Planning Agreement

**[INSERT NAME OF ENTITY]**

**PLANNING AGREEMENT**

Under Section 35 of the

*Planning Development and Infrastructure Act 2016*

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**DATE**

[Insert date of agreement]

**PARTIES**

**Minister for Planning** of Level 11, 45 Pirie Street, Adelaide, South Australia, 5000

**[Insert Council]** of [Insert address]

**[Insert Council]** of [Insert address]

**[Insert other party]** of [Insert address]

**BACKGROUND**

1. The administration of the PDI Act is committed to the Minister.
2. [Insert Councils] are constituted under the LG Act for the government and management of their Council Areas at the local level.
3. [Insert other party] is [Insert details of other party].
4. The Parties have determined to enter into an agreement under Section 35 of the PDI Act for the purposes of:
   1. providing for the constitution of a joint planning board to carry out the functions and powers assigned to the Board under this Agreement within the Area; and
   2. enabling the preparation (and thereafter amendment, if necessary) of a Regional Plan for the Area by the Board; and
   3. facilitating the appointment of an assessment panel by the Board under Sections 82 and 83 of the PDI Act; 1
   4. facilitating the appointment of an Assessment Manager by the Board under Section 87 of the PDI Act; 2
   5. [insert other purposes for entering into the agreement, if any].
5. It is the intention of the Parties that the Board is a local government body, and it is neither an agency nor instrumentality of the Crown.

Note: Points 1 and 2 are not mandatory requirements

**AGREED TERMS**

# introduction

## Minister to Establish Board

The Board is a joint planning board established under Section 36 of the PDI Act by the Minister in accordance with the terms of this Agreement.

Upon commencement of this Agreement, the Minister must, by notice published in the Gazette, establish the Board in accordance with the terms of this Agreement.

## Name

The name of the joint planning board is [Insert name].

## Corporate Status

The Board is a body corporate and is governed by the PDI Act and this Agreement.

## National Competition Policy

If the Board is at any time involved in a significant business activity as defined in the Clause 7 Statement prepared under the Competition Principles Agreement of the National Competition Policy, it will implement the principles of competitive neutrality by way of annual review of its business operations in the market place and application of the relevant principle(s) where that is appropriate to do so, unless the benefits to be realised through the application of the principles of competitive neutrality outweigh the costs associated with implementation as provided for in Part 4 of the *Government Business Enterprises (Competition) Act 1996*.

## Outcomes

This Agreement is intended to achieve the following outcomes:

the establishment of the Board;

the preparation (and thereafter amendment, if necessary) of a Regional Plan by the Board;

the appointment of an Assessment Panel by the Board; 3

the appointment of an Assessment Manager by the Board; 4

[insert other outcomes intended to be achieved].

Note: Points 3 and 4 are not mandatory requirements

## Regional Objectives and Targets

The Councils may, from time to time, determine:

objectives;

priorities; and/or

targets for the Area.

The Board must:

to the extent directed by the Councils, take steps to achieve the objectives, priorities and targets determined by the Councils; and

report to the Councils in writing annually on the commencement of this Agreement as to its progress in achieving the objectives, priorities and targets determined by the Councils.

# Functions, POWERS AND DUTIES of the board

The functions, powers and duties of the Board are to be exercised in the performance and furtherance of the purposes and outcomes of this Agreement and the objectives, priorities and targets set by the Councils.

## Functions

The functions of the Board, in addition to those assigned to it under the PDI Act or any other Act are:

to be responsible for the preparation (and thereafter amendment, if necessary) of a Regional Plan;

to appoint an Assessment Panel under Sections 82 and 83 of the PDI Act; 5

to appoint an Assessment Manager under Section 87 of the PDI Act; 6

to work with, receive advice from and provide advice to the Commission as and when required related to the performance and furtherance of the purposes and outcomes of this Agreement and/or the objectives, priorities and targets set by the Councils;

[insert such other local government functions as determined by the Councils within the scope of Band 2];

Note: Points 5 and 6 are not mandatory requirements

## Powers

In addition to those available to it under the PDI Act or any other Act, the Board has the following powers:

to establish and maintain a reserve fund or funds clearly identified for the upkeep and/or replacement of fixed assets of the Board or meeting any deferred liability of the Board;

to establish and maintain a cash reserve development fund or funds clearly identified for future initiatives supported by the Strategic Plan;

subject to Clause 9.1 to enter into any kind of contract or arrangement;

to borrow funds and incur expenditure in accordance with Clause 9.1;

to publish information relating to its operations and/or on behalf of the Parties;

subject to Clause 9.1 to employ, engage, determine conditions of employment/engagement, remunerate, remove, suspend or dismiss/terminate the Executive Officer of the Board;

subject to Clause 9.1 to employ, engage or retain professional advisers to the Board;

subject to the PDI Act and any other Act, to set and charge fees for the use of facilities and services of the Board;

subject to Clause 9.1 to institute, initiate and carry on legal proceedings;

to adopt and use a trading name provided that the Board must first register the trading name with the Australian Securities and Investments Commission in accordance with the *Business Names Registration Act 2011*;

* + 1. subject to Clause 9.1 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. to open and operate bank accounts;
    3. to make submissions for and accept grants, subsidies and contributions to further the purposes and outcomes of this Agreement and/or the objectives, priorities and targets set by the Councils;
    4. to invest any funds of the Board in any investment provided that:

#### in exercising this power of investment the Board must exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of other persons; and

#### the Board must avoid investments that are speculative or hazardous in nature;

#### the Board must not make an investment with a body other than the Local Government Finance Authority of South Australia without the prior agreement of the Councils;

to compromise, compound, abandon or settle a debt/claim owed to the Board;

to make any election for tax;

with the prior approval of the Councils, other than as set out in Clause 2.2.11, to participate in a trust, including by becoming and exercising the powers of a trustee, not inconsistent with this Agreement or the purposes and outcomes of this Agreement and/or the objectives, priorities and targets set by the Councils;

the power 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 the purposes and outcomes of this Agreement and/or the objectives, priorities and targets set by the Councils;

subject to Clause 9.1, to lease, licence, hire or rent any real property or interests therein;

with the prior approval of the Councils, to purchase, sell or otherwise acquire, dispose of or encumber any real property or interests therein other than by lease or licence.

## Duties

The Board has the following duties:

to exercise the functions and powers of the Board only in the performance and furtherance of the purposes and outcomes of this Agreement and the objectives, priorities and targets set by the Councils;

notwithstanding any other clause or provision in this Agreement, not to act outside the Area unless the prior approval of the Councils that such action is necessary or expedient to the performance of the Parties or the Board’s functions has been obtained;

to comply with this Agreement, the PDI Act, all other applicable law and any lawful joint direction of the Councils.

## Other Powers, Functions and Duties

The Board may exercise such other local government functions, powers and duties as are:

delegated to the Board under the PDI Act or any other Act from time to time;

agreed with the Parties from time to time.

