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# Wollongong City of Innovation Limited

ACN 002 291 590

A Public Company Limited by Guarantee  
(Company)

## Constitution

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# 1 Definitions and Interpretation

## 1.1 Definitions

In this Constitution, unless the context indicates a contrary intention:

**Act** means the *Corporations Act 2001* (Cth);

**AGM** means an annual general meeting of the Company held in accordance with section 250N of the Act;

**ASIC** means the Australian Securities and Investments Commission;

**Auditor** means the auditor for the time being of the Company;

**Bankruptcy Act** means the *Bankruptcy Act 1966* (Cth);

**Board** means the Directors of the Company;

**Business Day** means a day on which banks (as that term is defined in the *Banking Act 1959* (Cth)) are generally open for business in Sydney, Australia;

**Chair** means the person elected as chairperson in accordance with rule 16.1 and includes an acting chair under rule 11.5;

**Code of Conduct** means the policy (if any) adopted by the Board which governs the manner in which each of the Directors are required to conduct themselves in the discharge of their duties;

**Committee** means a committee to which powers have been delegated by the Board pursuant to rule 18.7;

**Company** means Wollongong City of Innovation Limited ACN 002 291 590;

**Constitution** means this constitution and any supplementary, substituted or amended Constitution for the time being in force;

**Council Appointed Director** means a Director appointed in accordance with rule 14.5(a)(1);

**Council Appointed Officer Director** means a Director appointed in accordance with rule 14.5(a)(2);

**Deputy Chair** means the person elected as deputy chairperson in accordance with rule 16.1;

**Director** means the directors of the Company from time to time appointed in accordance with rule 14;

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**General Meeting** means a general meeting under rule 10 and includes the AGM under rule 13.1;

**Guarantee** means the maximum amount each Member agrees to pay the Company in accordance with rule 4;

**Member** means any person who becomes a member in accordance with the Act and this Constitution;

**Member Director** means any Director elected by the Members at a General Meeting;

**Members present** means Members present at a General Meeting of the Company in person or, if applicable, by duly appointed corporate representative, proxy or attorney;

**Office** means the registered office from time to time of the Company;

**Officer** means an officer of the Company within the meaning of section 9 of the Act;

**Register** means the register of Members of the Company to be kept pursuant to the Act;

**Registered Address** means the address of a Member specified in the Register or any other address of which the Member notifies the Company as a place at which the Member will accept service of notices;

**Replaceable Rules** means all or any of the replaceable rules contained in the Act from time to time and includes any replaceable rule that was or may become, a provision of the Act;

**Seal** means the common seal, if any, from time to time of the Company;

**Secretary** means a person appointed as secretary of the Company and includes any person appointed to perform the duties of secretary;

**Securities** includes shares, rights to shares, options to acquire shares and other securities with rights of conversion to equity; and

**Voting Member** is a Member who under this Constitution is entitled to vote at any General Meeting, and in respect of which, neither any annual subscription remains unpaid under rule 12.1 (c) or other membership fees remain unpaid

## 1.2 Interpretation

In this Constitution, unless the context indicates a contrary intention: (documents) a reference to this constitution or another document includes any document which varies, supplements, replaces, assigns or novates this Constitution or that other document.

**(references)** a reference to the background, a party, rule, clause, paragraph, schedule or annexure is a reference to the background, a party, rule, clause, paragraph, schedule or annexure to or of this Constitution.

**(headings)** rule headings and the table of contents are inserted for convenience only and must not be used when interpreting this Constitution.

**(requirements)** a requirement to do anything includes a requirement to cause that thing to be done, and a requirement not to do anything includes a requirement to prevent that thing being done.

**(including)** **including** and **includes** are not words of limitation.

**(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning.

**(singular)** the singular includes the plural and vice-versa.

**(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it.

**(writing)** a reference to a notice, consent, request, approval or other communication under these rules or an agreement between the parties means a written notice, request, consent, approval or agreement.

**(Australian currency)** a reference to **dollars** or **\$** is a reference to Australian currency.

**(month)** a reference to a month is a reference to a calendar month.

**(year)** a reference to a year is a reference to twelve consecutive calendar months.

## **2 General**

### **2.1 Name of Company**

The name of the Company is Wollongong City of Innovation Limited.

### **2.2 Replaceable rules**

This Constitution takes the place of the Replaceable Rules contained in the Act.

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### **3 The Company**

#### **3.1 Public Company limited by Guarantee**

The Company is a public company limited by guarantee.

#### **3.2 Restriction on shares**

The Company does not have the power to issue or allot shares of any kind.

#### **3.3 Non-profit**

- (a) The income, property, profits and financial surplus of the Company, whenever derived, must be applied solely towards the promotion of the objects of the Company as set out in this Constitution.
- (b) The Company is a non-profit organisation and must not carry on business for the purpose of profit or gain to its Members.
- (c) No portion of the Company's income, property, profits and financial surplus may be paid, distributed to or transferred, directly, indirectly, by way of dividend, property, bonus or otherwise by way of profit, to the Members, or the Directors, or their relatives, except as provided by this Constitution.
- (d) Nothing in this Constitution prevents:
  - (1) the payment, in good faith, of reasonable and proper remuneration to any officer or employee of the Company, or to any Member or the Board of the Company, in return for any services actually rendered to the Company or for goods supplied in the ordinary and usual course of business;
  - (2) the payment of interest at a rate not exceeding interest at the relevant rate for the time being charged by the Company's bankers for overdrawn accounts on money borrowed from a Member; or
  - (3) payment of reasonable and proper rent for premises demised or let by any Member to the Company.

#### **3.4 No distribution of profits to Members on winding up**

- (a) If the Company is wound up or dissolved, the assets and property available for distribution after satisfaction of all debts and liabilities are to be given or transferred to some other institution or institutions:
  - (1) having objects similar to the objects of the Company; and
  - (2) whose constitution prohibits the distribution of its income and property to an extent at least as great as that imposed by this Constitution.



- (b) The Directors may determine the identity of the institution or institutions for the purpose of rule 3.4(a) at the time of dissolution.

If the Directors fail to determine the identity of the institution or institutions under rule 3.4(b), the Supreme Court of New South Wales may make that determination.

#### **4 Guarantee of Members**

In the event that the Company is wound up, each Member undertakes to contribute a maximum of \$10.00 to the Company for payment of:

- (a) the debts and liabilities of the Company;
- (b) the costs, charges and expenses of any winding up; and
- (c) the adjustment of the rights of Members among themselves,

while the Member is a Member or within one year after the Member ceases to be a Member.

