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# LOCAL GOVERNMENT ACT 1999

## GAWLER RIVER FLOODPLAIN MANAGEMENT AUTHORITY

### *Notice of Alteration to the Charter*

PURSUANT to Clause 17 of the Charter, and Clause 19, Part 2, Schedule 2 of the Local Government Act 1999, the Charter published in the *Gazette* on 25 October 2012 at pages 4730 to 4735 was amended by a resolution passed in the same terms of the City of Playford on 28 April 2015, District Council of Mallala on 10 March 2015, Town of Gawler on 24 March 2015, The Barossa Council on 17 March 2015, Light Regional Council on 24 March 2015 and the Adelaide Hills Council on 24 March 2015.

The Charter, as amended, of the Gawler River Floodplain Management Authority is set out below.

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#### 1. ESTABLISHMENT

The Gawler River Floodplain Management Authority ('the Authority') is established by the Constituent Councils as a regional subsidiary pursuant to section 43 and Schedule 2 ('the Schedule') of the Local Government Act 1999 ('the Act').

This Charter governs the affairs of the Authority.

#### 2. CONSTITUENT COUNCILS

The Authority is established by the City of Playford, District Council of Mallala, Town of Gawler, The Barossa Council, Light Regional Council and the Adelaide Hills Council ('the Constituent Councils').

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

#### 3. PURPOSE

3.1 The Authority has been established for the following purposes:

- 3.1.1 to co-ordinate the construction, operation and maintenance of flood mitigation infrastructure for the Gawler River. This purpose is the core business of the Authority;
- 3.1.2 to raise finance for the purpose of developing, managing and operating and maintaining works approved by the Board;
- 3.1.3 to provide a forum for the discussion and consideration of topics relating to the Constituent Council's obligations and responsibilities in relation to management of flood mitigation for the Gawler River;
- 3.1.4 upon application of one or more Constituent Councils pursuant to clause 12.4:
  - 3.1.4.1 to coordinate the construction, maintenance and promotion and enhancement of the Gawler River and areas adjacent to the Gawler River as recreational open space for the adjacent communities; and
  - 3.1.4.2 to enter into agreements with one or more of the Constituent Councils for the purpose of managing and developing the Gawler River.

3.2 The Authority is not involved in a significant business activity as defined in the Clause 7 Statement prepared under the Competition Principles Agreement of the National Competition Policy.

#### 4. THE BOARD—ROLE AND MEMBERSHIP

4.1 The Authority will be governed by a Board.

4.2 The Board is responsible for the administration of the affairs of the Authority. The Board must ensure insofar as it is practicable, that the Authority observes the objectives set out in this Charter, that information provided to the Constituent Councils is accurate and that Constituent Councils are kept informed of the solvency of the Authority as well as any material developments which may affect the operating capacity and financial affairs of the Authority:

4.3 The Board will comprise:

- 4.3.1 One independent person who is not an officer, employee or elected member of a Constituent Council appointed by absolute majority of the Constituent Councils as the Chairperson for a term of two years and who has expertise in one or more of the following areas:
  - (a) environmental management;
  - (b) corporate financial management;

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- (c) general management;
  - (d) public sector governance.
- 4.3.2 The Chairperson is, at the expiry of his or her term of office, eligible for reappointment.
  - 4.3.3 Each of the Constituent Councils will appoint two persons to the Board. The Constituent Councils' appointees shall be the Chief Executive Officer of the Constituent Council or his or her nominee plus one elected member of the Constituent Council.
  - 4.3.4 Each Constituent Council may appoint either an Elected Member or a Council Officer as Deputy Board Member who may attend Board Meetings in the place of a Council Board Member who is absent.
  - 4.3.5 The Board may appoint observers to the Board. Such appointees will not be entitled to vote at meetings.
  - 4.3.6 Board members (with the exception of the Chairperson), shall not be entitled to receive a sitting fee.
  - 4.3.7 The Board may pay a sitting fee to the Chairperson in such amount as determined by the Board.
  - 4.4 A certificate signed by the Chief Executive Officer of the appointing Constituent Council will be sufficient evidence of appointment.
  - 4.5 In the absence of the Chairperson, the Board will elect a temporary acting Chairperson from amongst their members.

