



Eastern Waste Management Authority Special Board Meeting

Agenda

Wednesday 18 December 2024

Notice is hereby given that a special meeting of the Board of the Eastern Waste Management Authority
will be held via Zoom,
on Wednesday 18 December 2024 commencing at 4:30pm.

Acknowledgement of Country

We would like to acknowledge this land that we meet on today is the traditional lands for the Kaurna people and that we respect their spiritual relationship with their country.

We also acknowledge the Kaurna people as the custodians of the Adelaide region and that their cultural and heritage beliefs are as important to the living Kaurna people today.



Agenda

Eastern Waste Management Authority Special Meeting of the Board of Management

Meeting to be held on Wednesday 18 December 2024 commencing at 4:30pm,
via Zoom: <https://us06web.zoom.us/j/86454297975>

- 1. Present**
- 2. Acknowledgement of Country**
- 3. Apologies**
- 4. Declarations of Interest**

If a Board Director has an interest in a matter before the Board, they are asked to disclose the interest to the Board and provide full and accurate details of the relevant interest. Members are reminded to declare their interest before each item

5. Confidential Reports

5.1 Appointment of Independent Consultant

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6. Next Meeting of the Board

The next Ordinary Board Meeting is proposed to be held on:
Thursday 27 February 2025, at the Mayor's Parlour, City of Norwood, Payneham & St Peters,
175 The Parade, Norwood

7. Closure of Meeting

5.1 Appointment of Independent Consultant

Report Author Acting General Manager

Attachments A: Draft Consultancy Brief
B: East Waste Charter

Pursuant to Section 83(5) of the *Local Government Act 1999*, the Report attached to this Agenda and the accompanying documentation is provided to the Board Members upon the basis that the East Waste Board will consider the Report and the documents in confidence under Part 3 of the Act, specifically on the basis that the East Waste Board will receive, discuss or consider:

- Section 90(2) & (3)(b)(i)(ii) information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the East Waste Board is conducting or proposing to conduct business or to prejudice the commercial position of the East Waste Board.

Purpose and Context

The purpose of this report is to present the draft Consultancy Brief for the proposed independent review of East Waste's financial model and operations to the Board for approval. The report also seeks the Board's authorisation for Administration to proceed with the procurement process for appointing a suitably qualified consultancy firm to carry out the works as outlined in the brief.

Recommendation 1

Pursuant to Section 90(2) and (3)(b)(i)(ii) of the Local Government Act, 1999 the East Waste Board orders that the public, with the exception of the East Waste Acting General Manager, David Maywald, East Waste Manager Human Resources & Financial Services, Kelly Vandermoer and Executive Officer, Vanessa Davidson, be excluded from the meeting on the basis that the East Waste Board will receive, discuss and consider:

(b) information the disclosure of which—

- (i) could reasonably be expected to confer a commercial advantage on a person with whom the East Waste Board is conducting, or proposing to conduct, business, or to prejudice the commercial position of East Waste.***

The East Waste Board is satisfied that, the principle that the meeting should be conducted in a place open to the public, has been outweighed by the need to keep the receipt/discussion/consideration of the information confidential as premature release could impact the costs quoted for services.

Recommendation 2

That the East Waste Board:

- 1. Approves the draft Consultancy Brief as presented in Attachment A (Report 5.1, Attachment A, Special Board Meeting, 18 December 2024).***
- 2. Delegates the Acting General Manager of East Waste the authority in accordance with Section 36(1) of the Local Government Act 1999, to procure and appoint a suitably qualified consultancy firm to undertake the work outlined in the Consultancy Brief, in accordance with East Waste's procurement policies and procedures.***

Recommendation 3

That:

- 1. Pursuant to Section 91(7) and (9) of the Local Government Act 1999 the East Waste Board orders that the report, attachment, and minutes be kept confidential until further order.***
- 2. The meeting will be reopened to the public.***

Strategic Link

Objective 5. Provide Leadership

Strategy 5.4 Quality and transparent Corporate (Governance and Financial) activities.

Background

At the East Waste Board meeting held on 21 November 2024, the Board considered a report regarding the appointment of Acting General Manager, David Maywald, and the potential appointment of a human resources consultancy firm to assist with recruitment of a General Manager in accordance with Section 98 of the *Local Government Act 1999*, including engaging:

- *An 'Executive General Manager' with a senior local government background with strong change management and relationship building skills to support Mr Maywald in his role, while at the same time identifying opportunities for East Waste to evolve. This role will be a short term contract.*

Following consideration of the above report, the Board resolved:

Moved Mr C Malak that:

1. *The Board authorises Administration to develop a draft consultancy brief for the purpose of undertaking an independent review of the financial model and operations of East Waste to determine what future changes, if any, are required to be considered.*
2. *The Board seeks advice and input from the Constituent Members' Chief Executive Officers regarding the draft consultancy brief.*
3. *The Administration presents a report to the Board for its consideration outlining the draft consultancy brief and input provided by the Constituent Members' Chief Executive Officers to enable the adoption of a final document.*
4. *Mr David Maywald, Acting General Manager, East Waste, be remunerated in accordance with the full salary and all benefits that were afforded to the previous General Manager, for the period in which he is appointed as acting in the role.*

Seconded Cr T Jennings

Carried

In accordance with the Board's resolution, East Waste Administration subsequently developed a draft consultancy brief as presented in **Attachment A**. A copy of East Waste's Charter has been included for the Board's information and reference at **Attachment B**.

This draft consultancy brief was presented to Chief Executive Officers (CEOs) of East Waste's Member Councils at the ERA CEO's meeting held on 12 December 2024, at Norwood Town Hall, where feedback was sought and considered.

Report

At the ERA CEO's meeting held on 12 December 2024, the CEOs of East Waste's Member Councils expressed a broad support for the draft consultancy brief as presented, and the proposed review. An additional process was recommended to be included in the brief, being that the appointed Consultant and Acting General Manager meet with representatives of each of the Member Councils as a core component of the review. This will ensure the consultancy firm has a sound understanding of the unique needs and perspectives of each Council, and that the review is tailored to address specific concerns and opportunities relevant to each Council. The feedback from Member Council CEOs was constructive and has been incorporated into the revised draft consultancy brief as presented. The requirement for consultation with Member Councils will contribute to ensuring that the review process is transparent, collaborative, and reflective of the priorities of all Councils involved.

Financial Considerations

Through Budget Review One, Administration proposed a budget amendment, allocating a portion of the salary of the currently vacant Manager Business Services role, to the Consultancy Services budget line, anticipating the appointment of a consultant to backfill role requirements. Administration intends to review consultancy costs further through the upcoming Budget Review Two, once more information relating to the procurement for a suitable consultant is known.

Conclusion

The consultation process with the Member Councils has been productive, and the feedback provided has been important in refining the consultancy brief. The addition of the requirement for the Consultant and Acting General Manager to consult with Member Councils will strengthen the review process and ensure that all perspectives are considered.



Consultancy Brief: Review of East Waste Financial Model and Strategy

1. Objective:

To engage a suitable qualified consultant to conduct an independent review of East Waste's financial model and strategy. The review will need to consider the alignment of East Waste's future direction to the existing East Waste Charter (**refer Attachment B**), which governs East Waste's operations.

Specifically, the review will involve evaluating whether East Waste's current charging model (as described in the Annual Plan and the Budget) is fit for purpose to meet the needs of both East Waste and its Member Councils at present and in the future.

The consultant will also review East Waste's Strategic Plan to assess the extent that the current plan and financial model supports the long-term shared goals of East Waste's Member Councils and will contribute to strategic decision-making.

East Waste expects this exercise to assist with determining a desirable skillset, for the recruitment of a new General Manager.

2. Background

East Waste is a regional subsidiary formed under the Local Government Act 1999 (the Act) to provide waste collection services for its eight (8) Member Councils:

- Adelaide Hills Council
- City of Burnside
- Campbelltown City Council
- City of Norwood, Payneham & St Peters
- City of Mitcham
- City of Prospect
- City of Unley
- Corporation of the Town of Walkerville.

East Waste operates under the governance of a Board composed of nine directors—one from each Member Council and an Independent Chair. The Board appoints a General Manager to oversee day-to-day operations and implement Board decisions. Following the recent departure of the General Manager, East Waste is in the process of preparing to recruit a new General Manager/CEO.

