
PROPERTY COMPANY STRUCTURE

Datworks Filename: LS Advice – Property (LCM4429)

Attachments:

1. [Company constitution](#)
2. [Service agreement](#)



Authorising Officer:

A handwritten signature in black ink, appearing to read 'Bill Lyon'.

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Responsible Officer:

Linnet Batz
Chief Financial Officer

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Advisory

PURPOSE

To provide to Council the options available in undertaking the different types of transactions proposed in optimising underutilised Council land.

BACKGROUND

Redland City Council (Council) operates in a business environment where the community expects a continual level of quality service with only modest personal financial impost (that is, minor increases to the general rate). With this in mind Council has to continue to seek new ways to increase or add revenue and ensure operations are carried out in an efficient manner.

As part of safeguarding financial viability, Council has to ensure that its asset base is used in the best possible way and is generating maximum revenue where possible. Included in Council's \$2 billion asset base are significant land parcels that have been identified as surplus to needs, this land is underutilised in its current use and does not provide a financial return but still have on-going operational costs.

This report covers the options available to Council to facilitate the proposed business of buying, selling, leasing, licensing, developing (jointly or solely) land. The options are:

1. Council agrees to set up separate legal entity (company) for the land business; or
 2. Council undertakes all land transactions within existing structure; or
 3. Council does nothing – business as usual.
-

For Council to corporatise an activity it is required to be done under the *Corporations Act 2001(Cth)*. Council has a specific and express power to establish a company (under the *Corporations Act 2001 (Cth)*) for the purpose of conducting a beneficial enterprise.

Under the *Local Government Act 2009 (QLD)*, Council have the power to conduct a 'beneficial enterprise'. A beneficial enterprise is an enterprise that a local government considers is directed to benefiting, and can reasonably be expected to benefit, the whole or part of its local government area.

The advantages of establishing a stand-alone corporate entity (option 1), as opposed to delivering the same activities within Council's current organisation (option 2) are:

- It will enable Council to separate itself from the risks associated with this type of investment, for example:
 - Legal risk
 - Financial risk
 - Project risk
 - Reputation risk
- It will also allow for efficient decision making akin to a commercial company
- It will have access to a wider capital and skill base
- It will provide clean transparency by separation
- As a corporation the ownership of the entity can be transferred easily

The disadvantages of this option are:

- Resources involved in set up and on-going costs
- Possibly more reporting requirements

Council officers have conducted the following workshops regarding the property company:

- McMillan road development example – 2nd of September 2014;
- Reasons to start a property company and financial examples – 7th October 2014;
- Land details for proposed property company – 28th October 2014; &
- Business case including three year financials, company constitution and operational agreement – 11th November 2014.

ISSUES

1. Legislation
2. Set up costs and requirements
3. Financial accountability and governance
4. Accounting standards
5. Taxation implications
6. Board and ownership
7. Working capital facility and internal debt
8. Transfer of land
9. Employees
10. Dividend policy
11. Constraints
12. Assumptions
13. Operational costs
14. Benefits of separate entity
15. Benefits of type of business
16. Dis-benefits
17. Procurement
18. Risk
19. Duration of entity

For full details refer to attached business case.

STRATEGIC IMPLICATIONS

Legislative Requirements

The set-up of the company is covered by the *Local Government Act 2009 (Qld)*, *Local Government Regulation 2012* and the *Corporations Act 2001 (Cth)*.

Risk Management

Close attention will be given to the local property market, developer's willingness and demand, population growth, interest rates and construction inflation.

Financial

Operational costs are funded (in the short-term) via an internal loan with Council at QTC rates, as approved by through the Department of Local Government, Community Recovery and Resilience. A budget submission will processed at the December 2014 budget review.

People

A small team will be assembled from existing Council employees to manage and operate the separate entity.

Environmental

There are no foreseen environmental concerns from this initiative.

Social

The financial success of the separate entity has the potential to increase funds available to Council as an additional revenue source, which may address different community needs.

Alignment with Council's Policy and Plans

The recommendation supports Council's strategic objective to exceed financial targets while delivering outcomes.

CONSULTATION

- Mayor and Councillors
- Executive Leadership Team
- Brisbane City Council
- Ipswich City Council
- Gagens Lawyers
- BDO Australia
- CBP Lawyers
- Department of Local Government, Community Recovery and Resilience
- Queensland Treasury Corporation

OPTIONS

1: (a) Council agrees to set up a separate legal entity (company) for the land business;

(b) Council adopts company constitution (attached); &

(c) Council adopts operational agreement (attached).

As listed in the attached business case the main advantages in setting up a company include:

- i. A financial return with the appropriate return given the level of risk;
- ii. Separation from legal, financial, project and reputation risk;
- iii. Greater ability to access wider capital and skills base;

- iv. The ability to operate efficiently as a standalone commercial entity; &
- v. The capability to display transparency and separation from Council.

2: Council undertakes all land transaction within existing structure.

If Council chooses to facilitate land transaction through its existing structure it could arguably still receive a reasonable financial return however, it would **forego** the main advantages available to a separate legal entity listed in option one.

3: Do nothing – business as usual - what are the consequences?

If Council chooses to do nothing the consequences are threefold:

- i. Surplus land will remain in its current use;
- ii. Council will have to continue to maintain the surplus land; &
- iii. Council will have land assets that offer no financial return.

OFFICER'S RECOMMENDATION

That Council resolves to:

- 1. Create the company;**
- 2. Adopt the Constitution and Service Level Agreement;**
- 3. Appoint the Chief Executive Officer and Chief Financial Officer as directors;**
- 4. For the directors to recruit 3 other director positions for recommendation and approval by Council; and**
- 5. Hold a further Councillor meeting to develop strategic principles to achieve the company's objectives.**

Draft No 5
11 November 2014

Constitution of [Name of Company Pty Ltd]

Adopted by written agreement of the person specified in the application for the Company's registration as the person who consents to become a member, pursuant to section 136(1)(a) of the Corporations Act

Ref: [

Redland City Council
Constitution of [Name of Company Pty Ltd]

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1 Name of Company

The name of the company is **[Name of Company Pty Ltd]**.

2 Status of the Constitution

2.1 Constitution of the Company

This is the constitution of the Company.

2.2 Replaceable Rules

This Constitution displaces the Replaceable Rules, accordingly, none of the Replaceable Rules apply.

2.3 Amendment of Constitution

This Constitution may be amended by special resolution of the Members in accordance with the Corporations Act.

3 Interpretation

3.1 Definitions

In this Constitution these terms have the following meanings:

Auditor	The person appointed for the time being as the auditor of the Company.
Board	The Directors present at a meeting, duly convened as a Board meeting, at which a quorum is present.
Beneficial Enterprise	An enterprise that the Council considers is directed to benefiting, and can reasonably be expected to benefit, the whole or part of its Local Government area as defined by the Local Government.
Business Day	A day which is not a Saturday, Sunday or bank or public holiday in the place where the registered office of the Company for the time being is located.
Certificate	Any certificate issued by the Company on issue, or registration of transfer, of any Share, and any duplicate of that certificate.
Chief Executive Officer	Any person appointed for the time being as chief executive officer of the Company.
Company	[Name of Company Pty Ltd] .
Constitution	The constitution for the time being of the Company as constituted by this document and any resolutions of the Company modifying this document.
Corporations Act	The <i>Corporations Act 2001</i> (Cth).

Council	Redland City Council.
Council Land	Land acquired by the Company: (a) from Council; or (b) from any person, with Council's approval. Land in which Council owns or has an interest.
Director	A person who is a director for the time being of the Company. Directors means more than one Director. In relation to rules applying to meetings of the Board, including voting by Directors and material personal interests, references to Directors include alternates.
Default Rate	The interest rate per annum that is the sum of 3% and the rate advised by the bank with which the Company operates the Company's main trading account (or such other bank as is nominated by the Company for the purpose of this definition) as an equivalent rate charged by that bank for overdrafts in excess of \$100,000.
LG Act	The <i>Local Government Act 2009</i> (Qld).
Local Government Principles	The local government principles referred to in the LG Act.
Managing Director	Any person appointed for the time being as a managing director of the Company.
Member	A person who is, or who is registered as, a member of the Company or, in the case of joint holders of any Share, who are, or who are registered as, joint holders of that Share, and Members means more than one Member.
Option Holder	Any person granted any option in respect of any unissued Share, and Option Holders is to be construed accordingly.
Options Register	The register of Option Holders.
Register of Members	The register of Members maintained pursuant to the Corporations Act.
Replaceable Rules	The replaceable rules applicable to a proprietary limited company with share capital, set out in the Corporations Act.
Seal	The common seal for the time being of the Company, if any.
Secretary	Any person appointed for the time being as, or to perform the functions of, secretary of the Company.

