

LOCAL GOVERNMENT ACT 1999
CENTENNIAL PARK CEMETERY AUTHORITY
Regional Subsidiary Charter 2015

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;

Authority means the Centennial Park Cemetery Authority;

Board means the Board of Management of the Authority provided for in Clause 3;

Board Member includes a Constituent Council Board Member and an Independent Board Member;

Budget means the annual budget adopted by the Authority pursuant to Clause 5.1;

Business Plan means the business plan adopted by the Authority pursuant to Clause 6.2;

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 3.8;

Chief Executive Officer means the person appointed pursuant to Clause 4.1 as the Chief Executive Officer of the Authority;

Constituent Council Board Member means a member of the Board appointed under Clause 3.3.5;

Constituent Councils means those Councils identified in Clause 1.4;

Council means a Council constituted under the Act;

CPCA Owners' Executive Committee means a Committee comprised of the Chief Executive Officers and Mayors of the Constituent Councils.

Date of Withdrawal means the date a Constituent Council's withdrawal from the Authority becomes effective pursuant to Clause 7.1;

Deputy Chairperson means the member of the Board appointed to that office for the purposes of Clause 3.8;

Executive Meetings means the meetings convened for the purposes of Clause 6.7.1;

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;

Independent Board Member means a member of the Board appointed under Clause 3.3.7;

Liability Guarantee Fee means the annual fee paid to the Constituent Councils by the Authority in accordance with Clause 1.9;

Long Term Financial Plan means the long term financial plan prepared by the Authority for the purposes of Clause 5.4;

Minister means the Minister for State/Local Government Relations;

Model Financial Statements has the meaning given in the Regulations.

Net Assets means total assets (current and non-current) less total liabilities (current and non-current) of the Authority as reported in the annual audited financial statements of the Authority;

Nominations Committee is the Committee convened by the Board from time to time under Clause 3.3.7.1;

Operating Costs means all expenses incurred in the delivery of the Authority's services;

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

Strategic Plan means the strategic plan adopted by the Authority for the purposes of Clause 6.1;

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.

1.4 Establishment

The Authority is a regional subsidiary established under Section 43 of the Act by the City of Mitcham and the Corporation of the City of Unley.

1.5 Local Government Act 1999

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

1.6 Purpose

The purpose of the Authority is to care for, protect, manage, operate and improve Centennial Park and its associated facilities and services located either at Centennial Park Cemetery or elsewhere in an efficient and effective manner.

1.7 Objects of the Authority

The Authority is established for the following objects:

- 1.7.1 to ensure that the assets and facilities at Centennial Park and of the Authority are developed, maintained and operated in a sustainable and efficient manner;
- 1.7.2 to deliver effective and sustainable service provision for the Constituent Councils, customers of Centennial Park and the community of South Australia;

- 1.7.3 to manage the facilities of Centennial Park and the services provided by the Authority utilising sound business concepts;
- 1.7.4 to establish and demonstrate ethical policies and standards, in accordance with the rights of customers and industry standards;
- 1.7.5 to provide security of tenure for all interment licences at Centennial Park through sound financial and business management;
- 1.7.6 to proactively manage the business of Centennial Park in a competitive and changing environment;
- 1.7.7 to undertake key strategic and policy decisions for the purpose of enhancing and developing Centennial Park; and
- 1.7.8 to be financially self-sufficient.

1.8 National Competition Policy

- 1.8.1 The Authority is involved in a significant business activity.
- 1.8.2 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.

1.9 Liability Guarantee

- 1.9.1 Pursuant to Clause 31 of Schedule 2 to the Act, the liabilities incurred or assumed by the Authority are guaranteed by the Constituent Councils.
- 1.9.2 The Authority must pay an annual Liability Guarantee Fee, to each Constituent Council, on account of the guarantee under Clause 1.9.1.
- 1.9.3 Subject to Clause 1.9.4, the Liability Guarantee Fee is fixed at whichever amount is the lesser of:
 - 1.9.3.1 \$195 000 to each Constituent Council for the 2010-2011 Financial Year. Each year thereafter the Liability Guarantee Fee will be increased by a percentage equivalent to CPI—All Groups Adelaide March Quarter; or
 - 1.9.3.2 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, which amount will be distributed evenly between the Constituent Councils.
- 1.9.4 The Constituent Councils may in their absolute discretion unanimously agree to increase or waive or reduce the Guarantee Fee for any particular financial year(s) either on their own initiative or based on a submission by the Authority to the Constituent Councils.