## **5. TERM OF OFFICE—THE BOARD**

- 5.1 Subject only to the following subclauses, the term of office of each member of the Board, (with the exception of the Chairperson), will be as determined by the Constituent Council responsible for the appointment of the member and the Constituent Councils express a preference that members of the Board are appointed following each election of the Constituent Council for the term of the Council.
- 5.2 The Board may by a two-thirds majority vote of the members present (excluding the member subject to this clause) make a recommendation to the Constituent Council responsible for the appointment of the relevant member, that the Constituent Council terminate the appointment of the member in the event of:
  - 5.2.1 any behaviour of the member which in the opinion of the Board amounts to impropriety;
  - 5.2.2 serious neglect of duty in attending to the responsibilities of a member and/or Chairperson of the Board;
  - 5.2.3 breach of fiduciary duty to the Board;
  - 5.2.4 breach of the duty of confidentiality to the Board or the Constituent Councils;
  - 5.2.5 breach of the conflict of interest rules of the Board; or
  - 5.2.6 any other behaviour which may discredit the Board.
- 5.3 The Board may by a two-thirds majority vote of the members present (excluding the Chairperson) make a recommendation to the Constituent Councils that the appointment of the Chairperson be terminated in the event of:
  - 5.3.1 any behaviour of the Chairperson which in the opinion of the Board amounts to impropriety;
  - 5.3.2 serious neglect of duty in attending to the responsibilities of a member and/or Chairperson of the Board;
  - 5.3.3 breach of fiduciary duty to the Board;
  - 5.3.4 breach of the duty of confidentiality to the Board or the Constituent Councils;
  - 5.3.5 breach of the conflict of interest rules of the Board; or
  - 5.3.6 any other behaviour which may discredit the Board.
- 5.4 The Constituent Council which appointed the member whose term of office has become vacant will be responsible to appoint the replacement member.

## **6. PROCEEDINGS OF THE BOARD**

- 6.1 Subject only to the extent that they are modified by this clause, the proceedings of the Board will be the same as those for committees of Council as defined in Part 2 of Chapter 6 of the Act and in accordance with the Regulations for 'Other Committees' comprised in Part 2 of the Local Government (Proceedings at Meetings) Regulations 2000.

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References in Part 2 of Chapter 6 of the Act to ‘the Chief Executive Officer’ shall be read as if they were references to the Executive Officer of the Authority and references to ‘the Council’ or ‘the committee’ shall be read as if they were references to the Authority.

To the extent that this Charter and the Act and its associated Regulations are silent, the Board may determine its own meeting procedures.

- 6.2 Subject only to the special provisions of this clause, no meeting of the Board will commence until a quorum of members is present and no meeting may continue unless there is a quorum of members present. A quorum of members will comprise half the members plus one. A time limit of 30 minutes shall apply from the advertised time of the meeting in which to reach a quorum. Failure to reach a quorum within this time limit shall result in a failed meeting.
- 6.3 For the purpose of this clause, the contemporaneous linking together by an audio-visual or other interactive means, but excluding telephones (‘telecommunication meeting’) of a number of members of the Board provided that at least a quorum is present, is deemed to constitute a meeting of the Board. Each of the Board members taking part in the telecommunications meeting, must be able to hear and be heard by each of the other Board members present. At the commencement of the meeting, each Board member must announce his/her presence to all other Board members taking part in the meeting. A Board member must not leave a telecommunication meeting by disconnecting his/her, audio visual or other communication equipment, unless that Board member has previously notified the Chairperson of the meeting.
- 6.4 In the event that there is not a quorum present at two consecutive meetings of the Board, then an extraordinary meeting of the Board may be convened in the same manner as for a special meeting (see Clause 6.1), at which the business which was on the agendas for the two previous but failed meetings may be transacted at the extraordinary meeting of the Board where the requirement for a quorum is that there be at least one member representing each of the Constituent Councils in attendance. Decisions made at such a meeting will be binding on the subsidiary and all members of the Board and the Constituent Councils.
- 6.5 Subject only to any specific requirement of this Charter, all matters for decision at a meeting of the Board will be decided by a simple majority of the members present and entitled to vote on the matter. Both members from each Constituent Council present are entitled to vote on a matter. Voting members are entitled only to a deliberative vote. Board members may not vote by proxy.
- 6.6 In the event of equality of votes, the Chairperson will not have a casting vote and the matter will be deemed to have lapsed and may at some later time be reconsidered.
- 6.7 Meetings of the Board will be held at such time and such place as the Board decides subject only to the requirement that there will be at least one meeting in every two calendar months.
- 6.8 A special meeting of the Board may be held at any time and may be called at the request of the Chairperson or at the written request of six members of the Board representing all of the Constituent Councils.
- 6.9 Notice of all meetings will be given in accordance with the provisions applicable to a committee meeting under Part 2 of Chapter 6 of the Act and the associated Regulations.
- 6.10 Meetings of the Board will be open to the public unless the Board so resolves to exclude the public pursuant to section 90 of the Act.
- 6.11 All members must keep confidential all documents and any information provided to them in confidence for their consideration prior to a meeting of the Board.
- 6.12 The Board must ensure that accurate written minutes of its proceedings are kept and are produced for verification at the subsequent meeting of the Board.

