

LOCAL GOVERNMENT ACT 1999

MOUNT BARKER DISTRICT COUNCIL

Approval of a Subsidiary—Mount Barker Region Wastewater Utility

The Mount Barker District Council has resolved to establish a subsidiary pursuant to Section 42 of the *Local Government Act 1999* to provide wastewater services.

Pursuant to Clause 1 of Part 1 of Schedule 2 of the *Local Government Act 1999*, I approve the establishment of the Mount Barker Region Wastewater Utility.

The Charter of the Mount Barker Region Wastewater Utility is set out below.

Dated: 31 December 2024

HON JOE SZAKACS MP
Minister for Local Government

MOUNT BARKER REGION WASTEWATER UTILITY

Charter

1. INTRODUCTION

1.1 Name

The name of the subsidiary is the **Mount Barker Region Wastewater Utility** (referred to as ‘the Authority’ in this Charter).

1.2 Definitions

‘**Asset Management Plan**’ means the asset management plan adopted by the Authority pursuant to Clause 5.6;

‘**the Act**’ means the *Local Government Act (SA) 1999* and includes all regulations made thereunder;

‘**the Authority**’ means the Mount Barker Region Wastewater Utility;

‘**the Board**’ means the Board of Management of the Authority set out at Clause 3;

‘**Board Member**’ means a member of the Board appointed in accordance with Clause 3.2;

Bore Water Service means the Council owned and operated service for the extraction and supply of bore water, that is ground water extracted from aquifers, for beneficial use by customers;

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

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

‘**Chairperson**’ means the member of the Board appointed pursuant to Clause 3.4;

‘**Executive Officer**’ means the person appointed pursuant to Clause 4 to exercise the role of Executive Officer of the Authority irrespective of the position title given or held by that person;

‘**Council**’ means the Mount Barker District Council;

‘**Financial Statements**’ has the same meaning as in the Act;

‘**Financial Year**’ means 1 July in each year to 30 June in the subsequent year;

‘**Long Term Financial Plan**’ means the long term financial plan adopted by the Authority pursuant to Clause 5.5;

‘**National Water Initiative**’ has the same definition as in the *Water Act (Cth) 2007*;

Non Drinking Water Service means the Council owned and operated Bore-Water Service and Recycled Water Service which supplies non-potable water to customers for beneficial use;

Recycled Water Service means the Council owned and operated service for the supply of recycled water, that is water reclaimed from wastewater, for beneficial use by customers;

‘**Selection Panel**’ means the Panel established pursuant to Clause 3.3;

‘**Strategic Plan**’ means the strategic plan adopted by the Authority pursuant to Clause 6.1;

Trade Waste Service means the Council owned and operated service for the conveyance of any liquid or solid waste conveyed as wastewater in a water carriage system from any private, commercial or industrial premises, other than sewage or sullage wastewater and also includes any wastewater in excess of a standard residential dwelling (500 litres per premises per day) e.g. hospital, lodging house, nursing home etc;

Wastewater means materials transported through wastewater infrastructure, baths and similar other fixtures), effluent (liquid discharge from a wastewater treatment system such as a septic tank) and trade waste;

Wastewater Utility refers collectively to the Bore Water, Non-Drinking Water, Trade Waste, Recycled Water, and Wastewater Service;

Wastewater Service means the Council owned and operated service for the collection, treatment, storage, distribution and disposal (including by sale of recycled water) of wastewater, via a community wastewater management scheme (CWMS) or sewer scheme.

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

1.4.1 The Authority is a subsidiary of the Council established under Section 42 of the Act.

1.5 Local Government Act 1999

1.5.1 This Charter must be read in conjunction with Parts 1 and 3 of Schedule 2 to the Act.

1.5.2 The Authority shall conduct its affairs in accordance with Parts 1 and 3 of Schedule 2 to the Act except as modified by this Charter in a manner permitted by the Act.

1.5.3 The establishment of the Authority does not derogate from the power of the Council to act independently in relation to a matter within the jurisdiction of the Authority.

1.6 Objects and Purposes of the Authority

The Authority is established for the following objects and purposes:

1.6.1 to provide a safe and reliable Wastewater Utility to protect public health;

1.6.2 to endeavour to provide a level of service to customers and the community that meets or exceeds their expectations;

1.6.3 to support and enable agriculture and economic growth in the Wastewater Utility area;

1.6.4 to safely and sustainably preserve and improve the environment by conducting operations in compliance with the principles of ecologically sustainable development;

1.6.5 to be socially responsible;

1.6.6 to manage revenue collected responsibly and fairly and with integrity to provide a defined service to the Council's community;

1.6.7 to deliver results, focusing on safe and healthy workplaces, employee engagement, inclusion, innovation and accountability.

