

**Application for interim and final authorisation under  
subsection 88(1) of the *Competition and Consumer Act 2010*  
(Cth)**

**Submitted by the Copping Refuse Disposal Site Joint  
Authority**

**In relation to the Copping Regional Organics Facility**

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## Introduction

### Overview of authorisation application

The applicant seeks authorisation on behalf of itself, the Participating Councils and the successful contractor (described below) to:

- undertake a request for tender (RFT) process to appoint a contractor to design, build and operate an organics processing facility in Copping, Tasmania;
- negotiate and enter into a contract with the successful contractor for the design, building and operation of the organics processing facility; and
- operate the facility.

The applicant, the Participating Councils (defined below) and the successful contractor are located (or will be located) in southern Tasmania and have an interest in the efficient and effective processing of organic waste (as further described below).

### Interim authorisation

Interim authorisation is sought to allow the conduct of the RFT process for the services described above, albeit that any resulting contracts will be conditional on final authorisation of the proposed conduct.

The key reason for seeking interim authorisation is due to the project timeline being predicated on awarding the tender by September 2024 and entering into the contract negotiated between SWS and the successful tenderer by December 2024.

If this timeline cannot be achieved, SWS and the Participating Councils will be faced with the following issues:

- the Participating Councils' commitments for implementing organic waste processing services will not be met. Consequently, the Participating Councils will need to make further transitional arrangements. These include commitments in relation to:
  - contracts with collection service providers;
  - arrangements regarding infrastructure (bins);
  - Participating Councils' annual budgets;
  - organic waste collection provided to ratepayers; and
  - the coordination of regional education to support municipal waste management, as delays will mean that the Participating Councils'

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region cannot benefit from jointly producing educational materials with other regions in Tasmania.

- SWS and the Participating Councils may not achieve State and Federal Government targets for food waste reduction. For example, the State is committed to a 25% reduction in organic waste to landfills by 2025 and a further 50% reduction by 2030;<sup>1</sup>
- SWS is intending to submit a Notice of Intent to the Environment Protection Authority (EPA) relating to the project at the end of March 2024. If SWS is unable to obtain interim authorisation, this will impact the environmental impact assessment process;
- the shortlisted vendors' delivery schedules will be impacted if the tender cannot be awarded by September 2024. For example, any delays to this timeline may impact the ability of the preferred tenderer to deliver the project within the timelines required by SWS; and
- the Participating Councils will continue to incur the increased landfill levy imposed by the State government to disincentivise landfill under the *Waste and Resource Recovery Act 2022* (Tas) and the *Waste and Resource Recovery Regulations 2022* (Tas) over a more significant period.

Interim authorisation is not sought for entry into any contract arising from the RFT process, which will occur only if and when the Australian Competition and Consumer Commission (ACCC) issues a final determination authorising the proposed conduct.

The applicant submits that granting of the interim authorisation will not have any effect on competition or inhibit the market from returning to its pre-interim state if final authorisation is later denied, as the contract will be entered into subject to final authorisation being granted. The applicant also submits that the application for authorisation could not have been sought earlier as the Board of SWS only resolved to proceed with the CROF Project, subject to authorisation, in late 2023.

### Confidential information

In accordance with the ACCC's *Guidelines for excluding confidential information from the public register for authorisation (merger and non-merger) and notification processes (1 April 2019)*, the applicant requests that the following confidential information is excluded from the public register:

- individuals' email addresses to protect privacy;

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<sup>1</sup> Tasmanian Government, Department of Primary Industries, Parks, Water and Environment, *Draft Waste Action Plan, Consultation Draft* (June 2019), 10 <<https://nre.tas.gov.au/environment/waste-and-resource-recovery/waste-action-plan>>.



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- SWS's board paper and minutes at Attachment 4, as these are commercially sensitive; and
- other commercial in confidence information.

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## Applicant for authorisation

### 1. Applicant for authorisation

Name	<b>Copping Refuse Disposal Site Joint Authority</b> trading as <b>Southern Waste Solutions (SWS)</b>
ABN	87 928 486 460
Address	129 Derwent Park Road, Lutana, <b>Tasmania</b> 7009
Email	
Contact person	Chris Adekunle, Chief Executive Officer
Description of business activities	Waste treatment, landfill disposal, resource recovery, energy generation and related purposes
Email address for service	<a href="mailto:info@swstas.com.au">info@swstas.com.au</a>

### 2. Parties on whose behalf authorisation is sought

In addition to itself, SWS seeks authorisation for:

- City of Clarence, Sorell Council, Tasman Council and Kingborough Council as the members of SWS; and
- the successful tenderer / operator of the facility established as a result of the RFT process contemplated in this application for authorisation if and when appointed.

### 3. Overview of the applicant

- 3.1 Copping Refuse Disposal Site Joint Authority ABN 87 928 486 460 trading under the business name Southern Waste Solutions (**SWS**) is a waste management authority established in 2001 under section 30 of the *Local Government Act 1993* (Tas) (**LG Act**). Pursuant to section 34 of the LG Act, SWS is a body corporate with perpetual succession and a common seal.
- 3.2 The members of SWS are the City of Clarence, Sorell Council, Tasman Council and Kingborough Council (**Participating Councils**). Each Participating Council is established in accordance with section 18 of the LG Act and has the functions and powers bestowed by subsection 20(1) of the LG Act, including to provide for the health, safety and welfare of the community. A map of Tasmania showing the locations of the Participating Councils is at **Attachment 1**.
- 3.3 **Attachment 2** contains a chart detailing SWS's ownership structure.

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- 3.4 In accordance with SWS's Rules made pursuant to section 32 of the LG Act, SWS's Principle Objectives and Goals include to:
- 3.4.1 manage and operate the Site (defined below) for the purposes of waste treatment, landfill disposal, resource recovery and/or energy generation and for related purposes;
  - 3.4.2 manage successfully the operation of the Site by: (i) operating efficiently in accordance with sound commercial practice; (ii) maximising the net worth of SWS's assets; and (iii) operating and managing the Site to maximise benefits to SWS's members; and
  - 3.4.3 perform such other functions and provide such other services and facilities either on or off the Site as are necessary for achieving the Principal Objectives and Goals, which may be by or involve third parties, including but not limited to waste transfer stations and waste transport services.
- 3.5 The **Site** is the portion of land used or reserved for waste treatment, landfill disposal, resource recovery and/or energy generation and transmission and related purposes comprised in Certificates of Title Volume 126073 Folios 1 and 3 and part of Folio 4 and located at Blue Hills Road, Copping in the State of Tasmania, 7174.
- 3.6 SWS also currently operates the Lutana Waste Transfer Station and Copping B Landfill facilities. SWS is also a joint venture partner in the entity operating the Copping C Cell facility. SWS services approximately 50% of Tasmania's population across East Coast and Southern Tasmania, including the Break O'Day, Brighton, Clarence City, Glamorgan Spring Bay, Glenorchy City, Hobart City, Huon Valley, Kingborough, Sorell, Southern Midlands and Tasman local government areas.
- 3.7 SWS's governance arrangements consist of:
- 3.7.1 the appointment of 4 individuals each representing a Participating Council and referred to in SWS's Rules as Representatives; and
  - 3.7.2 the board of directors, comprised of 4 independent individuals, is responsible for, amongst other things, overseeing SWS's achievement of its strategies, governance, compliance and financial performance.
- 3.8 A copy of SWS's Rules is at **Attachment 3**.

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## The proposed conduct

### 4. Current arrangements

- 4.1 Currently, the Participating Councils manage the collection of waste in their respective municipal areas through contractual arrangements.
- 4.2 The Participating Councils each have a contract with SWS to manage the processing and disposal of general waste.
- 4.3 City of Clarence has separate arrangements for the collection of Garden Organics (**GO**) and Kingborough Council has arrangements in place to collect Food Organics and Garden Organics (**FOGO**) or allow it to be left at the Barretta Waste and Recycling Centre. Sorell Council and Tasman Council do not currently have arrangements in place regarding the collection of GO or FOGO. SWS does not process the existing GO or FOGO collected separately by City of Clarence and Kingborough Council. In 2023, the estimated GO and FOGO collected by the Participating Councils was as shown in Table 1 below:

**Table 1: 2023 GO and FOGO collection estimates**

Participating Council	2023 tonnes year
Clarence GO	3,741
Kingborough FOGO	2,463
Barretta Waste and Recycling Centre (Kingborough)	2,100
Sorell	0
Tasman	0
Total	8,304

### 5. Overview of the proposed CROF Project

- 5.1 In response to the perceived need in southern Tasmania for enhanced capability and capacity for processing FOGO, the applicant is proposing a project to design, build and operate a 'Copping Regional Organics Facility' (**CROF Project**). The rationale for the CROF Project is explained further below.
- 5.2 The Copping Regional Organics Facility (**CRO Facility**) is proposed to be a contained organic waste facility at the Site (SWS's current landfill site at Copping in Southern Tasmania, defined above). The CRO Facility would be fully owned by SWS. At the CRO Facility, organic waste will be accepted, decontaminated and processed into fertiliser meeting the requirements of

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Australian Standard 4454:201 Composts, soil conditioners and mulches for sale.<sup>2</sup>

- 5.3 The Participating Councils have committed<sup>3</sup> to:
- 5.3.1 supplying FOGO to the CRO Facility;
  - 5.3.2 implementing at the earliest practical time a domestic kerbside green waste and/or kerbside FOGO collection service;
  - 5.3.3 working with SWS to develop a transition plan that meets council requirements that leads to the implementation or redirection of a kerbside green waste and/or kerbside FOGO collection service in line with the commencement of operations at the CRO Facility;
  - 5.3.4 developing a kerbside FOGO collection catchment that will resemble the kerbside recycling collection catchment in residential areas;
  - 5.3.5 jointly developing a plan for education, communications and instruction on the use of a FOGO system; and
  - 5.3.6 working collaboratively towards the implementation of identified best practice FOGO collection services by 2030.
- 5.4 The FOGO categories proposed to be processed at the CRO Facility include (but are not limited to):
- 5.4.1 food scraps and leftovers;
  - 5.4.2 meat, bones and egg shells;
  - 5.4.3 cooked food;
  - 5.4.4 dairy products;
  - 5.4.5 coffee grounds and tea leaves;
  - 5.4.6 paper towel, cardboard and tissues;
  - 5.4.7 grass clippings and weeds; and
  - 5.4.8 small branches.
- 5.5 The financial viability of the CRO Facility has been assessed based solely on the likely Participating Council FOGO volumes even if no other organic waste is processed at the CRO Facility.
- 5.6 To carry out the CROF Project, SWS proposes to enter into a contract with a third party contractor to design, build and operate the CRO Facility for SWS.

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<sup>2</sup> Traditional windrow composting will be used initially at the CRO Facility while the broader CRO Facility is constructed and may be used on an ongoing basis based on operational need.

<sup>3</sup> Via a non-binding Memorandum of Understanding with SWS dated 2 September 2023.



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The proposed term of the contract is 15 years, with an option to extend the term by 10 years.

- 5.7 The Participating Councils and any other customers that deposit their organic waste at the CRO Facility will be charged a gate fee by SWS. The gate fee will be adjusted over the term of the contract by SWS.
- 5.8 SWS will have direct arrangements with the Participating Councils and other customers requiring the processing of organic waste. It is anticipated that if the contractor has existing or broader contractual relationships to accept and process organic waste with its customers, where the CRO Facility has capacity, the organic waste of the contractor's direct customers could also be processed at the CRO Facility in exchange for which the contractor would pay SWS a gate fee prescribed by SWS.
- 5.9 The contractor will be responsible for the disposal of the outputs of the CRO Facility, which is expected to involve selling compost and fertiliser to third parties (e.g. farmers and nurseries).
- 5.10 At the end of the contract term, SWS may choose to take over the operation of the CRO Facility itself or seek to enter into a new contract with a third party operator, which may include the contractor.

## 6. Expressions of Interest process

- 6.1 In September 2022, SWS commenced an Expression of Interest (EOI) process by issuing an invitation for EOIs to assist it in developing a suitable scope for an RFT for the proposed CROF Project. EOIs closed on 3 October 2022. Issuing the invitation also assisted SWS to better understand the relevant markets, explore legal frameworks and project delivery options and identify a shortlist of potential proponents for the CROF Project.
- 6.2 Following the review of 9 EOIs received by SWS, the assessment panel (comprised of 2 SWS representatives and 2 independent advisors) shortlisted 5 proponents. Details of the names and locations of all EOI respondents and those shortlisted are as set out in Table 2 below.

**Table 2: EOI respondent details and short list**

Name of EOI respondents	Address	Shortlisted for RFT
Cleanaway Pty Ltd	Level 4, 441 St Kilda Road, Melbourne VIC 3004	Yes
COVA Delivery Pty Ltd	40 Molle Street, Hobart TAS 7000	No
Downer EDI Works Pty Ltd	Triniti 3, Triniti Business Campus, Level 3, 39 Delhi Rd, North Ryde, NSW 2113	No
Hitachi Zosen Inova	Level 17, 40 Mount Street	No



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Name of EOI respondents	Address	Shortlisted for RFT
Australia Pty Ltd	North Sydney NSW 2060	
LMS ENERGY Pty Ltd	79 King William Road, UNLEY, SA 5061	Yes
Permeate Partners (Anaergia Singapore Pte Ltd )	3A International Business Park, #08-01 ICON @IBP, Singapore 609935	No
Remondis Australia Pty Ltd	Level 4, 163 O'riordan Street, Mascot, NSW 2020	Yes
SOILCO PTY Ltd	3/132 West Dapto Road Kembla Grange NSW 2526	Yes
Veolia Environmental Services (Australia) Pty Ltd	4/65 Pirrama Rd, Pyrmont NSW 2009	Yes

## 7. Proposed conduct

### 7.1 Outline of the proposed conduct

7.1.1 The applicant seeks authorisation for:

- (a) undertaking a select RFT process involving the 5 shortlisted proponents identified via the EOI process to appoint a contractor to design, build and operate the CRO Facility for SWS;
- (b) negotiating and entering into a contract with the successful contractor for the design, building and operation of the CRO Facility; and
- (c) the operation of the CRO Facility on the terms of the contract entered into with the successful contractor.

7.1.2 The applicant seeks authorisation on behalf of (as the context requires) itself, the Participating Councils and the successful contractor determined as a result of the RFT process contemplated in this application for authorisation if and when appointed.

7.1.3 Further details regarding the proposed conduct is set out in paragraphs 7.2 and 7.3.

### 7.2 RFT process

7.2.1 Authorisation is sought to engage in a select RFT process for the CROF Project. SWS proposes to formally invite the shortlisted EOI proponents to respond to the RFT. The RFT will:

- (a) set out the manner in which SWS proposes to conduct the RFT process;

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- (b) identify, in detail, SWS's 'must have' commercial parameters for the project, including the maximum operating cost and the maximum capital contribution to be made by SWS;
- (c) invite each tenderer to submit information through a one on one consultative process under which each tenderer will submit more detail in writing about the tenderer's interest in or response to SWS's commercial parameters and the tenderer's proposed solution;
- (d) set out the proposed design, build and operate model and include a copy of the proposed contract which reflects that model; and
- (e) require the proponents to submit a full commercial proposal/tender to deliver the CROF Project using that model.

7.2.2 SWS's evaluation committee will then assess the tenders received in response to that RFT. The evaluation committee will be confirmed prior to the release of the RFT, but is expected to include members with technical, commercial, legal and probity experience and one or more executive level employees from SWS. The evaluation committee will not include representatives of the SWS board or Participating Councils.

### 7.3 Negotiate, enter into a contract and perform the CROF Project and operate the CRO Facility

- 7.3.1 Authorisation is sought for SWS to negotiate and enter into a contract with the preferred contractor identified as a result of the RFT process described above (**Contractor**) to design, build and operate the CRO Facility.
- 7.3.2 The contract will provide for the conduct outlined below.
- 7.3.3 The CRO Facility must be able to fully service the Participating Councils' organic waste processing needs, which is expected to be 16,000 tonnes in 2026, increasing to approximately 26,000 tonnes by 2049.
- 7.3.4 The Contractor will be permitted to accept and process organic waste from other customers, provided that the Contractor ensures that the CRO Facility first has capacity to accept and process the Participating Councils' organic waste.
- 7.3.5 To ensure the CRO Facility has capacity for the Participating Councils' organic waste as set out in paragraph 7.3.3, the Contractor will not be permitted (either expressly or impliedly under the contract) to accept organic waste from other customers to the extent that it will impact the CRO Facility's ability to process the Participating Councils' organic waste.
- 7.3.6 SWS may accept a proposal by the Contractor to develop the CRO Facility to have more capacity than required by the Participating

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Councils initially, or in the future, provided there is a sufficient business case for the required investment.