Service Agreement	An agreement between the Company and the Council in relation to the operation of the Company.
Share	Any share in the share capital of the Company. Shares means more than one Share.

3.2 Interpretation

In this Constitution:

- (a) the words 'including', 'include' and 'includes' are to be construed without limitation;
- (b) a reference to legislation is to be construed as a reference to that legislation, any subordinate legislation under it, and that legislation and subordinate legislation as amended, re-enacted or replaced for the time being;
- (c) a reference to a 'person' includes a corporate representative appointed pursuant to section 250D of the Corporations Act;
- (d) headings are used for convenience only and are not intended to affect the interpretation of this Constitution; and
- (e) a word or expression defined in the Corporations Act and used, but not defined, in this Constitution has the same meaning given to it in the Corporations Act.

4 Objects

4.1 Object to deal with Council Land

The object of the Company is to conduct a Beneficial Enterprise by carrying out activities, including:

- (a) to buy, sell, develop, manage, lease, license and contract in relation to land including, Council Land;
- (b) to manage Council Land so as to:
 - (i) minimise Council's operational costs;
 - (ii) obtain the highest and best use of Council Land through obtaining development and environmental permits, business licenses, contracting and leasing arrangements;
- (c) to increase Council revenue sources through development, sale or management of land, including Council Land;
- (d) to undertake such projects in relation to land, including Council Land.

4.2 Ancillary activities

The Company's objects include undertaking any activities as are necessary, desirable or incidental to the objects referred to in **rule 4.1**.

5 Member's liability

5.1 Liability to contribute

Subject to this Constitution, each person who is a Member, and each person who was a Member during the year ending on the day of the commencement of the winding up of the Company, undertakes to contribute to the property of the Company for:

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

5.2 Limited liability

The amount that each Member or past Member is liable to contribute is limited to the amount unpaid on any Share of which that person is or was the registered holder.

6 Members

6.1 Number of Members

The Company must have at least one Member.

6.2 Limit on number of non-employee Members

- (a) The Company must have no more than 50 non-employee Members.
- (b) In determining the number of non-employee Members:
 - (i) the joint holders of any Share are counted as one Member; and
 - (ii) an employee Member is:
 - (A) a Member who is an employee of the Company or of a subsidiary of the Company; or
 - (B) a Member who was an employee of the Company, or of a subsidiary of the Company, when the Member became a Member.

6.3 Becoming a Member

Subject to the Corporations Act and this Constitution, a person becomes a Member on the registration of that person's name in the Register of Members.

7 Shares

7.1 Allotment and issue of Shares

- (a) Before issuing Shares, the Board must offer the Shares (**Offer Shares**) to Members. The number of Shares offered to each Member, as far as practicable, must be in proportion to the number of Shares that the Member already holds and the aggregate number of Shares already in issue.

- (b) In making the offer, the Board must give the Members a statement setting out the terms of the offer, including:
 - (i) the number of Shares offered;
 - (ii) the offer price for the Offer Shares, each call date, if the offer price is to be paid in instalments, the amount of each instalment and the amount of each call; and
 - (iii) the period of time for which the offer will remain open.
- (c) The Board may issue any Share not taken up under the offer on such terms as the Board determines.
- (d) The Board may issue Shares on any terms to any person, whether currently a Member or not, with the agreement of all the current Members.

7.2 Fractional entitlement

If on any issue of Shares (including on a distribution or bonus issue), a Member is entitled to a fraction of a Share, the Board may deal with that fractional entitlement, on behalf of that Member, in any manner determined by the Board to be appropriate.

7.3 Granting of options

Subject to the Corporations Act and this Constitution, the Board may grant to any person options to take up unissued Shares on such terms as the Board determines.

7.4 Options Register

The Company must maintain an Options Register.

7.5 Share certificates

- (a) It is a condition of the issue of any Shares that the Company is under no obligation to have ready for delivery any certificate or certificates relating to those Shares unless the person who is registered as the holder of those Shares (either as original subscriber, transferee or otherwise) makes a written request of the Company for the completion and delivery of share certificates, in which case the Company shall complete and deliver to the registered holder the relevant share certificates within one calendar month of receipt by the Company of that request.
- (b) Where a share certificate is lost or destroyed, the Board may issue a duplicate certificate to replace the lost or destroyed share certificate.
- (c) Where a share certificate is worn out or defaced, the Board may, upon its production to the Company, order the certificate to be cancelled and issue a replacement certificate to replace the worn out or defaced certificate.
- (d) The Company may charge a fee for the issue of a replacement certificate, of an amount determined by the Board but not to exceed the maximum fee (if any) prescribed under the Corporations Act.

- (e) Delivery of a certificate for a share to one of several joint holders is sufficient delivery to all such holders.

7.6 Joint holders of Shares

Where two or more persons are registered as the joint holders of any Share:

- (a) subject to the Corporations Act, the Company will not register more than four people as joint holder of any Share;
- (b) they hold that Share as joint tenants with rights of survivorship;
- (c) each Share certificate must set out the name of all joint holders;
- (d) on the death of any one or more of them, the survivor or survivors, as the case may be, are the only persons the Company recognises as having legal title to that Share;
- (e) each of them is jointly and severally liable to pay each call or instalment of each call and interest and any other amount payable in respect of that Share;
- (f) on transfer of that Share the instrument of transfer must be signed by all joint holders;
- (g) if the Board receives a request to convene a general meeting in accordance with this Constitution from any joint holder or any joint holders of that Share, the request must detail any proposed resolution, the name or names of the joint holder or holders requesting the meeting and be signed by all of the joint holders making the request. For this purpose, signatures of joint holders may be contained in more than one document;
- (h) if more than one joint holder attends a general meeting and purports to be entitled to vote on any resolution at that meeting, the joint holder whose name appears in the Register of Members before the names of other joint holders attending the meeting may vote;
- (i) on any resolution passed without a general meeting being held, all joint holders of that Share must sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures of joint holders may be contained in more than one document; and
- (j) any one of them may give a receipt for any amount paid in respect of that Share.

8 Maintenance of Register of Members

8.1 Register of Members

The Company must maintain a Register of Members.

8.2 Inspection of Register of Members

The Register of Members must be kept at the Company's registered office or the principal place of business. A Member may inspect the Register of

Members at no charge between the hours of 9.00 am and 4.00 pm on any Business Day.

9 Call on Shares

9.1 Power to make calls

Subject to the Corporations Act, this Constitution and the terms on which the Shares are on issue, the Board may make a call or calls on any Member in respect of any amount unpaid on any Share held by that Member.

9.2 Date of call and number of payments

- (a) Subject to the terms on which the Shares are on issue, a call is made on the date the Board resolves to make a call or, where the date of any call is specified in terms on which the Shares are on issue, on the date the Board allots the Shares.
- (b) Subject to the terms on which the Shares are on issue, a call may be payable in one payment or in instalments.

9.3 Notice of call

- (a) Subject to the terms on which the Shares are on issue, at least 14 days' notice must be given to the Member of the date on which the amount of the call or the instalment of the call must be paid.
- (b) Subject to the terms on which the Shares are on issue, the notice must state:
 - (i) the amount of the call or, as the case may be, the amount of each instalment;
 - (ii) the date (or dates) for payment;
 - (iii) the time (or times) for payment;
 - (iv) the place (or places) for payment;
 - (v) that interest may be payable if payment is not made on or before the date (or dates) for payment; and
 - (vi) that a lien will arise if the amount of the call or the instalment is not paid in accordance with the notice.
- (c) Any unintentional omission or error in giving or not giving notice of a call or the non-receipt of notice of a call by any person entitled to receive notice does not invalidate the call.

9.4 Revocation, postponement or extension of calls

Subject to the terms on which the Shares are on issue, before the Company receives any amount due under any call or instalment, the Board may resolve to revoke, postpone or extend the period within which that call or instalment must be paid. If the Board so resolves, the Board must notify all persons on whom the call was made.

9.5 Interest on unpaid calls

- (a) If an amount called is not paid on or before any date specified in the notice for payment, the Member must pay interest on the amount unpaid from the date specified in the notice of the call for payment until and including the date of actual payment. The interest rate may be determined by the Board, or, if the Board does not determine a rate, the interest rate is at the Default Rate. Interest will accrue and compound daily.
- (b) The Board may waive the right to require the payment of interest.

