

15 November 2017

CHARTER

of

**BROWN HILL AND KESWICK CREEKS
STORMWATER BOARD**

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1. ESTABLISHMENT

The Brown Hill and Keswick Creeks Stormwater Board ('the Regional Subsidiary') is established by the Constituent Councils as a regional subsidiary pursuant to section 43 of and Schedule 2 ('the Schedule') to the *Local Government Act 1999* ('the Act').

This Charter governs the affairs of the Regional Subsidiary.

2. CONSTITUENT COUNCILS

The Regional Subsidiary is established by the Corporation of the: City of Adelaide, City of Burnside, City of Unley, City of Mitcham and City of West Torrens ('the Constituent Councils').

The Constituent Councils have resolved to work together to establish a Regional Subsidiary to co-ordinate the implementation of the Plan.

3. 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 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.

4. PURPOSE

4.1 The Regional Subsidiary has been established for the following purposes:

- 4.1.1 to implement or oversee the construction of stormwater infrastructure for the purposes of the implementation of the Plan - subject to first obtaining the approval of the relevant Constituent Council(s) and, if necessary, the consent of the Storm Water Management Authority, in respect of any material change in the design or the cost of any works of implementation;
- 4.1.2 to oversee the maintenance and repair and/or renewal of stormwater infrastructure established through the implementation of the Plan;
- 4.1.3 to oversee the implementation of associated, adjacent and/or related infrastructure works or measures on behalf of a Constituent Council at the cost of the Constituent Council;
- 4.1.4 to hold stormwater infrastructure constructed in the implementation of the Plan on behalf of the Constituent Councils as agreed from time to time by resolution of the Constituent Councils;
- 4.1.5 to implement such other non-infrastructure measures as set out in the Plan or approved by the Constituent Councils or as determined by the Board to be necessary or convenient for or incidental to the implementation of the Plan;
- 4.1.6 to provide a forum for the discussion and consideration of the Constituent Councils' obligations and responsibilities under the Plan;
- 4.1.7 to enter into agreements with Constituent Councils for the purpose of managing the Plan;

- 4.1.8 to co-operate insofar as it is reasonably practicable with the Natural Resource Management Board in the performance of its functions under the *Natural Resources Management Act 2004* and otherwise with any other agency or instrumentality of the State, any body corporate and/or natural person including but not limited to landholders; and
- 4.1.9 to exercise other powers and functions as the Board considers necessary or convenient for or incidental to the purposes for which the Regional Subsidiary has been established.
- 4.2 The Regional Subsidiary is not involved in a significant business activity as defined in the Clause 7 Statement prepared under the Competition Principles Agreement of the National Competition Policy.
- 4.3 The Regional Subsidiary must not undertake any form of public consultation within the proclaimed area of any of the Constituent Councils without first having consulted with and taken into account any response from the Constituent Council.

5. GUIDING PRINCIPLES

The Regional Subsidiary must, in the performance of its functions and in all of its plans, policies and activities give due weight to all relevant policies of the Constituent Councils and to economic, social and environmental considerations.

6. POWERS

- 6.1 The Regional Subsidiary is constituted as a body corporate under the Act and in all things acts through the Board.
- 6.2 The Regional Subsidiary has the following powers:
 - 6.2.1 to acquire, deal with and dispose of real and personal property (wherever situated) and rights in relation to real and personal property;
 - 6.2.2 to compulsorily acquire land in accordance with the *Land Acquisition Act 1969*, provided that such acquisition is consistent with the Plan and subject to the Board having received at least four (4) weeks notice prior to consideration of the matter by the Regional Subsidiary and the Board agreeing to the disposal by resolution supported unanimously by all Board members;
 - 6.2.3 to sue and be sued in its corporate name;
 - 6.2.4 to enter into any kind of contract or arrangement;
 - 6.2.5 to receive, hold and expend funds provided by any third party, including funds from the Federal and/or State Governments, in the exercise, performance or discharge of its powers, functions and duties as set out in this Charter;
 - 6.2.6 to return surplus cash flow to Constituent Councils in proportion to their Equitable Interests at the end of any financial year either by way of cash payment or reduction of annual contribution;
 - 6.2.7 to set aside surplus revenue for future capital expenditure;
 - 6.2.8 to invest funds and in doing so to take into account Part 4 of Chapter 9 of the Act;

