

# CHARTER

**JUNE 2022**



# LOCAL GOVERNMENT ACT 1999

## ADELAIDE HILLS REGION WASTE MANAGEMENT AUTHORITY CHARTER

JUNE 2022

### 1. INTRODUCTION

#### 1.1. Definitions

**'Absolute Majority'** means a majority of the whole number of the Constituent Councils;

**'Act'** means the *Local Government Act 1999* and includes all regulations made under that Act;

**'Annual Contribution'** means the volume of rubbish and waste deposited in a financial year by a Constituent Council at landfill operations undertaken by the Authority, unless otherwise determined by the Authority;

**'Asset Management Plan'** means the asset management plan prepared under clause 5.5.1;

**'Authority'** means the Adelaide Hills Region Waste Management Authority;

**'Board'** means the board of management of the Authority as described in clause 3;

**'Board Member'** means a member of the Board appointed in accordance with clause 3.3 and, unless the context requires otherwise, includes a Deputy Board Member;

**'Budget'** means the annual budget adopted by the Authority in accordance with clause 5.2;

**'Business Plan'** means a business plan adopted by the Authority in accordance with clause 4.2;

**'CCI Schedule'** means the schedule compiled for the purposes of clause 5.1.1.

**'Chairperson'** means the member of the Board appointed in accordance with clause 3.3.1.2;

**'Constituent Councils'** means the Constituent Councils of the Authority as identified in clause 1.2.2 subject to any adjustment under clauses 8.2 or 8.3;

**'Council'** means a Council constituted under the Act;

**'Deputy Board Member'** means a deputy member of the Board appointed in accordance with clause 3.3.2;

**'Equity Interest'** means the interest of a Constituent Council in the Net Assets of the Authority as recorded in the CCI Schedule;

**'Equity Interest Percentage'** means the Equity Interest of a Constituent Council as a proportion of the Equity Interest of all Constituent Councils expressed as a percentage;

**'Executive Officer'** means the person appointed in accordance with clause 6.1 as the Executive Officer of the Authority;

**'Fees'** are fees for services or facilities provided by the Authority;

**'Financial Contribution'** means a monetary contribution of a Constituent Council to the Authority including under clause 5.3, but excludes Fees paid by the Constituent Council for services or facilities provided by the Authority;

**'Financial Statements'** has the same meaning as in the *Local Government (Financial Management) Regulations 2011*;

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

**'Long Term Financial Plan'** means the long term financial plan adopted by the Authority and approved by the Constituent Councils in accordance with clause 5.5;

**'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;

**'Region'** means the collective geographical areas of the Constituent Councils; and

**'Strategic Plan'** means a strategic plan adopted by the Authority in accordance with clause 4.

## **1.2. Establishment**

1.2.1. The Authority is a regional subsidiary established under section 43 of the Act by the Constituent Councils and must conduct its affairs in accordance with Parts 2 and 3, Schedule 2 of the Act except as modified by this Charter in a manner permitted by the Act.

1.2.2. The Constituent Councils are:

1.2.2.1. Mount Barker District Council;

1.2.2.2. Adelaide Hills Council;

1.2.2.3. Rural City of Murray Bridge; and

1.2.2.4. Alexandrina Council.

## **1.3. Purpose of the Authority**

The Authority is established to facilitate, co-ordinate and undertake waste management including waste collection, treatment, disposal and recycling within the Region.

## **1.4. Common Seal**

- 1.4.1. The Authority will have a common seal.
- 1.4.2. The common seal of the Authority must not be affixed to a document except to give effect to a resolution of the Board.
- 1.4.3. The affixing of the common seal of the Authority must be attested by two (2) Board Members.
- 1.4.4. 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 the persons who attested to the affixing of the seal and the date on which this occurred.
- 1.4.5. The Authority may by instrument under common seal authorise a person to execute documents on behalf of the Authority subject to any limitations specified in the instrument of authority.

## **2. FUNCTIONS AND POWERS OF THE AUTHORITY**

### **2.1. Functions**

- 2.1.1. The Authority has the following functions to:
  - 2.1.1.1. develop and implement policies designed to improve waste management and recycling programmes and practices within the Region;
  - 2.1.1.2. regularly review the Region's waste management and recycling practices and policies;
  - 2.1.1.3. provide and operate a place or places for the treatment, recycling and disposal of waste collected by or in the areas of the Constituent Councils or provided by agreement with any other person;
  - 2.1.1.4. develop further co-operation between the Constituent Councils in the collection, treatment, recycling and disposal of waste for which the Constituent Councils are or may become responsible;
  - 2.1.1.5. minimise the volume of waste collected in the areas of the Constituent Councils which is required to be disposed of to landfill;
  - 2.1.1.6. educate and motivate the community to achieve the practical reduction of waste through reuse and recycling initiatives; and
  - 2.1.1.7. undertake activities associated with its purpose outside the areas of the Constituent Councils where that activity has been approved by the Board as being necessary or expedient to the performance by the Authority of its functions.