7.3.7 The gate fees charged to Participating Councils by SWS are expected to be lower than other customers.

### 8. Relevant provisions of the *Competition and Consumer Act 2010* (Cth) which might apply to the proposed conduct

8.1 Authorisation is sought to:

8.1.1 make a contract or an arrangement, or arrive at an understanding, that would or might contain a cartel provision under Division 1 of Part IV of the *Competition and Consumer Act 2010* (Cth) (**CCA**);

8.1.2 give effect to a provision of a contract, arrangement or understanding that would or might be a cartel provision under Division 1 of Part IV of the CCA;

8.1.3 make a contract or arrangement, or arrive at an understanding, that would or might contain a provision with the purpose, effect or likely effect, of substantially lessening competition under section 45 of the CCA;

8.1.4 give effect to a provision of a contract, arrangement or understanding that would or might have the purpose, effect or likely effect, of substantially lessening competition under section 45 of the CCA;

8.1.5 engage with one or more persons in a concerted practice that would or might have the purpose, effect or likely effect, of substantially lessening competition under section 45 of the CCA; and

8.1.6 engage in conduct that would or might have the purpose, effect or likely effect, of substantially lessening competition in a market in which one or more of the parties would or might have a substantial degree of power or any other market in which one or more of the parties supply or acquire goods or services or is likely to supply goods or services directly or indirectly under section 46 of the CCA.

See paragraphs 7.2, 7.3.1 and 7.3.7, which describe the proposed conduct relating to SWS engaging in an RFT process and negotiating and entering into a contract with the Contractor to design, build and operate the CRO Facility, and the proposed provision in the contract allowing SWS to set gate fees.

8.2 Authorisation is also sought to engage in the practice of exclusive dealing that has the purpose, or has or is likely to have the effect, of substantially lessening competition under section 47 of the CCA. See paragraph 7.3.5, which proposes to limit the Contractor's ability to supply services to other customers to the extent that it will impact the Contractor's ability to process the Participating Councils' organic waste.

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8.3 The applicant submits that the public benefit from the proposed conduct will outweigh any possible public detriment.

8.4 In submitting this application, the applicant considered the application of (among other things):

8.4.1 section 2BA of the CCA;

8.4.2 the joint venture exceptions in sections 45AO and 45AP of the CCA;

8.4.3 the collective acquisition exception in section 45AU of the CCA; and

8.4.4 the anti-overlap provisions with respect to exclusive dealing,

but was not satisfied as to the clear operation of these provisions in respect of the proposed conduct, preferring to seek authorisation for the proposed conduct instead.

8.5 In relation to the anti-overlap provisions, the applicant further notes that the proposed conduct that may be relevant to the cartel provisions in Division 1 of Part IV of the CCA or section 45 of the CCA (see for example paragraph 8.1) may be different to the proposed conduct that may be relevant to exclusive dealing (see for example paragraph 8.2).

## 9. Rationale for the proposed conduct

9.1 The CROF Project is the applicant's response to a perceived need in southern Tasmania for enhanced capability and capacity in the composting of organic waste to address the circumstances set out below.

### Increased demand for organics collection

9.2 The applicant submits that the collection of organics is progressively growing in Tasmania, including through council waste management initiatives. For example, SWS has commissioned modelling which suggests FOGO projected to be collected by the Participating Councils is expected to be approximately 16,000 tonnes in 2026, increasing to approximately 26,000 tonnes by 2049.<sup>4</sup> Additionally, organic waste from other councils, commercial and industrial operations is expected to increase at the same time, based on increasing pressure to implement efficient and environmentally sustainable alternatives to landfill.<sup>5</sup>

### Supporting Government policy

9.3 The Commonwealth and Tasmanian Governments have policy goals to enhance waste management and reduce FOGO sent to landfill.

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<sup>4</sup> Modelling prepared by MRA Consulting Group dated 7 December 2023.

<sup>5</sup> See "Tasmanian Organics Research Report" published by the Department of Natural Resources and Environment Tasmania in February 2022 available at <https://nre.tas.gov.au/Documents/Tasmanian%20Organics%20Research%20Report%202022.PDF>.



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- 9.4 The Australian Government's National Waste Policy 2018<sup>6</sup> provides a national framework for waste and resource recovery in Australia, establishing 5 key principles, including (but not limited to) improving waste recovery and increased use of recycled materials. The proposed conduct is directly related to these principles as the CRO Facility will directly support the principle of waste recovery and recycling.
- 9.5 The National Waste Policy Action Plan 2019<sup>7</sup> adopted in response to the National Waste Policy 2018 sets specific targets to achieve that policy, including (relevantly):
- 9.5.1 providing support to develop distributed infrastructure solutions to process organic waste by 2022;
  - 9.5.2 delivering FOGO collection to households and businesses by 2023; and
  - 9.5.3 halving the amount of organic waste sent to landfill by 2030.
- 9.6 Additional organics waste recovery targets have been specified in the Tasmanian Government's Draft Waste Action Plan released in 2019<sup>8</sup>, which has proposed the goal of reducing the volume of organic waste sent to landfill by 25% by 2025 and 50% by 2030 (the latter being consistent with the National Waste Policy Action Plan 2019). Subsequently, the Tasmanian Government has implemented from 1 July 2022 a Landfill Levy on waste sent to landfill to encourage people to reduce waste, and to re-use and recycle materials instead of sending to landfill, as part of the Tasmanian Waste and Resource Recovery Strategy. The Strategy supplements the focus of the Tasmanian Government's Draft Waste Action Plan 2019, that aims to reduce food waste to landfill by 50% by 2030, much of which will be accomplished through the implementation of household FOGO collections.<sup>9</sup>
- 9.7 The proposed conduct is directly and strongly aligned to these Commonwealth and Tasmanian policy objectives to divert organic waste from landfill.

### Environmental benefits

- 9.8 Currently, the organic waste collected by the Participating Councils is processed by traditional windrow composting or direct application to land (i.e. landfill), with the potential for environmental impacts including water table contamination.<sup>10</sup>

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<sup>6</sup> Available at <https://www.dcceew.gov.au/environment/protection/waste/how-we-manage-waste/national-waste-policy>.

<sup>7</sup> Available at <https://www.dcceew.gov.au/environment/protection/waste/publications/national-waste-policy-action-plan>.

<sup>8</sup> Available at <https://nre.tas.gov.au/environment/waste-and-resource-recovery/waste-action-plan>.

<sup>9</sup> See <https://nre.tas.gov.au/environment/waste-and-resource-recovery/landfill-levy-faqs> and <https://wrr.tas.gov.au/Documents/Draft%20Waste%20Strategy%202022%20-%20final.pdf>

<sup>10</sup> See "Tasmanian Organics Research Report" published by the Department of Natural Resources and Environment Tasmania, February 2022, page 130, available at <https://nre.tas.gov.au/Documents/Tasmanian%20Organics%20Research%20Report%202022.PDF>.

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9.9 While the final design of the new CRO Facility will be based on responses to the RFT, it is likely to involve either or both of the following technologies:

9.9.1 *In-vessel Composting Technology* – a method of composting that confines the organic material within a closed container or vessel in which air flow and temperature can be controlled; and

9.9.2 *Anaerobic Digestion Technology* – a process where bacteria are used to breakdown organic matter in the absence of oxygen to produce high quality fertiliser or for energy generation.

9.10 The applicant submits that the adoption of these technologies will reduce the risk of environmental contamination. Additionally, by converting between 20,000 to 30,000 tonnes of organic material into compost or other products per annum, instead of sending to landfill, the CRO Facility will minimise the generation of CO<sub>2e</sub> emissions to the values set out in Table 3.

**Table 3: Expected emissions from CROF Project**

Waste Type	Avoided		Emitted
	<i>Composting</i>	<i>Anaerobic Digestion</i>	<i>Landfill</i>
<b>FOGO</b>	920	-1,560	16,715

tonnes carbon dioxide equivalent (CO<sub>2e</sub>) /annum

9.11 The 15,795 tonnes of CO<sub>2e</sub> emissions avoided through processing 20,000 tonnes of FOGO per annum through composting<sup>11</sup> is the equivalent of removing 3,515 cars from the road each year.<sup>12</sup>

*Additional factors supporting the proposed conduct*

9.12 SWS expects the new CRO Facility will:

9.12.1 support the FOGO processing needs of the Participating Councils and other customers of SWS and the Contractor on a long term basis;

9.12.2 help SWS achieve its strategic plan and otherwise facilitate SWS's projected business growth and future position, including by enabling SWS to differentiate its offerings to its current and future customer base;

9.12.3 achieve economies of scale because, on its own, a single council is substantially reliant on landfill for waste disposal, as the volumes of waste generated are not great enough to encourage investment in more advanced solutions, whereas when several councils aggregate waste volumes through a joint authority such as SWS, economies of scale are

<sup>11</sup> Calculated by deducting the CO<sub>2e</sub> emissions from composting from those emitted through landfill, as shown in Table 3.

<sup>12</sup> United States Government Environmental Protection Agency Greenhouse Gas Calculator <https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator#results>.



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improved, and avenues for innovation and capital investment are opened up, attracting greater interest from industry; and

- 9.12.4 expand SWS's capability and capacity to enable it to deliver organics processing services, as it does not currently have the expertise or commercial knowledge required to construct, own and operate the new CRO Facility itself.

### 10. The term of authorisation sought and reasons for seeking this period

#### 10.1 SWS seeks:

- 10.1.1 interim authorisation to progress the procurement process in early 2024, including the RFT process, selection of the preferred tenderer and negotiation of the conditions of contract; and

- 10.1.2 authorisation for 26 years from the execution of the contract with the Contractor for the provision of the services, including the construction of the CRO Facility (approximately 12 months), and an initial term of 15 years and one option to extend the services (10 years).

- 10.2 The rationale for the authorisation period proposed is to enable SWS to realise a return on any capital investments undertaken, while also enabling SWS sufficient time to develop the CRO Facility and associated business with the assistance of the Contractor, for the benefit of SWS and the Participating Councils and other SWS customers, and in sustainable and efficient manner.

### 11. Documents submitted to the SWS board

A paper submitted to the SWS board in relation to the CROF Project, and minutes reflecting the decision of the SWS board are at **Attachment 4**.

### 12. Parties likely to be directly impacted by the proposed conduct

- 12.1 In addition to the respondents to the EOI set out in Table 2 above, the other providers of organics processing facilities in southern Tasmania set out in Table 4 may be impacted by the proposed conduct.

**Table 4: Details of other FOGO processors**

Other FOGO processors	Contact details
B G & J M Barwick Pty. Ltd.	Website: <a href="http://barwicks.com.au/">http://barwicks.com.au/</a> Telephone: 03 6263 7319
Pure Foods Pty Ltd	Website: <a href="https://www.purefoods.com.au/">https://www.purefoods.com.au/</a> Telephone: 03 6341 9700
City of Hobart – McRobies Gully Waste Management Centre	Website: <a href="https://www.hobartcity.com.au/Residents/Recycling-and-rubbish/Recycling-and-disposal-facilities/McRobies-Gully-Waste-Management-">https://www.hobartcity.com.au/Residents/Recycling-and-rubbish/Recycling-and-disposal-facilities/McRobies-Gully-Waste-Management-</a>

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Centre-The-Tip

Telephone: 03 6238 2581

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12.2 B G & J M Barwick Pty. Ltd. and Pure Foods Pty Ltd

In southern Tasmania, B G & J M Barwick Pty. Ltd. (**Barwick's**) operates a sorting facility at Bridgewater to weigh, decontaminate and shred organics waste, including other councils' organics waste.<sup>13</sup>

Once contaminants are removed, the waste is transported to the Pure Living Soil composting facility in central Tasmania for processing. Pure Living Soil is a joint venture between Barwick's and Pure Foods Pty Ltd. The maximum permitted capacity of that facility is estimated to be 50,000 tonnes of waste.<sup>14</sup> It is estimated that the actual volume of organics processed by the facility is less than the maximum permitted capacity.<sup>15</sup>

12.3 City of Hobart – McRobies Gully Waste Management Centre

The City of Hobart owns and operates a composting facility at the McRobies Gully Waste Management Centre, which is used for accepting domestic and commercial FOGO. The outputs (i.e. mulch and compost) are sold or used by the City of Hobart.

The City of Hobart has committed to cease operation of this composting facility by 2030.<sup>16</sup>

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<sup>13</sup> Barwick's has also been chosen as the successful applicant for \$3 million of seed funding to establish a regional organic waste processing facility at Boyer in southern Tasmania. See, Roger Jaensch, Minister for the Environment, Tasmania, 'Successful proponent of southern organic waste processing facility announced' (Publication, 12 May 2022),

<[https://www.premier.tas.gov.au/site\\_resources\\_2015/additional\\_releases/successful\\_proponent\\_of\\_southern\\_organic\\_waste\\_processing\\_facility\\_announced?fbclid=IwAR1mGXq1BeSCZj2GmW9\\_SW-adQFb3\\_leZZxrBYbhgSeWAw-ducqSWmoYctQ#:~:text=Barwick%20manager%20Tyronn%20Barwick%20said,organic%20materials%20in%20an%20environmentally](https://www.premier.tas.gov.au/site_resources_2015/additional_releases/successful_proponent_of_southern_organic_waste_processing_facility_announced?fbclid=IwAR1mGXq1BeSCZj2GmW9_SW-adQFb3_leZZxrBYbhgSeWAw-ducqSWmoYctQ#:~:text=Barwick%20manager%20Tyronn%20Barwick%20said,organic%20materials%20in%20an%20environmentally)>.

<sup>14</sup> This is based on the Environmental Permit Conditions approved by the Department of Primary Industries, Water and Environment, Tasmania on 9 December 2005, available at: [LISTmap - Land Information System Tasmania \(thelist.tas.gov.au\)](https://documents.epa.tas.gov.au/document/7219?token=9F13F99B97B4B1AAD14F2644B7EFO5DD298E028D);

<https://documents.epa.tas.gov.au/document/7219?token=9F13F99B97B4B1AAD14F2644B7EFO5DD298E028D>

<sup>15</sup> Based on advice prepared on behalf of SWS by MRA Consulting in February 2024.

<sup>16</sup> City of Hobart Waste Management Strategy 2015–2030 (Publication, 9 May 2016)

<[https://www.hobartcity.com.au/files/assets/public/v/1/strategies-and-plans/city\\_of\\_hobart\\_waste\\_management\\_strategy\\_2015-2030.pdf](https://www.hobartcity.com.au/files/assets/public/v/1/strategies-and-plans/city_of_hobart_waste_management_strategy_2015-2030.pdf)>.

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## Market information and concentration

### 13. Products and services

13.1 The relevant products and services affected by the proposed conduct relate to the:

13.1.1 design, building and operation of an organic waste processing facility (**DBO Services Market**);

13.1.2 acceptance and processing of organic waste including (but not limited to):

(a) FOGO;

(b) other commercial organic wastes as requested by the Contractor including (but not limited to):

(i) food processing waste (e.g. food waste, sludges and processing residual);

(ii) livestock waste (e.g. meat processing residual and animal effluent);

(iii) agricultural waste (e.g. cropping residuals);

(iv) aquacultural waste (e.g. fish morts); and

(v) water treatment waste (e.g. biosolids).

(**FOGO Services Market**); and

13.1.3 supply of compost and fertiliser including organic compost, mulches, organics fertilisers, landscape soils, potting mixes, top dressing and broadacre fertiliser (**Fertiliser Market**).

### 14. Geographic areas

For the purposes of this application for authorisation, the applicant considers that the relevant areas of competition are as follows.

#### 14.1 DBO Services Market

Based on the locations of the respondents to the EOI, the applicant submits that the relevant area of competition for the DBO Services Markets is the whole of Australia, not limited to Tasmania.

#### 14.2 FOGO Services Market

The applicant submits that the relevant area of competition for the FOGO Services Market is likely to be southern Tasmania centered in and around the municipal areas of the Participating Councils and neighbouring councils. This is



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on the basis that geographic boundaries of the various waste markets in Tasmania are heavily influenced by geographic barriers such as transport cost and market participant perceptions (on both the supply and demand side) as to it being inappropriate to transport bulk waste large distances by road around Tasmania. Similar considerations mean that it is highly unlikely that FOGO would ever be transported to the CRO Facility from outside of Tasmania.