- 6.2.9 to provide a guarantee and/or indemnity of the obligations of another person;
- 6.2.10 to insure against any risk;
- 6.2.11 to co-ordinate the assessment, planning, demolition, construction, operation and maintenance of stormwater infrastructure as part of the implementation of the Plan;
- 6.2.12 to establish committees;
 - 6.2.12.1 comprised of any persons for the purpose of enquiring into and reporting to the Board on any matter within the functions and powers of the Regional Subsidiary and as detailed in the terms of reference given by the Board to the committee;
 - 6.2.12.2 with members of the committee holding office at the pleasure of the Board; and
 - 6.2.12.3 with the Chair of the Board being an *ex-officio* member of any committee established by the Board.
- 6.2.13 to delegate any power or function except to compulsorily acquire land as set out in clause 6.2.2 and excepting the delegations of any of the powers as prohibited from delegation by section 44(3) of the Act, (where applicable to the Regional Subsidiary); and
- 6.2.14 do anything else necessary or convenient for, or incidental to, the exercise, performance or discharge of its powers, functions or duties.
- 6.3 The exercise by the Regional Subsidiary of any of the powers conferred upon it is subject at all times to any limitations placed upon it by the Constituent Councils in accordance with their joint power of direction, by statute, by this Charter and otherwise as set out in delegations made by a Constituent Council.
- 6.4 For the avoidance of doubt, the Regional Subsidiary is unable to borrow or and may not otherwise raise funds except as set out in this Charter.
- 6.5 The Regional Subsidiary will have a common seal which may be affixed to documents requiring execution under common seal and must be witnessed by the Chairman of the Board and one other Board member.
 - 6.5.1 The common seal must not be affixed to a document except to give effect to a resolution of the Board.

The Executive Officer will maintain a register which records the resolutions of the Board giving the Regional Subsidiary the power to affix the common seal and details of the documents to which the common seal has been affixed with particulars of the persons who witnessed the fixing of the seal and the date of affixation.
 - 6.5.2 The Board may by instrument under seal authorise a person to execute documents on behalf of the Regional Subsidiary. The Executive Officer will maintain a register of such resolutions and details of any documents executed in this manner, together with particulars of the person executing the document.

7. THE BOARD—ROLE AND MEMBERSHIP

- 7.1 The Regional Subsidiary will be governed by a Board.
- 7.2 The Board is responsible for the administration of the affairs of the Regional Subsidiary. The Board must ensure insofar as it is practicable, that the Regional Subsidiary observes the objectives set out in this Charter, that information provided to the Constituent Councils is accurate and that Constituent Councils are kept informed of the solvency of the Regional Subsidiary as well as any material developments which may affect the operating capacity and financial affairs of the Regional Subsidiary.
- 7.3 Board membership is comprised as follows:
- 7.3.1 Five (5) natural persons appointed jointly by the Constituent Councils being persons who are not members or officers of any of the Constituent Councils. These persons will be appointed by the Constituent Councils from recommendations made by the Nominations Committee.
- 7.3.2 The persons recommended for appointment under clause 7.3.1 will be determined through a process approved by the Nominations Committee and will comprise persons with demonstrable skills relevant to the purpose of the Regional Subsidiary which may include (but is not limited to) skills in:
- (a) corporate financial management;
 - (b) corporate governance;
 - (c) project management;
 - (d) general management;
 - (e) engineering;
 - (f) economics; or
 - (g) environmental management.
- 7.3.3 The Board may appoint observers or specialists to attend meetings of the Board. Such appointees are not Board members and are, therefore, entitled to be present at a Board meeting at the discretion of the Board but are not entitled to vote at meetings of the Board.
- 7.3.4 Board members shall be entitled to:
- (a) receive a sitting fee determined by the Nominations Committee having regard to the *Guidelines for Agencies and Board Directors* (or any successor publication) published from time to time by the Department of Premier and Cabinet for Government Boards and Committees and approved by majority vote of the Constituent Councils; and
 - (b) reimbursement of their reasonable travelling and other expenses properly incurred in attending meetings of the Board.
- 7.4 Each Board member appointed in accordance with the provisions of this clause will be provided by the Executive Officer of the Regional Subsidiary with a written notice of proposed appointment and must provide to the Executive Officer a written acknowledgement, personally signed, confirming acceptance of their appointment and consent to act as a Board member.

8. TERM OF OFFICE—THE BOARD

The Board members will be appointed for a term of three (3) years excepting that the first appointments made will occur on a differential basis (two (2) Board members appointed for three (3) years, two (2) Board members appointed for two (2) years and one (1) Board member appointed for one (1) year) for the purposes of ensuring a rolling term of office whereby no more than two of the terms of office of Board members will expire at any one time. At the conclusion of their term of office, Board members will be eligible for reappointment.