2.1.2. In carrying out its functions, the Authority must:

2.1.2.1. consider measures to achieve financial sustainability; and

2.1.2.2. give due weight to economic, social and environmental considerations.

## **2.2. Powers**

In addition to those powers specified in the Act, the powers of the Authority are:

2.2.1. subject to clause 2.5, to acquire, deal with and dispose of real or personal property (wherever situated) and rights in relation to real and personal property in accordance with the long-term financial plan, business plan and annual budget;

2.2.2. subject to clause 2.5, to lease, licence, hire or rent any real or personal property;

2.2.3. subject to clause 2.4, to sue in its corporate name provided that any litigation is subject to an immediate information report to the Constituent Councils by the Executive Officer;

2.2.4. subject to the requirements of this Charter, to enter into any kind of contract or arrangement;

2.2.5. to establish a reserve fund or funds clearly identified for the upkeep or replacement of fixed assets of the Authority or for meeting any deferred liability of the Authority;

2.2.6. to invest any surplus funds of the Authority in the Local Government Finance Authority of South Australia;

2.2.7. to distribute surplus funds to the Constituent Councils on a basis determined by the Board and included in the Budget;

2.2.8. to enter into arrangements with the Constituent Councils for the purpose of operating and managing sites for the treatment, recycling, disposal and transfer of waste;

2.2.9. to determine the types of refuse and waste which will be received and the method of collection, treatment, recycling and disposal of the waste;

2.2.10. subject to clause 2.4, to undertake projects and to undertake all manner of things relating to and incidental to the collection, treatment, recycling and disposal of waste;

2.2.11. subject to clause 2.4, to commit the Authority to undertake a project in conjunction with any other Council or government agency and in doing so to participate in the formation of a trust, partnership or unincorporated joint venture with the other body to give effect to the project;

- 2.2.12. subject to clause 2.4, to employ, engage, remunerate, remove, suspend or dismiss the Executive Officer of the Authority;
- 2.2.13. to open and operate bank accounts;
- 2.2.14. to make submissions for and accept grants, subsidies and contributions to further its objects and purposes and to invest any funds of the Authority in any securities in which a Council may lawfully invest;
- 2.2.15. to charge fees for services or facilities provided by the Authority; and
- 2.2.16. subject to the Act and this Charter to do anything else necessary or convenient for, or incidental to, the exercise, performance or discharge of its powers, functions or duties.

### **2.3. Delegated Functions and Powers**

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

### **2.4. Borrowings and Expenditure**

- 2.4.1. The Authority has the power to incur expenditure as follows:
  - 2.4.1.1. in accordance with a Budget and approved by the Constituent Councils as required by the Act or this Charter;
  - 2.4.1.2. with the prior approval of the Constituent Councils; or
  - 2.4.1.3. in accordance with the Act, in respect of expenditure not contained in a Budget for a purpose of genuine emergency or hardship.
- 2.4.2. The Authority has the power to borrow money as follows:
  - 2.4.2.1. in accordance with a Budget and approved by the Constituent Councils as required by the Act or this Charter;
  - 2.4.2.2. in respect of an overdraft facility or facilities up to a maximum amount as determined by the Authority's Treasury Management Policy; or
  - 2.4.2.3. with the prior approval of the Constituent Councils.

### **2.5. Property**

No real property of the Authority may be sold, encumbered or otherwise dealt with without the prior approval of the Constituent Councils and the approval of the Authority by a resolution of the Board.

## **2.6. National Competition Policy**

The Authority will apply the principles of competitive neutrality to any significant business activity of the Authority in accordance with, and to the extent required by, the State of South Australia's *Revised Clause 7 Statement on the Application of Competition Principles to Local Government under the Competition Principles Agreement* (September 2002).

## **3. THE BOARD OF MANAGEMENT**

### **3.1. Role of the Board**

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

### **3.2. Functions of the Board**

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

- 3.2.1. formulating Strategic Plans and Business Plans in accordance with clauses 4.1 and 4.2 of this Charter and developing strategies aimed at improving the business of the Authority;
- 3.2.2. providing policy direction to the Authority;
- 3.2.3. monitoring, overseeing and measuring the performance of the Executive Officer of the Authority;
- 3.2.4. subject to this Charter, ensuring that the business of the Authority is undertaken in an open and transparent manner;
- 3.2.5. ensuring that ethical behaviour and integrity is established and maintained by the Authority and Board Members in all activities undertaken by the Authority;
- 3.2.6. exercising the care, diligence and skill that a prudent person of business would exercise in managing the affairs of other persons; and
- 3.2.7. ensuring that the Authority functions in accordance with its purpose and within its approved budget.

### **3.3. Board Members**

- 3.3.1. The Board will be comprised of five (5) members appointed as follows:
  - 3.3.1.1. One (1) person (who may be an elected member, an employee or an Independent Member) appointed by each Constituent Council with skills and/or knowledge in any of the following:
    - a. financial management;
    - b. legal / corporate governance;

- c. marketing and promotions;
- d. waste management;
- e. business management.