#### **5 Scope of Company's Powers**

Provided that its capacities and powers are exercised directly or indirectly in the furtherance of its purpose set out in rule 6, the Company has the legal capacity and powers of an individual and all the powers of a company limited by guarantee under the Act.

#### **6 Purpose of the Company**

The purpose of the Company is to contribute to the sustainable growth of a diverse and vibrant economy, including through:

- a) growing the Wollongong and the region's visitor economy;
- b) promoting and marketing Wollongong and the Illawarra region;
- c) supporting the attraction of new investment and business into Wollongong and the Illawarra region.

#### **7 Membership**

##### **7.1 Number of Members**

- (a) There must be at least one Member.
- (b) The Directors may set a limit on the maximum number of Members.

##### **7.2 Admission to membership**

- (a) The Board may from time to time in its absolute discretion admit to membership of the Company any person provided that, in the case of an individual, that person is more than 18 years of age.

- (b) The Board may in its absolute discretion admit or reject any applicant for membership. If the applicant is not admitted to membership in due course, all monies paid by that applicant to the Company must be returned in full.
- (c) The Board may fix the entrance fee (if any) and the subscription payable by an applicant for membership. The Board may not deal with any application for membership unless the entrance fee and subscription payable in respect of the application has been received by the Company.

### **7.3 Classes of Members**

The Directors may:

- (a) establish different classes of Members with such rights as prescribed to the class; and
- (b) prescribe the qualifications, rights and privileges of persons to become a Member of a class.

### **7.4 Address of Member**

- (a) Each Member is required to provide to the Secretary details of an address in Australia where the Company can send notices.
- (b) If a Member fails to provide an address in accordance with rule 7.4(a), the address of the Member is deemed to be the registered office of the Company.

### **7.5 Cessation of membership**

A Member ceases to be a Member if they:

- (a) die;
- (b) resign in writing;
- (c) become of unsound mind or become liable to be dealt with in any way under the law relating to mental health;
- (d) are convicted of an indictable offence; or
- (e) if they are a company, have a receiver or a receiver and manager appointed to its assets or some of them or passes a resolution or takes or has taken against it any action having the effect of its winding up.

### **7.6 Non-payment of Subscription**

If any subscription or other membership fee of a Member remains unpaid, the Member will be debarred from all privileges of membership. The Directors may, if they think fit, reinstate the Member on payment of all arrears.

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**7.7 Effect of cessation**

A Member who ceases to be a Member continues to be liable for:

- (a) any subscription and all arrears due and unpaid at the date of cessation;
- (b) all other moneys due by them to the Company; and
- (c) the Guarantee.

**7.8 Power of Directors in respect of a Member's conduct**

(a) If any Member:

- (1) wilfully refuses or neglects to comply with the provisions of this Constitution; or
- (2) is guilty of any conduct which, in the opinion of the Directors, is unbecoming of a Member or prejudicial to the interests of the Company,

the Board has the power to censure, fine, suspend or expel the Member from the Company pursuant to a Board resolution.

(b) At least one week before the meeting of the Board at which a resolution under rule 7.8(a) is passed, the Company must provide the Member with:

- (1) notice of the meeting;
- (2) any allegations against them;
- (3) the intended resolution; and
- (4) advice that the Member may, at the meeting and before the passing of the resolution, have an opportunity to give, orally or in writing, any explanation of defence they think fit.

(c) Any Member referred to in rule 7.8(a) may, by notice in writing lodged with the Secretary at least 24 hours before the time for holding the meeting at which the resolution is to be considered by the Directors, elect to have the question dealt with by the Company in General Meeting.

(d) If an election is made under rule 7.8(c):

- (1) a general meeting must be convened and the resolution considered; and
- (2) if the resolution is passed by a majority of two-thirds of those present and voting (such vote to be taken by ballot), the Member concerned will be dealt with accordingly.

## **8 Rights and Obligations of Members**

### **8.1 Amount of fees and subscriptions payable**

Entrance fees, annual subscription fees for the various classes of membership and categories of ordinary membership, sponsorship payments and other periodical payments from Members or supporters of the Company will be in such amounts and due at such times as the Board determines.

### **8.2 Variation of rights of Members**

- (a) Whilst membership is divided into different classes, the rights attached to any specific membership class (unless otherwise provided by the terms of application for membership of that class) may, whether or not the Company is being wound up, be varied only by resolution of the relevant membership class.
- (b) For the avoidance of doubt, ordinary Members of the Company (of whatever category of ordinary membership) constitute the same class of Members for the purposes of this Constitution.

## **9 Financial Records**

### **9.1 Keeping of Accounting and financial records**

- (a) Accounting and other financial and business records must record and explain the transactions and financial position of the Company, to enable true and fair profit and loss accounts and balance sheets to be prepared and to permit preparation of any other documents required by the Act or this Constitution.
- (b) The financial records must be kept:
  - (1) in such manner as to enable them to be conveniently and properly audited;
  - (2) for seven years after the completion of the transactions or operations to which they relate; and
  - (3) at the Company's registered office or at such other place as the Director's think fit.
- (c) The financial records must at all times be open to inspection by the Directors.

### **9.2 Financial year and financial reports**

- (a) The financial year of the Company commences on the first day of July and ends on the 30th day of June in the following calendar year.

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- (b) Each financial year, the Company must prepare a financial report and a director's report in accordance with the Act.
  - (c) The financial report for each financial year must consist of:
    - (1) the financial statements for the year;
    - (2) the notes to the financial statements; and
    - (3) the directors' declaration about the financial statements and the notes.
  - (d) The financial statements for the year will consist of:
    - (1) a profit and loss statement for the previous financial year of the Company;
    - (2) a balance sheet at the date to which the profit and loss account is made up;
    - (3) a statement of cash flows for the year; and
    - (4) if required by applicable accounting standards, a consolidated profit and loss statement, balance sheet and statement of cash flows.
  - (e) The notes to the financial statements will consist of:
    - (1) disclosures required by the Act and any applicable regulations;
    - (2) the notes required by applicable accounting standards (if any); and
    - (3) if required, any other information necessary to give a true and fair view of the financial position and performance of the Company.
  - (f) The Board's declaration made pursuant to rule 9.2(c) (3) is a declaration by the Board:
    - (1) that the financial statements, and the notes required by applicable accounting standards comply with those accounting standards;
    - (2) that the financial statements and the attached notes give a true and fair view of the financial position and performance of the Company;
    - (3) whether, in the Boards' opinion, there are reasonable grounds to believe that the Company will be able to pay its debts as and when they become due and payable; and

- (4) whether, in the Boards' opinion, the financial statements and attached notes are in accordance with the Act.

