

LOCAL GOVERNMENT INSTRUMENTS

CITY OF MITCHAM
CORPORATION OF THE CITY OF UNLEY
CENTENNIAL PARK CEMETERY AUTHORITY
Regional Subsidiary—Charter 2021

1. INTRODUCTION

1.1 *Name*

The name of the subsidiary is the Centennial Park Cemetery Authority.

1.2 *Definitions*

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

Annual Business Plan means the annual business plan adopted by the Board pursuant to Clause 7.5;

Authority means the Centennial Park Cemetery Authority;

Board means the Board of Management of the Authority provided for in Clause 5;

Board Member means at any time an Independent Board Member as provided for in Clause 5.3;

Borrowings Limit means at any time the amount authorised by the Constituent Councils in the current Budget;

Budget means the annual budget last adopted by the Board pursuant to Clause 7.5;

Business day means a day that is not a Saturday, Sunday or public holiday;

Centennial Park means the Centennial Park Cemetery and its associated facilities and services;

Chairperson means the member of the Board appointed to that office for the purposes of Clause 5.7;

Chief Executive Officer means at any time the person appointed as the Chief Executive Officer of the Authority and includes that person's deputy or a person acting in that position;

Constituent Councils means those Councils identified in Clause 2.1.1;

Council means a Council constituted under the Act;

Councillor means a person appointed or elected as an elected member of a Constituent Council;

CPCA Owners' Executive Committee means a Committee comprised of membership as identified in Clause 5.3.5;

Date of Withdrawal means the date a Constituent Council's withdrawal from the Authority becomes effective pursuant to Clause 4.2;

Day means a Business Day,

Deputy Chairperson means the member of the Board appointed to that office for the purposes of Clause 5.7;

Executive Meetings means the meetings convened by the CPCA Owners' Executive Committee for the purposes of Clause 4.4.5;

Financial Statements has the same meaning as in the Act;

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

Gazette means the *South Australian Government Gazette*;

Liability Guarantee Fee means the annual fee paid to the Constituent Councils by the Authority in accordance with Clause 2.4;

Long Term Financial Plan means the long-term financial plan prepared by the Authority for the purposes of Clause 7.1;

Minister means the South Australian State government Minister with responsibility for Local Government;

Nominations Committee is the Committee convened by the Board from time to time under Clause 5.3.1;

Regulations means the *Local Government (Financial Management) Regulations 2011*;

Strategic Plan means the strategic plan adopted by the Board for the purposes of Clause 7.1;

Third Party Venture means the power to undertake a commercial project with a third party (exceeding any contract or arrangement for the supply of goods or services to the Authority) such venture requiring the prior consent of the Constituent Councils.

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.

2. THE AUTHORITY

2.1 *Establishment and Charter*

- 2.1.1 The Authority is a regional subsidiary established under the Act by the City of Mitcham and the Corporation of the City of Unley.
- 2.1.2 This Charter must be reviewed as required by the Act but may be amended at any time by the joint direction of the Constituent Councils.
- 2.1.3 The Constituent Councils must consider any recommendations of the Board before voting to amend the Charter.
- 2.1.4 The chief executive officers of the Constituent Councils have determined that a copy of the Charter, must be published on the website of the Authority.
- 2.1.5 This Charter must be read in conjunction with Parts 2 and 3 of Schedule 2 to the Act. The Authority shall conduct its affairs in accordance with Schedule 2 to the Act except as modified by this Charter in a manner permitted by Schedule 2.

2.2 *Objects and Purposes*

The Authority is established to:

- 2.2.1 care for, protect, manage, operate and improve Centennial Park and its associated assets, facilities and services located either at Centennial Park Cemetery or elsewhere in an efficient and effective manner;
- 2.2.2 deliver effective and sustainable service provision for the Constituent Councils, customers of Centennial Park and the community of South Australia;
- 2.2.3 establish and demonstrate ethical policies and standards, in accordance with the rights of customers and industry standards;
- 2.2.4 provide security of tenure for all interment licences at Centennial Park;
- 2.2.5 undertake key strategic and policy decisions for the purposes of enhancing and developing Centennial Park; and
- 2.2.6 be financially sustainable and self-sufficient through the application of sound financial and business management practices.

2.3 *National Competition Policy*

- 2.3.1 The Authority is involved in a significant business activity.
- 2.3.2 The Authority will implement principles of competitive neutrality in respect of significant business activities to the extent that the benefits to be realised from the implementation of the principles of competitive neutrality outweigh the costs associated with the implementation.