### 14.3 Fertiliser Market

The applicant submits that the Fertiliser Market is likely to include the market for organic compost and fertiliser products (including manure, ammonia and seaweed based fertilisers) and fossil fuel based fertilisers on the basis that organic and fossil fuel based fertilisers are substitutable. The Fertiliser Market includes a variety of different products, some of which are imported into Tasmania from mainland Australia and foreign markets.

## 15. **Industry**

The relevant industries are:

- 15.1 the organic waste processing industry in the southern Tasmanian region; and
- 15.2 the organic and non-organic fertiliser industry.

## 16. **Market shares**

### 16.1 Organic waste processing industry

16.1.1 As stated above, Sorrell Council and Tasman Council do not currently collect kerbside GO or FOGO separately from other waste.

16.1.2 In 2023, based on the GO and FOGO generated by the southern Tasmanian region councils<sup>17</sup> (excluding Southern Midlands Council, Derwent Valley Council, Central Highlands Council), the estimated proportion of kerbside GO and FOGO collected by Clarence City and Kingborough Councils is:

- (a) Clarence City Council: approximately 15% (based on average of garden organics waste reported since 2018); and
- (b) Kingborough Council: approximately 19%.

16.1.3 In 2025, the applicant expects that the Participating Councils will process 32% of the total organics waste (GO and FOGO) collected by the 12 southern region Tasmanian councils. With the further expansion of FOGO services by Participating Councils in 2026, the applicant

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<sup>17</sup> The 12 southern region Tasmanian councils are (1) City of Clarence; (2) Kingborough Council; (3) Tasman Council; (4) Sorrell Council; (5) Huon Valley Council; (6) City of Hobart; (7) Southern Midlands Council; (8) Derwent Valley Council; (9) Central Highlands Council; (10) Glenorchy City Council; (11) Glamorgan Spring Bay Council; and (12) Brighton Council.

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submits that the expected share of the Participating Councils of the GO and FOGO collected by the southern region Tasmanian councils is 38%.

- 16.1.4 These figures do not take into consideration the organic waste generated by other sources such as commercial, industrial and agricultural sources, suggesting that, when combined with GO and FOGO from local governments in southern Tasmania, the market should greatly exceed the production capacity of the CRO Facility (which is anticipated to be between 20,000 tonnes to 30,000 tonnes per annum).

### 16.2 Organic and non-organic fertiliser industry

- 16.2.1 The applicant understands that, after processing, the volume of organic compost produced from processing FOGO at a facility of the kind proposed as the CRO Facility is approximately 60% of the FOGO volume processed. This will therefore likely equate to between 12,000 to 18,000 tonnes of organic compost produced at the Site per annum.
- 16.2.2 Under the proposed conduct, the applicant expects that the organic compost produced at the Site and offered for sale by the Contractor will equate to approximately<sup>18</sup> 0.6 percent of the total Tasmanian fertiliser market for cropping.

## 17. Existing competitors and likely entrants

- 17.1.1 There is currently limited scope for the competitive provision of the above services in Tasmania. Processing of organic waste in Tasmania is relatively new (and in many areas of Tasmania, still unavailable). The services are further advanced in other parts of Australia.
- 17.1.2 Details of existing and likely competitors are as set out in Table 4 above.

## 18. Any countervailing powers

- 18.1.1 Resource constraints mean that there are moderate to high barriers to entry in the organics processing industry, with entry into the market being highly dependent on service providers' ability to secure long term supply contracts and sufficient volumes of organic materials. This can be difficult in locations where transport of organic materials long distances is not viable.
- 18.1.2 Councils acting individually are also limited to their own municipal areas, whereas service providers wish to operate on a regional basis. Which

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<sup>18</sup> This estimate prepared on behalf of SWS by MRA Consulting assumes that the CRO Facility generates 15,000 tonnes of organic compost per annum and the compost is applied at an application rate of 10 tonnes of compost per hectare to achieve equivalent nutrient value of traditional fossil fuel based fertiliser applied to the agricultural area under cropping in Tasmania, with the Tasmanian agricultural area dedicated to cropping figures being 3.7% of Tasmania's land area or 252,000 hectares, derived from <https://www.abs.gov.au/ausstats/abs@.nsf/O/D1C2967E40D51C1DCA2573C5000D9EC3?opendocument>.

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means that most councils are not able to generate sufficient organic material to satisfy the level of output sought by a service provider to justify development of a facility. This means that service providers generally have considerable countervailing powers when negotiating with individual councils, which can mean that service delivery and pricing are sub-optimal for the councils.

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### Public benefit

The following significant benefits to the public are likely to result from the proposed conduct.

#### 19. Environmental benefits

- 19.1 As detailed in paragraph 9 above, the proposed conduct and CRO Facility will mean quality compost and related products will be generated whilst reducing methane emissions and other potential environmental impacts at landfills, such as water and air pollution.
- 19.2 In addition, the proposed conduct will enable the development of reprocessing markets as follows:
- 19.2.1 the production of organic compost and other fertilizer products will enable greater access to reliable high quality alternatives to fossil fuel based fertilisers in Tasmania which will help to reduce greenhouse gas emissions; and
  - 19.2.2 depending on the type of technology utilized at the CRO Facility, there is also the possibility of utilizing the CRO Facility that is based on Anaerobic Digestion Technology to process organic feedstock to generate an additional output that supports renewable energy generation.
- 19.3 Residents in local communities will also experience improved environmental and health outcomes from a lower waste accumulation (pollutants, fire and pests will reduce).
- 19.4 Research conducted on behalf of the New South Wales Environment Protection Authority<sup>19</sup> found that compost produced from FOGO contained low levels of organic chemicals and delivered consistently low environmental and human health risks when applied to land appropriately.

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<sup>19</sup> Available at <https://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/recycling/mwoo/wca-fogo-report.pdf>



**20. Economic benefits**

- 20.1 Collaborating in the procurement of this service jointly will lead to overall reduced costs and increased efficiency in the tender process, negotiating contracts and managing the delivery of the FOGO processing services.
- 20.2 The length of the contract provides certainty in the investment to service the Participating Councils and achieve economies of scale while also supporting SWS in achieving its strategic goals of supporting the Participating Councils to effectively and efficiently process waste at a cost the Participating Councils can afford.
- 20.3 Tasmania has a large number of councils compared to other Australian States, meaning each council is rather small (both population and land area). This leads to difficulties in servicing each council efficiently.
- 20.4 Victoria and Tasmania share relatively similar council land areas, with the Victorian council population being 4.5 times larger than in Tasmania. South Australia has a similar average population per council area albeit the average council services an area which is roughly 6 times larger than in Tasmania.
- 20.5 On this basis, the applicant submits that the economies of scale available to be realised by the Participating Councils procuring FOGO processing is not equivalent to in other Australian jurisdictions, requiring the proposed conduct so that the Participating Councils can achieve best practice in FOGO processing.
- 20.6 On this basis, the proposed conduct will support the Participating Councils to deliver better economic outcomes for their residents, at a time when the cost of waste disposal is otherwise increasing.

**21. Increase in competition**

- 21.1 The involvement of the Participating Councils in the joint procurement of this service is likely to increase competition for organics processing services in southern Tasmania.
- 21.2 Although a non-binding EOI process has already been conducted to identify a short list of tenderers, the aggregated volumes on offer will likely improve the quality of service offerings and encourage more competitive tenders when the RFT is conducted.
- 21.3 The tender process will be competitive and conducted in accordance with best practice probity standards, including transparency and audit requirements. Selected suppliers will not be in any way restricted from offering services to other councils or third parties, subject to any capacity constraints at the CRO Facility should the Contractor wish to process third party FOGO at the CRO Facility.

**22. Achievement of policy objectives**

22.1 As discussed in paragraph 9 above, the proposed conduct is consistent with and will directly support policy goals at both the Commonwealth and Tasmanian level, including under the National Waste Policy Action Plan 2019 and the Tasmanian Draft Waste Action Plan 2019.

**23. Creation of additional jobs**

23.1 Both the construction and operation of the facility will lead to improved local employment opportunities and resulting improvements in social and general community outcomes such as through support for local small businesses during the construction and operation phase. It is expected that up to 22 jobs will be directly created during the construction phase of the CRO Facility and that there will be at least 8 additional ongoing jobs created in the operation of the CRO Facility.

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**Public detriment (including likely competitive effects)**

Any public detriment resulting from the proposed conduct would be minimal (if any) in the relevant markets, and would be outweighed by the public benefits set out above. The public detriments could be as follows.

**24. Lessen competition**

24.1 The Participating Councils may be considered to be each other's competitors for the acquisition of organic waste processing services in southern Tasmania. By pursuing the CROF Project with SWS, the Participating Councils are agreeing to no longer compete in the market for acquisition of FOGO processing services. The proposed conduct therefore may lessen competition in the acquisition of processing services for organic waste in southern Tasmania.

24.2 The applicant notes however that the Participating Councils are only 4 of the 12 southern Tasmanian councils, and that the CRO Facility is being built to largely cater to the projected FOGO processing needs of the Participating Councils. On that basis, it is submitted by the applicant that the impact of the proposed conduct on the market for FOGO processing services in southern Tasmania would still be the subject of unmet processing capacity demand.

**25. Future without the proposed conduct**

25.1 If the proposed conduct is not authorised:

25.1.1 the Participating Councils would need to release individual tenders for FOGO processing services, utilising its own resources to tender and negotiate with preferred tenderers; or

25.1.2 the CROF Project would need to be restructured to engage in a collaboration that relies on the collaborative procurement or joint venture exemptions provided for in Part IV of the CCA.

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- 25.2 It is likely that such individual procurements would result in higher transaction costs for the individual Participating Councils, or otherwise fail to realise the public benefits described above, and it is also possible that, absent a compelling market opportunity for a new entrant to introduce an In-vessel Composting or Anaerobic Digestion technology based facility (which the applicant submits would be unlikely without the combined projected FOGO volumes of the Participating Councils), the relevant FOGO could still be sent to landfill at a higher financial and environmental cost for the Participating Councils. This outcome would also jeopardise the achievement of other public benefits such as policies for waste reduction and improved processing of organic waste.

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### Contact details of relevant market participants

The names and contact details of relevant market participants are set out in Tables 2 and 4 above.

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### Additional information

#### 26. Other authorisations

- 26.1 Local government bodies regularly seek authorisation from the ACCC to collectively procure waste related services.
- 26.2 Recent examples where authorisations were granted in respect of organics processing include:
- 26.2.1 AA1000503 (dated 25 February 2021) granted to the Melbourne Waste Resource Recovery Group in respect of the joint procurement of organic waste processing services;
  - 26.2.2 AA1000583 (dated 10 February 2022) granted to Barwon Water and a group of south west Victorian councils in respect of the Regional Renewable Organics Network; and
  - 26.2.3 AA1000603 (dated 16 June 2022) granted to the City of Hobart and others in respect of collective tendering for food and garden organics waste processing services.
- 26.3 All of these authorisations have elements similar, in many ways, to the proposed conduct set out in this application and the ACCC has determined there was a net public benefit in relation to the relevant conduct proposed in those applications.
- 26.4 The applicant notes that authorisation was denied by the ACCC in respect of an application by Council Solutions and a group of South Australian councils for the joint procurement, negotiation and contracting of waste collection and processing services in relation to, amongst other things, organics, in and around Adelaide (determination A91520 dated 20 December 2016). However, the applicant submits that the proposed conduct in this application is significantly

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different to that application as it is far more narrowly focused than in that denied application, and the market and geographical area is somewhat different.



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## Declaration by Applicant

The undersigned declares that, to the best of his knowledge and belief, the information given in this Application is true, correct and complete, that unless otherwise specified complete copies of documents have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertakes to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned is aware that giving false or misleading information is a serious offence and is aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).



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Signature of person authorised to sign this Application on behalf of the applicant  
Chris Adekunle  
Chief Executive Officer, Southern Waste Solutions

