Confidential Item

CAMPBELLTOWN CITY COUNCIL

Confidential Item

For Council meeting to be held on

Tuesday 7 June 2022 at 7.00 pm

Refer Item 11.5

Confidential Item

11.5 Application from City of Unley to Join East Waste

Chief Executive Officer, Paul Di Iulio's Report

Purpose of Report

To seek Council approval for the City of Unley to become a Constituent Council of East Waste.

Strategic Plan Link

Focus Area 2.3.1 Grow circular economy initiatives to eliminate waste and minimise resource use

Focus Area 2.3.2 Expand and implement waste management and recycling programs

Background

East Waste is a regional subsidiary of seven (7) Constituent Councils. The Constituent Councils are Adelaide Hills Council, City of Burnside, City of Campbelltown, City of Norwood Payneham and St Peters, City of Mitcham, City of Prospect and the Corporation of the Town of Walkerville.

The Constituent Councils of East Waste are equal shareholders, with each of the seven (7) existing Constituent Councils currently have a 14.29% share of East Waste. An eighth Constituent Council would reduce the shareholdings to 12.5% for each Constituent Council.

East Waste provides a variety of household collections of waste, recycling, garden organics, hard waste and public place litter bins for its seven (7) Constituent Councils. An incoming Constituent Council can apply to become a Constituent Council of East Waste if it makes a written application supported by an independent business case that is approved by the existing Constituent Councils, and the Minister.

City of Unley have made application, supported by an independent business case (attached), to East Waste requesting to become a Constituent Council.

Discussion

The City of Unley conducted a Tender Call for the collection and processing of their Waste, Recyclable and Green Organics in June 2021.

The East Waste Board considered a preliminary analysis of the opportunity, which detailed the strategic fit, core services, indicative costings, and indicative impact for existing Constituent Councils. The East Waste Board resolved that the East Waste General Manager pursue this opportunity and prepare a detailed business case for the Board to review at a future Board Meeting.

The East Waste Board considered a business case (non-core plan as defined by the East Waste Charter) at a Special Meeting of the East Waste Board on 21 March 2022. The business case (attached) described a financial benefit for existing East Waste Constituent Councils if Unley Council joined as a Constituent Member.

The business case prepared by BRM Advisory undertook a risk and governance review of City of Unley joining East Waste, as well as a review of the financial costings. Concurrently, as prescribed by the East Waste Charter, City of Unley initiated its own independent business case to join East Waste.

The independent risk, governance and financial review (refer confidential attachment) concluded that there is no material risk to the shared services model, and City of Unley joining East Waste represents an opportunity for East Waste to improve its efficiencies and reduce transaction costs. Furthermore, the Review concluded that there is clear financial benefit to existing Constituent Councils with the addition of City of Unley.

The independent risk, governance and financial review confirmed that existing Constituent Councils would receive a dilution in shareholding through a redistribution of the equal shareholding model from seven (7) Constituent Councils (14.29%), to eight (8) Constituent Councils (12.5%). However, the Review concluded that a joining fee is not required due to the financial benefit to existing Constituent Councils outweighing the dilution in equity shareholding value.

The East Waste Board considered the independent risk, governance and financial review (attached) on 21 March 2022:

1. Notes and accepts the Independent Business Case Analysis as presented in Attachment A.

2. Recognising the benefits as outlined in the Independent Business Case Analysis of the City of Unley joining East Waste as a Constituent Council, supports the City of Unley's application, subject to the unanimous support of existing constituent Councils.

3. Endorses not charging the City of Unley a joining fee, subject to feedback from Constituent Councils, given the year-on-year savings which are derived with the City of Unley being a member of East Waste.

4. Authorise the General Manager to engage with Member Councils to seek the required unanimous approval of accepting City of Unley's application to become a Member Council.

5. Subject to the unanimous support of Member Councils, make the required amendment to the Charter and seek the approval of the Minister of Local Government.

East Waste is now seeking absolute majority approval from the existing Constituent Councils for the City of Unley to join East Waste. Subject to achieving absolute majority approval from the existing Constituent Councils, East Waste will then seek the approval from the Minister of Local Government.

The East Waste Charter (attached) will require amendments to incorporate the City of Unley as a new Constituent Council. Pursuant to clause 3.4 of the Charter, the Charter may not be amended 'except as all the Constituent Councils may agree by each passing resolution in the same term. An amendment is not effective unless and until published in the Gazette'.

East Waste is seeking, by passing of the same resolution, a number of minor amendments to the East Waste Charter. The proposed changes are attached in a tracked version of the Charter for Member's consideration. Subject to existing Constituent Councils approving its application, it is anticipated that services for City of Unley will commence in the second half of 2022.

Staff believe that the City of Unley has a good strategic and geographical fit with East Waste and its Constituent Councils, and therefore recommend that Council support the City of Unley becoming a Constituent Council of East Waste.

Social Implications

There are no social implications in relation to this report.

Environmental / Climate Change Implications

There are no environmental implications in relation to this report.

Asset Management Implications

There are no asset management implications in relation to this report.

Governance / Risk Management

The independent risk, governance and financial review (attached) concludes there is no material risk to the existing shared services model by City of Unley joining East Waste.

East Waste has followed a clear governance process in determining the liability of City of Unley joining East Waste and it should be noted that the City of Unley would become jointly and severally liable for all of East Wastes debts and liabilities.

Community Engagement

As the inclusion of Unley will not impact on service levels provided to the existing Constituent Councils no community consultation has been undertaken.

Regional Implications

The inclusion of the City of Unley is a good example of how a successful Shared Services Model expanding, provides greater benefits for the Constituent Council and the incoming Council.

Economic Development Implications

There are no economic development implications in relation to this report.

Financial Implications

The independent risk, governance and financial review concludes there will be a financial benefit for Council by the City of Unley joining East Waste, in the order of approximately $100,000 per annum.

Recommendation

That Council:

1. **receive the report**

2. **endorses the City of Unley becoming a Constituent Council of the Eastern Waste Management Authority, acknowledging the financial, strategic and operational benefits that will be realised, as identified in the independent Business Case Analysis;**

3. **endorses the proposed amendments to the Eastern Waste Management Authority Charter to facilitate the City of Unley becoming a Constituent Council, namely inclusion of the City of Unley as a Constituent Council and the consequent amendments to the definition of 'Constituent Council' and more specifically to Clause 21.1, to increase the number of Directors from eight (8) to nine (9).**

4. **endorses the revision of Constituent Council shares consequent upon the membership of the City of Unley so that each Council will, from the date of Gazettal of the amended Charter, have a 12.5% equity share in the Eastern Waste Management Authority;**

5. **notes that the above decisions are subject to the City of Unley obtaining Ministerial approval to become a Constituent Council of the Eastern Waste Management Authority;**

6. **supports and endorses all other amendments proposed by the East Waste Board to the Eastern Waste Management Authority Charter as shown in Attachment B as part of the prescribed Charter review.**

20 May 2022

Mr Paul Di Iulio
Chief Executive Officer
Campbelltown City Council
PO Box 1
CAMPBELLTOWN SA 5074
(sent via email: pdiiulio@campbelltown.sa.gov.au)

Dear Paul,

Confidential: New Member Council Proposal and Charter Review

It is with excitement that I write to you outlining a proposal from the City of Unley to join East Waste as a Constituent (Member) Council. East Waste have undertaken a large body of work over the last nine-months working towards this position and we believe there are a number of financial and non-financial benefits with the City of Unley joining Campbelltown City Council and other existing Councils as an Authority member. These are outlined further in this letter.

In order for this to occur, the unanimous approval of all existing Member Councils is required, and it would be appreciated if you could prioritise the application to your Elected Member Body as soon as possible so we can provide the City of Unley with advice and if unanimously approved, progress with the onboarding process.

Additionally, a cyclic legislative review of the Eastern Waste Management Authority Charter is due and proposed changes for Campbelltown City Council's endorsement are outlined in this letter.

Background
In June 2021 East Waste responded to an open Request for Tender from the City of Unley for the Collection and Processing of their Waste, Recyclables & Organics. Two tenders, a conforming (non-member model) and non-conforming (Member model) were submitted. East Waste previously completed the City of Unley collections from 2007–2014, under a non-member model and from this gained valuable operational insight which was heavily considered in the submission from a financial, logistics and risk perspective.

Pleasingly, East Waste received correspondence from the City of Unley on 11 February 2022, advising it had been selected as the preferred tenderer under a membership model (that is the City of Unley joining East Waste). Since this time East Waste has been refining several points with the City of Unley and undertaking an independent Business Case Analysis.

Charter Requirements
Admission of a new Constituent Council requires the unanimous approval of all existing Member Councils, along with several other requirements, which are clearly spelt out in the East Waste Charter, specifically under Section 14.

14. INCOMING CONSTITUENT COUNCILS

14.1 Any council may become a Constituent Council (an Incoming Constituent Council) if:

14.1.1 it makes written application (in a form approved by the Board) to become a Constituent Council and agrees to be bound by this Charter (noting that Shares will change);

14.1.2 its application is supported by a thorough, realistic, independent, and diligent Business Case analysis;

14.1.3 it pays any joining fee or other payment as may be required by the Board;

14.1.4 the Constituent Councils approve the application and revised Shares by Unanimous Decision; and

14.1.5 the Minister approves.

14.2 An Incoming Constituent Council:

14.2.1 is jointly and severally liable with the other Constituent Councils for the debts and liabilities of the Authority incurred before or after the date it becomes a Constituent Council, or as otherwise agreed;

14.2.2 is bound by a decision made or step taken by the Board in the affairs of the Authority before it became a Constituent Council to the extent such decision or step was recorded in minutes of the Board's meetings or otherwise notified to the Incoming Constituent Council before it made application to become a Constituent Council; and,

14.2.3 upon becoming a Constituent Council has the Share agreed between the Incoming Constituent Council and the Constituent Councils.

With respect to Clause 14.1.2, it is understood that the tender and assessment process undertaken by the City of Unley sufficiently satisfies this requirement and the City of Unley will be seeking the Minister's approval (assuming all existing Constituent Councils approve) as a final step and as required by Clause 14.1.5.

Business Case Analysis

While undertaking a detailed and thorough tender submission, East Waste engaged the services of BRM Advisory to provide an independent review of East Waste's tender submission, specifically the financial models, risk, Australian Competition & Consumer Commission concerns and governance matters. The Business Case Analysis was extremely thorough, particularly with the financial component and a copy of the Business Case is attached (refer Attachment A) to assist Council in making a decision.

From a financial perspective, the basis of the Business Case was the submitted tender price, assumptions and the calculations behind this. Whilst important and showing a benefit to Member Councils collectively, in the order of $0.700M, given the City of Unley will not join until next financial year (assuming all existing Constituent Councils approve), it is largely theoretical as there are a high number of variables each year with the East Waste budget. To provide both the Board and Member Councils with a more accurate Year One assessment, should the City of Unley join, the draft FY2023 budget has been reworked and also analysed by BRM Advisory (refer Section 3.3 of Attachment A) on the assumption the City of Unley becomes a constituent Council.

This shows that despite increases in several cost centres outside East Waste's control (such as fuel), the saving to existing Member Councils collectively is $607k, by having the City of Unley as a Member for the entire FY23 year. **For Campbelltown City Council the budgeted saving in Year 1 alone is $109k.**

The Business Case also notes the benefit of the increased aggregated purchasing power that could be derived on waste related contracts with a collegiate approach.

From a non-financial perspective, the Business case identifies a number of benefits including:

- Increasing Membership is consistent with East Waste's 2030 Strategic Plan and Annual Business Plan;
- Strengthens the collective advocacy voice of East Waste;
- Logistically attractive as it borders two existing Member Councils;
- Increases the reach of East Waste's already successful education and behaviour change program;
- Increased attractiveness of East Waste as a partner for grants and pilot programs;
- Increasing the size of the Board to nine members addresses the existing anomaly where it is possible that the Board may be unable to reach a majority decision;
- No significant risk of note; and
- No foreseen Competitive Neutrality concerns.