The current East Waste Charter, last amended in 2022, outlines principles for governance, service delivery, and financial management. The Annual Plan and Budget underpin the financial model which supports East

Wastes operations and the relationship between Member Councils and East Waste. East Waste has changed the configuration of services to Member Councils over recent years which has the potential to create a more complex operational environment. This change in the service model has raised concerns about unintended consequences in the common fleet charging methodology, with some Member Councils possibly contributing disproportionately relative to the services received.

Given these developments, a review is necessary to ensure the Charter and financial model align with current operations and future strategic goals of East Waste. This will help support fair, transparent, and sustainable charging practices while guiding East Waste's strategic direction and leadership needs.

3. Scope of Work:

3.1. Financial Review:

- Evaluate the current East Waste Charter Annual Plan and Budget and operations to examine the financial model, including revenue streams and cost structures, to identify if changes are required.
- Identify any opportunities for efficiency improvements and potential cost savings.
- Provide recommendations for any necessary adjustments to the financial/charging model.

3.2. Strategic Alignment:

- Review East Waste's current Strategic Plan and shared goals.
- Assess whether East Waste is well positioned to meet future challenges identified in the Strategic Plan and assess if the financial model in the Charter remains relevant and applicable.

3.3. East Waste Charter Review:

The Charter sets out the principles that govern the relationship between Member Councils and East Waste. Clauses 1 (specifically the definition of Common Fleet Collection Percentage) 9.1, 51, 52 and 57 are of particular importance. Particular attention must be paid to the Annual Plan and Budget to analyse the current financial models. While the Budget does not require Member approval, the Annual Plan is required to be approved by Member Councils. Any changes in the financial model will be described in the Annual Plan and will then inform the Budget. Any changes in the financial model will therefore only come into effect following consent of an Absolute Majority of the Member Councils. Accordingly, it is expected the views of Member Councils will be sought by the Consultant as part of the development of any modification to the financial model as described in the Annual Plan.

- Examine the structure of the Charter to ensure it aligns with the current and future operational needs of East Waste and its Member Councils.

- Identify areas within the Charter that may require modification or updating consequent upon the review.
- Provide recommendations to the Board, ensuring compliance with legislative and regulatory frameworks.

3.4. Leadership Needs:

- Assess the existing organisational structure and leadership capabilities.
- Identify the key skills, experience, and attributes required in a future General Manager to drive East Waste's vision and strategic objectives.

3.5. Meeting with Member Councils

- It is crucial that the review takes into account the specific individual requirements of East Waste's Member Councils. Therefore, a key component of the review will be for the consultant and East Waste General Manager to meet individually with each Member Council's CEO to gather feedback, which will then be incorporated into the review process.

4. Deliverables:

- Comprehensive report outlining findings and recommendations for financial, operational, and strategic improvements.
- Detailed assessment of the East Waste Charter with suggested modifications if necessary.
- Clear guidance on the competencies and leadership qualities needed for the permanent General Manager role.
- Presentation of final findings to the East Waste Board and the Audit & Risk Management Committee.

5. Consultant Qualifications:

- Proven expertise in financial and operational assessments within the Local Government sector and/or waste management or similar industries.
 - Demonstrated experience in reviewing organisational charters and strategic planning.
 - Strong analytical, communication, human resources, and stakeholder engagement skills.
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LOCAL GOVERNMENT ACT 1999 EASTERN WASTE MANAGEMENT AUTHORITY
Charter

PART 1—PRELIMINARY

1. DICTIONARY

In this Charter:

Absolute Majority means a majority of the whole number of the Constituent Councils.

Act means Local Government Act 1999.

Annual Plan means an Annual Plan that conforms to Part 14 and last adopted by the Board.

Authority means Eastern Waste Management Authority ('East Waste').

Board means the board of management of the Authority.

Borrowings Limit means at any time the amount authorised in the current Annual Plan and Budget of the Authority.

Budget means a budget that conforms to Part 14 and last adopted by the Board.

Business Plan means a business plan that conforms to Part 12 and last adopted by the Board.

Chief Executive Officer means at any time the chief executive officer of the Authority and includes that person's deputy or a person acting in that position.

Common Fleet Collection Percentage means the proportion of the Authority's total time required to undertake waste collection activities for a Constituent Council (represented as a percentage) calculated in accordance with clause 57.

Constituent Council means at any time a constituent council in relation to the Authority and on the date of publication of this Charter in the *Gazette* means Adelaide Hills Council, City of Burnside, City of Campbelltown, City of Norwood Payneham and St Peters, City of Mitcham, City of Prospect, City of Unley, Corporation of the Town of Walkerville,.

Core Activity means activities associated with the collection, recycling and/or disposal of waste along with community behaviour change and ancillary services.

Deputy Director means a deputy for a Director.

Director means at any time a member of the Board.

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

Gazette means the South Australian Government Gazette.

Non-core Activity means an activity that is not a Core Activity.

Non-core Assets means in relation to a Non-core Activity any assets of the Authority acquired for the purpose of that Non-core Activity and includes any revenue derived from that Non-core Activity. Where an asset or revenue is acquired or derived for both a Core Activity and a Non-core Activity, a fair allocation between those purposes must be made by the Board.

Non-core Liabilities means in relation to a Non-core Activity any liabilities of the Authority incurred or assumed for the purpose of that Non-core Activity. Where a liability is incurred or assumed for both a Core Activity and a Non-core Activity, a fair allocation between those purposes must be made by the Board.

Non-core Plan means a plan for a Non-core Activity that conforms to Part 13 and forms part of the Business Plan.

Share means a Constituent Council's percentage share in the assets, liabilities and revenue of the Authority. On the date of Gazettal of this Charter, the shares are held between the Constituent Councils in equal proportions

The Shares may be varied by agreement in writing of all the Constituent Councils, and must be reviewed (and if necessary, varied) where a new Constituent Council is admitted or an existing Constituent Council resigns.

Simple Majority means a majority of the Directors present at a Board Meeting and entitled to vote, or a majority decision of the Constituent Councils as the case may be.

Surplus Funds means funds that are surplus to the long-term financial requirements of the Authority, as evidenced by its Business Plan.

Unanimous Decision means a decision made by all of the Constituent Councils as voting in the same manner.

Waste means any and all waste as approved by the Environment Protection Act 1993 Licence held by the Authority and includes domestic and commercial kerbside waste, kerbside green and food/organics, kerbside recyclable material, Council waste and Council depot waste.

Subject to the above, words and expressions in this Charter have the same meaning as in a provision of the Act that deals with the same matter.

2. INTERPRETATION

In this Charter: The singular includes the plural and *vice versa* and words importing a gender include other genders; words importing natural persons include corporations; reference to a section(s) is to a section of the Act and includes any section that substantially replaces that section and deals with the same matter; headings are for ease of reference only and do not affect the construction of this Charter.

3. ABOUT THIS CHARTER

3.1 This Charter is the charter of the Authority.

3.2 This Charter binds the Authority and each Constituent Council.

3.3 Despite any other provision in this Charter:

3.3.1 if the Act prohibits a thing being done, the thing may not be done;

3.3.2 if the Act requires a thing to be done, Board approval is given for that thing to be done; and

3.3.3 if a provision of this Charter is or becomes inconsistent with the Act, that provision must be read down or failing that severed from this Charter to the extent of the inconsistency.

- 3.4 This Charter may not be amended except as all the Constituent Councils may agree by each passing a resolution in the same terms. An amendment is not effective unless and until published in the *Gazette*.
- 3.5 The Constituent Councils may review this Charter at any time, but must in any event review this Charter at least once in every four years.
- 3.6 Notwithstanding Clause 3.5, the first review of this Charter is to be completed two years from the date of Gazettal of the Charter.

PART 2—AUTHORITY

4. ABOUT THE AUTHORITY

The Authority is an Authority established under the Act.

5. NAME OF THE AUTHORITY

The name of the Authority is Eastern Waste Management Authority trading as ‘East Waste’.

6. CORPORATE STATUS

The Authority is a body corporate.

PART 3—FUNCTIONS AND POWERS

7. PROPERTY

The Authority holds its property and assets on behalf of the Constituent Councils.

8. AREA OF INTEREST

The Authority may only undertake a Non-core Activity outside the areas of the Constituent Councils where that activity has been approved by Unanimous Decision of the Constituent Councils as being necessary or expedient to the performance by the Authority of its functions and is an activity included in a Business Plan of the Authority.