## Principles to be Observed by Members of the Board

The Members of the Board must seek to achieve the following in the performance of the Board’s functions:

providing professional input and policy direction to the Board;

ensuring strong accountability and stewardship of the Board;

monitoring, overseeing and measuring the performance of the Executive Officer of the Board;

ensuring that ethical behaviour and integrity is established and maintained by the Board in all activities undertaken by the Board;

subject to Clause 4.8.4, ensuring, where appropriate, that the business of the Board is undertaken in an open and transparent manner;

ensuring the Board develops and adopts such policies and procedures as give effect to good governance and administrative practices;

exercising the care, diligence and skill that a prudent person of business would exercise in managing the affairs of other persons; and

avoiding investments that are speculative or hazardous in nature.

# delegations

## General Matters

The Board must cause a separate record to be kept of all delegations made to the Board or made by the Board under the PDI Act or any other Act.

A person is entitled to inspect (without charge) the record of delegations referred to in this clause at the Principal Office of the Board during ordinary office hours.

A person is entitled, on payment of a fee fixed by the Board, to an extract from the record of delegations held.

The Executive Officer must cause a record of delegations referred to in this clause to be published on a website determined by the Executive Officer.

# constitution of BOARD

## Membership of the Board

The Board is constituted in accordance with Schedule 2.

Members of the Board appointed must, as far as possible collectively possess the following skills and experience:

finance and/or governance;

building, planning and development; and

strategic planning;

asset and risk management.

## Vacancy in Office of Member

The office of a Member will become vacant:

if the Member dies; or

if the Member completes a term of office and is not reappointed; or

if the Member resigns by written notice addressed to the Parties and served on any of them; or

if the Member becomes bankrupt or applies for the benefit of a law for the relief of insolvent debtors; or

if the Member is removed from office by the Councils by written notice; or

if the Party who appointed the Member ceases to be a Party to this Agreement.

The office of a Member who is an elected member of a Council will become vacant if the Member ceases to be a member of the Council that appointed the Member. 7

Note: 7 - If the Board is to be constituted of employees of Councils, then a corresponding clause dealing with the employee ceasing to be an employee of the Council that appointed them may be included.

The Board may, by resolution supported by at least two thirds of the Members currently in office (excluding the Member subject to this clause and ignoring any fraction), make a recommendation as to the termination of the appointment of a Member appointed pursuant to Schedule 2, in the event of any behaviour of a Member which in the opinion of the Board amounts to:

impropriety;

serious neglect of duty in attending to the responsibilities as a Member;

breach of fiduciary duty to the Board;

breach of any of the legislative obligations and duties of a Member;

breach of the conflict of interest provisions of this Agreement;

breach of the duty of confidentiality to the Board; or

any other behaviour which may discredit the Board or the Parties.

In the event the office of a Member becomes vacant, then a person must be appointed to fill the vacancy in the office of Member in the same manner as the Member was appointed and the person so appointed shall hold office for the balance of the original term.

A person is not required to be appointed to fill a vacancy under Clause 4.2.4 if the balance of the original term is less than six months unless there is already a vacancy in the office of a Member that has not been filled at the time of the subsequent vacancy.

## Remuneration of Board Members 8

The Board will pay each Member a sitting fee as determined by the Councils following the receipt of a recommendation from the Selection Panel 9 having regard to the provisions of Category 2 of the Board and Committees – Remuneration Framework Approved by the Cabinet for Government Boards and Committees (or such publication as may succeed such framework).

Note: 8 - This is a sample remuneration clause. Remuneration of Board Members is at the discretion of the Parties.   
Note: 9 - Delete if no Selection Panel appointed under Schedule 2.

The Board will pay each Deputy Member a sitting fee applicable for a Member in circumstances where the Deputy Member is required to act in the office of a Member.

All Members will receive from the Board reimbursement of expenses properly incurred in performing or discharging official functions and duties as determined by the Board and set out in a policy adopted by the Board for the purposes of this clause.

The sitting fee to be paid to and expenses reimbursed to Members will, at least once in every two years, be reviewed by the Councils based on any recommendation from the Selection Panel. 10

Note: 10 - Delete if no Selection Panel appointed under Schedule 2.

## Insurance

The Board must take out a suitable policy of insurance insuring Members and Deputy Members against risks associated with the performance or discharge of their official functions and duties or on official business of the Board.

## Propriety of Members of the Board

A Member of the Board must at all times act honestly in the performance and discharge of official functions and duties.

A Member or former Member of the Board must not, whether within or outside the State, make improper use of information acquired by virtue of his or her position as a Member to gain, directly or indirectly, an advantage for himself or herself or for another person or to cause detriment to the Board or a Party.

A Member of the Board must not, whether within or outside the State, make improper use of his or her position as a board member to gain, directly or indirectly, an advantage for himself or herself or for another person or to cause detriment to the Board or a Party.

The Board may, with the approval of the Councils, adopt additional conduct standards to apply to Members of the Board in addition to the provisions of any code of conduct adopted by the Minister and a Member must comply with any additional conduct standards adopted by the Board.

If the Minister has not adopted a code of conduct to be observed by members of a joint planning board, the Board must adopt a Code of Conduct approved by the Councils to be observed by Members. 11

Any Code of Conduct adopted by the Board must, at a minimum, include provisions relating to:

conflict of interest;

behaviour of Members;

use of information;

relationships with third parties;

public comment.

A Party may give directions in relation to an actual or potential conflict of duty between offices held concurrently, or in relation to some other incompatibility between offices held concurrently and, if the person concerned complies with those directions, he or she is excused from any breach that would otherwise have occurred. 11

Note: 11 - Delete if the Minister has adopted a Code of Conduct prior to the publication of this document.

## Board Members’ Duty of Care

A Member must at all times act with reasonable care and diligence in the performance and discharge of official functions and duties, and (without limiting the effect of the foregoing) for that purpose:

must take reasonable steps to inform himself or herself about the Board, its operations and activities; and

must take reasonable steps through the processes of the Board to obtain sufficient information and advice about matters to be decided by the Board to enable him or her to make conscientious and informed decisions; and

must exercise an active discretion with respect to all matters to be decided by the Board.

A Member is not bound to give continuous attention to the affairs of the Board but is required to exercise reasonable diligence in attendance at and preparation for meetings of the Board.

In determining the degree of care and diligence required to be exercised by a Member, regard must be had to the skills, knowledge or acumen possessed by the Member and the degree of risk involved in a particular circumstance.

If an elected member or employee of a Council is appointed as a Member, he or she is not taken to have vacated his or her office as a Member of the Council, or of staff of the Council, or to have been invalidly appointed to the Board because:

the potential exists for the duties of the two offices to conflict; or

the duties of either office require, by implication, the person’s full time attention.

A Member does not commit a breach of duty under this clause by acting in accordance with a joint direction from the Councils in accordance with Clause 20.3.3 and 20.3.4.

## Chairperson of the Board

The Board must have a Chairperson in accordance with Schedule 3.

The Board must have a Deputy Chairperson in accordance with Schedule 3.