## **7. PROPRIETY OF MEMBERS OF THE BOARD**

- 7.1 The principles regarding conflict of interest prescribed in the Act will apply to all members of the Board as if they were elected members of a Council.
- 7.2 The members of the Board will not be required to comply with Division 2, Chapter 5 (Register of Interests) of the Act.
- 7.3 The members of the Board will at all times act in accordance with their duties of confidence and confidentiality and individual fiduciary duties including honesty and the exercise of reasonable care and diligence with respect to the Board as required by Part 4, Division 1, Chapter 5 of the Act and Clause 23 of Part 2 of Schedule 2.

## **8. POWERS**

- 8.1 The Authority is constituted as a body corporate under the Act and in all things acts through the Board.
- 8.2 The Authority has:
  - 8.2.1 the power to acquire, deal with and dispose of real and personal property and rights in relation to real and personal property;

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- 8.2.2 the power to compulsorily acquire land in accordance with the Land Acquisition Act 1969, provided that such acquisition is for the purposes of flood mitigation
  - 8.2.3 the power to sue and be sued in its corporate name;
  - 8.2.4 the power to enter into any kind of contract or arrangement;
  - 8.2.5 the power to return surplus revenue to Constituent Councils in such proportions as the Board considers appropriate at the end of any financial year either by way of cash payment or reduction of annual contribution;
  - 8.2.6 the power to set aside surplus revenue for future capital expenditure;
  - 8.2.7 the power to invest funds and in doing so to take into account Part 4 of Chapter 9 of the Act;
  - 8.2.8 the power to establish committees;
  - 8.2.9 the power to delegate any function or duty except for the power to compulsorily acquire land as set out in Rule 8.2.2 and except for any of the powers set out in section 44 of the Local Government Act 1999, (where such powers are applicable to a Subsidiary); and
  - 8.2.10 the power to do anything else necessary or convenient for, or incidental to, the exercise, performance or discharge of its powers, functions or duties.
- 8.3 The Authority shall not act outside of the areas of the Constituent Councils without their prior approval that approval shall only be granted upon the basis that the Councils consider it necessary or expedient for the performance of their or the Authority's functions.<sup>1</sup>
  - 8.4 The Authority will have a common seal which may be affixed to documents requiring execution under common seal and must be witnessed by the Chairman of the Board and one other Board member.
  - 8.5 The common seal must not be affixed to a document except to give effect to a resolution of the Board. The Executive Officer will maintain a register which records the resolutions of the Board giving authority to affix the common seal and details of the documents to which the common seal has been affixed with particulars of the persons who witnessed the fixing of the seal and the date.
  - 8.6 The Board may by instrument under seal authorise a person to execute documents on behalf of the Authority. The Executive Officer will maintain a register of such resolutions and details of any documents executed in this way, together with particulars of the person executing the document.

