

**CORPORATIONS ACT 2001**  
A Public Company Limited by Guarantee

**Constitution  
of  
Property Investors Council of Australia Ltd**

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CORPORATIONS ACT 2001

CONSTITUTION OF A PUBLIC COMPANY LIMITED BY GUARANTEE AND NOT  
HAVING A SHARE CAPITAL

PROPERTY INVESTORS COUNCIL OF AUSTRALIA LTD

1. Preliminary

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1.1 Definitions

In this Constitution, unless the context otherwise requires:

**Alternate Directors** mean the alternate directors as appointed by the Directors pursuant to Rule 12.12;

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

**Associate Member** means any Member other than an Individual Member and specified in the Members Register as an Associate Member;

**Board** means the Directors acting as a board of directors;

**Chairman** means the chairman appointed pursuant to Rule 14.9;

**Chief Executive Officer** means the person appointed by the Board by Resolution pursuant to Rule 17;

**Code of Conduct** means a code of conduct developed by the Company to provide a framework for the Members to pursue the objectives of the Company;

**Company** means the Property Investors Council of Australia Ltd, c/o YK Partners, Level 2, 545 King Street, West Melbourne VIC 3003;

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

**Directors** means the directors of the Company from time to time and **Director** means any one of them;

**Income Tax Exempt Entity** means an entity endorsed as exempt from income tax under Subdivision 50-B of the *Income Tax Assessment Act 1997* (Cth);

**Individual Member** means a Member who is a natural person age 18 and above and specified in the Members Register as an Individual Member;

**Industry** means the property investment marketplace;

**Member** means a person who is granted membership in the Company and registered in the Members' Register;

**Members' Register** means the register of Members to be kept in accordance with the Corporations Act and to reflect the type of membership of each Member;

**Related Body Corporate** has the meaning given to that term in section 50 of the Corporations Act;

**Replaceable Rules** means the provisions of the Corporations Act which would but for the Constitution apply as replaceable rules under section 141 of the Corporations Act;

**Representative** means a person appointed to represent a body corporate Member at a general meeting of the Company in accordance with the Corporations Act;

**Resolution** means a resolution other than a Special Resolution;

**Rule** means a rule set out in this Constitution;

**Secretary** means a person appointed under Rule 18.1 as a secretary of the Company, and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company; and

**Special Resolution** means a resolution:

- (a) passed at a meeting by at least 75% of the votes cast by those Members present (whether personally or by another) and entitled to vote on that resolution; or
- (b) identified in a document where all those Members entitled to vote on the resolution sign a statement that they are in favour the resolution set out in the document.

## 1.2 Interpretation

In this Constitution, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa and a gender includes all genders;
- (b) other grammatical forms of defined words or expressions have corresponding meanings;
- (c) references to the Corporations Act, any section, regulation or schedule of the Corporations Act or any other legislation are references to that law as amended, consolidated, supplemented or replaced;
- (d) the meaning of general words is not limited by specific examples, introduced by including, for example or similar expressions;
- (e) references to any person include references to any individual, company, body corporate, association, partnership, firm, joint venture, trust or government agency;
- (f) a reference to a rule, paragraph, schedule or annexure is a reference to a rule, paragraph, schedule or annexure to this Constitution;

- (g) headings are for convenience only and must be ignored in interpreting this Constitution;
- (h) a reference to time is to Melbourne time;
- (i) money amounts are stated in Australian currency unless otherwise specified; and
- (j) a reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in visible form.

### **1.3 Constitution subject to the Corporations Act**

This Constitution is subject to the Corporations Act and where there is any inconsistency between a Rule and the Corporations Act, the Corporations Act prevails to the extent of the inconsistency.

### **1.4 Replaceable Rules not to apply**

The Replaceable Rules are displaced by this Constitution and do not apply to the Company.

## **2. Company Limited by Guarantee**

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### **2.1 Liability of Members Limited**

The liability of the Members of the Company is limited.

### **2.2 Guarantee by Members**

Each Member undertakes to contribute to the Company's property if the Company is wound up during, or within one year after the cessation of, the Member's membership on account of:

- (a) payment of the Company's debts and liabilities contracted before they ceased to be a Member;
  - (b) the costs of winding up; and
  - (iii) adjustment of the rights of the contributories among themselves,
- an amount not to exceed \$1.00.

## **3. Objectives of the Company**

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- (a) The objective of the Company is to operate as a not-for-profit organisation which is committed to:
  - i. advocating and lobbying on behalf of property investors' interests; and
  - ii. educating the Members on the economic, social benefits and risks of property investments in Australia.

(b) Without limiting the generality of Rule 3(a), the objectives of the Company include:

- i. assisting in the development and consolidation of a successful, reputable and ethical Industry;
- ii. developing and fostering appropriate professional standards for property investment advisors, in conjunction with government regulatory bodies;
- iii. informing, educating and developing property investment literacy and the related skills of the Members in the Industry;
- iv. providing a central source of information and assistance to Members in the Industry;
- v. providing a forum for analysis of trends in the Industry; and
- vi. developing and fostering research relevant to the Industry nationally.

#### **4. Income and Property**

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##### **4.1 Application of income and property for objects and purposes only**

The profits (if any), other income and property of the Company, however derived, must be applied solely towards the promotion of the objects and purposes of the Company as set out in Rule 3.

##### **4.2 No dividend, bonus or profit paid to Members**

No part of the profits, income or property of the Company may be paid or transferred to a Member, either directly or indirectly by way of dividend, bonus or otherwise.

##### **4.3 Payments by Company in good faith**

Subject to Rules 12.7, 12.8 and 12.9, Rule 4.2 does not prevent payment in good faith:

- (a) to an officer of the Company or a Member, or to a firm of which an officer of the Company or a Member is a partner, director or employee:
  - i. of remuneration for services to the Company; or
  - ii. for goods supplied in the ordinary course of business;
- (b) of interest at a rate not exceeding the rate fixed for the purposes of this Constitution by the Company in general meeting on money borrowed from an officer of the Company or a Member; or
- (c) of reasonable rent for premises let by an officer of the Company or a Member.