This Thursday 4<sup>th</sup> day of April 2024

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**Attachment 1**

A map of Tasmania showing the locations of the Participating Councils

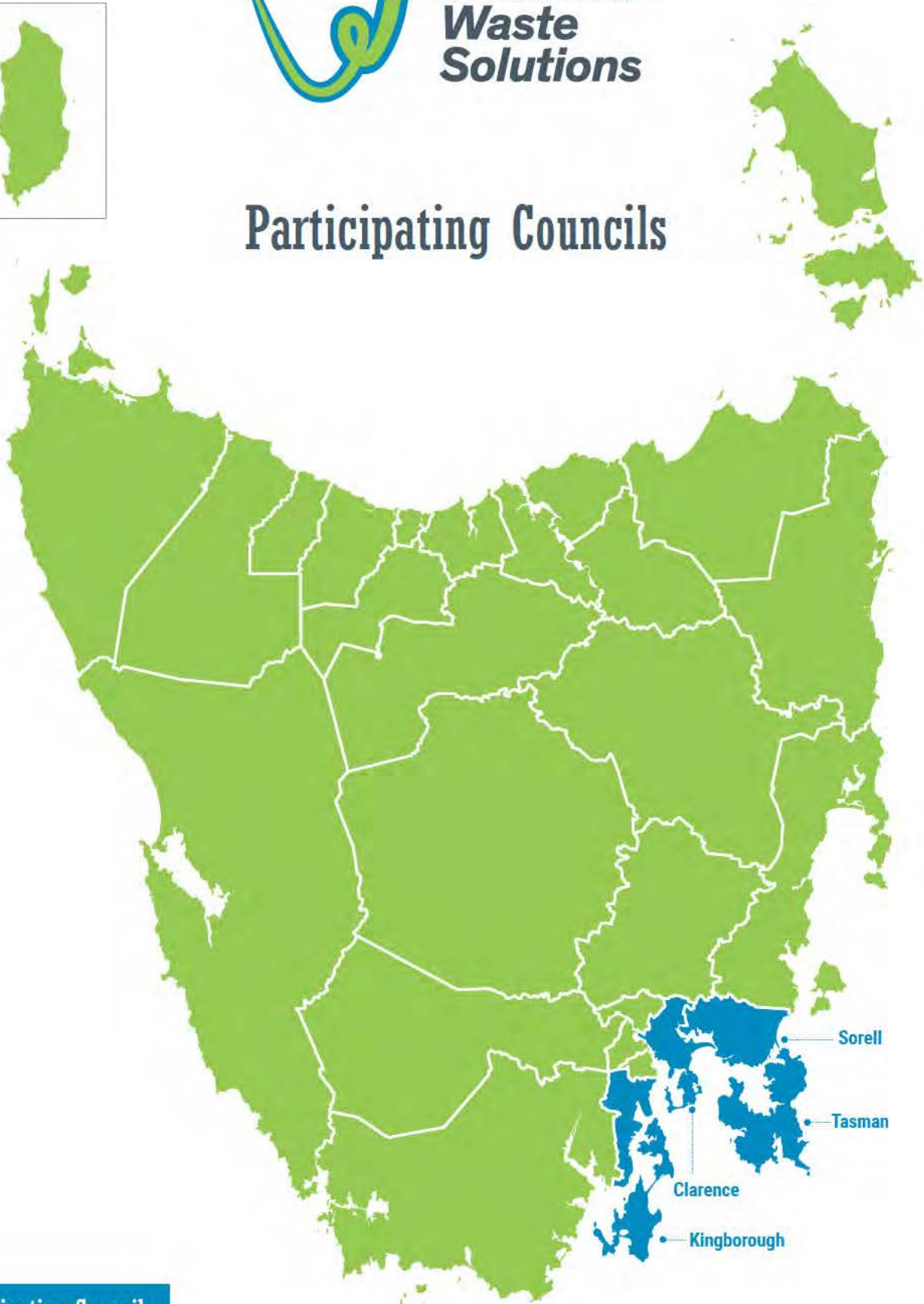




**Southern  
Waste  
Solutions**



## Participating Councils



Sorell

Tasman

Clarence

Kingborough

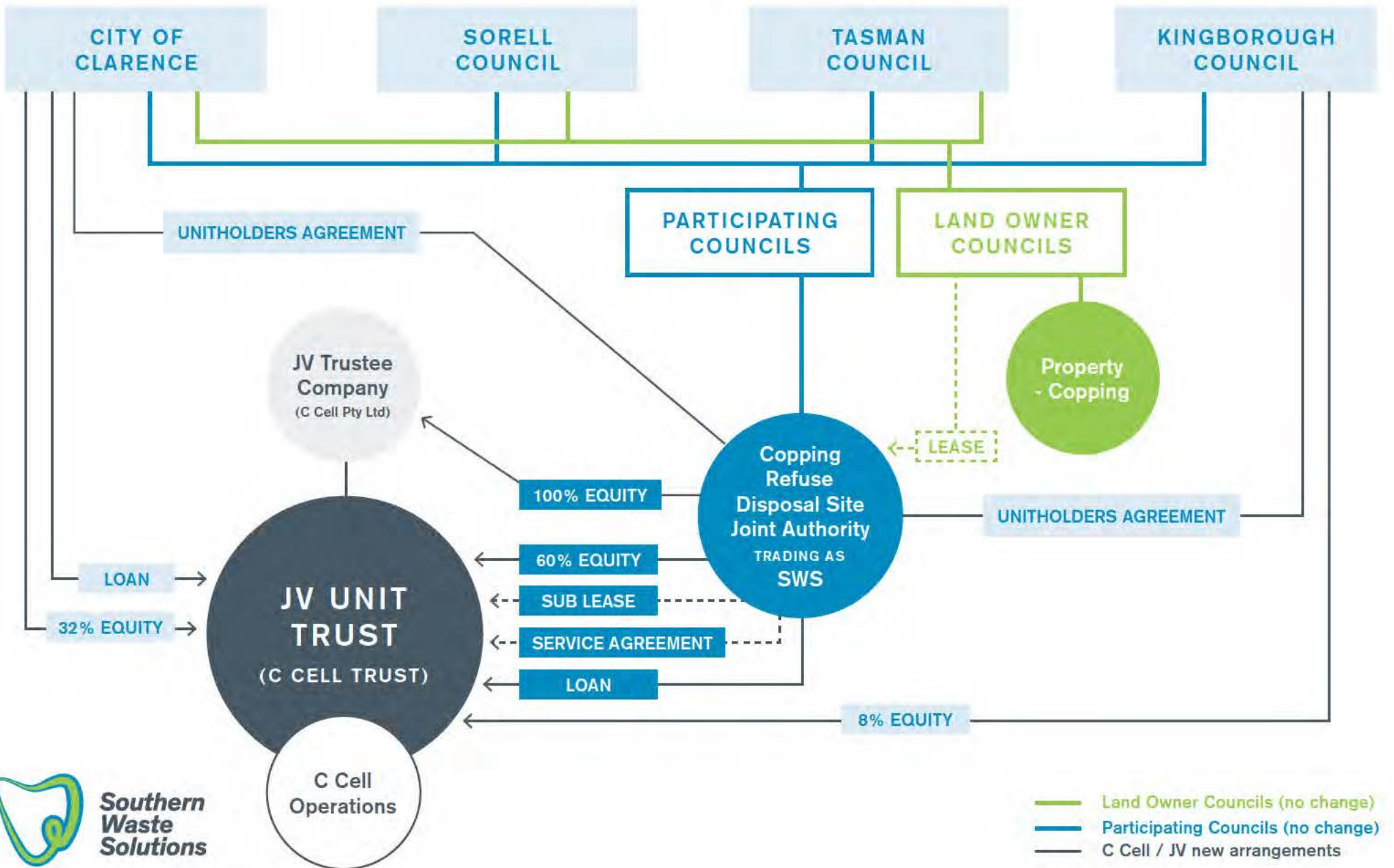
Participating Councils

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**Attachment 2**

Copy of a chart detailing SWS's ownership structure

# SWS ownership structure



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**Attachment 3**

Copy of SWS's Rules.



**Rules  
of the  
Copping Refuse Disposal Site Authority**

as amended March 2023

**CERTIFICATION OF THE RULES OF THE  
COPPING REFUSE DISPOSAL SITE JOINT AUTHORITY**

**Pursuant to Section 32 of the Local Government Act 1993 (Tas)**

I, Darren James Sheen of [REDACTED] qualified legal practitioner, HEREBY CERTIFY that the Rules of the Copping Refuse Disposal Site Joint Authority (a copy of which are annexed hereto and marked with the letter "A") are in accordance with the law.

This certification is given in accordance with Section 32(2) of the *Local Government Act 1993* (Tas).

DATED this 28<sup>th</sup> day of March 2023

SIGNED by Darren James Sheen  
in the presence of:

Witness Signature:.....

Print full name:..... Leah Vallas

Occupation:..... Solicitor (Commissioner for Declarations)

Occupation:..... Dobson Mitchell Allport

Full Address:.....

**CERTIFICATION OF THE RULES OF THE  
COPPING REFUSE DISPOSAL SITE JOINT AUTHORITY**

**Pursuant to Section 32(3)(b) of the *Local Government Act 1993* (Tas)**

I, IAN NELSON, of [REDACTED] Chief Executive Officer of the Clarence City Council (a Participating Council of the Authority), HEREBY CERTIFY that the Rules of the Copping Refuse Disposal Site Joint Authority (a copy of which are annexed hereto and marked with the Letter "A") have been made in accordance with the *Local Government Act 1993* (Tas).

This certification is given in accordance with Section 32(3)(b) of the *Local Government Act 1993*.

DATED this 28<sup>th</sup> day of MARCH 2023.

SIGNED by IAN NELSON  
in the presence of:

[REDACTED]

Witness signature:

[REDACTED]

Full name:

SHARON GILLON

Occupation:

Executive Assistant

Full address:

[REDACTED]

# RULES of the COPPING REFUSE DISPOSAL SITE JOINT AUTHORITY

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## **PART 1 - PRELIMINARY**

### **Name**

1. The name of the Authority is Copping Refuse Disposal Site Joint Authority.

### **Establishment and Commencement of the Authority**

2. The Authority is established as a joint authority under the Act.
3. These Rules come into effect on and from the commencement date agreed to by resolution of the Authority as constituted immediately before the coming into effect of these Rules.
4. These Rules replace the initial Rules of the Authority that came into effect with the publication of a notice in the Tasmanian Government Gazette on 21 March 2001, and that were amended on 19 March 2008, 1 July 2009, 23 August 2012 and 8 October 2015.

### **Body Corporate**

5. The Authority is a body corporate and has the powers and functions specified in these Rules.

### **Definitions**

6. In these Rules the following words and expressions have the following meaning unless there is something in the subject or context of use inconsistent with that meaning.
  - “Act” means the *Local Government Act 1993* (Tas);
  - “Adjoining Land-Owner” means the owner of any land which immediately adjoins the Land;
  - “Annual Share of Municipal Waste Register” means the Register with that name maintained by the Authority in accordance with these Rules;
  - “Auditor” means the auditor of the Authority;
  - “Authority” means the Copping Refuse Disposal Site Joint Authority;
  - “Balance Area” has the meaning set out in the Lease;
  - “Board” means the Board of Directors appointed by the Authority;
  - “Board Chair” means the person appointed by the Authority as chair of the Board under Rule 72;
  - “Business Plan” means the Business Plan referred to in Rules 181 and 182;
  - “Chair” means the Chair of the Authority elected by the Members under Rule 98 or Rule 132;
  - “Chief Executive Officer” means the Chief Executive Officer of the Authority appointed under Part 6;
  - “Close Associate” has the meaning set out in Section 51 of the Act;
  - “Competitive Neutrality Principles” means the competitive neutrality principles referred to in the Act;
  - “Comptroller” means the person appointed by the Authority under Rule 98, 99, 100 and



178 to administer income tax equivalents, guarantee fees and other relevant matters on behalf of Members and in accordance with Part 3A of the Act;

“Council” means a Council established under Section 18 of the Act;

“Councillor” means a person elected to a Council and includes the mayor, deputy mayor and alderman;

“Director” means a person appointed under these Rules as the Board Chair or as a member of the Board;

“EMP” means the Development Proposal and Environmental Management Plan for the Sub-regional Refuse Disposal Facility at Copping, Tasmania, and any other Environmental Management Plan approved by the EPA or the relevant planning authority in relation to the Land;

“Environmental Approval” means all permits, licences, approvals and authorities issued in relation to the Land from time to time, authorising any activities carried out on the Site for the purposes of waste treatment, disposal, resource recovery, energy generation and transmission off the Site to the grid and/or any other purposes, and includes:

(a). an EMP approved by a planning authority or the EPA or both;

(b). a Permit issued by the planning authority;

(c). an EPN or other notice, direction or directive issued by the EPA Director,

issued in relation to the Land including any amendments, amended conditions or approved changes made from time to time and the associated conditions as modified or amended from time to time;

“EPA” means the Environment Protection Authority Tasmania;

“EPA Director” means the director appointed under section 18 of the *Environmental Management and Pollution Control Act 1994*;

“EPN” means the Environment Protection Notice 690/1 and any subsequent environmental protection notices issued by the EPA Director in relation to the Land, and any amended conditions or approved changes made from time to time to the EPNs;

“Equity Interest Register” means the Register with that name maintained by the Authority in accordance with these Rules;

“General Manager” means the General Manager or Chief Executive Officer or equivalent position of a Council or the General Manager’s nominee;

“General Meeting” means a meeting of Members;

“Independently Verified Annual Share of Municipal Waste” means the applicable Member’s PCFAW as a proportion of the total of all Members PCFAW;

“Interest” has the meaning set out in the Act;

“Infrastructure” has the meaning set out in the Lease;

“Land” means all that land comprised in Certificates of Title Volume 126073 Folios 1, 3, and 4 excluding that part of Folio 4 leased to Robert Bruce Downie as set out in

registered lease B996834;

“Lease” means lease registered number C837468 entered into by the Authority and the Owner Councils as amended by any deed of variation;

“Lease Administrator” has the meaning set out in the Lease;

“Member” means a Participating Council;

“Minister” means the Minister responsible for the administration of the Act;

“Municipal Area” has the meaning set out in the Act;

“Municipal Waste” means waste arising from:

- (a). kerbside domestic waste (household solid and inert waste placed out for kerbside collection);
- (b). other domestic waste (residential solid and inert wastes);
- (c). residual domestic waste (non-recyclables) from Council operated or Council contracted waste transfer stations operated for the purpose of receiving waste from local residents within a relevant Member municipality;
- (d). other Council waste (Council generated solid and inert waste arising from street sweepings, litter bins, incidental green waste material), and includes:
  - (i). household domestic garbage set aside for kerbside collection;
  - (ii). food waste from industrial or commercial sources such as restaurants, food markets, supermarkets and the like set aside for kerbside collection;
  - (iii). paper and cardboard included as part of household collection of household domestic garbage; and
  - (iv). green waste included as part of household collection of household domestic garbage;

“Office” means the principal business office of the Authority;

“Owner Councils” means the Councils that own the Land;

“Ownership Interest Register” means the Register with that name maintained by the Authority in accordance with these Rules;

“Participating Councils” means those Councils that established the Authority in accordance with the Act or were admitted to the Authority after its establishment in accordance with these Rules but does not include a Council that has withdrawn from the Authority or has been expelled from the Authority in accordance with these Rules;

“PCFAW” means a Member’s forecasted annual Municipal Waste which is to be calculated as follows:

- (a). for a new Member admitted in accordance with Rule 18 it is to be an independently verified estimate of the new Member’s annual Municipal Waste that will be received at the Site until that Member’s PCIVAMW for a complete financial year is available; and



(b). for a Member where there has been a variation in that Member's gazetted Municipal Area of 10% or more of total land area it is to be an independently verified estimate of that Member's annual Municipal Waste that will be received at the Site until that Member's PCIVAMW for a complete financial year following the variation is available; and

(c). for all other Members it is to be the most recent PCIVAMW;

"PCIVAMW" means a Member's independently verified annual Municipal Waste received at the Site for a financial year;

"Permit" means any planning permit issued in relation to the Land under the *Land Use Planning & Approvals Act 1993* and the associated conditions as amended from time to time;

"Principal Objectives and Goals" means those objectives and goals set out in Rule 8;

"Proportionate Payments" means any financial contributions required to be made by Members to the operational and/or capital costs and expenses of the Authority calculated in accordance with their current Independently Verified Annual Share of Municipal Waste recorded in the Annual Share of Municipal Waste Register;

"Proxy" means a natural person appointed by a Member to act as its representative, with the same powers and functions as its Representative, when its Representative is absent, in accordance with Rule 61;

"Representative" means a natural person appointed by a Member to be the Representative of the Member in accordance with Rule 61;

"Register" means a register referred to in these Rules;

"Rules" means these Rules as altered or added to from time to time;

"Seal" means the common seal of the Authority;

"Secretary" means a person appointed as Secretary of the Authority under Rule 204;

"Simple Majority" means more than half of the total number of votes cast by Directors present at the meeting, each Director having one vote, or Members represented at the meeting by their Representative, a Member having the number of votes determined in accordance with Rule 63;

"Site" means that portion of the Land used or reserved for waste treatment, landfill disposal, resource recovery and/or energy generation and transmission off the Site into the grid and other related purposes;

"Special Resolution" means a resolution of Members under Rules 153 and 154;

"Strategic Plan" means the Strategic Plan referred to in Rule 181; and

"Treasurer" means the Treasurer for the State of Tasmania.

## **Interpretation**

7. In these Rules except to the extent that the context requires otherwise or the contrary intention appears:
  - (a). words and phrases which are defined in the Act have the same meaning in these Rules;
  - (b). words in the singular include the plural and vice versa;
  - (c). words importing a gender include the other gender;
  - (d). a reference to the Act or any other statute or regulations or to any section or clause of the Act or any other statute or regulations is to be read as though the words “as modified or substituted from time to time” were added to the reference;
  - (e). headings do not affect the construction of these Rules; and
  - (f). where a word or a phrase is given a particular meaning other cognate parts of speech and grammatical forms of that word or phrase shall have a corresponding meaning.

## **PART 2 - PRINCIPAL OBJECTIVES, FUNCTIONS AND POWERS**

### **Principal Objectives and Goals of the Authority**

8. The Principal Objectives and Goals of the Authority are:
  - (a). to manage and operate the Site for the purposes of waste treatment, landfill disposal, resource recovery, and/or energy generation and for related purposes and in a manner which conforms to the Environmental Approvals and to manage the Balance Area;
  - (b). to manage successfully the operation of the Site and Balance Area, which may be by or involve third parties by:
    - (i). operating efficiently in accordance with sound commercial practice;
    - (ii). maximising the net worth of the Authority’s assets; and
    - (iii). operating and managing both to maximise benefits to Members; and
  - (c). to perform such other functions and provide such other services and facilities either on or off the Site as are necessary for achieving the Principal Objectives and Goals, which may be by or involve third parties, including but not limited to waste transfer stations and waste transport services.
9. In pursuing its Principal Objectives and Goals, the Authority shall concentrate the exercise of its powers and duties on:
  - (a). representing the best interests of all Members;
  - (b). the approval of the Strategic Plan and the Business Plan and Budget;
  - (c). the setting of the terms of office and the remuneration of Directors; and
  - (d). the periodic review of the performance of the Board and of individual Directors.



## Functions of the Authority and of the Board

10. The Authority has the following functions:
- (a). to set the goals and objectives of the Authority in pursuing the Principal Objectives and Goals referred to in Rule 8;
  - (b). the establishment, maintenance and operation of the Site for the purposes of waste treatment, landfill disposal, resource recovery and/or energy generation, which may be by or involve third parties, in accordance with the Environmental Approvals and other relevant laws and statutes;
  - (c). to facilitate the operation of the Site and the Balance Area in accordance with the Principal Objectives and Goals of the Authority;
  - (d). to perform waste management functions outside the boundaries of the Municipal Areas of the Members which are consistent with these Rules and which are to be exercised in accordance with the Competitive Neutrality Principles;
  - (e). to perform any function specified in the Act or any other act or in these Rules consistent with the Principal Objectives and Goals of the Authority;
  - (f). to perform any function duly granted to, or imposed on any municipal, regional or public authority by any Act or Regulation (Federal or State) with respect to the treatment of waste, disposal of waste, resource recovery and/or energy generation from waste in Tasmania consistent with the Principal Objectives and Goals of the Authority;
  - (g). to have regard to the obligations of Members in relation to national competition agreements and their impact on future policies, procedures and practices concerning the waste management industry;
  - (h). to provide a copy of the annual report of the Authority to Members before the end of November in each year. The annual report is to include the following information and documents:
    - (i). a statement of the activities of the Authority during the preceding year;
    - (ii). a statement of the performance of the Authority in relation to the Principal Objectives and Goals set for the preceding financial year;
    - (iii). the financial statements of the Authority for the preceding financial year;
    - (iv). a copy of the audit opinion for the preceding financial year;
    - (v). any other information the Authority considers appropriate or necessary to inform Members of its performance and progress during the financial year; and
    - (vi). reports of the Chair and of the Board Chair;
  - (i). to notify the Members as soon as practicable after becoming aware of any development which, in the opinion of the Authority, may:
    - (i). significantly affect the financial viability or operating ability of the Authority;  
or
    - (ii). significantly affect the Authority in an adverse manner;

- (j). to provide Members with quarterly reports as soon as practicable after the end of March, June, September, and December in each year which comply with the requirements set out in Rules 193 to 197;
- (k). to provide Members with a report by 30 September in each financial year containing an audit by a qualified waste management specialist of each Member's PCIVAMW and their Independently Verified Annual Share of Municipal Waste as required under Rule 26;
- (l). to consult with the Board and with Members on the strategic direction to be taken by the Authority; and
- (m). to comply with the Environmental Approvals, all applicable legislation, standards and codes, and the requirements of the Business Plan.