## Proceedings of the Board

The quorum of the Board is [insert number] and no business can be transacted at a meeting of the Board unless a quorum is present.

Subject to Clause 4.8.10, ordinary meetings of the Board will be held at such times and places as determined by the Board except that there must be at least one ordinary meeting of the Board every two months.

Chapter 6 Part 3 of the LG Act extends to the Board as if the Board were a Council and the Members of the Board were members of a Council.

Subject to Chapter 6 Part 3 of the LG Act, meetings of the Board will be open to the public unless the Board resolves otherwise.

The Chairperson must preside at all meetings of the Board and, in the event the Chairperson is absent from a meeting, the Deputy Chairperson shall preside and, in the event of both the Chairperson and Deputy Chairperson being absent from a meeting, the Board must appoint one of the Members present to preside at that meeting only.

A decision carried by a majority of votes cast by Members at a meeting is a decision of the Board.

Each Member present at a meeting of the Board is entitled to one vote on any matter arising for decision and, if the votes are equal, the Board Member presiding at the meeting is entitled to a second or casting vote. 12

Note: 12 - This is consistent with the provisions applicable to subsidiaries of Joint Planning Boards, but is discretionary.

A telephone or video conference between Members will, for the purposes of this clause, be taken to be a meeting of the Board at which the participating Board Members are present if:

notice of the conference is given to all Members in the manner determined by the Board for that purpose; and

each participating Member is capable of communicating with every other participating Member during the conference;

the number of participating Members constitutes a quorum of the Board.

A proposed resolution of the Board becomes a valid decision of the Board despite the fact that it is not voted on at a meeting if:

notice of the proposed resolution is given to all Members in accordance with procedures determined by the Board; and

a majority of the Board Members current in office express their concurrence with the proposed resolution in writing or by electronic communication.

A person authorised in writing by a Party for the purposes of this clause may attend (but not participate in) a meeting of the Board and may have access to papers provided to the Board for the purpose of the meeting.

The Board must have accurate minutes kept of its proceedings.

The Executive Officer must ensure the minutes are presented to the next ordinary meeting of the Board for confirmation.

The Executive Officer must, within five days after a meeting of the Board, provide to each Member and the Councils a copy of the minutes of the meeting of the Board in a form agreed to by the Board.

Subject to the PDI Act, this clause, and to a direction of the Councils, the Board may determine its own procedures.

## Notice of Ordinary Meetings

Subject to Clause 4.10.2, notice of an ordinary meeting of the Board will be given by the Executive Officer to each Board Member not less than three clear days prior to the holding of the meeting.

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 Parties to terminate this Agreement, provide the notice to all Board Members at least four months before the date of the meeting.

A notice of meeting of the Board must:

be in writing; and

set out the date, time and place of the meeting; and

be signed by the Executive Officer; and

contain, or be accompanied by, the agenda for the meeting.

## Special Meetings

Any Party, the Chairperson or three 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 Board. 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.

On receipt of a written request pursuant to Clause 4.10, the Executive Officer and Chairperson must determine the date and time of the special meeting and the Executive Officer must give notice to all Board Members at least four hours prior to the commencement of the special meeting in accordance with Clause 4.9.3.

## Provisions Generally Applicable to Meetings

The Executive Officer must, insofar as is reasonably practicable:

ensure that items on an agenda given to Members are described with reasonable particularity and accuracy; and

supply to each Member at the time that notice of a meeting is given, a copy of any documents or reports that are to be considered at the meeting (so far as this is practicable).

Notice of a meeting of the Board may be given to a Board Member:

personally; or

by delivering the notice (whether by post or otherwise) to the usual place of residence of the Member or to another place authorised in writing by the Member; or

by a means authorised in writing by the Member as being an available means of giving notice.

A notice that is not given in accordance with Clause 4.11.2 is taken to have been validly given if the Executive Officer considers it impracticable to give the notice in accordance with that clause and takes action the Executive Officer considers reasonably practicable in the circumstances to bring the notice to the attention of the Member.

The Executive Officer must give notice to the public of the times and places of meetings of the Board at least three clear days prior to the holding of an ordinary meeting (or as soon as reasonably practicable with respect to a special meeting) by causing a copy of the notice and agenda for the meeting to be placed on public display at the principal offices of the Councils and the Board.

Subject to Clause 4.11.7, the Executive Officer must also ensure that a reasonable number of copies of any document or report supplied to Members for consideration at a meeting of the Board are available for inspection by members of the public:

at the principal offices of the Councils and the Board and on a website determined by the Executive Officer as soon as practicable after the time when the document or report is supplied to Members; or

in the case of a document or report supplied to Members at the Board Meeting, at the meeting as soon as practicable after the time when the document or report is supplied to Members.

The Executive Officer may indicate on a document or report provided to Members under Clause 4.11.1, any information or matter contained in or arising from a document or report that may, if the Board determines, be considered in confidence in accordance with Clause 4.8.4 provided that the Executive Officer at the same time specifies the basis on which an order could be made pursuant to the provisions of Chapter 6 Part 3 of the LG Act.

Clause 4.11.5 does not apply to a document or report:

that is subject to the operation of Clause 4.11.6; or

that relates to a matter dealt with by the Board on a confidential basis in accordance with Clause 4.8.4 and Chapter 6 Part 3 of the LG Act.

The Executive Officer must maintain a record of all notices of Board meetings given under Clause 4.9.3 to Members.

All Members must at all times keep confidential all documents and any information provided to them for their consideration on a confidential basis prior to a meeting of the Board except that this clause does not prevent a Board Member from disclosing documents and information to the elected members or employees of a Council on a confidential basis, where necessary.

# committees 13

The Board may establish committees in accordance with Section 38 of the PDI Act.

A member of a committee holds office at the pleasure of the Board.

Note: 13 - The Agreement can **require** the Board to establish certain committees.

# subsidiaries

The Board may establish subsidiaries in accordance with Section 39 of the PDI Act.

# Development assessment 14

The Board will appoint an Assessment Panel in respect of its Area under Sections 82 and 83 of the PDI Act.

The Board will appoint an Assessment Manager in accordance with Section 87 of the PDI Act.

Note: 14 - This is not a mandatory provision.

# EXECUTIVE OFFICER AND APPOINTMENT OF OTHER STAFF

The Board may employ staff and must, subject to Clause 8.3, appoint an Executive Officer 15 on a fixed term, performance-based employment contract, which does not exceed five years in duration (or such shorter term if the Agreement is to expire in accordance with Section 35(5)(a) of the PDI Act) and on such other terms as determined by the Board.

Note: 15 – the title Executive Officer is at the discretion of the Parties

The Board may at the end of the contract term enter into a new contract not exceeding five years in duration (or such shorter term if the Agreement is to expire in accordance with Section 35(5)(a) of the PDI Act) with the same person.

With the concurrence of the Councils, the Board may second a person employed by a Council, a subsidiary of a Council or a regional subsidiary of Councils to act in the office of Executive Officer for a term determined by the Councils which does not exceed any maximum term set by the Councils.

