

Constitution

Wollongong City of Innovation Limited

002 291 590

Constitution of Wollongong City of Innovation Limited

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Preliminary

1. Defined terms

1.1 In this Constitution unless the contrary intention appears:

Auditor means the Company's auditor;

Board means the board of Directors of the Company;

Business Day means any day except Saturdays, Sundays and public holidays in New South Wales;

Chairperson means the person appointed by the Board from time to time under clause 24.1;

Commissioner means the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of the Tax Act;

Company means Wollongong City Of Innovation Limited (ACN 002 291 590)

Constitution means the constitution of the Company as amended from time to time;

Corporations Act means the *Corporations Act 2001* (Cth) as modified or amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company;

Council means the Council of the City of Wollongong;

Deputy Chairperson means the person appointed by the Board from time to time under clause 24.3;

Director includes any person occupying the position of director of the Company;

General Meeting means a meeting of the Member(s) of the Company and includes an the Annual General Meeting of the Company;

Governing Body has the meaning in section 222 of the Local Government Act (NSW) 1993;

Member means the Council;

Region means the Illawarra region of New South Wales comprising the cities of Wollongong, Shellharbour and Shoalhaven, the municipality of Kiama and the shire of Wingecarribee;

Register means the register of Members of the Company;

Representative means a person appointed as such under clause 8;

Seal means the Company's common seal (if any);

Secretary means any person appointed by the Directors to perform any of the duties of a secretary of the Company;

Tax Act means the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth), jointly or as applicable, and

Term has the meaning in clause 13.

1.2 In this Constitution, except where the context otherwise requires, an expression in a clause of this Constitution has the same meaning as in the Corporations Act. Where the expression has more than one meaning in the Corporations Act and a provision of the Corporations Act deals with the same matter as a clause of this Constitution, that expression has the same meaning as in that provision.

2. Interpretation

In this Constitution, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes the other gender;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Constitution, and a reference to this Constitution includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (f) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- (g) a reference to time is to the time in Wollongong, NSW, and
- (h) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions.

3. Replaceable rules

To the extent permitted by law, the replaceable rules in the Corporations Act do not apply to the Company.

4. Nature of the Company

The Company is a public company limited by guarantee and does not have a share capital.

5. Objects

5.1 The objects for which the Company is established are:

- (a) Promoting and marketing the City of Wollongong and the Illawarra Region as a vibrant and diverse place to live, work and play;
- (b) Developing and deploying physical and digital assets to generate revenue and support the positioning of the City of Wollongong and the Illawarra Region;
- (c) Championing a culture focused on broadening the commercial base of Wollongong and the Illawarra Region, increasing visitation and investment attraction;
- (d) Attracting, supporting, facilitating and holding events that showcase the strengths of Wollongong and the Illawarra Region.

5.2 The Company may only exercise the powers in section 124(1) of the Corporations Act to:

- (a) carry out the objects in this clause 5, and
- (b) do all things incidental or convenient in relation to the exercise of power under clause 5.3(a).

Income and Property of the Company

6. Non-profit clause

- 6.1 The income and property of the Company will only be applied towards the promotion of the objects of the Company set out in clause 5.
- 6.2 No income or property will be paid or transferred directly or indirectly to the Member except for payments to the Member:
 - (a) in return for any services rendered or goods supplied to the Company or expenses incurred by the Company, in the ordinary and usual course of business of the Company, or
 - (b) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent.

Membership

7. Membership

The Company shall have one Member, which shall be the Council.

8. Representative

- 8.1 The Member may by written notice to the Secretary:
 - (a) appoint a natural person to act as its representative in all matters connected with the Company as permitted by the Corporations Act, and
 - (b) remove a Representative.
- 8.2 A Representative is entitled to:
 - (a) exercise at a General Meeting all the powers which the Member could exercise if it were a natural person;
 - (b) be nominated for, appointed as and hold office as a Director, and
 - (c) be counted towards a quorum on the basis that the Member is to be considered personally present at a general meeting by its Representative.
- 8.3 A written resolution of the Governing Body of the Member or written document authorised by the General Manager of the Member under delegated authority is rebuttable evidence of the appointment or of the removal of the appointment (as appropriate) of the Representative.
- 8.4 The appointment of the Representative may set out restrictions on the Representative's powers.

