

LOCAL GOVERNMENT ACT 1999

Adelaide Central Market Authority

THE ADELAIDE CITY COUNCIL has resolved to amend the Charter for the Adelaide Central Market Authority subsidiary, established pursuant to Section 42 of the Local Government Act 1999.

Pursuant to Clause 3 of Part 1 of Schedule 2 of the Local Government Act 1999, the Charter of the Adelaide Central Market Authority, as amended is set out below.

P. SMITH, Chief Executive Officer

LOCAL GOVERNMENT ACT 1999
ADELAIDE CENTRAL MARKET AUTHORITY
Charter—2014

1. Introduction**1.1 Name of Authority**

The name of the Authority is the Adelaide Central Market Authority.

1.2 Corporate Status

The Authority is a body corporate under the Act and in all things acts through the Board which has the responsibility to manage the business and other affairs of the Authority ensuring that the Authority acts in accordance with the Act and this Charter.

1.3 Dictionary

1.3.1 **ACMA General Manager** means that person appointed by the Board pursuant to Clause 3.3 to manage the business of the Authority and the Board;

1.3.2 **Act** means the Local Government Act 1999 and all relevant Regulations made thereunder;

1.3.3 **Annual Business Plan** means the business plan adopted by the Authority pursuant to Clause 4.5;

1.3.4 **Authority** means the Adelaide Central Market Authority established as a single council subsidiary pursuant to Section 42 of the Act;

1.3.5 **Board** means the Board of Management established under Clause 2 of this Charter;

1.3.6 **Board Member** means a member of the Board;

1.3.7 **Budget** means the annual budget adopted by the Authority pursuant to Clause 4.5;

1.3.8 **Capital Enhancement Fund** means net surplus funds directed to new and enhanced facilities subject to a case by case project proposal and included in an annual business plan approved by Council;

1.3.9 **Capital Renewal Fund** means a fund created to provide for those individual asset renewal projects which require completion to ensure the assets meet the required level of service;

1.3.10 **Charter** means this charter of the Authority prepared by the Council;

1.3.11 **Council** means The Corporation of the City Adelaide;

1.3.12 **deliberative vote** means a vote cast by each Board Member (including the Chairperson) for the purpose of deciding a matter under deliberation;

1.3.13 **Council's CEO** means the person occupying the office of Chief Executive Officer of the Council;

1.3.14 **financial year** means 1 July in each year to 30 June in the subsequent year;

1.3.15 **Gazette** means the South Australian Government Gazette;

1.3.16 **Headlease** means the lease granted by the Council to the Authority in accordance with this Charter;

1.3.17 **Market** means the property owned by the Council situated at Grote Street, Adelaide and known as the Adelaide Central Market and the Car Park as defined in the Headlease;

1.3.18 **Market Charter** means the document entitled 'Adelaide Central Market Charter 2011', as approved by the Council at its meeting of 31 May 2011, as reviewed and amended from time to time by the Council and, for the purposes of clarification, the Market Charter, although referred to in this Charter, is a separate and distinct document from the Charter and does not form part of the Charter.

1.3.19 **Operating Agreement** means the agreement entered into between the Council and the Authority and any amended agreement regarding the Market;

1.3.20 **simple majority** means a majority of those present and entitled to vote;

1.4 Interpretation

In this Charter:

1.4.1 the singular includes the plural and vice versa and words importing a gender include other genders;

1.4.2 words importing natural persons include corporations;

1.4.3 reference to a Section(s) is to a section of the Act and includes any section that substantially replaces that Section and deals with the same matter;

1.4.4 headings are for ease of reference only and do not affect the construction of this Charter.

1.5 Local Government Act

1.5.1 The Authority is established pursuant to Section 42 of the Act.

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

1.5.3 The Authority shall conduct its affairs in accordance with and comply with Schedule 2 to the Act except as modified by this Charter in a manner permitted by Schedule 2.

