

## **Council Meeting Minutes**

**25 October 2016 at 7.00 pm  
Council Chamber, 401 Greenhill Road, Tusmore**

**Members Present:** Mayor David Parkin  
Councillors Bills, Davis, Ford, Lemon, Lord, Monceaux,  
Osterstock, Piggott and Wilkins

**Staff Present:** Paul Deb, Chief Executive Officer  
Louise Miller-Frost, General Manager Community and  
Development Services  
Martin Cooper, General Manager Corporate Services  
Barry Cant, General Manager Urban Services

**The Mayor read the opening prayer.**

**The Mayor acknowledged those who gave their life for this Country and also acknowledged the Traditional Owners.**

### **Evacuation Procedure**

The Mayor read the evacuation procedure.

### **Recording of Council Meetings**

The Mayor advised that the Council Meeting is recorded.

### **Apologies**

Councillors Cornish and Davey

### **Leave of Absence**

Councillor Bagster

### **Request for Leave of Absence – Councillor Bagster (4.1)**

Councillor Monceaux moved:

C10878 That the Leave of Absence be granted for Council meetings on 8 and 22 November 2016.

Seconded by Councillor Bills

CARRIED

**Confirmation of Minutes**

Councillor Davis moved:

C10879 That the Minutes of the meeting of Council held on 11 October 2016 be taken as read and confirmed.

Seconded by Councillor Piggott

CARRIED

**Mayor's Report**

Councillor Lemon moved:

C10880 That the Mayor's Report be received.

Seconded by Councillor Lord

CARRIED

**Reports of Members, Delegates and Working Parties**

Councillor Monceaux attended the Mutual Liability Scheme workshop prior to the Council meeting on 11 October 2016, the Local Government Grants Commission Elected Member Workshop on 18 October, and the Burnside Retirement Services Inc. banking on 20 October.

Councillor Osterstock attended the Mutual Liability Scheme workshop on 11 October 2016.

Councillor Ford attended the Local Government Grants Commission Elected Member Workshop on 18 October 2016.

Councillor Davis attended the Pink and Blue Ball in support of the Australian Lions Childhood Cancer Research Foundation on 22 October 2016.

Councillor Piggott attended the Community and Civic Centre Master Plan Steering Committee and the Audit Committee meeting on 17 October 2016 and the Local Government Grants Commission Elected Members Workshop on 18 October.

Councillor Lord attended the Glenunga Hub Garage Sale Trail stall holders on 22 October 2016.

Councillor Lemon attended the Local Government Association Annual General Meeting on 21 October 2016, the women's breakfast hosted by women of the Adelaide City Council on 22 October, the Glenunga Hub Garage Sale Trail stall holders on 22 October and along with Councillor Cornish attended eight garage sales in our respective wards on the same day.

Councillor Wilkins attended the Australian Garden History National Conference in Canberra 13 to 17 October 2016.

**Deputations**

Nil

## Petitions

Nil

## Questions on Notice

### 10.1 Judicial Review Proceedings – Burnside Investigation

Councillor Osterstock asked the following questions on notice:

1. Has the Council previously considered the option of judicial review or other proceedings against the Minister in relation to the MacPherson report? If so, were such proceedings pursued? If they were, what was the outcome? If they were not, why not?

*The Council has previously considered the option of judicial review. At its meeting of 24 April 2012, the Council resolved to seek legal advice as to obtaining orders from the Supreme Court that would have the effect of requiring the Minister for Local Government to cause the "City of Burnside - Investigation report produced pursuant to Section 272 (7) of the Local Government Act 1999," otherwise known in the media as the "MacPherson Report" or the "Burnside Report," to be finalised.*

*That opinion from Queen's Counsel (who is now a member of the judiciary), together with legal advice from Wallmans lawyers, was provided as an attachment to the Agenda report for Agenda item 20.1 for the meeting of Council on 26 June 2016. The Minutes of the meeting record that the Council received the report, but did not resolve to deal with the matter any further.*

*Pursuant to the Supreme Court Rules, judicial review proceedings are to be filed as soon as reasonably practicable, and in any event within 12 months of the decision of the Minister not to finalise the report. The Council is now out of time within which to initiate a judicial review seeking an order in the nature of mandamus. While the Court has the discretion to extend that period of time, the Council has received advice that it is likely the Court will now find there is no good reason to do so, particularly in circumstances when the Council considered the issue, received advice within time and determined not to pursue the matter.*

2. If legal advice has been obtained in relation to such a suggestion, what, in essence, are the key elements of the advice to the Council?

*The key elements of the advice from Queen's Counsel in 2012 were:*

*"it is most unlikely that the Supreme Court of South Australia would order a Minister to require completion and submission of a final report because the Minister has no statutory duty to do so that can be enforced"; and*

*"the chance of obtaining mandamus against a Minister of the Crown are so remote that that avenue can be put to one side".*

*Further, the Council has since obtained more recent legal advice that confirms given the difficulties ordinarily faced by a party in seeking to compel a Minister of the Crown to perform a duty, the present*

*circumstances, particularly with regards to the passage of time, would render any action against the Minister futile. The Council is now out of time within which to initiate a judicial review and any application to the Court to extend the time within which to file such proceedings is highly unlikely to be successful.*

3. What would be the likely costs exposure for the Council in pursuing a judicial review or other proceedings against the Minister?

*Judicial review is a specialised jurisdiction and the Council would be required to engage solicitors and Queen's/Senior Counsel. The Council would be required, as a condition precedent, to address the extension of time issue. The fee estimate for such an argument could amount to \$35,000 - \$45,000 (plus GST). This is a conservative figure. It could be higher if other parties seek to be joined to the proceedings, thereby increasing the Council's costs exposure*

*As a general rule, costs follow the event. If the Council were unsuccessful in its application for an extension of time, not only would it be required to meet its own legal fees, but the Court may also make an order against the Council for the legal fees of any other party who applied to be joined.*

*Conversely, if the Council were successful in arguing the extension of time issue, it would then be required to meet its legal costs for the substantive argument, that is, the application for an order in the nature of mandamus to compel the Minister to complete the report. Again, depending on the nature of the arguments that would be led and how many parties may apply to be joined, the Council has been advised that it would not be unusual for the legal fees in such proceedings to, conservatively, be in the range \$100,000 - \$150,000 (plus GST).*

*If the Council were unsuccessful on the substantive argument, again, it may be faced with a costs order against it for any joined parties. That is, the Council's fees could range from its own fees of \$150,000 at a minimum, to \$450,000 if it were unsuccessful.*

4. Has the Council received advice as to the likely success or otherwise of such action? If so, what is that advice?

*In addition to the advice received from Queen's Counsel in 2012, the Council has received further, recent, advice which confirms that not only is the legal situation the same as it was in 2012, but that it is now significantly out of time within which to initiate a judicial review seeking an order in the nature of mandamus. The Council's legal advice on this issue was, and remains, that there is no likely prospect of success in pursuing judicial review proceedings in relation to this matter and the costs incurred in seeking to do so would be public funds 'thrown away'.*

## 10.2 LGA Mutual Liabilities Scheme

Councillor Ford asked the following question on notice:

Would Administration please provide a copy of the agreement between the City of Burnside and the LGA Mutual Liabilities Scheme, including policy relating to resolution of disputation between the parties?