2. FUNCTIONS, POWERS AND DUTIES OF THE AUTHORITY

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

2.1 Functions

The Authority has the following functions:

- 2.1.1 to provide, equip, operate and maintain one or more public cemetery facilities, crematoriums, mausoleums and mortuaries;
- 2.1.2 to provide, sell, lease or hire monuments, tombstones, trees, flowers and other things incidental to interment and memorialisation of cremated remains and burials;

- 2.1.3 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;
- 2.1.4 establish other facilities and services incidental or ancillary to the establishment, operation and management of cemeteries, crematoriums, mortuaries and mausoleums; and
- 2.1.5 to promote, investigate or utilise alternative lawful methods of disposing of human remains.

2.2 Powers

The Authority has the following discretionary powers:

- 2.2.1 to accumulate surplus funds for investment purposes;
- 2.2.2 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;
- 2.2.3 to establish and maintain a cash reserve development fund or funds clearly identified for future initiatives supported by the Strategic Plan;
- 2.2.4 to provide for an investment reserve fund clearly identified for the future upkeep obligations of the Authority and, subject to Clause 2.5, to borrow against such fund;
- 2.2.5 subject to Clause 2.5, to enter into any kind of contract or arrangement, including Third Party Ventures;
- 2.2.6 subject to Clauses 2.5 and 2.6, to purchase, sell, lease, hire, rent or otherwise acquire or dispose of any real or personal property or interests therein;
- 2.2.7 to borrow funds and incur expenditure in accordance with Clause 2.5;
- 2.2.8 subject to Clause 2.5, to employ, engage determine conditions of employment/engagement, remunerate, remove, suspend or dismiss/terminate the Chief Executive Officer of the Authority;
- 2.2.9 subject to Clause 2.5, to employ, engage or retain professional advisers to the Authority;
- 2.2.10 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;
- 2.2.11 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;
- 2.2.12 subject to Clause 2.5, to institute, initiate and carry on legal proceedings;
- 2.2.13 to adopt and use a trading name provided that the Authority must first register the trading name with the Office of Consumer and Business Affairs in accordance with the Business Names Act 1996;
- 2.2.14 subject to Clause 2.5, 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;
- 2.2.15 to open and operate bank accounts;
- 2.2.16 to make submissions for and accept grants, subsidies and contributions to further its objects and purposes;

- 2.2.17 to invest any funds of the Authority in any investment provided that:
- 2.2.17.1 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
 - 2.2.17.2 the Authority must avoid investments that are speculative or hazardous in nature;
- 2.2.18 without limiting the power in Clause 2.2.17, to lend money to a Constituent Council on terms determined by agreement between the Authority and the Constituent Council;
- 2.2.19 to with the prior approval of the Board 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;
- 2.2.20 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;
- 2.2.21 to promote, investigate or utilise alternative lawful methods of disposing of human remains;
- 2.2.22 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.

2.3 Other Powers, Functions and Duties

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

2.4 Common Seal

- 2.4.1 The Authority will have a common seal.
- 2.4.2 The common seal of the Authority must not be affixed to a document except to give effect to a resolution of the Board.
- 2.4.3 The affixation of the common seal of the Authority must be attested by two Board Members.
- 2.4.4 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 witnessed the fixing of the seal and the date that the seal was affixed.
- 2.4.5 The Authority may by instrument under common seal, authorise a person to execute documents on behalf of the Authority subject to any limitations specified in the instrument of authority.

2.5 Borrowings and Expenditure

- 2.5.1 The Authority has the power to incur expenditure as follows:
- 2.5.1.1 in accordance with a budget adopted by the Authority under Clause 5.1; or
 - 2.5.1.2 with the prior approval of both of the Constituent Councils; or
 - 2.5.1.3 in accordance with the Act, in respect of expenditure not contained in a budget adopted by the Authority for a purpose of genuine emergency or hardship.
- 2.5.2 Subject to Clause 2.5.3, the Authority has the power to borrow money as follows:

- 2.5.2.1 in accordance with a budget adopted by the Authority under Clause 5.1; or
 - 2.5.2.2 in respect of an overdraft facility or facilities up to a maximum amount of \$100 000; or
 - 2.5.2.3 with the prior approval of both of the Constituent Councils.
- 2.5.3 Unless otherwise approved by both of the Constituent Councils, any and all borrowings (except overdraft facilities) taken out by the Authority:
- 2.5.3.1 must be from the Local Government Financial Authority or a registered bank or financial institution within Australia; and
 - 2.5.3.2 must be drawn down within a period of 24 months from the date of approval.