9. CHAIRPERSON OF THE BOARD

9.1 At all times the Authority must have a Chairperson.

9.2 The Board shall determine from its members the Chairperson of the Board.

9.3 The Chairperson shall be appointed for a term of one (1) year and is eligible for re-appointment at the expiration of the term of office.

9.4 In the event that the Chairperson resigns from the office of Chairperson or as a Board member or is no longer eligible to act as a Board member prior to the expiration of the term of office, the Board shall determine from the other Board members an acting Chairperson until such time as the Board makes a new appointment under clause 9.2.

9.5 The Chairperson shall preside at all meetings of the Board and, in the event of the Chairperson being absent from a meeting, the Board members present shall appoint a person from amongst them who shall preside for that meeting or until the Chairperson is present.

9.6 The Chairperson's functions include:

- (a) to serve as Chair of all committees established by the Board;
- (b) to represent the Regional Subsidiary in all external dealings including but not limited to, the Constituent Councils, the State Government and its agencies, other statutory authorities, the media and the public generally; and
- (c) to exercise other functions as determined by the Board.

10. PROPRIETY OF MEMBERS OF THE BOARD

10.1 The principles regarding conflict of interest prescribed in the Act apply to all members of the Board as if they were elected members of a council.

10.2 The members of the Board are required to comply with Division 2, Chapter 5 (Register of Interests) of the Act and to submit returns to the Authority accordingly.

10.3 The members of the Board will at all times act in accordance with their duties of confidence and confidentiality and individual fiduciary duties including honesty and the exercise of reasonable care and diligence with respect to the Board as required by Part 4, Division 1, Chapter 5 of the Act and Clause 23 of Part 2 of Schedule 2.

11. REMOVAL OF BOARD MEMBERS FROM OFFICE

- 11.1 Neither the Regional Subsidiary nor the Board may remove a Board member from office.
- 11.2 The office of a Board member will become vacant upon the occurrence of any of the events listed at clause 20(3) of Schedule 2 to the Act.
- 11.3 A Board member may be removed by a decision being a resolution in the same or substantially the same terms passed by at least four (4) of the Constituent Councils.
- 11.4 The Board may request the Nominations Committee to make a recommendation to the Constituent Councils that a Board member be removed from office in the event of:
- (a) behaviour of the Board member which, in the opinion of the Board, amounts to impropriety;
 - (b) serious neglect of duty in attending to the responsibilities of a Board member;
 - (c) breach of a fiduciary duty to the Board or the Regional Subsidiary;
 - (d) breach of the conflict of interest provisions which apply to Board members; or
 - (e) any other behaviour which may discredit the Board and/or the Regional Subsidiary.
- 11.5 A Board member may otherwise be removed from office according to law.

12. PROCEEDINGS OF THE BOARD

- 12.1 Subject only to the extent that they are modified by this clause, the proceedings of the Board will be the same as those for committees of a council as defined in Part 2 of Chapter 6 of the Act and in accordance with the Regulations for 'Other Committees' comprised in Parts 1, 3 and 4 of the *Local Government (Procedures at Meetings) Regulations 2013*.
- References in Part 2 of Chapter 6 of the Act to 'the Chief Executive Officer' shall be read as if they were references to the Executive Officer of the Regional Subsidiary and references to 'the Council' or 'the committee' shall be read as if they were references to the Regional Subsidiary.
- To the extent that this Charter and the Act and the relevant Regulations are silent, the Board may determine its own meeting procedures.
- 12.2 Subject only to the special provisions of this clause, a meeting of the Board will not commence until a quorum of Board members is present and no meeting may continue unless there is a quorum of Board members present. A quorum of Board members will comprise half the Board members then in office (ignoring any fraction) plus one. A time limit of 30 minutes shall apply from the advertised commencement time of the Board meeting in which to achieve a quorum. Failure to achieve a quorum within this time limit shall result in a failed meeting.
- 12.3 For the purpose of this clause, the contemporaneous linking together by an audio-visual or other interactive means, including telephone conferencing

(‘telecommunication meeting’) of a number of Board members provided that at least a quorum is present, is sufficient to constitute a meeting of the Board.