#### **5. Income Tax Exempt Entity**

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- (a) The Company may endeavour to become and remain an Income Tax Exempt Entity.

- (b) If the Company becomes an Income Tax Exempt Entity, and is aware of any material changes in the purposes or activities of the Company such that it ceases to be entitled to be endorsed as an Income Tax Exempt Entity, the Company must notify the Australian Taxation Office of such material changes.

## **6. Membership**

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### **6.1 Application for membership**

A person may apply for membership in such form as the Board may prescribe from time to time.

### **6.2 Types of membership**

The types of Membership available to prospective Members of the Company are:

- (a) Individual Members; and
- (b) Associate Members.

In addition to these types of memberships, the Members may create other types of membership in such form as the Members approve by Special Resolution from time to time.

### **6.3 Admission to membership**

- (b) Every applicant for membership of the Company (other than those specified in the Company's application for registration) must:
- i. be an individual, partnership, corporation or organisation that:
    - A. is interested in and agrees to support the objectives and activities of the Company;
    - B. nominates the type of membership the applicant is applying for; and
    - C. meets any additional criteria established for membership in the Company (including the payment of annual fee) as may be adopted by the Board from time to time;
  - ii. sign an application for membership, including the required guarantee, in such form as may from time to time be prescribed by the Company; and
  - iii. agree to be bound by this Constitution, the Code of Conduct and any other rules, by-laws, policies or other standards prescribed by the Board from time to time.
- (c) Subject to Rule 6.3(e), upon satisfaction of the requirements set out in Rules 6.3(b)ii and 6.3(b)iii, the applicant shall be a Member.

- (d) The Secretary must enter in the Members' Register the name and type of Membership of any person admitted as a Member.
- (e) A person's membership who has been terminated in accordance with Rule 6.9 shall not be eligible for admission to membership of the Company, unless otherwise agreed by Resolution of the Board.

#### **6.4 Members' Code of Conduct**

The Board may from time to time consider, approve and amend the Code of Conduct. The Code of Conduct is to have regard to the importance of maintaining the Company as the peak industry body developed to bring about standards and accreditation in the Industry.

#### **6.5 Member to notify changes**

A Member must promptly notify the Company of any change in the details with respect to that Member which are recorded in the Members' Register.

#### **6.6 Rights and privileges of membership**

Subject to Rule 9.1, without limiting any other rights conferred on Members, Members have the right to receive notice of, attend and vote at any general meeting of the Company.

#### **6.7 Variation of Members' rights**

If at any time the membership of the Company is divided into different classes of Members, the rights attached to any class may, subject to the Corporations Act, be varied or cancelled, unless otherwise provided by this Constitution or by the terms of grant of membership of that class, only by:

- (a) Special Resolution passed at a meeting of the class of Members whose rights are being varied or cancelled; or
- (b) the written consent of Members with at least 75% of the votes in the class.

In relation to any meeting to approve that Special Resolution, the provisions contained in this Constitution relating to notice of meetings, the appointment of a Chairman and of proxies, attorneys and Representatives, the depositing and form and validity of proxies and the conduct of general meetings will otherwise apply to any meeting of a class.

#### **6.8 Resignation**

A Member may by written notice to the Company resign from membership with immediate effect or with effect from a specified date occurring not more than 21 days after the service of the notice. A Member remains liable after resignation for all money due by the Member to the Company, in addition to any sum for which the Member is liable as a Member under Rule 2.2.

## **6.9 Termination of membership**

- (a) The Board has the power by Resolution to censure, fine, suspend or subject to the provisions of this Constitution, terminate the membership of a Member from the Company for any reason.
- (b) The membership of any Member may be terminated by the Board in accordance with the following procedures.
  - i. Before terminating the membership, the Board must give at least 42 days' notice of the intention to terminate the membership the Member whose membership may be terminated specifying the action the Member is required to take in order to avoid termination (if possible).
  - ii. If the Member complies with the notice (if possible), then the person's membership shall not be terminated.
  - iii. If the Member fails to comply with the notice, then the membership shall be terminated at the expiry of the notice.

## **6.10 Cessation to of membership**

A person ceases to be a Member on:

- (a) resignation under Rule 6.8;
- (b) termination of the person's membership in accordance with Rule 6.9;
- (c) in the case of a natural person:
  - i. death;
  - ii. becoming bankrupt or insolvent or making an arrangement or composition with creditors of the person's joint or separate estate generally; or
  - iii. becoming of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health; and
- (d) in the case of a body corporate:
  - i. being dissolved or otherwise ceasing to exist;
  - ii. having a liquidator or provisional liquidator appointed to it; or
  - iii. being insolvent.
- (e) a person who ceases to be a Member must pay the Company on the date the membership ends, all amounts owing or payable by that person to the Company, and this obligation survives the end of the membership.

## **7. General Meetings**

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### **7.1 Annual general meeting**

Annual general meetings of the Company are to be held in accordance with the Corporations Act.

### **7.2 Convening a general meeting**

In relation to the convening of general meetings:

- (a) the Board may convene general meetings to be held at any place the Directors deem fit; and
- (b) a general meeting must be convened by the Directors as soon as practicable following a requisition of Members in the manner provided for by the Corporations Act.

### **7.3 Members have power to convene general meeting**

If there are not sufficient Directors for a quorum for a Directors' meeting, a general meeting of the Company may be convened by:

- (a) if the Company has less than 100 Members, a Director or any two or more Members; or
- (b) if the Company has 100 or more Members, Members who represent at least 5% of the total voting rights of all the Members having the right to vote at the meeting,

at the cost of the Company.

