

# LOCAL GOVERNMENT ACT 1999

## SOUTHERN REGION WASTE RESOURCE AUTHORITY REGIONAL SUBSIDIARY

### Charter— 2015

#### 1. INTRODUCTION

##### 1.1 Name

The name of the subsidiary is Southern Region Waste Resource Authority (referred to as 'the Authority' in this Charter).

##### 1.2 Definitions

1.2.1 'absolute majority' means a majority of the whole number of the Board members or of the Constituent Councils as the case may be;

1.2.2 'Constituent Councils' means the Councils identified at Clause 1.3 of this Charter;

1.2.3 'Gazette' means the *South Australian Government Gazette*;

1.2.4 'net assets' means total assets (current and non-current) less total liabilities (current and non-current) as reported in the annual audited financial statements of the Authority together with the net present value of the projected future cash inflows net of cash outflows of the remaining useable airspace over the SRWRA Landfill Operation as licensed by the Environment Protection Authority;

1.2.5 'simple majority' means a majority of those present and entitled to vote;

1.2.6 'SRWRA Landfill Operation' means that land which is held by the Authority under certificates of title volume 5822, folio 967; volume 5822, folio 966; volume 5822, folio 965; volume 5299, folio 719; volume 5299, folio 720; volume 5479, folio 871 and volume 5696, folio 771;

1.2.7 'waste' means any or all waste as approved under the Environment Protection Act licence held by the Authority or its contractor.

##### 1.3 Establishment

The Authority is a regional subsidiary established pursuant to section 43 of the Local Government Act 1999 by the:

1.3.1 City of Holdfast Bay;

1.3.2 City of Marion; and

1.3.3 City of Onkaparinga.

##### 1.4 Local Government Act 1999

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

##### 1.5 Objects and Purposes

1.5.1 The Authority is established to:

1.5.1.1 provide and operate services at a place or places for the management of waste by or on behalf of the Constituent Councils and/or any other approved Councils;

1.5.1.2 undertake anything relevant (including educational programmes and processes) to the management of waste;

1.5.1.3 provide a forum for discussion and/or research for the ongoing improvement of management of waste;

1.5.1.4 undertake management of waste on behalf of the Constituent Councils on a competitive basis;

1.5.1.5 fulfil, on behalf of the Constituent Councils, any ongoing obligation in relation to rehabilitation and monitoring of waste management facilities under its control;

1.5.1.6 develop or facilitate activities or enterprises that result in a beneficial use of waste;

1.5.1.7 be financially self sufficient;

1.5.1.8 develop or facilitate activities or enterprises that result in a beneficial use of the landfill site or infrastructure; and

1.5.1.9 have regard in the performance of its functions to sustainable, environmentally efficient practices with regard to waste management

1.5.2 The Authority must in the performance of its role and functions and in all of its plans, policies, and activities operate in a sustainable manner by giving due weight to economic, social and environmental considerations.

##### 1.6 Powers and Functions of the Authority

The powers and functions of the Authority are to be exercised in the performance of the Authority's Objects and Purposes. The Authority shall have those powers and functions delegated to it by the Constituent Councils from time to time which include but are not limited to:

1.6.1 accumulation of surplus funds for investment purposes;

1.6.2 investment of any of the funds of the Authority in any investment authorised by the Trustee Act 1936, or with the Local Government Finance Authority provided that:

1.6.2.1 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

1.6.2.2 the Authority must avoid investments that are speculative or hazardous in nature;