Each of the Board members taking part in the telecommunications meeting must be able to hear and be heard by each of the other Board members present. At the commencement of the meeting, each Board member must announce his/her presence to all other Board members taking part in the meeting. A Board member must not leave a telecommunication meeting by disconnecting his/her, audio visual or other communication equipment, unless that Board member has previously notified the Chairperson of the meeting.

- 12.4 In the event that a quorum is not present at two consecutive meetings of the Board, an extraordinary meeting of the Board may be convened in the same manner as for a special meeting (see clause 9.8), at which the business in the agendas for the two previous failed meetings may be transacted at the extraordinary meeting of the Board where the requirement for a quorum is altered to at least two (2) members being in attendance. Decisions made at the extraordinary meeting of the Board will be binding on the Regional Subsidiary and all members of the Board and the Constituent Councils.
- 12.5 Unless this Charter provides otherwise, all matters for decision at a meeting of the Board will be decided by a simple majority of the Board members present and entitled to vote on the matter.

Each Board member, including the Chair, is entitled to only a deliberative vote on a matter. Board members may not vote by proxy.
- 12.6 In the event of equality of votes, the Chairperson will not have a casting vote and the matter will be deemed to have lapsed and may at some later time, whether at the same meeting or at a subsequent meeting, be reconsidered.
- 12.7 Meetings of the Board will be held at such time and such place as the Board decides subject only to the requirement that there will be at least one meeting in every three calendar months.
- 12.8 A special meeting of the Board may be held at any time and may be called at the request of the Chairperson or at the written request of three (3) members of the Board.
- 12.9 Notice of all meetings will be given in accordance with the provisions applicable to a committee meeting under Part 2 of Chapter 6 of the Act and the associated Regulations.
- 12.10 Meetings of the Board will be open to the public unless the Board resolves to exclude the public pursuant to section 90 of the Act.
- 12.11 All Board members must keep confidential all documents and any information provided to them in confidence for their consideration prior to a meeting of the Board.
- 12.12 The Board must ensure that accurate written minutes of its proceedings are kept and are produced for confirmation at the next or a subsequent meeting of the Board.

13. ADMINISTRATIVE MATTERS

- 13.1 There will be an Executive Officer of the Regional Subsidiary appointed by the Board for a maximum of five (5) years on terms and conditions to be determined by the Board.
- 13.2 The Executive Officer will be responsible to the Board:
- 13.2.1 to ensure that the policies and lawful decisions, including contracts and tenders in accord with s49 of the Act and public consultation in accord with s50 of the Act, of the Regional Subsidiary are implemented in a timely manner;
 - 13.2.2 for the efficient and effective management of the operations and affairs of the Regional Subsidiary;
 - 13.2.3 to provide advice and reports to the Board on the exercise and performance of the Regional Subsidiary's powers and functions; and
 - 13.2.4 to give effect to the principles of human resource and work health and safety management generally applicable within local government.
- 13.3 The Executive Officer has those powers, insofar as they may be made applicable, as the chief executive officer of a council as prescribed at section 99 of the Act and such other powers, functions and duties as prescribed by this clause and as determined necessary by the Board from time to time to ensure the efficient and effective management of the operations and affairs of the Regional Subsidiary.
- 13.4 The Board may authorise the Executive Officer to employ such other officers as are required for the efficient and effective management of the operations and affairs of the Regional Subsidiary.
- 13.5 The Board may engage professional consultants and it may authorise the Executive Officer to engage professional consultants to provide services to the Regional Subsidiary to ensure the proper execution of its decisions, the efficient and effective management of the operations and affairs of the Regional Subsidiary and for giving effect to the general management objectives and principles of personal management prescribed by this Charter.
- 13.6 The establishment of the Regional Subsidiary does not derogate from the power of any Constituent Council from performing for itself the same functions and powers as the Regional Subsidiary could on behalf of the Council.
- 13.6.1 The Regional Subsidiary must register with the *Local Government Association Mutual Liability Scheme* and comply with the rules of that Scheme.
 - 13.6.2 If the Regional Subsidiary employs any person, it must register with the *Local Government Superannuation Scheme* or employee nominee and the *Local Government Association Workers Compensation Scheme* and comply with the rules of those Schemes.

14. FINANCIAL CONTRIBUTIONS TO THE REGIONAL SUBSIDIARY

- 14.1 The annual contributions of the Constituent Councils shall be based on the Schedule One (1) percentage shares for Capital Works and operating expenses

(including maintenance of assets but excluding depreciation thereof) of the Regional Subsidiary. (*Schedule One (1) reproduced below for ease of reference*).

