



Constitution of Noosa Biosphere Reserve Foundation Ltd

A public company limited by guarantee
Amended on 2 December 2022

Table of contents

1	Preliminary -----	5
1.1	Definitions -----	5
1.2	Interpretation-----	6
1.3	Application of the Corporations Act-----	6
1.4	Exercising powers-----	7
2	Objects -----	7
2.1	Objects of company -----	7
2.2	Exercise of powers to achieve objects -----	8
3	Not for profit -----	8
3.1	Promotion of the objects-----	8
3.2	No income or Property to a member -----	8
3.3	No income or Property to a director-----	8
4	Membership -----	9
4.1	Members -----	9
4.2	Classes -----	9
4.3	Application for membership-----	9
4.4	Admission to membership-----	9
4.5	Rights and responsibilities of Members-----	9
4.6	Admission of Directors as members -----	9
4.7	Notice by members-----	10
4.8	Resignation and termination of membership-----	10
5	Winding up -----	11
5.1	Limited liability on winding up -----	11
5.2	No distribution of profits to members on a winding up-----	11
6	Annual General Meeting -----	11
6.1	Annual general meeting-----	11
6.2	Business at annual general meetings -----	11
6.3	Provisions about general meetings apply to annual general meeting-----	12
7	General meetings -----	12
7.1	Calling general meetings-----	12
7.2	Postponing or cancelling a meeting -----	12
7.3	Notice of general meetings -----	13
7.4	Non-receipt of notice -----	13
7.5	Admission to general meetings -----	14

7.6	Quorum at general meetings	14
7.7	Chair of the board	15
7.8	Acting Chair of the board	15
7.9	Conduct of general meetings	15
7.10	Adjournment and postponement by the chair	16
7.11	Decisions at general meetings	16
7.12	When poll may be demanded	17
7.13	Voting rights	17
7.14	Representation at general meetings	18
7.15	Deleted	18
7.16	Voting where the company has only one member	18
7.17	Appointment of proxies	18
8	Directors	19
8.1	First Directors	19
8.2	Directors	19
8.3	Election of directors	19
8.4	Qualification for membership of the board	19
8.5	Retirement of directors	19
8.6	Resignation	19
8.7	Removal	19
8.8	Vacating office	20
8.9	Casual vacancies	20
8.10	Directors who are employees of the company	20
8.11	Directors who are unable to fulfil their duties due to illness or incapacity	20
8.12	Director's interests	20
9	Powers and duties of directors	22
9.1	General powers	22
9.2	Power to borrow and give security	22
9.3	Powers of appointment	22
9.4	Duties of directors	23
9.5	Board Charter	23
10	Proceedings of directors' meetings	23
10.1	Meetings of directors	23
10.2	Calling meetings of directors	23
10.3	Notice of meetings of directors	23
10.4	Quorum at meetings of directors	24
10.5	Chair of the board and deputy Chair of the board of directors	24
10.6	Decisions of directors	25
10.7	Written resolutions	25

10.8	Committees-----	25
10.9	Delegation to a director-----	25
10.10	Validity of acts-----	25
10.11	Appointment of advisory group-----	26
11	Company Secretary -----	26
11.1	Company Secretary-----	26
12	Indemnity and insurance -----	26
12.1	Officer’s right of indemnity -----	26
12.2	Indemnity-----	26
12.3	Scope of indemnity -----	26
12.4	Insurance -----	27
12.5	Savings-----	27
12.6	Contract-----	27
13	Minutes -----	27
13.1	Contents of minutes -----	27
13.2	Signing of minutes-----	27
14	Inspection of records-----	28
14.1	Inspection by member -----	28
14.2	Access by director -----	28
15	Notices-----	28
15.1	Method of service-----	28
15.2	Time of service-----	28
15.3	Evidence of service -----	28
15.4	Other communications and documents -----	29
16	General -----	29
16.1	Submission to jurisdiction-----	29
16.2	Prohibition and enforceability -----	29
16.3	Amendment to the constitution -----	29

Constitution

Noosa Biosphere Reserve Foundation Ltd

1 Preliminary

1.1 Definitions

In this constitution:

Term	Definition
Australian Biosphere Reserve Management Principles	means the Australian Biosphere Reserve Management Principles as made under Schedule 7 of the <i>Environment Protection and Biodiversity Conservation Regulations 2000</i> (C'th).
ACNC	means Australian Charities and Not-for-profits Commission.
ACNC Regulations	means the Australian Charities and Not-for-profits Commission Regulations 2012 (C'th).
Business Day	means a day that is not a Saturday, Sunday or public holiday in Queensland.
Corporations Act	means Corporations Act 2001 (C'th).
Founding Member	means Noosa Shire Council.
Noosa Biosphere Reserve	means the Noosa Biosphere Reserve area as designated under the UNESCO Man and the Biosphere Program as may be varied from time to time.
Noosa Biosphere Reserve Trust	means the trust administered by the company known by that name.
Property	means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal Property of any description.
Publicly Responsible Person	means a person who has a degree of responsibility to the community as a whole including a person who: <ol style="list-style-type: none"> (a) performs a public function; (b) belongs to a professional body which has a professional code of ethics and rules of conduct; (c) has received formal recognition from the government for their services to the community; or (d) falls within the description of the term of responsible person approved by the Commissioner of Taxation or other relevant Commonwealth authority, and who, unless the Commissioner of Taxation otherwise agrees, is not an associate of the company or an associate of a director of the company other than: <ol style="list-style-type: none"> (e) in a professional capacity; or (f) as a director.