### **7.4 Notice of general meetings**

Except as permitted by the Corporations Act, at least 14 days' notice of every general meeting (or if the meeting is one at which it is proposed to pass a Special Resolution, at least 21 days' notice (exclusive of the day on which the notice is served or deemed to be served but inclusive of the day for which notice is given) must be given in the manner provided by in Rule 23 to the Members entitled to attend, and the persons entitled under this Constitution to receive notices.

### **7.5 Calculation of period of notice**

In computing the period of notice under Rule 7.4, both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

### **7.6 Directors entitled to notice of general meeting**

A Director is entitled to receive notice of and to attend all general meetings of the Company and is entitled to speak at those meetings.

## **7.7 Contents of notice of general meetings**

Every notice convening a general meeting must set out:

- (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
- (b) the general nature of any special business to be transacted at the meeting;
- (c) the details of any Special Resolution intended to be passed at the meeting;
- (d) the rights of and requirement for a Member to appoint a proxy and how to do so by accompanying an instrument of proxy in the form which complies with the Corporations Act, and this Constitution or in any other form as the Directors may from time to time prescribe or accept; and
- (e) otherwise comply with the requirements of section 249L of the Corporations Act.

## **7.8 Cancellation or postponement of general meeting**

Where a general meeting (including an annual general meeting) is convened by the Directors, they may by notice, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them or change the place for the meeting.

This Rule 7.8 does not apply to a meeting convened in accordance with the Corporations Act by a single Director, by Members, by the Directors on the request of Members, or to a meeting convened by a court.

## **7.9 Notice of cancellation, postponement or change of place of general meeting**

Written notice of cancellation or postponement or change of place of a general meeting must be given to all persons entitled to receive notices of general meetings from the Company. The notice must be given at least 5 days before the date for which the meeting is convened and must specify the reason for the cancellation, postponement or change of place. A notice of a change of place of a general meeting must specify the different place for the holding of the meeting.

## **7.10 Contents of notice postponing general meeting**

A notice postponing the holding of a general meeting must specify:

- (a) a date and time for the holding of the meeting;
- (b) a place for the holding of the meeting, which may be either the same as or different from the place specified in the notice convening the meeting; and
- (c) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

### **7.11 Business at postponed general meeting**

The only business that may be transacted at a general meeting the holding of which is postponed is the business specified in the original notice convening the meeting.

### **7.12 Non-receipt of notice**

The non-receipt of, or accidental omission to give, a notice of a general meeting or cancellation, postponement or change of place of a general meeting by, or to, a person entitled to receive notice does not invalidate any Resolution or Special Resolution passed at the general meeting or at a postponed or changed place meeting or the cancellation or postponement of a meeting.

### **7.13 Proxy, attorney or Representative at postponed general meeting**

Where by the terms of an instrument appointing a proxy or attorney or of an appointment of a Representative:

- (a) the appointed person is authorised to attend and vote at a general meeting or general meetings to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of Representative,

then, by force of this Rule, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of Representative unless the Member appointing the proxy, attorney or Representative gives to the Company at its Registered Office notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

## **8. Proceedings at General Meeting**

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### **8.1 Member deemed to be present**

Unless the contrary intention appears, a reference to a Member in this Rule 8 means a person who is a Member, or:

- (a) an attorney;
- (b) a proxy; or
- (c) a Representative;

of that Member.

### **8.2 Business at annual general meeting**

The business of an annual general meeting will be:

- (a) to receive and consider the profit and loss account, balance sheet, reports of the Directors and of the auditors and the statement of the Directors;

- (b) to appoint Directors in place of any retiring Director or any Director whose office will be vacated by virtue of Rule 13.1(b) or 13.4; and
- (c) to transact any other business which may be properly brought before the meeting.

### **8.3 Quorum for general meeting**

No business will be transacted at any general meeting unless a quorum is present at the beginning of the business. A quorum is constituted by:

- (a) if the Company has less than 100 Members, 5 Members of the Company present in person, by attorney, by proxy or by Representative; or
- (b) if the Company has 100 or more Members, Members in person, by attorney, by proxy or by Representative who represent at least 5% of the total voting rights of all the Members having the right to vote at the meeting.

### **8.4 If quorum not present**

If within 30 minutes after the time appointed for a general meeting a quorum is not present, the meeting:

- (a) if convened by a Director, or at the request of Members, is dissolved; and
- (b) in any other case, stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Directors appoint by notice to the Members and others entitled to notice of the meeting.

### **8.5 Adjourned meeting**

At a meeting adjourned under Rule 8.4(b), two persons each being a Member, proxy, attorney or Representative present at the meeting are a quorum. If a quorum is not present within 30 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

### **8.6 Appointment of Chairman of general meeting**

If the Directors have elected one of their number as Chairman of their meetings, that person is entitled to preside as Chairman at a general meeting of the Company.

### **8.7 Absence of Chairman at general meeting**

If a general meeting is held and:

- (a) a Chairman has not been elected by the Directors; or
- (b) the elected Chairman is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the following may preside as chairman of the meeting (in order of precedence):

- (c) the deputy chairman (if any);

- (d) a Director chosen by a majority of the Directors present;
- (e) the only Director present;
- (f) a Member chosen by a majority of the Members present in person or by proxy, attorney or Representative.

#### **8.8 Conduct of general meetings**

The Chairman of a general meeting:

- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is in the Chairman's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and
- (c) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the Chairman considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the Chairman under this rule is final.

#### **8.9 Adjournment of general meeting**

The Chairman of a general meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place, but:

- (a) in exercising this discretion, the Chairman may, but need not, seek the approval of the Members present in person or by proxy, attorney or Representative; and
- (b) only unfinished business is to be transacted at a meeting resumed after an adjournment.