- 1.5.4 The establishment of the Authority does not derogate from the power of Council to act independently in relation to a matter within the jurisdiction of the Authority.
- 1.5.5 Nothing in this Charter shall be construed as limiting or altering the existence of any right or entitlement of the Council under the Act.
- 1.6 *About this Charter*
- 1.6.1 This Charter is the charter of the Authority.
- 1.6.2 The Charter binds the Authority and the Council.
- 1.6.3 Despite any other provision in the Charter but subject to Clause 1.5:
- 1.6.3.1 if the Act prohibits a thing being done the thing may not be done;
- 1.6.3.2 if the Act requires or permits a thing to be done authority is given for that thing to be done;
- 1.6.3.3 if a provision of the Charter is, or becomes, inconsistent with the Act, that provision must be read down, or failing that, severed from the Charter to the extent of the inconsistency.
- 1.6.4 The Charter may not be amended except by the Council passing a resolution in the same terms. An amendment is not effective unless and until published in the *Gazette*.
- 1.6.5 This Charter may be reviewed by the Council at any time and must be reviewed by the Council whenever it is relevant to do so because of a review of the Council's strategic management plans.
- 1.7 *Objects and Purposes*
- 1.7.1 *Objects and Purposes*
The objects and purposes of the Authority are:
- 1.7.1.1 to oversee the management and operation of the Market in accordance with:
- (a) the Charter;
- (b) the Market Charter; and
- (c) the Council's Strategic Plan;
- 1.7.1.2 to be responsible for maintaining and enhancing the iconic standing of the Market for the benefit of all stakeholders;
- 1.7.1.3 to be responsible for the Market becoming internationally recognized as a vibrant, diverse and unique fresh produce market community that is commercially sustainable for traders and the Council.
- 1.7.2 *Status of Market Charter*
- 1.7.2.1 The Market Charter, has the purpose of more specifically defining the manner in which the Authority will achieve the mission, goals and key success factors in order to meet the vision set out in the Market Charter.
- 1.8 *Powers, Functions and Duties*
- 1.8.1 The powers, functions and duties of the Authority are to be exercised in the performance of the Authority's objects and purposes. In addition to those specified in the Act, the Authority shall have the following powers, functions and duties:
- 1.8.1.1 to enter into a Headlease with the Council as Lessor pursuant to which the Council will grant to the Authority a Lease of the whole of the Market and to comply with the Headlease. That Lease will be on such terms and conditions as nominated by the Council. Other than as provided for in Clause 1.8.1.2 the Authority must not enter into any contract dealing or arrangement with respect to real property without the approval of Council;
- 1.8.1.2 notwithstanding Clause 1.12, to, as Lessee pursuant to the Headlease and subject to the Headlease, grant subleases, licences and other rights of occupation over any areas of the Market which may become vacant from time to time;
- 1.8.1.3 to ensure that the Market is managed, operated, marketed and conducted in accordance with the Market Charter, the Operating Agreement and the Headlease;
- 1.8.1.4 subject to Clause 1.11, to enter into contracts, purchase, sell, lease, hire, rent or otherwise acquire or dispose of any chattel, plant or equipment;
- 1.8.1.5 to open and operate bank accounts;
- 1.8.1.6 to borrow money and incur expenditure in accordance with Clause 1.11;
- 1.8.1.7 to pay to the Council in accordance with the Headlease:
- (a) an annual rent comprising a percentage of the rent and recoverable outgoings payable by lessees, licensees and occupiers of the Market; and
- (b) a percentage of net revenue derived by the Authority in each Financial Year;
- 1.8.1.8 to accumulate surplus funds to the extent that those surplus funds are not required to be paid to the Council pursuant to the Headlease;
- 1.8.1.9 to use the trading name 'Adelaide Central Market';
- 1.8.1.10 to establish a Traders' Advisory Group and to actively engage with and communicate with the Traders' Advisory Group and the Traders' Association in relation to the activities of the Authority;
- 1.8.1.11 to establish a good working relationship with those responsible for the management of retail centres adjoining the Market and other stakeholders;
- 1.8.1.12 to co-ordinate the undertaking of the advertising and other promotion of the Market in consultation with the Traders' Advisory Group and the Traders' Association;
- 1.8.1.13 to actively market tenancies in the Market that may become vacant;

- 1.8.1.14 to ensure that the Market is maintained at all times in a state of repair which a prudent investor would maintain the same to ensure a maximum level of amenity for customers and occupancy by traders and a maximum level of rent return;
- 1.8.1.15 to comply with all relevant legislative and compliance requirements;
- 1.8.1.16 to do anything else necessary or convenient for or incidental to the exercise, performance or discharge of the Authority's powers, functions or duties;
- 1.8.1.17 to be financially self-sufficient for operational and capital renewal costs;
- 1.8.1.18 to proactively manage the business of the Market in a competitive and changing environment; and
- 1.8.1.19 subject to Clauses 1.8.1.1, 1.11, 1.12 and 3, to enter into any kind of contract or arrangement.
- 1.8.2 The Authority must establish a Capital Enhancement Fund and must pay into the Capital Enhancement Fund all surplus funds accumulated by the Authority, and any such surplus funds accumulated in the Capital Enhancement Fund must be expended by the Authority for the purposes of capital enhancement as approved by the Council in accordance with Clause 4.5.2.
- 1.8.3 For the purpose of complying with its obligations under Clause 1.8.1.14 the Authority must create a Capital Renewal Fund to provide for the cost of undertaking capital expenditure in relation to the maintenance and upkeep of existing improvements and infrastructure in the Market.
- 1.8.4 The Authority is not authorised to act outside the area of the Council unless the prior approval of the Council is obtained which approval may be granted only in accordance with the Act.
- 1.8.5 To the extent that a matter arises concerning the Authority for which the Authority does not have an adopted policy, the Authority must comply with any and all adopted policies of the Council that exist in relation to that matter, except where the Council has resolved otherwise.
- 1.9 *Other Powers and Functions*

The Authority may exercise such other powers and functions as are delegated to the Authority by the Council from time to time.
- 1.10 *National Competition Policy*

The Authority must undertake any commercial activities which constitute a significant business activity of the Authority in accordance with the principles of competitive neutrality.
- 1.11 *Funding of Authority, Borrowing Money and Investment*
 - 1.11.1 It is intended that the operations of the Authority shall be funded from the rents, licence fees and other moneys which will be payable by lessees, licensees and occupiers of the Market to the Authority either as a Concurrent Lessee (in respect of those tenancies in existence as at the date of the grant of the Headlease) or as Underlessor (in respect of those tenancies granted by the Authority after the date of the grant of the Headlease).
 - 1.11.2 The Authority has the power to incur expenditure as follows:
 - 1.11.2.1 in accordance with a budget adopted by the Authority and approved by the Council as required by the Act or this Charter; or
 - 1.11.2.2 with the prior approval of the Council; or
 - 1.11.2.3 in accordance with the Act, and in respect of expenditure not contained in a budget adopted by the Authority and approved by the Council, for a purpose of genuine emergency or hardship.
 - 1.11.3 Unless otherwise approved by the Council any and all borrowings taken out by the Authority must be from the Local Government Financial Authority or a registered bank or financial institution within Australia.
 - 1.11.4 Unless otherwise approved by the Council, any and all borrowings taken out by the Authority must:
 - 1.11.4.1 not be used for the purpose of funding operational costs or capital renewal costs and must be used for the purpose of undertaking capital enhancements approved by Council in circumstances where Council has approved a capital enhancement project under Clause 4.5.2 but there are insufficient funds in the Capital Enhancement Fund to undertake the capital enhancement project; and
 - 1.11.4.2 be from the Local Government Financial Authority or a registered bank or financial institution within Australia.
 - 1.11.5 For the purposes of Schedule 2, Clause 3 (2) (k) of the Act the Authority must obtain the prior approval of the Council in respect of any investment to be undertaken by the Authority.
- 1.12 *Property*
 - 1.12.1 All property held by the Authority is held by it on behalf of Council.
 - 1.12.2 Except as provided for in Clause 1.8.1.2, the Authority must not acquire, dispose, encumber or otherwise deal with any real property without the approval of the Council.
 - 1.12.3 The Authority may acquire or dispose of or otherwise deal with chattels, plant and equipment provided that such dealing is consistent with and permitted in the Annual Business Plan or the Budget, or is otherwise approved by Council.
- 2. **Board of Management**
 - 2.1 *Role of Board*