9. PURPOSE AND FUNCTIONS

- 9.1 The Authority is established by the Constituent Councils for the purpose of the collection and disposal of Waste, primarily within the areas of the Constituent Councils and has the following functions in this regard:
 - 9.1.1 to predominantly operate or obtain services for the collection of Waste on behalf of Constituent Councils and/or other approved Councils;
 - 9.1.2 to provide waste management services whether in or (so far as the Act allows) outside the area of any of the Constituent Councils, including waste collection, recycling of organic and inorganic materials, disposal of waste along with community behaviour change and ancillary services.;
 - 9.1.3 to undertake management and collection of Waste (in accordance with regulatory approvals) and kerbside materials recovery, on behalf of Constituent Councils (and/or other approved councils) in an environmentally responsible, effective, efficient, economic and competitive manner;
- 9.2 The following functions may be undertaken by the Authority but only where required or directed by one or more Constituent Councils and charged directly to the Council or Councils so requiring or directing:
 - 9.2.1 to promote the minimisation of Waste in the areas of the Constituent Councils;
 - 9.2.2 to promote the recycling of recyclable materials in the areas of the Constituent Councils
 - 9.2.3 to undertake Waste community education and behaviour change programs on behalf of the Constituent Councils;
 - 9.2.4 on behalf of the Constituent Councils or on its own behalf, to liaise with other councils, the State of South Australia and the Commonwealth of Australia and their respective instrumentalities for matters relating to Waste management in the common interest of the Constituent Councils;
 - 9.2.5 on behalf of the Constituent Councils, provide a representative to any statutory board or statutory committee concerned with waste management that allows two or more of the Constituent Councils to nominate a representative;
 - 9.2.6 on behalf of the Constituent Councils or on its own behalf, to make application for grants and other funding from the State of South Australia and the Commonwealth of Australia and their respective instrumentalities for the purposes of the Authority;
 - 9.2.7 to keep Constituent Councils abreast of any emerging opportunities/trends/issues in waste management;
 - 9.2.8 to undertake activities which result in a beneficial use of Waste on behalf of the Constituent Councils;
 - 9.2.9 to conduct all activities in a manner which complies with all regulatory requirements and minimises risks to the Constituent Councils;
 - 9.2.10 on behalf of the Constituent Councils or on its own behalf, to liaise with relevant State Government agencies such as Green Industries SA, Environment Protection Authority (or equivalent successor organisations), taking into account its approved Business Plan;
 - 9.2.11 on behalf of the Constituent Councils, to perform and/or monitor the effectiveness and application of funding arrangements agreed by the Constituent Councils for waste management;
 - 9.2.12 to provide a forum for discussion and consideration of topics relating to the Constituent Councils’ responsibilities to manage waste particularly in the area of the Constituent Councils and the implications of that management beyond the area of the Constituent Councils.

10. POWERS

The Authority may do anything necessary, expedient or incidental to performing or discharging its functions including, without limitation:

- 10.1 become a member of and/or co-operate with any organisation with complementary functions;
- 10.2 receive gifts of money or property from any person;
- 10.3 make payable by a new Constituent Council any joining fee;
- 10.4 carry out its Annual Plan and Budget;

- 10.5 carry out its Business Plan and Non-core Plans;
- 10.6 make payable by Constituent Councils contributions to the Authority in proportion to their Core Shares;
- 10.7 employ and dismiss a Chief Executive Officer;
- 10.8 contract with any person;
- 10.9 acquire or dispose of any real or personal property in accordance with the Business Plan or otherwise with a Unanimous Decision of the Constituent Councils;
- 10.10 operate an account or accounts with a bank or with the Local Government Finance Authority, or both;
- 10.11 borrow or raise money within the Borrowings Limit;
- 10.12 lend money in accordance with the Business Plan or pursuant to a Unanimous Decision of the Constituent Council;
- 10.13 insure against any risk;
- 10.14 enter into a partnership or joint venture with any person in accordance with the Business Plan or pursuant to a Unanimous Decision of the Constituent Councils;
- 10.15 pay any cost or expense of the establishment, operation, administration or winding up of the Authority;
- 10.16 compromise, compound, abandon or settle a debt or claim owed to the Authority;
- 10.17 waive a legal or equitable or statutory right;
- 10.18 refer a dispute between the Authority and any third party (other than a Constituent Council) to arbitration;
- 10.19 allocate receipts and expenditure between Core Activity and Non-core Activities and between each Non-core Activity;
- 10.20 where the same services/activities are not being provided equally to all Constituent Councils, to charge the differential costs of those services/activities directly to the benefiting Councils;
- 10.21 charge Constituent Councils the full costs incurred in the delivery of the services to them, -such costs being calculated on a user pays basis (including depreciation and other overheads for use of shared assets, and all other common expenses);
- 10.22 charge non-Constituent Councils a price, based on an estimate of costs incurred in providing the service plus a margin for profit and risk;
- 10.23 make any election for the purpose of any tax;
- 10.24 delegate the exercise of any of its functions or other powers (including the receipt and payment of money) to any person;
- 10.25 those powers given to trustees by law, equity or statute and not necessarily inconsistent with this Charter or the functions of the Authority;
- 10.26 pay to the Constituent Councils or accumulate as reserves for up to such period as the law allows any surplus funds;
- 10.27 such other powers as the Act or this Charter may confer upon the Authority;
- 10.28 all things incidental to the exercise of any other power of the Authority.

11. POWER OF DELEGATION

As a matter of record, Schedule 2, Clause 36 of the Act vests a power of delegation in the Authority. The Authority may not delegate the following powers or functions:

- 11.1 the power to impose charges;
- 11.2 the power to enter into transactions in excess of \$50 000 unless authorised in an Annual Plan;
- 11.3 the power to borrow money or obtain any other form of financial accommodation unless authorised in an Annual Plan;
- 11.4 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;
- 11.5 the power to approve the reimbursement of expenses or payment of allowances to members of the Board of Management;
- 11.6 the power to adopt a Budget;
- 11.7 the power to adopt an Annual Plan;
- 11.8 the power to adopt a Business Plan (or any component thereof);
- 11.9 the power to adopt or revise financial estimates and reports; and
- 11.10 the power to make any application or recommendation to the Minister.

12. GUIDING PRINCIPLES

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

PART 4—CONSTITUENT COUNCILS

13. CONSTITUENT COUNCILS MAY ACT INDEPENDENTLY

A Constituent Council may perform for itself the same functions and powers as the Authority could on behalf of that Constituent Council.

14. INCOMING CONSTITUENT COUNCILS

- 14.1 Any council may become a Constituent Council (an Incoming Constituent Council) if:
 - 14.1.1 it makes written application (in a form approved by the Board) to become a Constituent Council and agrees to be bound by this Charter (noting that Shares will change);
 - 14.1.2 its application is supported by a thorough, realistic, independent, and diligent Business Case analysis;
 - 14.1.3 it pays any joining fee or other payment as may be required by the Board;
 - 14.1.4 the Constituent Councils approve the application and revised Shares by Unanimous Decision; and
 - 14.1.5 the Minister approves.