General Meetings

9. Calling general meeting

- 9.1 Any 3 Directors may, at any time, call a general meeting.
- 9.2 The Member may request the Directors to call a general meeting in accordance with section 249D of the Corporations Act.

10. Notice of general meeting

- 10.1 Subject to the provisions of the Corporations Act allowing general meetings to be held with shorter notice, at least 21 days written notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to the Member of any General Meeting.
- 10.2 A notice calling a General Meeting:
- (a) must specify the place, date and time of the meeting and if the meeting is to be held in two or more places, the technology that will be used to facilitate this; and
 - (b) must state the general nature of the business to be transacted at the meeting; and
 - (c) may specify a place, facsimile number and electronic address for the purposes of proxy appointment.
- 10.3 A notice of an annual general meeting need not state that the business to be transacted at the meeting includes:
- (a) the consideration of the annual financial report, Directors' report and the Auditor's report; and
- 10.4 the appointment and fixing of the remuneration of the Auditor. The Directors may postpone or cancel any General Meeting whenever they think fit (other than a meeting called as the result of a request under clause 9.2).
- 10.5 The Directors must give notice of the postponement or cancellation of a General Meeting to all persons referred to in clause 42.1 entitled to receive notices from the Company.

Proceedings at General Meetings

11. Member

In clauses 14, 15 and 17, Member includes the Member present by proxy, attorney or Representative.

12. Resolution

- 12.1 Subject to the Corporations Act, the Company may pass any resolution without a meeting by the Member signing a record in writing of the resolution.
- 12.2 A notice of meeting must be issued with relevant accompanying documentation in respect of resolutions, even if intended to be passed under clause 12.1. The record signed under clause 12.1 must also record the Member's determination to pass the relevant resolutions without holding a meeting and, where relevant, its agreement to pass the resolution on shorter notice than that prescribed in the Corporations Act for such a meeting if it were held.
- 12.3 Passage of a resolution under clause 12.1, must be recorded in the Company's minute books.
- 12.4 A Representative of the Member may sign a record of a resolution under clause 12.1.

13. Quorum

- 13.1 No business may be transacted at a General Meeting unless a quorum is present when the meeting proceeds to business.
- 13.2 A quorum is the Member.
- 13.3 If a quorum is not present within 30 minutes after the time appointed for a General Meeting:

- (a) if the General Meeting was called on the requisition of the Member, it is automatically dissolved; or
- (b) in any other case:
 - (i) it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the chairperson of the General Meeting; and
 - (ii) if at the adjourned General Meeting a quorum is not present within 30 minutes after the time appointed for the General Meeting, the General Meeting is automatically dissolved.

14. Chairperson

- 14.1 The Chairperson, or in the Chairperson's absence, the Deputy Chairperson, of Directors' meetings, will be the chairperson at every General Meeting.
- 14.2 The Member may appoint a chairperson of a General Meeting if:
 - (a) there is no Chairperson or Deputy Chairperson; or
 - (b) neither the Chairperson nor Deputy Chairperson is present within 15 minutes after the time appointed for holding the general meeting; or
 - (c) the Chairperson and Deputy Chairperson are unwilling to act as chairperson of the General Meeting.
- 14.3 If no appointment is made under clause 14.2, then the meeting shall be adjourned for 7 days as if it had been adjourned by the chairperson of the General Meeting under clause 15.
- 14.4 If there is a dispute at a General Meeting about a question of procedure, the chairperson of the General Meeting may determine the question.

15. Adjournment

- 15.1 The chairperson of a General Meeting at which a quorum is present:
 - (a) in his or her discretion may adjourn the General Meeting with the Member's consent; and
 - (b) must adjourn the General Meeting if the Member directs him or her to do so.
- 15.2 An adjourned General Meeting may take place at a different venue to the initial General Meeting.
- 15.3 The only business that can be transacted at an adjourned General Meeting is the unfinished business of the initial General Meeting.
- 15.4 Notice of an adjourned General Meeting must only be given in accordance with clause 10.1 if a General Meeting has been adjourned for more than 21 days.