The Board shall be responsible to manage all of the affairs of the Authority and ensure that the Authority acts in accordance with this Charter and all relevant legislation including the Act.
 - 2.2 *Membership of the Board*
 - 2.2.1 A Board Member appointed under Clause 2.3 must be a natural person.
 - 2.2.2 It is intended that Board Members collectively have a range of knowledge, skills and experience across the following areas:

- 2.2.2.1 retail;
- 2.2.2.2 food supply chain (with retail emphasis);
- 2.2.2.3 retail property management;
- 2.2.2.4 marketing;
- 2.2.2.5 board governance;
- 2.2.2.6 business acumen;
- 2.2.2.7 people leadership;
- 2.2.2.8 strategic management; and
- 2.2.2.9 knowledge of the Market.

2.3 *Appointment of Board Members*

- 2.3.1 Subject to Clause 2.3.2, the Board shall consist of up to seven Board Members including the Chairperson appointed by the Council who collectively have the knowledge, skills and experience set out in Clause 2.2.2.
- 2.3.2 One Board Member must be a Council Member and one Board Member must be the Chair of the Traders Advisory Group, unless the Chair of the Traders Advisory Group refuses or is unable to act as a Board Member, in which case the Council may appoint another person to be a Board Member in place of the Chair of the Traders Advisory Group.
- 2.3.3 The Chairperson Selection Panel will determine and undertake an expression of interest process for the position of Chairperson and make a recommendation to the Council for the Council's approval and the appointment of a Chairperson.
- 2.3.4 The Council will appoint one person to be a Board Member and the Chairperson following a recommendation of the Chairperson Selection Panel for a maximum three year term determined by the Council.
- 2.3.5 The Board Member Selection Panel will determine and undertake an expression of interest process for the position of Board Member and make a recommendation to the Council for the Council's approval and the appointment of a Board Member(s).
- 2.3.6 The Council will appoint a person(s) to be a Board Member(s) following a recommendation of the Board Member Selection Panel for a maximum three year term determined by the Council provided that the Council shall ensure that no more than three Board Members' terms of office expire in the same year.
- 2.3.7 A Board Member is eligible for reappointment at the expiration of a term of office provided that no Board Member shall be entitled to serve more than two consecutive terms.
- 2.3.8 Prior to the conclusion of the term of office of the Chairperson or any Board Member a further appointment will be made by the Council in accordance with Clauses 2.3.4 and 2.3.6.
- 2.3.9 The Council must give to the Authority a written notice of appointment of a Board Member and Chairperson.
- 2.3.10 Each Board Member must give to the Authority a signed written consent to act as a Board Member.
- 2.3.11 The Council will appoint a Board Member, other than the Chairperson to be the Deputy Chairperson for a maximum term of three years.
- 2.3.12 The Chairperson shall preside at all meetings of the Board and in the event of the Chairperson being absent from a meeting the Deputy Chairperson shall preside and in the event of both the Chairperson and the Deputy Chairperson being absent from a meeting the Board Members present shall appoint a Board Member from amongst them who shall preside for that meeting or until the Chairperson or the Deputy Chairperson is present.
- 2.3.13 In the event that the Chairperson resigns or is removed from office by the Council or is no longer eligible to act as a Board Member then the Deputy Chairperson shall act in that office and in the event of the Deputy Chairperson refusing or being unable to so act the Board shall appoint from amongst the Board Members a new Chairperson who shall hold office until a further appointment is made pursuant to Clause 2.3.4 whereupon the person so appointed will hold office for such term as determined by the Council.
- 2.3.14 Subject to Clause 2.3.7 the Chairperson and the Deputy Chairperson are eligible for re-appointment at the expiration of their term of office.

2.4 *Selection Panels*

- 2.4.1 The Chair Selection Panel shall comprise:
 - 2.4.1.1 three Council Members appointed by resolution of the Council;
 - 2.4.1.2 a recruitment consultant appointed by the Council's CEO;
 - 2.4.1.3 the Council's CEO; and
 - 2.4.1.4 the Chair of the Traders Advisory Group.
- 2.4.2 The Board Member Selection Panel shall comprise:
 - 2.4.2.1 three Council Members appointed by resolution of the Council;
 - 2.4.2.2 a recruitment consultant appointed by the Council's CEO;
 - 2.4.2.3 the Chairperson;
 - 2.4.2.4 the Council's CEO; and
 - 2.4.2.5 the Chair of the Traders Advisory Group.
- 2.4.3 The Chairpersons of the Chairperson Selection Panel and the Board Member Selection Panel shall be the Council's CEO.
- 2.4.4 The procedure to be observed at meetings of the Chairperson Selection Panel and Board Member Selection Panel including the quorum for such meetings shall be determined by the Chairperson Selection Panel and Board Member Selection Panel respectively.