The Executive Officer is responsible for appointing, managing, suspending and dismissing the other employees of the Board on behalf of the Board.

In the absence of the Executive Officer for any period exceeding one week, the Executive Officer must 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 must be appointed by the Board.

The Board delegates responsibility for day to day management of the Board 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 operations of the Board.

The functions of the Executive Officer include:

ensuring the decisions of the Board are implemented in a timely and efficient manner;

providing information to assist the Board to assess the Board’s performance against its Strategic, Long Term Financial and Business Plans;

providing advice and reports to the Board on the exercise and performance of its powers and functions under this Agreement or any Act;

co-ordinating and initiating proposals for consideration of the Board including but not limited to continuing improvement of the operations of the Board;

ensuring the assets and resources of the Board are properly managed and maintained;

ensuring that records required under the PDI Act or any other Act are properly kept and maintained;

exercising, performing or discharging other powers, functions or duties conferred on the Executive Officer by or under the PDI Act or any other Act and performing other functions lawfully directed by the Board;

achieving financial outcomes in accordance with adopted plans and budgets; and

establishing policies and procedures relating to work, health and safety.

The Board must undertake a review of the performance of the Executive Officer at least once every year.

The Executive Officer and other senior staff of the Board as determined by the Board, are required to submit returns under Chapter 7, Part 4, Division 2 of the LG Act, as if the Executive Officer and other staff of the Board were employees of a Council and the Board was a Council.

The Executive Officer may delegate or sub-delegate to an employee of the Board or Council, or a committee comprising employees of the Board or Council, 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.

Where a power or function of the Executive Officer is delegated to an employee, the employee is responsible to the Executive Officer for the efficient and effective exercise or performance of that power or function.

A written record of delegations and sub-delegations under this clause must be kept by the Executive Officer at all times.

# FINANCIALS

## Borrowings and Expenditure

The Board has the power to incur expenditure as follows:

in accordance with a Budget adopted by the Board and approved by the Councils as required by this Agreement; or

with the prior approval of the Councils; or

in accordance with Clause 9.3.10.

Subject to Clause 9.1.3, the Board has the power to borrow money as follows:

in accordance with a Budget adopted by the Board as required by the PDI Act or this Agreement;

in respect of an overdraft facility or facilities up to a maximum amount of $100,000; 16

Note: 16 - A Board may not need an overdraft, depending on the extent of its operations.

with the prior approval of the Councils.

Unless otherwise approved by the Councils, any and all borrowings taken out by the Board:

must be from the Local Government Finance Authority of South Australia or a registered bank or financial institution within Australia; and

in the case of fixed loans, must be drawn down within a period of 24 months from the date of approval.

## Property

All property held by the Board is held by it on behalf of the Councils.

Except as provided in Clause 2.2.20 or in accordance with a Policy adopted by the Board by resolution with the agreement of the Councils, no property of the Board may be sold, encumbered or otherwise dealt with without the prior approval of the Councils and the approval of the Board by resolution.

**Budget** 17

Note: 17 -Budget requirements will largely depend on the scope of the Board’s intended powers and functions

The Board must have a Budget for each financial year.

Each Budget of the Board:

must deal with each principal activity of the Board on a separate basis; and

must be consistent with its Business Plan; and

must comply with standards and principles prescribed by the Councils and the *Local Government (Financial Management) Regulations 2011*,as if the Board were a regional subsidiary.

The Board must before 30 April of each year, prepare and submit a draft Budget to the Councils for the ensuing Financial Year (or, if appropriate, part Financial Year) for approval by the Councils.

The Board must adopt after 31 May and within six weeks of approval of the draft Budget by the Councils in each year, a Budget for the ensuing Financial Year consistent with the approval given by the Councils pursuant to Clause 9.3.3.

The Board may in a Financial Year, after consultation with the Councils, incur spending before adoption of its Budget for the year, but the spending must be provided for in the appropriate Budget for the year.

The Board must each Financial Year provide a copy of its adopted Budget to the Parties within five business days after the adoption of the Budget by the Board.

Quarterly reports summarising the financial position and performance of the Board against the Budget must be prepared by the Executive Officer and presented to a meeting of the Board at each ordinary meeting of the Board and copies provided to the Councils.

The Board may with the approval of the Councils, amend its Budget for a Financial Year at any time before the year ends.

The contents of the Budget must be in accordance with the PDI Act, the regulations and any requirement of the Councils.

The Board may incur, for the purpose of genuine emergency or hardship, spending that is not authorised by its Budget.

## Financial Contributions

The Councils must contribute funds to the Board each financial year:

in accordance with the funding contribution provided for in Schedule 1; and

as set out in the Budget adopted by the Board and approved by the Councils.

The Councils may agree to provide the Board with additional funds at any time on such terms and conditions, if any, as determined by the Councils.

The contributions of the Councils payable to the Board under this clause are recoverable by the Board as a debt.

## Financial Standards and Reporting

The Board must ensure the Financial Statements of the Board for each Financial Year are audited by the Board’s auditor.

The Financial Statements must be finalised and audited in sufficient time to be included in the Annual Report to be provided to the Parties pursuant to the PDI Act.

## Financial Transactions

The Board must establish and maintain a bank account with such banking facilities and at a bank to be determined by the Board.

The Board will develop and maintain appropriate policies for all financial transactions.

The Executive Officer must act prudently in the handling of all financial transactions for the Board.

**Long Term Financial Plan**

The Board must prepare and submit to the Councils for their approval a Long Term Financial Plan covering the term of this Agreement in a form and including such matters which, as relevant, is consistent with Section 122 of the LG Act and the *Local Government (Financial Management) Regulations 2011* as if the Board were a Council.

The Board may at any time review the Long Term Financial Plan but must undertake a review of the Long Term Financial Plan as soon as practicable after the annual review of its Business Plan and concurrently with any review of its Strategic Plan.

In any event, the Board must undertake a comprehensive review of its Long Term Financial Plan every four years.

The Long Term Financial Plan will be taken to form part of the Board’s Strategic Plan.

# MANAGEMENT FRAMEWORK 18

Note: 18 - These requirements will depend on the scope of the powers and functions of the Board

## Strategic Plan

Consistent with the Long Term Financial Plan, the Board must:

prepare and adopt a Strategic Plan covering the term of this Agreement which sets out the goals, objectives, strategies and priorities of the Board over the period of the Strategic Plan;

prepare an Asset Management Plan, with detailed financials for the term of this Agreement;

submit the Strategic Plan to the Councils for their approval.

## Business Plan

The Board:

must in consultation with the Councils prepare and adopt a Business Plan for a minimum three year period which will continue in force for the period specified in the Business Plan or until the adoption by the Board of a new Business Plan;

must in consultation with the Councils review the Business Plan annually and following such a review, the Business Plan shall continue to operate for the period for which the Business Plan was adopted pursuant to Clause 10.2.1;

may, after consultation with the Councils, amend its Business Plan at any time; and

must ensure the contents of the Business Plan is in accordance with the PDI Act, and regulations.