2.6 Property

- 2.6.1 All property held by the Authority is held by it on behalf of the Constituent Councils.
- 2.6.2 No property of the Authority may be sold, encumbered or otherwise dealt with outside of the ordinary course of business unless authorised by:
 - 2.6.2.1 the Strategic Plan or Financial Plan; or
 - 2.6.2.2 the prior approval of both Constituent Councils.

2.7 Delegation by the Constituent Councils

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

3. BOARD OF MANAGEMENT

3.1 Role of the Board

The Board is the Authority's governing body and has the responsibility for the administration of the affairs of the Authority ensuring that the Authority acts in accordance with this Charter and all relevant legislation including the Act.

3.2 Functions of the Board

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

- 3.2.1 striving to position the Authority as the premier provider of cemetery services;
- 3.2.2 the formulation of Strategic and Business Plans in accordance with Clauses 6.1 and 6.2 and the development of strategies aimed at improving the business of Centennial Park;
- 3.2.3 providing professional input and policy direction to the Authority;
- 3.2.4 ensuring strong accountability and stewardship of the Authority;
- 3.2.5 monitoring, overseeing and measuring the performance of the Chief Executive Officer of the Authority;
- 3.2.6 ensuring that ethical behaviour and integrity is established and maintained by the Authority, the Board and Board Members in all activities undertaken by the Authority;
- 3.2.7 subject to Clause 3.9.6, ensuring that the business of the Authority is undertaken in an open and transparent manner;
- 3.2.8 paying the Liability Guarantee Fee in accordance with Clause 1.9;
- 3.2.9 developing and adopting such policies and procedures as give effect to good governance and administrative practices;
- 3.2.10 exercising the care, diligence and skill that a prudent person of business would exercise in managing the affairs of other persons;

- 3.2.11 avoiding investments that are speculative or hazardous by nature; and
- 3.2.12 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.

3.3 Membership of the Board

- 3.3.1 The Board shall consist of seven members being:
 - 3.3.1.1 two members appointed by each of the Constituent Councils under Clause 3.3.5;
 - and
 - 3.3.1.2 three independent members appointed under Clause 3.3.7, appointed on the basis set out in this Clause 3.3.
- 3.3.2 A person who is or has been affected by any of the circumstances set out in Clauses 3.4.3.1, 3.4.3.2 and 3.4.3.4 is ineligible for appointment or reappointment as a Board Member.
- 3.3.3 No Deputy Board Members will be appointed.
- 3.3.4 Board Members will be selected on the basis that the Board as a whole will possess a diverse range of skills appropriate for the strategic needs of the Authority. To facilitate this outcome, a gap analysis of the skills possessed by the Board will be undertaken by Nominations Committee prior to a vacancy on the Board being filled.
- 3.3.5 Subject to Clause 3.3.9, each Constituent Council must appoint for a maximum period of two years and on such other conditions as the Constituent Council may determine, two Board Members. Council members and council employees are eligible for appointment, however each Constituent Council must ensure that one of its appointees is a Council member.
- 3.3.6 Each Constituent Council must give notice in writing to the Authority of its appointment of Board Members, the term of appointment and of any termination or revocation of those appointments.
- 3.3.7 Subject to Clause 3.3.9, the Board will appoint three Independent Board Members as follows:
 - 3.3.7.1 the Board will convene a committee for the purposes of sourcing, assessing and recommending candidates for the position of Independent Board Member;
 - 3.3.7.2 the Board will consider the recommendations of the Nominations Committee and determine a preferred candidate for position as Independent Board Member;
 - 3.3.7.3 the Board will obtain the approval of the CPCA Owner Executive Committee prior to appointing a person as an Independent Board Member; and
 - 3.3.7.4 a person approved for appointment under Clause 3.3.7.3 may be appointed for a period of three years on conditions determined by the Board.
- 3.3.8 The Nominations Committee may utilise external expertise when fulfilling its role under Clause 3.3.7.1.
- 3.3.9 The terms of the Independent Board Members will be determined so that no more than one Independent Board Member's term expires in any calendar year.
- 3.3.10 A notice in writing signed by the Chief Executive Officer of a Constituent Council will be sufficient evidence of an appointment, termination or revocation of the appointment of a Board Member.