### **9.3 Keeping of financial records**

- (a) Proper books and financial records must be kept and maintained correctly reflecting the financial affairs of the Company. The Company must ensure the relevant accounting and auditing requirements of the Act are duly complied with.
- (b) The Board must distribute to all Members at the end of each financial year, copies of the financial report including a copy of the auditor's report and any other documentation required under the Act.

### **9.4 Banking of monies**

All the monies of the Company are to be banked in the name of the Company in a bank account at such APRA regulated financial institution as the Board may from time to time direct.

### **9.4 Appointment of Auditor**

The Company must appoint and retain a properly qualified Auditor to audit the Company's financial statements whose duties are determined in accordance with the Act.

### **9.6 Inspection of financial records of the Company**

- (a) The Board may at its sole discretion determine whether and to what extent, and at what time and place and under what conditions the financial records and other documents of the Company or any of them will be open to the inspection of Members other than Directors.
- (b) No Member other than Directors has the right to inspect any document of the Company except as provided by the Act (or other applicable laws) or as authorised by the Board.

## **10 General Meetings**

### **10.1 Calling of General Meetings by Directors**

Any three (3) Directors may, at any time, call a General Meeting.

### **10.2 Calling of General Meetings by Members**

Members with at least 5% of the votes that may be cast at a General Meeting of the Company may call and arrange to hold a General Meeting in accordance with section 249F of the Act.

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**10.3 Calling of General Meetings by Directors when requested by Members**

The Directors must call and arrange to hold a General Meeting in accordance with section 249D (1) of the Act, on the request of Members with at least 5% of the votes that may be cast at a General Meeting.

**10.4 Failure of Directors to call a General Meeting**

Members with more than 50% of the votes of all Members who make a request under section 249D of the Act, may call and arrange to hold a General Meeting where the Directors do not do so within 21 days after the request is given to the Company (in accordance with section 249E of the Act).

**10.5 Calling of General Meetings by the Court**

The Court may order a General Meeting to be called in accordance with section 249G of the Act if it is impracticable to call the meeting in any other way.

**10.6 Amount of notice of General Meetings**

- (a) Subject to the Act, at least 21 days' notice must be given of a General Meeting.
- (b) Subject to rule 10.6(c), the Company may call on shorter notice:
  - (1) an AGM, if all of the Members entitled to attend and vote at the AGM agree beforehand; and
  - (2) any other General Meeting, if Members with at least 95% of the votes that may be cast at the meeting agree beforehand.

**10.7 Notice of General Meetings**

- (a) Written notice of the General Meeting must be given individually to each Member entitled to vote at the meeting and to each Director.
- (b) The Company may give the notice of meeting to a Member:
  - (1) personally;
  - (2) by sending it by post to the address of the Member in the register of Members or the alternative address (if any) nominated by the Member;
  - (3) by sending it to the fax number or electronic address (if any) nominated by the Member; or
  - (4) by any other means authorised by the Act.

- (d) a notice of meeting sent by post is taken to be given three days after it is posted. A notice of meeting sent by fax or other electronic means is taken to be given on the Business Day after it is sent.

#### **10.8 Auditor entitled to notice and other communication**

The Company must give its Auditor:

- (a) notice of General Meeting in the same way that a Member is entitled to receive notice; and
- (b) any other communication relating to the General Meeting that a Member is entitled to receive.

#### **10.9 Contents of notice of General Meeting**

The notice of General Meeting must conform with the requirements of section 249L of the Act.

#### **10.10 Notice of adjourned General Meeting**

When a General Meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for one month or more.

#### **10.11 Members' rights to put resolutions at a General Meeting**

- (a) The Members may propose a resolution to be moved at a General Meeting only in accordance with the provisions of Division 4 of Part 2G.2 of the Act.
- (b) Only a Voting Member may seek to place an item of business or resolution (**Matter**) before a General Meeting. Any Voting Member who wishes to place a Matter before a General Meeting, must, at least 35 days before the next General Meeting, give the Board written notice of the Matter. The Board may determine in its absolute discretion whether to include the Matter as part of the business of the General Meeting.

#### **10.12 Time and place for General Meetings**

A General Meeting must be held at a reasonable time and place determined by the Board.

#### **10.13 Technology**

The Company may hold a General Meeting at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.



## **11 Proceedings of General Meetings**

### **11.1 Business of General Meetings**

- (a) The Chair of a General Meeting may refuse admission to, or require to leave and remain out of, the meeting any person:
  - (1) in possession of any image or sound-recording or sound- recording device;
  - (2) in possession of an object considered by the Chair to be dangerous, offensive or liable to cause disruption;
  - (3) who refuses to produce or to permit examination of any object, or the contents of any object or container, in the person's possession;
  - (4) who behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
  - (5) who is not:
    - (A) a Member or a proxy, attorney or, if applicable, a corporate representative of a Member;
    - (B) a Director; or
    - (C) the auditor of the Company.
- (b) Except with the approval of the Board, with the permission of the Chair or pursuant to the Act, no person may move at any General Meeting either:
  - (1) in regard to any special business of which notice has not been given under rule 10.7, any resolution or any amendment of a resolution; or
  - (2) any other resolution which does not constitute part of special business of which notice has been given under rule 10.7.
- (c) The auditors and their representative are entitled to attend and be heard on any part of the business of a General Meeting concerning an audit in their capacity as auditor. The auditors or their representative, if present at the meeting, may be questioned by the Members, as a whole, about the audit.

## **11.2 Quorum**

- (a) A quorum for a General Meeting is constituted by at least 10 Members (in person, by proxy or by representative) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one member).
- (b) No business may be transacted at any General Meeting, except the election of a Chair and the adjournment of the General Meeting, if a quorum is not present.

## **11.3 Adjournment in absence of quorum**

- (a) A General Meeting that does not have a quorum present within 30 minutes after the time for the meeting set out in the notice of meeting is to be adjourned to a date, time and place as the Directors specify.
- (b) If the Directors do not specify one or more of those requirements, the General Meeting is to be adjourned to:
  - (1) if the date is not specified, same day of the week;
  - (2) if the time is not specified, the same time; or
  - (3) if the place is not specified, the same place.
- (c) If no quorum is present at the resumed meeting within 30 minutes after the time for the General Meeting, the meeting is dissolved.