While not identified within the Business Case, there is strong alignment between East Waste's Strategic Plan and the City of Unley's Waste Management & Resource Recovery Plan which will only serve to further drive positive environmental, social and circular economy outcomes for all Councils.

Revision of Shares

Approving the City of Unley as a Constituent Council requires unanimous approval of revised shares (Clause 14.1.4 of the East Waste Charter).

As per Clause 57.1 of the East Waste Charter, each of the Constituent Councils, have an equal (one-seventh) share in East Waste. Currently this is 14.29% and with total equity on 30 June 2021 being $1.219M this equates to $174k for each Constituent Council. It is worth noting that the distribution of equity only takes real effect upon the exit of a Member Council or upon the winding up of the Authority, at which time an accurate determination of each equity share would be made.

Introducing the City of Unley creates an eighth equal shareholder and reduces existing Member Council's shareholding to 12.5%, which equates to a reduction of approximately $22k.

East Waste Board Recommendation

The East Waste Board has thoroughly considered the City of Unley's proposal including the Independent Business Case to join East Waste as a Member Council, leading to it confidentially resolving at a Special Board meeting on 21 March 2022 to (in part):

Moved Cr Ashby that the Board:

2. *Recognising the benefits as outlined in the Independent Business Case Analysis of the City of Unley joining East Waste as a Constituent Council, supports the City of Unley's application, subject to the unanimous support of existing Constituent Councils.*
3. *Endorses not charging the City of Unley a joining fee, subject to feedback from Constituent Councils, given the year-on-year savings which are derived with the City of Unley being a member of East Waste.*

Seconded Mr Cammell *Carried*

Clause 14.1.3 of the East Waste Charter provides the Board with the option of applying a joining fee to an incoming Member Council. In considering this, the Board agreed with the recommendation within the Independent Business Case to not charge a joining fee. This is consistent with the City of Prospect not being charged a joining fee upon their admission in 2017.

Charter Review

The East Waste Charter is required by legislation to be reviewed at least once every four (4) years. Clause 3.5 of the East Waste Charter states:

> *3.5 The Constituent Councils may review this Charter at any time but must in any event review this Charter at least once in every four years.*

The East Waste Charter was last reviewed in September 2017, in line with the admission of the City of Prospect as a Member Council. A review of the Charter was held over in 2021 due to the possibility of the City of Unley coming onboard, which would result in another change to the Charter. When admitting a new Member Council, amendments require a unanimous approval.

A tracked version of the proposed amendments to the Charter is contained within Attachment B of this letter. You will note the changes are in two colours. The two required changes associated with the admission of the City of Unley as Member Council, are shown in **purple** and are:

- Page 1, Clause 1: Constituent Council Meaning – Addition of 'City of Unley'
- Pg 4, Clause 21.1: Appointment of Directors - Increasing the number of Directors from eight to nine (one from each Constituent Council and an Independent Director).

The remaining changes that East Waste is proposing (endorsed by the Board) are shown in **blue** and are a combination of correcting minor irregularities, grammatical corrections and updating terminology. No significant intent changes have been made. A summary of the key changes is summarised in Table 1 below.

Table 1: Proposed Key changes to the East Waste Charter

Page No.	Clause No.	Change	Rationale
1	1	Inclusion of *Common Fleet Collection Percentage* definition	Currently the Charter requires any return of operating surplus to be distributed according to a Council's shareholding (Clause 61), with all Councils holding an equal share in East Waste (14.29%). Operating Capital in any given year is raised according to Common Fleet Collection percentages, which currently ranges from 3.4% to 21.12%. From an equity point of view it is seen appropriate to return any surplus funds proportionately to how they were raised.

* Continued on following page

Table 1: Proposed Key changes to the East Waste Charter (continued)

Page No.	Clause No.	Change	Rationale
1	1	Amendment to *Core Activity* terminology	The current Charter tightly controls the activities East Waste can undertake. This amendment retains the scope to waste activities, however expands to include 'behaviour change and ancillary services.' It also allows for waste-related work to be undertaken outside of the Constituent Council area. As an example, the current process to offer or provide our highly sought after 'Why Waste it?' program to other Council's is too onerous for a beneficial return (~$2-$5K), so this option is not explored. Key decisions around membership or purchasing of large assets (e.g. Trucks) will still rest with the Board and/or Member Councils.
2	3.6	Removal of clause	Redundant – relates to the very first approval of the Charter.
2	9.1.2 9.2.3	Inclusion of 'behaviour change' and 'ancillary services'	Inclusion of terms in Purpose and Functions given the importance of the activity and 2030 Strategic Plan focus.
4	21.1.1 21.1.3	Council Director and Independent Chairperson term increased from two to three years	Minimise the Administrative requirements associated with appointment or reappointment of Directors and Chairperson and allow for greater continuity.
7	29.11	Removal of operational focus associated with the Operations Assistance Committee	Committee is retained however operational directive detailed within the Charter is not required.
7	29.12	Inclusion of annual Member Council Mayor & CEO's meting	Value of high-level Mayor's/CEO meting recognised and important to acknowledge within the Charter.
12	57.4	Removal of clause	Redundant. Related to a bygone Charter.
12	61	Replacing Shares with Common Fleet Collection Percentage	Directly related to first change proposed in this table. Currently this clause requires any return of operating surplus to be distributed according to a Council's shareholding, with all Councils holding an equal share in East Waste (14.29%). Operating Capital in any given year is raised according to Common Fleet Collection Percentage, which currently ranges from 3.4% to 21.12%. From an equity point of view it is seen appropriate to return any surplus funds proportionately to how they were raised.

Resolution to Council

The City of Unley proposal is an extension of a tender process and combined with the market sensitive information contained within the Business Case Review, I request that the information is presented and considered to your Elected Member body confidentially. For the purposes of this I would recommend utilising provision (k) of the confidential orders - *(k) tenders for the supply of goods, the provision of services or the carrying out of works.*

As previously noted, the admittance of an Incoming Council and Charter Changes, must be a unanimous decision of the Member Councils. The resolutions of each Member Council **must be** passed in the same terms, meaning that one or more council cannot impose conditions on the admittance of an Incoming Council or any Charter amendment unless agreed by all Member Councils. Therefore, I provide the following confidential recommendation for all Councils to use on this matter.

That the Council:

1. *Receives the report titled 'xxxxx' from the Chief Executive Officer;*

2. *Endorses the City of Unley becoming a Constituent Council of the Eastern Waste Management Authority, acknowledging the financial, strategic and operational benefits that will be realised, as identified in the independent Business Case Analysis;*

3. *Endorses the proposed amendments to the Eastern Waste Management Authority Charter to facilitate the City of Unley becoming a Constituent Council, namely inclusion of the City of Unley as a Constituent Council and the consequent amendments to the definition of 'Constituent Council' and to Clause 21.1, to increase the number of Directors from eight (8) to nine (9).*

4. *Endorses the revision of Constituent Council shares consequent upon the membership of the City of Unley so that each Council will, from the date of Gazettal of the amended Charter, have a 12.5% equity share in the Eastern Waste Management Authority;*

5. *Notes that the above decisions are subject to the City of Unley obtaining Ministerial approval to become a Constituent Council of the Eastern Waste Management Authority;*

6. *Supports and endorses all other amendments proposed by the East Waste Board to the Eastern Waste Management Authority Charter as shown in Attachment X as part of the prescribed Charter review.*

In the event Campbelltown City Council does not wish to support the City of Unley application to become a Constituent Council of East Waste, it will be sufficient for it to resolve solely in the terms of endorsing Recommendation 1 & 6 above. `This will allow the required legislative review of the Charter to pass and progress.

Thank you for your consideration of this matter and I strongly encourage you to read the attached Business Case Analysis in full. This is an extremely important decision for East Waste and Member Councils and if unanimously endorsed will serve to strengthen an already strong, efficient Organisation. With the City of Unley joining, not only are there ongoing significant financial savings for Campbelltown City Council, East Waste will collect and handle approximately 25% of metropolitan Adelaide's kerbisde organics and recycling collections

from over 40% of metropolitan Adelaide Councils. The secondary benefits this aggregated purchasing power, education reach and advocacy strength (which is already well regarded) provides cannot be understated.

If you have any questions in relation to the Business Case or wish me to present and/or attend the Council Meeting where these matters are tabled, please do not hesitate to contact me. As mentioned at the start of the letter, it would be greatly appreciated if you could prioritise tabling the City of Unley application to become a Member Council, to your Elected Member Body as soon as possible so we can provide the City of Unley with advice and hopefully, progress with the onboarding process.

Yours sincerely,



ROB GREGORY
GENERAL MANAGER

East Waste

Business Case Analysis: Admission of a New Member Council

April 2022

BRM Advisory

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EXECUTIVE SUMMARY

In June 2021 East Waste submitted a conforming tender for the collection of all waste on behalf of the City of Unley, concurrent with this and with the unanimous endorsement of the East Waste Board, a non-conforming tender was also submitted on the basis that the City of Unley would become a Member Council of East Waste. The City of Unley has now advised that it wishes to accept the non-conforming tender and become a Member of East Waste, subject to confirmation of the likely cost of the services in FY2023 and their own financial due diligence.

The operations of East Waste are governed by its Charter which also sets out the mechanism for the admission of a new member (Incoming Council), which includes a requirement to analyse the business case for the admission of a new member.

The admission of a new member is consistent with the East Waste 2030 Strategic Plan and the Annual Plan *'where value to existing Members can be realised'.*

The business case demonstrates that the admission of the City of Unley as a member of East Waste would provide a financial benefit to the current members of East Waste in the form of a lower common fleet percentage, which has the effect of lowering the cost of service for each of the Member Councils.

Based on our review of the financial models that supported the non-conforming tender response East Waste identified a financial benefit of circa $0.700 million to the current Member Councils if the City of Unley was to become a Member Council. This financial benefit was of course based on the assumptions used in the financial model, a number of which – particularly fuel have moved significantly since that time. However, based on our review of the East Waste draft FY2023 budget a financial benefit to current Member Councils of $0.607 million should be achievable using the Common Fleet charging methodology.

Under the Charter, Member Councils have an equal share in the equity of East Waste, while the admission of the City of Unley as a Member Council would result in the equity position of each current Member being reduced by $22,000, given the overall financial benefit of admitting the City of Unley as a Member Council is greater than this for each Member Council in year one alone we do not consider it appropriate to charge the City of Unley a joining fee.

With East Waste currently handling approximately 20% of Adelaide's kerbside municipal waste, organics and recycling this market share has enabled East Waste to secure highly competitive pricing for its Member Councils on a number of waste related contracts. Increasing this market share will further strengthen East Waste's aggregated purchasing power.

The admission of the City of Unley as a Member would also provide non-financial benefits to Member Councils such as expanding the reach of East Waste's education and behavioural change programs, strengthening the collective voice of Member Councils as advocates for positive change and increased attractiveness as a partner for grant and pilot programs or research projects.

The admission of the City of Unley as an Incoming Council to East Waste is not likely to give rise to any competition issues or materially change the risk profile of East Waste or its Member Councils.

There are compelling financial and non-financial benefits supporting the admission of the City of Unley as a Member Council of East Waste.

1. INTRODUCTION

1.1 Background

1.1.1 East Waste is the trading name of Eastern Waste Management Authority, which was established in 1928. The Authority is a regional subsidiary of the Adelaide Hills Council, City of Burnside, Campbelltown City Council, City of Norwood, Payneham & St Peters, City of Mitcham, City of Prospect and Town of Walkerville.

1.1.2 East Waste is governed by a Charter (the Charter) pursuant to Section 43 of the Local Government Act 1999 (Act) and administered by a Board, which includes a director appointed by each Council and an Independent Chair. The Charter sets out the purpose of the Authority is the collection and disposal of waste and recycling in an environmentally responsible, effective, efficient, economic and competitive manner.