Term	Definition
Representative	means, for a member which is a body corporate including the Founding Member and for a meeting, a person authorised under the Corporations Act (or a corresponding previous law) by the body corporate to be its representative
Trust	means Noosa Biosphere Reserve Trust ABN 12733644585
UNESCO	means the United Nations Educational, Scientific and Cultural Organisation.
UNESCO Man and the Biosphere Program	means the intergovernmental scientific programme under the name 'Man and the Biosphere Program' that is facilitated by UNESCO.

1.2 Interpretation

In this constitution:

- (a) a reference to a member present at a general meeting is a reference to a member present in person or by proxy, attorney or Representative;
- (b) a reference to a person holding or occupying a particular office or position is a reference to any person who occupies or performs the duties of that office or position;
- (c) unless the contrary intention appears:
 - (i) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity;
 - (ii) a reference to a person includes that person's successors, legal personal representatives, permitted substitutes and permitted assigns;
 - (iii) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (iv) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
 - (v) a reference to a rule is a reference to a rule of this constitution;
 - (vi) a reference to a document or agreement (including a reference to this document) is to that document or agreement as amended, supplemented, varied or replaced; and
 - (vii) if any day on or by which a person must do something under this document is not a Business Day, then the person must do it on or by the next Business Day; and
- (d) headings are for convenience only and do not affect interpretation.

1.3 Application of the Corporations Act

- (a) The replaceable rules in the Corporations Act do not apply to the company.
- (b) Where an expression is used in a manner consistent with a provision of the Corporations Act, the expression has the same meaning as in that provision.

1.4 Exercising powers

- (a) The company may exercise any power, take any action or engage in any conduct which the Corporations Act permits a company limited by guarantee to exercise, take or engage in.
- (b) A power conferred on a person to do a particular act or thing under this constitution includes, unless the contrary intention appears, a power (exercisable in the same way and subject to the same conditions) to repeal, rescind, revoke, amend or vary that act or thing.
- (c) A power conferred under this constitution to do a particular act or thing:
 - (i) may be exercised from time to time and subject to conditions; and
 - (ii) may, where the power concerns particular matters, be exercised for only some of those matters or as to a particular class of those matters, and to make different provision concerning different matters or different classes of matters.
- (d) Where a power to appoint a person to an office or position is conferred under this constitution (except the power to appoint a director under rule 8) the power includes, unless the contrary intention appears, a power to:
 - (i) appoint a person to act in the office or position until a person is appointed to the office or position;
 - (ii) remove or suspend any person appointed (without prejudice to any rights or obligations under any contract between the person and the company); and
 - (iii) appoint another person temporarily in the place of any person removed or suspended or in the place of any sick or absent holder of the office or position.
- (e) Where this constitution gives power to a person to delegate a function or power:
 - (i) the delegation may be concurrent with, or (except in the case of a delegation by the directors) to the exclusion of, the performance or exercise of that function or power by the person;
 - (ii) the delegation may be either general or limited in any way provided in the terms of delegation;
 - (iii) the delegation need not be to a specified person but may be to any person holding, occupying or performing the duties of a specified office or position;
 - (iv) the delegation may include the power to delegate; and
 - (v) where performing or exercising that function or power depends on that person's opinion, belief or state of mind about a matter, that function or power may be performed or exercised by the delegate on the delegate's opinion, belief or state of mind about that matter.

2 Objects

2.1 Objects of company

- (a) The principal object of the company is to be the corporate trustee of the Noosa Biosphere Reserve Trust ABN 12733644585 for the public charitable purpose of protecting and enhancing the natural environment.
- (b) To achieve these objects, the company may, without limitation:

- (i) harness the resources of the community in support of the object in rule 2.1(a);
- (ii) establish and maintain affiliations and information exchange with other organisations having similar objects to those in rule 2.1(a);
- (iii) act as trustee of any trust and establish any public gift fund the purpose of which relates to the object in rule 2.1(a);
- (iv) promote the object in rule 2.1(a); and
- (v) do all other things incidental or conducive to the attainment of the object in rule 2.1(a).

2.2 Exercise of powers to achieve objects

Nothing restricts the company from exercising a power which in itself is not charitable, for any purpose which is incidental to the charitable objects of the company or which is intended to generate revenue for, or otherwise further, those objects.