## **11.4 Chairing meetings of Members**

- (a) The Chair of the Board is entitled to take the chair at every General Meeting.
- (b) If at any General Meeting:
  - (1) the Chair of the Board is not present at the specified time for holding the meeting; or
  - (2) the Chair of the Board is present but is unwilling to act as Chair of the meeting, the Deputy Chair of the Board is entitled to take the chair at the meeting.
- (c) If at any General Meeting:
  - (1) there is no Chair of the Board or Deputy Chair of the Board;

- (2) the Chair of the Board and Deputy Chair of the Board are not present at the specified time for holding the meeting; or
- (3) the Chair of the Board and the Deputy Chair of the Board are present but each is unwilling to act as Chair of the meeting,

The Directors present may choose another Director as Chair of the meeting and if no Director is present or if each of the Directors present are unwilling to act as Chair of the meeting, a Member chosen by the Members present is entitled to take the chair at the meeting.

### **11.5 Acting Chair**

If during any General Meeting the Chair acting pursuant to rule 11.4 is unwilling to act as chair for any part of the proceedings, the Chair may withdraw as chair during the relevant part of the proceedings and may nominate any person:

- (a) who immediately before the General Meeting was a Director or
- (b) who has been nominated for election as a Director at the meeting to be acting chair of the meeting during the relevant part of the proceedings. On conclusion the acting chair is to withdraw and the Chair is to resume as chair of the meeting.

### **11.6 General conduct of General Meeting**

- (a) Subject to the requirements of the Act, the general conduct of each General Meeting of the Company and the procedures to be adopted at the meeting are determined by the Chair.
- (b) The Chair may as considered necessary for the proper conduct of the meeting 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 of the Members present.
- (c) The Chair may require the adoption of any procedure that, in the Chair's opinion, is necessary or desirable for the proper and orderly casting or recording of votes at any General Meeting of the Company, whether on a show of hands or on a poll.

### **11.7 Adjournment**

- (a) Subject to the provisions of rule 11.7(d), the Chair may at any time during the course of the General Meeting adjourn any business, motion, question, resolution, debate or discussion either to a later time at the same meeting or to an adjourned meeting.

- (b) Subject to the provisions of rule 11.7(d), if the Chair exercises a right of adjournment of a meeting pursuant to rule 11.7(a), the Chair has the discretion to decide whether to seek the approval of the Members present to the adjournment. Unless the Chair exercises that discretion, no votes regarding the adjournment can be taken by the Members present.
- (c) No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (d) The Chair must adjourn the meeting if the Members present with a majority of votes at the meeting agree or direct that the Chair must do so.

### **11.8 Voting**

- (a) Subject to any rights or restrictions attached to any class of Member, at a General Meeting:
  - (1) on a show of hands each Voting Member has one vote; and
  - (2) on a poll, each Voting Member has one vote.
- (b) A challenge to a right to vote at a General Meeting:
  - (1) may only be made at the meeting; and
  - (2) must be determined by the Chair whose decision is final.
- (c) Each question submitted to a General Meeting is to be decided in the first instance by a show of hands of the Voting Members present and entitled to vote. Subject to paragraph (b) of this rule, in the case of equal votes, the Chair has, both on a show of hands and at a poll, a casting vote in addition to the vote or votes to which the Chair may be entitled as:
  - (1) a Voting Member;
  - (2) a proxy;
  - (3) an attorney; or
  - (4) if applicable, a duly appointed corporate representative of a Voting Member.
- (d) On a show of hands, where the Chair has 2 or more appointments that specify different ways to vote on a resolution, the Chair cannot vote but has a casting vote in the case of an equality of votes cast by Voting Members.

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**11.9 Declaration of vote on a show of hands; when poll demanded**

- (a) At any meeting, unless a poll is demanded, a declaration by the Chair that a resolution has been passed or lost, having regard to the majority required, and an entry to that effect in the minute book signed by the Chair for that or the next succeeding meeting, is conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (b) A poll may be demanded:
  - (1) before a vote is taken;
  - (2) before the voting results on a show of hands are declared; or
  - (3) immediately after the voting results on a show of hands are declared.
- (c) A poll may be demanded by:
  - (1) the Chair;
  - (2) at least 2 Voting Members present entitled to vote on the resolution.
- (d) No poll may be demanded on the election of a Chair of a meeting or the adjournment of a meeting.

**11.10 Taking a poll**

If a poll is demanded as provided in rule 11.9(b), it is to be taken in the manner and at the time and place as the Chair directs, and the result of the poll is deemed to be the resolution of the meeting at which the poll was demanded. The demand for a poll may be withdrawn. In the case of any dispute as to the admission or rejection of a vote, the Chair's determination in respect of the dispute made in good faith is final.

**11.11 Continuation of business**

A demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded. A poll demanded on any question of adjournment is to be taken at the meeting immediately and without adjournment.

**11.12 Special meetings**

All the provisions of these rules as to General Meetings apply to any special meeting of any class of Members that may be held pursuant to the operation of this Constitution or the Act.

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## **12 Votes of Members**

### **12.1 Voting rights**

- (a) The entitlement of Members to vote on a show of hands and on a poll is as follows:
  - (1) every ordinary Member has the right to one vote;
  - (2) the voting rights of other classes of Members is as determined by the Board.
- (b) In the case of a Member who is of unsound mind or whose personal affairs or estate are to be dealt with under the mental health laws, the trustee or person managing the Member's affairs or estate may exercise any of the Member's rights at a General Meeting as if the trustee or person managing were the Member.
- (c) A Member whose annual subscription is more than one month in arrears or paid in accordance with a schedule approved by the Board, at the date of the General Meeting, is not entitled to vote at that meeting.
- (d) Subject to rule 12.1(e), where a person is entitled to vote in more than one capacity, that person is entitled only to one vote on a show of hands; and
- (e) If the person appointed as proxy has 2 or more appointments that specify different ways to vote on the resolution, the proxy must not vote on a show of hands.

### **12.2 Appointment of proxies**

- (a) Any Voting Member entitled to attend and cast a vote at a General Meeting may appoint a proxy or, if the Voting Member is a body corporate, a representative, to attend and cast a vote at that meeting.
- (b) A proxy must be a Voting Member of the Company who is entitled in their own right to vote at a General Meeting of the Company.
- (c) A proxy or representative appointed under this rule 12.2 must be appointed in the manner set out in, and has the rights set out in, Division 6 of Part 2G.2 of the Act.

### **12.3 Validity of vote**

A proxy is not revoked by the principal attending and taking part in the meeting, unless the principal actually votes at the meeting on the resolution for which the proxy is proposed to be used.