2. FUNCTIONS, POWERS AND DUTIES OF THE AUTHORITY

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

2.1 Functions

2.1.1 To provide and operate the Wastewater Utility on behalf of the Council;

2.1.2 To facilitate and coordinate activities and enterprises that enhance wastewater management and reuse;

2.1.3 To develop and deliver wastewater capital works programs and operating plans;

2.1.4 To develop and review wastewater management policies and practices;

2.1.5 To set customer pricing and developer infrastructure contributions (subject to legislative constraints);

2.1.6 To facilitate community education programs to promote the Council's wastewater management and water recycling programs and improve environmental sustainability of the wastewater system;

2.1.7 To undertake responsibility for the operation, maintenance and renewal of the Wastewater Utility assets including trade waste management;

2.1.8 Provide advice and recommendations to the Council on:

2.1.8.1 required investment in infrastructure upgrades;

2.1.8.2 environmental impacts and environmental sustainability;

2.1.9 To undertake a Council representative role in relation to the Wastewater Utility with other tiers of government and external bodies/entities;

2.1.10 To provide strategic and operational management and oversight of the Wastewater Utility;

2.1.11 To develop and implement strategies for growth in recycled water customers;

2.1.12 To actively engage and communicate with the customers of the Wastewater Utility in relation to the activities of the Authority;

2.1.13 To manage risks associated with the Wastewater Utility and to ensure that the Authority complies with all relevant legislative and compliance requirements;

2.1.14 To provide an advisory service to wastewater utilities owned and operated by other entities in support of them achieving their objectives and delivering outcomes for their communities;

2.1.15 To provide resources and management services to other wastewater entities on an as needed and commercial basis where appropriate.

2.2 Powers

2.2.1 Subject to Clause 2.6, to enter into any kind of contract or arrangement;

2.2.2 To borrow funds and incur expenditure in accordance with Clause 2.6;

2.2.3 Subject to Clause 2.6, to employ, engage, determine conditions of employment or engagement, remunerate, remove, suspend, dismiss or terminate the person appointed to exercise the role of Executive Officer of the Authority;

2.2.4 Subject to Clauses 2.6 and 4, to employ other staff;

2.2.5 Subject to Clause 2.6, to employ, engage or retain professional advisers to the Authority;

2.2.6 Subject to Clause 2.6, to institute, initiate and carry on legal proceedings;

2.2.7 To establish committees for such purposes as the Authority considers appropriate provided that the Authority notifies the Council's Chief Executive Officer of the establishment of a committee as soon as practicable following the Authority's decision;

2.2.8 Subject to Clause 2.6, to agree to undertake a project in conjunction with any council or government agency or authority and in so doing to participate in the formation of a trust, partnership or joint venture with any council or government agency or authority to give effect to the project;

- 2.2.9 To print or publish any materials in any medium that the Authority considers appropriate for the attainment of its objects and purposes;
- 2.2.10 To adopt and use a business name subject to registration of the business name;
- 2.2.11 To open and operate bank accounts;
- 2.2.12 To make submissions for and accept grants, subsidies, contributions, sponsorships and other forms of revenue and support to further its objects and purposes;
- 2.2.13 To set fees and charges in accordance with the National Water Initiative and the Essential Services Commission of South Australia pricing principles as in force from time to time;
- 2.2.14 To apply for and hold any regulatory or other approval in relation to the Wastewater Utility;
- 2.2.15 To invest any funds of the Authority in any investment provided that:
 - 2.2.15.1 in exercising this power of investment, the Authority must exercise the care, diligence and skill that a prudent person or business would exercise in managing the affairs of other persons; and
 - 2.2.15.2 the Authority must avoid investments that are speculative or hazardous in nature;
- 2.2.16 With the prior approval of the Council, to purchase, sell or otherwise acquire, dispose of or encumber any real property or interests therein;
- 2.2.17 Subject to Clause 2.6, to acquire, dispose or otherwise deal with personal and other property (not being real property or interests therein);
- 2.2.18 To undertake any actions necessary to achieve compliance with a regulation, standard or guideline related to the Wastewater Utility;
- 2.2.19 To do anything else necessary or convenient for or incidental to the exercise, performance or discharge of its powers, functions or duties or the attainment of its objects and purposes.