2.5 *Functions of the Board*

- 2.5.1 The Board has the following functions:
- 2.5.1.1 formulating strategic plans and strategies aimed at:
 - (a) aligning the activities of the Authority with the vision, mission and goals set out in the Market Charter; and
 - (b) improving the activities of the Authority.
 - 2.5.1.2 providing professional input and policy direction to the Authority;
 - 2.5.1.3 subject to Clause 3, appointing, monitoring, overseeing and evaluating the performance of the ACMA General Manager;
 - 2.5.1.4 ensuring that a code of conduct dealing with ethical behaviour and integrity is established and implemented in all activities undertaken by the Authority and Board Members;
 - 2.5.1.5 preparing and developing annual business plans to be presented to the Council for approval;
 - 2.5.1.6 ensuring the highest standards of governance and public administration are maintained by the Authority;
 - 2.5.1.7 exercising the care, diligence and skill that a prudent person of business would exercise in managing the affairs of other persons.

2.6 *Board Duties*

- 2.6.1 The Board must ensure as far as practicable:
- 2.6.1.1 that the Authority observes all plans, targets, structures, systems and practices required or applied to the Council;
 - 2.6.1.2 that all information furnished to the Council is accurate;
 - 2.6.1.3 that the Council is advised, as soon as practicable, of any material development that affects the financial or operating capacity of the Authority or gives rise to the expectation that the Authority may not be able to meet its debts as and when they fall due;
 - 2.6.1.4 that the Authority acts in accordance with applicable laws, mandatory codes of practice and this Charter;
 - 2.6.1.5 that the Authority acts ethically and with integrity;
 - 2.6.1.6 that the activities of the Authority are conducted efficiently and effectively and that the assets of the Authority are properly managed and maintained; and
 - 2.6.1.7 that the Authority performs its Annual Business Plan and achieves the financial outcomes projected in its Budget.

2.7 *Removal of Board Members*

- 2.7.1 Neither the Authority nor the Board may remove a Board Member.
- 2.7.2 The Council may remove a Board Member from office by giving to the Board Member a written notice of removal of the Board Member.
- 2.7.3 The Council may remove a Board Member who is absent without leave of the Board from three consecutive ordinary meetings of the Board.
- 2.7.4 Subject to Clause 2.7.2 the Council may remove a Board Member either of its own volition or upon recommendation of the Board passed by a two thirds majority vote of the Board Members present (excluding the Board Member subject to this Clause 2.7.4) for:
- 2.7.4.1 any behaviour of the Board Member which in the opinion of the Board or the Council amounts to impropriety;
 - 2.7.4.2 serious neglect of duty in attending to the responsibilities of a Board Member;
 - 2.7.4.3 breach of fiduciary duty to the Authority or the Council;
 - 2.7.4.4 breach of the duty of confidentiality to the Authority and/or the Council;
 - 2.7.4.5 breach of the propriety requirements of the Board; or
 - 2.7.4.6 any other behaviour which may discredit the Board or the Authority or the Council;
 - 2.7.4.7 any other, or no reason.

2.8 *Vacation of the Office of Board Member*

- 2.8.1 A person vacates office as a Board Member if and when:
- 2.8.1.1 Clauses 2.7.2 to 2.7.4 inclusive permits;
 - 2.8.1.2 Schedule 2, Clause 4 (3) of the Act requires or permits; or
 - 2.8.1.3 the person was when appointed a Member of the Council and ceases to be a Member of the Council;
 - 2.8.1.4 in the case of a Board member who is a Member of the Council, at the expiry of his or her term of office as a Member of the Council as set out in the Act.
- 2.8.2 A Board Member need not retire from office at any time.

2.9 *Remuneration and Expenses of Board Members*

- 2.9.1 The Authority is entitled to pay retrospectively appropriate remuneration fees to all Board Members as approved by the Council.
- 2.9.2 The Authority must pay to a Board Member retrospectively any travelling and other expenses that are properly incurred in connection with the Authority's business and with the prior approval of the Board as recorded in minutes of a Board meeting.

2.10 *Vacancies*

2.10.1 *Casual Vacancies*

- 2.10.1.1 If any casual vacancy occurs in the membership of the Board it will be filled in the same manner as the original appointment except where the Council by resolution determines otherwise.
- 2.10.1.2 The person appointed to the Board to fill a casual vacancy will be appointed for a maximum three year term as determined by the Council.

2.10.2 *Vacant Board*

- 2.10.2.1 In the event that the office of all Board Members becomes vacant at any one time, the Council may do one or both of the following:
 - (a) appoint persons as Board Members in such manner as determined by the Council for a maximum six month period and on such other terms and conditions as determined by the Council;
 - (b) delegate to the Council's CEO the Council's power to direct and control the Authority subject to any conditions or limitations as determined by the Council.

2.11 *Register of Interest*

A Board Member is not required to submit returns to the Authority under Chapter 5, Part 4, Division 2 of the Act.

2.12 *Protection from Liability*

In accordance with Schedule 2, Clause 38 of the Act a Board Member is afforded protection from certain civil liabilities.

2.13 *Saving Provision*

In accordance with Schedule 2, Clause 40 of the Act no act or proceeding of the Authority is invalid by reason of:

- 2.13.1 a vacancy or vacancies in the membership of the Board; or
- 2.13.2 a defect in the appointment of a Board Member.