Constituent Council	Capital Works (Equitable Interest) Percentage Share %	Operating Expenses Percentage Share %
The Corporation of the City of Adelaide	8	20
City of Burnside	12	20
City of Mitcham	10	20
Corporation of the City of Unley	21	20
City of West Torrens	49	20
Total	100%	100%

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- 14.2 An individual Constituent Council may with the agreement of the Board by resolution acquire, deal with, operate and/or manage a specific infrastructure asset or project whether in whole or part; provided such asset does not encroach across Council boundaries.
- 14.3 The Board is responsible to provide each of the Constituent Councils with sufficient information for it to ascertain the level of and to understand the reasons for the funding contribution requirements in the following financial year. This will be achieved through the Business Plan and the annual budget.
- 14.4 The Board will determine annually the funds required by the Regional Subsidiary to enable it to perform its functions in the next financial year. The Constituent Councils shall contribute the funds identified by the Board in the annual budget. Councils may contribute additional funds that are required for the continuing function of the Regional Subsidiary and approved by the Constituent Councils, in accordance with Clause 13. The Board must provide full details regarding the need for additional funds to the Constituent Councils.
- 14.5 The annual funding contributions will be paid by each Constituent Council in advance by biannual instalments.
- 14.6 Additional funding contributions (if any) will be paid by each Constituent Council in the manner and at the time determined by the Board.
- 14.7 The Board is accountable to each Constituent Council to ensure that the Regional Subsidiary functions in accordance with its Business Plan and approved budgets.
- 14.8 The Regional Subsidiary may enter into separate funding arrangements with Constituent Councils and with any State or Federal Government or their agencies in respect of any project undertaken or to be undertaken by or on behalf of the Regional Subsidiary.

¹ The Members acknowledge and support the right for the City of West Torrens to enter into negotiations with the Adelaide Airport owner (Commonwealth of Australia) and lessee (Adelaide Airport Ltd) to recover 2% of its share representing the assessed average annual flooding damages cost avoided for the Adelaide Airport.

15. BUSINESS PLAN

- 15.1 The Regional Subsidiary shall have a Business Plan in respect of the ensuing four years as per clause 24 of Schedule 2 to the Act. The Business Plan will take into account the Long Term Financial Plan of the Regional Subsidiary and other relevant issues relating to the implementation, management, maintenance, repair and renewal of stormwater infrastructure.
- 15.2 The Business Plan must:
- 15.2.1 specify the services to be provided by the Regional Subsidiary;
 - 15.2.2 identify how the Regional Subsidiary intends to manage service delivery;
 - 15.2.3 identify the performance targets which the Regional Subsidiary is to pursue;
 - 15.2.4 set out the financial and other resources and internal processes that will be required to achieve the performance targets and objectives of the Regional Subsidiary; and
 - 15.2.5 specify the performance measures that are to be used to monitor and assess performance against targets.
- 15.3 Prior to setting the draft budget each year the Regional Subsidiary must review the Business Plan in conjunction with the Constituent Councils and this review must have regard to the Long Term Financial Plan. The Business Plan must be updated each year to ensure it provides for the ensuing four years.

16. BUDGET

- 16.1 The Regional Subsidiary must prepare a budget for the next financial year.
- 16.2 The budget must:
- 16.2.1 deal with each principal activity of the Regional Subsidiary on a separate basis;
 - 16.2.2 be consistent with and account for activities and circumstances referred to in the Regional Subsidiary's Business Plan;
 - 16.2.3 be submitted in draft form to each Constituent Council before 31 March for approval of the Council's proposed contribution for the next financial year;
 - 16.2.4 not be adopted by the Regional Subsidiary until after 31 May but before 30 June in each year;
 - 16.2.5 the adoption of the budget requires a two-thirds majority of the Board members present; and
 - 16.2.6 identify the amount of and the reasons for the proposed financial contributions to be made by each Constituent Council to the Regional Subsidiary.
- 16.3 The Regional Subsidiary must provide a copy of its budget to each Constituent Council within five (5) business days after adoption.
- 16.4 The Regional Subsidiary must reconsider its budget in accordance with regulation 9 of the *Local Government (Financial Management) Regulations 2011*.

- 16.5 The Regional Subsidiary must submit to each Constituent Council for approval, any proposed amendment to the budget that provides for an additional funding contribution by the Constituent Councils.
- 16.6 Where a Constituent Council has failed to approve its contribution, or an amended budget, and has not served a notice on the Regional Subsidiary in accordance with clause 26.2 within two months of the receipt of the draft budget, or amended budget by the Constituent Council, the approval of the Constituent Council to its contribution or to the amended budget as the case may be, will be deemed to have been given.