- 1.6.3 setting aside a reserve fund or funds clearly identified for the upkeep and/or replacement of fixed assets of the Authority or meeting any deferred liability of the Authority;
- 1.6.4 borrowing money and/or to incurring expenditure in accordance with Clause 1.7 of this Charter;
- 1.6.5 opening and operating bank accounts;
- 1.6.6 entering into contracts, purchasing, selling, leasing, hiring, renting or otherwise acquiring or disposing of any personal property or interests therein;
- 1.6.7 purchasing, selling, leasing, hiring, renting or otherwise acquiring or disposing of any real property or interests therein, provided that it shall be a condition precedent, that in any such transaction where the Authority will incur a singular or a total liability of \$500 000 or more that the prior written approval of two-thirds of the Constituent Councils is obtained;
- 1.6.8 appointing, managing, suspending and dismissing the Executive Officer of the Authority;
- 1.6.9 engaging retaining, and dispensing with the services of professional advisers to the Authority;
- 1.6.10 charging whatever fees the Authority considers appropriate for services rendered to any person, body or Council;
- 1.6.11 determining the types of waste which shall be received and the method of collection treatment, recycling and disposal of that waste;
- 1.6.12 undertaking all manner of things relating and incidental to the collection, treatment, recycling and disposal of waste;
- 1.6.13 pursuing the concept of co-operative regionalism in the collection, treatment, recycling and disposal of waste for which the Constituent Councils are or may become responsible
- 1.6.14 cause all waste collected by the Authority to be treated, recycled and disposed of in a sanitary and environmentally acceptable way;
- 1.6.15 providing a forum for the discussion and consideration of topics related to the Constituent Councils' obligations and responsibilities in respect of waste;
- 1.6.16 adopting and using a trading name provided that the Authority shall first register the trading name with the Office of Consumer and Business Affairs in accordance with the requirements of the Business Names Act 1996;
- 1.6.17 to commence legal proceedings provided that any legal proceedings seeking urgent relief be the subject of an urgent report to the Constituent Councils by the Executive Officer;
- 1.6.18 without limiting the Authority's powers and functions, to make submissions to and negotiate with the Federal Government, State Government and other sources of grant funding in relation to the provision and receipt of funding for the Authority; and
- 1.6.19 anything else necessary or convenient for or incidental to the exercise, performance or discharge of its powers and, functions.

## 1.7 Borrowings and Expenditure

- 1.7.1 The Authority has the power to incur expenditure and/or to borrow money:
  - (a) in accordance with the approved budget of the Authority; or
  - (b) for the purposes of unbudgeted expenditure in accordance with (c) and (d) below; or
  - (c) pursuant to the provisions of subclauses 1.6.7 and 1.7.4 of this Charter; or
  - (d) with the prior approval of two-thirds of the Constituent Councils for amounts which do not exceed 25% of the value of the net assets of the Authority and with the prior approval of all the Constituent Councils for other amounts, which approval must be evidenced by formal resolution of the Councils, or
  - (e) otherwise for genuine emergency or hardship as provided for in the Act.
- 1.7.2 For the purpose of exercising the powers at Clause 1.7.1 of this Charter the Authority may borrow money from the Local Government Finance Authority or from a registered bank or financial institution within Australia.
- 1.7.3 For the purposes of Clause 1.7.2 but subject to Clause 1.7.4 of this Charter borrowings of the Authority:
  - (a) must not be used for the purpose of funding operational costs;
  - and*
  - (b) where the borrowings are undertaken with the prior approval of the Constituent Councils, must be drawn down within a period of 24 months from the date of approval.
- 1.7.4 The Authority may operate an overdraft facility or facilities as required provided that the overdrawn balance must not exceed \$100 000 in total without the prior approval of two-thirds of the Constituent Councils.

## 1.8 Delegation by the Authority

The Authority may by resolution delegate to the Executive Officer of the Authority any of its powers or functions under this Charter but may not delegate:

- 1.8.1 the power to impose charges;
- 1.8.2 the power to enter into transactions in excess of \$100 000
- 1.8.3 the power to borrow money or obtain any other form of financial accommodation;
- 1.8.4 the power 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;
- 1.8.5 the power to approve the reimbursement of expenses or payment of allowances to members of the Board of Management;
- 1.8.6 the power to adopt or revise a budget or any financial estimates and reports; and
- 1.8.7 the power to make any application or recommendation to the Minister.

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

## 1.9 National Competition Policy

1.9.1 The Authority may, from time to time, be involved in commercial activities which constitute a significant business activity of the Authority.

1.9.2 Where the Authority is engaged in any activity which is a significant business activity it will, in relation to that business activity, undertake a risk/benefit analysis and, if necessary, implement principles of competitive neutrality to the extent that the benefits to be realised from the implementation of the principles of competitive neutrality outweigh the costs associated with implementation.

## 2. BOARD OF MANAGEMENT

The Authority is a body corporate and is governed by a Board of Management (referred to as 'the Board' in this Charter) which shall have the responsibility to manage the business and other affairs of the Authority ensuring that the Authority acts in accordance with this Charter.