2.3 Duties

The Authority has the following duties:

- 2.3.1 to ensure the Wastewater Utility:
 - 2.3.1.1 is being delivered prudently and efficiently;
 - 2.3.1.2 is sustainable into the future from a financial, capability and environmental perspective;
 - 2.3.1.3 demonstrates accountability to the Council, customers and the community;
 - 2.3.1.4 meets all regulatory and compliance obligations;
- 2.3.2 to operate the Wastewater Utility in a financially and environmentally sustainable manner;
- 2.3.3 to give due weight to economic, social and environmental considerations;
- 2.3.4 to minimise risk to the Council;
- 2.3.5 to ensure the Wastewater Utility has a strong customer focus;
- 2.3.6 to consider and keep the Council informed on opportunities, risks and the relevant regulatory framework;
- 2.3.7 to exercise the functions and powers of the Authority only in the performance and furtherance of the Authority's objects and purposes;
- 2.3.8 to comply with this Charter, the Act, all other applicable law and any lawful direction of the Council.

2.4 Other Powers, Functions and Duties

The Authority may exercise such other functions, powers and duties as are delegated to the Authority or authorised by the Council from time to time.

2.5 Acting Outside Area

- 2.5.1 The Authority may act outside the area of the Council with the prior approval of the Council which approval will only be given if the Council considers it necessary or expedient to the attainment of the Authority's Objects and Purposes for the Authority to act outside the area of the Council.

2.6 Borrowings and Expenditure

- 2.6.1 The Authority has the power to incur expenditure as follows:
 - 2.6.1.1 in accordance with a budget adopted by the Authority and approved by the Council as required by the Act or this Charter; or
 - 2.6.1.2 with the prior approval of the Council; or
 - 2.6.1.3 in accordance with the Act, in respect of expenditure not contained in a budget adopted by the Authority for a purpose of genuine emergency or hardship.
- 2.6.2 The Authority has the power to borrow money as follows:
 - 2.6.2.1 in accordance with a budget adopted by the Authority in accordance with the Act and this Charter; or
 - 2.6.2.2 with the prior approval of the Council.

2.7 Delegation by the Authority

- 2.7.1 The Authority may, in accordance with this Charter and the Act, by resolution, delegate to a committee, an employee of the Authority or the Council or to a person for the time being occupying a particular office or position any of its powers and functions under the Act or Charter but may not delegate:
 - 2.7.1.1 the power to borrow money or obtain any other forms of financial accommodation not contained in a Budget adopted by the Authority;

- 2.7.1.2 the power to approve expenditure of money on works, services or operations of the Authority not contained in a Budget adopted by the Authority;
- 2.7.1.3 the power to approve the reimbursement of expenses or payment of allowances or remuneration to Board Members other than where such reimbursement is made in accordance with a policy adopted by the Authority;
- 2.7.1.4 the power to adopt or revise a Budget of the Authority;
- 2.7.1.5 the power to adopt or revise an Asset Management Plan, Business Plan, Strategic Plan or Long Term Financial Plan of the Authority;
- 2.7.1.6 the power to adopt or revise financial estimates and reports; and
- 2.7.1.7 the power to make any application or recommendation to the Minister.

2.7.2 A delegation is revocable at will and does not prevent the Authority from acting in a matter.

3. BOARD OF MANAGEMENT

3.1 Role and Structure

- 3.1.1 The Authority is a body corporate and is governed by the Act and this Charter.
- 3.1.2 The Board is the Authority's governing body and has the responsibility for the administration of the affairs of the Authority ensuring that the Authority acts in accordance with this Charter and all relevant legislation including the Act.
- 3.1.3 All meetings of the Authority shall be meetings of the Board.