17. ACCOUNTING

The Regional Subsidiary must ensure that its accounting records, accounts and financial statements are prepared and maintained in accordance with the requirements upon it as set out in the Act and the *Local Government (Financial Management) Regulations 2011*.

18. AUDIT

- 18.1 The Regional Subsidiary must appoint an auditor.
- 18.2 The Regional Subsidiary must provide its audited financial statements annually to the Chief Executive Officer of each Constituent Council by 30 September.
- 18.3 The Regional Subsidiary is required to establish an audit committee unless exempted by regulation.

19. FINANCE

- 19.1 The Regional Subsidiary must establish and maintain a bank account with such banking facilities and at a bank to be determined by the Board.
- 19.2 The Regional Subsidiary will pay any cost or expense of the establishment, operation, administration or winding up of the Regional Subsidiary.
- 19.3 The Regional Subsidiary may on behalf of the Constituent Councils or on its own behalf, make application for payments out of the Stormwater Management Fund and other funding from the State of South Australia and the Commonwealth of Australia for the purposes of implementing the Plan.
- 19.4 The Regional Subsidiary will only compromise, compound, abandon or settle a debt or claim owed to the Regional Subsidiary subject to due diligence and without prejudice.
- 19.5 All cheques to be authorised must be signed by two members of the Board or one member of the Board and the Executive Officer.
- 19.6 The Executive Officer must act prudently in the handling of all financial transactions for the Regional Subsidiary and must provide quarterly financial and corporate reports to the Board and, if requested, to the Constituent Councils.

20. PLANS, REPORTS AND INFORMATION

- 20.1 The Regional Subsidiary must prepare a Long Term Financial Plan and Asset and Infrastructure Management Plan and a Business Plan.

- 20.2 The Regional Subsidiary must submit an annual report including on all works and operations and including the audited financial statements, to each Constituent Council before 30 September of the subsequent Financial Year.
- 20.3 The Board may review any of the Plans of the Regional Subsidiary at any time but must undertake a review of:
- 20.3.1 the Long Term Financial Plan of the Regional Subsidiary within six (6) months of the adoption or update of the Business Plan of the Regional Subsidiary and must, in any event, review the Long Term Financial Plan every four (4) years; and
- 20.3.2 the Asset and Infrastructure Management Plan of the Regional Subsidiary at any time but must in any event review the Asset and Infrastructure Management Plan every four (4) years.
- 20.4 Within two weeks following each ordinary meeting of the Board the Constituent Councils shall be provided with a Key Outcomes Summary of the meeting which Summary shall include the achievements against the Business Plan when that report has been received at the Board meeting.
- 20.5 The Board shall report at any other time at the written request of a Constituent Council on matters being undertaken by the Regional Subsidiary. Such report shall also be provided to all other Constituent Councils.

21. CONSTITUENT COUNCILS MAY DIRECT THE REGIONAL SUBSIDIARY

- 21.1 The Regional Subsidiary is, in accordance with the Act, subject to the joint direction and control of the Constituent Councils.
- 21.2 To be effective against the Regional Subsidiary, a determination or direction or other decision of the Constituent Councils must be made/given in the same or substantially the same terms as evidenced by either:
- 21.2.1 a minute signed by the chair of a meeting of authorised delegates of the Constituent Councils that at such meeting a resolution was duly made by each delegate on behalf of their Council; or
- 21.2.2 a resolution in the same terms in favour of that decision passed individually by each of the Constituent Councils.

22. CONSTITUENT COUNCILS ARE GUARANTORS OF THE REGIONAL SUBSIDIARY

As a matter of record, Schedule 2, clause 31(1) of the Act is that liabilities incurred or assumed by the Regional Subsidiary are guaranteed by the Constituent Councils. As between the Constituent Councils, they share in the debts and liabilities of the Regional Subsidiary in proportion to their respective Equitable Interests.

23. INSURANCE REQUIREMENTS

- 23.1 The Regional Subsidiary must register with the Local Government Association Mutual Liability Scheme and comply with the Rules of that Scheme.
- 23.2 The Regional Subsidiary shall advise Local Government Risk Services of its insurance requirements relating to other special (non-civil liability) risks including all real and personal assets in its ownership or under its management, care and control.

23.3 If the Regional Subsidiary employs any person it must register with the Local Government Association Workers Compensation Scheme and comply with the Rules of that Scheme.