1.1.3 In June 2021 East Waste submitted two responses to a tender issued by the City of Unley (Unley) for the collection and processing of wastes, recyclables and organics.

1.1.3.1 The first tender was submitted on the basis that Unley would be a client council (the conforming tender).

1.1.3.2 The second tender was submitted on the basis that Unley would become a Member Council of East Waste (non -conforming tender).

1.1.4 The non-conforming tender proposing that the Unley become a Member Council of East Waste was unanimously endorsed by the East Waste Board prior to submission.

1.1.5 East Waste has since been advised that, subject to further financial due diligence and confirmation of costs, Unley has accepted the non-conforming tender and wishes to become a member of East Waste. This means that the risk in the cost of the services is borne by Unley (as it is for all Member Councils) and the non-conforming tendered prices are indicative only and are non-binding on East Waste.

1.1.6 The East Waste Charter sets out the process for a Council to become a Constituent Council (Member Council). Clause 14 of the Charter deals with Incoming Constituent Council which states that amongst other things the application by an incoming Council is to be supported by a '*thorough, realistic, independent and diligent Business Case analysis*'.

1.1.7 BRM Advisory has been retained by East Waste to undertake the Business Case analysis required under the Charter.

1.1.8 It should be noted that BRM Advisory has previously been contracted by East Waste (and separately by each of its Constituent Councils) and the City of Unley to undertake work on various projects but these are unrelated to this Business Case.

1.2 New Member Councils

The process for a Council to become a Member Council of East Waste is set out in clause 14 of the East Waste Charter which sets out the purpose and functions of the Authority and binds the Authority and each Member Council.

"14. INCOMING CONSTITUENT COUNCILS

14.1 Any council may become a Constituent Council (an Incoming Constituent Council) if:

14.1.1 it makes written application (in a form approved by the Board) to become a Constituent Council and agrees to be bound by this Charter (noting that Shares will change);

14.1.2 its application is supported by a thorough, realistic, independent, and diligent Business Case analysis;

14.1.3 it pays any joining fee or other payment as may be required by the Board;

14.1.4 the Constituent Councils approve the application and revised Shares by Unanimous Decision; and

14.1.5 the Minister approves."

1.3 Scope

The Business Case analysis undertaken examines the impact and relative merits of Unley becoming a Member Council of East Waste. As part of this process we have undertaken the following:

1.3.1 Reviewed the East Waste financial calculations used to support the Unley tender submission;

1.3.2 Reviewed the proposed East Waste common fleet percentages for Year 1 and those based on the draft FY2023 budget;

1.3.3 Assessed the financial implications, if any, in the collection fees that are forecast to be charged to existing Member Councils with the introduction of Unley;

1.3.4 Given consideration to a joining fee (in accordance with clause 14.1.3 of the Charter);

1.3.5 Considered whether Unley becoming a Member Council is likely to require the approval of the Australian Competition & Consumer Commission (ACCC);

1.3.6 Governance matters of note;

1.3.7 Risk matters of note; and

1.3.8 Others matters deemed relevant to the decision.

2. STRATEGIC RATIONALE

2.1 Strategic Plan

2.1.1 The East Waste 2030 Strategic Plan was endorsed by the Board in September 2020, this sets out a series of bold and ambitious targets (Key Performance Indicators) which East Waste aspires to meet through five Key Objectives and a series of related strategies.

2.1.2 The key objectives in the 2030 Strategic Plan are:

1. Deliver cost-effective and efficient services facilities
2. Maximise source separation and recycling
3. Provide leading and innovative behaviour change and education
4. Help develop a local circular economy
5. Provide leadership

2.1.3 As part of progressing the objective of *'deliver cost effective and efficient services'* the following strategies would be specifically advanced if the City of Unley was to become a Member Council.

"1.1 Attract additional services and/or new councils where further economies of-scale can be achieved.

1.3 Partner with other councils and organisations to achieve greater synergies and economies of scale in service delivery."

2.1.4 Admitting Unley as a new Member Council is consistent with the East Waste Strategic Plan.

2.2 Annual Plan

2.2.1 The 2021/22 Annual Plan is the first Annual Plan which has been developed under the East Waste 2030 Strategic Plan.

2.2.2 Consistent with the 2030 Strategic Plan one of the identified key activities in the Annual Plan is to 'Investigate opportunities outside of existing Member Councils' which is defined as 'actively pursue service provision to non-member Councils where value to existing Members can be realised'.

2.2.3 The conforming and non-conforming responses to the Unley tender process were submitted on the basis that each option added financial and non-financial value to the current Member Councils of East Waste.

2.2.4 There is a range of non-financial benefits which could be added to East Waste and the Member Councils by admitting the Unley as a Member Council, these benefits include:

2.2.4.1 Building on the partnerships and collaboration ethos that exists between eastern region councils and the strong history of working together to achieve better outcomes for the community.

2.2.4.2 Achieving greater collaboration and consistency in kerbside waste services across metropolitan Adelaide, which has a positive impact on waste education and behavioural change.

2.2.4.3 Expanding the reach of East Waste's education and behavioural change programs to households and businesses in the City of Unley would support East Waste's goal of reducing contamination rates and ultimately reducing costs.

2.2.4.4 With one additional member, East Waste's membership would comprise over 40% of South Australia's metropolitan councils, strengthening its voice in advocating for positive changes such as a 'choice and flexibility' model.

2.2.4.5 Expanding East Waste's membership base and market share increases its attractiveness as a partner in grant programs, pilot programs and research projects.

2.2.4.6 Having previously serviced Unley until 2014, East Waste already has a high degree of operational knowledge of Unley's service delivery requirements, demographics and geography.

2.2.5 Admitting Unley as a new Member Council is highly likely to realise non-financial value to the Member Councils and is consistent with the East Waste 2021-22 Annual Plan.

3. FINANCIAL IMPACTS

3.1 City of Unley Tender

3.1.1 From a financial perspective East Waste operates almost entirely on a Common Fleet Costing methodology, whereby Member Councils are charged directly against the time it takes to undertake their services. This is achieved through the utilisation of a specialised cloud-based, real-time GPS based system, supported by detailed reporting capabilities. As a result of this minor variations in the Common Fleet percentages (and therefore apportioning of Common Fleet costs) occur from year to year in response to efficiencies and increased collection costs (e.g. increase in developments, Fire Ban days and events).

3.1.2 Specific costs (and rebates where applicable) such as waste disposal and resource processing are directly on-charged, to Member Councils. The time taken to provide services is recorded on a calendar year basis.

3.1.3 In preparing the Unley tender response East Waste estimated the additional costs that would be incurred or increased from the delivery of the services to Unley (excluding those costs that are directly on-charged e.g. Processing, bin supply etc.).

3.1.4 Consistent with the East Waste Long Term Financial Plan (LTFP) the cost of purchasing fleet to service Unley will be funded by external borrowings from the Local Government Finance Authority.

3.1.5 In addition to the costs identified above we expect that there would be some incremental additional costs associated with increased governance obligations and some one-off costs for the admission of a new Member Council. We do not consider these to be material in the context of the on-going financial benefits derived from the admission of Unley as a new Member.

3.2 FY2023 Budget Impact on Common Fleet and Member Council Costs

3.2.1 The FY2023 budget contains income provisions of $436,652 which are deducted from the amount that is recovered from Member Councils under the Common Fleet charging methodology.

3.2.2 In addition to the Common Fleet charge paid by Member Councils, they contribute equally to recover the budgeted "Administration Charge". In FY2023 the Administration Charge is budgeted at $249,184 or $35,598 per Member Council.

3.2.3 The addition of a new Member Council would result in the Administration Charge reducing by $4,450 per existing Member Council as Unley would be required to contribute to the recovery of this cost.

3.2.4 Member Councils also pay 1% of the Common Fleet charge as a Common Fleet Cost Surplus charge. Unley would also contribute to the Common Fleet Surplus charge.

3.2.5 Table One shows for each Member Council (and Unley) the change in the Common Fleet percentage and amount collected through the Common Fleet Charge, along with the change in contribution towards the Administration Charge.

Table One: FY2023 Common Fleet %, Charge and Administration Charge Comparison

Council	FY2023 Budget excluding Unley			FY2023 Budget including Unley			Financial Benefit
	CFC %	CFC Allocation	Admin Charge	CFC %	CFC Allocation	Admin Charge	
Adelaide Hills	21.05%	$ 2,815,519	$ 35,598	17.94%	$ 2,694,227	$ 31,148	$ 125,742
City of Burnside	18.04%	$ 2,413,210	$ 35,598	15.38%	$ 2,309,249	$ 31,148	$ 108,411
Campbelltown City Council	18.15%	$ 2,427,670	$ 35,598	15.47%	$ 2,323,086	$ 31,148	$ 109,034
City of Mitcham	14.51%	$ 1,940,580	$ 35,598	12.37%	$ 1,856,980	$ 31,148	$ 88,050
City of NPSP	16.96%	$ 2,268,905	$ 35,598	14.46%	$ 2,171,161	$ 31,148	$ 102,194
City of Prospect	7.88%	$ 1,054,338	$ 35,598	6.72%	$ 1,008,917	$ 31,148	$ 49,871
Town of Walkerville	3.41%	$ 456,068	$ 35,598	2.91%	$ 436,420	$ 31,148	$ 24,097
City of Unley		$ -	$ -	14.75%	$ 2,215,065	$ 31,148	
TOTAL	100.00%	$ 13,376,289	$ 249,184	100%	$ 15,015,105	$ 249,184	$ 607,398

3.2.6 Based on the FY2023 draft budget the cost to Unley costs is forecast to be 7.01% higher than the non-conforming tendered price.

3.2.7 In addition, costs totalling $138,000 have been budgeted above the tendered price for bin tagging, green organics disposal fees, hard waste disposal fees, fuel, bin maintenance and repairs, recycle processing costs and employee costs. These revised cost forecasts are based on updated assumptions in relation to contractual and market factors that will affect the cost of providing waste services. There has been no change to the service levels or service hours included in the Unley tender.

3.2.8 These revised costs would be directly recovered from Unley in accordance with East Waste's Common Fleet pricing model and will need to be considered by Unley as part of its financial due diligence.

3.2.9 Based on the total hours estimated for the delivery of services to all Member Councils, with the addition of Unley, the adjusted Common Fleet percentages are shown in Table One along with the reduction in the costs that would be recovered from Member Councils.

3.2.10 Based on East Waste's FY2023 draft budget, the addition of Unley as a Member Council is forecast to provide a benefit of circa $0.607 million to Member Councils in reduced Common Fleet costs and shared recovery of the Administration Charge for that reporting period. This benefit arises from Unley sharing in the Indirect Costs of operating the subsidiary.

3.2.11 **This forecast benefit takes into account increased operating costs such as fuel prices, depreciation due to depot upgrades and employee costs under the new Enterprise Agreement that will apply to East Waste**.

3.2.12 There is always execution risk in on-boarding a new client (or Member Council) which may result in unforeseen expenditure and it may be prudent to provide a financial provision to cover this in FY2023, notwithstanding this the challenge to be given to management is to deliver the identified financial benefits for all Member Councils.

4. JOINING FEE

4.1.1 Under the Charter, consideration must be given to whether an Incoming Council is required to pay a joining fee or make any other payments, as determined by the Board.

4.1.2 In determining whether a joining fee ought to be paid or not a key consideration is the estimated impact on the equity position of Member Councils by admitting an Incoming Council.

4.1.3 Under the Charter the Member Councils' shares in the Authority are equal.

4.1.4 Therefore, each of the seven Member Councils has an equity share in East Waste of approximately 14%. The total equity position reported on 30 June 2021 was $1,219,000. Shared equally between seven members, each Member Council holds approximate equity of $174,000.

4.1.5 Introducing an eighth equal shareholder would reduce each equity share to 12.5% and the approximate equity position of each member would reduce by $22,000 to $152,000.