2.4 *Liability Guarantee*

- 2.4.1 Pursuant to Clause 31 of Schedule 2 to the Act, the liabilities incurred or assumed by the Authority are guaranteed by the Constituent Councils.
- 2.4.2 The Authority must pay an annual Liability Guarantee Fee, to each Constituent Council, on account of the guarantee under Clause 2.4.1.
- 2.4.3 Subject to Clause 2.4.4, the Liability Guarantee Fee was fixed at \$319,000 to each Constituent Council for the 2019-2020 Financial Year. Each year thereafter the Liability Guarantee Fee will be increased by a percentage equivalent to CPI—All Groups Adelaide March Quarter; or
- 2.4.4 The Liability Guarantee Fee will be reviewed and re-set by the Board in consultation by the CPCA Owners' Executive Committee once in every five years having regard to:
 - 2.4.4.1 the future financial sustainability of the Authority;
 - 2.4.4.2 the financial projections of the Authority as set out in its Long Term Financial Plan;
 - 2.4.4.3 the amount that equals 2.5% of the total gross liabilities of the Authority as at 1 July of the Financial Year that the Liability Guarantee Fee is to be paid; and
 - 2.4.4.4 the estimate of the liability of the Authority for the future upkeep of graves and gardens, as determined by an independent actuarial consultant engaged by the Authority at its cost, on terms and conditions agreed by the CPCA Owners' Executive Committee.
- 2.4.5 The Constituent Councils may in their absolute discretion jointly agree to increase or waive or reduce the Liability Guarantee Fee for any particular financial year(s) either on their own initiative or based on a submission by the Authority to them.

3. FUNCTIONS AND POWERS

3.1 *Subject to this Charter*, the functions and powers of the Authority are to be exercised for the purpose of performing the Authority's Objects and Purposes:

- 3.1.1 to provide, equip, operate and maintain one or more public cemetery facilities, crematoriums, mausoleums and mortuaries;
- 3.1.2 to provide, sell, lease or hire monuments, tombstones, trees, flowers and other things incidental to interment and memorialisation of cremated remains and burials;
- 3.1.3 to promote the services and facilities of Centennial Park and to carry out any business or operation the Authority considers can enhance the value and render profitable any of the facilities or services of Centennial Park;
- 3.1.4 establish other facilities and services incidental or ancillary to the establishment, operation and management of cemeteries, crematoriums, mortuaries and mausoleums;
- 3.1.5 to promote, investigate or utilise alternative lawful methods of disposing of human remains;
- 3.1.6 to accumulate surplus funds including for investment purposes;
- 3.1.7 to establish and maintain a reserve fund or funds clearly identified for the upkeep and/or replacement of fixed assets of the Authority or meeting any deferred liability of the Authority;

- 3.1.8 to establish and maintain a cash reserve development fund or funds clearly identified for future initiatives supported by the strategic management plans;
- 3.1.9 subject to Clause 7.4, to enter into any kind of contract or arrangement, including Third Party Ventures;
- 3.1.10 subject to Clauses 3.3 and 7.4, to purchase, sell, lease, hire, rent or otherwise acquire or dispose of any real or personal property or interests therein;
- 3.1.11 to borrow funds and incur expenditure in accordance with Clause 7.4;
- 3.1.12 to expend funds consistent with industry practice for philanthropic purposes;
- 3.1.13 to employ, engage determine conditions of employment/engagement, remunerate, remove, suspend or dismiss/terminate the Chief Executive Officer of the Authority;
- 3.1.14 to employ, engage or retain professional advisers to the Authority;
- 3.1.15 to directly market the skills and expertise of its employees and its products and services for the benefit of the Authority and the Constituent Councils;
- 3.1.16 to charge whatever fees the Authority considers appropriate for services rendered to any person, body or Council (other than a Constituent Council) provided that such fees charged by the Authority shall be sufficient to at least cover the cost to the Authority of providing the services;
- 3.1.17 subject to Clause 7.4, to institute, initiate and carry on legal proceedings;
- 3.1.18 to adopt and use a trading name provided that the Authority must first register the trading name with the Australian Securities Investment Commission in accordance with the *Business Names Registration Act 2011* (Cwth);
- 3.1.19 subject to Clause 7.4, to agree to undertake a project in conjunction with any Council or government agency or authority and in so doing 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;
- 3.1.20 to open and operate bank accounts;
- 3.1.21 to make submissions for and accept grants, subsidies and contributions to further its objects and purposes;
- 3.1.22 to invest any funds of the Authority in any investment provided that:
 - 3.1.22.1 in exercising this power of investment, the Authority must exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of other persons; and
 - 3.1.22.2 the Authority must avoid investments that are speculative or hazardous in nature;
- 3.1.23 without limiting the power in Clause 3.1.22, to lend money to a Constituent Council on terms determined by agreement between the Authority and the Constituent Council;
- 3.1.24 to, with the prior approval of the Authority, undertake its functions and exercise its powers outside the areas of the Constituent Councils to the extent considered necessary or expedient to the performance of its functions by the Board, including by providing services ancillary to the purpose of the Authority;
- 3.1.25 provided that the consent of the Constituent Councils has first been obtained 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 Authority; and
- 3.1.26 the power 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.

3.2 *Other Powers, Functions and Duties*

The Authority may exercise such other functions, powers and must comply with any duties as are delegated to or imposed on the Authority by the Constituent Councils from time to time.

3.3 *Property*

- 3.3.1 All property held by the Authority is held by it on behalf of the Constituent Councils.
- 3.3.2 No property of the Authority may be sold, encumbered or otherwise dealt with outside of the ordinary course of business unless authorised by:
 - 3.3.2.1 the strategic management plans; or
 - 3.3.2.2 the prior approval of both Constituent Councils.