3.2 Membership of the Board

- 3.2.1 Subject to Clause 3.2.10, the Board shall consist of up to seven (7) members, including the Chairperson and the Board Members referred to in Clause 3.2.10, appointed by the Council following the receipt of recommendations from the Selection Panel in accordance with this clause.
- 3.2.2 No more than one (1) Board Member may be a member of the Council.
- 3.2.3 Subject to Clause 3.2.10, the Council may appoint Board Members including the Chairperson for a maximum period of four (4) years each and on such other conditions as the Council may determine.
- 3.2.4 Subject to Clause 3.2.10, the Council may at any time terminate or revoke a Board Member's appointment and appoint one or more (as the case may be) other persons to be a Board Member(s).
- 3.2.5 Subject to Clause 3.2.10, the Council must as far as practicable ensure that the Board Members collectively possess the following skills and experience:
 - 3.2.5.1 Wastewater Utility operation;
 - 3.2.5.2 water regulation and pricing;
 - 3.2.5.3 financial management;
 - 3.2.5.4 legal and governance;
 - 3.2.5.5 engineering or asset management;
 - 3.2.5.6 customer relations, communications and/or marketing;
 - 3.2.5.7 entrepreneurship/innovation/commercial;
 - 3.2.5.8 strategic advice;
 - 3.2.5.9 public policy; and
 - 3.2.5.10 risk management.
- 3.2.6 Subject to Clause 3.2.10, the Council must as far as practicable seek to achieve diversity amongst Board Members.
- 3.2.7 The Council must give notice in writing to the Authority of its appointment of Board Members, the term of appointment, any other conditions, and of any termination or revocation of those appointments. A notice in writing signed by the Chief Executive Officer of the Council will be sufficient evidence of an appointment, termination or revocation of an appointment and will constitute notice as required by this clause.
- 3.2.8 The Selection Panel shall invite applications for the positions of Board Member including the position of Chairperson and assess such applications through such process as it considers appropriate save that such process must be undertaken, as far as reasonably practicable, in confidence.
- 3.2.9 Subject to Clause 3.2.10, the Selection Panel shall make recommendations to the Council on the appointment of Board Members and the Chairperson including the terms and conditions to attach to such appointments.
- 3.2.10 The Executive Officer is eligible to be appointed as a Board Member but the Executive Officer cannot fulfil the role of Chairperson.
- 3.2.11 There will be no deputies to Board Members other than the Deputy Chairperson appointed pursuant to Clause 3.4.3.

3.3 Selection Panel

- 3.3.1 The Selection Panel is to be comprised of the Mayor and Chief Executive Officer of the Council or their nominee(s) and a person not being an employee or member of the Council chosen by the Mayor and Chief Executive Officer of the Council.

3.4 Chairperson of the Board

- 3.4.1 The Chairperson will cease to hold office as Chairperson in the event:
 - 3.4.1.1 the Chairperson resigns as Chairperson; or
 - 3.4.1.2 the Chairperson ceases to be a Board Member; or
 - 3.4.1.3 the Council terminates the Chairperson's appointment as Chairperson.

- 3.4.2 In the event that the office of Chairperson becomes vacant, then the Council must appoint a new Chairperson in the same manner as the original appointment who shall hold office for the balance of the original term or until such later date as the Council may determine and at the expiry of that term shall be eligible for reappointment.
- 3.4.3 The Board shall appoint a Board Member, other than the Chairperson or a Board Member who is also the Executive Officer, to be the Deputy Chairperson for a term of up to four (4) years provided such term does not exceed the Board Member's term of appointment as a Board Member and at the conclusion of the Deputy Chairperson's term of office, the Deputy Chairperson is eligible for reappointment.
- 3.4.4 In the event that the Chairperson refuses or is unable to act as Chairperson or ceases to hold office as Chairperson or a Board Member, then the Deputy Chairperson shall act in that office for the period that the Chairperson refuses or is unable to act or, if relevant, until such time as a Chairperson has been appointed by the Council.
- 3.4.5 In the event that the Deputy Chairperson is pursuant to Clause 3.4.4 to act as Chairperson but refuses or is unable to act as Chairperson or ceases to hold office as a Board Member, the Board shall appoint a Board Member other than a Board Member who is also the Executive Officer to be the Chairperson for the period that the Chairperson or Deputy Chairperson refuses or is unable to act or, if relevant until such time as a Chairperson has been appointed by the Council.
- 3.4.6 The Chairperson must preside at all meetings of the Board and, in the event the Chairperson is absent from a meeting or part of a meeting, the Deputy Chairperson shall preside for the duration of the Chairperson's absence and, in the event of both the Chairperson and Deputy Chairperson being absent from a meeting or part of a meeting, the Board must appoint one of the Board Members present to preside for the duration of the Chairperson's or Deputy Chairperson's absence.
- 3.4.7 The Authority will pay the Chairperson an allowance as determined by the Council following the receipt of a recommendation from the Selection Panel 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).
- 3.5 **Office of Board Member**
- 3.5.1 At the conclusion of a Board Member's term of office, including the Chairperson, such Board Member or Chairperson will be eligible for re-appointment.
- 3.5.2 A Board Member will cease to hold office in the circumstances set out in the Act as to when a Board Member's office becomes vacant.
- 3.5.3 Subject to Clause 3.2.10, where, for any reason, the office of a Board Member becomes vacant, the Council will be responsible for appointing a replacement Board Member.
- 3.5.4 Subject to Clause 3.2.10, 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 may be appointed for the balance of the term of the original appointment or such longer term of up to four (4) years and at the expiry of that term shall be eligible for reappointment.
- 3.6 **Remuneration of Board Members**
- 3.6.1 The Authority will pay each Board Member a sitting fee (other than a Board Member who is also the Executive Officer) as determined by the Council following the receipt of a recommendation from the Selection Panel 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).
- 3.6.2 The Board Members will receive from the Authority reimbursement of expenses properly incurred in performing or discharging official functions and duties as determined by the Authority and set out in a policy adopted by the Authority for the purposes of this clause.
- 3.6.3 The Selection Panel will annually review the sitting fee to be paid to Board Members and allowance to be paid to the Chairperson and make recommendations to the Council of the outcome of the review and any alteration to such fees and allowance.
- 3.7 **Insurance**
- The Authority must take out a suitable policy of insurance insuring Board Members and their spouses or another person who may be accompanying a Board Member, against risks associated with the performance or discharge of their official functions and duties or on official business of the Authority.
- 3.8 **Returns**
- 3.8.1 Board Members are not required to submit returns under Chapter 5, Part 4, Division 2 of the Act.
- 3.8.2 The Council may require Board Members upon their appointment and annually thereafter to disclose to the Council particular interests they hold as set out in a policy adopted by the Council provided that any such policy must:
- 3.8.2.1 provide that the information furnished to the Council pursuant to this clause will not be made publicly available except where required by law;
- 3.8.2.2 not require the disclosure of a Board Member's interests that exceed that which the Board Member would have been required to disclose under Chapter 5, Part 4, Division 2 of the Act but for Clause 3.8.1.
- 3.9 **Proceedings of the Board**
- 3.9.1 *General*
- The procedure to be observed at a meeting of the Board will be:
- 3.9.1.1 as prescribed by the Act;
- 3.9.1.2 insofar as the procedure is not prescribed by the Act, as set out in this Charter or otherwise determined by the Council;
- 3.9.1.3 insofar as the procedure is not prescribed by the Act, this Charter or the Council—as determined by the Board itself.