16. Decision on questions

- 16.1 Subject to the Corporations Act in relation to special resolutions, a resolution is carried if the Member votes in favour of the resolution.
- 16.2 A resolution put to the vote of a General Meeting is decided by the Member.
- 16.3 A:
 - (a) declaration by the chairperson that a resolution has been carried or lost; and
 - (b) an entry to that effect in the minutes of the General Meeting;

are conclusive evidence of the fact.

- 16.4 The chairperson of a General Meeting does not have any entitlement to vote at the general meeting other than as a proxy, attorney or Representative of the Member.

Voting

17. Votes by proxy

- 17.1 If the Member appoints a proxy or an attorney, the proxy or attorney may vote on a resolution.
- 17.2 A proxy may vote or abstain as he or she chooses except where the appointment of the proxy directs the way the proxy is to vote on a particular resolution. If a proxy votes at all, the proxy will be deemed to have voted the directed proxy in the manner directed.

18. Document appointing proxy

- 18.1 An appointment of a proxy is valid if it is signed by the Member and contains the information required by subsection 250A(1) of the Corporations Act. The Directors may determine that an appointment of proxy is valid even if it only contains some of the information required by section 250A(1) of the Corporations Act.
- 18.2 For the purposes of clause 18.1, an appointment received at an electronic address will be taken to be signed by the Member if:
- (a) a personal identification code allocated by the Company to the Member has been input into the appointment; or
 - (b) the appointment has been verified in another manner approved by the Directors.
- 18.3 A proxy's appointment is valid at an adjourned general meeting.
- 18.4 A proxy or attorney may be appointed for all general meetings or for any number of general meetings or for a particular purpose.
- 18.5 Unless otherwise provided for in the proxy's appointment or in any instrument appointing an attorney, the appointment of the proxy or the attorney will be taken to confer authority:
- (a) to vote on:
 - (i) any amendment moved to the proposed resolutions and on any motion that the proposed resolution not be put or any similar motion; and
 - (ii) any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the general meeting,
even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and
 - (b) to vote on any motion before the general meeting whether or not the motion is referred to in the appointment.

19. Lodgement of proxy

- 19.1 The written appointment of a proxy or attorney must be received by the Company, at least 48 hours (unless otherwise specified in the notice of meeting to which the proxy relates) before:
- (a) the time for holding the general meeting or adjourned general meeting at which the appointee proposes to vote; or
 - (b) the decision on the resolution on which the appointee proposes to vote.

- 19.2 The Company receives an appointment of a proxy and any power of attorney or other authority under which it was executed when they are received at:
- (a) the Company's registered office;
 - (b) a facsimile number at the Company's registered office; or
 - (c) a place, facsimile number or electronic address specified for that purpose in the notice of meeting.

Appointment and Removal of Directors

20. Transitional Arrangements and Initial Term

- 20.1 Up to the close of the General Meeting at which this constitution is adopted the Board of Directors shall consist of not less than 5 and not more than 9 Directors, of which up to:
- (a) 3 Directors will be appointed by Council; and
 - (b) 6 Directors will be appointed by the then current members of the Company at a General Meeting.

For the avoidance of doubt, up to the close of the General Meeting at which this constitution is adopted, clauses 21.1 to 25.2 will not apply and be of no effect.