3 Not for profit

3.1 Promotion of the objects

The income and Property of the company must only be applied towards promoting the company's objects set out in this constitution.

3.2 No income or Property to a member

No income or Property of the company may be paid or transferred, directly or indirectly, to a member except for approved payments to a member:

- (a) in return for services rendered by, or goods supplied, by the member to the company in the ordinary and usual course of business;
- (b) for reasonable and proper rent for premises leased by a member to the company; or
- (c) as principal payments on money lent by the member, and interest payments if the interest is at a commercial rate.

3.3 No income or Property to a director

- (a) No income or Property of the company may be paid or transferred, directly or indirectly, to a director on account of remuneration for services provided by the director in their capacity as a director.
- (b) All payments to directors must be approved by the directors including, but not limited to:
 - (i) out of pocket expenses incurred by a director in performing a duty as a director; and
 - (ii) a service rendered to the company by a director in a professional or technical capacity or as an employee, other than in the capacity as a director where:
 - (A) the provision of the service has the prior approval of the directors; and
 - (B) the amount payable is not more than an amount which commercially would be reasonable payment for the service.

4 Membership

4.1 Members

The members are:

- (a) the Founding Member;
- (b) the persons named as members with their consent in the application for registration of the company; and
- (c) any other persons admitted to membership under this constitution.

4.2 Classes

Until otherwise decided by the members in a general meeting, the only class of membership is ordinary membership.

4.3 Application for membership

- (a) Any individual who or body corporate which:
 - (i) is, in the opinion of the members, supportive of the purpose of the company; and
 - (ii) has the nomination of another member,may apply to be a member of the company.
- (b) An application for membership must be in an approved form together with any other documents or evidence as to qualification for membership that the board requires.

4.4 Admission to membership

- (a) An application for membership is to be considered by the members at an AGM.
- (b) The members may in their absolute discretion accept or reject an application for membership.
- (c) The members are not required to give a reason for accepting or rejecting an application for membership.
- (d) As soon as possible after the application for membership is considered the company secretary must give written notice of the outcome of the application to the applicant.

4.5 Rights and responsibilities of Members

- (a) All members of the Company are entitled to:
 - (i) receive notices of and attend members' meetings;
 - (ii) speak, be heard and vote on any proposed resolution at a members' meeting;
 - (iii) vote on a proposed resolution by way of circular resolution.
- (b) All members must comply with the company's constitution, policies and codes of conduct.

4.6 Admission of Directors as members

A person, who is appointed or elected as a director of the company, other than to a casual vacancy will automatically become a member of the company upon providing his or her consent to be a member in a form approved by the board.

4.7 Notice by members

- (a) Each member must promptly notify the company secretary in writing of any change in their address or contact details.
- (b) The Founding Member and any other body corporate member must nominate one individual (**Representative**) to represent it in the company and must promptly notify the company secretary in writing of any change in its Representative.

4.8 Resignation and termination of membership

- (a) A member automatically ceases to be a member:
 - (i) Upon the expiration of one month after written notice of their resignation as a member is received by the company secretary;
 - (ii) Upon the members death if an individual or upon a body corporate member ceasing to exist;
 - (iii) Where the person became a member by virtue of rule 4.6 - then upon the expiration of 3 years from the date the member ceases or ceased to be a director, provided however that such person may then re- apply for admission as a member under rule 4.3;
 - (iv) Where the person became a member other than by virtue of rule 4.6 – then upon the expiration of 3 years from the admission of the member as a member, provided that such person may then reapply for membership under rule 4.3; or
 - (v) Upon the member’s termination as a member by the board under rule 4.8(b).
- (b) The board may terminate a member’s membership if the member:
 - (i) fails to notify the company of a change in address or contact details and is unable to be contacted at the address in the register for a period of two years;
 - (ii) is of unsound mind or is a patient under laws relating to mental health or whose estate is administered under the laws about mental health;
 - (iii) becomes bankrupt or insolvent;
 - (iv) fails to respond within one month to a written request sent to their registered address from the company secretary seeking that they wish to remain a member of the company ; or
 - (v) has behaved in a way the board considers to be injurious or prejudicial to the character or interests of the company or the Noosa Biosphere Reserve Trust.
- (c) The board must give the member written notice of its intention to terminate the member’s membership and the reason for the proposed termination.
- (d) If the reason set out in the notice under rule 4.8(c) remains unresolved, in the opinion of the board, for one month after the date of the notice, the member’s membership is terminated.
- (e) The rights or privileges of membership may be reinstated at the absolute discretion of the board.
- (f) Membership is personal to the member and is not transferable.

5 Winding up

5.1 Limited liability on winding up

- (a) If the company is wound up while a person is a member, or within one year after the person ceases to be a member, the person must contribute the guarantee amount to the assets of the company for the:
 - (i) payment of the debts and liabilities of the company contracted before the person ceased to be a member; and
 - (ii) costs of winding up.
- (b) Each member of the company agrees the guarantee amount under rule 5.1(a) is \$10.

