

Council Meeting Agenda & Reports

16 January 2023

Our Vision

*A City which values its heritage, cultural diversity,
sense of place and natural environment.*

*A progressive City which is prosperous, sustainable
and socially cohesive, with a strong community spirit.*

City of Norwood Payneham & St Peters
175 The Parade, Norwood SA 5067

Telephone 8366 4555
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City of
Norwood
Payneham
& St Peters

12 January 2023

To all Members of the Council

NOTICE OF MEETING

I wish to advise that pursuant to Sections 83 and 87 of the *Local Government Act 1999*, the next Ordinary Meeting of the Norwood Payneham & St Peters Council, will be held in the Council Chambers, Norwood Town Hall, 175 The Parade, Norwood, on:

Monday 16 January 2023, commencing at 7.00pm.

Please advise Tina Zullo on 8366 4545 or email tzullo@npsp.sa.gov.au, if you are unable to attend this meeting or will be late.

Yours faithfully



Lisa Mara
ACTING CHIEF EXECUTIVE OFFICER

City of Norwood Payneham & St Peters
175 The Parade, Norwood SA 5067

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City of
Norwood
Payneham
& St Peters

1.	KAURNA ACKNOWLEDGEMENT	1
2.	OPENING PRAYER	1
3.	CONFIRMATION OF THE MINUTES OF THE COUNCIL MEETING HELD ON 5 DECEMBER 2022	1
4.	MAYOR'S COMMUNICATION	1
5.	DELEGATES COMMUNICATION	1
6.	QUESTIONS WITHOUT NOTICE	1
7.	QUESTIONS WITH NOTICE	1
8.	DEPUTATIONS	1
8.1	DEPUTATION – REQUEST TO CEASE DEVELOPMENT APPROVAL OF TWO-STOREY ADDITIONS FOR PROPERTIES LOCATED IN ESTABLISHED NEIGHBOURHOOD ZONES	2
9.	PETITIONS	3
9.1	PETITION – REQUEST TO CEASE DEVELOPMENT APPROVAL OF TWO-STOREY ADDITIONS FOR PROPERTIES LOCATED IN ESTABLISHED NEIGHBOURHOOD ZONES	4
	<i>Attachments – Item 9.1</i>	6
10.	WRITTEN NOTICES OF MOTION	7
11.	STAFF REPORTS	7
	Section 1 – Strategy & Policy	8
11.1	SUBMISSION ON THE REVIEW OF THE LOCAL NUISANCE AND LITTER CONTROL ACT 2016	9
	<i>Attachments – Item 11.1</i>	15
	Section 2 – Corporate & Finance	16
11.2	MONTHLY FINANCIAL REPORT – NOVEMBER 2022	17
	<i>Attachments – Item 11.2</i>	19
11.3	2023-2024 ANNUAL BUSINESS PLAN AND BUDGET OBJECTIVES & PARAMETERS	20
	Section 3 – Governance & General	28
11.4	LOCAL GOVERNMENT ASSOCIATION (LGA) 2023 ORDINARY GENERAL MEETING – APPOINTMENT OF COUNCIL DELEGATE	29
11.5	LOCAL GOVERNMENT ASSOCIATION (LGA) 2023 ORDINARY GENERAL MEETING – ITEMS OF BUSINESS	30
	<i>Attachments – Item 11.5</i>	34
11.6	APPOINTMENT TO THE BOARD OF THE EASTERN HEALTH AUTHORITY INCORPORATED	35
	<i>Attachments – Item 11.6</i>	37
11.7	APPOINTMENT TO THE EASTERN WASTE MANAGEMENT AUTHORITY INCORPORATED BOARD (EAST WASTE)	38
	<i>Attachments – Item 11.7</i>	40
11.8	APPOINTMENT TO THE BOARD OF ERA WATER	41
	<i>Attachments – Item 11.8</i>	43
11.9	APPOINTMENT TO THE HIGHBURY LANDFILL AUTHORITY BOARD OF MANAGEMENT	44
	<i>Attachments – Item 11.9</i>	46
11.10	NOMINATIONS TO EXTERNAL BODIES – SOUTH AUSTRALIAN PUBLIC HEALTH COUNCIL & PREMIER'S CLIMATE CHANGE COUNCIL	47
	<i>Attachments – Item 11.10</i>	49
11.11	ERA WATER – DRAFT WATER SUPPLY DURING PERIODS OF CONSTRAINED SUPPLY POLICY	50
	<i>Attachments – Item 11.11</i>	53
12.	ADOPTION OF COMMITTEE MINUTES	54
13.	OTHER BUSINESS	54
14.	CONFIDENTIAL REPORTS	54
14.1	COUNCIL RELATED MATTER	55
14.2	COUNCIL RELATED MATTER	56
14.3	COUNCIL RELATED MATTER	57
15.	CLOSURE	58

VENUE Council Chambers, Norwood Town Hall

HOUR

PRESENT

Council Members

Staff

APOLOGIES

ABSENT

1. **KAURNA ACKNOWLEDGEMENT**

2. **OPENING PRAYER**

3. **CONFIRMATION OF THE MINUTES OF THE COUNCIL MEETING HELD ON 5 DECEMBER 2022**

4. **MAYOR'S COMMUNICATION**

5. **DELEGATES COMMUNICATION**

6. **QUESTIONS WITHOUT NOTICE**

7. **QUESTIONS WITH NOTICE**
Nil

8. **DEPUTATIONS**

8.1 DEPUTATION – REQUEST TO CEASE DEVELOPMENT APPROVAL OF TWO-STOREY ADDITIONS FOR PROPERTIES LOCATED IN ESTABLISHED NEIGHBOURHOOD ZONES

REPORT AUTHOR: General Manager, Governance & Civic Affairs
GENERAL MANAGER: Not Applicable
CONTACT NUMBER: 8366 4549
FILE REFERENCE: qA1041 qA110841
ATTACHMENTS: Nil

SPEAKER/S

Mr John Hatch.

ORGANISATION/GROUP REPRESENTED BY SPEAKER/S

Not Applicable.

COMMENTS

Mr Hatch has written to the Council requesting that he be permitted to address the Council in relation to development approvals for two-storey additions to properties located in Established Neighbourhood zones that are also subject to an Historic Area Overlay.

In accordance with the *Local Government (Procedures at Meetings) Regulations 2013*, Mr Hatch has been given approval to address the Council.

9. PETITIONS

9.1 PETITION – REQUEST TO CEASE DEVELOPMENT APPROVAL OF TWO-STOREY ADDITIONS FOR PROPERTIES LOCATED IN ESTABLISHED NEIGHBOURHOOD ZONES

REPORT AUTHOR: General Manager, Urban Planning & Environment
GENERAL MANAGER: Chief Executive Officer
CONTACT NUMBER: 8366 4501
FILE REFERENCE: qA110841
ATTACHMENTS: A

PURPOSE OF REPORT

The purpose of this report is to table a petition which has been received requesting that the Council cease issuing Development approvals for two-storey additions to properties located in Established Neighbourhood zones that are also subject to an Historic Area Overlay.

BACKGROUND

The petitioners are requesting that the Council cease approving development applications for two-storey extensions in “Established Neighbourhood” zones that are also subject to an “Historic Area Overlay”.

A copy of the petition is contained in **Attachment A**.

The petition has been signed by a total of 117 property owners in Joslin and part of St Peters.

In accordance with the Council’s *Privacy Policy*, the personal information of the petitioners, (ie property numbers, telephone numbers and email addresses) have been redacted from the petition. The names of the signatories which are included on the petition have not been redacted from the petition.

RELEVANT STRATEGIC DIRECTIONS & POLICIES

The relevant Goals contained in *CityPlan 2030* are:

Outcome 2: Cultural Vitality

Objective 2.4: Pleasant, well designed, and sustainable urban environments.

Strategy:

2.4.1 Encourage development that complements our City’s build heritage and character areas.

2.4.2 Encourage sustainable and quality urban design outcomes.

DISCUSSION

The Council’s Assessment Panel (the Panel) and Development Assessment staff, are responsible for assessing Development Applications against the relevant provisions of the *Planning and Design Code* (the Code). In many cases, procedural tables contained within the Code prescribe the relevant policies, which means that the assessment cannot take into account any other policies which are not prescribed, even if the Planner undertaking the assessment is of the view that other policies could be relevant to the assessment.

Development Applications which were lodged prior to March 2021 were assessed by the Council’s Development Assessment staff or the Panel against the relevant provisions of the Council’s former Development Plan. Therefore, some developments currently under construction may have been assessed under the former planning system.

Development Assessment staff and the Panel discharge their duties in accordance with the relevant planning legislation and instruments of delegation. Assessments by junior staff are considered by the Council's Assessment Manager before authorisation is granted and design guidance is provided by the Council's Heritage Advisor (David Brown) for most developments proposed in the Historic Area Overlay, Local Heritage Place Overlay or the Heritage Adjacency Overlay areas. This provides a robust "check and balance" to ensure that Development Applications are determined appropriately. In addition, the assessing Planner must also consider the context of the development site, including the prevailing built form and streetscape character. Streetscape fit is especially important for development in the Historic and Character Area Overlays, which generally involves maintaining a single storey streetscape appearance.

However, in order for historic and character homes to be adapted to modern day dwelling functionality, the building footprint and mass of dwelling additions behind the main front façade of the building can be relatively large and sometimes two-storey. Some neighbours may consider this problematic, as is highlighted in the petition.

The current planning policy provisions contained in the Planning and Design Code do allow consideration of two-storey developments in Established Neighbourhood Zones, even where there is an Historic Area Overlay in place. It should be noted that the Code provisions are guiding in nature, rather than mandatory requirements. As such, it is not open to the Council's Assessment Panel and Development Assessment staff to simply cease approving two-storey dwelling extensions in the Established Neighbourhood Zones as each application has to be carefully considered and all relevant provisions of the Code must be considered and applied in a prudent and practical manner.

In addition, as the Council's Assessment Manager and Assessment Panel operate as Planning Authorities in their right in accordance with the planning legislation operating in South Australia, the Council **cannot** instruct its planning staff to cease approving any particular type of development nor instruct staff to process Development Applications in any particular manner.

That said, if there is sufficient community concern with the policies contained in the Planning and Design Code, then there is certainly merit in the Council considering the extent to which it may be possible to amend the Code to include more specific provisions that would essentially give the Council's Development Assessment staff stronger provisions to rely on to limit the extent to which two- storey extensions in Established Neighbourhood Zones could be favourably considered.

As Members are aware, in response to concerns similar to those expressed in the Petition, the Council considered a Notice of Motion which was submitted by Cr Moorhouse, at the Council meeting held on 5 December 2022 and following consideration of the matter, resolved the following:

1. *That staff write a letter to the State Planning Commissioner, Craig Holden, requesting him to clarify the process of how Councils can change aspects of the Planning and Design Code that have broader implications than one council area and to clarify the role and terms of reference of the State Government's Code Control Group.*
2. *That staff prepare a report on Council's ability to have a more nuanced and detailed policy regarding large scale two-storey residential additions in areas affected by the Historic Area Overlay.*

It is anticipated that a report as requested in the motion, will be presented to the Council at its meeting to be held on 6 March 2023, for the Council's consideration.

It is therefore recommended that the petitioners be advised that the Council is in the process of investigating whether it is possible for the Council to have a more nuanced and detailed policy to restrict large scale two-storey residential additions in Established Neighbourhood Zones and areas affected by the Historic Area Overlay and that the petitioners will be advised of the outcome of the matter once finalised.

RECOMMENDATION

That the convenor of the petition be advised that the Council is in the process of investigating whether it is possible for the Council to have a more nuanced and detailed policy to restrict large scale two-storey residential additions in Established Neighbourhood Zones and areas affected by the Historic Area Overlay and that the petitioners will be advised of the outcome when the Council has considered

Attachments – Item 9.1

Attachment A

Petition

Request to Cease Development Approval of Two-Storey Additions for Properties Located in Established Neighbourhood Zones

City of Norwood Payneham & St Peters
175 The Parade, Norwood SA 5067

Telephone 8366 4555
Facsimile 8332 6338
Email townhall@npsp.sa.gov.au
Website www.npsp.sa.gov.au



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As a result of our recent personal and social interest in the two-storey extensions in our area, a small group of us have conducted a survey (Petition) in our immediate area. Given our limited resources, time and money, we decided to 'circulate' our petition in four adjacent Avenues; Second to Fifth, within Joslin and part of St Peters, Lambert Road to Winchester Street. We felt that this was a relevant and reasonably homogenous area, comprising an estimated 180 or so mainly owner-occupied dwellings.

During November and December 2022 four of us made one plus one follow-up visit on foot, usually just one of us, and using Council templates, asked people to sign a petition which had the following introduction/or explanation.

“The Council has allowed substantial, modern two-storey dwelling extensions to be built within ‘Established Neighbourhood’ zones that are also subject to an ‘Historic Area Overlay’. This has resulted in buildings that are not in keeping with the character of the locality and have had an unacceptable impact on the amenity and privacy currently enjoyed and valued by existing residents.

The SA Planning and Design Code for ‘Established Neighbourhood’ zones states that the maximum building height is one-storey. Unfortunately, because it is ‘policy’ and not law, it is open to interpretation.

This should not be ignored by Council Planning Assessors.”

“We, the undersigned residents/rate payers, request the Council cease approving development applications for two-storey extensions in “Established Neighbourhood” zones that are also subject to an ‘Historic Area Overlay’.”

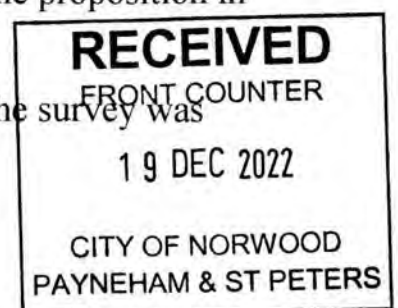
We completed this very recently and the results in summary were as follows:

Estimated number of target dwellings	170-180
Number accessed after two attempts	135
Number signing the Petition	117
Percentage accessed	≈77
Percentage signing	≈87

The limited survey (Petition) is indicative only, but not subject to any clear bias other than location. We suggest that it indicates support for the proposition in the Petition.

We are happy to supply further details and evidence of how the survey was conducted.

John and Lucy Hatch



PETITION

To the City of Norwood Payneham & St Peters

175 The Parade, Norwood SA 5067
PO BOX 204, Kent Town SA 5071

Telephone 8366 4555
Facsimile 8332 6338
Email townhall@npsp.sa.gov.au
Website www.npsp.sa.gov.au

ABN 11 390 194 824



City of
Norwood
Payneham
& St Peters

PETITION CONTACT DETAILS (Convenor of Petition)

Name: **Lucy and John Hatch**

Address: [REDACTED]

Phone: [REDACTED] Mobile: [REDACTED]

Email: [REDACTED]

Part 1: The petition of: (identify the individuals or group – eg: the residents of The City of Norwood Payneham & St Peters)

Residents of the following streets in the suburb of Joslin and St Peters:

2nd, 3rd, 4th and 5th Avenues between Lambert Road and Winchester Street

Part 2: Matter of concern to petitioners: (outline the circumstances of the matter)

The Council has allowed substantial, modern two-storey dwelling extensions to be built within "Established Neighbourhood" zones that are also subject to an "Historic Area Overlay". This has resulted in buildings that are not in keeping with the character of the locality and have had an unacceptable impact on the amenity and privacy currently enjoyed and valued by existing residents.

The SA Planning and Design Code for "Established Neighbourhood" zones states that the maximum building height is one-storey. Unfortunately, because it is "policy" and not law, it is open to interpretation.

This should not be ignored by Council Planning Assessors.

Part 3: The petitioners request / submission is that the Council: (outline the action that the petitioners are requesting Council should or should not take)

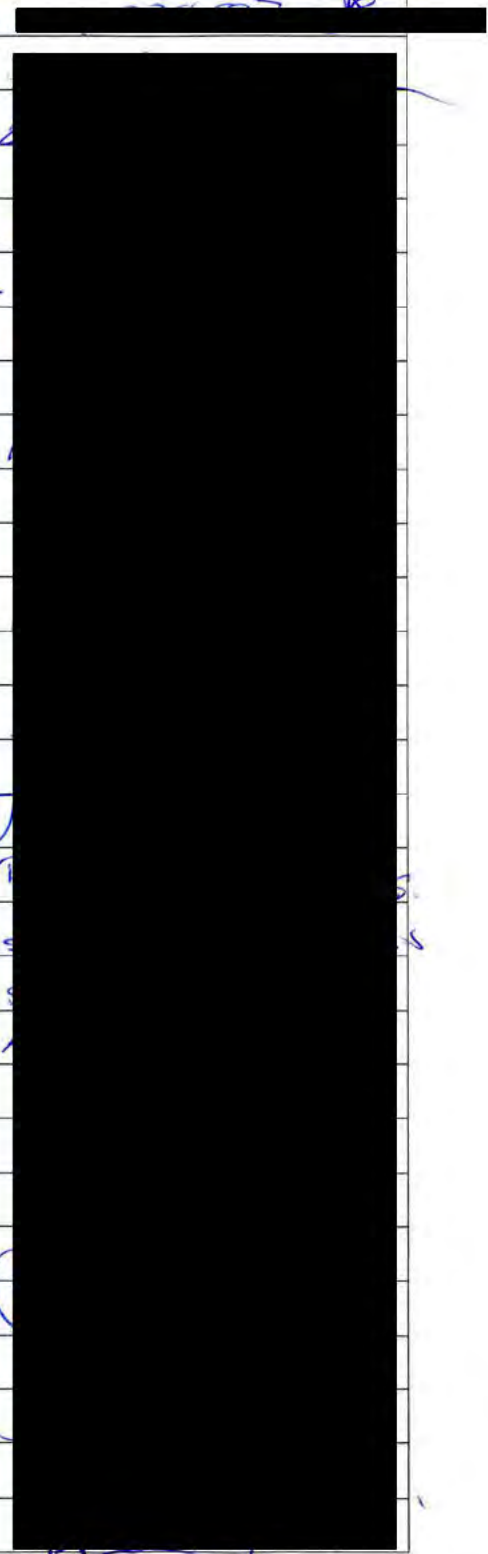
We, the undersigned residents/rate payers, request the Council cease approving development applications for two-storey extensions in "Established Neighbourhood" zones that are also subject to an "Historic Area Overlay".

Part 4: List of signatories to the petition:

Please note: when this petition is placed on the public agenda for a Council meeting, it will be a public document and will appear on the Council website. Your address will be redacted, but your name and signature will appear in the public document.

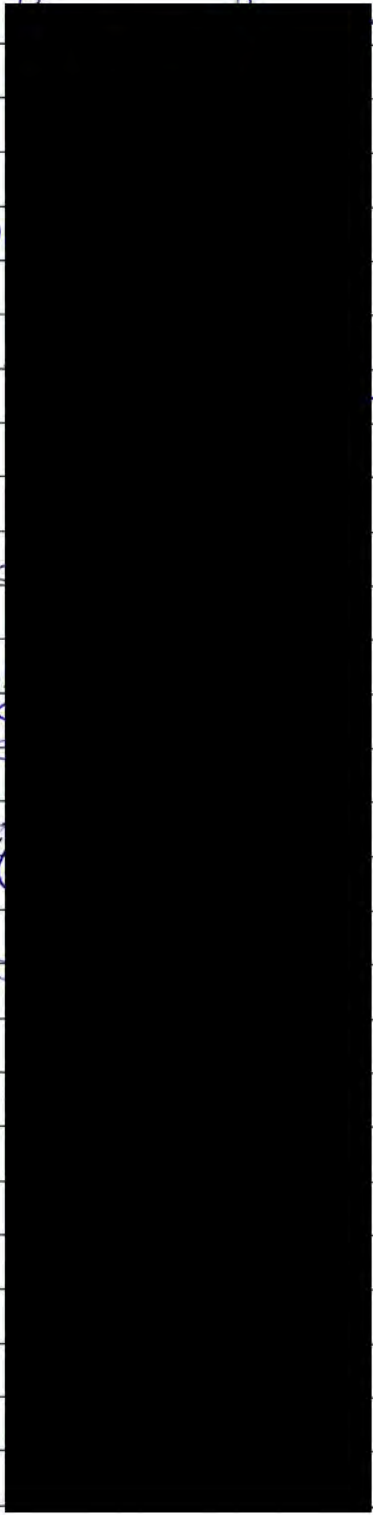
28

Name (print)	Address	Signature
Tania Evans	█ Second Ave Joslin	█
Lou Gold Finch	█ " " "	█
Caleb Gray	█ Second Ave	█
	█ empty block	█
GIULIO GARLETTA	█ SECOND AVE JOSLIN.	█
MARINA GARLETTA	█ SECOND AVE JOSLIN.	█
ANN PESLEY	█ SECOND AVE JOSLIN	█
Rodney Harrison	█ Second Ave	█
Cynthia Wynne	█ Second Ave	█
Anthony Wynne	█ Second Ave	█
Christos Oms	█ second Ave	█
Mardell Yaw	█ Second Ave	█
→ S. Vrfana	█ Second Ave	█
NAUTER SINGH	█ USECOND AVE	█
Jeanie Roberts	█ Second Ave	█
Kier Roberts	" " "	█
Eracorn	█ SECOND AVE	█
Eracorn	" " "	█
S. Hodge	█ Second Ave	█
A Hodge	" " "	█
V. Meroran	█ SECOND AVE	█
Piera CARBONE	█ SECOND AVE	█
Malini DeSilva	█ Second AV	█
Trish clenan	█ second Ave	█
John Abela	█ Second Ave	█
Ian Bills	█ Second Ave	█
Rebecca Lovell	█ Second Ave	█
G. DiStefano	█ Second Ave	█
Ben Pudney	█ Second Ave	█



Part 4: List of signatories to the petition:

Please note: when this petition is placed on the public agenda for a Council meeting, it will be a public document and will appear on the Council website. Your address will be redacted, but your name and signature will appear in the public document.

Name (print)	Address	Signature
BARBARA BANSEMER	[REDACTED] Third Ave, St Peter	
Peter Bansemer	[REDACTED] Third Ave St Peter	
Barb Turner	[REDACTED] THIRD AVE JOSLIN	
MIKE GARD	[REDACTED] THIRD AVE JOSLIN	
liz GARD	[REDACTED] TH IRD AVE JOSLIN	
Rebecca George	[REDACTED] Third Ave Joslin	
COREY LEHMAN	[REDACTED] THIRD AVE JOSLIN	
Son Langley	[REDACTED] THIRD AVE, JOSLIN	
Marie Matthews	[REDACTED] Third Av Joslin	
Mala Conway	[REDACTED] " " "	
DANAE KENT	[REDACTED] THIRD AVE, ST PETER	
Gail Ramos	[REDACTED] Third Ave St Peter	
KENY (CANTON)	[REDACTED] THIRD AVE ST PETERS	
Ronnie Sidman	[REDACTED] Third Av St Peters	
Chris Easton	[REDACTED] Third Ave St Peter	
TERRY MACKINNON	[REDACTED] THIRD AVE ST PETERS	
PATRICK FEENEY	[REDACTED] THIRD AVE	
Kerwynn Parker	[REDACTED] Third Ave	
Ash Turner	[REDACTED] Third Ave	
W O Miley	[REDACTED] Third Ave	
Terry Henderson	[REDACTED] Third Joslin	
Janel Paradise	[REDACTED] Third Ave Josf	
CHRIS MINCHIN	[REDACTED] THIRD AVENUE JOSLIN	
Kathy MINCHIN	[REDACTED] 3rd Ave JOSLIN	
Anne-Marie Eliseo	[REDACTED] Third Av Joslin	
Micki Pardo	[REDACTED] THIRD AV JOSLIN	
PAUL PARDOS	[REDACTED] THIRD AVE JOSLIN	
Annie Zhou	[REDACTED] third Ave Joslin	

Part 4: List of signatories to the petition:

Please note: when this petition is placed on the public agenda for a Council meeting, it will be a public document and will appear on the Council website. Your address will be redacted, but your name and signature will appear in the public document.

Name (print)	Address	Signature
Lucy Hatch	█ Fifth Ave Joslin	
MARK PENSHAM	█ FIFTH AVE JOSLIN	
ROBYN HUNT	█ Fifth Ave Joslin	
ROSS HAMBOUR	█ FIFTH AVE JOSLIN	
JOHN WALSH	█ FIFTH AVE JOSLIN	
JOHN HATCH	█ Fifth Ave Joslin	
MARIO BRUNO	█ Lambert Rd, Joslin	
Dora Bruno	█ Lambert Rd, Joslin	
Scott Germain	█ Fifth Ave Joslin	
Ellie Sandhu	█ fifth ave JOS.	
Meredith Johnson	█ Fifth Ave, Joslin	
Lucy Fitzgerald	█ Fifth Ave, Joslin	
Nicole McGuinness	█ Fifth Ave Joslin	
DARRYL PALMER	█ FIFTH AVE JOSLIN	
Shirley [unclear]	█ [unclear]	
Sanya [unclear]	█ Fifth Ave Joslin	
BRITISH	█ FIFTH AVE JOSLIN	
SHUWEN	█ Fifth AVE	
CARY MCNEILL	█ FIFTH AVE	
Lindsay Moseby	█ FIFTH AVE	
Robin [unclear]	█ FIFTH AVE	
ENRICO RE	█ FIFTH AVE	
KERH CAISWELL	█ FIFTH AVE	
DAVID PREECE	█ FIFTH AVE	
PETER ZECK	█ FIFTH AVE JOSLIN	
ABOULLAH RIZWAN	█ FIFTH AVE JOSLIN	
Jul Johnson	█ Fifth Ave Joslin	
JOHN HOWARTH	█ FIFTH AVE, JOSLIN	
David Madlyn	█ Fifth Ave Joslin	

10. WRITTEN NOTICES OF MOTION
Nil

11. STAFF REPORTS

Section 1 – Strategy & Policy

Reports

11.1 SUBMISSION ON THE REVIEW OF THE LOCAL NUISANCE AND LITTER CONTROL ACT 2016

REPORT AUTHOR: Senior Urban Planner
GENERAL MANAGER: General Manager, Urban Planning & Environment
CONTACT NUMBER: 8366 4560
FILE REFERENCE: qA74113
ATTACHMENTS: A - E

PURPOSE OF REPORT

The purpose of this report is to advise the Council of the review of the *Local Nuisance and Litter Control Act 2016*, which is currently being undertaken by the Environment Protection Agency (EPA) and to seek the Council's endorsement of a draft submission.

BACKGROUND

The *Local Nuisance and Litter Control Act 2016* (LNLC Act) has been in operation in its entirety since 1 July 2017, providing Local Government with over five (5) years' experience in administering and enforcing the Act. In August 2018, the EPA commenced a review of the legislation and a subsequent discussion paper was released for public consultation in July 2019, in response to which a total of 47 submissions were submitted.

Following further collaboration between the EPA, the Local Government Association of South Australia (LGA) and a Working Group comprising of representatives from various Councils, the EPA has now compiled a draft Bill that seeks to amend the LNLC Act in a variety of ways and which is currently released for public consultation.

The current consolidated draft Bill, its accompanying Explanatory Report and the earlier discussion paper (2019) and consultation report (2021), are all available for viewing via the following link: https://www.epa.sa.gov.au/community/have_your_say, under the heading 'Local Nuisance and Litter Control Act 2021 – proposed reforms'. They are also contained in **Attachments B - E**.

A draft submission to the EPA has been prepared for the Council's consideration and is contained in **Attachment A**.

RELEVANT STRATEGIC DIRECTIONS & POLICIES

Outcome 4: Environmental Sustainability

A leader in environmental sustainability

Objectives:

- 4.1 *Sustainable and efficient management of resources*
- 4.2 *Sustainable streets and open spaces*

Strategy:

- 4.1.2 *Investigate and implement innovative waste reduction and education initiatives*
- 4.2.1 *Improve the amenity and safety of streets for all users*

FINANCIAL AND BUDGET IMPLICATIONS

The introduction of the LNLC Act in 2017, required Local Government to commit additional resourcing to handle issues that formally fell within the EPA's jurisdiction. Consequently, Local Government has incurred costs in doing so. These costs are not easily recoverable through the current enforcement provisions of the Act.

The proposed amendments to the LNLC Act have the potential to increase the resourcing required of Local Government to address complaints raised, which will have financial implications as a result of additional out-of-hours inspections and the like. Additionally, the proposed amendments may increase reliance on external expert/technical advice which will increase costs. On the other hand, the amendments do seek to introduce additional cost recovery mechanisms for Local Government which may help to assist in offsetting some of these costs, where utilised.

If the Bill is assented to in Parliament, the additional cost implications to this Council that are likely to result from additional out-of-hours inspections and greater reliance on external expert/technical advice are difficult to quantify. However, it is considered that the additional workload can be managed within existing resources. That said, this will need to be carefully monitored.

EXTERNAL ECONOMIC IMPLICATIONS

The only real economic implication of the proposed changes to external parties will be the increased expiation fines set for bodies corporate, which in most cases has doubled. That being said, the Council's approach with respect to offences committed under the LNLC Act has always been, and will continue to be, an 'education before regulation' approach, unless otherwise instructed by the Council. Since the introduction of the Act, the Council has issued very few expiation fines and instead has successfully resolved matters through negotiation and education. Several nuisance abatement notices have been issued to individuals for continuing or particularly egregious breaches and they have proved to be a useful formal enforcement tool for Council staff, without the need for expiations or court intervention. To date, no nuisance or littering matters have resulted in court proceedings.

SOCIAL ISSUES

The introduction of the LNLC Act in 2017, improved community access to a service that can deal with issues surrounding local nuisances and littering. This will continue to be the case as a result of the proposed reforms. These reforms do not seek to remove any agents of nuisance, or ways by which a person may litter, and to this end the reforms seek to introduce additional means by which a person or business may create a nuisance or cause littering to occur, as well as imposing additional proactive responsibilities on persons to avoid future littering or nuisance offences from occurring.

CULTURAL ISSUES

Through the administration of the LNLC Act, the Council has and will continue to ensure that the amenity of residential areas is maintained and that incompatible land uses remain separated. Public spaces will maintain vibrancy and interest for citizens by ensuring compliance with the littering provisions of the Act remains a focus.

ENVIRONMENTAL ISSUES

One of the objectives of the LNLC Act is '*to promote the creation and maintenance of a clean and healthy environment*'. The proposed amendments do not derogate from this objective and Council staff will continue to play an increased role in the detection and management of environmental harm caused by way of local nuisance and/or littering.

RESOURCE ISSUES

The draft submission has been prepared on the assumption that there will be no additional staff resources required. (Refer to the Financial and Budget Implications section of this Report for resourcing issues as a result of the proposed changes).

RISK MANAGEMENT

The proposed introduction of 'light' as an agent of nuisance increases the likelihood of out-of-hours inspections being conducted by Council staff. As a result, those staff responsible for responding to these complaints may have to undertake work during hours of minimal or no daylight, potentially presenting additional risks to staff undertaking these inspections. The draft submission contains recommendations for improvements to the proposed amendments to mitigate this risk to staff (see **Attachment A**, under the heading '*6.1: Light as an agent of nuisance*')

CONSULTATION

- **Elected Members**
Nil
- **Community**
Nil
- **Staff**
General Manager, Urban Planning & Environment
Manager, Development Assessment
Compliance Officer, Planning Services
Team Leader, Regulatory Services
Senior Compliance Officer, Planning Services
- **Other Agencies**
Nil

DISCUSSION

Local Nuisance Amendments

The current LNLC Act prescribes a number of agents of local nuisance over which Local Government has jurisdiction to investigate and enforce, subject to several exclusions. These are: noise, dust, smoke, fumes, aerosols, vibration, unsightly conditions, insanitary conditions and animals.

In the original draft Bill that was released for consultation in 2015, light and heat were included as agents of local nuisance but were removed prior to the Bill being introduced to Parliament because of a lack of specificity in its definition and application. Similarly, when the EPA undertook their review of the Act in 2019 and sought feedback on introducing light as an agent of nuisance, it was the general consensus amongst Local Government and other parties, that it would be useful for Local Government to deal with nuisances arising from light but any proposed legislative framework would need to be concise and unambiguous in its terms and application.

As a result of feedback from Local Government and the public, light is again proposed to be introduced as an agent of local nuisance. The intent of the inclusion is to allow Local Government to deal only with issues of light nuisance that may be reasonably avoided and to exclude all others, such that Local Government resources are not unnecessarily stretched. The proposed definition includes an extensive list of exclusions, which are considered to be appropriate and adequate.

The LNLC Act defines light as causing a nuisance where the light travels from one place to another, and an Authorised Officer determines that *'the nature, intensity, colour, location, direction or extent of light is such as to constitute an unreasonable interference with the enjoyment of neighbouring premises by persons occupying those premises'*. This inclusion will result in an increased expectation on Council staff to respond to and resolve complaints involving light. However, given the extensive list of exclusions it is anticipated that the extra resourcing required to handle these complaints should not be problematic. Notwithstanding this, the proposed submission includes a recommendation that the evidentiary provisions contained within the *Local Nuisance and Litter Control Regulations 2017* (LNLC Regulations), be extended to allow Authorised Officers to make an assessment of light nuisance based on photographic or video material provided by a complainant, as a means of reducing the resourcing burden this addition will impose on Councils.

The draft Bill also seeks to introduce a new offence – the installation of a designated device on premises such that the operation of the device results in a local nuisance. A designated device is defined as an air conditioning unit or an external light. This provision will place more responsibility on installers to ensure these devices are installed in appropriate locations, and in turn provides an option for recourse against an installer rather than a subsequent owner or occupier. The draft submission from this Council supports this inclusion.

Clause 5 of Schedule 1 of the LNLC Act, sets out a list of activities that are declared to not be local nuisance. One of those is '*behaviour... an activity on, or noise emanating from, licensed premises*'; for which a complaint should be lodged with the Liquor Licensing Commissioner. This exclusion encompasses any kind of nuisance that may arise from licensed premises, be it a faulty air conditioning unit or live music. Section 106 of the *Liquor Licensing Act 1997* (LL Act) requires at least 10 complainants for a complaint to be considered 'valid'. The challenging requirement for 10 complainants, combined with the exclusion within the LNLC Act has created frustration throughout the community which experience has shown can sometimes leave complaints unresolved. Responsively, the draft Bill proposes to amend the LNLC Act and LL Act in alike terms, such that only nuisances that are related to the service of alcohol or live music sit within the jurisdiction of the Liquor Licensing Commissioner, giving Councils power to deal with other nuisances such as noisy air conditioning units. The draft submission supports this inclusion subject to both the LNLC Act and the LL Act being amended in no uncertain terms.

Similarly, the LNLC Act currently does not apply to 'noise or other nuisance that may be the subject of proceedings under the *Residential Tenancies Act 1995*. Pursuant to Section 71 of that Act, it is a default term of any residential tenancy that the tenant must not cause or permit a nuisance. By consequence, any nuisance caused by a lessee cannot be enforced by the provisions of the LNLC Act. This appears to have been an oversight by the original drafters of the LNLC Act and the draft Bill proposes to remove this exclusion, and the draft submission from this Council supports this amendment.

The draft Bill also seeks to introduce noise from refrigerated vehicles as a type of nuisance able to be addressed by the LNLC Act, by modifying the exclusion that applies to vehicles generally to no longer apply to refrigerated vehicles. The draft submission from this Council supports this inclusion.

With respect to 'things are not a local nuisance' in Clause 5 of Schedule 1, the draft Bill proposes to include vibration and light associated with public infrastructure works (the current exemption only applies to noise) and dust from unsealed roads as exclusions, which the draft submission from this Council supports.

Section 19 of the LNLC Act, provides Local Government with the ability to issue a local nuisance exemption to allow, for example, a concrete pour to take place prior to 07:00am. The current provisions prescribe specific documentation that must accompany an application and place a maximum time limit on the validity of an exemption to three (3) months. The draft Bill proposes to give Local Government discretion in respect of both the required documentation and the time period for which the exemption will apply. The draft submission from this Council supports this inclusion.

Littering Amendments

Pursuant to Section 23 of the LNLC Act, it is an offence to post a bill (a flyer, brochure or poster containing promotional material) on property without the consent of the owner or occupier of the property – which is most often seen in the context of flyers being posted on vehicles in car parks. Currently, however, there is no definition of 'property' and so the general interpretation has been that property is limited to that upon which a bill is posted (e.g., the vehicle). This has left little recourse for car park owners or Local Government who are often left with the inevitable litter. The draft Bill proposes to introduce a definition of 'property' that includes any land on which a vehicle is located, if the bill posting occurs on a vehicle. The draft submission from this Council supports this inclusion.

In an effort to combat the ever-continuing problem many Councils face with trolleys being dumped, the draft Bill proposes a suite of new provisions that relate specifically to trolleys. These involve:

- including trolleys within the definition of 'general litter' in the LNLC Act;
- requiring businesses to provide identification information on every trolley they provide for their customers; and
- specific provisions that may be included in a nuisance abatement notice that is issued as a result of the littering of trolleys.

While the City of Norwood Payneham & St Peters does not experience the same extent of trolley littering as some other Councils with regional centres do, Council staff do have experience dealing with this issue, especially along The Parade, Norwood. Accordingly, the draft submission supports these amendments.

The draft Bill also seeks to introduce a general duty to prevent or minimise litter by persons carrying on a business. As well as applying to litter generally, it also requires a person to take all reasonable and practicable measures to prevent or minimise litter that escapes from a stormwater management system. A feature which is overlooked in the current LNLC Act, stormwater management systems are often not required to be cleaned and maintained following installation, and so these amendments aim to bridge that gap and place the onus on business operators to ensure this is no longer the case.

Finally, in respect to litter, the draft Bill seeks to improve cost-recovery mechanisms for Local Government that are required to undertake an urgent clean up of litter because of hazards it may pose. Currently, in such circumstances, Local Government may only recover costs which are incidental to the clean up through a successful prosecution of the offender. The proposed amendment to the LNLC Act is the inclusion of a new section that allows Local Government to recover costs from an offender by notice in writing, with the costs to be recoverable as a debt if unpaid. The draft submission supports this inclusion as it provides a simpler means by which the Council may recover costs incurred as a result of another person's offence.

Administrative and Technical Amendments

Abatement notices provide a useful enforcement tool which Local Government can use to address ongoing local nuisance issues, such as limiting the hours of operation of noisy fixed devices such as air conditioning units. Unfortunately, the current LNLC Act provisions only allow an abatement notice to be issued to a person and so when a property is sold or otherwise occupied by a different person the Council has to issue a fresh abatement notice to the new occupier if the local nuisance has not otherwise been resolved. A new section is proposed to be implemented by the draft Bill that allows Local Government to register an abatement notice against land, so that the obligation to comply with its term automatically carries over to any new owner or occupier of the land. The draft submission supports this inclusion, but in so doing has requested that the EPA consider extending the ability to link abatement notices to land to litter abatement notices also.

The draft Bill proposes to increase the expiation fees applicable to bodies corporate (i.e. a legal entity other than a natural person, such as a company or incorporated association) for most offences, in most cases doubling the fees from \$500 to \$1000. Local Government comments during the consultation demonstrates that some businesses appear to consider a \$500 expiation fee as a small cost in comparison to the advantage they might gain from breaching the Act and so that fee was not acting as the deterrent it should to some. Despite Council staff preferring to resolve matters without the need for expiation fees, the draft submission supports this inclusion as it has the potential to succeed as a deterrent and reduce workload for Council staff.

Finally, the draft Bill also proposes to amend various provisions of the LNLC Act to clear up confusion in the current wording, all of which the draft submission is supportive.

OPTIONS

The Council may choose to support or oppose the draft Bill, to support or oppose specific aspects of the Bill, or suggest alternative provisions.

For the reasons set out in the body of this Report, it is recommended that the draft submission, contained in **Attachment A**, be endorsed by the Council as its submission on the draft Bill.

CONCLUSION

The majority of the proposed amendments will not alter the way in which this Council's staff currently approach and deal with complaints about litter and nuisance. Council staff have typically tried to resolve complaints without the need for enforcement action and that will continue despite the new provisions. Nonetheless, the addition of proactive obligations on different parties is welcomed and the inclusion of additional enforcement tools and increased expiation fees for bodies corporate will be useful if and when the need arises.

The introduction of light as an agent of nuisance will inevitably result in increased complaints being made to the Council, especially while any new legislation is in its infancy and the exclusions are not properly understood by the community. Nonetheless, the additional resourcing expected to be needed as a consequence is not considered to be excessive and unreasonable. On balance, the advantages gained by the community through this inclusion outweighs any additional resourcing that may be required by some councils to address these complaints.

Overall, the draft Bill seeks to make positive changes to the LNLC Act and LNLC Regulations without diminishing Local Government's ability to meet the needs of their citizens. For this reason, the draft submission is supportive of the proposed Bill subject to a few minor changes/suggestions as aforementioned.

COMMENTS

Nil

RECOMMENDATION

1. That the draft submission contained in **Attachment A**, be endorsed as the Council's submission on the draft *Local Nuisance and Litter Control Act (Miscellaneous) Amendment Bill 2022*.
2. That the Chief Executive Officer be authorised to make minor editorial changes to the draft submission, prior to its submission.
3. That a copy of the Council's submission be provided to the Local Government Association of South Australia.

Attachments – Item 11.1

Attachment A

Submission on the Review of the *Local Nuisance and Litter Control Act 2016*



City of
Norwood
Payneham
& St Peters

File Number:
Enquiries To: Kieran Fairbrother
Direct Telephone: 08 8366 4560

29 December 2022

Mr Steven Mudge
Acting Manager – Policy, Assessment and Finance
Local Nuisance and Litter Control Act 2022
Environment Protection Authority
GPO Box 2607
ADELAIDE SA 5001

Via email: epainfo@sa.gov.au

Dear Mr Mudge

SUBMISSION ON REVIEW OF THE LOCAL NUISANCE AND LITTER CONTROL ACT 2016

I refer to the review of the *Local Nuisance and Litter Control Act 2016* (LNLC Act), which is currently being undertaken by the Environment Protection Agency (EPA).

The review was considered by the Council at its meeting held on 16 January 2023 and set out below is the submission which has been endorsed by the Council. The headings used in this submission are reflective of those contained in the EPA's October 2022 Explanatory Report for the review of the LNLC Act.

1. General Amendments

1.1. Waste Collection Vehicles – application beyond roads and road related areas

The Council supports this amendment, and notes that the amendment seeks to clarify that nuisances from waste transport vehicles operating on private property, are enforceable under the Act. However, the Council questions the applicability of this section in light of Schedule 1 Part 3 Clause 5(i). This Clause currently reads '*subject to Part 2 clause 4(a)(i)(D), noise from vehicles (other than vehicles operating within, or entering or leaving, business premises*' is exempt from constituting a local nuisance for the purposes of Section 17(1). The Council is of the view that Clause 5(J) of Schedule 1, exempts all vehicles from causing a nuisance unless they are operating within, entering or leaving, business premises, or collecting waste (Schedule 1 Part 2 clause 4(a)(i)(D)).

Accordingly, to avoid confusion and contradiction within the LNLC Act, the Council suggests that Schedule 1 Part 3 Clause 5(i) be simultaneously amended to read:

Subject to section 5(5) and Part 2 clause 4(a)(i)(D) and (DA), noise from vehicles (other than vehicles operating within, or entering or leaving business premises)

1.2. Exemptions from the LNLC Act for causing local nuisance

The Council supports these proposed amendments, and notes that the amendment seeks to provide councils with the discretion to waive the requirement for a site nuisance management plan and to determine the length of time for which an exemption will apply. Council staff have experience in issuing nuisance exemptions, which is both time and resource consuming. The discretion for each council to determine how long an exemption will apply is a welcomed inclusion in the Act.

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1.3. Allowing councils to clean up and recover costs after, if a hazard exists

The Council supports the proposed Section 22A, as this will enable Local Government to take urgent action to clean up hazardous litter where the offender is not known and then recover the associated costs which are incurred by the Council from the offender if the offender is later identified, without the need for civil proceedings.

1.4. Bill posting – car parks and expiations

The Council supports this amendment. The inclusion of an expiation fee for bill posting provides a less resource-intensive enforcement tool for Local Government and will act as a useful deterrent to prevent future offences.

1.5. Expiations

The Council supports the differentiation for expiation fees between natural persons and bodies corporate for certain offences, as well as the increased expiation fees for bodies corporate. In the context of a multi-million-dollar construction project, a \$210 or \$500 expiation fee could be considered by businesses as a small expense and of little concern. Doubling these fees for bodies corporate will assist in deterring these offences.

The Council understands that where there is the likelihood of continued or repeat offences, and expiation fines do not secure compliance, then other enforcement tools such as abatement notices should be utilised for securing compliance. In these instances, however, the Council is of the view that the expiation fee prescribed under Section 30(9) should be increased to reflect the severity of the offence. In instances where an expiation fee under Section 18(2) does not achieve compliance, it is the Council's view that the same expiation fee for a failure to comply with an abatement notice is an insufficient deterrent to prevent continued offences. In such circumstances, councils will be left with no choice but to commence legal proceedings which is both time and resource intensive.

2. Trolley-related Amendments

The Council has experience with trolley littering within the council area, particularly on The Parade, Norwood. The Council recognises that this is a growing, continued problem for the community generally and some larger metropolitan councils and so it supports the proposed trolley-related amendments.

2.2.3. General duty

The Council supports the inclusion of the proposed Section 21A, which seeks to impose a general duty on persons carrying on a business to take all reasonable and practicable measures to prevent or minimise littering associated with the carrying on of that business.

3. Stormwater Management Systems

The Council recognises the current gap in the legislation that places no obligation on businesses to maintain their stormwater management system, unless conditions are imposed as part of a Development Authorisation or EPA License. Accordingly, the proposed addition of a general duty to maintain and clean such systems is supported by the Council. The Council concurs with the proposed definition of stormwater management systems.

4. New Provisions

4.1. Abatement notices – linkage to land

The Council supports the ability for councils to register a Nuisance Abatement Notice onto land, as a means of alerting prospective purchasers of unresolved local nuisance matters. This ability already exists for councils with respect to enforcement notices issued under the *Planning, Development and*

Infrastructure Act 2016, which has shown success, and so a similar provision for Abatement Notices to be linked to land is welcomed.

However, the Council questions why the proposed section 30A limits the registration of Abatement Notices on land to only nuisance abatement notices. In consideration of the proposed Section 21A (general duty to prevent or minimise litter), the Council suggests it would be better for the proposed Section 30A to also include the ability to register litter abatement notices against land. To the extent that a business owner is required to comply with a plan of action provided in response to a litter abatement notice (such as a trolley management plan, a general litter mitigation plan, or a plan to prevent litter escaping from a stormwater management system) the Council submits that these obligations should be able to be carried across to new business owners (where applicable) without the need for a new litter abatement notice being issued and a new plan of action being prepared in response.

4.2. Improving cost recovery

The Council approaches breaches of the LNLC Act with an 'education before regulation' approach, resulting in very few expiation notices being issued since the introduction of the Act. Accordingly, the Council's ability to recover costs incidental to breaches of the Act has been, and is, limited.

The Council understands the intent of this provision is to give Local Governments a simpler way of recovering costs which are incurred as a result of action taken in respect to non-compliance with an abatement notice, which the current provisions of the Act fail to provide. Accordingly, this inclusion is supported by the Council.

4.3. New offence provision – Installation of external lights or air conditioners that cause local nuisance

The Council understands that the intent behind this provision is to redirect liability for causing a local nuisance to the installer of a designated device, rather than the user of that device, where the device has been installed in a position where it could have been foreseen that it would be likely to cause a local nuisance. The Council is supportive of such a provision, and believes more responsibility should be placed on installers, especially when the end user may not be fully informed on where the unit should be installed.

5. Consequential Amendments

5.1. Liquor Licensing Act 1997

The Council supports this amendment, which seeks to amend the exclusion in clause 5(k) of Schedule 1 of the LNLC Act, to allow Local Government to administer and enforce nuisances arising from licensed premises where those nuisances are not directly connected with the service of alcohol or associated entertainment. However, the Council's support for this amendment is subject to Section 106 of the *Liquor Licensing Act 1997* (LL Act), being amended in similar terms such that complaints relating to noise, entertainment, music and behaviour from patrons continue to rest with the Liquor Licensing Commissioner.

The City of Norwood Payneham & St Peters contains several important mixed-use areas, such as The Parade, Norwood and the suburb of Kent Town, where interface issues between residential and non-residential land uses can arise. To this end, numerous complaints have been lodged with the Council regarding nuisances arising from licensed premises. While the Council has no formal powers to deal with these complaints, the Council has nonetheless tried to assist complainants to resolve their respective complaints by negotiating or mediating on their behalf after verifying the complaint. However, not all complaints are resolved and the Council's ability to take the matter further is non-existent, leaving complainants often frustrated and left with an unresolved complaint because the Liquor Licensing Commission 'cannot and will not do anything'.

A common complaint which is received by the Council in this context relates to noisy air-conditioning units. Often it is the case that nuisances arising from air-conditioning units located on licensed premises are causing a nuisance to only one or two neighbours. The current provisions of the LL Act, requires a complainant to be one of at least ten (10) persons who are affected by the nuisance in order to be

considered a valid complaint (s 106(3)(a)). This requirement is too onerous for complaints of this nature and is oftentimes impossible to be met where the nuisance does not affect so many people. Therefore, the current exemption in the LNLC Act and the corresponding provision in the LL Act, present a gap in the legislation where certain complaints cannot be resolved.

Accordingly, the Council welcomes the ability to deal with nuisances that arise from licensed premises where the activity which is generating the nuisance has no association with the service of alcohol, or music or entertainment being played, on the premises (e.g. air-conditioning noise). The Council believes that Local Government is the most appropriate authority to deal with these types of complaints.

6. Variation Regulations

6.1. Light as an agent of local nuisance

When the first review of the LNLC Act was undertaken in 2019, the Council opposed the idea of introducing light as an agent of nuisance as: it was not clear what lights would be captured by this inclusion and which would be excluded, the impact on resourcing for Local Government would be high, and council officers did not have the necessary specialist expertise to properly assess the impacts of lighting.

The current proposal addresses the first of these concerns. The Council supports the proposed list of exclusions and has nothing further to add, noting that the proposed list is appropriate and responsive to both community expectations and local government resourcing.

The Council understands that these reforms do not propose to alter the measurement procedures provided by Regulation 7 of the *Local Nuisance and Litter Control Regulations 2017*, meaning that complaints regarding nuisances caused by light, will be investigated and assessed by an Authorised Officer by way of a subjective assessment, in the same manner that other nuisances are investigated and assessed currently. In other words, Authorised Officers will not be expected to undertake any specialist training in this field or have a full understanding of and be able to apply, AS/NZS 4282:2019 – *Control of the obtrusive effects of outdoor lighting*. In this regard, the proposed inclusion should not unnecessarily burden Local Government, however the Council anticipates that community expectations may need to be managed appropriately and carefully in response to this.

However, there will still be an impact on costs and resourcing as a result of this inclusion. Lighting will only become an issue during the hours between sunset and sunrise – hours during which most councils (if not all) do not have Authorised Officers working at these times. Accordingly, there will be an imposition on Local Government to provide sufficient staff resourcing to investigate these complaints, outside of normal operating hours, in order to meet community expectations and fulfil their duties under the Act. The Council appreciates that this is an unavoidable cost.

Notwithstanding this, this imposition on Local Government could be lessened by an amendment to regulation 7 of the LNLC Regulations. This regulation currently reads:

7—Measurement procedures for determining presence of local nuisance

For the purposes of section 21(d) of the Act, if, in determining the presence of local nuisance, section 17(1) of the Act (including a provision referred to by that section) requires an authorised officer to form an opinion about a matter, the officer may form the opinion based on the officer's own senses.

This regulation could be amended to separate the above into a sub-regulation (a) and then include a second sub-regulation (b) that states:

- (b) With respect to determining the presence of local nuisance arising from light(s), an authorised officer may form an opinion based on photographic or video material provided to the officer that the officer believes to reasonably demonstrate the effects of the light(s).

While the wording as suggested above can be changed, the Council requests that the EPA consider this suggestion. A provision in the Regulations that enables Local Government to use photographs or videos provided by a complainant will also assist in reducing the imposition on Local Government

resources and costs that will be involved by out-of-hours inspections. This does not affect Section 50 of the Act, as Regulation 7 stipulates that it only relates to Sections 21(d) and 17(1) of the Act.

The Council trusts that the EPA will give serious consideration to the above suggestion. The Council is generally supportive of the proposal to include light as an agent of nuisance.

6.2. Clause 5 of Schedule 1 amendments

6.2.1. Construction activities

The Council has not encountered any issues with the application of the current exclusion to construction activities. Nonetheless, the Council understands that the intent of this amendment is to prevent developers/builders from falling back on an inadequate *Construction Environment Management Plan* (or similar) that was approved as part of a development approval. In this instance, the Council appreciates that there can often be separation between those officers who assess and approve Development Applications (and thus CEMPs) and those officers who are reacting to and resolving nuisance complaints and as such the Council welcomes this amendment. The removal of construction activities from the current exemption should provide clarity to the industry that an approved CEMP is a guide only and not a bar from further action being taken should a nuisance result from construction work being undertaken.

6.2.2. Noise from public infrastructure – application to vibration and extent of the exclusion

The Council is supportive of this amendment to exclude vibration and other nuisances from public infrastructure works from the ambit of the LNLC Act.

6.2.3. Residential Tenancies Act 1995

Despite this exemption, the Council has continued in its attempts to resolve nuisances which are generated by tenants. Unfortunately, not all of these complaints result in a resolution and so complainants are left frustrated by the Council's inability to take the matter further. Additionally, landlords are not always willing to resolve the matter with their tenant and this is partly because the potential for eviction as a result of tribunal proceedings is extremely punitive in the context of the nuisances being generated. In short, the punishment is disproportionate to the offence.

Accordingly, the Council is supportive of this amendment.

6.2.4. Dust from unsealed roads

The City of Norwood Payneham & St Peters does not contain any unsealed roads, other than some laneways in which traffic speed and volume does not generate any significant dust issues. As such, the Council does not have a strong view on this suggested amendment. That being said, the Council believes the proposed amendment is a sensible and practical approach and supports this amendment.

6.2.5. Noise from refrigerated vehicles

The Council seeks clarification on how this proposed amendment interacts with the exemption provided by the proposed Clause 5(k) of Schedule 1 – noise or behaviour in respect of which a complaint may be lodged with the Liquor Licensing Commissioner. The Council appreciates the similarity between the noise from a refrigeration mechanism on refrigerated vehicles and the noise generated from air-conditioning units and it makes sense for Local Government to regulate this type of nuisance. However, refrigerated vehicles are often operated on licensed premises, in direct association with a licensed event (e.g. catering for a licensed function) and the Act is not clear on whether a nuisance being generated from the refrigeration mechanism should be dealt with under the LNLC Act or whether it is exempt by virtue of Section 106 of the LL Act.

Accordingly, the Council suggests an amendment to the proposed Clause 4(a)(i)(DA) of Schedule 1, such that it excludes noise which is emitted from the operation of refrigeration equipment fitted on or in a vehicle where that vehicle is located on licensed premises and/or is being used in association with a liquor-licensed event.

Additionally, the wording of the proposed Clause 4(a)(i)(DA) states “*in the case of noise from the operation of refrigeration equipment fitted on or in a vehicle that is parked and not being operated...*”. The Council assumes that the wording underlined, namely “and not being operated”, relates to the vehicle and not the refrigeration mechanism. As such, further clarity regarding the wording of this clause would be appreciated, to avoid confusion.

6.3. Public infrastructure works

The Council supports the addition of this definition. In respect to the definition of “*public infrastructure works*” however, the Council suggests the following wording in order to better encapsulate the intent of the definition:

public infrastructure works means work or activity in the nature of the construction, alteration, installation, repair, maintenance, removal or replacement of public infrastructure.

6.4. Hyperlink in Regulation 4

The Council is supportive of this administrative amendment.

Other Comments

For the purposes of providing clarity, the Council suggests that the proposed definition for “*business premises*” is amended such that (a) reads as:

- (a) *the premises in which the business is conducted, or that constitute the business (which also includes any area of local government land used for the purposes of outdoor dining or trading); and*

This amendment is sought to ensure that any lighting of outdoor dining and trading areas associated with a lawfully-operating business are exempt from the application of the Act by virtue of the proposed exclusions from the definition of light in Clause 5(t)(xv) of Schedule 1.

Thank you for the opportunity to provide comments on the proposed reforms of the LNLC Act. Should you wish to discuss this matter further please do not hesitate to contact me or Kieran Fairbrother, Senior Urban Planner by telephone on 08 8366 4560 or email at kfairbrother@npsp.sa.gov.au.