## **12.4 Form and execution of instrument of proxy**

- (a) Unless the Company otherwise determines, an instrument appointing a proxy is required to be in writing signed by the appointor or the attorney of the appointor or, if the appointor is a corporation, under its common Seal or signed by a duly authorised officer.
- (b) The instrument of proxy is deemed to include the right to demand or join in demanding a poll and (except to the extent to which the proxy is specifically directed to vote for or against any proposal) the power to act generally at the meeting for the person giving the proxy.
- (c) An instrument appointing a proxy, unless the contrary is stated, is valid for any adjournment of the meeting, as well as for the meeting to which it relates. Any signed proxy that is incomplete may be completed by the Secretary on authority from the Board and as permitted by the Act. The Board may authorise completion of the proxy by the insertion of the Director's name as the person in whose favour the proxy is given provided that the Director is also entitled to vote at the General Meeting as required by rule 12.2(b).
- (d) No instrument appointing a proxy is, except as provided in this rule, valid after the expiration of 12 months after the date of its execution. Any Member may deposit at the Office an instrument duly stamped (if necessary) appointing a proxy and the appointment is valid for all or any stipulated meetings of the Company until revocation.

## **12.5 Attorneys of members**

Any Member may, by duly executed power of attorney, appoint an attorney to act on the Member's behalf at all or certain specified meetings of the Company. Before the attorney is entitled to act under the power of attorney, the power of attorney or proof of the power of attorney to the satisfaction of the Board must be produced for inspection at the Office or any other place the Board may determine from time to time together, in each case, with evidence of the due execution of the power of attorney as required by the Board. The attorney may be authorised to appoint a proxy for the Member granting the power of attorney.

## **13 Annual General Meetings**

### **13.1 Holding of AGM**

- (a) The Company must hold an AGM within 18 months after its registration.
- (b) The Company must hold an AGM at least once in each calendar year and within five months after the end of its financial year.

- (c) An AGM is to be held in addition to any other meetings held by the Company in a year.
- (d) If the Company only has one Member, it is not required to hold an AGM.

### **13.2 Extension of time for AGM**

The Company may lodge an application with ASIC to extend the period within which it is required to hold the AGM in accordance with section 250P of the Act.

### **13.3 Consideration of Reports at AGM**

The Directors must lay before an AGM:

- (a) the financial report;
- (b) the Directors' report; and
- (c) the Auditor's report,

For the last financial year that ended before the AGM completed in accordance with the requirements of Part 2M.3 of Chapter 2M of the Act.

### **13.4 Business of the AGM**

The business of the AGM may include any of the following, even if not referred to in the notice of meeting:

- (a) the consideration of the annual financial report, Boards' report and Auditor's report;
- (b) the election of Directors;
- (c) the appointment of the Auditor; and
- (d) the fixing of the Auditor's remuneration.

### **13.5 Questions by Members of the Company**

The Chair of the AGM must allow a reasonable opportunity for the Members as a whole at the meeting to ask questions about or make comments on the management of the Company.

### **13.6 Questions by Members of Auditors**

If the Auditor or their representative is at the AGM, the Chair must allow a reasonable opportunity for the Members as a whole at the meeting to ask the Auditor or their representative questions relevant to the conduct of the audit and the preparation and content of the Auditor's report.



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**13.7 Auditor's right to be heard at meetings of Members**

- (a) The Auditor is entitled to attend and be heard at General Meetings.
- (b) The Auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the Auditor in their capacity as Auditor.
- (c) The Auditor is entitled to be heard even if:
  - (1) the Auditor retires at the meetings; or
  - (2) the meeting passes a resolution to remove the Auditor from office.
- (d) The Auditor may authorise a person in writing as their representative for the purpose of attending and speaking at any General Meeting.

**14 The Board****14.1 Number of Directors**

The Company must have at least 5 Directors and not more than 9 Directors.

**14.2 Composition of the Board**

Until determined otherwise by the Company, the Board consists of:

- (a) three Council Appointed Directors;
- (b) two Council Appointed Officer Directors; and
- (c) four Member Directors.

**14.3 Qualification of Directors**

To be eligible for the office of a Director, a person must consent in writing to act as Director and:

- (a) be appointed as a Council Appointed Director in accordance with rule 14.5 (a)(1);
- (b) be appointed as a Council Appointed Director in accordance with rule 14.5 (a)(2);
- (c) be elected as a Member Director in accordance with rule 14.4

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**14.4 Election and Appointment of Member Directors**

- (a) Apart from the Directors appointed under rule 14.5, the Members may appoint up to 4 Member Directors to the Board by ordinary resolution passed at General Meeting from persons nominated in accordance with rule 14.4(b).
- (b) The Board will nominate persons for appointment to the Board having regard to the nominee's specific skills in commerce, finance, governance, marketing, tourism or business generally or such other skills as determined by the Board, subject to the person also satisfying the criteria for a Director set out in rule 14.7.

**14.5 Council Appointed Directors and Council Appointed Officer Directors**

- (a) Wollongong City Council may appoint:
  - (1) 3 Council Appointed Directors, who must be persons independent of Wollongong City Council (not Councillors or Officers) and who have demonstrated an interest and capacity to act in the general interests of the Wollongong community; and
  - (2) 2 Council Appointed Officer Directors, one of whom must be an employee of Wollongong City Council and one whom must be a Wollongong City Councillor.
- (b) A Council Appointed Director or Council Appointed Officer Director is not required to retire and seek re-election at any General Meeting of the Company.
- (c) A Council Appointed Director or Council Appointed Officer Director holds office until their nomination is withdrawn from Wollongong City Council and another person nominated in their place.

**14.6 Obligations and Duties of Directors**

Each Director (including the Chair and Deputy Chair) is subject to, and must comply with, the requirements, obligations and duties imposed on directors under the Act, this Constitution, the Company's Code of Conduct or Board Charter (if adopted, and as amended) and at common law.

**14.7 Qualification for membership of the Board**

- (a) A Director elected in accordance with rule 14.4 must be a Voting Member of the Company or an employee, shareholder, director of a Voting Member.
- (b) All Directors are required to be natural persons.
- (c) The Auditor is ineligible to be elected or appointed as a Director.

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**14.8 Casual vacancies**

- (a) The Board has the power at any time and from time to time to appoint a person who satisfies the criteria under rule 14.7 as a Director to fill a casual vacancy among the Board. However, the total number of Directors may not at any time exceed the number fixed in accordance with this Constitution.
- (b) Any person appointed under this rule 14.8 holds office until:
  - (1) in the case of a person filling a Council Appointed Director or Council Appointed Officer Director vacancy, until a person is appointed in accordance with rule 14.5; or
  - (2) in any other case, until the next General Meeting when an election will be held to fill the vacancy. However, such person is not to be taken into account in determining the number of Directors who are to retire by rotation at the meeting. Any person appointed under this rule 14.8 is eligible for election at that General Meeting.

