

LOCAL GOVERNMENT ACT 1999
NOTICE OF APPROVAL OF A REGIONAL SUBSIDIARY
Eastern Region Alliance Water

THE CITY OF BURNSIDE, THE CITY OF NORWOOD, PAYNEHAM & ST PETERS AND THE CORPORATION OF THE TOWN OF WALKERVILLE, have resolved to establish a subsidiary pursuant to Section 43 of the Local Government Act 1999, to develop, implement, oversee and manage practical solutions to provide water supply diversity within and outside the Region; to supply water to the Constituent Councils and other persons for irrigation purposes within and outside the Region except that priority shall be given to the supply of water for irrigation within the Region.

Pursuant to Clause 17 of Part 2 of Schedule 2 of the Local Government Act 1999, I approve the establishment of the Eastern Regional Alliance (ERA) Water.

The charter of the Eastern Regional Alliance (ERA) Water is set out below.

Dated 21 July 2015.

GEOFF BROCK, Minister for Local Government

**ERA WATER
REGIONAL SUBSIDIARY
CHARTER 2015**



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1. INTRODUCTION

1.1 Name

The name of the subsidiary is ERA Water (referred to as **the Subsidiary** in this Charter).

1.2 Definitions

1.2.1 In this Charter, unless the contrary intention appears:

- 1.2.1.1 **the Act** means the Local Government Act 1999 and includes all regulations made thereunder;
- 1.2.1.2 **the Subsidiary** means ERA Water;
- 1.2.1.3 **the Board** means the Board of Management of the Subsidiary set out at Clause 3;
- 1.2.1.4 **Annual Business Plan** means the annual business plan adopted by the Subsidiary pursuant to Clause 6.1;
- 1.2.1.5 **Board Member** means a member of the Board appointed pursuant to Clause 3.4, and unless the context requires otherwise or it is expressly stated otherwise, a reference to a Board Member includes a Deputy Board Member;
- 1.2.1.6 **Budget** means the annual budget adopted by the Subsidiary pursuant to Clause 5.1;
- 1.2.1.7 **Chairperson** means the member of the Board appointed pursuant to Clause 3.4.1.2;
- 1.2.1.8 **Constituent Councils** means those councils identified at Clause 1.5;
- 1.2.1.9 **Council** means a council constituted under the Act;
- 1.2.1.10 **Date of Withdrawal** means the date a Constituent Council's withdrawal from the Subsidiary becomes effective pursuant to Clause 7.2.2;
- 1.2.1.11 **Deputy Board Member** means a person appointed to act as a deputy to a Board Member in accordance with Clause 3.5;
- 1.2.1.12 **Financial Statements** has the same meaning as in the Act;
- 1.2.1.13 **Financial Year** means 1 July in each year to 30 June in the subsequent year;
- 1.2.1.14 **General Manager** means the person appointed pursuant to Clause 4 as the General Manager of the Subsidiary;
- 1.2.1.15 **Long Term Financial Plan** means the long term financial plan prepared by the Subsidiary and approved by the Constituent Councils pursuant to Clause 5.5;
- 1.2.1.16 **Net Assets** means total assets (current and non-current) less total liabilities (current and non-current) of the Subsidiary as reported in the annual audited Financial Statements of the Subsidiary;
- 1.2.1.17 **Project** means the collaborative long term joint undertaking of the Constituent Councils to implement a stormwater capture, treatment and distribution system in eastern Adelaide through, amongst other things, the linking and aggregation of small aquifers and storages via a regional aquifer storage and recovery system and the development of a cross-catchment, cross-council stormwater supply pipeline around eastern Adelaide;
- 1.2.1.18 **Region** means the collective geographical area of the Constituent Councils;
- 1.2.1.19 **Water** does not include mains water.

1.3 Interpretation

In this Charter, unless the context otherwise requires:

- 1.3.1 headings do not affect interpretation;
- 1.3.2 singular includes plural and plural includes singular;
- 1.3.3 words of one gender include any gender;
- 1.3.4 a reference to a person includes a partnership, corporation, association, government body and any other entity;
- 1.3.5 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- 1.3.6 an unenforceable provision or part of a provision of this Charter may be severed, and the remainder of this Charter continues in force, unless this would materially change the intended effect of this Charter;
- 1.3.7 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions; and
- 1.3.8 a reference to a 'Clause' means a clause of this Charter.

1.4 Establishment

The Subsidiary is a regional subsidiary established under Section 43 of the Act by the Constituent Councils.

1.5 Constituent Councils

The Constituent Councils are:

- 1.5.1 City of Burnside;
- 1.5.2 City of Norwood, Payneham & St Peters; and
- 1.5.3 Corporation of the Town of Walkerville.

1.6 Local Government Act 1999

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

1.7 National Competition Policy

If the Subsidiary is at any time involved in a significant business activity as defined in the Clause 7 Statement prepared under the Competition Principles Agreement of the National Competition Policy, it will implement the principles of competitive neutrality by way of annual review of its business operations in the market place and application of the relevant principle(s) where that is appropriate to do so, unless the benefits to be realised

through the application of the principles of competitive neutrality outweigh the costs associated with implementation as provided for in Part 4 of the Government Business Enterprises (Competition) Act 1996.