Unless required by the Chairman, a vote may not be taken or demanded by the Members present in person or by proxy, attorney or Representative in respect of any adjournment.

#### **8.10 Notice of adjourned meeting**

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

## **9. Voting**

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### **9.1 Voting rights**

The following voting rights will apply until otherwise determine by the Board:

- (a) Individual Members will be entitled to 1 vote; and
- (b) Associate Members are not entitled to a vote.

### **9.2 Resolution determined by majority**

Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

### **9.3 Equality of votes - casting vote for Chairman**

In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting at which the show of hands takes place or at which the poll is demanded will be entitled to a second or casting vote.

### **9.4 Voting on show of hands**

- (a) At any general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is effectively demanded and the demand is not withdrawn.
- (b) A declaration by the Chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact. Neither the Chairman nor the minutes need state and it is not necessary to prove the number or Chairman of the votes recorded in favour of or against the resolution.

### **9.5 Demanding a poll**

At a general meeting of the Company, a poll may be demanded by:

- (a) at least two Members entitled to vote on the resolution;
- (b) Members with at least 10 % of the votes that may be cast on the resolution on a poll; or
- (c) the Chairman of the meeting.

### **9.6 Poll**

If a poll is effectively demanded:

- (a) it must be taken in the manner and at the date and time directed by the Chairman and the result of the poll is a resolution of the meeting at which the poll was demanded;

- (b) on the election of a Chairman or on a question of adjournment it must be taken immediately;
- (c) the demand may be withdrawn; and
- (d) the demand does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

#### **9.7 Entitlement to vote**

Subject to the rights and any restrictions attached to any class of Members and to this Constitution;

- (a) on a show of hands or poll, each Member present in person has the number of votes set out in Rule 9.1 and each other person present as proxy, attorney or Representative of a Member has the same number of votes as the Member represented by that the person;
- (b) a Member who is of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mental health may vote, whether on a show of hands or on a poll, by his or her committee or trustee or by such other person as properly has the management of his or her estate, and any such committee, trustee or other person may vote by proxy; and
- (c) a Member is not entitled to vote at any general meeting if the Member's annual subscription (if any) is more than 2 months in arrears at the date of the meeting.

#### **9.8 Objection to voting qualification**

An objection to the right of a person to attend or vote at a general meeting or adjourned general meeting or to vote on a poll:

- (a) may not be raised except at that meeting or adjourned meeting or when that poll is taken; and
- (b) must be referred to the Chairman of the meeting, whose decision is final.

A vote not disallowed under the objection is valid for all purposes.

#### **9.9 Chairman to determine voting dispute**

If there is a dispute as to the admission or rejection of a vote, the Chairman of the general meeting must decide it and the Chairman's decision made in good faith is final and conclusive.

#### **9.10 Circulating resolutions of Members**

Unless the Corporations Act requires otherwise, the Members may pass a resolution without a general meeting being held if all of the Members who are 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. Separate copies of a document may be used for

signing by Members if the wording of the resolution and statement is identical in each copy. The resolution is taken to be passed (and if it is required to be a Special Resolution to be effective, passed as a Special Resolution), as if it had been passed unanimously at a duly convened general meeting, at the time the Secretary has evidence that the last Member has signed it.

## **10. Power of attorney**

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### **10.1 Right to appoint attorney**

A Member may by power of attorney appoint an attorney to act on the Member's behalf at all or any meetings of the Company or of any class of Members.

### **10.2 Deposit of power of attorney with Company**

To be effective, an instrument appointing an attorney under this Rule, together with any evidence of non-revocation the Directors require, must be received by the Company at least 48 hours before the meeting.

## **11. Proxy**

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### **11.1 Instrument appointing proxy**

- (a) The instrument appointing a proxy must be in writing signed by the Member or by the Member's attorney properly authorised in writing, or, if the Member is a body corporate, under its common seal or signed by at least two of its officers.
- (b) An instrument appointing a proxy is valid if it contains the information required by the Corporations Act, including:
  - iv. the Member's name and address;
  - v. the Company's name;
  - vi. the proxy's name or the name of the office held by the proxy; and
  - vii. the meetings at which the appointment may be used, including whether at any adjournment of the meetings.

### **11.2 Deposit of proxy with Company**

- (a) The instrument appointing a proxy and the original power of attorney (if any) under which it is signed or a certified copy of the power of attorney must be received by the Company at least 48 hours before the time for holding the meeting by delivery to the Company's registered office, by facsimile received at a fax number at the Company's registered office or otherwise by any other means permissible under section 250B(3) of the Corporations Act.
- (b) An instrument appointing a proxy will only be valid for 12 months from the date of its execution unless it states that it is valid for all meetings until revoked, except that any instrument may be used at any adjournment of the meeting for which it was originally intended.

### **11.3 Validity of vote given in accordance with proxy**

Unless the Company has received written notice of the matter before the start of the meeting at which a proxy or an attorney votes, a vote cast by the proxy or attorney will be valid even if, before the proxy or attorney voted:

- (a) the Member dies;
- (b) the Member revokes the proxy's or attorney's appointment; or
- (c) the Member revokes the authority under which the proxy was appointed by a third party.

## **12. Directors**

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### **12.1 Number of Directors**

The number of the Directors must not be less than 3 and not more than 8.

### **12.2 Residence of Directors**

A majority of the Directors, but no less than 2, must be natural persons who ordinarily reside within Australia.

### **12.3 Consent**

Before being appointed as a Director a person must give the Company a signed consent to act as Director which must be retained by the Company.

### **12.4 Appointment of Directors**

The appointment of Directors is by resolution of the Company.

### **12.5 Directors may fill casual vacancies**

The Directors have the power at any time to appoint a person to fill a casual vacancy because of death, resignation, removal, disqualification or otherwise, except that the total number of Directors must not at any time exceed 8. Casual appointments will hold office until the next appointment of Directors is made under Rule 13.