## **9. ADMINISTRATIVE MATTERS**

- 9.1 There will be an Executive Officer of the Authority appointed by the Board on terms and conditions to be determined by the Board.
- 9.2 The Executive Officer will be responsible to the Board:
  - 9.2.1 to ensure that the policies and lawful decisions of the Authority are implemented in a timely manner;
  - 9.2.2 for the efficient and effective management of the operations and affairs of the Authority;
  - 9.2.3 to provide advice and reports to the Board on the exercise and performance of the Authority's powers and functions; and
  - 9.2.4 to give effect to the principles of human resource management generally applicable within the local government industry.
- 9.3 The Executive Officer has such powers, functions and duties prescribed by this clause and as determined necessary by the Board from time to time to ensure the efficient and effective management of the operations and affairs of the Authority.
- 9.4 The Board may employ other officers and it may authorise the Executive Officer to employ such other officers on its behalf as are required for the efficient and effective management of the operations and affairs of the Authority.
- 9.5 The Board may engage professional consultants and it may authorise the Executive Officer to engage professional consultants to provide services to the Authority to ensure the proper execution of its decisions, the efficient and effective management of the operations and affairs of the Authority and for giving effect to the general management objectives and principles of personal management prescribed by this Charter.

## **10. FINANCIAL CONTRIBUTIONS TO THE AUTHORITY**

- 10.1 The contributions of the Constituent Councils shall be based on the following percentage shares for capital works, maintenance of assets of the Authority and operational costs of the Authority.
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Constituent Council	Capital Works Percentage Share %	Maintenance of Assets Percentage Share %	Operational Costs Percentage Share %
Adelaide Hills Council	1.73	1.73	16.66
The Barossa Council	8.67	8.67	16.66
Town of Gawler	17.34	17.34	16.66
Light Regional Council	8.67	8.67	16.66
District Council of Mallala	28.91	28.91	16.66
City of Playford	34.68	34.68	16.66
Total	100%	100%	100%

- 10.2 The Board will be responsible to provide the Constituent Councils with sufficient information for each of them to ascertain the level of and understand the reasons behind the funding required in the following financial year. This will be achieved via the business plan and the annual budget.
- 10.3 The Board will determine annually the funds required by the Authority to enable it to function. The Constituent Councils shall contribute the funds requested by the Board, in the annual budget and approved by the Council, and any additional funds that are required for the continuing function of the Authority and approved by the Council, in accordance with Clause 11. The Board must provide full details regarding the need for additional funds to the Constituent Councils.
- 10.4 The annual contribution will be paid by each Constituent Council in advance by six monthly instalments.
- 10.5 Additional contributions (if any) will be paid by each Constituent Council in the manner and at the time determined by the Board.
- 10.6 The Board is accountable to each Constituent Council to ensure that the Authority functions in accordance with its business plan and approved budgets.
- 10.7 The Board on behalf of the Authority may enter into separate funding arrangements with Constituent Councils and with any State or Federal Government or their agencies in respect of any project undertaken or to be undertaken by or on behalf of the Authority.
- 10.8 Where a Council or Councils enter into an agreement with the Authority under Clause 12.4 of this Charter the subscriptions payable under that agreement shall be additional to the subscriptions payable under this Clause.

## 11. BUDGET

- 11.1 The Authority must prepare a budget for the forthcoming financial year.
- 11.2 The budget must:
  - 11.2.1 deal with each principal activity of the Authority on a separate basis;
  - 11.2.2 be consistent with and account for activities and circumstances referred to in the Authority's business plan;
  - 11.2.3 be submitted in draft form to each Constituent Council before 31 March for approval of its contribution for the year;
  - 11.2.4 not be adopted by the Authority until after 31 May but before 30 September;
  - 11.2.5 the adoption of the budget requires a two-thirds majority of the Board members present; and
  - 11.2.6 identify the amount of and the reasons for the financial contributions to be made by each Constituent Council to the Authority.
- 11.3 The Authority must provide a copy of its budget to each Constituent Council within five business days after adoption.
- 11.4 The Authority must reconsider its budget in accordance with Regulation 9 of the Local Government (Financial Management) Regulations 2011.
- 11.5 The Authority must submit to each Constituent Council for approval, any proposed amendment to the budget that provides for an additional contribution by the Constituent Councils.
- 11.6 Where a Constituent Council has failed to approve a draft budget, or an amended budget, and has not served a notice on the Authority in accordance with Clause 20.2 within two months of the receipt of the draft budget, or amended budget by the Constituent Council, then the approval of the Constituent Council to the draft budget, or amended budget, will be deemed to have been given.