3.9.2 *Board Meetings*

- 3.9.2.1 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 (1) ordinary meeting of the Board every three months.
- 3.9.2.2 An ordinary meeting of the Board will constitute an ordinary meeting of the Authority. The Board shall administer the business of the Authority at the ordinary meeting.
- 3.9.2.3 Subject to Clause 3.9.7, the Council, the Chairperson or three (3) Board Members may by delivering a written request to the Executive Officer require a special meeting of the Board to be held and any such special meeting shall constitute a special meeting of the Authority. The written request must be accompanied by the agenda for the special meeting and if an agenda is not provided the request has no effect.
- 3.9.2.4 Meetings of the Board will not be open to the public and Chapter 6 Part 3 of the Act does not extend to the Authority.
- 3.9.2.5 Without limiting Clause 5(8) of Schedule 2 of the Act, the Board may permit such persons to attend Board meetings as it considers appropriate.

3.9.3 *Notice of Meetings*

- 3.9.3.1 Notice of an ordinary meeting of the Board will be given by the Executive Officer to each Board Member and the Chief Executive Officer of the Council not less than three (3) clear days prior to the holding of the meeting by such means as the Executive Officer considers reasonably practicable to bring the notice to the attention of the Board Member.
- 3.9.3.2 Subject to Clause 3.9.7, on receipt of a written request pursuant to Clause 3.9.2.3, the Executive Officer and Chairperson must determine the date and time of the special meeting and subject to Clause 3.9.3.3, the Executive Officer must give notice to all Board Members at least four (4) hours prior to the commencement of the special meeting.
- 3.9.3.3 The Executive Officer must, in relation to a notice of meeting of the Board for the purpose of considering the making of a recommendation to the Council to wind up the Authority, provide the notice to all Board Members at least two (2) months before the date of the meeting.
- 3.9.3.4 Subject to Clause 3.9.7 notice of a meeting of the Board must:
 - (a) be in writing; and
 - (b) set out the date, time and place of the meeting; and
 - (c) be signed by the Executive Officer; and
 - (d) contain, or be accompanied by, the agenda for the meeting; and
 - (e) be accompanied by a copy of any documents or reports that are to be considered at the meeting (so far as this is practicable).