3.3.1.2. One (1) person appointed jointly by Absolute Majority of the Constituent Councils, with relevant professional expertise, who is not a member or officer of a Constituent Council to be the Chairperson of the Board.

3.3.1.3. The Chairperson of the Board shall be selected through a process determined by a panel comprising the Chief Executive Officers of the Constituent Councils.

3.3.1.4. A panel comprising each Constituent Council's Chief Executive Officers or nominee will meet collectively to develop a position description/information package for prospective Board Members, outlining the responsibilities and desired skills. The panel will meet to discuss their proposed appointees, prior to final appointment, for the purpose of ensuring that the Board will have an appropriate skill mix.

3.3.2. Each Constituent Council must also appoint one Deputy Board Member.

3.3.3. A Deputy Board Member will be appointed in the same manner as a Board Member.

3.3.4. The Deputy Board Member is entitled to act in place of a Board Member appointed by the same Constituent Council that appointed the Deputy Board Member, if the Board Member is absent or unable for any reason to act as a Board Member, for the period of the Board Member's absence or inability to act as a Board Member.

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

3.3.6. Each Constituent Council must give notice in writing to the Authority of its appointment of Board Members and Deputy Members, the term of appointment if applicable and any termination or revocation of those appointments. A notice in writing signed by the Chief Executive Officer of a Constituent Council will be sufficient evidence of an appointment, termination or revocation of an appointment and will constitute notice as required by this clause 3.3.6.

#### **3.4. Term of Office**

3.4.1. Subject to clause 3.4.3 the term of office of a Board Member appointed under clause 3.3.1.1 and a Deputy Board Member, shall be for a term



determined by the Constituent Council appointing that Board Member. At the conclusion of a such a Board Member's term of office, the Board Member will be eligible for re-appointment.

- 3.4.2. Subject to clauses 3.4.3 and 3.4.5, the term of office of the Chairperson of the Board shall be for a period of three (3) years. At the conclusion of the term of office the Chairperson of the Board will be eligible for re-appointment.
- 3.4.3. The office of a Board Member will become vacant if:
  - 3.4.3.1. any of the grounds or circumstances set out in the Act as to when a Board Member's office becomes vacant arise;
  - 3.4.3.2. the Constituent Council which appointed the Board Member under clause 3.3.1.1 terminates or revokes the Board Member's appointment;
  - 3.4.3.3. the Board Member is an elected member of a Constituent Council, upon ceasing to be an elected member of the Constituent Council which appointed him or her; or
  - 3.4.3.4. the Board Member is an employee of a Constituent Council, upon ceasing to be employed by the Council which appointed him or her.
- 3.4.4. The Authority may, by a resolution of the Board supported by at least two-thirds majority of the Board Members currently in office (excluding the Board Member subject to this clause) ignoring any fraction, make a recommendation to a Constituent Council that it terminate the appointment of a Board Member appointed by that Constituent Council in the event of any behaviour of that Board Member which in the opinion of the Authority amounts to:
  - 3.4.4.1. impropriety;
  - 3.4.4.2. serious neglect of duty in attending to the responsibilities as a Board Member;
  - 3.4.4.3. breach of fiduciary duty to the Authority;
  - 3.4.4.4. breach of the duty of confidentiality to the Authority; or
  - 3.4.4.5. any other behaviour which may discredit the Board, the Authority or a Constituent Council.
- 3.4.5. The Independent Chair appointed pursuant to clause 3.3.1.2 may be removed by a decision being a resolution in the same or similar terms passed by an Absolute Majority of the Constituent Councils.
- 3.4.6. Where any vacancy occurs in the membership of the Board it must be filled in the same manner as the original appointment and the person appointed to fill the vacancy will be appointed for the balance of the term

of the original appointment and at the expiry of that term shall be eligible for re-appointment.

### **3.5. Reimbursement of Expenses of Board Members and Remuneration of Chairperson**

- 3.5.1. All Board Members will receive from the Authority reimbursement of expenses properly incurred in performing or discharging official functions and duties as determined by the Authority and set out in a policy adopted by the Authority for the purposes of this clause.
- 3.5.2. The Chairperson will be eligible for a sitting fee from the funds of the Authority as determined by the Constituent Councils.
- 3.5.3. Board Members appointed by Constituent Councils will not be entitled to a sitting fee from the funds of the Authority.

### **3.6. Propriety of Board Members**

- 3.6.1. Subject to the express provisions of Schedule 2 to the Act and this Charter, all provisions governing propriety and duties of members of a Council and public officers under the law of South Australia will be applicable to Board Members.
- 3.6.2. Subject to clauses 20(6) and 20(7) of Schedule 2 to the Act, the provisions regarding conflict of interest prescribed in the Act apply to all Board Members as if they were members of a Council.
- 3.6.3. 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 Schedule 2, Part 2 of the Act.
- 3.6.4. The Authority must adopt a Code of Conduct for Board Members.
- 3.6.5. Each Board Member is required to submit returns under Chapter 5, Part 4, Division 2 of the Act as if the Board Member was a member of a Council.