9.6 Joint holders

Each joint holder of any Share is jointly and severally liable to pay each call or instalment and interest and any other amount in respect of that Share.

9.7 Differentiation between Members of amounts payable on calls

The terms on which Shares are on issue may differ between Members as to the amount to be paid on any call or instalment and the date (or dates) on which payment is to be made.

9.8 Payment of calls in advance

- (a) The Board may accept any sum in respect of any amount uncalled or called but not yet payable on any Share. The Board may authorise payment by the Company of interest upon the whole or any part of any sum so accepted until the date on which the sum paid is payable under a call. The interest rate will be determined by the Board.
- (b) Any sum so accepted is:
 - (i) to be treated as a loan to the Company, not as share capital of the Company until the date on which the sum is payable under a call or instalment; and
 - (ii) not to be taken into account in determining an entitlement to vote or the amount of any distribution in respect of any Share.
- (c) The Board may repay any sum so accepted at any time on giving the Member not less than ten days' notice.

10 Lien

10.1 Lien for unpaid amounts

- (a) The Company has a first and paramount lien:
 - (i) on each partly paid Share (and any distribution in respect of it, including dividends) in respect of any call (including any instalment) due and payable but unpaid and any interest and any other amount owing in respect of that Share; and
 - (ii) on each Share in respect of any amount owed to or paid by the Company which the Company is required by law to pay in respect of the Share.

- (b) By notice, the Board may discharge or waive, in whole or in part, any lien or declare any Share to be wholly or partly exempt from a lien, but otherwise no act or omission is to be taken as discharging or a waiver or grant of an exemption from any lien. A lien may not be discharged or waived otherwise.
- (c) If any Share is subject to a lien and the Company registers the transfer without giving notice of the lien to the transferee of the Share, the lien is treated as waived as against the transferee.

10.2 Enforcement of lien

- (a) The Board may sell or otherwise dispose of any Share the subject of a lien, if:
 - (i) a sum in respect of which the lien exists is due and payable but is unpaid;
 - (ii) the Company has provided notice to the Member or, if the Company has notice of the death, bankruptcy or the mental incapacity of the Member, provided notice to the person entitled to be registered as the holder of that Share:
 - (A) setting out that amount due but unpaid paid or required to be paid or outstanding;
 - (B) requiring payment of that amount; and
 - (C) stating that the Share is liable to be sold or otherwise disposed of if payment of that amount is not made within 14 days after the date of the notice; and
 - (iii) the amount specified in the notice is not paid in full in accordance with the notice.
- (b) The terms on which and manner by which any Share may be sold or otherwise disposed of are to be determined by the Board.
- (c) Interest accrues and compounds daily at the rate determined by the Board or, if no such rate is determined, at the Default Rate on the amount due but unpaid, costs and expenses paid in connection with the enforcement of the lien and the sale or other disposal of the Shares.
- (d) The Company may receive the net proceeds of the sale or other disposal of any Share and execute an instrument of transfer in respect of the Share. The Company must apply the net proceeds of the sale or disposal of any Share in or towards satisfaction of the amount due but unpaid, costs and expenses paid or payable in connection with the enforcement of the lien and the sale or other disposal of that Share and accrued interest on all those amounts.
- (e) The Company must pay any balance of the net proceeds of sale or other disposal to the Member whose Share has been sold or otherwise disposed of.

- (f) The purchaser is entitled to assume that the proceeds of sale or other disposal have been applied in accordance with this Constitution and is not responsible for the application of the purchase money by the Company.

10.3 Continuing liability

If the net proceeds from the sale or other disposal of any Share are less than the sum of the amount:

- (a) due but unpaid in respect of that Share;
- (b) the costs and expenses paid or payable in connection with the enforcement of the lien and the sale or other disposal; and
- (c) interest on those amounts (**Shortfall**),

the person whose Share has been sold or otherwise disposed of, continues to be liable and must pay to the Company an amount equal to the Shortfall together with interest.

11 Forfeiture

11.1 Notice regarding forfeiture

- (a) If any Member does not pay the amount of any call or instalment in respect of any Share when it is due, the Board may give notice to the Member or, if the Company has notice of the death, bankruptcy or the mental incapacity of the Member, give notice to the person entitled to be registered as the holder of that Share:
 - (i) requiring payment of:
 - (A) the unpaid call or instalment;
 - (B) any costs and expenses incurred by the Company as a result of the non-payment of the call or instalment and the amount of the costs and expenses; and
 - (C) interest that has accrued and compounded (on a daily basis) on the amount of the unpaid call or instalment;
 - (ii) demanding payment of those amounts within 14 days after the date of the notice;
 - (iii) stating the place where payment is to be made; and
 - (iv) stating that the Share and any distribution in respect of it not yet made are liable to be forfeited and that on forfeiture the Shares may be sold or otherwise disposed of if payment of the amount demanded is not made in full within 14 days after the date of the notice.

11.2 Forfeiture

- (a) If payment of the amount demanded is not made in full in accordance with the notice, any Share or distribution, the subject of the notice, may be forfeited on a resolution of the Board to that effect.
- (b) The Board may accept the surrender of any Share which may be forfeited. If the Board accepts the surrender, that Share will be treated as having been forfeited.
- (c) If any Share is forfeited, notice of forfeiture will be given to the registered holder of that Share, or, as the case may be, each joint holder, and the date and details of the forfeiture will be recorded in the Register of Members.
- (d) The Board may sell or otherwise dispose of any forfeited Share on behalf of the Member. The terms and manner of sale or disposal are to be determined by the Board.
- (e) At any time before any forfeited Share is sold or otherwise disposed of, the Board may cancel the forfeiture on terms determined by it.
- (f) On forfeiture of any Share, the holder of that Share ceases to be a Member and ceases to have any right as a Member in respect of that forfeited Share (including in respect of any distribution), but remains liable to pay to the Company for:
 - (i) all amounts payable by the holder to the Company at the date of forfeiture;
 - (ii) further costs or expenses incurred by the Company in respect of the forfeiture; and
 - (iii) interest which accrues and compounds daily at a rate determined by the Board or, if no such rate is determined, at the Default Rate on those amounts from the date of forfeiture until payment of amounts and accrued interest in full.
- (g) the liability of a Member continues until:
 - (i) the Member pays all those amounts and accrued interest in full; or
 - (ii) the Company receives and applies the net proceeds from the sale or other disposal of the forfeited Share an amount which is equal to or greater than all those amounts and accrued interest.
- (h) The Company may receive the net proceeds from the sale or other disposal of any forfeited Share and execute an instrument of transfer in respect of the forfeited Share. The Company must apply the net proceeds of any sale or other disposal of any Share in or towards satisfaction of amounts due but unpaid, costs and expenses paid or payable in connection with the enforcement of the forfeiture and the sale or other disposal of that Share and accrued interest on all those amounts.

- (i) The Company must pay the balance (if any) of the net proceeds of sale or other disposal to the Member whose forfeited Share has been sold or otherwise disposed of.
- (j) The purchaser of any forfeited Share is entitled to assume that the proceeds of the sale or other disposal have been applied in accordance with this Constitution and is not responsible for the application to the purchase money by the Company.

11.3 Continuing liability

If the net proceeds from the sale or other disposal of any Share are less than the sum of the amount:

- (a) due but unpaid in respect of that Share;
- (b) the costs and expenses paid or payable in connection with the enforcement of the forfeiture and the sale or other disposal; and
- (c) interest on those amounts (**Forfeiture Shortfall**),

the person, whose Share has been sold or otherwise disposed of, continues to be liable and must pay to the Company an amount equal to the Forfeiture Shortfall together with interest.

11.4 Cancellation of forfeited Shares

By resolution passed at a general meeting, the Company may cancel any forfeited Share.

12 Transfers

12.1 Transfer of Shares

- (a) Subject to the Corporations Act and this Constitution, a Member may transfer any Share held by the Member by an instrument of transfer:
 - (i) in any form prescribed by the Board; or
 - (ii) if the Board does not prescribe a form, in any common form.
- (b) A Share may not be transferred other than in accordance with this rule.
- (c) The instrument of transfer must be signed by, or on behalf of, both the transferor and the transferee.

12.2 Registration of transfers

A Member transferring a Share remains the holder of that Share until the transfer is registered and the name of the person to whom the Share is being transferred is entered in the Register of Members.

12.3 Company's refusal to register

- (a) The Board may refuse to register any transfer of Shares for any reason.
- (b) Notice must be given to the transferee within two months after the date on which the transfer was lodged if the Board refuses to register a transfer of any Share.