3.4 *Delegation by the Authority*

- 3.4.1 The Board may delegate any of the Authority's powers and functions except those to:
 - 3.4.1.1 enter into transactions in excess of \$250,000
 - 3.4.1.2 borrow money or obtain any other form of financial accommodation unless otherwise provided by this Charter and/or set out in the Budget and/or approved by the Constituent Councils;
 - 3.4.1.3 approve expenditure of money on the works, services, operations of the Authority not set out in the Budget or, where required by this Charter, approved by the Constituent Councils;
 - 3.4.1.4 adopt or revise an Annual Business Plan or Budget or any financial estimates and reports; and/or
 - 3.4.1.5 make significant policy recommendations to the government.
- 3.4.2 The Board must cause a separate record to be kept of all delegations made by it under this clause, to be called the 'Register of Delegations' which must, at least once in every financial year, be submitted to the Owners Executive Committee for review and, if necessary, direction.

4. **CONSTITUENT COUNCILS**

4.1 *Equitable Interest*

- 4.1.1 Subject to Clause 4.1.2, the equitable interest of the Constituent Councils in the Authority is agreed as follows:
 - 4.1.1.1 City of Mitcham: 50%.
 - 4.1.1.2 City of Unley: 50%.

4.1.2 The equitable interest of the Constituent Councils in the Authority as set out at subclause 4.1.1 may be varied by agreement of the Constituent Councils and will be varied where a new council becomes a member of the Authority or where an existing Constituent Council withdraws from the Authority, pursuant to Clause 4.2.

4.2 *Withdrawal of a Constituent Council*

4.2.1 The withdrawal of either Constituent Council is inconsistent with the requirements of section 43 of the Act.

4.2.2 Upon a Constituent Council providing no less than six months' notice of its intention to withdraw from the Authority to the other Constituent Council and the Authority, the Authority on behalf of the Constituent Councils will notify the Minister and request that the Authority be wound up under Clause 33 (2), Schedule 2 of the Act.

4.3 *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 agreement of both Constituent Councils. This Charter may be amended to provide for the admission of a new Constituent Council or Councils, with or without conditions.

4.3.1 The Authority is subject to the joint direction and control of the Constituent Councils.

4.3.2 To be effective, a direction or other decision of the Constituent Councils must be a decision in the same or substantially the same terms made by both Constituent Councils and evidenced by minutes signed by the Chief Executive Officer of each of the Constituent Councils as a true and accurate record of a decision made by the delegate or at the relevant meeting which minute must be provided to the Chief Executive Officer of the Authority.

4.4 *Owners' Executive Committee*

4.4.1 The Constituent Councils have appointed the CPCA Owners' Executive Committee as their representatives to provide advice to the Authority and act as a conduit to the Constituent Councils on the performance of the Authority.

4.4.2 Membership of the CPCA Owners Executive Committee shall consist of the following from each Constituent Council:

- Mayor
- One Councillor
- Chief Executive Officer

4.4.3 The role of the CPCA Owners Executive Committee is to provide a mechanism for communication between the Constituent Councils and the Authority and to undertake the functions conferred upon it by this Charter.

4.4.4 The CPCA Owners' Executive Committee has the following responsibilities:

4.4.4.1 to represent the Constituent Councils when communicating with the Board

4.4.4.2 to foster a positive and collaborative relationship between the Constituent Councils and the Authority;

4.4.4.3 to determine how the Constituent Councils will be engaged / consulted in relation to the preparation of the draft Annual Business Plan and Budget

4.4.4.4 to receive and provide comment on the quarterly reports prepared by the Authority on performance against the Annual Business Plan and Budget and the annual Financial Statements prior to presentation to the Constituent Councils .

4.4.4.5 to appoint the Chairperson and Deputy Chairperson after giving due consideration to the recommendations of the Board;

4.4.4.6 to approve the terms and conditions of appointment for the Independent Board Members;

4.4.4.7 to set the annual remuneration payable to the Chairperson, the Deputy Chairperson and other Board Members

4.4.4.8 to approve a recommendation from the Board to revoke, suspend or terminate the appointment of a Board Member;

4.4.4.9 to participate and provide feedback as a stakeholder of the Board on the Board's annual performance evaluation as per Clause 5.9.

4.4.4.10 to receive the report of the Board on the annual performance evaluation of itself;

4.4.4.11 to liaise with the Authority to provide feedback, guidance and direction to the Board and to Management on matters related to ownership; and

4.4.4.12 to provide information reports and recommendations (as required) to the Constituent Councils on the activities and performance of the Authority, having regard to the commercial in confidence nature of such information.

4.4.5 *Executive Meetings*

4.4.5.1 The CPCA Owners' Executive Committee, the Chairperson of the Authority, and the Chief Executive Officer of the Authority will meet quarterly or as otherwise determined by the CPCA Owners' Executive Committee to discuss the performance of the Authority.

4.4.5.2 The CPCA Owners' Executive Committee Chairperson or the CPCA Board Chairperson may invite a Board Member to attend meetings of the CPCA Owners' Executive Committee.

4.4.5.3 The Authority must complete a performance and issues report in anticipation of each CPCA Owners' Executive Committee meeting, clearly identifying matters which are considered to be confidential, and provide a copy of the report to each member of the Committee no less than five days prior to the meeting of the Committee.