### 2.1 Functions of the Board

2.1.1 The formulation of strategic plans and strategies aimed at improving the business of the Authority.

2.1.2 To provide professional input and policy direction to the Authority.

2.1.3 Monitoring, overseeing and measuring the performance of the Executive Officer of the Authority.

2.1.4 Ensuring that a code of ethical behaviour and integrity is established and implemented in all business dealing of the Authority.

2.1.5 Developing business plans.

2.1.6 Exercising the care, diligence and skill that a prudent person of business would exercise in managing the affairs of other persons.

2.1.7 Observe all plans, targets, structures, systems and practices required or applied to the Authority by the Constituent Councils.

2.1.8 Ensure that all information furnished to a Constituent Council is accurate.

2.1.9 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 or gives rise to the expectation that the Authority may not be able to meet its debts as and when they fall due.

### 2.2 Membership of the Board

2.2.1 The Board shall consist of seven members appointed as follows:

2.2.1.1 two persons appointed by each Constituent Council;

2.2.1.2 one person appointed jointly by the Constituent Councils who is not a member or officer of a Constituent Council but who, in the opinion of the Constituent Councils, has expertise in waste management and/or business.

This person will be chosen from a list of persons circulated to the Constituent Councils and appointed by a panel comprising the Chief Executive Officer (or nominee) and one other person from each Constituent Council.

2.2.2 With the exception of the person appointed pursuant to subclause 2.2.1.2, a Board Member shall, subject to this Charter, be appointed for a term not exceeding the term of the Constituent Council and specified in the instrument of appointment and at the expiration of the term of office will be eligible for re-appointment.

2.2.3 The Constituent Councils may appoint either a specific Deputy for each Board Member appointed pursuant to subclause 2.2.1.1 or, as an alternative, may appoint one non specific Deputy for both such Board Members and a second Deputy to that Deputy. In the absence of a Board Member the specific Deputy or the non specific Deputy will be deemed to be the Board Member for that time or, where a non specific Deputy and second Deputy have been appointed and both Board Members are absent then both Deputies will be deemed to be the Board Members for that time, exercising all of the rights and privileges and being subject to all of the obligations and liabilities of the Board Member(s) during the absence of the Board Member(s).

2.2.4 The office of a Board Member will become vacant upon:

2.2.4.1 the death of the Board Member; or

2.2.4.2 the Council providing written notice of termination to the Board Member and the Board; or

2.2.4.3 if the Board Member is an elected member of a Constituent Council upon ceasing to be an elected member; or

2.2.4.4 if the Board Member is an officer of a Constituent Council, upon ceasing to be employed by the Council which appointed him/her; or

2.2.4.5 upon the Board Member providing his/her resignation in writing to one or more of the Constituent Councils; or

2.2.4.6 upon the happening of any other event through which the Board Member would be ineligible to remain as a member of the Board; or

2.2.4.7 upon the Board Member becoming a bankrupt or applying for the benefit of a law for the relief of insolvent debtors; or

2.2.4.8 if the Board Member has been appointed pursuant to subclause 2.2.1.1, upon the Constituent Council withdrawing from the Authority.

2.2.5 The Board may by a two-thirds majority vote of the Board Members present (excluding the Board Member subject to this subclause 2.2.5) make a recommendation to the relevant Constituent Council requesting the Constituent Council to terminate the appointment of a Board Member that it has appointed under subclause 2.2.1.1 or to all of the Constituent Councils to terminate the appointment of the Board Member appointed under subclause 2.2.1.2 for:

2.2.5.1 any behaviour of the Board Member which in the opinion of the Board amounts to impropriety;

2.2.5.2 serious neglect of duty in attending to his/her responsibilities as a Board Member;

2.2.5.3 breach of fiduciary duty to the Authority or the Constituent Council(s);

2.2.5.4 breach of the duty of confidentiality to the Authority and/or the Constituent Council(s);