*The Local Government Association Mutual Liability Scheme (LGAMLS) is a local government indemnity scheme established pursuant to Schedule 1 Part 1, 2, (1), (a) of the Local Government Act 1999, providing civil liability cover.*

*Membership to the LGAMLS is available to 'local government entities' (i.e. a Council, not an individual) and is governed by a set of Rules – as it is not 'insurance', there is no policy. A copy of the LGAMLS Scheme Rules is provided in Attachment A.*

*Membership is voluntary and complies with S142 of the Local Government Act 1999.*

*The City of Burnside commenced membership of the LGAMLS on 30 June 1989 and, by way of payment of an annual contribution, has continued to be a member, including the current 2016/2017 membership year.*

*A copy of City of Burnside's current Certificate of Membership for the 2016/2017 membership year is provided in Attachment B.*

*In keeping with the intent of a local government indemnity scheme, the LGAMLS maintains 100 per cent Council membership.*

*With respect to policy relating to resolution of disputation between the parties, refer to Section 12 of the LGAMLS Rules – Claims Procedure.*

*By accepting membership to the LGAMLS and paying the annual contribution, a Council agrees to be bound by the Rules, in particular Rules 12.1 (Notice), Rule 12.2 (Not Admit Liability), Rule 12.5 (Continued Support) and Rule 12.6 (Subrogation). Once a civil liability claim is notified to the LGAMLS and accepted pursuant to the Rules, the LGAMLS will confirm indemnity. Once indemnity is confirmed, the Council agrees to subrogate its rights to investigate, defend, and resolve any claim against the Member (Rule 12.6).*

### Motions on Notice

#### Judicial Review Proceedings – Burnside Investigation (11.1)

Councillor Osterstock moved:

- C10881 1. That the independent legal advice of Counsel (Paul Slattery QC, assisted by Andrew Tokley), together with the legal advice received from Wallmans Lawyers (Michael Kelledy) dated 12 June 2012 as previously provided to elected members on a strictly confidential basis, in relation to the question whether the Council may take action to compel the Minister of Local Government to conclude the so called "Burnside Investigation" be further noted as relevant to this motion.

2. That Council, having again considered these advices, in addition to the confidential legal advice received on 11 October 2016, resolves not to further consider and/or initiate any legal proceedings in relation to this matter.

Seconded by Councillor Piggott

CARRIED

A Division was called by Councillor Monceaux:

**In Favour**

Councillor Osterstock  
Councillor Davis  
Councillor Piggott  
Councillor Lemon  
Councillor Wilkins

**Against**

Councillor Monceaux  
Councillor Bills  
Councillor Ford  
Councillor Lord

The Division resulted in the Motion being

CARRIED

**Ministerial Investigation into the City Of Burnside (11.2)**

The Mayor refused to accept the motion as due to Council's resolution in item 11.1 it now constituted a rescission motion in part and a rescission motion requires notice to the CEO five clear days before the meeting.

**Correspondence – Mr James Jacobsen – Rescission Motion (11.3)**

Councillor Ford moved:

That the Motion of 11 October 2016 (C10866) "that all claims under Section 39 of the *Local Government Act 1999* and generally against City of Burnside by Mr James W. Jacobsen, past, present, future, be referred to the LGA MLS by the CEO for independent assessment and determination as appropriate" be rescinded.

Seconded by Councillor Monceaux

LOST

A Division was called by Councillor Bills:

**In Favour**

Councillor Monceaux  
Councillor Bills  
Councillor Ford  
Councillor Lord

**Against**

Councillor Osterstock  
Councillor Davis  
Councillor Piggott  
Councillor Lemon  
Councillor Wilkins

The Division resulted in the Motion being

LOST

**Questions without Notice**

Nil

**Motions without Notice**

Nil

**Reports of Officers****CEO Recruitment, Performance Appraisal and Remuneration Review  
Committee Finance and Meeting Attendance Report 1/7/16 – 30/9/16  
(Operational) (14.1)**

Councillor Osterstock moved:

C10882 That the Report be received.

Seconded by Councillor Lemon

CARRIED

**First Quarter 2016/17 Budget Update (Operational) (14.2)**

Councillor Osterstock moved:

C10883 1. That the Report be received.

2. That the following variances to the 2016/17 Adopted Budget be adopted to create the First Quarter Forecast (full year):

2.1 Operating Income net decrease of \$246,691.

2.2 Operating Expenditure net increase of \$39,758.

2.3 Decrease in Capital Revenue of \$129,241.

Seconded by Councillor Davis

CARRIED

**Minutes of Audit Committee – 17 October 2016 (Operational) (14.3)**

Councillor Piggott moved:

C10884 That the Minutes of the Audit Committee held on 17 October 2016 be received.

Seconded by Councillor Osterstock

CARRIED

**Eastern Regional Alliance Water – Draft Annual Business Plan and Budget  
(Operational) (14.6)**

Councillor Piggott moved:

C10885 1. That the Report be received.

2. That Council approves the draft 2016/17 eastern region alliance water annual business plan and budget.

Seconded by Councillor Lemon

CARRIED

**Gurney Road Garden Licence (Operational) (14.8)**

Councillor Osterstock moved:

- C10886
1. That the Report be received.
  2. That Council endorses the commencement of community consultation in accordance with its obligations under the *Local Government Act 1999* on the proposed grant of licence to the Minister for Education and Child Development over Gurney Road Garden located at 41 Grant Avenue, Rose Park.
  3. That, subject to the outcome of the community consultation, a further report be presented to Council including a recommendation in relation to proposed licence.

Seconded by Councillor Piggott

CARRIED

Councillor Osterstock left the meeting at 8.09 pm.

**2015/16 Annual Report (Strategic) (14.4)**

Councillor Lemon moved:

- C10887
1. That the Report be received.
  2. That Council adopts the Audited Annual Financial Statements 2015/16 for the year ending 30 June 2016 and authorises the Mayor and the Chief Executive Officer to sign the Certification Statement and the Chief Executive Officer and the General Manager Corporate Services to sign the Management Representation Letter.
  3. That following any corrections or changes identified by Elected Members or Administration, the 2015/16 City of Burnside Annual Report is adopted by Council.