### **3.7. Proceedings of the Board**

#### **3.7.1. Board Meetings**

- 3.7.1.1. Ordinary meetings of the Board will be held at such time and such place as the Board decides subject only to the requirement that there will be at least one (1) ordinary meeting of the Board every three (3) months.
- 3.7.1.2. An ordinary meeting of the Board will constitute an ordinary meeting of the Authority. The Board shall administer the business of the Authority at the ordinary meeting.

- 3.7.1.3. Any Constituent Council, the Chairperson or two Board Members may, by delivering a written request to the Executive Officer, require a special meeting of the Board to be held and any such special meeting shall constitute a special meeting of the Authority. The written request for a special meeting must be accompanied by the agenda for the special meeting or the request will be of no effect.
- 3.7.1.4. On receipt of a written request pursuant to clause 3.7.1.3 the Executive Officer must send a notice to all Board Members at least four hours prior to the commencement of the special meeting.
- 3.7.1.5. For the purposes of this clause 3.7.1, the contemporary linking together by telephone, audio-visual or other instantaneous means ('telecommunications meeting') of the Board Members provided that at least a quorum is present, is deemed to constitute a meeting of the Board. Each of the Board Members taking part in the telecommunications 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 or her presence to all other Board Members taking part in the meeting. A Board Member must not leave a telecommunications meeting by disconnecting his or her telephone, audio-visual or other communication equipment, unless that Board Member has previously notified the Chairperson of the meeting.
- 3.7.1.6. A proposed resolution in writing and given to all Board Members in accordance with procedures 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 will be as valid and effective as if it had been passed at a meeting of the Board duly convened and held.
- 3.7.1.7. Ordinary meetings of the Board will be open to the public unless the Board resolves to consider a matter in confidence in accordance with the provisions of Chapter 6, Part 3 of the Act. Chapter 6, Part 3 of the Act extends to the Authority as if the Authority were a Council and the Board Members were members of a Council. Where an order is made under this clause, a note must be made in the minutes of the making of the order and of the grounds on which it was made.
- 3.7.1.8. Where the Board has considered any information or a matter in confidence under clause 3.7.1.7, it may subsequently resolve to keep minutes and/or documents considered during that part of the meeting relating to that information or matter

confidential in accordance with section 91 of the Act as if the Authority were a Council.

### **3.7.2. Notice of Meetings**

3.7.2.1. Subject to clause 3.7.2.2, notice to Board Members and the public of all meetings of the Board will be given in accordance with the requirements applicable to a meeting of a Council under the Act as if the Authority were a Council, the Board Members were members of a Council and the Executive Officer a Chief Executive Officer of a Council.

3.7.2.2. The Executive Officer must, in relation to a notice of meeting of the Board for the purpose of considering the making of a recommendation to the Constituent Councils to wind up the Authority, provide the notice to all Board Members at least four (4) months before the date of the meeting.

### **3.7.3. Quorum**

No meeting of the Board will commence until a quorum of Board Members is present and no meeting may continue if there is not a quorum of Board Members present. A quorum of Board Members will comprise one-half of the Board Members in office, ignoring any fraction, plus one.

### **3.7.4. Majority Decision-Making**

3.7.4.1. Unless otherwise required at law or by this Charter, all matters for decision at a meeting of the Board will be decided by a simple majority of the Board Members present and entitled to vote on the matter.

3.7.4.2. All Board Members including the Chairperson present and entitled to vote on the matter are required to cast a vote.

3.7.4.3. All Board Members including the Chairperson are entitled to a deliberative vote only and if the votes are equal, the Chairperson (or person acting as the chairperson in accordance with this Charter) only will have a casting vote.

### **3.7.5. Confidentiality**

All Board Members must at all times keep confidential all documents and reports provided to them for their consideration prior to a meeting of the Board that is subject to an indication by the Executive Officer that information or matter contained in or arising from a document or report may, if the Authority determines be considered in confidence or that relates to a matter dealt with by the Board on a confidential basis in accordance with clause 3.7.1.7 and Chapter 6, Part 3 of the Act.

**3.7.6. Minutes**

- 3.7.6.1. The Executive Officer must cause minutes to be kept of the proceedings at every meeting of the Board and ensure that the minutes are presented to the next ordinary meeting of the Board for confirmation. Where the Executive Officer is excluded from attendance at a meeting of the Board pursuant to clause 3.7.1.7 the person presiding at the meeting shall cause the minutes to be kept.
- 3.7.6.2. The Executive Officer must, within five (5) days after a meeting of the Board, provide to each Board Member a copy of the draft minutes of the meeting of the Board.
- 3.7.6.3. A copy of the minutes of a meeting of the Board must be placed on the Authority website within five days after the meeting at which the minutes are confirmed.
- 3.7.6.4. Clause 3.7.6.3 does not apply to the minutes of a meeting of the Board that relates to information or a matter dealt with by the Board on a confidential basis in accordance with clause 3.7.1.7 and Chapter 6, Part 3 of the Act.