- 20.2 At the General Meeting at which this constitution is adopted by the Company and immediately after the adoption of this constitution:
- (a) the Member must pass a resolution to remove all of the Board; and
 - (b) the Member must pass a resolution to appoint 3 Directors to the Board, who will each hold office for a Term.
- 20.3 Within 28 days after the close of the General Meeting at which this constitution is adopted by the Company:
- (c) the Directors must convene of meeting of the Directors appointed under clause 20.2(b) and those Directors must resolve to appoint up to 6 Directors to the Board and of those newly appointed Directors:
 - (i) up to 2 of those Directors will hold office for an initial term of 1 year;
 - (ii) up to 2 of those Directors will hold office for an initial term of 2 years; and
 - (iii) up to 2 of those Directors will hold office for an initial term of 3 years.
- 20.4 The resolutions in clauses 20.2(a) and (b) will take effect on and from the close of the General Meeting at which this constitution is adopted..
- 20.5 The appointment of Directors under this clause 9will be subject to the requirements of clauses 21.1 and 21.2
- 20.6 After serving their initial term, the Directors appointed under this clause 20will be eligible for re- appointment for further Terms.

21. Number of Directors

- 21.1 The Company must have not more than 9 Directors, comprising:
- (a) not more than 3 Directors appointed by the Member under clause 22; and
 - (b) not more than 6 Directors appointed by the Board under clause 23.1.
- 21.2 There must:
- (a) not be more than 3 employees or members of the Governing Body of the Member

holding office on the Board at any one time.

22. Member appointed Directors

Subject to clause 9(a) and (b) the Member may by giving written notice to the Company, appoint up to 3 Directors to the Board.

23. Board appointed Directors

23.1 Subject to clause 9(a) and (b), the Board may appoint up to 6 Directors to the Board at any meeting of the Board from persons nominated in accordance with clauses 23.2 and 23.3.

23.2 The Board will nominate persons for appointment to the Board having regard to the nominee's specific skills in commerce, finance, governance, marketing, tourism, hospitality or business generally or such other skills as determined by the Board.

23.3 The Board will deliver to the Member at least 7 days prior to the Board meeting at which it is proposed that the nominee will be appointed, the names in writing of all persons nominated by the Board in accordance with clause 12.2. The Member may in its absolute discretion disapprove such nomination and that person will not be eligible for consideration for appointment by the Board. If the Member fails to disapprove such nomination in writing by 9.00pm on the day before the Board meeting, then it will be deemed to have not disapproved the nomination.

24. Duration

Subject to clauses 20.3 and 27 and to a Director ceasing to hold office earlier for any reason (including by reason of the terms of the Director's appointment or removal from office), each Director shall hold office for three (3) years from the date of appointment ('Term') and will be eligible for re-appointment for subsequent Terms.

25. Removal

25.1 Any Director appointed by the Board under clause 23.1 or 20.2(c) may be removed by the Member before the end of their period of office following receipt of a notice given on behalf of the Board to the Member evidencing that such removal is sanctioned by a majority vote of the Board. The Board may appoint another Director to fill the casual vacancy in accordance with clause 27.1.

25.2 The Member may remove any Director before the end of the Director's period of office and the resulting vacancy will be treated as a casual vacancy and the Member may appoint another person to fill that vacancy provided the appointment is made within two (2) months of the date of removal of the Director, with that person holding office for the remainder of the original Director's Term, after which the Board or the Member (being whoever appointed the original Director) may appoint a Director for a new Term.

26. Conduct that is prejudicial to the interests of the Company

26.1 If the conduct or position of any Director is such that continuance in office appears to the majority of the Directors to be prejudicial to the interests of the Company, a majority of Directors at a meeting of the Directors specifically called for that purpose may suspend that Director. For the avoidance of doubt, the Director is not entitled to be present while the matter is being considered at the meeting or vote on the matter.

26.2 Within 14 days of the suspension, the Directors must call a General Meeting, at which the Member may either confirm the suspension and remove the Director from office in accordance with clause 25.2 or annul the suspension and reinstate the Director.

27. Casual vacancies

- 27.1 Subject to clause 21.2(b), the Board may appoint any person as a Director to fill a casual vacancy on the Board, however if that casual vacancy arose as a result of the removal of a Director by the Member under clause 25.2, they must not do so unless the Member has not filled the casual vacancy within the time specified in clause 25.2 .
- 27.2 A Director appointed under clause 27.1 will hold office for the balance (if any) of the period for which the Director, whose membership of the Board became vacant, was appointed, unless removed earlier by the Member under this Constitution.