Councillor Osterstock returned to the meeting at 8.11 pm.

Seconded by Councillor Piggott

CARRIED UNANIMOUSLY

**Draft Long Term Financial Plan 2017 – 2026 (Strategic) (14.5)**

Councillor Piggott moved:

- C10888
1. That the Report be received.
  2. That the draft Long Term Financial Plan 2016/17 be adopted.

Seconded by Councillor Osterstock

CARRIED



A Division was called by Councillor Ford:

**In Favour**

Councillor Monceaux  
Councillor Osterstock  
Councillor Davis  
Councillor Piggott  
Councillor Lord  
Councillor Lemon  
Councillor Wilkins

**Against**

Councillor Ford  
Councillor Bills

The Division resulted in the Motion being

CARRIED

Councillor Lord left the meeting at 8.45 pm.

**Urban Tree Canopy Coverage (Seed Consulting Report) (Operational) (14.7)**

Councillor Bills moved:

1. That the Report be received.
2. That Council endorse the Urban Tree Canopy Coverage report by Seed Consulting for public release.

Councillor Lord returned to the meeting at 8.50 pm.

Councillor Osterstock left the meeting at 8.58 pm.

Seconded by Councillor Lemon

Councillor Piggott moved an amendment:

- C10889
1. That the Report be received.
  2. That Council endorse the Urban Tree Canopy Coverage report by Seed Consulting for public release.
  3. That the Administration present a report to Council outlining potential strategies to address the reduction in canopy cover.

Councillor Osterstock returned to the meeting at 9.01 pm.

Seconded by Councillor Davis

CARRIED UNANIMOUSLY

The amendment became the motion and was

CARRIED UNANIMOUSLY

**Adjournment of Meeting**

Councillor Davis moved:

- C10890 That the Council Meeting be adjourned at 9.06 pm for a refreshment break of 10 minutes before recommencing at 9.16 pm.

Seconded by Councillor Piggott

CARRIED

**Resumption of Meeting**

Councillor Bills moved:

C10891 That the meeting be resumed at 9.16 pm.

Seconded by Councillor Lemon

CARRIED

Councillor Piggott was not present at the resumption of Council and did not return.

**September 2016 Storm Events (Operational) (14.9)**

Councillor Davis moved:

C10892 1. That the Report be received.

2. That the cost implications of the recent storm events be presented at the Quarter 2 2016/17 Budget Review and any future works recommended as a part of the 2017/18 draft Annual Business planning process.

3. That the cost benefit of purchasing a sand bagging machine will be presented in the Council report due in December 2016.

Seconded by Councillor Lemon

CARRIED

**Proposal – Shipsters Road, Kensington Park Footbridge (Operational) (14.10)**

Mayor Parkin declared that under Section 74 of the *Local Government Act 1999* a member of a Council who has an interest in a matter before the Council must disclose the interest to the Council. I disclose that I have an interest in Pembroke School in that I am a former Chairman and Honorary Life Member of the school.

Subsection 74(4) of the Act requires the member who has an interest in a matter before Council to vacate the Chamber and not participate in any way in discussion on the matter. Although under 74(4b), 74(4) does not apply when the interest is in a non-profit association, I choose to vacate the Chamber for the following reason:

*During my campaign for the role of Mayor I recognised that there may arise a perceived conflict of interest in my former relationship with Pembroke School. I undertook not to participate in any matter associated with the School that may come before the Chamber. I vacate to honour this commitment.*

Mayor Parkin left the meeting 9.23 pm.

**Acting Presiding Member**

The Chief Executive Officer sought nominations for the position of Acting Presiding Member.

Councillor Monceaux nominated Councillor Wilkins. Councillor Wilkins accepted the nomination.

Councillor Monceaux moved:

C10893 That Councillor Wilkins be appointed the Acting Presiding Member for the consideration of Item 14.10 Proposal – Shipsters Road, Kensington Park Footbridge (Operational).

Seconded by Councillor Lemon

CARRIED

Councillor Bills moved:

C10894 1. That the Report be received.

2. That the Council supports, in principle, the construction of the proposed footbridge by Pembroke School over portion of Shipsters Road, Kensington Park located within the City of Burnside generally in accordance with the plans by Grieve Gillet Anderson dated September 2016.

3. That a further detailed report be presented to Council for final approval.

Seconded by Councillor Davis

CARRIED UNANIMOUSLY

Councillor Bills left the meeting at 9.29 pm.

Mayor Parkin returned to the meeting at 9.29 pm.

### **Subsidiaries, Regional Subsidiaries and other Organisations/Entities**

#### **Eastern Waste Management Authority (15.1)**

Nil

#### **Eastern Health Authority (15.2)**

Board of Management Meeting 23 October 2016.

Councillor Bills returned to the meeting at 9.32 pm.

Councillor Osterstock left the meeting at 9.32 pm.

#### **Highbury Landfill Authority (15.3)**

Nil

#### **ERA Water (15.4)**

Nil

### **Council Correspondence**

Nil

### **Other Business**

Councillor Osterstock returned to the meeting at 9.34 pm.

**Confidential Items****Correspondence Received from a Former Elected Member (Operational) (18.1)**

Councillor Osterstock moved:

- C10895 1. Pursuant to section 90(2) of the *Local Government Act 1999*, the Council orders that all members of the public except, Elected Members of the City of Burnside, the Chief Executive Officer, General Manager, Corporate Services; General Manager, Community and Development Services; General Manager, Urban Services, Principal Governance Officer, Ms Tracy Riddle Kelledy Jones Lawyers and the Executive Assistants, be excluded from attendance at the meeting for Agenda Item 18.1 "Correspondence Received from a Former Elected Member".
2. The Council is satisfied that pursuant to section 90(3)(g) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is information concerning matters that must be considered in confidence, in order to ensure that the Council does not breach any legal obligation or duty in relation to an existing suppression order;
3. as well as pursuant to section 90(3)(h) of the *Local Government Act 1999*, as information to be received, discussed or considered in relation to this Agenda item is information concerning matters that must be considered in confidence in order to ensure that the Council maintains the privilege in, and the confidentiality of, the legal advice it has received and will consider in association with the matter, as well as to maintain the Council's orders of confidentiality over certain information.
4. Further, the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because of the public interest generally in maintaining confidentiality of the Council's legal advice.