1.8 **Objects and Purposes of the Subsidiary**

The Subsidiary is established for the following objects and purposes:

- 1.8.1 to implement, oversee and manage the Project;
- 1.8.2 to develop, implement, oversee and manage practical solutions to provide water supply diversity within and outside the Region;
- 1.8.3 to supply water to the Constituent Councils and other persons for irrigation purposes within and outside the Region except that priority shall be given to the supply of water for irrigation within the Region;
- 1.8.4 to manage and oversee the distribution of water captured as part of the Project;
- 1.8.5 to provide strategic direction for the Project;
- 1.8.6 to fund, lease or own physical infrastructure required to undertake the Project;
- 1.8.7 to meet all legislative requirements for the Subsidiary;
- 1.8.8 to be responsible for the ongoing maintenance, replacement and other capital requirements of all physical infrastructure owned by the Subsidiary;
- 1.8.9 to utilise proven water management planning principles and technologies;
- 1.8.10 to manage, operate and control the necessary infrastructure for the Project;
- 1.8.11 to maximise economic, environmental and social benefits to the community by developing and implementing innovative water management principles and techniques;
- 1.8.12 to identify, develop and implement water recycling and supply opportunities for the Constituent Councils;
- 1.8.13 to provide technical and other expert services and advice to the Constituent Councils in the area of water management and recycling including identifying emerging issues and opportunities;
- 1.8.14 to represent the Constituent Councils and liaise with State government regarding the implementation or alteration of legislation in relation to water and licensing;
- 1.8.15 to be financially self-sufficient as far as possible.

1.9 **Liability Guarantee**

- 1.9.1 Pursuant to Clause 31 of Schedule 2 to the Act the liabilities incurred or assumed by the Subsidiary are guaranteed by the Constituent Councils.

2. **FUNCTIONS, POWERS AND DUTIES OF THE SUBSIDIARY**

The functions, powers and duties of the Subsidiary are to be exercised in the performance and furtherance of the Subsidiary's objects and purposes.

2.1 **Functions and Powers**

In addition to those specified in the Act, the Subsidiary has the following functions and powers:

- 2.1.1 to establish and maintain a reserve fund or funds clearly identified for the upkeep and/or replacement of fixed assets of the Subsidiary or meeting any deferred liability of the Subsidiary;
- 2.1.2 subject to Clause 2.5 to enter into any kind of contract or arrangement;
- 2.1.3 subject to Clauses 2.5 and 2.6 to purchase, lease, hire, rent or otherwise acquire or dispose of (other than by sale) any real property or interests therein;
- 2.1.4 subject to Clauses 2.5 and 2.6 and to obtaining the prior approval of the Constituent Councils, to sell any real property or interests therein;
- 2.1.5 to borrow funds and incur expenditure in accordance with Clause 2.5;
- 2.1.6 subject to Clause 2.5 to employ, engage, determine conditions of employment/engagement, remunerate, remove, suspend or dismiss/terminate the General Manager and other staff of the Subsidiary;
- 2.1.7 subject to Clause 2.5 to employ, engage or retain professional advisers to the Subsidiary;
- 2.1.8 subject to Clause 2.5 to purchase, sell, lease, hire, rent or otherwise acquire or dispose of any personal property or interests therein;
- 2.1.9 to directly market and promote the skills and expertise of its employees and its products and services for the benefit of the Subsidiary and the Constituent Councils;
- 2.1.10 to charge whatever fees the Subsidiary considers appropriate for services rendered or goods provided to any person, body or council including a Constituent Council;
- 2.1.11 subject to Clause 2.5 to institute, initiate and carry on legal proceedings;
- 2.1.12 to adopt and use a trading name provided that the Subsidiary must first register the trading name with Consumer and Business Services in accordance with the Business Names Act 1996;
- 2.1.13 subject to Clause 2.5 to agree to undertake a project in conjunction with any council or government agency or authority and in doing so to participate in the formation of a trust, partnership or joint venture with any council or government agency or authority to give effect to the project;
- 2.1.14 to open and operate bank accounts;
- 2.1.15 to make submissions for and accept grants, subsidies and contributions to further its objects and purposes;
- 2.1.16 subject to Clause 2.2 to undertake and exercise such powers and functions as specified in this Charter outside the areas of the Constituent Councils;
- 2.1.17 subject to obtaining the prior approval of the Constituent Councils, to participate in a trust, including by becoming and exercising the powers of a trustee, not inconsistent with this Charter or the objects and purposes of the Subsidiary;
- 2.1.18 to grant a rebate of fees and charges for services rendered or goods provided to the Constituent Councils in such amount as determined by the Subsidiary provided that any rebate granted to the Constituent Councils is in proportion to the fees and charges paid by the Constituent Councils;
- 2.1.19 to compromise, compound, abandon or settle a debt/claim owed to the Subsidiary;