4.1.6 The total forecast benefit delivered to current Member Councils in year one is circa $0.607 million through reduced waste management costs. As a whole, the reduction in the equity position of Member Councils is significantly outweighed by the forecast savings in year one.

4.1.7 It should be noted that the distribution of equity only takes real effect upon the exit of a Member Council or upon the winding up of the Authority, at which time an accurate determination of each equity share would be made. Neither of those outcomes are currently within scope.

4.1.8 It was on the basis of a total net financial benefit to Member Councils that East Waste resolved not to impose a joining fee on the City of Prospect when it applied to become an Incoming Council in 2017. That same basis can be applied in relation to the City of Unley's application.

4.1.9 Another consideration in relation to applying a joining fee or any other payments is the recovery of direct costs associated with the admission of an Incoming Council. These costs may include legal fees and Government Gazette publishing costs.

4.1.10 The admission of a new Member would require an amendment to the Charter and the costs associated with the Gazettal of such an amendment are in the order of $10,000, together with any external costs incurred in undertaking the review.

4.1.11 Given that the Charter is (past) due for a review in any event and any application from the City of Unley has arisen from a direct approach by East Waste (through a tender process), it is recommended that these costs be absorbed by East Waste.

4.1.12 On the basis outlined above, a joining fee is not recommended should the City of Unley be admitted as an Incoming Council.

5. REGULATORY ISSUES

5.1 National Competition Policy

5.1.1 In 1995, following an Independent Committee of Inquiry into a National Competition Policy (Hilmer Report), leaders of governments signed the three agreements (Competition Principles Agreement, Conduct Code Agreement, Agreement to implement the National Competition Policy and Related Reforms) in which they committed to a program of economic reforms. This program was known as the National Competition Policy.

5.1.2 Amongst the National Competition Policy reforms was the introduction of 'competitive neutrality' so that privately-owned businesses can compete on an equal footing with those owned by Government. Competitive neutrality seeks to enable fair competition between local government (including subsidiaries of local government) and private sector businesses, by neutralising any advantages or disadvantages that the government businesses may experience, simply as a result of government ownership.

5.1.3 National Competition Policy only requires that competitive neutrality be introduced for 'significant' government businesses and, where the benefits of competitive neutrality outweigh the costs.

5.1.4 Whether a business is deemed to be significant or not depends on the size of the business and its importance in the particular market.

5.1.5 The Australian Competition & Consumer Commission (ACCC) is the competition regulator in Australia and is the body which would determine whether admitting the City of Unley as a member of East Waste would lessen competition to the extent that such conduct would or might constitute a cartel provision within the meaning of Division 1 of Part IV of the Competition and Consumer Act 2010 Act and may substantially lessen competition within the meaning of section 45 of the Competition and Consumer Act 2010.

5.1.6 In 2018 the ACCC provided a determination that enabled Adelaide City Council and the Cities of Charles Sturt, Marion and Port Adelaide Enfield (the Participating Councils) to jointly procure the collection of domestic waste, recyclables and organics through kerbside collection, including the supply and maintenance of mobile garbage bins.

5.1.7 The determination was based on a range of factors including that the Participating Councils considered that the proposed joint procurement will provide value for money, improve waste management and reduce waste, to achieve environmental and economic benefits for their communities. The ACCC was satisfied that these likely benefits to the public would outweigh the detriments to the public from the joint procurement.

5.1.8 In the event that the ACCC sought to examine whether admitting the City of Unley as a member of East Waste would lessen competition to the extent that such conduct would or might constitute a cartel provision, East Waste should be in a position to rely upon the arguments previously used by the Participating Councils.

5.2 Competitive Neutrality

5.2.1 Competitive neutrality requires that the prices charged by local government businesses should aim to recover the full costs of a business activity, including:

5.2.1.1 the direct costs of providing the service and an appropriate proportion of indirect costs;

5.2.1.2 all relevant taxes or tax equivalents;

5.2.1.3 a commercial level of interest payments; and

5.2.1.4 a commercial rate of return (over a reasonable period).

5.2.2 The prices charged by East Waste to the Member Councils reflect the following principles of competitive neutrality.

5.2.2.1 East Waste currently recovers the full direct cost of providing the services together with an appropriate portion of indirect costs (through the Common Fleet percentage).

5.2.2.2 Finance is obtained through the Local Government Finance Authority (LGFA) and interest is recovered from Member Councils (although we do note that the interest rates applied by the LGFA do not appear to have a similar margin as would be applied by private sector lenders to reflect a level of commercial risk).

5.2.3 Should the ACCC seek to determine that the principles of competitive neutrality should apply we would argue that the benefits of applying full competitive neutrality principles would not outweigh the costs of doing so.

6. GOVERNANCE ISSUES

6.1 Charter

6.1.1 East Waste is a regional subsidiary established under Section 43 of the Local Government Act 1999. It operates pursuant to a Charter that is adopted by Member Councils and approved by the Minister for Local Government.

6.1.2 Changes in the membership of East Waste over time are envisaged as the Charter makes specific provision for incoming or outgoing constituent councils.

6.1.3 All Member Councils are bound by the provisions of the Charter.

6.1.4 The non-conforming tender proposed that the City of Unley become a Member Council and equal shareholder of East Waste.

6.1.5 If admitted on these terms, the City of Unley would also be bound by the provisions of the Charter and enjoy the same rights as other Member Councils.

6.1.6 The City of Unley would be required to appoint a Director and Deputy Director to the Board.

6.1.7 This would bring the total membership of the Board to nine Directors, which is a size that supports sound decision making and does not conflict with the principles of good corporate governance.

6.1.8 The Act provides that each member of a regional subsidiary board present at a meeting has one vote. A decision is carried by the majority of the votes.

6.1.9 As the Act prohibits the Presiding Member (Chair) of a regional subsidiary board from having a second or casting vote, increasing the size of the Board to nine members addresses the existing anomaly where it is possible that the Board may be unable to reach a majority decision.

6.1.10 Increasing the number of Board positions from eight to nine would require a minor consequential change to Clause 21.1 of the Charter.

6.1.11 The definition of 'Constituent Council' in Clause 1 of the Charter would need to be amended to include the 'City of Unley'.

6.1.12 The changes required to the Charter to formalise the admittance of the City of Unley would be minor and would not create disruption to the effective governance of the subsidiary. There are no material governance risks to East Waste or its Member Council arising from this action.

6.1.13 These minor amendments can be progressed as a standalone action, or East Waste may consider incorporating these amendments into the period review of the Charter, which is now (past) due.

6.2 Member Council considerations

6.2.1 The admittance of an Incoming Council must be a unanimous decision of the Member Councils. The resolutions of each Member Council must be passed in the same terms, meaning that one or more council cannot impose conditions on the admittance of an Incoming Council unless agreed by all Member Councils.

6.2.2 The processes required by Member Councils to facilitate these changes are not outside of the ordinary operations of a Councils and are not complex or resource intensive to progress.

6.2.3 Having regard to Clause 14.2 of the Charter, it is recommended that East Waste provide the City of Unley with a detailed Due Diligence report prior to a formal application being received which documents all relevant decisions or steps taken by East Waste in relation to existing or future debts and liabilities for which the Constituent Councils are jointly and severally liable.

6.2.4 In accordance with the Act, the approval of the Minister is required before a Council can become a constituent member of a regional subsidiary. This approval should be sought after all other relevant requirements of the Charter (particularly the unanimous approval of the Member Councils) have been satisfied.

7. RISK MANAGEMENT

7.1 Risk Analysis

7.1.1 East Waste has adopted a Risk Management Policy.

7.1.2 East Waste has also adopted a Risk Management Framework that sets out a process for assessing, treating and monitoring identified risks.

7.1.3 The Risk Management Framework provides that Strategic and Business Planning must adequately consider the risks facing East Waste in setting and pursuing its objectives and the effectiveness of systems that are in place to manage and communicate those risks.

7.1.4 Under the adopted Risk Management Framework, the East Waste Board is expected to:

a) give adequate consideration to risks when setting East Waste's objectives;
b) understand the risks facing East Waste in pursuit of its objectives;
c) oversee the effectiveness of systems implemented by the organisation to manage risk;
d) accept only those risks that are appropriate in the context of East Waste's objectives; and
e) consider information about such risks and make sure they are properly communicated to the appropriate stakeholder or governing body.

7.1.5 As part of the process of submitting a non-conforming tender East Waste undertook a high-level risk analysis in accordance with the Policy and Framework.

7.1.6 Details of the risk analysis undertaken by East Waste should be incorporated into reports to the East Waste Board and Committees, and in communications with Member Councils about the non-conforming tender.

7.1.7 Member Councils should also consider their own risk policies and frameworks in determining whether or not to give their support to the admission of the City of Unley as an Incoming Council.

7.1.8 The risk analysis undertaken by East Waste determined that the proposal outlined in the non-conforming tender does not materially alter the key external risks identified in East Waste's Risk Register:

7.1.8.1 damage to brand and image,

7.1.8.2 regulation / legislative changes,

7.1.8.3 growing competition in waste collection,

7.1.8.4 political uncertainty,

7.1.8.5 market environment changes, and

7.1.8.6 technology innovation and evolution.

7.1.9 These macro level risks are likely to retain the same profile and require the same controls regardless of whether the City of Unley is admitted as an incoming Council.

7.1.10 The risk analysis identified the following potential financial risks:

7.1.10.1 The capital cost of the purchase of fleet trucks and equipment is understated.

7.1.10.2 There is a material variation between budgeted and actual costs.

7.1.10.3 The hours required to deliver the services for Unley have been materially understated.

7.1.10.4 Unable to deliver services in the timeframe planned due to delays in the delivery of fleet trucks delivery.

7.1.10.5 Additional resources are required to deliver the service e.g. greater impact on customer service staff than expected

7.1.10.6 Labour shortages (the ability to secure drivers)

7.1.10.7 Operational risks of delivery

7.2 Risk Controls

7.2.1 Identified risks would be treated and monitored in accordance with the East Waste Risk Management Framework and current risk management practices. No risks have been identified through the Risk Analysis that sit outside of the risk tolerance levels adopted by East Waste.

7.2.2 The financial risks are controlled by the systems and procedures that East Waste has in place for the admittance of an Incoming Council in its Charter, such as the application being supported by *a thorough, realistic, independent, and diligent Business Case analysis.*

7.2.3 Financial risks of understated capital costs or hours required to deliver services are mitigated by East Waste's 'full cost recovery only' pricing model for Member Councils outlined in the non-conforming tender. Common Fleet percentages are adjusted on an annual basis to reflect the actual costs of the delivery of services and share of the overheads, mitigating the risk that Member Councils would be subsidising the costs of service delivery to another council.

7.2.4 While some movement in costs at the margins is to be expected due to market factors (fuel costs etc), the likelihood that the costs to Member Councils would be impacted to a point where there is a no longer a net positive financial impact of admitting the City of Unley is assessed are being 'Low' on the adopted East Waste risk matrix.

7.2.5 The admittance of an Incoming Council creates some risk of misalignment of organisational values, priorities and expectations. In the case of Unley, this risk is deemed to be 'Low' given there is a history of positive collaboration and engagement with most Member Councils through the Eastern Region Alliance.

7.2.6 An Incoming Council may only be admitted with the approval of the Minister for Local Government.

7.2.6.1 It is important that an application to the Minister be made in the correct form once all other requirements of the Charter have been satisfied.

7.2.6.2 We note that the proposal to admit an Incoming Council aligns with the *Principles to be observed by council* in section 8 of the Act which promote collaboration and resource sharing.

7.2.7 There is some risk that the approval to admit an Incoming Council may be delayed beyond the timeframe for commencing services which has the potential to produce result in a short-term service disruption.

7.2.7.1 This risk can be mitigated by a short-term contract to provide services to Unley and participation on the Board in an observer role until formal approval to join East Waste is obtained.