**3.7.7. Code of Practice**

- 3.7.7.1. The Board must adopt a Code of Practice for Meeting Procedures to apply to the proceedings and conduct of meetings of the Board. The Code of Practice for Meeting Procedures must not be inconsistent with the Act or this Charter.
- 3.7.7.2. The Code of Practice for Meeting Procedures may be reviewed by the Board at any time and must be reviewed at least once every four (4) years.
- 3.7.7.3. In the event of any inconsistency between this Charter and the Code of Practice for Meeting Procedures, this Charter shall prevail.

**3.7.8. Committees**

- 3.7.8.1. The Board may from time to time as it sees fit establish committees, including their associated terms of reference, for the purposes of assisting it in the performance of its functions. A committee established by the Board under this clause may be comprised of such persons that the Board determines.
- 3.7.8.2. Every committee shall operate in accordance with the terms of reference and general procedures applicable to the Board itself subject to any variation prescribed by the Board when establishing the committee.

## 4. STRATEGIC MANAGEMENT

### 4.1. Strategic Plan

- 4.1.1. The Authority must:
- 4.1.1.1. prepare, and subject to clause 4.1.1.2, adopt a ten year Strategic Plan for the conduct of its business which will identify the Authority's objectives over the period of the Strategic Plan and the principal activities that the Authority intends to undertake to achieve its objectives;
  - 4.1.1.2. submit the Strategic Plan to the Constituent Councils for their approval; and
  - 4.1.1.3. in consultation with the Constituent Councils, review the Strategic Plan at least once in every four years.
- 4.1.2. In preparing and when reviewing a Strategic Plan, the Board must at a minimum have regard to the following:
- 4.1.2.1. any State government agency waste plan then in force in relation to the area of a Constituent Council and any proposed changes to such plan;
  - 4.1.2.2. any initiatives proposed by the Commonwealth of Australia or the State Government which may impact upon or affect proper waste management in the area;
  - 4.1.2.3. any plan or policy of a Constituent Council for waste management then in force and any proposed changes to such plan or policy;
  - 4.1.2.4. the current strategic management plans of each Constituent Council; and
  - 4.1.2.5. the current annual business plan and budget of each Constituent Council.

### 4.2. Business Plan

The Authority:

- 4.2.1. must in consultation with the Constituent Councils prepare and adopt an annual Business 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;
- 4.2.2. must before 31 March of each year submit a draft business plan and draft budget to the Constituent Councils for the ensuing Financial Year in accordance with the Act and obtain approval of the draft budget by an Absolute Majority of the Constituent Councils;



- 4.2.3. following approval of the draft business plan by the Constituent Councils, after 31 May and before 30 June each year, the Authority must adopt the draft business plan as the Business Plan for the ensuing Financial Year;
- 4.2.4. may, after consultation with the Constituent Councils, amend its Business Plan at any time; and
- 4.2.5. must ensure the contents of the Business Plan are in accordance with the Act.

### **4.3. Annual Report**

The Authority must submit to the Constituent Councils by 30 September in each financial year an annual report on the work and operations of the Authority detailing achievement of the objectives described in the Business Plan and incorporating the audited Financial Statements of the Authority for the preceding Financial Year and any other information or reports as required by the Constituent Councils.

### **4.4. Audit**

- 4.4.1. The Authority must cause adequate and proper books of account to be kept in relation to all the affairs of the Authority and must establish and maintain effective auditing of its operations.
- 4.4.2. The Authority must appoint an auditor in accordance with the Act on such terms and conditions as determined by the Authority.
- 4.4.3. The audited Financial Statements of the Authority, together with the accompanying report from the Auditor, shall be submitted to both the Board and the Constituent Councils by 30 September in each year.

### **4.5. Audit Committee**

- 4.5.1. The Authority will establish an audit committee as required by clause 30, Schedule 2 of the Act.

## **5. FINANCIAL MANAGEMENT**

### **5.1. Equity Interest**

- 5.1.1. The Authority will by the end of every calendar year prepare or update as required a schedule setting out the interest of each Constituent Council in the Net Assets of the Authority (**CCI Schedule**).
- 5.1.2. The CCI Schedule will set out each Constituent Council's Equity Interest in the Authority as at 30 June that year calculated in accordance with clause 5.1.3.
- 5.1.3. The Equity Interest of a Constituent Council as at the end of a Financial Year will be determined by adjusting the Equity Interest of the Constituent Council calculated for the previous Financial Year by the Annual Contribution of the Council.

- 5.1.4. The Equity Interest of a Constituent Council as at the date on which this Charter comes into operation will be equal to the cumulative tonnes of rubbish and waste deposited by the Constituent Council at a landfill operated by the Authority in period commencing 1 July 2001 until 30 June of the financial year immediately preceding the commencement of this Charter.