2.2.5.5 breach of the conflict of interest provisions; or

- 2.2.5.6 any other behaviour which may discredit the Authority.
- 2.2.6 A Board Member may be removed from office as a Board Member prior to the expiration of a term of appointment only in accordance with the following:
- 2.2.6.1 a Board Member appointed by a Constituent Council pursuant to subclause 2.2.1.1, by resolution of the Constituent Council which originally appointed the Board Member; and
- 2.2.6.2 the Board Member appointed jointly by the Constituent Councils pursuant to subclause 2.2.1.2 by a joint resolution being a resolution passed by each of the Constituent Councils.
- 2.2.7 If any casual vacancy occurs in the membership of the Board it will be filled in the same manner as the original appointment. The person appointed to the Board to fill a casual vacancy will be appointed for the balance of the term of the original appointment.
- 2.2.8 The Board Member appointed pursuant to subclause 2.2.1.2 shall be eligible for such allowance from the funds of the Authority as the Board shall determine from time to time.
- 2.3 Propriety of Members of the Board**
- 2.3.1 The principles regarding conflict of interest prescribed in the Act apply to all Board Members in the same manner as if they were elected members of a Council.  
*(See Chapter 5, Part 4, Division 3 of the Act for conflict of interest provisions)*
- 2.3.2 Subject to clause 2.3.3, the Board Members are not required to comply with Division 2, Chapter 5 (Register of Interests) of the Act.
- 2.3.3 The Independent Chair is required to comply with Division 2, Chapter 5 (Register of Interests) of the Act.
- 2.3.4 The Board Members will 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 Part 2 of Schedule 2 to the Act.
- 2.4 Chair of the Board**
- 2.4.1 The Chair of the Board shall be the person appointed pursuant to subclause 2.2.1.2, who shall hold office for a term of three years, unless he/she resigns or is removed from office pursuant to subclause 2.2.5 or is otherwise no longer eligible to act as a Board Member.
- 2.4.2 The Chair is eligible for re-appointment at the expiration of the term of office.
- 2.4.3 In the event that the appointed Chair either resigns or is no longer eligible to act as a Board Member prior to the expiration of that person's term, the Board shall elect from amongst the other Board Members a new Chair who shall hold office until a further appointment is made pursuant to subclause 2.2.1.2 whereupon the person so appointed will hold office for the duration of the original appointment.
- 2.4.4 The Board may choose a person appointed pursuant to subclause 2.2.1.1 to be the Deputy Chair of the Board for a term determined by the Board.
- 2.4.5 The Chair shall preside at all meetings of the Board and, in the event of the Chair being absent from a meeting, the Deputy Chair shall preside and in the event of both the Chair and the Deputy Chair being absent from a meeting the Board Members present shall appoint a person from amongst them, who shall preside for that meeting or until the Chair or the Deputy Chair is present.
- 2.5 Meetings of the Board**
- 2.5.1 The provisions of Part 2 of the Local Government (Procedures at Meetings) Regulations 2013 shall, insofar as the same may be applicable and not inconsistent with this Charter, apply to the proceedings at and conduct of all meetings of the Board.
- 2.5.2 Ordinary meetings of the Board must take place at such times and places as may be fixed by the Board or the Executive Officer of the Authority from time to time. There shall be at least six ordinary meeting of the Board held in each financial year. Meetings shall not be held before 5 p.m. unless the Board resolves otherwise by resolution supported unanimously by all of the Board Members present at the meeting which determines the issue.
- 2.5.3 An ordinary meeting of the Board will constitute an ordinary meeting of the Authority. The Board shall administer the business of the ordinary meeting.
- 2.5.4 For the purposes of this subclause, the contemporary linking together by telephone, audio-visual or other instantaneous means ('telecommunications meeting') of a number 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 meeting, 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 Chair of the meeting.
- 2.5.5 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. The Executive Officer will include confirmation of any decision which is made in accordance with this clause in the next Board meeting agenda and will otherwise deal with the decision in the same manner as would occur if the decision had been made at a Board meeting.
- 2.5.6 Notice of ordinary meetings of the Board must be given by the Executive Officer to each Board Member not less than three clear days prior to the holding of the meeting.
- 2.5.7 Notice of any meeting of the Board must:

- (a) be in writing; and
- (b) set out the date, time and place of the meeting; and
- (c) be signed by the Executive Officer; and
- (d) contain, or be accompanied by, the agenda for the meeting; and
- (e) be accompanied by a copy of any documents or reports that are to be considered at the meeting (so far as this is practicable).