11. The Board has the following functions:

- (a). to ensure that the business and affairs of the Authority and that the functions and powers of the Authority that the Authority has delegated to be carried out by the Board are conducted and performed in a manner that is:
  - (i). in accordance with sound commercial practice;
  - (ii). consistent with the approved Strategic and Business Plans of the Authority and the Principal Objectives and Goals set out in Rule 8; and
  - (iii). in accordance with the Environmental Approvals, and all other permits, licences and governing legislation;
- (b). to provide such advice, information and assistance to the Authority concerning its specified functions and powers as the Authority may require;
- (c). to carry out any necessary schemes, works and undertakings;
- (d). to provide both on and off the Site all manner of facilities and services incidental to the Authority's Principal Objectives and Goals including, but not limited to waste transfer stations and transport services;
- (e). to have regard to the economic and social well-being of its customers, employees and the community generally;
- (f). to follow environmentally sound principles in its development and resource management activities;
- (g). to prepare a Strategic Plan and a Business Plan for the Authority in accordance with Rules 181 and 182;
- (h). to provide the Authority with quarterly reports as soon as practicable after the end of March, June, September, and December in each year which comply with the requirements set out in Rules 193 to 197;
- (i). to be responsible for the employment of the Chief Executive Officer and the determination of the terms and conditions of that employment;
- (j). to manage the resources of the Authority;
- (k). to ensure appropriate policy frameworks are in place; and



- (l). to provide a briefing at any reasonable time in respect to the performance of the Board's functions to one or more General Managers of Members upon request.

### **Powers of the Authority**

12. In carrying out its objectives and functions the Authority has the following powers:
  - (a). to acquire, hold, lease, licence, dispose of and otherwise deal with real property;
  - (b). to acquire, hold, lease, licence, dispose of and otherwise deal with personal property;
  - (c). to enter into contracts provided that any contract that is entered into does not extend beyond the term of the Lease, or give rise to any contractual responsibilities or commitments of Members or Owner Councils after the date of the termination or expiration of the Lease;
  - (d). to appoint employees, agents and attorneys;
  - (e). to enter into contracts for the performance or exercise of any of its functions or powers jointly with another person or body;
  - (f). to set fees, charges, terms and conditions relating to work done, or services, goods or information supplied by it except any fee or charge referred to in section 205(2) of the Act or any rate or charge referred to in Part 9 of the Act;
  - (g). to engage consultants and provide consultancy services;
  - (h). subject to these Rules to raise loans and other financial accommodation;
  - (i). to give security for loans and financial accommodation;
  - (j). to transfer assets and liabilities from the Authority to a Council, or from a Council to the Authority;
  - (k). to transfer employees and the rights of employees from a Council to the Authority, or from the Authority to a Council;
  - (l). to exercise any power specified in the Act or any other act or in these Rules consistent with its Principal Objectives and Goals and functions;
  - (m). to make by-laws under Part 11 of the Act as if it were a Council;
  - (n). to do all things necessary or convenient to be done in connection with, or incidental to, the performance and exercise of its functions and powers;
  - (o). to perform its powers outside the boundaries of the municipal area of the Members which are consistent with these Rules and which are to be exercised in accordance with national competition principles; and
  - (p). to require the Board to carry out specified powers of the Authority.

### **Powers of the Board**

13. (a) The Board may exercise all powers and functions delegated to it by the Authority in writing.
- (b) The Board may access independent, expert advice, at the Authority's expense, as it determines necessary to exercise its powers and functions and satisfy the duties of directors.

## **Delegations**

14. Except for the power under Rule 12(a) and as provided in Rule 213(b), the Authority may delegate to the Chair, Board or Secretary, with or without conditions, any of the functions and powers that are within the power of the Authority (including any specified power of on-delegation of those functions and powers) and are not by these Rules or by legislation directed or required to be exercised or done by the Authority in General Meeting.
15. The Board may delegate to the Chief Executive Officer, an individual director, a committee of the Board or the Secretary (in their capacity as secretary to the Board), with or without conditions:
  - (a). any of the functions and powers delegated to it by the Authority in writing (including any specified power of on-delegation of those functions and powers); and
  - (b). any of the functions and powers conferred upon it under these Rules.

## **PART 3 - COMPOSITION OF THE AUTHORITY AND OF THE BOARD**

### **Members**

16. Each Member may use the Site as its sole or principal landfill refuse disposal site for its Municipal Waste subject to the Member entering into a written agreement with the Authority.
17. Intentionally Omitted.
18. Other Councils may be admitted to the Authority as Members:
  - (a). if approved by a Simple Majority of the then current Members;
  - (b). subject to the applicant Council meeting any requirements that are specified by the then current Members; and
  - (c). in accordance with the provisions of these Rules.
19. Any new Member shall be permitted to purchase the share/interest in equity in the Authority only up to its Independently Verified Annual Share of Municipal Waste at the date of its admission to the Authority.
20. The Authority must as soon as possible after determining the permitted share/interest in equity under Rule 19 for a new Member give notice ("the Purchase Notice") to all other Members inviting each of them to state in writing within 60 days from the date of the Purchase Notice whether they are willing to sell part of the share/interest in equity referred to in the Purchase Notice.
21. At the expiration of 60 days from the date of the Purchase Notice the Authority must allocate the share/interest in equity referred to in the Purchase Notice to or amongst the other Members who have expressed a willingness to sell and (if more than one) so far as possible pro rata according to the Member's equity interest in the Authority provided that no Member is obliged to dispose more than the share/interest in equity they have indicated a willingness to sell.
22. If the whole of the new Member's share/interest in equity referred to in the Purchase Notice



is not satisfied by sales under Rule 21 the new Member's share/interest in equity is to be reduced by the amount not sold.

23. All changes to the share/interest in equity of the Members shall be recorded in the Equity Interest Register.
24. Any additional operational and/or capital costs that arise as a result of an increase in the volume of Municipal Waste deposited at the Site arising from the admission of a new Member shall, subject to the provisions of Rule 210 be met by way of a Proportionate Payment from all Members, including the newly admitted Council.
25. An applicant Council's decision to purchase a share/interest in equity in the Authority less than its Independently Verified Annual Share of Municipal Waste shall not affect or reduce that Council's liability to make any Proportionate Payment required to be made by Members with respect to the operational and/or capital costs and expenses of the Authority, with all Proportionate Payments to be based on a Member's Independently Verified Annual Share of Municipal Waste.
26. The Authority shall ensure that by 30 September in each year it obtains and submits for the information of each Member a report from the Board in accordance with the provisions of Rule 10(k).
27. The Independently Verified Annual Share of Municipal Waste shall form the basis of any Proportionate Payments charged to each Member at the relevant time.
28. The Act in so far as it applies to a joint authority established under the Act applies to Members of the Authority and to the responsibilities of Members and Representatives of Members unless otherwise provided for in these Rules.

#### **Cessation and Withdrawal of Participation – Members**

29. Subject to any requirements of the Act and of these Rules, a Member may cease to participate in the Authority and withdraw as a Member.
30. A Member that intends to withdraw from the Authority ("Withdrawing Member") is to give the Authority not less than 12 months written notice of its intention to withdraw from the Authority in which it shall advise a date from which it no longer wishes to be a Member ("the Member's Termination Date").
31. By giving a notice to the Authority under Rule 30 the Withdrawing Member appoints the Authority as its agent for the sale of their share/interest in the equity of the Authority ("WPC Equity") in one or more lots at the discretion of the Authority at a price to be agreed between the Withdrawing Member and the Authority or failing agreement as to such price, at a price determined by valuation by a valuer appointed by mutual agreement between the Withdrawing Member and the Authority. If the Withdrawing Member and the Authority fail to agree to the appointment of a valuer, then the valuation will be undertaken by a valuer appointed by the president for the time being of the Law Society of Tasmania or that person's nominee at the request of either the Withdrawing Member and the Authority. The Withdrawing Member and the Authority will bear the cost of the valuation equally.
32. The Authority must as soon as possible, after determination of the price for the WPC Equity in accordance with Rule 31 ("Sale Price"), give written notice ("the Sale Notice") to all



other Members inviting each of them to state in writing within 60 days from the date of the Sale Notice whether they are willing to purchase any, and if so, what maximum part of the WPC Equity referred to in the Sale Notice.

33. At the expiration of 60 days from the date of the Sale Notice the Authority must allocate the WPC Equity referred to in the Sale Notice or amongst the other Members who have expressed a willingness to purchase and (if more than one) so far as may be possible pro rata according to the Withdrawing Member's equity interest in the Authority provided that no Member is obliged to take more than the share/interest in equity they have indicated a willingness to purchase. The Withdrawing Member is bound on payment of the Sale Price fixed to transfer the WPC Equity to the purchaser or purchasers and, in default, the Authority may receive and give a good discharge for the purchase money on behalf of the Withdrawing Member and enter the name of the purchaser or purchasers in the Equity Interest Register as holder by transfer of the share/interest in equity purchased by the purchaser or purchasers.
34. If the whole of the WPC Equity is not sold under Rule 33 then, subject to these Rules, at any time before the Member's Termination Date the Authority may transfer any part of the WPC Equity not sold, to a Council approved by the other Members acting reasonably and who meets the admission criteria for a Member, at a price determined by a valuer appointed by mutual agreement between the Withdrawing Member and the Authority. If the Withdrawing Member and the Authority fail to agree on the appointment of a valuer, then the valuation will be undertaken by a valuer appointed by the president for the time being of the Law Society of Tasmania or that person's nominee at the request of either the Withdrawing Member or the Authority. The Withdrawing Member and the Authority will bear the cost of the valuation equally, and in the event of any such sale the Authority must note in the Equity Interest Register the transfer of the share/interest in equity so sold.
35. If the whole of the WPC Equity is not sold under Rules 33 and 34, the Withdrawing Member will continue to be a Member with a share/interest in equity in the Authority reduced by the amounts sold.
36. The Authority may in their absolute and uncontrolled discretion refuse to register any proposed transfer of share/interest in equity in the Authority without assigning any reason for such refusal.
37. Subject to Rule 35, the Member giving notice pursuant to Rule 30 shall be deemed to have withdrawn from the Authority with effect from the Member's Termination Date. Such withdrawal will be without prejudice to any obligations on the part of the Member up to, and the rights or entitlements due to it under these Rules following, the Member's Termination Date.
38. A Member that withdraws from the Authority pursuant to Rule 37 is not entitled to a refund of any Proportionate Payments made prior to the Member's Termination Date or return of any other capital or assets it has provided to the Authority after the Member's Termination Date.
39. In the event of a withdrawal from the Authority pursuant to Rule 37, the Council which has withdrawn remains liable to contribute in respect of any liabilities of the Authority incurred while it was a Member for a period of 12 months after the Member's Termination Date



such liability calculated using the Withdrawing Member's Independently Verified Annual Share of Municipal Waste at the Member's Termination Date.

### **Disciplinary Action – Members**

40. The Authority may take disciplinary action against a Member if a Simple Majority of Representatives determine there has been either:
  - (a). a material and persistent breach of a requirement(s) of these Rules by the Member;  
or
  - (b). a repudiation of the principles, objectives or goals of the Authority, as provided in Rule 8, by the Member.
41. Where the Authority has made a determination under Rule 40, the Authority must determine to either:
  - (a). reprimand the Member;
  - (b). suspend the participation of the Member for a specified period; or
  - (c). expel the Member.
42. The disciplinary action against a Member under Rule 41 does not take effect until the later of the following:
  - (a). the fourteenth day after the day on which a written notice is served on the Member of the decision under Rule 43; or
  - (b). if the Member exercises their right of appeal under Rule 45, the General Meeting convened to hear the appeal confirms the disciplinary action decision then the date of that meeting.
43. If the Authority makes a disciplinary action determination against a Member, the Chair, without undue delay, is to cause to be served on the Member a notice in writing:
  - (a). stating the disciplinary action determination under Rule 41 against the Member;
  - (b). specifying the grounds for the disciplinary action determination; and
  - (c). informing the Member of the right to appeal the decision under Rule 45.
44. Where the Authority suspends the participation of a Member under Rule 41 all rights and benefits of being a Member under these Rules are suspended for the specified period but the Member's obligations continue.
45. A Member may appeal against a disciplinary action determination under Rule 41 as follows:
  - (a). by serving on the Chair, within fourteen days after the service of a notice under Rule 43, a requisition in writing demanding the convening of a General Meeting for the purpose of hearing the appeal;
  - (b). on receipt of a requisition, the Chair is to immediately notify the Authority of the receipt;
  - (c). the Authority is to cause a General Meeting to be held within 14 days after the day on which the requisition is received;

- (d). at a General Meeting convened for the purpose of hearing an appeal under this Rule:
    - (i). no business other than the question of the disciplinary action determination is to be transacted;
    - (ii). the Authority may place before the meeting details of the grounds of the disciplinary action determination and the Authority's reason for the disciplinary action determination;
    - (iii). the disciplined Member must be given an opportunity to be heard;
    - (iv). the disciplined Member's Representative has no votes; and
    - (v). subject to Rule 45(d)(iv) the Representatives of the Members who are present are to vote by secret ballot on the question of whether the disciplinary action determination should be lifted or confirmed;
  - (e). if at the General Meeting a Simple Majority of the Representatives present and entitled to vote, vote in favour of:
    - (i). the lifting of the disciplinary action determination:
      - (A) the disciplinary action is to be lifted; and
      - (B) the disciplined Member is entitled to continue as a Member of the Authority;
    - (ii). the confirmation of the disciplinary action determination:
      - (A) the disciplinary action takes effect; and
      - (B) where the disciplinary action determination is to expel the Member, the expelled Member ceases to be a Member of the Authority.
46. The Authority is deemed to be the expelled Member's agent for the sale of their share/interest in the equity of the Authority in one or more lots at the discretion of the Authority at a price to be determined by independent valuation.
47. The Authority must as soon as possible after the expulsion of a Member give notice ("the Expulsion Notice") to all other Members inviting each of them to state in writing within 60 days from the date of the Expulsion Notice whether they are willing to purchase any, and if so, what maximum part of the share/interest referred to in the Expulsion Notice.
48. At the expiration of 60 days from the date of the Expulsion Notice the Authority must allocate the share/interest in the equity referred to in the Expulsion Notice to or amongst the other Members who have expressed a willingness to purchase and (if more than one) so far as may be possible pro rata according to the Member's share/interest in the equity of the Authority provided that no Member is obliged to take more than the share/interest in equity they have indicated a willingness to purchase. The expelled Member is bound on payment of the price determined by independent valuation in accordance with Rule 46 to transfer its equity interest to the purchaser or purchasers and, in default, the Authority may receive and give a good discharge for the purchase money on behalf of the expelled Member and enter the name of the purchaser or purchasers in the Equity Interest Register as the holder by transfer of the share/interest purchased by the purchaser or purchasers.



49. If the whole of the expelled Member share/interest in equity is not sold under Rule 48 then, subject to these Rules, the Authority may transfer that share/interest in equity not sold to the Members pro rata according to the Member's equity interest in the Authority at that time and in the event of any such transfer the Authority must note in the Equity Interest Register the transfer of the share/interest in equity so transferred.