- 14.2 An Incoming Constituent Council:
- 14.2.1 is jointly and severally liable with the other Constituent Councils for the debts and liabilities of the Authority incurred before or after the date it becomes a Constituent Council, or as otherwise agreed;
 - 14.2.2 is bound by a decision made or step taken by the Board in the affairs of the Authority before it became a Constituent Council to the extent such decision or step was recorded in minutes of the Board's meetings or otherwise notified to the Incoming Constituent Council before it made application to become a Constituent Council; and
 - 14.2.3 upon becoming a Constituent Council has the Share agreed between the Incoming Constituent Council and the Constituent Councils.
- 15. OUTGOING CONSTITUENT COUNCILS**
- 15.1 A Constituent Council may resign if and only if:
- 15.1.1 the Constituent Council gives at least 24 months' written notice of resignation to each Constituent Council, which notice is effective on the next 30 June on or after expiry of that period;
 - 15.1.2 the Board by majority vote approves; and
 - 15.1.3 the Minister approves.
- 15.2 A former Constituent Council remains liable to contribute to the debts and liabilities of the Authority incurred while it was a Constituent Council including by contributing to the depreciated value of any asset acquired during that time, and for a share of any future losses on contracts entered into whilst a Constituent Council.
- 15.3 A former Constituent Council:
- 15.3.1 is not entitled to any refund of contributions made;
 - 15.3.2 relinquishes any beneficial interest in the assets of the Authority; and
 - 15.3.3 remains bound by any separate contract in force between the Authority and the former Constituent Council.
- 15.4 This Clause is to be read conjunctively with Clause 57 of this Charter.
- 16. NO TRANSFER OF MEMBERSHIP**
- Membership of the Authority is personal to the Constituent Council and is not transferable.
- 17. CONSTITUENT COUNCILS MAY DIRECT THE AUTHORITY**
- 17.1 The Authority is subject to the joint direction and control of the Constituent Councils.
- 17.2 To be effective, a determination or direction or other decision of the Constituent Councils must be a Unanimous Decision and evidenced by either:
- 17.2.1 a minute signed by the chair of a meeting of authorised delegates of the Constituent Councils that at such meeting a decision was duly made by each delegate on behalf of their Constituent Council; or
 - 17.2.2 a resolution in the same terms in favour of that decision passed individually by each of the Constituent Councils.
- 18. CONSTITUENT COUNCILS ARE GUARANTORS OF THE AUTHORITY**
- 18.1 As a matter of record, Schedule 2, Clause 31 (1) of the Act is that liabilities incurred or assumed by the Authority are guaranteed by the Constituent Councils.
- 18.2 As between the Constituent Councils, they share in the liabilities of the Authority in proportion to their respective Share.
- 19. SPECIAL DECISIONS FOR THE AUTHORITY**
- Neither the Authority nor any person on its behalf may give effect to a Special Decision unless the Constituent Councils vote in favour of a resolution for the Special Decision by Absolute Majority.
- For these purposes, a Special Decision means any of the following:
- (a) adopt or vary a Business Plan;
 - (b) adopt or vary an Annual Plan;
 - (c) delegate the authority of the Board to any person other than the Chief Executive Officer;
 - (d) to any extent not provided for in a Business Plan or Annual Plan and Budget:
 - (i) call on Constituent Councils to contribute funds;
 - (ii) grant or vary a guarantee/indemnity of the obligations of another person;
 - (iii) apply for government funding;
 - (iv) obtain credit except in the ordinary course of the activities of the Authority;
 - (v) acquire (by purchase or finance lease) a capital asset;
 - (vi) dispose of a capital asset except at the end of its effective life;
 - (vii) take a lease or tenancy of any premises;
 - (viii) employ any employees.
- The Authority must promptly give effect to Special Decision made in conformity with this clause.

PART 5—DIRECTORS

20. QUALIFICATION OF DIRECTORS

A Director must be a natural person.

21. APPOINTMENT OF DIRECTORS

21.1 Subject to the provisions of Clauses 33.1 and 33.2 the Board shall consist of nine Directors appointed as follows:

- 21.1.1 one person appointed by each Constituent Council which person may be an officer, employee, elected member of a Constituent Council or an independent person who will be appointed for a three-year term; and

21.1.2 one independent person (who shall be the Chair) appointed jointly by Absolute Majority of the Constituent Councils for a three-year term (and at the expiration of the term is eligible for re-appointment) who is not an officer, employee or elected member of a Constituent Council, but who has expertise in:

- (a) corporate financial management and/or
- (b) general management and/or
- (c) waste management and/or
- (d) transport fleet management and/or
- (e) public sector governance and/or
- (f) marketing and/or
- (g) economics and/or
- (h) environmental management.

21.2 Each Constituent Council must give to the Authority a written notice of appointment of the Director appointed under Clause 21.1.1 and written confirmation of their agreement with the proposed appointment of the Director under Clause 21.1.2.

21.3 Each Director must give to the Authority a written consent to act as a Director, signed by him/herself.

21.4 Each Constituent Council must appoint a person to be a Deputy Director for such term as determined by that Constituent Council who may act in place of that Constituent Council's Director, and will have the same powers as a Director pursuant to the Charter, if the Director is unable for any reason to be present at a meeting of the Board; and

21.4.1 If at any time a Deputy Director is removed from their office pursuant to Clause 22A, the Constituent Council must appoint another person to be a Deputy Director.

22. REMOVAL OF DIRECTORS

22.1 Neither the Authority nor the Board may remove a Director.

22.2 A Constituent Council which appointed a person as a Director may remove that person from office by giving to the Authority a written notice of removal of the Director, signed by the Chief Executive Officer of the Constituent Council.

22.3 The Director appointed pursuant to Clause 21.1.2 may be removed by a decision being a resolution in the same or similar terms passed by an Absolute Majority of the Constituent Councils.

22.4 The Board may recommend to Constituent Councils, that the appointment of a Director be terminated in the event of:

22.4.1 behaviour of the Director which in the opinion of the Board amounts to impropriety;

22.4.2 serious neglect of duty in attending to the responsibilities of Director;

22.4.3 breach of fiduciary duty to the Board;

22.4.4 breach of the duty of confidentiality to the Board;

22.4.5 breach of the conflict of interest rules of the Board; or

22.4.6 any other behaviour which may discredit the Board.

22.5 The office of a Director becomes vacant if the Director:

22.5.1 dies;

22.5.2 is not reappointed;

22.5.3 resigns by written notice addressed to the Constituent Councils and served on any of them;

22.5.4 becomes bankrupt or applies for the benefit of a law for the relief of insolvent debtors;

22.5.5 was when appointed an elected member or employee of the Constituent Council who appointed them and ceases to be an elected member or employee of that Constituent Council; or

22.5.6 was appointed by a Constituent Council, which ceases to be a Constituent Council.

22A. REMOVAL OF DEPUTY DIRECTORS

22A.1 Neither the Authority nor the Board may remove a Deputy Director.

22A.2 A Constituent Council which appointed a person as a Deputy Director may remove that person from their office by giving the Board a written notice of removal of the Deputy Director, signed by the Chief Executive Officer of the Constituent Council.

22A.3 The Board may recommend to Constituent Councils that the appointment of a Deputy Director may be terminated in the event of:

22A.3.1 behaviour of the Deputy Director which in the opinion of the Board amounts to impropriety;

22A.3.2 serious neglect of duty in attending to the responsibilities of the Deputy Director;

22A.3.3 breach of fiduciary duty to the Board;

22A.3.4 breach of duty of confidentiality to the Board;

22A.3.5 breach of the conflict of interest rules of the Board; or

22A.3.6 any other behaviour which may discredit the Board.

22A.4 The office of a Deputy Director becomes vacant if the Deputy Director:

22A.4.1 dies;

22A.4.2 is not reappointed;

22A.4.3 resigns by written notice addressed to the Constituent Councils and served on any of them;

- 22A.4.4 becomes bankrupt or applies for the benefit of a law for the relief of insolvent debtors;
 22A.4.5 was when appointed an elected member or employee of the Constituent Council who appointed them and ceases to be an elected member or employee of that Constituent Council; or
 22A.4.6 was appointed by a Constituent Council, which ceases to be a Constituent Council.

23. REMUNERATION AND EXPENSES OF DIRECTORS

- 23.1 The Authority will only remunerate the Independent Director/Chair appointed under Clause 21.1.2.
 23.2 The Board will determine the level of the remuneration (no matter how it is classified) of the Independent Director/Chair, by having regard to its Director/Chair Remuneration Policy.
 23.3 The Authority can pay a Director's travelling and other expenses that they properly incur in connection with the Authority's business and with the prior approval of the Board as recorded in minutes of Board meetings.

24. REGISTER OF INTERESTS

A Director is required to submit returns to the Authority under Chapter 5, Part 4, Division 2 of the Act.

25. PROTECTION FROM LIABILITY

As a matter of record, Schedule 2, Clause 38 of the Act protects a Director from certain civil liabilities.

26. SAVING PROVISION

As a matter of record, Schedule 2, Clause 40 of the Act is that no act or proceeding of the Authority is invalid by reason of:

- 26.1 a vacancy or vacancies in the membership of the Board; or
 26.2 a defect in the appointment of a Director.

PART 6—OTHER OFFICERS

27. CHAIR

- 27.1 At all times, the Authority must have a Chair, who will be the independent Director appointed under Clause 21.1.2.
 27.2 The Chair's functions are:
 27.2.1 to preside at all meetings of the Board;
 27.2.2 to serve as an *ex officio* member of all committees established by the Board;
 27.2.3 to represent the Authority in relations with the media and the public generally; and
 27.2.4 to exercise other functions as the Board determines.