Seconded by Councillor Davis

CARRIED

A Division was called by Councillor Osterstock:

**In Favour**

Councillor Monceaux  
Councillor Osterstock  
Councillor Davis  
Councillor Lord  
Councillor Lemon  
Councillor Wilkins

**Against**

Councillor Bills  
Councillor Ford

The Division resulted in the Motion being

CARRIED

Councillor Lemon moved:

- C10896 1. *Confidential Resolution*
2. *Confidential Resolution*
3. *Confidential Resolution*
4. *Confidential Resolution*

Seconded by Councillor Davis

TIED

The Mayor used his casting vote and the motion was

CARRIED

A Division was called by Councillor Davis:

**In Favour**

Councillor Osterstock  
Councillor Davis  
Councillor Lemon  
Councillor Wilkins  
Mayor Parkin

**Against**

Councillor Monceaux  
Councillor Bills  
Councillor Ford  
Councillor Lord

The Division resulted in the Motion being

CARRIED

**Confidentiality Recommendation**

Councillor Davis moved:

C10897 1. That, having considered the matter in confidence, pursuant to section 91(7) and 91(9) of the *Local Government Act 1999*, the Council orders that:

- 1.1 The report, attachments and minutes relating to this Agenda item remain confidential on the basis that the information to be received, discussed or considered in relation to this Agenda item is information concerning matters that must be considered in confidence in order to ensure that the Council does not breach any legal obligation or duty in relation to an existing suppression order pursuant to section 90(3)(h) of the *Local Government Act 1999*; and maintains the privilege in, and the confidentiality of the legal advice it has received and will consider in association with the matter, as well as maintain the Council's orders of confidentiality over certain information, pursuant to section 90(3)(h) of the *Local Government Act 1999*;
- 1.2 The principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because of the public interest generally in maintaining confidentiality in these matters; and
- 1.3 The report, attachments and minutes will not be available for public inspection for the period of five years, at which time this order will be revoked / reviewed by the Council.

2. That for the item named in clause 1.1 and associated sub clauses, unless;

- 2.1 the period in respect of any order made under section 91(7) of the *Local Government Act 1999* lapses; or
- 2.2 Council resolves to revoke an order made under section 91(7) of the *Local Government Act 1999*; or
- 2.3 the CEO determines, pursuant to the delegated authority which this resolution provides, that the order be revoked;

any discussion of Council on the matter and any recording made of those discussions are to be treated as confidential.

Seconded by Councillor Lemon

CARRIED

A Division was called by Councillor Osterstock:

**In Favour**

Councillor Monceaux  
 Councillor Osterstock  
 Councillor Bills  
 Councillor Davis  
 Councillor Lord  
 Councillor Lemon  
 Councillor Wilkins

**Against**

Councillor Ford

The Division resulted in the Motion being

CARRIED

**Brown Hill Keswick Creek Stormwater Management Project – State Government Funding Proposal (Strategic) (18.2)**

Councillor Davis moved:

- C10898 1. Pursuant to section 90(2) of the *Local Government Act 1999*, the Council orders that all members of the public except, Elected Members of the City of Burnside, the Chief Executive Officer, General Manager, Corporate Services; General Manager, Community and Development Services; General Manager, Urban Services, Manager, Information Systems, Principal Governance Officer and the Executive Assistants, be excluded from attendance at the meeting for Agenda Item 18.2 “Brown Hill Keswick Creek Stormwater Management Project – State Government Funding Proposal”.
2. The Council is satisfied that pursuant to section 90(3)(j) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is information the disclosure of which would divulge information provided on a confidential basis by a Minister of the Crown. At the request of the Minister for Water and the River Murray, confidentiality must be maintained throughout the process until such time as the State Government presents its funding offer to the five (5) catchment Councils and they each have the opportunity to review the offer and the conditions attached.
3. In addition, the disclosure of this information would, on balance be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in the continued non-disclosure of the information. The benefit to the public at large resulting from the withholding of the information outweighs the benefit to it of disclosure of the information. The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the disclosure of this information as requested could materially impact on negotiations between the parties and as such the request to remain in confidence is required to be upheld until such time as matters are finalised and Council has considered its position.

Seconded by Councillor Osterstock

CARRIED

Councillor Lemon moved:

- C10899 1. *Confidential Resolution*
2. *Confidential Resolution*
3. *Confidential Resolution*

4. *Confidential Resolution*
5. *Confidential Resolution*
6. *Confidential Resolution*
7. *Confidential Resolution*
8. *Confidential Resolution*

Seconded by Councillor Wilkins

CARRIED UNANIMOUSLY

### **Confidentiality Recommendation**

Councillor Davis moved:

- C10900 1. That having considered Agenda Item 18.2 “Brown Hill Keswick Creek Stormwater Management Project – State Government Funding Proposal” in confidence under section 90(2) and (3)(j) of the *Local Government Act 1999*, the Council, pursuant to section 91(7) of that Act orders that:
- 1.1. The item remain confidential on the basis that the information to be received, discussed or considered in relation to this Agenda item is information concerning matters that must be considered in confidence in order to ensure that the Council divulge information provided on a confidential basis by a Minister of the Crown pursuant to section 90(3)(j) of the *Local Government Act 1999* as the Minister for Water and the River Murray has requested that confidentiality must be maintained throughout the process until such time as the State Government presents its funding offer to the five (5) catchment Councils and they each have the opportunity to review the offer and the conditions attached;
  - 1.2. The principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because of the public interest generally in maintaining confidentiality in these matters; and
  - 1.3. The report, attachments and minutes will not be available for public inspection until a public announcement has been made by the Minister on a finalised funding model, at which time this order will be revoked / reviewed by the Council.
2. That for the item named in clause 1.1 and associated sub clauses, unless:
- 2.1. the period in respect of any order made under section 91(7) of the *Local Government Act 1999* lapses; or
  - 2.2. Council resolves to revoke an order made under section 91(7) of the *Local Government Act 1999*; or
  - 2.3. the CEO determines, pursuant to the delegated authority which this resolution provides, that the order be revoked;

any discussion of Council on the matter and any recording made of those discussions are to be treated as confidential.

Seconded by Councillor Wilkins

CARRIED UNANIMOUSLY

Councillor Osterstock left the meeting at 10.20 pm.

### **Closure**

The meeting closed at 10.21 pm.



# SCHEME RULES

## **1. Operation of Rules**

These Rules operate from 4.00pm on 30th June 2002.