- 2.1.20 to make any election for tax;
- 2.1.21 to do anything else necessary or convenient for or incidental to the exercise, performance or discharge of its powers, functions or duties or the attainment of its objects and purposes.
- 2.2 **Duties**
The Subsidiary has the following duties:
- 2.2.1 to exercise the functions and powers of the Subsidiary in the performance and furtherance of the Subsidiary's objects and purposes;
- 2.2.2 to, notwithstanding any other Clause or provision in this Charter, only act outside the area of the Constituent Councils with the prior approval of the Constituent Councils whose approval is granted on the basis that the Constituent Councils consider it necessary or expedient to the performance of the Constituent Councils' or the Subsidiary's functions.
- 2.3 **Other Powers, Functions and Duties**
The Subsidiary may exercise such other functions, powers and duties as are delegated to the Subsidiary from the Constituent Councils from time to time.
- 2.4 **Common Seal**
- 2.4.1 The Subsidiary will have a common seal.
- 2.4.2 The common seal of the Subsidiary must not be affixed to a document except to give effect to a resolution of the Board.
- 2.4.3 The affixation of the common seal of the Subsidiary must be attested by two Board Members or the General Manager and one (1) Board Member.
- 2.4.4 The General Manager 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 witnessed the fixing of the common seal and the date that the seal was affixed.
- 2.4.5 The Subsidiary may by instrument under common seal authorise a person to execute documents on behalf of the Subsidiary subject to any limitations specified in the instrument of authority.
- 2.5 **Borrowings and Expenditure**
- 2.5.1 The Subsidiary has the power to incur expenditure as follows:
- 2.5.1.1 in accordance with a Budget adopted by the Subsidiary and approved by the Constituent Councils as required by the Act or this Charter; or
- 2.5.1.2 with the prior approval of all of the Constituent Councils; or
- 2.5.1.3 in accordance with the Act, and in respect of expenditure not contained in a Budget adopted by the Subsidiary and approved by the Constituent Councils, for a purpose of genuine emergency or hardship.
- 2.5.2 Subject to Clause 2.5.3 the Subsidiary has the power to borrow money as follows:
- 2.5.2.1 in accordance with a Budget adopted by the Subsidiary and approved by the Constituent Councils as required by the Act or this Charter; or
- 2.5.2.2 with the prior approval of all of the Constituent Councils.
- 2.5.3 Unless otherwise approved by all of the Constituent Councils any and all borrowings taken out by the Subsidiary must be from the Local Government Financial Authority or a registered bank or financial institution within Australia.
- 2.6 **Property**
- 2.6.1 All property held by the Subsidiary is held by it on behalf of the Constituent Councils.
- 2.6.2 No person may sell, encumber or otherwise deal with any real property of the Subsidiary without the approval of the Subsidiary by way of, and evidenced by, a resolution of the Board.
- 2.7 **Delegation by the Subsidiary**
- 2.7.1 The Subsidiary may, in accordance with this Charter and the Act, by resolution, delegate to a committee, an employee of the Subsidiary or of a Constituent Council or to a person for the time being occupying a particular office or position any of its powers, functions and duties under this Charter but may not delegate:
- 2.7.1.1 the power to borrow money or obtain any other form of financial accommodation not being a draw down of an approved overdraft facility;
- 2.7.1.2 the power to approve the reimbursement of expenses or payment of allowances to Board Members;
- 2.7.1.3 the power to adopt Budgets;
- 2.7.1.4 the power to adopt or revise financial estimates and reports;
- 2.7.1.5 the power to make any application or recommendation to the Minister; and
- 2.7.1.6 the power to approve expenditure of money not contained in a Budget adopted by the Subsidiary in accordance with this Charter.
- 2.7.2 A delegation is revocable at will and does not prevent the Subsidiary from acting in a matter.
3. **BOARD OF MANAGEMENT**
- 3.1 **Structure**
- 3.1.1 The Subsidiary is a body corporate and is governed by the Act and this Charter.
- 3.1.2 The Board is the Subsidiary's governing body and has the responsibility for the administration of the affairs of the Subsidiary ensuring that the Subsidiary acts in accordance with this Charter and all relevant legislation including the Act.
- 3.1.3 All meetings of the Subsidiary shall be meetings of the Board.
- 3.2 **Role of the Board**
The Board is responsible for the administration of the affairs of the Subsidiary and ensuring that the Subsidiary acts in accordance with this Charter and all relevant legislation including the Act.

3.3 **Functions of the Board**

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

- 3.3.1 providing professional input and policy direction to the Subsidiary;
- 3.3.2 ensuring strong accountability and stewardship of the Subsidiary;
- 3.3.3 monitoring, overseeing and measuring the performance of the General Manager of the Subsidiary;
- 3.3.4 ensuring that ethical behaviour and integrity is established and maintained by the Subsidiary, the Board and Board Members in all activities undertaken by the Subsidiary;
- 3.3.5 subject to Clause 3.11.5, ensuring, where appropriate, that the business of the Subsidiary is undertaken in an open and transparent manner;
- 3.3.6 developing and adopting such policies and procedures as give effect to good governance and administrative practices;
- 3.3.7 exercising the care, diligence and skill that a prudent person of business would exercise in managing the affairs of other persons;
- 3.3.8 avoiding investments that are speculative or hazardous by nature.

3.4 **Membership of the Board**

3.4.1 The Board shall consist of four (4) members appointed as follows:

3.4.1.1 Constituent Council Board Members

Each Constituent Council must appoint for a maximum period of two (2) years and on such other conditions as the Constituent Council may determine one (1) person (who may be the Chief Executive Officer of that Constituent Council), to be a Board Member and may at any time terminate or revoke that appointment and appoint another person to be a Board Member;

3.4.1.2 Independent Chairperson

(a) Following the receipt of a recommendation from the Chief Executive Officers of the Constituent Councils in accordance with Clause 3.4.3, the Constituent Councils must appoint a person to be a Board Member and Chairperson (not being an elected member or employee of a Constituent Council) for a maximum period of two (2) years and on such other conditions as the Constituent Councils may determine and the Constituent Councils may at any time terminate or revoke that appointment and appoint another person to be a Board Member and Chairperson.