**14.9 Term of Appointment**

- (a) At each AGM, Member Directors elected to fill a casual vacancy and one quarter of the remaining Directors (other than Directors appointed under rule 14.5) must retire. A person seeking re-election after serving on the Board as a Casual vacancy will be elected for a term that expires when the person who they replaced was due to retire.
- (b) The Directors who must retire at each AGM under rule 14.9(a) will be the Directors who have been longest in office since last being elected. Where Directors were elected on the same day, the Director(s) to retire will be decided by lot unless they agree otherwise.
- (c) Other than a Director appointed under rule 14.5(a)(2), a Member Director's term of office starts at the General Meeting at which they are elected and ends at the end of the AGM at which they retire.
- (d) Other than a Director appointed under rule 14.5, each Member Director must retire at least once every four years.
- (e) A Director who retires under rule 14.9(d) may nominate for election or re-election, subject to rule 14.9(f).
- (f) Other than a Director appointed under rule 14.5, A Director who has held office for a continuous period of 8 years may only be re-appointed or re-elected by special resolution of the members.

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**14.10 Remuneration of Directors**

- (a) The Directors may be paid all travelling, accommodation, and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committee of the Directors or General Meetings or otherwise in the execution of their duties as Directors.
- (b) Subject to rule 14.10(c), the Directors, with the exception of those appointed under 14.2(b) may be entitled to remuneration by virtue of their position as Directors.
- (c) A Director who, with the unanimous approval of the Board, other than the Director or Directors affected, is called upon to perform extra services or to make a special exertion or to undertake executive or other work for the Company beyond or outside the Director's ordinary duties or is engaged to provide any other service, may be paid a fee for those services, exertions or work. Such transactions must be reported in the Annual Report as related party transactions.

**15 Resignation and Removal****15.1 Resignation**

- (a) Any Director may resign from membership of the Board by notice in writing delivered to the Secretary.
- (b) Resignation takes effect at the time when such notice is received by the Secretary unless some later date is specified in the notice as the effective date.

**15.2 Removal by Members**

- (a) A Director appointed under rule 14.5 may be removed from office by ordinary resolution of the Members at a General Meeting of the Company convened for that purpose. At any such General Meeting the Director must be given the opportunity to fully present their case as to why they should not be removed either orally or in writing or partly by either or both of these means.
- (b) A Director who ceases to be a Director under rule 15.2(a) of this rule retains office until the dissolution or adjournment of the General Meeting at which the member is removed.

**15.3 Removal by Wollongong City Council**

- (a) A Council Appointed Director or Council Appointed Officer Director may only be removed from office by written notice from Wollongong City Council, and are not subject to removal by ordinary resolution of Members under rule 15.2.

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## **15.4 Disqualification**

- (a) In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Act, the office becomes vacant if that member:
  - (1) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
  - (2) becomes bankrupt under the Bankruptcy Act;
  - (3) dies; or
  - (4) fails to attend 3 consecutive meetings of the Board without the prior approval of the Board.
  - (5) fails to satisfy the criteria under the constitution for a Director for more than 30 days.
- (b) A Director who vacates office pursuant to this rule is not to be taken into account in determining the number of Directors who are to retire by rotation at any AGM.

## **16 Chair and Deputy Chair**

### **16.1 Appointment to office**

- (a) Subject to rule 16.1(b), the Directors must elect a Chair and Deputy Chair (who may not be a Council Appointed Officer Director) at the first Board meeting after any AGM.
- (b) The Chair and Deputy Chair continue to hold office until the earlier of:
  - (1) their resignation from that office in accordance with rule 15.1;
  - (2) their removal from that office in accordance with rule 15.2;
  - (3) their office as Director becoming vacant in accordance with this Constitution or he or she resigns or is removed from that office; or
  - (4) the date of the first Board meeting after the first anniversary of their appointment to that office.
- (c) The Board has the sole power at any time to appoint any Directors as Chair and Deputy Chair and to remove any Director appointed under this Constitution from any of those offices, but not from the office of Director.

## **16.2 Resignation**

Resignation of the Chair or Deputy Chair must be effected in accordance with rule 15.1 or rule 15.3.

## **17 Exercise of Voting Power**

### **17.1 Exercise of voting power in other corporations**

- (a) The Board may exercise the voting power conferred by the shares in any corporation held or owned by the Company as the Board thinks fit (including the exercise of the voting power in favour of any resolution appointing the Directors or any of them directors of that corporation).
- (b) A Director may vote in favour of the exercise of voting rights in a company notwithstanding that the Director, or may be about to be appointed, a director of that other company and may be interested in the exercise of those voting rights.

## **18 Board Proceedings**

### **18.1 Procedures relating to Board meetings**

- (a) The Board may meet together, upon each Director being given reasonable notice, for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit.
- (b) Subject to rule 18.1(c), unless the Directors determine otherwise, the quorum for a Board meeting is 5 Directors. The quorum must be present at all times during the Board meeting.
- (c) Despite rule 18.1(b), the quorum must include at least one Council Appointed Director, one Council Appointed Officer Director and one Member Director.
- (d) If the number of Directors is not sufficient to constitute a quorum at a Board meeting, the Directors may act only to call a General Meeting.
- (e) A notice given to a Director under this rule 18 must be given as follows:
  - (1) by ordinary post to the address registered with ASIC in respect of the Company as the Director's residential address, in which case the notice is deemed to have been served 2 Business Days after posting;
  - (2) personally given to the Director in which case the notice is deemed to have been served when delivered to the Director;
  - (3) by facsimile transmission to the number notified to the Company in writing by the Director for service of notices in which case the

notice is deemed to have been served when the facsimile system generates a message confirming successful transmission of the total number of pages of the notice; and

- (4) by email to the email address notified to the Company in writing by the Director for service of notices in which case the notice is deemed to have been served when the email message is sent provided that the sender does not receive any notification of non-delivery.

For the avoidance of doubt, this rule will apply to any notice given to a person in their capacity as Director and rule 24 will not apply in respect of such a notice.

## **18.2 Meetings by telephone or other means of communication**

The Board may meet either in person or by telephone or by other means of communication consented to by all Directors subject to the right of a Director to withdraw their consent within a reasonable period before a meeting. A meeting conducted by telephone or other means of communication is deemed to be held at the place agreed upon by the Directors attending the meeting, provided that at least one of the members present at the meeting is at that place for the duration of the meeting.