## Audit

The Board must cause adequate and proper books of account to be kept in relation to all the affairs of the Board and must establish and maintain effective auditing of its operations.

The Parties agree the provisions of Regulation 20 of the *Local Government (Financial Management) Regulations 2011* apply to the Board as if the Board were a regional subsidiary.

The Board must appoint an Auditor in accordance with Clause 10.3.2 on such terms and conditions as determined by the Board.

The audited Financial Statements of the Board, together with the accompanying report from the Auditor, shall be submitted to both the Board and the Parties by 30 September in each year.

## Audit and Risk Management Committee

The Board must establish an Audit and Risk Management Committee to be comprised of five persons nominated by the Board and approved by the Councils.

The functions of the Audit and Risk Management Committee include:

reviewing annual Financial Statements to ensure they provide a timely and fair view of the state of affairs of the Board;

liaising with external auditors; and

reviewing the adequacy of the accounting, internal auditing, reporting and other financial management systems and practices of the Board on a regular basis.

The members of the Audit and Risk Management Committee:

must include two persons professionally qualified in accounting, commerce, finance, law or risk management;

must include at least one person who is not a Member of the Board and who is determined by the Councils to have financial experience relevant to the functions of the Audit and Risk Management Committee;

may include elected members of the Councils.

The term of appointment of a member of the Audit and Risk Management Committee shall be for a term not exceeding two years at the expiry of which such member will be eligible for reappointment.

The Parties may agree to implement audit arrangements that differ from the requirements of this clause (including but not limited to the implementation of an internal audit or audit undertaken by one of the Councils on behalf of the Board). In such cases, the terms of that agreement operate to the exclusion of this clause.

## Insurance and Superannuation Requirements

The Board shall register with the Local Government Mutual Liability Scheme and the Local Government Workers Compensation Scheme and comply with the rules of the Schemes.

The Board 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 Board.

# Provision of information

The Board must, at the written request of a Party, furnish to the Party information or records in the possession or control of the Board as the Party may require in such manner and form as the Party may require.

If the Board considers that information or a record furnished under this clause contains matters that should be treated as confidential, the Board may advise the Party of that opinion giving the reason for the opinion and the Party may, subject to Clause 11.3, act on that advice as the Party thinks fit.

If the Party is satisfied on the basis of the Board’s advice that the Board owes a duty of confidence in respect of a matter, the Party must ensure the observance of that duty in respect of the matter, but this clause does not prevent a disclosure as required in the proper performance of the functions or duties of the Party.

# disclosure

If the Board discloses to a person in pursuance of this Agreement a matter in respect of which the Board owes a duty of confidence, the Board must give notice of the disclosure to the person to whom the duty is owed.

A Member of the Board does not commit a breach of duty by reporting a matter relating to the affairs of the Board to a Party, or otherwise in accordance with the provisions of the PDI Act.

# Common Seal

The Board will have a common seal.

The common seal of the Board must not be affixed to a document except to give effect to a resolution of the Board.

The affixation of the common seal of the Board must be attested by two Board Members.

The Executive Officer must maintain a register which records the resolutions of the Board giving authority to affix the common seal and details of the documents to which the common seal has been affixed with the particulars of persons who witnessed the fixing of the seal and the date the seal was affixed.

The Board may by instrument under common seal authorise a person to execute documents on behalf of the Board subject to any limitations specified in the instrument of authority.

If a document appears to bear the common seal of the Board, it will be presumed in the absence of proof to the contrary that the common seal of the Board was properly affixed to the document.

# Validity of acts

An act or proceeding of the Board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a Member.

# Protection from liability

The Board must indemnify each Member of the Board against any civil liability for an honest act or omission in the performance or discharge of the Member’s powers, functions and duties under this Agreement.

This Clause survives the expiry or termination of this Agreement.

# Liability Guarantee

The liabilities incurred or assumed by the Board are guaranteed by the Councils.

# inconsistency with PDI Act and regulations

This Agreement is not invalid on account of any inconsistency with the PDI Act or any regulations made thereunder.

In the event of an inconsistency between the provisions of this Agreement and the provisions of the PDI Act and any regulations made thereunder, the provisions of the PDI Act and the regulations prevail to the extent of the inconsistency.

# GOVERNING LAW AND JURISDICTION

This Agreement is governed by the laws of South Australia.

# service

A document required to be served on or given to a person by the Board under any law may be served or given:

in any manner provided for under the PDI Act; or

if no relevant provision exists under the PDI Act, in any manner provided for under the LG Act, as if the Board were a Council.

A document required to be served on or given to the Board under any law may be served or given:

in any manner provided for under the PDI Act; or

if no relevant provision exists under the PDI Act, in any manner provided for under the LG Act, as if the Board were a Council.

A document required to be served on or by or given on or by a Party to this Agreement on another party to this Agreement for the purposes of this Agreement may be served or given:

in any manner provided for under the PDI Act; or

if no relevant provision exists under the PDI Act, in any manner provided for under the LG Act (and if the Party is not a Council, the LG Act applies as if the Party were a Council for the purposes of this clause).

# MISCELLANEOUS PROVISIONS

## Withdrawal of a Party

Subject to the PDI Act, a Party (other than the Minister) may with the consent of the Parties withdraw from the Agreement after giving not less than six months written notice of its intention to do so, subject to Clause 20.1.2, to the Board and to the other Parties.

In any event, a withdrawal will not become effective until 30 June following the expiry of the six months written notice period referred to in Clause 20.1.1. Until a withdrawal becomes effective, the Party proposing withdrawal from the Agreement will remain liable for all financial contributions up to the Date of Withdrawal.

Upon a withdrawal taking effect, a Party will be entitled to payment of such amounts and on such conditions as determined by unanimous agreement of the Parties and failing unanimous agreement the matter will be resolved in accordance with Clause 20.6.

The withdrawal of any Party does not extinguish the liability of that Party for the payment of its contribution towards any actual or contingent deficiency in the Net Assets of the Board at the end of the Financial Year in which such withdrawal occurs.

The withdrawal of any Party does not extinguish the liability of that Party to contribute to any loss or liability incurred by the Board at any time before or after the Date of Withdrawal in respect of any act or omission by the Board prior to such date.

## Abolition of Board

The Board may be abolished by the Minister in accordance with Section 36(3) of the PDI Act on termination or expiry of the Agreement.

Upon expiry or termination of this Agreement, the Councils may jointly request the Minister abolish the Board.

Subject to the PDI Act, on abolition of the Board, the surplus assets or liabilities of the Board, as the case may be, must be distributed between or become the responsibility of:

a new Board (if formed for the same Area); or

the Parties, as agreed unanimously by the Parties and failing unanimous agreement the matter will be resolved in accordance with Clause 20.6.

## Non-derogation and Direction by Parties 19

Note: 19 - The degree to which the Parties can direct/control the Board is a matter for the Parties.

Subject to any provision of the PDI Act to the contrary, the establishment of the Board does not derogate from the power of any of the Parties to act independently in relation to a matter within the jurisdiction of the Board.