3.4.2 Each Constituent Council must give notice in writing to the Subsidiary of the appointment of a Board Member, the term of appointment, any other conditions, and of any termination or revocation of that appointment.

3.4.3 The Chief Executive Officers of the Constituent Councils shall invite applications for the position of Chairperson and assess such applications through such process as they consider appropriate and make recommendations to the Constituent Councils on the appointment of the Chairperson including the fee to be paid to the Chairperson and other terms and conditions to attach to such appointment.

3.5 **Deputy Board Members**

3.5.1 Each Constituent Council must appoint a person to be a Deputy Board Member for such term as determined by that Constituent Council who may act in place of that Constituent Council's Board Member if the Board Member is unable for any reason to be present at a meeting of the Board and may at any time revoke or terminate that appointment and appoint another person to be a Deputy Board Member.

3.6 **Office of Board Member**

3.6.1 Subject to Clause 3.6.2, at the conclusion of a Board Member's term of office such Board Member will be eligible for re-appointment.

3.6.2 The office of a Board Member will become vacant:

- 3.6.2.1 if any of the grounds or circumstances set out in the Act as to when a Board Member's office becomes vacant arises; or
- 3.6.2.2 where applicable, the Board Member ceasing to be an elected member or employee of the Constituent Council that appointed him or her;
- 3.6.2.3 if the Constituent Council who appointed the Board Member terminates or revokes the Board Member's appointment in the event of any behaviour of that Board Member which in the opinion of the Constituent Council amounts to:
 - (a) impropriety;
 - (b) serious neglect of duty in attending to the responsibilities as a Board Member;
 - (c) breach of fiduciary duty to the Board;
 - (d) breach of any of the legislative obligations and duties of a Board Member including the conflict of interest provisions in the Act;
 - (e) breach of the duty of confidentiality to the Board and/or the Constituent Councils; or
 - (f) any other behaviour which may discredit the Board, the Subsidiary or the Constituent Councils;
- 3.6.2.4 if the Constituent Council who appointed the Board Member ceases to be a Constituent Council.

3.6.3 The office of a Deputy Board Member will become vacant in the same way as the office of a Board Member will become vacant as set out in Clause 3.6.2 of this Charter or if the Constituent Council who appointed the Deputy Board Member terminates or revokes the Deputy Board Member's appointment.

- 3.6.4 Where, for any reason, the office of a Board Member becomes vacant the Constituent Council which appointed the Board Member will be responsible for appointing a replacement Board Member, and in the case of the office of the Chairperson becoming vacant the Constituent Councils will be responsible for appointing a replacement Board Member and Chairperson.
- 3.6.5 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 reappointment.
- 3.7 **Remuneration and Reimbursement of Expenses of Chairperson**
- 3.7.1 The Subsidiary will pay the Chairperson a fee as determined by the Constituent Councils following the receipt of a recommendation from the Chief Executive Officers of the Constituent Councils having regard to the Guidelines for Agencies and Board Directors published from time to time by the Department of Premier and Cabinet for Government Boards and Committees or such publication as may succeed such Guidelines).
- 3.7.2 The Chairperson will receive from the Subsidiary reimbursement of expenses properly incurred in performing or discharging official functions and duties as determined by the Subsidiary and set out in a policy adopted by the Subsidiary for the purposes of this clause.
- 3.7.3 The Chief Executive Officers of the Constituent Councils will review the annual fee to be paid to the Chairperson and make recommendations to the Constituent Councils of the outcome of the review and any alteration to such annual fee.
- 3.8 **Insurance**
- 3.8.1 The Subsidiary must take out a suitable policy of insurance insuring Board Members including Deputy Board Members, against risks associated with the performance or discharge of their official functions and duties or on official business of the Subsidiary.
- 3.9 **Propriety of Members of the Board**
- 3.9.1 Board Members will not be required to submit returns under Chapter 5, Part 4, Division 2 of the Act.
- 3.9.2 The provisions regarding conflict of interest prescribed in the Act apply to all Board Members as if they were elected members of a council and the Subsidiary were a council.
- 3.9.3 Board Members must at all times act in accordance with their duties of confidence and confidentiality and other legal and fiduciary duties to the Subsidiary at all times while acting in their capacity as a Board Member including honesty and the exercise of reasonable care and diligence as required by Part 4, Division 1, Chapter 5 of the Act and Clause 23 of Schedule 2, Part 2 of the Act.
- 3.9.4 The Subsidiary must adopt a Code of Conduct approved by the Constituent Councils to be observed by Board Members.
- 3.10 **Chairperson of the Board**
- 3.10.1 The Chairperson will cease to hold office as Chairperson in the event:
- 3.10.1.1 the Chairperson resigns as Chairperson; or
- 3.10.1.2 the Chairperson ceases to be a Board Member; or
- 3.10.1.3 the Constituent Councils terminate the Chairperson's appointment as Chairperson.
- 3.10.2 The Chairperson must preside at all meetings of the Board and, in the event the Chairperson is absent from a meeting, the Board must appoint one of the Board Members present to preside at that meeting only.
- 3.10.3 In the event that the Chairperson is to be absent for an extended period (being a period in excess of two months), then the Board must appoint a Board Member to act as Chairperson for the period of the absence of the Chairperson.
- 3.11 **Proceedings of the Board**
- 3.11.1 Subject to Clause 3.11.6 ordinary meetings of the Board will be held at such times and places as determined by the Board except that there must be at least one ordinary meeting of the Board every two months.
- 3.11.2 An ordinary meeting of the Board will constitute an ordinary meeting of the Subsidiary. The Board shall administer the business of the Subsidiary at the ordinary meeting.
- 3.11.3 For the purpose of this Clause 3.11, the contemporaneous linking together by telephone, audio-visual or other instantaneous means ('telecommunications meeting') of the Board Members is deemed to constitute a meeting of the Board provided that:
- 3.11.3.1 notice of the telecommunications meeting is given to all Board Members in the manner determined by the Board for that purpose; and
- 3.11.3.2 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; and
- 3.11.3.3 at least a quorum is present during the telecommunications meeting; and
- 3.11.3.4 at the commencement of the meeting, each Board Member must announce his/her presence to all other Board Members taking part in the meeting; and
- 3.11.3.5 a Board Member must not leave a telecommunications meeting by disconnecting his/her telephone, audio-visual or other communication equipment, unless that Board Member has previously notified the Chairperson of the meeting.
- 3.11.4 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 and will constitute a valid decision of the Subsidiary where a majority of Board Members vote in favour of the resolution by signing and returning the resolution to the General Manager or otherwise giving written notice of their consent and setting out the terms of the resolution to the General Manager. The resolution will be deemed a