12.4 Company may suspend registration

- (a) Subject to this Constitution, the Board may suspend the registration of transfers at the times and for the period of time it determines.
- (b) A period of suspension of registration must not exceed 30 days in any calendar year.

12.5 Retention of instruments of transfer

Instruments of transfer in respect of transfers that are registered may be retained by the Company for such period of time as the Board may determine.

12.6 Destroying instruments of transfer

- (a) Subject to the Corporations Act, the Company may destroy an instrument of transfer or any other title document five years after registration of the transfer.
- (b) The Company is not responsible for any loss in respect of any document destroyed in accordance with the Corporations Act or this Constitution.

12.7 Return of certificate

Any person who ceases to be a Member must return any Share certificate or, as the case may be, any other title document to the Company as soon as practicable.

13 Transmission of Shares

13.1 Transmission of Shares on death

- (a) On the death of a Member who does not own Shares jointly, the Company will recognise only the personal representative of the deceased Member as being entitled to the deceased's interest in the Shares.
- (b) The personal representative of the deceased Member may provide the Board with information it reasonably requires to establish conclusively that the personal representative is the personal representative of the deceased Member and the personal representative is entitled to be registered as the Member holding the Shares.
- (c) If the Board is satisfied that the personal representative is the personal representative of the deceased and is entitled to be registered as the holder of the Shares, it will notify the personal representative to that effect and accordingly, that the personal representative has the same rights as the deceased Member. At any time after the Board so notifies the personal representative, the personal representative may:
 - (i) by giving a signed notice to the Company, elect to be registered as the holder of any Share owned by the deceased; or
 - (ii) by giving a proper instrument of transfer to the Company, transfer any Share owned by the deceased to another person.

- (d) A trustee, executor or administrator of the estate of a deceased Member may be registered as the holder of any Share owned by the deceased as trustee, executor or administrator of that estate.

13.2 Transmission of Shares on bankruptcy

- (a) A person entitled to any Share on the bankruptcy of a Member may provide the Board with information it reasonably requires to establish conclusively that the person is entitled to be registered as the holder of any Share owned by the bankrupt Member.
- (b) If the Board is satisfied that the person is entitled to be registered as the holder of any Share, the Board will notify the person to that effect and accordingly, that the person has the same rights as the bankrupt Member. At any time after the Board so notifies the person the person may:
 - (i) by giving a signed notice to the Company, elect to be registered as the holder of any Share owned by the bankrupt Member; or
 - (ii) by giving a proper instrument of transfer to the Company, transfer any Share owned by the bankrupt Member to another person.
- (c) A trustee or administrator of a person who is bankrupt may be registered as the holder of any Share owned by that person as trustee or administrator of that person's affairs.
- (d) This rule is subject to the *Bankruptcy Act 1966* (Cth).

13.3 Transmission of Shares on mental incapacity

- (a) A person entitled to any Share because a Member is subject to assessment or treatment under any mental health law may provide the Board with information it reasonably requires to establish conclusively that the person is entitled to be registered as the holder of any Share owned by the Member.
- (b) If the Board is satisfied that the person is entitled to be registered as the holder of any Share, the Board will notify the person to that effect and accordingly, that the person has the same rights as the Member. At any time after the Board so notifies the person, the person may:
 - (i) by giving a signed notice to the Company, elect to be registered as the holder of any Share owned by the Member; or
 - (ii) by giving a proper instrument of transfer to the Company, transfer any Shares owned by the Member to another person.
- (c) A trustee or administrator of a person who is mentally or physically incapable of managing his or her affairs, may be registered as the holder of any Share owned by that person as trustee or administrator of that person's affairs.

14 Interests recognised

Subject to this Constitution, the Company is entitled to treat the Member who is the registered holder of any Share as the sole legal owner of that Share. Subject to the Corporations Act and this Constitution, the Company is not required to recognise any other interest in respect of any Share of any other person.

15 General meetings

15.1 Director convening a general meeting

- (a) Any Director may convene a general meeting.
- (b) The Company may hold an annual general meeting, to elect Directors and transact any other business which under this Constitution is to be transacted at any annual general meeting.

15.2 Meetings requested by Members

- (a) If the Board receives a request from a Member or Members with at least five percent of the votes that may be cast at any general meeting or at least 100 Members who are entitled to vote at that general meeting, the Board must convene a general meeting within 21 days after the date of receipt of that request.
- (b) The request must detail any proposed resolution, the names of the Members requesting the meeting and be signed by all of the Members.
- (c) A general meeting requested by the Members must be held no later than two calendar months after the request is received.

15.3 Notice of general meeting

At least 21 days' notice of a general meeting must be given to the Members, Directors and Auditor (if the Company has an Auditor). The notice must:

- (a) state the date, time and place (or places) of the meeting;
- (b) state the general nature of the business to be conducted at the meeting;
- (c) state any proposed resolutions;
- (d) state the names of proxies that have been appointed (if any); and
- (e) contain a statement informing the Members of the right to appoint a proxy.

15.4 Shorter notice of general meeting

Subject to the Corporations Act, shorter notice of a general meeting may be given if the calling of the notice of the general meeting on shorter notice is agreed to by 95% of the Members entitled to attend and vote at the general meeting agree before the meeting, and accordingly, any such general meeting will be treated as having been duly convened.

15.5 Notice of resumption of an adjourned meeting

If a general meeting is adjourned for 30 days or more, at least 30 days' notice must be given to the Members, Directors and Auditor (if the Company has an Auditor) of the date, time and place (or places) for the resumption of the adjourned general meeting.

15.6 General meetings at two or more places

A general meeting may be held in two or more places. If a general meeting is held in two or more places, the Company must use technology that gives Members a reasonable opportunity to participate at that general meeting.

15.7 Postponement or cancellation of general meetings

- (a) Subject to this Constitution and the Corporations Act, the Board may change the place (or places) of, postpone or cancel a general meeting.
- (b) If a general meeting is convened pursuant to a request by Members, the Board may not postpone or cancel the general meeting without the consent of the requesting Members.

15.8 Notice of change, postponement or cancellation of meeting

- (a) If the Board changes the place (or places) of a general meeting, notice must be given to each Member and each person entitled to receive notice of the meeting of the new place (or places) of the meeting.
- (b) If the Board postpones a general meeting, notice must be given to each Member and each other person entitled to receive notice of the new date, time and place (or places) of the meeting.
- (c) If the Board cancels a general meeting, notice must be given to each Member and each other person entitled to receive notice of general meetings.

15.9 Omission to give notice relating to general meeting

No resolution passed at or proceedings at any general meeting will be invalid because of any unintentional omission or error in giving or not giving notice of:

- (a) that general meeting;
- (b) any change of place (or places) of that general meeting;
- (c) postponement of that general meeting, including the date, time and place (or places) for the resumption of the adjourned meeting; or
- (d) resumption of that adjourned general meeting.

16 Proceedings at general meetings

16.1 Quorum

- (a) A quorum at a general meeting is:
 - (i) where the Company has one Member only, that Member;
 - (ii) where the Company has 2 or more Members, 2 Members.

- (b) The quorum must be present at all times during the general meeting.
- (c) In determining whether a quorum is present, count individuals attending as proxies or representatives. However if a Member has appointed more than one proxy or representative, count only one of them. If an individual is attending both as a Member and as a proxy or representative, count the individual only once.

16.2 Lack of quorum

- (a) If a quorum is not present within 30 minutes after the time appointed for a general meeting (or any longer period of time as the chair may allow) or ceases to be present at any time during the general meeting, the general meeting:
 - (i) if convened on the request of Members, is dissolved; or
 - (ii) in any other case:
 - (A) is adjourned to be resumed on a day, time and place (or places) as the chair determines or if the chair is not present as the Directors at the meeting may determine; or
 - (B) if the Directors do not so determine, no Director is present, or no Director present determines:
 - (1) the date for the resumption of the adjourned general meeting will be on the same day in the next week;
 - (2) the time for the resumption of the adjourned general meeting will be at the same time as the adjourned meeting; and
 - (3) the place (or places) for the resumption of the adjourned general meeting, will be at the same place (or places) as the adjourned meeting.
- (b) If a quorum is not present within 30 minutes after the time appointed for the resumption of the adjourned general meeting or ceases to be present during the meeting, the general meeting is dissolved.