3.9.4 *Quorum*

- 3.9.4.1 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.
- 3.9.4.2 A quorum of Board Members will comprise one (1) half of the Board Members in office, ignoring any fraction, plus one (1).

3.9.5 *Confidentiality*

- 3.9.5.1 All Board Members must at all times keep confidential all documents and reports provided to them for their consideration at a meeting of the Board that the Executive Officer, or in the case of documents and reports relating to a matter to which Clause 3.9.7 relates—the Chairperson, has indicated ought to be treated as confidential or the Board has determined are to be treated as confidential.

3.9.6 *Minutes*

- 3.9.6.1 The Executive Officer, or in the case of a special meeting held pursuant to Clause 3.9.7—the Chairperson, 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.
- 3.9.6.2 The Executive Officer must, or in the case of the minutes of a special meeting held pursuant to Clause 3.9.7—the Chairperson must, within five (5) days after a meeting of the Board provide to each Board Member (other than the Board Member who is also the Executive Officer) and the Chief Executive Officer of the Council a copy of the minutes of the meeting of the Board.

3.9.7 *Other Matters*

- 3.9.7.1 In the case of any matter to be considered by the Board concerning the Executive Officer, the Chairperson:
 - (a) may call a special meeting for the purposes of considering such a matter; or
 - (b) will, upon receiving a written request from the Council or three (3) Board Members, call a special meeting for the purposes of considering such a matter;
 - (c) will, if a special meeting is to be called for the purposes of considering such a matter:
 - (i) determine the date and time of the special meeting;
 - (ii) give notice in writing to all other Board Members and the Chief Executive Officer of the Council setting out the date, time and place of the special meeting at least four (4) hours prior to the commencement of the special meeting;
 - (iii) provide an agenda accompanied by all relevant documents and information to be considered by the Board at the special meeting in relation to the matter to all other Board Members except the Board Member who is also the Executive Officer.

3.10 Board Performance Review

- 3.10.1 The Selection Panel will conduct in confidence, as far as reasonably practicable, a performance review of the Board as soon as practicable upon the conclusion of two (2) years of the establishment of the first Board of the Authority and subsequently at such other intervals as determined by the Council. In conducting the performance review the Selection Panel may:
- 3.10.1.1 be assisted by such persons that the Selection Panel considers appropriate;
 - 3.10.1.2 have regard to requirements of the Act;
 - 3.10.1.3 be provided with access to Board papers, minutes, budgets, financial results, plans and procedures;
 - 3.10.1.4 interview Board members individually or collectively;
 - 3.10.1.5 make recommendations as to:
 - (a) the workings of the Board;
 - (b) the replacement of individual Board Members;
 - (c) the addition of Board Members;
 - (d) amendments or alterations to the Charter;
 - 3.10.1.6 consult with Board Members individually or collectively before issuing the final report;
- 3.10.2 The Selection Panel will prepare a report for consideration by the Council.

4. EXECUTIVE OFFICER AND APPOINTMENT OF OTHER STAFF

- 4.1 The Authority may employ staff including an Executive Officer. The position title of the Executive Officer of the Authority will be **determined** by the Authority.
- 4.2 The Executive Officer will be employed on such terms and conditions as determined by the Authority and may also hold office as a Board Member in accordance with Clause 3.2.10.
- 4.3 The Executive Officer is responsible for appointing, managing, suspending and dismissing all the other employees of the Authority on behalf of the Authority including determining the terms and conditions of employment of such other employees.
- 4.4 In the absence of the Executive Officer, the Executive Officer may appoint a suitable person as Acting Executive Officer. If the Executive Officer does not make or is incapable of making such an appointment, a suitable person may be appointed by the Board. The Council's Chief Executive Officer will be notified of the appointment of an Acting Executive Officer as soon as reasonably practicable after such appointment. The Acting Executive Officer will not act or hold office as a Board Member notwithstanding their appointment to act in the office of Executive Officer.
- 4.5 The Authority delegates responsibility for day to day management of the Authority to the Executive Officer, who will ensure that sound business and human resource management practices are applied in the efficient and effective management of the functions and operations of the Authority.
- 4.6 The functions of the Executive Officer include:
- 4.6.1 ensuring that the decisions of the Authority are implemented in a timely and efficient manner;
 - 4.6.2 providing information to assist the Authority to assess the Authority's performance against its Strategic, Long Term Financial and Business and Asset Management Plans;
 - 4.6.3 providing advice and reports to the Authority on the exercise and performance of its powers, functions and duties under this Charter or any Act;
 - 4.6.4 co-ordinating and initiating proposals for consideration of the Authority;
 - 4.6.5 ensuring that the assets and resources of the Authority are properly managed and maintained;
 - 4.6.6 ensuring that records required under the Act or any other legislation are properly kept and maintained;
 - 4.6.7 exercising, performing or discharging other powers, functions or duties conferred on the Executive Officer by or under the Act or any other Act, and performing other functions lawfully directed by the Authority;
 - 4.6.8 establishing policies and procedures relating to work, health and safety.
- 4.7 The Authority must undertake a review of the performance of the Executive Officer at least once every year.
- 4.8 The 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 Executive Officer. Such delegation or sub-delegation may be subject to conditions or limitations as determined by the Executive Officer.
- 4.9 A written record of delegations and sub-delegations must be kept by the Executive Officer at all times.