3.3.11 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 an Independent Board Member.

3.4 Office of Board Member

3.4.1 The maximum periods that a person can serve as a Board Member is:

3.4.1.1 in respect of a Board Member appointed by a Constituent Council, eight continuous years;

3.4.1.2 in respect of an Independent Board Member (except where Clause 3.4.1.3 applies), nine continuous years; and

3.4.1.3 in respect of an Independent Board Member who has served as the chairperson of the Authority, twelve years provided there is a recommendation of the Board to this effect.

3.4.2 A Board Member is, subject to Clauses 3.3.2 and 3.4.1, eligible for re-appointment at the conclusion of his or her term of office.

3.4.3 A Board Member will cease to hold office and his or her position will become vacant:

3.4.3.1 if any of the grounds or circumstances set out in the Act as to when a Board Member's office becomes vacant arises;

3.4.3.2 if he or she is convicted of an indictable offence punishable by imprisonment;

3.4.3.3 in relation to a Constituent Council Board Member, immediately upon:

(a) the Constituent Council which appointed the Board Member ceasing to be a Constituent Council;

(b) the Board Member ceasing to be an elected member or employee (as appropriate) of the Constituent Council that appointed him or her;

(c) in the case of an elected member, the conclusion of the next periodic local government election following their appointment; or

3.4.3.4 upon the happening of any other event through which the Board Member would be ineligible to remain as a Board Member.

3.4.4 At any time:

3.4.4.1 a Constituent Council may revoke the appointment of a Board Member appointed by that Council by providing written notice to the other Constituent Council and the Authority; and

3.4.4.2 the Board of the Authority may revoke the appointment of an Independent Board Member with the prior approval of the CPCA Owner Executive Committee.

3.4.5 Where, for any reason, the office of a Board Member becomes vacant, a replacement Board Member will be appointed in accordance with Clause 3.3, 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.

3.4.6 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 to this effect.

3.5 Remuneration of Board Members

- 3.5.1 The Authority will pay each Board Member an annual fee based upon relevant State Government benchmarks and approved by the CPCA Owners' Executive Committee.
- 3.5.2 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.
- 3.5.3 The CPCA Owners' Executive Committee will review the annual fee to be paid to the Board Members and advise the Chief Executive Officer by notice in writing signed by the Chief Executive Officers of the Constituent Councils of the outcome of the review and any alteration to such annual fees.

3.6 Insurance

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.

3.7 Propriety of Members of the Board

- 3.7.1 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.
- 3.7.2 Board Members will not be required to submit returns under Chapter 5, Part 4, Division 2 of the Act.
- 3.7.3 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.
- 3.7.4 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 of the Act.

3.8 Chairperson and Deputy Chairperson

- 3.8.1 The CPCA Owners' Executive Committee must appoint from among the Independent Board Members a Chairperson and a Deputy Chairperson for a term respectively of no more than three years and on such other conditions as determined by the CPCA Owners' Executive Committee.
- 3.8.2 Subject to Clause 3.4.1, a Chairperson or Deputy Chairperson will be eligible for re-appointment at the conclusion of his or her term of office.
- 3.8.3 The Chairperson or Deputy Chairperson will cease to hold office as Chairperson or Deputy Chairperson (as relevant) in the event:
 - 3.8.3.1 the Chairperson or Deputy Chairperson resigns from that office;
 - 3.8.3.2 the Chairperson or Deputy Chairperson ceases to be a Board Member; or
 - 3.8.3.3 the CPCA Owners' Executive Committee terminates the Chairperson or Deputy Chairperson's appointment.
- 3.8.4 In the event that the office of Chairperson or Deputy Chairperson becomes vacant, then the CPCA Owners' Executive Committee must 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.