28. DEPUTY CHAIR

- 28.1 At all times, the Authority must have a Deputy Chair, who must be a Board Member.
 28.2 The Board appoints the Deputy Chair and may at any time remove from office the Deputy Chair and appoint a replacement Deputy Chair.
 28.3 The Deputy Chair's functions are:
 28.3.1 to assist the Chair; and
 28.3.2 to exercise the Chair's functions whenever the Chair is unable to do so.
 28.4 A person ceases to be Deputy Chair if they cease to be a Board Member.

29. CHIEF EXECUTIVE OFFICER

- 29.1 At all times so far as practicable, the Authority must have a Chief Executive Officer.
 29.2 At any time the Board may give a new title to the position of Chief Executive Officer in which case this Charter is taken to refer to the same position under a new title.
 29.3 The Board shall appoint a Chief Executive Officer on a fixed term performance based employment contract, which does not exceed five years in duration.
 29.4 The Board may at the end of the contract term, enter into a new contract not exceeding five years in duration with the same person.
 29.5 The Board may revoke or vary an appointment of a Chief Executive Officer, subject to any agreement made between the Chief Executive Officer and the Authority.
 29.6 In the absence of the Chief Executive Officer for any period exceeding one week, the Chief Executive Officer shall appoint a suitable person as Acting Chief Executive Officer. If the Chief Executive Officer does not make or is incapable of making such an appointment, a suitable person must be appointed by the Board.
 29.7 The Board delegates responsibility for day to day management of the Authority to the Chief Executive Officer, who will ensure that sound business, risk minimisation, financial and human resource management practices are applied in the efficient and effective management of the operations of the Authority.
 29.8 The functions of the Chief Executive Officer shall include:
 29.8.1 ensuring that the decisions of the Board are implemented in a timely and efficient manner;
 29.8.2 providing information to assist the Board to assess the Authority's performance against its Business Plan;
 29.8.3 appointing, managing, suspending and dismissing other employees of the Authority;
 29.8.4 providing advice and reports to the Board on the exercise and performance of its powers and functions under this Charter or any Act;
 29.8.5 co-ordinating and initiating proposals for consideration of the Board including but not limited to continuing improvement of the operations of the Authority;
 29.8.6 ensuring that the assets and resources of the Authority are properly managed and maintained;
 29.8.7 ensuring that records required under the Act or any other legislation are properly kept and maintained;

- 29.8.8 exercising, performing or discharging other powers, functions or duties conferred on the Chief Executive Officer by or under the Act or any other Act, and performing other functions lawfully directed by the Board, and achieving financial outcomes in accordance with adopted plans and budgets.
- 29.8.9 issuing notices calling Board meetings;
- 29.8.10 attending all Board meetings and keeping correct minutes of the proceedings unless excluded by resolution of the Board;
- 29.8.11 managing all other employees of the Authority;
- 29.8.12 receiving and answering correspondence and notices to the Authority;
- 29.8.13 keeping all documents and records belonging to the Authority;
- 29.8.14 supervising the handling of money by or for the Authority and the keeping of financial records;
- 29.8.15 issuing receipts for moneys received and keep a correct account of all receipts and expenditure;
- 29.8.16 operating the Authority's bank account (including sign cheques and other negotiable instruments and make payments over the Internet within the delegations to the position) together with one other signatory appointed by the Board. Unless the Board determines otherwise, that other person must be the Chair;
- 29.8.17 having custody and safekeeping of the records of the Authority;
- 29.8.18 preparing draft Annual and Business Plans for consideration of the Board;
- 29.8.19 monitoring the financial performance of the Authority against an adopted Annual and Business Plan and promptly reporting to the Board any material discrepancies known or anticipated;
- 29.8.20 preparing such statements, reports, returns or other written information as the Act or any law requires the Authority to lodge with government;
- 29.8.21 preparing draft financial statements; and
- 29.8.22 such other functions as the Board may vest in the Chief Executive Officer.
- 29.9 The Board may delegate to the Chief Executive Officer any of the powers that the Board can exercise where those powers are not restricted from delegation by the Act or this Charter, noting that:
 - 29.9.1 the Chief 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 Chief Executive Officer. Such delegation or sub-delegation may be subject to conditions or limitations as determined by the Chief Executive Officer;
 - 29.9.2 where a power or function is delegated to an employee, the employee is responsible to the Chief Executive Officer for the efficient and effective exercise or performance of that power or function; and
 - 29.9.3 a written record of delegations and sub-delegations must be kept by the Chief Executive Officer at all times.
- 29.10 The Chief Executive Officer enjoys functions and responsibilities set out at Section 99 (1) (a), (b), (c), (d), (e) and (h) and 103 of the Act as if the Authority were a council and the Chief Executive Officer were a chief executive officer of a council.
- 29.11 The Chief Executive Officer may establish an Operations Assistance Committee consisting of one appropriately qualified senior officer from each Constituent Council.
- 29.12 The Chief Executive Officer will, at least annually, hold a meeting collectively with each of the Mayors and CEO's of the Constituent Councils at a venue to be notified to the Constituent Councils at least 14 days prior to the date of the meeting.

30. AUDITOR

The Authority must have an auditor. Subject to the Act an auditor holds office on the terms and conditions (including as to remuneration) that the Board determines.

PART 7—AUDIT COMMITTEE

31. AUDIT COMMITTEE

As a matter of record, the Authority is required to establish an audit committee and Schedule 2, Clause 30 of the Act governs the constitution and functions of the audit committee.

PART 8—STAFF

32. STAFF

- 32.1 In addition to a Chief Executive Officer, the Authority may employ other staff subject to the Board making appropriate financial provision.
- 32.2 The Board and a Constituent Council may arrange for that Constituent Council to make available its staff in connection with the Authority's affairs for such remuneration (if any) as those parties may agree.

PART 9—BOARD

33. BOARD

The Authority must at all times have a Board comprised of Directors.

- 33.1 The Constituent Councils acknowledge and accept that the Directors will act and take decisions in the best interest of the Authority.
- 33.2 The Constituent Councils understand that each Director nominated by a Constituent Council will bring to discussion a perspective from the Council which nominated that Director but that shall not interfere with the obligations of Directors in respect of Clause 33.1.

34. BOARD'S POWERS

- 34.1 As a matter of record, Schedule 2, Clause 22 (1) of the Act is that the Board is responsible for the administration of the affairs of the Authority.
- 34.2 As a matter of record, Schedule 2, Clause 22 (3) of the Act is that anything done by the Board in the administration of the Authority's affairs is binding on the Authority.
- 34.3 The Board may exercise all the powers of the Authority except any powers that the Act or this Charter requires the Constituent Councils to exercise.
- 34.4 As a matter of record, Schedule 2, Clause 36 (1) of the Act authorises the Board to delegate powers or functions conferred under this or another Act.
- 34.4.1 A delegation of powers by the Board:
- (a) may authorise the delegate to sub-delegate all or any of the powers vested in the delegate;
 - (b) is concurrent with the exercise by the Board of those powers;
 - (c) is subject to any specified conditions and limitations; and
 - (d) is revocable at will.