16.3 Chairing general meetings

- (a) The chair of the general meeting will be the Director elected for the time being as chair of Board meetings.
- (b) If the chair is not present within 15 minutes after the time appointed for any general meeting or if the chair is unwilling or unable to act as chair for the whole or any part of that general meeting, the Directors present may elect a Director present to chair that general meeting.
- (c) If no Director is elected or if all the Directors present decline to take the chair for the whole or any part of that general meeting, the Members present (whether in person or by proxy) may elect a Member present (in person) to chair for the whole or any part of that general meeting. If the Members do not so elect a chair, the meeting will be adjourned to be

resumed on the same day, at the same time and at the same place (or places) in the following week.

16.4 Conduct of general meetings

The chair of each general meeting has charge of conduct of that meeting, including the procedures to be adopted and the application of those procedures at that meeting.

16.5 Adjournment

- (a) The chair of a general meeting at which a quorum is present may adjourn the meeting to another date, time and place (or places).
- (b) The chair of a general meeting may adjourn the meeting to another date, time and place (or places) if it appears to the chair that it is likely to be impracticable to hold or to continue to hold the meeting because of the number of Members who wish to attend but who are not present.
- (c) If a majority of Members present at a general meeting in person or by proxy determine that the meeting should be adjourned, the chair must adjourn the general meeting to a date, time and place (or places) determined by the chair.
- (d) No business may be transacted on the resumption of the adjourned general meeting other than the business left unfinished at the adjourned general meeting.

17 Proxy

17.1 Appointment of proxy

- (a) A Member who is entitled to attend and to vote at a general meeting of the Company may appoint a person as proxy to attend, speak and vote for that Member. The instrument appointing a proxy may restrict the exercise of any power.
- (b) A proxy may, but does not have to, be a Member.
- (c) An appointment of a proxy may be a standing one.
- (d) A proxy is not entitled to vote if the Member who has appointed the proxy is present in person at the meeting.
- (e) If a Member is entitled to cast two or more votes at a meeting, the Member may appoint two proxies. If the Member appoints two proxies and the appointment does not specify the proportion or the number of votes each proxy may exercise, each proxy may exercise half the votes.
- (f) Any fractions of votes resulting from the application of **rule 17.1(e)** will be disregarded.

17.2 Proxy instruments

- (a) An appointment of a proxy must be in writing and be signed by the Member appointing the proxy or by the duly authorised attorney of the Member and state:

- (i) the Member's name and address;
 - (ii) the Company's name;
 - (iii) the proxy's name or the name of the office held by the proxy; and
 - (iv) the general meeting at which the proxy may be used, or if the appointment is a standing one, a clear statement to that effect.
- (b) Where a proxy is signed pursuant to a power of attorney, a copy of the power of attorney (certified as a true copy of the original) must be attached to the proxy instrument sent to the Company.
- (c) An instrument appointing a proxy may direct the way in which a proxy is to vote on a particular resolution. If an instrument contains a direction, the proxy is not entitled to vote on the proposed resolution except as directed in the instrument.

17.3 Proxy to be received by Company

- (a) An instrument purporting to appoint a proxy is not effective unless it is received, together with any additional documentation, including a copy of the power of attorney (certified as a true copy of the original), by the Company at least 48 hours before the general meeting or, as the case may be, the resumption of an adjourned general meeting, at any of the following:
- (i) the registered office;
 - (ii) a facsimile number at the registered office; or
 - (iii) a place, facsimile number or electronic address specified for that purpose in the notice of the general meeting.

17.4 Power to demand poll

A proxy may demand, or join in demanding, a poll.

17.5 Revocation of proxy

The appointment of a proxy may be revoked by the Member who appointed the proxy by notice to the Company from the Member or, as the case may be, the duly authorised attorney of the Member, stating that the appointment of a proxy is revoked or by appointing a new proxy.

17.6 Validity of votes of proxy

A vote cast by a proxy will be valid unless before the start of a general meeting (or, in the case of an adjourned general meeting, before the resumption of the adjourned general meeting) at which a proxy votes:

- (a) the Member who appointed the proxy ceases to be a Member; or
- (b) the Company receives notice of:
 - (i) the revocation of the instrument appointing the proxy;
 - (ii) the appointment of a new proxy; or
 - (iii) the revocation of any power of attorney under which the proxy was appointed.

17.7 No liability

The Company is not responsible for ensuring that any directions provided in the instrument appointing the proxy or the way in which a proxy is to vote on a particular resolution are complied with, and accordingly is not liable if those directions are not complied with.

18 Body corporate representative

18.1 Appointment of corporate representative

- (a) If a Member is a body corporate, it may appoint a natural person as its representative to exercise on its behalf any or all of the powers it may exercise:
 - (i) at meetings of the Members;
 - (ii) at meetings of creditors or debenture holders; or
 - (iii) relating to resolutions to be passed without meetings.
- (b) The appointment of a corporate representative may be a standing one.

18.2 Authority to act as corporate representative

- (a) An appointment of a corporate representative must be in writing and be signed by the body corporate appointing the representative and state:
 - (i) the Member's name and address;
 - (ii) the Company's name;
 - (iii) the representative's name or the name of the office held by the representative; and
 - (iv) the general meeting at which the representative may act, or if the appointment is a standing one, a clear statement to that effect.
- (b) The instrument appointing the corporate representative may restrict the exercise of any power.

18.3 Instrument to be received by Company

- (a) An instrument purporting to appoint a corporate representative is not valid unless it is received by the Company before the general meeting or, in the case of an adjourned meeting, before the resumption of an adjourned general meeting.
- (b) An instrument appointing a corporate representative must be:
 - (i) received by the Company at any of the following not less than 24 hours before the meeting:
 - (A) the registered office;
 - (B) a facsimile number at the registered office; or
 - (C) a place, facsimile number or electronic address specified for that purpose in the notice of the general meeting, or

- (ii) delivered to the Secretary or the chair of the Board, at the venue where the meeting is held, before commencement of the meeting.

18.4 Revocation and appointment of corporate representative

The appointment of a corporate representative may be revoked by the Member who appointed the corporate representative by notice to the Company from the Member stating that the appointment of the corporate representative is revoked or by appointing a new corporate representative.

18.5 Validity of votes of corporate representative

A vote cast by a corporate representative will be valid unless before the start of the general meeting (or, in the case on an adjourned general meeting, before the resumption of the adjourned general meeting) at which a corporate representative votes:

- (a) the Member who appointed the corporate representative ceases to be a Member; or
- (b) the Company has received notice of:
 - (i) the revocation of the instrument appointing the corporate representative; or
 - (ii) the appointment of a new corporate representative.

18.6 No liability

The Company is not responsible for ensuring that the terms of appointment of a corporate representative are complied with, and accordingly is not liable if those terms are not complied with.

19 Voting

19.1 Entitlement to vote

Each Member entitled to vote at a general meeting may vote in person or by proxy. On a show of hands, each Member has one vote, and on a poll one vote for each Share held.

19.2 No casting vote

If on any ordinary resolution an equal number of votes is cast for and against a resolution, the chair does not have a casting vote in addition to any vote cast by the chair as a Member, and the motion is not passed.

19.3 Proxy vote to be identified

Before a vote is taken the chair must inform the Members present whether any proxy votes have been received and, if so, how the proxy votes are to be cast.

19.4 Voting on resolution

At any general meeting, a resolution put to a vote must be decided by a show of hands unless a poll is demanded in accordance with this Constitution.

19.5 Objection to right to vote

- (a) A challenge to a right to vote at a general meeting:
 - (i) may only be made at that general meeting; and
 - (ii) must be determined by the chair.
- (b) A decision made by the chair in relation to a challenge to a right to vote is final.

19.6 Written resolutions

Members may pass a resolution without a general meeting being held if all the Members 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. For this purpose, signatures of the Members may be contained in more than one document.

19.7 Minutes

- (a) Unless a poll is demanded in accordance with this Constitution, a declaration by the chair that a resolution has, on a show of hands, been:
 - (i) carried;
 - (ii) carried unanimously;
 - (iii) carried by a particular majority; or
 - (iv) lost or not carried by a particular majority,is conclusive evidence of the fact declared. An entry to that effect made in the minutes book of the Company signed by the chair is evidence of that fact unless the contrary is proved.
- (b) Within one month after each general meeting, the Directors must record or cause to be recorded in the minutes book:
 - (i) the proceedings and resolutions of each general meeting;
 - (ii) any declarations at each general meeting; and
 - (iii) all resolutions passed by Members without a general meeting.
- (c) The chair, or the chair of the next meeting, must sign the minutes within one month after the general meeting.
- (d) The minute books must be kept at the registered office.
- (e) Members may inspect the minute books between the hours of 9.00 am and 5.00 pm on any Business Day. No amount may be charged for inspection.