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## **12. BUSINESS PLAN**

- 12.1 The Authority shall have a rolling Business Plan in respect of the ensuing three years.
- 12.2 The Business Plan must:
  - 12.2.1 state the services to be provided by the Authority;
  - 12.2.2 identify how the Authority intends to manage service delivery;
  - 12.2.3 identify the performance targets which the Authority is to pursue;
  - 12.2.4 provide a statement of financial and other resources and internal processes that will be required to achieve the performance targets and objectives of the Authority; and
  - 12.2.5 specify the performance measures that are to be used to monitor and assess performance against targets.
- 12.3 Prior to setting the draft budget each year the Authority must review the Business Plan in conjunction with the Constituent Councils. The Business Plan must be updated to ensure it presents a plan for the ensuing three years.
- 12.4 One or more of the Constituent Councils may request the Authority to undertake a function provided for in Clause 3.1.4 of this Charter, which function is additional to those undertaken by the Authority for all of the Constituent Councils. Where one or more Constituent Councils make a request under this Clause, the Constituent Council or Councils must enter into a written agreement with the Authority which commits the Council or Councils to annual subscription amounts and/or an equal percentages of classes of subscription to meet the costs of the Authority in undertaking the additional function and which deals, amongst other things, with the ownership and maintenance of any resultant infrastructure.

## **13. ACCOUNTING**

The Authority must ensure that its accounting records, accounts and financial statements are prepared and maintained in accordance with all relevant Australian Accounting Standards. See Regulations 11 and 12, Local Government (Financial Management) Regulations 2011, in relation to particular accounting practices.

## **14. AUDIT**

- 14.1 The Authority must appoint an auditor.
- 14.2 The Authority must provide its audited financial statements to the Chief Executive Officer of each Constituent Council by 30 September. See Part 6, Local Government (Financial Management) Regulations 2011, in relation to the Authority's audit responsibilities.

## **15. FINANCE**

- 15.1 The Board must establish and maintain a bank account with such banking facilities and at a bank to be determined by the Board.
- 15.2 All cheques to be authorised must be signed by two members of the Board or one member of the Board and the Executive Officer.
- 15.3 The Executive Officer must act prudently in the handling of all financial transactions for the Board and must provide quarterly financial and corporate reports to the Board and if requested, the Constituent Councils.
- 15.4 The Board will, at the end of each financial year prepare a schedule of assets and liabilities. In addition, the Board must maintain a record to be known as the 'Schedule of Constituent Councils' Interests in Net Assets'.
- 15.5 The 'Schedule of Constituent Councils' Interests in Net Assets' will reflect the proportionate contribution each Constituent Council has made to capital, operations and maintenance to the Authority having regard to the proportionate contribution to subscriptions for each function undertaken by the Authority. The Schedule when updated by the Board at the end of each financial year will reflect the proportionate contribution of each Constituent Council since the commencement of the Authority and once accepted by each Constituent Council will be evidence of the agreed proportion of a Constituent Council's interests in the net assets as at 30 June in that year.
- 15.6 Where there is any dispute as to the Schedule, Clause 20 shall apply.

## **16. REPORTS AND INFORMATION**

- 16.1 The Authority must submit its annual report on its work and operations including its audited financial statements, to each Constituent Council before 30 September.

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- 16.2 Within two weeks following each ordinary meeting of the Board, the Constituent Councils shall be provided with a Key Outcomes Summary of the meeting that shall include the Achievements Against the Business Plan Report for those meetings that it is received by the Board.
  - 16.3 The Board shall report at any other time at the written request of a Constituent Council on matters being undertaken by the Authority. Any such report shall be provided to all Constituent Councils.

## **17. ALTERATION TO THE CHARTER**

- 17.1 This Charter may be amended by unanimous resolution of the Constituent Councils.
- 17.2 The Executive Officer of the Authority must ensure that the amended Charter is published in the *Gazette*.
- 17.3 Before the Constituent Councils vote on a proposal to alter this Charter they must take into account any recommendations of the Board.