28. Vacation of office

The office of a Director immediately becomes vacant if the Director:

- (a) is prohibited by the Corporations Act from holding office or continuing as a Director;
- (b) is liable to have a person appointed, under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing their affairs, to administer it, or becomes in the opinion of the Directors incapable of performing his or her duties;
- (c) resigns by notice in writing to the Company;
- (d) is removed under clauses 25.1 or 25.2;
- (e) is absent from Directors' meetings for three consecutive meetings without leave of absence from the Directors; or
- (f) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest as required by the Corporations Act.

Powers and Duties of Directors

29. Powers and duties of Directors

- 29.1 The business of the Company shall be managed by or under the direction of the Directors, who may exercise all powers of the Company except any powers that this Constitution or the Corporations Act requires the Company to exercise in general meeting.
- 29.2 Without limiting the generality of clause 29.1 , the Directors may exercise all the powers of the Company to:
- (a) borrow money;
 - (b) charge any property or business of the Company;
 - (c) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person;
 - (d) guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person; and
- (e) make rules, regulations and by-laws.
- 29.3 Despite clause 29.2 (e), any rule, regulation or by-law of the Company made by the Board may be disallowed or revoked by resolution of the Company.

Proceedings of Directors

30. Directors' meetings

- 30.1 There shall be no less than five meetings of Directors in each calendar year at such places and at such times as the Directors may determine.
- 30.2 The Chairperson or not less than 3 Directors may at any time, and the Secretary must on the request of the Chairperson or those 3 Directors, call a Directors' meeting.
- 30.3 A Directors' meeting must be called on at least 48 hours written notice of a meeting to each Director.
- 30.4 It is not necessary to give notice of a meeting of the Directors to an Australian resident whom the Secretary, when giving notice to the other Directors, reasonably believes to be temporarily outside Australia.
- 30.5 Subject to the Corporations Act, a Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion. The Directors need not all be physically present in the same place for a Directors' meeting to be held.
- 30.6 Subject to clause 33, a Director who participates in a meeting held in accordance with this Constitution is taken to be present and entitled to vote at the meeting.
- 30.7 Clauses 30.5 to 30.6 apply to meetings of Directors' committees as if all committee members were Directors.
- 30.8 The Directors may meet together, adjourn and regulate their meetings as they think fit.
- 30.9 A quorum is a majority of the number of Directors holding office at the time of the meeting, of which 1 of the Directors present must be a Director appointed by the Member. No business may be transacted at a meeting unless a quorum is present when a meeting proceeds to business.
- 30.10 Notice of a meeting of Directors may be given in writing, or the meeting may be otherwise called using any technology consented to by all the Directors.

31. Decision on questions

- 31.1 Subject to this Constitution, questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting and, subject to clause 33, each Director has one vote.
- 31.2 The chairperson of a meeting has a casting vote in addition to his or her deliberative vote.

Payments to Directors

32. Payments to Directors

No payment will be made to any Director of the Company other than payment:

- (a) of out of pocket expenses properly and reasonably incurred by the Director in the performance of any duty as Director of the Company where the payments do not exceed an amount previously approved by the Directors;
- (b) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the amount payable has prior approval of the Directors of the Company and is not more than an amount which commercially would be reasonable payment for the service;
- (c) of any salary or wage due to the Director as an employee of the Company where the terms of employment have been approved by the Directors of the Company; and
- (d) relating to an indemnity in favour of the Director previously approved by the Directors and permitted by section 199A of the Corporations Act or a contract of insurance permitted by section 199B of the Corporations Act.

33. Directors' interests

- 33.1 No contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested is avoided or rendered voidable merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 33.2 No Director contracting with or being interested in any arrangement involving the Company is liable to account to the Company for any profit realised by or under any such contract or arrangement merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 33.3 A Director is not disqualified merely because of being a Director from contracting with the Company in any respect.
- 33.4 Subject to clause 32, a Director or a body or entity in which a Director has a direct or indirect interest may:
- (a) enter into any agreement or arrangement with the Company;
 - (b) hold any office or place of profit other than as auditor in the Company; and
 - (c) act in a professional capacity other than as auditor for the Company,
- and the Director or the body or entity can receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company.
- 33.5 A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:
- (a) be present while the matter is being considered at the meeting; or
 - (b) vote on the matter,
- unless permitted by the Corporations Act to do so, in which case the Director may:
- (c) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
 - (d) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
 - (e) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.