- 3.8.5 The Chairperson must preside at all meetings of the Board and, in the event the Chairperson is absent from a meeting, the Deputy Chairperson must preside. In the event that neither the Chairperson nor the Deputy Chairperson are present then the Board must select another Independent Board Member to preside at that meeting only. If there is no Independent Board Member present, the Board must appoint a Constituent Council Board Member present to preside at that meeting only.
- 3.8.6 During an extended absence of the Chairperson, the Deputy Chairperson will fulfil the role of Chairperson under this Charter.

3.9 Proceedings of the Board

- 3.9.1 All meetings of the Authority shall be meetings of the Board.
- 3.9.2 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.
- 3.9.3 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.
- 3.9.4 For the purpose of this Clause 3.9, the contemporary linking together by telephone, audio-visual or other instantaneous means (telecommunications meeting) of the Board Members provided that at least a quorum is present, is deemed to constitute a meeting of the Board. Each of the Board Members taking part in the telecommunications meeting must at all times during the telecommunications meeting be able to hear and be heard by each of the other Board Members present. At the commencement of the meeting, each Board Member must announce his/her presence to all other Board Members taking part in the meeting. A Board Member must not leave a telecommunications meeting by disconnecting his/her telephone, audio-visual or other communication equipment, unless that Board Member has previously notified the Chair of the meeting.
- 3.9.5 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 Authority where a majority of Board Members vote in favour of the resolution by signing and returning the resolution to the Chief Executive Officer or otherwise giving written notice of their consent and setting out the terms of the resolution to the Chief Executive Officer. The resolution will be deemed a resolution of the Board and will be as valid and effective as if it had been passed at a meeting of the Board duly convened and held.
- 3.9.6 Subject to Clause 3.9.7, meetings of the Board will not be open to the public unless the Board resolves otherwise.
- 3.9.7 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.
- 3.9.8 The Chief Executive Officer must within one calendar month following a local government periodic election, call an ordinary meeting of the Board at which meeting the time, date and place of ordinary meetings of the Board over a period as agreed by the Board shall be determined.
- 3.9.9 Subject to Clause 3.9.14, notice of an ordinary meeting of the Board will be given by the Chief Executive Officer to each Board Member not less than three clear days prior to the holding of the meeting.
- 3.9.10 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.

- 3.9.11 Notice of meeting of the Board must:
- 3.9.11.1 be in writing; and
 - 3.9.11.2 set out the date, time and place of the meeting; and
 - 3.9.11.3 be signed by the Chief Executive Officer; and
 - 3.9.11.4 contain, or be accompanied by, the agenda for the meeting.
- 3.9.12 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.
- 3.9.13 On receipt of a written request pursuant to Clause 3.9.12, 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.
- 3.9.14 The Chief Executive Officer must, insofar as is reasonably practicable:
- 3.9.14.1 ensure that items on an agenda given to Board Members are described with reasonable particularity and accuracy; and
 - 3.9.14.2 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).
- 3.9.15 Notice of a meeting of the Board may be given to a Board Member:
- 3.9.15.1 personally; or
 - 3.9.15.2 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
 - 3.9.15.3 in the case of a Constituent Council Board Member, by leaving the notice for the Board Member at an appropriate place at the principal office of the Constituent Council which appointed the Board Member; or
 - 3.9.15.4 by a means authorised in writing by the Board Member as being an available means of giving notice.
- 3.9.16 A notice that is not given in accordance with Clause 3.9.15 is taken to have been validly given if the Chief Executive Officer considers it impracticable to give the notice in accordance with that Clause and takes action the Chief Executive Officer considers reasonably practicable in the circumstances to bring the notice to the attention of the Board Member.
- 3.9.17 The Chief Executive Officer must maintain a record of all notices of Board meetings given under Clause 3.9.11 to Board Members.
- 3.9.18 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 one half of the Board Members in office, ignoring any fraction, plus one.
- 3.9.19 Unless otherwise required at law or by this Charter, all matters for decision at a meeting of the Board will be decided by a simple majority of the Board Members present

and entitled to vote on the matter. 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.