#### **Cessation and Withdrawal of Land Ownership - Owner Councils**

50. If an Owner Council ("the Withdrawing Owner Council") wishes to dispose of its interest in the Land, it shall provide the other Owner Councils and the Authority not less than 15 months prior written notice of its decision that it no longer wishes to be an Owner Council including the date from which it wishes this to apply ("the Owner Council's Termination Date").
51. The Withdrawing Owner Council shall transfer its legal and equitable interest in the Land to the remaining Owner Councils prior to or on the Owner Council's Termination Date.
52. The Withdrawing Owner Council shall transfer its legal and equitable interest in the Land free of any encumbrance, mortgage, lien, caveat, dealing or any other restriction on the title of the Land it has created or a person on its behalf has created, and which has been registered on the title of the Land and which the other Owner Councils require to be removed prior to the Owner Council's Termination Date.
53. On or before the effective date of the transfer of the Withdrawing Owner Council's interest in the Land to the other Owner Councils in accordance with these Rules ("the Transfer Date"), the remaining Owner Councils shall pay to the withdrawing Owner Council a sum of money ("the Reimbursement Sum") that represents the fair market value (or such other value agreed to by the parties in writing) of the legal and equitable interest in the Land of the Withdrawing Owner Council at the Transfer Date.
54. The Reimbursement Sum is to be calculated as follows:
- (a). if the Tasman Council withdraws from the Authority then the Clarence City Council is to pay two thirds of the Reimbursement Sum and Sorell Council is to pay one third;
  - (b). if the Sorell Council withdraws from the Authority then the Clarence City Council is to pay six sevenths of the Reimbursement Sum and Tasman Council is to pay one seventh; and
  - (c). if the Clarence City Council withdraws from the Authority then the Sorell Council is to pay three quarters of the Reimbursement Sum and Tasman Council is to pay one quarter.
55. If the Owner Councils are not able to agree on the amount of the Reimbursement Sum within 15 months of the date of the notice given pursuant to Rule 50, the amount is to be determined by an independent valuer ("the Valuer") who is either agreed to by the Owner Councils or in default of agreement, appointed by the President of the Law Society of Tasmania.
56. The determination of the Valuer is to be final as between the Owner Councils in relation to the amount of the Reimbursement Sum, and the Owner Councils shall pay to the

Withdrawing Owner Council the Reimbursement Sum so determined within two months (or such other period of time agreed in writing by all the Owner Councils) of the date of the Valuer's determination. The Valuer's fee and costs are to be shared equally between the Owner Councils.

### **Amalgamation of Councils**

57. If any of the Member's share/interest in equity in the Authority is transferred to another Council as a result of any change or amalgamation of Municipal Areas, including but not limited to a transfer under Part 12A of the Act, the Authority must note in the Equity Interest Register the share/interest in equity so transferred.
58. Where the transferee under Rule 57 is not a Member at the time immediately before the transfer date the transfer is subject to the admission of the transferee as a Member under Rule 18.
59. Intentionally Omitted.
60. If any of an Owner Council's interest in the Land is transferred to another Council as a result of any change or amalgamation of Municipal Areas, including but not limited to a transfer under Part 12A of the Act, the Authority must note in the Ownership Percentage Register the interest so transferred.

### **Membership of the Authority - Representatives**

61. Subject to Rules 63 to 70, each Member will appoint, which may be a reappointment, within 60 days of ordinary Council elections or being admitted as a Member:
  - (a). a Representative, who may be either an elected Councillor or a Council employee; and
  - (b). a Proxy who may be either an elected Councillor or a Council employee, to act in place of the Representative during any absence of the Representative.
62. References to a Representative in these Rules include a Proxy appointed to act in the Representative's place in accordance with the Rules during the period of their absence.
63. Each Member is entitled to exercise the number of votes determined in accordance with the following table:

<b>Member's share/interest as recorded in the Equity Interest Register</b>	<b>Votes</b>
Greater than 0 – 15%	1
Greater than 15% – 25%	2
Greater than 25% - 40%	3
Greater than 40% - less than 50%	4



50% and over	Where there are 3 or more Members	Number of Votes equal to the sum of votes of all other Members minus 1
	Where there are 2 Members	Number of votes equal to that of the other Member and where both have 50% 4 votes each
	Where there is 1 Member	9

64. Intentionally Omitted
65. No Representative or Proxy may be a Director or hold any remunerated position with the Authority.
66. Intentionally omitted.
67. A Member may, subject to the provisions of Rule 61, apart from the obligation to make the appointment within 60 days of ordinary Council elections or being admitted as a Member, remove a Representative or Proxy and appoint a replacement Representative or Proxy at any time for the remainder of the term of the original appointment.
68. Written notice shall be given by each Member to the Authority and to each other Member at the time of the appointment, removal or replacement of any Representative or Proxy by the notifying Member.
69. Representatives and Proxies are not entitled to any remuneration from the Authority other than the Chair who may be remunerated subject to the following:
- (a) notwithstanding Rule 65, Representatives, on the advice of the Secretary, may approve the payment of remuneration for the role of Chair;
  - (b) if Representatives approve any payment under Rule 69(a), the decision will be recorded in the minutes of the general meeting at which it was approved and the Secretary will advise Participating Councils in the Quarterly Report to Participating Councils; and
  - (c) any payments approved under Rule 69(a) will not be paid to any Council employee appointed or acting temporarily as the Chair.
70. Any Proxy not acting in the place of an appointed Representative who is absent, at the relevant time, may attend any meeting of the Authority, but shall not be entitled to vote at any meeting of the Authority.

### **Membership of the Board**

71. The Board of Directors shall consist of:
- (a). the Board Chair; and

- (b). at least two and no more than four other Directors.
72. The Board Chair and the other Directors shall be appointed by the Authority at a General Meeting.
73. The Authority shall, in the appointment of the Board Chair and other Directors, take into account the powers, functions and responsibilities of the Board and shall appoint persons who collectively have the skills and expertise to carry out those powers, functions and responsibilities, drawn from persons with expertise and/or experience in one or more of the following relevant fields:
- (a). financial management, business management and administration;
  - (b). engineering, project management or related disciplines;
  - (c). waste management;
  - (d). transport;
  - (e). environmental management;
  - (f). any other fields relevant to the business strategy or Principal Objectives and Goals of the Authority.
74. A Director shall be appointed for a term of office not exceeding three years.
75. The Authority shall ensure that in appointment of Directors, terms of office shall be set so as to ensure that the term of office of at least one Director concludes in each calendar year.
76. A Director whose term is due to expire may be reappointed provided that no Director shall be appointed for more than nine consecutive years.
77. The Authority may by special resolution at a general meeting remove a Director from office and may appoint another person in place of the Director so removed, and that person shall be appointed for the residual term of office of the removed Director.
78. Intentionally Omitted.
79. The office of a Director is vacated if the Director:
- (a). is convicted on indictment of an offence that concerns the making, or participation in making, of decisions that affect the whole or a substantial part of the business of the Authority, or concerns an act that has the capacity to affect significantly the Authority's financial standing;
  - (b). is convicted of an offence that is punishable by imprisonment for a period greater than 12 months or involves dishonesty and is punishable by imprisonment for at least 3 months;
  - (c). is an undischarged bankrupt under the law of Australia, its external territories or another country;
  - (d). has executed a personal insolvency agreement under Part X of the *Bankruptcy Act 1966* (Cth) or a similar law of an external Territory or a foreign country, and the terms of the agreement have not been fully complied with;
  - (e). is removed from office under Rule 77;



- (f). is absent from meetings of the Board for three consecutive meetings without leave of absence from the Board;
  - (g). resigns office by notice in writing to the Secretary of the Authority;
  - (h). is prohibited from being a director of a company under the *Corporations Act 2001* (Cth); or
  - (i). is elected as a Councillor of a Member or is appointed as the Chief Executive Officer, the Secretary, or an employee of the Authority or of a Member or provides remunerated services to the Authority (other than the performance of the duties and responsibilities of Director).
80. The Board Chair and the Directors shall be paid such remuneration as the Authority in General Meeting from time to time determines.
81. In making such determination, the Chair and any Representative may consult with the Board Chair and such other persons as it considers appropriate.
82. Each Director is entitled to be reimbursed from Authority funds for all reasonable travel, accommodation and other expenses incurred by the Director while engaged on the business of the Authority.

## **PART 4 - DUTIES OF MEMBERS, REPRESENTATIVES, PROXIES AND DIRECTORS**

### **Duties of Members, Representatives, Proxies and Directors**

83. A Member, Representative, Proxy or Director shall, in the exercise of the functions and powers of a Member, Representative, Proxy or Director as applicable:
- (a). act honestly;
  - (b). exercise a degree of care and diligence that a reasonable person in a like position would exercise in the circumstances;
  - (c). not make improper use, in Tasmania or elsewhere, of information acquired because of his or her office on the Authority to gain directly or indirectly, an advantage for himself or herself or another person, or to cause damage to the Authority or any other person, or to avoid, directly or indirectly, a disadvantage; and
  - (d). avoid conflict of interest.

### **Duty to Prevent Insolvent Trading**

84. A Member, Representative, Proxy or Director shall take all reasonable steps to prevent the Authority from incurring a debt if:
- (a). at the time the debt is incurred, or by incurring the debt, the Authority is or will not be able to pay all its debts as and when they become due and payable; or
  - (b). at the time the debt is incurred, the Member, Representative, Proxy or Director is aware, or a person in the Member's, Representative's, Proxy's or Director's position should be aware, that there are reasonable grounds for suspecting that the Authority is not able to pay all its debts as and when they become due and payable.

## Disclosure of Interests

85. A Member, Representative or Director, as soon as practicable after becoming aware of the same, and a Proxy while acting as a Representative in accordance with Rule 62 at the start of the applicable meeting, shall disclose to the Authority any of the following:
  - (a). a direct or indirect pecuniary or other interest in a matter being considered, or about to be considered, by the Authority; and/or
  - (b). an interest of the Member, Representative, Proxy or Director in a matter that may conflict with the proper performance of the Member's, Representative's, Proxy's or Director's duties on a matter.
86. At any meeting of the Authority or of the Board, a Representative, Proxy or Director shall not participate in any discussion, or vote on any matter in respect of which the Representative, Proxy or Director:
  - (a). has an interest; or
  - (b). is aware or ought to be aware that a Close Associate has an interest.
87. A Member, Representative, Proxy or Director shall declare any interest in a matter before any discussion on that matter commences.
88. On declaring an interest, a Representative, Proxy or Director is to leave the room in which the meeting is being held until the matter in which the Representative, Proxy or Director has an interest has been concluded. The Representative, Proxy or Director may thereafter return to the meeting.
89. A Member, Representative, Proxy or Director shall, in accordance with the Act, advise the Secretary in writing of the details of any interest declared in accordance with these Rules within 7 days of that declaration.
90. The Secretary is to ensure that any declaration of interest is recorded in the Minutes of the meeting at which the declaration is made.
91. The Chief Executive Officer shall ensure that an employee of the Authority notifies him or her, in writing, of any interest of the employee in any matter in respect of which he or she:
  - (a). provides advice to the Authority or to the Board;
  - (b). makes a decision or determination; or
  - (c). makes a recommendation to the Authority or to the Board.
92. The Chief Executive Officer shall advise the Secretary of any interest of any employee that has been declared or notified to the Chief Executive Officer.
93. The Secretary shall keep a Register of Interests of the Members, Representatives, Proxies or Directors and of any employees of the Authority that have been declared or notified to the Chief Executive Officer or the Secretary.
94. The Secretary shall advise the Chief Executive Officer of any interest of any Member, Representative, Proxy or Director that has been declared or notified to the Secretary.



### **Adverse Developments**

95. The Board shall immediately notify the Authority if the Board becomes aware of any development that may:
- (a). significantly affect the financial viability or operating ability of the Authority; or
  - (b). significantly affect the Authority in an adverse manner.

### **Authority Registers**

96. The Secretary must cause the Authority to keep and maintain the following registers:
- (a). a register of each Member's share/interest in the equity of the Authority ("Equity Interest Register"), with each Member's share/interest being recorded as a percentage share of the Authority's total equity;
  - (b). a register of each Owner Council's percentage share in the Land ("Ownership Percentage Register"), with each Owner Council's percentage share being recorded as a percentage share of the Land;
  - (c). a register of each Member's Independently Verified Annual Share of Municipal Waste ("Annual Share of Municipal Waste Register");
  - (d). a register of each Member's membership voting entitlement ("Voting Rights Register"), with the total number of voting entitlements allocated to Members on the basis determined in Rule 63; and
  - (e). the register required by Rule 93.

## **PART 5 - MEETINGS OF THE AUTHORITY AND OF THE BOARD**

### **Annual General Meeting of the Authority**

97. An Annual General Meeting of the Authority shall be held in every calendar year between the months of July and 15 December (inclusive).
98. The Annual General Meeting is to:
- (a). receive the financial statements and reports of the Directors, the Chief Executive Officer, the auditor and the Comptroller for the last financial year;
  - (b). elect the Chair in accordance with Rule 130;
  - (c). appoint and fix the remuneration of the auditor;
  - (d). appoint and fix the remuneration of the Comptroller.

### **General Meetings of the Authority**

99. A General Meeting of the Authority may:
- (a). transact any business specified in the notice;
  - (b). appoint the Directors and fix or review their terms and conditions of appointment;
  - (c). review the performance of the Board and the Directors;
  - (d). review any of its functions and powers that have been specified to be carried out by

the Board or any other person;

- (e). declare a dividend subject to the provisions of Rules 219 and 220; and
  - (f). appoint a comptroller.
100. The Chair and any Representative may consult with such other persons as is considered appropriate in relation to the obligations of the Authority regarding the appointment of a comptroller. If a comptroller is appointed, the Comptroller is to be required to carry out those matters referred to in the Act that relate to the Comptroller.
101. In addition to the Annual General Meeting and subject to Rule 135, there will be held such other General Meetings in each year as the Members determine necessary.
102. The Chair or a majority of Members may convene a General Meeting of the Authority at any reasonable time by providing appropriate notice in accordance with these Rules.

### **Meetings of the Board**

103. The Board shall meet at such times and places, which includes by electronic mail or other electronic means, as are determined by the Board as often as is necessary to properly discharge its responsibilities and functions under these Rules, and shall meet at least quarterly in each year.
104. The Board Chair, after giving each Director reasonable notice of a meeting, may convene a meeting at any time.
105. The Board Chair shall convene a meeting when requested to do so by two or more Directors.
106. A Board member may participate in a meeting of the Board by telephone, electronic mail or other electronic means, or any other means of communication provided by the Board. A Board Member who participates by such means shall be taken to have been present at the meeting.

### **Notice of General Meetings of the Authority and Meetings of the Board**

107. Fourteen days notice of the Annual and any other General Meeting of the Authority shall be given by the Secretary to:
- (a). each Member, Representative and Proxy;
  - (b). the Directors;
  - (c). the General Manager of any Member who is not a Representative;
  - (d). the Chief Executive Officer;
  - (e). the Comptroller, and
  - (f). the auditor.
108. The notice shall specify the place, the day, and the hour of the meeting and the general nature of the business to be transacted at the meeting of the Authority.
109. The Authority may call the Annual General Meeting and any other General Meeting on shorter notice if all Representatives entitled to attend and vote at the meeting agree to the



110. Directors, Proxies, and General Managers of a Member who are not a Representative or a Proxy acting as a Representative shall be provided with Agendas, Minutes and papers relating to Authority meetings, and be invited to attend all meetings of the Authority, but shall not be entitled to vote at any meeting of the Authority.

#### **Notice of meetings of the Board**

111. Seven days notice of any meeting of the Board shall be given by the Secretary to:
- (a). each Director, and
  - (b). the Chief Executive Officer.
112. The notice shall specify the place, the day, and the hour of the meeting and the general nature of the business to be transacted at the meeting of the Board.