## **2. Definitions**

In these Rules, the following words have the meanings given to them:

- 2.1 “Board” means the Board of Management appointed by LGA in accordance with these Rules.
- 2.2 “Civil Liability” means any liability not being criminal resulting from an obligation, function, power or duty of a Member arising under law.
- 2.3 “Claim” means any claim for civil liability made upon a Member during the term of this Mutual Scheme.
- 2.4 “Eligible Body” means:
  - 2.4.1 Local Government Association of South Australia (LGA);
  - 2.4.2 The Local Government Finance Authority of South Australia;
  - 2.4.3 Local Government Superannuation Board;
  - 2.4.4 Council Purchasing Authority Pty Ltd;
  - 2.4.5 All Councils and subsidiaries constituted pursuant to the provisions of the Local Government Act, 1999;
  - 2.4.6 Any other body so prescribed by the provisions of the Local Government Act, 1999;
  - 2.4.7 Any other body admitted to membership of the Mutual Scheme by LGA.
- 2.5 “Fund” means the fund established and maintained in accordance with these Rules.
- 2.6 “Indemnity Cover” means insurance or reinsurance cover purchased or procured by LGA for and on behalf of Members to satisfy and manage the Claims admitted to indemnity in the amount determined from time to time by LGA.
- 2.7 “Manager” means the manager appointed in accordance with Part 1 of Schedule 1 to the Local Government Act 1999 and these Rules.
- 2.8 “Member” means an eligible body admitted at the discretion of LGA to membership of the Mutual Scheme.
- 2.9 “Mutual Scheme” means The Local Government Association Mutual Liability Scheme conducted pursuant to Schedule 1 of the Local Government Act, 1999 and in accordance with these Rules.
- 2.10 “Ordinary Resolution” means a resolution passed with the majority of the votes of all persons present and entitled to vote at the meeting at which the resolution is put.



2.11 “Pooled Cover” means the discretionary indemnity cover provided from the Fund to satisfy and manage the Claims admitted to indemnity in the amount determined from time to time by LGA.

2.12 “Special Resolution” means a resolution passed with the unanimous vote of all persons present and entitled to vote at the meeting at which the resolution is put.

### **3. Delegation**

3.1 LGA may delegate any power, function or duty under these Rules to the Board subject to such limitations and conditions as may be determined by LGA.

3.2 LGA may revoke or amend a delegated power, function or duty at any time.

3.3 Subject only to any limitations or conditions in the delegation the Board in exercising delegated power will be empowered under these Rules as if it were LGA.

### **4. Objectives of the Mutual Scheme**

4.1 The objectives of the Mutual Scheme are to provide to Members of the Mutual Scheme assistance in respect of their potential and actual Civil Liabilities more particularly set out in these Rules and including but not limited to:

4.1.1 advice in respect of minimising the occurrence and severity of all Civil Liabilities;

4.1.2 assistance in the administration, investigation, management and resolution of all Claims;

4.1.3 legal representation in respect of all Claims; and

4.1.4 financial assistance by way of discretionary grants in respect of the Civil Liabilities of the Members.

### **5. Membership**

5.1 The Eligible Bodies set out in Rules 2.4.1 to 2.4.5 inclusive are automatically entitled to membership of the Mutual Scheme.

5.2 LGA may from time to time by Special Resolution admit to membership of the Mutual Scheme any other Eligible Body which makes application to LGA and agrees to be bound by these Rules.

5.3 In exercising discretion to admit an Eligible Body to membership of the Mutual Scheme, LGA may take into account any matter which it considers relevant.

5.4 In respect of each financial year during the operation of the Mutual Scheme, the Members shall be those Eligible Bodies which have been admitted to membership and have paid all moneys levied in respect of their membership for that financial year.

5.5 At the discretion of LGA the benefits of membership may be limited to defined Civil Liability, to limited Pooled Cover, to limited Indemnity Cover or any combination of those matters.

5.6 Payment of a contribution by a Member shall be evidence of the Member’s agreement to be bound by these Rules.

### **6. The Board**

6.1 LGA will establish a Board to administer the Mutual Scheme in the pursuit of the Objectives for and on behalf of LGA.

6.2 Membership of the Board will be for a term of three years and Board members will be eligible for reappointment upon expiry of their term.

- 6.3 The Board will comprise:
- 6.3.1 Six members appointed by the State Executive of LGA one of whom will be appointed by the Board to be the Presiding Member of the Board; and
  - 6.3.2 Two members nominated by the Government of the State of South Australia, whose appointment will not be unreasonably withheld, and appointed by the State Executive of LGA; and
  - 6.3.3 Two members nominated by the Manager, whose appointment will not be unreasonably withheld, and appointed by the State Executive of LGA.
- 6.4 Every member of the Board may have a deputy nominated by the member who may attend meetings and vote in the absence of the member and otherwise may attend meetings at the invitation of the Board but will not be entitled to vote.
- 6.5 Save for any matter which under the Rules requires a Special Resolution, questions arising at a meeting of the Board shall be decided by Ordinary Resolution.
- 6.6 Six members of the Board including one member appointed under Clause 6.3.2 (or the deputy attending as the case may be) will constitute a quorum for any meeting of the Board.
- 6.7 Members of the Board will be entitled to only one vote on any matter.
- 6.8 Except in special circumstances approved by LGA no payment or other valuable consideration or any other benefit shall be made or given out of the Fund to any member of the Board in respect of that person's performance of duties as a member of the Board or otherwise.
- 6.9 The Board shall report annually to LGA and the Members on all aspects of the operation of the Mutual Scheme for the preceding year.
- 6.10 A member of the Board (including a deputy) will incur no personal liability for an honest act or omission in the performance or purported performance of powers, functions or duties of the Board.
- 6.11 A liability that would, but for Rule 6.10 lie against a member of the Board, lies instead against LGA.

## **7. Fund**

- 7.1 LGA shall establish and maintain a Fund to meet the Objectives and for that purpose shall at the commencement of each financial year levy the Members of the Mutual Scheme a contribution to be paid into the Fund at such levels as are determined by LGA to meet:
- 7.1.1 such Claims as may be made against any one or more of the Members during that year to the extent of the Pooled Cover;
  - 7.1.2 the premium payable to an appropriate indemnity insurer to provide Indemnity Cover for the Members during that year;
  - 7.1.3 the operating expenses of the Mutual Scheme for that year;
  - 7.1.4 any grants or allocations to Members which LGA in its discretion may make;
  - 7.1.5 an administration fee determined by LGA from time to time and payable to LGA for the performance by LGA of its functions and duties under these Rules;
  - 7.1.6 any other amount determined by LGA to be required for the continuation of the Mutual Scheme.
- 7.2 Each Claim shall be met:

- 7.2.1 to the extent that the Claim does not exceed the amount of the Pooled Cover, from the Fund;
- 7.2.2 to the extent that the Claim exceeds the amount of the Pooled Cover:
  - 7.2.2.1 to the amount of the Pooled Cover, from the Fund;
  - 7.2.2.2 thereafter from Indemnity Cover to the extent of that cover;
- 7.2.3 to the extent that the Claim exceeds the amount of the Pooled Cover and the Indemnity Cover;
  - 7.2.3.1 to the amount of the Pooled Cover, from the Fund;
  - 7.2.3.2 to the amount of the Indemnity Cover, to the extent of that cover; and
  - 7.2.3.3 the balance by the Member against which the Claim was made.
- 7.3 The Members must contribute to the Fund in the proportions determined annually by LGA.
- 7.4 LGA shall administer the Fund with the intent that upon the settlement of all Claims made in any financial year:
  - 7.4.1 any surplus remaining in the Fund attributable to that year shall be allocated at the absolute direction of LGA toward liabilities of the Fund for any other year whether future or past; and
  - 7.4.2 any deficiency in the Fund in that year may be met by additional contributions levied by LGA against each Member for that year in the proportion in which contributions were made to the Fund for that year.