4.4.5.4 All meetings of the CPCA Owners' Executive Committee are to be held in confidence and not open to members of the Constituent Councils or their staff unless attending in an acting capacity or as otherwise invited by the Committee.

4.4.5.5 Meetings of the CPCA Owners' Executive Committee will be chaired on an alternating basis by the Mayor of each Constituent Council or as otherwise agreed.

4.4.5.6 In the absence of a Constituent Council Mayor, the Acting Mayor or Deputy Mayor is considered to be a proxy member of the CPCA Owners' Executive Committee. In the absence of a Deputy Mayor, the Constituent Council must nominate a proxy to the Mayor who will hold office for a period of up to 2 years.

5. BOARD OF MANAGEMENT

5.1 *Role of the Board*

The Authority is a body corporate and is governed by the Board which has the responsibility to manage the business and other affairs of the Authority in accordance with this Charter, all relevant legislation including the Act and any delegations made to it.

5.2 *Functions of the Board*

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

- 5.2.1 striving to position the Authority as a premier provider of cemetery services in South Australia;
- 5.2.2 the formulation of strategic management plans and strategies aimed at improving the business of the Authority;
- 5.2.3 providing professional input and policy direction to the Authority;
- 5.2.4 ensuring strong accountability and stewardship of the Authority;
- 5.2.5 monitoring, overseeing and measuring the performance of the Chief Executive Officer of the Authority;
- 5.2.6 ensuring that a code of ethical behaviour and integrity is established, implemented and maintained in all activities undertaken by the Authority;
- 5.2.7 paying the Liability Guarantee Fee in accordance with Clause 2.4;
- 5.2.8 implementing such policies and procedures as to give effect to good governance, risk management and administrative practices;
- 5.2.9 exercising the care, diligence and skill that a prudent person of business would exercise in managing the affairs of other persons;
- 5.2.10 ensuring that information provided to the Constituent Councils is accurate;
- 5.2.11 ensuring that Constituent Councils are advised, as soon as reasonably practicable, of any material developments that affect the risk profile, or 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; and
- 5.2.12 developing and giving effect to policies that reflect the Authority's responsibilities under the *National Competition Policy* and the *Competition and Consumer Act 2010 (Commonwealth)* and ensuring that the Authority operates in accordance with this Charter and all relevant legislation.

5.3 *Membership of the Board*

- 5.3.1 Board Members will be selected on the basis that the Board will possess a diverse range of skills appropriate for the strategic needs of the Authority. To facilitate this outcome prior to a vacancy on the Board being filled, an analysis of the skills then possessed by the Board will be undertaken by the Nominations Committee and approved by the Board before being provided to the CPCA Owners' Executive Committee.
- 5.3.2 The Board shall consist of a minimum of three and maximum of five independent Board Members, none of whom may be an officer or elected member of a Constituent Council, appointed on terms and conditions recommended by the Board and approved by the CPCA Owners' Executive Committee .
- 5.3.3 A person who is or has been affected by any of the circumstances set out in Clause 5.4.3 is ineligible for appointment or reappointment as a Board Member.
- 5.3.4 Deputy Board Members will not be appointed.
- 5.3.5 Subject to Clause 5.3.7, the Board will appoint up to five Board Members as follows:
 - 5.3.5.1 the Board will convene the Nominations Committee for the purposes of sourcing, assessing and recommending candidates for the position of Board Member;
 - 5.3.5.2 the Nominations Committee must consist of at least two representatives from the CPCA Owners Executive Committee, one being from each Constituent Council .
 - 5.3.5.3 the Board will consider the recommendations of the Nominations Committee and determine a preferred candidate for a position as a Board Member; and
 - 5.3.5.4 the Board will obtain the approval of the CPCA Owner Executive Committee prior to appointing a person as a Board Member.
- 5.3.6 Where reasonably practical, the terms of the Board Members will be determined so that no more than one Board Member's term expires in any calendar year.
- 5.3.7 Where all Board positions are vacant or for any other reason the Board is unable to make appointments to the Board, as provided for by clause 5.3.5.4, Board Members will be appointed by the CPCA Owner Executive Committee.
- 5.3.8 A notice in writing signed by the Chief Executive Officer of the Authority will be sufficient evidence of an appointment, termination or revocation of an appointment of a Board Member.

5.4 *Office of Board Member*

- 5.4.1 The maximum period that a person can serve as a Board Member, is nine continuous years unless there is a recommendation of the Board, which is approved by the CPCA Owners Executive Committee to extend the maximum period to twelve continuous years, in exceptional circumstances.
- 5.4.2 A Board Member is, subject to Clause 5.4.1, eligible for re-appointment at the conclusion of their term of office.
- 5.4.3 A Board Member will cease to hold office and the Board position will become vacant:
 - 5.4.3.1 if any of the grounds or circumstances set out in the Act as to when a Board Member's office becomes vacant arise;
 - 5.4.3.2 if they are convicted of an indictable offence punishable by imprisonment; or
 - 5.4.3.3 upon the happening of any other event through which a Board Member would be ineligible to remain as a Board Member.