### **12.6 Auditor cannot be Director**

Subject to the Corporations Act, an auditor of the Company or partner or employee or employer of an auditor must not be appointed a Director of the Company.

### **12.7 Remuneration of Directors**

Unless approved by Members' Resolution, a Director must not be paid any remuneration for services as a Director.

## **12.8 Reimbursement of expenses**

A Director is entitled to be reimbursed out of the funds of the Company for their reasonable travelling, accommodation and other expenses incurred when travelling to or from meetings of the Directors or a committee or when otherwise engaged on the business of the Company.

## **12.9 Payments to Director**

Any payment to a Director which is not prohibited under Rule 12.7 (including a payment permitted under Rule 12.8) must be approved by the Directors.

## **12.10 Director's interests**

Subject to complying with the Corporations Act regarding disclosure of and voting on matters involving material personal interests, a Director may:

- (a) hold any office or place of profit in the Company, except that of auditor unless being or becoming a Director would breach any law by reason of holding that office;
- (b) hold any office or place of profit in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest of any kind;
- (c) enter into a contract or arrangement with the Company;
- (d) participate in any association, institution, fund, trust or scheme for past or present employees or directors of the Company or persons dependent on or connected with them;
- (e) act in a professional capacity (or be a member of a firm which acts in a professional capacity) for the Company, except as auditor;
- (f) if the other Directors determine that the Director's interest should not disqualify the Director from considering or voting on a matter, participate in, vote on and be counted in a quorum for any meeting, resolution or decision of the Directors and may be present at any meeting where any matter is being considered by the Directors; and
- (g) sign or participate in the execution of a document by or on behalf of the Company; and
- (h) do any of the above despite the fiduciary relationship of the Director's office:
  - i. without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and
  - ii. without affecting the validity of any contract or arrangement.

A reference to the Company in this rule is also a reference to each Related Body Corporate of the Company.

### 12.11 Directors to declare potential conflicts

Any Director who holds any office or possesses any property which might (whether directly or indirectly) create duties or interests in conflict with his duties or interests as a Director of the Company must declare the fact of his holding such office and the nature and extent of any conflict at the first meeting of the Directors held after the Director becomes a Director or (if already a Director) at the first meeting of the Directors held after the relevant facts came to the Director's knowledge.

### 12.12 Alternate Directors

Subject to the Corporations Act and Rule 12.5, each Director may by writing under hand or by facsimile appoint any person to act as an Alternate Director in the Director's place during any period the Director thinks fit and for whom the Director has obtained the prior consent of the Board. Any Alternate Director:

- (a) may be removed or suspended from office by written notice to the Company from the Director who appointed the Alternate Director;
- (b) is entitled to receive notice of meetings of the Board, to attend meetings (if the Director who appointed the Alternate Director is not present) and to be counted towards a quorum at meetings;
- (c) is entitled to vote at meetings he or she attends on all resolutions on which the Director who appointed the Alternate Director could vote had he or she attended and, where the alternate is a Director in the alternate's own right, will have a separate vote on behalf of the Director the alternate is representing in addition to the alternate's own vote;
- (d) may exercise any powers that the appointor Director may exercise in the alternate's own right where the appointor Director is unavailable for any reason except the power to appoint an Alternate Director. The action of an Alternate Director will be conclusive evidence as against third parties of the unavailability of the appointor Director;
- (e) will automatically vacate office if the Director who appointed the Alternate Director is removed or otherwise ceases to hold office for any reason;
- (f) while acting as an Alternate Director, he or she is responsible to the Company for his or her own acts and defaults and will not be deemed to be the agent of the appointor Director;
- (g) will not be entitled to receive any remuneration from the Company but will be entitled to reimbursement for reasonable travelling and other expenses incurred in attending meetings of the Board or otherwise on the Company's business;
- (h) will not be taken into account in determining the number of Directors for the purposes of this Constitution; and
- (i) may act as an Alternate Director for more than 1 Director.

## **13. Directors' Tenure of Office**

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### **13.1 Directors' tenure of office**

- (a) Subject to the Corporations Act and Rule 13.1(b), each Director will hold office for 3 years, until the Director retires in accordance with this Constitution or until the Director's office is vacated in accordance with this Constitution.
- (b) 2 years after the first appointments, and thereafter at each annual general meeting, the office of one third of Directors will be vacated (in addition to any casual appointments terminated in accordance with Rule 12.5).
- (c) The Directors to vacate their offices under Rule 13.1(b) will be chosen to do so in the following order:
  - i. the most senior Directors (based on length of service) first; and
  - ii. if necessary, by lot from among Directors ranking equally in seniority (based on length of service).

### **13.2 Retiring Director eligible for re-appointment**

Subject to Rule 13.1 and 13.4, a Director who retires or whose office is vacated under this Constitution is eligible for appointment or re-appointment to the Board.

### **13.3 Removal of Director by the Company**

The Company may by Resolution remove any Director at any time.

### **13.4 Vacation of office**

- (a) The office of a Director will be automatically vacated if the Director:
  - i. commits an act of bankruptcy or enters into an arrangement or composition with all or a substantial number of his or her creditors;
  - ii. becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the laws relating to mental health;
  - iii. resigns office by notice in writing to the Company; or
  - iv. is prohibited from being a Director in accordance with any of the provisions of the Corporations Act or any order made under the Corporations Act.
- (b) A Director whose office is vacated under Rule 13.4(a) will not be eligible for re-election until the disability (or disabilities) referred to is (or are) removed.

## **14. Powers and duties of Directors**

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### **14.1 Directors to manage Company**

The Directors are to manage the business of the Company and may exercise all the powers of the Company that are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in general meeting.