- 3.9.20 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.
- 3.9.21 The Executive Officer must cause minutes to be kept of the proceedings at every meeting of the Board and ensure that the minutes are presented to the next ordinary meeting of the Board for confirmation. Where the Executive Officer is absent or excluded from attendance at a meeting of the Board pursuant to Clause 3.9.6, the person presiding at the meeting shall cause the minutes to be kept.
- 3.9.22 The 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.
- 3.9.23 The Board must adopt a Code of Practice for Meeting Procedures to apply to the proceedings at and conduct of meetings of the Board. The Code of Practice for Meeting Procedures must not be inconsistent with the Act or this Charter.
- 3.9.24 The Code of Practice for Meeting Procedures may be reviewed by the Board at any time and must be reviewed at least once every three years.
- 3.9.25 In the event of any inconsistency between this Charter and the Code of Practice for Meeting Procedures, this Charter shall prevail.
- 3.9.26 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.

3.10 Board Annual Performance Review

- 3.10.1 The Board of the Authority will undertake an annual performance evaluation of the Authority.
- 3.10.2 Every third year, the evaluation undertaken by the Board under Clause 3.10.1 will include the engagement of an external adviser to assist the Board to undertake the review.
- 3.10.3 An external adviser appointed for the purpose of Clause 3.10.2:
 - 3.10.3.1 will have regard to requirements of the Act and the Regulations;
 - 3.10.3.2 will be provided with access to Board papers, minutes, budgets, financial results, plans and procedures;
 - 3.10.3.3 may interview Board members individually or collectively;
 - 3.10.3.4 may make recommendations as to the:
 - (a) workings of the Board;
 - (b) replacement of individual Board members; and
 - (c) addition of Board members;
 - 3.10.3.5 will consult with Board members before issuing the final report.
- 3.10.4 The Board will submit external performance evaluation reports received at the conclusion of a review under Clause 3.10.2 to the CPCA Owners' Executive Committee.

4. **CHIEF EXECUTIVE OFFICER AND APPOINTMENT OF OTHER STAFF**

- 4.1 The Authority must appoint a Chief Executive Officer on a fixed term performance based employment contract which does not exceed five years in duration. The Authority 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 In the absence of the Chief Executive Officer for any period exceeding one week, the Chief Executive Officer must appoint a suitable person as Acting Chief Executive Officer. If the Chief Executive Officer does not make or is incapable of making such an appointment, a suitable person must be appointed by the Board.
- 4.3 The Authority delegates responsibility for day to day management of the Authority to the Chief Executive Officer, who will ensure that sound business and human resource management practices are applied in the efficient and effective management of the operations of the Authority.
- 4.4 The functions of the Chief Executive Officer include:
- 4.4.1 ensuring that the decisions of the Authority are implemented in a timely and efficient manner;
 - 4.4.2 providing information to assist the Authority to assess the Authority's performance against its Strategic, Long Term Financial and Business Plans;
 - 4.4.3 appointing, managing, suspending and dismissing the other employees of the Authority;
 - 4.4.4 providing advice and reports to the Authority on the exercise and performance of its powers and functions under this Charter or any Act;
 - 4.4.5 co-ordinating and initiating proposals for consideration of the Authority including, but not limited to, continuing improvement of the operations of the Authority;
 - 4.4.6 ensuring that the assets and resources of the Authority are properly managed and maintained;
 - 4.4.7 ensuring that records required under the Act or any other legislation are properly kept and maintained;
 - 4.4.8 exercising, performing or discharging other powers, functions or duties conferred on the Chief Executive Officer by or under the Act or any other Act and performing other functions lawfully directed by the Authority; and
 - 4.4.9 achieving financial outcomes in accordance with adopted plans and budgets.
- 4.5 **Delegations and sub-delegations:**
- 4.5.1 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;
 - 4.5.2 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;
 - 4.5.3 a written record of delegations and sub-delegations must be kept by the Chief Executive Officer at all times.

5. FINANCIALS

5.1 Budget

- 5.1.1 The Authority must before 30 April of each year, prepare a draft Budget in accordance with the Act and Regulations.
- 5.1.2 The Authority must adopt after 31 May, a Budget in accordance with the Act and Regulations for the ensuing Financial Year.
- 5.1.3 The Authority may in a Financial Year, after consultation with the Constituent Councils, incur spending before adoption of its budget for the year, but the spending must be provided for in the appropriate budget for the year.
- 5.1.4 The Authority must provide a copy of the annual budget to the Constituent Councils within five business days of the budget being approved by the Board of the Authority.
- 5.1.5 The Authority must, in accordance with the Act and the Regulations, prepare and consider reports presented in a manner consistent with the Model Financial Statements showing a revised forecast of:
 - 5.1.5.1 the Authority's operating and capital investment activities for the relevant financial year; and
 - 5.1.5.2 each line item set out in the Authority's budgeted financial statements for the relevant financial year,
compared with the estimates set out in the approved budget.