2.14 *Governance Issues for Members of the Board*

- 2.14.1 The principles regarding conflict of interest prescribed in the Act apply to all Board Members in the same manner as if the Authority was a council and the Board Member was a member of a council.
- 2.14.2 The Board Members will at all times act in accordance with their duties of confidence and confidentiality and individual fiduciary duties including honesty and the exercise of reasonable care and diligence with respect to the performance and discharge of official functions and duties as required by Chapter 5, Part 4, Division 1 of the Act and Schedule 2, Part 1, Clause 7 to the Act.
- 2.14.3 The Authority must prepare and adopt and thereafter keep under review policies on:
 - 2.14.3.1 contracts and tenders as would conform to Section 49 of the Act; and
 - 2.14.3.2 a code of conduct to be observed by Board Members.
- 2.14.4 The Authority must, in consultation with the Council, prepare and adopt, and thereafter keep under review, policies on:
 - 2.14.4.1 governance including:
 - (a) the operation of any account with a bank or Local Government Finance Authority;
 - (b) human resource management;
 - (c) improper assistance to a prospective contract party;
 - (d) improper offering of inducements to Board Member or to staff of the Authority; and
 - (e) improper lobbying of Board Members or staff of the Authority;
 - (f) work health and safety; and
 - (g) protection of the environment.
- 2.14.5 Nothing in Clause 2.14 is to be construed as limiting the Authority's power to adopt such other policies it sees fit.

2.15 *Meetings of the Board*

- 2.15.1 Subject to Schedule 2, Clause 5 of the Act, the Board may determine its own procedures for meetings, which must be fair and contribute to free and open decision making.
- 2.15.2 Ordinary meetings of the Board must take place at such times and places as may be fixed by the Board from time to time and in any event not less than six times per financial year.
- 2.15.3 An ordinary meeting of the Board will constitute an ordinary meeting of the Authority. The Board shall administer the business of the ordinary meeting.
- 2.15.4 *Telecommunications Meeting*
 - 2.15.4.1 For the purposes of this Clause 2.15, the contemporary linking together by telephone, audio-visual or other instantaneous means (telecommunications meeting) of a number of the board Members provided that at least a quorum is present is deemed to constitute a meeting of the Board.
 - 2.15.4.2 Each of the Board Members taking part in the telecommunications meeting must at all times during the telecommunications meeting be able to hear and be heard by each of the Board Members present.
 - 2.15.4.3 At the commencement of the meeting each Board members must announce his/her presence to all other Board Members taking part in the meeting.
 - 2.15.4.4 A Board member must not leave a telecommunications meeting by disconnecting his/her telephone, audio-visual or other communication equipment unless that board member has previously notified the Chairperson of the meeting.

- 2.15.5 Written Resolution
- 2.15.5.1 A proposed resolution in writing and given to all Board Members in accordance with procedures determined by the Board will be a valid decision of the Board where a majority of Board Members vote in favour of the resolution by signing and returning the resolution to the ACMA General Manager or otherwise giving written notice of their consent and setting out the terms of the resolution to the ACMA General Manager.
- 2.15.5.2 The resolution shall thereupon be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held.
- 2.15.6 Notice of ordinary meetings of the Board must be given by the ACMA General Manager to each Board Member not less than three clear business days prior to the holding of the meeting.
- 2.15.7 Special Meeting
- 2.15.7.1 The Council or any Board Member may by delivering a written request to the ACMA General Manager of the principal office of the Authority require a special meeting of the Board to be held.
- 2.15.7.2 On receipt of the request the ACMA General Manager shall send a notice of the special meeting to all Board Members at least 24 hours prior to the commencement of the special meeting.
- 2.15.7.3 The request by any Board Member to the ACMA General Manager of the Authority requiring a special meeting to be held must be accompanied by the proposed agenda for the meeting and any written reports intended to be considered at the meeting (and if the proposed agenda is not provided the request is of no effect).
- 2.15.8 Notice of any meeting of the Board must:
- 2.15.8.1 be in writing; and
- 2.15.8.2 set out the date, time and place of the meeting; and
- 2.15.8.3 be signed by the ACMA General Manager; and
- 2.15.8.4 contain or be accompanied by the agenda for the meeting; and
- 2.15.8.5 be accompanied by a copy of any documents or reports that are to be considered at the meeting (so far as this is practicable).
- 2.15.9 The ACMA General Manager must maintain a record of all notices of meetings given to Board Members.
- 2.15.10 Notice of a meeting may be given to a Board Member:
- 2.15.10.1 personally; or
- 2.15.10.2 by delivering the notice (whether by post or otherwise) to the usual place of residence of the Board Member or to another place authorised in writing by the Board Member; or
- 2.15.10.3 by leaving the notice for the Board member at an appropriate place at the principal office of the Council; or
- 2.15.10.4 by a means authorised in writing by the Board Member as being an available means of giving notice.
- 2.15.11 Any notice that is not given in accordance with Clause 2.15.8 will be taken to have been validly given if the ACMA General Manager considers it impracticable to give the notice in accordance with Clause 2.15.8 and takes action that the ACMA General Manager considers reasonably practicable in the circumstances to bring the notice to the Board Member's attention.
- 2.15.12 The Chairperson may convene urgent general meetings of the Board at the Chairperson's discretion.
- 2.15.13 The Chairperson shall convene other meetings of the Board as the Board may direct.
- 2.15.14 A majority of the Board Members present at a meeting of the Board may adjourn the meeting from time to time and from place to place.
- 2.15.15 Minutes
- 2.15.15.1 The ACMA General Manager must ensure minutes are kept of the proceedings at every meeting of the Board.
- 2.15.15.2 The minutes must be prepared and distributed to Board Members and the Council within five business days of the meeting to which they relate.
- 2.15.15.3 The minutes must be presented to the next ordinary meeting of the Board for confirmation and adoption.
- 2.15.15.4 Where the ACMA General Manager is excluded from attendance at a meeting of the Board the person presiding at the meeting shall ensure the minutes are kept.
- 2.15.16 Quorum
- The quorum for any meeting of the Board is a simple majority of the number of Board Members in office and no business will be transacted at a meeting of the Board unless a quorum is present.
- 2.15.17 Voting
- 2.15.17.1 Every Board Member including the Chairperson shall have a deliberative vote.
- 2.15.17.2 The Chairperson shall not in the event of an equality of votes have a casting vote.
- 2.15.17.3 All matters will be decided by a majority of votes of the Board Members present except where this Charter provides otherwise.
- 2.15.17.4 In the event of an equality of votes the matter will lapse.
- 2.15.17.5 Subject to the Act and this Charter each Board Member validly present at a Board meeting must vote on a matter arising for decision at that meeting.
- 2.15.18 The Board may invite any person to attend at a meeting of the Board to act in an advisory capacity.
- 2.15.19 Subject to this Charter, Schedule 2, Clause 5 of the Act and to any direction of the Council the Board may determine its own procedures for voting which must be fair and contribute to free and open decision making.