- resolution of the Board and will be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held.
- 3.11.5 Subject to Chapter 6 Part 3 of the Act meetings of the Board will be open to the public unless the Board resolves otherwise and Chapter 6 Part 3 of the Act extends to the Subsidiary.
- 3.11.6 The first ordinary meeting of the Board following the establishment of the Subsidiary will be determined and called by the Chief Executive Officers of the Constituent Councils at which meeting the time, date and place of ordinary meetings of the Board shall be determined.
- 3.11.7 Subject to Clause 3.11.11, notice of an ordinary meeting of the Board will be given by the General Manager to each Board Member not less than three (3) clear days prior to the holding of the meeting.
- 3.11.8 The General Manager 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 Subsidiary, provide the notice to all Board Members at least four (4) months before the date of the meeting.
- 3.11.9 A notice of meeting of the Board must:
- 3.11.9.1 be in writing; and
 - 3.11.9.2 set out the date, time and place of the meeting; and
 - 3.11.9.3 be signed by the General Manager; and
 - 3.11.9.4 contain, or be accompanied by, the agenda for the meeting.
- 3.11.10 Any Constituent Council, the Chairperson or three (3) Board Members may, by delivering a written request to the General Manager require a special meeting of the Board to be held and any such special meeting shall constitute a special meeting of the Subsidiary. The written request must be accompanied by the agenda for the special meeting and if an agenda is not provided the request has no effect.
- 3.11.11 On receipt of a written request pursuant to Clause 3.11.10, the General Manager and Chairperson must determine the date and time of the special meeting and the General Manager must give notice to all Board Members at least four (4) hours prior to the commencement of the special meeting.
- 3.11.12 The General Manager must, insofar as is reasonably practicable:
- 3.11.12.1 ensure that items on an agenda given to Board Members are described with reasonable particularity and accuracy; and
 - 3.11.12.2 supply to each Board Member at the time that notice of a meeting is given a copy of any documents or reports that are to be considered at the meeting (so far as this is practicable).
- 3.11.13 Notice of a meeting of the Board may be given to a Board Member:
- 3.11.13.1 personally; or
 - 3.11.13.2 by delivering the notice (whether by post or otherwise) to the usual place of residence of the Board Member or to another place authorised in writing by the Board Member; or
 - 3.11.13.3 by a means authorised in writing by the Board Member as being an available means of giving notice.
- 3.11.14 A notice that is not given in accordance with Clause 3.11.13 is taken to have been validly given if the General Manager considers it impracticable to give the notice in accordance with that Clause and takes action the General Manager considers reasonably practicable in the circumstances to bring the notice to the attention of the Board Member.
- 3.11.15 The General Manager must maintain a record of all notices of Board meetings given under Clause 3.11.9 to Board Members.
- 3.11.16 A meeting of the Board must not commence until a quorum of Board Members is present and a meeting must not continue if there is not a quorum of Board Members present. A quorum of Board Members will comprise three (3) Board Members in office.
- 3.11.17 All matters for decision at a meeting of the Board will be decided by a simple majority of the Board Members present and entitled to vote on the matter. All Board Members including the Chairperson present and entitled to vote on a matter are required to vote. All Board Members including the Chairperson are entitled to a deliberative vote and if the votes are equal the Chairperson or other Board Member presiding at the meeting does not have a second or casting vote.
- 3.11.18 All Board Members must at all times keep confidential all documents and any information provided to them for their consideration prior to a meeting of the Board except that this clause does not prevent a Board Member from disclosing documents and information to the elected members or employees of a Constituent Council where necessary.
- 3.11.19 The General Manager must cause minutes to be kept of the proceedings of every meeting of the Board and ensure that the minutes are presented to the next ordinary meeting of the Board for confirmation. Where the General Manager is absent or excluded from attendance at a meeting of the Board, the person presiding at the meeting shall cause the minutes to be kept.
- 3.11.20 The General Manager must, within five (5) days after a meeting of the Board provide to each Board Member and the Constituent Councils a copy of the minutes of the meeting of the Board in a form agreed to by the Board.
- 3.11.21 Subject to the Act, this Charter and a direction of the Constituent Councils, the Board may determine its own procedures.
- 3.11.22 The Board may establish Committees as it considers necessary, and determine the membership of, terms of reference for and meeting procedures of such committees as it sees fit.
- 4. GENERAL MANAGER AND APPOINTMENT OF OTHER STAFF**
- 4.1 The Subsidiary may employ staff and may appoint a General Manager on a fixed term performance based employment contract, which does not exceed five years in duration and on such other conditions as determined