35. BOARD MEETINGS

- 35.1 Subject to Schedule 2, Clause 21 of the Act, to a direction of the Constituent Councils and to the other provisions of this Charter.
- 35.1.1 the Board must determine its own procedures for meetings, which must be fair and contribute to free and open decision making;
- 35.1.2 the Board must set out the adopted meeting procedures in a meeting procedure code of practice which will be available to the public for inspection (without charge) and by way of a copy (on payment of a fee fixed by the Board); and
- 35.1.3 the code of practice may be reviewed by the Board at any time but must be reviewed at least once in every three years.
- 35.2 An ordinary meeting of the Board must be held at least every three calendar months.
- 35.3 Ordinary meeting of the Board must take place at such times and places as may be fixed by the Board or absent any decision of the Board the Chief Executive Officer of the Authority. Meetings shall not be held before 5 p.m. unless the Board resolves otherwise by resolution supported unanimously by all Board Members.
- 35.4 An ordinary meeting of the Board will constitute an ordinary meeting of the Authority. The Board shall administer the business of the ordinary meeting.
- 35.5 Notice of ordinary meetings of the Board must be given by the Chief Executive Officer to each Board Member and to each Constituent Council not less than three clear days prior to the holding of the meeting and shall be accompanied by the agenda for the meeting and any written reports.
- 35.6 The Chair or any two Directors may call a special meeting of the Board.
- 35.7 A special meeting of the Board must be held at a reasonable time and if the meeting is to be held in person, at a reasonable place.
- 35.8 Unless all Directors entitled to vote at the meeting agree otherwise, the persons calling a special Board meeting must give to the Chief Executive Officer a notice of meeting that:
- 35.8.1 sets out the place, date and time for the meeting;
 - 35.8.2 states the general nature of the business of the meeting;
 - 35.8.3 is accompanied by relevant information so far as reasonably available (if not already given to the Directors); and
 - 35.8.4 is provided at least one clear business day before the special meeting (or such other period as all the Directors in office may as a matter of general policy determine otherwise).
- 35.9 A notice of special meeting provided to Directors by the Chief Executive Officer will at the same time be placed on public display at the principal office of the Authority and of each Constituent Council.
- 35.10 As a matter of record, Schedule 2, Clause 21 (5) of the Act permits a virtual Board meeting.
- 35.10.1 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 Directors provided that at least a quorum is present, is deemed to constitute a meeting of the Board. Each of the Directors 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 Directors present. At the commencement of the meeting, each Director must announce his/her presence to all other Directors taking part in the meeting. A Director must not leave a telecommunications meeting by disconnecting his/her telephone, audio visual or other communication equipment, unless that Director has previously notified the chair of the meeting.
- 35.11 As a matter of record, Schedule 2, Clause 21 (6) of the Act permits a decision of the Board to be made in writing and not at a meeting.
- 35.11.1 A proposed resolution in writing and given to all Directors in accordance with proceedings determined by the Board will be a valid decision of the Board where a simple majority of Directors vote in favour of the resolution by signing and returning the resolution to the Chief Executive Officer or otherwise giving written notice of their consent and setting out the terms of the resolution to the Chief Executive Officer. The resolution shall thereupon be as valid and effectual as if it had been passed at the meeting of the Board duly convened and held.
- 35.12 Chapter 6, Parts 3 and 4 (public access to meetings and minutes) of the Act (to the extent that Part 4 is not inconsistent with this Charter) apply to Board meetings as if the Authority were a council and the Directors were members of a council.

- 35.13 Unless the Directors determine otherwise, the quorum for a Board meeting is a number ascertained by dividing the total number of members of the committee by two, ignoring any fraction resulting from the division and adding one.
- 35.14 At any time, the Board may agree to invite a person to attend a Board meeting as an observer or adviser.
- 35.15 As a matter of record, Schedule 2, Clauses 21 (4) (one vote per Director, no casting vote) and 21 (3) (majority vote) of the Act govern voting at a Board meeting.
- 35.16 As a matter of record, Schedule 2, Clause 21 (11) of the Act obliges the Board to keep minutes of its proceedings. All minutes must be prepared and distributed to both Directors and also to Constituent Councils within seven business days of the meeting to which they relate.

PART 10—COMPETITIVE NEUTRALITY

36. COMPETITIVE NEUTRALITY

- 36.1 For the purposes of Schedule 2, Clause 32 of the Act, the Authority is not involved in a significant business activity in undertaking its Core Activity.
- 36.2 In respect of any Non-core Activity that is a significant business activity, the Authority must at all times have current a National Competition Policy Statement in relation to competitive neutrality which it will adhere to in undertaking that Non-core Activity.

PART 11—GOVERNANCE

37. DIRECTOR'S CONFLICT OF INTEREST

As a matter of record, by Section 75 (2) of the Act, the provisions of Chapter 5, Part 4, Division 3 apply to Directors.

38. DIRECTOR'S DUTIES OF CARE

As a matter of record, Schedule 2, Clause 23 of the Act (care and diligence) and Schedule 2, Clause 34 of the Act (honesty, use of information, use of position) set out certain statutory duties that apply to a Director.

39. BOARD POLICIES AND CODES

- 39.1 The Authority must, in consultation with the Constituent Councils, prepare and adopt and thereafter keep under review policies on:
- 39.1.1 procedures for meetings of the Board (in accordance with Clause 35.1 of this Charter);
 - 39.1.2 contracts and tenders, as would conform to Section 49 of the Act;
 - 39.1.3 public consultation, as would conform to Section 50 of the Act.
 - 39.1.4 governance including as concerns:
 - (a) the operation of any account with a bank or Local Government Finance Authority;
 - (b) human resource management;
 - (c) improper assistance to a prospective contract party;
 - (d) improper offering of inducements to Directors or to staff of the Authority;
 - (e) improper lobbying of Directors or staff of the Authority;
 - 39.1.5 occupational health and safety;
 - 39.1.6 protection of the environment.
- 39.2 To the extent it is able, the Board must ensure that such policies as above are complied with in the affairs of the Authority.
- 39.3 The Board must prepare and adopt within six months after the Gazettal of this Charter, a code of conduct to be observed by Directors.

40. BOARD DUTIES TO CONSTITUENT COUNCILS

As a matter of record, Schedule 2, Clause 22 (2) of the Act is that the Board must ensure as far as practicable:

- 40.1 that the Authority observes all plans, targets, structures, systems and practices required or applied to the Authority by the Constituent Councils;
- 40.2 that all information furnished to a Constituent Council is accurate; and
- 40.3 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.

41. BOARD DUTIES TO THE AUTHORITY

The Board must ensure:

- 41.1 that the Authority acts in accordance with applicable laws, mandatory codes of practice, this Charter, Business Plan, Annual Plan and achieves the financial outcomes projected in its Budget;
- 41.2 that the Authority acts ethically and with integrity;
- 41.3 that the activities of the Authority are conducted efficiently and effectively and that any assets of the Authority are properly managed and maintained; and
- 41.4 that, subject to any overriding duty of confidence, the affairs of the Authority are undertaken in an open and transparent manner.

PART 12—BUSINESS PLANS

42. BUSINESS PLANS

As a matter of record, Schedule 2, Clause 24 of the Act sets out requirements for Business Plans. The following provisions of this Part are in addition to and not in derogation of the requirements of the Act.

43. ABOUT A BUSINESS PLAN

- 43.1 The Board must prepare at least a ten-year Business Plan for the region, in a collaborative manner with Constituent Councils which cannot be in conflict with this Charter.
- 43.2 The Board must also prepare a ten-year Long Term Financial Plan (which, must include principles detailing the actual distribution of overheads between the Constituent Councils and any other matter required by the Constituent Councils or determined by the Board to be included therein) and an Asset Management Plan.
- 43.3 The Long Term Financial and Asset Management Plans form part of the Business Plan.
- 43.4 In preparing and when reviewing a Business Plan, the Board must at a minimum have regard to the following:
 - 43.4.1 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;
 - 43.4.2 any initiatives proposed by the Commonwealth of Australia or the State Government as may impact upon or affect proper waste management in the area of an individual Constituent Council or Constituent Councils collectively;
 - 43.4.3 any plan or policy of a Constituent Council for waste management then in force, and any proposed changes to such plan or policy;
 - 43.4.4 the strategic management plans of each Constituent Council then in force; and
 - 43.4.5 the annual business plan and budget of each Constituent Council then in force.

PART 13—NON-CORE ACTIVITY

44. ABOUT NON-CORE ACTIVITY

- 44.1 Where before the date this Charter becomes effective the Authority has committed to a Non-core Activity:
 - 44.1.1 a Non-core Plan for that Non-core Activity must be prepared by the Chief Executive Officer and approved by Board resolution no later than 30 June 2013, so far as that Non-core Activity at the time then remains to be performed; and
 - 44.1.2 all the Constituent Councils are taken to be participants in that Non-core Activity with Non-core Shares equal to their Core Shares.
- 44.2 After the date this Charter becomes effective, the Authority must not tender for or commit to a Non-core Activity except in compliance with this Charter.

45. NON-CORE ACTIVITY PROPOSALS

The Chief Executive Officer, the Board or any Constituent Council may propose the Authority adopt a Non-core Plan.

46. NON-CORE ACTIVITY CONSULTATION

A proposer of a draft Non-core Plan must consult all the Constituent Councils in developing the draft.