- 2.15.20 Subject to Clause 2.16 meetings of the Board will not be conducted in a place open to the public.
- 2.16 *Annual General Meeting*
- 2.16.1 An Annual General Meeting of the Board shall be held prior to November in each year at a place and time determined by a resolution of the Board.
- 2.16.2 Notice of the Annual General Meeting will be given by:
- 2.16.2.1 placing a copy of the notice and agenda on public display at the principal office of the Authority and of the Council; and
- 2.16.2.2 by notice in newspapers that circulate in the area of the Council; and
- 2.16.2.3 in such other manner as the ACMA General Manager considers appropriate.
- 2.16.3 The notice and agenda must be placed on public display for at least 14 clear days before the Annual General Meeting and in accordance with Clause 2.16.2 until the completion of the Annual General meeting and must be available to the public:
- 2.16.3.1 for inspection, without charge; and
- 2.16.3.2 by way of a copy upon payment of a fee fixed by the Authority.
- 2.16.4 A reasonable number of copies of the notice and agenda and any document or report supplied to Board Members for the Annual General Meeting must be available for members of the public at the meeting.
- 2.16.5 The Annual General Meeting will be conducted in a place open to the public and will consider and deal with business of a general nature aimed at reviewing the progress and direction of the Authority over the immediately preceding financial year and shall include the following:
- 2.16.5.1 Chairperson's report;
- 2.16.5.2 ACMA General Manager's report;
- 2.16.5.3 the Annual Business Plan and Budget adopted by the Authority for the ensuing financial year;
- 2.16.5.4 the audited financial statements of the Authority for the previous financial year; and
- 2.16.5.5 any other general business determined by the Board to be considered at the Annual General Meeting.
- 2.16.6 The minutes of the Annual General Meeting must be available to the public within five days of the Annual General Meeting for inspection or by provision of a copy upon payment of a fixed fee by the Board.
- 2.17 *Delegations*
- 2.17.1 Delegation by the Council
- 2.17.1.1 In accordance with and subject to the Act, the Council may delegate to the Authority a power or function vested or conferred on the Council under the Act or another Act.
- 2.17.2 Delegation by the Authority
- 2.17.2.1 Subject to Clause 2.17.2.3 the Authority may by resolution delegate such of its powers, functions and duties under this Charter as it determines.
- 2.17.2.2 The Authority must adopt and regularly review a formal written policy which sets out those powers, functions and duties which are to be the subject of delegation including the terms and conditions of such delegation and the limits and restrictions on the exercise of the relevant powers, functions and duties delegated.
- 2.17.2.3 Notwithstanding the provisions of Clause 2.17.2.1 the Authority may not delegate:
- (a) the power to impose charges;
- (b) the power to enter into transactions in excess of an amount to be specified by the Board in its written policy established under Clause 2.17.2.2;
- (c) the power to borrow money or obtain any other form of financial accommodation not set out or included in a budget approved by the Authority, and where required by this Charter, approved by the Council;
- (d) the power to approve expenditure of money on the works, services or operations of the Authority not set out or included in a budget approved by the Authority and, where required by this Charter approved by the Council;
- (e) the power to approve the reimbursement of expenses or payment of remuneration fees to Board Members; and
- (f) the power to adopt budgets.
- 2.17.3 Delegation by the Council's CEO
- 2.17.3.1 In accordance with and subject to the Act, the Council's CEO may delegate (or subdelegate) a power or function vested or conferred in or on the Council's CEO under the Act, to:
- (a) an employee of the Council or to the employee for the time being occupying a particular office or position; or
- (b) a committee comprising employees of the Council; or
- (c) an authorised person as defined in the Act.
- 2.17.4 A delegation is revocable at will and does not prevent the Authority from acting in a matter.
3. **Employees of the Authority and Seconded Employees**
- 3.1 The Authority may employ persons with the prior approval of the Council which approval may be granted on such terms and conditions as the Council determines.
- 3.2 The Council may second employees of the Council to the Authority on such terms and conditions including in relation to responsibilities, employee performance management and reporting as agreed and set out in an Operating Agreement between the Council and the Authority.

- 3.3 The Authority must:
- 3.3.1 appoint a person to be the ACMA General Manager to manage the business of the Authority and the Board on terms and conditions agreed between the Authority and the ACMA General Manager; and
 - 3.3.2 obtain the Council's prior consent to the appointment of the ACMA General Manager, including the appointment of any person as the acting ACMA General Manager;
 - 3.3.3 obtain the Council's prior consent to the terms and conditions of the appointment of the ACMA General Manager to be agreed between the Authority and the ACMA General Manager.