Subject to any provision of the PDI Act to the contrary, provided the Councils (or a majority of the Councils) have all first agreed as to the action to be taken, the Councils may jointly direct and control the Board.

A joint direction of the Councils to the Board is only valid and required to be complied with by the Board if all of the Councils (or a majority of the Councils) express the direction in the same or similar terms.

Where the Councils seek to jointly direct the Board, that direction must be made and evidenced by either a resolution passed by the Council making the direction.

Where the Board is required pursuant to the PDI Act or this Agreement to obtain the consent or approval of one or more of the Parties, that consent or approval must only be granted and must be evidenced by either a resolution passed by the Council granting such consent or approval, or otherwise if that Party is not a Council, in writing signed by or on behalf of the Party.

Unless otherwise stated in this Agreement, where the Board is required to obtain the consent or approval of the Councils or Parties, this means the consent or approval of all of the Councils or Parties (or a majority of the Parties) is expressed in the same or similar terms.

For the purpose of this clause, any direction given by Councils must be communicated by notice in writing provided to the Executive Officer of the Board together with a copy of the relevant resolutions of the Councils and written instruments.

## Review of Agreement

The Board must review this Agreement at least once in every five years and submit any recommendations for changes to the Agreement to the Parties.

Before the Parties determine a proposal to alter this Agreement arising from a review under this clause, they must take into account any recommendation of the Board.

## Transitional Provisions

### Executive Officer

The Councils must appoint a person to act in the position of Executive Officer as soon as possible after the establishment of the Board until such time as the Board appoints a Executive Officer in accordance with Clause 8.1.

### First Board Meeting

The first meeting of the Board following the establishment of the Board will be called by the Acting Executive Officer appointed pursuant to Clause 20.5.1 to be held within three months of the appointment by the Parties of the Members.

At the first meeting of the Board, the Board will determine the time, date and place of ordinary meetings of the Board up to the following local government periodic election.

The Acting Executive Officer must give notice of the first Board meeting to Members and the public in accordance with Clause 4.9.

### First Budget

Notwithstanding Clause 9, the first draft Budget of the Board following its establishment for the current part financial year must be submitted to the Councils for their approval within four months of the first Board meeting held in accordance with Clause 20.5.2.

Notwithstanding Clause 9, the Board must, within six weeks of approval by the Councils of the first draft budget for the current part financial year submitted in accordance with Clause 20.5.3.1, adopt a Budget consistent with the approval given by the Councils pursuant to Clause 20.5.3.1.

### Plans

The first Long Term Financial Plan, Strategic Plan and Business Plan of the Board following its establishment must be submitted to the Councils for their approval within twelve months of the establishment of the Board.

### Audit Committee

The Board must establish an Audit and Risk Management Committee in accordance with Clause 10.4 within six months of the first Board meeting held in accordance with Clause 20.5.2.

## Disputes

### General

Where a dispute arises between the Parties or between a Party and the Board which relates to this Agreement or the Board, (**the Dispute**) the Parties will use their best endeavours to resolve the Dispute and to act at all times in good faith.

### Mediation

A Party is not entitled to initiate arbitration or court proceedings (except proceedings seeking urgent equitable or injunctive relief) in respect of a Dispute unless it has complied with this clause 20.6.2.

If the Parties are unable to resolve the Dispute within thirty days, the Parties must refer the Dispute for mediation in accordance with the Mediation Rules of the Law Society of South Australia Incorporated, within seven days of a written request by any Party to the other Party that the Dispute be referred for mediation, to:

a mediator agreed by the Parties; or

if the Parties are unable to agree on a mediator at the time the Dispute is to be referred for mediation, a mediator nominated by the then President of the Law Society or the President’s successor.

In the event the Parties fail to refer the matter for mediation in accordance with Clause 20.6.2.2, one or more of the Parties may refer the matter for mediation in accordance with the Mediation Rules of the Law Society of South Australia Incorporated to a mediator nominated by the then President of the Law Society or the President’s successor.

The role of any mediator is to assist in negotiating a resolution of the dispute. A mediator may not make a decision that is binding on a Party unless that Party has so agreed in writing.

If mediation does not resolve the Dispute within 28 days of referral of the Dispute for mediation or such longer period agreed unanimously by the Parties as evidenced by resolutions of each of the Parties, any Party may then refer the Dispute to arbitration in accordance with Clause 20.6.3 or otherwise commence court proceedings.

### Arbitration

An arbitrator may be appointed by agreement between the Parties.

Failing agreement as to an arbitrator, the then Chairperson of the South Australian Chapter of the Institute of Arbitrators or his successor shall nominate an Arbitrator pursuant to these conditions.

A submission to arbitration shall be deemed to be a submission to arbitration within the meaning of the *Commercial Arbitration Act 2011*.

Upon serving a notice of arbitration, the Party serving the notice shall lodge with the arbitrator a deposit by way of security for the cost of the arbitration proceedings.

Upon each submission to arbitration, the costs of and incidental to the submission and award shall be at the discretion of the arbitrator who may in his or her sole discretion determine the amount of costs, how costs are to be proportioned and by whom they are to be paid.

Whenever reasonably possible, performance of the obligations of the parties pursuant to this Agreement shall continue during the mediation or arbitration proceedings and no payment by or to a Party shall be withheld on account of the mediation and arbitration proceedings.

## Exemption from Requirements of Agreement

The Board may, with the approval of the Councils, apply to the Minister in writing for an exemption from any of the requirements of this Agreement.

An application under Clause 20.7.1 must comply with any guidelines determined by the Minister.

An exemption granted by the Minister under this Clause may operate for a limited duration, or be subject to such conditions as the Minister thinks fit.

# DEFINITIONS AND INTERPRETATION

## Definitions

In this Agreement, unless the contrary intention appears:

**Area** means the collective Council Areas of the Councils;

**Board** means [insert name of Joint Planning Board];

**Business Plan** means the business plan adopted by the Board pursuant to Clause 10.2;

**Assessment Manager** means the person appointed by the Board under Section 87 of the PDI Act;

**Assessment Panel** means the assessment panel appointed by the Board under Section 82 of the PDI Act;

**Board Member** or **Member** means a person appointed to the Board in accordance with Schedule 2, and unless the context requires otherwise or it is expressly stated otherwise, a reference to a Board Member includes a Deputy Board Member;

**Budget** means the annual budget adopted by the Board pursuant to Clause 9.3;

**Chairperson** means the member of the Board appointed pursuant to Clause 4.7;

**Commission** has the same meaning as in the PDI Act;

**Councils** means those councils constituted under the LG Act who have agreed to enter into this Agreement in accordance with Section 35(1) of the PDI Act and **Council** has the corresponding meaning;