47. NON-CORE PLAN REQUIREMENTS

A draft Non-core Plan must set out in reasonable detail in relation to the Non-core Activity it concerns:

- 47.1 the kind of service to which it relates;
- 47.2 its priority in relation to other existing or proposed Core Activity and Non-core Activity;
- 47.3 its expected duration;
- 47.4 a timetable for its full implementation;
- 47.5 its anticipated effect on the resources of the Authority (including financial, technological, physical and human resources) and in particular and without limiting the generality of the foregoing:
 - 47.5.1 personnel requirements over time, and how those requirements are to be satisfied;
 - 47.5.2 plant and equipment requirements over time, and how those requirements are to be satisfied;
 - 47.5.3 fuel and other consumables requirements over time, and how those requirements are to be satisfied;
 - 47.5.4 access to weigh-stations, recycling premises, and waste dump premises over time, and how those requirements are to be satisfied;
- 47.6 its anticipated expenditure, revenue and cash-flow outcomes over time (on a calendar monthly basis);
- 47.7 the sources of funds and when those funds need be sourced;
- 47.8 whether and if so what resources of a Constituent Council are required to be available to the Non-core Activity;
- 47.9 whether the Local Government Mutual Liability Scheme has forecast any peculiar liability issues for the Non-core Activity, and the advice given in relation to those liability issues;
- 47.10 whether the lawyers for the Authority have forecast any peculiar legal issues for the Non-core Activity, and the advice given in relation to those legal issues;
- 47.11 whether the auditors of the Authority have forecast any peculiar accounting or audit issues for the Non-core Activity;
- 47.12 governance issues, including whether and what delegations are required;
- 47.13 whether the Non-core Activity is a significant business activity and if so, how adherence to the National Competition Policy will be assured; and
- 47.14 how the Non-core Plan may change over time.

48. CONDITIONS OF ADOPTION OF A NON-CORE PLAN

A Non-core Plan is not effective unless and until all of the following are satisfied:

- 48.1 the Board resolves to adopt the Non-core Plan;

48.2 the Constituent Councils have each resolved to:

48.2.1 approve their Council's participation in the Non-core Activity; and

48.2.2 make any necessary consequential changes to their Council's strategic management plans, annual business plan and budget.

49. NON-CORE PLANS AS PART OF THE BUSINESS PLAN

A Non-core Plan adopted by the Authority forms part of the Business Plan.

50. REVIEW OF A NON-CORE PLAN

As part of a Business Plan, a Non-core Plan is subject to review by the Authority at the same times as the remainder of the Business Plan.

PART 14—ANNUAL PLAN AND BUDGET

51. ANNUAL PLAN

The Authority must, for each financial year, have an Annual Plan which supports and informs its Budget. The Annual Plan must:

51.1 include an outline of the Authority's objectives for the financial year, the activities that the Authority intends to undertake to achieve those objectives and the measures that the Authority intends to use to assess its performance against its objectives over the financial year;

51.2 assess the financial requirements of the Authority for the financial year and, taking those requirements into account, set out a summary of the Authority's proposed operating expenditure, capital expenditure and sources of revenue;

51.3 take into account the objectives set out in the Business Plan and, in particular, the Long-Term Financial Plan and issues relevant to the management of assets and resources by the Authority;

51.4 set out proposals for the recovery of overheads over the financial year from the Constituent Councils; and

51.5 address or include any other matter prescribed by the Constituent Councils or determined to be relevant by the Board.

52. ABOUT AN ANNUAL PLAN

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

52.2 Before the Authority adopts its Annual Plan it must prepare a draft Annual Plan and obtain the consent of an Absolute Majority of the Constituent Councils to that Plan.

52.3 The Authority must prepare the draft Annual Plan and provide it to the Constituent Councils by a date determined by the Councils for the purpose of obtaining the consent of the Councils on or before 31 May in each financial year.

53. BUDGETS

As a matter of record, Schedule 2, Clause 25 of the Act sets out requirements for Budgets, and the Authority must advise Constituent Councils of the proposed fees for the next financial year by 1 April in the preceding financial year.

54. ABOUT A BUDGET

54.1 An adopted Budget (prepared in a manner consistent with the Annual Plan) binds the Authority and is authority for the Authority to perform work and incur debts and meet obligations according to its own terms without reference back to the Board or to a Constituent Council (except to any extent the Budget or the Annual Plan otherwise requires).

54.2 Each Budget of the Authority must be adopted:

54.2.1 after the Authority has adopted its Annual Plan;

54.2.2 must be consistent with that Plan; and

54.2.3 before 30 June in each financial year.

55. EXPENDITURE OUTSIDE A BUDGET

55.1 As a matter of record, Schedule 2, Clause 25(4) is that the Authority may incur, for the purpose of genuine emergency or hardship, spending that is not authorised by its Budget without consulting with and seeking approval from the Constituent Councils.

55.2 As a matter of record, Schedule 2, Clause 25 (5) is that 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.

PART 15—SHARES

56. ABOUT SHARES

A Share means a Constituent Council's percentage share in the assets, liabilities and revenue of the Authority (after deducting Non-core Assets and Non-core Liabilities) as between all the Constituent Councils in accordance with this Part 15.

To avoid doubt, a third party dealing with the Authority is entitled to have recourse to all the Constituent Councils jointly and severally, regardless of the Shares of the Constituent Councils.

57. VARIATION OF SHARES

57.1 At the date of operation of this Charter the Constituent Councils' shares in the Authority are equal.

57.2 At any time, all the Constituent Councils may in writing agree to vary the Share of one or more of them.

57.3 The Shares must be reviewed and, as necessary, varied each time:

57.3.1 a council is admitted to the Authority as a Constituent Council;

57.3.2 a Constituent Council amalgamates with another council; or

57.3.3 a Constituent Council resigns from the Authority.

- 57.4 It is agreed between the Constituent Councils that the Constituent Councils are liable to contribute to any debts and liabilities of the Authority incurred prior to the date of operation of this Charter (including in relation to the depreciated value of any asset acquired and for any losses under contract entered into before that date) in the Shares set out at Clause 57.4 above.

PART 16—FUNDING

58. FUNDING

The Authority may decline to take any action where funds then available to the Authority are in the Board's opinion insufficient to defray the costs of such action and any debt or liability that may result.

59. CONSTITUENT COUNCIL CONTRIBUTIONS TO WORKING CAPITAL

- 59.1 This Clause applies only to a Core Activity.
- 59.2 A Constituent Council must contribute to the Authority such amounts at such times as the Budget requires (after deducting from the Budget any amounts identified as Non-core Assets and Non-Core Liabilities).
- 59.3 If the Budget does not specify a fixed dollar amount to be payable by the Contributor, the Constituent Council may require as a condition of payment that the Authority first provide an itemised estimate of the Core Activity expenditure reasonably expected to be incurred and which that contribution is to defray (after adjustments for payments previously made by that Constituent Council).
- 59.4 The Authority must use contributions received from a Constituent Council only for the purposes of a Core Activity as set out in the Budget.
- 59.5 If a Constituent Council (a Defaulter) fails to pay its full contribution so required when due:
- 59.5.1 the Defaulter must pay to the Authority interest on that amount at the official Reserve Bank Cash Rate Target plus 10% per annum from the due date to the date of actual payment;
 - 59.5.2 the Authority may recover that amount and that interest from the Defaulter as a debt;
 - 59.5.3 the Authority may, without prejudicing its other rights, set off any moneys otherwise payable by the Authority to the Defaulter against that amount and interest; and
 - 59.5.4 if the default continues for at least 14 days:
 - (a) the Authority must notify all Constituent Councils (including the Defaulter) of the fact and details of the default; and
 - (b) Constituent Councils other than the Defaulter must together lend to the Authority an amount (equal to the amount not paid by the Defaulter) in such proportions as they may agree or failing agreement between themselves, in the proportion that their Share bears to the total Shares held by those Constituent Councils making such loan, for repayment when and to the extent the Defaulter makes good the contribution and accrued interest.

60. DEBT FUNDING

The Authority may borrow or raise money from the Local Government Finance Authority or a bank of such amount(s) as provided for in a Business Plan and Budget approved by the Constituent Councils.

61. DISTRIBUTIONS TO CONSTITUENT COUNCILS

The Authority must pay or credit surplus funds to the Constituent Councils in proportion to their Common Fleet Collection Percentages to the extent the Board determines the Authority can afford to pay having regard to future expenditure the Business Plan anticipates be incurred.

62. CONTRIBUTIONS ON INSOLVENCY

On the insolvency of the Authority, and subject to Clause 57 of this Charter, each Constituent Council must contribute in proportion to their Share to the debts and liabilities of the Authority and otherwise as incurred while the Constituent Council is a Constituent Council.