Yours sincerely

Mario Barone PSM
CHIEF EXECUTIVE OFFICER

Attachment B

Submission on the Review of the *Local Nuisance and Litter Control Act 2016*



City of
Norwood
Payneham
& St Peters

South Australia

Local Nuisance and Litter Control Act 2016

An Act to regulate local nuisance and littering; to make related amendments to the *Local Government Act 1999*, the *Motor Vehicles Act 1959* and the *Summary Offences Act 1953*; and for other purposes.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Interpretation

Part 2—Objects and application of Act

- 4 Objects of Act
- 5 Interaction with other Acts
- 6 Territorial and extra-territorial application of Act

Part 3—Administration

Division 1—Councils

- 7 Functions of councils
- 8 Annual reports by councils

Division 2—Administering bodies

- 9 Administering bodies
- 10 Delegation
- 11 Periodic reports by administering bodies

Division 3—Authorised officers

- 12 Authorised officers
- 13 Identity cards
- 14 Powers of authorised officers
- 15 Limit of area of authorised officers appointed by councils
- 16 Provisions relating to seizure

Part 4—Offences

Division 1—Local nuisance

- 17 Meaning of local nuisance
- 18 Causing local nuisance
- 19 Exemptions from application of section 18

- 19A Installation of designated device that results in local nuisance
- 20 Person must cease local nuisance if asked
- 21 Regulations for purposes of Division
- 21A General duty to prevent or minimise litter—person carrying on business

Division 2—Litter control

- 22 Disposing of litter
- 22A Recovery of costs of urgent clean up of litter from public place
- 23 Bill posting
- 24 Litterer must remove litter if asked
- 24A Identification of shopping trolleys
- 25 Citizen's notification

Division 3—Miscellaneous

- 26 Liability of vehicle owners
- 27 Defence of due diligence
- 28 Alternative finding
- 29 Notification to EPA of serious or material environmental harm

Part 5—Nuisance abatement notices and litter abatement notices

- 30 Nuisance and litter abatement notices
- 30A Registration of nuisance abatement notice in relation to land
- 31 Action on non-compliance with notice
- 32 Appeals

Part 6—Civil remedies and penalties

- 33 Civil remedies
- 34 Minister or council may recover civil penalty in respect of contravention

Part 7—Miscellaneous

- 35 Constitution of the Environment, Resources and Development Court
- 36 Delegation by Minister
- 37 Service of notices or other documents
- 38 Immunity
- 39 Protection from liability
- 40 Statutory declarations
- 41 False or misleading information
- 42 Confidentiality
- 43 Offences
- 44 Offences and Environment, Resources and Development Court
- 45 Orders in respect of contraventions
- 46 Offences by bodies corporate
- 47 Continuing offences
- 48 Recovery of administrative and technical costs associated with contraventions
- 49 Assessment of reasonable costs and expenses
- 50 Evidentiary provisions
- 51 Regulations

Schedule 1—Meaning of local nuisance (section 17)

Part 1—Interpretation

1 Interpretation

Part 2—Things that are local nuisance

2 Declared agents (section 17(1)(a))

3 Unsightly conditions on premises (section 17(1)(c))

4 Things declared to constitute local nuisance (section 17(1)(e))

Part 3—Things that are not local nuisance

5 Things that are not local nuisance

Schedule 2—Related amendments and transitional provisions

Part 1—Preliminary

1 Amendment provisions

Part 2—Amendment of *Local Government Act 1999*

2 Repeal of section 235

3 Amendment of section 236—Abandonment of vehicles

4 Repeal of section 240

5 Amendment of section 254—Power to make orders

Part 3—Amendment of *Motor Vehicles Act 1959*

6 Amendment of section 139D—Confidentiality

Part 4—Amendment of *Summary Offences Act 1953*

7 Repeal of section 48

Part 5—Transitional provisions

8 Continuation of by-laws under section 240 of the *Local Government Act 1999* relating to bill-posting

9 Continuation of orders made under section 254 of the *Local Government Act 1999*

Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Local Nuisance and Litter Control Act 2016*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Interpretation

In this Act, unless the contrary intention appears—

amenity value of an area includes any quality or condition of the area that conduces to its enjoyment;

authorised officer means a person appointed to be an authorised officer under section 12;

business premises of a business includes—

- (a) the premises in which the business is conducted, or that constitute the business; and
- (b) an ancillary car park (or car parks) used by customers of the business; and
- (c) if the business premises are constituted of, or form part of, a shopping centre—the common areas of the shopping centre that are accessible to the public (including a car park for the shopping centre);

class A hazardous litter—see section 22(5);

class B hazardous litter—see section 22(5);

council means a council within the meaning of the *Local Government Act 1999*;

environment protection policy has the same meaning as in the *Environment Protection Act 1993*;

function includes a power or duty;

general litter—see section 22(5);

LGA means the Local Government Association of South Australia;

litter—see section 22(5);

litter abatement notice—see section 30;

local nuisance—see section 17;

nuisance abatement notice—see section 30;

owner—

- (a) in relation to a vessel, has the same meaning as in the *Harbors and Navigation Act 1993*, and includes the operator of the vessel within the meaning of that Act;
- (b) in relation to a vehicle within the meaning of the *Road Traffic Act 1961*, has the same meaning as in section 5(1) of the *Road Traffic Act 1961*, and includes the operator of the vehicle within the meaning of that Act;

premises means—

- (a) any land, building (including residential premises) or place (including a public place, or a movable building or structure); or
- (b) a part of premises;

prescribed activity of environmental significance has the same meaning as in the *Environment Protection Act 1993*;

public place has the same meaning as in the *Road Traffic Act 1961*;

relevant council, in relation to the commission (or alleged commission) of an offence under this Act, means the council for the area in which the commission (or alleged commission) of the offence occurred;

road has the same meaning as in the *Road Traffic Act 1961*;

road-related area has the same meaning as in the *Road Traffic Act 1961*;

shopping centre means a group of retail business premises (whether or not other business premises are also present) that are—

- (a) promoted as, or generally regarded as constituting, a shopping centre, shopping mall, shopping court or shopping arcade; and
- (b) located in 1 building or in 2 or more buildings that are either adjoining or separated only by common areas or other areas owned by the owner of the premises;

stormwater management system means any infrastructure or equipment (including vegetated assets) used for collecting, containing, conveying or treating stormwater for the purposes of stormwater management;

vehicle includes—

- (a) a vessel; and
- (b) a vehicle within the meaning of the *Road Traffic Act 1961*;

vessel has the same meaning as in the *Harbors and Navigation Act 1993*.

Part 2—Objects and application of Act

4—Objects of Act

- (1) The objects of the Act are—
 - (a) to protect individuals and communities from local nuisance; and
 - (b) to prevent littering; and
 - (c) to improve the amenity value of local areas; and
 - (d) to promote the creation and maintenance of a clean and healthy environment.
- (2) The Minister, councils and other persons or bodies involved in the administration of this Act must have regard to, and seek to further, the objects of this Act.

5—Interaction with other Acts

- (1) Except as specifically provided by this Act, the provisions of this Act are in addition to, and do not limit, the provisions of any other law of the State.
- (2) Without limiting the generality of subsection (1), this Act is not intended to be construed so as to prevent any person from being prosecuted under any other enactment for an offence that is also punishable by this Act, or from being liable under any other law of the State to any penalty or punishment that is higher than a penalty or punishment provided by this Act.

- (3) Nothing in this Act affects or limits a right or remedy that exists apart from this Act and compliance with this Act does not necessarily indicate that a common law duty of care has been satisfied.
- (4) Subject to subsection (5), this Act does not apply in relation to an activity authorised by an environmental authorisation within the meaning of the *Environment Protection Act 1993*.
- ~~(5) This Act applies in relation to the use of a road or road related area by a vehicle for the purposes of, or in connection with, the following prescribed activities of environmental significance:~~
- ~~(a) a waste transport business (category A);~~
 - ~~(b) a waste transport business (category B);~~
 - ~~(c) dredging;~~
 - ~~(d) earthworks drainage.~~
- (5) This Act applies in relation to—
- (a) the use of a vehicle for the purposes of, or in connection with, the conduct of the following:
 - (i) a waste transport business (category A);
 - (ii) a waste transport business (category B);
 other than the use of that vehicle at or in connection with premises, works or facilities used for the purposes of undertaking a prescribed activity of environmental significance as authorised by an environmental authorisation within the meaning of the *Environment Protection Act 1993*; and
 - (b) the use of a road or road related area by a vehicle for the purposes of, or in connection with, the following prescribed activities of environmental significance as authorised by an environmental authorisation within the meaning of the *Environment Protection Act 1993*:
 - (i) dredging;
 - (ii) earthworks drainage.

6—Territorial and extra-territorial application of Act

- (1) If—
- (a) a person causes local nuisance within the State by an activity carried on outside the State; and
 - (b) the activity would, if carried on within the State, constitute a contravention of this Act,
- the person is liable to a penalty in respect of the contravention as if the activity were carried on by the person within the State.
- (2) For the purposes of this section, a reference to carrying on an activity includes a reference to a failure to act.

Part 3—Administration

Division 1—Councils

7—Functions of councils

- (1) Subject to this Act, a council is the principal authority for dealing with local nuisance and littering in its area.
- (2) In connection with subsection (1), the following functions are conferred on a council by this Act:
 - (a) to take action to manage local nuisance and littering within its area;
 - (b) to cooperate with any other person or body involved in the administration of this Act;
 - (c) to provide, or support the provision of, educational information within its area to help detect, prevent and manage local nuisance and littering;
 - (d) such other functions as are assigned to the council by this Act.
- (3) A council must, in performing its functions under this Act, have regard to—
 - (a) the guidelines adopted or prescribed by regulation for managing unreasonable complainant conduct; and
 - (b) any other guidelines adopted or prescribed by regulation to assist councils in performing their functions.

8—Annual reports by councils

A council must, in its annual report prepared pursuant to section 131 of the *Local Government Act 1999* in relation to a particular financial year, include details of the performance by the council during that year of functions conferred on it under this Act.

Division 2—Administering bodies

9—Administering bodies

- (1) The Governor may make regulations declaring a body to be an administering body for the purposes of the administration or enforcement of this Act either generally or in specified locations or subject to specified conditions.
- (2) The regulations may—
 - (a) provide that this Act or specified provisions of this Act will apply (subject to such conditions, modifications or requirements as may be prescribed by the regulations) in order to confer functions or rights on—
 - (i) an administering body as if it were a council (including a relevant council); or
 - (ii) officers or employees of the administering body as if they were authorised officers of a council; and

- (b) provide that any fines, penalties or forfeitures recovered in proceedings commenced by an administering body before a court for an offence against this Act must be paid to the administering body.
- (3) The conferral under this section of a function on an administering body or its officers or employees is not, unless the contrary intention is specified in the regulations, to be taken to limit or affect the performance of that function by the Minister, a council or an authorised officer.

10—Delegation

- (1) An administering body, may, by instrument executed by the administering body, delegate a function conferred on the administering body under this Division to—
 - (a) a committee of the administering body; or
 - (b) an officer or employee of the administering body; or
 - (c) an officer or employee of the administering body for the time being occupying a particular office or position.
- (2) A delegation under this section may be given subject to conditions specified in the instrument of delegation.
- (3) A delegation under this section is revocable at will and does not prevent the administering body from acting in any matter.

11—Periodic reports by administering bodies

- (1) An administering body must report to the Minister, at such intervals as the Minister requires, on the performance by the body of functions conferred on the body under this Division.
- (2) The Minister must, within 6 sitting days after receiving a report under subsection (1), cause copies of the report to be laid before both Houses of Parliament.

Division 3—Authorised officers

12—Authorised officers

- (1) All police officers are authorised officers for the purposes of this Act.
- (2) The Minister may appoint persons to be authorised officers for the purposes of this Act.
- (3) A council may appoint—
 - (a) specified officers or employees of the council; or
 - (b) a specified class of officers or employees of the council,
 to be authorised officers for the purposes of this Act.
- (4) An appointment—
 - (a) may be made subject to conditions specified in the instrument of appointment; and
 - (b) is, in the case of an appointment by a council or other appointment of a prescribed class, subject to conditions prescribed by regulation.

- (5) A person may hold an appointment as an authorised officer from more than 1 council.
- (6) The Minister or a council that has made an appointment under this section may, at any time, revoke the appointment, or vary or revoke a condition specified in the instrument of such an appointment or impose a further such condition.

13—Identity cards

- (1) An authorised officer is not required to be issued with an identity card in the following circumstances:
 - (a) if the authorised officer is a police officer;
 - (b) if the authorised officer is appointed by a council and the Minister has designated a card issued to such an authorised officer by the council as an identity card for the purposes of this Act.
- (2) In any other circumstances, an authorised officer appointed under this Act must be issued with an identity card in a form approved by the Minister—
 - (a) containing the person's name and a recent photograph of the person; and
 - (b) stating that the person is an authorised officer for the purposes of this Act; and
 - (c) specifying the name or office of the issuing authority.
- (3) The identity card must be issued as soon as is reasonably practicable after the appointment is made (but an authorised officer is not prevented from exercising powers under this Act just because an identity card is yet to be issued).
- (4) An authorised officer must, at the request of a person in relation to whom the officer intends to exercise any powers under this Act, produce for the inspection of the person his or her identity card (unless the identity card is yet to be issued).

14—Powers of authorised officers

- (1) An authorised officer may, for any purpose connected with the administration or enforcement of this Act or with the performance, exercise or discharge of a function under this Act—
 - (a) at any reasonable time, enter or inspect any premises or vehicle; and
 - (b) during the course of the inspection of any premises or vehicle—
 - (i) ask questions of any person found in or on the premises or vehicle; and
 - (ii) open a part of, or thing in or on, the premises or vehicle; and
 - (iii) inspect any substance, material or thing found in or on the premises or vehicle; and
 - (iv) take and remove samples of any substance, material or thing found in or on the premises or vehicle; and
 - (v) require any person to produce any plans, specifications, books, papers or documents; and
 - (vi) examine, copy and take extracts from any plans, specifications, books, papers or documents; and

- (vii) take photographs, films or video recordings; and
 - (viii) take measurements, make notes and carry out tests; and
 - (ix) remove, or seize and retain, any substance, material or thing that has or may have been used in, or may constitute evidence of, a contravention of this Act; and
 - (c) require a person who the authorised officer reasonably suspects has committed, is committing or is about to commit, an offence against this Act, to state the person's full name and usual place of residence and to produce evidence of the person's identity; and
 - (d) require any person to answer any question that may be relevant to the administration or enforcement of this Act; and
 - (e) give directions as to the stopping or movement of a vehicle; and
 - (f) give any other directions reasonably required in connection with the exercise of a power conferred by any of the paragraphs above or otherwise in connection with the administration or enforcement of this Act.
- (2) In the exercise of powers under this Act, an authorised officer may be accompanied by such assistants as may be necessary or desirable in the circumstances.
- (3) An authorised officer may only use reasonable force—
- (a) to enter any premises or vehicle; or
 - (b) to open a part of, or thing in, the premises or vehicle,
- on the authority of a warrant issued by a magistrate or a justice.
- (4) However—
- (a) an application for a warrant under subsection (3) cannot be made to a justice who is a member, officer or employee of a council; and
 - (b) a magistrate or justice must not issue a warrant under subsection (3) unless satisfied—
 - (i) that there are reasonable grounds to suspect that an offence against this Act has been, is being, or is about to be, committed; or
 - (ii) that the warrant is reasonably required in the circumstances.
- (5) If an authorised officer is inspecting premises or a vehicle under this section, the person in charge of the premises or vehicle must provide such assistance as the authorised officer reasonably requires to facilitate the inspection.
- (6) A person who—
- (a) hinders or obstructs an authorised officer, or a person assisting an authorised officer, in the exercise of a power under this Act; or
 - (b) uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer, in the exercise of a power under this Act; or
 - (c) refuses or fails to comply with a requirement or direction of an authorised officer under this Act; or

- (d) having been asked a question under this section, does not answer the question to the best of his or her knowledge, information and belief; or
- (e) falsely represents, by words or conduct, that he or she is an authorised officer or other person with powers under this Act,

is guilty of an offence.

Maximum penalty: \$10 000.

- (7) It is not an excuse for a person to refuse or fail to furnish information under this section on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.
- (8) However, if compliance with a requirement to furnish information might tend to incriminate a person or make a person liable to a penalty, then—
 - (a) in the case of a person who is required to produce, or provide a copy of, a document or information—the fact of production, or provision of, the document or the information (as distinct from the contents of the documents or the information); or
 - (b) in any other case—any answer given in compliance with the requirement, is not admissible in evidence against the person for an offence or for the imposition of a penalty (other than proceedings in respect of the provision of information that is false or misleading).
- (9) An authorised officer, or a person assisting an authorised officer, who—
 - (a) addresses offensive language to any other person; or
 - (b) without lawful authority hinders or obstructs or uses or threatens to use force in relation to any other person,

is guilty of an offence.

Maximum penalty: \$10 000.

15—Limit of area of authorised officers appointed by councils

An authorised officer appointed by a council may, subject to any conditions of his or her appointment, exercise powers under this Act outside of the council area in the following circumstances:

- (a) subject to paragraph (b), if the powers are to be exercised in another council area—to the extent agreed to, in writing, by the other council;
- (b) if the authorised officer believes on reasonable grounds that an offence under this Act has been committed within the council area that requires the exercise of powers outside the council area (including within the area of another council or outside the State).

16—Provisions relating to seizure

- (1) If a substance, material or thing has been seized under this Division, the following provisions apply:
- (a) the substance, material or thing seized must be held pending proceedings for an offence against this Act unless the Minister or relevant council (as the case may require), on application, authorises its release to the person from whom it was seized, or to any person who had legal title to it at the time of its seizure, subject to such conditions as the Minister or council thinks fit;
 - (b) if—
 - (i) proceedings are not instituted for an offence against this Act in relation to the substance, material or thing within the prescribed period after its seizure; or
 - (ii) after proceedings have been so instituted and the defendant is not found guilty or convicted of the offence,

the person from whom it was seized is entitled to recover the substance, material or thing or, if it has been destroyed, compensation equal to the market value of the substance, material or thing at the time of its seizure;
 - (c) an action for the payment of compensation may be brought in any court of competent jurisdiction;
 - (d) the court by which a person is convicted or found guilty of an offence against this Act in relation to the substance, material or thing may, if the proceedings were instituted within the prescribed period after its seizure, order—
 - (i) that the substance, material or thing be forfeited to the Minister or relevant council; or
 - (ii) if the substance, material or thing has been released pursuant to paragraph (a)—that the person to whom it was released or the defendant pay to the Minister or relevant council (as the case may require) an amount equal to its market value at the time of its seizure as the court thinks fit;
 - (e) if a person is, under this section, entitled to recover any substance, material or thing, but the person—
 - (i) fails to do so within 6 months after having been requested to do so by the Minister or relevant council; or
 - (ii) cannot be located within 6 months after reasonable attempts by the Minister or relevant council to do so,

the substance, material or thing is, by force of this section, forfeited to the Minister or council;
 - (f) any substance, material or thing forfeited under this section must be disposed of in such manner as the Minister or relevant council (as the case may require) may direct;
 - (g) if the substance, material or thing is sold, the proceeds of the sale must—

- (i) if the sale was directed by the Minister—be paid into the Consolidated Account; or
 - (ii) if the sale was directed by the relevant council—be paid to that council.
- (2) For the avoidance of doubt, this section does not apply in relation to a substance, material or thing—
 - (a) removed or disposed of by or on behalf of the Minister or a council under section 31 (following non-compliance with the requirements of a nuisance abatement notice or litter abatement notice); or
 - (b) removed or disposed of by a council under section 234 of the *Local Government Act 1999*; or
 - (c) collected by a council under section 297 of the *Local Government Act 1999*.
- (3) In this section—

prescribed period means 6 months (or such longer period as the Environment, Resources and Development Court may, on application by the Minister or relevant council, allow).

Part 4—Offences

Division 1—Local nuisance

17—Meaning of local nuisance

- (1) For the purposes of this Act, local nuisance is—
 - (a) any adverse effect on an amenity value of an area that—
 - (i) is caused by—
 - (A) noise, odour, smoke, fumes, aerosols or dust; or
 - (B) animals, whether dead or alive; or
 - (C) any other agent or class of agent declared by Schedule 1; and
 - (ii) unreasonably interferes with or is likely to interfere unreasonably with the enjoyment of the area by persons occupying a place within, or lawfully resorting to, the area; or
 - (b) insanitary conditions on premises that unreasonably interfere with or are likely to interfere unreasonably with the enjoyment of premises occupied by persons in the vicinity; or
 - (c) unsightly conditions, of a kind declared by Schedule 1, on premises caused by human activity or a failure to act; or
 - (d) a contravention of, or failure to comply with a provision of an environment protection policy, or of any other Act or law, declared by Schedule 1; or
 - (e) anything declared by Schedule 1 to constitute local nuisance,
 but does not include anything declared by Schedule 1 not to constitute local nuisance.

Note—

Schedule 1 may be added to or amended by regulation—see section 51(2)(a) and (b).

- (2) For the purposes of subsection (1)(b), conditions on premises will be taken to be insanitary if an authorised officer reasonably believes that—
- (a) the premises are so filthy or neglected that there is a risk of infestation by rodents or other pests; or
 - (b) offensive material or odours are emitted from the premises.
- (3) In this section—
animals includes insects.

18—Causing local nuisance

- (1) A person who carries on an activity intentionally or recklessly and with the knowledge that local nuisance will result is guilty of an offence.

Maximum penalty:

- (a) in the case of a body corporate—\$60 000;
- (b) in the case of ~~a natural person~~ **an individual**—\$30 000.

- (2) A person who carries on an activity that results in local nuisance is guilty of an offence.

Maximum penalty:

- (a) in the case of a body corporate—\$20 000;
- (b) in the case of ~~a natural person~~ **an individual**—\$10 000.

~~Expiation fee: \$500.~~

Expiation fee:

- (a) **in the case of a body corporate—\$1 000;**
- (b) **in the case of an individual —\$500.**

- (3) For the purposes of this section—
- (a) the occupier or person in charge of a place at or from which the activity that results in local nuisance is carried on will be taken to have carried on the activity (but without affecting the liability of any other person in respect of the activity);
 - (b) a reference to carrying on an activity includes a reference to a failure to act.

Note—

If the activity occurs in, at or from a vehicle or in connection with the use of a vehicle, the owner of the vehicle is, under section 26, taken to have committed an offence.

19—Exemptions from application of section 18

- (1) A person will be exempt from the application of section 18 in respect of a specified activity if the council for the area in which the activity is to be carried on declares, by notice in writing, in accordance with this section, that the person is so exempt.

Examples—

The following are examples of activities for which an exemption may be declared:

- (a) construction or demolition works;
 - (b) concerts or events;
 - (c) activities using amplified sound.
- (2) An application for a declaration under this section must be made to a council in the manner and form prescribed by regulation and must be accompanied by—
- (a) **subject to subsection (2a)**, a site nuisance management plan containing the details prescribed by regulation; and
 - (b) any other information in connection with the application that the council may require; and
 - (c) ~~a fee of an amount fixed by regulation~~ the fee fixed by the council pursuant to section 188(1)(g) of the *Local Government Act 1999*.
- (2a) **If the council is satisfied that any anticipated adverse effects from the specified activity on the amenity value of the area concerned—**
- (a) are not reasonably able to be avoided; and
 - (b) will be of short duration,
- the council may waive the requirement to provide a site nuisance plan under subsection (2)(a).**
- (3) A council must not make a declaration under this section unless it is satisfied that—
- (a) there are exceptional circumstances that justify the making of the declaration; and
 - (b) **unless subsection (2a) applies**, the applicant's nuisance management plan adequately sets out the measures that the person will take to prevent, minimise or address any anticipated adverse effects from the specified activity on the amenity value of the area concerned.
- (4) A declaration may be unconditional or subject to conditions, including (but not limited to) conditions relating to—
- (a) the permitted times or periods of time for carrying on the activity; or
 - (b) the manner of carrying on the activity.
- (4a) **The council may, on application by the holder of a declaration under this section, extend the period for which the declaration operates for such period as is specified by notice in writing.**
- (4b) **An application for an extension of a declaration must—**
- (a) be made in the manner and form determined by the council; and
 - (b) be made before the period to be extended has expired; and

- (c) be accompanied by any information in connection with the application that the council may require (including a site nuisance management plan if such a plan has not previously been provided; and
- (d) be accompanied by the fee fixed by the council pursuant to section 188(1)(g) of the *Local Government Act 1999*.

and may be made in relation to a declaration, the period of which has been extended by previous application under this section.

- (5) The council may, by further notice in writing, vary or revoke a declaration under this section.
- ~~(6) A declaration under this section has effect from the date specified in the declaration and remains in force according to its terms for a period not exceeding 3 months specified in the declaration or until revoked by the council.~~
- (6) A declaration under this section has effect from the date specified in the declaration and remains in force according to its terms—
 - (a) for a period as determined by the council to be reasonable in the circumstances and specified in the declaration; or
 - (b) until the declaration is revoked by the council under this section; or
 - (c) if the period of its operation is extended by the council under this section—until the end of that period.
- (7) A council must publish a declaration made under this section, and any variations or extensions of the declaration, on a website determined by the council.

19A—Installation of designated device that results in local nuisance

- (1) A person who, after the commencement of this section, installs a designated device, or causes a designated device to be installed, on premises in a fixed position such that the operation of the device results in local nuisance, is guilty of an offence.

Maximum penalty:

- (a) in the case of a body corporate—\$10 000;
 - (b) in the case of an individual —\$5 000.
- (2) In any proceedings (criminal or civil) where it is alleged that a person contravened subsection (1), it will be a defence if it is proved that—
 - (a) at the time the designated device was installed, the person did not foresee and could not reasonably be expected to have foreseen that installation of the device would, when operated, result in local nuisance; or
 - (b) the person who installed the designated device, or caused the designated device to be installed, did not determine the position in which the device was installed; or
 - (c) the local nuisance resulting from the operation of the designated device was as a result of a defect in, or modification of, the device that occurred after the time of its installation.
 - (3) In this section—

designated device means—

 - (a) an air conditioning unit; or

- (b) an external light.

20—Person must cease local nuisance if asked

A person must, on request by an authorised officer, cease an activity, or remove from premises owned or occupied by the person any substance, material or thing that, in the opinion of the authorised officer, is causing local nuisance.

Maximum penalty: \$5 000.

~~Expiation fee: \$210.~~

Expiation fee:

- (a) in the case of a body corporate—\$500;
- (b) in the case of an individual —\$210.

21—Regulations for purposes of Division

Regulations may be made for the purposes of this Division and may, without limitation—

- (a) prohibit, restrict or regulate an activity, or the use or sale of a substance, material or thing, or the use or installation of equipment or infrastructure relevant to the prevention or management of local nuisance; and
- (b) prohibit, restrict or regulate the manufacture, possession, transport, storage, use or disposal of a substance, material, equipment or thing that causes local nuisance; and
- (c) provide for the removal or destruction of a substance, material, equipment or thing that causes local nuisance; and
- (d) provide for compliance standards, and testing or monitoring standards, procedures or techniques (including sensory techniques), to be applied or used by authorised officers in detecting or identifying local nuisance; and
- (e) provide for the taking, analysis or testing of samples relevant to detecting, identifying or monitoring local nuisance including—
 - (i) the persons who may take, analyse or test those samples; and
 - (ii) the places where those samples may be analysed or tested; and
 - (iii) the reporting of the results of the analysis or testing of those samples.

21A—General duty to prevent or minimise litter—person carrying on business

- (1) A person who carries on a business must take all reasonable and practicable measures to prevent or minimise litter that is caused by, or related to, the carrying on of the business.
- (2) Without limiting the generality of subsection (1), the duty includes a duty to prevent or minimise litter—
 - (a) that is disposed of by customers of the business in contravention of this Division; and

- (b) that escapes from a stormwater management system owned by, or under the management and control of, the business.
- (3) Failure to comply with the duty under this section does not itself constitute an offence, but—
 - (a) compliance with the duty may be enforced by the issuing of a litter abatement notice; and
 - (b) failure to comply with the duty will be taken to be a contravention of the Act for the purposes of section 48.
- (4) In the Section—

business includes a business not carried on for profit or gain.

Division 2—Litter control

22—Disposing of litter

- (1) A person must not dispose of litter onto any land or into any waters.
- Maximum penalty:
- (a) for an offence involving the disposal of any amount of class A hazardous litter—
 - (i) in the case of a body corporate—\$250 000;
 - (ii) in the case of ~~a natural person~~ **an individual**—\$120 000 or imprisonment for 2 years;
 - (b) for an offence involving the disposal of 50 litres or more of class B hazardous litter or general litter—
 - (i) in the case of a body corporate—\$60 000;
 - (ii) in the case of ~~a natural person~~ **an individual**—\$30 000 or imprisonment for 6 months;
 - (c) for an offence involving the disposal of up to 50 litres of class B hazardous litter—\$10 000;
 - (d) for an offence involving the disposal of up to 50 litres of general litter—\$5 000.

Expiation fee:

- ~~(a) for an offence involving the disposal of 50 litres or more of class B hazardous litter or general litter—\$1 000;~~
- ~~(b) for an offence involving the disposal of up to 50 litres of class B hazardous litter—\$500;~~
- ~~(c) for an offence involving the disposal of up to 50 litres of general litter—\$210.~~
- (a) for an offence involving the disposal of 50 litres or more of class B hazardous litter or general litter—
 - (i) in the case of a body corporate—\$2 000;
 - (ii) in the case of an individual—\$1 000;
- (b) for an offence involving the disposal of up to 50 litres of class B hazardous litter—\$500;

- (i) in the case of a body corporate—\$1 000;
 - (ii) in the case of an individual —\$500;
 - (c) for an offence involving the disposal of up to 50 litres of general litter—\$210.
 - (i) in the case of a body corporate—\$500;
 - (ii) in the case of an individual —\$210.
- (2) For the purposes of subsection (1)—
 - (a) if litter is discarded, deposited, blows or falls from premises or a vehicle onto land or into waters, it is taken to have been disposed of onto the land or into the waters; and
 - (b) a person will be taken to have disposed of litter onto land or into waters if the person caused or allowed the litter to be disposed of onto the land or into the waters; and
 - (c) the occupier or person in charge of a place from which litter is discarded or deposited or blows or falls will be taken to have disposed of the litter (but without affecting the liability of any other person in respect of the disposal).

Note—

If the disposal of litter occurs from a vehicle or in connection with the use of a vehicle, the owner of the vehicle is, under section 26, taken to have committed an offence.

- (3) However, subsection (1) does not apply to the disposal of litter—
 - (a) in a council area—
 - (i) in a bin or other receptacle provided by the council for litter of that kind; or
 - (ii) in some other manner approved or authorised by the council; or
 - (b) at a depot, facility or works of a kind described in Schedule 1 Part A clause 3 of the *Environment Protection Act 1993* at which such material is received; or
 - (c) if the litter consists of a vehicle to which sections 236 and 237 of the *Local Government Act 1999* apply; or
 - (d) in accordance with an approval, consent, licence, permit, exemption or other authorisation or entitlement granted by a council or granted under any Act or law of this State or the Commonwealth.
- (4) In any proceedings where it is alleged that a person contravened subsection (1), it will be a defence if it is proved that—
 - (a) the litter was disposed of on that person's property or on some other person's property with that other person's consent; or
 - (b) the disposal was accidental and the person has, as soon as becoming aware of the disposal, taken all reasonable steps to retrieve the litter.
- (5) In this section, unless the contrary intention appears—

class A hazardous litter means domestic or commercial waste comprised of—

 - (a) asbestos;
 - (b) material containing asbestos;

- (c) any substance, material or thing of a kind prescribed by regulation;
- (d) a combination of litter referred to in a preceding paragraph of this definition and any other litter;

class B hazardous litter means—

- (a) when disposed of onto land or into waters—
 - (i) live cigarettes or cigarette butts;
 - (ii) used syringes;
 - (iii) waste glass (whether or not broken);
 - (iv) any substance, material or thing of a kind prescribed by regulation;
 - (v) a combination of litter referred to in a preceding paragraph of this definition and general litter;
- (b) when disposed of into waters—any disused or decommissioned vehicle, appliance or device or part of such a vehicle, appliance or device or any other structure or thing that an authorised officer reasonably suspects is being used, or is intended for use, in the waters as an artificial reef;

general litter means any solid or liquid domestic or commercial waste, and includes, without limitation—

- (a) cigarettes or cigarette butts;
- (b) chewing gum;
- (c) food or food scraps;
- (d) beverage containers;
- (e) packaging;
- (f) clothing, footwear or other personal accessories or personal items;
- (g) furniture;
- (h) garden cuttings or clippings or other plant matter;
- (i) garden landscaping material;
- (j) dead or diseased animals;
- (k) vehicles or vehicle parts;
- (ka) shopping trolleys
- (l) machinery or equipment used in farming or agriculture;
- (m) demolition material (including, but not limited to, clay, concrete, rock, sand, soil or other inert mineralogical matter);
- (n) building or construction material or equipment;
- (o) any material or thing used or generated in the course of carrying on a prescribed activity of environmental significance;
- (oa) any material or thing deposited (either directly or indirectly) into, or that otherwise enters, a stormwater management system (other than stormwater);
- (p) any substance, material or thing of a kind prescribed by regulation,

but does not include hazardous litter;

hazardous litter means class A hazardous litter or class B hazardous litter;

litter means general litter or hazardous litter;

surface waters means—

- (a) marine waters within the meaning of the *Environment Protection Act 1993*; and
- (b) naturally occurring inland waters; and
- (c) artificially created bodies of water or streams that are for public use or enjoyment;

waste has the same meaning as in the *Environment Protection Act 1993*;

waters means surface waters or underground waters.

22A—Recovery of costs of urgent clean up of litter from public place

- (1) If a council takes urgent action to clean up, from a public place, litter that the council considers to be a hazard, in circumstances where the identity of the person who disposed of the litter is not known, the council may, if that person is later identified, by notice in writing served on that person, require the person to pay the council the reasonable costs and expenses incurred by the council in taking that action.
- (2) For the purposes of subsection (1), the costs and expenses may include those reasonably incurred by the council in taking samples or in conducting tests, examinations, monitoring or analysis in relation to taking action under that subsection.
- (3) An amount payable to the council in accordance with a notice under this section must be paid by the person within the period specified in the notice, being not less than 28 days from the date of the notice, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid.
- (4) If the amount payable to the council is not paid in accordance with this section, the amount may be recovered as debt by the council.

23—Bill posting

- (1) A person must not post a bill on property without the consent of the owner or occupier of the property.

Maximum penalty: \$10 000.

Expiation fee: \$315.

- (2) If a bill is posted on property in contravention of subsection (1), a person who distributed or authorised the distribution of the bill for posting is guilty of an offence.

Maximum penalty:

- (a) in the case of a body corporate—\$20 000;
- (b) in the case of ~~a natural person~~ an individual—\$10 000.

Expiation Fee: \$500.

- (3) In any proceedings where it is alleged that a person contravened subsection (2), it will be a defence if it is proved that the person did not foresee and could not reasonably be expected to have foreseen the likelihood that such bills would be posted without consent.
- (4) If a person is convicted of an offence against subsection (1) or (2), the court may order the offender to pay to the owner or occupier of the relevant property such compensation for loss or damage caused to the property by the commission of the offence as the court considers just.
- (5) In this section—
- bill* includes a flyer, brochure or poster containing promotional material, and includes anything declared by regulation to be a bill, but does not include anything declared by regulation not to be a bill.

property includes, in the case of a vehicle (other than a vessel), the land on which the vehicle is located.

24—Litterer must remove litter if asked

A person must, on request by an authorised officer, remove a bill posted on property, or any other litter disposed of, by that person in contravention of this Division and dispose of it as directed by the authorised officer.

Maximum penalty: \$5 000.

Expiation fee: ~~\$210~~.

- (a) in the case of a body corporate—\$500;
- (b) in the case of an individual—\$210.

24A—Identification of shopping trolleys

A person who provides shopping trolleys for the use of customers in the course of a business carried on by the person must ensure that the shopping trolleys are marked with, or have securely attached to them, the following information:

- (a) the trading name of the business carried on by the person;
- (b) a contact telephone number or QR code that may be used for the reporting of trolleys left in a place outside the business premises of the business;
- (c) any other information prescribed by regulation.

Maximum penalty: \$5 000.

Expiation fee: \$210.

25—Citizen's notification

- (1) A person who reasonably suspects another person of having committed an offence against this Division may notify the Minister or the relevant council of that suspicion by forwarding a report (a *citizen's notification*) to the Minister or the council in the form (which may be electronic), and containing the details (which may include images), prescribed by regulation.
- (2) In any proceedings, a citizen's notification constitutes evidence of the matters contained in that notification.

Division 3—Miscellaneous

26—Liability of vehicle owners

- (1) Subject to this Part, if—
 - (a) an activity is carried on—
 - (i) in, at or from a vehicle; or
 - (ii) in connection with the use of a vehicle; and
 - (b) the activity results in an offence against section 18, 22 or 23 (a *principal offence*),

the owner of the vehicle is guilty of an offence against this section and is liable to the same penalty as is prescribed for the principal offence and the expiation fee (if any) that is fixed for the principal offence also applies in relation to the offence against this section.

- (2) The owner of a vehicle and the person who committed the principal offence (the *alleged principal offender*) are not both liable through the operation of this section to be found guilty of, or to expiate, an offence arising out of the same circumstances, and consequently a finding of guilt in relation to, or expiation by, the owner exonerates the alleged principal offender and conversely a finding of guilt in relation to, or expiation by, the alleged principal offender exonerates the owner.
- (3) An expiation notice or expiation reminder notice given under the *Expiation of Offences Act 1996* to the owner of a vehicle for an alleged offence against this section involving the vehicle must be accompanied by a notice inviting the owner, if he or she was not the alleged principal offender, to provide the council or officer specified in the notice, within the period specified in the notice, with a statutory declaration—
 - (a) setting out the name and address of the person who the owner believes to have been the alleged principal offender; or
 - (b) if he or she had transferred ownership of the vehicle to another prior to the time of the alleged principal offence and has complied with the *Motor Vehicles Act 1959* or the *Harbors and Navigation Act 1993* (as the case may require) in respect of the transfer—setting out details of the transfer (including the name and address of the transferee).
- (4) If the vehicle is owned by 2 or more persons—
 - (a) a prosecution for an offence against this section may be brought against 1 of the owners or against some or all of the owners jointly as co-defendants; and
 - (b) if the case for the prosecution is proved and a defence is not established, the defendant or each of the defendants who does not establish a defence is liable to be found guilty of an offence against this section.
- (5) Before proceedings are commenced against the owner of a vehicle for an offence against this section, the complainant must send the owner a notice—
 - (a) setting out particulars of the alleged principal offence; and

- (b) inviting the owner, if he or she was not the alleged principal offender or the owner of the vehicle at the time of the alleged principal offence, to provide the complainant, within 21 days of the date of the notice, with a statutory declaration setting out any matters referred to in subsection (3)(a) or (b).
- (6) Subsection (5) does not apply to—
 - (a) proceedings commenced where an owner has elected under the *Expiation of Offences Act 1996* to be prosecuted for the offence; or
 - (b) proceedings commenced against an owner of a vehicle who has been named in a statutory declaration under this section as the alleged principal offender.
- (7) Subject to subsection (8), in proceedings against the owner of a vehicle for an offence against this section, it is a defence to prove—
 - (a) that, in consequence of some unlawful act, the vehicle was not in the possession or control of the owner at the time of commission of the alleged principal offence; or
 - (b) that the owner provided the complainant with a statutory declaration in accordance with an invitation under this section.
- (8) The defence in subsection (7)(b) does not apply if it is proved that the owner made the declaration knowing it to be false in a material particular.
- (9) If—
 - (a) an expiation notice is given to a person named as the alleged principal offender in a statutory declaration under this section; or
 - (b) proceedings are commenced against such a person,the notice or summons, as the case may be, must be accompanied by a notice setting out particulars of the statutory declaration that named the person as the alleged principal offender.
- (10) The particulars of the statutory declaration provided to the alleged principal offender must not include the address of the person who provided the statutory declaration.
- (11) In proceedings against a person named in a statutory declaration under this section for the offence to which the declaration relates, it will be presumed, in the absence of proof to the contrary, that the person was present in or at the vehicle at the time at which the alleged principal offence was committed.
- (12) In proceedings against the owner of a vehicle or the alleged principal offender for an offence under this Part, an allegation in the complaint that a notice was given under this section on a specified day will be accepted as proof, in the absence of proof to the contrary, of the facts alleged.
- (13) For the purposes of subsection (1), an activity comprised of the disposal of a substance, material or thing onto land or into waters that results in an offence against this Act will be presumed, in the absence of proof to the contrary, to have been carried on in connection with the use of a vehicle if the substance, material or thing has been disposed of onto land or into waters and the vehicle was seen arriving at that place before the disposal or leaving the place after the disposal.
- (14) This section does not apply in the case of a principal offence against section 22 if—
 - (a) the vehicle from which the litter was disposed of is—

- (i) a taxi; or
 - (ii) a train, tram, bus, ferry, passenger ship, or other public transport vehicle that was being used for a public purpose at the time; and
- (b) the litter was disposed of by a passenger of the vehicle.

27—Defence of due diligence

- (1) In any proceedings against a person for an offence under section 18 or 22, it is a defence to prove that the person took all reasonable precautions and exercised all due diligence to prevent the commission of the offence.
- (2) Without limiting subsection (1), in the case of an offence committed or allegedly committed by a person in the course of undertaking a prescribed activity of environmental significance (to the extent referred to in section 5(5)), it is not proved that the person took all reasonable precautions and exercised all due diligence to prevent the commission of the offence unless it is proved that the person—
 - (a) had taken reasonable steps to prevent or avoid the circumstances that gave rise to the offence including by putting in place any systems or safeguards that might reasonably be expected to be in place; and
 - (b) complied with the requirements of any notice under this Act that related to preventing or managing the circumstances that gave rise to the offence; and
 - (c) as soon as becoming aware of the circumstances that gave rise to the offence—
 - (i) reported those circumstances to the Minister or the relevant council; and
 - (ii) took all reasonable steps necessary to prevent or reduce those circumstances.
- (3) A person who would, but for the defence provided by this section, have contravened section 18 or 22 is, despite that defence, to be taken to have contravened that provision for the purposes of—
 - (a) any proceedings under section 33 in respect of the contravention; and
 - (b) the issuing or enforcement of a nuisance abatement notice or litter abatement notice in respect of the contravention; and
 - (c) the making by a court of an order under section 45 in proceedings for an offence in respect of the contravention.
- (4) This section does not apply in relation to a person who is charged with an offence under section 46.

28—Alternative finding

If, in proceedings for an offence against this Part, the court is not satisfied that the defendant is guilty of the offence charged but is satisfied that the defendant is guilty of an offence against this Part that carries a lower maximum penalty (determined according to relative maximum monetary penalties), the court may find the defendant guilty of the latter offence.

29—Notification to EPA of serious or material environmental harm

If a council has reason to believe that an offence committed under section 18 or 22 has, or may have, resulted in material environmental harm, or serious environmental harm, within the meaning of the *Environment Protection Act 1993*, the council must, as soon as practicable, notify the Environment Protection Authority of that belief.

Part 5—Nuisance abatement notices and litter abatement notices

30—Nuisance and litter abatement notices

- (1) The Minister or a relevant council may issue—
 - (a) a nuisance abatement notice for or in connection with securing compliance with Part 4 Division 1; or
 - (b) a litter abatement notice for or in connection with securing compliance with Part 4 Division 2.
- (2) A notice under this section—
 - (a) must be in the form of a written notice served on the person to whom it is issued; and
 - (b) must specify the person to whom it is issued (by name or by a description sufficient to identify the person); and
 - (c) must specify the purpose for which it is issued; and
 - (d) may direct 2 or more persons to do something specified in the notice jointly; and
 - (e) may impose a requirement that the person do 1 or more of the following:
 - (i) discontinue, or not commence, a specified activity indefinitely or for a specified period or until further notice;
 - (ii) not carry on a specified activity except at specified times or subject to specified conditions;
 - (iii) take specified samples or conduct specified tests, examinations, monitoring or analyses at specified times or intervals or for a specified period or until further notice;
 - (iv) furnish to the Minister or council specified results or reports within a specified period;
 - (v) clean up litter that the Minister or council considers to have been caused by a contravention of this Act;
 - (vi) make good any damage to property that the Minister or council considers to have been caused by a contravention of this Act;
 - (vii) prepare, in accordance with specified requirements and to the satisfaction of the Minister or council, a plan of action for the purposes of securing compliance with any requirement of this Act or preventing any future contravention of this Act;

- (viii) take such other specified action in a specified way, and within a specified period or at specified times or in specified circumstances; and
 - (f) may, in addition, in the case of a litter abatement notice, impose a requirement that the person prepare, in accordance with specified requirements and to the satisfaction of the Minister or council, a plan of action for the purposes of—
 - (i) preventing the escape of litter from business premises; or
 - ~~(ii) keeping a specified area (not exceeding 100 metres) around business premises free from litter; and~~
 - (ii) subject to subsection (2a), keeping a specified area around business premises free from litter; or
 - (iii) without limiting a preceding subparagraph, the management of shopping trolleys in relation to a business premises; and
 - (g) may impose any other requirement prescribed by regulation; and
 - (h) must state that the person may, within 14 days, appeal against the notice to the Environment, Resources and Development Court.
- (2a) If a plan of action requires an area to be specified for the purposes of paragraph (f)(ii), the area specified must not—
- (a) in the case of litter comprised of shopping trolleys—exceed 1km; and
 - (b) in the case of any other litter—exceed 100 metres.
- (2b) Without limiting any other provision of this section, a plan of action prepared by a person for the purpose of subsection (2)(f) may be required, as specified in the notice, to include the following:
- (a) requirements regarding the provision, maintenance and cleaning of litter prevention equipment such as bins and stormwater management systems;
 - (b) if shopping trolleys are provided in the course of, or in relation to, a business carried on by the person (including a business involving the ownership or management of a shopping centre)—1 or more of the following requirements with respect to the management of the shopping trolleys (*the shopping trolley management requirements*):
 - (i) the current name and contact details (including telephone number and email address of the manager of the business or their delegate who will be responsible for liaising with local government representatives about shopping trolley management;
 - (ii) a requirement to provide and maintain a list of the current contact details (including telephone number and email address) for—
 - (A) the business premises of the business (and if more than 1 premises is located in a council area, for each such premises); and
 - (B) the person or persons who hold senior management positions in the business;

- (iii) requirements relating to the provision of sufficient resources for shopping trolley collection services for the business to enable compliance with the plan of action requirements relating to trolley collection;
 - (iv) requirements to ensure the collection of shopping trolleys located outside the business premises of the business—
 - (A) where the trolley pose a hazard—immediately following notification of their location;
 - (B) in any other a case—within 72 hours of notification of their location, or as otherwise agreed by the Minister or council;
 - (v) requirements relating to the making and keeping of records in relation to notifications of shopping trolleys located outside the business premises of the business received by the business and—
 - (A) the subsequent collection of trolleys; or
 - (B) in the case of no trolley being found at the reported location, details of the time and date at which the trolley collector attended the location,

and requirements for the provision of those records to the Minister or council;
 - (vi) requirements relating to the notification to the persons who may use the trolleys—
 - (A) to not remove shopping trolleys from, or leave shopping trolleys outside, the business premises of the business including, but not limited to, the provision of indoor or outdoor signage to that effect; and
 - (B) regarding the penalties that apply for the removal of shopping trolleys from, or leaving shopping trolleys outside, the business premises of the business;
 - (vii) requirements relating to the provision of shopping trolley return bays at exit points to the business premises of the business and the signage of such trolley return bays;
 - (viii) requirements relating to the provision of information regarding the trolley collection schedules and trolley collection routes (including maps or diagrams) of the business to the Minister council;
 - (ix) any other requirements reasonably included to promote or secure compliance with any requirements of this Act or preventing any future contravention of this Act.
- (2c) A notice that imposes a requirement for a person to prepare a plan of action under this section may include a requirement that the person comply with requirements included in the plan of action to the satisfaction of the Minister or council.
- (3) A notice under this section may be issued to a person by 2 or more councils jointly to prevent the person contravening a provision of this Act in those council areas.

- (4) A notice under this section that relates to an activity or conditions on premises may be issued to—
- (a) the owner or occupier of the premises; or
 - (b) a person who has the management or control of the premises; or
 - (c) a person who is the trustee of a person referred to in paragraph (a) or (b), or is managing the affairs of such a person on some other basis.
- (5) An authorised officer may, if of the opinion that urgent action is required, issue an emergency notice imposing a requirement of a kind referred to in subsection (2)(e) ~~or~~ ~~(3)~~ or as reasonably required in the circumstances.
- (6) An emergency notice may be issued orally, but, in that event, the person to whom the notice is issued must be advised forthwith of the person's right to appeal against the notice to the Environment, Resources and Development Court.
- (7) If an emergency notice is issued to a person by an authorised officer, the notice will cease to have effect on the expiration of 3 business days from the time of its issue unless confirmed by a notice issued by the Minister or council and served on the person.
- (8) The Minister or a council may, by written notice served on a person to whom a notice under this section has been issued by the Minister or council, vary or revoke the notice.
- (9) A person to whom a notice is issued under this section must not, without reasonable excuse, fail to comply with the notice.

Maximum penalty:

- (a) in the case of a body corporate—\$60 000;
- (b) in the case of ~~a natural person~~ ~~an individual~~—\$30 000.

Expiation fee: ~~\$500~~.

- (a) in the case of a body corporate—\$1 000;
- (b) in the case of an individual—\$500.

- (10) A person must not hinder or obstruct a person complying with a notice under this section.

Maximum penalty: \$25 000.

30A—Registration of nuisance abatement notice in relation to land

- (1) If—
- (a) a nuisance abatement notice has been issued under this Part; and
 - (b) the notice was issued in relation to an activity carried out on land, or requires a person to take action on or in relation to that land,
- the relevant authority may apply to the Registrar-General for registration of the notice in relation to that land.
- (2) An application under this section must—
- (a) define the land to which it relates; and

- (b) comply with any requirements imposed by the Registrar-General for the purpose of this section.
- (3) The Registrar-General must, on due application under subsection (2), register the notice in relation to the land by making such entries in any register book, memorial or other book or record in the Lands Titles Registration Office or in the General Registry Office as the Registrar-General thinks fit.
- (4) The relevant authority must, in accordance with the regulations, provide to the Registrar-General notice of any variation to a notice registered under this section.
- (5) A notice registered under this section (as varied from time to time) is binding on each owner and occupier from time to time of the land.
- (6) If an owner or occupier of the land referred to in subsection (5) ceases to own or occupy the land (as the case may be), then they must, as soon as reasonably practicable, notify the relevant authority in writing of the name or address of the new owner or occupier.

Maximum penalty: \$2 000.

- (7) The Registrar-General must, on application by the relevant authority, cancel the registration of notice in relation to land and make such endorsements to that effect in the appropriate register book, memorial or other book or record in respect of the land as the Registrar-General thinks fit.
- (8) The relevant authority must apply to the Registrar-General for cancellation of the registration of a notice under this section in relation to land—
 - (a) on revocation of the notice; or
 - (b) on full compliance with the requirements of the notice; or
 - (c) if action has been taken under this Part to carry out the requirements of the notice—on payment of any amount recoverable by the relevant authority under this part in relation to the action so taken.
- (9) An owner or occupier of the relevant land must be notified, by notice in writing, if—
 - (a) a notice is registered under subsection (3); or
 - (b) a notice of the variation of the notice is registered under subsection (4); or
 - (c) the cancellation of the registration of a notice given effect under subsection (8).
- (10) In this section—

relevant authority means—

 - (a) in relation to a notice issued by the Minister—the Minister; and
 - (b) in relation to a notice issued by council—the council; and
 - (c) in relation to a notice issued by 2 or more councils jointly—each of those councils jointly.

31—Action on non-compliance with notice

- (1) If the requirements of a nuisance abatement notice or litter abatement notice issued by the Minister or a council are not complied with, the Minister or council may take any action required by the notice.
- (2) Action to be taken under subsection (1) may be taken on behalf of the Minister or council by an authorised officer or another person authorised by the Minister or council for the purpose.
- (3) If a person other than an authorised officer is authorised to take action under subsection (2), the following provisions apply:
 - (a) the Minister or council must issue the person with an instrument of authority;
 - (b) the person may exercise such powers of an authorised officer as are reasonably required for the purpose of taking action under that subsection;
 - (c) the provisions of this Act apply in relation to the exercise of such powers by the person in the same way as in relation to an authorised officer;
 - (d) the person must produce the instrument of authority for the inspection of any person in relation to whom the person intends to exercise powers of an authorised officer.
- (4) A person taking action under this section may enter any relevant premises or vehicle at any reasonable time.
- (5) The reasonable costs and expenses incurred by the Minister or a council in taking action under this section may be recovered by the Minister or council as a debt from the person who failed to comply with the requirements of the notice.
- (6) If an amount is recoverable from a person under this section, the Minister or council may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid.
- (7) In addition, if an amount recoverable under this section relates to action taken in relation to any land owned by the person to whom the notice was issued (including a building or other structure on such land), the amount will be a charge on the land in favour of the Minister or council in accordance with a scheme prescribed by the regulations (with a priority determined in accordance with the regulations).
- (8) If litter or a substance, material or thing is removed from premises in taking action under this section, the Minister or the council (as the case requires) may sell or dispose of as the Minister or Council thinks appropriate.
- (9) If litter, or a substance, material or thing is sold under subsection (8), the Minister or the council must apply any proceeds of sale as follows:
 - (a) firstly, in payment of the costs of an incidental to the sale;
 - (b) secondly, in payment of the costs and incidental to the removal and custody of the litter, substance, material or thing;
 - (c) thirdly, in payment of any other reasonable costs and expenses incurred by the Minister or council in taking action under this section (which payment must be taken into account for the purposes of subsection (5));

- (d) fourthly, in payment of balance to the owner of the litter, substance, material or thing.
- (10) For the avoidance of doubt—
 - (a) the *Unclaimed Goods Act 1987* does not apply to, or in respect of, any litter, substance, thing or material that is removed from premises under this section; and
 - (b) subsections (8) and (9) do not limit or derogate from Chapter 11 Part 3 or section 297 of the *Local Government Act 1999*.

32—Appeals

- (1) A person who has been issued with a nuisance abatement notice or litter abatement notice may appeal to the Environment, Resources and Development Court against the notice.
- (2) An appeal—
 - (a) must be instituted within 14 days after the notice is served on the person (or such longer period as the Court allows); and
 - (b) must be made in a manner and form determined by the Court, setting out the grounds of the appeal.
- (3) An appeal must be referred in the first instance to a conference under section 16 of the *Environment, Resources and Development Court Act 1993* (and the provisions of that Act will then apply in relation to the appeal).
- (4) The Minister or a council is entitled to be a party to any proceedings under this section.

Part 6—Civil remedies and penalties

33—Civil remedies

- (1) Application may be made to the Environment, Resources and Development Court for 1 or more of the following orders:
 - (a) if a person has engaged, is engaging or is proposing to engage in conduct in contravention of this Act—an order restraining the person from engaging in the conduct and, if the Court considers it appropriate to do so, requiring the person to take any specified action;
 - (b) if a person has refused or failed, is refusing or failing or is proposing to refuse or fail to take any action required by this Act—an order requiring the person to take that action;
 - (c) if a person has caused damage to property by a contravention of this Act—an order requiring the person to take specified action to make good the damage and, if appropriate, to take specified action to prevent or mitigate further damage;

- (d) if the Minister or a council has incurred costs or expenses in taking action to prevent or mitigate damage caused by a contravention of this Act, or to make good resulting damage—an order against the person who committed the contravention for payment of the reasonable costs and expenses incurred in taking that action;
 - (e) if a person has suffered injury or loss or damage to property as a result of a contravention of this Act, or incurred costs and expenses in taking action to prevent or mitigate such injury, loss or damage—an order against the person who committed the contravention for payment of compensation for the injury, loss or damage, or for payment of the reasonable costs and expenses incurred in taking that action;
 - (f) if a person who has been issued with a nuisance abatement notice or litter abatement notice has incurred costs and expenses in carrying out the requirements of the order or reimbursing the Minister or a council for action taken in pursuance of the order—an order for payment of the whole or a portion of the costs and expenses, as the Court considers appropriate, against 1 or more other persons who were liable for the costs and expenses;
 - (g) if the Court considers it appropriate to do so, an order against a person who has contravened this Act—
 - (i) if the application for the order was made by the Minister—for payment for the credit of the Consolidated Account; or
 - (ii) if the application for the order was made by a relevant council—for payment to the council,
 of an amount in the nature of exemplary damages determined by the Court.
- (2) The power of the Court to make an order restraining a person from engaging in conduct of a particular kind may be exercised—
- (a) if the Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
 - (b) if it appears to the Court that, in the event that an order is not made, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of causing local nuisance, littering or injury to persons or loss or damage to property if the first mentioned person engages in conduct of that kind.
- (3) The power of the Court to make an order requiring a person to take specified action may be exercised—
- (a) if the Court is satisfied that the person has refused or failed to take that action—whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to take that action; or

- (b) if it appears to the Court that, in the event that an order is not made, it is likely that the person will refuse or fail to take that action—whether or not the person has previously refused or failed to take that action and whether or not there is an imminent danger of causing local nuisance, littering or injury to persons or loss or damage to property if the first mentioned person refuses or fails to take that action.
- (4) In assessing an amount to be ordered in the nature of exemplary damages, the Court must have regard to—
 - (a) any detriment to the public interest resulting from the contravention; and
 - (b) any financial saving or other benefit that the respondent stood to gain by committing the contravention; and
 - (c) any other matter it considers relevant.
- (5) The power to order payment of an amount in the nature of exemplary damages may only be exercised by a Judge of the Court.
- (6) An application under this section may be made—
 - (a) by the Minister or a council; or
 - (b) by any person whose interests are affected by the subject matter of the application; or
 - (c) by any other person with the permission of the Court.
- (7) Before the Court may grant permission for the purposes of subsection (6)(c), the Court must be satisfied that—
 - (a) the proceedings on the application would not be an abuse of the process of the Court; and
 - (b) there is a real or significant likelihood that the requirements for the making of an order under subsection (1) on the application would be satisfied; and
 - (c) it is in the public interest that the proceedings should be brought.
- (8) If an application is made by a person other than the Minister—
 - (a) the applicant must serve a copy of the application on the Minister within 3 days after filing the application with the Court; and
 - (b) the Court must, on application by the Minister, join the Minister as a party to the proceedings.
- (9) If an application is made by a person other than the relevant council—
 - (a) the applicant must serve a copy of the application on the relevant council within 3 days after filing the application with the Court; and
 - (b) the Court must, on application by the council, join the council as a party to the proceedings.
- (10) An application under this section may be made in a representative capacity (but, if so, the consent of all persons on whose behalf the application is made must be obtained).