5.2 No distribution of profits to members on a winding up

- (a) Where Property remains after the winding up or dissolution of the company and satisfaction of all its debts and liabilities, it must not be distributed among members.
- (b) The surplus property referred to in rule 5.2(a) must be given to another fund, authority or institution:
 - (i) with objects similar to the objects of the company;
 - (ii) whose constitution prohibits the distribution of its income and Property among its members; and
 - (iii) that is charitable at law.
- (c) In addition to rule 5.2(b), if the company is registered as a charity under Part 11A of the Taxation Administration Act 2001(Qld), then the charitable fund, authority or institution to which the surplus property may be given must also be:
 - (i) registered under the Taxation Administration Act 2001(Qld); or
 - (ii) one which the commissioner as defined in that Act is satisfied:
 - (A) has a principal object or pursuit mentioned in subsection (3)(a) of that Act or
 - (B) is charitable or for the promotion of the public good.
- (d) The fund, authority or institution to receive the surplus property under this rule must be decided by the directors at or before the time of the winding-up or dissolution. If the directors do not wish to decide, or do not decide, the members by ordinary resolution must decide. If the members do not decide, the decision must be referred to the Supreme Court of the state or territory in which the company's registered office is located.

6 Annual General Meeting

6.1 Annual general meeting

A general meeting, to be called the annual general meeting, must be held at least once in every calendar year (after the end of the first financial year).

6.2 Business at annual general meetings

- (a) The business of an annual general meeting is:

- (i) to review the company's and Trust's activities and finances during the period since the last AGM;
 - (ii) to receive and consider the annual financial statements and directors reports for the company and the Trust; and
 - (iii) to elect directors;
 - (iv) if required by the Corporations Act or other relevant legislation, to appoint an auditor or reviewer; and
 - (v) to transact any other business which, under this document, is required to be transacted at an annual general meeting.
- (b) All other business transacted at an annual general meeting and all business transacted at other general meetings is special business.
- (c) The auditor or reviewer, if any, and its representative may attend and be heard on any part of the business of a meeting concerning the auditor or reviewer. The auditor or reviewer, if any, or its representative, if present at the meeting, may be questioned by the members, as a whole, about the audit or review, if undertaken.

6.3 Provisions about general meetings apply to annual general meeting

The provisions of this constitution about general meetings apply, with necessary changes, to annual general meetings.

7 General meetings

7.1 Calling general meetings

- (a) A general meeting must be held within 2 months of a resolution by the board directing the company secretary to call a general meeting.
- (b) A general meeting must be held within 2 months of the receipt by the company secretary of a written request for a general meeting (member's requisition) from the Founding Member or at least three current members of the company, which request must set out the business to be discussed and any proposed resolution for consideration at the meeting.

7.2 Postponing or cancelling a meeting

- (a) Subject to rule 7.2(b), the directors may:
 - (i) postpone a meeting of members;
 - (ii) cancel a meeting of members; or
 - (iii) change the place for a general meeting, ifthey consider that the meeting has become unnecessary, or the venue would be unreasonable or impractical or a change is necessary in the interests of conducting the meeting efficiently.
- (b) A meeting which is not called by a directors' resolution and is called under a members' requisition referred to in rule 7.1 (b) may not be postponed or cancelled without the prior written consent of the persons who called or requisitioned the meeting.

7.3 Notice of general meetings

- (a) Notice of a general meeting must be given to each person who at the time of giving the notice is a member, director or auditor of the company.
- (b) The directors may decide the content of a notice of a general meeting, but the notice must include the general nature of the business to be transacted at the meeting and any other matters required by the ACNC or the Corporations Act.
- (c) Unless the Corporations Act provides otherwise:
 - (i) no business may be transacted at a general meeting unless the general nature of the business is stated in the notice calling the meeting; and
 - (ii) except with the approval of the directors or the Chair of the board, no person may move any amendment to a proposed resolution the terms of which are set out in the notice calling the meeting or to a document which relates to that resolution and a copy of which has been made available to members to inspect or obtain.
- (d) A person may waive notice of any general meeting by written notice to the company.
- (e) Subject to rule 7.3(f), at least 21 days' notice must be given for a meeting of members.
- (f) The company may call a meeting on shorter notice:
 - (i) if an annual general meeting, when all the members entitled to attend and vote at the annual general meeting agree beforehand; and
 - (ii) if any other general meeting, when members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- (g) The company cannot call an annual general meeting or other general meeting on shorter notice if it is a meeting at which a resolution will be moved to:
 - (i) remove a director under section 203D of the Corporations Act or appoint a director in place of a director removed under that section; or
 - (ii) remove an auditor under section 329 of the Corporations Act.