5.2 Financial Standards and Reporting

- 5.2.1 The Authority must ensure that the Financial Statements of the Authority for each Financial Year are audited by the Authority's auditor.
- 5.2.2 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 6.3.

5.3 Financial Transactions

- 5.3.1 The Authority must establish and maintain a bank account with such banking facilities and at a bank to be determined by the Board.
- 5.3.2 The Board will develop and maintain appropriate policies for all financial transactions.
- 5.3.3 The Chief Executive Officer must act prudently in the handling of all financial transactions for the Authority.

5.4 Long Term Financial Plan

- 5.4.1 The Authority must prepare a Long Term Financial Plan in accordance with this Clause 5.4 and submit the Long Term Financial Plan to the Constituent Councils for their approval.
- 5.4.2 The Long Term Financial Plan must cover a period of five years and be updated by the Authority on a rolling twelve month basis.
- 5.4.3 The Long Term Financial Plan must be in a form which, as relevant, is consistent with Section 122 of the Act and Regulation 5 of the Regulations and include:
 - 5.4.3.1 an estimated income statement, balance sheet, statement of changes in equity and statement of cash flows with respect to the period of the Long Term Financial Plan presented in a manner consistent with the Model Financial Statements;

5.4.3.2 a summary of proposed operating and capital investment activities presented in a manner consistent with the note in the Model Financial Statements entitled Uniform Presentation of Finances;

5.4.3.3 estimates with respect to an operating surplus ratio, an asset sustainability ratio and a net financial liabilities ratio presented in a manner consistent with the note in the Model Financial Statements entitled Financial Indicators.

All defined terms in this Clause take their meaning from the Regulations.

5.4.4 The Authority may at any time review the Long Term Financial Plan but must undertake a review of the Long Term Financial Plan as soon as practicable after the annual review of its Business Plan and concurrently with any review of its Strategic Plan.

5.4.5 The Authority must undertake a comprehensive review of its Long Term Financial Plan every five years.

5.4.6 The Long Term Financial Plan will be taken to form part of the Authority's Strategic Plan.

6. MANAGEMENT FRAMEWORK

6.1 Strategic Plan

Consistent with the Long Term Financial Plan set out above, the Authority must:

6.1.1 prepare and adopt a Strategic Plan with a minimum operational period of five years which sets out the goals, objectives, strategies and priorities of the Authority over the period of the Strategic Plan; and

6.1.2 submit the Strategic Plan to the Constituent Councils for their approval.

6.2 Business Plan

The Authority:

6.2.1 Must, in consultation with the Constituent Councils, prepare and adopt a Business Plan for a minimum three year period which will continue in force for the period specified in the Business Plan or until the earlier adoption by the Authority of a new Business Plan;

6.2.2 Must, in consultation with the Constituent Councils, review the Business Plan annually and following such a review, the Business Plan shall continue to operate for the period for which the Business Plan was adopted pursuant to Clause 6.2.1;

6.2.3 may, after consultation with the Constituent Councils, amend its Business Plan at any time; and

6.2.4 must ensure the contents of the Business Plan is in accordance with the Act.

6.3 Annual Report

6.3.1 The Authority must each year produce an Annual Report summarising the activities, achievements and financial performance of the Authority for the preceding Financial Year.

6.3.2 The Annual Report must incorporate the audited financial statements of the Authority for the relevant Financial Year.

6.3.3 The Annual Report must be provided to the Constituent Councils by 31 October each year.

6.4 Audit

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

6.5 Audit and Risk Management Committee

6.5.1 The Board must establish an Audit and Risk Management Committee to be comprised of three persons being:

- 6.5.1.1 an Independent Board Member with qualifications and experience in finance;
 - 6.5.1.2 any other Independent Board Member; and
 - 6.5.1.3 a person with skills appropriate to the role who is not a member of the Board.
- 6.5.2 The Chairperson for the Risk and Audit Management Committee will be the person described in Clause 6.5.1.1.
- 6.5.3 Professionally qualified officers of the Constituent Councils are permitted to attend meetings of the Risk and Audit Management Committee as observers.
- 6.5.4 The term of appointment of a member of the Audit and Risk Management Committee shall be for a term not exceeding two years at the expiry of which such member will be eligible for re-appointment.