- by the Subsidiary. The Subsidiary may at the end of the contract term enter into a new contract not exceeding five years in duration with the same person.
- 4.2 The General Manager is responsible for appointing, managing, suspending and dismissing the other employees of the Subsidiary on behalf of the Subsidiary.
- 4.3 In the absence of the General Manager for any period exceeding one week, the General Manager must appoint a suitable person as Acting General Manager. If the General Manager does not make, or is incapable of making, such an appointment a suitable person must be appointed by the Subsidiary.
- 4.4 The Subsidiary delegates responsibility for day to day management of the Subsidiary to the General Manager, who will ensure that sound business and human resource management practices are applied in the efficient and effective management of the operations of the Subsidiary.
- 4.5 The functions of the General Manager include:
- 4.5.1 ensuring that the decisions of the Subsidiary are implemented in a timely and efficient manner;
- 4.5.2 providing information to assist the Subsidiary to assess the Subsidiary's performance against its Strategic and Business Plans;
- 4.5.3 providing advice and reports to the Subsidiary on the exercise and performance of its powers and functions under this Charter or any Act;
- 4.5.4 co-ordinating and initiating proposals for consideration of the Subsidiary including but not limited to continuing improvement of the operations of the Subsidiary;
- 4.5.5 ensuring that the assets and resources of the Subsidiary are properly managed and maintained;
- 4.5.6 ensuring that records required under the Act or any other legislation are properly kept and maintained;
- 4.5.7 advise the Subsidiary on all relevant legislative changes;
- 4.5.8 exercising, performing or discharging other powers, functions or duties conferred on the General Manager by or under the Act or any other Act, and performing other functions lawfully directed by the Subsidiary;
- 4.5.9 achieving financial outcomes in accordance with adopted plans and Budgets; and
- 4.5.10 establishing policies and procedures relating to work, health and safety.
- 4.6 The General Manager may delegate or sub-delegate with the consent of the Subsidiary to an employee of the Subsidiary or a committee comprising employees of the Subsidiary, any power or function vested in the General Manager. Such delegation or sub-delegation may be subject to conditions or limitations as determined by the General Manager.
- 4.7 Where a power or function is delegated to an employee of the Subsidiary, the employee is responsible to the General Manager for the efficient and effective exercise or performance of that power or function.
- 4.8 A written record of delegations and sub-delegations must be kept by the General Manager at all times.
- 4.9 In the event the Subsidiary does not appoint a General Manager, the Board shall undertake the responsibilities and functions of the General Manager set out in this Charter.
5. **FINANCIALS**
- 5.1 **Budget**
- 5.1.1 The Subsidiary must before 31 March of each year prepare and submit a draft Budget to the Constituent Councils for the ensuing Financial Year (or, if appropriate, part Financial Year in relation to the first Budget of the Subsidiary after it is established) in accordance with the Act for approval by the Constituent Councils.
- 5.1.2 The Subsidiary must adopt by 30 June in each year, a Budget in accordance with the Act for the ensuing Financial Year as approved unanimously by the Constituent Councils pursuant to Clause 5.1.1.
- 5.1.3 The Subsidiary 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.
- 5.1.4 The Subsidiary must provide a copy of its adopted annual Budget to the Constituent Councils within five (5) business days after the adoption of the annual Budget by the Subsidiary.
- 5.1.5 Monthly reports summarising the financial position and performance of the Subsidiary against the annual Budget must be prepared and presented to the Board at each ordinary meeting of the Board and copies provided to the Constituent Councils.
- 5.1.6 The Subsidiary must reconsider its annual Budget in accordance with the Act at least (3) times at intervals of not less than three (3) months between 30 September and 31 May (inclusive) in the relevant Financial Year and may with the unanimous approval of the Constituent Councils amend its annual Budget for a Financial Year at any time before the year ends.
- 5.1.7 The annual Budget must be in accordance with the Act.
- 5.2 **Financial Contributions**
- 5.2.1 Any financial contributions to the Subsidiary by the Constituent Councils will be in equal amounts unless the Constituent Councils agree otherwise.
- 5.2.2 Each of the Constituent Councils must contribute funds in equal amounts to the Subsidiary as set out in the Budget adopted by the Subsidiary and approved by the Constituent Councils.
- 5.2.3 The Constituent Councils may unanimously agree to provide the Subsidiary with additional funds at any time on such terms and conditions, if any, as determined by the Constituent Councils.
- 5.3 **Financial Standards and Reporting**
- 5.3.1 The Subsidiary must ensure that the Financial Statements of the Subsidiary for each Financial Year are audited by the Subsidiary's auditor.
- 5.3.2 The Financial Statements must be finalised and audited in sufficient time to be included in the Annual Report to be provided to the Constituent Councils pursuant to Clause 6.2.