PART 17—ASSETS

63. ACQUISITION OF ASSETS

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

64. DISPOSAL OF ASSETS

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

65. INVESTMENTS

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

- 65.1 in waste management infrastructure and ancillary land;
- 65.2 in plant and equipment to store, transfer and/or treat waste;
- 65.3 in plant and equipment to transport waste from properties to an appropriate place of storage and/or disposal; and
- 65.4 cash on interest-bearing deposit with any bank

66. INTERESTS IN COMPANIES

As a matter of record, Schedule 2, Clause 39 of the Act prohibits the Authority from having an interest in most companies.

PART 18—INSURANCE

67. INSURANCE

- 67.1 The Authority must register with the Local Government Association Mutual Liability Scheme and comply with the rules of that Scheme.
- 67.2 If the Authority employs any person, it must register with the Local Government Superannuation Scheme and the Local Government Association Workers Compensation Scheme and comply with the rules of those Schemes.

PART 19—FINANCIAL PRACTICES

68. ACCOUNTING RECORDS

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

69. ABOUT ACCOUNTING FOR SERVICES

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

70. OTHER FINANCIAL PRACTICES

Except as may be stated elsewhere in this Charter or required by law, there are no special accounting, internal auditing or financial systems or practices to be established or observed by the Authority.

PART 20—ACCESS TO INFORMATION**71. ACCESS TO RECORDS**

A Constituent Council and a Director each has a right to inspect and take copies of the books and records of the Authority for any proper purpose.

72. PROVISION OF INFORMATION

As a matter of record Schedule 2, Clause 27 of the Act entitles each Constituent Council to be furnished with information or records of the Authority.

73. BOARD REPORTS

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

74. ANNUAL REPORTS

74.1 As a matter of record, Schedule 2, Clause 28 of the Act requires the Authority to furnish an annual report to the Constituent Councils.

74.2 The annual report will be in such format and include such content as the Constituent Councils may prescribe by Absolute Majority.

74.3 The annual report must be delivered to the Councils on or before 30 September in each year subsequent to the financial year to which the report relates.

PART 21—DISPUTE RESOLUTION**75. DISPUTE RESOLUTION****75.1 About this clause:**

75.1.1 The procedure in this Clause must be applied to any dispute that arises between the Authority and a Constituent Council concerning the affairs of the Authority, or between Constituent Councils concerning the affairs of the Authority, including a dispute as to the meaning or effect of this Charter and whether the dispute concerns a claim in common law, equity or under statute.

75.1.2 The Authority and a Constituent Council must continue to observe and perform this Charter despite the application or operation of this clause.

75.1.3 This Clause does not prejudice the right of a party:

- (a) to require the continuing observance and performance of this Charter by all parties; or
- (b) to institute proceedings to enforce payment due under this Charter or to seek injunctive relief to prevent immediate and irreparable harm.

75.1.4 Pending completion of the procedure set out in this clause, and subject to this clause, a dispute must not be the subject of legal proceedings between any of the parties in dispute. If legal proceedings are initiated or continued in breach of this provision, a party to the dispute is entitled to apply for and be granted an order of the court adjourning those proceedings pending completion of the procedure set out in this clause.

75.2 **Step 1: Notice of dispute:** A party to the dispute must promptly notify each other party to the dispute:

75.2.1 the nature of the dispute, giving reasonable details;

75.2.2 what action (if any) the party giving notice thinks will resolve the dispute; and but a failure to give such notice does not entitle any other party to damages.

75.3 **Step 2: Meeting of the parties:** A party to the dispute who complies with the previous step may at the same or a later time notify each other party to the dispute that the first party requires a meeting within 14 business days after the giving of such notice. In that case, each party to the dispute must send to the meeting a senior manager of that party with the Board to resolve the dispute and at the meeting make a good faith attempt to resolve the dispute.

75.4 **Step 3: Mediation:** Despite whether any previous step was taken, a dispute not resolved within 30 days must be referred to mediation, as to which:

75.4.1 the mediator must be a person agreed by the parties in dispute or, if they cannot agree within 14 business days, a mediator nominated by the then President of the South Australian Bar Association (or equivalent officer of any successor organisation);

- 75.4.2 the role of a mediator is to assist in negotiating a resolution of a dispute. A mediator may not make a decision binding on a party unless that party has so agreed in writing;
- 75.4.3 the mediation must take place in a location in Adelaide agreed by the parties;
- 75.4.4 a party in dispute must co-operate in arranging and expediting mediation;
- 75.4.5 a party in dispute must send to the mediation a senior manager with authority to resolve the dispute;
- 75.4.6 the mediator may exclude lawyers acting for the parties in dispute and may co-opt expert assistance as the mediator thinks fit;
- 75.4.7 a party in dispute may withdraw from mediation if there is reason to believe the mediator is not acting in confidence, or with good faith or is acting for a purpose other than resolving the dispute;
- 75.4.8 unless otherwise agreed in writing:
 - (a) everything that occurs before the mediator is in confidence and in closed session;
 - (b) discussions (including admissions and concessions) are without prejudice and may not be called into evidence in any subsequent litigation by a party;
 - (c) documents brought into existence specifically for the purpose of the mediation may not be admitted in evidence in any subsequent legal proceedings by a party;
 - (d) the parties in dispute must report back to the mediator within 14 business days on actions taken, based on the outcome of the mediation;
- 75.4.9 a party in dispute need not spend more than one day in mediation for a matter under dispute;
- 75.4.10 a party in dispute must bear an equal share of the costs and expenses of the mediator and otherwise bears their own costs.

75.5 **Step 4: Arbitration:** Despite whether any previous step was taken, a dispute not resolved within 60 days must be referred to arbitration, as to which:

- 75.5.1 there must be only one arbitrator and who is a natural person agreed by the parties or, if they cannot agree within 14 business days, an arbitrator nominated by the then Chairperson of The Institute of Arbitrators and Mediators Australia (South Australian Chapter);
- 75.5.2 the role of the arbitrator is to resolve the dispute and make decisions binding on the parties;
- 75.5.3 the arbitration must take place in an agreed location in Adelaide;
- 75.5.4 a party must co-operate in arranging and expediting arbitration;
- 75.5.5 a party must send to the arbitration a senior manager with authority to resolve the dispute;
- 75.5.6 the parties may provide evidence and given written and verbal submissions to the arbitrator within the time set by the arbitrator;
- 75.5.7 the arbitrator must:
 - (a) consider the evidence and submissions;
 - (b) decide the dispute; and
 - (c) give written reasons to each party;
- 75.5.8 subject to this clause, the arbitration must take place under Rules 5 to 18 (inclusive) of the Rules of The Institute of Arbitrators and Mediators for the Conduct of Commercial Arbitrations and the provisions of the Commercial Arbitration Act 1986 (S.A.) and which Rules are taken to be incorporated by reference into this clause or subject to this clause, the arbitrator must fix the rules of arbitration;
- 75.5.9 the costs and expenses of the arbitrator and of each party must be borne as the arbitrator decides.

PART 22—WINDING UP

76. WINDING UP

The Authority may be wound up in circumstances as Schedule 2, Clause 33 (1) of the Act allows or requires.

77. DISTRIBUTION OF ASSETS AND LIABILITIES ON WINDING UP

In the event the Authority commences to wind up and except to any extent the Board unanimously determines otherwise, the Authority must divide among the Constituent Councils in kind all of the Authority's assets and liabilities in proportion to their Shares or as otherwise agreed by Unanimous Decision of the Constituent Councils.

PART 23—COMMITTEES

78. COMMITTEES

- 78.1 The Board may establish a committee of Directors 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.
- 78.2 A member of a committee established under this Clause holds office at the pleasure of the Board.
- 78.3 The Board may establish advisory committees consisting of or including persons who are not Directors for 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 which must be given by the Board to the advisory committee.
- 78.4 A member of an advisory committee established under this Clause holds office at the pleasure of the Board.

PART 24—OTHER MATTERS

79. EXECUTION OF DOCUMENTS

The Chief Executive Officer must maintain a register of use of the Common Seal. As a matter of record, Schedule 2, Clause 37 of the Act governs the execution of documents by the Authority.

80. PRINCIPAL OFFICE

The Authority's principal office is at 1 Temple Court, Ottoway, S.A. 5013 or as the Board may determine otherwise.

81. SERVICE OF DOCUMENTS

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

82. CIRCUMSTANCES NOT PROVIDED FOR

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

The undersigned (being each Council specified in the Charter) agree to the above as the charter of the Authority.

Rob Gregory, General Manager East Waste