## **8. Management of the Mutual Scheme**

- 8.1 LGA shall engage a Manager upon such terms and conditions as may be determined by LGA.
- 8.2 The Manager's duties shall be specified by LGA from time to time and shall include:
  - 8.2.1 the preparation of the annual operating budget;
  - 8.2.2 the calculation of contributions in conjunction with actuarial advice;
  - 8.2.3 the recommendation of the level of Pooled Cover to be provided in any year;
  - 8.2.4 the recommendation of the level of Indemnity Cover in any year;
  - 8.2.5 the negotiation of Indemnity Cover on the best terms available;
  - 8.2.6 the management of Claims made against each Member including:
    - 8.2.6.1 the investigation and assessment of those Claims;
    - 8.2.6.2 the preparation of regular reports to LGA or the Board on the progress of Claims and the preparation of recommendations as to the settlement or otherwise of the Claims;
    - 8.2.6.3 the issue of instructions to the Mutual Scheme's legal advisers for advice in respect of Claims and for assistance in the defence of Claims;
    - 8.2.6.4 the provisions of loss prevention and risk minimisation guidelines;
    - 8.2.6.5 the keeping of the accounts of the Fund for each year;

- 8.2.6.6 the preparation of advice and recommendations on the investment of any moneys of the Fund not immediately required;
- 8.2.6.7 the preparation of regular reports to LGA or the Board in such form as LGA or the Board shall from time to time direct in respect of the Fund under its administration as to:
  - 8.2.6.7.1 Claims outstanding;
  - 8.2.6.7.2 the assessment of liability in respect of each outstanding Claim;
  - 8.2.6.7.3 the ability of the Fund to meet the assessment of liability;
  - 8.2.6.7.4 the assessment of further contributions required, if any;
  - 8.2.6.7.5 the investment of the monies of the Fund not immediately required;
  - 8.2.6.7.6 the allocation of surplus money in the Fund, if any.

8.3 The Manager shall be available at all times to LGA, and to the Board and to any member of the Board, or any member of any committee of the Board or any of the Members to answer any questions on the conduct of the activities of the Mutual Scheme.

## **9. Admission of Claim to Indemnity**

LGA shall consider any Claim for which a Member seeks indemnity from the Fund and may in its sole and absolute discretion and either in whole or in part and upon such terms and conditions as LGA may consider appropriate determine whether it will grant indemnity for the Member from the Fund in respect of any such Claim.

## **10. Duties of the Board**

- 10.1 The Board shall be responsible to LGA to the extent of delegated power and within the ambit of its power the duties of the Board shall be:
  - 10.1.1 to achieve and implement the Objectives of the Mutual Scheme;
  - 10.1.2 to ensure from a financial perspective that the Mutual Scheme is viable;
  - 10.1.3 to conduct its business in such manner as is resolved by the Board from time to time;
  - 10.1.4 to determine whether to recommend to LGA the admission of an Eligible Body to membership;
  - 10.1.5 to recommend to LGA any changes to the Rules;
  - 10.1.6 to review the performance and function of the Mutual Scheme.
- 10.2 The Board shall be responsible to LGA for the financial management of the Mutual Scheme to the extent that it shall:
  - 10.2.1 from time to time undertake an assessment of the Members or any of them and their activities to assist in the determination of the proportion in which the Members are to contribute to the Fund in any year and may upon the conclusion of any such investigation direct the Members or any of them as to the procedures to be adopted by them to prevent losses or to minimise Civil Liability;
  - 10.2.2 annually prepare the financial statements and, where considered necessary, report to LGA and the Members on any items arising from those statements;

- 10.2.3 annually determine the extent of Civil Liabilities to be indemnified from the Fund;
  - 10.2.4 annually determine the amount of Pooled Cover to be provided for the Members from the Fund;
  - 10.2.5 annually determine the amount and nature of Indemnity Cover to be purchased for the Members from the Fund for any term and to determine the indemnity insurer for this purpose;
  - 10.2.6 be responsible for the assessment of the Members to determine the proportion in which they are to contribute to the Fund in each year.
- 10.3 The Board shall consider regularly the reports of the Manager in relation to Claims:
- 10.3.1 shall submit its instructions to the Manager as to any Claim made against the Pooled Cover; and
  - 10.3.2 from time to time shall issue instructions to the Manager to permit the Manager to process those Claims.
- 10.4 The Board may establish such committees as it considers necessary to be constituted by such persons as the Board may determine to investigate and report to the Board on any matter relevant to the Mutual Scheme.
- 10.5 The Board shall upon receipt of the recommendation of the Manager prepare and submit to LGA in and for each year during the term of the Mutual Scheme a budget and a financial report which shall deal separately with the following items:
- 10.5.1 the projected income of the Fund by way of contributions, interest or other sources;
  - 10.5.2 the liabilities of the Fund for estimated Claims and Claims adjustment costs;
  - 10.5.3 the amounts to be allowed to provide for the cost of arranging Indemnity Cover
  - 10.5.4 general and administrative costs to be charged against the Fund;
  - 10.5.5 any grants to be made to a Member or any other person or body for any purpose associated with a Civil Liability of a Member whenever arising.
- 10.6 The Board may at its discretion alter the amounts to be expended in respect of the items listed in the budget for each year where necessary to meet the purposes of the Mutual Scheme.
- 10.7 Where it becomes apparent to the Board that for any year the Fund will be insufficient to meet Claims payable from the Fund, the Board must so advise LGA which may at any time require the payment by the Members of an additional contribution in the same proportions as the contribution paid by each of the Members to the Fund for that year in order to ensure that all Claims upon the Fund for that year are able to be met.

## **11. Additional Powers of LGA**

- 11.1 Pooled Cover LGA shall consider granting indemnity with respect to any Civil Liability of a Member from the Fund for a level of Pooled Cover to be determined annually by LGA.
- 11.2 Indemnity Cover LGA shall authorise the Manager to purchase Indemnity Cover in excess of Pooled Cover to an amount determined by LGA from year to year.
- 11.3 Excess

Each member will be liable for the first amount of any Claim to be known as the "Excess" which shall be determined by LGA. The Excess may be a differential amount for each Member and for each Claim or a combination of both.