## **18.3 Questions decided by majority**

Questions raised at any Board meeting are decided by a majority of votes. The chair of the Board meeting may, in addition to a deliberative vote, have a second or casting vote in the event of an equality of votes.

## **18.4 Convening of meetings**

The Board may at any time, and the Secretary, upon the request of any one Director, must convene a Board meeting upon reasonable notice individually to each other Director.

## **18.5 Chair**

The Chair is, if present, able and willing preside as chair at all Board meetings and if:

- (a) there is no such Chair;
- (b) the Chair is not present within 15 minutes after the time appointed for the meeting; or
- (c) the Chair is unable or unwilling to preside,

then the Deputy Chair if present at the meeting, able and willing or in the absence or unwillingness of both of them a Director, appointed by the meeting, must act as chair of the meeting.

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**18.6 Powers of meetings**

A Board meeting or any adjournment of a meeting at which a quorum is present is competent to exercise any of the authorities, powers and discretions for the time being vested in or exercisable by the Board.

**18.7 Delegation of powers to Committees**

The Board may, subject to the constraints imposed by law, delegate any of its powers to Committees consisting of one or more Directors or any other person or persons as the Board thinks fit. Any Committee formed or person or persons appointed to the Committee must, in the exercise of the powers delegated, conform to any regulations that may from time to time be imposed by the Board. A delegate of the Board may be authorised to sub-delegate any of the powers for the time being vested in the delegate.

**18.8 Proceedings of Committees**

- (a) The meetings and proceedings of any Committee are to be governed by the provisions of these rules for regulating the meetings and proceedings of the Board so far as they are applicable and are not superseded by any regulations made by the Board under rule 18.7.
- (b) A Committee in the exercise of the duties delegated or assigned to it must conform to any regulations, directions or instructions that may be imposed or given by the Board.
- (c) A Committee appointed by the Board is under the control and direction of the Board and has no direct part or power in the management of the Company.

**18.9 Validity of acts**

- (a) All acts done at any Board meeting or by a Committee or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any of the members or the Committee or the person acting as a Director or that any of them were disqualified, as valid as if every person had been duly appointed and was qualified and continued to be a Director or a Committee member.

**18.10 Written resolutions**

- (a) A written or email resolution of which notice has been given to all Directors and signed agreed by a majority of such members entitled to vote on the resolution, is as valid and effectual as if it was passed at a Board meeting. The written or email resolution may consist of several documents in the same form each signed agreed by one or more of the Directors.



- (b) A facsimile transmission or other document produced by mechanical or electronic means under the name of a Director with the Director's authority is deemed to be a document in writing signed by that Director. Any resolution made pursuant to this rule is passed when the last Director signs it.

## **19 Powers of the Board**

### **19.1 General Powers of the Board**

- (a) The management and control of the business and affairs of the Company are vested in the Board, which (in addition to the powers and authorities conferred upon them by these rules) may exercise all powers and do all things as are within the power of the Company.
- (b) The Board may make, amend or rescind such regulations consistent with the Constitution, as considered by the Board to be necessary for:
- (1) the proper control, administration and management of the Company's finances, affairs and property or
  - (2) the convenience, comfort and well-being of the Members (including the terms of entry of Members to the Company's premises and any event or function sponsored, promoted, facilitated or conducted by the Company).
- (c) Regulations made by the Board may be disallowed by the Company in a later General Meeting.
- (d) A resolution or regulation made by the Company in a General Meeting cannot invalidate prior acts of the Board which would have been valid if that resolution or regulation had not been passed or made.

### **19.2 Conflict of Interest**

A Director who has any actual or potential material conflict of interest in any matter or arrangement that is being considered, or is to be considered, at a Board meeting, must declare such conflict which will be dealt with in accordance with the relevant provisions (including section 195) of the Act.

## **20 Secretary**

### **20.1 Appointment**

The Directors must appoint a Secretary in accordance with the Act.

### **20.2 Terms and conditions of office**

The Secretary holds office on such terms and conditions in relation to remuneration and otherwise as the Board determines.

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The Board may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

## **21 Other Salaried Officers**

### **21.1 Appointment**

The Board has the power to appoint officers and employees at any time on such terms as it thinks fit and may, subject to conditions of the employment of such officers and employees, dispense with their services and appoint other officers and employees.

### **21.2 Chief Executive Officer**

- (a) The Board shall from time to time appoint a Chief Executive Officer or General Manager (CEO) of the company for such period and on such terms as they think fit.
- (b) The Board will determine such remuneration and benefits to be received by the CEO.
- (c) The CEO will be responsible for the general management of the company and must not be a Director.

## **22 The Seal**

### **22.1 Company Seal is optional**

The Company may have a Seal.

### **22.2 Affixing the Seal**

If the Company has a Seal, the Board is to provide for its safe custody and it should only be used with the Board's authority. Every instrument to which the Seal is affixed is to be signed by a Director and countersigned by the Secretary, a second Director, or another person appointed by the Board for the purpose. The Board may determine either generally or in any particular case that a signature may be affixed by a mechanical means specified in the determination.

### **22.3 Execution of documents without a Seal**

The Company may execute a document, including a deed, by having the document signed by:

- (a) 2 Directors; or
- (b) a Director and Secretary;

- 
- (c) by the General Manager or Chief Executive Officer under delegation by resolution of the Board; or
  - (d) by a duly appointed attorney of the Company pursuant to a valid power of attorney in force.

If the Company executes a deed, the document is to be expressed to be executed as a deed and be executed in accordance with the appropriate procedures set out in this rule or as required by law.

## **23 Minutes and Access**

### **23.1 Company must maintain minute books**

- (a) The Company must keep minute books in which it records within one month:
  - (1) proceedings and resolutions of Members' meetings;
  - (2) proceedings and resolutions of Board and committee meetings (together with the names of the Directors present at each meeting of the Company, the Board and of any Committees);
  - (3) resolutions passed by Members without a meeting; and
  - (4) resolutions passed by Board without a meeting.
- (b) The Company must ensure that the minutes of a meeting are signed by the Chair of the meeting or the Chair of the next meeting within a reasonable time after the meeting. The minutes of any Board meeting or of any Committee or of the Company, if purporting to be signed by the Chair of the meeting or by the Chair of the next succeeding meeting are prima facie evidence of the matters stated in the minutes.
- (c) The Company must ensure that any minutes which record the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution is passed.