- 5.4.4 At any time the Board may revoke the appointment of a Board Member if it has received the prior approval of the CPCA Owners Executive Committee.
- 5.4.5 Where, for any reason, the office of a Board Member becomes vacant, a replacement Board Member will be appointed in the same manner as the original appointment, excepting that the person appointed to fill a vacancy will be appointed for the balance of the term of the original appointment and at the expiry of that term shall be eligible for re-appointment.
- 5.4.6 Notwithstanding any other provision of this Charter, the Constituent Councils may remove the Board of the Authority at any time by both Constituent Councils passing a resolution in the same or in substantially the same terms to this effect.
- 5.5 *Remuneration of Board Members*
- 5.5.1 The Authority will pay each to Board Member an annual fee as determined by the CPCA Owners' Executive Committee.
- 5.5.1.1 The annual base fee for a Board Member will be benchmarked externally every three years and reset by the CPCA Executive Committee and indexed annually based on the Adelaide March Quarter CPI figure.
- 5.5.1.2 The annual fee for the Chairperson will be 1.75 times the annual fee for a Board Member.
- 5.5.1.3 The annual fee for the Deputy Chairperson and Audit and Risk Committee Chair will be 1.25 time of the annual fee for a Board member.
- 5.5.2 All Board Members will receive from the Authority reimbursement of expenses properly incurred in performing or discharging official functions and duties as determined by the Authority and set out in a policy adopted by the Authority for the purposes of this clause.
- 5.6 *Propriety of Members of the Board*
- 5.6.1 Subject to the express provisions of Schedule 2 to the Act and this Charter, all provisions governing the propriety and duties of elected members of a council and public officers under the Act and other South Australian legislation apply to Board Members.
- 5.6.2 Board Members will not be required to submit returns under Chapter 5, Part 4, Division 2 of the Act.
- 5.6.3 Subject to Clauses 20 (6) and 20 (7) of Schedule 2 to the Act, the provisions regarding conflict of interest prescribed in the Act apply to all Board Members as if they were elected members of a council and the Authority was a council.
- 5.6.4 Board Members must act in accordance with their duties of confidence and confidentiality and other legal and fiduciary duties to the Authority 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 to the Act.
- 5.7 *Chairperson and Deputy Chairperson*
- 5.7.1 The Board will recommend to the CPCA Owners' Executive Committee the appointment of a Chairperson and a Deputy Chairperson, from among the Board Members.
- 5.7.2 The CPCA Owners' Executive Committee must appoint from among the Board Members a Chairperson and a Deputy Chairperson for a term respectively of no more than a three years term and on such other conditions as determined by the Committee.
- 5.7.3 Regardless of Clause 5.4.1, a Chairperson may be re-appointed for one further term (three years) or a maximum of 6 continuous years.
- 5.7.4 The Chairperson or Deputy Chairperson will cease to hold office as Chairperson or Deputy Chairperson (as relevant) in the event:
- 5.7.4.1 the Chairperson or Deputy Chairperson resigns from that office;
- 5.7.4.2 the Chairperson or Deputy Chairperson ceases to be a Board Member; or
- 5.7.4.3 the CPCA Owners' Executive Committee terminates the appointment of the Chairperson or Deputy Chairperson.
- 5.7.5 In the event that the office of Chairperson or Deputy Chairperson becomes vacant, the CPCA Owners' Executive Committee must, subject to Clause 5.4.1 appoint a new Chairperson or Deputy Chairperson (as relevant) who shall hold office for the balance of the original term or until such later date as the CPCA Owners' Executive Committee may determine.
- 5.7.6 The Chairperson must preside at all meetings of the Board and, in the event the Chairperson is absent from a meeting of there is a vacancy in the office of the Chairperson, the Deputy Chairperson must preside. In the event that neither the Chairperson nor the Deputy Chairperson are present or in office, then the Board must select another person from the Board Members present to preside at that meeting only.
- 5.8 *Proceedings of the Board*
- 5.8.1 Subject to the requirements of Schedule 2 to the Act, the Charter and any direction of the Constituent Councils, the Board must determine procedures to apply at or in relation to its meetings and set them out in a Code of Practice for Meetings which shall be reviewed annually. In the event that the Board does not adopt a Code of Practice, the provisions of Part 2 of the Local Government (Procedures at Meetings) Regulations 2013 shall, insofar as the same may be applicable and not inconsistent with this Charter, apply to the proceedings at and conduct of, all meetings of the Board.
- 5.8.2 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.
- 5.8.3 An ordinary meeting of the Board will constitute an ordinary meeting of the Authority. The Board shall administer the business of the Authority at the ordinary meeting.
- 5.8.4 Notice of meetings of the Board must be given by the Chief Executive Officer in a manner consistent with the provisions of the Act for notice of Council meetings. Only the notice of meeting will be available to the public. The Agenda and all supporting reports and documents will be confidential and not available for public inspection unless the Board otherwise resolves.
- 5.8.5 Meetings of the Board will not be open to the public unless the Board resolves otherwise.