7.4 Non-receipt of notice

- (a) Subject to the Corporations Act, the:
 - (i) non-receipt of a notice of any general meeting by; or
 - (ii) accidental omission to give notice to, any person entitled to notice does not invalidate anything done (including the passing of a resolution) at that meeting.
- (b) A person's attendance at a general meeting waives any objection that person may have to:
 - (i) a failure to give notice, or the giving of a defective notice, of the meeting unless the person at the beginning of the meeting objects to the holding of the meeting; and
 - (ii) the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting, unless the person objects to considering the matter when it is presented.

7.5 Admission to general meetings

- (a) The chair of a general meeting:
 - (i) has charge of the general conduct of the meeting and the procedures to be adopted at the meeting;
 - (ii) may require the adoption of any procedure which is in the Chair'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
 - (iii) may, having regard where necessary to the Corporations Act, and the ACNC's guidance terminate discussion or debate on any matter whenever the Chair of the board considers it necessary or desirable for the proper conduct of the meeting, and a decision by the Chair of the board under this rule is final.
- (b) The Chair may delegate the powers conferred by rule 7.5(a) to any person.
- (c) A person, whether a member or not, requested by the directors or the Chair of the board to attend a general meeting is entitled to be present and, at the request of the chair, to speak at the meeting.
- (d) Members of the public may attend as observers only.

7.6 Quorum at general meetings

- (a) No business may be transacted at a general meeting, except the election of a chair of the meeting and the adjournment of the meeting, unless a quorum of members is present in person, by proxy or Representative when the meeting proceeds to business.
- (b) A quorum for a general meeting is:
 - (i) where there is only one member, that member; and
 - (ii) where there is more than one member but not more than 10 members, 50% of the members plus one; and
 - (iii) where there is more than 10 members, six members.
- (c) If a quorum is not present within 30 minutes after the time appointed for the general meeting:
 - (i) where the meeting was called at the request of members, the meeting must be dissolved; or
 - (ii) in any other case:
 - (A) the meeting stands adjourned to the day, and at the time and place, the directors present decide; or
 - (B) if they do not make a decision, to the same day in the next week at the same time and place.
- (d) At an adjourned meeting, if a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

7.7 Chair of the board

- (a) The Chair of the board is entitled to take the chair at every general meeting.
- (b) If at any general meeting:
 - (i) the Chair of the board is not present at the specified time for holding the meeting;
or
 - (ii) the Chair of the board is present but is unwilling to act as chair of the meeting,
the deputy Chair of the board is entitled to take the chair at the meeting.
- (c) If at any general meeting:
 - (i) there is no Chair of the board or deputy Chair of the board;
 - (ii) the Chair of the board and deputy Chair of the board are not present at the specified time for holding the meeting; or
 - (iii) the Chair of the board and the deputy Chair of the board are present but each is unwilling to act as chair of the meeting,

the directors present may choose another director as chair of the meeting and if no director is present or if each of the directors present are unwilling to act as chair of the meeting, a member chosen by the members present is entitled to take the chair at the meeting.

7.8 Acting Chair of the board

- (a) A chair of a general meeting may, for any item of business or discrete part of the meeting, vacate the chair in favour of another person nominated by him or her (**Acting Chair**).
- (b) Where an instrument of proxy appoints the Chair of the board as proxy for part of the proceedings for which an Acting Chair has been nominated, the instrument of proxy is taken to be in favour of the Acting Chair for the relevant part of the proceedings.

7.9 Conduct of general meetings

- (a) A general meeting may be held by members meeting face to face in person or by the contemporaneous linking together by telephone or other electronic means including by way of a virtual online medium, or by a hybrid or combination of these.
- (b) All the provisions in this constitution relating to meetings of the members apply, as far as they can and with any necessary changes, to meetings of the members by telephone or other electronic means including those held by way of a virtual online medium. In particular:
 - (i) The meeting is to be taken to be held at the place where the chairperson of the meeting is or at any other place the chairperson of the meeting decides on, if at least one of the members involved was at that place for the duration of the meeting.
 - (ii) A member participating in a meeting in this way, is to be taken to be present in person at the meeting.
 - (iii) If, before or during the meeting, any technical difficulty occurs where one or more members cease to participate, the chairperson may adjourn the meeting until the difficulty is remedied or may, where a quorum of members remains present, continue with the meeting.