LOCAL GOVERNMENT ACT 1999

EASTERN WASTE MANAGEMENT AUTHORITY

Charter

PART 1—PRELIMINARY

1. DICTIONARY

In this Charter:

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

Act means Local Government Act 1999.

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

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

Board means the board of management of the Authority.

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

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

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

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

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

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

Core Activity means activities associated with the collection, recycling and/or disposal of waste ~~produced~~along with community behaviour change and ancillary services. ~~within the area of one or more of the Constituent Councils~~.

Deputy Director means a deputy for a Director.

Director means at any time a member of the Board.

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

Gazette means the South Australian Government Gazette.

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

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

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

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

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

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

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

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

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

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

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

2. INTERPRETATION

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

3. ABOUT THIS CHARTER

3.1 This Charter is the charter of the Authority.

3.2 This Charter binds the Authority and each Constituent Council.

3.3 Despite any other provision in this Charter:

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

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

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

3.4 This Charter may not be amended except as all the Constituent Councils may agree by each passing a resolution in the same terms. An amendment is not effective unless and until published in the *Gazette*.

3.5 The Constituent Councils may review this Charter at any time,but must in any event review this Charter at least once in every four years.

~~3.6 Notwithstanding Clause 3.5, the first review of this Charter is to be completed two years from the date of Gazettal of the Charter.~~

PART 2—AUTHORITY

4. ABOUT THE AUTHORITY

The Authority is an Authority established under the Act.

5. NAME OF THE AUTHORITY

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

6. CORPORATE STATUS

The Authority is a body corporate.

PART 3—FUNCTIONS AND POWERS

7. PROPERTY

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

8. AREA OF INTEREST

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

9. PURPOSE AND FUNCTIONS

9.1 The Authority is established by the Constituent Councils for the purpose of the collection and disposal of Waste, primarily within the areas of the Constituent Councils and has the following functions in this regard:

9.1.1 to predominantly operate or obtain services for the collection of Waste on behalf of Constituent Councils and/or other approved Councils;

9.1.2 to provide waste management services whether in or (so far as the Act allows) outside the area of any of the Constituent Councils, including waste collection, recycling of organic and inorganic materials, disposal of waste along with community behaviour change and ancillary services.;

9.1.3 to undertake management and collection of Waste (in accordance with regulatory approvals) and kerbside materials recovery, on behalf of Constituent Councils (and/or other approved councils) in an environmentally responsible, effective, efficient, economic and competitive manner;

9.2 The following functions may be undertaken by the Authority but only where required or directed by one or more Constituent Councils and charged directly to the Council or Councils so requiring or directing:

9.2.1 to promote the minimisation of Waste in the areas of the Constituent Councils;

9.2.2 to promote the recycling of recyclable materials in the areas of the Constituent Councils

9.2.3 to undertake Waste community education and behaviour change programs on behalf of the Constituent Councils;

9.2.4 on behalf of the Constituent Councils or on its own behalf, to liaise with other councils, the State of South Australia and the Commonwealth of Australia and their respective instrumentalities for matters relating to Waste management in the common interest of the Constituent Councils;

9.2.5 on behalf of the Constituent Councils, provide a representative to any statutory board or statutory committee concerned with waste management that allows two or more of the Constituent Councils to nominate a representative;

9.2.6 on behalf of the Constituent Councils or on its own behalf, to make application for grants and other funding from the State of South Australia and the Commonwealth of Australia and their respective instrumentalities for the purposes of the Authority;

9.2.7 to keep Constituent Councils abreast of any emerging opportunities/trends/issues in waste management;

9.2.8 to undertake activities which result in a beneficial use of Waste on behalf of the Constituent Councils;

9.2.9 to conduct all activities in a manner which complies with all regulatory requirements and minimises risks to the Constituent Councils;

9.2.10 on behalf of the Constituent Councils or on its own behalf, to liaise with relevant State Government agencies such as Green Industries SA ~~(successor to Zero Waste SA)~~, Environment Protection Authority (or equivalent successor organisations), taking into account its approved Business Plan;

9.2.11 on behalf of the Constituent Councils, to perform and/or monitor the effectiveness and application of funding arrangements agreed by the Constituent Councils for waste management;

9.2.12 to provide a forum for discussion and consideration of topics relating to the Constituent Councils' responsibilities to manage waste particularly in the areas of the Constituent Councils and the implications of that management beyond the areas of the Constituent Councils.

10. POWERS

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

10.1 become a member of and/or co-operate with any organisation with complementary functions;

10.2 receive gifts of money or property from any person;

10.3 make payable by a new Constituent Council any joining fee;

10.4 carry out its Annual Plan and Budget;

10.5 carry out its Business Plan and Non-core Plans;

10.6 make payable by Constituent Councils contributions to the Authority in proportion to their Core Shares;

10.7 employ and dismiss a Chief Executive Officer;

10.8 contract with any person;

10.9 acquire or dispose of any real or personal property in accordance with the Business Plan or otherwise with a Unanimous Decision of the Constituent Councils;

10.10 operate an account or accounts with a bank or with the Local Government Finance Authority, or both;

10.11 borrow or raise money within the Borrowings Limit;

10.12 lend money in accordance with the Business Plan or pursuant to a Unanimous Decision of the Constituent Council;

10.13 insure against any risk;

10.14 enter into a partnership or joint venture with any person in accordance with the Business Plan or pursuant to a Unanimous Decision of the Constituent Councils;

10.15 pay any cost or expense of the establishment, operation, administration or winding up of the Authority;

10.16 compromise, compound, abandon or settle a debt or claim owed to the Authority;

10.17 waive a legal or equitable or statutory right;

10.18 refer a dispute between the Authority and any third party (other than a Constituent Council) to arbitration;

10.19 allocate receipts and expenditure between Core Activity and Non-core Activities and between each Non-core Activity;

10.20 where the same services/activities are not being provided equally to all Constituent Councils, to charge the differential costs of those services/activities directly to the benefiting Councils;

10.21 charge Constituent Councils the full costs incurred in the delivery of the services to them, -such costs being calculated on a user pays basis (including depreciation and other overheads for use of shared assets, and all other common expenses);

10.22 charge non-Constituent Councils a price, based on an estimate of costs incurred in providing the service plus a margin for profit and risk;

10.23 make any election for the purpose of any tax;

10.24 delegate the exercise of any of its functions or other powers (including the receipt and payment of money) to any person;

10.25 those powers given to trustees by law, equity or statute and not necessarily inconsistent with this Charter or the functions of the Authority;

10.26 pay to the Constituent Councils or accumulate as reserves for up to such period as the law allows any surplus funds;

10.27 such other powers as the Act or this Charter may confer upon the Authority;

10.28 all things incidental to the exercise of any other power of the Authority.

11. POWER OF DELEGATION

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

11.1 the power to impose charges;

11.2 the power to enter into transactions in excess of $50 000 unless authorised in an Annual Plan;

11.3 the power to borrow money or obtain any other form of financial accommodation unless authorised in an Annual Plan;

11.4 the power to approve expenditure of money on the works, services or operations of the Authority not set out in a Budget approved by the Authority or where required by this Charter approved by the Constituent Councils;

11.5 the power to approve the reimbursement of expenses or payment of allowances to members of the Board of Management;

11.6 the power to adopt a Budget;

11.7 the power to adopt an Annual Plan;

11.8 the power to adopt a Business Plan (or any component thereof);

11.9 the power to adopt or revise financial estimates and reports; and

11.10 the power to make any application or recommendation to the Minister.

12. GUIDING PRINCIPLES

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

PART 4—CONSTITUENT COUNCILS

13. CONSTITUENT COUNCILS MAY ACT INDEPENDENTLY

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

14. INCOMING CONSTITUENT COUNCILS

14.1 Any council may become a Constituent Council (an Incoming Constituent Council) if:

14.1.1 it makes written application (in a form approved by the Board) to become a Constituent Council and agrees to be bound by this Charter (noting that Shares will change);

14.1.2 its application is supported by a thorough, realistic, independent, and diligent Business Case analysis;

14.1.3 it pays any joining fee or other payment as may be required by the Board;

14.1.4 the Constituent Councils approve the application and revised Shares by Unanimous Decision; and

14.1.5 the Minister approves.

14.2 An Incoming Constituent Council:

14.2.1 is jointly and severally liable with the other Constituent Councils for the debts and liabilities of the Authority incurred before or after the date it becomes a Constituent Council, or as otherwise agreed;

14.2.2 is bound by a decision made or step taken by the Board in the affairs of the Authority before it became a Constituent Council to the extent such decision or step was recorded in minutes of the Board's meetings or otherwise notified to the Incoming Constituent Council before it made application to become a Constituent Council; and

14.2.3 upon becoming a Constituent Council has the Share agreed between the Incoming Constituent Council and the Constituent Councils.

15. OUTGOING CONSTITUENT COUNCILS

15.1 A Constituent Council may resign if and only if:

15.1.1 the Constituent Council gives at least twenty four (24) months' written notice of resignation to each Constituent Council, which notice is effective on the next 30 June on or after expiry of that period;

15.1.2 the Board by majority vote approves; and

15.1.3 the Minister approves.

15.2 A former Constituent Council remains liable to contribute to the debts and liabilities of the Authority incurred while it was a Constituent Council including by contributing to the depreciated value of any asset acquired during that time, and for a share of any future losses on contracts entered into whilst a Constituent Council.

15.3 A former Constituent Council:

15.3.1 is not entitled to any refund of contributions made;

15.3.2 relinquishes any beneficial interest in the assets of the Authority; and

15.3.3 remains bound by any separate contract in force between it and the Authority ~~and the former Constituent Council~~.

15.4 This Clause is to be read conjunctively with Clause 57 of this Charter.

16. NO TRANSFER OF MEMBERSHIP

Membership of the Authority is personal to the Constituent Council and is not transferable.

17. CONSTITUENT COUNCILS MAY DIRECT THE AUTHORITY

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

17.2 To be effective, a determination or direction or other decision of the Constituent Councils must be a Unanimous Decision and evidenced by either:

17.2.1 a minute signed by the chair of a meeting of authorised delegates of the Constituent Councils that at such meeting a decision was duly made by each delegate on behalf of their Constituent Council; or

17.2.2 a resolution in the same terms in favour of that decision passed individually by each of the Constituent Councils.

18. CONSTITUENT COUNCILS ARE GUARANTORS OF THE AUTHORITY

18.1 As a matter of record, Schedule 2, Clause 31 (1) of the Act is that liabilities incurred or assumed by the Authority are guaranteed by the Constituent Councils.

18.2 As between the Constituent Councils, they share in the liabilities of the Authority in proportion to their respective Share.

19. SPECIAL DECISIONS FOR THE AUTHORITY

Neither the Authority nor any person on its behalf may give effect to a Special Decision unless the Constituent Councils vote in favour of a resolution for the Special Decision by Absolute Majority.

For these purposes, a Special Decision means any of the following:

(a) adopt or vary a Business Plan;

(b) adopt or vary an Annual Plan;

(c) delegate the authority of the Board to any person other than the Chief Executive Officer;

(d) to any extent not provided for in a Business Plan or Annual Plan and Budget:

(i) call on Constituent Councils to contribute funds;

(ii) grant or vary a guarantee/indemnity of the obligations of another person;

(iii) apply for government funding;

(iv) obtain credit except in the ordinary course of the activities of the Authority;

(v) acquire (by purchase or finance lease) a capital asset;

(vi) dispose of a capital asset except at the end of its effective life;

(vii) take a lease or tenancy of any premises;

(viii) employ any employees.

The Authority must promptly give effect to Special Decision made in conformity with this Clause.

PART 5—DIRECTORS

20. QUALIFICATION OF DIRECTORS

A Director must be a natural person.