24. ALTERATION TO THE CHARTER

24.1 This Charter may be altered (amended) by resolutions passed in the same or substantially the same terms by the Constituent Councils.

24.2 The Executive Officer of the Regional Subsidiary must ensure that the amended Charter is published on a website determined by the Executive Officer and that notice of the amendment and a website address at which the Charter is available for inspection is published in the *Gazette* and that a copy of the amended Charter is provided to the Minister.

24.3 Before the Constituent Councils vote on a proposal to alter this Charter they must take into account any recommendations of the Board.

25. WITHDRAWAL OF A CONSTITUENT COUNCIL

25.1 A Constituent Council may withdraw from the Regional Subsidiary if and only if:

25.1.1 the Council gives written notice of withdrawal and the reasons to each other Council being at least twelve (12) months notice expiring on 30 June of a subsequent financial year; and

25.1.2 enters into a binding arrangement with and to the satisfaction of the Regional Subsidiary and the other Constituent Councils to make payment(s) equivalent to the amounts it would otherwise be required to make as a continuing Constituent Council in respect of the full implementation of the Plan and the maintenance and renewal of infrastructure assets and the administration costs of the Regional Subsidiary; and

25.1.3 all of the other Constituent Councils approve; and

25.1.4 the Minister approves.

25.2 A suspended or a former Constituent Council remains liable to contribute to the debts and/or liabilities of the Regional Subsidiary for the purposes of construction, maintenance and repair of the entire stormwater infrastructure as set out in the Plan that is the subject of that Council's contribution as a Constituent Council.

26. ADDITION OF NEW MEMBER

26.1 The Regional Subsidiary may consider the addition of a new member to the Regional Subsidiary;

26.1.1 if the proposed new member makes written application (in a form approved by the Board) to become a Member and agrees to be bound by this Charter;

26.1.2 the Constituent Councils each resolve to approve the addition of the new member to the Regional Subsidiary; and

26.1.3 the Minister approves the proposed new member becoming a Constituent Council.

26.2 The Charter shall be amended in accordance with its provisions to address the addition of any new Constituent Council.

27. DISPUTES

27.1 In the event of any dispute or difference between the Constituent Councils and the Regional Subsidiary concerning the operations or affairs of the Regional Subsidiary, the dispute process shall be initiated by a Constituent Council serving a notice of dispute on all other Constituent Councils with a contemporaneous copy being served on the Regional Subsidiary. The Constituent Councils:

27.1.1 will attempt to settle the dispute or difference by negotiating in good faith;

27.1.2 if good faith negotiations do not settle the dispute or difference within one month of the dispute arising then the dispute shall be referred to an expert for determination. The expert shall be a person with the skills and expertise necessary to resolve the dispute and shall be nominated by the President of the Local Government Association of South Australia ('LGA'). The expert is an expert and not an arbitrator. The expert's determination shall be final and binding on the Constituent Councils. The costs of the expert will be apportioned and payable in accordance with the expert's determination;

27.1.3 if the dispute is unable to be resolved by the expert within six months then any Constituent Council may request the Minister to dissolve the Regional Subsidiary; and

27.1.4 notwithstanding the existence of a dispute or difference, the Constituent Councils will continue to meet their obligations to the Regional Subsidiary.

For the purposes of clause 27.1 'dispute' includes where a Constituent Council has failed or refuses to approve its annual contribution as set out in a draft budget advised by the Regional Subsidiary under clauses 16.2.3 or 16.5.

28. DISSOLUTION OF THE REGIONAL SUBSIDIARY

28.1 The Regional Subsidiary may be dissolved by the Minister in the circumstances envisaged by the Act.

28.2 In the event of there being net assets upon dissolution and after realisation of all assets and meeting all liabilities, the net assets will be distributed to the then Constituent Councils on the basis of their equitable interest (Capital Works) in the Regional Subsidiary.

28.3 In the event of there being an insolvency of the Regional Subsidiary at the time of dissolution, the then Constituent Councils will be responsible jointly and severally to pay the liabilities of the Regional Subsidiary and between themselves in the proportion of their equitable interest (Capital Works).

29. TECHNICAL ASSESSMENT PANEL

A 'Technical Assessment Panel' (the Panel) may be appointed to support the decision-making processes of the Board with powers determined by the Board to provide advice to the Board and/or the Executive Officer in relation to the management of the technical aspects of the design, assessment, planning, demolition and construction of the

various parts or projects for the purpose the Plan. The Members of the Panel will be appointed at the sole discretion and invitation of the Board but must include the Chairperson and the Executive Officer of the Board.