All documents or reports delivered to Board Members in accordance with this subclause are confidential unless indicated otherwise.

2.5.8 The Executive Officer must maintain a record of all notices of meetings given under subclause 2.5.7 to Board Members.

2.5.9 Notice under subclause 2.5.7 may be given to a Board Member:

- (a) personally; or
- (b) 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; or
- (c) by leaving the notice for a Board Member appointed under subclause 2.2.1.1 at an appropriate place at the principal office of the Constituent Council which appointed the Board Member; or
- (d) by a means authorised in writing by the Board Member as being an available means of giving notice.
- (e) by electronic delivery to an email address that the Authority has established for the Board Member for the purposes of communications to and from the Authority and for the delivery of Authority documentation

2.5.10 A notice that is not given in accordance with subclause 2.5.9 will be taken to have been validly given if the Executive Officer considers it impracticable to give the notice in accordance with the subclause and takes action that the Executive Officer considers reasonably practicable in the circumstances to bring the notice to the Board Member's attention.

2.5.11 Any Constituent Council or Board Member may by delivering a written request to the Executive Officer of the Authority require a special meeting of the Board to be held. The request will only be valid if it is accompanied by the agenda for the special meeting. On receipt of the request the Executive Officer shall send a notice of the special meeting to all Board Members at least 24 hours prior to the commencement of the special meeting. Such notice shall comply with subclauses 2.5.7 and 2.5.9 of this Charter.

2.5.12 The quorum for any meeting of the Board is a simple majority of the number of members in office.

2.5.13 Every Board Member, including the Chair, shall have a deliberative vote. The Chair shall not in the event of an equality of votes have a casting vote.

2.5.14 All matters will be decided by a simple majority of votes of the Board Members present except where this Charter provides otherwise. In the event of an equality of votes the matter will lapse.

2.5.15 Subject to subclause 2.3.1, all Board Members present at a meeting shall vote.

2.5.16 Any meeting of the Board may be adjourned from time to time and from place to place.

2.5.17 Subject to Clause 2.6 and to the absolute discretion of the Board to conduct any meeting or part of any meeting in public, meetings of the Board will not be conducted in a place open to the public.

2.5.18 The Executive Officer must cause minutes to be kept of the proceedings at every meeting of the Board.

2.5.19 If the Executive Officer is excluded from attendance at a meeting of the Board, the person presiding at the meeting shall cause the minutes to be kept.

2.5.20 Each Board Member must be supplied with a copy of all minutes of the proceedings of a meeting within five days of the meeting.

2.5.21 All documents presented to, received at or derived from a Board Meeting, including but not limited to:

- (a) minutes of a Board Meeting;
  - (b) reports to the Board received at a meeting of the Board; and
  - (c) recommendations presented to the Board in writing and adopted by resolution of the Board.
- will remain confidential and not available for public inspection unless the Board otherwise resolves.

2.5.22 Prior to the conclusion of each meeting of the Board, the Board must identify which agenda items considered by the Board at that meeting will be the subject of an information report to the Constituent Councils.

2.5.23 Subject to this Charter and to any direction of the Constituent Councils the Board may determine its own procedures.

## 2.6 **Annual General Meeting**

2.6.1 An Annual General Meeting of the Board shall be held prior to November in each year at a place and time determined by a resolution of the Board.

2.6.2 In addition to the requirements of subclause 2.5.6 of this Charter, notice of the Annual General Meeting will also be given by:

- (a) placing a copy of the notice and agenda on public display at the principal office of the Authority and of each Constituent Council;
- (b) by giving notice in newspapers which circulate in the areas of the Constituent Councils;
- (c) in such other manner as the Executive Officer considers appropriate taking into account:
  - (i) the characteristics of the community and area of the Constituent Councils; and
  - (ii) the best ways to bring notice of the Annual General Meeting to the attention of the public; and
  - (iii) such other matters as the Executive Officer thinks fit.