21. APPOINTMENT OF DIRECTORS

21.1 Subject to the provisions of Clauses 33.1 and 33.2 the Board shall consist of nine (9) ~~eight~~ Directors appointed as follows:

21.1.1 one person appointed by each Constituent Council which person may be an officer, employee, elected member of a Constituent Council or an independent person who will be appointed for a ~~two~~ three (3) year term; and

21.1.2 one independent person (who shall be the Chair) appointed jointly by Absolute Majority of the Constituent Councils for a ~~two~~ three (3) year term (and at the expiration of the term is eligible for re-appointment) who is not an officer, employee or elected member of a Constituent Council, but who has expertise in:

(a) corporate financial management and/or

(b) general management and/or

(c) waste management and/or

(d) transport fleet management and/or

(e) public sector governance and/or

(f) marketing and/or

(g) economics and/or

(h) environmental management.

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

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

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

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

22. REMOVAL OF DIRECTORS

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

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

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

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

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

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

22.4.3 breach of fiduciary duty to the Board;

22.4.4 breach of the duty of confidentiality to the Board;

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

22.4.6 any other behaviour which may discredit the Board.

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

22.5.1 dies;

22.5.2 is not reappointed;

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

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

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

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

22A. REMOVAL OF DEPUTY DIRECTORS

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

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

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

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

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

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

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

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

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

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

22A.4.1 dies;

22A.4.2 is not reappointed;

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

22A.4.4 becomes bankrupt or applies for the benefit of a law for the relief of insolvent debtors;

22A.4.5 was when appointed an elected member or employee of the Constituent Council who appointed them and ceases to be an elected member of employee of that Constituent Council; or

22A.4.6 was appointed by a Constituent Council, which ceases to be a Constituent Council.

23. REMUNERATION AND EXPENSES OF DIRECTORS

23.1 The Authority will only remunerate the Independent Director/Chair appointed under Clause 21.1.2.

23.2 The Board will determine the level of the remuneration (no matter how it is classified) of the Independent Director/Chair, by having regard to its Director/Chair Remuneration Policy.

23.3 The Authority can pay a Director's travelling and other expenses that are properly incurred in connection with the Authority's business and with the prior approval of the Board as recorded in minutes of Board meetings.

24. REGISTER OF INTERESTS

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

25. PROTECTION FROM LIABILITY

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

26. SAVING PROVISION

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

26.1 a vacancy or vacancies in the membership of the Board; or

26.2 a defect in the appointment of a Director or a Deputy Director.

PART 6—OTHER OFFICERS

27. CHAIR

27.1 At all times, the Authority must have a Chair, who will be the independent Director appointed under Clause 21.1.2.

27.2 The Chair's functions are:

27.2.1 to preside at all meetings of the Board;

27.2.2 to serve as an *ex officio* member and chair of all committees established by the Board;

27.2.3 to represent the Authority in relations with the media and the public generally; and

27.2.4 to exercise other functions as the Board determines.

28. DEPUTY CHAIR

28.1 At all times, the Authority must have a Deputy Chair, who must be a Director. ~~Board Member.~~

28.2 The Board appoints the Deputy Chair and may at any time remove from office the Deputy Chair and appoint a replacement Deputy Chair.

28.3 The Deputy Chair's functions are:

28.3.1 to assist the Chair; and

28.3.2 to exercise the Chair's functions whenever the Chair is unable to do so.

28.4 A person ceases to be Deputy Chair if they cease to be a Director~~Board Member~~.

29. CHIEF EXECUTIVE OFFICER

29.1 At all times so far as practicable, the Authority must have a Chief Executive Officer.

29.2 At any time, the Board may give a new title to the position of Chief Executive Officer in which case this Charter is taken to refer to the same position under a new title.

29.3 The Board shall appoint a Chief Executive Officer on a fixed term performance-based employment contract, which does not exceed five years in duration.

29.4 The Board may at the end of the contract term, enter into a new contract not exceeding five years in duration with the same person.

29.5 The Board may revoke or vary an appointment of a Chief Executive Officer, subject to any agreement made between the Chief Executive Officer and the Authority.

29.6 In the absence of the Chief Executive Officer for any period exceeding one week, the Chief Executive Officer shall appoint a suitable person as Acting Chief Executive Officer. If the Chief Executive Officer does not make or is incapable of making such an appointment, a suitable person must be appointed by the Board.

29.7 The Board delegates responsibility for day to day management of the Authority to the Chief Executive Officer, who will ensure that sound business, risk minimisation, financial and human resource management practices are applied in the efficient and effective management of the operations of the Authority.

29.8 The functions of the Chief Executive Officer shall include:

29.8.1 ensuring that the decisions of the Board are implemented in a timely and efficient manner;

29.8.2 providing information to assist the Board to assess the Authority's performance against its Business Plan;

29.8.3 appointing, managing, suspending and dismissing other employees of the Authority;

29.8.4 providing advice and reports to the Board on the exercise and performance of its powers and functions under this Charter or any Act;

29.8.5 co-ordinating and initiating proposals for consideration of the Board including but not limited to continuing improvement of the operations of the Authority;

29.8.6 ensuring that the assets and resources of the Authority are properly managed and maintained;

29.8.7 ensuring that records required under the Act or any other legislation are properly kept and maintained;

29.8.8 exercising, performing or discharging other powers, functions or duties conferred on the Chief Executive Officer by or under the Act or any other Act, and performing other functions lawfully directed by the Board, and achieving financial outcomes in accordance with adopted plans and budgets.

29.8.9 issuing notices calling Board meetings;

29.8.10 attending all Board meetings and keeping correct minutes of the proceedings unless excluded by resolution of the Board;

29.8.11 managing all other employees of the Authority;

29.8.12 receiving and answering correspondence and notices to the Authority;

29.8.13 keeping all documents and records belonging to the Authority;

29.8.14 supervising the handling of money by or for the Authority and the keeping of financial records;

29.8.15 issuing receipts for moneys received and keep a correct account of all receipts and expenditure;

29.8.16 operating the Authority's bank account (including sign cheques and other negotiable instruments and make payments over the Internet within the delegations to the position) together with one other signatory appointed by the Board. Unless the Board determines otherwise, that another person must be the Chair;

29.8.17 having custody and safekeeping of the records of the Authority;

29.8.18 preparing draft Annual and Business Plans for consideration of the Board;

29.8.19 monitoring the financial performance of the Authority against an adopted Annual and Business Plan and promptly reporting to the Board any material discrepancies known or anticipated;

29.8.20 preparing such statements, reports, returns or other written information as the Act or any law requires the Authority to lodge with government;

29.8.21 preparing draft financial statements; and

29.8.22 such other functions as the Board may vest in the Chief Executive Officer.

29.9 The Board may delegate to the Chief Executive Officer any of the powers that the Board can exercise where those powers are not restricted from delegation by the Act or this Charter, noting that:

29.9.1 the Chief Executive Officer may delegate or sub-delegate to an employee of the Authority or a committee comprising employees of the Authority, any power or function vested in the Chief Executive Officer. Such delegation or sub-delegation may be subject to conditions or limitations as determined by the Chief Executive Officer;

29.9.2 where a power or function is delegated to an employee, the employee is responsible to the Chief Executive Officer for the efficient and effective exercise or performanceof that power or function; and

29.9.3 a written record of delegations and sub-delegations must be kept by the Chief Executive Officer at all times.

29.10 The Chief Executive Officer enjoys functions and responsibilities set out at Section 99 (1) *(a)*, *(b)*, *(c)*, *(d)*, *(e)* and *(h)* and 103 of the Act as if the Authority were a council and the Chief Executive Officer were a chief executive officer of a council.

29.11 The Chief Executive Officer may establish an Operations Assistance Committee consisting of one appropriately qualified senior officer from each Constituent Council ~~and this Committee will:~~

~~29.11.1 advise and assist the Chief Executive Officer in operations matters;~~

~~29.11.2 report to the Board via the Chief Executive Officer;~~

~~29.11.3 meet at least four times in each calendar year;~~

~~29.11.4 be chaired by the Chief Executive Officer; and~~

29.11.1 ~~have its terms of reference written by the Chief Executive Officer.~~

29.12 The Chief Executive Officer will, at least annually, convene a meeting to which each of the Mayors and CEO of each Constituent Council is invited, at a venue determined by the Chief Executive Officer and notified to the Constituent Councils at least fourteen (14) days prior to the date of the meeting.

30. AUDITOR

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

PART 7—AUDIT COMMITTEE

31. AUDIT COMMITTEE

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

PART 8—STAFF

32. STAFF

32.1 In addition to a Chief Executive Officer, the Authority may employ other staff subject to the Board making appropriate financial provision.

32.2 The Board and a Constituent Council may arrange for that Constituent Council to make available its staff in connection with the Authority's affairs for such remuneration (if any) as those parties may agree.

PART 9—BOARD

33. BOARD

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

33.1 The Constituent Councils acknowledge and accept that the Directors will act and take decisions in the best interest of the Authority.

33.2 The Constituent Councils understand that each Director nominated by a Constituent Council will bring to discussion a perspective from the Council which nominated that Director but that shall not interfere with the obligations of Directors in respect of Clause 33.1.

34. BOARD'S POWERS

34.1 As a matter of record, Schedule 2, Clause 22 (1) of the Act is that the Board is responsible for the administration of the affairs of the Authority.

34.2 As a matter of record, Schedule 2, Clause 22 (3) of the Act is that anything done by the Board in the administration of the Authority's affairs is binding on the Authority.

34.3 The Board may exercise all the powers of the Authority except any powers that the Act or this Charter requires the Constituent Councils to exercise.

34.4 As a matter of record, Schedule 2, Clause 36 (1) of the Act authorises the Board to delegate powers or functions conferred under this or another Act.

34.4.1 A delegation of powers by the Board:

(a) may authorise the delegate to sub-delegate all or any of the powers vested in the delegate;

(b) is concurrent with the exercise by the Board of those powers;

(c) is subject to any specified conditions and limitations; and

(d) is revocable at will.

35. BOARD MEETINGS

35.1 Subject to Schedule 2, Clause 21 of the Act, to a direction of the Constituent Councils and to the other provisions of this Charter.

35.1.1 the Board must determine its own procedures for meetings, which must be fair and contribute to free and open decision making;

35.1.2 the Board must set out the adopted meeting procedures in a meeting procedure code of practice which will be available to the public for inspection (without charge) and by way of a copy (on payment of a fee fixed by the Board); and

35.1.3 the code of practice may be reviewed by the Board at any time but must be reviewed at least once in every three years.

35.2 An ordinary meeting of the Board must be held at least every three (3) calendar months.

35.3 Ordinary meeting of the Board must take place at such times and places as may be fixed by the Board or absent any decision of the Board the Chief Executive Officer of the Authority. Meetings shall not be held before 5 p.m. unless the Board resolves otherwise by resolution supported unanimously by all Directors~~Board Members~~.

35.4 An ordinary meeting of the Board will constitute an ordinary meeting of the Authority. The Board shall administer the business of the ordinary meeting.

35.5 Notice of ordinary meetings of the Board must be given by the Chief Executive Officer to each Director ~~Board Member~~ and to each Constituent Council not less than three (3) clear days prior to the holding of the meeting and shall be accompanied by the agenda for the meeting and any written reports.

35.6 The Chair or any two Directors may call a special meeting of the Board.

35.7 A special meeting of the Board must be held at a reasonable time and if the meeting is to be held in person, at a reasonable place.

35.8 Unless all Directors entitled to vote at the meeting agree otherwise, the persons calling a special Board meeting must give to the Chief Executive Officer a notice of meeting that:

35.8.1 sets out the place, date and time for the meeting;

35.8.2 states the general nature of the business of the meeting;

35.8.3 is accompanied by relevant information so far as reasonably available (if not already given to the Directors); and

35.8.4 is provided at least one clear business day before the special meeting (or such other period as all the Directors in office may as a matter of general policy determine otherwise).

35.9 A notice of special meeting provided to Directors by the Chief Executive Officer will at the same time be placed on public display at the principal office of the Authority and of each Constituent Council.

35.10 As a matter of record, Schedule 2, Clause 21 (5) of the Act permits a virtual Board meeting ~~by telephone or videoconference~~.