20 Poll

20.1 Chair may determine to take a poll

The chair of a general meeting may determine that a poll be taken on any resolution.

20.2 Right to demand poll

A poll may be demanded on any resolution at a general meeting other than the election of a chair or the question of an adjournment by:

- (a) at least five Members entitled to vote on the resolution; or
- (b) Members with at least five percent of the votes that may be cast on the resolution on a poll.

20.3 Procedure for demanding poll

- (a) A poll may be demanded:
 - (i) before a vote on a show of hands is taken;
 - (ii) before the result of a vote on a show of hands is declared; or
 - (iii) immediately after the result of a vote on a show of hands is declared.
- (b) If a poll is demanded on the election of a chair or on the question of an adjournment, it must be taken immediately. If a poll is demanded on any other matter, it may be taken in the manner and at the time and place (or places) as the chair directs.
- (c) Other than where a poll is demanded on the election of a chair or the question of an adjournment, a demand for a poll may be withdrawn at any time by the person or persons who demanded it. A demand for a poll which is withdrawn does not invalidate the result of a show of hands declared before the demand for the poll was made.
- (d) Other than where a poll is demanded on the election of a chair or the question of an adjournment, a demand for a poll does not prevent the general meeting continuing for the transaction of any business.

21 Appointment and removal of Directors

21.1 Number of Directors

The Company must have at least one Director. At least one Director must reside ordinarily in Australia.

21.2 Appointment of Directors

- (a) The Company may appoint a person as a Director by resolution passed in general meeting.
- (b) An appointment of a person as a Director is not effective unless a signed consent to the appointment is provided by that person to the Company. The appointment of a person as a Director will take effect on the later of the date of appointment and the date on which the Company receives the signed consent.
- (c) Directors are not subject to retirement by rotation.
- (d) A Director is not required to have a share qualification.

21.3 Director may resign

A Director may resign as a director by giving a written notice of resignation to the Company at the registered office.

21.4 Removal by Members

The Company may by resolution passed in general meeting remove a Director from office.

21.5 Cessation of Directorship

A person ceases to be a Director and the office of Director is vacated if the person:

- (a) resigns as a Director in accordance with this Constitution;
- (b) is subject to assessment or treatment under any mental health law and the Board resolves that the person should cease to be a Director;
- (c) dies;
- (d) is disqualified from acting as a Director under the Corporations Act.

22 Alternate Directors

22.1 Appointment and terms of appointment

- (a) Any Director may appoint a natural person, approved by a Majority of the other Directors to act as the alternate of that Director and may specify the terms of the alternate's appointment. The terms of that appointment may provide for the alternate to exercise some or all of the powers of that Director.
- (b) A person may be appointed as the alternate of more than one Director.
- (c) An alternate is not an agent of the Director appointing the alternate.
- (d) The Director appointing an alternate must give notice to the Company of that appointment. If the notice does not detail the terms of the appointment, the alternate will have the power to exercise all of the powers of the Director. The appointment will continue until notice of termination of the appointment is received by the Company.

22.2 Company not responsible for terms of appointment

The Company is not responsible for ensuring that the terms of appointment of an alternate are complied with and accordingly, is not liable if those terms are not complied with.

22.3 Remuneration of alternate

An alternate is not entitled to receive any fee (or other remuneration) from the Company for services performed as an alternate.

22.4 Notice and attendance at Board meetings

If the notice appointing the alternate provides that the alternate is to receive notice of Board meetings, the Company must provide each alternate with notice. By notice to the Company, the Director who appointed an alternate

may at any time require that the notice of Board meetings cease to be given to the alternate.

22.5 Voting of alternate

An alternate is entitled to a vote for each Director that the alternate represents in addition to any vote the alternate may have as a Director in the alternate's own right.

22.6 Termination of appointment of alternate

- (a) A Director who appointed an alternate may terminate the appointment of the alternate at any time by notice to the alternate, the Directors and the Company.
- (b) An alternate may terminate the alternate's appointment at any time by notice to the Directors and the Company.
- (c) A termination of appointment does not take effect until the Company has received notice of termination.

22.7 Cessation of appointment of alternate

An alternate ceases to be an alternate if the person who appointed that alternate ceases to be a Director.

23 Powers and duties of Board

23.1 Board to manage Company

- (a) Subject to this Constitution and the Corporations Act, the activities of the Company are to be managed by, or under the direction of, the Board.
- (b) Subject to this Constitution and the Corporations Act, the Board may exercise all powers of the Company that are not required to be exercised by the Company in a general meeting.
- (c) The powers of the Board include the power to:
 - (i) borrow or otherwise raise money;
 - (ii) mortgage, charge (including in the form of a floating charge) any of the Company's assets (both present and future); and
 - (iii) issue debentures and other securities, and any instrument (including any bond).

23.2 Negotiable instruments

All negotiable instruments and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed in such manner as the Board may determine.

23.3 Delegation of Board powers

The Board may delegate any of its powers except clause 23.1(c), to:

- (a) a Director;
- (b) a committee of Directors;

- (c) an employee of the Company; or
- (d) any other person.

23.4 Wholly owned subsidiary company

Where the Company is a wholly owned subsidiary of a body corporate (**holding company**), a Director may act in the best interests of the holding company where to do so is permitted under the Corporations Act.

23.5 Rules for exercise of Board's powers

The Board must exercise its powers:

- (a) in accordance with the Local Government Principles;
- (b) in the public interest; and
- (c) in accordance with the Service Agreement.

24 Managing Director

24.1 Appointment of Managing Director

The Board may appoint one or more of the Directors to the office of Managing Director for such period, and on such terms (including as to remuneration), as the Board determines.

24.2 Terms of appointment

- (a) The Board may confer on a Managing Director any of the powers that the Board may exercise.
- (b) The Board may vary or revoke a conferral of any power on the Managing Director.
- (c) The Board may at any time vary or revoke an appointment of a Managing Director.
- (d) A person ceases to be a Managing Director if the person ceases to be a Director.

25 Remuneration and reimbursement for expenses

25.1 Remuneration of Directors

- (a) The Directors are entitled to receive such remuneration as is from time to time determined by the Company in general meeting.
- (b) Directors' fees accrue on a day to day basis and are apportionable accordingly.

25.2 Reimbursement of expenses

Directors and alternates are entitled to be reimbursed by the Company for reasonable costs and expenses incurred or to be incurred in connection with attendance at meetings of the Board and committees of the Board.

26 Board meetings

26.1 Convening meetings

- (a) In the ordinary course, the Secretary will convene Board meetings in accordance with the determination of the Board.
- (b) A Director may at any time convene a Board meeting by notice to the other Directors.

26.2 Notice of meetings

- (a) Reasonable notice of each Board meeting must be given to the Directors and each alternate entitled to receive notice (if any).
- (b) Each notice must state:
 - (i) the date, time and place (or places) of the Board meeting;
 - (ii) the general nature of the business to be conducted at the Board meeting.

26.3 Omission to give notice

No resolution passed at or proceedings at any Board meeting will be invalid because of any unintentional omission or error in giving or not giving notice of:

- (a) that Board meeting;
- (b) any change of place (or places) of that Board meeting;
- (c) postponement of that Board meeting; or
- (d) resumption of that adjourned Board meeting.

26.4 Use of technology

A Board meeting may be convened or held using any technology consented to by all Directors. The consent may be a standing one. A Director may withdraw consent to the use of a particular technology within a reasonable time period before a Board meeting.

26.5 Quorum at meetings

A quorum at a Board meeting is at least two of the Directors present in person. The quorum must be present at all times during the Board meeting.

26.6 Chair of meetings

- (a) The Directors may elect a chair and may determine the period during which the chair holds office.
- (b) If the person entitled to chair a meeting is not present within 30 minutes after the time appointed for a Board meeting or if the chair is unwilling or unable to act as chair for the whole or any part of that Board meeting, the Directors present may elect a Director present to chair that Board meeting.

26.7 Passing resolutions at meetings

- (a) Subject to this Constitution, questions arising at a Board meeting are decided by a majority of votes of the Directors present and entitled to vote on the question.
- (b) In the case of an equality of votes, the chair of the meeting does not have a casting vote and the motion is not passed.
- (c) Each Director present in person or by alternate is entitled to vote and has one vote.

26.8 Conduct of meetings

The chair of each Board meeting has charge of conduct of that meeting, of the procedures to be adopted and the application of those procedures at that meeting.

26.9 Written resolutions

The Board may pass a resolution without a Board 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. For this purpose, signatures can be contained in more than one document.