6.6 Insurance and Superannuation Requirements

- 6.6.1 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.
- 6.6.2 The Authority shall register with the Local Government Asset Mutual Fund or otherwise advise Local Government Risk Management Services of its insurance requirements relating to Local Government Special Risks including buildings, structures, vehicles and equipment under the management, care and control of the Authority.

6.7 Executive Meetings

- 6.7.1 The CPCA Owners' Executive Committee, the Chairperson of the Authority and the Chief Executive of the Authority will meet to discuss the performance of the Authority.
- 6.7.2 The Executive Meetings will occur quarterly or as otherwise determined by the Executive Committee.
- 6.7.3 The agenda for the Executive Meeting will be based on a standard template performance and issues report developed by the Executive Committee.
- 6.7.4 The Authority must complete a performance and issues report in anticipation of each Executive Meeting and provide a copy of the report to each Executive Meeting participants no less than five days prior to the Executive Meeting.

7. MISCELLANEOUS PROVISIONS

7.1 Withdrawal of a Constituent Council

- 7.1.1 The withdrawal of either Constituent Council is inconsistent with the requirements of Section 43 of the Act.
- 7.1.2 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 for Planning and request that the Authority be wound up under Clause 33 (2), Schedule 2 of the Act.

7.2 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 and this Charter may be amended to provide for the admission of a new Constituent Council or Councils, with or without conditions.

7.3 Winding Up

- 7.3.1 A special meeting will be convened in accordance with Clause 3.9.12 if either the Board or a Constituent Council proposes the winding up of the Authority.
- 7.3.2 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 each Constituent Councils' equity in the Authority as set out in the Authority's balance sheet for the current financial year.

7.4 Non-derogation and Direction by Constituent Councils

- 7.4.1 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.
- 7.4.2 Provided that the Constituent Councils have all first agreed as to the action to be taken, the Constituent Councils may jointly direct and control the Authority.
- 7.4.3 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 must only be granted and must be evidenced by a resolution passed by either or each of the Constituent Councils granting such approval.
- 7.4.4 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.
- 7.4.5 For the purpose of this Clause 7.4, 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.

7.5 Review of Charter

- 7.5.1 The Authority must review this Charter at least once in every four years.
- 7.5.2 This Charter may be amended with the approval of both of the Constituent Councils.
- 7.5.3 The Chief Executive Officer 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.
- 7.5.4 Before the Constituent Councils vote on a proposal to alter this Charter, they must take into account any recommendation of the Board.

7.6 Disputes

7.6.1 *General*

7.6.1.1 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.

7.6.2 *Mediation*

7.6.2.1 A party is not entitled to initiate arbitration or court proceedings (except proceedings seeking urgent equitable or injunctive relief) in respect of a Dispute unless it has complied with this Clause 7.6.2.

7.6.2.2 If the parties are unable to resolve the Dispute within thirty 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.

7.6.2.3 In the event the parties fail to refer the matter for mediation in accordance with Clause 7.6.2.2, 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.

7.6.2.4 The role of any mediator is to assist in negotiating a resolution of the dispute. A mediator may not make a decision that is binding on a party unless that party has so agreed in writing.

7.6.2.5 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 parties as evidenced by resolutions of each of the parties, any party may then refer the Dispute to Arbitration in accordance with Clause 7.6.3.

7.6.3 *Arbitration*

7.6.3.1 An arbitrator may be appointed by agreement between the parties.

7.6.3.2 Failing agreement as to an arbitrator, the then Chairperson of the South Australian Chapter of the Institute of Arbitrators or his successor shall nominate an Arbitrator pursuant to these conditions.

7.6.3.3 A submission to arbitration shall be deemed to be a submission to arbitration within the meaning of the Commercial Arbitration Act 1985 (South Australia).

7.6.3.4 Upon serving a notice of arbitration, the party serving the notice shall lodge with the arbitrator a deposit by way of security for the cost of the arbitration proceedings.

7.6.3.5 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.

- 7.6.4 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.

Dated 10 August 2015.

M. PEARS, Chief Executive Officer, City of Mitcham

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