2.6.3 The notice and agenda must be placed on public display at least 14 clear days before the Annual General Meeting and must be available to the public:

- (a) at the offices of the Authority for inspection, without charge; and
- (b) by way of a copy being provided upon request and, upon payment of a fee fixed by the Authority, and

- (c) by being placed on the website of the Authority and must be kept on public display until the completion of the Annual General Meeting.
- 2.6.4 A reasonable number of copies of the notice and agenda and any document or report supplied to Board Members for the Annual General Meeting must be available for members of the public at the meeting.
- 2.6.5 The Annual General Meeting will be conducted in a place open to the public and will consider and deal with business of a general nature aimed at reviewing the progress and direction of the Authority over the immediately preceding financial year and shall include the following:
  - (a) Chair's report;
  - (b) Executive Officer's report;
  - (c) the annual budget for the ensuing financial year;
  - (d) the audited financial statements for the previous financial year;
  - (e) any other general business determined by the Board to be considered at the Annual General Meeting.
- 2.6.6 The minutes of the Annual General Meeting must, in addition to the requirements of subclause 2.5.20 be available to the public within five days of the Meeting for inspection or by provision of a copy upon payment of a fee fixed by the Board.

### 3. STAFFING ISSUES

- 3.1 The Board must appoint an Executive Officer of the Authority to manage the business of the Board on terms agreed between the Executive Officer and the Board. The Executive Officer may be a natural person or a body corporate.
- 3.2 The Executive Officer shall cause records to be kept of the business and financial affairs of the Authority in accordance with this Charter, in addition to other duties provided for by this Charter and those specified in the terms and conditions of appointment.
- 3.3 In the absence or likely absence of the Executive Officer for any period exceeding two weeks a suitable person to act in the position of Executive Officer of the Authority must be appointed by the Board.
- 3.4 The Board 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.
- 3.5 The functions of the Executive Officer shall be specified in the terms and conditions of appointment and shall include but are not limited to:
  - 3.5.1 attending at all meetings of the Board unless excluded by resolution of the Board;
  - 3.5.2 ensuring that the decisions of the Board are implemented in a timely and efficient manner;
  - 3.5.3 providing information to assist the Board to assess the Authority's performance against its Strategic and Business Plans;
  - 3.5.4 appointing, managing, suspending and dismissing other employees of the Authority;
  - 3.5.5 determining the conditions of employment of employees of the Authority, within budgetary constraints set by the Board;
  - 3.5.6 providing advice and reports to the Board on the exercise and performance of its powers and functions under this Charter or any Act;
  - 3.5.7 ensuring that the Authority is at all times complying with Schedule 2 to the Act and all other relevant statutory obligations;
  - 3.5.8 co-ordinating and initiating proposals for consideration of the Board including but not limited to continuing improvement of the operations of the Authority;
  - 3.5.9 ensuring that the assets and resources of the Authority are properly managed and maintained;
  - 3.5.10 ensuring that records required under the Act or any other legislation are properly kept and maintained;
  - 3.5.11 exercising, performing or discharging other powers, functions or duties conferred on the Executive Officer by or under the Act or any other Act, and performing other functions lawfully directed by the Board;
  - 3.5.12 achieving financial outcomes in accordance with adopted plans and budgets of the Authority;
  - 3.5.13 inviting any person to attend at a meeting of the Board to act in an advisory capacity; and
  - 3.5.14 providing reports to the Constituent Councils in accordance with subclause 2.5.22.
- 3.6 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 the Executive Officer. Such delegation or sub-delegation may be subject to any conditions or limitations as determined by the Executive Officer.
- 3.7 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.
- 3.8 A written record of all delegations and sub-delegations must be kept by the Executive Officer at all times.
- 3.9 The Executive Officer and any other officer declared by the Board to be subject to this provision is required to comply with Division 2 of Part 4 of Chapter 7 (Register of Interests) of the Act. Section 118 (Inspection of Register) of the Act and Section 119 (Restrictions on disclosure) of the Act will apply.

### 4. MANAGEMENT

- 4.1 **Financial Management**
  - 4.1.1 The Authority shall keep proper books of accounts in accordance with the requirements of the Local Government (Financial Management) Regulations 2011.
  - 4.1.2 The Authority's books of account must be available for inspection by any Board Member or authorised representative of any Constituent Council at any reasonable time on request.
  - 4.1.3 The Authority must establish and maintain a bank account with such banking facilities and at a bank to be determined by the Board.
  - 4.1.4 All cheques must be signed by two persons authorised by resolution of the Board.