#### 11.4 Limit of Exposure

Subject to admitting a Claim to Indemnity under Clause 9 a Member's entitlement from the Fund shall never exceed the Pooled Cover for each Claim. Entitlement to claim from Indemnity Cover shall be as contracted by LGA on behalf of all Members. The quantum of any Claim in excess of Indemnity Cover shall be the responsibility of the Member.

#### 11.5 Defaulting Member

LGA may by written notice to a Member in default of these Rules exclude that Member from any or a defined entitlement to Pooled Cover or Indemnity Cover.

#### 11.6 Special Risks

LGA may by written notice to a Member exclude the Member from any or a defined entitlement to Pooled Cover or Indemnity Cover with respect to a "special risk" of Civil Liability as determined by LGA.

#### 11.7 Other Insurance

A Member is not entitled to indemnity from the Pooled Cover for any loss, damage or liability which at the time of the happening of such loss, damage or liability or the Claim for such was otherwise indemnified or insured by or would, but for the existence of this Mutual Scheme be indemnified or insured by any other Policy or Policies of Insurance or otherwise except in respect of any liability beyond the amount which would have been payable under such other Policy or Policies had this Mutual Scheme not been effected.

This Rule is to be construed to exclude Claims made with respect to professional indemnity claims and occurrences for all other claims, made or occurring prior to 30 June 1989.

### **12. Claims Procedure**

#### 12.1 Notice

A Member shall as a condition precedent to a Claim to be indemnified under these Rules and subject to the default provisions as a condition of continued membership forthwith give to the Manager written notice of each of the following:

12.1.1 any circumstance or occurrence of which the Member shall become aware which is likely to give rise to a Claim against the Member for Civil Liability;

12.1.2 any receipt of notice, written or oral, from any person of any intention to make a Claim against the Member; and

12.1.3 any Claim made against the Member whether the quantum of the Claim exceeds the Excess or not.

#### 12.2 Not admit liability

A Member shall not admit liability for, compromise, settle or make or promise any payment in respect of any Claim which may be the subject of indemnity hereunder or incur any costs or expenses in connection therewith without the written consent of LGA which if it so wishes shall be entitled to take over and conduct in the name of the Member the defence and/or settlement of any such claim for which purpose the Member shall give all such information and assistance as LGA may reasonably require.

12.3 Increase in Risk A Member shall forthwith give to LGA full particulars in writing of any material increase in the risk of any Civil Liability and shall pay such additional contribution and shall comply with such other terms and conditions, if any, as may be reasonably required by LGA in respect of such Civil Liability.

#### 12.4 Fraudulent Claims and False Information

If a Member shall make any Claim knowing the same to be false or fraudulent as regards amount or otherwise or shall provide any false information with respect to a Claim the entitlement shall become void and all benefits hereunder relating to that Claim shall be forfeited.

#### 12.5 Continued Support

During the continuance of any Claim against a Member which is to be indemnified from the Mutual Scheme the Member shall provide the Board or the Manager with whatever information and support (including technical and professional support if requested) as is requested to enable the adequate investigation, defence and resolution of any such Claim.

#### 12.6 Subrogation

Every Member seeking indemnity from the Mutual Scheme shall by membership of the Mutual Scheme have agreed to subrogate to LGA its rights to investigate, defend and resolve any Claim against the Member.

#### 12.7 Special Assistance

Any Member requiring special assistance by way of a grant or otherwise to manage any Civil Liability may make written application for such to LGA whereupon LGA shall deal with the matter and in doing so may request any information from the Member and may resolve to refuse the grant, or make the grant on such terms and conditions as it deems appropriate.

### **13. Contributions**

13.1 Contributions for each year shall be as determined by LGA having regard to any matter which it determines relevant.

13.2 Contributions once paid by a Member to the Fund shall not be recoverable in whole or in part by the Member for any reason.

13.3 Contributions by each Member shall be applied by LGA at its discretion toward the accumulation of the Fund, the purchase for and on behalf of each Member (as one of a group of Members of the Mutual Scheme) of Indemnity Cover in respect of Civil Liability of each Member in excess of the level of Pooled Cover and otherwise in furtherance of the objectives of the Mutual Scheme.

13.4 Contributions for each Member shall be determined by LGA from year to year and for the purpose of determining the appropriate contribution for each Member, the Member shall provide LGA, the Board and the Manager such information as is required to determine:

13.4.1 the history of Civil Liability claims against the Member;

13.4.2 operating procedures of the Member in all of its activities; and

13.4.3 any other matter requested by LGA, the Board or the Manager.

13.5 Additional contributions for any year may be levied by LGA against any Member at any time for any of the following reasons:

13.5.1 increasing Pooled Cover in any year;

13.5.2 purchasing additional Indemnity Cover in any year;

13.5.3 to cover special Civil Liability risks as determined by LGA;

13.5.4 to cover increase in risk of Civil Liability of a Member;

13.5.5 to compensate the Fund for the actions of a defaulting Member;

- 13.5.6 any other reason determined by LGA by Special Resolution to be a relevant reason.
- 13.6 For the purposes of this Rule the certificate of the Manager of the costs to the Fund of a defaulting Member if accepted by LGA shall be final and binding upon all Members.
- 14. Financial Provisions**
- 14.1 LGA shall in the name of the Mutual Scheme open an account with a Bank of its choice.
- 14.2 LGA may authorise a member of the Board and/or the Manager to operate the bank account.
- 14.3 All moneys received in respect of the Mutual Scheme shall be immediately deposited to the credit of the bank account.
- 14.4 LGA may invest any moneys received and not immediately required to meet the liabilities of the Mutual Scheme:
- 14.4.1 with the Local Government Finance Authority of South Australia;
- 14.4.2 in any security or investment authorised by the Trustee Act; or
- 14.4.3 in any security or investment authorised by the Local Government Act, 1999 or prescribed for the purposes of that Act.
- 14.5 LGA may borrow moneys for the objectives of the Mutual Scheme and for that purpose may secure the repayment of such loans by granting security over the assets of the Mutual Scheme and the Fund.
- 14.6 LGA, the Board and the Manager shall keep or cause to be kept all such accounting records for the Mutual Scheme as fully and correctly explain the transactions and financial position of the Mutual Scheme.
- 14.7 The accounting records shall be prepared and maintained in such a manner as will enable:
- 14.7.1 true and fair accounts of the Mutual Scheme to be prepared from time to time; and
- 14.7.2 the accounts of the Mutual Scheme to be conveniently and properly audited annually.
- 15. Auditor**
- 15.1 LGA shall appoint an auditor to audit the books of account kept in respect of the Mutual Scheme.
- 15.2 The Members (and the authorised representatives of each of the Members) and the Auditor shall be entitled at all times to have access to the accounting and all other records of the Mutual Scheme.
- 15.3 The Auditor shall audit the Mutual Scheme's accounting records annually during the currency of the Mutual Scheme or more frequently as LGA may direct.
- 15.4 The Auditor shall cause a written report to be sent to LGA and the Board on the completion of each annual audit in respect of the accounting records of the Mutual Scheme" and other records relating to the accounts prepared therefrom.
- 15.5 The Auditor's report shall state whether in the Auditor's opinion the accounting records aforesaid have been kept in accordance with generally accepted accounting principles and if the Auditor considers that the records have not been so kept the Auditor shall specify the reason for not being satisfied with them.



