset Management Plan.

17.10 The Long Term Financial and Asset Management Plans form part of the Business Plan.

17.11 The Authority must review the Business Plan annually, in consultation with the Constituent Councils.

17.12 In preparing and reviewing the Business Plan, the Authority must address or include any other matter prescribed by the Constituent Councils or determined to be relevant by the Board.

Annual Plan

17.13 The Authority must, for each Financial Year, have an Annual Plan which supports and informs its Budget. The Annual Plan must:

- 17.13.1 include an outline of the Authority's objectives for the Financial Year, the activities that the Authority intends to undertake to achieve those objectives and the measures that the Authority intends to use to assess its performance against its objectives over the financial year;
- 17.13.2 assess the financial requirements of the Authority for the Financial Year and, taking those requirements into account, set out a summary of the Authority's proposed operating expenditure, capital expenditure and sources of revenue;
- 17.13.3 consider the objectives set out in the Business Plan and, in particular, the Long-Term Financial Plan and issues relevant to the management of assets and resources by the Authority;
- 17.13.4 set out proposals for the recovery of overheads over the Financial Year from the Constituent Councils; and
- 17.13.5 address or include any other matter prescribed by the Constituent Councils or determined to be relevant by the Board.

17.14 An adopted Annual Plan binds the Authority and is the basis upon which the Budget is prepared.

17.15 The draft Annual Plan must be referred to the Constituent Councils with sufficient time to receive any comments from them for consideration by the Board at the time it is considered by the Board for adoption.

Annual Budget

- 17.16 The Authority shall, after 31 May but before the end of June in each Financial Year, prepare (in a manner consistent with its Annual Plan) and adopt a Budget for the ensuing Financial Year in accordance with the Act.
- 17.17 The draft annual Budget must be referred to Constituent Councils with sufficient time to receive any comments from the Councils for consideration by the Board at the time it is considered by the Board for adoption.
- 17.18 The Authority must provide a copy of its Budget to the Constituent Councils within five (5) business days after adoption by the Board.
- 17.19 Reports summarising the financial position and performance of the Authority against the annual Budget must be prepared and presented to the Board at each Board meeting and copies provided to the Constituent Councils within five (5) days of the Board meeting to which they have been presented.
- 17.20 Subject to any other provision of this Charter, an adopted Budget binds the Authority and is authority for the Authority to perform work, incur debts and meet obligations according to its terms without the need for any further approval of the Constituent Councils.

Service Agreement

- 17.21 The Authority will enter into a Service Agreement with each of the Constituent Councils in a form and upon terms and conditions agreed by each Constituent Council.

18. FUNDING

- 18.1 The Constituent Councils share in the liabilities of the Authority in accordance with their respective interest in the Authority under the Schedule of Constituent Councils Interest in Net Assets.
- 18.2 The Board is responsible to provide the Constituent Councils with sufficient information for each to ascertain the level of and to understand the reasons behind, the funding required in the next Financial Year through the Business Plan and the Annual Budget.
- 18.3 The Board will annually determine the funds required by the Authority to enable it to function in accordance with this Charter.
- 18.4 Subject to all of the Constituent Councils approving the Annual Budget, the Constituent Councils shall contribute the funds requested by the Board in the Annual Budget.
- 18.5 The Board may during any Financial Year for purposes of genuine emergency or hardship determine that additional funds are required for the continuing function of the Authority.
- 18.6 The Board must obtain a Unanimous Decision from the Constituent Councils regarding the need for additional funds, before the Constituent Councils will be obliged to meet any request for additional funds.

- 18.7 The annual contribution will be paid in arrears by monthly instalments by each Constituent Council.
- 18.8 Additional contributions (if any) will be paid by each Constituent Council in the proportions attributable as set out in clause 18.1 and in the manner and at the time determined by the Board.
- 18.9 The Board is accountable to the Constituent Councils, individually and collectively, to ensure that the Authority functions in accordance with its Business Plan and approved Budget.
- 18.10 The Authority must use contributions received from a Constituent Council only for the purposes of an activity set out in the Budget.
- 18.11 If a Constituent Council (the Defaulter) fails to pay its full contribution when due, following the expiration of fourteen (14) days' notice in writing being given:
- 18.11.1 the Defaulter must pay to the Authority interest on that amount at the official Reserve Bank Cash Rate Target plus 10% per annum from the due date to the date of actual payment;
 - 18.11.2 the Authority may recover that amount and that interest from the Defaulter as a debt;
 - 18.11.3 the Authority may, without prejudicing its other rights, set off any moneys otherwise payable by the Authority to the Defaulter against that amount and interest; and
 - 18.11.4 if the default continues beyond the expiration of the fourteen (14) days' notice in writing having been delivered:
 - (i) the Authority must notify all Constituent Councils (including the Defaulter) of the fact and details of the default; and
 - (ii) Constituent Councils, other than the Defaulter, must together lend to the Authority an amount equal to the amount not paid by the Defaulter, in such proportions as they may agree, or failing agreement, in the proportion of the Schedule of Constituent Councils Interest in Net Assets of those Constituent Councils making such loan, for repayment when and to the extent the Defaulter makes good the contribution and accrued interest.