**Council Area** has the same meaning as ‘area’ in the LG Act;

**Date of Withdrawal** means the date a Party’s withdrawal from the Board becomes effective pursuant to Clause 20.1;

**Deputy Member** means a person appointed to act as a deputy to a Member in accordance with Schedule 2;

**Executive Officer** means the person appointed pursuant to Clause 8.1 as the Executive Officer of the Board;

**Financial Statements** has the same meaning as in Section 127 of the LG Act;

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

**Gazette** means the South Australian Government Gazette (including any supplement to that gazette) printed and published, or purporting to be printed and published, by the Government Printer of the State of South Australia;

**LG Act** means the *Local Government Act 1999* and includes all regulations made thereunder;

**Long Term Financial Plan** means the long term financial plan prepared by the Board and approved by the Councils pursuant to Clause 9.7;

**Minister** means the Minister responsible for the administration of the PDI Act;

**Net Assets** means total assets (current and non-current) less total liabilities (current and non-current) of the Board as reported in the annual audited Financial Statements of the Board;

**Parties** means those entities who have agreed to enter into this Agreement in accordance with Section 35(1) of the PDI Act and **Party** has the corresponding meaning;

**PDI Act** means the *Planning, Development and Infrastructure Act 2016* and includes all regulations made thereunder;

**Principal Office** means the principal office of the Board as determined by the Board after consultation with the Parties;

**Regional Plan** has the same meaning as in Section 64 of the PDI Act;

**Selection Panel** means the Panel established from time-to-time, pursuant to Schedule 2. 20

Note: 20 – Delete if inapplicable

## Interpretation

In this Agreement, unless the context otherwise requires:

headings do not affect interpretation;

singular includes plural and plural includes singular;

words of one gender include any gender;

a reference to a person includes a partnership, corporation, association, government body and any other entity;

a reference to legislation (including subordinate legislation) includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;

an unenforceable provision or part of a provision of this Agreement may be severed, and the remainder of this Agreement continues in force, unless this would materially change the intended effect of this Agreement;

the meaning of general words is not limited by specific examples introduced by ‘including’, ‘for example’ or similar expressions; and

a reference to a ‘Clause’ means a clause of this Agreement.

## Background

The background forms part of this Agreement and is correct.

Schedule 1 – Funding Contribution

[Insert details of funding contributions by parties]

Schedule 2 – Board Membership

[SELECT ONE OF THE THREE BELOW OPTIONS]

Option 1 – Members of the Board are Jointly Appointed by the Councils Following the Receipt of Recommendations from a Selection Panel

A. **Membership of the Board**

A.1 The Board comprises [insert number between 3 and 7] Members.

A.2 The Members of the Board are jointly appointed by the Councils following the receipt of recommendations from the Selection Panel in accordance with Clause C of this Schedule.

A.3 Subject to Clause 4.2, the term of office of a Member of the Board is [insert] years and a Member is eligible for reappointment following the expiry of their term of office.

A.4 A person may be appointed to the Board only if the appointment of such person is consistent with any requirement of the Minister under Section 35(4) of the PDI Act.

B. **Deputy Members**

B.1 There must be a Deputy Member of the Board for [each Member OR the Chairperson and Deputy Chairperson] of the Board.

B.2 The Deputy Members of the Board:

B.2.2 are appointed in the same manner, subject to the same conditions and for the same term;

B.2.3 may be removed from office in the same way and their office will become vacant in the same circumstances

as the Member of the Board for whom they are appointed as Deputy.

B.3 The office of Deputy Member becomes vacant if the office of the Member of the Board for whom they are appointed as Deputy becomes vacant.

B.4 A Deputy Member is entitled to act in the place of the Member for whom they are appointed as Deputy Member if that Member is absent or unable for any reason to act as a Member and may exercise all the rights and privileges of the Member and will be deemed to be the Member of the Board for the period of the Member’s absence or inability to act as a Member.

C. **Selection Panel**

C.1 The Selection Panel shall be formed, as required from time-to-time under the terms of this Agreement.

C.2 The Selection Panel is to be comprised of:

C.2.1 the persons for the time being occupying the office of Principal Member of the Councils or their representative;

C.2.2 the persons for the time being occupying the office of Chief Executive Officer of the Councils or their representative; and

C.2.3 if the Minister so determines, a representative of the Minister.

C.3 The Selection Panel may be assisted by a legal practitioner and/or person experienced in human resource management jointly agreed by the members of the Selection Panel.

C.4 The Board is responsible for any expenses incurred by the Selection Panel in obtaining the assistance of a person specified in Clause C.3.

C.5 The Selection Panel shall invite applications for the position of Member of the Board, Chairperson of the Board and Deputy Chairperson of the Board 21 and assess such applications through such process as it considers appropriate and make recommendations to the Councils on the appointment of such Members of the Board.

Note: 21 - Include if Selection Panel is to be responsible for recommending to Councils who to appoint as Chairperson or Deputy Chairperson.

Option 2 – Minister Appoints Members after obtaining recommendations from Councils

A. **Membership of the Board**

A.1 The Board comprises [insert number between 3 and 7] Members.

A.2 The Members of the Board are appointed by the Minister following the receipt of recommendations from the Councils.

A.3 Subject to Clause 4.2, the term of office of a Member of the Board is [insert] years and a Member is eligible for reappointment following the expiry of their term of office.

A.4 A person may be appointed to the Board only if the appointment of such person is consistent with any requirement of the Minister under Section 35(4) of the PDI Act.

B. **Deputy Members**

B.1 There must be a Deputy Member of the Board for [each Member OR the Chairperson and Deputy Chairperson] of the Board.

B.2 The Deputy Members of the Board:

B.2.2 are appointed in the same manner, subject to the same conditions and for the same term;

B.2.3 may be removed from office in the same way and their office will become vacant in the same circumstances

as the Member of the Board for whom they are appointed as Deputy.

B.3 The office of Deputy Member becomes vacant if the office of the Member of the Board for whom they are appointed as Deputy becomes vacant.

B.4 A Deputy Member is entitled to act in the place of the Member for whom they are appointed as Deputy Member if that Member is absent or unable for any reason to act as a Member and may exercise all the rights and privileges of the Member and will be deemed to be the Member of the Board for the period of the Member’s absence or inability to act as a Member.

Option 3 – Each Council Appoints their Own Member by their Own Process

(Option only viable if 7 or less Councils are party to the Agreement)

A. **Membership of the Board**

A.1 The Board comprises [insert number between 3 and 7] Members.

A.2 Each Council must, by resolution, appoint a Member of the Board.

A.3 Subject to Clause 4.2, the term of office of a Member of the Board is [insert] years and a Member is eligible for reappointment following the expiry of their term of office.

A.4 A person may be appointed to the Board only if the appointment of such person is consistent with any requirement of the Minister under Section 35(4) of the PDI Act.

A.5 If a Council fails to appoint a Member in accordance with this Clause, the Minister may appoint a person to fill the vacancy.

B. **Deputy Members**

B.1 There must be a Deputy Member of the Board for [each Member OR the Chairperson and Deputy Chairperson] of the Board.

B.2 The Deputy Members of the Board:

B.2.2 are appointed in the same manner, subject to the same conditions and for the same term;

B.2.3 may be removed from office in the same way and their office will become vacant in the same circumstances

as the Member of the Board for whom they are appointed as Deputy.