## **5.2. Annual Budget**

- 5.2.1. The Board will determine annually, and will include within the draft budget submitted to the Constituent Councils for approval, the funds required to enable the Authority to operate and to fulfil its purpose and undertake its functions.
- 5.2.2. The Authority must before 31 March of each year prepare and submit a draft budget (including proposed Fees and Financial Contributions) to the Constituent Councils for the ensuing Financial Year in accordance with the Act and obtain approval of the draft budget by an Absolute Majority of the Constituent Councils.
- 5.2.3. Following approval of the draft budget by the Constituent Councils, after 31 May and before 30 June each year, the Authority must adopt the draft budget as the Budget for the ensuing Financial Year in accordance with the Act.
- 5.2.4. The Authority may in a Financial Year, after consultation with the Constituent Councils, incur spending before adoption of its Budget for the year, but the spending must be provided for in the appropriate Budget for the year.
- 5.2.5. The Authority must each Financial Year provide a copy of its Budget to the Constituent Councils within five (5) business days after adoption by the Authority.
- 5.2.6. Reports summarising the financial position and performance of the Authority against the Budget shall be prepared and presented to the Board at each ordinary meeting of the Board and copies provided to the Constituent Councils.
- 5.2.7. The Authority must reconsider its Budget in accordance with the Act in a manner consistent with the Act and may with the approval of the Constituent Councils amend its Budget for a Financial Year at any time before the Financial Year ends.

## **5.3. Financial Contributions**

- 5.3.1. The Authority may include in the Budget submitted to the Constituent Councils for approval Financial Contributions to be paid by the Constituent Councils.
- 5.3.2. The Authority may during any Financial Year for purposes of genuine emergency, extraordinary circumstances or hardship determine that additional Financial Contributions are required by the Authority for the

continuing functioning of the Authority and request these funds from the Constituent Councils.

- 5.3.3. Any additional financial contributions to be paid by the Constituent Councils will be submitted to the Constituent Councils for approval.

#### **5.4. Financial Standards and Reporting**

- 5.4.1. The Authority must ensure that the Financial Statements of the Authority for each Financial Year are audited by the Authority's auditor.
- 5.4.2. The Financial Statements must be finalised and audited by 31 August each year.

#### **5.5. Long Term Financial Plan**

- 5.5.1. The Board must prepare a Long Term Financial Plan covering a period of at least ten (10) years and an Asset Management Plan in a form and including such matters which, as relevant, is consistent with section 122 of the Act and the *Local Government (Financial Management) Regulations 2011* as if the Authority were a Council.
- 5.5.2. The Authority must undertake:
- 5.5.2.1. a comprehensive review of its Long Term Financial Plan every four (4) years;
  - 5.5.2.2. a review of the Long Term Financial Plan as soon as practicable after the annual review of its Business Plan and concurrently with any review of its Strategic Plan and may undertake a review of the Long Term Financial Plan at any other time.
- 5.5.3. The Long Term Financial Plan and the Asset Management Plan will be taken to form part of the Strategic Plan.

#### **5.6. Banking**

- 5.6.1. The Authority must establish and maintain a bank account with such banking facilities and at a bank to be determined by the Authority. The Authority will appoint no less than two (2) authorised operators of the bank accounts at any one time. The authorised operators must be Board Members, Authority staff or Constituent Council staff.
- 5.6.2. All payments made by the Authority must be authorised by an authorised operator appointed under clause 5.6.1 and be in accordance with a finance management policy adopted by the Board.

### **6. ADMINISTRATIVE MATTERS**

#### **6.1. Executive Officer and Staff**

- 6.1.1. The Authority may employ staff and the Board must appoint an Executive Officer on a fixed term performance based employment

contract, which does not exceed five (5) years in duration and on such other terms as determined by the Board. The Board may at the end of the contract term enter into a new contract not exceeding five (5) years in duration with the same person.

- 6.1.2. The Executive Officer is responsible for appointing, managing, suspending and dismissing the other employees of the Authority on behalf of the Authority.
- 6.1.3. In the absence of the Executive Officer for any period exceeding three (3) weeks, the Executive Officer must after consultation appoint a suitable person as Acting Executive Officer. If the Executive Officer does not make or is incapable of making such an appointment, a suitable person must be appointed by the Board.
- 6.1.4. The functions of the Executive Officer include:
  - 6.1.4.1. ensuring the decisions of the Authority are implemented in a timely and efficient manner;
  - 6.1.4.2. carrying out such duties as the Authority may direct;
  - 6.1.4.3. attending at all meetings of the Board unless excluded by resolution of the Board;
  - 6.1.4.4. providing information to assist the Authority to assess the Authority's performance against the Strategic Plan and Business Plan;
  - 6.1.4.5. appointing, managing, suspending and dismissing all other employees of the Authority;
  - 6.1.4.6. determining the conditions of employment of all other employees of the Authority, within budgetary constraints set by the Board;
  - 6.1.4.7. providing advice and reports to the Authority on the exercise and performance of its powers and functions under this Charter or any Act;
  - 6.1.4.8. ensuring that the assets and resources of the Authority are properly managed and maintained;
  - 6.1.4.9. ensuring that records required under the Act or any other legislation are properly kept and maintained;
  - 6.1.4.10. achieving financial and other outcomes in accordance with adopted plans and budgets of the Authority;
  - 6.1.4.11. ensuring the efficient and effective management of the operations and affairs of the Authority; and

6.1.4.12. exercising, performing or discharging other powers, functions or duties conferred on the Executive Officer by or under the Act or any other Act or this Charter.