4. Management

4.1 *Financial Management*

- 4.1.1 The Authority shall keep proper books of accounts in accordance with the requirements of the Local Government (Financial Management) Regulations 2011.
- 4.1.2 The Authority must review its budget in accordance with the requirements of the Local Government (Financial Management) Regulations 2011.
- 4.1.3 The Authority's books of account must be available for inspection by any Board Member the CEO of the Council or any authorised representative of the Council at any reasonable time on request.
- 4.1.4 The Authority must establish and maintain a bank account with such banking facilities and at a bank to be determined by the Authority.
- 4.1.5 The Authority shall appoint no less than two Board Members, the ACMA General Manager, the Chairperson and the Deputy Chairperson as authorised operators of all bank accounts of the Authority.
- 4.1.6 A minimum of two authorised operators must be required to deal with the bank account at any one time.
- 4.1.7 All cheques must be signed by two persons authorised by resolution of the Board.
- 4.1.8 Any payments made by Electronic Funds Transfer must be made in accordance with procedures which have received the prior approval of the Authority's Auditor and been adopted by the Authority.
- 4.1.9 The Authority must develop and present to Council for adoption a treasury management policy to include (but not limited to) provisions relating to debt, savings, surplus funds and financial risk reduction through a holistic approach to borrowings, investment and financial management.
- 4.1.10 The ACMA General Manager must act prudently in the handling of all financial transactions for the Authority and must provide quarterly financial and corporate reports to the Board and, if requested, to the Council.

4.2 *Financial Plan*

- 4.2.1 The Authority must:
 - 4.2.1.1 prepare and adopt a Financial Plan with an operational period of not less than four years which includes the level of a proposed dividend, projected revenues including leasing and car parking revenues and major capital works, infrastructure and operating budgets;
 - 4.2.1.2 include in the Financial Plan goals, objectives and relevant key performance indicators; and
 - 4.2.1.3 submit the Financial Plan to the Council for its approval prior to the adoption of the Financial Plan.
- 4.2.2 The Authority may with the Council's consent amend the Financial Plan at any time.

4.3 *Audit*

- 4.3.1 The Authority shall appoint an auditor in accordance with the Local Government (Financial Management) Regulations 2011 (the Auditor) on such terms and conditions as determined by the Authority.
- 4.3.2 The Auditor shall hold office until the appointment is rescinded by a resolution of the Board at an ordinary meeting.
- 4.3.3 The Auditor will have the same powers and responsibilities as set out in the Act in relation to a council.
- 4.3.4 The audit of the financial statements of the Authority together with the accompanying report from the Auditor shall be submitted to both the Board and the Council.
- 4.3.5 The books of account and financial statements shall be audited at least once per year.
- 4.3.6 The Authority is required to appoint an audit committee.
- 4.3.7 The Authority must to the extent not already specified in this Clause 4.3 comply with all of the requirements of Schedule 2, Clause 13 of the Act.

4.4 *Strategic Plan*

- 4.4.1 The Authority must:
 - 4.4.1.1 prepare and adopt a Strategic Plan with an operational period of not less than four years which sets out the goals, objectives, strategies and priorities of the Authority and the Market and its relationship to the wider precinct over the period of the Strategic Plan;
 - 4.4.1.2 include in the Strategic Plan goals, objectives and key performance indicators;
 - 4.4.1.3 ensure the Strategic Plan is aligned with the Council's strategic plan;
 - 4.4.1.4 submit the Strategic Plan to the Council for its approval in month of February prior to the adoption of the Strategic Plan.
- 4.4.2 The Authority may with the Council's consent amend the Strategic Plan at any time.

4.5 *Annual Business Plan and Budget*

- 4.5.1 The Authority must:
 - 4.5.1.1 prepare an Annual Business Plan and Budget for approval by the Council;
 - 4.5.1.2 undertake reasonable consultation with the Council prior to submitting the Annual Business Plan and Budget to the Council for approval.

- 4.5.2 The Annual Business Plan must:
- 4.5.2.1 link the core activities of the Authority to strategic, operational and organisational requirements with supporting financial projections setting out the estimates of revenue and expenditure as necessary for the period;
 - 4.5.2.2 include the performance targets of the Authority as approved by the Council ;
 - 4.5.2.3 include those measures to be employed to monitor and assess performance and achievement of targets;
 - 4.5.2.4 include proposals for the undertaking of capital enhancement projects and the funding of such projects;
 - 4.5.2.5 otherwise comply with the requirements of Schedule 2, Clause 8 of the Act.
- 4.5.3 The Budget must:
- 4.5.3.1 detail the estimated revenues and costs for the forthcoming financial year; and
 - 4.5.3.2 otherwise comply with the requirements of Schedule 2, Clause 9 of the Act;
- 4.5.4 The Annual Business Plan and Budget must be submitted to the Council for approval by a date nominated by the Council from time to time in accordance with the Council's budgetary approval process;
- 4.5.5 Neither the Annual Business Plan nor the Budget shall be amended without reasonable consultation with and the prior approval of the Council.
- 4.6 *Marketing Plan*
- 4.6.1 The Authority must:
- 4.6.1.1 prepare and adopt a Marketing Plan with an operational period of not less than four years which must include the positioning of the Market as a retail and tourism destination for South Australia;
 - 4.6.1.2 include in the Marketing Plan goals, objectives and key performance indicators;
 - 4.6.1.3 submit the Marketing Plan to the Council for its approval at the same time as the Strategic Plan is submitted to the Council for approval.
- 4.6.2 The Authority may with the Council's consent amend the Marketing Plan at any time.
- 4.7 *Reporting*
- 4.7.1 The Authority must submit to the Council in each Financial Year a report on the work and operations of the Authority detailing achievement of the aims and objectives of its Annual Business Plan and incorporating the audited financial statements of the Authority and any other information or reports required by the Council in a timeframe determined by the Council.
- 4.7.2 The Authority shall present financial statements in accordance with the Local Government (Financial Management) Regulations 2011 to Council in a timeframe determined by the Council each financial year.
- 4.7.3 The Authority must submit to the Council within 30 days of the expiration of each quarter in each financial year a quarterly report in relation to the operations of the Authority and the Market detailing performance against strategic milestones and key performance indicators in the Annual Business Plan and demonstrating alignment with the Strategic Plan and the Council's Strategic Plan and containing such other information as the Council may specify from time to time.
5. **Miscellaneous**
- 5.1 *Insurance and Superannuation Requirements*
- 5.1.1 The Authority shall register with the Local Government Mutual Liability Scheme and comply with the Rules of that Scheme unless directed otherwise by the Council.
 - 5.1.2 The Authority shall advise the Local Government Asset Mutual Fund on its insurance requirements relating to local government special risks including buildings, structures, vehicles and equipment under the management, care and control of the Authority.
 - 5.1.3 If the Authority employs any person it shall register with the Local Government Superannuation Scheme and the Local Government Workers Compensation Scheme and comply with the Rules of those Schemes.
- 5.2 *Winding Up*
- 5.2.1 The Authority may be wound up by the Minister acting upon a resolution of the Council or by the Minister in accordance with Schedule 2, Part 1, Clause 16 (1) (b) of the Act.
 - 5.2.2 In the event of a winding up of the Authority:
 - 5.2.2.1 any surplus assets after payment of all expenses shall be returned to the Council prior to the passing of the resolution to wind up; and
 - 5.2.2.2 the Headlease shall at the election of the Council be either transferred by the Authority to the Council or surrendered.
- 5.3 *Alteration and Review of Charter*
- 5.3.1 Consistent with Clause 1.6.5 the Council may review this Charter at any time.
 - 5.3.2 This Charter may be amended by a resolution passed in the same terms by the Council.
 - 5.3.3 The ACMA General Manager must ensure that the amended Charter is published in the *Gazette* and a copy of the amended Charter is provided to the Minister.
- 5.4 *Committees*
- 5.4.1 In addition to the Audit Committee the Authority may establish a committee of Board Members for the purpose of:
 - 5.4.1.1 enquiring into and reporting to the Board on any matter within the Authority's functions and powers and as detailed in the terms of reference given by the Board to the committee;
 - 5.4.1.2 exercising, performing or discharging delegated powers, functions or duties.
 - 5.4.2 A member of a committee established under Clause 5.4.1 holds office at the pleasure of the Authority.