- 5.8.6 The Chief Executive Officer and other employees of the Authority as determined by the Chief Executive Officer may attend meetings of the Board unless the Board resolves otherwise. The Board may determine that other specific persons may attend a meeting of the Board without opening the meeting to the public.
- 5.8.7 The minutes of all Board meetings will be confidential and not available for public inspection unless the Board otherwise resolves.
- 5.8.8 The Chief Executive Officer must, in relation to a notice of meeting of the Board for the purpose of considering the making of a recommendation to the Constituent Councils to wind up the Authority, provide the notice to all Board Members at least four months before the date of the meeting.
- 5.8.9 Any Constituent Council, the Chairperson or three Board Members may by delivering a written request to the Chief Executive Officer require a special meeting of the Board to be held and any such special meeting shall constitute a special meeting of the Authority. The written request must be accompanied by the agenda for the special meeting and if an agenda is not provided the request has no effect.
- 5.8.10 On receipt of a written request pursuant to Clause 3.8.9, the Chief Executive Officer and Chairperson must determine the date and time of the special meeting and the Chief Executive Officer must give notice to all Board Members at least four hours prior to the commencement of the special meeting.
- 5.8.11 A meeting of the Board must not commence until a quorum of Board Members is present and a meeting must not continue if a quorum of Board Members is not present. A quorum of Board Members will comprise one half of the Board Members in office, ignoring any fraction, plus one.
- 5.8.12 Unless otherwise required at law or by this Charter, all matters for decision at a meeting of the Board will be decided by a simple majority vote 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 has a casting vote.
- 5.8.13 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.
- 5.8.14 The Chief Executive Officer must, within five days after a meeting of the Board, provide to each Board Member a copy of the minutes of the meeting of the Board.
- 5.8.15 The Board may establish Committees as it considers necessary and determine the membership and terms of reference and meeting procedures of such committees as it sees fit.
- 5.9 *Board Annual Performance Review*
- 5.9.1 The Board will undertake an annual evaluation of its performance.
- 5.9.2 The CPCA Owners' Executive Committee will participate and provide feedback in the annual performance evaluation.
- 5.9.3 The Board will submit all external performance evaluation reports received, at the conclusion of a review under Clause 5.9.1, to the CPCA Owners' Executive Committee.

6. CHIEF EXECUTIVE OFFICER AND APPOINTMENT OF OTHER STAFF

- 6.1 The Board must appoint a Chief Executive Officer, on a fixed term performance-based employment contract which does not exceed five years in duration, to manage the business of the Authority. The Board may, at the end of any contract term enter into a new contract not exceeding five years in duration with the same person.
- 6.2 The Chief Executive Officer is subject to the same legislative responsibilities and duties as a chief executive officer of a council including but not limited to the matters set out in Parts 1 and 3 of Chapter 7 of the Act.
- 6.3 In the absence of the Chief Executive Officer for any period exceeding two weeks, the Chief Executive Officer must appoint a suitable person to act in the position of 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.
- 6.4 The Chief Executive Officer is responsible for the day to day management of the Authority and will ensure that sound business and human resource management practices are applied in the efficient and effective management of the operations of the Authority.
- 6.5 The functions of the Chief Executive Officer shall be specified in the contract of employment and shall include:
- 6.5.1 attending all meetings of the Board unless excluded by resolution of the Board;
- 6.5.2 inviting any person to attend a meeting of the Board to act in an advisory capacity;
- 6.5.3 ensuring that the lawful decisions of the Board are implemented in a timely and efficient manner;
- 6.5.4 providing information to assist the Board to assess the Authority's performance against its Strategic, Long Term Financial and Business Plans;
- 6.5.5 appointing, managing, suspending and dismissing the other employees of the Authority;
- 6.5.6 providing advice and reports to the Board on the exercise and performance of its powers and functions under this Charter or any Act;
- 6.5.7 determining the terms and conditions of employment of employees of the Authority, within the budgets adopted by the Board;
- 6.5.8 co-ordinating and initiating proposals for consideration of the Board including, but not limited to, continuing improvement of the operations of the Authority;
- 6.5.9 ensuring that the assets and resources of the Authority are properly managed and maintained;
- 6.5.10 ensuring that records required under the Act or any other legislation are properly kept and maintained;
- 6.5.11 ensuring that at all times the Authority is complying with its statutory obligations;
- 6.5.12 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
- 6.5.13 achieving financial outcomes in accordance with the adopted plans and budgets of the Authority.

- 6.6 *Delegations and sub-delegations*
- 6.6.1 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.
- 6.6.2 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.
- 6.6.3 A written record of delegations and sub-delegations must be kept by the Chief Executive Officer at all times.

7. MANAGEMENT

7.1 *Strategic Management Plans*

The Authority shall:

- 7.1.1 prepare
- 7.1.1.1 a four-year Strategic Plan which sets out the goals, objectives, strategies and priorities of the Authority for the period;
- 7.1.1.2 a Long Term Financial Plan for a period of at least 10 years; and
- 7.1.1.3 an Infrastructure and Asset Management Plan, relating to the management and development of infrastructure and major assets by the Authority for a period of at least 10 years.
- collectively, the 'strategic management plans'.
- 7.1.2 review the Strategic Plan annually;
- 7.1.3 consult with the Constituent Councils prior to the Board adopting or amending the strategic management plans; and
- 7.1.4 submit the strategic management plans to the Constituent Councils for approval.