26.10 Minutes of meetings

- (a) Within one month after each Board meeting, the Directors must record or cause to be recorded in the minute books:
 - (i) the proceedings and resolutions of each Board meeting; and
 - (ii) all resolutions passed without a Board meeting.
- (b) The chair of the meeting, or the chair of the next Board meeting, must sign the minutes.
- (c) The minute books must be kept at the registered office.
- (d) The Directors may inspect the minute books at no charge between the hours of 9:00 am and 5:00 pm on any Business Day. No amount may be charged for inspection.

26.11 Committee meetings

The Board will determine how meetings of any committee of the Board are to be conducted, including the procedures to be adopted and the application of those procedures.

26.12 Council CEO may attend Board meetings

The chief executive officer of the Council is entitled to receive notice of meetings of the Board, and to attend as an observer.

27 Director's interests

27.1 Declaration of interest

- (a) Any Director who has a material personal interest in a contract or proposed contract of the Company, holds any office or owns any

property such that the Director might have duties or interests which conflict or may conflict either directly or indirectly with the Director's duties or interests as a Director, must give the Board notice of the interest at a Board meeting.

- (b) A notice of a material personal interest must set out:
 - (i) the nature and extent of the interest; and
 - (ii) the relation of the interest to the affairs of the Company.
- (c) The notice must be provided to the Board at a Board meeting as soon as practicable.
- (d) Details of the notice must be recorded in the minutes of the Board meeting at which the notice is provided.

27.2 Voting by interested Directors

If a Director who has a material personal interest in a matter that is being considered at a Board meeting has provided notice to the Board in accordance with this Constitution:

- (a) the Director may vote on the matter at a meeting;
- (b) any transactions that relate to the material personal interest may proceed;
- (c) the Director may retain benefits under the transaction even though the Director has a material personal interest; and
- (d) the Company cannot avoid the transaction merely because of the existence of the interest.

28 Appointment of Secretary

- (a) The Board may appoint a natural person to act as Secretary on the terms and for such a period as the Board may determine.
- (b) Any Secretary appointed may be removed at any time by the Board.

29 Chief Executive Officer

29.1 Appointment of Chief Executive Officer

- (a) The Board may appoint a Chief Executive Officer of the Company to deal with the operation of the Company in accordance with the delegated authorities approved by the Board.
- (b) The Chief Executive Officer of the Company will attend Board meetings if directed by the Board but is not a Director and has no right to vote at such meetings.

29.2 Delegation of powers

- (a) Subject to the Service Agreement, the Board may confer on the Chief Executive Officer of the Company any of the powers that the Board may exercise.
- (b) The Board may vary or revoke a conferral of any power on the Chief Executive Officer of the Company.

29.3 Removal of Chief Executive Officer

The Board may at any time vary or revoke an appointment of a Chief Executive Officer of the Company.

30 Seal

- (a) If the Company has a Seal the Directors must provide for the safe custody of the Seal (and any duplicate of it).
- (b) The Seal (and any duplicate of it) must not be used without the prior authority of the Board, and when used, the Seal must be used in accordance with any direction of the Board.
- (c) If a document is to be executed by the use of the Seal, the fixing of the Seal must be witnessed by two Directors or a Director and Secretary.

31 Financial records

31.1 Member's access to financial records

Any Member is entitled to inspect books of the Company on reasonable notice.

31.2 Directors' access to financial records

Any Director may at any time access and inspect any financial record and any other record of the Company.

31.3 Access to financial records after ceasing to be a Director

The Board may determine that any person who is to cease or has ceased to be a Director may continue to have access to and inspect any financial record and any other record of the Company relating to the time during which the person was a Director.

32 Distributions

32.1 Payment of dividends

- (a) Subject to **rule 32.1(c)**, the Board may from time to time either determine or declare that a dividend is payable on a class of Shares (taking into account the terms of issue of those Shares) and fix:
 - (i) the amount of the dividend;

- (ii) the record date, being the date on which persons who hold Shares in the relevant class at midnight at the end of that date will be entitled to receive the dividend;
 - (iii) the time for payment; and
 - (iv) the method of payment which may include the payment of cash, the issue of Shares, the grant of options or the distribution of assets.
- (b) Interest is not payable on a dividend.
- (c) A dividend is payable:
- (i) out of the profits of the Company; or
 - (ii) out of such other amounts and in any circumstances permitted under the Corporations Act.

32.2 Provisions and reserves

- (a) Subject to this Constitution, the Board may determine to set aside out of the profits of the Company, any provision or reserve as the Board determines.
- (b) The Board may appropriate to the Company's profits any amount previously set aside as a provision or reserve.
- (c) Any amount set aside as a provision or reserve does not have to be kept separate from any other asset of the Company and such amount may be used as the Board determines.

32.3 Deductions from dividends

Without prejudice to the application of any other rule of this Constitution, the Board may deduct from any dividend payable to the Member any amount presently due but unpaid by the Member to the Company.

32.4 Unpaid calls

Without prejudice to the application of any other rule of this Constitution, the Board may retain the dividends payable on Shares in respect of which there are any unpaid calls.

32.5 Dividends payable in cash

A dividend payable in cash may be paid:

- (a) by cheque sent by post or by courier to the addresses of the Member or to an address directed by that Member;
- (b) by electronic funds transfer to an account nominated by and in the name of the Member; or
- (c) in any other manner determined by the Board.

32.6 Dividends payable by the transfer of assets

- (a) The Board may direct payment of the dividend wholly or partly by the distribution of specific assets (including fully paid Shares and fully paid debentures or any other security) to some or all of the Members.

- (b) To give effect to any direction the Board may do all things that the Board considers appropriate including:
 - (i) fixing the value for distribution of any specific asset or any part of any such asset; or
 - (ii) making a cash payment to any Member to adjust the value of distributions made to Members.

32.7 Capitalisation of profits

- (a) Subject to the Corporations Act, this Constitution and the terms of issue of Shares, the Board may determine to capitalise any amount available for distribution to Members by paying up in full unissued Shares to be issued to Members as fully paid.
- (b) Each Member is entitled to benefit from any such capitalisation on the same basis as that Member is entitled to dividends.
- (c) To give effect to any direction, the Board may do all things that the Board considers appropriate including:
 - (i) disregarding any fractional Share entitlement to any Share;
 - (ii) making a cash payment in respect of any fractional entitlement;
 - (iii) fixing the value for distribution of any specific asset or any part of any such asset; or
 - (iv) making a cash payment to any Member to adjust the value of distributions made to Members.

33 Notices

33.1 General

Any notice, statement or other communication under this Constitution must be in writing except that any notice convening a Board meeting does not need to be in writing.

33.2 How to give a communication

In addition to any other way allowed by the Corporations Act, a notice or other communication may be given by being:

- (a) personally delivered;
- (b) left at the person's current address as recorded in the Register of Members;
- (c) sent to the person's address as recorded in the Register of Members by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail;
- (d) sent by fax to the person's current fax number for notices; or
- (e) sent by email to the person's current email address for notices.

33.3 Communications by post

A communication is given if posted:

- (a) within Australia to an Australian address, three Business Days after posting;
- (b) outside Australia to an address outside Australia, ten Business Days after posting.

33.4 Communications by fax

A communication is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

33.5 Communications by email

A communication is given if sent by email, when the information system from which the email was sent produces a confirmation of delivery report which indicates that the email has entered the information system of the recipient, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the information system of the recipient.

33.6 After hours communications

If a communication is given:

- (a) after 4:00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9:00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

34 Indemnity and insurance

34.1 Indemnity

To the extent permitted by the Corporations Act and subject to the Corporations Act, the Company may indemnify each officer of the Company in respect of any liability, loss, damage, cost or expense incurred or suffered or to be incurred or suffered by the officer, including legal costs and expenses incurred in defending an action, in or arising out of the conduct of any activity of the Company or the proper performance of any duty of that officer.

34.2 Documenting indemnity

The Company may enter into an agreement containing an indemnity in favour of an officer. The Board will determine the terms of the indemnity contained in the agreement.

34.3 Insurance

- (a) To the extent permitted by the Corporations Act and subject to the Corporations Act, the Company may pay any premium in respect of a contract of insurance between an insurer and an officer, or any person

who has been an officer of the Company in respect of the liability suffered or incurred in or arising out of the conduct of any activity of the Company and the proper performance by the officer of any duty.

- (b) If the Board determines, the Company may execute a document containing rules under which the Company agrees to pay any premium in relation to such a contract of insurance.