7.10 Adjournment and postponement by the chair

- (a) Despite rules 7.2(a) and 7.2(b), where the chair of the meeting considers that:
- (i) there is not enough room for the number of members who wish to attend the meeting; or
 - (ii) a postponement is necessary in light of the behaviour of persons present or for any other reason so that the business of the meeting can be properly carried out,
- the chair may postpone the meeting before it has started, whether or not a quorum is present.
- (b) A postponement under rule 7.10(a) is to another time, which may be on the same day as the meeting, and may be to another place (and the new time and place is taken to be the time and place for the meeting as if specified in the notice which called the meeting originally).
- (c) The chair may at any time during the course of the meeting:
- (i) adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting; and
 - (ii) for the purpose of allowing any poll to be taken or determined, suspend the proceedings of the meeting for any period or periods he or she decides without effecting an adjournment – no business may be transacted and no discussion may take place during any suspension of proceedings unless the chair otherwise allows.
- (d) The chair's rights under rules 7.10(a) and 7.10(c) are exclusive and, unless the chair requires otherwise, no vote may be taken or demanded by the members present about any postponement, adjournment or suspension of proceedings.
- (e) Only unfinished business may be transacted at a meeting resumed after an adjournment.
- (f) Where a meeting is postponed or adjourned for 30 days or more, notice of the postponed or adjourned meeting must be given as in the case of the original meeting within seven days.

7.11 Decisions at general meetings

- (a) Except where a members' decision is required to be made by a special resolution, questions arising at a general meeting must be decided by a majority of votes cast by the members present at the meeting. A decision made in this way is for all purposes, a decision of the members.
- (b) If the votes are equal on a proposed resolution, the chair of the meeting does not have a casting vote in addition to any deliberative vote, and the motion will be taken to be lost.
- (c) A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is demanded:
- (i) before the show of hands is taken;
 - (ii) before the result of the show of hands is declared; or
 - (iii) immediately after the result of the show of hands is declared.
- (d) Unless a poll is duly demanded, a declaration by the chair of the meeting that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular

majority, or lost, and an entry to that effect in the company's minute book is conclusive evidence of the fact without proof of the number or proportion of the votes recorded for or against the resolution.

7.12 When poll may be demanded

- (a) A poll may be demanded by:
 - (i) the chair of the meeting;
 - (ii) at least five members entitled to vote on the resolution.
- (b) A demand for a poll does not prevent a general meeting continuing to transact any business except the question on which the poll is demanded.
- (c) If a poll is duly demanded at a general meeting, it must be taken in the way and either at once or after an interval or adjournment as the chair of the meeting directs. The result of the poll as declared by the chair is the resolution of the meeting at which the poll was demanded.

7.13 Voting rights

- (a) Subject to this constitution and to any rights or restrictions attached to any class of membership, at a general meeting:
 - (i) on a show of hands, each member present has one vote;
 - (ii) where a person is entitled to vote by virtue of rule 7.17 in more than one capacity, that person is entitled only to one vote on a show of hands;
 - (iii) if the person appointed as proxy has two or more appointments that specify different ways to vote on a resolution, the proxy must not vote on a show of hands; and
 - (iv) on a poll, each member present has one vote.
- (b) Where any amount payable to the company has not been duly paid that member is not entitled to vote, nor to be counted in the quorum for the meeting.
- (c) A member is not entitled to vote on a resolution if, under the Corporations Act the notice which called the meeting specified that:
 - (i) the member must not vote or must abstain from voting on the resolution; or
 - (ii) a vote on the resolution by the member must be disregarded for any purposes.
- (d) If the member referred to in rule 7.13(c) or a person acting as proxy, attorney or Representative of that member does tender a vote on that resolution, their vote must not be counted.
- (e) An objection to the validity of a vote tendered at a general meeting must be:
 - (i) raised before or immediately after the result of the vote is declared; and
 - (ii) referred to the chair of the meeting, whose decision is final.
- (f) A vote tendered, but not disallowed by the chair of a meeting under rule 7.13(e), is valid for all purposes, even if it would not otherwise have been valid.

- (g) The chair may decide any difficulty or dispute which arises as to the number of votes which may be cast by or on behalf of any member and the decision of the chair is final.

7.14 Representation at general meetings

- (a) Subject to this constitution, each member entitled to vote at a general meeting may vote:
- (i) in person or, where a member is a body corporate including the Founding Member, by its Representative;
 - (ii) by not more than one proxy; or
 - (iii) by not more than one attorney.
- (b) A proxy, attorney or Representative may, but need not, be a member of the company.

7.15 Deleted

7.16 Voting where the company has only one member

If the company has only one member, the company may pass a resolution by the member recording it and signing the record.

7.17 Appointment of proxies

- (a) Any member entitled to vote at a general meeting may appoint one proxy.
- (b) A proxy may be a member who is not entitled in their own right to vote on a particular resolution.
- (c) The document appointing a proxy must:
- (i) be in the form approved by the board;
 - (ii) be signed by the appointor or his attorney;
 - (iii) set out the name of the person to be appointed as proxy;
 - (iv) allow the member to direct the proxy to vote for or against (or abstain from voting on) any proposed resolution;
 - (v) set out the period of appointment including whether it is valid only for stipulated meetings; and
 - (vi) be received by the company at least 48 hours (or a lesser period as the board may decide and stipulate in the notice of meeting) before the time for holding the meeting or poll at which the person named in the document proposes to vote.
- (d) Unless otherwise specified or revoked a proxy appointment is valid for any adjournment of the meeting, as well as for the meeting to which it relates.
- (e) The proxy document is deemed to include the right to demand or join in demanding a poll and (except to the extent to which the proxy is specifically directed to vote for or against any proposal) the power to act generally at the meeting for the person giving the proxy.