6.1.5. The Authority must undertake an annual performance review of the Executive Officer.

6.1.6. The Executive Officer and other senior staff of the Authority as determined by the Authority, are required to submit returns under Chapter 7, Part 4, Division 2 of the Act, as if the Executive Officer and other staff of the Authority were employees of a Council and the Authority was a Council.

6.1.7. The Executive Officer must act prudently in the handling of all financial transactions for the Authority and must provide quarterly financial and corporate reports to the Board and the Constituent Councils.

## **6.2. Engagement of Consultants and Advisers**

The Authority may engage consultants and advisers to provide services to the Authority to ensure the proper execution of its decisions, the efficient and effective management of the operations and affairs of the Authority and for giving effect to the general management objectives and principles of personnel management prescribed by this Charter.

## **7. DISPUTES BETWEEN CONSTITUENT COUNCILS**

### **7.1. General**

Where a dispute arises between the Constituent Councils or between a Constituent Council and the Authority (the parties to this Charter) which relates to this Charter or the Authority ('the Dispute'), the parties will use their best endeavours to resolve the Dispute and to act at all times in good faith.

### **7.2. Mediation**

7.2.1. A party is not entitled to initiate arbitration or court proceedings (except proceedings seeking urgent equitable or injunctive relief) in respect of a Dispute unless it has complied with this clause 7.2.

7.2.2. If the parties are unable to resolve the Dispute within thirty (30) days, the parties must refer the Dispute for mediation in accordance with the Mediation Rules of the Resolution Institute within seven (7) days of a written request by any party to the other party that the Dispute be referred for mediation, to:

7.2.2.1. a mediator agreed by the parties; or

7.2.2.2. if the parties are unable to agree on a mediator at the time the Dispute is to be referred for mediation, a mediator nominated by the President of the Law Society.

7.2.3. In the event the parties fail to refer the matter for mediation in accordance with clause 7.2.2, one or more of the parties may refer the matter for mediation in accordance with the Mediation Rules of the

Resolution Institute to a mediator nominated by the President of the Law Society.

- 7.2.4. The role of any mediator is to assist in negotiating a resolution of the dispute. A mediator may not make a decision that is binding on a party unless that party has so agreed in writing.
- 7.2.5. If mediation does not resolve the Dispute within twenty-eight (28) days of referral of the Dispute for mediation or such longer period agreed unanimously by the parties as evidenced by resolutions of each of the parties, any party may then refer the Dispute to Arbitration in accordance with clause 7.3.

### **7.3. Arbitration**

- 7.3.1. An arbitrator may be appointed by agreement between the parties.
- 7.3.2. Failing agreement as to an arbitrator, the Chief Executive Officer of the Resolution Institute or his or her successor shall nominate an arbitrator pursuant to these conditions.
- 7.3.3. A submission to arbitration shall be deemed to be a submission to arbitration within the meaning of the *Commercial Arbitration Act 2011*.
- 7.3.4. Upon serving a notice of arbitration, the party serving the notice shall lodge with the arbitrator a deposit by way of security for the cost of the arbitration proceedings.
- 7.3.5. Upon each submission to arbitration, the costs of and incidental to the submission and award shall be at the discretion of the arbitrator who may in his or her sole discretion determine the amount of costs, how costs are to be proportioned and by whom they are to be paid.
- 7.3.6. Whenever reasonably possible, performance of the obligations of the parties pursuant to this Charter shall continue during the mediation or arbitration proceedings and no payment by or to a party shall be withheld on account of the mediation and arbitration proceedings.

## **8. MISCELLANEOUS MATTERS**

### **8.1. Alteration to Charter**

- 8.1.1. Subject to the Act, this Charter may be amended at any time by the agreement of all Constituent Councils after taking into account the recommendations of the Authority.
- 8.1.2. This Charter will be reviewed by the Constituent Councils acting in concurrence at least once in every four (4) years.
- 8.1.3. The Executive Officer must ensure that the amended Charter is published as required by the Act and a copy of the amended Charter provided to the Minister.