35 Winding up

If the Company is wound up any property that remains (after satisfaction of all debts and liabilities of the Company, the payment of the costs, charges and expenses of winding up and any adjustment of the rights of the contributories among Members) must be distributed among the Members in proportion to the number of Shares held by each Member (subject to any special rights or conditions attaching to particular classes of Shares).

Draft No 3
11 November 2014

Redland City Council

[Name of Company Pty Ltd]

Service Agreement

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Date

Parties

Redland City Council of [Address] (**Member**)

[Name of Company Pty Ltd] [ACN xxx xxx xxx] of [Address] (**Company**)

Background

- A The Member is the sole shareholder of the Company.
- B The Member and the Company have entered into this document to set out their agreement in relation to aspects of the operation of the Company.
-

Agreed terms

1 Definitions

1.1 Definitions in this document

In this document these terms have the following meanings:

- Agreement** The agreement set out in this document.
- Business Day** A day which is not a Saturday, Sunday or bank or public holiday in Brisbane.
- Constitution** The constitution of the Company.

1.2 Definitions in Constitution

Terms defined in the Constitution have the same meaning in this document.

2 Matters requiring approval of Member

The Company and the Member agree that the Board must not undertake any of the following transactions, unless it has been approved by the Member:

- (a) issue or grant any rights in respect of any Shares, notes, debentures, bonds, options, warrants or other rights convertible into Shares, loan capital (including shareholder loan capital) or any other securities in the Company;
- (b) acquire any Council Land;

- (c) enter into any contract for services to the Company that has a value of **[\$10 million]** or more;
- (d) incur any item of capital expenditure, the total cost of which exceeds **[\$10 million]**;
- (e) approve the capitalisation of profits or reserves or the reduction of capital or write down the value of any Council Land or other asset of the Company;

3 Composition of Directors

3.1 Member's right to appoint and remove Directors

It is acknowledged that under the Constitution the Member has the right to appoint and remove Directors by resolution.

3.2 Intended composition of Board

- (a) At the date of this document, the Member proposes that the Directors of the Company will comprise qualified and experienced individuals including at least:
 - (i) two senior employees of the Council; and
 - (ii) three independent Directors with expertise in the Company's activities.
- (b) However the parties note that the appointment of Directors is at the sole discretion of the Member and the composition of the Directors appointed from time to time may vary.

4 Company management

4.1 Governance principles

The Company must:

- (a) adopt the 'local government principles' as referred to in the Local Government Act; and
- (b) comply with the Local Government Principles.

4.2 Auditor

The parties agree that the auditor of the Company will be the Auditor-General of Queensland.

4.3 Financial information for Member

The Company must make available information to the Member in relation to the Company's financial management as required by the Corporations Act and the Local Government Act 2009 including if applicable:

- (a) monthly management accounts;
- (b) annual audited financial statements;

- (c) annual budgets;
- (d) business plans.

4.4 Restricted investments

The Company must not invest any funds of the Company other than in accordance with legislated requirements and prudent business practices.

4.5 Engagement of staff

The Council acknowledges and agrees that the terms on which the Company engages staff are not required to comply with the terms and conditions applicable to engagements of staff by Council.

5 Dividend policy

- 5.1** The Board may in consultation with the Council determine a Dividend policy and or to set aside out of the profits of the Company, any dividend, provision or reserve as the Board determines.

6 Duration of agreement

6.1 Commencement and termination

The parties agree that the terms of this Agreement commence on execution of this document by all parties and continue to have effect until:

- (a) the agreement is terminated by mutual agreement of the parties;
- (b) the Company is dissolved and the winding up of the Company's affairs completed.

6.2 Termination without prejudice to rights

Termination of this agreement pursuant to **clause 6.1**:

- (a) is without prejudice to the rights of either party against the other party for any breach of this document arising on or prior to the date of termination;
- (b) does not affect any rights or obligations expressed to survive termination of this Agreement.

7 Notices

7.1 General

A notice, demand, certification, process or other communication relating to this document must be in writing in English and may be given by an agent of the sender.

7.2 How to give a communication

In addition to any other lawful means, a communication may be given by being:

- (a) personally delivered;

- (b) left at the party's current delivery address for notices;
- (c) sent to the party's current postal address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail;
- (d) sent by fax to the party's current fax number for notices; or
- (e) sent by email to the person's current email address for notices.

7.3 Particulars for delivery of notices

- (a) The particulars for delivery of notices are initially:

Member

Delivery address: 91 to 93 Bloomfield Street Cleveland
 Postal address: PO Box 21 Cleveland Qld
 Fax: 3829 8765
 Attention: Chief Executive Office (CEO)

Company

Delivery address: 91 to 93 Bloomfield Street Cleveland
 Postal address: PO Box 21 Cleveland Qld
 Fax: 3829 8765
 Attention: Chief Finance Officer (CFO)

- (b) Each party may change its particulars for delivery of notices by notice to each other party.

7.4 Communications by post

Subject to **clause 7.7**, a communication is given if posted:

- (a) within Australia to an Australian postal address, three Business Days after posting; or
- (b) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, ten Business Days after posting.

7.5 Communications by fax

Subject to **clause 7.7**, a communication is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

7.6 Communications by email

A communication is given if sent by email, when the information system from which the email was sent produces a confirmation of delivery report which indicates that the email has entered the information system of the recipient, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the information system of the recipient.

7.7 After hours communications

If a communication is given:

- (a) after 4.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

7.8 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this document may be served by any method contemplated by this **clause 7** or in accordance with any applicable law.

8 GST

8.1 Construction

In this **clause 8**:

- (a) words and expressions which are not defined in this document but which have a defined meaning in GST Law have the same meaning as in the GST Law; and
- (b) “**GST Law**” has the meaning given to that expression in the A New Tax System (Goods and Services Tax) Act 1999.

8.2 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this document are exclusive of GST.

8.3 Payment of GST

If GST is payable by a supplier or by the representative member for a GST group of which the supplier is a member, on any supply made under this document, the recipient will pay to the supplier an amount equal to the GST payable on the supply.

8.4 Timing of GST payment

The recipient will pay the amount referred to in **clause 8.3** in addition to and at the same time that the consideration for the supply is to be provided under this document.

8.5 Tax invoice

The supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under **clause 8.3**. The recipient can withhold payment of the amount until the supplier provides a tax invoice or an adjustment note, as appropriate.

8.6 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a supplier under this document, the amount payable by the recipient under **clause 8.3** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.

8.7 Reimbursements

Where a party is required under this document to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

9 General

9.1 Legal costs

- (a) The Member agrees to pay the legal and other costs of the parties in preparing and negotiating this document.
- (b) Otherwise, each party must pay its own legal and other costs and expenses of performing its obligations under this document.

9.2 Amendment

This document may only be varied or replaced by a document executed by the parties.

9.3 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a party of a right relating to this document does not prevent any other exercise of that right or the exercise of any other right.
- (b) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

9.4 Rights cumulative

Except as expressly stated otherwise in this document, the rights of a party under this document are cumulative and are in addition to any other rights of that party.

9.5 Consents

Except as expressly stated otherwise in this document, a party may conditionally or unconditionally give or withhold any consent to be given under this document and is not obliged to give its reasons for doing so.

9.6 Further steps

Each party must promptly do whatever any other party reasonably requires of it to give effect to this document and to perform its obligations under it.

9.7 Governing law and jurisdiction

- (a) This document is governed by and is to be construed in accordance with the laws applicable in Queensland.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

9.8 Assignment

- (a) A party must not assign or deal with any right under this document without the prior written consent of the other parties.
- (b) Any purported dealing in breach of this clause is of no effect.

9.9 Counterparts

This document may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

9.10 Relationship of parties

This document is not intended to create a partnership, joint venture or agency relationship between the parties.

9.11 Deed

This document is a deed. Factors which might suggest otherwise are to be disregarded.

9.12 Construction

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;

- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (v) a right includes a benefit, remedy, discretion or power;
 - (vi) time is to local time in Brisbane;
 - (vii) '\$' or 'dollars' is a reference to Australian currency;
 - (viii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
 - (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions;
 - (x) this document includes all schedules and annexures to it; and
 - (xi) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this document;
- (g) if the date on or by which any act must be done under this document is not a Business Day, the act must be done on or by the next Business Day; and
- (h) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

9.13 Headings

Headings do not affect the interpretation of this document.

Execution

Executed as a deed.

Signed by Redland City Council by its
authorised officer in the presence of:

)
)
)
)

.....
Witness

.....
Authorised Officer

.....
Name of Witness (print)

.....
Name of Authorised Officer (print)

**Executed by [Name of Company Pty
Ltd]**

)
)

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)