### **14.2 Specific powers of Directors**

Without limiting the generality of Rule 14.1, the Directors may exercise all the powers of the Company to create by-laws, to borrow or raise money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

### **14.3 Appointment of attorney**

The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for the purposes and with the powers, authorities and discretions vested in or exercisable by the Directors for the period and subject to the conditions they think fit.

### **14.4 Provisions in power of attorney**

A power of attorney granted under Rule 14.3 may contain any provisions for the protection and convenience of persons dealing with the attorney that the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions vested in the attorney.

### **14.5 Signing of cheques**

The Directors may determine the manner in which and persons by whom cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and receipts for money paid to the Company, may be signed, drawn, accepted, endorsed or otherwise executed.

### **14.6 Appointment of Executive Directors**

The Directors may appoint one or more of themselves as an Executive Director or to any other office (except auditor) with the Company for the period and on the terms they think fit.

### **14.7 Termination of appointment of Executive Director**

Whether or not the appointment of an Executive Director was expressed to be for a specified term, the appointment of an Executive Director terminates if:

- (a) the Executive Director ceases for any reason to be a Director or a Member; or

- (b) the Directors remove the Executive Director from the office of Executive Director (which, subject to any contract between the Company and the Executive Director, the Directors have power to do); or
- (c) the Executive Director ceases to be employed by the Company.

#### **14.8 Remuneration of Executive Directors**

The remuneration of an Executive Director may be fixed by the Directors and may be by way of salary only.

#### **14.9 Chairman**

The Directors may appoint a person to be the Chairman. The Chairman will preside at all meetings of the Company and the Board and preside at meetings of the Executive Committee. The Chairman may appoint, with the consent of the Board, standing committees, task forces and their respective chairpersons. The Chairman will perform such other duties as may be prescribed from time to time by the Board.

#### **14.10 Powers of delegation**

The Directors may delegate any of their powers to any persons they select for any period, to be exercised for any objects and purposes on any terms and subject to any conditions and restrictions as they think fit, and may revoke, withdraw, alter or vary the delegation of any of those powers.

The powers of delegation expressly or impliedly conferred by this Constitution on the Directors are conferred in substitution for, and to the exclusion of, the power conferred by section 198D of the Corporations Act.

### **15. Proceedings of Directors**

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#### **15.1 Board meetings and quorum for Board meetings**

- (a) The Directors may meet for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit but must meet at least once in every 4 month period.
- (b) The quorum will be 2 Directors. If the number of Directors falls below 2, the Directors may act for the sole purpose of filling the casual vacancy or vacancies pursuant to Rule 12.5.
- (c) If a quorum is present at the beginning of the meeting, it is deemed to be present throughout the meeting even if a Director absents himself, or absents from voting, for any reason.

#### **15.2 Conduct of Board meetings**

A Directors' meeting may be called or held by telephone or by using any other technology consented to by all the Directors. The consent may be a standing one and may only be varied or withdrawn by a further ordinary resolution of Directors.

### 15.3 Convening of Board meeting and place of meeting

The Board must meet whenever a meeting is called by at least 3 Directors provided that not less than 1 working days' written notice has been given to the other Directors.

### 15.4 Responsibilities of the Board

- (a) The Board is responsible for, and has the sole power in respect of, the policy, practices, overall management and operation of the Company. The Board may delegate any such responsibilities to the Chief Executive Officer or its committees or otherwise as it may determine.
- (b) Without limiting paragraph (a), the specific responsibilities of the Board include the business plan including the following (where applicable):
  - i. adoption of business plan and budget on a yearly basis (which will include, amongst other matters, items listed below);
  - ii. set strategic corporate goals;
  - iii. set policies governing the operation of the Company;
  - iv. provide and monitor performance against broad objectives;
  - v. consider and approve recommendations from committees for the distribution of funds;
  - vi. review progress in achieving the objectives of the Company;
  - vii. appoint Members to committees and the Executive Committee;
  - viii. appoint and remove the Chief Executive Officer;
  - ix. approve the terms and conditions of appointment and the remuneration of the Chief Executive Officer;
  - x. determine the delegation to the Chief Executive Officer;
  - xi. supervise the activities of the Chief Executive Officer;
  - xii. establishing any Chapters including appropriate organisation and guidelines for operation;
  - xiii. set guidelines on the admission of new Members;
  - xiv. set guidelines for the appointment and secondment of staff;
  - xv. set guidelines for the making of public announcements by the Company;
  - xvi. determine the insurances to be effected by the Company; and

- xvii. ensure that the Company is managed in a financially responsible and prudent manner to best achieve the objectives of the Company with a particular focus on available and projected funds in the short and medium term.

#### **15.5 Board meeting competent to exercise all powers**

A meeting of the Directors at which a quorum is present may exercise all or any of the powers and discretions vested in or exercisable by the Directors generally.

#### **15.6 Resolution passed deemed to be determination of Board**

Any resolution properly passed at a duly convened meeting of the Directors at which a quorum is present will be deemed to be a determination by all the Directors of the Board for the purposes of this Constitution.

#### **15.7 Questions to be decided by majority**

Questions arising at any Board meeting will be decided by a majority of votes of Directors present and entitled to vote. The Chairman will have a casting vote as well as a deliberative vote.

#### **15.8 Circulating resolutions**

The Directors may pass a resolution without a Directors' meeting being held if all of the Directors who are 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. 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. The resolution is passed when the last Director signs.

#### **15.9 Committee powers and meetings**

- (a) The Directors may appoint and delegate any of their powers to any committees of Directors and officers and may revoke any such delegation. Any committee must exercise the powers delegated to it in accordance with any directions of the Board and will be accountable and shall report to the Board. The meetings and proceedings of any committee consisting of two or more Directors or officers will be governed by the provisions of this Constitution regulating the meetings and proceedings of the Directors so far as they are applicable and are not superseded by any direction made by the Board under this Rule 15.9.
- (b) Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.
- (c) Each committee may adopt rules for its own government not inconsistent with this Constitution or with rules adopted by the Board.
- (d) Every committee may meet and adjourn as it thinks proper. Questions arising at any meeting will be determined by a majority of votes of the Members

present, and in the case of an equality of votes the Chairman of the committee will have a second or casting vote.