Distributions to Constituent Councils

- 18.12 The Authority must pay or credit surplus funds to the Constituent Councils in proportion to their respective interests in the Authority under the Schedule of Constituent Councils Interest in Net Assets, to the extent the Board determines the Authority can afford to pay, having regard to future expenditure that the Business Plan anticipates will be incurred.
- 18.13 If the Board determines that the Authority needs to fund an operating shortfall or loss, the Constituent Councils will be charged in proportion to the Schedule of Constituent Councils Interest in Net Assets.

Contributions on Insolvency

18.14 On the insolvency of the Authority each Constituent Council must contribute in proportion to its interest in the Schedule of Constituent Councils Interest in Net Assets to the debts and liabilities of the Authority and otherwise as incurred while the Constituent Council is a Constituent Council.

19. ASSETS**Acquisition of Assets**

19.1 The Authority may in accordance with this Charter acquire such assets (real or personal) as its Business Plan provides or otherwise pursuant to a Unanimous Decision of the Constituent Councils.

Disposal of Assets

19.2 The Authority may dispose of assets as its Business Plan provides, or at the end of the asset's economic life.

19.3 The Authority must, in the acquisition or disposal of assets, comply with any relevant policy adopted by the Board, in particular in accordance with clause 11.2 of this Charter.

20. INVESTMENTS

20.1 In accordance with its Business Plan and Budget the Authority may invest in:

20.1.1 waste management infrastructure and ancillary land;

20.1.2 plant and equipment to store, transfer and/or treat waste;

20.1.3 plant and equipment to transport waste from properties to an appropriate place of storage and/or disposal; and

20.1.4 cash on interest-bearing deposit with any bank.

21. INSURANCE

21.1 Unless the Authority otherwise determines to explore other market opportunities, 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.

21.2 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.

21.3 The Authority shall register with the Local Government Superannuation Scheme and comply with the Rules of that Scheme (where applicable).

22. ACCOUNTING RECORDS

22.1 The Authority must comply with section 124 of the Act as if the Authority were a council.

- 22.2 The Authority must keep accounting records in relation to services in such manner as will enable the calculation of Constituent Council contributions to, expenditure on and revenue from, that service separately.

23. ACCESS TO DOCUMENTS

Access to Records

- 23.1 A Constituent Council and a Board Member each has a right to inspect and to take copies of the books and records of the Authority for any proper purpose being a purpose related to the lawful duties and obligations of the Constituent Council or Board Member, as the case may be.
- 23.2 In the first instance 'proper purpose' will be determined by the CEO. If there is a dispute as to whether a proper purpose has been established, the Board will determine whether access to the records is to be granted.
- 23.3 Unless the access is required for an urgent purpose, the Constituent Council or Board Member is required to provide reasonable notice, in writing, addressed to the CEO regarding the request for access and the proper purpose for which access is required.
- 23.4 The CEO, or delegate providing access, may indicate to the Constituent Council or Board Member that information contained in the document is, or should be, considered confidential.
- 23.5 The CEO may require the Constituent Council or Board Member to pay the Authority's reasonable costs in complying with such a request. If there is a dispute as to the reasonable costs sought by the Authority, the Board will determine the reasonable costs payable for access to records (if any).
- 23.6 The Constituent Council or Board Member must not make improper use of the information acquired by accessing records.

Board Reports

- 23.7 The Authority must provide Board reports to the Board Members and Constituent Councils in accordance with this Charter and otherwise at such times, in such format and with such content as the Board may determine.

Annual Reports

- 23.8 Clause 28, Part 2, of Schedule 2 to the Act requires the Authority to furnish an Annual Report to the Constituent Councils.
- 23.9 The Annual Report will be in such format and include such content as required by law and otherwise as the Constituent Councils may determine by Majority, as evidenced by resolution.
- 23.10 The Annual Report must be delivered to the Constituent Councils on or before 30 September in each year subsequent to the Financial Year to which the report relates.

24. DISPUTE RESOLUTION

The procedure in this clause must be applied to any dispute that arises between the Authority and a Constituent Council concerning the affairs of the Authority, or

between Constituent Councils concerning the affairs of the Authority, including as to the meaning or effect of this Charter.

- 24.1 The Authority and a Constituent Council must continue to observe and perform this Charter despite the dispute.
- 24.2 This clause does not prejudice the right of a party:
- (a) to require the continuing observance and performance of this Charter by all parties; or
 - (b) to institute proceedings to enforce payment due under this Charter or to seek injunctive relief to prevent immediate and irreparable harm.
- 24.3 Subject to this clause, a dispute must not be the subject of legal proceedings between any of the parties in dispute. If legal proceedings are initiated or continued in breach of this provision, a party to the dispute is entitled to apply for and be granted an order of the court adjourning those proceedings pending completion of the procedure set out in this clause.