- 5.4 **Financial Transactions**
- 5.4.1 The Subsidiary must establish and maintain a bank account with such banking facilities and at a bank to be determined by the Subsidiary.
- 5.4.2 The Subsidiary must develop and maintain appropriate policies for all financial transactions.
- 5.4.3 The General Manager must act prudently in the handling of all financial transactions for the Subsidiary.
- 5.5 **Long Term Financial Plan**
- 5.5.1 The Subsidiary must prepare and submit to the Constituent Councils for their unanimous approval a Long Term Financial Plan covering a period of at least three (3) years.
6. **MANAGEMENT FRAMEWORK**
- 6.1 **Annual Business Plan**
- The Subsidiary:
- 6.1.1 must prepare an Annual Business Plan for unanimous approval by the Constituent Councils;
- 6.1.2 must adopt an Annual Business Plan as approved unanimously by the Constituent Councils in accordance with Clause 6.2.1;
- 6.1.3 may, with the unanimous approval of the Constituent Councils amend its Annual Business Plan at any time; and
- 6.1.4 must ensure the content of the Annual Business Plan is in accordance with the Act.
- 6.2 **Annual Report**
- 6.2.1 The Subsidiary must each year, produce an Annual Report summarising the activities, achievements and financial performance of the Subsidiary for the preceding Financial Year.
- 6.2.2 The Annual Report must incorporate the audited Financial Statements of the Subsidiary for the relevant Financial Year.
- 6.2.3 The Annual Report must be provided to the Constituent Councils by 30 September each year.
- 6.3 **Audit**
- 6.3.1 The Subsidiary must cause adequate and proper books of account to be kept in relation to all the affairs of the Subsidiary and must establish and maintain effective auditing of its operations.
- 6.3.2 The Subsidiary must appoint an Auditor in accordance with the Act on such terms and conditions as determined by the Subsidiary.
- 6.3.3 The audited Financial Statements of the Subsidiary, 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.
- 6.4 **Audit Committee**
- 6.4.1 Subject to Clause 6.4.2 the Subsidiary must establish an Audit Committee to be comprised of between three (3) and five (5) persons determined or approved unanimously by the Constituent Councils.
- 6.4.2 The Audit Committee must include at least two (2) members who are not employees or Board Members of the Subsidiary, or employees or elected members of a Constituent Council.
- 6.4.3 The Members of the Audit Committee must be appointed for a two (2) year term and at the expiry of their term of office are eligible for reappointment.
- 6.4.4 The Chairperson of the Audit Committee must not be an employee or Board Member of the Subsidiary or employee or elected member of a Constituent Council.
- 6.4.5 The Subsidiary may only pay a sitting fee to the members of the Audit Committee who are not employees or Board Members of the Subsidiary or employees or elected members of a Constituent Council as determined by the Subsidiary.
- 6.5 **Insurance and Superannuation Requirements**
- 6.5.1 The Subsidiary shall register with the Local Government Mutual Liability Scheme and the Local Government Workers Compensation Scheme and comply with the rules of the schemes.
- 6.5.2 The Subsidiary shall advise Local Government Risk Management Services of its insurance requirements relating to Local Government Special Risks including buildings, structures, vehicles and equipment under the management, care and control of the Subsidiary.
- 6.5.3 The Subsidiary shall register with the Local Government Superannuation Scheme and comply with the rules of the Scheme.
7. **MISCELLANEOUS PROVISIONS**
- 7.1 **Equitable Interests**
- 7.1.1 The Constituent Councils have an equal equitable interest in the Subsidiary which may be varied by unanimous agreement of all the Constituent Councils.
- 7.2 **Withdrawal of a Constituent Council**
- 7.2.1 A Constituent Council may with the Minister's consent withdraw from the Subsidiary by giving not less than two years (24 months) written notice of its intention to do so, subject to Clause 7.2.2, to the Board and to the other Constituent Councils.
- 7.2.2 In any event, a withdrawal will not become effective until 30 June following the expiry of the two years (24 months) written notice period referred to in Clause 7.2.1. Until a withdrawal becomes effective the Constituent Council proposing withdrawal from the Subsidiary will remain liable for all financial contributions up to the Date of Withdrawal, and through its Board Members retains responsibility for ensuring the continued proper conduct of the affairs of the Subsidiary during that time.
- 7.2.3 Upon a withdrawal taking effect a Constituent Council will be entitled to payment of such amounts and on such conditions as determined by unanimous agreement of the Constituent Councils and failing unanimous agreement the matter will be resolved in accordance with Clause 7.7.