#### **15.10 Validity of acts of Directors**

All acts done by any meeting of the Directors or by a committee of the Directors or by any person acting as a Director are valid even if it is afterwards discovered that there was some defect in the appointment or election of any Director or person acting as a Director or that any Director was disqualified or had vacated office or was otherwise not entitled to vote or act.

### **16. Minutes and Registers to be kept**

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#### **15.11 Minutes**

The Directors must ensure minutes of Directors meetings are prepared within one month of the relevant meeting, which minutes must contain details of:

- (a) the names of the Directors present at each meeting of the Directors and of any committee of Directors;
- (b) all declarations made or notices given by any Director (either generally or Specially) of his or her interest in any contract or proposed contract or of his or her holding of any office or property whereby any conflict of duty or interest may arise;
- (c) all orders made by the Directors and committees of Directors;
- (d) all Resolutions and proceedings of general meetings of the Company, meetings of the Directors and meetings of any committee of the Directors; and
- (e) Resolutions passed by Members or Directors without a meeting.

Any minutes of any general meetings of the Company, meetings of the Directors or meetings of any committee of the Directors must be signed by the Chairman of the meeting or by the Chairman of the next succeeding meeting and once signed will constitute evidence of the matters stated in the minutes.

#### **15.12 Registers**

In accordance with the Corporations Act, the Directors must set up and maintain:

- (a) a Members' Register;
- (b) a register of charges;
- (c) any other registers required to be kept under the Corporations Act.

The registers may be kept either in a bound or loose leaf book or on computer. If a register is kept on computer, its contents must be capable of being printed out in hard copy.

## **17. Chief Executive Officer**

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The Directors may appoint a Chief Executive Officer. The Directors may give a Chief Executive Officer any of the powers conferred on them by this Constitution, subject, at the Directors' discretion, to:

- (a) any time period;
- (b) specific purposes; and
- (c) any other terms and restrictions.

All or any of those powers may be given collaterally with or to the exclusion of the powers of the Directors and may be revoked or varied by the Directors. The Chief Executive Officer may be or become a Director, but if the Chief Executive Officer then ceases to be a Director for any reason, that does not of itself affect the appointment, or terms of appointment, of the Chief Executive Officer.

## **18. Secretary**

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### **18.1 Appointment of Secretary**

The Company must have at least one Secretary who is to be appointed by the Directors. One of the Secretaries must ordinarily reside within Australia.

### **18.2 Suspension and removal of Secretary**

The Directors may suspend or remove a Secretary from that office.

### **18.3 Powers, duties and authorities of Secretary**

A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Directors. The exercise of those powers and authorities and the performance of those duties by a Secretary are subject at all times to the control of the Directors.

## **19. Seals**

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### **19.1 Safe custody of common seals**

The Directors must provide for the safe custody of any seal of the Company.

### **19.2 Use of common seal**

If the Company has a common seal or duplicate common seal:

- (a) it may be used only by the authority of the Directors, or of a Committee authorised by the Directors to authorise its use; and
- (b) every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

## **20. Accounts**

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### **20.1 Accounting records**

- (a) The Directors must cause accounting and other records to be kept correctly and explain the transactions and financial position of the Company, to enable the preparation of true and fair profit and loss accounts and balance sheets and to permit preparation of any other documents required by the Corporations Act or this Constitution. The records must be kept:
  - i. in such manner to enable them to be conveniently and properly audited;
  - ii. for 7 years after the completion of the transactions or operations to which they relate; and
  - iii. at such place as the Directors think fit and at all times be open to inspection by the Directors.
- (b) The Directors, other officers and employees who obtain information through any of the Company's accounting or other records because they are, or have been, a director or other officer or employee of the Company must not improperly use the information to:
  - i. gain an advantage for themselves or someone else; or
  - ii. cause detriment to the Company.

### **20.2 Accounts to be laid before annual general meeting**

At the annual general meeting, the Directors must lay before the Company:

- (a) a profit and loss account for the last financial year of the Company;
- (b) a balance sheet as at the date to which the profit and loss account is made up;
- (c) an account of the contributions (both cash and in-kind) of each Member for the last financial year; and
- (d) attached to the documents referred to in paragraphs (a) and (b), a report by the Directors with respect to the state of the Company's affairs, a statement by the Directors in accordance with the Corporations Act and the auditors' report in respect of the documents unless the Company in accordance with the Corporations Act has resolved not to appoint auditors.

The profit and loss accounts, balance sheets and reports must comply with all applicable provisions of the Corporations Act.

## **21. Audit**

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### **21.1 Auditors**

- (a) Auditors of the Company must be appointed and removed and their remuneration, rights and duties will be regulated in accordance with the Corporations Act.
- (b) The accounts of the Company must be audited in respect of each financial year of the Company and the correctness of the profit and loss account, balance sheet and the account of Members' contributions must be ascertained by the auditors of the Company in accordance with the Corporations Act.

### **21.2 Approval of accounts**

Accounts of the Company when prepared by the Directors will be conclusive except as regards any error identified within three months after the date of preparation. If any error is identified within this period, the accounts must immediately be corrected and will then be conclusive.

## **22. Inspection of Records**

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Each Member will be entitled to receive a copy of the annual financial statements of the Company within 30 days after their publication. A Member may inspect the accounting books and records of the Company upon giving reasonable notice to the Audit Committee.

## **23. Notices**

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### **23.1 Methods of service**

The Company may give a document to a Member:

- (a) personally;
- (b) by sending it by post to the address for the Member in the Register or an alternative address nominated by the Member;
- (c) by sending it to a fax number or electronic address nominated by the Member;  
or
- (d) by sending it to the Member by other electronic means including by advertisement, as the Directors determine.