5. FINANCIALS

5.1 Budget

- 5.1.1 The Authority must before 31 March of each year prepare and submit a draft Budget to the Council for the ensuing Financial Year (or, if appropriate in relation to the first budget of the Authority following its establishment, part Financial Year) in accordance with the Act for approval by the Council.
- 5.1.2 The Authority must adopt after 31 May and after approval of the draft Budget by the Council in each year, a Budget in accordance with the Act for the ensuing Financial Year consistent with the approval given by the Council pursuant to Clause 5.1.1.
- 5.1.3 The Authority may in a Financial Year, with the approval of the Council, incur spending before adoption of its Budget for the year, but the spending must be provided for in the appropriate Budget for the year.
- 5.1.4 The Authority must each Financial Year provide a copy of its adopted Budget to the Chief Executive Officer of the Council within five (5) business days after the adoption of the Budget by the Authority. See Regulation 8 of the *Local Government (Financial Management) Regulations 2011*.

- 5.1.5 Quarterly reports summarising the financial position and performance of the Authority against the Budget must be prepared and presented to the Board at each ordinary meeting of the Board or at such meetings as determined by the Board and copies provided to the Council.
- 5.1.6 The Authority must reconsider its Budget in accordance with the Act in a manner consistent with the Act and may with the approval of the Council amend its Budget for a Financial Year at any time before the year ends.
- 5.1.7 The contents of the Budget must be in accordance with the Act.
- 5.2 **Funding and Financial Contributions**
 - 5.2.1 The Council will contribute funds to the Authority as set out in the Budget adopted by the Authority and approved by the Council.
 - 5.2.2 The Council may 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 Council.
 - 5.2.3 It is intended that the Authority will be self-funding.
 - 5.2.4 The Authority will if requested by the Council make a payment to the Council from the annual profit of the Authority where there is a surplus after the Authority has funded its operational and capital expenditure as set out in a Budget approved by the Council.
- 5.3 **Financial Standards and Reporting**
 - 5.3.1 The Authority must ensure that the Financial Statements of the Authority for each Financial Year are audited by the Authority'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 Council pursuant to Clause 6.3.
- 5.4 **Financial Transactions**
 - 5.4.1 The Authority will develop and maintain appropriate financial management.
 - 5.4.2 The Executive Officer must act prudently in the handling of all financial transactions for the Authority.
- 5.5 **Long Term Financial Plan**
 - 5.5.1 The Authority must:
 - 5.5.1.1 prepare and adopt a Long Term Financial Plan covering a period of at least ten (10) years in a form and including such matters which, as relevant, is consistent with the Act as if the Authority were a council;
 - 5.5.1.2 submit the Long Term Financial Plan to the Council for its approval.
 - 5.5.2 The Authority may at any time review its Long Term Financial Plan and must undertake a comprehensive review of its Long Term Financial Plan on an annual basis and as soon as practicable after the annual review of its Business Plan and concurrently with any review of its Strategic Plan.
 - 5.5.3 The Long Term Financial Plan will be taken to form part of the Authority's Strategic Plan.
- 5.6 **Asset Management Plan**
 - 5.6.1 The Authority must:
 - 5.6.1.1 prepare and adopt an Asset Management Plan for the Wastewater Utility;
 - 5.6.1.2 submit the Asset Management Plan to the Council for its approval.
 - 5.6.2 The Authority must undertake a comprehensive review of the Asset Management Plan at least every two (2) years or more often should material changes occur.
- 6. **MANAGEMENT FRAMEWORK**
 - 6.1 **Strategic Plan**
 - 6.1.1 The Authority must:
 - 6.1.1.1 prepare and adopt a Strategic Plan with a minimum operational period of ten 10 years which sets out the goals, objectives, strategies and priorities of the Authority over the period of the Strategic Plan;
 - 6.1.1.2 submit the Strategic Plan to the Council for its approval.
 - 6.1.2 The Authority must review the Strategic Plan at least every four (4) years.
 - 6.2 **Business Plan**