- 7.2.4 The withdrawal of any Constituent Council does not extinguish the liability of that Constituent Council for the payment of its contribution towards any actual or contingent deficiency in the Net Assets of the Subsidiary at the end of the Financial Year in which such withdrawal occurs.
- 7.2.5 The withdrawal of any Constituent Council does not extinguish the liability of that Constituent Council to contribute to any loss or liability incurred by the Subsidiary at any time before or after the Date of Withdrawal in respect of any act or omission by the Subsidiary prior to such date.
- 7.3 **New Members**
Subject to the provisions of the Act, and in particular to obtaining the Minister's approval a council may become a Constituent Council by unanimous agreement of all the Constituent Councils and this Charter may be amended to provide for the admission of a new constituent council or councils, with or without conditions.
- 7.4 **Winding-Up**
- 7.4.1 The Subsidiary may be wound up in accordance with the Act.
- 7.4.2 Should the Board request the Constituent Councils to consider winding up the Subsidiary or should one of the Constituent Councils request the other Constituent Council(s) to consider winding up the Subsidiary then the Council, or Councils as the case may be, must call a special meeting in accordance with Clause 3.11.10.
- 7.4.3 On a winding-up of the Subsidiary, the surplus assets or liabilities of the Subsidiary, as the case may be, must be distributed between or become the responsibility of the Constituent Councils as agreed unanimously by the Constituent Councils and failing unanimous agreement the matter will be resolved in accordance with Clause 7.7.
- 7.5 **Non-derogation and Direction by Constituent Councils**
- 7.5.1 The establishment of the Subsidiary 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 Subsidiary.
- 7.5.2 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 Subsidiary.
- 7.5.3 Where the Subsidiary is required pursuant to the Act or this Charter to obtain the approval of one or more of the Constituent Councils that approval must only be granted and must be evidenced by a resolution of the Constituent Council granting such approval.
- 7.5.4 Unless otherwise stated in this Charter where the Subsidiary is required to obtain the consent or approval of the Constituent Councils this means the unanimous consent or approval of all of the Constituent Councils.
- 7.5.5 For the purpose of this Clause 7.5, any direction, approval or consent given by the Constituent Councils must be communicated by notice in writing provided to the General Manager of the Subsidiary together with a copy of the relevant resolutions of the Constituent Councils.
- 7.6 **Review of Charter**
- 7.6.1 The Subsidiary must review this Charter at least once in every four (4) years.
- 7.6.2 This Charter may be amended with the unanimous approval of all of the Constituent Councils.
- 7.6.3 The General Manager must ensure that the amended Charter is published in the *Gazette* in accordance with the Act and a copy of the amended Charter provided to the Minister.
- 7.6.4 Before the Constituent Councils vote on a proposal to alter this Charter they must take into account any recommendation of the Board.
- 7.7 **Disputes Between Constituent Councils**
- 7.7.1 General
- 7.7.1.1 Where a dispute arises between the Constituent Councils which relates to this Charter or the Subsidiary, (**the Dispute**) the Constituent Councils will use their best endeavours to resolve the Dispute and to act at all times in good faith.
- 7.7.2 Mediation
- 7.7.2.1 A Constituent Council is not entitled to initiate arbitration or court proceedings (except proceedings seeking urgent equitable or injunctive relief) in respect of a Dispute unless it has complied with this Clause 7.7.2.
- 7.7.2.2 If the Constituent Councils are unable to resolve the Dispute within thirty (30) days, the Constituent Councils must refer the Dispute for mediation in accordance with the Mediation Rules of the Law Society of South Australia Incorporated, within seven (7) days of a written request by any Constituent Council to the other Constituent Councils that the Dispute be referred for mediation, to:
- (a) a mediator agreed unanimously by the Constituent Councils; or
- (b) if the Constituent Councils are unable to agree unanimously on a mediator at the time the Dispute is to be referred for mediation, a mediator nominated by the then President of the Law Society or the President's successor.
- 7.7.2.3 In the event the Constituent Councils fail to refer the matter for mediation in accordance with Clause 7.7.2.2, one or more Constituent Councils may refer the matter for mediation in accordance with the Mediation Rules of the Law Society of South Australia Incorporated to a mediator nominated by the then President of the Law Society or the President's successor.
- 7.7.2.4 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 Constituent Council unless that Constituent Council has so agreed in writing.
- 7.7.2.5 If mediation does not resolve the Dispute within 28 days of referral of the Dispute for mediation or such longer period agreed unanimously by the Constituent Councils as evidenced by resolutions of each of the Constituent Councils, any Constituent Council may then refer the Dispute to Arbitration in accordance with Clause 7.7.3.

- 7.7.3 Arbitration
- 7.7.3.1 An arbitrator may be appointed by unanimous agreement between the Constituent Councils.
- 7.7.3.2 Failing agreement as to an arbitrator the then Chairperson of the South Australian Chapter of the Institute of Arbitrators or their successor shall nominate an Arbitrator pursuant to these conditions.
- 7.7.3.3 A submission to arbitration shall be deemed to be a submission to arbitration within the meaning of the Commercial Arbitration Act 1985.
- 7.7.3.4 Upon serving a notice of arbitration the Constituent Council serving the notice shall lodge with the arbitrator a deposit by way of security for the cost of the arbitration proceedings.
- 7.7.3.5 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.
- 7.7.4 Whenever reasonably possible performance of the obligations of the Constituent Councils pursuant to this Charter shall continue during the mediation or arbitration proceedings and no payment by a Constituent Council to the Subsidiary or to a Constituent Council by the Subsidiary shall be withheld on account of the mediation and arbitration proceedings.

Dated 20 July 2015

Mr Paul Deb, Chief Executive Officer, City of Burnside
Mr Mario Barone, Chief Executive Officer, City of Norwood, Payneham & St Peters
Ms Kiki Magro, Chief Executive Officer, Corporation of the Town of Walkerville