34. Remaining Directors

- 34.1 The Directors may act even if there are vacancies on the Board.
- 34.2 If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting, the Directors may act only to call a general meeting.

35. Chairperson

- 35.1 The Directors must appoint a Director as Chairperson of Directors' meetings and may determine the period for which the Chairperson will hold office.
- 35.2 If no Chairperson is appointed or if the Chairperson is not present at any Directors' meeting within 10 minutes after the time appointed for the meeting to begin and if no Deputy Chairperson has been elected in accordance with Clause 35.3 or if that Deputy Chairperson is also absent or unwilling to act, the Directors present must elect a Director to be the chairperson of the meeting.

35.3 The Directors may elect a Director as Deputy Chairperson to act as chairperson in the Chairperson's absence.

36. Delegation

36.1 The Directors may delegate any of their powers, other than those which by law must be dealt with by the Directors as a board, to a committee or committees.

36.2 The Directors may at any time revoke any delegation of power to a committee.

36.3 At least one member of each committee must be a Director.

36.4 A committee must exercise its powers in accordance with any directions of the Directors and a power exercised in that way is taken to have been exercised by the Directors.

36.5 A committee may be authorised by the Directors to sub-delegate all or any of the powers for the time being vested in it.

36.6 Meetings of any committee of Directors will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Directors. The provisions apply as if each member was a Director.

37. Written resolutions

37.1 The Directors may pass a resolution without a Director's meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed when the last Director signs.

37.2 For the purposes of clause 37.1, separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.

37.3 Any document referred to in this clause may be in the form of a facsimile or electronic transmission.

37.4 The minutes of Directors' meetings must record that a meeting was held in accordance with this clause.

37.5 This clause applies to meetings of Directors' committees as if all members of the committee were Directors.

38. Validity of acts of Directors

If it is discovered that:

(a) there was a defect in the appointment of a person as a Director, or member of a Directors' committee; or

(b) a person appointed to one of those positions was disqualified,

all acts of the Directors or the Directors' committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

39. Minutes and Registers

39.1 The Directors must cause minutes to be made of:

(a) the names of the Directors present at all Directors' meetings and meetings of Directors' committees;

(b) all proceedings and resolutions of general meetings, Directors' meetings and meetings of Directors' committees;

(c) all resolutions passed by Directors in accordance with clause 37;

- (d) all appointments of officers;
 - (e) all orders made by the Directors and Directors' committees; and
 - (f) all disclosures of interests made under clause 33.
- 39.2 Minutes must be signed by the chairman of the meeting or by the chairman of the next meeting of the relevant body.
- 39.3 The Company must keep all registers required by this Constitution and the Corporations Act.

40. Appointment of attorneys and agents

- 40.1 The Directors may from time to time by resolution or power of attorney executed in accordance with section 127 of the Corporations Act appoint any person to be the attorney or agent of the Company:
- (a) for the purposes;
 - (b) with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);
 - (c) for the period; and
 - (d) subject to the conditions, determined by the Directors.
- 40.2 An appointment by the Directors of an attorney or agent of the Company may be made in favour of:
- (a) any member of any committee established under this Constitution;
 - (b) any company;
 - (c) the members, directors, nominees or managers of any company or firm; or
 - (d) any fluctuating body of persons whether nominated directly or indirectly by the Directors.
- 40.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.
- 40.4 The Directors may appoint attorneys or agents by facsimile transmission, telegraph or cable to act for and on behalf of the Company.
- 40.5 An attorney or agent appointed under this clause may be authorised by the Directors to subdelegate all or any of the powers authorities and discretions for the time being vested in it.