- (11) An application may be made without notice to any person and, if the Court is satisfied on the application that the respondent has a case to answer, it may grant permission to the applicant to serve a summons requiring the respondent to appear before the Court to show cause why an order should not be made under this section.
- (12) An application under this section must, in the first instance, be referred to a conference under section 16 of the *Environment, Resources and Development Court Act 1993* (and the provisions of that Act will then apply in relation to the application).
- (13) If, on an application under this section or before the determination of the proceedings commenced by the application, the Court is satisfied that, in order to preserve the rights or interests of parties to the proceedings or for any other reason, it is desirable to make an interim order under this section, the Court may make such an order.
- (14) An interim order—
 - (a) may be made on an application without notice to any person; and
 - (b) may be made whether or not the proceedings have been referred to a conference; and
 - (c) will be made subject to such conditions as the Court thinks fit; and
 - (d) will not operate after the proceedings in which it is made are finally determined.
- (15) If the Court makes an order requiring the respondent to take any specified action to make good any damage to property or to prevent or mitigate further damage, the provisions of Part 5 relating to—
 - (a) the taking of action by the Minister or a council on non-compliance with a nuisance abatement notice or litter abatement notice; and
 - (b) the recovery of costs and expenses by the Minister or a council,apply in relation to the Court's order in the same way as in relation to a nuisance abatement notice or litter abatement notice issued by the Minister or a council under that Part.
- (16) The Court may, if it thinks fit, adjourn proceedings under this section in order to permit the respondent to make an application for the grant or variation of an environmental authorisation within the meaning of the *Environment Protection Act 1993* that should have been but was not made, or to remedy any other default.
- (17) The Court may order an applicant in proceedings under this section—
 - (a) to provide security for the payment of costs that may be awarded against the applicant if the application is subsequently dismissed;
 - (b) to give an undertaking as to the payment of any amount that may be awarded against the applicant under subsection (18).
- (18) If, on an application under this section alleging a contravention of this Act, the Court is satisfied—
 - (a) that the respondent has not contravened this Act; and
 - (b) that the respondent has suffered loss or damage as a result of the actions of the applicant; and

- (c) that in the circumstances it is appropriate to make an order under this provision,

the Court may, on the application of the respondent (and in addition to any order as to costs), require the applicant to pay to the respondent an amount, determined by the Court, to compensate the respondent for the loss or damage suffered by the respondent.

- (19) The Court may, if it considers it appropriate to do so, either on its own initiative or on the application of a party, vary or revoke an order previously made under this section.
- (20) Proceedings under this section based on a contravention of this Act may be commenced at any time within 3 years after the date of the alleged contravention or, with the authorisation of the Attorney-General, at any later time.
- (21) An apparently genuine document purporting to be under the hand of the Attorney-General and to authorise the commencement of proceedings under this section will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.
- (22) The Court may, in any proceedings under this section, make such orders in relation to the costs of the proceedings as it thinks just and reasonable.
- (23) Without limiting the generality of subsection (22), in determining whether to make any order in relation to costs the Court may have regard to the following matters (so far as they are relevant):
- (a) whether the applicant is pursuing a personal interest only in bringing the proceedings or is furthering a wider group interest or the public interest;
 - (b) whether or not the proceedings raise significant issues relating to the administration of this Act.

34—Minister or council may recover civil penalty in respect of contravention

- (1) Subject to this section, if the Minister or a relevant council is satisfied that a person has committed an offence by contravening a provision of this Act, the Minister or council may, as an alternative to criminal proceedings, recover, by negotiation or by application to the Environment, Resources and Development Court an amount as a civil penalty in respect of the contravention.
- (2) The Minister or a relevant council may not recover an amount under this section in respect of a contravention if the relevant offence requires proof of intention or some other state of mind, and must, in respect of any other contravention, determine whether to initiate proceedings for an offence or take action under this section, having regard to the seriousness of the contravention, the previous record of the offender and any other relevant factors.
- (3) The Minister or a relevant council may not make an application to the Court under this section to recover an amount from a person as a civil penalty in respect of a contravention—
 - (a) unless the Minister or council has served on the person a notice in the prescribed form advising the person that the person may, by written notice to the Minister or council, elect to be prosecuted for the contravention and the person has been allowed not less than 21 days after service of the notice to make such an election; or

- (b) if the person serves written notice on the Minister or council, before the making of such an application, that the person elects to be prosecuted for the contravention.
- (4) The maximum amount that the Minister or a relevant council may recover by negotiation as a civil penalty in respect of a contravention is the sum of the amount specified by this Act as the criminal penalty in relation to that contravention and the amount of any economic benefit acquired by the person, or accrued or accruing to the person, as a result of the contravention.
- (5) If, on an application by the Minister or a council, the Environment, Resources and Development Court is satisfied on the balance of probabilities that a person has contravened a provision of this Act, the Court may order the person to pay to the Minister or council an amount as a civil penalty (but not exceeding the sum of the amount specified by this Act as the criminal penalty in relation to that contravention and the amount of any economic benefit acquired by the person, or accrued or accruing to the person, as a result of the contravention).
- (6) In determining the amount to be paid by a person as a civil penalty, the Court must have regard to—
 - (a) the nature and extent of the contravention; and
 - (b) any injury to persons, loss or damage to property or detriment to the public interest resulting from the contravention; and
 - (c) any financial saving or other benefit that the person stood to gain by committing the contravention; and
 - (d) whether the person has previously been found, in proceedings under this Act, to have engaged in any similar conduct; and
 - (e) any other matter it considers relevant.
- (7) The jurisdiction conferred by this section is to be part of the civil jurisdiction of the Court.
- (8) If conduct of a person constitutes a contravention of 2 or more provisions of this Act, an amount may be recovered from the person under this section in relation to the contravention of 1 or more of those provisions (provided that the person is not liable to pay more than 1 amount as a civil penalty in respect of the same conduct).
- (9) Proceedings for an order under this section that a person pay an amount as a civil penalty in relation to a contravention of this Act, or for enforcement of such an order, are stayed if criminal proceedings are started or have already been started against the person for an offence constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.
- (10) Proceedings referred to in subsection (9) may only be resumed if the criminal proceedings do not result in a formal finding of guilt being made against the person.
- (11) Evidence of information given or evidence of the production of documents by a person is not admissible in criminal proceedings against the person if—
 - (a) the person gave the evidence or produced the documents in the course of negotiations or proceedings under this section for the recovery of an amount as a civil penalty in relation to a contravention of this Act; and

- (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was alleged to constitute the contravention.
- (12) However, subsection (11) does not apply to criminal proceedings in respect of the making of a false or misleading statement.
- (13) Proceedings for an order under this section may be commenced at any time within 3 years after the date of the alleged contravention or, with the authorisation of the Attorney-General, at any later time within 10 years after the date of the alleged contravention.
- (14) An apparently genuine document purporting to be under the hand of the Attorney-General and to authorise the commencement of proceedings for an order under this section will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.
- (15) The Court may, in any proceedings under this section, make such orders in relation to the costs of the proceedings as it thinks just and reasonable.

Part 7—Miscellaneous

35—Constitution of the Environment, Resources and Development Court

The Environment, Resources and Development Court is, when exercising jurisdiction under this Act, to be constituted in the same way as it is when exercising jurisdiction under the *Environment Protection Act 1993*.

36—Delegation by Minister

- (1) The Minister may delegate a function or power conferred on the Minister under this Act—
 - (a) to a specified person or body; or
 - (b) to a person occupying or acting in a specified office or position.
- (2) A delegation—
 - (a) may be made subject to conditions or limitations specified in the instrument of delegation; and
 - (b) if the instrument of delegation so provides, may be further delegated by the delegate; and
 - (c) is revocable at will and does not prevent the delegator from acting personally in a matter.

37—Service of notices or other documents

- (1) Subject to this section, if this Act requires or authorises a notice or other document to be served on, or given to, a person, the notice or document may—
 - (a) be served on, or given to, the person or an agent of the person; or
 - (b) be left for the person at his or her place of residence or business with someone apparently over the age of 16 years; or
 - (c) be sent by post to the person or an agent of the person at his or her last known address; or

- (d) if the notice or document is to be served on the owner of land, the land is unoccupied, and the person seeking to serve the notice or document has taken reasonable steps to effect service under the other paragraphs of this subsection but has been unsuccessful—be served by fixing it to some conspicuous part of the land; or
 - (e) if the notice or document is to be served on the occupier of land—be sent by post to the occupier at the address of the land; or
 - (f) be served on the person by fixing it to, or leaving it on, a vessel that the person is apparently in charge of, or expected to board at some stage, if the person giving or serving the notice or document has reasonable grounds to believe that service in this manner will bring the notice or document to the attention of the person to be served; or
 - (g) be sent to the person by fax or email to a fax number or email address provided by the person (in which case the notice or document will be taken to have been served or given at the time of transmission); or
 - (h) be served or given in some other manner prescribed by the regulations.
- (2) Without limiting subsection (1), a notice or document to be served on or given to a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth may be served or given in accordance with that Act.
- (3) Subject to the regulations, a notice or document required or authorised to be given to an owner of land may, if it is to be served personally, be served on the owner, 1 of any joint owners, or the agent of the owner.

38—Immunity

- (1) No personal liability attaches to—
- (a) the Minister; or
 - (b) an authorised officer or any other person engaged in the administration of this Act,
- for an honest act or omission in the performance, exercise or discharge, or purported performance, exercise or discharge, of a function under this Act.
- (2) Subject to subsection (3), a liability that would, but for subsection (1), lie against a person lies instead against the Crown.
- (3) A liability that would, but for subsection (1), lie against an officer, employee, agent or contractor of a council lies instead against the council.

39—Protection from liability

A failure by the Minister or a council to perform a function under this Act, does not give rise to any civil liability.

40—Statutory declarations

If a person is required by or under this Act to provide information to the Minister or a council, the Minister or council may require that the information be verified by statutory declaration and, in that event, the person will not be taken to have provided the information as required unless it has been so verified.

41—False or misleading information

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in a report or any other information furnished, or record kept, under this Act.

Maximum penalty:

- (a) in the case of a body corporate—\$50 000;
- (b) in the case of a natural person—\$20 000.

42—Confidentiality

A person must not divulge any information relating to trade processes or financial information obtained (whether by that person or some other person) in the administration or enforcement of this Act except—

- (a) as authorised by or under this Act; or
- (b) with the consent of the person from whom the information was obtained or to whom the information relates; or
- (c) in connection with the administration or enforcement of this Act; or
- (d) for the purpose of any legal proceedings arising out of the administration or enforcement of this Act.

Maximum penalty: \$25 000.

43—Offences

- (1) Proceedings for an offence against this Act may only be commenced by—
 - (a) the Director of Public Prosecutions; or
 - (b) the Minister; or
 - (c) an authorised officer; or
 - (d) a relevant council; or
 - (e) the chief executive officer of a relevant council; or
 - (f) a police officer; or
 - (g) a person acting on the written authority of the Minister.
- (2) An apparently genuine document purporting to be under the hand of the Minister and to authorise the commencement of proceedings under this Act must be accepted in legal proceedings, in the absence of proof to the contrary, as proof of an authorisation under subsection (1)(g).

44—Offences and Environment, Resources and Development Court

Offences constituted by this Act lie within the criminal jurisdiction of the Environment, Resources and Development Court.

45—Orders in respect of contraventions

- (1) If, in proceedings under this Act, the court finds that the defendant contravened this Act and the contravention has resulted in injury to a person or loss or damage to property, the court may, in addition to any penalty it may impose, do 1 or more of the following:
- (a) order the person to take specified action to make good any damage and, if appropriate, to take specified action to prevent or mitigate further damage;
 - (b) order the person to take specified action to publicise the contravention and its consequences and any other orders made against the person;
 - (c) order the person to pay—
 - (i) to the Minister or a council that has incurred costs or expenses in taking action to prevent or mitigate or make good any damage (including, in the case of litter, taking action to remove or clean up, and lawfully dispose of the litter); and
 - (ii) to any person who has suffered injury or loss or damage to property as a result of the contravention, or incurred costs or expenses in taking action to prevent or mitigate such injury, loss or damage (including, in the case of litter, taking action to remove or clean up, and lawfully dispose of the litter),

the reasonable costs and expenses so incurred, or compensation for the injury, loss or damage so suffered, as the case may be, in such amount as is determined by the court.
- (2) If a person is found by a court to have contravened this Act, the court may, in addition to any penalty it may impose, order the person to pay to the Minister or a council an amount not exceeding the court's estimation of the amount of the economic benefit acquired by the person, or accrued or accruing to the person, as a result of the contravention.
- (3) For the purposes of subsection (2), an economic benefit obtained by delaying or avoiding costs will be taken to be an economic benefit acquired as a result of a contravention if the contravention can be attributed (in whole or in part) to that delay or avoidance.
- (4) The court may, by an order under this section, fix a period for compliance and impose any other requirements the court considers necessary or expedient for enforcement of the order.
- (5) An amount paid to the Minister in accordance with an order under subsection (2) must be paid into the Environment Protection Fund under the *Environment Protection Act 1993*.

46—Offences by bodies corporate

- (1) If a body corporate is guilty of an offence against this Act, each director of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless the director proves that he or she could not by the exercise of due diligence have prevented the commission of the offence.

- (2) If a body corporate is guilty of an offence against this Act, each member of the governing body of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence when committed by a natural person if the prosecution proves that—
- (a) the member knew, or ought reasonably to have known, that there was a significant risk that such an offence would be committed; and
 - (b) the member was in a position to influence the conduct of the body corporate in relation to the commission of such an offence; and
 - (c) the member failed to exercise due diligence to prevent the commission of the offence.

47—Continuing offences

- (1) If an offence against a provision of this Act is committed by a person by reason of a continuing act or omission—
- (a) the person is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continues of not more than an amount equal to one fifth of the maximum penalty prescribed for that offence; and
 - (b) if the act or omission continues after the person is convicted of the offence, the person is guilty of a further offence against that provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continues after that conviction of not more than an amount equal to one fifth of the maximum penalty prescribed for that offence.
- (2) For the purposes of this section, an obligation to do something is to be regarded as continuing until the act is done notwithstanding that any period within which, or time before which, the act is required to be done has expired or passed.

48—Recovery of administrative and technical costs associated with contraventions

- (1) If a person has contravened this Act and the Minister or a council—
- (a) has taken action to—
 - (i) investigate the contravention; or
 - (ii) issue a nuisance abatement notice or litter abatement notice in respect of the contravention; or
 - (iii) ensure that the person has complied with requirements imposed in relation to the contravention by a nuisance abatement notice or litter abatement notice or by an order of a court under this Act; or
 - (b) has, in taking such action, incurred costs and expenses in taking samples or in conducting tests, examinations, monitoring or analyses,
- the Minister or council may, by notice in writing served on the person, require the person to pay to the Minister or council the reasonable costs and expenses incurred by the Minister or council in taking such action.

- (2) Subject to subsection (3), an amount payable to the Minister or council in accordance with a notice under this section must be paid within the period specified in the notice.
- (3) On application by a person who has been served a notice under this section, the Minister or council that served the notice may, by notice in writing—
 - (a) extend the time for payment of an amount payable in accordance with the notice; or
 - (b) waive payment of such an amount or reduce the amount payable.
- (4) A person who fails to pay an amount payable to the Minister or council in accordance with this section is guilty of an offence.

Maximum penalty: \$2 500.

Expiation fee: \$500.

- (5) If a notice is issued under this section in respect of a contravention and—
 - (a) the contravention is the subject of an appeal; or
 - (b) the notice requires payment of an amount in respect of the issue of a nuisance abatement notice or litter abatement notice in respect of the contravention and the nuisance abatement notice or litter abatement notice is the subject of an appeal,

the first-mentioned notice is suspended until the appeal has been determined (but if the court, on appeal, finds that the contravention was committed or that the nuisance abatement notice or litter abatement notice was properly issued, as the case may be, the first-mentioned notice will have effect as if the period for payment specified in the notice commenced on the day on which the appeal was determined).

- (6) If an amount payable to the Minister or council is not paid in accordance with this section, the amount may be recovered as a debt by the Minister or council.

49—Assessment of reasonable costs and expenses

For the purposes of this Act, the reasonable costs and expenses that have been or would be incurred by the Minister, a council or some other person or body in taking any action are to be assessed by reference to the reasonable costs and expenses that would have been or would be incurred in having the action taken by independent contractors engaged for that purpose.

50—Evidentiary provisions

- (1) In proceedings under this Act, where it is alleged that a person caused local nuisance within the meaning of section 17, evidence by an authorised officer that he or she formed the opinion based on his or her own senses that—
 - (a) the agent alleged to have caused the local nuisance when discharged or emitted from a place occupied or a vehicle owned by the person travelled to a place occupied by another person; and
 - (b) the level, nature or extent of the agent within the place occupied by the other person was such as to constitute an unreasonable interference with the person's enjoyment of the place,

constitutes proof, in the absence of proof to the contrary, of those matters.

- (2) In proceedings under this Act, a certificate of an authorised officer certifying that, at a specified time—
- (a) a specified place was a road, road-related area or other public place; or
 - (b) a specified vehicle was stopped or parked in a specified place; or
 - (c) a specified person was the owner or operator of a specified vehicle,
- constitutes proof, in the absence of proof to the contrary, of those matters.
- (3) In proceedings under this Act, a certificate of an authorised officer certifying that—
- (a) specified matter was class A hazardous litter, class B hazardous litter or general litter; or
 - (b) a specified amount of litter was disposed of,
- constitutes proof, in the absence of proof to the contrary, of those matters.
- (4) In proceedings under this Act, a certificate of the Minister, a council or an authorised officer certifying as to a matter relating to—
- (a) the appointment or non-appointment of a person as an authorised officer under this Act; or
 - (b) a delegation or authority under this Act; or
 - (c) a notice, requirement or direction of the Minister, a council or an authorised officer under this Act; or
 - (d) any other decision of the Minister, a council or an authorised officer; or
 - (e) the receipt or non-receipt by the Minister, a council or an authorised officer of a notification, report or information given or required to be given or furnished to the Minister, council or authorised officer under this Act,
- constitutes proof, in the absence of proof to the contrary, of the matters so certified.
- (5) In proceedings under this Act for the recovery of reasonable costs and expenses incurred by the Minister, a council or some other person or body, a certificate executed by the Minister or council detailing the costs and expenses and the purpose for which they were incurred constitutes proof, in the absence of proof to the contrary, of the matters so certified.
- (6) In proceedings under this Act, an apparently genuine document purporting to be an authorisation, notice, order, certificate or other document, or a copy of an authorisation, notice, order, certificate or other document, issued or executed by the Minister, a council or an authorised officer under this Act or the *Environment Protection Act 1993* will be accepted as such in the absence of proof to the contrary.

51—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
- (a) declare matters under Schedule 1 relating to local nuisance as contemplated by section 17(1), by inserting a provision into the Schedule;
 - (b) amend Schedule 1 by—

- (i) substituting a provision in, or deleting a provision from, the Schedule; or
 - (ii) inserting material into, substituting material in, or deleting material from, a provision of the Schedule;
 - (c) require the keeping of records, statistics and other forms of information by any person or body and the provision of reports based on that information;
 - (d) fix fees to be paid in respect of any matter under this Act and regulate the payment, recovery, waiver or reduction of such fees;
 - (e) exempt, either absolutely or subject to prescribed conditions or limitations—
 - (i) persons or classes of persons;
 - (ii) areas of the State,
 from this Act or specified provisions of this Act;
 - (ea) include evidentiary provisions to facilitate proof of breaches of the Act or the regulations for the purposes of proceedings for offences;
 - (eb) contain provisions of a savings or transitional nature;
 - (f) impose fines, not exceeding \$10 000, for breach of a regulation;
 - (g) fix expiation fees, not exceeding \$500, for alleged offences against the regulations.
- (3) The regulations may adopt, wholly or partially and with or without modification—
- (a) a code, standard or guidelines relating to matters in respect of which regulations may be made under this Act; or
 - (b) an amendment to such a code, standard or guidelines.
- (4) The regulations or a code, standard or guidelines adopted by the regulations may—
- (a) refer to or incorporate, wholly or partially and with or without modification, a standard or other document prepared or published by a prescribed body or person, either as in force at the time the regulations are made or as in force from time to time; and
 - (b) be of general or limited application (including so as to apply only to a specified part of the State); and
 - (c) make different provision according to the persons, things or circumstances to which they are expressed to apply; and
 - (d) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, a council or a prescribed person or body.
- (5) If—
- (a) a code, standard or guidelines are adopted by the regulations; or
 - (b) the regulations, or a code, standard or guidelines adopted by the regulations, refer to a standard or other document prepared or published by a prescribed body,

then—

- (c) a copy of the code, standard, guidelines or other document must be kept available for inspection by members of the public, without charge and during normal office hours, at an office or offices specified in the regulations; and
 - (d) in any legal proceedings, evidence of the contents of the code, standard, guidelines or other document may be given by production of a document purporting to be certified by or on behalf of the Minister as a true copy of the code, standard, guidelines or other document; and
 - (e) the code, standard, guidelines or other document has effect as if it were a regulation made under this Act.
- (6) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act.
- (7) A provision of a regulation made under subsection (6) may, if the regulation so provides, take effect from the commencement of this subsection or from a later day.
- (8) To the extent to which a provision takes effect under subsection (7) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
 - (a) decreasing the person's rights; or
 - (b) imposing liabilities on the person.
- (9) Before a regulation is made under this Act, the Minister must consult (in such manner as the Minister thinks fit) with the LGA and any councils or other persons or bodies likely to be affected by the regulation.

Schedule 1—Meaning of local nuisance (section 17)

Part 1—Interpretation

1—Interpretation

In this Schedule, unless the contrary intention appears—

authorised graffiti, in relation to premises, means—

- (a) graffiti commissioned for the premises by a public authority as public art; or
- (b) graffiti that is on the premises with the consent of the owner or occupier of the premises (other than offensive graffiti or graffiti comprised only or principally of words, symbols or tags);

bird scaring device means a device designed, adapted or used to scare birds by the emission of noise;

construction activity includes—

- (a) demolition work, site preparation work and building maintenance or repair work; and
- (b) the operation of vehicles within, or entering or leaving, a construction site; and
- (c) any activities, at or within the immediate vicinity of a construction site, of persons who perform work at the site, or work connected with work at the site;

construction noise means noise from any construction activity;

emergency services organisation means—

- (a) an emergency services organisation within the meaning of the *Fire and Emergency Services Act 2005*; and
- (b) in relation to a particular emergency within the meaning of the *Emergency Management Act 2004*—the control agency for the emergency under that Act; and
- (c) SA Ambulance Service Inc; and
- (d) South Australian Police; and
- (e) a local government council engaged in duties in connection with an emergency;

essential services has the same meaning as in the *Essential Services Commission Act 2002*+

fixed machine means a machine that is installed as a fixture on premises for operation and use in that position;

fixed machine noise means noise from a fixed machine;

machine includes a device or equipment;

machine noise means noise from a machine;

offensive graffiti means graffiti that a reasonable person would consider to be obscene or offensive;

promotional image means an image conveying a promotional message, (whether consisting of words, numbers or other symbols, or other images);

public infrastructure means—

- (a) infrastructure, equipment, structures, works and other facilities used on or in connection with the provision of essential services or telecommunications; and
- (b) roads and their supporting structures and works;

public infrastructure works means work for the construction, installation, repair, maintenance or replacement of, or making of other physical changes to, public infrastructure;

street or tree maintenance machines includes—

- (a) sweeping or cleaning machines, blowers or similar machines when part of an organised program of such activity undertaken by or on behalf of a council or business; and
- (b) chainsaws, power saws or mulching or chipping machines when part of a program of works related to public street trees;

solid fuel heater has the same meaning as in the *Environment Protection (Air Quality) Policy 2016*;

waste has the same meaning as in the *Environment Protection Act 1993*;

waste collection noise means noise from waste collection, and includes noise generated by—

- (a) the intermittent stopping, starting and movement on a road of a waste transport vehicle in the course of collecting waste for a council kerbside waste collection service; or
- (b) the setting down or picking up of a skip bin; or
- (c) the gathering or collection of waste by a vehicle from the site at which the waste was generated; or
- (d) the depositing of waste into a receptacle in which it is to be transported;

waste transport vehicle means a vehicle used for or in connection with a waste transport business (category A) or a waste transport business (category B), each within the meaning of the *Environment Protection Act 1993* Schedule 1 Part A.

Part 2—Things that are local nuisance

2—Declared agents (section 17(1)(a))

~~Vibration is a declared agent for the purposes of section 17(1)(a).~~

The following are declared agents for the purposes of section 17(1)(a):

- (a) vibration;
- (b) light.

3—Unsightly conditions on premises (section 17(1)(c))

For the purposes of section 17(1)(c), the following unsightly conditions are declared:

- (a) conditions on premises involving—
 - (i) excessive or unconstrained rubbish, waste or vegetation; or
 - (ii) stockpiled, excessive or unconstrained disused or derelict items or material that a reasonable person would consider to be rubbish or waste in the circumstances; or
 - (iii) graffiti (other than authorised graffiti) that has been left on the premises—
 - (A) in the case of offensive graffiti—for more than 7 days; or
 - (B) in any other case—for more than 28 days,

where, in the opinion of an authorised officer, the conditions have had an adverse effect on the amenity value of the area or caused the premises to be significantly out of conformity with the general appearance of neighbouring premises; or

- (b) conditions involving a building on the premises having been left partially demolished or in a state of disrepair, dilapidation or damage where, in the opinion of an authorised officer, the conditions have had an adverse effect on the amenity value of the area or caused the premises to be significantly out of conformity with the general appearance of neighbouring premises.

4—Things declared to constitute local nuisance (section 17(1)(e))

The following are declared to constitute local nuisance for the purposes of section 17(1)(e):

- (a) noise ~~generated on premises~~, if an authorised officer forms the opinion—
 - (i) that—
 - (A) in the case of fixed machine noise generated on domestic premises—the noise has travelled from the domestic premises to a habitable room, or an outdoor courtyard or entertainment area, on neighbouring premises; or
 - (B) in the case of noise other than fixed machine noise generated on domestic premises—the noise has travelled from the domestic premises to neighbouring premises between the hours of—
 - 8pm and midnight on any day; or
 - midnight and 9am on Sunday; or
 - midnight and 8am on any other day; or
 - (C) in the case of construction noise—the noise has travelled from the location of the construction activity to neighbouring premises—
 - on any Sunday or public holiday; or

- after 7pm or before 7am on any other day; or
- (D) in the case of waste collection noise—the noise has travelled from the place at which it was generated to neighbouring premises—
 - before 9am or after 7pm on any Sunday or public holiday; or
 - after 7pm or before 7am on any other day; or
- (DA) in the case of noise from the operation of refrigeration equipment fitted on or in a vehicle that is parked and not being operated—the noise has travelled from the place where the vehicle is parked to neighbouring premises between the hours of—
 - 8pm and midnight on any day; or
 - Midnight and 9am on Sunday; or
 - Midnight and 8am on any other day; or
- (E) in the case of noise from a street or tree maintenance machine being used in a public place—the noise has travelled from the public place to neighbouring premises—
 - before 9am or after 7pm on any Sunday or public holiday; or
 - after 7pm or before 7am on any other day; and
- (ii) that the level, nature or extent of the noise (including its volume, pitch, vibrational frequency, prevalence or frequency of occurrence) is such as to constitute an unreasonable interference with the enjoyment of the neighbouring premises by persons occupying those premises;
- (b) odour generated on premises, if an authorised officer forms the opinion that—
 - (i) the odour has travelled to neighbouring premises; and
 - (ii) the nature, intensity or extent of the odour is such as to constitute an unreasonable interference with the enjoyment of the neighbouring premises by persons occupying those premises;
- (c) dust generated on premises, if an authorised officer forms the opinion that—
 - (i) the dust has travelled to neighbouring premises; and
 - (ii) the nature, extent, smell, density or texture of the dust is such as to constitute an unreasonable interference with the enjoyment of the neighbouring premises by persons occupying those premises;
- (d) smoke generated on premises, if—
 - (i) an authorised officer forms the opinion that—
 - (A) the smoke has travelled to neighbouring premises; and

- (B) the nature, extent, colour, smell or density of the smoke is such as to constitute an unreasonable interference with the enjoyment of the neighbouring premises by persons occupying those premises; or
- (ii) without limiting the generality of subparagraph (i), in the case of smoke from a solid fuel heater—
 - (A) a visible plume of smoke extends into the air above neighbouring premises from the flue or chimney of the heater more than 15 minutes after the heater is lit; and
 - (B) an authorised officer forms the opinion that the nature, extent, colour, smell or density of the smoke is such as to constitute an unreasonable interference with the enjoyment of the neighbouring premises by persons occupying those premises;
- (e) vibration generated on premises, if an authorised officer forms the opinion that—
 - (i) the vibration has travelled to neighbouring premises; and
 - (ii) the nature, intensity or extent of the vibration is such as to constitute an unreasonable interference with the enjoyment of the neighbouring premises by persons occupying those premises;
- (ea) light emitted from a place, if an authorised officer forms the opinion that—
 - (i) the light has travelled from the place at which it was generated to neighbouring premises; and
 - (ii) the nature, intensity, colour, location, direction or extent of light is such as to constitute an unreasonable interference with the enjoyment of the neighbouring premises by persons occupying those premises;
- ~~(f) installation of a fixed machine on domestic premises that, in the opinion of an authorised officer, when operated or used in accordance with the manufacturer's instructions, generates noise of a kind referred to in paragraph (a)(i)(A), the level, nature or extent of which is of a kind referred to in paragraph (a)(ii);~~
- (g) projection of a promotional, obscene or offensive image onto property without the consent of the owner or occupier of the property;
- (h) using an audible bird scaring device otherwise than in accordance with the *Audible Bird Scaring Devices Environmental Noise Guidelines 2007* prepared by the Environment Protection Authority.

Part 3—Things that are not local nuisance

5—Things that are not local nuisance

The following are declared not to constitute local nuisance for the purposes of section 17(1):

- (a) noise or other nuisance from blasting operations carried out as part of a mining operation within the meaning of the *Mines and Works Inspection Act 1920* or *Mining Act 1971*;
- (b) noise or other nuisance from any activity carried on in accordance with a program for environment protection and rehabilitation that is in force for mining operations under Part 10A of the *Mining Act 1971*;
- (c) noise or other nuisance from the keeping of animals in accordance with a development authorisation within the meaning of the *Development Act 1993*;
- (ca) noise, odour or waste from animals living in their natural habitat (other than such animals that have been actively encouraged, by feeding, to gather in a particular area);
- (d) **other than the case of construction noise or other nuisance from construction activities carried out in accordance with a development authorisation within the meaning of the *Development Act 1993* or the *Planning, Development and Infrastructure Act 2016*—** noise or other nuisance from any other activity carried on in accordance with an authorisation (including an approval, consent, licence, permit, exemption or entitlement) granted under any other Act (other than this Act), provided that—
 - (i) the authorisation imposes requirements to control, minimise or eliminate (as far as reasonably practicable) any noise or other forms of nuisance likely to result from the activity; and
 - (ii) those requirements are complied with;
- (e) noise or other nuisance from fireworks displays;
- (f) noise or other nuisance from sporting or associated activities at sporting venues;
- (g) noise or other nuisance from community events run by or on behalf of a council (subject to any conditions imposed by the council);
- ~~(h) noise from public infrastructure works;~~
- (h) **noise, vibration and other nuisance from public infrastructure works where—**
 - (a) the works are carried out because of an emergency or urgent public need; or
 - (b) the works are carried out in the circumstances in order to avoid or reduce inconvenience or disruption to traffic or pedestrians during normal business hours;
- (i) subject to Part 2 ~~clause 4(1)(a)(i)(D)~~ **clause 4(a)(i)(D) and (DA)**, noise from vehicles (other than vehicles operating within, or entering or leaving, business premises);

- (j) noise or other nuisance that may be the subject of proceedings under—
 - (i) the *Community Titles Act 1996*; or
 - (ii) the *Strata Titles Act 1988*; or
 - ~~(iii) the *Residential Tenancies Act 1995*;~~
- ~~(k) an activity on, or noise emanating from, licensed premises within the meaning of the *Liquor Licensing Act 1997* in respect of which a complaint may be lodged with the Liquor Licensing Commissioner under section 106 of that Act;~~
- (k) noise or behaviour in respect of which a complaint may be lodged with the Liquor Licensing Commissioner under section 106 of the *Liquor Licensing Act 1997*;
- ~~(l) behaviour in respect of which a complaint may be lodged with the Liquor Licensing Commissioner under section 106 of the *Liquor Licensing Act 1997*;~~
- (m) noise principally consisting of music or voices, or both, resulting from an activity at domestic premises;
- (n) noise from activities carried on in the normal course of a school, kindergarten, child care centre or place of worship;
- (o) noise created by a dog barking or otherwise that may be the subject of an offence under section 45A(5) of the *Dog and Cat Management Act 1995*;
- (p) aircraft or railway noise;
- (q) noise caused by emergency vehicle sirens;
- (r) noise outside of the human audible range.
- (s) dust from unsealed public roads;
- (t) light emitted by or from the following:
 - (i) public street lighting;
 - (ii) public infrastructure works;
 - (iii) airports;
 - (iv) harbours;
 - (v) vehicles;
 - (vi) railway premises (within the meaning of the *Rail Safety National Law (South Australia) Act 2012*);
 - (vii) bus stations and bus depots
 - (viii) public transport operating centres and facilities;
 - (ix) goods vehicles operating and transport centres (including goods distribution centres);
 - (x) traffic control devices;
 - (xi) navigational aids (including lighthouses);
 - (xii) premises or facilities (including temporary premises or facilities) used by an emergency services organisation;

- (xiii) correctional institutions (within the meaning of the *Correctional Services Act 1982*);
- (xiv) premises or facilities of, or used by, an arm of the Australian Defence Force (including training areas);
- (xv) business premises during the normal operating hours of the business provided that the lights are required for the reasonable and safe operation of the business and reasonable measures have been taken to reduce the impact of the light on neighbouring premises;
- (xvi) public light displays (including laser light displays);
- (xvii) Christmas light displays;
- (xviii) Natural sources (including reflection of natural light).

Schedule 2—Related amendments and transitional provisions

Part 1—Preliminary

1—Amendment provisions

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Local Government Act 1999*

2—Repeal of section 235

Section 235—delete the section

3—Amendment of section 236—Abandonment of vehicles

Section 236—delete "or farm implement" wherever occurring

4—Repeal of section 240

Section 240—delete the section

5—Amendment of section 254—Power to make orders

Section 254(1), table, items 1 and 3—delete items 1 and 3

Part 3—Amendment of *Motor Vehicles Act 1959*

6—Amendment of section 139D—Confidentiality

Section 139D(1)(ea)—delete paragraph (ea) and substitute:

- (ea) as may be required for the purposes of—
 - (i) Part 9 Division 3 of the *Criminal Law (Sentencing) Act 1988*; or
 - (ii) Part 4 Division 3 of the *Local Nuisance and Litter Control Act 2016*; or

Part 4—Amendment of *Summary Offences Act 1953*

7—Repeal of section 48

Section 48—delete the section

Part 5—Transitional provisions

8—Continuation of by-laws under section 240 of the *Local Government Act 1999* relating to bill-posting

If, immediately before the commencement of clause 4, a by-law was in force under section 240 of the *Local Government Act 1999*—

- (a) the by-law continues in force after that commencement; and
- (b) section 240 of that Act continues in force after that commencement for the purposes of the by-law,

until the by-law is revoked or expires (whichever occurs sooner).

9—Continuation of orders made under section 254 of the *Local Government Act 1999*

If, immediately before the commencement of clause 5, an order was in force under section 254 of the *Local Government Act 1999* requiring a person to do or to refrain from doing a thing specified in section 254(1), table, Column 1, item 1 or 3 of that Act, the order continues in force after that commencement—

- (a) until the requirements of the order are complied with; or
- (b) for such longer period as may be necessary to enable the person or the council to exercise any rights or powers under Chapter 12 Part 2 in relation to the order.

Attachment C

Submission on the Review of the *Local Nuisance and Litter Control Act 2016*



City of
Norwood
Payneham
& St Peters



Local Nuisance and Litter Control Act 2016

Explanatory report for reforms

Local Nuisance and Litter Control Act 2016 reforms – Explanatory report

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ISBN 978-1-925521-00-9

October 2022

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Contents

Abbreviations	1
1 Introduction	3
1.1 Purpose of the Act	3
1.2 Why is the Act being reviewed	3
1.3 Consultation process to date	3
2 Draft bill to amend the LNLC Act and other consequential acts	4
2.1 General amendments	4
2.2 Trolley related amendments	6
2.3 Stormwater management systems	8
2.4 New provisions	9
2.5 Consequential amendments	10
3 Variation regulations	11
3.1 Light as an agent of local nuisance	11
3.2 Clause 5 of Schedule 1 amendments	12
3.3 Public infrastructure works	13
3.4 Hyperlink in Regulation 4	13

Abbreviations

EPA	South Australian Environment Protection Authority
EP Act	<i>Environment Protection Act 1993</i>
LGA	Local Government Association
LL Act	<i>Liquor Licensing Act 1997</i>
LNLC Act	<i>Local Nuisance and Litter Control Act 2016</i>
SA	South Australia

1 Introduction

The *Local Nuisance and Litter Control Act 2016* is administered by local government and provides the community with an effective and consistent local service for the management of nuisance complaints and heightened deterrence for littering and illegal dumping.

The LNLC Act provides a modern legislative scheme for litter control in South Australia including:

- tiered offences depending on the type of litter (small versus large quantities, dangerous and hazardous litter)
- improvements in the use of surveillance for evidence gathering in the case of illegal dumping (linking an offence to the registered owner of a vehicle)
- allowing non-government organisations to undertake compliance activities (subject to approval)
- for public reporting of littering and illegal dumping.

1.1 Purpose of the Act

The objects of the LNLC Act are to:

- protect individual and communities from local nuisance
- prevent littering; improve the amenity value of local areas
- promote the creation and maintenance of a clean and healthy environment.

1.2 Why is the Act being reviewed

The EPA commenced review of the legislation in August 2018 (after a full year of being in operation) to identify any opportunities to improve the legislation and ensure the legislation was allowing councils to deliver its objectives.

1.3 Consultation process to date

A discussion paper was completed in collaboration with the Local Government Association (LGA), and was released in July 2019 with a three-month consultation period. The consultation program included a public meeting held in Adelaide and a meeting with local government representatives hosted by the LGA. The consultation was advertised in *The Advertiser* and there was coverage through local media and talkback radio.

A total of 47 submissions were received and the consultation report was published on the EPA website in February 2021¹.

¹ https://www.epa.sa.gov.au/files/14821_Inlc_act_consultation_2019.pdf

2 Draft bill to amend the LNLC Act and other consequential acts

2.1 General amendments

2.1.1 Waste collection vehicles – application beyond roads and road related areas

The LNLC Act is designed so that the majority of activities licensed by the EPA are excluded as these are already regulated under the EP Act. The exceptions are activities associated with a vehicle, such as earthworks drainage, dredging and waste transport.

There are two reasons for the exceptions.

- 1 Litter from earthworks drainage, dredging and waste transport vehicles are better dealt with under the provisions of the LNLC Act. Excluding these vehicles from the LNLC Act would make the operation of public litter reporting more difficult as checks would need to be made against a frequently updated list of vehicle registrations associated with EPA licences.
- 2 The appropriate reporting of other forms of nuisance from these activities, particularly noise. The neighbours of an EPA licensed site would generally report directly to the EPA as they know the site is licensed. However, a person who wishes to report nuisance from a mobile activity is unlikely to know that the activity is licensed by the EPA and would not report to them. This person should have confidence that their local council can deal with all mobile activities, whether EPA licensed or not.

The wording of the current exclusion is limited to 'roads and road-related areas' as defined in the *Road Traffic Act 1961*:

- **road** means an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving of motor vehicles
- **road-related area** means any of the following:
 - an area that divides a road
 - a footpath or nature strip adjacent to a road
 - an area that is not a road and that is open to the public and designated for use by cyclists or animals
 - any public place that is not a road and on which a vehicle may be driven, whether or not it is lawful to drive a vehicle there.

The way the exclusion is written means that in the case of waste transport vehicles the LNLC Act generally applies to nuisance generated by them **except** when operating on private property that is not accessible to the public.

There does not appear to be any policy reason as to why nuisance from waste vehicles when they are operating on private property should be treated differently than any other circumstance.

Section 5(5) of the LNLC Act is proposed to be amended to separate activities of category A and B waste transport businesses from dredging and earthworks drainage activities. The LNLC Act will still apply to these activities. The amendment will allow for the LNLC Act to specifically apply to the activities of waste transport business when operating on private property.

2.1.2 Exemptions from the LNLC Act for causing local nuisance

Under section 19 persons creating nuisance may apply for an exemption from the LNLC Act. The current process for applying for this exemption includes submitting a site nuisance management plan containing the details prescribed by regulation; any other information in connection with the application that the council may require; and a fee of an amount fixed by regulation. This section acknowledges that there are some necessary activities in the community that will cause local nuisance which is largely unavoidable. If granted, the exemption will last for a maximum period of three months. The

person must apply for another exemption using the same process if an activity that causes local nuisance lasts longer than three months .

The amendments proposed for section 19 include:

- Addition of subsection (2a): a provision such that where a council is satisfied that the nuisance will be of a limited nature and is unavoidable the council may waive the requirement for a site nuisance management plan as required by section 19(2)(a).
- Addition of subsection (4a): a provision that allows councils to extend exceptions without the need for a further detailed application.
- Addition of subsection (4b): this provision outlines the criteria for making an application for an extension of declaration.
- Amendment of section 6: removal of 'not exceeding three months' and replacing with: (a) for a period as determined by the council to be reasonable in the circumstances and specified on the declaration, (b) until the declaration is revoked by the council under this section, or (c) if the period of its operation is extended by the council under this section – until the end of that period.
- Addition to section 19(7): insertion of 'or extensions' after variations so that the section reads: 'A council must publish a declaration made under this section, and any variations **or extensions** of the declaration, on a website determined by the council'.

The amendments are to allow councils to manage exemptions with flexibility, so they are better able to meet the needs of their community.

2.1.3 Allowing councils to clean up and recover costs after if a hazard exists

The current LNLC Act does not prevent councils from urgent clean-up of litter that may be posing an environmental, health or physical hazard. However it does not allow for cost recovery in these circumstances from the alleged offender. If the alleged offender is known, a litter abatement notice can be issued to the person that requires, among other things, that they clean the litter up. This notice would also include a timeframe for the clean up to occur. If the notice is not complied with then the council may clean it up and charge the clean-up cost to the person responsible.

In situations where there is material that is littered that causes a hazard, whether a health, environmental or physical hazard, it may be reasonable for the community to expect that the material is cleaned up immediately. This may be carried out by the council even if the alleged offender is unknown.

In this scenario, section 45 of the LNLC Act provides for the court to order costs be paid for such matters **only** where there is a conviction. Section 34 outlines the civil penalty provisions; however they do not provide a specific remedy in this regard as the maximum civil penalty is the maximum penalty for the offence plus an illegally obtained economic benefit. It could be argued that part of the penalty applied could be used to offset the cost of clean-up or alternatively, that the clean-up cost was an avoided cost of economic benefit to the alleged offender and recoverable.

The proposed amendment to the LNLC Act is the insertion of a new section that provides for the recovery of costs of urgent clean-up of litter from public place. This section allows for councils to recover reasonable costs and expenses in situations where they have taken urgent action to clean up litter (that is considered to be a hazard) from the person who disposed of the litter if they are later identified. The costs and expenses may include those reasonably incurred by the council 'in taking samples or in conducting tests, examinations, monitoring or analysis in relating to taking action...'.

Under this section an amount must be paid by the person to the council within the period specified in the notice, being not less than 28 days from the date of the notice. If the amount is not paid within that period, the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid. If the amount to council is not paid, the amount may be recovered as debt by the council.

2.1.4 Bill posting – car parks and expiations

Under the LNLC Act a person must not post a bill on property without the consent of the owner or occupier. The Act covers the posting of bills on buildings, cars and other property but is unclear with regard to bill posting occurring on vehicles within a carpark and whether the carpark constitutes property or only the cars that the bills are posted to. This is important as the owner of a carpark may be aggrieved by bill posting on their land but may not have recourse to deal with it under the Act. However, the owner of the carpark will be responsible for removing litter and, if offensive material is being distributed, may suffer reputational damage. The ability to address the bill posting would rest with the owner of the car in the carpark and this may be impractical.

Currently, the Act only provides for a court-imposed penalty for person who authorised the bill posting. Court proceedings are a considerable cost to councils and alleged offenders.

Section 23(5) has been proposed to be amended to insert the definition of property:

property includes, in the case of a vehicle (other than a vessel), the land on which the vehicle is located

This allows the 'consent' element of section 23(1) to extend to either the owner of the vehicle **or** the owner of the land. The intent of this amendment is to allow the owners of carparks to appropriately deal with bill posting on vehicles in their carparks without consideration as to whether the vehicle owner had an issue. This amendment also extends to councils dealing with bill posting with regard to public lands and roads.

Section 23(2) provides the maximum penalties for bill posing on property without consent of the owner or occupier. A person who distributes or authorised the distribution of the bill for posting is guilty of an offence. Currently, the LNLC Act has only provided the maximum penalties. This section has been amended to provide an expiation of \$500 and will not include differential expiations.

2.1.5 Expiations

The deterrence value of expiations will differ depending on the context of their use. There is a limit on how laws can address this matter as even a \$5,000 expiation may be of limited deterrence for a multi-million-dollar project. Feedback received from consultation was that the expiation fee amount of \$500 is not a sufficient deterrent for many local nuisance issues and is seen by some to be the 'cost of doing business' or is simply so small compared to the scale of the nuisance that it has no impact.

Amendments to various sections of the LNLC Act are proposed to provide differentiation for expiations between body corporate and natural persons for the following offences:

- 18(2) – Body corporate \$1,000, an individual \$500
- 20 – Body corporate \$500, an individual \$210
- 22(a) – Body corporate \$2,000, an individual \$1,000
- 22(b) – Body corporate \$1,000, an individual \$500
- 22(c) – Body corporate \$500, an individual \$210
- 24 – Body corporate \$500, an individual \$210
- 30(9) – Body Corporate \$1,000, an individual \$500.

2.2 Trolley related amendments

Trolleys that are dumped outside of shopping centres constitute litter under the LNLC Act although the offence applies to the person doing the littering, not the owner of the trolley. Council officers are rarely present to witness the act of littering and there is little in the Act to resolve the problem effectively. The majority of councils consider the current provisions for the management of abandoned trolleys to be ineffective.

2.2.1 Shopping trolleys as definition of general litter

Section 22(5) is proposed to be amended to include shopping trolleys within the definition on general litter to confirm the current interpretation.

2.2.2 Trolley identification

The LNLC Act has been proposed to be amended to insert a new section 24A – Identification of shopping trolleys. A person who provides shopping trolleys for the use of customers in the course of the business must ensure the shopping trolleys are marked with, or have securely attached to them the following information:

- the trading name of the business; and
- the contact phone number (or QR code) for the reporting of trolleys found outside of the business or associated shopping area (including car park) that facilitates collection.

Failure to put identification on the trolley would result in a maximum penalty of \$5,000 or an expiation of \$210.

2.2.3 General duty

An additional section, 21A – General duty to prevent or minimise litter–person carrying on business, is proposed to be included under Part 4 Division 2 of the LNLC Act that applies to businesses. This section creates a general duty for businesses to take all reasonable and practicable measures to prevent litter associated with a business. This is not limited solely to littering by a business but also litter from patrons such as fast food litter and trolleys.

For the purpose of this section, business includes a business not carried out for profit. Failure to comply with the section does not itself constitute an offence however, compliance may be enforced through a litter abatement notice or taken as a contravention of the LNLC Act for the purpose of section 48 – Recovery of administrative and technical costs associated with contraventions.

2.2.4 Litter abatement notices

Section 30(2)(f)(ii) allows for a litter abatement notice to be issued that imposes a requirement for keeping a specified area (not exceeding 100 m) around business premises free from litter (which currently includes trolleys). To better allow for this section to be used for trolleys as a compliance tool it is proposed to be amended to increase the specified area around a business free from litter to 1 km for trolleys and 100 m for all other litter.

To allow for the further inclusion as trolleys within this section the term business premises is proposed to be defined to include any ancillary carpark, and where the business is co-located with other businesses, to include the joint areas of the broader shopping community.

2.2.5 Trolley management plan to satisfaction of council

Section 30(2)(f) allows council to require a plan of action for the purpose of preventing the escape of litter from the premises and keeping a specified area around a business litter free. It is proposed to specify that a plan for abandoned trolleys (shopping trolley management requirements) may include:

- Current name and contact details of the store manager or their delegate to be responsible for liaison with local government representatives about trolley management.
- Actions requiring the provision and maintenance of a list of contacts for their store/stores in the local government area (including phone numbers and emails), with additional company contacts at senior management level.
- Actions to ensure that trolley collection services are sufficiently resourced to enable collection within 72 hours of notification or as otherwise agreed with the council.

- Actions to ensure that trolleys reported as posing significant risk or nuisance are collected immediately upon notification and all other trolleys reported are collected within 72 hours of notification or as otherwise as agreed by the council.
- Actions to maintain records of all trolleys reported and collected or the time at which a trolley collector attended to collect a reported trolley if no trolley was found at that location.
- Actions to inform customers that trolleys should not be removed from the premises or abandoned, and that penalties apply for the dumping of trolleys outside the retail outlet/complex, including indoor and outdoor signage.
- Actions regarding the provision of suitable, well-signed trolley bays at exit points to retail outlets or complexes.
- Actions regarding the provision to council, on request, an up-to-date map showing trolley collection routes and schedules.
- Actions to achieve compliance with any aspect of the Act.

This plan is to be produced to the satisfaction of the council.

The LNLC Act already applies to trolleys and a council can issue a litter abatement notice with the requirement that the retailer provide a plan for improved management of abandoned trolleys. The purpose of the proposed amendments is to provide better guidance, to local councils, on how the existing litter abatement notices can be used for managing trolley abandonment.

The proposed amendments provide councils with further powers to require businesses to implement strategies to reduce excessive trolley abandonment or for the collection of abandoned trolleys where there is a significant issue of trolley abandonment. The amendments are intended as a middle ground between feedback from industry and local government, and provides for a structured understanding and dialogue between the councils and retailers.

These amendments are not designed to unfairly burden or apply unnecessary costs on retailers that manage their trolleys well or do not experience trolley abandonment. The notices will be issued on an individual basis by local councils where there is an issue of trolley abandonment.

2.3 Stormwater management systems

The cleaning of stormwater cleansing devices is a considerable issue in that stormwater quality devices such as oil separators are often installed in developments such as carparks and petrol stations but there is no obligation regarding their ongoing maintenance.

2.3.1 Maintain and clean

A new provision is proposed to be added requiring a person who carries on a business, which owns a stormwater management system, to take all reasonable and practicable measures to prevent or minimise litter that escapes from the stormwater management system. Failure to comply with the section does not itself constitute an offence however, compliance may be enforced through a litter abatement notice or may be taken as a contravention of the LNLC Act for the purpose of section 48 – Recovery of administrative and technical costs associated with contraventions.

2.3.2 Stormwater management system definition

The following definition for stormwater management systems is proposed to be included in section 3 – Interpretation the LNLC Act:

Stormwater management systems means any infrastructure or equipment (including vegetated assets) used for collecting, containing, conveying or treating stormwater for the purposes of stormwater management;

2.3.3 General litter definition

Section 22(5) of the LNLC Act is proposed to be amended to include a further example under general litter:

(oa) a material deposited (either directly or indirectly) into, or that otherwise enters, a stormwater management system (other than stormwater);

2.3.4 Abatement notices

The Minister or local council can issue a litter abatement notice requiring a plan of action for the purpose of securing compliance with the LNLC Act. It has been proposed to insert a new subsection into section 30. This new subsection (2b) allows for situations where a litter abatement notice has been issued, without limiting any other provision within section 30, a requirement can be included regarding the provision, maintenance and cleaning of litter prevention systems such as stormwater management systems.

2.4 New provisions

2.4.1 Abatement notices – linkage to land

One of the main tools for addressing nuisance from fixed machines such as air conditioners and pool pumps is a nuisance abatement notice. Appropriate elements of the notice may include limiting hours of operation or requiring the maintenance of an acoustic barrier.

Local government has identified that the change of ownership of a property with a problematic fixed machine that has controls applied within a notice is not able to be transferred to the new owner of the property and a new regulatory process will need to be undertaken.

New provisions are proposed to allow councils to register a nuisance abatement notice onto land. This will be done through the insertion of section 30A – Registration of nuisance abatement notice in relation to land.

2.4.2 Improving cost recovery

Cost recovery is an important element of any regulatory function performed by government. The LNLC Act contains a number of cost recovery provisions, generally linked to contraventions of the legislation that are directed at recovering costs from alleged offenders. Where such measures are not being utilised or are not completely effective the residual cost is, by default, recovered through general rates as a service provided for the benefit of the broader community.

A new provision is proposed to be added to the LNLC Act to the effect that litter collected by a council or any other material causing local nuisance collected by a council (under section 31 – Action on non-compliance with notice) and for clean-ups where an alleged offender is not identified, is not subject to the *Unclaimed Goods Act 1987*. This Act legislates for the sale and disposal of unclaimed goods in SA.

This proposed new provision includes material causing local nuisance (dead animals, unsightly premises and insanitary conditions) which may not necessarily meet the definition of litter. A further element of this provision is such that, in the case of material removed because it is causing local nuisance only (as there is a link to ownership), any money recouped from the sale or recycling of material is to be provided by the council to the person subject to the nuisance abatement notice notwithstanding the recovery of any costs due.

2.4.3 New offence provision – installation of external lights or air conditioners that cause local nuisance

An amendment to the LNLC Act is proposed to create a new offence provision regarding the installation of devices in locations where it is reasonably likely to create or potentially cause a local nuisance. For the purpose of this provision 'device' will be defined as limited to air conditioners and external lights. Often nuisance associated with these is a result of poor location and there is a cost to the owner to relocate the device. This provision ensures installers give due consideration to the location of the installation of the device.

This is proposed to replace the existing condition in clause 4(f) of Schedule 1 that deems installing a fixed machine on a domestic premises in a poor location, a nuisance.

2.5 Consequential amendments

2.5.1 Liquor Licensing Act 1997

Conditions that are not local nuisance are listed under clause 5 of Schedule 1 of the LNLC Act for the purpose of avoiding duplication with other legislation. Nuisances related to the service of alcohol are regulated under the Liquor Licensing Act 1997 (LL Act) and are not local nuisance under the LNLC Act.

It is proposed that paragraph (k) be deleted from clause 5 of Schedule 1 of the LNLC Act and replaced with:

(k) noise or behaviour in respect of which a complaint may be lodged with the Liquor Licensing Commissioner under section 106 of the Liquor Licensing Act 1997;

To further clarify that nuisances related to the service of alcohol are not regulated under the LNLC Act, it is proposed that section 106 of the LL Act be amended. The proposed amendments to the LL Act are to limit the application of the section to noise from entertainment and patrons, or any other activity directly associated with the liquor licence issued under the LL Act.

3 Variation regulations

3.1 Light as an agent of local nuisance

Light was included in the definition of local nuisance when the initial draft bill was first consulted on in 2015 but removed due to feedback from councils that the definition of light in the bill was too broad. The Environmental Defenders Office noted in the recent consultation period that ‘given every other sensory nuisance is included it seems prudent to include light considering its ability to interfere with enjoyment of land’.

It is proposed to amend clause 2 of Schedule 1 of the LNLC Act to include light as an agent of local nuisance. The addition of light as an agent of local nuisance is proposed to come with a number of exclusions to avoid an increase in responsibility for regulators (councils). Only issues of light nuisance that may reasonably be resolved are to remain as a result of the various proposed exclusions.

Light is proposed to be declared an agent of local nuisance. The following light sources in Schedule 1 are excluded:

- public street lighting
- public infrastructure works
- airports
- harbours
- vehicles
- railway premises
- bus stations and depots
- public transport operating centres and facilities
- goods vehicles operating and transport centres
- traffic control devices
- navigational aids
- premises or facilities used by an emergency services organisation
- correctional institutions
- premises or facilities of an arm of the Australian Defence Forces (including training areas)
- lights required for the reasonable and safe operation of business premises during times when the business is operating where reasonable efforts have been made to reduce the light impact on neighbouring premises.
- public lights
- Christmas light displays
- natural sources (including the reflection of natural light).

Part 1—Interpretation has been proposed to include the following definition for emergency services organisation.