### **23.2 Access to minutes**

Members are entitled to gain access to the minute book of meeting of Members, in accordance with the Act.

## **24 Notices**

### **24.1 Service of notices**

A notice may be given by the Company to a Member, or in the case of joint holders to the Member whose name stands first in the Register, in any of the formats described in this rule 24.

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**24.2 When notice deemed to be served**

Any notice served on a Member:

- (a) by post is deemed to have been served at the expiration of 48 hours after postage. Service is taken to have been proven where the envelope containing the notice was properly addressed and posted.
- (b) personally or left at the Member's Registered Address is deemed to have been served when delivered.
- (c) by facsimile transmission is deemed to have been served when the transmission is sent. A facsimile is taken to have been sent when the Company's facsimile system generates a message confirming successful transmission of the total number of pages of the notice to the addressee.
- (d) by electronic means is deemed to have been served when the electronic message is sent.

**24.3 Member not known at Registered Address**

Where a Member does not have a Registered Address or where the Company has bona fide reason to believe that a Member is not known at the Member's Registered Address, all future notices are:

- (a) deemed to have been given to the Member if the notice is exhibited in the Office for a period of 48 hours; and
- (b) deemed to have been served at the commencement of that period unless and until the Member informs the Company of a registered place of address.

**24.4 Provision of period of notice**

Where a given number of days' notice is required to be provided, the day of service is not included in the calculation of the number of days.

**24.5 Service on deceased Members**

A notice delivered to the Registered Address of a Member pursuant to these rules is deemed to have been duly served and the service is for all purposes deemed to be sufficient service of the notice or document on the Member's heirs, executors or administrators (notwithstanding that the Member is then dead and whether or not the Company has notice of the Member's death).

**24.6 Persons entitled to notice of General Meeting**

- (a) Notice of every General Meeting is to be given to:
  - (1) each Member individually who is entitled to vote at General Meetings of the Company;
  - (2) each Director; and

(3) the auditor for the time being of the Company.

(b) No other person is entitled to receive notices of General Meetings.

#### **24.7 Notification of change of address**

Every Member must notify the Company of any change of his or her address and any such new address must be entered in the register of Members as required to be kept by the Act and upon being so entered becomes the Member's Registered Address.

### **25 Indemnity**

#### **25.1 Extent of indemnity**

(a) Subject to Part 2D.2 of the Act, a person who is an Officer or auditor of the Company is indemnified by the Company against any liability to another person (other than the Company or a related body corporate of the Company as defined in the Act) incurred in that person's capacity as an Officer unless the liability:

(1) arises out of conduct involving a lack of good faith; or

(2) is for a pecuniary penalty order or composition order under Part 9.4B of the Act.

(b) The Company is required to indemnify an Officer against a liability for costs and expenses (including, without limitation, legal expenses on a full indemnity basis) incurred by the Officer:

(1) in defending proceedings, whether civil or criminal, in which:

(A) judgment is given in favour of the Officer; or

(B) the Officer is acquitted; or

(2) in connection with an application, in relation to proceedings under rule 25.1(b)(1), in which a court grants relief to the Officer under the Act, subject to an obligation that the Officer repay to the Company the expenses advanced by the Company if:

(3) judgment is not given in the Officer's favour;

(4) the Officer is not acquitted;

(5) a court subsequently determines that the indemnification is not permitted; or

(6) the indemnification is not permitted by the Act.

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- (c) For the purposes of this rule, the Company has the burden of proving that the Officer to be indemnified is not entitled to the requested indemnification.
  - (d) The indemnification rights in this rule constitute a contract between the relevant parties seeking indemnification and the Company and continue to have effect following the rescission or restrictive modification of the rule with respect to events occurring prior to the rescission or modification of the rule.

## **25.2 Payment of costs**

The Directors may, out of the funds of the Company, pay all costs, losses and expenses which any Officer incurs or will incur under any contract entered, as a result of an act or thing done by them as an Officer or due to the discharge of their duties.

## **25.3 Limit of indemnity**

Subject to the provisions of the Act, an Officer of the Company is not liable for:

- (a) the acts, receipts, neglect or defaults of any other Officer;
- (b) joining in any receipt or other act of conformity or for any loss or expense happening to the Company through:
  - (1) the insufficiency or deficiency of title to any property acquired by order of the Officers for or on behalf of the Company; or
  - (2) the insufficiency or deficiency of any security in or upon which any of the moneys of the Company are invested;
- (c) any loss or damage arising from the bankruptcy, insolvency or tortious act of any person with whom any moneys, Securities or effects are deposited;
- (d) any loss occasioned by any error of judgment or oversight on the Officer's part; or
- (e) any other loss, damage or misfortune which occurs in the execution of the Officer's duties unless the loss, damage or misfortune occurred through the Officer's own dishonesty.

## **25.4 Contract of insurance**

Subject to law, the Company may pay a premium for a contract insuring a person who is or has been an Officer, against:

- (a) any liability incurred by the Officer which does not arise out of conduct involving a wilful breach of duty in relation to the Company or a contravention of sections 182 or 183 of the Act; or

- (b) any liability for costs and expenses incurred by that person in defending proceedings relating to that person's position with the Company, whether civil or criminal and whatever their outcome.

**25.5 Personal liability of Officer**

If the Board, Director, or any officer of the Company becomes personally liable for the payment of any sum primarily due from the Company, the Board may execute a charge or security over all or part of the Company assets as an indemnity for any loss incurred by the person as a result of the liability.


**25.6 Insurance**

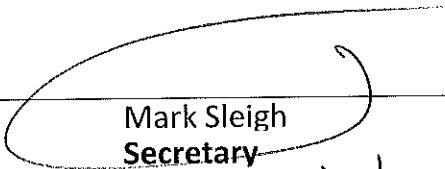
- (a) Subject to law, the Company may pay insurance premiums in respect of insurance for the benefit of every person who is or has been a Director, Secretary or Board officer acting in that capacity against:

- (1) costs and expenses in defending any proceedings, whether civil or criminal; or
- (2) a liability arising from negligence or other conduct, except for a liability incurred by the person acting in that capacity and arising out of conduct involving a wilful breach of duty in relation to the Company or a breach of the provisions of the Act.

- (b) The Company may pay insurance premiums in respect of insurance for the benefit of the auditor or an employee of the Company who is not a Director, Secretary or Board officer concerned in the management of the Company.

*New*  
*Constitution*  
*Adopted*

  
 Wayne Morris  
**Director**  
 Date: 22/6/15

  
 Mark Sleigh  
**Secretary**  
 Date: 22/6/15