### **23.2 Notice deemed to be served**

- (a) Any notice by advertisement will be deemed to have been served on the day of publication of the newspaper containing the advertisement.
- (b) Any notice sent by post will be deemed to have been served on the day following the day on which the notice is posted unless sent by airmail to an address outside the country in which it was posted, in which case it will be

deemed to have been served on the fifth day following the day on which it is posted.

- (c) A notice sent by telex or facsimile or to the electronic address of a Member will be deemed to have been served on the same day it was sent.

### **23.3 Service by post**

To prove service by post, it is sufficient to prove that the notice with required postage was properly addressed and posted. A certificate in writing signed by any manager, secretary or other officer of the Company that the notice was properly addressed and posted will be conclusive evidence of such matters.

### **23.4 Notices to Members whose whereabouts unknown**

Where:

- (a) the Company has a genuine reason to believe that a Member is not known at the address shown for that Member in the Members' Register;
- (b) the Company has subsequently made an inquiry at that address as to the whereabouts of the Member; and
- (c) the inquiry either elicits no response or a response indicating that the Member's present whereabouts are unknown,

all future notices will be deemed to be given to the Member if the notice is exhibited in the Office for a period (not including weekends and public holidays) of 48 hours and will be deemed to be duly served at the end of that period. This Rule will apply unless and until the Member informs the Company of a registered place of address or that the Member has resumed residence at the Member's address shown in the Member's Register or notifies the Company of a new address to which the Company may send the Member notices (which will be deemed to be the Member's registered address).

### **23.5 Notice to deceased or bankrupt Members**

Any notice or document given to a Member will be deemed to have been properly given despite the Member's death or bankruptcy and whether or not the Company has notice of death or bankruptcy until some other person is registered in place of the Member.

### **23.6 Signing of notices**

The signature to any notice to be given by the Company may be written or printed.

## **24. Winding Up**

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### **24.1 Distribution of assets**

If upon the winding up or dissolution of the Company there remains after satisfaction of all its debts and liabilities any property whatsoever, the same must not be paid to

or distributed amongst the Members of the Company but will be given or transferred to one or more other funds, authorities or institutions which or each of which:

- (a) has objects similar to the objects of the Company; and
- (b) whose Constitution prohibits the distribution of its income and property among its Members to an extent at least as great as is imposed on the Company under or by virtue of Rule 2.2,

to be determined by the Board at or before the time of dissolution and in default thereof by application to the courts for determination.

#### **24.2 Fee or commission paid to liquidator to be approved in general meeting**

No fee or commission will be paid by the Company to any Director or liquidator upon any sale or realisation of the Company's undertaking or assets or any part of them except with the approval of the Company in a general meeting, that meeting to be convened by notice specifying the fee or commission proposed to be paid.

### **25. Indemnity and insurance**

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#### **25.1 Indemnification of officers of the Company**

To the extent permitted by law:

- (a) the Company must indemnify any Director and other officer of the Company against any liability (other than legal costs) incurred in acting as a Director or officer of the Company other than:
  - i. a liability owed to the Company or a Related Body Corporate;
  - ii. a liability for a pecuniary penalty order under section 1317G or a compensation order under section 1317H of the Corporations Act; or
  - iii. a liability that did not arise out of conduct in good faith;
- (b) the Company must indemnify any Director and other officer of the Company for costs and expenses incurred by a Director or officer of the Company in defending an action for a liability incurred in acting as a Director or officer of the Company except for legal costs incurred:
  - i. in defending or resisting any proceedings, whether civil or criminal, in which the Director or officer is found to have a liability for which they could not be indemnified under subclause (a) above;
  - ii. in defending or resisting criminal proceedings in which the Director or officer is found guilty;
  - iii. in defending or resisting proceedings brought by the ASIC or by a liquidator for a court order if the grounds for making the order are found by the court to have been established, except for costs incurred in responding to actions taken by the ASIC or a liquidator as part of an investigation before commencing proceedings for the court order; or

- iv. in connection with proceedings for relief to the Director or other officer under the Corporations Act in which the relief is denied by the court; and
- (c) the Company may make a payment, or agree to make a payment, whether by way of advance, loan or otherwise, for any legal costs incurred by a Director or officer, on the condition that the Director or officer must repay the amount paid by the Company to the extent that the Company is ultimately found not liable to indemnify the Director or officer for those legal costs.

## **25.2 Insurance**

To the extent permitted by law, the Company may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been a Director or other officer of the Company or of a subsidiary of the Company other than a liability arising out of:

- (a) conduct involving wilful breach of duty in relation to the Company;
- (b) a contravention of section 182 or 183 of the Corporations Act; or
- (c) the contract would, if the Company paid the premium, be made void by statute.

## **26. Counterparts**

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This Constitution may consist of a number of copies (including facsimile copies) each signed by one or more parties to the Constitution. If so, the signed copies are treated as making up the one document.

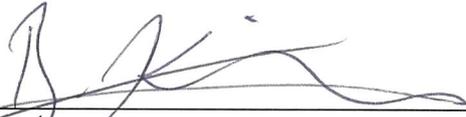
**SIGNING PAGE**

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Each of the undersigned, being a person specified in the application for registration of the Company as a person who consents to become a Member of the Company, agrees to the terms of this Constitution.

**DATED:**

**Executed by Property Investors Council of )  
Australia Ltd in accordance with Section 127 )  
of the Corporations Act 2001: )**

  
\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

BENJAMIN JAMES KINGSLEY  
Name (please print)

\_\_\_\_\_  
Name (please print)

**Signed by Benjamin James Kingsley in the )  
presence of: )**

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Benjamin James Kingsley

MATTHEW TRAVIS SKEHAN  
Name (please print)