## **16. Actuary**

- 16.1 LGA shall appoint an actuary to advise LGA on all aspects of the Mutual Scheme.
- 16.2 LGA will procure actuarial advice as and when required and at least annually for the purpose of preparing the annual budget.
- 16.3 The annual actuarial report will be provided to LGA, the Board and the Manager.

## **17. Accumulation**

LGA is permitted to accumulate and to retain for purposes consistent with these Rules any money or contributions from Members in any one or more financial year for any purpose consistent with the objectives of the Mutual Scheme.

## **18. Termination of Membership**

- 18.1 A Member may terminate membership of the Mutual Scheme at any time by notice in writing to that effect or by failing to pay contributions levied by LGA within the time prescribed and in such case the Member shall not thereafter be entitled to any benefits which may otherwise have been forthcoming from the Mutual Scheme
- 18.2 A Member which fails to give at least ninety (90) days written notice of intention to withdraw from the Mutual Scheme or which otherwise fails to comply with time requirements of LGA shall pay to LGA any costs incurred by LGA, the Board or the Manager as a result of such failure and any costs may be recovered by LGA against the Member as a debt.
- 18.3 Termination of membership of a Member shall not vary or waive the obligations of the continuing Members.
- 18.4 Termination of membership shall not affect the withdrawing Member's current or subsequent obligation to make further contributions for any year during which the membership was current including the year of termination.
- 18.5 Membership may be terminated by LGA in the event that a Member:
  - 18.5.1 fails to comply with the reasonable directions of LGA, the Board or the Manager as to the conduct of its operations so as to minimise risk;
  - 18.5.2 fails to allow a risk management audit to be undertaken by the Board or the Manager or by the Manager's nominee;
  - 18.5.3 fails to pay contributions within the time prescribed by LGA:
  - 18.5.4 commits any breach of these Rules.
- 18.6 Termination of membership shall not otherwise affect entitlement to indemnity for any Claim already admitted to indemnity by virtue of Rule 9 nor vary or waive the obligations of the defaulting Member to comply with the provisions of the Rules in respect of any year during which the defaulting Member was a Member of the Mutual Scheme.
- 18.7 If a Member is in default in payment of a contribution or in any other way so that the Fund suffers any financial loss or incurs additional expense LGA may as an alternative to termination under Rule 18.5 require the defaulting Member to pay to the Fund an amount to be determined by LGA to reimburse the Fund for the loss or additional expense.

A Certificate of the Manager specifying the amount so payable by the defaulting Member shall be accepted by LGA and shall be final and binding upon the Member. The amount in the Certificate may be recovered against the member by LGA as a debt payable by the defaulting Member.
- 18.8 If a Member fails to comply with a direction under Rule 18.5.1 LGA may as an alternative to termination require the Member to pay an additional contribution to cover the additional risk

of Civil Liability or it may exclude that risk of Civil Liability from the Pooled Cover and the Reinsurance Cover or it may otherwise limit the exposure of the Fund and the reinsurer to such Civil Liability.

- 18.9 Subject to compliance with the termination procedures a defaulting Member may have its entitlements to Pooled Cover and Reinsurance Cover limited by the Board under this Rule.
- 18.10 In any situation where membership is terminated or limited LGA shall forthwith provide formal notification of the fact to the Minister responsible for Local Government and to the Treasurer.

## **19. Determination of Disputes**

- 19.1 If any dispute or difference shall arise between any Member and LGA or any Member and the Board or any Member and the Manager out of or in connection with the operations of the Mutual Scheme then any party may give written notice of dispute which adequately identifies and provides details of the dispute to the other party or parties. Notwithstanding the existence of a dispute the parties shall continue to perform their respective obligations under the Rules.
- 19.2 Within fourteen (14) days after receiving a notice of dispute the parties to the dispute shall confer at least once and in good faith to resolve the dispute or to agree on methods of doing so. All aspects of every such conference, except the fact of the occurrence of the conference, shall be privileged.

If one or the other of the parties has not made a reasonable or meaningful attempt at a resolution within 28 days of service of the notice of dispute, that dispute shall be referred to arbitration.

- 19.3 If within a further fourteen (14) days of the dispute being referred to arbitration, the parties have not agreed upon an arbitrator the dispute shall be referred to a solicitor or barrister of the Supreme Court of South Australia appointed for this purpose by the President for the time being of the Law Society of South Australia and all proceedings shall be subject to the provisions of the Commercial Arbitration Act 1986.
- 19.4 Except where the parties to a dispute otherwise agree in writing each party shall bear its own costs and pay one half of the fees and expenses of the arbitration.
- 19.5 The decision of the Arbitrator shall be final and binding upon the parties.

## **20. Amendment to Rules**

- 20.1 These Rules may be amended at any time by LGA.
- 20.2 Amendments to these Rules shall operate prospectively and not retrospectively.
- 20.3 Notice of any amendment shall be given forthwith to all Members and to the Minister responsible for Local Government and to the Treasurer as long as the reinsurance from the State Government exists.

## **21. Term of Mutual Scheme and Termination**

- 21.1 The Mutual Scheme will continue until it is terminated by an Act of the Parliament of the State of South Australia.
- 21.2 Upon termination of the Mutual Scheme, unless the Parliament of the State of South Australia determines otherwise, the Fund remaining after satisfying all liabilities will be paid by LGA for the benefit of the members at that time in such manner as is determined by LGA in its absolute discretion.



**Local Government Association**  
Mutual Liability Scheme

*CONFIRMATION OF MEMBERSHIP*

This is to confirm the

**City of Burnside**

is a Member of the

**Local Government Association Mutual Liability Scheme** ("the LGAMLS")

for the period commencing

4.00pm on 30 June 2016 to 4.00pm on 30th June 2017.

The LGAMLS provides indemnity for civil liability claims subject to the Rules of the LGAMLS. Indemnity is unlimited subject to the Terms of the South Australian Government Treasurer's Indemnity.

Confirmed By:

A handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to be 'R. Kelly'.

**Scheme Manager**

**Date:** 14 April 2016