Emergency services organisation means:

- a an emergency services organisation within the meaning of the *Fire and Emergency Services Act 2005*; and
- b in relation to a particular emergency within the meaning of *the Emergency Management Act 2004* – the control agency for the emergency under that Act; and
- c SA Ambulance Service Inc; and
- d South Australian Police; and

- e a local government council engaged in duties in connection with an emergency;

3.2 Clause 5 of Schedule 1 amendments

Clause 5 of schedule 1 outlines conditions that are not local nuisance for the purpose of section 17(1).

3.2.1 Construction activities

Clause 5(d) of Schedule 1 prescribes noise or other nuisance from activities carried out in accordance with an authorisation granted under any other Act (other than the LNLC Act) as not being local nuisance. The authorisation must impose requirements to control, minimise or eliminate (as far as is reasonably practicable) any noise or other forms of nuisance likely to result from the activity and those requirements are complied with by those conducting the activity.

This clause is proposed to be amended to ensure that construction activities associated with an approval are no longer part of what is not local nuisance.

3.2.2 Noise from public infrastructure – application to vibration and extent of the exclusion

Noise from public infrastructure works is prescribed as 'not local nuisance' under clause 5(h) of Schedule 1 of the LNLC Act so that infrastructure works which benefit the public are not unduly regulated where the nuisance is unavoidable. Examples of this include evening or overnight roadworks or water infrastructure maintenance where a certain amount of noise is unavoidable and must be carried out overnight to avoid traffic disruption. Although vibration is a very uncommon form of nuisance associated with public infrastructure works, it is evident that public infrastructure earthworks may result in some level of vibration impact caused by compacting of road base associated with the works.

Under the *Environment Protection Act 1993* the definition of noise includes vibration. Under the LNLC Act noise and vibration are separate agents of nuisance and the exclusion of noise from public infrastructure does not include vibration.

Clause 5(h) of Schedule 1 of the LNLC Act is proposed to be amended so that noise, vibration, and light (subject to light being added as an agent of local nuisance) from public infrastructure works that are conducted due to an urgent public need or to avoid or reduce inconvenience to traffic or pedestrians during normal business hours or long term are not local nuisance.

3.2.3 Residential Tenancies Act 1995

Clause 5(j) of Schedule 1 states that noise or other nuisance that may be subject to proceedings under the *Community Titles Act 1996*, *Strata Titles Act 1988* or *Residential Tenancies Act 1995* are not local nuisance.

The current exemption for local nuisance in tenanted properties is limited to situations where local nuisance can be dealt with under the *Residential Tenancies Act 1995*. However, the remedy provided under this Act may include eviction, which is excessively punitive when compared to the LNLC Act.

The LNLC Act is proposed to be amended to delete the Residential Tenancies Act from this clause such that all local nuisance from tenanted properties fall under the scope of the LNLC Act.

3.2.4 Dust from unsealed public roads

There are tens of thousands of kilometres of unsealed roads in SA. It is not practical or cost effective to seal and maintain all these roads. To ensure councils are not deemed responsible for nuisance dust from unsealed roads, dust from unsealed public roads is proposed to be added to clause 5 of Schedule 1 as a further declaration of what is not local nuisance for the purpose of the LNLC Act.

3.2.5 Noise from refrigerated vehicles

Clause 5(i) of Schedule 1 (noise from vehicles) is proposed to be amended so that it does not include noise from refrigerated vehicles. The operation of a refrigerated truck at a premises is not dissimilar to the operation of a fixed machine such as an air conditioner or pool pump which are included in the definition of local nuisance under clause 4 of Schedule 1. This amendment is to be limited to the noise from the refrigeration mechanism of the vehicle.

3.3 Public infrastructure works

Clause 5(h) of schedule 1 defines public infrastructure works as not local nuisance. Clause 1, Part 1 of Schedule 1 of the LNLC Act is proposed to be amended to include a definition of public infrastructure works for the purpose of this clause.

public infrastructure means—

- (a) infrastructure, equipment, structures, works and other facilities used on or in connection with the provision of essential services or telecommunications; and
- (b) roads and their supporting structures and works;

essential services has the same meaning as the *Essential Services Commission Act 2002*

3.4 Hyperlink in Regulation 4

Regulation 4 of the LNLC Regulations provides a link to *Managing Unreasonable Complainant Conduct Practice Manual* published by the New South Wales Ombudsman. The link has been replaced as the current one has been removed. The document remains the same.

Attachment D

Submission on the Review of the *Local Nuisance and Litter Control Act 2016*



City of
Norwood
Payneham
& St Peters

Consultation report – Review of the *Local Nuisance and Litter Control Act 2016*

Issued February 2021

EPA 1127/21: This consultation report provides a summary of consultation feedback and recommendations resulting from the release of a discussion paper in 2019 regarding a review of the Local Nuisance and Litter Control Act 2016.

1 Introduction

The *Local Nuisance and Litter Control Act 2016* (LNLC Act) passed Parliament on 18 May 2016 and the Governor in Executive Council gave assent on 26 May 2016. The Act commenced in two parts. The Regulations and all elements of the LNLC Act except for those specific to local nuisance offences commenced on 1 February 2017, and the local nuisance offences commenced on 1 July 2017.

The LNLC Act is for local government and provides the community with a more effective and consistent service for the management of nuisance complaints and heightened deterrence for littering and illegal dumping. The Environment Protection Authority (EPA) does not have a role in administering the LNLC Act and is managing a review of the legislation on behalf of the state government.

The LNLC Act provides a modern legislative scheme for litter control in South Australia including tiered offences depending on the type of litter (small versus large quantities, dangerous and hazardous litter); improvements in the use of surveillance for evidence gathering in the case of illegal dumping (linking an offence to the registered owner of a vehicle); allowing non-government organisations to undertake compliance activities (subject to approval); and for public reporting of littering and illegal dumping.

The second anniversary of the full commencement of the LNLC Act was 1 July 2019. This milestone provided a useful prompt to undertake a review of the operation of the LNLC Act. Feedback from councils, the community, and other stakeholders indicated that there was potential to fine-tune elements of the legislation. The EPA developed a discussion paper outlining issues raised and invited further feedback from stakeholders on issues not covered by the paper.

The discussion paper was released on 9 July 2019 and consultation ran for a period of three months ending on 4 October 2019. Consultation was publicised through an advertisement in *The Advertiser* and media coverage through local media and talkback radio. The consultation program included a public meeting in Adelaide and a meeting with local government representatives hosted by the Local Government Association (LGA).

This report will be submitted to the Minister for Environment and Water, Hon David Speirs MP for his consideration. The EPA will assist the government to progress amendments as a result of this review of the *Local Nuisance and Litter Control Act 2016*.

2 Consultation feedback on local nuisance discussion points

The local nuisance provisions of the LNLC Act allow councils to manage various nuisance issues in their community. Nuisances covered by the legislation include environmental nuisances (eg smoke and noise), insanitary conditions and more general amenity nuisances (eg unsightly premises). These nuisances were previously addressed using the *Environment Protection Act 1993* (EP Act), *Local Government Act 1999* or the *South Australian Public Health Act 2011*. Since the commencement of the local nuisance elements of the LNLC Act on 1 July 2017 there have been various issues raised by councils and the public. A number of issues were outlined in the discussion paper seeking comment and feedback. This section summarises responses to those discussion points and provides recommendations as to whether legislative amendments are supported or not.

2.1 What is and is not local nuisance?

The LNLC Act describes the meaning of local nuisance in section 17 with the ability to further refine the definition of what is and is not local nuisance through Schedule 1. The definition was refined following consultation feedback from councils on the draft Bill which had light and heat within the meaning of local nuisance. These were removed to ensure the starting point for regulation of nuisance was manageable by councils and not too broad. Further consideration of the addition of light and heat at a later date once the Act had been implemented was noted in the consultation report for the draft Bill. As an alternative the Act provides the ability to prescribe specific types of nuisance that might include light or heat in the regulations with the agreement of local government to do so. An example of this is 'vibration', prescribed in Part 2 of Schedule 1.

A number of determinations as to what is not local nuisance are also included in Part 3 of Schedule 1. These listings fall within three categories. The first category of listings is where the issue of nuisance is adequately managed under alternative legislation. This is where an activity is approved under other legislation, the approval or conditions of the approval adequately minimise or prevent nuisance impacts, and those conditions are complied with. An example of this is a development authorisation with conditions of approval related to time of operation that effectively limits noise to reasonable business hours as covered by clause 5(d). In this circumstance the noise from the day time operation would need to be considered reasonable for the approved activity. This ensures that the development system takes precedence in determining the appropriateness of a land use for a certain location. By comparison, if an approved development had no relevant noise controls in place through condition of approval or had conditions relating to noise control but these conditions were not being complied with, both the *Development Act 1993* and LNLC Act could be applied to gain compliance.

The second category of listings is where another Act contains a resolution or complaints process for nuisance issues. An example of this is the *Strata Titles Act 1988* that contains remedies for nuisance within a strata management group. A further example of this type, the *Liquor Licensing Act 1997* (LL Act) is discussed in detail below as to whether the provisions of that Act are appropriate to cover all forms of nuisance or are better limited to nuisance from established premises that relates directly to the service of alcohol such as patron and entertainment noise.

The third category of listings is where the nuisance is considered a reasonable feature in the community. These include noise from a school or kindergarten, or emergency vehicle sirens.

2.1.1 Local nuisance management and liquor licensing

The LL Act (section 106) provides a complaints process for most forms of nuisances from licensed premises. So as to avoid conflict between this legislation and the LNLC Act, any form of nuisance that can be dealt with under the LL Act is excluded from being regulated under the LNLC Act through Schedule 1 ('things that are not local nuisance'). As a result, councils have no ability to apply the LNLC Act for most forms of nuisance, and complaints can only be managed by the Office of Liquor and Gambling.

Bricks-and-mortar licensed premises

In the context of bricks-and-mortar licensed premises this means nuisance noise from air conditioners or other plant on the property cannot be addressed under the LNLC Act by councils. While the process under the LL Act can address

nuisances that are not specific to licensed premise, the LNLC Act provides a more timely response in these scenarios. Council officers would be more familiar with addressing them than officers from the Office of Liquor and Gambling, who would generally deal with music and patron noise issues.

Consultation feedback summary

There was a wide variety of views put forward in submissions regarding this issue. Some councils cited lack of resources, after-hours work, and confusion in the community regarding split responsibilities if the LNLC Act was to be amended. However, some other councils, and the LGA, support changes being made to ensure businesses are treated the same with regard to nuisances not related to the service of alcohol. There was also a suggestion from one council that staff of the Liquor Licensing Commission should be authorised under LNLC Act if there were any change. A further submitter noted that if the LNLC Act is changed then the Liquor Licensing Act should also be amended so there is only a single pathway for complainants. The Liquor Licensing Commissioner gave feedback that his office was not set up to deal with nuisance that is not related to the service of alcohol and that such nuisance does not fit within the Objects of the LL Act. The Commissioner indicated a willingness to amend the LL Act to ensure that it was clear that only nuisance related to the service of alcohol was covered.

Response to consultation feedback

The intent of clause 5 of Schedule 1, that declares certain matters not to constitute local nuisance, is to avoid duplication with other legislative controls and to exclude matters considered reasonable elements of community life. The declaration regarding noise from licensed premises was meant in good faith to avoid duplication of process with the provisions of the LL Act. Since the LNLC Act commenced it has become apparent that the types of nuisance envisaged by the LL Act do not align with what is dealt with under the LNLC Act. The misalignment has resulted in a lesser service being available to the community for non-alcohol service related nuisances at licensed premises and councils are unable to address nuisance equally across businesses in their areas.

Recommendation

Both Acts be amended to delineate that regulation of nuisances associated with service of alcohol (music, patron noise and other patron behaviour) is regulated under the LL Act and nuisances not associated with service of alcohol are regulated under the LNLC Act, and that these amendments are made as part of any future project to amend the legislation. So that such amendments are aligned it is suggested that one or the other are made consequentially within the same Bill.

Outdoor events with a liquor licence

There are also issues with the application of the exclusion to the management of outdoor events. Firstly, the application of the exclusion in circumstances where only part of an event space has a liquor license is problematic. The exclusion only applies to the area that is licensed and the remainder of the event to be dealt with under the LNLC Act. This creates problems where council compliance staff are unable to address complaints about nuisances emanating from a licensed area of an event.

A further issue specific to outdoor events is caused because they are inevitably annual or one-off and of a short duration. For outdoor events that are licensed (in part or full), the process under section 106 of the Liquor Licensing Act does not provide for immediate compliance intervention and there is limited deterrence and compliance options in these circumstances. Section 106(3a)(b) provides that no conciliation meeting or other hearing may be held on the complaint until the period of 14 days has elapsed from the day that the licensee is served with a copy of the complaint. This leaves the community with no reasonable avenue to address a nuisance.

Consultation feedback summary

There was feedback from some councils that changes were not necessary as SA Police (SAPOL) would respond to matters associated with a liquor licence. Other councils pointed to controls available under the *Local Government Act 1999* in relation to council land and roads as well as use of the LNLC Act for matters not connected to the liquor licence.

Response to consultation feedback

The EPA agrees that existing mechanisms will deal with the majority of complaints that arise from outdoor events, with or without a liquor licence. These mechanisms would be strengthened with better delineation of nuisance managed under the LL Act and LNLC Act as described in the earlier section.

Recommendation

Nuisance from outdoor events with a liquor licence associated with service of alcohol (music, patron noise and other patron behaviour) continue to be regulated under the LL Act, and nuisances not associated with service of alcohol are regulated under the LNLC Act or preferably through relevant conditions of council permitting, where an event is held on council land. It is noted that the preceding recommendation will support resolution of this issue.

2.1.2 Interaction with other legislation

The LNLC Act sets out a number of exclusions related to different Acts in Part 3 of Schedule 1 where the issue of nuisance is adequately managed under the alternative legislation or where another Act contains a resolution or complaints process for nuisance issues. Comment is sought as to whether the current suite of exemptions related to legislation is sufficient or whether there are other Acts that also address local nuisance issues and should be considered for exclusion.

Consultation feedback summary

There was concern raised by a number of councils regarding the current provision that excludes activities with development approvals and conditions that address nuisance matters as the conditions are generally deficient and enforcement of the conditions is less straightforward than under the LNLC Act. There was also a comment that the current approach is broadly confusing. It was suggested by the LGA that the Act may need to be amended such that conditions of development approval should exclude operation of the LNLC Act or that guidance from the EPA is required to better inform actions of councils. Consideration of the inclusion of the *South Australian Public Health Act 2011* (SAPH Act) as it relates to dealing with squalor was requested and there was also comment made that there was uncertainty how the LNLC Act applies to utilities.

Response to consultation feedback

The way that the LNLC Act currently operates is that the conditions of a development authorisation (or any other authorisation relevant to the activity) must control, minimise or eliminate as far as reasonably practicable nuisance that is likely to result from the activity in order for the LNLC Act to not apply. Further to this, the conditions must be complied with. It is included so that the person undertaking the activity only has obligations under one Act to achieve a reasonable outcome relevant to generation of nuisance. The exclusion does not apply if conditions of an existing authorisation are inadequate to meet the requirement that the nuisance is controlled, minimised or eliminated as far as reasonably practicable. The exclusion also does not apply if the conditions are not being complied with. As such, if a person undertaking an activity (that would potentially satisfy the exclusion) is not complying with a condition of an

a development authorisation in particular, related to the construction phase of a development, that is causing this issue, which is the requirement to supply a construction environment management plan (CEMP). There is an argument from developers that such a condition meets the requirements discussed earlier, whereas councils find that the quality of the CEMP and its implementation will determine whether nuisance is being suitably managed. It may be possible to limit the exclusion to conditions relating to the operational obligations of a development post-construction.

The *Public Health (Severe Domestic Squalor) Policy 2013* defines 'severe domestic squalor' as domestic premises whose conditions of squalor to present a risk of harm to the health of neighbours, residents and visitors. The key difference between this and the controls in the LNLC Act regarding insanitary conditions are that the LNLC Act provides for control of nuisance impacts rather than health impacts. The LNLC Act defines 'insanitary conditions' as being where an authorised officer reasonably believes that the premises are so filthy or neglected that there is a risk of infestation by rodents or other pests; or offensive material or odours are emitted from the premises. Neither of these nuisance impacts may necessarily meet the 'risk to health' threshold of the SAPH Act so to exclude the operation of the LNLC Act for matters of squalor generally would limit council powers to manage such nuisances.

The LNLC Act provides some leeway to utilities in that noise nuisance from public infrastructure works is excluded. Further guidance on the application of the legislation to utilities may be achieved through better definition within the LNLC Act or through provision of advice and fact sheets to local government by the LGA.

Recommendations

- Amendment to Schedule 1 of the LNLC Act to allow for the Act to apply to the construction stage of developments to be included as part of any proposal to amend the LNLC Act, resulting from this review. As part of this, consideration will be given to the role of CEMPs in negating the need for the LNLC Act to apply (where the CEMP is of a suitable quality) and any duplication with exemption obligations under the LNLC Act.
- Further consideration is given to better definition of 'public infrastructure' that is excluded from operation of the LNLC Act to ensure that only infrastructure that requires special dispensation due to urgency or avoidance of impacts on the community is included and that improved guidance to councils on the correct operation of the exclusion is developed.

2.1.3 Animals living in their 'natural' habitat

Noise, odour or waste from animals living in their natural habitat are declared as not being local nuisance under clause 5, Schedule 1 of the LNLC Act with the exception to this being where animals have been actively encouraged, by feeding, to gather in a particular area. The term 'natural' is not defined in the Act and takes its common meaning as '1. existing in or formed by nature; not artificial: a natural bridge' (Macquarie Dictionary).

A query was made by a local government officer to the EPA as to whether this definition may extend to the naturalised habitat of mice, rats and pigeons in human structures. Based on the definition above such naturalised habitat should not be considered the same as natural habitat as mice, rats and pigeons in human structures can be considered a local nuisance. Comment was sought on whether any improvement such as a set definition is necessary.

Consultation feedback summary

Submissions regarding this issue were varied. There were several submissions from councils that indicated the current provisions work well or that there was no need for a specific definition. Other council submissions sought to amend the provision that allows action to be taken where animals are attracted by feeding to also include where nesting sites are provided, where nesting sites are not discouraged, or where vegetation is planted to attract wildlife. Some submitters sought to add buildings and structures to the definition of 'natural habitat' while others sought clarification that the definition did not include such structures.

Response to consultation feedback

The addition of human structures to the exclusion, whether in its own right or as an amendment to 'natural habitat' would mean that little could be done regarding nuisance animals associated with dwellings such as rats, mice and pigeons and would essentially negate the direct provisions in sections 17(1)(b) and 17(2)(a) of the LNLC Act. This would not be a desirable amendment to the legislation.

The suggested reduction in the exclusion such that the Act could apply to nuisance from wild animals where nesting sites were provided or not suitably discouraged may have negative urban biodiversity outcomes, depending on the species of animal, and may have limited effect. With the current exclusion not extending to the built environment such an approach would only address nesting in 'natural habitat'. The suggestion that the provision of, or not discouraging, nesting sites in natural habitat; and the planting of vegetation to attract wild animals could also be considered as a form of causing nuisance needs further information to be provided by councils to allow proper consideration. It would not be appropriate to limit the maintenance or improvement of urban biodiversity through the legislation. However if there were examples of species that did not contribute to urban biodiversity being attracted in this way then there may be reason for further consideration. It would also be inappropriate, as an example, to require the removal of flowering vegetation on account that bees or birds are attracted when the plants are in flower and someone is aggrieved. This would intrude significantly on the rights of landowners to maintain their gardens with flowering plants and should be considered in the category of potential nuisances that are acceptable to the broader community, similar to noise from children at schools.

Recommendation

The current regulatory approach is retained.

2.1.4 Noise from sporting activities – motorsports

Noise or other nuisance from sporting or associated activities at sporting venues is declared as 'not local nuisance' and excluded from regulation under the LNLC Act, on the basis that sports venues are widespread, provide an important community function, and noise, in particular, is incidental to the playing of sport at the venue.

Motorsports is a form of sport that produces considerably more noise than other sports. Motorsports venues, and the noise generated, are mostly already regulated through other legislation (EP Act, *Planning, Development and Infrastructure Act 2016* and *South Australian Motorsport Act 1984*).

All new and upgraded motorsports venues require a development approval to operate and should include conditions to control noise impacts such as limited hours of operation. If a motorsports venue is proposed within 3 km of residential premises not associated with the premises the development application must be referred to the EPA who has the ability to direct refusal or apply conditions to limit impacts. A motorsports venue less than 200 m from a residential premises not associated with the venue will require a licence under Schedule 1, Activity 8(5) of the EP Act.

If motorsports venues were removed from the exclusion for sporting venues, the majority of venues would still not be regulated under the LNLC Act. This is because the Act does not apply to EPA licensed premises or development authorisation approved activities (as discussed earlier) that have conditions to minimise nuisance from the activity (see section 5 and Part 3 of Schedule 1 of the LNLC Act). This reflects the design of the LNLC Act not to apply duplication of regulation on activities effectively regulated for nuisance impacts under other legislation.

The only motorsports venues that would be regulated by the LNLC Act in this scenario is where development authorisations are lacking conditions that minimise noise impacts on neighbouring residents and those older venues with existing land use rights that do not have a relevant approvals or conditions of approval. The LNLC Act could be used to apply similar controls as would be applied to a new or upgraded facility through the development system with the use of a nuisance abatement notice. Currently the EP Act may still be used to regulate such issues.

Consultation feedback summary

The majority of submissions on this matter were not supportive of any change to the legislation to allow the LNLC Act to be applied to motorsports venues that did not have an approval under other legislation. It was generally put that such venues are very uncommon and that the Development Act (or Planning, Development and Infrastructure Act) and the EP Act suitably regulate the majority of motorsports venues and able to regulate any future developments of this kind.

Response to consultation feedback

The EPA agrees that there are very few motorsports venues that are able to operate without a development approval or EPA licence (where needed) and that the potential for nuisance is minimal. The only possible issue that may arise would be if such a venue sought to increase the number of events held however it is noted that such a move may trigger the need for a development approval.

Recommendation

The current regulatory approach is retained.

2.1.5 Possible new ‘things that are local nuisance’

There were several general suggestions made that would duplicate controls in place under other legislation or would more suitably be regulated under existing legislation. These included regulation of illuminated signage by businesses and on bus stops (regulated as a form of development in most cases), containment of cats and dogs on owner’s property, and car ‘burnouts’. Additional suggestions beyond the scope of the discussion paper are considered in section 5 of this report.

Light as an agent of local nuisance

Light and heat were included in the definition of local nuisance when the Bill for the LNLC Act was first consulted on in 2015 but subsequently removed due to feedback from councils that the definition in the Bill was too broad. Since the Act commenced, a number of councils have indicated that being able to deal with light nuisance under the Act would be useful.

Light is considered a statutory form of nuisance under Queensland and ACT legislation, and also in the United Kingdom. Light nuisance in a domestic setting is generally easy to resolve through better screening and redirection of lighting or use of timers. Light from larger sources (eg sporting fields and commercial premises) may prove more difficult but as with all other nuisances regulated by the Act, light nuisance would operate within the due diligence defence provisions in section 27 where reasonability of actions to ameliorate a nuisance is a relevant consideration. For example, it would be unreasonable for a sporting venue to remove its lights but may be reasonable to adjust direction, upgrade to technology with less light spill or apply a curfew on their use.

Consultation feedback summary

The majority of council submissions did not support the inclusion of light on the basis of additional workload, operational difficulties with out-of-hours complaints, and the need for technical capabilities regarding light measurement. There were some council submissions that supported targeted regulation of lighting but warned against the potential for resource impacts if a ‘carte blanche’ approach was pursued. Community submissions were supportive of including light as an agent of nuisance. The issue was also discussed considerably at the public consultation meeting that was held. The discussion included whether natural light and artificial light should be regulated.

Natural light was raised in the context of glare from roofs and solar panels. The Environmental Defenders Office (EDO) were supportive of including light and outlined the scientific evidence that light pollution can have lasting adverse effects on both human and wildlife health. The EDO submission also outlined the United Kingdom approach to light nuisance including relevant considerations councils should have when assessing such nuisance.

Response to consultation feedback

As noted in the EDO submission, 'given every other sensory nuisance is included it seems prudent to include light considering its ability to interfere with enjoyment of land'. It is acknowledged that the addition of light as an agent of nuisance would increase the responsibilities of the regulator (councils) and its addition would need to be limited by a number of exclusions and transitional approaches in order to reduce any such increase. The increase in responsibilities to councils needs to be considered alongside the benefit to the community of having a resolution path for light nuisance. Provision of controls that are restricted to lighting that does not require development approval would fill a regulatory gap where there is currently no recourse for residents impacted by light nuisance. If light was included it would be assessed using subjective assessment, as with other nuisances.

It is noted that lighting associated with an authorisation under other legislation would be automatically excluded from application of the LNLC Act due to the broad exclusion in clause 5(d). This would exclude more recently approved developments where light spill was a relevant consideration. Lighting that would need to be considered for exclusion from the LNLC Act (in addition to current exclusions that would apply) or at least managed through a mediation approach would include pre-existing lighting associated with activities that would now be dealt with under the development system such as outdoor business (including industry) lighting, illuminated billboards and signage; street lighting; and lighting on public or private land for safe public thoroughfare. Light from sporting venues could be excluded by broadening the current exclusion regarding noise from sporting venues to include light. Consideration would also need to be given regarding application (or exclusion) to temporary installations such as Christmas lights. Consideration would also need to be given to limiting controls to external lighting and any other relevant limitations.

The addition of light as an agent of local nuisance can be achieved through amendment of Schedule 1 via a regulation. It does not require an Act amendment. The ability to include (and amend or remove) through a regulation change would allow for quick changes or repeal should it be trialled and prove unworkable.

Recommendation

Light is included as an agent of local nuisance via regulations, as part of any proposal to amend the LNLC Act resulting from this review and that the EPA further engage with the LGA and councils on the scope of controls that are to be applied.

Noise from vehicles – revving, alarms, off-road motorbikes

The LNLC Act currently excludes noise from vehicles other than vehicles operating within, or entering or leaving, business premises and from waste transport vehicles on roads and road-related areas. This is because it is impractical to apply regulation to general traffic noise, including noisy vehicles on roads, at a specific locality because the vehicles that are causing the noise (and the nuisance) are transiting the location irregularly and cannot, individually, be identified as the source of the nuisance associated with the locality. SAPOL have powers under the *Australian Road Rules* (rule 291) to deal with individual vehicles that are identified on roads as being unreasonably noisy.

Following the implementation of the legislation it is apparent that there are examples where nuisance is emanating from an identifiable individual vehicle at a specific locality that the exclusion may currently apply to. The examples identified to date are revving engines on residential premises, running food refrigeration vehicles overnight, faulty car alarms and recreational use of off-road motorbikes (not associated with primary production activities).

Consultation feedback summary

The general consensus from councils was that the regulation of car alarms and off-road motorbikes should not be included within the legislation although the LGA did support further discussion regarding off-road motorbikes. Issues raised regarding the inclusion of car alarms included the inability for authorised officers to access registration information in the field in a timely manner to determine the offender and a general reluctance to take on additional workload. Issues raised regarding off-road motorbikes included links to anti-social behaviour and that SAPOL are better placed to manage such nuisances.

There were a number of council submissions that indicated support for the inclusion of refrigerated trucks within the ambit of the legislation. It was noted in one submission that running of a refrigerated truck would be similar to running a noisy air conditioner or other form of compressor, and could be easily identified using subjective assessment. A further submission from a council noted that such complaints could be followed up during business hours and would not present after-hours concerns raised elsewhere.

Response to consultation feedback

From submissions received there was little appetite from councils for regulation of car alarms, revving on premises or off-road motorbike use. Some submissions did support their inclusion within the LNLC Act but a number of councils also articulated particular barriers to effective regulation of these matters. There was however support from a number of councils and other submitters for refrigerated trucks to be included. As noted on one of these submissions, the operation of a refrigerated truck at a premises is not dissimilar to the operation of a fixed machine such as an air conditioner or pool pump. Given the potential for such a noise nuisance to be a nightly issue rather than the sporadic nature of other nuisances it is worthy of consideration for inclusion.

Recommendation

Noise from refrigerated vehicles to be specifically included as a form of local nuisance (or that the exclusion related to vehicle noise is clarified), as part of any future project to amend the legislation.

2.1.6 Possible new 'things that are not local nuisance'***Dust from unsealed roads***

Some councils receive complaints regarding dust nuisance generated from unsealed roads. There are tens of thousands of kilometres of unsealed roads throughout South Australia. It is not practical and would be cost prohibitive to seal all roads and maintain them. Councils are able to assist with nuisance dust where the issue is considerable by erecting signage regarding dust nuisance or reducing speed limits in impacted areas. The LNLC Act attributes responsibility for nuisance by applying to a person carrying on an activity that results in nuisance, or through failure to act. To ensure that councils are not deemed responsible for nuisance dust from unsealed roads through a perverse interpretation of 'failure to act' as a result of not sealing a road, it is suggested that dust from unsealed roads should be prescribed as 'not local nuisance'.

Consultation feedback summary

There was general support that dust from public roads should be excluded from the LNLC Act. There was consideration given to extending such an exclusion to private roads in a small number of submissions. One council suggested that private roads should also be considered for exclusion, while another council suggested dust from private roads should be investigated like any other dust contributing to a local nuisance.

Response to consultation feedback

It is agreed that dust from public roads should be excluded from the operation of the LNLC Act. The cause of the nuisance in these circumstances is generally from third party vehicles using the roads in good faith and may be generating nuisance when otherwise using the road in a lawful manner (speed, etc). It would be inappropriate (and pointless) for councils to deal with such a nuisance by pursuing the owners of these vehicles. The other 'cause' of such nuisance may be the material used for the road, which would be a matter for the relevant council. Such issues may be unresolvable or, if they are, would be resolved by the council, and representation to council is available under the *Local Government Act 1999* by aggrieved persons.

Excluding dust from private roads may cause unnecessary complications with enforcement of general dust complaints from private property. While there is merit to treat all unsealed roads, similarly there is potential for confusion as to which part of a private property may be considered a road. It is preferable to apply common sense and the concept of 'reasonable and practicable' as articulated in regulation 4 of the *Local Nuisance and Litter Control Regulations 2017* (LNLC Regulations) when assessing dust nuisance from private property.

Recommendation

Dust from unsealed public roads to be prescribed as 'not local nuisance' under Schedule 1 of the LNLC Act as part of any future project to amend the legislation.

Noise from public infrastructure – application to vibration and extent of the exclusion

Noise from public infrastructure works is prescribed as 'not local nuisance' under Schedule 1 of the LNLC Act so that infrastructure works which benefit the public are not unduly regulated where the nuisance is unavoidable. While dust can be attenuated, noise is often extremely hard to minimise when working on public infrastructure. Examples include evening or overnight roadworks or water infrastructure maintenance where a certain amount of noise is unavoidable and must be carried out overnight to avoid traffic disruption. Under the EP Act, noise includes vibration, while under the LNLC Act noise and vibration are separate agents of nuisance and hence the exclusion relating to noise from public infrastructure does not apply to vibration.

It is evident that public infrastructure earthworks may also result in some level of vibration impact caused by compacting of road base associated with the works. The vibration impact would be minimal in most circumstances and it is proposed to prescribe that vibration from public infrastructure works is not local nuisance. Dilapidation reports (used to assess the state of a building before and after an activity that produces vibration to identify any damage and provide evidence for claiming of damages) may also be available as an alternative to regulation prior to commencement of major public infrastructure projects.

A further issue is the extent of the exemption for noise from public infrastructure. While there are roadworks, water pipe repairs and the like that may need to occur late at night and with limited advance notice to fix an issue and avoid disruption to traffic (as discussed earlier) there are other examples of public infrastructure works that may not necessarily need to be conducted at night or in the early morning other than for convenience. One example is concreting works associated with a public hospital redevelopment. Under the terms of the exclusion there are no limits to the nuisance caused to neighbouring properties from this activity while the same activity on another site would be regulated by the LNLC Act.

The benefit of applying the Act to such scenarios is that where there is a valid need, an exemption (under section 19) can be sought and, as part of that process, neighbours can be informed by the applicant and complaint mechanisms put in place by the applicant such that the council receives less complaints.

Consultation feedback summary

The majority of submissions were supportive of excluding vibration from public infrastructure works from the application of the LNLC Act. Some councils noted that they had not dealt with issues relating to vibration from public works previously.

There were opposing views regarding the proposal to limit the exclusion to situations where nuisance cannot be reasonably avoided or managed. Some submitters supported the proposal and some did not. Two councils submitted that applying a consideration as to whether works were 'reasonably avoidable' would be confusing for the community and should not be included.

Response to consultation feedback

It is acknowledged that vibration is a very uncommon form of nuisance associated with public infrastructure works. Given the exemption for noise from public infrastructure works is based on the urgency and public good, and that vibration is very difficult to limit when it does occur, it would not be unreasonable to extend the exemption to vibration.

The concept of limiting the application of the public infrastructure exclusion to works where it is completely necessary had a mixed response. There are similar inconsistencies within the legislation such as how air conditioner noise might be addressed at a premises that holds a liquor licence versus one that does not (discussed earlier) that this review is seeking to address. The LNLC Act already has a mechanism in place to allow for nuisance where it is necessary to avoid inconvenience to traffic or pedestrians through the considerations for authorised officers outlined in Regulation 4 of the LNLC Regulations. This is a lesser exclusion than is currently applied to public infrastructure works as it does not fully accommodate the public good element of public infrastructure works, however it may be a more appropriate approach to ensure that nuisance in the community is regulated more fairly. Such an approach could be improved for the purpose of public infrastructure by accommodating emergency situations or work to re-establish or repair essential services.

Recommendation

To include the following as part of any future project to amend the legislation:

- the exclusion for public infrastructure works be extended to include vibration
- consideration given to limiting the exclusion for public infrastructure works to works that occur within certain hours or are otherwise of a critical, time dependent, nature.

Early morning concrete pours in hot weather

An occasional source of noise complaints in the community is the early morning commencement of concrete pours associated with construction within residential areas. Early morning pours are done either due to the size of the pour or to accommodate extreme weather conditions that might affect the structural integrity of the concrete. Heat-related issues can be overcome to some extent with curing additives, and sealants applied after the pour. While there are alternative approaches available, this form of nuisance is usually a one-off event, has technical merit and warrants consideration of allowing early starts through some form of exemption where extreme heat is forecast. It would be important to set limits on what constitutes a reasonable early start time and to ensure the forecast temperature is easily verified by compliance staff so that it is not abused by operators over summer months.

Consultation feedback summary

Feedback on this issue was varied. A number of councils suggested that the current exemption provisions of the LNLC Act were sufficient and others suggested these could be made simpler for the purpose of concrete pours. Other councils were supportive of an automatic exemption for concrete pours during hot weather, some stipulated there should be limits regarding the timing of early starts applied to such exemptions, and others suggested there should be an unambiguous and easy way for compliance staff to assess the times against meteorological conditions.

The industry association representing concrete suppliers proposed there should not be time constraints placed on early concrete pours in that they normally occur through technical imperative and also reduces impacts on traffic. It was also noted that temperature may not be the only driver for an early pour and the size of the job is also a relevant consideration in establishing a permanent exemption.

A further suggestion was to issue permits (other than the current exemption) for early morning concrete pours. The LGA was supportive of further discussions with industry on the matter.

Response to consultation feedback

The positive experience of a number of councils effectively utilising the existing exemption provisions to allow for early morning concrete pours indicates there is limited need to provide set exemptions for this activity. More rules would provide less flexibility for councils to administer the legislation to the satisfaction of their communities.

It is further noted that issues other than temperature were identified as possible triggers (size of pour, rain, high winds) for early starts, so to only deal with temperature would make compliance with requirements of the Act less clear for concrete operators. This is because some triggers would require an exemption under the current arrangements, and pours during high temperatures would require assessment by council staff against the terms of any possible exemption provision to confirm compliance if a complaint was made.

Some of the comments received supported more straightforward exemption processes (permitting). The Act already allows for councils to establish shorter assessment timeframes (regulation 6), however there may be opportunities to provide for reduced requirements associated with the application for an exemption particularly regarding content obligations for a site nuisance management plan. Such reduced obligations could be limited to certain activities or at the determination of councils.

Recommendation

Amendments to the exemption provisions to be developed in association with the LGA to allow councils greater discretion as to what they require from applicants and that such amendments to be considered as part of any future project to amend the legislation.

**2.2 Waste collection vehicles – application beyond roads and road-related areas
[section 5(5)]**

The LNLC Act is designed so that the majority of activities licensed by the EPA are excluded as they are already regulated under the EP Act. The exceptions to this are activities associated with a vehicle such as earthworks drainage, dredging and waste transport.

There are two reasons for this arrangement. Firstly, litter from such vehicles is better dealt with under the provisions of the LNLC Act and to exclude these vehicles would make the operation of public litter reporting more difficult as checks would need to be made against a frequently updated list of vehicle registrations associated with the EPA license. The second reason relates to appropriate reporting of other forms of nuisance from these activities, particularly noise. The neighbours of an licensed site would generally report directly to the EPA, while a complainant aggrieved by a nuisance

from a mobile activity would unlikely know that the activity is licensed by the EPA and should have confidence that their local council can deal with all mobile activities, whether EPA licensed or not.

The wording of the current exclusion is limited to 'roads and road-related areas', as defined in the *Road Traffic Act 1961*. While the common meaning of these terms might seem to limit the application to public roads and nearby areas, the definitions extend their meaning to include private property areas that are publicly accessible to pedestrians, bicycles and motor vehicles. The way the exclusion is written means that, in the case of waste transport vehicles, the LNLC Act generally applies to nuisance generated by them except when operating on private property that is not accessible to the public, as noted above. This creates a regulatory arrangement that causes unnecessary difficulty when assessing alleged nuisance from waste transport vehicles.

Consultation feedback summary

Consultation feedback was generally supportive of consistency between how the LNLC Act is applied to waste collection vehicles on public and private land and that councils should be able to regulate equally in all circumstances. A few councils stated that council waste collection should remain exempt or that the 'exemption' should be better articulated in the Act.

Response to consultation feedback

There does not appear to be any policy reason as to why nuisance from waste vehicles when they are operating on private property should be treated differently to every other circumstance. This appears to be an unforeseen issue with the Act.

Council waste collection vehicles are not exempted. Schedule 1 of the LNLC Act has no link to whether that collection is licensed or not. Further, council waste transport vehicles do not require an EPA licence and are not subject to the limitations imposed by section 5 of the LNLC Act. The only limitation is related to EPA-licensed waste transporters that prevents intervention regarding nuisance when they are operating on private property, as discussed above. The Act applies to council waste collection vehicles on public and private land (if such vehicles were to collect waste from private land).

Recommendation

Application of the LNLC Act to EPA-licensed waste collection vehicles to be extended to include private property as part of any future project to amend the legislation.

2.3 Improve subjective assessment of nuisance or introduce objective measures of compliance

Subjective assessment is provided for in section 50 of the LNLC Act to allow authorised officers to assess the presence of nuisance using their own senses. This may include aural assessment of noise, visual assessment of dust or smoke nuisance, and odour assessments. Regulations (regulation 4) under the Act provide guidance on various considerations when making a subjective assessment of the presence of nuisance. The broader experience of the EPA in assisting councils with the implementation and administration of the Act is that subjective assessment will improve with experience, and be further enhanced with training from the EPA.

Sensory evidence, or subjective assessment, is not new when dealing with nuisances throughout Australia. In South Australia it is already provided for under provisions identical to those in the LNLC Act, under section 139(4) of the EP Act. Tasmania, Queensland and Victoria allow subjective assessment by councils of nuisance. Victoria prohibits the use of domestic air conditioners overnight where noise is audible from within a habitable room of another residential premises. Audibility of noise is a very straightforward use of subjective assessment, however determining the reasonability of an audible noise is less so.

While there are provisions both Acts that support subjective assessment, there are no provisions that prevent the taking of objective measurements as part of determining whether there is sufficient evidence that an offence may be occurring.

One issue that may arise is where a subjective determination of noise nuisance is made relating to a complaint where the noise is of a nature that is borderline with regard to causing nuisance and a further objective measurement (taken after the subjective determination by the alleged offender or a third party) may appear contradictory. For this reason, all noise complaints of a borderline nature should be assessed with an element of objective measurement to ensure that compliance requirements are reasonable and effective. Subjective assessment is still useful for very obvious offences and for obviously unreasonable complaints.

Under the EP Act, the *Environment Protection (Noise) Policy 2007* (Noise Policy) provides objective guidance on what is considered to meet the general environmental duty (section 25 – *reasonable and practicable measures*) relating to noise. In essence, this sets noise standards for compliance with the general environmental duty.

The LNLC Act has similar to the general environmental duty under section 27 – *defence of due diligence*. Assessment of noise against the Noise Policy to assist in determining whether the defence of due diligence is likely to be applicable is appropriate in cases where the noise is of a borderline nature. However, a similar approach could be incorporated into the LNLC Act or Regulations to provide clarity around the use of such an approach.

Current guidance to local government could be updated to incorporate a process chart that councils would use for straightforward noise nuisances (high end, low end, and matters of fact/time related), and for making a subjective determination (not limited to subjective assessment) of borderline or other complicated noise nuisance issues that incorporates an objective assessment using the Noise Policy or a similar but simplified scheme established under the Act to provide certainty in assessments. Such a procedure could also be incorporated into the Regulations to build on the guidance provided by regulation 4. It is understood that some council officers use point-in-time noise readings to support their subjective assessments.

There are other options that could be considered to improve the application of the subjective assessment approach within the legislation. Non-legislative approaches include further training of local government staff and the development of a standard operating procedure adopted by councils.

A further legislative option specific to key domestic noise sources, such as air conditioners, would be to apply a similar approach as Victoria where audibility of certain noise sources from habitable rooms of a residential premises during night-time hours, except under exceptional circumstances such as extreme weather, is prohibited.

Consultation feedback summary

A number of councils made submissions that the subjective assessment approach was working well and did not support changes. It was further noted that support and guidelines from the EPA encouraged the appropriate use of subjective assessment. With regard to noise nuisance, a number of councils indicated that the subjective approach does not prevent officers from utilising measurement of noise in borderline or complex situations, when required, to assist forming a subjective view. It was also noted that inclusion of measurement of some description would help ensure proposed compliance requirements are practicable and reasonable and will be effective to reduce the nuisance noise.

One council submission noted that if objective assessment is introduced it will require additional training, practice guidelines, expertise and support, resourcing and the supply of equipment to undertake relevant testing, such as noise meters, vibration detection equipment, dust monitoring devices, etc. The additional cost associated with upskilling and equipment was noted as a negative outcome by many councils.

It was noted in one submission that councils were reluctant to initiate prosecution proceedings relying solely on the subjective assessment of an authorised officer. However, the submission further commented that the economic nature of a subjective assessment would be lost with prescriptive measures and guidelines.

The Environmental Defenders Office pointed out that there were already subjective and objective elements to section 50; the current subjective assessment requires assessment using objective criteria.

A submission from a community member noted that assessment by an officer at one point in time did not provide consistency in application of the legislation, with traffic noise and other noises making the assessment unfair and biased.

There were a number of suggestions made to improve the assessment of local nuisance under the Act:

- remove subjective assessment and allow video/audio evidence
- compulsory mediation for all local nuisance complaints regarding construction
- more guidance for when councils need to take action
- more training for councils on subjective assessment
- out-of-hours assistance from the EPA in noise assessments
- section 50 should be amended to reflect a three-step assessment process: whether the alleged person caused the nuisance; assessment of level, nature and extent of nuisance; and assessment of reasonableness
- the EPA to develop a formal policy or set of guidelines that acknowledges and seeks to reconcile the different thresholds established by the different regulatory frameworks
- agreement that a process chart be developed and/or procedure incorporated into the regulations
- provide further guidance in the Act, regarding the role which objective measurements can play in addressing local nuisance matters
- the EPA to undertake objective assessments to support councils in situations where council officers deem a matter to be 'borderline', or where the officer has deemed the matter to be not a nuisance and the complainant is not satisfied with the outcome
- councils have a shared acoustic engineer to provide technical/ scientific data for factual objective results
- residents hire sound measuring equipment from council at a low cost in order to make recordings themselves to support the investigation process
- give local ward councillors an option to become authorised officers so that nuisance may be verified after hours. They may live in close proximity and could work as a backup to council.

Response to consultation feedback

When the LNLC Act was being developed in 2015 there was very clear input from councils that measurement obligations for nuisance were not supported due to the need to maintain equipment and skillsets within the council to undertake the measurements. The majority of council submissions to the discussion paper maintain this view.

It is also acknowledged that objective measurements may support evidence for the purpose of court action and that the main nuisance issue where objective measurements may be useful is that of noise. It is important to note that the Act does not prevent the collection of additional evidence to assist with proving an offence, and the collection of objective measurements of noise to support a subjective determination of nuisance is good practice.

The retention of nuisance type matters within the Noise Policy 2007 also likely causes confusion and will be overcome with the review of the policy currently underway.

Further training or documentation from the LGA, Authorised Persons Association (APA) or the EPA on the proper use of subjective assessment that provides guidance on when and how to use objective measurement as part of a subjective determination may assist council staff with administering the legislation. It may also be appropriate to improve regulation 4 by codifying such guidance.

A number of suggestions related to further EPA involvement in the administration of the Act. It should be noted that the Act is principally to be administered by local government.

Recommendations

- Guidance for the use of objective measurement to support subjective determinations under the LNLC Act to be developed, and whether that guidance should be advisory or codified within the regulations (see regulation 4) to be considered as part of any future project to amend the legislation.
- If objective criteria is included in the LNLC Act as part of any future project to amend the legislation that the Noise Policy is specified as not applicable under the Act.
- The EPA to discuss with the LGA and APA the need for further training of authorised persons and an appropriate delivery approach.

3 Consultation feedback on litter discussion points

3.1 Allowing councils to clean up and recover costs after if a hazard exists

The LNLC Act does not prevent councils from urgent clean-ups of littered material, however it does not allow for cost recovery in these circumstances. The Act provides that a Litter Abatement Notice may be issued to the person responsible for the litter that requires, among other things, that they clean it up. Such a notice would also include a timeframe for the clean-up to occur. If the notice is not complied with then the council may clean up the material and charge the clean-up cost to the person responsible.

This scenario is fair and reasonable in most situations as it provides procedural fairness to the alleged offender. When there is material littered that causes a hazard, whether a health, environmental or physical hazard (eg in the middle of a road), it may be a reasonable community expectation that the material is cleaned up immediately. This may be carried out by the council even if the offender is not yet known.

The Act provides for the court to order costs be paid for such matters (section 45) only where there is a conviction. The civil penalty provisions of the Act (section 34) do not provide a specific remedy in this regard as the maximum civil penalty is the maximum penalty for the offence plus any illegally obtained economic benefit. It could be argued that part of the penalty applied could be used to offset the cost of clean-up or alternatively, that the clean-up cost was an avoided cost of economic benefit to the alleged offender and recoverable. An option to explore could be a retrospective order of costs for such a scenario where an offender is identified but a conviction, for whatever reason, is not pursued. This could possibly be achieved through an extension to section 48 where councils may currently recoup technical and administrative costs.

Consultation feedback summary

There was unanimous support for the proposed amendment. It was highlighted in one submission that there will be a need for councils to be able to demonstrate a need to act in order to use the provision, should it be added. One submitter suggested that a similar approach to section 105J(9)(a) of the *Fire and Emergency Services Act 2005* where councils may apply the debt as 'rates in arrears' would be useful.

Response to consultation feedback

This amendment will be an important tool for councils to have to ensure that clean-ups that are required to remove or prevent a public hazard can be done promptly and costs may still be recovered. It will be important to retain procedural fairness so that councils do not default to using such a power without giving the alleged offender an opportunity to arrange for a clean-up.

Recommendation

An amendment to allow for retrospective cost-recovery orders where an alleged offender is identified after clean-up by a council and the clean-up was reasonably necessary to remove an environmental, health or physical hazard and that appeal rights for such an order to be considered as part of any future project to amend the legislation.

3.2 Bill posting – car parks and expiations

Under the LNLC Act a person must not post a bill on property without the consent of the owner or occupier. This covers posting of bills on buildings, cars and other property but it is unclear where bill posting is occurring on vehicles within a carpark, as to whether the carpark constitutes 'property' or it only applies to the cars. This is important as a carpark owner may be aggrieved by the posting of bills on their land but may not have recourse to deal with it themselves. The ability to address the bill posting would rest with the owner of a car in the carpark. This may need improvement as it is the owner of the carpark that will be responsible for removing the resulting litter and, where offensive material is being distributed, may suffer reputational damage.

The Act currently only provides for a court imposed penalty for persons that authorise bill posting. Court proceedings are a considerable cost to councils and alleged offenders, and an expiation will provide deterrence from reoffending in many instances. An expiation amount for section 23(2) would overcome this issue.

Consultation feedback summary

There was general support for the inclusion of an expiation against the offence of authorising bill posting. There were various views regarding allowing for carpark owners to initiate complaints regarding bill posting on their premises. Some submitters stated that carpark operators should not be able to instigate proceedings against posters of bills on their property while others were supportive of broadening the provision to allow for carpark owners to initiate proceedings for bill posting on their property. There was also a suggestion that expiations should be tiered to address varying degrees of bill posting.

Response to consultation feedback

It may not have been completely clear what amendment was proposed in the discussion paper regarding extension of 'property' to include carparks, as responses tended to focus on carpark owners being able to initiate proceedings for bill posting on their premises. The civil remedy provisions of the Act would be extended to the owner of the carpark but there would also be powers made available to councils. Such an amendment would also allow councils to expiate or prosecute on behalf of a carpark owner.

Recommendation

A further definition of 'property' to include a carpark where bills are posted on vehicles and that the addition of an expiation for the offence of authorising bill posting to be considered as part of any future project to amend the legislation.

3.3 Illegal dumping

Illegal dumping is a considerable issue in the community and the LNLC Act introduced a number of tools to assist councils with compliance and cost recovery. Such initiatives include the following:

- Vehicle owner responsibility provisions that allow for surveillance of illegal dumping hotspots and for reports of vehicles being used for illegal dumping to be better followed up for possible prosecution.
- Higher penalties and expiations for acts of illegal dumping.
- Specific penalties for asbestos dumping.
- Ability to order clean-ups where the offender is known.
- Ability to undertake the clean-up and charge the offender where the offender does not comply with a litter abatement notice.

A very general question was asked in the discussion paper as to whether submitters had any suggested changes to the Act that would assist with tackling illegal dumping.

Consultation feedback summary

There were a number of suggestions made across the submissions:

- Introducing higher expiation amounts for the littering offences in the LNLC Act.
- Adding an expiation for the 'Class A hazardous litter' offence.
- Extending the proposed retrospective cost recovery for emergency situations to illegal dumping situations where the offender is determined after the council cleans up the material.
- Considering 'general litter' as 'Class B hazardous litter' where it is disposed of to waters.
- Considering degradable plastics and other microplastics as 'Class B hazardous litter'.
- Including straws, cutlery and napkins as 'general litter'.
- Allowing abandoned unregistered trailers to be dealt with as illegal dumping rather than an abandoned vehicle.
- Allowing for a charge on land against an offender's property where the illegal dumping did not occur on the property.
- Reintroducing the 'Dob In a Litterer' program.

Providing a reverse burden of proof where an authorised officer forms an opinion as to the source of illegal dumping such that the alleged offender needs to prove that they did not dump the material.

A number of council submissions raised greater use of solid waste levy (the levy applied to waste that is disposed to landfill) funds for waste and recycling infrastructure or for reimbursement of costs associated with illegal dumping clean-ups. There was also a suggestion that the levy could be waived for illegally dumped material.

The EPA also notes from discussions with some councils that there has been some concern as to the interpretation of liquid wastewater being a form of litter and illegal dumping in that there are no examples provided within the definition to give greater clarity.

Response to consultation feedback

A number of the suggested amendments are worthy of further consideration. Higher expiation amounts would need to be informed by an assessment of councils' use of expiations and whether the amounts are not a sufficient deterrent (repeat offenders). An expiation amount for 'Class A hazardous litter' would need to be considerable to align with the maximum penalty under the LNLC Act (\$250,000 for a body corporate) and may need to be of such an amount that it would be unlikely Parliament would support such a penalty being imposed at the discretion of an authorised officer.

There is an existing court process available for cost recovery from illegal dumping offenders where they can be identified but it may be appropriate to consider an option for councils to pursue where there is no conviction subject to suitable protections and appeal rights. The ability to apply a charge on land owned by a person found to be illegally dumping on land other than their own may also be suitable but would need further assessment to ensure it could be utilised in a manner that was fair to all parties, including the alleged offender.

There is merit to considering litter to waters as an aggravated form of littering. This is already contemplated in the LNLC Act with dumping of bulky waste such as vehicles to create artificial reefs considered 'Class B hazardous litter'. Equally, degradable plastics and other microplastics may also be considered a higher risk to the environment and could potentially be in a higher bracket of litter. There would however be considerable problems with compliance in that authorised officers would have difficulty determining and proving that an offence involved such material without employing laboratory testing. Straws, cutlery and napkins fall within the current definition of 'general litter' in that they are considered solid domestic or commercial waste.

The LNLC Act does consider vehicles and vehicle parts to be general litter where they do not fall within the ambit of 'abandoned' vehicles under the *Local Government Act 1999*. It may be appropriate to better define the crossover between the two pieces of legislation or provide further guidance to councils on this matter.

The operation of the 'Dob in a Litterer' program is not established by the LNLC Act. The state government discontinued the scheme in September. Similarly, the solid waste levy was not established under the LNLC Act and related matters are determined under the EP Act. Work has been done previously, through the LGA, as to an appropriate methodology for a rebate or exemption from the levy for illegally dumped material, however there has yet to be a proposal developed that overcomes governance and probity issues. The EPA is continuing to work with the LGA on finding possible ways forward.

Provision of a reverse burden of proof should only be considered in situations where natural justice can be maintained. Providing that an authorised officer may form an opinion as to the source of illegal dumping such that the alleged offender needs to prove that they did not dump the material would need to be strictly controlled by providing strict objective criteria for an authorised officer to satisfy in forming their opinion. This may include finding identifying documents, traceable vehicle parts or similar. This could be explored further but it would not be appropriate to provide such a power without including objective criteria.

Recommendation

The suggestions regarding littering and illegal dumping, where appropriate to do so, to be considered as part of any future project to amend the legislation.

3.4 Trolleys

Trolleys that are dumped outside of shopping centres constitute littering under the LNLC Act. The offence applies to the person doing the littering, not the owner of the trolley. Council officers are rarely present to witness the act of littering and there is little in the Act to resolve the problem effectively. The act of littering does not extinguish ownership rights for these articles.

There are a number of approaches that could further assist councils with the management of trolleys in their area. Many of these were raised at a 'Shopping Trolley Summit' hosted by the City of Marion in July 2018. Extension of the litter abatement notice provisions such that they can be issued to the owners of trolleys requiring collection or preventative measures to be implemented is one way that this might be achieved.

The ACT government has a scheme in place to better manage trolleys dumped in the community. It should be noted however that the territory government provides all local government services. In any other state or territory the programs established for trolleys in the ACT would be administered by local government.

The ACT scheme is summarised as the following:

- The creation of offences against the improper use of shopping trolleys including removal of trolleys from shopping centres.
- A retailer must place signage warning people against taking shopping trolleys outside a shopping centre precinct.
- The requirement that retailers keep trolleys on their premises with an exemption from this requirement if a trolley containment system is in place (eg deposit or wheel locks).
- The provision of identification on shopping trolleys to assist their collection if abandoned.
- A proactive trolley collection scheme that allows the government to respond to a trolley problem in a specific area.

Some councils across Australia have introduced local bylaws to manage the issue. For example, Alice Springs Town Council's bylaws allow council officers to fine people caught abandoning trolleys, impound trolleys collected from council land, charge the owner of the trolleys a release fee, require the owner to collect the trolleys, and to dispose of the trolleys if not collected. In the context of this review, such provisions could be written into the LNLC Act as general provisions that councils could utilise at their discretion. Alternatively it could be left to councils to create their own bylaws.

One issue that needs consideration when applying stricter controls on the use of trolleys outside of shopping centres is the potential for social disadvantage for those without a car or the means to buy their own personal trolley to transport shopping to their home. This issue was highlighted in a report by the ACT Human Rights Commissioner in response to the ACT trolley controls. A further issue is whether such changes might promote additional car use, however this impact would be minimal.

Consultation feedback summary

The majority of input to this issue came from councils. The majority of councils consider the current provisions for the management of abandoned trolleys in the LNLC Act are ineffective and statewide provisions were preferable to implementing council bylaws. Some councils hold the view that the various trolley reporting services such as Trolley Tracker rarely respond within a reasonable timeframe. Identifying members of the community who abandon trolleys was problematic and the likelihood of witnessing the act was unlikely. It was further noted by a number of councils that impounding trolleys found away from shopping precincts was also ineffective.

There were some councils that noted that they did not have a significant problem with abandoned trolleys and would be concerned by the impact any legislated restrictions may have on small businesses and council resources if mandatory requirements were applied.