## 8.2. Withdrawal of a Constituent Council

- 8.2.1. Subject to ministerial approval and clause 8.2.2, a Constituent Council may withdraw from the Authority by giving not less than twenty-four (24) months' notice of its intention to do so to the Board and to the Executive Officer, unless a shorter withdrawal period is agreed by the Constituent Councils and approved by the Board.
- 8.2.2. On receipt of a notice under clause 8.2.1, the Authority will undertake an assessment of the impact of the withdrawal on the Authority for the purposes of determining the ongoing viability of the Authority. Should the Authority resolve following a consideration of the assessment that the Authority will no longer be financially viable then the Constituent Councils (including the Constituent Council which has notified its intention to withdraw) will work together to determine an orderly winding up of the Authority under clause 8.4 and a notice provided under clause 8.2.1 will be of no further effect.
- 8.2.3. Subject to clause 8.2.2, a withdrawal becomes effective from 30 June (or such later date as agreed by the Constituent Councils) following the expiry of the twenty-four (24) month notice period. Until the date on which the withdrawal becomes effective (**Withdrawal Date**), the withdrawing Constituent Council:
- 8.2.3.1. must continue to pay Financial Contributions to the Authority as required by this Charter; and
  - 8.2.3.2. through its Board Members and Deputy Board Members, retains responsibility for ensuring the continued proper conduct of the affairs of the Authority.
- 8.2.4. A withdrawing Constituent Council will remain liable in proportion to the Constituent Council's Equity Interest Percentage calculated at the date of providing the notice under clause 8.2.1 for:
- 8.2.4.1. liabilities of the Authority up to the Withdrawal Date;
  - 8.2.4.2. Financial Contributions towards any actual or contingent deficiency in the Net Assets of the Authority at the end of the financial year in which the Withdrawal Date occurs; and
  - 8.2.4.3. any ongoing or newly arising liability of the Authority existing or arising after the Withdrawal Date which relates to circumstances existing or acts, omissions or decisions of the Authority prior to the Withdrawal Date.
- 8.2.5. Upon withdrawal taking effect and subject to clause 8.2.7, a Constituent Council will be entitled at the discretion of the Board to be paid not more than 50% of the Constituent Council's Equity Interest (**Equity Payment**).
- 8.2.6. The withdrawing Constituent Council will be entitled to receive the Equity Payment by quarterly instalments to be paid over a period of two

(2) years with the first instalment being due on 1 January following the Withdrawal Date.

- 8.2.7. A withdrawing Constituent Council will not be entitled to be paid any amount in respect of any reserve fund established by the Authority.

### **8.3. Addition of New Member**

- 8.3.1. Subject to the provisions of the Act and in particular ministerial approval to the admission of a new Constituent Council or Councils, this Charter may be amended by agreement of all of the Constituent Councils to provide for the admission of a new Constituent Council or Councils.
- 8.3.2. An incoming Constituent Council's Equity Interest will be calculated from the date on which the Constituent Council becomes a member of the Authority, subject to clause 8.3.3.
- 8.3.3. For the purposes of determining an incoming Council's Equity Interest, profits or liabilities of the Authority which relate to circumstances or acts, omissions or decisions of the Authority which existed or occurred prior to the incoming Council becoming a Constituent Council will be excluded in accordance with any applicable resolution of the Board.

### **8.4. Winding Up**

- 8.4.1. Subject to the Act, the Authority may be wound up by the Constituent Councils.
- 8.4.2. In the event that there is a proposal to wind up the Authority, initiated by the Authority, a Constituent Council or the Minister, the Authority will recommend to the Constituent Councils a process and timeframe for the orderly winding up of the Authority.
- 8.4.3. In the event of there being Net Assets upon dissolution and after realisation of all assets and meeting all liabilities, the Net Assets will be distributed to the Constituent Councils on the basis of their Equity Interest Percentage.
- 8.4.4. In the event of there being any unfunded liabilities of the Authority at the time of a winding up or otherwise, each Constituent Council will be responsible (as between the Constituent Councils) to fund a proportion of the unfunded liabilities calculated on the basis of the Equity Interest Percentage of that Constituent Council.

### **8.5. Insurance**

- 8.5.1. The Authority must obtain and maintain a prudent level of insurance to cover its anticipated risks and civil liabilities (including workers' compensation) and assets.
- 8.5.2. The Authority must take out a suitable policy of insurance insuring Board Members and their spouses or other persons who may be accompanying a Board Member against risks associated with the

performance or discharge of their official functions and duties or on official business of the Authority.

#### **8.6. Non-Derogation and Direction by Constituent Councils**

- 8.6.1. 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.
- 8.6.2. Provided that the Constituent Councils have all first agreed as to the action to be taken, the Constituent Councils may jointly direct and control the Authority by resolution passed by each Constituent Council expressed in the same or similar terms.
- 8.6.3. For the purpose of clause 8.6.2, any direction given by the Constituent Councils must be given in writing to the Executive Officer of the Authority together with a copy of the relevant resolutions of the Constituent Councils.
- 8.6.4. Where the Authority is required pursuant to the Act or this Charter to obtain the consent or approval of one or more of the Constituent Councils, that approval must only be granted and must be evidenced by a resolution passed by each of the Constituent Councils granting such approval.
- 8.6.5. Unless otherwise stated in this Charter, where the Authority is required to obtain the consent or approval of the Constituent Councils, this means the consent and approval of all the Constituent Councils expressed in the same or similar terms.

#### **8.7. Circumstances not provided for**

- 8.7.1. If any circumstance arises about which this Charter is silent, incapable of taking effect or being implemented according to its strict provisions, the Chairperson may decide the action to be taken to ensure achievement of the objects and purposes of the Authority and its effective administration.
- 8.7.2. The Chairperson shall report any such decision at the next ordinary meeting of the Authority.