4.1.5 Any payments made by Electronic Funds Transfer must be made in accordance with procedures which have received the prior written approval of the Board.

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 if requested, the Constituent Councils.

#### 4.2 **Audit**

4.2.1 The Authority shall appoint an auditor in accordance with the Local Government (Financial Management) Regulations 2011, on terms and conditions set by the Board.

4.2.2 The Auditor will have the same powers and responsibilities as set out in the Local Government Act 1999, in relation to a council subsidiary.

4.2.3 The audit of Financial Statements of the Authority, together with the accompanying report from the Auditor, shall be submitted to both the Board and the Constituent Councils.

4.2.4 The books of account and financial statements shall be audited at least once per year.

4.2.5 The Authority is required to establish an audit committee.

#### 4.3 **Strategic Plan**

The Authority shall:

4.3.1 prepare a five year Strategic Plan 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; and

4.3.2 review the Strategic Plan annually; and

4.3.3 consult with the Constituent Councils prior to adopting or amending the Strategic Plan.

#### 4.4 **Annual Business Plan and Budget**

4.4.1 The Authority shall, after 31 May but before the end of June in each financial year, prepare and adopt an annual business plan and budget for the ensuing financial year in accordance with the Local Government Act 1999.

4.4.2 The proposed annual business plan and budget must be referred to Constituent Councils at the same time as the Executive Officer submits it to the Board Members.

4.4.3 A Constituent Council may comment in writing to the Executive Officer on the business plan and budget at least three business days before the meeting at which it will be considered by the Board or, alternatively, may comment through its Board Member at the meeting of the Board.

4.4.4 The Authority must provide a copy of its annual business plan and budget to the Constituent Councils within five business days after adoption by the Board.

4.4.5 Reports summarising the financial position and performance of the Authority against the annual business plan and budget shall be prepared and presented to the Board every three calendar months and copies provided to the Constituent Councils within five days of the Board meeting to which they have been presented.

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

*(See Clause 25, Part 2, Schedule 2 to the Act and Regulations 7, 8 & 9 to the Local Government (Financial Management) Regulations 2011 for the contents of the budget)*

#### 4.5 **Reporting**

4.5.1 The Authority must submit to the Constituent Councils by 30 September in each year in respect of the immediately preceding financial year, a report on the work and operations of the Authority detailing achievement of the aims and objectives of its Business Plan and incorporating the audited Financial Statements of the Authority and any other information or reports as required by the Constituent Councils.

4.5.2 The Board shall present a balance sheet and full financial report to the Constituent Councils at the end of each financial year.

4.5.3 The Board shall present audited financial statements to the Constituent Councils in accordance with the requirements of the Local Government (Financial Management) Regulations 2011.

### 5. **MISCELLANEOUS**

#### 5.1 **Equitable Interest**

5.1.1 Subject to subclause 5.1.2 the equitable interest of the Constituent Councils in the Authority is agreed as follows:

(a) City of Holdfast Bay: 15%.

(b) City of Marion: 30%.

(c) City of Onkaparinga: 55%.

5.1.2 The equitable interest of the Constituent Councils in the Authority as set out at subclause 5.1.1 may be varied by agreement of the Constituent Councils and will be varied where a new Constituent Council or Councils is admitted pursuant to Clause 5.3.

#### 5.2 **Withdrawal**

5.2.1 A Constituent Council may not withdraw from the Authority except with the approval of the Minister and subject to the Local Government Act and this Charter.

5.2.2 A Constituent Council which intends to withdraw from the Authority shall give to the Board and the other Constituent Councils written notice of such intention, specifying the date of intended withdrawal. The notice shall be a minimum of 24 months notice expiring on 30 June of the relevant financial year.

5.2.3 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.