35.10.1 For the purposes of this subclause, the contemporary linking together by telephone, audio-visual or other instantaneous means ('telecommunications meeting') of a number of the Directors provided that at least a quorum is present, is deemed to constitute a meeting of the Board. Each of the Directors taking part in the meeting, must at all times during the telecommunications meeting be able to hear and be heard by each of the other Directors present. At the commencement of the meeting, each Director must announce his/her presence to all other Directors taking part in the meeting. A Director must not leave a telecommunications meeting by disconnecting his/her telephone, audio visual or other communication equipment, unless that Director has previously notified the chair of the meeting.

35.11 As a matter of record, Schedule 2, Clause 21 (6) of the Act permits a decision of the Board to be made in writing and not at a meeting.

35.11.1 A proposed resolution in writing and given to all Directors in accordance with proceedings determined by the Board will be a valid decision of the Board where a simple majority of Directors vote in favour of the resolution by signing and returning the resolution to the Chief Executive Officer or otherwise giving written notice of their consent and setting out the terms of the resolution to the Chief Executive Officer. The resolution shall thereupon be as valid and effectual as if it had been passed at the meeting of the Board duly convened and held.

35.12 Chapter 6, Parts 3 and 4 (public access to meetings and minutes) of the Act (to the extent that Part 4 is not inconsistent with this Charter) apply to Board meetings as if the Authority were a council and the Directors were members of a council.

35.13 Unless the Directors determine otherwise, the quorum for a Board meeting is a number ascertained by dividing the total number of members of the committee by two, ignoring any fraction resulting from the division and adding one.

35.14 At any time, the Board may agree to invite a person to attend a Board meeting as an observer or adviser.

35.15 As a matter of record, Schedule 2, Clauses 21 (4) (one vote per Director, no casting vote) and 21 (3) (majority vote) of the Act govern voting at a Board meeting.

35.16 As a matter of record, Schedule 2, Clause 21 (11) of the Act obliges the Board to keep minutes of its proceedings. All minutes must be prepared and distributed to both Directors and also to Constituent Councils within seven (7) business days of the meeting to which they relate.

PART 10—COMPETITIVE NEUTRALITY

36. COMPETITIVE NEUTRALITY

36.1 For the purposes of Schedule 2, Clause 32 of the Act, the Authority is not involved in a significant business activity in undertaking its Core Activity.

36.2 In respect of any Non-core Activity that is a significant business activity, the Authority must at all times have current a National Competition Policy Statement in relation to competitive neutrality which it will adhere to in undertaking that Non- core Activity.

PART 11—GOVERNANCE

37. DIRECTOR'S CONFLICT OF INTEREST

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

38. DIRECTOR'S DUTIES OF CARE

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

39. BOARD POLICIES AND CODES

39.1 The Authority must, in consultation with the Constituent Councils, prepare and adopt and thereafter keep under review policies on:

39.1.1 procedures for meetings of the Board (in accordance with Clause 35.1 of this Charter);

39.1.2 contracts and tenders, as would conform to Section 49 of the Act;

39.1.3 public consultation, as would conform to Section 50 of the Act.

39.1.4 governance including as concerns:

(a) the operation of any account with a bank or Local Government Finance Authority;

(b) human resource management;

(c) improper assistance to a prospective contract party;

(d) improper offering of inducements to Directors or to staff of the Authority;

(e) improper lobbying of Directors or staff of the Authority;

39.1.5 occupational health and safety;

39.1.6 protection of the environment.

39.2 To the extent it is able, the Board must ensure that such policies as above are complied with in the affairs of the Authority.

39.3 The Board must prepare and adopt within six months after the Gazettal of this Charter, a code of conduct to be observed by Directors.

40. BOARD DUTIES TO CONSTITUENT COUNCILS

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

40.1 that the Authority observes all plans, targets, structures, systems and practices required or applied to the Authority by the Constituent Councils;

40.2 that all information furnished to a Constituent Council is accurate; and

40.3 that the Constituent Councils are advised, as soon as practicable, of any material development that affects the financial or operating capacity of the Authority or gives rise to the expectation that the Authority may not be able to meet its debts as and when they fall due.

41. BOARD DUTIES TO THE AUTHORITY

The Board must ensure:

41.1 that the Authority acts in accordance with applicable laws, mandatory codes of practice, this Charter, Business Plan, Annual Plan and achieves the financial outcomes projected in its Budget;

41.2 that the Authority acts ethically and with integrity;

41.3 that the activities of the Authority are conducted efficiently and effectively and that any assets of the Authority are properly managed and maintained; and

41.4 that, subject to any overriding duty of confidence, the affairs of the Authority are undertaken in an open and transparent manner.

PART 12—BUSINESS PLANS

42. BUSINESS PLANS

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

43. ABOUT A BUSINESS PLAN

43.1 The Board must prepare at least a ten (10)-year Business Plan for the region, in a collaborative manner with Constituent Councils which cannot be in conflict with this Charter.

43.2 The Board must also prepare a ten (10) year Long Term Financial Plan (which, must include principles detailing the actual distribution of overheads between the Constituent Councils and any other matter required by the Constituent Councils or determined by the Board to be included therein) and an Asset Management Plan.

43.3 The Long Term Financial and Asset Management Plans form part of the Business Plan.

43.4 In preparing and when reviewing a Business Plan, the Board must at a minimum have regard to the following:

43.4.1 any State Government Agency Waste plan then in force in relation to the area of a Constituent Council and any proposed changes to such plan;

43.4.2 any initiatives proposed by the Commonwealth of Australia or the State Government as may impact upon or affect proper waste management in the area of an individual Constituent Council or Constituent Councils collectively;

43.4.3 any plan or policy of a Constituent Council for waste management then in force, and any proposed changes to such plan or policy;

43.4.4 the strategic management plans of each Constituent Council then in force; and

43.4.5 the annual business plan and budget of each Constituent Council then in force.

PART 13—NON-CORE ACTIVITY

44. ABOUT NON-CORE ACTIVITY

44.1 Where before the date this Charter becomes effective the Authority has committed to a Non-core Activity:

44.1.1 a Non-core Plan for that Non-core Activity must be prepared by the Chief Executive Officer and approved by Board resolution no later than 30 June in each year, so far as that Non-core Activity at the time then remains to be performed; and

44.1.2 all the Constituent Councils are taken to be participants in that Non-core Activity with Non-core Shares equal to their Core Shares.

44.2 After the date this Charter becomes effective, the Authority must not tender for or commit to a Non-core Activity except in compliance with this Charter.

45. NON-CORE ACTIVITY PROPOSALS

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

46. NON-CORE ACTIVITY CONSULTATION

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

47. NON-CORE PLAN REQUIREMENTS

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

47.1 the kind of service to which it relates;

47.2 its priority in relation to other existing or proposed Core Activity and Non-core Activity;

47.3 its expected duration;

47.4 a timetable for its full implementation;

47.5 its anticipated effect on the resources of the Authority (including financial, technological, physical and human resources) and in particular and without limiting the generality of the foregoing:

47.5.1 personnel requirements over time, and how those requirements are to be satisfied;

47.5.2 plant and equipment requirements over time, and how those requirements are to be satisfied;

47.5.3 fuel and other consumables requirements over time, and how those requirements are to be satisfied;

47.5.4 access to weigh-stations, recycling premises, and waste dump premises over time, and how those requirements are to be satisfied;

47.6 its anticipated expenditure, revenue and cash-flow outcomes over time (on a calendar monthly basis);

47.7 the sources of funds and when those funds need be sourced;

47.8 whether and if so what resources of a Constituent Council are required to be available to the Non-core Activity;

47.9 whether the Local Government Mutual Liability Scheme has forecast any peculiar liability issues for the Non-core Activity, and the advice given in relation to those liability issues;

47.10 whether the lawyers for the Authority have forecast any peculiar legal issues for the Non-core Activity, and the advice given in relation to those legal issues;

47.11 whether the auditors of the Authority have forecast any peculiar accounting or audit issues for the Non-core Activity;

47.12 governance issues, including whether and what delegations are required;

47.13 whether the Non-core Activity is a significant business activity and if so, how adherence to the National Competition Policy will be assured; and

47.14 how the Non-core Plan may change over time.

48. CONDITIONS OF ADOPTION OF A NON-CORE PLAN

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

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

48.2 the Constituent Councils have each resolved to:

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

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

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

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

50. REVIEW OF A NON-CORE PLAN

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

PART 14—ANNUAL PLAN AND BUDGET

51. ANNUAL PLAN

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

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

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

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

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

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

52. ABOUT AN ANNUAL PLAN

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

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

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

53. BUDGETS

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

54. ABOUT A BUDGET

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

54.2 Each Budget of the Authority must be adopted:

54.2.1 after the Authority has adopted its Annual Plan;

54.2.2 must be consistent with that Plan; and

54.2.3 before 30 June in each financialyear.

55. EXPENDITURE OUTSIDE A BUDGET

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

55.2 As a matter of record, Schedule 2, Clause 25 (5) is that the Authority may, in a financial year, after consultation with the Constituent Councils, incur spending before adoption of its Budget for the year, but the spending must be provided for in the appropriate Budget for the year.

PART 15—SHARES

56. ABOUT SHARES

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

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

57. VARIATION OF SHARES

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

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

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

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

57.3.2 a Constituent Council amalgamates with another council; or

57.3.3 a Constituent Council resigns from the Authority.

~~57.4 Notwithstanding the above, it is recognised and agreed that the Shares of the Constituent Councils immediately preceding the date of operation of this Charter are as follows:~~

~~City of Burnside~~	~~18.90%~~
~~City of Norwood Payneham and St. Peters~~	~~16.93%~~
~~Corporation of the Town of Walkerville~~	~~3.23%~~
~~City of Mitcham~~	~~26.24%~~
~~City of Campbelltown~~	~~19.83%~~
~~Adelaide Hills Council~~	~~14.87%~~

~~57.5~~57.4 It is agreed between the Constituent Councils that the Constituent Councils are liable to contribute to any debts and liabilities of the Authority incurred prior to the date of operation of this Charter (including in relation to the depreciated value of any asset acquired and for any losses under contract entered into before that date) in the Shares set out at Clause 57.1 above.

PART 16—FUNDING

58. FUNDING

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

59. CONSTITUENT COUNCIL CONTRIBUTIONS TO WORKING CAPITAL

59.1 This Clause applies only to a Core Activity.

59.2 A Constituent Council must contribute to the Authority such amounts at such times as the Budget requires (after deducting from the Budget any amounts identified as Non-core Assets and Non-Core Liabilities).

59.3 If the Budget does not specify a fixed dollar amount to be payable by the Contributor, the Constituent Council may require as a condition of payment that the Authority first provide an itemised estimate of the Core Activity expenditure reasonably expected to be incurred and which that contribution is to defray (after adjustments for payments previously made by that Constituent Council).

59.4 The Authority must use contributions received from a Constituent Council only for the purposes of a Core Activity as set out in the Budget.

59.5 If a Constituent Council (a Defaulter) fails to pay its full contribution so required when due:

59.5.1 the Defaulter must pay to the Authority interest on that amount at the official Reserve Bank Cash Rate Target plus 10% per annum from the due date to the date of actual payment;

59.5.2 the Authority may recover that amount and that interest from the Defaulter as a debt;

59.5.3 the Authority may, without prejudicing its other rights, set off any moneys otherwise payable by the Authority to the Defaulter against that amount and interest; and

59.5.4 if the default continues for at least 14 days:

(a) the Authority must notify all Constituent Councils (including the Defaulter) of the fact and details of the default; and

(b) Constituent Councils other than the Defaulter must together lend to the Authority an amount (equal to the amount not paid by the Defaulter) in such proportions as they may agree or failing agreement between themselves, in the proportion that their Share bears to the total Shares held by those Constituent Councils making such loan, for repayment when and to the extent the Defaulter makes good the contribution and accrued interest.