30. AREA OF INTEREST

The Regional Subsidiary may be required to undertake activities outside the area of the Constituent Councils yet within the stormwater catchment in order to comprehensively plan, investigate, assess, construct or maintain stormwater infrastructure, where such activities meet the requirements of the Plan and any supplement thereof as approved by the Authority for that particular catchment.

The Constituent Councils by operation of this clause provide their collective authority and consent for the Regional Subsidiary to undertake such activities in accordance with clause 6 of this Charter.

31. USE OF CATCHMENT STORMWATER

31.1 A Constituent Council may take water from stormwater infrastructure for its own use without penalty or other financial contribution.

31.2 Where a Constituent Council takes water from stormwater infrastructure for sale to a third party, that Council agrees to pay to the Regional Subsidiary for the water taken at any amount per mega litre set annually by the Board at 1 July for the ensuing twelve (12) months noting that the Council is not required to pay for water taken for the Council's own use unless the Board demands payment from that Council where the use is assessed by the Board to be beyond the reasonable supply capacity of the catchment.

31.3 A Constituent Council that takes stormwater for whatever reason or purpose agrees to account annually to the Board for the amount of water taken.

31.4 Where any dispute arises between the Constituent Councils concerning the amount of water being taken or proposed to be taken by a Council, the Regional Subsidiary may determine the maximum allocation for any particular year having regard to the reasonable supply capacity of the catchment.

32. ABOUT THIS CHARTER

This Charter is the charter of the Regional Subsidiary.

This Charter binds the Regional Subsidiary and each Constituent Council.

Despite any other provision in this Charter:

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

32.2 if the Act requires a thing to be done, authority is given for that thing to be done; and

32.3 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.

33. DEFINITIONS

In this Charter:

Act means the *Local Government Act 1999*.

Authority means the Stormwater Management Authority established under Schedule 1A of the Act.

Board means the collective Members of the board of management of the Regional Subsidiary.

Budget (or budget) means a budget that conforms to clause 16 and last adopted by the Board.

Business Plan means a business plan that conforms to clause 15 and last adopted by the Board.

Constituent Council means City of Adelaide, City of Burnside, Corporation of the City of Unley, City of Mitcham and City of West Torrens.

Equitable Interest means the percentage interest of an individual Constituent Council as set out in Schedule 1 to this Charter in the column 'Capital Works (Equitable Interest) Percentage Share'

Establishment Period means at any time the first 12 months during the initial establishment year.

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

Interpretation means 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.

Nominations Committee means the Chief Executive Officers (or their nominees) and the Mayor (or elected member authorised by the Mayor) of each of the Constituent Councils. A meeting of the Nominations Committee for any purpose provided in this Charter may only occur if at least three (3) of the Constituent Councils are represented by either of the CEO (or nominee) or Mayor (or elected member).

Plan means the approved and Gazetted Stormwater Management Plan

Regional Subsidiary means the Brown Hill and Keswick Creeks Stormwater Board.

Stormwater Management Plan ("the Plan") means a plan and any subsequent revisions or supplements thereof in relation to the Brown Hill and Keswick Creeks catchment of which each of the Constituent Councils are part and approved by the Stormwater Management Authority for implementation by the Regional Subsidiary which complies with the requirements of Division 3 of Schedule 1A of the Act.

Surplus Funds means funds that are surplus to the financial requirements of the Regional Subsidiary in achieving the requirements of the Stormwater Management Plan, and as evidenced by any Plan adopted by the Board.

Technical Assessment Panel (the Panel) means a person appointed to a panel at the discretion of the Board to provide advice and manage the technical aspects of the design, assessment, planning, demolition and construction of the various parts or projects for the purpose the Plan.

SCHEDULE ONE

The contributions of the Constituent Councils shall be based on the following percentage shares for capital works, maintenance of assets of the Regional Subsidiary and operating expenses of the Regional Subsidiary:

Constituent Council	Capital Works (Equitable Interest) Percentage Share %	Operating Expenses Percentage Share² %
The Corporation of the City of Adelaide	8	20
City of Burnside	12	20
City of Mitcham	10	20
Corporation of the City of Unley	21	20
City of West Torrens	49	20
Total	100%	100%

² The parties acknowledge and agree that, for the purpose of determining the contribution of each Constituent Council, the operating expenses of the Regional Subsidiary do not include depreciation.