- 5.2.4 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 such withdrawal in respect of any act or omission by the Authority prior to such withdrawal. For the avoidance of doubt, any and all costs associated with closure processes (including but not limited to capping and post-closure monitoring and necessary actions) of a waste cell or the landfill site generally is a liability incurred before the withdrawal of a Constituent Council and is, therefore, a continuing liability for the purposes of this clause.
- 5.2.5 Payment by or to the withdrawing Constituent Council must be fully paid by 30 June of the financial year following 30 June of the year in which the withdrawal occurs unless there is common agreement of alternative payment arrangements by the Constituent Councils.
- 5.3 New Members**  
Subject to the provisions of the Act, this Charter may be amended by the unanimous agreement of the Constituent Councils to provide for the admission of a new Constituent Council or Councils, with or without conditions of membership.
- 5.4 Insurance Requirements**
- 5.4.1 The Authority shall register with the Local Government Mutual Liability Scheme and comply with the Rules of that Scheme.
- 5.4.2 The Authority shall advise Local Government Risk Management Services of its insurance requirements relating to Local Government Special Risks including buildings, structures, vehicles and equipment under the management, care and control of the Authority.
- 5.4.3 If the Authority employs any person it shall register with the Local Government Workers Compensation Scheme and comply with the Rules of that Scheme.
- 5.5 Winding Up and Statutory Guarantee**
- 5.5.1 The Authority may be wound up by unanimous resolution of the Constituent Councils and with the consent of the Minister.
- 5.5.2 On winding up of the Authority, the surplus assets or liabilities of the Authority, as the case may be, shall be distributed between or becomes the responsibility of the Constituent Councils in the same proportion as their equitable interest in the Authority in accordance with Clause 5.1.
- 5.5.3 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 their equity share for the purpose of satisfying their statutory guarantee of the liabilities of the Authority.
- 5.6 Direction by Constituent Councils**
- 5.6.1 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.
- 5.6.2 Provided that all of the Constituent Councils have first agreed as to the action to be taken, the Constituent Councils may direct and control the Authority.
- 5.6.3 For the purpose of this Clause, any decision of the Constituent Councils under subclause 5.6.1 and/or direction given or control exercised by the Constituent Councils must be given in writing to the Executive Officer of the Authority.
- 5.7 Review of Charter**
- 5.7.1 This Charter will be reviewed by the Constituent Councils acting in concurrence at least once in every four years.
- 5.7.2 This Charter may be amended by unanimous agreement expressed by resolution of the Constituent Councils.
- 5.7.3 The Executive Officer must ensure that the amended Charter is published on a website (or websites) determined by the Chief Executive Officers of the Constituent Councils, that a notice of the fact of the amendment and a website address at which the Charter is available for inspection is published in the *Gazette* and a copy of the amended Charter provided to the Minister.
- 5.7.4 Before the Constituent Councils vote on a proposal to alter this Charter they must take into account any recommendation of the Board.
- 5.8 Disputes Between Constituent Councils**
- 5.8.1 The Constituent Councils agree to work together in good faith to resolve any matter requiring their direction or resolution.
- 5.8.2 Where the Constituent Councils are unable to resolve a matter within 28 days of the matter being presented to them, the matter will be referred for arbitration by the President (or his/her nominee) of the Institute of Arbitration.
- 5.8.3 Notwithstanding subclause 5.8.2 the Constituent Councils agree to be bound by the decision of the Arbitrator (except in relation to any decision relating to the acquisition or disposal of any real property) and will endeavour to work together in good faith in the implementation of that decision.
- 5.8.4 The costs of arbitration shall be borne equally by the Constituent Councils.
- 5.9 Committees**
- 5.9.1 The Board may establish a committee comprised of any persons 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 given by the Board to the committee.
- 5.9.2 The Board may establish a committee comprised only of Board Members for the purpose of exercising, performing or discharging delegated powers, functions or duties.
- 5.9.3 A member of a committee established under this Clause holds office at the pleasure of the Board.

5.9.4 The Chair of the Board is an *ex-officio* a member of any committee established by the Board.

**5.10 Common Seal**

5.10.1 The Authority will have a common seal, which may be affixed to documents requiring execution under seal and where affixed must be witnessed by two Board Members or where authority has been conferred by instrument executed under the common seal of the Authority, by the Chair of the Board and the Executive Officer.

5.10.2 The common seal must not be affixed to a document except to give effect to a resolution of the Board.

5.10.3 The Executive Officer must 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 persons who witnessed the fixing of the seal and the date that the seal was affixed.

5.10.4 The Board may by instrument under seal authorise a person to execute documents on behalf of the Authority.

**5.11 Circumstances Not Provided For**

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

MARK HINDMARSH Executive Officer