In general, councils would like further powers to deal with abandoned trolleys with particular focus on the responsibility of retailers to better manage the issue. Suggestions for additional powers include:

- Requiring supermarkets to label trolleys with their brand and a reporting hotline to facilitate collection.
- Implementing the ACT scheme (outlined above).
- Specifically including trolleys in the definition of 'general litter' in the legislation.
- Requiring retailers to prepare a shopping trolley management plan.
- Extending the ability to issue litter abatement notices to areas beyond the current 100-m limit and to retailers.
- An express power to enable councils to recover costs from owners for removing trolleys from public spaces.
- Requiring trolleys have coin or wheel locks (geofencing) or an EFT holding mechanism;
- Extending responsibility for abandoned trolleys to owners of trolleys;
- Appropriate fines and penalties should be available for failure to clean up and manage shopping trolleys as 'litter'.

There were submissions made by a few retailers/retail groups. Coles indicated that it was keen to implement more customer and awareness strategies and was also open to potential investments in infrastructure.

To assist socially disadvantaged individuals, it was suggested that revenue generated from trolley deposits not refunded could be used to subsidise a home delivery option or that a reduced fee could be offered to allow socially disadvantaged individuals access to this service upon presentation of a health card or other relevant documentation. One council submitted that social disadvantage and trolley use is not a council matter.

Response to consultation feedback

The EPA acknowledges that some councils have concerns regarding the proliferation of abandoned shopping trolleys in their areas and have asked the government to provide them with better powers to manage the issue. In determining what might be appropriate insofar as new powers it is important to consider the potential costs to both councils and retailers of doing so.

Applying mandatory obligations on all retailers would be a blunt approach and apply unnecessary costs on retailers that manage their trolleys well or do not experience trolley abandonment. Equally, applying the same controls to a small retailer that may have an occasional trolley removed from their premises as to a very large retailer that is losing significant numbers of trolleys to abandonment would apply unreasonable costs, generally be an unfair application of regulation, and cause a significant cost burden to small businesses. Any obligations placed on retailers would also need to be overseen by council regulatory staff to ensure compliance and if controls were applied broadly there would be a community expectation that all retailers complied regardless of their level of trolley abandonment and councils would need to resource that compliance effort. This would result in a significant cost burden to councils.

Improving current tools such as litter abatement notices so that they can be better used to address the causes of abandonment and requiring specific controls from individual retailers would be useful improvements to the legislative scheme and could provide all of the necessary powers to be applied on a case-by-case basis with retailers that have considerable trolley abandonment issues. A further option would be to give councils the power to require a retailer to prepare and implement a shopping trolley management plan. This would allow councils to make an active determination to focus on a problematic area and the retailer(s) in that area rather than a requirement for councils to require such things of all retailers across their entire area.

Recommendations

The following to be considered as part of any future project to amend the legislation:

- trolleys are added to the definition of 'general litter'
- providing councils with further powers, whether through improvements to litter abatement notices or by other means, to require individual retailers to implement strategies to reduce excessive trolley abandonment or for the collection of abandoned trolleys where there is a significant issue of trolley abandonment
- cost recovery mechanisms for recovery of shopping trolleys from outside of shopping precincts

4 Consultation feedback on general discussion points

4.1 Abatement notices – linkage to land

One of the main tools for addressing nuisance from fixed machines such as air conditioners and pool pumps is a nuisance abatement notice. Nuisance from a fixed machine requires ongoing management to avoid further nuisance and controls such as limiting hours of operation or requiring the maintenance of an acoustic barrier may be appropriate elements of a notice. It has been identified by local government that change of ownership of a property with a problematic fixed machine that has controls applied within a notice is not able to be transferred to the new owner of the property and a new regulatory process would need to be undertaken. It has been proposed that the LNLC Act be amended to allow councils to register nuisance abatement notices against land where the source of the nuisance at a property requires ongoing regulation.

Consultation feedback summary

There was general support among submissions on this issue. The majority of submitters on this matter were councils. A few councils put forward an alternative approach of amending the *Land and Business (Sale and Conveyancing) Regulations 2010* such that notices under the LNLC Act would be flagged through the Form 1 process under that legislation during sale or transfer of property.

Response to consultation feedback

The EPA supports a broad toolkit for councils to use to administer the legislation.

Recommendation

The ability for a council to register a nuisance abatement notice onto land to be considered as part of any future amendments to the legislation and that amendment of the *Land and Business (Sale and Conveyancing) Regulations 2010* is suggested to the Attorney General's Department (Consumer and Business Services) when that legislation is next revised.

4.2 Improving cost recovery

Cost recovery is an important element of any regulatory function performed by government. The LNLC Act contains a number of cost recovery provisions, generally linked to contraventions of the legislation that are directed at recovering costs from offenders. Where such measures are not being utilised or are not completely effective the residual cost is, by default, recovered through general rates as a service provided for the benefit of the broader community. Advice is sought from stakeholders regarding other potential mechanisms that could be considered to further enhance cost recovery provisions of the Act aimed at the offender.

Consultation feedback summary

There were a number of suggestions made within consultation submissions:

- Using the solid waste levy for reimbursement of clean-up costs for illegally dumped materials and/or to enable a waiver of solid waste levy payments on illegally dumped materials.
- Providing liability for clean-up costs to property managers of rented premises that could then be taken from the rental bond.
- The prescribed scheme should be amended to be a statutory charge where the council does not have to notify the Registrar-General. Instead the council notifies the land owner prior to applying the charge to the Rates Notice for the land.
- Consideration should be given to amending section 48 to enable cost recovery where urgent action is taken by the council to address a contravention of the LNLC Act.
- An automatic charging provision should be added for outstanding costs owed under the LNLC Act to assist in assuring security for councils and alleviate the administrative and cost burden associated with registering a charge.
- Section 33(15) should be amended so that councils can undertake default action and recover costs under section 31 for all manner of orders imposed by the ERD Court.
- Local government to be exempt from having to apply the *Unclaimed Goods Act 1987*.
- The EPA should also provide guidance on how to dispose of items that have been removed from a property. For example, council could sell items to reduce the total cost of a clean-up (eg scrap metal).

Response to consultation feedback

A number of attempts have been made by the EPA and LGA to determine appropriate mechanisms to enable a waiver of solid waste levy payments on illegally dumped materials but there has yet to be an appropriate mechanism established that would allow that to occur in an auditable fashion. The EPA is supportive of such an approach if an appropriate mechanism can be determined.

Attributing liability on third parties for illegally dumped material is an interesting concept but lacks an element of fairness in that the third party should not be held accountable for the actions of others. Feedback regarding amendment to existing provisions to make them easier to apply is very useful and such amendments should be pursued in any revisions to the Act. Section 48 relies on a contravention of the Act having occurred and being proven but may otherwise apply to urgent action as it does non-urgent action. Clarification that the *Unclaimed Goods Act* does not apply where it is clear that material has been dumped may also be a useful addition to the legislation although interaction with section 297 – *property in rubbish* of the *Local Government Act 1999*, would need to be considered.

Recommendation

The suggested amendments to existing elements of the legislation, and consideration of interactions with the *Unclaimed Goods Act 1987*, to be considered as part of any future project to amend the legislation.

4.3 Which court is best placed to deal with nuisance, litter and illegal dumping

The Environment, Resources and Development (ERD) Court specialises in environment protection and has a greater, and likely more consistent, knowledge of matters such as nuisance, litter and illegal dumping. The ERD Court acts as the Magistrates Court in its criminal jurisdiction, and there is no substantive difference in procedure between the ERD Court and the Magistrates Court. The only minor difference in practice is that the ERD Court tends to have more pre-trial listings (ie a pre-trial conference followed by a directions hearing).

At present, in the ERD Court, the matters are heard in a central location. In the Magistrates Court, the matters can be heard either in Adelaide or in a regional court. While there is no requirement that a matter must be heard in a location where the offence took place, considerations of the balance of convenience (including the location most convenient to the defendant) would come in to play. As a result, matters could end up being listed in Port Augusta, Ceduna, Mount Gambier or elsewhere. While this would make use of the legislation by the EPA potentially more costly, it would provide greater access to regional councils to pursue prosecutions.

The Magistrates Court also has the facilities to arrange payment options for fines so offenders can go from the court to the cashier to finalise penalty payments. All metropolitan Magistrates Courts have staff to help direct a person to the court, a duty solicitor and assistance for disability or language issues.

Consultation feedback summary

The majority of feedback provided regarding this issue was in support of retaining jurisdiction with the ERD Court, mostly due to the specialist nature of the Court and better understanding of the subject matter being considered. There were a few submissions that suggested that jurisdiction could be split with minor offences dealt with through the Magistrates Court and more serious offences retained by the ERD Court.

Response to consultation feedback

Court proceedings under the LNLC Act to date in the ERD Court have been handled in a very thorough way. The Court has been very accommodating of self-representation and the judgements have provided useful case law in the application of the Act. The EPA acknowledges that local government is generally supportive of jurisdiction remaining with the ERD Court.

Recommendation

Jurisdiction for the Act to remain with the ERD Court.

4.4 What jurisdiction is best placed to deal with administrative appeals?

The LNLC Act currently allows appeals against litter and nuisance abatement notices to be made to the ERD Court. At the time that the Act was drafted, the South Australian Civil and Administrative Tribunal (SACAT¹) was still in the process of being fully established and bringing relevant existing legislation under its jurisdiction. SACAT is considered a lower formality and lower-cost jurisdiction for administrative appeals. As a result of the complexity and volume of work being done to implement SACAT at the time it was not appropriate to add the Act to the SACAT jurisdiction. Instead it was determined that appeals under the Act should be dealt with by the ERD Court.

Consultation feedback summary

The majority of feedback on this issue recognised that the ERD Court's expertise in environment protection matters was very useful in hearing appeals under the Act and was helpful in resolving matters on appeal and sought to retain appeals with the jurisdiction of the ERD Court. It was noted in a few submissions that SACAT provides for a faster, simpler and cheaper resolution of matters. One council noted that SACAT has broad oversight on local government matters.

¹ SACAT is a state tribunal that helps South Australians resolve issues within specific areas of law, either through agreement at a conference, conciliation or mediation, or through a decision of the tribunal at hearing. SACAT also conducts reviews of government decisions.

Response to consultation feedback

Appeals to date in the ERD Court have been reasonably straightforward and in the absence of any feedback regarding perceived or actual issues with the process the EPA is supportive of maintaining jurisdiction with the ERD Court.

Recommendation

Jurisdiction for appeals to remain with the ERD Court.

4.5 Exemptions from the LNLC Act for causing local nuisance

Persons creating nuisance may apply for an exemption from the LNLC Act (section 18). The process requires the applicant to submit a site nuisance management plan to the satisfaction of the council details sources of the nuisance, the steps being taken to minimise the nuisance and details of a person that can receive complaints regarding the nuisance, among other things. There are some necessary activities in the community that will cause local nuisance which is largely unavoidable and the exemption provision is in place to accommodate these activities.

The provisions in the Act allow for an exemption to last for a maximum of three months. If an activity that causes local nuisance extends beyond this period then a further exemption would need to be applied for, using the same process. The time limit for exemptions is in place to ensure that activities causing nuisance are completed in a timely manner and do not drag on to the detriment of neighbours. One activity that has the potential to cause nuisance over an extended period is large-scale construction which will often last several months and in some cases more than a year. In these circumstances the proponent will need to apply for an exemption every three months. A shorter process for extension or special categories of exemption that facilitate longer-term projects could be considered to reduce the administrative burden on councils and proponents.

Consultation feedback summary

Generally feedback from councils on this issue supports the current exemption process. Some councils would like to be able to grant exemptions for longer periods of time, on an ongoing basis or extend existing exemptions through a lesser process. One council suggested that the regulations prescribe too high a threshold for 'exceptional circumstances' and should be reviewed.

Response to consultation feedback

How councils manage exemptions in their community should be as flexible as possible so that the council meets the needs of its community. The EPA supports improvements to the exemption process to make their use more flexible. The term 'exceptional circumstances' is not defined in the Regulations.

Recommendation

Amendment of the LNLC Act to allow councils to extend exemptions without the need for a further application and allow councils to determine the appropriate expiry of the exemption to be considered as part of any future project to amend the legislation.

5 Other issues

Additional issues that have been raised through the consultation process not in the discussion paper are listed below under general groupings and a response against each group is provided.

5.1 Service delivery by councils and police

- SAPOL awareness (eg construction times, etc) needs improvement.
- Action advised after a breach through a letter from council should be required to be implemented in a shorter period of time.
- Non-legislative tools should be employed ie updated guidance tools for local councils and further training for local government staff.
- Refresher and ongoing training is required and must continue with EPA and LGA assistance.
- State government to provide ongoing funding to support councils in administering the LNLC Act. The EPA to provide more support to councils for noise and environmental nuisance matters.
- Residents afflicted by air-conditioner use after midnight are told to call police who do not attend and say no crime was committed. Told to call council who say that after-hours service only occurs in 'emergency' situations. Police should give a reference number or a after-hours service should report matters to council, or else how are single people meant to provide verification of noise nuisance.
- Disparity between three suburban councils as to how a specific issue is dealt with.
- Operational and administration aspects from initial council contact (told to ring EPA) through to investigation by council – one person's opinion at one point in time of their choosing and no contact with person raising issue.
- As a priority, there needs to be a public education and awareness campaign to inform the public, tradespersons and stakeholders that this Act exists and local government is responsible authority and not the EPA.

Response to consultation feedback

Further training of SAPOL officers and council staff in the operation of the LNLC Act and provision of guidance materials where of value is supported and will help overcome many of the issues raised above. It is recognised that SAPOL officers have wide ranging responsibilities and matters of local nuisance may not be an operational priority at times of high demand. This constraint needs to be recognised by the community however additional training in responsibilities under the Act would be helpful.

There is the occasional issue with complainants being told by councils to ring the EPA regarding local nuisance matters. The EPA will continue to work through issues to ensure that the issues are resolved.

Recommendations

- The EPA continues to liaise with local government and SAPOL regarding administration of the Act and promotes council membership with the Australasian Environmental Law Enforcement and Regulators neTwork (AELERT) to ensure councils have access to training in modern regulation provided through the network.
- The EPA continues to work with councils that divert complainants to the EPA to overcome any issues.

5.2 Suggested changes or additions related to issues that cause nuisance

- Allowable noise periods should be abolished.
- Illuminated signage by businesses and on bus stops (regulated as a form of development in most cases).
- Containment of cats and dogs on owner's property.
- Car 'burnouts'.
- Enhanced powers for dealing with unsightly premises, construction noise, and non-fixed machinery noise from non-domestic premises with specific reference to noise from council-operated lawnmowers.
- Cleaning of stormwater cleansing devices should be an obligation of the Act.
- Stormwater transgressing property boundaries should be determined as a nuisance.

- Night time noise restrictions should be added to government-run roadworks projects longer than a month near residential areas.
- Delivery of *Messenger* newspapers should be banned and instead distributed from community/retail outlets.
- Legislate maximum decibel rating for reversing vehicle sounds.
- Windfarms should not be approved until more data regarding impacts are available (from a NSW resident).
- Consideration should also be made to nuisance concerns from activity resulting in changes to barometric pressure and the impact on neighbouring premises.
- The definition of 'music' should be addressed so that it is not open to widespread interpretation.
- Grievances with neighbour's amplified music, use of power tools, camera surveillance and use of compactors.
- A new challenge is accounting for new technologies causing nuisance, particularly drones and lightweight aircraft.
- Air conditioners in the residential dwellings and commercial residential interface – no council regulatory requirement for distance or space from adjoining dwellings, bedrooms.
- Solar panel glare – laser beam like effect on adjoining properties at different times, inability to shield or redirect from living areas and outdoor recreational spaces
- Combined clustered multifactorial nuisance – individual residential property impacted from various surrounding sources, not just one individual nuisance, eg air conditioner noise and vibration, and solar panel glare.
- Grievance with neighbour barbequing and the resultant smoke and odour. Barbeques should not be allowed undercover.
- eScooters and share bikes are a problem, specifically illegal use, dumping and helmet sanitation.

Response to consultation feedback

There are a number of issues that occur in the community that may cause nuisance to some people that are difficult to apply sensible regulation. There are also different thresholds of acceptance by individuals for noise and other nuisance matters that impact them. In such circumstances the government needs to determine what is reasonable in a modern community.

New technologies will always need to be assessed if they are generating unacceptable nuisance. eScooters and share bikes are 'approved' under local government permits and as such are not considered nuisance for the purpose of the LNLC Act (see Schedule 1). Aircraft, including model aircraft and drones, are regulated by the Commonwealth and as such are unable to be regulated under South Australian legislation. The Act is designed to easily add new forms of nuisance quickly if they are proving to be problematic in the community.

There were several general suggestions made that would duplicate controls in other legislation or be more suitably regulated under existing legislation. These include regulation of illuminated signage by businesses and on bus stops (regulated as a form of development in most cases), containment of cats and dogs on owner's property, and car 'burnouts'.

There were two suggestions regarding stormwater related nuisances. The first was that the cleaning of stormwater cleansing devices should be an obligation of the Act. This would need to be 'flipped' in that devices that are discharging material or nutrient on account of not being cleaned would need to be captured. The second suggestion was that stormwater transgressing property boundaries should be determined as a nuisance. The cleaning of stormwater cleansing devices is a considerable issue in that stormwater quality devices such as oil separators are often installed as part of developments such as car parks and petrol stations but there is no obligation regarding their ongoing maintenance. The issue of stormwater transgress across property boundaries can be dealt with under common law and would be burdensome if it were included in statutory law. The issue of reasonability would be difficult for councils to adjudicate on.

There was one further suggestion that night time noise restrictions should be added to government run roadworks projects longer than a month near residential areas. Such projects fall under the public infrastructure exemptions of the Act.

Recommendation

Consideration to be given to an appropriate mechanism within the legislation to allow councils to require stormwater cleansing devices to be cleaned as part of any future project to amend the legislation. No further amendments are proposed regarding the additional issues raised during consultation.

5.3 Expiations

- The expiation fee amount of \$500 is not a sufficient deterrent for many local nuisance activities and is seen to be the 'cost of doing business' or it is simply so small compared to the scale of the nuisance that it has no impact.
- The expiation fee to be appropriately scaled and increased to \$750 in the case of a natural person and \$2,500 in the case of a body corporate, or in the case of construction activities, is scaled to the estimated cost of the project.

Response to consultation feedback

It is acknowledged that the deterrence value of expiations will differ depending on the context of their use. There is a limit to how laws can address this matter as even a \$5,000 expiation may be of limited deterrence for a multi-million dollar project. In circumstances where an expiation does not gain compliance there are several provisions in the Act that can be used such as section 30 – *nuisance and litter abatement notices*, section 47 – *continuing offences*, and section 33 – *civil remedies*. There is also the option to not issue an expiation and instead commence court proceedings either for the offence itself or non-compliance with an order. The maximum penalties for these offences are ultimately the upper limit of deterrence offered by the Act and should be applied in circumstances of clear breaches where there is a likelihood of continued or repeat offending.

Recommendation

Consideration to be given to the quantum of expiations and whether differentiation in application of expiations is possible and warranted as part of any future project to amend the legislation.

5.4 Annual reporting

- It would be great if the EPA could prepare a template reporting tool to be used across local government to ensure consistency in reporting and the information compiled in a report to the relevant Minister to reflect the work local government does in this area, providing transparency to the public such as is the case within the Annual Reporting under the Public Health Act.
- The annual reporting requirement for councils is considered unnecessary and it is recommended to be removed from the Act.

Response to consultation feedback

The *South Australian Public Health Act 2011* establishes a hierarchical system of public health management overseen at the state government level whereas the LNLC Act is for local government and dictates that councils are the principal authority for dealing with nuisance and litter in their area. The EPA has been assisting councils with taking on this function since the Act commenced but is not an over-arching authority with regard to the administration of the legislation. The EPA has provided a template for reporting to local government and this is still available to councils.

Annual reporting provides the local community with a better understanding of how the Act is being administered by the councils. It also helps councils understand the types of nuisance that are prevalent in their workload that may assist with identifying proactive measures to reduce nuisance in the community.

Recommendation

No amendments are proposed regarding annual reporting.

5.5 Unsightly conditions

- That the definition of 'unsightly conditions' be revisited. The definition should capture items that have been left on a property for a significant amount of time and cause the conditions to be out of conformity with neighbouring land. Examples include machinery, portaloos, fencing, unmoved/derelict trailers either on private land or public land.
- Give consideration to defining the term 'area' with regard to 'unsightly premises'. Currently it is open to interpretation.

Response to consultation feedback

The LNLCA provides the framework for dealing with unsightly premises largely through Schedule 1 which describes stockpiled, excessive or unconstrained disused or derelict items or material that a reasonable person would consider to be rubbish or waste in the circumstances to constitute unsightly premises in certain circumstances. It is likely that the examples provided in the submission as noted above could reasonably fit within the definition already for private land. Things left on public land should be reasonably dealt with under legislation that controls the use of such land whether that be the *Local Government Act* or *Crown Land Management Act 2009*. The term 'area' is in the context of the surrounding area that is impacted by the unsightly nature of the premises. To define it tightly would limit its applicability to those rigid conditions.

Recommendation

No amendments are proposed regarding unsightly premises

5.6 Property information

- When an owner fails/stalls taking action to minimise air-conditioner noise deemed a nuisance, the property title should have a notation.
- Property information should be made available where households have noise/vibration issues likely to affect peaceful enjoyment of the property (disrupt sleep) so that if sold or rented, new residents are aware of the situation beforehand.

Response to consultation feedback

This issue is largely captured through section 4.1 of this report that considers the ability for nuisance abatement notices to be registered against a property. The proposals are slightly different as there is no mention of linkage to a particular regulatory instrument and may be broader in application and more difficult to apply.

Recommendation

See section 4.1 of this report.

6 Conclusion and next steps

The consultation process has provided the EPA with valuable input and consideration of the issues raised in the discussion paper. It is clear from the feedback provided during consultation that there are a number of improvements that could be made to the legislation to improve community outcomes relating to nuisance and litter but that generally the legislation provides suitable tools to manage nuisance and litter impacts in the community.

This report will be forwarded to Minister David Speirs MP, Minister for the Environment and Water, for his consideration. Should the Minister be supportive of progressing any or all of the recommendations of this report the EPA will assist the Minister and commence a further project or projects to amend the legislation. The EPA will conduct further consultation on the detail of any proposed amendments to the legislation.

Further information

Legislation

[Online legislation](#) is freely available. Copies of legislation are available for purchase from:

Service SA Government Legislation Outlet
Adelaide Service SA Centre
108 North Terrace
Adelaide SA 5000

Telephone: 13 23 24
Facsimile: (08) 8204 1909
Website: <https://service.sa.gov.au/12-legislation>
Email: ServiceSAcustomerservice@sa.gov.au

General information

Environment Protection Authority
GPO Box 2607
Adelaide SA 5001

Telephone: (08) 8204 2004
Facsimile: (08) 8124 4670
Freecall: 1800 623 445 (country)
Website: <https://www.epa.sa.gov.au>
Email: epainfo@sa.gov.au

Appendix 1 List of submitters

Residents

Daryl Baker
Steve Bath
Roger Bond
Lisa Braun
Justin Bussell
Frank Byrt
Serena Coulls
Teresa Festa
Julie Gregory
Mark Heard
Diana Jaquillard
Shona and Tiffanwy Klippel-Cooper
Jordan (no last name provided)
Andrew Pellen
Elizabeth Petry
Michael Ribarich
John Rooney
Russell Sayers
Barbara Stopp

Councils

Adelaide Hills Council
Adelaide Plains Council
City of Adelaide
City of Burnside
City of Charles Sturt
City of Holdfast Bay
City of Marion
City of Mitcham
City of Norwood, Payneham and St Peters
City of Onkaparinga
City of Playford
City of Port Adelaide Enfield
City of Prospect
City of Salisbury
City of Tea Tree Gully

City of Unley

City of Victor Harbor

City of West Torrens

District Council of Ceduna

Local Government Association (SA)

Mid Murray Council

The Barossa Council

Organisations

Cement Concrete and Aggregates Australia

Coles Supermarkets Australia Pty Ltd

Environmental Defenders Office (SA) Inc

Small Business Commissioner

Stormwater and Infrastructure Asset Management – Andrew Thomas

Yass Earthmovers (NSW) – Andrew Field

Attachment E

Submission on the Review of the *Local Nuisance and Litter Control Act 2016*



City of
Norwood
Payneham
& St Peters

Review of the *Local Nuisance and Litter Control Act 2016* discussion paper

Issued June 2019

EPA 1115/19: This discussion paper outlines issues being considered in a review of the Local Nuisance and Litter Control Act 2016.

1 Introduction

The *Local Nuisance and Litter Control Act 2016* (LNLC Act) passed Parliament on 18 May 2016 and the Governor in Executive Council gave assent on 26 May 2016. The Act commenced in two parts. The Regulations and all elements of the LNLC Act except for those specific to local nuisance offences commenced on 1 February 2017. The local nuisance offences commenced on 1 July 2017.

The LNLC Act provides the community with a more effective and consistent local service for the management of nuisance complaints and heightened deterrence for littering and illegal dumping.

The LNLC Act provides a modern legislative scheme for litter control in South Australia including tiered offences depending on the type of litter (small versus large quantities, dangerous and hazardous litter); improvements in the use of surveillance for evidence gathering in the case of illegal dumping (linking an offence to the registered owner of a vehicle); allowing non-government organisations to undertake compliance activities (subject to approval); and for public reporting of littering and illegal dumping.

The first anniversary of the full commencement of the LNLC Act was 1 July 2018. This milestone provides a useful prompt to undertake a minor review of the operation of the LNLC Act. Feedback from councils, the community, and other stakeholders indicate that there is potential to fine-tune elements of the legislation. This minor review will consider the functionality of the legislation and the effectiveness of the legislation within the context of whether the scope of the legislation is appropriately addressing nuisance complaints, littering and illegal dumping issues in the community.

This paper discusses issues that have been identified as requiring review. In addition to comment on the issues presented in this paper, the Environment Protection Authority (EPA) welcomes any further feedback from stakeholders on the legislation. All issues raised during consultation will be considered by the EPA and responded to through a report on the consultation. Following the consultation period a report will be submitted to the Minister for Environment and Water, Hon David Speirs MP for his consideration. The EPA will assist the Government with any amendments that they seek to progress.

Comments on the review are due by **Friday, 4 October 2019**.

Comments may be forwarded by mail or email to:

Review of the Local Nuisance and Litter Control Act 2016
Environment Protection Authority
GPO Box 2607
ADELAIDE SA 5001
Email: epainfo@sa.gov.au (mark subject as Review of Local Nuisance and Litter Control Act)

Emailed submissions are preferred.

All submissions received by the EPA during the consultation period will be acknowledged and treated as public documents unless provided in confidence, subject to the requirements of the *Freedom of Information Act 1991*, and may be quoted in reports.

2 Implementation of the Local Nuisance and Litter Control Act 2016

As part of consultation with the Local Government Association (LGA) during development of the LNLC Act, the EPA agreed to provide a range of support services designed to assist local government with the transition to managing local nuisance issues. A service level agreement (SLA) was entered into for the provision of support services for environmental nuisance matters.

Under the terms of the SLA the EPA, since commencement of the LNLC Act, has provided:

- one staff member to manage and coordinate implementation of the LNLC Act in close consultation with the LGA and individual councils
- access to operational staff to directly assist councils in the areas of operational administration, application of compliance standards and dealing with difficult issues
- equipment to assist councils to respond to nuisance issues
- training to council staff
- a suite of fact sheets, guidelines and standard operating procedures for use by councils;

The EPA has attended all regions of the state and provided training to 330 council staff in relation to local nuisance, in addition to 220 council staff trained in litter provisions of the LNLC Act.

Councils continue to be in regular contact with the EPA. The types of issues addressed have ranged from basic training and information around roles and responsibilities and introduction of the LNLC Act, through to more complex issues including field-based assistance and training in use of noise meters.

3 Local nuisance discussion points

The local nuisance provisions of the LNLC Act allow councils to manage various nuisance issues in their community. Nuisances covered by the legislation include environmental nuisances (eg smoke and noise), insanitary conditions and more general amenity nuisances (eg unsightly premises). These nuisances were previously addressed using the *Environment Protection Act 1993* (EP Act), *Local Government Act 1999* or the *South Australian Public Health Act 2011*. Since the commencement of the local nuisance elements of the LNLC Act on 1 July 2017 there have been various minor issues raised with the EPA. These issues are outlined in the sections below and comment is invited as to whether change is required, and if so, what changes would be most suitable.

3.1 What is and is not local nuisance?

The LNLC Act describes the meaning of local nuisance in section 17 with the ability to further refine the definition of what is and is not local nuisance through Schedule 1 of the LNLC Act. The definition was refined following consultation feedback from councils on the draft Bill which had light and heat within the meaning of local nuisance. These were removed to ensure the starting point for regulation of nuisance was manageable by councils and not too broad. Further

consideration of the addition of light and heat at a later date once the Act had been implemented was noted in the consultation report for the draft Bill. As an alternative the Act provides the ability to prescribe specific types of nuisance that might include light or heat in the regulations with the agreement of local government to do so. An example of this is 'vibration', prescribed in Part 2 of Schedule 1.

A number of determinations as to what is not local nuisance are also included in Part 3 of Schedule 1 of the LNLC Act. These listings fall within three categories. The first category of listings is where the issue of nuisance is adequately managed under alternative legislation. This is where an activity is approved under other legislation, the approval or conditions of the approval adequately minimise or prevent nuisance impacts, and those conditions are complied with.

An example of this is a development authorisation with conditions of approval related to time of operation that effectively limits noise to reasonable business hours [covered by Clause 5(d)]. In this circumstance the noise from the day time operation would need to be considered reasonable for the approved activity. This ensures that the development system takes precedence in determining the appropriateness of a land use for a certain location. By comparison, if an approved development had no relevant noise controls in place through condition of approval or had conditions relating to noise control but these conditions were not being complied with, both the Development Act 1993 and LNLC Act could be applied to gain compliance.

The second category of listings is where another Act contains a resolution or complaints process for nuisance issues. An example of this is the *Strata Titles Act 1988* that contains remedies for nuisance within a strata management group. A further example of this type, the *Liquor Licensing Act 1997*, is discussed in detail later in this paper as to whether the provisions of that Act are appropriate to cover all forms of nuisance or are better limited to entertainment type nuisances from established premises.

The third category of listings is where the nuisances are considered a reasonable feature in the community. These include noise from a school or kindergarten, or emergency vehicle sirens.

4 Review of current inclusions and exclusions

4.1 Local nuisance management and liquor licensing

The Liquor Licensing Act 1997 (section 106) provides a complaints process for most forms of nuisances from premises licensed under that Act. So as to avoid conflict between this legislation and the LNLC Act, any form of nuisance that can be dealt with under the Liquor Licensing Act is excluded from being regulated under the LNLC Act through Schedule 1 ('things that are not local nuisance'). As a result, councils have no ability to apply the LNLC Act for most forms of nuisance, and complaints can only be managed by the Office of Liquor and Gambling, under the Liquor Licensing Act.

4.1.1 Bricks and mortar licensed premises

In the context of bricks and mortar licensed premises this means nuisance noise from air conditioners or other plants on the property that would be addressed under the LNLC Act by councils on any other type of commercial premises cannot be addressed. While the process under the Liquor Licensing Act can address nuisances that are not specific to licensed premises the LNLC Act provides a more timely response in these scenarios. Council officers would be more familiar with addressing them than officers from the Office of Liquor and Gambling, who would generally deal with music and patron noise issues.

4.1.2 Outdoor events with a liquor licence

There are also issues with the application of the exclusion to the management of outdoor events. Firstly, the application of the exclusion in circumstances where only part of an event space has a liquor license is problematic. The exclusion only applies to the area that is licensed and therefore the remainder of the event is able to be dealt with under the LNLC Act. This creates problems where council compliance staff are unable to address complaints about nuisances emanating from a licensed area of an event.

A further issue specific to outdoor events is caused because they are inevitably annual or one-off and of a short duration. For outdoor events that are licensed (in part or full), the process under section 106 of the Liquor Licensing Act does not provide for immediate compliance intervention and therefore provides limited deterrence and compliance options in these circumstances. Section 106(3a)(b) provides that no conciliation meeting or other hearing may be held on the complaint until the period of 14 days has elapsed from the day that the licensee is served with a copy of the complaint. This leaves the community with no reasonable avenue to address a nuisance.

Possible solutions

These issues could be easily resolved by amending the exclusion in the LNLC Act to better reflect the specific types of nuisance that are envisaged to be dealt with under the Liquor Licensing Act 1997 being noise associated with the service of alcohol, such as entertainment and patron noise from 'bricks and mortar' licensed premises. This would ensure that common nuisances that are not linked to the service of alcohol and those associated with outdoor events (not associated with bricks and mortar venues) are able to be managed under the LNLC Act.

As an example, a noisy compressor at a hotel is no different to a noisy compressor from a supermarket, has no relationship with the service of alcohol, and should be regulated in the same manner. Events, that will usually have council involvement (eg food inspections, road closures, etc) can also be managed by council in a more responsive manner that meets community expectations if such an amendment were to be made. The Liquor Licensing Act may also benefit from greater clarity as to types of nuisance that its nuisance process is designed to deal with.

Questions:

Should noise and other nuisances, other than those related to entertainment and patrons, that are common to licensed and non-licensed premises be dealt with under the LNLC Act?

Should the LNLC Act be amended so that outdoor events can be subject to the local nuisance provisions despite the fact that some or all of the event space also requires a liquor licence?

Would there be benefit in amending the nuisance provisions of the Liquor Licensing Act 1997 to better align with the LNLC Act?

4.2 Interaction with other legislation

The LNLC Act sets out a number of exclusions related to different Acts in Part 3 of Schedule 1 where the issue of nuisance is adequately managed under the alternative legislation or where another Act contains a resolution or complaints process for nuisance issues. Comment is sought as to whether the current suite of exemptions related to legislation is sufficient or whether there are other Acts that also address local nuisance issues and should be considered for exclusion.

Question: Is the current suite of exclusions related to other legislation that deals with local nuisances sufficient or are there other Acts that also address local nuisance issues that should be considered for exclusion under Part 3 of Schedule 1?

4.3 Animals living in their 'natural' habitat

Noise, odour or waste from animals living in their natural habitat are declared as not being local nuisance under Schedule 1, Clause 5 of the LNLC Act with the exception to this being where animals have been actively encouraged, by feeding, to gather in a particular area. The term 'natural' is not defined in the Act and takes its common meaning being (Macquarie Dictionary): '1. existing in or formed by nature; not artificial: a natural bridge'.

A query was made by a local government officer to the EPA as to whether this definition may extend to the naturalised habitat of mice, rats and pigeons in human structures. Based on the definition above such naturalised habitat should not be considered the same as natural habitat (mice, rats and pigeons in human structures can be considered a local

nuisance) however comment is sought on whether any improvement such as a set definition is necessary.

Question: Is there any need to set a definition for natural habitat?

4.4 Noise from sporting activities – motorsports

Noise or other nuisance from sporting or associated activities at sporting venues is declared as ‘not local nuisance’ and therefore excluded from regulation under the LNLC Act, on the basis that sports venues are widespread, provide an important community function, and noise, in particular, is incidental to the playing of sport at the venue.

Motorsports is a form of sport that produces considerably more noise than other sports. Motorsports venues, and the noise generated, are mostly already regulated through other legislation (*Development Act 1993*, EP Act and *South Australian Motorsport Act 1984*).

All new and upgraded motorsports venues require a development approval to operate. Development approvals should include conditions to control noise impacts such as limited hours of operation. If a motorsports venue is proposed within 3 km of residential premises not associated with the premises the development application must be referred to the EPA who has the ability to direct refusal or apply conditions to limit impacts. If a motorsports venue is less than 200 metres from a residential premises not associated with the venue it requires a licence under Schedule 1, Activity 8(5) of the EP Act.

If motorsports venues were removed from the exclusion for sporting venues the majority of venues would still not be regulated under the LNLC Act. This is because the Act does not apply to EPA licensed premises or development authorisation approved activities (as discussed earlier) that have conditions to minimise nuisance from the activity (see section 5 and Part 3 of Schedule 1 of the LNLC Act). This reflects the design of the LNLC Act so as not to apply duplication of regulation on activities that are effectively regulated for nuisance impacts under other legislation.

The only motorsports venues that would be able to be regulated by the LNLC Act in this scenario is where development authorisations are lacking conditions that minimise noise impacts on neighbouring residents and those older venues with existing land use rights that do not have a relevant approvals or conditions of approval. The LNLC Act could be used to apply similar controls as would be applied to a new or upgraded facility through the development system with the use of a nuisance abatement notice. Currently the Environment Protection Act 1993 may still be used to regulate such issues.

Question: Should the exclusion for noise and associated nuisances from sporting or associated activities at sporting venues be amended to remove motorsports venues from the exclusion allowing such activities to be regulated under the LNLC Act only in cases where they are not already regulated under a development approval or EPA licence?

4.5 Possible new ‘things that are local nuisance’

4.5.1 Light as an agent of local nuisance

Light and heat were included in the definition of local nuisance when the Bill for the LNLC Act was first consulted on in 2015 but subsequently removed prior to the Bill being introduced into Parliament due to feedback from councils that the definition in the Bill was too broad. Since the Act has commenced there have been a number of councils who have indicated that being able to deal with light nuisance under the Act would be useful.

Light is, considered a statutory form of nuisance under Queensland and ACT legislation, is also considered a statutory form of nuisance in the United Kingdom. Light nuisance in a domestic setting is generally easy to resolve through better screening and redirection of lighting or use of timers. Light from larger sources (eg sporting fields and commercial premises) may prove more difficult but, as with all other nuisances regulated by the Act, light nuisance would operate within the due diligence defence provisions in section 27 of the Act where reasonability of actions to ameliorate a nuisance is a relevant consideration. For example, it would be unreasonable for a sporting venue to remove its lights but may be reasonable to adjust direction, upgrade to technology with less light spill or apply a curfew on their use.

Question: Should light be included as an agent causing local nuisance that can be regulated under the Act and if not, what issues would prevent its inclusion?

4.5.2 Noise from vehicles – revving, alarms, off-road motorbikes

The LNLC Act currently excludes noise from vehicles other than vehicles operating within, or entering or leaving, business premises and from waste transport vehicles on roads and road-related areas. This is because it is impractical to apply regulation to general traffic noise, including noisy vehicles on roads, at a specific locality because the vehicles that are causing the noise (and the nuisance) are transiting the location irregularly and cannot, individually, be identified as the source of the nuisance associated with the locality. South Australia Police have powers under the *Australian Road Rules* (rule 291) to deal with individual vehicles that are identified on roads as being unreasonably noisy.

Following the implementation of the legislation it is apparent that there are examples where nuisance is emanating from an identifiable individual vehicle at a specific locality that the exclusion may currently apply to. The examples identified to date are revving of engines on residential premises, running of food refrigeration vehicles on domestic premises overnight, faulty car alarms, and recreational use of off-road motorbikes (not associated with primary production activities).

Question: Should the exclusion relating to noise from vehicles be amended to ensure nuisance from vehicles that is not associated with use on roads is able to be regulated as local nuisance and are there any other examples that should be considered?

4.6 Possible new ‘things that are not local nuisance’

4.6.1 Dust from unsealed roads

Some councils receive complaints regarding dust nuisance generated from unsealed roads. There are tens of thousands of kilometres of unsealed roads throughout South Australia, and it is not practical and would be cost prohibitive to seal all roads and maintain them. Councils are able to assist with nuisance dust where the issue is considerable by erecting signage regarding dust nuisance or reducing speed limits in impacted areas. The LNLC Act attributes responsibility for nuisance by applying to a person carrying on an activity that results in nuisance, or through failure to act. To ensure that councils are not deemed responsible for nuisance dust from unsealed roads through a perverse interpretation of ‘failure to act’ as a result of not sealing a road it is suggested that dust from unsealed roads should be prescribed as ‘not local nuisance’.

Question: Should dust from unsealed roads be considered ‘not local nuisance’ for the purposes of the Act and if not, what circumstances would justify allocation of responsibility to a council?

4.6.2 Noise from public infrastructure – application to vibration and extent of the exclusion

Noise from public infrastructure works is prescribed as ‘not local nuisance’ under Schedule 1 of the LNLC Act. It is prescribed so that infrastructure works which benefit the public are not unduly regulated where the nuisance is unavoidable. While dust can be attenuated, noise is often extremely hard to minimise when working on public infrastructure. Examples include evening or overnight roadworks or water infrastructure maintenance where a certain amount of noise is unavoidable and must be carried out overnight to avoid traffic disruption.

It is evident that public infrastructure earthworks such as the examples given may also result in some level of vibration impact caused by compacting of road base associated with the works. The vibration impact would be minimal in most circumstances and it is proposed to prescribe that vibration from public infrastructure works is not local nuisance. Dilapidation reports (used to assess the state of a building before and after an activity that produces vibration to identify any damage and provide evidence for claiming of damages) may also be available as an alternative to regulation prior to commencement of major public infrastructure projects.

A further issue that has arisen is the extent of the exemption for noise from public infrastructure. While there are roadworks, water pipe repairs and the like that may need to occur late at night and with limited advance notice to fix an issue and avoid disruption to traffic (as discussed earlier). There are other examples of public infrastructure works that may not necessarily need to be conducted at night or in the early morning other than for convenience. One example is concreting works associated with a public hospital redevelopment. Under the terms of the exclusion there are no limits to the nuisance caused to neighbouring properties from this activity whereas the same activity on another site would be regulated by the LNLC Act.

The benefit of applying the Act to such scenarios is that where there is a valid need an exemption (under section 19) can be sought and, as part of that process, neighbours can be informed by the applicant and complaint mechanisms put in place by the applicant such that the council should receive less complaints.

Questions:

Should the exclusion of noise from public infrastructure be extended to also exclude vibration from public infrastructure?

Should the exemption for public infrastructure be limited to activities where nuisance cannot reasonably be avoided or managed?

4.6.3 Early morning concrete pours in hot weather

An occasional source of noise complaints in the community is the early morning commencement of concrete pours associated with construction within residential areas. Early morning pours are done either due to the size of the pour or to accommodate extreme weather conditions that might affect the structural integrity of the concrete. Heat-related issues can be overcome to some extent with curing additives, and sealants applied after the pour. Whilst there are alternative approaches available, this form of nuisance is usually a one-off event, has technical merit and warrants consideration of allowing early starts through some form of exemption where extreme heat is forecast. It would be important to set limits on what constitutes a reasonable early start time and to ensure the forecast temperature is easily verified by compliance staff so that it is not abused by operators over summer months.

Questions:

Should provision be included to allow for early morning concrete pours during extremely hot weather?

If allowance was made, what are relevant considerations regarding applying limitations such as temperature and start time?

5 Waste collection vehicles – application beyond roads and road-related areas [section 5(5)]?

The LNLC Act is designed so that the majority of activities licensed by the EPA are excluded as they are already regulated directly by the EPA under the EP Act. The exceptions to this are activities that are undertaken associated with a vehicle, including: earthworks drainage, dredging and waste transport.

This is for two reasons. Firstly, that litter from such vehicles is better dealt with under the provisions of the LNLC Act and to exclude these vehicles would have made the operation of a public litter reporting program more difficult in that checks would need to be made against a list of licence plates which would need to be kept up to date. The second reason is that the general public should have confidence in reporting nuisances to the appropriate regulator in that neighbours of an EPA licensed site would generally know to make complaints to the EPA whereas a complainant aggrieved by a nuisance from a mobile activity would be unlikely to know that the activity is licensed by the EPA.

The wording of the current exclusion is limited to 'roads and road-related areas', as defined in the *Road Traffic Act 1961*. While the common meaning of these terms might seem to limit the application to public roads and nearby areas, the definitions extend their meaning to include private property areas that are publicly accessible to pedestrians, bicycles and

motor vehicles. The way that the exclusion is written means that, in the case of waste transport vehicles, the LNLC Act generally applies to nuisance generated by them except when operating on private property that is not accessible to the public, as noted above. This creates a regulatory arrangement that is very difficult to communicate and creates unnecessary difficulty when assessing alleged nuisance from waste transport vehicles that are operating on private property.

Question: Should the LNLC Act apply to waste transport vehicles operating on private property as well as when operating on roads and road-related areas?

6 Improve subjective assessment of nuisance or introduce objective measures of compliance

Subjective assessment is provided for in section 50 of the LNLC Act to allow authorised officers to assess the presence of nuisance using their own senses. This may include aural assessment of noise, visual assessment of dust or smoke nuisance, and odour assessments. Regulations (regulation 4) under the Act provide guidance on various considerations when making a subjective assessment of the presence of nuisance. The broader experience of the EPA in assisting councils with the implementation and administration of the Act is that subjective assessment is being used effectively to assess nuisance complaints, will improve with experience, and could be further improved by further training from the EPA in subjective assessment.

Sensory evidence, or subjective assessment, is not new when dealing with nuisances throughout Australia. In South Australia it is already provided for under provisions identical to those in the LNLC Act, under section 139(4) of the EP Act. Tasmania, Queensland and Victoria all allow subjective assessment by councils of nuisance. In Victoria, they prohibit the use of domestic air conditioners overnight where noise is audible within a habitable room of another residential premises. Audibility of noise is a very straightforward use of subjective assessment whereas determining the reasonability of an audible noise is less so.

While there are provisions in the Act that support subjective assessment, there is nothing in the Act, as is also the case with the EP Act that prevents the taking of objective measurements as part of determining whether there is sufficient evidence that an offence may be occurring.

One issue that may arise, in the area of noise nuisance, is where a subjective determination of noise nuisance is made relating to a complaint where the noise is of a nature that is borderline with regard to causing nuisance and a further objective measurement (taken after the subjective determination by the alleged offender or a third party) may appear contradictory. For this reason, all noise complaints of a borderline nature should be assessed with an element of objective measurement to ensure that compliance requirements are reasonable and effective. Subjective assessment is still useful for very obvious offences and for obviously unreasonable complaints.

Under the EP Act, the *Environment Protection (Noise) Policy 2007* (Noise Policy) provides objective guidance on what is considered to meet the general environmental duty (section 25 – reasonable and practicable measures) relating to noise. In essence, this sets noise standards for compliance with the general environmental duty.

The LNLC Act has similar to the general environmental duty under section 27 – defence of due diligence. Assessment of noise against the Noise Policy to assist in determining whether the defence of due diligence is likely to be applicable is appropriate in cases where the noise is of a borderline nature. However, a similar approach could be incorporated into the LNLC Act or Regulations to provide clarity around the use of such an approach.

Current guidance to local government could be updated to incorporate a process chart that councils can use straightforward noise nuisances (high end, low end, and matters of fact/time related) with subjective assessment alone, and for making a subjective determination (not limited to subjective assessment) of borderline or other complicated noise nuisance issues that incorporates an objective assessment using the Noise Policy or a similar scheme established under the Act to provide certainty in assessments. Such a procedure could also be incorporated into the Regulations to build on the guidance provided by regulation 4.

There are other options that could be considered to improve the application of the subjective assessment approach within the legislation. Non-legislative approaches could include further training of local government staff or the development of a standard operating procedure that could be adopted by councils.

A further legislative option specific to key domestic noise sources such as air conditioners, would be to apply a similar approach as Victoria where audibility of certain noise sources from habitable rooms of a residential premises during night-time hours, except under exceptional circumstances such as extreme weather, is prohibited.

Questions:

Would any of the options discussed improve the assessment of noise nuisance under the LNLC Act?

Are there any other suggestions to improve the assessment of noise nuisance under the LNLC Act?

7 Litter discussion points

7.1 Allowing councils to clean up and recover costs after if a hazard exists

The LNLC Act does not prevent councils from urgent clean-ups of littered material, however it does not allow for cost recovery in these circumstances. The Act provides that a Litter Abatement Notice may be issued to the person responsible for the litter that requires, among other things, that they clean it up. Such a notice would also include a timeframe for the clean-up to occur. If the notice is not complied with then the council may clean up the material and charge the person responsible for the cost of that clean-up.

This scenario is fair and reasonable in most situations as it provides procedural fairness to the alleged offender. When there is material littered that causes a hazard whether a health or environmental hazard or a physical hazard (eg in the middle of a road) it may be a reasonable community expectation that the material is cleaned up immediately. This may not always be able to be done by the offender as the offender may not even be known to authorities early on.

The Act does provide for the court to order costs be paid by the convicted party for such matters (section 45) but only where there is a conviction. The civil penalty provisions of the Act (section 34) do not provide a specific remedy in this regard as the maximum civil penalty is the maximum penalty for the offence plus any illegally obtained economic benefit. It could be argued that part of the penalty applied could be used to offset the cost of clean up or alternatively, that the clean-up cost was an avoided cost of economic benefit to the alleged offender and recoverable. An option to explore could be a retrospective order of costs for such a scenario where an offender is identified but a conviction, for whatever reason, is not pursued. This could possibly be achieved through an extension to section 48 where councils may currently recoup technical and administrative costs.

Question: Should a retrospective costs order be made available to councils where immediate clean-up of litter is required because it is causing a hazard?

7.2 Bill posting – car parks and expiations

Under the LNLC Act a person must not post a bill on property without the consent of the owner or occupier of the property. This covers posting of bills on buildings, cars and other property but it is unclear as to whether, where bill posting is occurring on vehicles within a carpark, whether the carpark constitutes 'on property' or whether it only applies to the cars. This is important as a car park owner may be aggrieved by the posting of bills on their land but may not have recourse to deal with it themselves. The ability to address the bill posting would rest with the owner of a car in the carpark. This may need improvement as it is the owner of the carpark that will be responsible for removing the resulting litter and, where offensive material is being distributed, may suffer reputational damage.

The Act currently only provides for a court imposed penalty for persons that authorise bill posting. Court proceedings are a considerable cost to councils and alleged offenders and an expiation will provide deterrence from reoffending in many instances. An expiation amount for section 23(2) would overcome this issue.

Question:

Should car park owners be able to commence proceedings for distribution of bills on their premises?

Should there also be an expiation for the offence of authorising bill posting?

7.3 Illegal dumping

Illegal dumping is a considerable issue in the community and the LNLC Act introduced a number of tools to assist councils with compliance and cost recovery. Such initiatives include the following:

- Vehicle owner responsibility provisions that allow for surveillance of illegal dumping hotspots and for reports of vehicles being used for illegal dumping to be better followed up for possible prosecution.
- Higher penalties and expiations for acts of illegal dumping.
- Specific penalties for asbestos dumping.
- Ability to order clean-ups where the offender is known.
- Ability to undertake the clean-up and charge the offender where the offender does not comply with a litter abatement notice.

Question: Are there any suggested changes to the LNLC Act that would assist in tackling illegal dumping?

7.4 Trolleys

Trolleys that are dumped outside of shopping centres constitute littering under the LNLC Act. The offence applies to the person doing the littering, not the owner of the trolley. Council officers are rarely present to witness the act of littering and there is little in the Act to resolve the problem effectively. The act of littering does not extinguish ownership rights for these articles.

There are a number of approaches that could be considered further to assist councils with the management of trolleys in their area. Many of these were raised at a 'Shopping Trolley Summit' hosted by the City of Marion in July 2018. Extension of the litter abatement notice provisions such that they can be issued to the owners of trolleys requiring collection or preventative measures to be implemented is one way that this might be achieved.

The ACT has a scheme in place to better manage trolleys dumped in the community. It should be noted however that the ACT government provides all local government services as there are no councils in the ACT. In any other State or Territory the programs established for trolleys in the ACT would be administered by local government.

The ACT scheme is summarised below:

- the creation of offences against the improper use of shopping trolleys including removal of trolleys from shopping centres
- a retailer must place signage warning people against taking shopping trolleys outside a shopping centre precinct;
- requirement upon a retailer that they keep trolleys on their premises with an exemption from this requirement if a trolley containment system is in place (eg deposit or wheel locks)
- the provision of identification on shopping trolleys to assist their collection if abandoned
- a proactive trolley collection scheme that allows the government to respond to a trolley problem in a specific area.

Some councils across Australia have introduced local bylaws to manage the issue. For example, Alice Springs Town Council's bylaws allow council officers to fine people caught abandoning trolleys, impound trolleys collected from council land, charge the owner of the trolleys a release fee, require the owner to collect the trolleys, and to dispose of the trolleys if not collected. In the context of this review, such provisions could be written into the LNLC Act as general provisions that councils could utilise at their discretion. Alternatively it could be left to councils to create their own bylaws in this area.

One issue that needs consideration when applying stricter controls on the use of trolleys outside of shopping centres is the potential for social disadvantage for those without a car or the means to buy their own personal trolley to transport shopping to their home. This issue was highlighted in a report by the ACT Human Rights Commissioner in response to the ACT trolley controls¹. A further issue is whether such changes might promote additional car use, however this impact would be minimal.

Questions:

Are general litter provisions sufficient to manage abandoned trolleys and if not, what would be the preferred approach for local government and why?

Have councils considered use of existing bylaw making provisions in the *Local Government Act 1999* to regulate the abandonment of trolleys on council roads?

How do you suggest the issue of social disadvantage and trolley use is addressed?

8 General discussion points

8.1 Abatement notices – linkage to land

One of the main tools for addressing nuisance from fixed machines such as air conditioners and pool pumps is a nuisance abatement notice. Nuisance from a fixed machine requires ongoing management to avoid further nuisance so controls such as limiting hours of operation or requiring the maintenance of an acoustic barrier may be appropriate elements of a notice. It has been identified by local government that change of ownership of a property with a problematic fixed machine that has controls applied within a notice is not able to be transferred to the new owner of the property and a new regulatory process would need to be undertaken to apply the controls to the new owners. It has been proposed that the LNLC Act be amended to allow councils to register nuisance abatement notices against land where the source of the nuisance at a property requires ongoing regulation.

Question: Should the LNLC Act be amended to allow councils to register a notice on land when it is considered that the source of a nuisance on a property requires ongoing regulation?

8.2 Improving cost recovery

Cost recovery is an important element of any regulatory function performed by government. The LNLC Act contains a number of cost recovery provisions, generally linked to contraventions of the legislation that are directed at recovering costs from offenders. Where such measures are not being utilised or are not completely effective the residual cost is, by default, recovered through general rates as a service provided for the benefit of the broader community. Advice is sought from stakeholders regarding other potential mechanisms that could be considered to further enhance cost recovery provisions of the Act aimed at the offender.

Question: What other mechanisms for cost recovery should be considered for the LNLC Act?

8.3 Which court is best placed to deal with nuisance, litter and illegal dumping?

The Environment, Resources and Development (ERD) Court specialises in environment protection and has a greater, and likely more consistent, knowledge of matters such as nuisance, litter and illegal dumping. The ERD Court acts as the Magistrates Court in its criminal jurisdiction, and there is therefore no substantive difference in procedure between the

¹ <http://www.hrc.act.gov.au/res/Response%20to%20CM%20Shopping%20Trolleys.pdf>

ERD Court and the Magistrates Court. The only minor difference in practice is that the ERD Court tends to have more pre-trial listings (ie a pre-trial conference followed by a directions hearing).

At present, in the ERD Court, the matters are heard in a central location. In the Magistrates Court, the matters can be heard either in Adelaide or in a regional court. While there is no requirement that a matter must be heard in a location where the offence took place, considerations of the balance of convenience (including, most relevantly the location most convenient to the defendant) would come in to play. As a result, matters could end up being listed in Port Augusta, Ceduna, Mount Gambier or elsewhere. While this would make use of the legislation by the EPA potentially more costly, it would provide greater access to regional councils to pursue prosecutions.

The Magistrates Court also has the facilities to arrange payment options for fines so offenders can go from the court to the cashier to finalise penalty payments. All metropolitan Magistrates Courts have staff to help direct a person to the court, a duty solicitor and assistance for disability or language issues.

Question: What are the views of local government regarding the current jurisdiction that the LNLC Act falls within, and what are the positives and negatives for changing the jurisdiction to the Magistrates Court?

8.4 What jurisdiction is best placed to deal with administrative appeals?

The LNLC Act currently provides that appeals against litter and nuisance abatement notices are to be made to the ERD Court. At the time that the Act was drafted, the South Australian Civil and Administrative Tribunal (SACAT²) was still in the process of being fully established and bringing relevant existing legislation under its jurisdiction. SACAT is considered a lower formality and lower-cost jurisdiction for administrative appeals. As a result of the complexity and volume of work being done to implement SACAT at the time it was not considered appropriate to add the Act to the SACAT jurisdiction. Instead it was determined that appeals under the Act should be dealt with by the ERD Court.

Question: Does the specialist nature of the ERD Court provide benefits when hearing appeals against notices that would outweigh any cost benefits associated with moving appeals to SACAT?

8.5 Exemptions from the LNLC Act for causing local nuisance

Persons creating nuisance may apply for an exemption from the LNLC Act (section 18). The process requires the applicant to submit a site nuisance management plan to the satisfaction of the council that details the sources of the nuisance, the steps being taken to minimise the nuisance and details of a person that can receive complaints regarding the nuisance, among other things. There are some necessary activities in the community that will cause local nuisance which is largely unavoidable and the exemption provision is in place to accommodate these activities.

The provisions in the Act allow for an exemption to last for a maximum of three months. If an activity that causes local nuisance extends beyond this period then a further exemption would need to be applied for, using the same process. The time limit for exemptions is in place to ensure that activities causing nuisance are completed in a timely manner and that activities do not drag on to the detriment of neighbours simply because no time limit is established. One activity that has the potential to cause nuisance over an extended period is large-scale construction which will often last several months and in some cases more than a year. In these circumstances the proponent will need to apply for an exemption every three months. A shorter process for extension or special categories of exemption that facilitate longer-term projects could be considered to reduce the administrative burden on councils and on proponents.