#### **Notices and Material to be Provided to Adjoining Landowners**

113. Unless the owner advises the Secretary that the owner does not require the notice and/or material to be provided
- (a). the Secretary shall provide to each Adjoining Land-Owner, a copy of the agenda for the annual and any other General Meeting of the Authority; and
  - (b). the Chief Executive Officer (or a person delegated by the Chief Executive Officer) shall provide to each Adjoining Land-Owner:
    - (i) a copy of the results of all sampling analysis referred to in condition M1(d) of Attachment 1 to the permit issued by Sorell Council on 7 September 1999 in relation to the Land as modified by the Resource Management and Planning and Appeal Tribunal on 10 December 1999, not including the records described in condition M1(c), at the time that they are submitted to the EPA Director; and
    - (ii). a copy of the annual volumetric surveys of the Landfill referred to in condition G7 of Attachment 1 to the permit issued by Sorell Council on 7 September 1999 in relation to the Land as modified by the Resource Management and Planning and Appeal Tribunal on 10 December 1999 at the time that they are submitted to the EPA Director; and
    - (iii). a copy of all other information required to be provided to the Adjoining Land-Owner under any Environmental Approval or other relevant permit, licence or notice or for the purpose of complying with an Environmental Approval or any other relevant permit, licence or notice.

#### **Committees of the Authority or of the Board**

114. The Authority may establish such committees as they consider appropriate and determine the requirements for the membership of those committees.
115. The Board may establish such committees as it considers appropriate.
116. A committee may consist of any persons the Authority or the Board considers appropriate.
117. A committee shall conform to any requirements imposed by the Authority or the Board including any reporting or other functions that are required by the Authority or the Board.

118. The meetings and proceedings of committees shall be governed by these Rules as far as applicable and not superseded by any requirements imposed by the Authority or the Board under these Rules.

### **Convening of Meetings**

119. Meetings of the Authority are to be held at the times and places determined by the Authority subject to Rules 139 and 150.
120. Meetings of the Board are to be held at the times and places determined by the Board.

### **Attendance**

121. (a). The Board Chair shall attend meetings of the Authority and shall provide information as required.
- (b). The auditor and the Comptroller are entitled to attend General Meetings of the Authority and be heard on any part of the business of the meeting which relates to their responsibilities.
- (c). The Authority may request the Chief Executive Officer attend any meeting, or any part of a meeting, of the Authority and provide information as requested. The request may be a standing invitation.
122. Any Councillor or General Manager of a Member who is not a Representative or Proxy and any employee of a Member and any Director is entitled to attend the Annual General Meeting of the Authority but is not entitled to vote.
123. A General Meeting of the Authority and a meeting of the Board will not be open to the public.
124. The Chief Executive Officer shall attend meetings of the Board and shall provide information as required.

### **Quorum**

125. There is a quorum at a General Meeting of the Authority if:
- (a). where the total number of Representatives is four or more, a minimum of three Representatives are present in person at the meeting and who collectively are entitled to exercise 50% or more of the votes; or
- (b). where the total number of Representatives is three or fewer, all Representatives are present at the meeting.
126. There is a quorum at a meeting of the Board if:
- (a). where the total number of Directors is four or less, at least two Directors are present at the meeting; or
- (b). where the total number of Directors is five, more than half of the members of the Board are present at the meeting.
127. The only business that may be transacted at a meeting if the requisite quorum is not present is:
- (a). the election of a person to chair the meeting if the Chair or Board Chair, as



appropriate, is absent; and

(b). the adjournment of the meeting.

128. If within 30 minutes after the time specified for a General Meeting of the Authority or for a meeting of the Board a quorum is not present, the meeting is to be adjourned to a date, time and place as determined by the Chair or Board Chair, as appropriate, within 14 days of the adjourned meeting. If, at the adjourned meeting, a quorum is not present within 30 minutes after the time specified for holding the meeting, the meeting is to be dissolved.
129. If a Representative, Proxy or Director is excluded under Rule 88 from being present at a meeting of the Authority or of the Board and taking part in the consideration and decision of the Authority or the Board in relation to a matter, a quorum for the purposes of considering and making a decision in relation to that matter is constituted by the number of Members votes or Directors specified as constituting a quorum less the number of Members votes or Directors so excluded.

### **Chair**

130. (a). Subject to subrule (b), the Chair holds office for a term commencing at one Annual General Meeting and concluding at the Annual General Meeting in the calendar year two years after the appointment unless the Members at a General Meeting earlier remove the Chair by special resolution.
- (b). The Chair may be appointed at any time other than as provided in subrule (a), with the appointment concluding at the second Annual General Meeting after the appointment.
131. The Chair is entitled to chair every General Meeting of the Authority.
132. If the Chair is not present for the meeting, the meeting is to elect a chair for that meeting with authority to conduct the meeting as if they were the Chair.

### **Board Chair**

133. The Board Chair is entitled to chair every meeting of the Board.
134. If the Board Chair is not present for the meeting, the meeting is to elect a chair for that meeting with authority to conduct the meeting as if they were the Board Chair.

### **Conduct of Meetings of the Authority**

135. At least one General Meeting of the Authority is to be held in each quarter of the year.
136. Subject to the provisions of these Rules, the Chair is to determine the general conduct of and procedure at General Meetings of the Authority.
137. If the Chair considers it necessary or desirable for the proper and orderly conduct of the meeting, the Chair may demand the cessation of debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote.
138. The Representatives are to adopt procedures which are considered necessary or desirable for the proper and orderly conduct of meetings including the proper and orderly casting or recording of votes at any General Meeting of the Authority. In the absence of such

procedures the Chair may require the adoption of any procedures which the Chair considers necessary or desirable for the proper and orderly casting or recording of votes at any General Meeting of the Authority.

139. A Representative may participate in a meeting of the Authority by telephone, electronic mail or other electronic means, or any other means of communication provided by the Authority. A Representative who participates by such means shall be taken to have been present at the meeting.
140. The Authority may allow a person who is not a Representative to attend and participate in (but not to vote at) a meeting of the Authority for the purpose of advising or informing it on any matter.

#### **Adjournment of a Meeting of the Authority**

141. The Chair during the course of a General Meeting of the Authority may, with the approval of a majority of the Representatives present, adjourn the meeting to another time or place.
142. The Chair may, with the approval of a majority of the Representatives present, adjourn or defer any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion and may adjourn any business, motion, question, resolution, debate or discussion either to a later time at the same meeting or to an adjourned meeting.
143. No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
144. Any adjourned meeting shall be held within 14 days of the adjourned meeting unless the majority of Representatives present agree otherwise. If the adjournment is for more than 30 days, notice shall be given of the adjourned meeting.

#### **Voting at Meetings of the Authority and of the Board**

145. Each:
  - (a). particular Member by its Representative is entitled to cast the number of votes determined in accordance with Rule 63 on each matter considered at meetings of the Authority;
  - (b). Director is entitled to cast one vote on each matter considered at meetings of the Board.
146. A question arising at a meeting is determined by a Simple Majority of the votes of Representatives or Directors present and able to vote at the meeting unless otherwise specified in the Rules.
147. A tied vote results in the question being determined in the negative.
148. A vote is to be taken in such manner as the Chair or the Board Chair directs.

#### **Declaration of Vote**

149. The Chair or the Board Chair may declare that a resolution has been carried or lost by:
  - (a). a declaration by the Chair or the Board Chair that a resolution has been carried, carried by a specified majority, or lost; and



- (b). an entry to that effect in the Minutes of the meeting,  
which is conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.

### **Resolution in Writing or by Electronic Means**

150. A resolution in writing signed by a Simple Majority of Representatives or Directors entitled to vote on a resolution or a resolution transmitted to the Secretary by electronic mail or other electronic means is taken to have been passed at a duly called and constituted General Meeting of the Authority or meeting of the Board. The resolution is taken to have been determined on the day upon which it is transmitted by the Secretary to the Representatives or Directors.
151. A resolution of the type referred to in Rule 150 may consist of several documents in the same form, each signed by one or more Representatives or Directors provided the resolution is identically worded.
152. If a majority of Representatives or Directors do not agree to the procedure in Rule 150, no resolution can be passed in this manner.

### **Special Resolutions**

153. The Authority shall resolve a matter by special resolution if required by these Rules.
154. A matter may be resolved by special resolution only if:
- (a). it is passed at a General Meeting of the Authority, of which at least 14 days written notice has been given specifying the intention to propose the resolution as a special resolution; and
  - (b). it is passed by a majority of at least 75% of the votes which may be cast at the meeting.

### **Minutes and Papers**

155. The Authority and the Board are to ensure that Minutes of their meetings are duly recorded by the Secretary.
156. The Minutes are to include:
- (a). the names of the Representatives or Directors present at General Meetings or meetings of the Board; and
  - (b). the persons present at any committee meeting.
157. The Minutes are to also include a record of:
- (a). resolutions and proceedings of General Meetings of the Authority and meetings of the Board; and
  - (b). meetings of any committee.
158. The Minutes of any meeting, signed by the chair of the relevant meeting or by the chair of the next succeeding meeting, is evidence of the matters stated in the Minutes.
159. The Minutes of Authority and Board meetings and all papers and reports considered by the Authority and by the Board are to be classified (in whole or in part) by the Secretary as

“Open” or “Commercial-in-Confidence”.

160. Minutes, papers and reports marked “Commercial-in-Confidence” are, unless the Authority or the Board agrees otherwise, to be made available only to Representatives, Proxies and Directors and, through the ‘closed agenda’, to Members.
161. The Secretary will provide:
  - (a). in respect to each Authority meeting:
    - (i). prior to each meeting, a copy of all papers and reports to be considered by the Authority; and
    - (ii). as soon as practicable after each meeting, a copy of the draft Minutes, to:
      - A. Representatives and Proxies;
      - B. Directors;
      - C. General Managers of Members for the information of Councillors and relevant Member employees;
      - D. the auditor;
      - E. the Chief Executive Officer.
  - (b). in respect to each Board meeting:
    - (i). prior to each meeting, a copy of all papers and reports to be considered by the Board; and
    - (ii). as soon as practicable after each meeting, a copy of the draft Minutes, to:
      - A. Directors; and
      - B. the Chief Executive Officer.

#### **Exclusion of Chief Executive Officer and Others from Certain Deliberations**

162. A person under consideration by the Authority for appointment or re-appointment as the Secretary or by the Board for appointment or re-appointment as Chief Executive Officer shall not be present during any deliberation of the Authority or the Board or at the time the Authority or Board makes a decision, in relation to:
  - (a). the appointment or re-appointment; or
  - (b). the determination or application of any terms or conditions on which the Secretary or the Chief Executive Officer holds office; or
  - (c). the approval of the Chief Executive Officer engaging in paid employment outside the duties of the office of Chief Executive Officer; or
  - (d). the termination of the appointment of the Secretary or the Chief Executive Officer.
163. The Board may in its discretion request the Chief Executive Officer to leave the meeting at other times.



## **Validity of Proceedings**

164. An act or proceeding of the Authority or the Board or of any person acting under any direction of the Authority or the Board is not invalid by reason only that at the time the act or proceeding was done, taken or commenced, there was a vacancy in the membership of the Authority or the Board.
165. Any act and proceeding of the Authority or the Board or of any person acting under any direction of the Authority or the Board is valid even if:
  - (a) the appointment of a Representative, Proxy or Director was defective; or
  - (b) any person appointed as a Representative, Proxy or Director was disqualified from acting as, or incapable of being, a Representative, Proxy, Director as applicable.

## **PART 6 - CHIEF EXECUTIVE OFFICER AND OTHER EMPLOYEES**

### **Appointment and Removal of Chief Executive Officer**

166. The Board may appoint a person to be Chief Executive Officer.
167. The Chief Executive Officer is to be appointed by the Board at a duly constituted meeting.
168. The Chief Executive Officer may be an employee of a Member.
169. The office of the Chief Executive Officer is vacated upon the Chief Executive Officer:
  - (a) being convicted on indictment of an offence that concerns the making, or participation in making, of decisions that affect the whole or a substantial part of the business of the Authority, or concerns an act that has the capacity to affect significantly the Authority's financial standing;
  - (b) being convicted of an offence that is punishable by imprisonment for a period greater than 12 months or involves dishonesty and is punishable by imprisonment for at least 3 months;
  - (c) becoming an undischarged bankrupt under the law of Australia, its external territories or another country;
  - (d) executing a personal insolvency agreement under Part X of the *Bankruptcy Act 1966* or a similar law of an external Territory or a foreign country, and the terms of the agreement have not been fully complied with;
  - (e) resigning office by notice in writing to the Board Chair;
  - (f) being prohibited from being a director of a company under the *Corporations Act 2001* (Cth); or
  - (g) being elected as a Councillor of a Council.

### **Remuneration of Chief Executive Officer**

170. The Chief Executive Officer will be paid such remuneration as the Board at a duly constituted meeting from time to time determines.

### **Travel and Other Expenses**

171. The Chief Executive Officer is entitled to be paid from Authority funds all reasonable travel, accommodation and other expenses incurred by the Chief Executive Officer while engaged on the business of the Authority.

### **General Powers and Responsibilities of Chief Executive Officer**

172. The Chief Executive Officer is responsible to the Board for the general administration and management of the Authority's business activities and, in particular, for the determination of the number and types of employees and the terms and conditions of employment, consistent with the approved budget. On behalf of the Board, the Board Chair is the primary contract with the Chief Executive Officer.
173. The Board may delegate to the Chief Executive Officer, with or without conditions, any of the functions and powers that are within the power of the Board or that have been delegated to the Board by the Authority (including any specified power of on- delegation of those functions and powers) and are not by these Rules or by legislation directed or required to be exercised or done by the Authority in General Meeting.
174. The Chief Executive Officer is to exercise, subject to any conditions imposed, all powers and functions delegated by the Board in writing to be performed by the Chief Executive Officer.
175. The Chief Executive Officer may delegate any of his or her functions and powers as authorised by the Board, together with any relevant conditions imposed by the Board, to any person that has been appointed to assist the Board in performing and exercising its functions and powers.
176. The Chief Executive Officer shall ensure that the business and affairs and those functions and powers of the Board that the Board has specified are to be carried out by the Chief Executive Officer are managed and conducted in a manner that is in accordance with the Principal Objectives and Goals set out in Rule 8, with the Business Plan of the Authority, and with sound commercial practice.
177. The Chief Executive Officer shall provide advice information and assistance to the Board concerning its specified functions and powers (including any functions and powers delegated to it by the Authority), including such assistance as the Board may require with preparation of the Business Plan.
178. The Chief Executive Officer is to manage the resources of the Authority, and may be appointed as Comptroller.
179. The Board may require the Chief Executive Officer to attend all meetings of the Board.

### **Particular Responsibilities**

180. The Chief Executive Officer shall undertake the following particular responsibilities to the satisfaction of the Board:
- (a). provide advice to the Board with respect to its functions and powers;
  - (b). coordinate and implement the objectives, policies, programs and decisions of the



- Authority and of the Board;
- (c). prepare or assist in the preparation of strategic, business, marketing and operational plans for the Board;
  - (d). identify, pursue and implement development and commercial opportunities to the betterment of the organisation;
  - (e). manage the day-to-day trading activities of the Authority;
  - (f). prepare or oversee preparation of financial and other reports and maintain records/reports requested by the Board;
  - (g). subject to any relevant policies approved by the Authority or Board, provide public or media statements on matters relating to the organisation;
  - (h). represent the organisation on State or Regional committees regarding waste treatment and management and other matters related to the Authority's trading activities;
  - (i). initiate, develop and promote policies, practices and processes for the effective and efficient allocation and control of resources (human and financial) for the Board's operational activities;
  - (j). undertake risk management, environmental management and community liaison;
  - (k). establish, and review and update where necessary, preventative maintenance programs for all machinery, plant and infrastructure associated with the organisation;
  - (l). provide leadership and management of employees and contractors involved, manage performance, and provide support for employees supervised;
  - (m). implement and monitor the organisation's Health and Safety policies environmental policies, procedures and programs;
  - (n). adhere to all policies and procedures;
  - (o). ensure that environmental management is established and maintained in accordance with relevant legislation, Environmental Approvals, and other permits, licences and notices;
  - (p). review and report on the performance of environmental management, including recommendations for improvement and compliance with relevant legislation, Environmental Approvals, and other permits, licences and notices;
  - (q). in conjunction with the Secretary, provide induction training for newly appointed Representatives, Proxies and Directors;
  - (r). report to the Board on operations and performance against the Business Plan and Strategic Plan in general terms and on specific current initiatives; and
  - (s). perform other duties that are within the limits of his or her skill, competence and training.