Secretary

41. Secretary

- 41.1 If required by the Corporations Act, there must be at least one secretary of the Company appointed by the Directors for a term and at remuneration and on conditions determined by them.
- 41.2 The Secretary is entitled to attend and be heard on any matter at all Directors' meetings and general meetings.
- 41.3 The Directors may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

Seals

42. Common Seal

If the Company has a Seal:

- (a) the Board must provide for the safe custody of the Seal;
- (b) the Seal must not be used without the authority of the Directors or a Directors' committee authorised to use the Seal;
- (c) every document to which the Seal is affixed must be signed by a Director and be countersigned by another Director, the Secretary or another person appointed by the Board to countersign the document.

Inspection of records

43. Inspection of records

- 43.1 On reasonable notice to the Secretary and at reasonable times, the Member is entitled to full access to the financial records and other documents of the Company for the purpose of auditing and valuing the Company, making copies and any other reasonable purpose.
- 43.2 The Company must at all reasonable times make its financial records available in writing for the inspection by any Director and any other person authorised or permitted by the Corporations Act to inspect such records.

Notices

44. Service of notices

- 44.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution:
 - (a) by serving it on the person; or
 - (b) by sending it by post, facsimile transmission or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person.
- 44.2 A notice sent by post is taken to be served:
 - (a) by properly addressing, prepaying and posting a letter containing the notice; and
 - (b) on the day after the day on which it was posted.
- 44.3 A notice sent by facsimile transmission or electronic notification is taken to be served:
 - (a) by properly addressing the facsimile transmission or electronic notification and transmitting it; and
 - (b) if sent:
 - (i) before 4.00pm on a Business Day, on that Business Day;
 - (ii) after 4.00pm on a Business Day, on the next Business Day;
 - (iii) on a day that it not a Business Day, on the next Business Day,unless there is evidence that the facsimile transmission or electronic notification was unsuccessful.
- 44.4 A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was addressed and stamped and was posted is

conclusive evidence of posting.

44.5 Subject to the Corporations Act the signature to a written notice given by the Company may be written or printed.

44.6 All notices sent by post outside Australia must be sent by prepaid airmail post.

45. Persons entitled to notice

45.1 Notice of every general meeting must be given to:

- (a) the Member;
- (b) every Director;
- (c) the Auditor; and
- (d) any other person required by the Corporations Act.

45.2 No other person is entitled to receive notice of a General Meeting.

Audit and Accounts

46. Audit and accounts

46.1 The Board must cause the Company to keep written financial records in relation to the business of the Company in accordance with the requirements of the Corporations Act.

46.2 The Board must cause the financial records of the Company to be audited in accordance with the requirements of the Corporations Act.

46.3 The financial year of the Company will be 1 July to 30 June each year.

Winding Up

47. Winding up

47.1 If the Company is wound up the Member undertakes to contribute to the property of the Company for the payment of debts and liabilities of the Company and payment of costs, charges and expenses of winding up, such amount as may be required, not exceeding \$10.00.

47.2 On the winding up of the Company, any surplus remaining after the satisfaction of all the debts and liabilities of the Company will not be paid to the Member, but will be given or transferred to another entity, such entity to be determined by the Member and in default, by application to the Supreme Court of New South Wales for determination.

Indemnity

48. Indemnity

48.1 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act the Company indemnifies every person who is or has been an officer of the Company against:

- (a) any liability (other than for legal costs) incurred by that person as an officer of the

Company (including liabilities incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment); or

- (b) reasonable legal costs incurred in defending an action for a liability incurred by that person as an officer of the Company (including legal costs incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).

48.2 The amount of any indemnity payable under clauses 48.1(a) or (b) will include an additional amount (GST Amount) equal to any GST payable by the officer being indemnified (Indemnified Officer) in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a GST tax invoice for the GST Amount.

48.3 For the purposes of this clause, officer means:

- (a) a Director; or
- (b) a Secretary.

Amendments to Constitution

49. Amendments to Constitution

49.1 In addition to any requirement of the Corporations Act, this Constitution cannot be amended unless the Member gives prior written consent.

(A)