² SACAT is a state tribunal that helps South Australians resolve issues within specific areas of law, either through agreement at a conference, conciliation or mediation, or through a decision of the tribunal at hearing. SACAT also conducts reviews of government decisions.

Question: Are there any opportunities for improvement to the exemption process which reflects a balance between excessive exposure for neighbours, and the reality of some activities that cause local nuisance lasting longer than three months?

9 Other improvements

The issues identified above have been derived from feedback from stakeholders, mostly councils, during the first 18 months of the full operation of the legislation. This is not to say that there are not other issues that stakeholders would like considered as part of the review of the LNLC Act.

Question: Are there any legislative, non-legislative or administrative suggestions that you would like to have considered as part of the review of the LNLC Act?

Further information

Legislation

[Online legislation](#) is freely available. Copies of legislation are available for purchase from:

Service SA Government Legislation Outlet
Adelaide Service SA Centre
108 North Terrace
Adelaide SA 5000

Telephone: 13 23 24
Facsimile: (08) 8204 1909
Website: <https://service.sa.gov.au/12-legislation>
Email: ServiceSAcustomerservice@sa.gov.au

General information

Environment Protection Authority
GPO Box 2607
Adelaide SA 5001

Telephone: (08) 8204 2004
Facsimile: (08) 8124 4670
Freecall: 1800 623 445 (country)
Website: <https://www.epa.sa.gov.au>
Email: epainfo@sa.gov.au

Section 2 – Corporate & Finance
Reports

11.2 MONTHLY FINANCIAL REPORT – NOVEMBER 2022

REPORT AUTHOR: Manager, Finance
GENERAL MANAGER: Chief Executive Officer
CONTACT NUMBER: 8366 4585
FILE REFERENCE: qA101554
ATTACHMENTS: A

PURPOSE OF REPORT

The purpose of this report is to provide the Council with information regarding its financial performance for the year ended November 2022.

BACKGROUND

Section 59 of the *Local Government Act 1999* (the Act), requires the Council to keep its resource allocation, expenditure and activities and the efficiency and effectiveness of its service delivery, under review. To assist the Council in complying with these legislative requirements and the principles of good corporate financial governance, the Council is provided with monthly financial reports detailing its financial performance compared to its Budget.

RELEVANT STRATEGIC DIRECTIONS AND POLICIES

Not Applicable.

FINANCIAL AND BUDGET IMPLICATIONS

Financial sustainability is as an ongoing high priority for the Council. The Council adopted a Budget which forecasts an Operating Surplus of \$861,695 for the 2022-2023 Financial Year. The First Budget update presented has reduced the Operating Surplus by \$141,731 to \$719,964 for the 2022-2023 Financial Year.

For the period ended November 2022, the Council's Operating Surplus is \$3,138,000 against a budgeted Operating Surplus of \$2,559,000, resulting in a favourable variance of \$579,000.

EXTERNAL ECONOMIC IMPLICATIONS

Not Applicable.

SOCIAL ISSUES

Not Applicable.

CULTURAL ISSUES

Not Applicable.

ENVIRONMENTAL ISSUES

Not Applicable.

RESOURCE ISSUES

Not Applicable.

RISK MANAGEMENT

Not Applicable.

CONSULTATION

- **Elected Members**
Not Applicable.
- **Community**
Not Applicable.
- **Staff**
Responsible Officers and General Managers.
- **Other Agencies**
Not Applicable.

DISCUSSION

For the period ended November 2022, the Council's Operating Surplus is \$3,138,000 against a budgeted Operating Surplus of \$2,559,000, resulting in a favourable variance of \$579,000.

Employee expenses are \$758,000 (11%) favourable to the Revised Budget. The driving factors behind this variance are as follows:

- Budgeted staff positions that were vacant at the commencement of the financial year. Some of these positions are now filled and others are currently undergoing recruitment. Where required, activities and functions have been back filled by utilisation of temporary staff or consultants.

Contracted Services are \$409,000 (10%) unfavourable to the Revised Budget. These variances will be reviewed more closely during the second budget review that will be completed in January.

The Monthly Financial report is contained in **Attachment A**.

OPTIONS

Not Applicable.

CONCLUSION

Not Applicable.

COMMENTS

Not Applicable.

RECOMMENDATION

That the November 2022 Monthly Financial Report be received and noted.

Attachments – Item 11.2

Attachment A

Monthly Financial Report November 2022

City of Norwood Payneham & St Peters
175 The Parade, Norwood SA 5067

Telephone 8366 4555
Facsimile 8332 6338
Email townhall@npsp.sa.gov.au
Website www.npsp.sa.gov.au

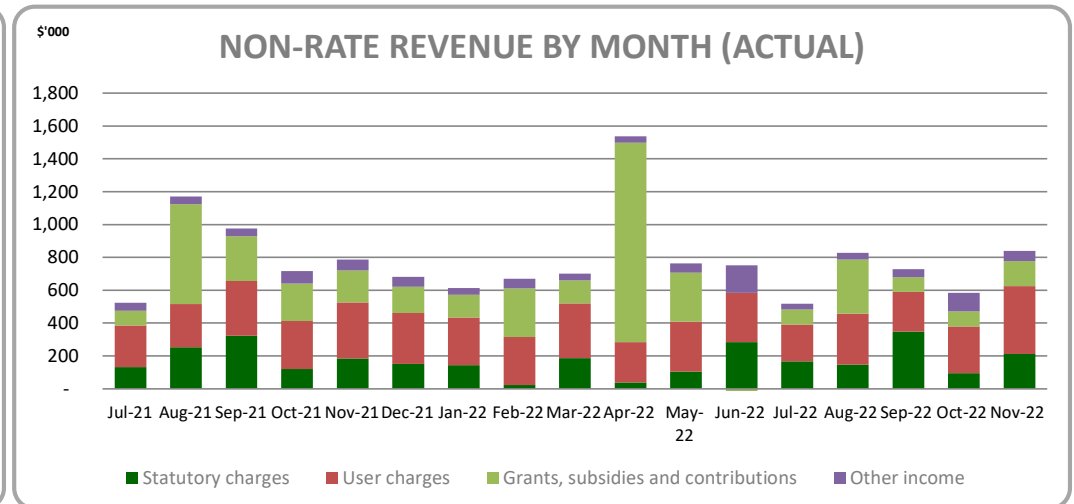
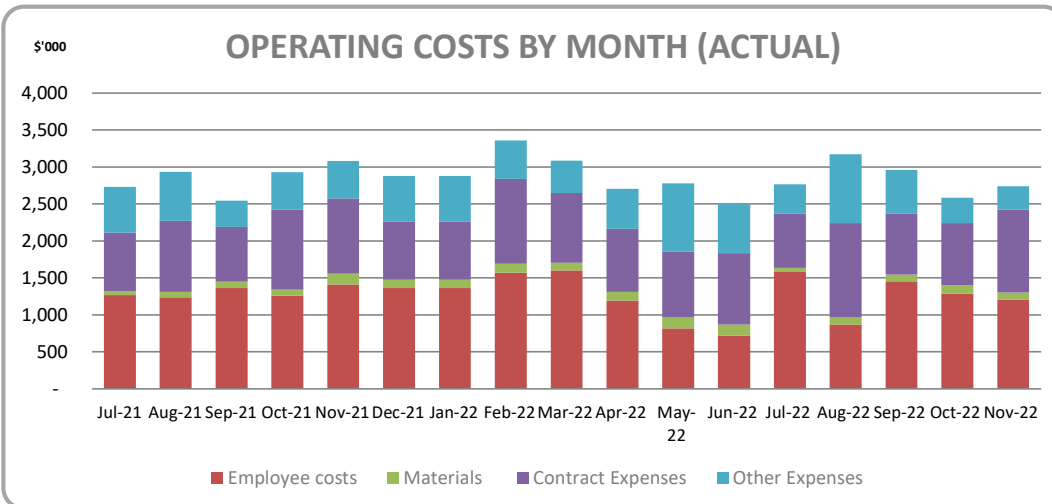


City of
**Norwood
Payneham
& St Peters**

CITY OF NORWOOD PAYNEHAM & ST PETERS

Financial Performance for the period ended 30 November 2022					
LYTD Actual		YTD Actual	YTD Revised Budget	Var	Var %
\$'000		\$'000	\$'000	\$'000	
	Revenue				
15,721	Rates Revenue	16,646	16,634	12	0%
1,012	Statutory Charges	970	1,015	(45)	(4%)
1,488	User Charges	1,474	1,518	(44)	(3%)
1,392	Grants, Subsidies and Contributions	754	746	8	1%
8	Investment Income	77	19	58	307%
278	Other	225	193	32	16%
4	Reimbursements	5	7	(2)	(31%)
19,904	Total Revenue	20,151	20,132	19	0%
	Expenses				
6,540	Employee Expenses	6,406	7,164	758	11%
4,306	Contracted Services	4,625	4,216	(409)	(10%)
186	Energy	182	215	34	16%
336	Insurance	386	341	(44)	(13%)
402	Legal expense	173	95	(79)	(83%)
137	Materials	143	169	26	15%
296	Parts, Accessories and Consumables	301	348	46	13%
45	Water	111	168	57	34%
1,862	Sundry	1,818	1,853	35	2%
5,263	Depreciation, Amortisation and Impairment	2,790	2,790	-	-
164	Finance Costs	77	215	137	64%
105	Net Loss - Joint Ventures & Associates	-	-	-	-
19,642	Total Expenses	17,013	17,573	560	3%
262	Operating Surplus/(Deficit)	3,138	2,559	579	23%

Summary of Net Cost of Divisions for the period				
Division	YTD Actual	YTD Revised Budget	Var	Var %
	\$'000	\$'000	\$'000	
Chief Executive Office	(1,670)	(1,782)	112	6%
Corporate Services	(4,468)	(4,728)	260	5%
Governance and Community Affairs	(564)	(696)	131	19%
Urban Planning and Environment	(1,040)	(1,068)	27	3%
Urban Services	(5,765)	(5,802)	36	1%
Operating Surplus/(Deficit) (before Rate Revenue)	(13,508)	(14,075)	567	4%
Rate Revenue	16,646	16,634	12	0%
Operating Surplus/(Deficit)	3,138	2,559	579	23%

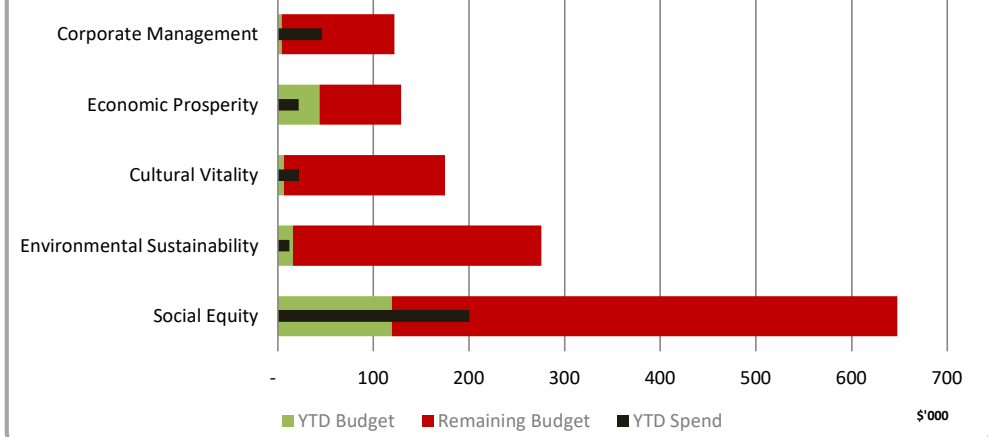


CITY OF NORWOOD PAYNEHAM & ST PETERS

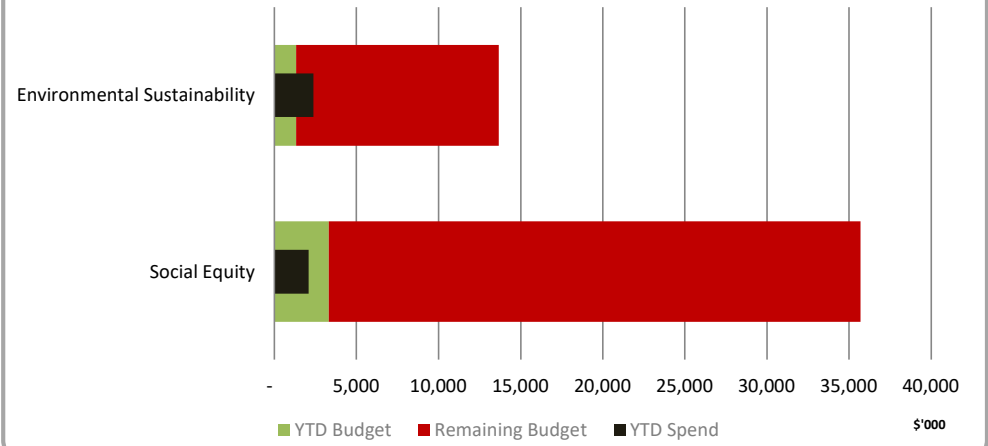
Project Summary for period ended 30 November 2022

	YTD Actual	YTD Revised Budget	Remaining Budget
	\$'000	\$'000	\$'000
Operating Projects			
Income			
Social Equity	-	-	477
Environmental Sustainability	-	-	60
Cultural Vitality	-	-	-
Economic Prosperity	-	-	-
Corporate Management	-	-	-
Total Income	-	-	537
Expenses			
Social Equity	200	729	528
Environmental Sustainability	12	272	260
Cultural Vitality	22	191	169
Economic Prosperity	22	107	85
Corporate Management	46	118	71
Total Expenses	303	1,416	1,114
Net Cost of Operating Projects	(303)	(1,416)	(576)
Capital Projects			
Income			
Social Equity	-	49	(4,855)
Environmental Sustainability	-	-	(5,186)
Cultural Vitality	-	-	-
Economic Prosperity	-	-	-
Corporate Management	-	-	-
Total Income	-	49	(10,041)
Expenses			
Social Equity	2,102	3,311	32,401
Environmental Sustainability	2,388	1,325	12,345
Cultural Vitality	128	-	88
Economic Prosperity	211	278	-
Corporate Management	38	52	273
Total Expenses	4,867	4,966	45,107
Net Cost of Capital Projects	(4,867)	(4,918)	(55,148)

SERVICE INITIATIVES (inc. Carry Forwards)



NEW ASSETS & RENEWALS (inc. Carry Forwards)



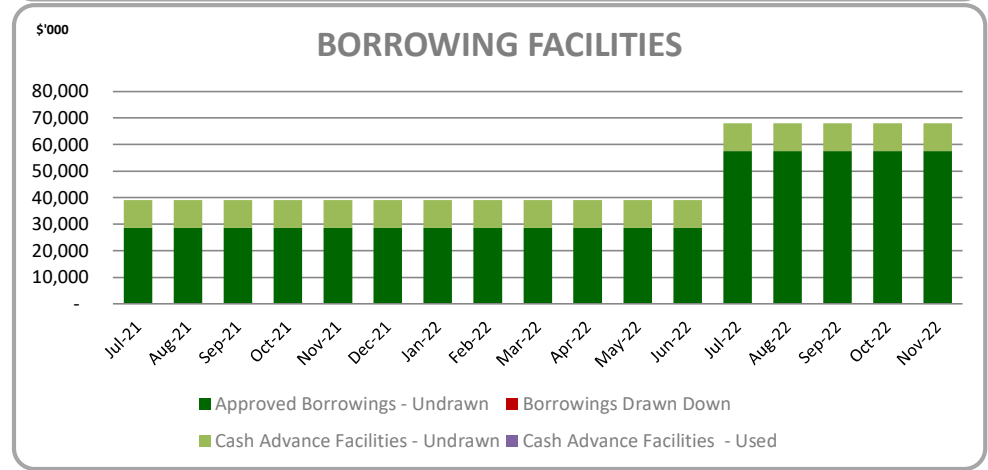
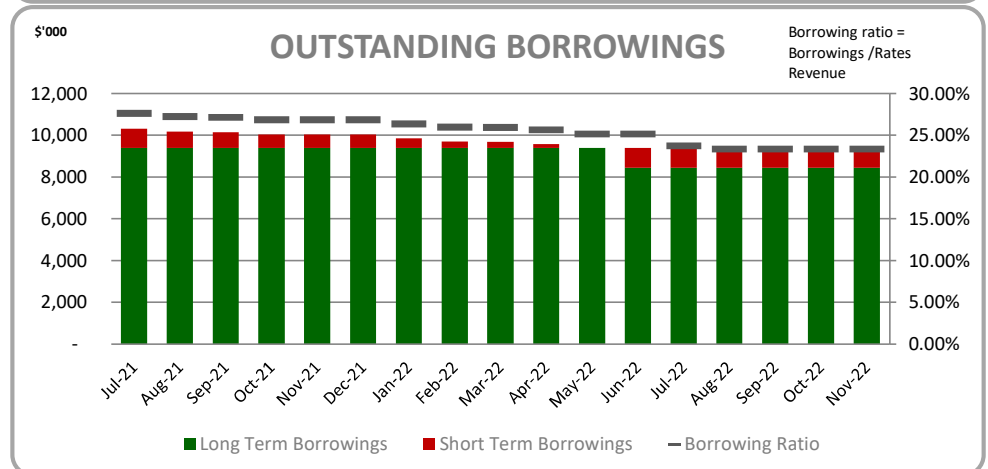
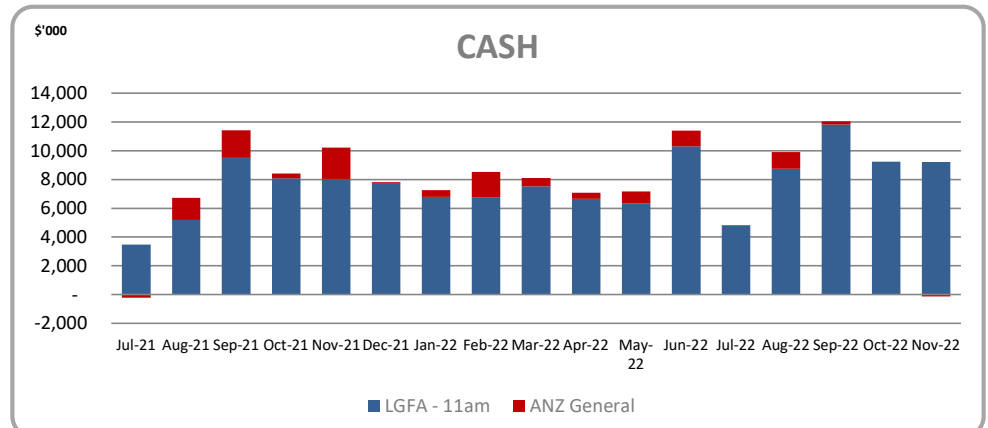
CITY OF NORWOOD PAYNEHAM & ST PETERS

Statement of Financial position as at 30 Nov 2022

	Nov-22	Oct-22	Movement	June 2022
	Actual	Actual		
	\$'000	\$'000	\$'000	\$'000
ASSETS				
Current Assets				
Bank and Cash	9,111	9,265	(154)	11,393
Accounts receivables	24,898	27,777	(2,879)	3,255
Less : Provision for Bad Debts	(580)	(580)	-	(580)
Total Current Assets	33,429	36,462	(3,033)	14,068
Non-current Assets				
Financial Assets	113	113	-	113
Investments in Joint Ventures	2,131	2,131	-	1,931
Infrastructure, Property, Plant and Equipment	550,086	549,023	1,063	548,034
Total Non-current Assets	552,330	551,267	1,063	550,078
Total Assets	585,759	587,728	(1,969)	564,146
LIABILITIES				
Current Liabilities				
Trade and Other Payables	32,149	35,390	(3,240)	13,031
Borrowings	1,021	1,021	-	1,021
Provisions	3,004	3,004	-	3,004
Total Current Liabilities	36,174	39,415	(3,240)	17,056
Non-current Liabilities				
Borrowings	8,059	8,250	(190)	8,527
Provisions	1,145	1,104	41	1,280
Investments in Joint Ventures	864	864	-	864
Total Non-current Liabilities	10,069	10,218	(149)	10,671
Total Liabilities	46,243	49,633	(3,389)	27,727
NET ASSETS	539,516	538,096	1,420	536,419
EQUITY				
Accumulated Surplus	65,846	64,426	1,420	62,709
Asset Revaluation Reserves	473,670	473,670	-	473,670
TOTAL EQUITY	539,516	538,096	1,420	536,379

0

Key areas to highlight YTD :



11.3 2023-2024 ANNUAL BUSINESS PLAN AND BUDGET OBJECTIVES & PARAMETERS

REPORT AUTHOR: Acting Manager, Finance
GENERAL MANAGER: General Manager, Governance & Civic Affairs
CONTACT NUMBER: 8366 4548
FILE REFERENCE: A538520
ATTACHMENTS: Nil

PURPOSE OF REPORT

The purpose of this report is to seek the Council's endorsement of the objectives and parameters which will apply in the development of the draft 2023-2024 Annual Business Plan and Annual Budget.

BACKGROUND

Legislative Requirements

Pursuant to Section 123 of the *Local Government Act 1999* (the Act), each financial year the Council is required to prepare an Annual Business Plan and Annual Budget. The Annual Business Plan and Annual Budget are to be adopted by the Council after 31 May for the ensuing financial year and except in a case involving extraordinary administrative difficulty, before 31 August for the financial year.

Pursuant to Section 123(2) of the Act and in Regulation 6 of the *Local Government (Financial Management) Regulations 2011* (the Regulations), each Annual Business Plan of a Council must-

- (a) *include a summary of the Council's long-term objectives (as set out in its strategic management plans); and*
- (b) *include an outline of—*
 - (i) *the Council's objectives for the financial year; and*
 - (ii) *the activities that the Council intends to undertake to achieve those objectives; and*
 - (iii) *the measures (financial and non-financial) that the Council intends to use to assess the performance of the Council against its objectives over the financial year; and*
- (c) *assess the financial requirements of the Council for the financial year and, taking those requirements into account, set out a summary of its proposed operating expenditure, capital expenditure and sources of revenue; and*
- (d) *set out the rates structure and policies for the financial year; and*
- (e) *assess the impact of the rates structure and policies on the community based on modelling that has been undertaken or obtained by the Council; and*
- (f) *take into account the Council's Long-Term Financial Plan and relevant issues relating to the management and development of infrastructure and major assets by the Council; and*
- (g) *address or include any other matter prescribed by the Regulations.*

Pursuant to Section 123 (3) of the Act, prior to the adoption of the Annual Business Plan, the Council must undertake public consultation for a minimum period of twenty-one (21) days. At the conclusion of the public consultation period, a public meeting is to be held where members of the community can ask questions and make submissions regarding the draft Annual Business Plan. During the public consultation period, the Council must make available copies of the draft Annual Business Plan at its Principle place of business.

RELEVANT STRATEGIC DIRECTIONS & POLICIES

The Council's Strategic Management Plan, *CityPlan 2030: Shaping Our Future*, the Long-term Financial Plan and Whole-of-Life Asset and Infrastructure Management Plans, provide the basis and framework upon which the Council's Annual Business Plan and Budget is based.

FINANCIAL AND BUDGET IMPLICATIONS

The Council's Long-Term Financial Plan, sets out the Council's financial goal as, *"A City which delivers on our Strategic Outcomes by managing our financial resources in a sustainable and equitable manner"*, in short to be financially sustainable.

The Local Government Association of South Australia defines financial sustainability as:

- *"A Council's long-term financial performance and position is sustainable where planned long-term service and infrastructure levels and standards are met without unplanned increases in rates or disruptive cuts to services."*
- *The key elements to the definition are*
 - *ensuring the maintenance of a Council's high priority expenditure programs, both operating and capital;*
 - *ensuring a reasonable degree of stability and predictability in the overall rate burden; and,*
 - *promoting a fair sharing in the distribution of Council resources and the attendant taxation between current and future ratepayers.*

In simple terms, financial sustainability means positioning the Council so that it can continue to provide quality services, programs and facilities and maintain the Council's infrastructure to a defined service standard, with stable rate increases (removal of sudden increases) and ensuring inter-generational equity.

The Council will need to ensure that its Annual Business Plan and Budget, contains objectives and financial parameters which will deliver a responsible budget and meet the reasonable needs of the community on an equitable and "value for money" basis. For the 2023-2024 Financial year, the Council's 2021-2031 Long-Term Financial Plan, projects an Operating Surplus of \$1,355,000 based on a Rate Revenue increase of 4.55%.

It should be noted that the target Operating Surplus includes Grant Income of \$362,000 which is expected to be received in the 2023-2024 Financial Year under the Roads-to-Recovery Program and is included in the Capital Projects budget to be spent on a Capital Road Project(s).

EXTERNAL ECONOMIC IMPLICATIONS

The Annual Business Plan and Budget will have an economic impact on property owners and suppliers of goods and services to the Council, the level of which will be dependent on the final decisions taken in respect to the level of income, and subsequently the Rate increase required to meet proposed expenditure.

SOCIAL ISSUES

Nil.

CULTURAL ISSUES

Nil.

ENVIRONMENTAL ISSUES

Nil.

RESOURCE ISSUES

Nil.

RISK MANAGEMENT

Financial Management and Annual Business Plan preparation processes are governed by the *Local Government Act 1999* and Regulation 6 of the *Local Government (Financial Management) Regulations 2011*. All budget documentation will need to be prepared in accordance with the relevant statutory requirements.

CONSULTATION

- **Elected Members**
Not Applicable.
- **Community**
Not Applicable.
- **Staff**
Not Applicable.
- **Other Agencies**
Not Applicable.

DISCUSSION

2023-2024 Annual Business Plan

The Annual Business Plan is the Council's statement of the intended services, programs, facilities and objectives set by the Council for a given financial year. It is based upon the objectives and strategies set out in the Council's Strategic Plan *CityPlan 2030: Shaping Our Future*, the Long-term Financial Plan and the Whole-of-Life Infrastructure and Asset Management Plans.

The Council's Strategic Plan, *CityPlan 2030: Shaping Our Future*, sets out the Council's Outcomes in respect to Social Equity, Cultural Vitality, Economic Prosperity and Environmental Sustainability, together with objectives and strategies for each Outcome.

Pursuant to Section 123(2) (b) (i), the Annual Business Plan must contain a series of objectives for the financial year. To be effective the annual objectives should be in line with the outcomes contained in the *City Plan 2030: Shaping Our Future* and assist the Council in delivering on the financial outcomes set out in the Long-Term Financial Plan.

The following objectives are proposed to be incorporated into the 2023-2024 Annual Business Plan.

Social Equity

An inclusive, connected, accessible and friendly community

- Our cost-effective services are welcoming, inclusive, and socially connected all ages and abilities.
- Our infrastructure assets are maintained and renewed in line with Councils Whole of Life Infrastructure framework.
- Deliver programs and activities which result in an engaged and participating community.
- Engage disabled, aged, youth and varied cultures in the life of the City through a variety of events and programs.
- Rates are fair and equitable for our residents and ratepayers.

Cultural Vitality

A culturally rich and diverse City, with a strong identity, history and 'sense of place'

- Promote a healthy cultural life and creative expression through the use of public art and events that complement the City's cultural heritage.
- Provide opportunities for the community to contribute to the social and creative life of the City through events, activities, arts and cultural initiatives.

Economic Prosperity

A dynamic and thriving centre for business and services

- Support the development of a prosperous local economy.

Environmental Sustainability

A leader in environmental sustainability

- Ensure urban development undertaken enhances the environmental, social and cultural character of our City.
- Maximise the use of the City's open space by providing a range of active and passive open space recreation opportunities.
- Promote recycling and environmentally sustainable practices throughout the City.
- Consider innovative infrastructure solutions which minimise the impact on the environment.

Organisational Excellence

- Ensure best use of Council resources by innovative, efficient and effective service provision.
- Demonstrate Business Excellence Principles.
- Financially sound organisation.

The assessment of new projects, services, programs and activities will be assessed against both the Annual Business Plan objectives and *City Plan 2030* objectives and strategies.

The 2023-2024 Annual Budget

To ensure that the Council delivers its financial objectives and in accordance with the Council's standard practice, the draft 2023-2024 Annual Budget should be developed with reference to and within the framework of the Long-Term Financial Plan, which, based on the components of the rate revenue increase set out in the Budget and Financial Implications above, sets out a target Operating Surplus of \$1,355,000.

To ensure the Council's financial targets are achieved, the Annual Budget must be set with reference to similar key influences and assumptions. The influences and assumptions relating to external economic conditions and internal policy decisions are set out below.

Key Influences

- maintenance and renewal program for existing infrastructure assets, including roads, footpaths, Council owned properties and open spaces, are consistent with the *Whole-of Life Infrastructure and Asset Management Plans*;
- commitment to major projects which span more than one (1) financial year;
- initiatives and major projects which are undertaken need to contribute to the Vision, strategic direction and the wellbeing of our City as set out in the *CityPlan 2030: Shaping Our Future*;
- previously recognised ongoing operational savings are to be maintained;
- to continue to implement the principles and practices of the Business Excellence Framework (i.e. Continuous Improvement of the organisations procedures and process to ensure the "best value" is achieved);
- prudent financial management to ensure ongoing financial sustainability; and
- decisions will be informed and based on the best available evidence and information at the time.

Key Assumptions

The Annual Budget incorporates three (3) components of the Council Operations, these being:

- Recurrent Income and Expenditure (Recurrent Budget)
- Operating Projects (Operating Projects Budget); and
- Capital Projects (Capital Budget).

As in previous years, the preparation of the Annual Budget will be undertaken in two (2) stages. The first stage will be the preparation on the Recurrent Budget, which incorporates the revenues and expenditure required to provide the "Business as Usual" services. The second stage will focus on the Capital and Operating Project budget.

Rate Revenue Increases

As in previous years, for the initial review of the draft Recurrent Budget, no increase in rate revenue will be taken into account in the analysis. Notwithstanding this, it should be noted, that the financial projections set out in the Council's Long-Term Financial Plan is based on a Rate Revenue increase of 4.55%.

Maintaining Existing Services at Current Service Standards

The draft Recurrent Budget is proposed to be based on a "business as usual" assumption, which means that the Council will continue to provide the existing services, programs and facilities at the current service levels, unless otherwise determined by the Council. This is not to say that the existing services, programs and facilities will be continued to be delivered in the same way. It should be noted that service levels, and the associated budget will be adjusted to reflect ongoing operating cost adjustments resulting from projects completed during the 2022-2023 Financial year.

The "business as usual" assumption does not take into account any change in direction or service levels in response to community expectations, legislative requirements, changing economic conditions or any changes which the Council may wish to make. Such changes will be accounted for in the Council's Operating & Capital Projects Budget.

Cost Escalation

Materials, Contracts and Other Expenses

The Adelaide CPI for the June 2022 Quarter and September 2022 Quarter was 6.4% and 8.4% respectively. An alternative measure for cost escalation is the Local Government Price Index (LGPI). As the nature of the price movement associated with goods and services consumed by Local Government is different to the goods and services consumed by the 'average household', the LGPI is a reliable and independent measure of the inflationary effect on price changes in the South Australian Local Government sector. The LGPI is similar in nature to the CPI, however it represents the movements of prices associated with the goods and services used by Local Government in South Australia (to deliver services to its community) as opposed to the goods and services consumed by the 'average metropolitan household'. The LGPI considers both recurrent and capital expenditure. The change in the recurrent component from the previous year of the LGPI for South Australia to June 2022 is 3.8% and as at September 2022 is 4.5%.

The State Government recently released the 2022-2023 Mid-year Budget Review, which forecasts the Adelaide CPI at 7.25% for the remainder of 2022-2023, reducing to 4.0% for the 2023-2024 financial year. The Federal Government expects inflation to peak at 7.75% by December 2022, before easing gradually to 3.50% by June 2024.

After consideration of both the LGPI and the community's expectation that increases should only move by the CPI forecast, it is recommended that the **maximum** expenditure increase for 2023-2024 across the Materials, Contracts and Other Expenses component of the Budget, be set at 8.0%, which has been determined with reference to the current movements in the Adelaide CPI and the LGPI Index for recurrent expenditure. It should be noted that this may change as the Budget process progresses.

It should also be noted that in some circumstances, there may be cost increases in excess of the 8% target (i.e. Solid Waste Levy, fuel charges and materials costs) and in other circumstances, there will be no or minimal cost increases.

Wages and Salaries

Wages and Salaries and other associated employee on-costs will be indexed in line with the current Enterprise Agreements, which is currently set at 5.0% (from 1 November 2022 then 3% from 1 November 2023) for the *Municipal Officers Enterprise Agreement* (indoor staff) and 2% for *The Local Government Workers Enterprise Agreement* (outdoor staff). It should be noted that *The Local Government Workers Enterprise Agreement* (outdoor staff) expires in November 2023. As negotiations will not commence until after the adoption of the 2023-2024 Budget, for the purpose of developing the Wages and Salaries budget, it is proposed that the indexation factor be increased to 5.0% in line with the *Municipal Officers Enterprise Agreement*. It should be noted that in-line with the *Superannuation Guarantee (Administration) Act 1992*, superannuation guarantee payments will increase to 11% of eligible earnings.

Fees and Charges

Fees and Charges which are not set by legislation, are proposed to be increased by 5.0% or market levels as determined by the review of the Fees and Charges, which will be considered at the Council meeting scheduled for 6 March 2023. The proposed increase is the weighted average of the recommended increase in Material & Contracts and the Wages and Salaries Indexation.

Capital Expenditure

Capital Expenditure relates to the purchasing, building, upgrading and renewing of the Council's assets. Capital Expenditure is funded from depreciation, borrowings and grant funding (where available). For asset renewals the main funding source is depreciation. For new assets and upgrades, the main funding source is borrowings and grant funding. The draft Annual Budget will assume that the Council will borrow to fund new assets and the upgrading of existing assets, with the renewal of assets being funded through depreciation.

Assuming that the Reserve Bank of Australia maintains cash rates at the current level of 3.10%, the interest rates on new borrowings are forecast to be between 4.5% per annum and 6.0% per annum, depending on the term of the borrowings. The interest rate on investment income is forecast at 3.30% per annum.

New Operating and Capital Projects

The assessment of new projects, both Operating and Capital, which are put forward for consideration, will be based on the objectives contained in *CityPlan 2030: Shaping Our Future*, the Council's Long Term Financial Plan and the Infrastructure and Asset Management Plans and the annual objectives set out above.

All new proposed Projects are to be considered and approved within the constraints of the Long-Term Financial Plan. New services and "one-off" Operating Projects are funded through Rate Revenue increases, grant funding or by expenditure savings. New Capital Projects will be funded via Grant Funding (if secured), borrowings or cash reserves.

Carry Forward Projects

Where Operating Projects are not completed within budgeted scheduled timeframes, future deficits can eventuate, as the Rate Revenue is raised in the year the project is initially approved. As part of the draft 2023-2024 Budget, the cost to complete the Operating Projects from prior financial years will be carried forward to the 2023-2024 Financial Year, however the estimate of Carried Forward Projects will be excluded for rate modelling purposes. In this respect, estimates will be based on the 2022-2023 Third Quarter Budget Update, with the associated operational impacts being built into the determination of the 2023-2024 Operating Result.

The draft Recurrent Budget (prior to any increase in Rate Revenue being determined by the Council together with the Operating and Capital Projects) will be presented to Elected Members at a Workshop which is scheduled for 14 March 2023. The draft Recurrent Budget and the Capital and Operating Projects are proposed to be considered by the Council at a Special Council Meeting which is scheduled for 11 April 2023.

Budget Management Principles

As in previous years, the Council needs to exercise "budget discipline" if it is to achieve its financial outcomes that are set out in the Annual Business Plan and Budget and continue to achieve and maintain financial sustainability. To date, the approach which has been taken by this Council once the Annual Business Plan and Budget has been adopted, includes:

- no new recurrent operating expenditure or projects approved without being matched by an increase in operating revenue (i.e., Grants/Fee for Service) or a reduction in expenditure, elsewhere within the Council's operations;
- expenditure over-runs are offset by deferral of discretionary expenditure or expenditure savings elsewhere within the Council's operations;
- income shortfalls to be matched by operating expenditure savings; and
- no new capital expenditure that requires additional borrowings.

Noting that there may be some urgent issues that require urgent attention however once the Budget is adopted, these should be the exception rather than the rule.

Budget Timetable

Pursuant to Section 123 of the Act and Regulation 6 of the Regulations, the Council is required to adopt the Annual Business Plan and Annual Budget after 31 May for the ensuing financial year and except in a case involving extraordinary administrative difficulty, before 31 August for the financial year.

As set out in Table 1 below, a proposed budget timetable has been developed to ensure that the Council is in a position to adopt the 2023-2024 Annual Business Plan and Annual Budget at the Council meeting to be held on 3 July 2023.

TABLE 1: KEY BUDGET PROCESS ACTIVITIES 2022-2023

Key Steps	Dates
Budget process, parameters and objectives adopted	Monday 16 January 2023 (Council Meeting)
Fees and charges adopted in principle by the Council	Monday 6 March 2023 (Council Meeting)
Budget Workshop with Elected Members	Tuesday 14 March 2023
Budget Council Meeting <ul style="list-style-type: none"> • <i>Recurrent Budget considered</i> • <i>Operating and Capital Projects considered</i> 	Tuesday 11 April 2023 (Special Meeting)
Draft Annual Business Plan, rating model and projects carried forward and Infrastructure Whole of Life endorsed	Monday 1 May 2023 (Council Meeting)
Draft Annual Business Plan available for viewing by the public	Friday 5 May 2023
Meeting to receive public submissions on the Annual Business Plan	Monday 29 May 2023
Consideration of public submissions	Tuesday 13 June 2023 (Special Council Meeting)
Adoption of Annual Business Plan and Budget	Monday 3 July 2023 (Council Meeting)

In respect to the community consultation on the Annual Business Plan, a Public Meeting is proposed to be held on Monday 29 May 2023 to allow members of the community to present their comments and feedback to the Council on the content of the Annual Business Plan and Budget.

OPTIONS

The Council has the following options in respect to this issue:

1. adopt the Annual Business Plan objectives, Annual Budget parameters and assumptions as recommended; or
2. amend any or all of the recommended Annual Business Plan objectives, Annual Budget parameters and assumptions.

The Annual Business Plan objectives, Annual Budget parameters and assumptions set out in this report, are consistent with the approach which the Council has set in previous years to the development of the Annual Business Plan and Budget. In addition, the proposed approach and timetable as presented, will ensure that the Council meets its legislative requirements as set out in the *Local Government Act 1999* and Regulation 6 of the *Local Government (Financial Management) Regulations 2011* therefore Option 1 is recommended.

CONCLUSION

The development of the 2023-2024 Annual Business Plan and Budget should form the platform to position the Council to achieve ongoing Financial Sustainability. Financial Sustainability is not a number on the Income Statement, it is a strategy. Therefore, strategies need to be developed that integrate into the Council's planning and are supported by longer term planning, with any future decisions made being consistent with and supporting the strategy.

COMMENTS

If Elected Members have any questions or require clarification in relation to specific budget items, and/or any issues raised in this report, do not hesitate to contact the Manager, Finance, Sharon Francis on 8366 4548 or email sfrancis@npsp.sa.gov.au prior to the meeting.

RECOMMENDATION

1. That the Annual Business Plan objectives be adopted "in principle" for the purposes of preparing the draft 2023-2024 Annual Business Plan and Budget.
2. That the following budget parameters and assumptions be adopted 'in principle' for the purposes of preparing the draft 2023-2024 Annual Business Plan and Budget:
 - the Recurrent Operating Budget be prepared on a "business as usual" basis;
 - the continuation of previously recognised ongoing operational savings;
 - maximum Material, Contracts and Other Expenses cost escalation be set at 8%;
 - wages and salaries increases be set in line with the Council's Enterprise Bargaining Agreements;
 - fees and charges not set by Legislation be increased by a minimum of 5.0%;
 - new Capital Projects to be considered and approved within the context of the Annual Business Plan objectives, *CityPlan 2030: Shaping Our Future*, The Infrastructure and Asset Management Plan and the Council's Long Term Financial Plan;
 - new services and one-off projects to be considered and approved within the context of the Annual Business Plan objectives, *CityPlan 2030: Shaping Our Future*, The Infrastructure and Asset Management Plan and the Council's Long Term Financial Plan be funded through Rate Revenue increases or by expenditure savings; and
 - new capital projects are funded through grant funding and or long-term borrowings.

**Section 3 – Governance & General
Reports**

**11.4 LOCAL GOVERNMENT ASSOCIATION (LGA) 2023 ORDINARY GENERAL MEETING –
APPOINTMENT OF COUNCIL DELEGATE**

REPORT AUTHOR: General Manager, Governance & Civic Affairs
GENERAL MANAGER: Chief Executive Officer
CONTACT NUMBER: 8366 4549
FILE REFERENCE: qA2219
ATTACHMENTS: Nil

PURPOSE OF REPORT

The purpose of the report is to advise the Council of the Local Government Association of South Australia's (LGA) 2023 Ordinary General Meeting and the requirement, in accordance with the LGA Constitution, to appoint a Council Delegate to represent the Council and vote at the General Meeting.

BACKGROUND

The Local Government Association (LGA) 2023 Ordinary General Meeting, will be held on Friday 14 April 2023. The agenda will be issued to all Councils in the near future.

Pursuant to the LGA Constitution, Councils are required to appoint a Council Delegate to represent the Council and vote at the LGA General Meeting, if the Council wishes to be represented and have voting rights at the Local Government Association 2023 Ordinary General Meeting. The Council may also appoint a Proxy Delegate in the event the Delegate is unable to attend the Ordinary General Meeting.

A Council Officer cannot be a Delegate, however, they can attend the LGA Ordinary General Meeting.

Traditionally, the Mayor has been appointed as the Delegate for the LGA Ordinary General Meeting.

It is considered appropriate that the Council also appoints a Deputy Council Delegate in the event that the appointed Delegate is unable to attend the Ordinary General Meeting.

RELEVANT POLICIES & STRATEGIC DIRECTIONS

Not Applicable.

RECOMMENDATION

1. That Mayor Robert Bria be appointed as the Council Delegate for the Local Government Association 2023 Ordinary General Meeting.
2. That Councillor _____ be appointed as the Deputy Council Delegate for the Local Government Association 2023 Ordinary General Meeting.

11.5 LOCAL GOVERNMENT ASSOCIATION (LGA) 2023 ORDINARY GENERAL MEETING – ITEMS OF BUSINESS

REPORT AUTHOR: General Manager, Governance & Civic Affairs
GENERAL MANAGER: Chief Executive Officer
CONTACT NUMBER: 8366 4549
FILE REFERENCE: qA2219
ATTACHMENTS: A

PURPOSE OF REPORT

The purpose of the report is to advise the Council of the Local Government Association of South Australia's (LGA) 2023 Ordinary General Meeting and the invitation from the LGA to submit *Items of Business* for consideration at the Ordinary General Meeting.

BACKGROUND

The Local Government Association (LGA) 2023 Ordinary General Meeting, will be held on Friday, 14 April 2023.

The purpose of the OGM is to consider items of strategic importance to Local Government and the LGA, as recommended by the Board of Directors, the South Australian Region Organisation of Councils (SAROC) or the Greater Adelaide Region of Councils (GAROC).

Items of Business must be submitted to either the LGA Board of Directors, or in the case of this Council, GAROC, for consideration prior to being referred to the OGM (or AGM), for consideration. It is however at the discretion of the Council to determine if the item is to be submitted to either the Board of Directors or GAROC.

The role of the Board of Directors is to oversee the corporate governance of the LGA and provide strategic direction and leadership.

The role of GAROC is regional advocacy, policy initiation and review, leadership, engagement and capacity building in the region(s).

Whilst not strictly specified, the logical approach is to refer the *Item of Business* to the relevant body in accordance with its role.

Pursuant to the LGA Constitution, Councils are invited to submit Items of Business for consideration at the Ordinary General Meeting. Items of Business must be received by Friday, 5 February 2023, if they are to be considered at the 2023 Ordinary General Meeting.

RELEVANT POLICIES & STRATEGIC DIRECTIONS

Not Applicable.

DISCUSSION

A requirement of the LGA in respect to Items of Business, is that Items of Business submitted by Councils, should highlight a relevant reference to the LGA Strategic Plan.

A copy of the LGA 2021-2025 Strategic Plan is contained within **Attachment A**.

Proposed Item of Business – Timing of Local Government Elections

Mayor Bria has advised that he wishes to submit the following Item of Business for consideration as an Item of Business at the OGM and is therefore seeking the Council's endorsement of the Motion:

That, having regard to the recommendations made by the Electoral Commission of South Australia (ECSA) contained within its 2010, 2014 and 2018 Local Government Election Reports, the Local Government Association of South Australia (LGA) write to The Hon Geoff Brock MP, Minister for Local Government requesting that the State Government change the timing of periodic Local Government Elections to ensure that Local Government Elections are not held in the same year as State Government Elections, and ideally two (2) years apart.

Mayor Bria has provided the following in support of the proposed Notice of Motion for the Council's consideration:

In 2010 and 2022 South Australians voted in three (3) general/periodic elections:

- 2010 – State (March), Federal (August) and Local (November); and
- 2022 - State (March), Federal (May), and Local (November).

In 2022, Voters who live in the State electorate of Bragg voted in a fourth election (bi-election). The impact of these elections with constant campaign ads, corflutes, letters, door knocking and other campaign materials – with minimal respite between campaigns - was exhausting for Voters and raised the issues of the timing of Local Government elections, being the last elections held in these years.

At its September 2018 meeting, the Council supported the following Notice of Motion which I submitted regarding the timing of the Local Government elections:

“That the Annual General Meeting requests that the Local Government Association of South Australia lobby the State Government to investigate the merits of State Government and Local Government elections being held two (2) years apart from each other, as opposed to the current arrangement of being held in the same year.”

The Motion was subsequently debated and not supported by the LGA's Annual General Meeting held that year.

However, having three (3) elections in the same year requires a re-think about the timing of periodic Local Government Elections.

There are several reasons why the State Government should consider changing the timing of periodic Local Government Elections, including:

- Voter (elector) fatigue;
- relieves pressure on ECSA regarding:
 - workload issues for staff
 - timing of representation reviews
 - implementing and ratifying changes to the Electoral Roll; and
- increased focus on Local Government to potentially increase Voter participation.

With regards to the last dot point, the statewide level of Voter/Elector participation in Local Government Elections since the introduction of postal voting in 2000 has not varied significantly. Although there was a large spike in Voter participation in 2000, since 2003, Voter participation has hovered around a third of all eligible Voters.

While it could be argued low Voter participation rate will continue for as long as there is voluntary voting in Local Government Elections, a change in the timing of the elections so they do not coincide with State and/or Federal elections in the same year may generate greater community interest and therefore, increase Voter participation.

The table below shows the level of Voter participation in Local Government Elections since 2000:

Year of Election	Voter Participation (statewide)
2022	34.54%
2018	32.94%
2014	31.99%
2010	32.88%
2006	31.62%
2003	33%
2000	40% (plus)

ECSA has long argued that a change in the timing of periodic Local Government Elections should be considered and has repeatedly made recommendations to that effect. Excerpts from ECSA's Local Government Election Reports are included below.

ECSA Local Government Election Report (2010) page 45

With four-year terms for both State and local government periodic elections conducted within an eight-month period in the same year, elector fatigue and apathy are of concern, particularly when also aligned with a federal election in the same period.

As local government election activities commence in early August with the close of rolls and opening of nominations, the current gap of five months from polling day for the State election continues to challenge the capacity to plan and execute the periodic elections for 67 councils across South Australia.

The Commission retains the previously reported opinion that the close alignment of two major electoral events in such a short timeframe significantly increases operational difficulties due to the high workload associated with the preparation and conduct of 250 simultaneous council elections.

It is recommended that further consideration be given to the scheduling of local government periodic elections, so they fall due during the four-year period between State Parliamentary elections similar to legislative arrangements in both New South Wales and Victoria.

ECSA Local Government Election Report (2014) page 51

The risk of elector fatigue and apathy continues to raise concern for the level of Voter participation at local government periodic elections conducted within eight months of State Parliamentary elections scheduled in March of the same calendar year.

The extremely short period from polling day for the State election in March to the close of rolls for local government elections in early August and opening of nominations in early September continues to challenge the capacity to plan and execute periodic elections for all 67 councils across the State.

As previously reported, it is the opinion of the Commission that to retain the close alignment of two major electoral events significantly increases operational difficulties with the preparation and conduct of more than 230 possible simultaneous council elections.

It is recommended that the scheduling of local government periodic elections in the same year as a State general election be given further consideration.

Local Government Election Reports (2018) page 11

The overlap with the state election period also poses problems with implementing the outcomes of representation reviews. Under the current scheduling arrangements gazetted by the Minister for Local Government, representation reviews are required to be undertaken by approximately half of all councils within the two years prior to a periodic election. In order for any changes proposed by council to be implemented at the next periodic elections, they must be certified by the Electoral Commissioner and gazetted prior to 1 January of the year of the periodic elections. For example, the 2016-17 reviews had to be certified and gazetted prior to 1 January 2018 in order to be implemented at the 2018 Council Elections.

ECSA's involvement in certifying the reviews can be resource intensive, which is not ideal when the end of a review period overlaps with the state election planning period. In addition, in 2017 a number of councils submitted late reviews, and this included several complex multi-ward councils requiring confirmation of ward boundaries and consequent elector movements. It is not only the certification which causes difficulties – during the year immediately following certification, but the redistribution of electors must also be implemented on the electoral roll. However, due to high enrolment activity and the close of roll for the state election, representation review changes can only be implemented after the state election.

The changes must be implemented by July in the year of a periodic election in order for council rolls to be created based on the new structures (as close of rolls takes place in August). This provides a very narrow time period to implement the changes. To further compound this issue, it is probable that a federal election roll close may also occur during the period close to the next state election in 2022.

Elector fatigue, confusion and the impact on elector participation should also be a factor in considering the timing of the local government periodic elections. Some council Chief Executive Officers have expressed concerns about the periodic elections being overshadowed by the state election and the effects of elector fatigue. Ideally, the two election events should be, to the nearest extent possible, two years apart.

Recommendation 1:

Change the timing of local government periodic elections. The date should be shifted so that the periodic elections do not occur within the same year as a state election.

If the current timing of local government periodic elections remains, ECSA will need to consider alternative solutions for effective delivery of the two election events, such as a two-tiered workforce – one workforce focussed on the state election, while another workforce concurrently works on the early planning and execution of the local government periodic elections which will require additional resourcing.

In conclusion, the case for changing the timing of the periodic elections for Local Government is compelling and should be given strong consideration by the LGA and the State Government. Victoria has successfully used the model of alternating State and Local Government elections every two (2) years for many years, and it is time South Australia followed suit. While the State Government has no control over the timing of a Federal Election, it does have control of the timing of Local Government Elections. By doing so, South Australian Voters will never have more than two (2) general/periodic elections for different spheres of government in the same year again.

OPTIONS

The Council can choose to submit the proposed Item of Business to the LGA for consideration as an Item of Business at the Local Government Association of South Australia's 2023 Ordinary General Meeting or decline the invitation to submit an Item of Business.

CONCLUSION

Items of Business must be submitted to the Local Government Association of South Australia by Friday, 3 February 2023, if they are to be considered at the 2023 LGA Ordinary General Meeting.

COMMENTS

Nil.

RECOMMENDATION

That the Council submits the following Item of Business to the Local Government Association of South Australia for consideration as an Item of Business at the Ordinary General Meeting:

- That, having regard to the recommendations made by the Electoral Commission of South Australia (ECSA) contained within its 2010, 2014 and 2018 Local Government Election Reports, the Local Government Association of South Australia (LGA) write to The Hon Geoff Brock MP, Minister for Local Government requesting that the State Government change the timing of periodic Local Government Elections to ensure that Local Government Elections are not held in the same year as State Government Elections, and ideally two (2) years apart.

Attachments – Item 11.5

Attachment A

Local Government Association (LGA) 2023 Ordinary General Meeting Items of Business

City of Norwood Payneham & St Peters
175 The Parade, Norwood SA 5067

Telephone 8366 4555
Facsimile 8332 6338
Email townhall@npsp.sa.gov.au
Website www.npsp.sa.gov.au



City of
Norwood
Payneham
& St Peters



LGA 25

Strategic Plan 2021-2025

Advocate

*Achieve greater
influence for local
government*

Assist

*Build the capacity of
member councils*

Advance

*Facilitate continuous
improvement in local
government*

Achieve

Embed best practice governance and operations to enable the LGA to provide value to members



Message from the President

It is often said that councils are the level of government closest to the community, and work best when they genuinely engage with the communities they serve.

The same can be said of the LGA. The LGA exists for its member councils - and works best when it is close to its members, and listens to and represents their interests.

As the voice of local government, the LGA provides leadership, support, representation and advocacy on behalf of South Australian councils, for the benefit of the community.

Just as councils are about more than roads, rates and rubbish, so too the LGA is about more than just advocacy. In addition to achieving greater influence for local government, the LGA plays a critical role in strengthening the capacity of councils and driving innovation that prepares our sector for the future.

With the implementation of once-in-a-generation local government reforms just around the corner, the role of the LGA in practically assisting its members, avoiding unnecessary duplication and finding smarter ways to operate is more important than ever.

As we do this, the LGA needs to continually ensure its own house is in order, lead by example in its operations and governance, and demonstrate social and environmental responsibility.

This Strategic Plan has been developed with strong input from our members – from those who sit on our Board and committees, to council members, CEOs and frontline staff from around South Australia.

Thank you to those who continue to take the time to let us know how we can work together to do great things for our communities.



Mayor Angela Evans

LGA President

March 2021



About the LGA

The Local Government Association of South Australia (LGA) is the peak body for local government in South Australia. The LGA provides leadership and services to councils, and represents the sector to State and Federal governments and other key stakeholders. Membership of the LGA is voluntary, but all 68 of South Australia's councils are members.

The Association also provides competitive procurement and indemnity (insurance) services to councils through two separate commercial entities, LGA Procurement and LGASA Mutual.

The LGA is governed by a Board of Directors and supported by a secretariat based in Local Government House in Adelaide. The LGA is federated with interstate bodies through the Australian Local Government Association (ALGA), which represents local government's national interests.

More information about the LGA is available on our website at www.lga.sa.gov.au.

About the Strategic Plan

The LGA's Strategic Plan outlines how the LGA will prioritise its resources in meeting the needs of its member councils. The plan does not detail everything that the LGA is involved in, rather it identifies the strategic outcomes that the LGA will focus on over the next four years.

The Strategic Plan is a plan for the Association and not a plan for councils. It contains strategies that will advance the interests of local government in South Australia and progress the objects outlined in the LGA Constitution.

The Strategic Plan informs the LGA's work plans and budgets, as well as the Strategic and Annual Business Plans of subsidiaries and Board committees. The LGA's progress in achieving the outcomes sought by this plan is monitored through quarterly and annual reporting.

The Strategic Plan was developed with input from member councils, the LGA Board, GAROC and SAROC Committees, the LGA's Audit and Risk Committee and LGA staff. This happened through workshops and formal consultation processes, as well as through the regular feedback the LGA receives from members through its annual member's survey.



LGA's Integrated Planning and Reporting Framework



LGA's Governance Framework

The LGA is governed by a Board of Directors, which receives input on policy issues from the Greater Adelaide Region of Councils (GAROC) and South Australian Region of Councils (SAROC). GAROC and SAROC are committees of the LGA Board that provide regional advocacy, policy initiation and review, leadership, engagement and capacity building in the regions. The LGA Board also receives advice from its Audit and Risk Committee, CEO Advisory Group and the LGA secretariat.

Each year, the LGA holds an Ordinary General Meeting (OGM) and an Annual General Meeting (AGM). The purpose of those meetings is for member councils to determine the policy direction of the LGA via items of business that are of strategic importance to local government.

The LGA secretariat, led by the CEO, has responsibility for implementing the direction established by the LGA Board and by members through General Meetings.

The LGA's commercial entities – LGA Procurement and LGASA Mutual – are both governed by their own Board of Directors that report to the LGA Board.

Those roles and responsibilities are summarised below.

Role	Leading body
Strategy and Governance <i>Where we are going</i> <i>Decisions and rules</i>	LGA Board LGASA Mutual Board LGA Procurement Board
Policy <i>What we stand for</i>	Member councils via: <ul style="list-style-type: none"> • GAROC and SAROC Committees • AGM and OGM
Advice <i>Informing how we operate</i>	CEO Advisory Group Audit and Risk Committee LGA secretariat
Operations <i>Delivery of advocacy and services</i>	LGA secretariat
Measurement <i>Determining success</i>	Member councils

Context

The key considerations that form the context for this Strategic Plan include:

- Social and economic impacts of COVID-19, heightening the role of councils in driving local economic development and community wellbeing.
- Implementation of the Local Government Review Bill, and changes that will enhance council governance and operations.
- Financial sustainability for councils, including their critical roles in providing and maintaining infrastructure and community assets.
- Federal, State and Local Government elections scheduled for 2022, including proactively influencing national and state policy agendas and partnering with government in the implementation of new directions.
- Technological change, presenting new opportunities and increasing risks.
- The ongoing impacts of climate change and evolving responsibilities for local government in emergency management.
- Implementation of planning reforms and achieving positive planning and design outcomes in communities.