## **Strategic and Business Plans**



181. Under the direction of the Board:
- (a). the Chief Executive Officer shall, by 31 May in each year, prepare and annually update a Strategic Plan that sets out the strategic priorities of the Authority for the forthcoming five years for the approval of the Authority by 30 June in each year;
  - (b). the Chief Executive Officer shall, by 31 May in each year, prepare a draft Business Plan for the financial year commencing on the following 1 July for the approval of the Authority by 30 June in each year.
182. The Business Plan shall:
- (a). contain a summary of the projected financial results of the Authority in respect of the current financial year and the financial year covered by the Plan;
  - (b). include a draft budget for the financial year covered by the Plan;
  - (c). include an estimate of any dividend that is likely to be recommended in respect of the current financial year;
  - (d). specify the undertakings and assets that are the main undertakings of the Authority, and include a list of all major current contracts and proposed tenders and major contracts;
  - (e). include an estimate of any financial commitments likely to be required from Participating Councils in the financial year following the year covered by the Plan which is to be supplied to Participating Councils by 28 February of each financial year;
  - (f). be in a form and contain all such information that a reasonable Authority would require to be contained in a Business Plan in respect of a business of similar size and nature; and
  - (g). be consistent with the Principal Objectives and Goals.
183. The Business Plan shall include performance measures, and reflect these measures in reporting the achievement of strategic outcomes and objectives for the year.
184. Intentionally Omitted.
185. If a current, enforceable waste services contract that includes the calculation of gate fees for the next financial year has not been agreed between the Authority and each Member, the Chief Executive Officer shall provide the draft budget to Members before 31 March in each year for information, comment and feedback prior to the preparation of the final Business Plan for submission to the Board.
186. If a draft budget is provided to Members under Rule 185 and comments are subsequently provided from Members, the Chief Executive Officer shall, if necessary, revise the draft Business Plan and shall present the revised Business Plan to the Board for consideration.
187. The Chief Executive Officer shall review the draft Business Plan in accordance with any comments from the Board prior to its submission to the Authority for approval.
188. Once approved by the Board, the Business Plan shall be provided by the Secretary to the Authority at its next meeting for review and approval.

189. A General Meeting of the Authority shall review the Business Plan prepared by the Chief Executive Officer for the succeeding financial year before 30 June in each year.
190. Once approved by the Authority:
  - (a). subject to any commercially sensitive aspects being separated into a separate section and marked 'commercial in confidence', the Business Plan shall be provided to each Member; and
  - (b). the Strategic Plan and the Business Plan shall be submitted to the Annual General Meeting for noting.
191. Intentionally omitted.
192. The Authority's Annual Reports shall be made available to the public on the Authority's website.

### **Quarterly and Other Reports**

#### ***Quarterly Report to Authority***

193. The Chief Executive Officer is to provide the Board with a quarterly report which includes, in relation to the Authority:
  - (a). a report on general performance;
  - (b). a report on financial performance;
  - (c). a statement of statutory, environmental and contractual compliance;
  - (d). a report on performance in meeting the Principal Objectives and Goals;
  - (e). a report on performance under its Business Plan; and
  - (f). a report on any matters specifically identified by the Authority or significant issues arising from delegated functions.
194. Once approved by the Board, the Quarterly Report shall be provided to the Authority at its next meeting for endorsement.
195. Intentionally omitted.
196. Quarterly financial reporting shall include a comparison of actual performance against the budget.
197. The Chief Executive Officer is required to submit to the Board the report referred to in Rule 193 as soon as practicable after the end of March, June, September, and December in each year.
198. Intentionally omitted.

#### ***Contractual Obligations***

199. The Chief Executive Officer shall prepare, maintain and adhere to guidelines and negotiating parameters approved by the Authority or by the Board for the conduct of contract negotiations.
200. Intentionally omitted.

### **Policy Development**

201. In the development of strategic policy, the Authority, through the Secretary, shall provide draft papers for consideration and comment by Members with any comment received being taken into account in the preparation of final proposals for endorsement by the Authority.

### **Employees of the Authority**

202. The Chief Executive Officer may if authorised by the Authority appoint a person or persons to assist the Authority and the Board in performing and exercising their functions and powers.
203. The Chief Executive Officer is to establish and maintain appropriate policies and procedures related to employees of the Authority.

### **Secretary**

204. The Authority is to appoint a person to be Secretary of the Authority, and that person shall also be Secretary of the Board.
205. The Secretary may be the Chief Executive Officer or an employee of a Member.
206. Subject to Rule 207:
- (a). the Chair may appoint a person as Acting Secretary, if the Secretary is absent or otherwise unable to perform the functions of Secretary, for the period the Secretary is absent or unable to perform the functions of Secretary; and
  - (b). the Acting Secretary has the powers and functions of the Secretary for the period of the appointment.
207. If the Secretary is absent or intends to be absent for more than a calendar month the Chair's decision to appoint an Acting Secretary in accordance with Rule 206 is to be ratified at the next meeting of the Authority.

### **Duty to Notify Authority of Adverse Developments and Reports**

208. The Chief Executive Officer shall immediately notify the Board after the Chief Executive Officer becomes aware of any development that may:
- (a). significantly affect the financial viability or operating ability of the Authority; or
  - (b). significantly affect the Authority in an adverse manner.

## **PART 7 - FINANCIAL ARRANGEMENTS, ACCOUNTS & AUDIT**

### **Authorised deposit taking institution accounts**

209. The Board may open and operate any authorised deposit taking institution accounts it considers necessary, provided that:
- (a). those authorised deposit taking institution accounts comply with the requirements in Section 81 of the Act; and
  - (b). the opening of the authorised deposit taking institution account is reported to the next General Meeting of the Authority.



## **Financial Contributions and Revenue**

210. Other than payments for gate fees based on tonnage for waste or refuse disposal at the Site, Members are not required to make any Proportionate Payment to the Authority, unless the Authority on the advice of the Board directs that this is necessary for the operational needs of the Authority.

## **Investment**

211. The Board may invest money in accordance with an investment policy approved by the Authority:
- (a). in any manner in which a trustee is authorised by law to invest trust funds;
  - (b). in any investment the Treasurer approves; or
  - (c). in any other manner or investment that satisfies the provisions of the Act for the investment of money by Councils.

## **Borrowing**

212. The Authority may not raise a new loan in any financial year exceeding any amount the Treasurer determines for that financial year.
213. (a). The Authority shall not raise a loan or obtain any form of financial accommodation unless the proposed loan or financial accommodation is first approved by special resolution.
- (b). The Board may not raise any loan or obtain any form of financial accommodation without the express consent of the Authority.

## **Accounting records**

214. The Board shall keep accounting records in accordance with the *Financial Management and Audit Act 1990* (Tas).
215. The Board shall keep such accounting records that correctly record and explain its transactions and financial position and keep those records in a manner that:
- (a). allows true and fair accounts of the Authority to be prepared from time to time;
  - (b). allows the Authority's accounts to be conveniently and properly audited or reviewed; and
  - (c). complies with Australian Accounting Standards and other mandatory professional reporting requirements.

## **Financial statements**

216. Within 60 days after the end of each financial year the Chief Executive Officer shall prepare the financial statements of the Authority relating to that financial year including:
- (a). an operating statement for the financial year; and
  - (b). a statement of financial position as at the end of the financial year; and
  - (c). a statement of cash flows for the financial year; and
  - (d). statements, reports and notes attached to or intended to be read with the financial statements.

## **Audit**

217. The accounts and financial reports of the Authority are subject to the *Financial Management and Audit Act 1990* (Tas).
218. The accounts and financial reports of the Authority are to be audited in accordance with the *Financial Management and Audit Act 1990* (Tas).

## **PART 8 - DIVIDENDS AND OTHER PAYMENTS**

### **Declaration of Dividend**

219. The Representatives in General Meeting may, on the advice of the Board, declare a dividend in respect of the results of the financial transactions of the Authority during each financial year that is to be distributed to the Members. The Authority may not declare a dividend in excess of the amount recommended by the Board. The dividend is to be paid by the end of each following financial year.
220. The dividend may be paid only out of profits in accordance with the principle of real capital maintenance and after payment of guarantee fees and tax equivalents.

### **Distribution of Dividends**

221. The dividend shall be distributed only to the Members in proportion to their respective shares or interest in the equity of the Authority as set out in the Equity Interest Register.

### **Distribution of Other Payments**

222. Any payments the Authority receives from the Treasurer or the Comptroller are to be distributed in accordance with Rule 223 after deduction therefrom of any amount of such payment to which the Authority is entitled.
223. If any payment referred to in Rule 222 can reasonably be categorized as being referable to the Land, the balance of the payment, after any entitlement due to the Authority, is to be distributed between the Owner Councils in proportion to their respective interests in the Land set out in the Ownership Interest Register. If such payments can reasonably be categorized as being referable to the operations of the Authority, the balance of the payment, after any entitlement due to the Authority, is to be distributed between the Members in the same proportions to their respective shares/interest in equity set out in the Equity Interest Register.

## **PART 9 - MISCELLANEOUS**

### **Immunity from Liability**

224. The Authority shall, to the extent permitted by law, indemnify a person who is, or has been, an officer against any liability incurred by that person in his or her capacity as an officer to a person other than the Authority.
225. To the extent permitted by law, the Authority indemnifies each officer against:



a person other than the Authority unless the liability arises out of conduct on the part of the officer which involves a criminal act, lack of good faith, or a malicious act or omission; and

- (b). any liability for costs and expenses incurred by the officer in his or her capacity as an officer of the Authority:
  - (i). in defending any proceedings in which judgment is given in favour of the person or in which the person is acquitted; or
  - (ii). in connection with an application, in relation to those proceedings, in which a court granted relief to the person,

except where such proceedings or application arises out of or is connected with conduct of the type referred to in Rule 225(a).

226. In Rules 224, 225 and 227 “officer” includes a Representative, a Director, the Chief Executive Officer, the Secretary, the auditor, the Comptroller, and any other person employed by the Authority.

### **Insurance Premiums**

227. The Authority may, on the advice of the Board, pay a premium on a contract insuring a person who is, or has been, an officer against liability other than a liability arising out of the type referred to in Rule 225(a).

### **Notices**

228. Any notice required to be given to a person under these Rules is effectively given and is taken to be received if it is:

- (a). delivered by hand to the person; or
- (b). left at, or sent by post to, the person’s postal or residential address or place of business or employment last known to the giver of the document; or
- (c). sent by way of electronic mail to the person’s electronic mail address last known to the giver of the document.

229. Any notice required to be given to a Member under these Rules is effectively given and taken to be received if it is:

- (a). left at, or sent by post to, the Council Offices of that Member; or
- (b). sent by way of electronic mail to that Member’s electronic mail address.

### **Seal and Execution of Sealed Documents**

- 230. (a). The seal of the Authority is to be in the form of a rubber stamp, inscribed with the name of the Authority and the words “Common Seal”.
- (b). The seal shall remain in the custody of the Secretary.
- (c). The seal of the Authority shall not be affixed to any instrument except by resolution of the Authority.
- (d). Documents that are sealed by the Authority are to be attested by:



- (i). the signatures of one Representative appointed for that purpose by the Authority and of the Secretary; or
  - (ii). if the Secretary is a party to the document to be sealed, two Representatives of the Authority appointed for that purpose by the Authority,
- and that attestation is sufficient for all purposes that the seal was affixed by resolution of the Authority.

### **Amendment of Rules**

231. (a). These Rules may only be amended by a special resolution of Representatives and subsequently by a majority of Members.
- (b). In addition to the requirements in sub-rule (a) the Authority must comply with the requirements of sections 31 and 32 of the Act unless the amendments are:
- (i). of a technical or administrative nature; and
  - (ii). do not significantly alter the purpose or objectives of the Authority; and
  - (iii). do not significantly alter the interaction between the Authority and the public.
232. The Rules shall be subject to a review at least every five years and be updated to reflect contemporary best practice and the requirements of Members.

### **Winding Up**

233. The Authority may be wound up:
- (a). as provided in the Act; or
  - (b). if no provision is made in the Act, where a General Meeting resolves by special resolution that it be wound up.

### **Surplus**

234. On the winding up of the Authority, the person appointed to administer the winding up shall distribute any assets or proceeds between the Members that remain after payment of the expenses of the Authority.
235. The assets to be distributed to Members are to be apportioned according to their share/interest in equity set out in the Equity Interest Register.

### **Insolvency**

236. In the event of the insolvency of the Authority, the Members are responsible for the liabilities of the Authority. The liability of each Member to be calculated using their Independently Verified Annual Share of Municipal Waste disposed of at the Site at the earlier date of:
- (a). the resolution or decision to wind up;
  - (b). the decision, direction or approval of the Minister for the winding up.

### **Liabilities of the Authority**

237. Each Member is responsible for any liabilities of the Authority apportioned according to

their Independently Verified Annual Share of Municipal Waste at the date when the liability was incurred.

### **Rates**

238. The Authority is to pay to the Sorell Council the rates and charges associated with the Land whether or not it leases all of the Land and whether or not all the Land is used as a landfill disposal site.

### **Ownership and Lease of the Copping Refuse Disposal Site**

239. The Owner Councils are to lease to the Authority the Land on the following terms:
- (a). for an initial term of fifty (50) years;
  - (b). at a rental (determined, if necessary, by an independent qualified valuer) representing the fair market rental for the Site; and
  - (c). such other usual terms and conditions as would be usual and appropriate for such a lease.

### **Documentation**

240. All of the Authority's and the Board' electronic and hardcopy documentation ("documentation") shall be adequately secured by appropriate means including appropriate back-up arrangements off site in a location agreed by the Authority and Lease Administrator to ensure the information is safely secured and may be retrieved if for any reason it is not available from other business records. If the parties are not able to agree on a suitable location then, the documentation is to be stored at the Clarence City Council's offices.
241. The Authority grants the Members a licence to copy, reproduce and distribute in whole or in part to any person acting on behalf of the Members any documentation that is provided to the Members by the Authority.

### **Business Name of the Authority**

242. The Authority and the Board are to use a business name for the Authority (the "approved business name"), and shall not use any other name for the Authority other than that name.
243. Until determined otherwise by special resolution of the Authority, the approved business name shall be 'Southern Waste Solutions'.
244. The approved business name is to be used by the Authority and the Board on formal documentation, and in advertising, promotion, sponsorship, marketing of the Authority and related activities.
245. The approved business name is to be registered by the Authority (whether as a business name, domain name, or other registered name) in the name of the Authority or the Members as required by the Lease Administrator.
246. The Authority and the Board shall not sub-license, sub-let, transfer or otherwise enter into any commercial arrangement or understanding with any other person regarding the approved business name, without the prior written approval of the Lease Administrator.

## SCHEDULE 1: PROPORTIONATE PAYMENTS AND SHARES

### Proportionate Payments

- 1 Each Member will on the Authority's request pay their applicable Proportionate Payments calculated in accordance with their Independently Verified Annual Share of Municipal Waste disposed at the Site.

### Interests

At 1 July 2017 the relevant interest of Members are as follows:

#### Equity Interest Register

Member	Share/Interest
Clarence City Council	48%
Sorell Council	24%
Tasman Council	8%
Kingborough Council	20%

#### Ownership Percentage Register

Owner Council	Percentage/Share
Clarence City Council	60%
Sorell Council	30%
Tasman Council	10%

#### Annual Share of Municipal Waste Register

Member	Share/Interest
Clarence City Council	50%
Sorell Council	16%
Tasman Council	5%
Kingborough Council	29%

#### Voting Rights Register

Member	Votes
Clarence City Council	4
Sorell Council	2
Tasman Council	1
Kingborough Council	2



**EXECUTION BY THE SUBSCRIBING COUNCILS**

<p>The Common Seal of the CITY OF CLARENCE was affixed this day of <u>29<sup>th</sup> May</u> 2023 pursuant to a resolution of the Council made the <u>24<sup>th</sup></u> day of <u>April</u> 2023 in the presence of:</p>
<p>The Common Seal of the KINGBOROUGH COUNCIL was affixed this <u>25<sup>th</sup></u> day of <u>May</u> 2023 pursuant to a resolution of the Council made the <u>1<sup>st</sup></u> day of <u>May</u> 2023 in the presence of:</p>
<p>The Common Seal of the SORELL COUNCIL was affixed this <u>25<sup>th</sup></u> day of <u>May</u> 2023 pursuant to a resolution of the Council made the <u>16<sup>th</sup></u> day of <u>MAY</u> 2023 in the presence of:</p>
<p>The Common Seal of the TASMAN COUNCIL was affixed this <u>9<sup>th</sup></u> day of <u>June</u> 2023 pursuant to a resolution of the Council made the <u>26<sup>th</sup></u> day of <u>April</u> 2023 in the presence of:</p>

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**Attachment 4**

[REDACTED]