The Authority:

 - 6.2.1 must in consultation with the Council 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 a new Business Plan;
 - 6.2.2 may undertake consultation with stakeholders on the draft Business Plan and take into account submissions received in development of the Business Plan put forward for adoption;
 - 6.2.3 must in consultation with the Council review the Business Plan annually and following such a review the Business Plan shall continue to operate for the period for which the Business Plan was adopted pursuant to Clause 6.2.1;
 - 6.2.4 may, after consultation with the Council amend its Business Plan at any time; and
 - 6.2.5 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.
 - 6.3 **Annual Report**
 - 6.3.1 The Authority must each year, produce an Annual Report summarising the activities, achievements and financial performance of the Authority for the preceding Financial Year.
 - 6.3.2 The Annual Report must incorporate the audited financial statements of the Authority for the relevant Financial Year.
 - 6.3.3 The Annual Report must be provided to the Council by 30 September each year.

6.4 Reporting**6.4.1 The Chairperson shall:**

- 6.4.1.1 present to the Council the draft Budget for the Authority at such time as determined by the Council but before 31 March in each year outlining the planned activities of the Authority for the forthcoming financial year;
- 6.4.1.2 present to the Council the Annual Report of the Authority at such time as determined by the Council but before 30 September each year outlining the achievements of the Authority for the previous financial year; and
- 6.4.1.3 prepare and provide to the Council's Chief Executive Officer a report on the key outcomes of each meeting of the Board within 5 (five) days of each such meeting.

6.5 Audit

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

6.6 Audit and Risk Management Committee

- 6.6.1 The Authority must establish an Audit and Risk Management Committee in accordance with the Act.
- 6.6.2 The members of the Audit and Risk Management Committee will be nominated by the Authority and appointed by the Council.
- 6.6.3 The terms and conditions of the appointment of members of the Audit and Risk Management Committee will be determined by the Council.
- 6.6.4 The Terms of Reference for the Audit and Risk Management Committee shall be determined by the Council following consultation with the Authority.

6.7 Insurance and Superannuation Requirements

- 6.7.1 The Authority shall register with the Local Government Mutual Liability Scheme and the Local Government Workers Compensation Scheme and comply with the rules of the schemes.
- 6.7.2 The Authority 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 Authority.
- 6.7.3 The Authority shall register with the Local Government Superannuation Scheme and comply with the rules of the Scheme.

7. MISCELLANEOUS PROVISIONS**7.1 Winding-Up**

- 7.1.1 The Authority may be wound up in accordance with the Act.
- 7.1.2 Should the Authority be considering the making of a request to the Council to consider winding up the Authority, the Authority must request a special meeting be called in accordance with Clause 3.9.3.3.
- 7.1.3 On a winding-up of the Authority, the surplus assets or liabilities of the Authority, as the case may be, will vest in or attach to the Council.

7.2 Non-derogation and Direction by Council

- 7.2.1 The establishment of the Authority does not derogate from the power of the Council to act independently in relation to a matter within the jurisdiction of the Authority.
- 7.2.2 The Authority is subject to the direction and control of the Council.
- 7.2.3 A direction given by the Council under this clause must be in writing, and a copy of any direction must be available at the principal office of the Council.

7.3 Review of Charter

- 7.3.1 The Authority must review this Charter at least once in every four (4) years.
- 7.3.2 This Charter may be amended with the approval of the Council.
- 7.3.3 Before the Council votes on a proposal to alter this Charter, it must take into account any recommendation of the Authority.
- 7.3.4 The Executive Officer must:
 - 7.3.4.1 furnish a copy of the Charter, as amended, to the Minister;
 - 7.3.4.2 ensure that a copy of the Charter, as amended, is published on a website (or websites) determined by the Chief Executive Officer of the Council; and
 - 7.3.4.3 ensure that a notice of the fact of the amendment and a website address at which the Charter as amended is available for inspection is published in the Gazette.

7.4 Transitional Provisions

The Council may issue directions to the Authority which must be in writing concerning transitional arrangements to be followed by the Authority following its commencement which directions may where necessary and appropriate modify the requirements set out in this Charter.

Dated: 9 December 2024

ANDREW STUART
Chief Executive Officer
Mount Barker District Council