7.2 *Financial Management*

- 7.2.1 The Authority shall keep proper books of accounts in accordance with the requirements of the Regulations.
- 7.2.2 The Authority's books of account must be available for inspection by any Board Member or authorised representative of any Constituent Council at any reasonable time on request.
- 7.2.3 The Authority must establish and maintain a bank account with such banking facilities and at a bank to be determined by the Board.
- 7.2.4 All cheques must be signed by two persons authorised by resolution of the Board.
- 7.2.5 Any payments made by Electronic Funds Transfer must be made in accordance with procedures which have received the prior written approval of the Board.
- 7.2.6 The Chief Executive Officer must act prudently in the handling of all financial transactions for the Authority and must provide quarterly financial and corporate reports to the Board and if requested, the Constituent Councils.

7.3 *Audit*

- 7.3.1 The Board must appoint an Auditor in accordance with the Act and the Regulations, on terms and conditions as determined by the Board.
- 7.3.2 The Auditor will have the same powers and responsibilities as set out in the Act, in relation to a council.
- 7.3.3 The audited Financial Statements of the Authority, together with the accompanying report from the Auditor, shall be submitted to both the Board and the Constituent Councils by 30 September in each year.
- 7.3.4 The Board must establish an Audit and Risk Committee to be comprised of three persons being:
- 7.3.4.1 a Board Member with qualifications and experience in finance;
- 7.3.4.2 any other Board Member; and
- 7.3.4.3 a person with skills appropriate to the role who is not a member of the Board.
- 7.3.5 The Chairperson for the Audit and Risk Committee will be the person described in Clause 7.3.4.1.
- 7.3.6 The term of appointment of a member of the Audit and Risk Committee shall not exceed two years but at the expiry of which the member will be eligible for re-appointment.

7.4 *Borrowings and Expenditures*

- 7.4.1 The Authority has the power to incur expenditure and/or to borrow as follows:
- 7.4.1.1 in accordance with a Budget of the Authority; or
- 7.4.1.2 with the prior approval of both of the Constituent Councils; or
- 7.4.1.3 in accordance with the Act, in respect of expenditure not contained in a Budget adopted by the Board for a purpose of genuine emergency or hardship.
- 7.4.2 The Authority may operate an overdraft facility of facilities as required provided that the overdrawn balance does not exceed \$100,000 in total without the prior approval of the Constituent Councils.
- 7.4.3 Unless otherwise approved by both of the Constituent Councils, any and all borrowings (except overdraft facilities) taken out by the Authority:
- 7.4.3.1 must be from the Local Government Financial Authority or a registered bank or financial institution within Australia; and
- 7.4.3.2 must be drawn down within a period of 24 months from the date of approval.

7.5 *Annual Business Plan and Budget*

- 7.5.1 The Authority, shall before the end of May in each Financial Year, prepare a draft Annual Business Plan and Budget for the ensuing Financial Year in accordance with the Act and Regulations.

- 7.5.2 Following consideration by the CPCA Owners' Executive Committee, the draft Annual Business Plan and Budget must be referred to Constituent Councils with sufficient time to enable the Constituent Councils to provide comments for the consideration of the Board at the time it is to be considered for adoption by the Board.
- 7.5.3 The Board shall give due consideration to any comments received from the Constituent Councils before adopting the Annual Business Plan and Budget.
- 7.5.4 The Authority must provide a copy of the Annual Business Plan and Budget to the Constituent Councils within five business days of the budget being adopted by the Board.
- 7.5.5 Reports summarising the financial position and performance of the Authority against the Annual Budget shall be prepared and presented to the Board no less than once in every three calendar months and copies provided to the Constituent Councils within five days of the Board meeting to which they have been presented.

7.6 *Reporting*

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

8. MISCELLANEOUS PROVISIONS

8.1 *Winding Up and Statutory Guarantee*

- 8.1.1 A special meeting will be convened in accordance with Clause 5.8.9 if either the Board or a Constituent Council proposes the winding up of the Authority.
- 8.1.2 The Authority may be wound up by resolution of the Constituent Councils in the same or substantially the same terms and with the consent of the Minister.
- 8.1.3 On a winding up of the Authority, the surplus assets or liabilities of the Authority, as the case may be, must be distributed between or become the responsibility of the Constituent Councils in proportion to their equitable interest in the Authority in accordance with Clause 4.1.
- 8.1.4 If there are insufficient funds to pay all expenses due by the Authority on winding up (or at any other time there are unfunded liabilities which the Authority cannot meet), a call shall be made upon all of the Constituent Councils in proportion to their equitable interest for the purpose of satisfying their statutory guarantee of the liabilities of the Authority.

8.2 *Insurance Requirements*

- 8.2.1 The Authority shall register with the Local Government Mutual Liability Scheme and the Local Government Workers Compensation Scheme and comply with the rules of the Schemes.
- 8.2.2 The Authority shall advise Local Government Risk Services of its insurance requirements relating to Local Government Special Risks including buildings, structures, vehicles and equipment under the management, care and control of the Authority.
- 8.2.3 The Authority must take out a suitable policy of insurance insuring Board Members and their spouses or another person who may be accompanying a Board Member, against risks associated with the performance or discharge of their official functions and duties or on official business of the Authority.