Vision

For South Australian councils to work together as willing and trusted partners in government, for the benefit of our communities.

Mission

To provide leadership, support, representation and advocacy on behalf of South Australian councils.

Values and Behaviours

Our Values

Our Individual Behaviour

Our Organisational Behaviour

	V	O	I	C	E
Our Values	Value and Respect 	Optimism 	Integrity 	Connectivity 	Excellence 
Our Individual Behaviour	<p>I am considerate of others' priorities and workloads.</p> <p>I communicate with respect and am approachable, professional and polite.</p>	<p>I always look for the positive opportunity, even when challenged.</p>	<p>I uphold the values of the LGA and adhere to my workplace responsibilities.</p>	<p>I welcome opportunities to engage with others and build positive working relationships.</p>	<p>I am a leader and role model through my actions and behaviour.</p> <p>I value everyone equally.</p> <p>I am a driver of constructive change.</p>
Our Organisational Behaviour	<p>We engage with, and have confidence and trust in the ability and judgement of all of our staff.</p> <p>We provide regular, honest and constructive feedback.</p>	<p>We recognise the importance of a positive work/life balance.</p> <p>We recognise the best qualities in our staff and harness all abilities.</p>	<p>We are consistent in decision making and are honest when dealing with staff and stakeholders.</p>	<p>We provide a safe, supportive and informative workplace with clear and regular communication.</p> <p>We commit to removing barriers that impact on effective work practices.</p>	<p>We empower, support and encourage our staff.</p> <p>We lead toward clear and inspiring goals and vision.</p>

- SA councils -
PART
 - of your -
EVERY
DAY.

Strategy 1:

The LGA will achieve greater influence for local government through a strategic and evidence-based approach to advocacy, partnering with state and federal government wherever possible, and by raising the profile of local government.

The LGA's advocacy will help councils to provide high quality services, facilities and operations that meet the needs of communities, while driving downward pressure on rates. As the voice of local government, the LGA's advocacy will inform awareness campaigns that shine light on the role and value of local government to communities.

The LGA's success in advocacy is built upon being close to members and understanding what is important to them.

Advocate

Achieve greater influence
for local government

Outcomes

- 1.1 We are close to our members, seek their feedback and represent them with evidence-based advocacy on issues that matter.
- 1.2 Governments rely on our proactive contribution to policy and legislation that impacts councils, leading to better outcomes for communities.
- 1.3 Communities understand and value the services provided by local government, and are encouraged to participate in council processes.

Prioritise and measure

Key priorities, along with targets and measures to monitor and report on the LGA's performance against these outcomes will be set each year in our suite of operational and committee plans, including:

- Annual Business Plan
- Advocacy Plan
- SAROC and GAROC Annual Business Plans
- Communications Strategy
- Engagement Plan.

Strategy 2:

The LGA will continue to provide resources, services and advice that assist councils. Through these services and by working together as a united local government sector, councils will be able to achieve more with less, leading to better outcomes for their communities.

The LGA will continue to assist council staff and elected members in core areas including policy and governance, training, web services, emergency management, communications, procurement, and mutual indemnity (insurance). Recent changes within our sector, including the implementation of local government reforms and strengthening financial sustainability in the context of growing cost pressures present opportunities for the LGA to further assist its members.

The LGA's Assist services, which enable the sharing of knowledge and experience between councils, will help drive an effective and efficient local government sector.

Assist

Build the capacity of member councils

Outcomes

- 2.1 We are close to our members and understand their capacity and capability needs.
- 2.2 Councils draw upon our resources, services and advice in order to save time and money, and reduce risk.
- 2.3 Councils are engaged in addressing sector-wide priorities, including local government reforms and achieving greater financial sustainability.
- 2.4 We leverage grant funding for the benefit of councils, and their communities.

Prioritise and measure

Key priorities, along with targets and measures to monitor and report on the LGA's performance against these outcomes will be set each year in our suite of operational, committee and subsidiary plans, including:

- Annual Business Plan
- Assist Plan
- SAROC and GAROC Annual Business Plans
- LGASA Mutual Strategic Plan
- LGA Procurement Strategic Plan

Strategy 3:

The local government sector is continually innovating to prepare for the future and place downward pressure on rates.

The LGA will facilitate continuous improvement for the sector through thought leadership and research about the future of local government, and by developing new partnerships and services that respond to emerging needs, and help drive innovation.

The LGA will assist councils understand their relative strengths through performance measurement and reporting. Technology presents an opportunity for the sector to innovate and better connect with communities, and take action to manage evolving cyber risks.

Advance

Facilitate continuous improvement in local government

Outcomes

3.1

We research and communicate on emerging issues for councils and their communities.

3.2

New partnerships and services help councils innovate and prepare for the future.

3.3

We provide access to systems that provide councils with the evidence base for continuous improvement.

3.4

The local government sector maximises the use of emerging technology, while effectively managing cyber risks.

Prioritise and measure

Key priorities, along with targets and measures to monitor and report on the LGA's performance against these outcomes will be set each year in our suite of operational, subsidiary and corporate plans, including:

- Annual Business Plan
- Advocacy Plan
- Communications Strategy
- Engagement Plan
- LGASA Mutual Strategic Plan
- LGA Procurement Strategic Plan

Strategy 4:

The LGA's ability to serve its members relies upon strong organisational foundations in areas such as financial management and people and culture, and the agility that comes from our size and structure as a member based association.

Improvements in corporate systems will be important to better monitor and communicate how the LGA provides value to members.

As a leader in the local government sector, it is important for LGA to lead by example and demonstrate social and environmental responsibility in its operations.

Achieve

Embed best practice governance and operations to enable the LGA to provide value to members

Outcomes

- 4.1 We lead by example in the governance and operations of the LGA.
- 4.2 The LGA's financial sustainability is supported by a growth in revenue from value-adding member services and LGA Procurement.
- 4.3 We provide a safe, healthy and rewarding work environment.
- 4.4 Systems and technology improve LGA operations and allow us to better serve our members.

Prioritise and measure

Key priorities, along with targets and measures to monitor and report on the LGA's performance will be set each year in our suite of operational and corporate plans:

- Annual Business Plan
- People and Culture Plan
- ICT Strategy
- Long-Term Financial Plan



Monitoring and Review

Implementation of this Strategic Plan will occur through the LGA's Annual Business Plan and other operational and corporate plans, as well as via the Strategic and Annual Business Plans of subsidiaries and Board committees.

The LGA's Annual Business Plan is monitored through Key Performance Indicators, which are reported upon quarterly to the LGA Board, and annually via the Annual Report. In addition to the annual Key Performance Indicators, the following strategic measures will be used to determine the LGA's success in achieving the strategies and outcomes of this plan:

Strategic Measures	Target
Membership	<p>All South Australian councils remain members of the LGA.</p> <p>All South Australian councils remain members of the Mutual Liability and Worker's Compensation Schemes.</p>
Members perception of value	<p>Retain member perception of LGA value for money for services to the sector of at least 7/10 over a rolling three year average.</p> <p>Retain an overall value of LGA membership of an average of at least \$2Million per council over a rolling three years.</p> <p>Advocate – achieve an average value for money for advocacy services of at least 7/10 on an annual basis.</p> <p>Assist – achieve an average value for money for assist services of least 7/10 on an annual basis.</p> <p>Advance – achieve an average value for money for advance services of at least 7/10 on an annual basis.</p>
Utilisation of LGA services	<p>All South Australian councils draw upon the resources provided on the LGA members only website.</p> <p>All South Australian councils use one or more of the LGA's value-adding member services.</p> <p>All South Australian councils use one or more services provided by LGA Procurement.</p>
Community awareness	<p>Maintain or increase the reach of the LGA's community awareness campaigns.</p> <p>Maintain or increase the community's understanding of the role of local government, as measured through the LGA's annual community survey.</p>
Financial management	<p>Income from member subscriptions to not exceed 25% of overall revenue.</p> <p>Retain operating surplus, liquidity and net financial liability ratios within the targets established by the Long Term Financial Plan.</p>



Cooper Pedy

Roxby Downs



11.6 APPOINTMENT TO THE BOARD OF THE EASTERN HEALTH AUTHORITY INCORPORATED

REPORT AUTHOR: General Manager, Governance & Civic Affairs
GENERAL MANAGER: Chief Executive Officer
CONTACT NUMBER: 8366 4549
FILE REFERENCE: qA88432
ATTACHMENTS: A

PURPOSE OF REPORT

The purpose of the report is to seek the Council's appointment of members to the Board of the Eastern Health Authority (EHA).

BACKGROUND

The Eastern Health Authority (EHA), provides public and environmental health services on behalf of its Constituent Councils namely, the City of Norwood Payneham & St Peters, City of Burnside, Campbelltown City Council, the City of Prospect and the Corporation of the Town of Walkerville.

EHA ensures that its Constituent Councils are meeting their legislative responsibilities, which relate to Environmental Health and are mandated in a number of pieces of legislation, the most relevant of these being the *SA Public Health Act 2011*, the *Food Act 2001* and the *Supported Residential Facilities Act 1992*.

The EHA Board of Management is responsible for oversight of the Authorities' activities and ensuring that EHA acts in accordance with its Charter.

A copy of the Eastern Health Authority Charter is contained within **Attachment A**.

Clause 2.2 of the Eastern Health Authority Charter, sets out that each Constituent Council must appoint:

(a) one elected member; and

(b) one other person who may be an officer, employee or elected member of that Constituent Council or an independent person, to be Board members and may at any time revoke these appointments and appoint other persons on behalf of that Constituent Council.

At its meeting held in December 2018, the Council appointed Councillors Sue Whittington and Garry Knoblauch as the Council's Members of the EHA Board for the previous term of the Council.

The EHA Charter does not require the appointment of Deputies to act in place of the Board Members of the EHA Board of Management.

The Board meets a minimum of six (6) times a year and all meetings are held at EHA which is located at 101 Payneham Road, St Peters, with meetings usually commencing at 6.30pm.

Board Meetings have been scheduled for 2023 as follows:

- 22 February 2023;
- 8 March 2023;
- 3 May 2023;
- 28 June 2023;
- 30 August 2023; and
- 1 November 2023

In accordance with the Eastern Health Authority's Charter, the term of appointment to the Eastern Health Authority Board of Management is for a period of two (2) years.

RELEVANT POLICIES & STRATEGIC DIRECTIONS

Not Applicable.

FINANCIAL AND BUDGET IMPLICATIONS

As no sitting fees are payable to Board Members there are no financial implications associated with this matter.

RECOMMENDATION

That Councillor _____ and Councillor _____ be appointed to the Board of the Eastern Health Authority Board for a term of two (2) years.

Attachments – Item 11.6

Attachment A

Appointment to the Eastern Health Authority Incorporated

City of Norwood Payneham & St Peters
175 The Parade, Norwood SA 5067

Telephone 8366 4555
Facsimile 8332 6338
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City of
**Norwood
Payneham
& St Peters**

eha EASTERN HEALTH AUTHORITY

Charter 2016



local councils working together to protect the health of the community

1.	EASTERN HEALTH AUTHORITY	4
1.1.	Regional subsidiary	4
1.2.	Constituent Councils	4
1.3.	Preamble	4
1.4.	Purpose.....	4
1.5.	Functions.....	4
1.6.	Powers	6
1.7.	Area of activity	7
1.8.	Common seal.....	7
2.	BOARD OF MANAGEMENT.....	7
2.1.	Functions.....	7
2.2.	Membership of the Board	8
2.3.	Conduct of Board Members.....	9
2.4.	Board policies and codes	9
2.5.	Chair of the Board	10
2.6.	Powers of the Chair and Deputy Chair.....	10
2.7.	Committees	10
3.	MEETINGS OF THE BOARD	11
3.1.	Ordinary meetings	11
3.2.	Special meetings.....	11
3.3.	Telephone or video conferencing.....	11
3.4.	Notice of meetings.....	12
3.5.	Minutes	13
3.6.	Quorum.....	13
3.7.	Meeting procedure	13
3.8.	Voting	14
3.9.	Circular resolutions.....	14
3.10.	Meetings to be held in public except in special circumstances	14
3.11.	Public inspection of documents.....	14
3.12.	Saving provision	15
4.	CHIEF EXECUTIVE OFFICER.....	15
4.1.	Appointment.....	15
4.2.	Responsibilities	15
4.3.	Functions of the Chief Executive Officer.....	16
4.4.	Acting Chief Executive Officer.....	17
5.	STAFF OF EHA	17
6.	REGIONAL PUBLIC HEALTH PLAN.....	17
6.1.	Obligation to prepare	17

6.2.	Contents	18
6.3.	Consultation	18
6.4.	Adoption of a Regional Public Health Plan	19
6.5.	Implementation of a Regional Public Health Plan.....	19
6.6.	Review.....	19
6.7.	Reporting.....	19
7.	FUNDING AND FINANCIAL MANAGEMENT.....	19
7.1.	Financial management	19
7.2.	Bank account.....	20
7.3.	Budget.....	20
7.4.	Funding contributions.....	20
7.5.	Financial reporting	21
7.6.	Audit.....	21
7.7.	Liability	21
7.8.	Insolvency	21
7.9.	Insurance and superannuation requirements.....	22
8.	BUSINESS PLAN	22
8.1.	Contents of the Business Plan	22
8.2.	Review and assessment against the Business Plan	22
9.	MEMBERSHIP	23
9.1.	New Members.....	23
9.2.	Withdrawal of a member	23
10.	DISPUTE RESOLUTION	24
11.	WINDING UP	26
12.	MISCELLANEOUS.....	27
12.1.	Action by the Constituent Councils	27
12.2.	Direction by the Constituent Councils.....	27
12.3.	Alteration and review of charter	27
12.4.	Access to information	27
12.5.	Circumstances not provided for	27
13.	INTERPRETATION.....	28
13.1.	Glossary	28
13.2.	Interpreting the charter	29
	Schedule 1 – Funding Contribution Calculation Formula	29

1. EASTERN HEALTH AUTHORITY

1.1. Regional subsidiary

Eastern Health Authority (EHA) is a regional subsidiary established under section 43 of the Act.

1.2. Constituent Councils

The Constituent Councils of EHA are:

- a) City of Norwood Payneham & St Peters;
- b) City of Burnside;
- c) Campbelltown City Council;
- d) City of Prospect; and
- e) The Corporation of the Town of Walkerville,

(Constituent Councils).

1.3. Preamble

The field of Environmental health continues to increase in complexity and diversity, making it difficult for small to medium size councils to attract and retain staff who are experienced and fully skilled across the legislative demands placed on Local Government.

EHA's size, structure and sole focus on environmental health puts it in an ideal position to provide high quality, specialist services to the community on behalf of its Constituent Councils. This in turn ensures Constituent Councils are meeting their broad environmental health legislative responsibilities.

1.4. Purpose

EHA is established by the Constituent Councils for the purpose of providing public and environmental health services primarily to and within the areas of the Constituent Councils.

1.5. Functions

For, or in connection with its purpose, EHA may undertake the following functions:

- a) take action to preserve, protect and promote public and environmental health within the area of the Constituent Councils;
- b) cooperate with other authorities involved in the administration of public and environmental health;

- c) promote and monitor public and environmental health whether in or, so far as the Act and the charter allows, outside the area of the Constituent Councils;
- d) assist the Constituent Councils to meet their legislative responsibilities in accordance with the SA Public Health Act, the *Food Act 2001* (SA), the *Supported Residential Facilities Act 1992* (SA), the *Expiation of Offences Act 1996* (SA), the *Housing Improvement Act 1940* (SA) (or any successor legislation to these Acts) and any other legislation regulating similar matters that the Constituent Councils determine is appropriate within the purposes of EHA;
- e) establish objectives and policy priorities for the promotion and protection of public and environmental health within the areas of the Constituent Councils;
- f) provide immunisation programs for the protection of public health within the areas of the Constituent Councils or to ensure that such programs are provided;
- g) promote and monitor standards of hygiene and sanitation;
- h) promote and monitor food safety standards;
- i) identify risks to public and environmental health within the areas of the Constituent Councils;
- j) monitor and regulate communicable and infectious disease control;
- k) licence and monitor standards in Supported Residential Facilities;
- l) ensure that remedial action is taken to reduce or eliminate adverse impacts or risks to public and environmental health;
- m) provide, or support the provision of, educational information about public and environmental health and provide or support activities within the areas of the Constituent Councils to preserve, protect or promote public health;
- n) keep the Constituent Councils abreast of any emerging opportunities, trends and issues in public and environmental health; and
- o) any other functions described in the Charter or assigned by the Constituent Councils to EHA consistent with EHA's purpose.

1.6. Powers

EHA has the powers necessary for the carrying out of its functions, and may:

- a) enter into contracts or arrangements with any government agency or authority, or councils, including the Constituent Councils;
- b) appoint, employ, remunerate, remove or suspend officers, managers, employees and agents;
- c) enter into contracts with any person for the acquisition or provision of goods and services;
- d) receive financial contributions from the Constituent Councils;
- e) publish information;
- f) acquire, hold, deal with and dispose of any real or personal property, subject to the requirements of the Constituent Councils;
- g) open and operate bank accounts;
- h) acquire funds for the purpose of its functions or operations by entering into loan agreements;
- i) invest any of the funds of EHA in any investment with the LGA Finance Authority, provided that in exercising this power of investment EHA must:
 - (a) exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of other persons; and
 - (b) avoid investments that are speculative or hazardous in nature;
- j) raise revenue by applying for grants and other funding from the State of South Australia or the Commonwealth of Australia and their respective agencies or instrumentalities on behalf of the Constituent Councils or on its own behalf.

1.7. **Area of activity**

EHA may only undertake an activity outside the area 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 EHA of its functions and is an activity included in the EHA business plan.

1.8. **Common seal**

- a) EHA shall have a common seal upon which its corporate name shall appear in legible characters.
- b) The common seal shall not be used without the authorisation of a resolution of EHA and every use of the common seal shall be recorded in a register.
- c) The affixing of the common seal shall be witnessed by the Chair or Deputy Chair or such other Board member as the Board may appoint for the purpose.
- d) The common seal shall be kept in the custody of the Chief Executive Officer or such other person as EHA may from time to time decide.

2. **BOARD OF MANAGEMENT**

2.1. **Functions**

The Board is responsible for managing all activities of EHA and ensuring that EHA acts in accordance with the Charter. The Board will:

- a) formulate plans and strategies aimed at improving the activities of EHA;
- b) provide input and policy direction to EHA;
- c) monitor, oversee and evaluate the performance of the Chief Executive Officer.
- d) ensure that ethical behaviour and integrity is maintained in all activities undertaken by EHA;
- e) subject to clause 3.10, ensure that the activities of EHA are undertaken in an open and transparent manner;
- f) assist with the development of the Public Health Plan and Business Plan; and

- g) exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of other persons.

2.2. Membership of the Board

- a) Each Constituent Council must appoint:
 - (a) one elected member; and
 - (b) one other person who may be an officer, employee or elected member of that Constituent Council or an independent person,

to be Board members and may at any time revoke these appointments and appoint other persons on behalf of that Constituent Council.
- b) A Board Member shall be appointed for the term of office specified in the instrument of appointment, and at the expiration of the term of office will be eligible for re-appointment by the Constituent Council.
- c) Each Constituent Council must give notice in writing to EHA of the elected members it has appointed as Board Members and of any revocation of any of those appointments.
- d) Any person authorised by a Constituent Council may attend (but not participate in) a Board meeting and may have access to papers provided to Board Members for the purpose of the meeting.
- e) The provisions regarding the office of a board member becoming vacant as prescribed in the Act apply to all Board Members.
- f) Where the office of a board member becomes vacant, the relevant Constituent Council will appoint another person as a Board member.
- g) The Board may by a two thirds majority vote of the Board Members present (excluding the Board Member who is the subject of a recommendation under this clause g)) make a recommendation to the relevant Constituent Council requesting that the Constituent Council terminate the appointment of a Board Member in the event of:
 - (a) any behaviour of the Board Member which in the opinion of the Board amounts to impropriety;
 - (b) serious neglect of duty in attending to their responsibilities as a Board Member;

- (c) breach of fiduciary duty to EHA, a Constituent Council or the Constituent Councils;
 - (d) breach of the duty of confidentiality to EHA, a Constituent Council or the Constituent Councils;
 - (e) breach of the conflict of interest provisions of the Act; or
 - (f) any other behaviour that may, in the opinion of the Board, discredit EHA.
- h) The members of the Board shall not be entitled to receive any remuneration in respect of their attendance at meetings or on any other business of the Board.

2.3. **Conduct of Board Members**

- a) Subject to clauses 20(6) and 20(7), Schedule 2 to the Act, the provisions regarding conflict of interest prescribed in the Act apply to Board Members.
- b) Board Members are not required to comply with Division 2, Part 4, Chapter 5 (Register of Interests) of the Act.
- c) Board Members must at all times act in accordance with their duties under the Act.

2.4. **Board policies and codes**

- a) EHA must, in consultation with the Board Members ensure that appropriate policies, practices and procedures are implemented and maintained in order to:
 - (a) ensure compliance with any statutory requirements; and
 - (b) achieve and maintain standards of good public administration.
- b) A code of conduct currently prescribed under section 63 of the Act will apply to Board Members as if the Board Members were elected members, except insofar as the prescribed code of conduct is inconsistent with an express provision of the charter or schedule 2 of the Act. In the event of such an inconsistency, the charter or schedule 2 of the Act (as relevant) will prevail to the extent of the inconsistency.
- c) To the extent it is able, the Board must ensure that its policies are complied with in the conduct of the affairs of EHA and are periodically reviewed and, if appropriate, amended.

- d) The audit committee will develop a schedule for the periodic review of EHA policies by 30 June each year and provide this to the Board for approval.

2.5. **Chair of the Board**

- a) A Chair and Deputy Chair shall be elected at the first meeting of the Board after a Periodic Election.
- b) The Chair and Deputy Chair shall hold office for a period of one year from the date of the election by the Board.
- c) Where there is more than one nomination for the position of Chair or Deputy Chair, the election shall be decided by ballot.
- d) Both the Chair and Deputy Chair shall be eligible for re-election to their respective offices at the end of the relevant one year term.
- e) If the Chair should cease to be a Board Member, the Deputy Chair may act as the Chair until the election of a new Chair.

2.6. **Powers of the Chair and Deputy Chair**

- a) The Chair shall preside at all meetings of the Board and, in the event of the Chair being absent from a meeting, the Deputy Chair shall preside. In the event of the Chair and Deputy Chair being absent from a meeting, the Board Members present shall appoint a member from among them, who shall preside for that meeting or until the Chair or Deputy Chair is present.
- b) The Chair and the Deputy Chair individually or collectively shall have such powers as may be decided by the Board.

2.7. **Committees**

- a) The Board may establish a committee for the purpose of:
 - (a) enquiring into and reporting to the Board on any matter within EHA's functions and powers and as detailed in the terms of reference given by the Board to the committee; or
 - (b) exercising, performing or discharging delegated powers, functions or duties.
- b) A member of a committee established under this clause holds office at the pleasure of the Board.
- c) The Chair of the Board is an *ex-officio* member of any committee or advisory committee established by the Board.

3. MEETINGS OF THE BOARD

3.1. Ordinary meetings

- a) Ordinary meetings of the Board will take place at such times and places as may be fixed by the Board or where there are no meetings fixed by the Board, by the Chief Executive Officer in consultation with the Chair from time to time, so that there are no less than five ordinary meetings per financial year.
- b) Notice of ordinary meetings of the Board must be given by the Chief Executive Officer to each Board Member and the chief executive officer of each Constituent Council at least three clear days prior to the holding of the meeting.

3.2. Special meetings

- a) Any two Board Members may by delivering a written request to the Chief Executive Officer require a special meeting of the Board to be held.
- b) The request must be accompanied by the proposed agenda for the meeting and any written reports intended to be considered at the meeting (if the proposed agenda is not provided the request is of no effect).
- c) On receipt of the request, the Chief Executive Officer must send a notice of the special meeting to all Board Members and Chief Executive Officers of the Constituent Councils at least four hours prior to the commencement of the special meeting.
- d) The Chair may convene special meetings of the Board at the Chair's discretion without complying with the notice requirements prescribed in clause 3.4 provided always that there is a minimum one hour notice given to Board members.

3.3. Telephone or video conferencing

- a) Special meetings of the Board convened under clause 3.2 may occur by telephone or video conference provided that at least a quorum is present.
- b) Where one or more Board Members attends a Board meeting by telephone or video conferencing, the meeting will be taken to be

open to the public, provided that members of the public can hear the discussion between Board members.

- c) Each of the Board Members taking part in a meeting via telephone or video conferencing must, at all times during the meeting, be able to hear and be heard by the other Board Members present.
- d) At the commencement of the meeting by telephone, each Board Member must announce their presence to all other Board Members taking part in the meeting.
- e) Board Members must not leave a meeting by disconnecting their telephone, audio-visual or other communication equipment, without notifying the Chair of the meeting.

3.4. **Notice of meetings**

- a) Except where clause 3.2 applies, notice of Board meetings must be given in accordance with this clause.
- b) Notice of any meeting of the Board must:
 - (a) be in writing;
 - (b) set out the date, time and place of the meeting;
 - (c) be signed by the Chief Executive Officer;
 - (d) contain, or be accompanied by, the agenda for the meeting; and
 - (e) be accompanied by a copy of any document or report that is to be considered at the meeting (as far as this is practicable).
- c) Notice under clause b) may be given to a Board Member:
 - (a) personally;
 - (b) by delivering the notice (whether by post or otherwise) to the usual place of residence of the Board Member or to another place authorised in writing by the Board Member;
 - (c) electronically via email to an email address approved by the Board Member;
 - (d) by leaving the notice at the principal office of the Constituent Council which appointed the Board Member; or

- (e) by a means authorised in writing by the Board Member being an available means of giving notice.
- d) A notice that is not given in accordance with clause c) will be taken to have been validly given if the Chief Executive Officer considers it impracticable to give the notice in accordance with that clause and takes action that the Chief Executive Officer considers reasonably practicable in the circumstances to bring the notice to the Board Member's attention.
- e) The Chief Executive Officer may indicate on a document or report provided to Board Members that any information or matter contained in or arising from the document or report is confidential until such time as the Board determines whether the document or report will be considered in confidence under clause 3.10.b).

3.5. Minutes

- a) The Chief Executive Officer must cause minutes to be kept of the proceedings at every meeting of the Board.
- b) Where the Chief Executive Officer is excluded from attendance at a meeting of the Board pursuant to clause 3.10.b), the person presiding at the meeting shall cause the minutes to be kept.

3.6. Quorum

- a) A quorum of Board Members is constituted by dividing the total number of Board Members for the time being in office by two, ignoring any fraction resulting from the division and adding one.
- b) No business will be transacted at a meeting unless a quorum is present and maintained during the meeting.

3.7. Meeting procedure

- a) The Board may determine its own procedures for the conduct of its meetings provided they are not inconsistent with the Act or the charter.
- b) Meeting procedures determined by the Board must be documented and be made available to the public.
- c) Where the Board has not determined a procedure to address a particular circumstance, the provisions of Part 2 of the *Local Government (Procedures at Meetings) Regulations 2000* (SA) shall apply.

3.8. Voting

- a) Board Members including the Chair, shall have a deliberative vote. The Chair shall not in the event of a tied vote, have a second or casting vote.
- b) All matters will be decided by simple majority of votes of the Board Members present. In the event of a tied vote the matter will lapse.
- c) Each Board Member present at a meeting must vote on a question arising for decision at the meeting.

3.9. Circular resolutions

- a) A valid decision of the Board may be obtained by a proposed resolution in writing given to all Board Members in accordance with procedures determined by the Board, where a simple majority of Board Members vote in favour of the resolution by signing and returning the resolution to the Chief Executive Officer or otherwise giving written notice of their consent and setting out the terms of the resolution to the Chief Executive Officer.
- b) A resolution consented to under clause a) is as valid and effectual as if it had been passed at a meeting of the Board.

3.10. Meetings to be held in public except in special circumstances

- a) Subject to this clause, meetings of the Board must be conducted in a place open to the public.
- b) The Board may order that the public be excluded from attendance at any meeting in accordance with the procedure under sections 90(2) and 90(3) of the Act.
- c) An order made under clause b) must be recorded in the minutes of the meeting including describing the grounds on which the order was made.

3.11. Public inspection of documents

- a) Subject to clause c), a person is entitled to inspect, without payment of a fee:
 - (a) minutes of a Board Meeting;
 - (b) reports received by the Board Meeting; and
 - (c) recommendations presented to the Board in writing and adopted by resolution of the Board.

- b) Subject to clause c), a person is entitled, on payment to the Board of a fee fixed by the Board, to obtain a copy of any documents available for inspection under clause a).
- c) Clauses a) and b) do not apply in relation to a document or part of a document if:
 - (a) the document or part of the document relates to a matter of a kind considered by the Board in confidence under clause 3.10.b); and
 - (b) the Board orders that the document or part of the document be kept confidential (provided that in so ordering the Board must specify the duration of the order or the circumstances in which it will cease to apply or a period after which it must be reviewed).

3.12. **Saving provision**

- a) No act or proceeding of EHA is invalid by reason of:
 - (a) a vacancy or vacancies in the membership of the Board; or
 - (b) a defect in the appointment of a Board Member.

4. **CHIEF EXECUTIVE OFFICER**

4.1. **Appointment**

- a) The Board shall appoint a Chief Executive Officer to manage the business of EHA on a fixed term performance based employment contract, which does not exceed five years in duration.
- b) At the expiry of a Chief Executive Officer's contract, the Board may reappoint the same person as Chief Executive Officer on a new contract of no greater than five years duration.

4.2. **Responsibilities**

- a) The Chief Executive Officer is responsible to the Board for the execution of decisions taken by the Board and for the efficient and effective management of the affairs of EHA.
- b) The Chief Executive Officer shall cause records to be kept of all activities and financial affairs of EHA in accordance with the charter, in addition to other duties provided for by the charter and those specified in the terms and conditions of appointment.

4.3. Functions of the Chief Executive Officer

The functions of the Chief Executive Officer shall be specified in the terms and conditions of appointment and will include terms to the effect that the Chief Executive Officer's functions may:

- a) ensure that the policies, procedures, codes of conduct and any lawful decisions of EHA are implemented and promulgated in a timely and efficient manner;
- b) undertake responsibility for the day to day operations and affairs of EHA;
- c) provide advice, assistance and reports to EHA through the Board in the exercise and performance of its powers and functions under the charter and the Act;
- d) initiate and co-ordinate proposals for consideration by EHA for developing objectives, policies and programs for the Constituent Council areas;
- e) provide information to EHA to assist EHA to assess performance against EHA plans;
- f) ensure that timely and accurate information about EHA policies and programs is regularly provided to the communities of the Constituent Councils;
- g) ensure that appropriate and prompt responses are given to specific requests for information made to EHA and, where appropriate, the Constituent Councils;
- h) ensure that the assets and resources of EHA are properly managed and maintained;
- i) maintain records that EHA and the Constituent Councils are required to maintain under the charter, the Act or another Act in respect of EHA;
- j) ensure sound principles of human resource management, health and safety to the employment of staff by EHA, including the principles listed in section 107(2) of the Act;
- k) ensure compliance with the obligations under *Work Health and Safety Act 2012 (SA)* of both EHA and the Chief Executive Officer (as an 'officer' of EHA within the meaning of the WHS Act); and

- l) exercise, perform or discharge other powers, functions or duties conferred on the Chief Executive Officer by the charter, and to perform other functions lawfully directed by the Board.

4.4. **Acting Chief Executive Officer**

- a) Where an absence of the Chief Executive Officer is foreseen, the Chief Executive Officer may appoint a suitable person to act as Chief Executive Officer, provided that the Board may determine to revoke the Chief Executive Officer's appointment and appoint an alternative person as Acting Chief Executive Officer.
- b) If the Chief Executive Officer does not make or is incapable of making an appointment under clause a), a suitable person will be appointed by the Board.

5. **STAFF OF EHA**

EHA may employ any staff required for the fulfilment of its functions. The conditions on which staff are employed will be determined by the Chief Executive Officer.

6. **REGIONAL PUBLIC HEALTH PLAN**

6.1. **Obligation to prepare**

- a) EHA must prepare for the Constituent Councils a draft regional public health plan for the purposes of the South Australian Public Health Act.
- b) The draft Regional Public Health Plan must be:
 - (a) in the form determined or approved by the Minister; and
 - (b) consistent with the State Public Health Plan.
- c) In drafting the Regional Public Health Plan, EHA will take into account:
 - (a) any guidelines prepared or adopted by the Minister to assist councils prepare regional public health plans; and
 - (b) in so far as is reasonably practicable give due consideration to the regional public health plans of other councils where relevant to issues or activities under the Regional Public Health Plan.

6.2. Contents

The Regional Public Health Plan must:

- a) comprehensively assess the state of public health in the areas of the Constituent Councils;
- b) identify existing and potential public health risks and provide for strategies for addressing and eliminating or reducing those risks;
- c) identify opportunities and outline strategies for promoting public health in the areas of the Constituent Councils;
- d) address any public health issues specified by the Minister; and
- e) include information as to:
 - (a) the state and condition of public health within the area of the Constituent Councils and related trends;
 - (b) environmental, social, economic and practical considerations relating to public health within the area of the Constituent Councils; and
 - (c) other prescribed matters; and
- f) include such other information or material contemplated by the SA Public Health Act or regulations made under that Act.

6.3. Consultation

- a) EHA will submit the draft Regional Public Health Plan to the Constituent Councils for approval for the plan to be provided, on behalf of the Constituent Councils, to:
 - (a) the Minister;
 - (b) any incorporated hospital established under the *Health Care Act 2008* (SA) that operates a facility within the area of the Constituent Councils;
 - (c) any relevant Public Health Authority Partner; and
 - (d) any other person prescribed by regulation made under the SA Public Health Act.
- b) Once approved by the Constituent Councils, EHA will, on behalf of the Constituent Councils, submit a copy of the draft Regional Public Health Plan to the entities listed in clause a) and consult with the Chief Public Health Officer and the public on the draft Public Health Authority Partner.

- c) EHA will provide an amended copy of the Regional Public Health Plan to the Constituent Councils which takes into account comments received through consultation under clause b).

6.4. **Adoption of a Regional Public Health Plan**

Each Constituent Council will determine whether or not to adopt the draft Regional Public Health Plan submitted to it by EHA under clause 6.3.c).

6.5. **Implementation of a Regional Public Health Plan**

EHA is responsible for undertaking any strategy and for attaining any priority or goal which the Regional Public Health Plan specifies as EHA's responsibility.

6.6. **Review**

EHA will, on behalf of the Constituent Councils, review the current Regional Public Health Plan every five years or at shorter time intervals as directed by the Constituent Councils.

6.7. **Reporting**

- a) EHA will on a biennial basis, on behalf of the Constituent Councils, prepare a draft report that contains a comprehensive assessment of the extent to which, during the reporting period, EHA and the Constituent Councils have succeeded in implementing the Regional Public Health Plan.
- b) The reporting period for the purposes of clause a) is the two years ending on 30 June preceding the drafting of the report.
- c) EHA will comply with guidelines issued by the Chief Public Health Officer in respect of the preparation of reports on regional public health plans.
- d) EHA will submit the draft report to the Constituent Councils for approval for the draft report to be provided to the Chief Public Health Officer by 30 June 2014.

7. **FUNDING AND FINANCIAL MANAGEMENT**

7.1. **Financial management**

- a) EHA shall keep proper books of account. Books of account must be available for inspection by any Board Member or authorised representative of any Constituent Council at any reasonable time on request.

- b) EHA must meet the obligations set out in the *Local Government (Financial Management) Regulations 2011 (SA)*.
- c) The Chief Executive Officer must act prudently in the handling of all financial transactions for EHA and must provide financial reports to the Board at its meetings and if requested, the Constituent Councils.

7.2. **Bank account**

- a) EHA must establish and maintain a bank account with such banking facilities and at a bank to be determined by the Board.
- b) All cheques must be signed by two persons authorised by resolution of the Board.
- c) Any payments made by electronic funds transfer must be made in accordance with procedures approved by the external auditor.

7.3. **Budget**

- a) EHA must prepare a proposed budget for each financial year in accordance with clause 25, Schedule 2 to the Act.
- b) The proposed budget must be referred to the Board at its April meeting and to the Chief Executive Officers of the Constituent Councils by 30 April each year.
- c) A Constituent Council may comment in writing to EHA on the proposed budget by 31 May each year.
- d) EHA must, after 31 May but before the end of June in each financial year, finalise and adopt an annual budget for the ensuing financial year in accordance with clause 25, Schedule 2 to the Act.

7.4. **Funding contributions**

- a) Constituent Council shall be liable to contribute monies to EHA each financial year for its proper operation.
- b) The contribution to be paid by a Constituent Council for any financial year shall be determined by calculating the Constituent Council's proportion of EHA's overall activities in accordance with the Funding Contribution Calculation Formula (see Schedule 1).
- c) Constituent Council contributions shall be paid in two equal instalments due respectively on 1 July and 1 January each year.
- d) The method of determining contributions can be changed with the written approval of not less than two thirds of the Constituent

Councils. Where the method for calculating contributions is changed, the revised methodology will apply from the date determined by not less than two thirds of the Constituent Councils.

- e) If a council becomes a new Constituent Council after the first day of July in any financial year, the contribution payable by that council for that year will be calculated on the basis of the number of whole months (or part thereof) remaining in that year.

7.5. **Financial reporting**

- a) The Board shall present a balance sheet and the audited financial statements for the immediately previous financial year to the Constituent Councils by 31 August each year.
- b) The financial year for EHA is 1 July of a year to 30 June in the subsequent year.

7.6. **Audit**

- a) The Board shall appoint an external auditor in accordance with the *Local Government (Financial Management) Regulations 2011 (SA)*.
- b) The audit of financial statements of EHA, together with the accompanying report from the external auditor, shall be submitted to the Chief Executive Officer and the Board.
- c) The books of account and financial statements shall be audited at least once per year.
- d) EHA will maintain an audit committee as required by, and to fulfil the functions set out in, clause 30, Schedule 2 to the Act.

7.7. **Liability**

The liabilities incurred and assumed by EHA are guaranteed by all Constituent Councils in the proportions specified in the Funding Contribution Calculation Formula.

7.8. **Insolvency**

In the event of EHA becoming insolvent, the Constituent Councils will be responsible for all liabilities of EHA in proportion to the percentage contribution calculated for each Constituent Council for the financial year prior to the year of the insolvency.

7.9. Insurance and superannuation requirements

- a) EHA shall register with the LGA Mutual Liability Scheme and comply with the rules of that scheme.
- b) EHA shall register with the LGA Asset Mutual Fund or otherwise advise the Local Government Risk Services of its insurance requirements relating to local government special risks in respect of buildings, structures, vehicles and equipment under the management, care and control of EHA.
- c) If EHA employs any person it shall register with Statewide Super and the LGA Workers Compensation Scheme and comply with the rules of those schemes.

8. BUSINESS PLAN

8.1. Contents of the Business Plan

- a) EHA must each year develop in accordance with this clause a business plan which supports and informs its annual budget.
- b) In addition to the requirements for the Business Plan set out in clause 24(6) of Schedule 2 to the Act, the Business Plan will include:
 - (a) a description of how EHA's functions relate to the delivery of the Regional Public Health Plan and the Business Plan;
 - (b) financial estimates of revenue and expenditure necessary for the delivery of the Regional Public Health Plan;
 - (c) performance targets which EHA is to pursue in respect of the Regional Public Health Plan.
- c) A draft of the Business Plan will be provided to the Constituent Councils on a date to be determined for the endorsement of the majority of those councils.
- d) The Board must provide a copy of the adopted annual Business Plan and budget to the Chief Executive Officers of each Constituent Council within five business days of its adoption.

8.2. Review and assessment against the Business Plan

- a) The Board must:
 - (a) compare the achievement of the Business Plan against performance targets for EHA at least once every financial year;

- (b) in consultation with the Constituent Councils review the contents of the Business Plan on an annual basis; and
 - (c) consult with the Constituent Councils prior to amending the Business Plan.
- b) EHA must submit to the Constituent Councils, by 30 September each year in respect of the immediately preceding financial year, an annual report on the work and operations of EHA detailing achievement of the aims and objectives of its Business Plan and incorporating any other information or report as required by the Constituent Councils.

9. MEMBERSHIP

9.1. New Members

The charter may be amended by the unanimous agreement of the Constituent Councils and the approval of the Minister to provide for the admission of a new Constituent Council or Councils, with or without conditions of membership.

9.2. Withdrawal of a member

- a) Subject to any legislative requirements, including but not limited to ministerial approval, a Constituent Council may resign from EHA at any time by giving a minimum 12 months notice to take effect from 30 June in the financial year after which the notice period has expired, unless otherwise agreed by unanimous resolution of the other Constituent Councils.
- b) Valid notice for the purposes of clause a) is notice in writing given to the Chief Executive Officer and each of the Constituent Councils.
- c) The withdrawal of any Constituent Council does not extinguish the liability of that Constituent Council to contribute to any loss or liability incurred by EHA at any time before or after such withdrawal in respect of any act or omission by EHA prior to such withdrawal.
- d) Payment of monies outstanding under the charter, by or to the withdrawing Constituent Council must be fully paid by 30 June of the financial year following 30 June of the year in which the withdrawal occurs unless there is a unanimous agreement as to alternative payment arrangements by the Constituent Councils.

10. DISPUTE RESOLUTION

- a) The procedure in this clause must be applied to any dispute that arises between EHA and a Constituent Council concerning the affairs of EHA, or between the Constituent Councils concerning the affairs of EHA, including a dispute as to the meaning or effect of the charter and whether the dispute concerns a claim in common law, equity or under statute.
- b) EHA and a Constituent Council must continue to observe the charter and perform its respective functions despite a dispute.
- c) This clause does not prejudice the right of a party:
 - (a) to require the continuing observance and performance of the charter by all parties: or
 - (b) to institute proceedings to enforce payment due under the charter or to seek injunctive relief to prevent immediate and irreparable harm.
- d) Subject to clause c), pending completion of the procedure set out in clauses e) to i), 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 clause, 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 10.
- e) **Step 1: Notice of dispute:** A party to the dispute must promptly notify each other party to the dispute of:
 - (a) the nature of the dispute, giving reasonable details;
 - (b) what action (if any) the party giving notice seeks to resolve the dispute.

A failure to give notice under this clause e) does not entitle any other party to damages.
- f) **Step 2: Request for a meeting of the parties:** A party providing notice of a dispute under clause e) may at the same or a later time notify each other party to the dispute that the notifying party requires a meeting within 14 business days.
- g) **Step 3: Meeting of senior managers:** Where a meeting is requested under clause f), a senior manager of each party must

attend a meeting with the Board in good faith to attempt to resolve the dispute.

- h) **Step 4: Meeting of chief executive officers:** Where a meeting of senior managers held under clause g) fails to resolve the dispute, the chief executive officers of EHA and each of the Constituent Councils must attend a meeting in good faith to attempt to resolve the dispute.
- i) **Step 5: Mediation:** If the meeting held under clause h) fails to resolve the dispute, then the dispute may be referred to mediation by any party to the dispute.
- j) Where a dispute is referred to mediation under clause i):
 - (a) the mediator must be a person agreed by the parties in dispute or, if they cannot agree within 14 days, a mediator nominated by the President of the South Australian Bar Association (or equivalent office of any successor organisation);
 - (b) the role of the mediator is to assist in negotiating a resolution of a dispute;
 - (c) a mediator may not make a decision binding on a party unless the parties agree to be so bound either at the time the mediator is appointed or subsequently;
 - (d) the mediation will occur at EHA's principal office or any other convenient location agreed by both parties;
 - (e) a party is not required to spend more than the equivalent of one business day in mediation of a dispute;
 - (f) each party to a dispute will cooperate in arranging and expediting the mediation, including by providing information in the possession or control of the party reasonably sought by the mediator in relation to the dispute;
 - (g) each party will send a senior manager authorised to resolve the dispute to the mediation;
 - (h) the mediator may exclude lawyers acting for the parties in dispute;
 - (i) the mediator may retain persons to provide expert assistance to the mediator;

- (j) a party in dispute may withdraw from mediation if in the reasonable opinion of that party, the mediator is not acting in confidence or with good faith, or is acting for a purpose other than resolving the dispute;
- (k) unless otherwise agreed in writing:
 - (i) everything that occurs before the mediator is in confidence and in closed session;
 - (ii) discussions (including admissions and concessions) are without prejudice and may not be called into evidence in any subsequent legal proceedings by a party;
 - (iii) 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; and
 - (iv) the parties in dispute must report back to the mediator within 14 days on actions taken based on the outcomes of the mediation; and
- (l) each party to the dispute must bear its own costs in respect of the mediation, plus an equal share of the costs and expenses of the mediator.

11. WINDING UP

- a) EHA may be wound up by the Minister acting upon a unanimous resolution of the Constituent Councils or by the Minister in accordance with clause 33(1)(b), Schedule 2 of the Act.
- b) In the event of EHA being wound up, any surplus assets after payment of all expenses shall be returned to the Constituent Councils in the proportions specified in the Funding Contribution Calculation Formula prior to the passing of the resolution to wind up.
- c) If there are insufficient funds to pay all expenses due by EHA on winding up, a levy shall be imposed on all Constituent Councils in the proportion determined under the Funding Contribution Calculation Formula prior to the passing of the resolution to wind up.

12. MISCELLANEOUS

12.1. Action by the Constituent Councils

The obligations of EHA under the charter do not derogate from the power of the Constituent Councils to jointly act in any manner prudent to the sound management and operation of EHA, provided that the Constituent Councils have first agreed by resolution of each Constituent Council as to the action to be taken.

12.2. Direction by the Constituent Councils

Any direction given to EHA by the Constituent Councils must be jointly given by the Constituent Councils to the Board of EHA by a notice or notices in writing.

12.3. Alteration and review of charter

- a) The charter will be reviewed by the Constituent Councils acting jointly at least once in every four years.
- b) The charter can only be amended by unanimous resolution of the Constituent Councils.
- c) Notice of a proposed alteration to the charter must be given by the Chief Executive Officer to all Constituent Councils at least four weeks prior to the Council meeting at which the alteration is proposed.
- d) The Chief Executive Officer must ensure that the amended charter is published in the *South Australian Government Gazette*, a copy of the amended charter is provided to the Minister and a copy is tabled for noting at the next Board meeting.

12.4. Access to information

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

12.5. Circumstances not provided for

- a) If any circumstances arise about which the charter is silent or which are, incapable of taking effect or being implemented the Board or the Chief Executive Officer may decide the action to be taken to ensure achievement of the objects of EHA and its effective administration.
- b) Where the Chief Executive Officer acts in accordance with clause a) he or she shall report that decision at the next Board meeting.

13. INTERPRETATION

13.1. Glossary

Term	Definition
Act	<i>Local Government Act 1999 (SA)</i>
Board	board of management of EHA
Board Member	a member of EHA board appointed for the purposes of clause 2.2 of the charter.
Business Plan	a business plan compiled in accordance with part 8 of the charter
Chief Executive Officer	The chief executive officer of EHA
Chief Public Health Officer	the officer of that name appointed under the SA Public Health Act
Constituent Council	a council listed in clause 1.2 of the charter or admitted under clause 9.1.
EHA	Eastern Health Authority
Funding Contribution Calculation Formula	the formula set out in Schedule 1 to the charter.
LGA	Local Government Association of SA
LGA Asset Mutual Fund	means the fund of that name provided by Local Government Risk Services
LGA Mutual Liability Scheme	means the scheme of that name conducted by the LGA.
LGA Workers Compensation Scheme	a business unit of the Local Government Association of South Australia.
Minister	South Australian Minister for Health and Aging
Periodic Election	has the meaning given in the <i>Local Government (Elections) Act 1999 (SA)</i> .
Public Health Authority Partner	is an entity prescribed or declared to be a public health authority partner pursuant to

	the SA Public Health Act
Regional Public Health Plan	the plan prepared under part 6 of the charter for the areas of the Constituent Councils.
SA Public Health Act	<i>South Australian Public Health Act 2011 (SA)</i>
State Public Health Plan	means the plan of that name under the SA Public Health Act
StatewideSuper	Statewide Superannuation Pty Ltd ABN 62 008 099 223
Supported Residential Facility	has the meaning given in the <i>Supported Residential Facilities Act 1992 (SA)</i> .

13.2. Interpreting the charter

- a) The charter will come into effect on the date it is published in the *South Australian Government Gazette*.
- b) The charter supersedes previous charters of the Eastern Health Authority.
- c) The charter must be read in conjunction with Schedule 2 to the Act.
- d) EHA shall conduct its affairs in accordance with Schedule 2 to the Act except as modified by the charter as permitted by Schedule 2 to the Act.
- e) Despite any other provision in the charter:
 - (a) if the Act prohibits a thing being done, the thing may not be done;
 - (b) if the Act requires a thing to be done, that thing must be done; and
 - (c) if a provision of the charter is or becomes inconsistent with the Act, that provision must be read down or failing that severed from the charter to the extent of the inconsistency.

Schedule 1 – Funding Contribution Calculation Formula

The funding contribution required from each Constituent Council is based on an estimated proportion of EHA's overall activities occurring within its respective area.

The estimated proportion is determined using the Funding Contribution Calculation Formula which is detailed on the following page.

In the formula, activities conducted by EHA on behalf of Constituent Councils have been weighted according to their estimated proportion of overall activities (see table below).

It should be noted that the weighted proportion allocated to administration is divided evenly between the Constituent Councils.

A calculation of each Constituent Councils proportion of resources used for a range of different activities is made. This occurs annually during the budget development process and is based on the best available data from the preceding year.

The formula determines the overall proportion of estimated use for each council by applying the weighting to each activity.

Activity	Weighted % of Activities
Administration	12.5%
Food Safety Activity	35.0%
Environmental Health Complaints	7.0%
Supported Residential Facilities	6.5%
Cooling Towers	6.5%
Skin Penetration	0.5%
Swimming Pools	2%
Number of Year 8 & 9 Enrolments	15.0%
Number of clients attending clinics	15.0%
Total	100%

Activity Description	Code	Activity weighting	Constituent Council -1	Constituent Council - 2	Constituent Council - 3	Constituent Council - 4	Constituent Council - 5	Total
Administration (to be shared evenly)	A	12.5%	12.5%/ CC	12.5%/ CC	12.5%/ CC	12.5%/ CC	12.5%/ CC	12.5%
Food Safety Activity.	B	35%	(N/B)x AW	(N/B)x AW	(N/B)x AW	(N/B)x AW	(N/B)x AW	28.5%
Environmental Health Complaints	C	7%	(N/C)x AW	(N/C)x AW	(N/C)x AW	(N/C)x AW	(N/C)x AW	11%
Supported Residential Facilities.	D	6.5%	(N/D)x AW	(N/D)x AW	(N/D)x AW	(N/D)x AW	(N/D)x AW	10%
High Risk Manufactured Water Systems	E	6.5%	(N/E)x AW	(N/E)x AW	(N/E)x AW	(N/E)x AW	(N/E)x AW	3%
Skin Penetration	F	0.5%	(N/F)x AW	(N/F)x AW	(N/F)x AW	(N/F)x AW	(N/F)x AW	2%
Public Access Swimming Pools.	G	2%	(N/G)x AW	(N/G)x AW	(N/G)x AW	(N/G)x AW	(N/G)x AW	3%
School enrolments vaccinated	H	15.0%	(N/H)x AW	(N/H)x AW	(N/H)x AW	(N/H)x AW	(N/H)x AW	15%
Clients attending public clinics	I	15.0%	(N/I)x AW	(N/I)x AW	(N/I)x AW	(N/I)x AW	(N/I)x AW	15%
Total Proportion of contribution			Sum A-I	Sum A-I	Sum A-I	Sum A-I	Sum A-I	100%

- N = Number in Constituent Council area.
- B through to I = Total number in all Constituent Councils.
- AW = Activity weighting.
- CC = Number of Constituent Councils (example provided uses five (5) Constituent Councils)

11.7 APPOINTMENT TO THE EASTERN WASTE MANAGEMENT AUTHORITY INCORPORATED BOARD (EAST WASTE)

REPORT AUTHOR: General Manager, Governance & Civic Affairs
GENERAL MANAGER: Chief Executive Officer
CONTACT NUMBER: 8366 4549
FILE REFERENCE: qA111240
ATTACHMENTS: A

PURPOSE OF REPORT

The purpose of the report is to seek the Council's appointment of a Board Member to the Eastern Waste Management Authority (East Waste) Board of Management.

BACKGROUND

The Eastern Waste Management Authority Incorporated (East Waste) is a Regional Subsidiary, established under Section 43 of the *Local Government Act 1999*, to provide at-cost kerbside waste collection services to its Constituent Councils. The membership base of East Waste comprises the Corporation of the Town of Walkerville, the City of Burnside, the City of Norwood Payneham & St Peters, the Campbelltown City Council, the City of Mitcham, the City of Prospect, the Adelaide Hills Council and the City of Unley.

East Waste is governed by a Board of Management which comprises Members appointed by each of the Constituent Councils.

A copy of the Eastern Waste Management Authority Incorporated Charter is contained within **Attachment A**.

Clause 21 of the Eastern Waste Management Authority Inc Charter (the Charter), sets out that the Board shall consist of nine (9) 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 three-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 three-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.*

In addition, the Charter requires each Constituent Council to appoint a Deputy Board Member.

In accordance with the East Waste's Charter, the term of appointment to the East Waste Board of Management is for a period of three (3) years.

There are five (5) ordinary Board Meetings scheduled each year. In 2022, Board Meetings were held at the Norwood Townhall on a Thursday, commencing at 5.30pm.

However, the Board will, at its first meeting to be held in February 2023, determine the location for meetings which are scheduled to be held in 2023.

RELEVANT POLICIES & STRATEGIC DIRECTIONS

Not Applicable.

FINANCIAL AND BUDGET IMPLICATIONS

As no sitting fees are payable to Board Members (other than the Independent Chairperson of the Board), there are no financial implications associated with this matter.

RECOMMENDATION

1. That _____ be appointed as the Board Member of the Eastern Waste Management Authority Inc Board of Management for a term of three (3) years.
2. That _____ be appointed as the Deputy Board Member of the Eastern Waste Management Authority Inc Board of Management for a term of three (3) years.

Attachments – Item 11.7

Attachment A

Appointment to the Eastern Waste Management Authority Incorporated Board (East Waste)

City of Norwood Payneham & St Peters
175 The Parade, Norwood SA 5067

Telephone 8366 4555
Facsimile 8332 6338
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Website www.npsp.sa.gov.au



City of
Norwood
Payneham
& St Peters

LOCAL GOVERNMENT ACT 1999 EASTERN WASTE MANAGEMENT AUTHORITY
Charter

PART I—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, Corporation of the Town of Walkerville,.

Core Activity means activities associated with the collection, recycling and/or disposal of waste along with community behaviour change and ancillary services.

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, 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 area of the Constituent Councils and the implications of that management beyond the area 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 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 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 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 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 three-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 three-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 or 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 they properly incur 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.

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 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 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 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 other 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 performance of 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.
- 29.12 The Chief Executive Officer will, at least annually, hold a meeting collectively with each of the Mayors and CEO's of the Constituent Councils at a venue to be notified to the Constituent Councils at least 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 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 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 Board Member and to each Constituent Council not less than three 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.
- 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 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 (2) 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-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-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 2013, 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 take into account 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 for Budgets, and the Authority must advise Constituent Councils of the proposed fees for the next financial year by 1 April in the preceding financial year.

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 financial year.

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 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 57.4 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 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.

PART 18—INSURANCE

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 a decision binding on a party unless that party has so agreed in writing;
- 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.

Endorsed 28 June 2022

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.

Rob Gregory, General Manager East Waste

11.8 APPOINTMENT TO THE BOARD OF ERA WATER

REPORT AUTHOR: General Manager, Governance & Civic Affairs
GENERAL MANAGER: Not Applicable
CONTACT NUMBER: 8366 4549
FILE REFERENCE: qA59949
ATTACHMENTS: A

PURPOSE OF REPORT

The purpose of this report is to enable the Council to appoint Board Members to the Board of ERA Water.

BACKGROUND

ERA Water is a Regional Subsidiary which has been established pursuant to the provisions of Section 43 of the *Local Government Act 1999*. ERA Water is responsible for the operation of a stormwater reuse scheme on behalf of the Constituent Councils, which involves the harvesting and distribution of recycled stormwater to irrigate Council parks and reserves, ovals and other areas of privately controlled open spaces in the eastern suburbs.

The Constituent Councils of ERA Water are the Cities of Burnside, Norwood Payneham & St Peters and the Town of Walkerville.

A copy of the Eastern Regional Alliance Water Charter is contained within **Attachment A**.

Clause 3.4 of the Eastern Regional Alliance (ERA) Water Charter, sets out that the Board shall comprise of four (4) Members appointed as follows:

3.4.1.1 Constituent Council Board Members

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

3.4.1.2 Independent Chairperson

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

In addition, the Charter requires each Constituent Council to appoint a Deputy Board Member.

In accordance with ERA's Charter, the term of appointment to the ERA Board of Management is for a period of two (2) years.

During the initial establishment stage of ERA Water, the Council appointed the Chief Executive Officer as the Council's Member of the Board, to oversee the operational arrangements required to implement the project and to assist with the governance arrangements of ERA Water.

Once the final commissioning and operations of the system were established and conducted in a stable Board and organisational environment, the Council appointed former Elected Member, Cr John Minney to the ERA Water Board.