Step 1: Notice of dispute:

- 24.4 A party to the dispute must promptly notify each other party to the dispute:
- (i) of the nature of the dispute, giving reasonable details; and
 - (ii) what action (if any) the party giving notice thinks will resolve the dispute; but a failure to give such notice does not entitle any other party to damages.

Step 2: Meeting of the parties:

- 24.5 A party to the dispute which complies with the previous step may at the same, or a later time, notify in writing each other party to the dispute that the first party requires a meeting within fourteen business days after the giving of such notice.
- 24.6 In that case, each party to the dispute must send to the meeting a senior manager of that party (which person for a Constituent Council will be the CEO unless the CEO is a Board member in which case it will be a second tier officer of the Constituent Council and which person for the Authority will be its CEO or nominee) to resolve the dispute and at the meeting make a good faith attempt to resolve the dispute.

Step 3: Mediation:

- 24.7 A dispute that is not resolved within thirty days must be referred to mediation.
- 24.8 The mediator must be a person agreed by the parties in dispute or, if they cannot agree within fourteen business days, a mediator nominated by the President of the of the South Australian Bar Association (or equivalent officer of any successor organisation).

- 24.9 The role of a mediator is to assist in negotiating a resolution of a dispute. A mediator may not make a decision binding on a party unless that party has so agreed in writing;
- 24.10 The mediation must take place in a location in Adelaide determined by the mediator. A party in dispute must cooperate in arranging and expediting mediation.
- 24.11 A party in dispute must send to the mediation a senior manager with authority to resolve the dispute.
- 24.12 The mediator may exclude lawyers acting for the parties in dispute and may co-opt expert assistance as the mediator thinks fit.
- 24.13 A party in dispute may withdraw from mediation if there is reason to believe the mediator is not acting in confidence, or with good faith or is acting for a purpose other than to resolve the dispute.
- 24.14 Unless otherwise agreed in writing:
- (i) everything that occurs before the mediator is confidential and will occur in closed session;
 - (ii) discussions (including admissions and concessions) are without prejudice and may not be called into evidence in any subsequent arbitration or litigation by a party; and
 - (iii) documents brought into existence specifically for the purpose of the mediation may not be admitted in evidence in any subsequent arbitration or legal proceedings by a party;
- 24.15 The parties in dispute must report back to the mediator within fourteen business days on actions taken, based on the outcome of the mediation.
- 24.16 A party in dispute need not spend more than one day in mediation for a matter under dispute.
- 24.17 A party in dispute must bear an equal share of the costs and expenses of the mediator and otherwise bears their own costs.

Step 4: Arbitration

- 24.18 Despite whether any previous step was taken, a dispute not resolved within 60 days must be referred to arbitration, as to which:
- (i) there must be only one Arbitrator and who is a natural person agreed by the parties or, if they cannot agree within fourteen business days, an Arbitrator nominated by the then Chairperson of The Institute of Arbitrators and Mediators (South Australian Chapter);
 - (ii) the arbitration must take place in an agreed location in Adelaide,
 - (iii) a party must co-operate in arranging and expediting arbitration;
 - (iv) a party must send out to the arbitration a senior manager with authority to resolve the dispute.

- 24.19 The costs and expenses of the Arbitrator and of each party will be borne as the Arbitrator decides.

Step 5: Expulsion

- 24.20 If the dispute is unable to be resolved through Arbitration within twelve (12) months of the dispute arising, then, by way of Majority decision, the Constituent Council's each individually and collectively agree that the other Constituent Councils may, by operation of this clause and on behalf of the other Constituent Council, make a request to the Minister, which will be deemed to be an application by that Constituent Council to the Minister to determine that it cease to be a Constituent Council of the Authority.

25. WINDING UP

The Authority may be wound up in circumstances as provided under clause 33(1) of Part 2, of Schedule 2 to the Act.

Winding Up and Statutory Guarantee

- 25.1 On winding up, the surplus assets or liabilities of the Authority shall be distributed between or become the responsibility of the Constituent Councils in the respective proportions under the Schedule of Constituent Councils Interest in Net Assets.
- 25.2 If there are insufficient funds to pay all expenses due by the Authority on winding up (or at any other time there are unfunded liabilities which the Authority cannot meet), a call shall be made upon all of the Constituent Councils in proportion to the Schedule of Constituent Councils Interest in Net Assets for the purpose of satisfying their statutory guarantee of the liabilities of the Authority or as otherwise agreed by unanimous decision of the Constituent Councils, evidenced by resolution.

PART 4 – MISCELLANEOUS

26. SERVICE OF DOCUMENTS

- 26.1 A document to be given by the Authority to a Constituent Council, or by a Constituent Council to the Authority may be given in a manner permitted by section 280 of the Act.
- 26.2 A written notice given by the Authority to a Constituent Council must be marked, 'Attention: Chief Executive Officer'.

27. CIRCUMSTANCES NOT PROVIDED FOR

If any circumstances arise about which this Charter is silent, or is incapable of taking effect or being implemented according to its terms, the Board may consider the circumstances and determine the action to be taken.