B.3 The office of Deputy Member becomes vacant if the office of the Member of the Board for whom they are appointed as Deputy becomes vacant.

B.4 A Deputy Member is entitled to act in the place of the Member for whom they are appointed as Deputy Member if that Member is absent or unable for any reason to act as a Member and may exercise all the rights and privileges of the Member and will be deemed to be the Member of the Board for the period of the Member’s absence or inability to act as a Member.

Schedule 3 – Chairperson and Deputy Chairperson

[SELECT ONE OF THE FOUR BELOW OPTIONS]

Option 1 – Councils Appoint Chairperson and Deputy Chairperson

(Chairperson and Deputy may be elected member or employee of Council)

A. The Councils must appoint from amongst the Members, a Chairperson for a term of up to [insert] years and on such other conditions as determined by the Councils.

B. The Councils must appoint from amongst the Members, other than the Chairperson, a Deputy Chairperson for a term of up to [insert] years and on such other conditions as determined by the Councils.

C. In the absence of the Chairperson, the Deputy Chairperson shall act in the office of Chairperson.

D. The Chairperson or Deputy Chairperson will cease to hold office as Chairperson or Deputy Chairperson in the event:

D.1 the person resigns as Chairperson or Deputy Chairperson; or

D.2 the person ceases to be a Member of the Board; or

D.3 the Councils, by resolution, terminate the Chairperson or Deputy Chairperson’s appointment as Chairperson or Deputy Chairperson.

E. In the event the office of Chairperson or Deputy Chairperson becomes vacant, the Councils must appoint a new Chairperson or Deputy Chairperson who shall hold office for the balance of the original term.

F. At the conclusion of the term of office of the Chairperson or Deputy Chairperson, the person is eligible for reappointment.

G. For the avoidance of doubt, a person may be appointed to the office of Member and Chairperson (or Deputy Chairperson, as the case may be) simultaneously and a person need not be an existing Board Member to be eligible to be appointed as Chairperson (or Deputy Chairperson).

Option 2 – Councils Appoint Chairperson and Deputy Chairperson

(Chairperson and Deputy not to be elected member or employee of Council)

A. The Councils must appoint from amongst the Members, a Chairperson for a term of up to [insert] years and on such other conditions as determined by the Councils.

B. The Councils must appoint from amongst the Members, other than the Chairperson, a Deputy Chairperson for a term of up to [insert] years and on such other conditions as determined by the Councils.

C. The Chairperson and Deputy Chairperson must not be an elected member or employee of a Council.

D. In the absence of the Chairperson, the Deputy Chairperson shall act in the office of Chairperson.

E The Chairperson or Deputy Chairperson will cease to hold office as Chairperson or Deputy Chairperson in the event:

E.1 the person resigns as Chairperson or Deputy Chairperson; or

E.2 the person ceases to be a Member of the Board; or

E.3 the person becomes an elected member or employee of a Council;

E.4 the Councils, by resolution, terminate the Chairperson or Deputy Chairperson’s appointment as Chairperson or Deputy Chairperson.

F. In the event the office of Chairperson or Deputy Chairperson becomes vacant, the Councils must appoint a new Chairperson or Deputy Chairperson who shall hold office for the balance of the original term.

G. At the conclusion of the term of office of the Chairperson or Deputy Chairperson, the person is eligible for reappointment.

H. For the avoidance of doubt, a person may be appointed to the office of Member and Chairperson simultaneously and a person need not be an existing Board Member to be eligible to be appointed as Chairperson.

Option 3 – Board Appoints Chairperson and Deputy Chairperson

(Chairperson and Deputy may be elected member or employee of Council)

A. The Board must appoint from amongst the Members, a Chairperson for a term of up to [insert] years and on such other conditions as determined by the Board.

B. The Board must appoint from amongst the Members, other than the Chairperson, a Deputy Chairperson for a term of up to [insert] years and on such other conditions as determined by the Board.

C. In the absence of the Chairperson, the Deputy Chairperson shall act in the office of Chairperson.

D. The Chairperson or Deputy Chairperson will cease to hold office as Chairperson or Deputy Chairperson in the event:

D.1 the person resigns as Chairperson or Deputy Chairperson; or

D.2 the person ceases to be a Member of the Board; or

D.3 the Board by unanimousresolution of the Board Members in office (excluding the person the subject of the resolution) terminates the Chairperson or Deputy Chairperson’s appointment as Chairperson or Deputy Chairperson.

E. In the event the office of Chairperson or Deputy Chairperson becomes vacant, the Board must appoint a new Chairperson or Deputy Chairperson who shall hold office for the balance of the original term.

F. At the conclusion of the term of office of the Chairperson or Deputy Chairperson, the person is eligible for reappointment.

Option 4 – Board Appoints Chairperson and Deputy Chairperson

(Chairperson and Deputy not to be elected member or employee of Council)

A. The Board must appoint from amongst the Members, a Chairperson for a term of up to [insert] years and on such other conditions as determined by the Board.

B. The Board must appoint from amongst the Members, other than the Chairperson, a Deputy Chairperson for a term of up to [insert] years and on such other conditions as determined by the Board.

C. The Chairperson and Deputy Chairperson must not be an elected member or employee of a Council.

D. In the absence of the Chairperson, the Deputy Chairperson shall act in the office of Chairperson.

E. The Chairperson or Deputy Chairperson will cease to hold office as Chairperson or Deputy Chairperson in the event:

E.1 the person resigns as Chairperson or Deputy Chairperson; or

E.2 the person ceases to be a Member of the Board; or

E.3 the person becomes an elected member or employee of a Council;

E.4 the Board by unanimousresolution of the Board Members in office (excluding the person the subject of the resolution) terminates the Chairperson or Deputy Chairperson’s appointment as Chairperson or Deputy Chairperson.

F. In the event the office of Chairperson or Deputy Chairperson becomes vacant, the Board must appoint a new Chairperson or Deputy Chairperson who shall hold office for the balance of the original term.

G. At the conclusion of the term of office of the Chairperson or Deputy Chairperson, the person is eligible for reappointment.

[Insert signature clauses, e.g.]

|  |  |
| --- | --- |
| **Signed** by **Minister for Planning** in the presence of: |  |
| Signature of witness    Name of witness (print) | Minister for Planning |

|  |  |
| --- | --- |
| **The common seal** of **[Insert Council]** was affixed in the presence of: |  |
| Signature of Mayor | Signature of Chief Executive Officer |
| Name of Mayor (print) | Name of Chief Executive Officer (print) |

|  |  |
| --- | --- |
| **The common seal** of **[Insert Council]** was affixed in the presence of: |  |
| Signature of Mayor | Signature of Chief Executive Officer |
| Name of Mayor (print) | Name of Chief Executive Officer (print) |

|  |  |
| --- | --- |
| **Signed** by **[Insert Other Party]** in the presence of: |  |
| Signature of witness    Name of witness (print) | [Insert Party] |