ERA Water Board meetings are held bi-monthly, commencing at 8.30am at the Town of Walkerville.

RELEVANT POLICIES & STRATEGIC DIRECTIONS

Not Applicable.

FINANCIAL AND BUDGET IMPLICATIONS

As no sitting fees are payable to Board Members (other than the Independent Chairperson of the Board), there are no financial implications associated with this matter.

RECOMMENDATION

1. That _____ be appointed as this Council's Board Member to the Board of ERA Water for a term of two (2) years.
2. That _____ be appointed as this Council's Deputy Board Member to the Board of ERA Water for a term of two (2) years.

Attachments – Item 11.8

Attachment A

Appointment to the Board of ERA Water

City of Norwood Payneham & St Peters
175 The Parade, Norwood SA 5067

Telephone 8366 4555
Facsimile 8332 6338
Email townhall@npsp.sa.gov.au
Website www.npsp.sa.gov.au



City of
**Norwood
Payneham
& St Peters**

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

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

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

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

Dated 21 July 2015.

GEOFF BROCK, Minister for Local Government

**ERA WATER
REGIONAL SUBSIDIARY
CHARTER 2015**



Level 15, 45 Pirie Street
Adelaide SA 5000
Telephone + 61 8 8210 1200
Fax + 61 8 8210 1234
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TABLE OF CONTENTS

1.	INTRODUCTION	4
1.1	Name	4
1.2	Definitions	4
1.3	Interpretation	4
1.4	Establishment	4
1.5	Constituent Councils.....	4
1.8	Objects and Purposes of the Subsidiary.....	5
1.9	Liability Guarantee	5
2.	FUNCTIONS, POWERS AND DUTIES OF THE SUBSIDIARY	5
2.1	Functions and Powers	5
2.2	Duties	6
2.3	Other Powers, Functions and Duties.....	6
2.4	Common Seal	6
2.5	Borrowings and Expenditure	6
2.6	Property	6
2.7	Delegation by the Subsidiary.....	6
3.	BOARD OF MANAGEMENT	6
3.1	Structure	6
3.2	Role of the Board.....	6
3.3	Functions of the Board	7
3.4	Membership of the Board	7
3.5	Deputy Board Members.....	7
3.6	Office of Board Member	7
3.7	Reimbursement of Expenses of Board Members.....	8
3.8	Insurance	8
3.9	Propriety of Members of the Board	8
3.10	Chairperson of the Board.....	8
3.11	Proceedings of the Board.....	8
4.	GENERAL MANAGER AND APPOINTMENT OF OTHER STAFF	9
5.	FINANCIALS.....	10
5.2	Financial Contributions	10
5.3	Financial Standards and Reporting	10
5.4	Financial Transactions	11
6.	MANAGEMENT FRAMEWORK	11
6.1	Annual Business Plan	11
6.2	Annual Report	11
6.3	Audit.....	11
6.4	Audit Committee	11
6.5	Insurance and Superannuation Requirements	11
7.	MISCELLANEOUS PROVISIONS	11
7.1	Equitable Interests	11
7.2	Withdrawal of a Constituent Council.....	11
7.3	New Members	12
7.4	Winding-Up.....	12
7.5	Non-derogation and Direction by Constituent Councils	12
7.6	Review of Charter.....	12
7.7	Disputes Between Constituent Councils	12

1. INTRODUCTION

1.1 Name

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

1.2 Definitions

1.2.1 In this Charter, unless the contrary intention appears:

1.2.1.1 **the Act** means the Local Government Act 1999 and includes all regulations made thereunder;

1.2.1.2 **the Subsidiary** means ERA Water;

1.2.1.3 **the Board** means the Board of Management of the Subsidiary set out at Clause 3;

1.2.1.4 **Annual Business Plan** means the annual business plan adopted by the Subsidiary pursuant to Clause 6.1;

1.2.1.5 **Board Member** means a member of the Board appointed pursuant to Clause 3.4, and unless the context requires otherwise or it is expressly stated otherwise, a reference to a Board Member includes a Deputy Board Member;

1.2.1.6 **Budget** means the annual budget adopted by the Subsidiary pursuant to Clause 5.1;

1.2.1.7 **Chairperson** means the member of the Board appointed pursuant to Clause 3.4.1.2;

1.2.1.8 **Constituent Councils** means those councils identified at Clause 1.5;

1.2.1.9 **Council** means a council constituted under the Act;

1.2.1.10 **Date of Withdrawal** means the date a Constituent Council's withdrawal from the Subsidiary becomes effective pursuant to Clause 7.2.2;

1.2.1.11 **Deputy Board Member** means a person appointed to act as a deputy to a Board Member in accordance with Clause 3.5;

1.2.1.12 **Financial Statements** has the same meaning as in the Act;

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

1.2.1.14 **General Manager** means the person appointed pursuant to Clause 4 as the General Manager of the Subsidiary;

1.2.1.15 **Long Term Financial Plan** means the long term financial plan prepared by the Subsidiary and approved by the Constituent Councils pursuant to Clause 5.5;

1.2.1.16 **Net Assets** means total assets (current and non-current) less total liabilities (current and non-current) of the Subsidiary as reported in the annual audited Financial Statements of the Subsidiary;

1.2.1.17 **Project** means the collaborative long term joint undertaking of the Constituent Councils to implement a stormwater capture, treatment and distribution system in eastern Adelaide through, amongst other things, the linking and aggregation of small aquifers and storages via a regional aquifer storage and recovery system and the development of a cross-catchment, cross-council stormwater supply pipeline around eastern Adelaide;

1.2.1.18 **Region** means the collective geographical area of the Constituent Councils;

1.2.1.19 **Water** does not include mains water.

1.3 Interpretation

In this Charter, unless the context otherwise requires:

1.3.1 headings do not affect interpretation;

1.3.2 singular includes plural and plural includes singular;

1.3.3 words of one gender include any gender;

1.3.4 a reference to a person includes a partnership, corporation, association, government body and any other entity;

1.3.5 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;

1.3.6 an unenforceable provision or part of a provision of this Charter may be severed, and the remainder of this Charter continues in force, unless this would materially change the intended effect of this Charter;

1.3.7 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions; and

1.3.8 a reference to a 'Clause' means a clause of this Charter.

1.4 Establishment

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

1.5 Constituent Councils

The Constituent Councils are:

1.5.1 City of Burnside;

1.5.2 City of Norwood, Payneham & St Peters; and

1.5.3 Corporation of the Town of Walkerville.

1.6 Local Government Act 1999

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

1.7 National Competition Policy

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

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

1.8 **Objects and Purposes of the Subsidiary**

The Subsidiary is established for the following objects and purposes:

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

1.9 **Liability Guarantee**

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

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

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

2.1 **Functions and Powers**

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

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

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

3.3 **Functions of the Board**

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

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

3.4 **Membership of the Board**

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

3.4.1.1 Constituent Council Board Members

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

3.4.1.2 Independent Chairperson

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

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

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

3.5 **Deputy Board Members**

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

3.6 **Office of Board Member**

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

3.6.2 The office of a Board Member will become vacant:

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

3.6.2.4 if the Constituent Council who appointed the Board Member ceases to be a Constituent Council.

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

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

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

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

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

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

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

Dated 20 July 2015

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

11.9 APPOINTMENT TO THE Highbury Landfill Authority Board of Management

REPORT AUTHOR: General Manager, Governance & Civic Affairs
GENERAL MANAGER: Chief Executive Officer
CONTACT NUMBER: 8366 4549
FILE REFERENCE: qA111242
ATTACHMENTS: A

PURPOSE OF REPORT

The purpose of the report is to seek the Council's appointment of a Board Member to the Highbury Landfill Authority Board of Management.

BACKGROUND

The Highbury Landfill Authority Inc (HLA) is a Regional Subsidiary which has been established pursuant to Section 43 of the *Local Government Act 1999*, by the Cities of Burnside and Norwood Payneham & St Peters and the Town of Walkerville.

The purpose of the Authority is to:

- facilitate the closure and post-closure of the Highbury Landfill site;
- manage the joint interests and liability of the Constituent Councils in relation to the closure of the Highbury Landfill site;
- undertake all manner of things relating to and incidental to the management function of the Authority; and
- provide a forum for the discussion and consideration of issues related to the joint obligations and responsibilities of the Constituent Councils in respect of the closure (and post-closure) of the Highbury Landfill site.

A copy of the Highbury Landfill Authority Inc Charter is contained within **Attachment A**.

Clause 2.2 of the HLA Charter sets out the following in respect to the membership arrangements of the Board:

- 2.2.1 *The Board shall consist of three members being one person appointed by each Constituent Council;*
2.2.2 *A Board Member shall be appointed for a term not exceeding three years specified in the instrument of appointment and at the expiration of the term of office will be eligible for re- appointment.*

The Council is also required to appoint a Deputy Member to the Board.

The Board meets quarterly at the Town of Walkerville, with meetings commencing at 10.00am. The first meeting of the Board scheduled for 2023 will be held on 30 March 2023.

RELEVANT POLICIES & STRATEGIC DIRECTIONS

Not Applicable.

FINANCIAL AND BUDGET IMPLICATIONS

As no sitting fees are payable to Board Members there are no financial implications associated with this matter.

RECOMMENDATION

1. That _____ be appointed to the Board of the Highbury Landfill Authority Inc for a term of three (3) years.
2. That _____ be appointed as the Deputy Member of the Highbury Landfill Authority for a term of three (3) years.

Attachments – Item 11.9

Attachment A

Appointment to the Highbury Landfill Authority Board of Management

City of Norwood Payneham & St Peters
175 The Parade, Norwood SA 5067

Telephone 8366 4555
Facsimile 8332 6338
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Website www.npsp.sa.gov.au



City of
Norwood
Payneham
& St Peters

HIGHBURY LANDFILL AUTHORITY CHARTER

*1. Introduction**1.1 Name*

The name of the subsidiary is the Highbury Landfill Authority (referred to as 'the Authority' in this Charter).

1.2 Establishment

The Authority is a regional subsidiary established pursuant to Section 43 of the *Local Government Act 1999* (**the Act**) by the:

- 1.2.1 City of Burnside;
- 1.2.2 City of Norwood, Payneham & St Peters; and
- 1.2.3 Corporation of the Town of Walkerville

(the Constituent Councils).

1.3 Local Government Act 1999

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

1.4 Purpose for which the Authority is Established

The Authority is established for the following objects and purposes:

- 1.4.1 to facilitate the closure and the post-closure of the Highbury Landfill Site;
- 1.4.2 to undertake all manner of things relating to and incidental to Clause 1.5.

1.5 Powers and Functions of the Authority

The Authority shall have all of the powers and functions as are necessary for the carrying out of the Authority's purpose. These include, but are not limited to:

- 1.5.1 the power to incur expenditure:
 - 1.5.1.1 in accordance with a budget adopted by the Authority; or
 - 1.5.1.2 with the prior approval of the Constituent Councils; or
 - 1.5.1.3 in accordance with the Act, in respect of expenditure not contained in a budget adopted by the Authority, for a purpose of genuine emergency or hardship;
- 1.5.2 the power to borrow funds from the Local Government Financial Authority (or such other entity approved by the Constituent Councils):
 - 1.5.2.1 in accordance with a budget adopted by the Authority under this Charter;
 - 1.5.2.2 with the prior approval of the Constituent Councils;
- 1.5.3 the power to accumulate surplus funds for investment purposes;
- 1.5.4 the power to establish a reserve fund or funds clearly identified for meeting any liability or obligation of the Authority;
- 1.5.5 the power to enter into any contract or arrangement;
- 1.5.6 the power to purchase, sell, lease, hire, rent or otherwise acquire or dispose of any personal property or interests therein;
- 1.5.7 subject to obtaining the unanimous consent of the Constituent Councils for the particular acquisition or disposal, the power to acquire or dispose of real property;
- 1.5.8 the power to employ, engage, remunerate, remove, suspend or dismiss the Manager of the Authority;
- 1.5.9 the power to invest any of the funds of the Authority in any investment authorised by the *Trustee Act 1936* or with the Local Government Finance Authority provided that:
 - 1.5.9.1 in exercising this power of investment the Authority must exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of other persons; and
 - 1.5.9.2 the Authority must avoid investments that are speculative or hazardous in nature;
- 1.5.10 the powers, functions or duties delegated to the Authority by the Constituent Councils from time-to-time;
- 1.5.11 the power to do anything else necessary or convenient for or incidental to the exercise, performance or discharge of its powers, functions or duties.

1.6 Property

All property held by the Authority is held by it on behalf of the Constituent Councils.

1.7 Delegation by the Authority

- 1.7.1 The Authority may by resolution delegate any of its powers, functions and duties under the Act or this Charter to:
 - 1.7.1.1 the Manager;
 - 1.7.1.2 a committee established by the Authority;
 - 1.7.1.3 an employee of the Authority or a Constituent Council;
 - 1.7.1.4 a person occupying a particular office or position.
- 1.7.2 A delegation is revokable at will and does not prevent the Authority from acting in a matter.

1.8 Acting Outside Area

- 1.8.1 The Constituent Councils consider it necessary and expedient to the attainment of the Authority's objects and purposes for the Authority to undertake the following activities outside the area of the Constituent Councils and accordingly authorise the Authority to undertake such activities:
 - 1.8.1.1 All activities relating to, necessary for and incidental to facilitating the closure and the post-closure of the Highbury Landfill Site.

2. Board of Management

The Authority is a body corporate and is governed by a Board of Management that shall have the responsibility to manage the business

and other affairs of the Authority ensuring that the Authority acts in accordance with this Charter.

2.1 Functions of the Board

- 2.1.1 The formulation of a closure management plan and strategy for closure of the Highbury Landfill Site by the Authority.
- 2.1.2 The provision of professional input and direction to the Authority.
- 2.1.3 To monitor, oversee and measure the performance of the Manager.
- 2.1.4 To assist in the development of an environmentally sound and economical solution to the closure of the Highbury Landfill Site.
- 2.1.5 To exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of other persons.

2.2 Membership of the Board

- 2.2.1 The Board shall consist of three members being one person appointed by each Constituent Council;
- 2.2.2 A Board Member shall be appointed for a term not exceeding three years specified in the instrument of appointment and at the expiration of the term of office will be eligible for re-appointment.
- 2.2.3 The office of a member of the Board will become vacant in accordance with Clause 20(3) of Schedule 2 of the Act.
- 2.2.4 Board Members shall be eligible for such allowances from the funds of the Authority as the Board shall determine from time to time.
- 2.2.5 Each Constituent Council may appoint a deputy Board Member to act in place of that Constituent Council's appointed Board Member.
- 2.2.6 Any other conditions of appointment for Board Members will be determined by the Board, subject to the agreement of the Constituent Councils.
- 2.2.7 In the absence of the Board Member, a deputy Board Member will be deemed to be the Board Member and can exercise all of the rights, privileges and obligations of the Board Member during the absence of that Board Member.

2.3 Propriety of Members of the Board

The Board Members are not required to comply with Division 2, Chapter 5 (Register of Interests) of the Act.

2.4 Chair of the Board

- 2.4.1 The Board shall elect a Chair from amongst the Members for a term and upon any conditions determined by the Board.
- 2.4.2 The Chair shall preside at all meetings of the Board and, in the event of the Chair being absent from a meeting, the members present shall appoint a member from amongst them, who shall preside for that meeting or until the Chair is present.

2.5 Meetings of the Board

- 2.5.1 The Board must determine procedures to apply at or in relation to its meetings provided that such procedures may not be inconsistent with any provisions of this Charter.
- 2.5.2 Ordinary meeting of the Board must take place at such times and places as may be fixed by the Board or the Manager of the Authority from time to time. There shall be at least one ordinary meeting of the Board held every six months.
- 2.5.3 Notice of ordinary meetings of the Board must be given by the Manager to each Board Member and to each Constituent Council not less than 7 clear days prior to the holding of the meeting and shall be accompanied by the agenda for the meeting and any written reports.
- 2.5.4 For the purposes of this sub-clause, the contemporary linking together by telephone, audio-visual, video-conferencing or other instantaneous means ('telecommunications meeting') of a number of the members of the Board is deemed to constitute a meeting of the Board provided that:
 - 2.5.4.1 at least a quorum is present;
 - 2.5.4.2 notice of the telecommunications meeting is given to all Board Members in the manner determined by the Board for that purpose; and
 - 2.5.4.3 each participating Board Member is capable of communicating with every other participating Board Member during the telecommunications meeting.
- 2.5.5 Each of the Board members taking part in the telecommunications meeting, must at all times during the telecommunications meeting be able to hear and be heard by each of the other Board Members present. At the commencement of the meeting, each Board Member must announce his/her presence to all other Board Members taking part in the meeting. A Board Member must not leave a telecommunications meeting by disconnecting his/her telephone, audiovisual or other communication equipment, unless that Board Member has previously notified the Chair of the meeting.
- 2.5.6 The Board may make decisions outside of a formally constituted meeting as follows: A proposed resolution in writing and given to all Board Members in accordance with procedures determined by the Board will be a valid decision of the Board where a majority of Board Members vote in favour of the resolution by signing and returning the resolution to the Manager or otherwise giving written notice of their consent and setting out the terms of the resolution to the Manager. The resolution shall thereupon be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held.
- 2.5.7 Any Constituent Council or Board Member may by delivering written notice to the Manager of the Authority require a special meeting of the Board to be held. The request for special meeting and the obligations upon the Manager in respect of notifying Board Members are the same as those applying to a chief executive officer of a council in relation to special council meetings called under the Act.
- 2.5.8 The quorum for any meeting of the Board is two (2) Board Members.
- 2.5.9 Every Board Member, including the Chair, shall have a deliberative vote. The Chair shall not in the event of an equality of votes have a casting vote.
- 2.5.10 All matters will be decided by a majority of votes of the Board Members present.
- 2.5.11 Subject to any provision of the Act to the contrary, all Board Members present at a meeting shall vote on each item for decision at the meeting.
- 2.5.12 All Board Members must keep confidential all documents and any information provided to them for their consideration prior to a meeting of the Board.
- 2.5.13 Subject to this Clause, meetings of the Board must be conducted in a place open to the public.
 - 2.5.13.1 In accordance with Clauses 2.5.4 and 2.5.5, the place may be an electronic place, provided that (subject to Clause

- 2.5.13.2) members of the public can hear the discussion between all Board Members.
- 2.5.13.2 The Board may order that the public be excluded from attendance at any meeting in accordance with the procedure set out in Section 90(2) - 90(3) of the Act.
- 2.5.13.3 If the Board makes an order under Clause 2.5.13.2, the making of the order, the grounds on which the order was made, the basis on which the information or matter to which the order relates falls within the ambit of each ground upon which the order was made and, if relevant, the reasons the receipt, consideration or discussion of information or the matter in a meeting open to the public would be contrary to the public interest must be included in the minutes.
- 2.5.14 The Manager must cause minutes to be kept of the proceedings at every meeting of the Board and ensure that the minutes are presented to the next ordinary meeting of the Board for confirmation.
- 2.5.15 Subject to Clause 2.5.17, a person is entitled to inspect, at place or on a website determined by the Chief Executive Officers of the Constituent Councils, without payment of a fee:
- 2.5.15.1 minutes of a Board meeting;
- 2.5.15.2 reports, attachments and recommendations to the Board, received at a meeting of the Board.
- 2.5.16 Subject to Clause 2.5.17, a person is entitled, upon payment of a fee fixed by the Board, to obtain a copy of any document available for inspection under Clause 2.5.15.
- 2.5.17 Clauses 2.5.15 and 2.5.16 do not apply in relation to a document or part of a document if:
- 2.5.17.1 the document or part of the document relates to a matter dealt with by the Board during a part of a meeting of the Board to which the public have been excluded in accordance with Clause 2.5.13.2; and
- 2.5.17.2 the Board orders that the document or part of the document be kept confidential.
- 2.5.18 If the Board makes an order under Clause 2.5.17.2, the Board must specify the duration of the order or the circumstances in which the order will cease to apply, or a period after which the order must be reviewed.
- 2.5.19 Each member of the Board and each Constituent Council must be supplied with a copy of all minutes of the proceedings of the meeting within five (5) days after that meeting.

3. Staffing Issues

- 3.1 The Board must appoint a Manager of the Authority who has expertise in environmental management and/or waste operations and business to manage the business of the Authority on terms agreed between the Manager and the Board. The Manager may be a natural person or a body corporate.
- 3.2 The Manager is responsible to the Board for the execution of all decisions made by the Board and for the efficient and effective management of the Authority.
- 3.3 The Manager is subject to the same legislative responsibilities and duties as a chief executive officer of a council including but not limited to those matters set out at Parts 1 and 3 of Chapter 7 of the Act.
- 3.4 The Manager may be, but need not be, an employee of the Authority.

4. Management

4.1 Financial Management

- 4.1.1 The Authority shall keep proper books of account in accordance with the requirements of the *Local Government (Financial Management) Regulations 2011*;
- 4.1.2 The Authority's books of account must be available for inspection by any Board Member or authorised representative of any Constituent Council at any reasonable time on request;
- 4.1.3 The Authority must establish and maintain a bank account with such banking facilities and at a bank to be determined by the Board;
- 4.1.4 Any payments made by Electronic Funds Transfer must be made in accordance with procedures which have received the prior written approval of the Auditor.
- 4.1.5 The Manager must act prudently in the handling of all financial transactions for the Authority and must provide quarterly financial and corporate reports to the Board and, if requested, the Constituent Councils.

4.2 Audit

- 4.2.1 The Authority shall appoint an auditor in accordance with the *Local Government (Financial Management) Regulations 2011*, on terms and conditions set by the Board;
- 4.2.2 The Auditor will have the same powers and responsibilities as set out in the Act, in relation to a council;
- 4.2.3 The audit of Financial Statements of the Authority, together with the accompanying report from the Auditor, shall be submitted to both the Board and the Constituent Councils;
- 4.2.4 The books of account and financial statements shall be audited at least once per year.

4.3 Audit Committee

- 4.3.1 The Authority is required to establish an audit committee to be comprised of three (3) persons nominated by the Authority and approved by the Constituent Councils.
- 4.3.2 The members of the Audit Committee:
- 4.3.2.1 must include at least one (1) person who is not a Board Member and who is determined by the Constituent Councils to have financial experience relevant to the functions of the Audit Committee; and
- 4.3.2.2 may include members who are members of a Constituent Council; and
- 4.3.2.3 must not include a Constituent Council's auditor under Section 128 of the Act or the auditor of the Authority.

4.4 Business Plan

The Authority:

- 4.4.1 must in consultation with the Constituent Councils prepare and adopt a Business Plan which will continue in force for the period specified in the Business Plan or until the earlier adoption by the Authority of the new Business Plan;
- 4.4.2 shall ensure the Business Plan links the closure of the Highbury Landfill Site to strategic, operational and organisational requirements with supporting financial projections setting out the estimates of revenue and expenditure as necessary for the

period;

- 4.4.3 must in consultation with the Constituent Councils review the Business Plan annually and following such a review the Business Plan shall continue to operate for the period for which the Business Plan was adopted pursuant to clause 4.4.1;
- 4.4.4 in preparing and subsequently reviewing the Business Plan have regard to and where appropriate integrate the requirements of the Authority's Risk Review plan (as adopted by the Board from time-to-time);
- 4.4.5 may, after consultation with the Constituent Councils amend its Business Plan at any time; and
- 4.4.6 must ensure the contents of the Business Plan is in accordance with the Act and may include or set out other matters deemed appropriate by the Authority.

4.5 Annual Budget

- 4.5.1 The Authority shall, must 31 May but before the end of June in each Financial Year, prepare and adopt an annual budget for the ensuing Financial Year in accordance with the Act;
- 4.5.2 The proposed annual budget must be referred to Constituent Councils at the same time as the Manager submits it to the Board Members. The proposed annual budget must be approved by the majority of the Constituent Councils prior to adoption by the Board;
- 4.5.3 The Authority must provide a copy of its annual budget to the Constituent Councils within five business days after adoption by the Board;
- 4.5.4 The Authority must review its budget in accordance with the *Local Government (Financial Management) Regulations 2011* and copies of the review report and decision of the Authority in respect of the review must be provided to the Constituent Councils within five days of the Board meeting to which the report was presented.

4.6 Reporting

- 4.6.1 The Authority must submit to the Constituent Councils by 30 September in each year in respect of the immediately preceding Financial Year, a report on the work and operations of the Authority detailing achievement of the aims and objectives of its Business Plan and incorporating the audited financial statements of the Authority and any other information or reports as required by the Constituent Councils;
- 4.6.2 The Board shall present a balance sheet and full financial report to the Constituent Councils at the end of each financial year;
- 4.6.3 The Board shall present the audited financial statements to the Constituent Councils in accordance with the requirements of the *Local Government (Financial Management) Regulations 2011*.

4.7 Financial Contributions

- 4.7.1 The Constituent Councils will contribute funds to the Authority as set out in the Budget adopted by the Authority and approved by the Constituent Councils.
- 4.7.2 The Constituent Councils may agree collectively or individually to provide the Authority with additional funds and/or in kind contributions at any time on such terms and conditions, if any, as determined by the relevant Constituent Council(s).

5. Miscellaneous

5.1 Equitable Share

- 5.1.1 Each of the Constituent Councils will have an equity share in the Authority as set out in the table contained at Schedule 1 to this Charter.
- 5.1.2 In the event of the Authority's insolvency, the Constituent Councils are responsible for the liabilities of the Authority in proportion to the equity share of the Constituent Councils in the Financial Year of the insolvency event.

5.2 Withdrawal

- 5.2.1 The withdrawal of either Constituent Council will result in the Authority being wound up pursuant to clause 5.4 and Part 2 of Schedule 2 to the Act.
- 5.2.2 The withdrawal of any Constituent Council does not extinguish the liability of that Constituent Council for the payment of its contribution towards any actual or contingent deficiency in the net assets of the Authority at the end of each Financial Year until the Authority is dissolved or wound up.
- 5.2.3 The withdrawal of any Constituent Council does not extinguish the liability of the withdrawing Constituent Council to contribute to any liability in respect of the Highbury Landfill Site.
- 5.2.4 The guarantee for any liability incurred or assumed by a Constituent Council survives the withdrawal by the Constituent Council.

5.3 Insurance and Superannuation Requirements

- 5.3.1 The Authority shall register with the Local Government Mutual Liability Scheme and comply with the rules of the Scheme.
- 5.3.2 The Authority shall advise the Local Government Risk Services of its insurance requirements relating to Local Government Special Risks including land, contamination, buildings, structures, vehicles and equipment under the management, care and control of the Authority.
- 5.3.3 Where the Authority has employees it shall register with the Statewide Super and the Local Government Workers Compensation Scheme and comply with the rules of the Scheme.

5.4 Winding Up

- 5.4.1 The Authority may be wound up in accordance with the Act and will be wound up where a Constituent Council seeks to withdraw from the Authority.
- 5.4.2 On winding up of the Authority, the surplus assets or liabilities of the Authority, as the case may be, shall be distributed between or become the responsibility of the Constituent Councils in the proportions of their equitable interest in accordance with Schedule 1.
- 5.4.3 If there are insufficient funds to pay all expenses due by the Authority on winding up, a levy shall be imposed on all Constituent Councils in proportion to the equity share of the Constituent Councils in the Financial Year prior to the passing of the resolution to wind up.

5.5 Non-derogation and Direction by Constituent Councils

- 5.5.1 The establishment of the Authority does not derogate from the power of any of the Constituent Councils to act

independently in relation to a matter within the jurisdiction of the Authority.

- 5.5.2 Provided that the Constituent Councils have all first agreed as to the action to be taken, the Constituent Councils may jointly direct and control the Authority by resolution passed by all Constituent Councils in the same or similar terms.
- 5.5.3 Where the Authority is required pursuant to the Act or this Charter to obtain the approval of one (1) or more of the Constituent Councils that approval must only be granted by a resolution passed by the Constituent Council or Constituent Councils granting such approval.
- 5.5.4 Unless otherwise stated in this Charter where the Authority is required to obtain the approval of all of the Constituent Councils this means the approval of all of the Constituent Councils expressed in the same or similar terms.
- 5.5.5 For the purpose of this clause, any direction given or approval granted by one (1) or more Constituent Councils must be communicated by notice in writing provided to the Manager of the Authority together with a copy of the relevant resolutions of the Constituent Councils.

5.6 *Review of Charter*

- 5.6.1 The Authority must review this Charter at least once in every four (4) years in accordance with the Act.
- 5.6.2 This Charter may be amended with the approval of all of the Constituent Councils.
- 5.6.3 Before the Constituent Councils vote on a proposal to alter this Charter, they must take into account any recommendation of the Board.
- 5.6.4 The Manager must:
 - 5.6.4.1 furnish a copy of the Charter, as amended, to the Minister;
 - 5.6.4.2 ensure that a copy of the Charter, as amended, is published on a website (or websites) determined by the Chief Executive Officers of the Constituent Councils; and
 - 5.6.4.3 ensure that a notice of the fact of the amendment and a website address at which the Charter is available for inspection is published in the Gazette.

5.7 *Dispute Resolution*

About this clause:

- 5.7.1 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.
- 5.7.2 The Authority and a Constituent Council must continue to observe and perform this Charter despite the application or operation of this clause.
- 5.7.3 This clause does not prejudice the right of a party:
 - 5.7.3.1 to require the continuing observance and performance of this Charter by all parties; or
 - 5.7.3.2 to institute proceedings to enforce payment due under this Charter or to seek injunctive relief to prevent immediate and irreparable harm.
- 5.7.4 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.

Step 1: Notice of dispute:

- 5.7.5 A party to the dispute must promptly notify each other party to the dispute:
 - 5.7.5.1 The nature of the dispute, giving reasonable details; and
 - 5.7.5.2 what action (if any) the party giving notice thinks will resolve the dispute,
 but a failure to give such notice does not entitle any other party to damages.

Step 2: Meeting of the parties:

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

Step 3: Mediation:

- 5.7.6 Despite whether any previous step was taken, a dispute not resolved within 30 days must be referred to mediation.
- 5.7.7 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).
- 5.7.8 The role of a mediator is to assist in negotiating a resolution of a dispute. A mediator may not make a decision binding on a party unless that party has so agreed in writing.
- 5.7.9 The mediation must take place in a location in Adelaide agreed by the parties.
- 5.7.10 A party in dispute must cooperate in arranging and expediting mediation.
- 5.7.11 A party in dispute must send to the mediation a senior manager with authority to resolve the dispute.
- 5.7.12 The mediator may exclude lawyers acting for the parties in dispute and may co-opt expert assistance as the mediator thinks fit.
- 5.7.13 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.

- 5.7.14 Unless otherwise agreed in writing;
- 5.7.14.1 everything that occurs before the mediator is in confidence and in closed session;
- 5.7.14.2 discussions (including admissions and concessions) are without prejudice and may not be called into evidence in any subsequent litigation by a party;
- 5.7.14.3 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;
- 5.7.14.4 the parties in dispute must report back to the mediator within 14 business days on actions taken, based on the outcome of the mediation;
- 5.7.14.5 a party in dispute need not spend more than one day in mediation for a matter under dispute; and
- 5.7.14.6 a party in dispute must bear an equal share of the costs and expenses of the mediator and otherwise bears their own costs.

Step 4: Arbitration:

- 5.7.15 Despite whether any previous step was taken, a dispute not resolved within 60 days must be referred to arbitration, as to which:
- 5.7.15.1 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 Resolution Institute;
- 5.7.15.2 the role of the arbitrator is to resolve the dispute and make decisions binding on the parties;
- 5.7.15.3 the arbitration must take place in an agreed location in Adelaide;
- 5.7.15.4 a party must cooperate in arranging and expediting arbitration;
- 5.7.15.5 a party must send to the arbitration a senior manager with authority to resolve the dispute; and
- 5.7.15.6 the parties may provide evidence and given written and verbal submissions to the arbitrator within the time set by the arbitrator;
- 5.7.16 The arbitrator must:
- 5.7.16.1 decide the dispute; and
- 5.7.16.2 give written reasons to each party.
- 5.7.17 Subject to a provision of this Charter to the contrary, the arbitration must take place under Resolution Institute Arbitration Rules and the provisions of the Commercial Arbitration Act 2011 (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.
- 5.7.18 The costs and expenses of the arbitrator and of each party must be borne as the arbitrator decides.

5.8 Common Seal

- 5.8.1 The Authority will have a common seal, which may be affixed to documents requiring execution under seal and where affixed must be witnessed by the Chair of the Board and the Manager.
- 5.8.2 The common seal must not be affixed to a document except to give effect to a resolution of the Board.
- 5.8.3 The Manager must maintain a register which records the resolutions of the Board giving authority to affix the common seal and details of the documents to which the common seal has been affixed with the particulars of persons who witnessed the fixing of the seal and the date that the seal was affixed.
- 5.8.4 The Board may by instrument under seal authorise a person to execute documents on behalf of the Authority.

5.9 Circumstances Not Provided For

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

SCHEDULE 1

Constituent Council	Equity Share	%
City of Burnside.....	50.406	
City of Norwood, Payneham & St Peters.....	40.357	
Corporation of Town of Walkerville.....	9.237	
	Total	100

11.10 NOMINATIONS TO EXTERNAL BODIES – SOUTH AUSTRALIAN PUBLIC HEALTH COUNCIL & PREMIER’S CLIMATE CHANGE COUNCIL

REPORT AUTHOR: Executive Assistant, Governance & Civic Affairs
GENERAL MANAGER: General Manager, Governance & Civic Affairs
CONTACT NUMBER: 8366 4549
FILE REFERENCE: qA2219
ATTACHMENTS: A - B

PURPOSE OF REPORT

The purpose of the report is to advise the Council of the call for nominations by the Local Government Association of South Australia (LGA) for appointment to the following bodies:

1. South Australian Public Health Council; and
2. Premier’s Climate Change Council.

Details relating to these appointments are set out below.

South Australian Public Health Council

The South Australian Public Health Council (SAPHC) is established pursuant to the *South Australian Public Health Act 2011*. The role of the SAPHC is to:

- (a) assist and advise the Chief Public Health Officer in relation to:
 - i. the protection and promotion of public health;
 - ii. the development and maintenance of a system of strategic planning for public health at the local, regional and State-wide levels;
 - iii. the development of health plans under this Act;
 - iv. strategies to ensure that a sufficiently trained and skilled workforce is in place for the purposes of this Act;
 - v. programs to promote public health research in the State;
 - vi. the preparation of the biennial report under Division 2; and the setting of standards and qualifications for authorised officers; and
- (b) any other functions assigned to the South Australian Public Health Council (SAPHC) by this or any other Act or by the Minister or the Chief Public Health Officer.

Meetings are held at the offices of SA Public Health which are located in Hindmarsh Square, Adelaide and Members must attend at least four (4) meetings a year. Sitting Fees of \$206 per meeting are applicable.

A copy of the Selection Criteria and Nomination Form is contained within **Attachment A**.

Premier’s Climate Change Council

The Premier’s Climate Change Council (PCCC) is a state-level committee established under the *Climate Change and Greenhouse Emissions Reduction Act 2007*.

The PCCC is made up of representatives from State Government, business, environment and conservation, the scientific community and other sectors, including Local Government.

The primary function of the PCCC’s is to provide independent advice to the Minister for Environment and Water on reducing greenhouse gas emissions and adapting to climate change, including advice on how to achieve energy efficiencies, increasing the use of renewable energy, developing methods to remove greenhouse gases from the atmosphere and establishing and achieving relevant targets.

The LGA is seeking nominations to fill a position on the PCCC for a three (3) year term commencing in July 2023.

There is one LGA nominated position on the PCCC currently held by former Lord Mayor Sandy Verschoor. Following the 2022 Local Government elections Ms Verschoor is not eligible for reappointment.

Nominees must be able to demonstrate an understanding of the issues and impacts associated with climate change. and must attend five (5) meetings per year.

Meetings are held at the Department of Energy and Water, located at 81-95 Waymouth Street, Adelaide with meetings currently proposed to be held on the following dates and times:

- Tuesday 11 July 2023, 2.00pm-5.00pm;
- Tuesday 19 September 2023, 9.00am-12.00pm; and
- Tuesday 5 December 2023, 9.00am-12.00pm.

Sitting fees are applicable (subject to qualifications).

A copy of the Selection Criteria and Nomination Form is contained within **Attachment B**.

RELEVANT POLICIES & STRATEGIC DIRECTIONS

Not Applicable.

RECOMMENDATION – SOUTH AUSTRALIAN PUBLIC HEALTH COUNCIL

1. The Council notes the report and declines the invitation to submit a nomination to the Local Government Association for the South Australian Public Health Council.

or

2. The Council nominates _____ to the Local Government Association for the South Australian Public Health Council.

RECOMMENDATION – PREMIER’S CLIMATE CHANGE COUNCIL

1. The Council notes the report and declines the invitation to submit a nomination to the Local Government Association for the Premier’s Climate Change Council.

or

2. The Council nominates _____ to the Local Government Association for the Premier’s Climate Change Council.

Attachments – Item 11.10

Attachment A

**Nominations to External Bodies –
South Australian Public Health Council & Premier’s Climate Change Council**



City of
**Norwood
Payneham
& St Peters**

PART A

LGA Appointments and Nominations to Outside Bodies — Call for Nominations

South Australian Public Health Council	
Governing Statute (if applicable)	Section 27(1)(b)(i) South Australian Public Health Act 2011
Purpose/Objective	<p>To assist and advise the Chief Public Health Officer in relation to:</p> <ul style="list-style-type: none"> (i) protection and promotion of public health (ii) the development and maintenance of a system of strategic planning for public health at the local, regional and State-wide levels, (iii) the development of health plans, (iv) strategies to ensure that a sufficiently trained and skilled workforce is in place (v) programs to promote public health research in the State (vi) the preparation of the biennial report (vii) setting standards and qualifications for authorised officers.
Administrative Details	<p>Four meetings held per year at SA Public Health head office</p> <p>Sitting fee of \$206 / session</p>
Selection Criteria (to be addressed by applicant)	<ul style="list-style-type: none"> • Local government knowledge and experience • Demonstrated experience in 2 or more aspects of the purposes (<i>listed above</i>)
<p>Liability and indemnity cover</p> <p><i>The LGA requires that persons appointed to Outside Bodies be appropriately insured throughout the period of their appointment and seeks to collect details of the insurances provided by the Outside Body on an annual basis.</i></p>	
<p>For more information contact: LGA Nominations Coordinator at nominationscoordinator@lga.sa.gov.au or 8224 2000</p>	

Attachment B

**Nominations to External Bodies –
South Australian Public Health Council & Premier’s Climate Change Council**



City of
**Norwood
Payneham
& St Peters**

LGA Appointments and Nominations to Outside Bodies — Call for Nominations

Premier's Climate Change Council	
Governing Statute (if applicable)	Section 9(2)(b) and 9(4) Climate Change and Greenhouse Emissions Reduction Act 2007
Purpose/Objective	To provide independent advice to the Minister for Environment and Water on reducing greenhouse gas emissions and adapting to climate change, including by achieving energy efficiencies, increasing the use of renewable energy, developing methods to remove greenhouse gases from the atmosphere and establishing and achieving relevant targets.
Administrative Details	<ul style="list-style-type: none"> 5 meetings per year at the DEW Office – 81-95 Waymouth Street, Adelaide Relevant meeting dates are currently proposed for: <ul style="list-style-type: none"> Tuesday 11 July 2-5pm Tuesday 19 September 9-12pm Tuesday 5 December 9-12pm <ul style="list-style-type: none"> Sitting fees \$12,383 p.a (subject to qualifications) Up to 3-year term
Selection Criteria (to be addressed by applicant)	<ul style="list-style-type: none"> Local government knowledge and experience Minister should seek to appoint persons who can demonstrate <ol style="list-style-type: none"> a) a commitment to action to address climate change, and b) an understanding of the issues and impacts associated with climate change. (9(3)). Must include a statement about your interest and experience in climate change
<p>Liability and indemnity cover</p> <p><i>The LGA requires that persons appointed to Outside Bodies be appropriately insured throughout the period of their appointment and seeks to collect details of the insurances provided by the Outside Body on an annual basis.</i></p>	
<p>For more information contact: LGA Nominations Coordinator at nominationscoordinator@lga.sa.gov.au or 8224 2000</p>	



This fact sheet is an excerpt on the role and function of the Premier's Climate Change from Division 2 of the *Climate Change and Greenhouse Emissions Reduction Act 2007*.

Division 2—Premier's Climate Change Council

9 - Premier's Climate Change Council

(1) The *Premier's Climate Change Council* is established.

(2) The Council will consist of at least 7 and not more than 10 members appointed by the Minister with a view to obtaining a reasonable range of persons from across the following sectors and a balance of expertise that is relevant to addressing or adapting to climate change:

- (a) the State Government;
- (b) the local government sector;
- (c) the business community;
- (d) the environment and conservation sector;
- (e) the scientific community;
- (f) other sectors of the State's community more generally.

(3) The Minister should seek to appoint persons who can demonstrate—

- (a) a commitment to action to address climate change; and
- (b) an understanding of the issues and impacts associated with climate change.

(4) The Minister should consult with the Local Government Association of South Australia before making an appointment for the purposes of subsection (2)(b).

(5) The Minister should consult with the Conservation Council of South Australia before making an appointment for the purposes of subsection (2)(d).

(6) At least 1 member of the Council must be a woman and at least 1 member must be a man.

10 - Conditions of membership

(1) A member of the Council will be appointed on conditions determined by the Minister for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of office, is eligible for reappointment.

(2) The Minister may remove a member of the Council from office—

- (a) for breach of, or non-compliance with, a condition of appointment; or
- (b) for failing to carry out duties of office satisfactorily; or
- (c) for neglect of duty; or
- (d) for misconduct.

(3) The office of a member of the Council becomes vacant if the member—

- (a) dies; or
- (b) completes a term of office and is not reappointed; or
- (c) resigns by written notice to the Minister; or
- (d) is removed from office under subsection (2).

(4) A member of the Council is entitled to fees, allowances and expenses determined by the Minister (subject to the qualification that a person appointed for the purposes of subsection (2)(a) will not be entitled to receive a sitting fee).

11 - Functions of Council

- (1) The primary function of the Council is to provide independent advice to the Minister about matters associated with reducing greenhouse gas emissions and adapting to climate change, including by achieving energy efficiencies, increasing the use of renewable energy, developing methods to remove greenhouse gases from the atmosphere, and establishing and achieving relevant targets.
- (2) The Council has other functions conferred by the Minister.
- (3) In the performance of its functions, the Council should seek—
- (a) to provide advice to the Minister on—
 - (i) the impact of climate change on business and the wider community, and the development or implementation of policies or programs relevant to addressing climate change, including by the initiation of specific projects and plans; and
 - (ii) the impact of the operation and implementation of this Act on business and the wider community and, as appropriate, any amendments to relevant legislation (including this Act) that, in the opinion of the Council, should be considered or promoted by the Minister; and
 - (iii) costs associated with reducing or limiting climate change or greenhouse gas emissions, or with mitigating the effects of climate change or greenhouse gas emissions; and
 - (iv) costs associated with failing to take action to address climate change; and
 - (v) commercial or other opportunities associated with climate change or reducing or limiting greenhouse gas emissions, with mitigating the effects of climate change or greenhouse gas emissions or with increasing the use of renewable energy sources; and
 - (vi) the effectiveness of any determination or target under section 5, and the need to revise any such determination or target; and
 - (vii) any other matter on which the Minister requests the advice of the Council; and
 - (b) to take a leadership role in consulting with business, the environment and conservation movement and the wider community about issues associated with climate change and to assist in disseminating information to business and other groups in order to encourage the implementation of practices that will assist in addressing climate change or adapting to the effects of climate change.
- (4) The following requirements apply in connection with the operation of paragraph (a) of subsection (3):
- (a) any advice to the Minister under that paragraph must be provided or confirmed by the Council by instrument in writing;
 - (b) the Minister must, within 6 sitting days after the end of each quarter, cause a copy of any instrument received under paragraph (a) of this subsection during the quarter to be laid before both Houses of Parliament;
 - (c) the Minister must ensure that any instrument tabled under paragraph (b) is accompanied by a statement from the Minister in which the Minister sets out the extent to which the Minister has acted on the relevant advice, or intends to act on the relevant advice and, to the extent that it is not accepted, the reasons why not.

12 - Procedure at meetings

(1) A member appointed by the Minister as the presiding member of the Council will preside at a meeting of the Council or, in the absence of that member, a member chosen by those present will preside.

(2) A majority of the members of the Council constitute a quorum of the Council.

(3) Subject to any direction of the Minister, the Council may determine its own procedures.

13 - Annual report

(1) The Council must, on or before 31 October in each year, provide to the Minister a report on its activities for the financial year ending on the preceding 30 June.

(2) The Minister must cause a copy of the report to be laid before both Houses of Parliament within 6 sitting days after the report is provided to the Minister.

For the full *Climate Change and Greenhouse Emissions Act 2007* visit
<https://www.legislation.sa.gov.au/LZ/C/A/CLIMATE%20CHANGE%20AND%20GREENHOUSE%20EMISSIONS%20REDUCTION%20ACT%202007.aspx>

Contact

Premier's Climate Change Council
Martin Haese, Chair
c/- Tania Panfilo (Senior Policy Officer/Secretariat)

Climate Change, Coast and Marine Branch
Department for Environment and Water

GPO Box 1047, Adelaide SA 5001

Phone: (08) 8463 4434

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<http://www.environment.sa.gov.au/climatechange>

11.11 ERA WATER – DRAFT WATER SUPPLY DURING PERIODS OF CONSTRAINED SUPPLY POLICY

REPORT AUTHOR: Chief Executive Officer
GENERAL MANAGER: Not Applicable
CONTACT NUMBER: 8366 4539
FILE REFERENCE: qA111245
ATTACHMENTS: A

PURPOSE OF REPORT

The purpose of this report is to advise and seek the Council's approval of a draft Policy which has been prepared by ERA Water regarding the supply of water during periods of constrained supply.

BACKGROUND

ERA Water is a Regional Subsidiary which has been established pursuant to the provisions of Section 43 of the *Local Government Act 1999*. ERA Water is responsible for the operation of a stormwater reuse scheme on behalf of the Constituent Councils, which involves the harvesting and distribution of recycled stormwater to irrigate Council parks and reserves, ovals and other areas of privately controlled open spaces in the eastern suburbs.

The Constituent Councils of ERA Water are the Cities of Burnside, Norwood Payneham & St Peters and the Town of Walkerville.

ERA Water has advised that at its meeting held on 3 November 2022, the ERA Water Board considered a draft Policy titled "*Water Supply During Periods of Constrained Supply*" and resolved to circulate the draft to its Constituent Councils and the ERA Water Audit Committee for consultation prior to formally adopting the draft Policy.

The need for this Policy has arisen from discussions which the Board has held regarding the supply of water to Constituent Councils and third-party customers, when the supply of water may be constrained (for example, as a result of an extended period of drought which limits the harvesting of stormwater and injection into the aquifer and as a consequence a reduced "water balance" held in storage in the aquifer).

The draft Policy reflects the provisions of the ERA Water Charter, the supply agreements which have been entered into with Constituent Councils and the supply contracts with third-party customers.

A copy of the draft Policy is contained in **Attachment A**.

DISCUSSION

The Objects and Purposes contained in the ERA Water Charter contain the following provisions:

- *Clause 1.8.2 – To develop, implement, oversee and manage practical solutions to provide water supply diversity within and outside the Region;*
- *Clause 1.8.3 – To supply water to the Constituent Councils and other persons for irrigation purposes within and outside the Region except that priority shall be given to the supply of water for irrigation within the Region.*

As such, the Objects and Purposes contained in the Charter, prioritise the supply of water within the Region of the three (3) Constituent Council areas, however, the Board has advised that these provisions do not specify that the Constituent Councils are prioritised as users. To this end, priority is given to all users that are located within the "region" – namely the Constituent Council areas. However, the Charter is silent in respect to the allocation of water and the respective prioritisation of third-party customers.

The Sales Agreement with each of the Constituent Councils includes the following provisions:

“The ERA Water Board additionally resolved that if ERA Water offers, in aggregate to all Constituent Councils, 204.7ML of water or more for sale in a financial year and there are sufficient operational connections to enable such quantities of water to be delivered to the Constituent Councils, then the Constituent Councils take or pay obligation for their share of 204.7ML of water comes into force. If ERA Water is able to offer less than 204.7ML of water in the irrigation season, no take or pay obligation arises for the financial year, but each Constituent Council is entitled to its proportionate share of the water that is available in that financial year.”

As such, in accordance with this Agreement, if ERA Water is unable to supply 204.7ML of water in a given year, allocations to the Constituent Councils are proportionally reduced in line with each Constituent Councils’ proportion of the total volume of water which is allocated to each Constituent Council. In this respect, by way of background, each Constituent Council has agreed to purchase a minimum volume of water and this is charged and paid for by each Constituent Council on a “take or pay” basis. That is whether a Constituent Council uses the allocated volume of water, it is required to pay for the volume of water which has been allocated to the respective Council.

The Board has advised that notwithstanding the above, there is no provision in the Agreement which deals with a situation where total Constituent Council demand (in excess of the agreed “take or pay” volumes) exceeds the volume able to be supplied by ERA Water.

In respect to third-party customers, in addition to the provisions of the Charter, there is a policy overlay which is reflected in contracts which have been entered into with third-parties that prioritise the supply of water to the three (3) Constituent Councils, consistent with the intent of the Charter.

To this end, Clause 4.4 of the Contract which is entered into with Third-party customers provides that:

Clause 4.4 – Notwithstanding any other provision of this contract, it is acknowledged and agreed that:

- 4.4.1 ERA Water make no commitments, guarantees or representations that ERA Water will supply you with the contracted volume in any particular calendar year;*
- 4.4.2 ERA Water will supply you with as much recycled water up to the contracted volume as may be available to us for such supply from time-to-time, first taking into account volumes of water (ERA Water) have harvested and are available for supply, the supply requirements of our Constituent Councils and the supply requirements of other contracted parties.*

The contracts with Third-party customers also include a clause with a formula setting out how reduced water supply will be applied to third-party customers.

In short, the Third-party contracts, prioritise the supply of water to Constituent Councils. As such, the Board has advised that it could be interpreted that the third-party contracts infer no restriction on the supply of water to Constituent Councils, however, this is counter-balanced by the Agreements with Constituent Councils providing for the eventuality of restriction of supply to Constituent Councils.

To address this complicated issue, the Board has prepared a draft policy which seeks to reflect the intent of the Charter, the Agreements with Constituent Councils and third-party contracts, to reinforce the principle of prioritisation of water supply to Constituent Councils, whilst acknowledging the financial benefits of supply to third-party customers. The draft Policy also seeks to provide guidance on the retention and use of water “reserves” in such circumstances.

The water balance available to ERA Water at the end of the 2021-2022 financial year was 525ML.

ERA Water have advised that the draft Policy should be considered as an interim policy which will be reviewed within 12 months of its adoption by the Board as this will enable the outcomes of the current ERA Water Scheme Enhancement Options Project to be taken into consideration when the Policy is reviewed.

The draft Policy has been reviewed by Council staff and it is considered that the draft Policy addresses the concerns/issues which have been raised by ERA Water.

In particular, the draft Policy provides clear guidance to the Board in respect to “water balance” and seeks to provide certainty to both Constituent Councils and third-party customers without compromising the volume of water which is retained in the aquifer.

The draft Policy also clarifies the issue of prioritisation and to this end prioritises the supply of water to Constituent Councils (ie. 204.7ML).

It is therefore recommended that ERA Water be advised, that the Council has considered and approves the draft Water Supply During Periods of Constrained Supply Policy.

RELEVANT POLICIES & STRATEGIC DIRECTIONS

Not Applicable.

FINANCIAL AND BUDGET IMPLICATIONS

Not Applicable.

RECOMMENDATION

That ERA Water be advised that the Council has considered the draft Water Supply During Periods of Constrained Supply Policy and approves the draft Policy.

Attachments – Item 11.11

Attachment A

ERA Water Draft Water Supply During Periods of Constrained Supply Policy

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City of
Norwood
Payneham
& St Peters



Policy Name	Water Supply During Periods of Constrained Supply
Policy Number	13
Date Last Adopted	
Date of Next Review	December 2023
Applicable Legislation/Policy	ERA Water Charter ERA Water Strategic Plan 2022-2025

BACKGROUND

ERA Water supplies recycled water to Constituent Councils and to Third Parties under agreements and contracts. The ERA Water Charter provides under the Charter Objects and Purposes for ERA Water :

1.8.3 to supply water to the Constituent Councils and other persons for irrigation purposes within and outside the Region except that priority shall be given to the supply of water for irrigation within the Region.

In addition, the supply Agreements with Constituent Councils and supply contracts with third party customers include provisions for reduction of contracted water supply volumes when ERA Water is unable to supply the contracted volumes. In particular, the third party supply contracts prioritise water supply to Constituent Councils in such circumstances.

This policy builds on the Charter, Agreements and contracts provisions to provide a framework for the supply of water by ERA Water in circumstances where water supply is constrained, such as during times of drought, or a longer term supply network outage.

The Policy is an interim Policy to be reviewed within 12 months, to take into consideration the outcomes of the ERA Water Scheme Enhancement Options project.

SCOPE

The Water Supply During Periods of Constrained Supply policy applies when ERA Water is unable to supply total contracted volumes within a given year without drawing down on the water balance available to ERA Water under its operating licence and conditions. These circumstances could include but not be limited to during times of drought when water demand exceeds the annual amount injected into the aquifer, hydrological changes in aquifer yield, or operational system supply constraints.

PRINCIPLES

The following principles apply in the application of this policy:

- Water is a valuable resource and use of water available to ERA Water under its operating licence must be managed sustainably and equitably.
- All available options to maintain supply to meet the demand of Constituent Councils and Third Party customers should be pursued in times of constrained water supply. Meeting the water volume supply requirements of existing Agreements and contracts is an objective.
- Water supply to meet the demands of Constituent Councils as owners of ERA Water should be prioritised should no feasible options exist to meet total water demand from the available supply.

DEFINITIONS

- 'Available supply' is defined as the volume of water harvested and injected in a given calendar year and able to be extracted in that calendar year, plus the accumulated water balance under the ERAW operating licence to a minimum of 370mL accumulated water balance.
- 'Region' means the collective geographical area of the Constituent Councils.

POLICY

1.1 Management of Available Supply

- 1.1.1 ERA Water has a target of maintaining a minimum of 370mL water balance available for use. This water balance represents the modelled annual supply required for the financial sustainability of ERA Water.
- 1.1.2 Where draw-down of the water balance in times of constrained supply will result in less than 370mL remaining in the water balance, this can occur providing the projected annual water demand in that year does not result in the water balance reducing to below 50% of the target water balance (ie 185mL), to maintain a supply "buffer" for the ensuing financial year in the event of extended constrained supply.
- 1.1.3 The accumulated water balance shall be returned to a minimum of 370mL as soon as operationally practicable after draw-down.
- 1.1.4 Additional sources of sustainable water supply shall be explored by ERA Water to supplement supply available from the MAR scheme water balance.

1.2 Prioritisation of Water Supply

- 1.2.1 Supply of water to Constituent Councils as owners of ERA Water to meet their annual demand shall be prioritised by ERA Water. As a minimum, ERA Water shall endeavour to supply Constituent Councils with the annual total volume of water specified under the 'take or pay' agreement with Constituent Councils of 204.7mL.
- 1.2.2 ERA Water will endeavour to supply the demand of Third Party customers in full where the minimum water balance under this policy is not compromised. Should limitations upon supply to Third Parties need to be imposed this shall be in accordance with the provisions of the supply contract.

REVIEW PROCESS

The Board will review this Policy within 12 months of the adoption date of the Policy.

INFORMATION

The contact officer for further information is ERA Water's General Manager, telephone 8366 4602.

ADOPTION OF THE POLICY

This Policy was endorsed by the Audit Committee on _____.

This Policy was adopted by the Board on _____.

12. ADOPTION OF COMMITTEE MINUTES
Nil

13. OTHER BUSINESS
(Of an urgent nature only)

14. CONFIDENTIAL REPORTS

14.1 COUNCIL RELATED MATTER

RECOMMENDATION 1

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

- (a) Information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead).

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

RECOMMENDATION 2

Under Section 91(7) and (9) of the *Local Government Act 1999* the Council orders that the report, minutes and discussion to be kept confidential until such time that the matter is finalised.

14.2 COUNCIL RELATED MATTER

RECOMMENDATION 1

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

- (b) information the disclosure of which –
 - (i) could reasonably be expected to confer a commercial advantage on a person with whom the Council is conducting, or proposing to conduct, business or to prejudice the commercial position of the Council;
 - (ii) would, on balance, be contrary to the public interest;

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

RECOMMENDATION 2

Under Section 91(7) and (9) of the *Local Government Act 1999* the Council orders that the report, minutes and discussion to be kept confidential until such time that the Council has commenced the process under Section 210 of the *Local Government Act 1999*.

14.3 COUNCIL RELATED MATTER

RECOMMENDATION 1

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

- (j) Information the disclosure of which_
 - (i) would divulge information provided on a confidential basis by or to a Minister of the Crown, or another public authority or official (not being an employee of the council, or a person engaged by the council); and
 - (ii) would, on balance, be contrary to the public interest;

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

RECOMMENDATION 2

Under Section 91(7) and (9) of the *Local Government Act 1999* the Council orders that the report, minutes and discussion to be kept confidential until the matter is finalised.

15. CLOSURE