8.3 *Common Seal*

- 8.3.1 The Authority will have a common seal.
- 8.3.2 The common seal of the Authority must not be affixed to a document except to give effect to a resolution of the Board.
- 8.3.3 The affixation of the common seal of the Authority must be attested by two Board Members, or where authority has been conferred by the Chairperson of the Board and the Chief Executive Officer.
- 8.3.4 The Chief Executive Officer must maintain a register which records the resolutions of the Board giving authority to affix the common seal and details of the documents to which the common seal has been affixed with the particulars of persons who attested the fixing of the seal and the date that the seal was affixed.
- 8.3.5 The Authority may by instrument under common seal, authorise a person to execute documents on behalf of the Authority subject to any limitations specified in the instrument of authority.

8.4 *Non-derogation and Direction by Constituent Councils*

- 8.4.1 The establishment of the Authority does not derogate from the power of any of the Constituent Councils to act independently in relation to a matter within the jurisdiction of the Authority.
- 8.4.2 Where the Authority is required, pursuant to the Act or this Charter, to obtain the approval of one or more of the Constituent Councils, that approval, if granted, must be evidenced by a resolution passed by either or each of the Constituent Councils.
- 8.4.3 Unless otherwise stated in this Charter, where the Authority is required to obtain the consent or approval of the Constituent Councils this means the consent or approval of both of the Constituent Councils expressed in the same or similar terms.
- 8.4.4 For the purpose of this Clause 8.4, any direction given by the Constituent Councils must be communicated by notice in writing provided to the Chief Executive Officer of the Authority together with a copy of the relevant resolutions of the Constituent Councils.

9. DISPUTE RESOLUTION

9.1 *About this clause*

- 9.1.1 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 the Constituent Councils concerning the affairs of the Authority, including a dispute as to the meaning or effect of this Charter.
- 9.1.2 The Authority and the Constituent Councils must continue to observe and perform this Charter despite the application or operation of this clause.
- 9.1.3 This clause does not prejudice the right of a party:

- 9.1.3.1 to require the continuing observance and performance of this Charter by all parties; or
- 9.1.3.2 to institute proceedings to enforce payment due under this Charter or to seek injunctive relief to prevent immediate and irreparable harm.
- 9.1.4 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.
- 9.2 *Dispute Resolution Process*
- 9.2.1 Where a dispute arises between the Constituent Councils or between a Constituent Council and the Authority (the parties to this Charter) which relates to this Charter or the Authority (Dispute), the parties will use their best endeavours to resolve the Dispute and to act at all times in good faith.
- 9.2.2 A party to the dispute must promptly notify each other party to the dispute:
- 9.2.2.1 The nature of the dispute, giving reasonable details; and
- 9.2.2.2 What action (if any) the party giving notice thinks will resolve the dispute; but a failure to give such notice does not entitle any other party to damages.
- 9.2.3 A party to the dispute who complies with the previous step may at the same or a later time notify in writing each other party to the dispute that the first party requires a meeting within 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.
- 9.2.4 *Mediation*
- 9.2.4.1 A party is not entitled to initiate arbitration or court proceedings (except proceedings seeking urgent equitable or injunctive relief) in respect of a Dispute unless it has complied with this Clause 9.2.4.
- 9.2.4.2 If the parties are unable to resolve the Dispute within 30 days, the parties must refer the Dispute for mediation in accordance with the Mediation Rules of the Law Society of South Australia Incorporated, within seven days of a written request by any party to the other party that the Dispute be referred for mediation to:
- (a) a mediator agreed by the parties; or
- (b) if the parties are unable to agree on a mediator at the time the Dispute is to be referred for mediation, a mediator nominated by the then President of the Law Society or the President's successor.
- 9.2.4.3 In the event the parties fail to refer the matter for mediation in accordance with Clause 9.2.4.2, one or more of the parties 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.
- 9.2.4.4 The role of any mediator is to assist in negotiating a resolution of the dispute. A mediator may not make a decision that is binding on a party unless that party has so agreed in writing.
- 9.2.4.5 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 parties as evidenced by resolutions of each of the parties, any party may then refer the Dispute to Arbitration in accordance with Clause 9.2.5.
- 9.2.5 *Arbitration*
- 9.2.5.1 An arbitrator may be appointed by agreement between the parties.
- 9.2.5.2 Failing agreement as to an arbitrator, the then Chairperson of the South Australian Chapter of the Chartered Institute of Arbitrators Australia or his successor shall nominate an Arbitrator pursuant to these conditions.
- 9.2.5.3 A submission to arbitration shall be deemed to be a submission to arbitration within the meaning of the *Commercial Arbitration Act 2011 (South Australia)*.
- 9.2.5.4 Upon serving a notice of arbitration, the party serving the notice shall lodge with the arbitrator a deposit by way of security for the cost of the arbitration proceedings.
- 9.2.5.5 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.
- 9.2.6 Whenever reasonably possible, performance of the obligations of the parties pursuant to this Charter shall continue during the mediation or arbitration proceedings and no payment by or to a party shall be withheld on account of the mediation and arbitration proceedings.

10. CIRCUMSTANCES NOT PROVIDED FOR

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

Dated: 21 October 2021

M. PEARS
Chief Executive Officer, City of Mitcham
P. TSOKAS
Chief Executive Officer, Corporation of the City of Unley