60. DEBT FUNDING

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

61. DISTRIBUTIONS TO CONSTITUENT COUNCILS

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

62. CONTRIBUTIONS ON INSOLVENCY

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

PART 17—ASSETS

63. ACQUISITION OF ASSETS

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

64. DISPOSAL OF ASSETS

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

65. INVESTMENTS

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

65.1 in waste management infrastructure and ancillary land;

65.2 in plant and equipment to store, transfer and/or treat waste;

65.3 in plant and equipment to transport waste from properties to an appropriate place of storage and/or disposal; and

65.4 cash on interest-bearing deposit with any bank

66. INTERESTS IN COMPANIES

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

67. INSURANCE

67.1 The Authority must register with the Local Government Association Mutual Liability Scheme and comply with the rules of that Scheme.

67.2 If the Authority employs any person, it must register with the Local Government Superannuation Scheme and the Local Government *Association Workers Compensation Scheme* and comply with the rules of those Schemes.

PART 19—FINANCIAL PRACTICES

68. ACCOUNTING RECORDS

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

69. ABOUT ACCOUNTING FOR SERVICES

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

70. OTHER FINANCIAL PRACTICES

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

PART 20—ACCESS TO INFORMATION

71. ACCESS TO RECORDS

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

72. PROVISION OF INFORMATION

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

73. BOARD REPORTS

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

74. ANNUAL REPORTS

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

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

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

PART 21—DISPUTE RESOLUTION

75. DISPUTE RESOLUTION

75.1 About this clause:

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

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

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

(a) to require the continuing observance and performance of this Charter by all parties; or

(b) to institute proceedings to enforce payment due under this Charter or to seek injunctive relief to prevent immediate and irreparable harm.

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

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

75.2.1 the nature of the dispute, giving reasonable details;

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

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

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

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

75.4.2 the role of a mediator is to assist in negotiating a resolution of a dispute. A mediator may not make any decision that is binding on a party unless that party has agreed in writing to be bound;

75.4.3 the mediation must take place in a location in Adelaide agreed by the parties;

75.4.4 a party in dispute must co-operate in arranging and expediting mediation;

75.4.5 a party in dispute must send to the mediation a senior manager with authority to resolve the dispute;

75.4.6 the mediator may exclude lawyers acting for the parties in dispute and may co-opt expert assistance as the mediator thinks fit;

75.4.7 a party in dispute may withdraw from mediation if there is reason to believe the mediator is not acting in confidence, or with good faith or is acting for a purpose other than resolving the dispute;

75.4.8 unless otherwise agreed in writing:

(a) everything that occurs before the mediator is in confidence and in closed session;

(b) discussions (including admissions and concessions) are without prejudice and may not be called into evidence in any subsequent litigation by a party;

(c) documents brought into existence specifically for the purpose of the mediation may not be admitted in evidence in any subsequent legal proceedings by a party;

(d) the parties in dispute must report back to the mediator within 14 business days on actions taken, based on the outcome of the mediation;

75.4.9 a party in dispute need not spend more than one day in mediation for a matter under dispute;

75.4.10 a party in dispute must bear an equal share of the costs and expenses of the mediator and otherwise bears their own costs.

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

75.5.1 there must be only one arbitrator and who is a natural person agreed by the parties or, if they cannot agree within 14 business days, an arbitrator nominated by the then Chairperson of The Institute of Arbitrators and Mediators Australia (South Australian Chapter);

75.5.2 the role of the arbitrator is to resolve the dispute and make decisions binding on the parties;

75.5.3 the arbitration must take place in an agreed location in Adelaide;

75.5.4 a party must co-operate in arranging and expediting arbitration;

75.5.5 a party must send to the arbitration a senior manager with authority to resolve the dispute;

75.5.6 the parties may provide evidence and given written and verbal submissions to the arbitrator within the time set by the arbitrator;

75.5.7 the arbitrator must:

(a) consider the evidence and submissions;

(b) decide the dispute; and

(c) give written reasons to each party;

75.5.8 subject to this clause, the arbitration must take place under Rules 5 to 18 (inclusive) of the Rules of The Institute of Arbitrators and Mediators for the Conduct of Commercial Arbitrations and the provisions of the Commercial Arbitration Act 1986 (S.A.) and which Rules are taken to be incorporated by reference into this clause or subject to this clause, the arbitrator must fix the rules of arbitration;

75.5.9 the costs and expenses of the arbitrator and of each party must be borne as the arbitrator decides.

PART 22—WINDING UP

76. WINDING UP

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

77. DISTRIBUTION OF ASSETS AND LIABILITIES ON WINDING UP

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

PART 23—COMMITTEES

78. COMMITTEES

78.1 The Board may establish a committee of Directors for the purpose of enquiring into and reporting to the Board on any matter within the Authority's functions and powers and as detailed in the terms of reference given by the Board to the committee.

78.2 A member of a committee established under this Clause holds office at the pleasure of the Board.

78.3 The Board may establish advisory committees consisting of or including persons who are not Directors for enquiring into and reporting to the Board on any matter within the Authority's functions and powers and as detailed in the terms of reference which must be given by the Board to the advisory committee.

78.4 A member of an advisory committee established under this Clause holds office at the pleasure of the Board.

PART 24—OTHER MATTERS

79. EXECUTION OF DOCUMENTS

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

80. PRINCIPAL OFFICE

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

81. SERVICE OF DOCUMENTS

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

82. CIRCUMSTANCES NOT PROVIDED FOR

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

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

~~SHANE RAYMOND, Manager, Corporate Services,~~ East Waste

EASTERN WASTE MANAGEMENT AUTHORITY
SPECIAL BOARD MEETING

Monday 21 March 2022

Notice is hereby given that a special meeting of The Board of the Eastern Waste Management Authority will be held via Zoom on Monday 21 March 2022 commencing at 8.15am



ROB GREGORY
GENERAL MANAGER

Acknowledgement of Country

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

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

EASTERN WASTE MANAGEMENT AUTHORITY

AGENDA

SPECIAL MEETING OF THE BOARD OF MANAGEMENT
Meeting to be held on Monday 21 March 2022
commencing at 8.15am via Zoom

1. PRESENT

2. ACKNOWLEDGEMENT OF COUNTRY

3. APOLOGIES

4. CONFLICTS OF INTEREST

5. CONFIRMATION OF THE MINUTES

NIL

6. MATTERS ARISING FROM THE MINUTES

7. QUESTIONS WITHOUT NOTICE

8. REPORTS

NIL

9. CONFIDENTIAL REPORTS

9.1 INCOMING MEMBER COUNCIL BUSINESS CASE. 4

10. OTHER BUSINESS

11. NEXT MEETING OF THE BOARD
The next Ordinary Board Meeting is proposed to be held on:
Thursday 5 May 2022, at the Mayor's Parlour, City of Norwood Payneham & St Peters, 175 The Parade, Norwood

12. CLOSURE OF MEETING

9.1: MEMBER COUNCIL REQUEST BUSINESS CASE

REPORT AUTHOR: **General Manager**
ATTACHMENTS: **A: Independent Business Case Analysis – City of Unley joining East Waste**

Purpose of the Report
To present to the Board the independent Business Case undertaken by BRM Advisory, on the City of Unley becoming a Member Council of East Waste.

Background
In June 2021 East Waste responded to an open Request for Tender from the City of Unley for the Collection and Processing of their Waste, Recyclables & Organics. Two tenders, a conforming (non-member model) and non-conforming (Member model) were submitted.

East Waste received correspondence from the City of Unley on 11 February 2022, advising it had been selected as the preferred tenderer under a membership model (that is the City of Unley joining East Waste). Members are referred to Confidential Report 9.1 of the February 2022 meeting for further information.

East Waste previously completed the City of Unley collections from 2007 – 2014, under a non-member model.

Report
The requirements for the consideration of an incoming Council are detailed in the East Waste Charter, specifically under Section 14.

14. INCOMING CONSTITUENT COUNCILS

14.1 Any council may become a Constituent Council (an Incoming Constituent Council) if:

14.1.1 it makes written application (in a form approved by the Board) to become a Constituent Council and agrees to be bound by this Charter (noting that Shares will change);

14.1.2 its application is supported by a thorough, realistic, independent, and diligent Business Case analysis;

14.1.3 it pays any joining fee or other payment as may be required by the Board;

14.1.4 the Constituent Councils approve the application and revised Shares by Unanimous Decision; and

14.1.5 the Minister approves.

14.2 An Incoming Constituent Council:

14.2.1 is jointly and severally liable with the other Constituent Councils for the debts and liabilities of the Authority incurred before or after the date it becomes a Constituent Council, or as otherwise agreed;

14.2.2 is bound by a decision made or step taken by the Board in the affairs of the Authority before it became a Constituent Council to the extent such decision or step was recorded in minutes of the Board's meetings or otherwise notified to the Incoming Constituent Council before it made application to become a Constituent Council; and,

14.2.3 upon becoming a Constituent Council has the Share agreed between the Incoming Constituent Council and the Constituent Councils.

With respect to 14.1.2, it is understood that the tender and assessment process undertaken by the City of Unley sufficiently satisfies this requirement.

East Waste engaged the services of BRM Advisory to provide an independent review of East Waste's tender submission, specifically the financial models, risk, Australian Competition & Consumer Commission concerns and governance matters.

BRM Advisory's Business Case Analysis is attached (refer Attachment A) and Director, Mark Booth will attend the meeting to provide an overview of the Analysis and answer any questions.

From a financial perspective, the basis of the Business Case is the submitted Tender price, assumptions and calculations behind this. Whilst important and showing a benefit to Member Councils collectively, in the order of $0.700M, given the City of Unley will not join until the FY23 year, it is largely theoretical. To provide both the Board and Member Councils with a more accurate Year One assessment, should the City of Unley join, the draft FY2023 budget has been reworked and analysed by BRM Advisory (refer Section 3.3 of Attachment A) on the assumption the City of Unley becomes a constituent Council.

This shows that despite increases in a number of cost centres outside East Waste's control (such as fuel), the saving to exiting Member Councils collectively remains in the order of $0.680M, by having the City of Unley as a Member for the entire FY23 year.

While undoubtedly there will be movement on the figures, throughout the year, the analysis shows a significant financial benefit in having the City of Unley join East Waste as a Member, even when the drop in equity of existing Councils is taken into consideration.

Other matters of note such as risk, competitive neutrality, strategic alliance, proposed joining fees and Charter amendments are discussed within the paper and do not highlight any significant matters of concern.

RECOMMENDATION 1

That pursuant to Section 90(2) and (3) of the *Local Government Act, 1999* East Waste orders that the public, with the exception of the subsidiary staff present, be excluded from the meeting on the basis that the Board will receive, discuss and consider:

(k) tenders for the supply of goods, the provision of services or the carrying out of works;

and the East Waste Board is satisfied that, in principle that the meeting should be conducted in a place open to the public, has been outweighed by the need to keep the receipt/discussion/consideration of the information confidential.

RECOMMENDATION 2

That the Board:

1. **Notes and accepts the Independent Business Case Analysis as presented in Attachment A.**

2. **Recognising the benefits as outlined in the Independent Business Case Analysis of the City of Unley joining East Waste as a Constituent Council, supports the City of Unley's application, subject to the unanimous support of existing constituent Councils.**

3. **Endorses not charging the City of Unley a joining fee, subject to feedback from Constituent Councils, given the year-on-year savings which are derived with the City of Unley being a member of East Waste.**

4. **Authorise the General Manager to engage with Member Councils to seek the required unanimous approval of accepting City of Unley's application to become a Member Council.**

5. **Subject to the unanimous support of Member Councils, make the required amendment to the Charter and seek the approval of the Minister of Local Government.**

RECOMMENDATION 3

Under *Section 91(7) and (9)* of the *Local Government Act 1999*, the East Waste Board orders that the report, minutes, and discussion be kept confidential for a period not exceeding 12 months, after which time the order will be reviewed.