- 5.4.3 The Authority may establish advisory committees consisting of or including persons who are not Board Members for enquiring into and reporting to the Board on any matter within the Authority's functions and powers and as detailed in the terms of reference which must be given by the Board to the advisory committee.
- 5.5 *Ex-Officio Member*
The Chairperson is an *ex-officio* member of any committee or advisory committee established by the Board.
- 5.6 *Common Seal*
- 5.6.1 The Authority shall have a common seal upon which its corporate name shall appear in legible characters.
- 5.6.2 The common seal shall not be used without the express authorisation of a resolution of the Authority and every use of the common seal shall be recorded in the minute book of the Authority.
- 5.6.3 The affixing of the common seal shall be witnessed by the Chairperson or the Deputy Chairperson and the ACMA General Manager or such other person as the Authority may appoint for the purpose.
- 5.6.4 The common seal shall be kept in the custody of the ACMA General Manager or such other person as the Authority may from time to time direct.
- 5.7 *Principal Office*
The Authority's principal office is located at Adelaide Central Market or as the Authority may otherwise determine.
- 5.8 *Service of Documents*
- 5.8.1 A document to be given by the Authority to the Council or by the Council to the Authority may be given in a manner that Section 280 of the Act permits.
- 5.8.2 A written notice given by the Authority to the Council must be marked 'Attention: Chief Executive Officer'.
- 5.9 *Access to Information/Records*
- 5.9.1 As a matter of record Schedule 2, Clause 11 of the Act entitles Council to be furnished with information or records of the Authority.
- 5.9.2 The Council and a Board member each have a right to inspect and take copies of the books and records of the Authority for any proper purpose.
- 5.10 *Circumstances Not Provided For*
- 5.10.1 If any circumstance arises about which this Charter is silent, incapable of taking effect or being implemented according to its strict provisions the Chairperson may decide the action to be taken to ensure achievement of the objects of the Authority and its effective administration.
- 5.10.2 The Chairperson shall report any such decision at the next ordinary meeting of the Authority and the Authority shall subsequently report any such decision to the Council at the next ordinary meeting of the Council.
- 6. Performance and Accountability of Authority**
- 6.1 The Council shall be entitled on an ongoing basis to review the performance of the Authority and the Board in the conduct of their respective activities under this Charter.
- 6.2 Without limiting the Council's powers under the Act, if at any time the Council is of the view that either the Authority and/or the Board is not performing its duties under this Charter the Council shall be entitled to provide a notice in writing to the Board (Council Notice) identifying those matters in respect of the performance by the Authority and/or the Board of its duties under this Charter which are not satisfactory to the Council together with details of any corrective action which the Council requires the Authority and/or the Board to take in order to rectify the identified performance issues.
- 6.3 The Board shall within 30 days of receipt of the Council Notice provide a written response to the Council as to the matters raised in the Council Notice (Notice in Response) which notice shall identify any corrective action which the Authority and/or the Board intends to undertake in order to address the issues raised in the Council Notice.
- 6.4 If the Authority or the Board disputes any matters raised in the Council Notice then the Notice of Response must identify any matters in respect of which the Authority and/or the Board do not agree.
- 6.5 The CEO of the Council and the Chairperson of the Board shall meet within 14 days of receipt by the Council of the Notice in Response to discuss the matters raised in the Council Notice and the Notice in Response.
- 6.6 Either:
- 6.6.1 following the meeting between the CEO of the Council and the Chairperson of the Board pursuant to Clause 6.5 and having considered the matters raised in the notice of response and the matters discussed between the CEO of the Council and the Chairperson of the Board at their meeting; or
- 6.6.2 if the Board does not provide a Notice in Response,
- the Council shall be entitled to take such further action (if any) as it determines with respect to the matters raised in the Council Notice which action may include but shall not be limited to the removal of the Board and the appointment of a replacement Board in accordance with the provisions of Clause 2.3.
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