## **18. WITHDRAWAL OF A CONSTITUENT COUNCIL**

- 18.1 Subject to the approval of the Minister, a Constituent Council may withdraw from the Authority by giving not less than six months notice of its intention to do so to all other Constituent Councils and the Executive Officer.
- 18.2 In any event a withdrawal cannot become effective until 30 June following the expiry of the six months in the preceding subclause. Until withdrawal becomes effective, the Constituent Council proposing withdrawal from the Authority will remain liable for all financial contributions in the remaining period and through its members on the Board, the responsibility of ensuring the continued proper conduct of the affairs of the Authority.
- 18.3 A withdrawing Constituent Council is not entitled to any refunds of any contributions made.

## **19. ADDITION OF NEW MEMBER**

- 19.1 The Board may consider the addition of a new member to the Authority.
- 19.2 The Constituent Councils must resolve unanimously to approve the addition of a new member to the Authority and must obtain Ministerial approval.
- 19.3 The Charter shall be amended in accordance with the provisions of this Charter to address any new addition.

## **20. DISPUTES**

- 20.1 In the event of any dispute or difference between the Constituent Councils and the Authority concerning the operations or affairs of the Authority, the dispute process shall be initiated by a Constituent Council serving a notice of dispute on all other Constituent Councils with a contemporaneous copy being served on the Authority. The Constituent Councils:
  - 20.1.1 will attempt to settle the dispute or difference by negotiating in good faith;
  - 20.1.2 if good faith negotiations do not settle the dispute or difference within one month of the dispute arising then the dispute shall be referred to an expert for determination. The expert shall be a person with the skills and expertise necessary to resolve the dispute and shall be nominated by the President of the Local Government Association of South Australia. The expert is an expert and not an arbitrator. The expert's determination shall be final and binding on the Constituent Councils. The costs of the expert will be apportioned and payable in accordance with the expert's determination;
  - 20.1.3 if the dispute is unable to be resolved by the expert within six months then any Constituent Council may request the Minister to dissolve the Authority; and
  - 20.1.4 notwithstanding the existence of a dispute or difference, the Constituent Councils will continue to meet their obligations to the Authority.
- 20.2 In the event of any dispute or difference between one or more Constituent Councils and the Authority concerning the operations or affairs of the Authority, the dispute process shall be initiated by a Constituent Council, or the Authority, serving a notice of dispute on the Constituent Council or the Authority, as the case may be, with a contemporaneous copy being served on all other Constituent Councils:
  - 20.2.1 will attempt to settle the dispute or difference by negotiating in good faith;
  - 20.2.2 if good faith negotiations do not settle the dispute or difference within one month of the dispute arising then, the dispute shall be referred to an expert for determination. The expert shall be a person with the skills and expertise necessary to examine the issues and shall be nominated by the President of the Local Government Association of South Australia. The expert is an expert and not an arbitrator. The expert's determination shall be final and binding on the Constituent Council and the Authority. The costs of the expert will be apportioned and payable in accordance with the expert's determination; and

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20.2.3 notwithstanding the existence of a dispute or difference, the Constituent Councils and the Authority will continue to meet their obligations to each other.

For the purposes of Clause 20.2 'dispute' includes where a Constituent Council has failed or refuses to approve the draft budget advised by the Authority under Clauses 11.2.3 or 11.5.

#### **20A LIMIT OF LIABILITY**

20A.1 Except insofar as clause 12.4 applies the liability of a Constituent Council to the Authority is limited to those functions undertaken by the Authority and to which the Constituent Council has made a financial contribution. The liability of a Constituent Council is proportional to the interest of that Council in the net assets of the Authority as determined under Clause 15 of this Charter.

20A.2 The liability of a Constituent Council to the Authority for any function undertaken by the Authority under clause 12.4 is limited to the requesting Constituent Council or Constituent Councils and as reflected in the agreement entered into with the Authority for those purposes.

#### **21. DISSOLUTION OF THE AUTHORITY**

21.1 The Authority may be dissolved by the Minister in the circumstances envisaged by Clause 33, Part 2 of Schedule 2.

21.2 In the event of there being net assets upon dissolution and after realisation of all assets and meeting all liabilities, the net assets will be distributed to the then Constituent Councils on the basis of their current interest in the net assets of the Authority as determined by Clause 15.

21.3 In the event of there being an insolvency of the Authority at the time of dissolution, the then Constituent Councils will be responsible jointly and severally to pay the liabilities of the Authority and between themselves in the proportion of their interest in the net assets last determined under Clause 15.

DEAN GOLLAN, Executive Officer

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