8 Directors

8.1 First Directors

- (a) The first directors (**First Directors**) are those persons named as directors in the application for incorporation of the company.
- (b) For transitional purposes, the First Directors will be comprised of:
 - (i) two directors whose terms will end at the conclusion of the first AGM;
 - (ii) three directors whose terms will end at the conclusion of the second AGM; and
 - (iii) three directors, one of whom will be a person appointed by the Founding Member, whose terms will end at the conclusion of the third AGM.

8.2 Directors

- (a) The board will consist of at least six and not more than eight directors:
 - (i) at least five directors to be elected under rule 8.3;
 - (ii) up to two other directors, appointed by the board for the term determined by the board, for their particular skills and experience; and
 - (iii) one director to be appointed and removed by the Founding Member in its complete discretion and who must be an elected member of the Founding Member.

8.3 Election of directors

The directors referred to in rule 8.2(a)(i) are to be elected by the members in accordance with the Corporations Act.

8.4 Qualification for membership of the board

A majority of the directors must be:

- (a) a Publicly Responsible Person; and
- (b) independent of the Founding Member.

8.5 Retirement of directors

- (a) Each director must retire from office at the conclusion of the third year following the person's appointment as a director.
- (b) Rule 8.5(a) does not apply to the First Directors.
- (c) Notwithstanding rule 8.5(a), the board may determine which of the directors, are to retire from time to time and, to the extent the law permits, the date of their retirement.

8.6 Resignation

A director may resign from the board by written notice delivered to the company secretary. The resignation takes effect when the notice is received by the company secretary, or on a later date specified in the notice.

8.7 Removal

- (a) A director may be removed from office by resolution of the members present and entitled to vote at a general meeting of the company convened for that purpose. At the meeting

the director must be given the opportunity to present his or her case.

- (b) A director removed under rule 8.7(a) retains office until the dissolution or adjournment of the general meeting at which he or she is removed.

8.8 Vacating office

In addition to the circumstances prescribed by the Corporations Act and this constitution, the office of a director becomes vacant if the director:

- (a) becomes an insolvent under administration, suspends payment generally to creditors or compounds with or assigns the director's estate for the benefit of creditors;
- (b) becomes a person of unsound mind or a person who is a patient under laws relating to mental health or whose estate is administered under laws about mental health;
- (c) is absent from meetings of the directors during a period of three consecutive calendar months without leave of absence from the directors where the directors have not, within 14 days of having been served by the company secretary with a notice giving particulars of the absence, resolved that leave of absence be granted;
- (d) resigns office by written notice to the company;
- (e) is removed from office under the Corporations Act or any other relevant legislation;
- (f) is prohibited from being a director by reason of the operation of the Corporations Act or any other relevant legislation; or
- (g) is convicted on indictment of an offence and the directors do not within one month after that conviction resolve to confirm the director's appointment or election (as the case may be) to the office of director.

8.9 Casual vacancies

- (a) In addition to its power to appoint directors under rule 8.2(a)(ii), and subject to rule 8.4, the board has power to appoint a qualified person as a director to fill a casual vacancy among the board.
- (b) Any person appointed under this rule holds office until the next general meeting.

8.10 Directors who are employees of the company

A director who is an employee of the company or any of its subsidiaries, ceases to be a director of the company upon the director ceasing to be employed (so that they are no longer employed by the company or any subsidiary of the company) but the person concerned is eligible for reappointment or re-election as a director of the company.

8.11 Directors who are unable to fulfil their duties due to illness or incapacity

- (a) A director may be removed from office by the board if the board resolves under its policy that the director is unable to fulfil their duties due to physical or mental illness or other incapacity.
- (b) The board will implement a policy about directors who are unable to fulfil their duties due to physical or mental illness or other incapacity for the purpose of making a determination under rule 8.11(a).

8.12 Director's interests

- (a) A director is not disqualified by reason only of being a director (or the fiduciary obligations arising from that office) from:

- (i) holding an office (except auditor) or place of profit or employment in the company or a related body corporate of the company;
 - (ii) holding an office or place of profit or employment in any other company, body corporate, trust or entity promoted by the company or in which it has interest;
 - (iii) being a member, creditor or otherwise being interested in any body corporate (including the company), partnership or entity, except as auditor of the company;
 - (iv) entering into any agreement or arrangement with the company; or
 - (v) acting in a professional capacity (or being a member of a firm which acts in a professional capacity) for the company, except as auditor of the company.
- (b) Each director must comply with the Corporations Act on the disclosure of the director's interests.
- (c) The directors may make regulations requiring the disclosure of interests that a director, and any person taken by the directors to be related to or associated with the director, may have in any matter concerning the company or a related body corporate. Any regulations made under this constitution bind all directors.
- (d) No act, transaction, agreement, instrument, resolution or other thing is invalid or voidable only because a person fails to comply with any regulation made under rule 8.12(c).
- (e) A director who has a material personal interest in a matter that is being considered by the directors must not be present at a meeting while the matter is being considered nor vote on the matter, except where permitted by the Corporations Act.
- (f) If a director has an interest in a matter, then subject to rules 8.12(c), 8.12(g) and the constitution:
- (i) that director may not be counted in a quorum at the board meeting that considers the matter that relates to the interest;
 - (ii) that director may not participate in and vote on matters that relate to the interest;
 - (iii) the company can proceed with any transaction that relates to the interest and the director may participate in the execution of any relevant document by or on behalf of the company;
 - (iv) the director may retain the benefits under the transaction that relates to the interest even though the director has the interest; and
 - (v) the company cannot avoid any transaction that relates to the interest merely because of the existence of the interest.
- (g) If an interest of a director is required to be disclosed under rule 8.12(b), rule 8.12(f)(iv) applies only if the interest is disclosed before the transaction is entered into.
- (h) A contract or arrangement entered into by or on behalf of the company in which a director is in any way interested is not invalid or voidable merely because the director holds office as a director or because of the fiduciary obligations arising from that office.
- (i) A director who is interested in any arrangement involving the company is not liable to account to the company for any profit realised under the arrangement merely because the director holds office as a director or because of the fiduciary obligations arising from that office, if the director complies with the disclosure requirements applicable to the director under rule 8.12(a) and under the Corporations Act about that interest.

- (j) A director who is interested in any contract or arrangement may, despite that interest, witness the fixing of the company seal to any document evidencing or otherwise connected with that contract or arrangement.

9 Powers and duties of directors

9.1 General powers

- (a) The directors are responsible for managing the business of the company and may exercise all powers and do all things that are within the company's power and are not expressly required by the Corporations Act or this constitution to be exercised by the company in a general meeting.
- (b) The board may make regulations, by-laws and policies consistent with the constitution, which in the opinion of the board are necessary or desirable for the proper control, administration and management of the company's finances, affairs and Property, or are necessary for the convenience, comfort and well-being of the members (including the terms of entry of members to the company's premises and any event or function sponsored, promoted, facilitated or conducted by the company) and amend or rescind any regulations and by-laws.
- (c) A regulation, policy or by-law of the company made by the board may be disallowed by the company in a later general meeting. A resolution or regulation made by the company in general meeting cannot invalidate prior acts of the board which would have been valid if that resolution or regulation had not been passed or made.
- (d) A director is entitled to attend and speak at general meetings and at meetings of a class of members, even if he or she is not a member or a member of the relevant class.

9.2 Power to borrow and give security

- (a) The directors may exercise all the powers of the company to:
 - (i) borrow or raise money in any other way;
 - (ii) charge mortgage or otherwise encumber any of the company's Property or business or any of its Property; and
 - (iii) issue debentures or give any security for a debt, liability or obligation of the company or of any other person.
- (b) The directors may decide how cheques, promissory notes, banker's drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed, as applicable, by or on behalf of the company.

9.3 Powers of appointment

The directors may:

- (a) appoint or employ any person as an officer, agent or attorney of the company for the purposes, with the powers, discretions and duties (including powers, discretions and duties vested in or exercisable by the directors), for any period and on any other conditions they decide;
- (b) authorise an officer, agent or attorney to delegate any of the powers, discretions and duties vested in the officer, agent or attorney; and
- (c) remove or dismiss any officer, agent or attorney of the company at any time, with or without cause.

9.4 Duties of directors

Each director must comply with the duties:

- (a) of a director under the Corporations Act and at common law (judge-made law),
- (b) imposed by Governance Standard 5 of the ACNC regulations; and
- (c) the fiduciary duties imposed on trustees by the law.

9.5 Board Charter

The company must have a Board Charter for the board, which may amongst other things include:

- (a) the duties and responsibilities of a director,
- (b) a skills matrix setting out the appropriate skills experience knowledge and qualifications and connection with the community appropriate for a director of the company;
- (c) a code of conduct for directors,
- (d) the process for recruitment and election or appointment of directors;
- (e) the requirements in relation to board renewal and evaluation; and
- (f) ongoing professional development.

10 Proceedings of directors' meetings

10.1 Meetings of directors

- (a) The directors may meet together to attend to business and adjourn and otherwise regulate their meetings as they decide.
- (b) The contemporaneous linking together by telephone or other electronic means of a sufficient number of directors to constitute a quorum, constitutes a meeting of the directors. All the provisions in this constitution relating to meetings of the directors apply, as far as they can and with any necessary changes, to meetings of the directors by telephone or other electronic means.
- (c) A meeting by telephone or other electronic means is to be taken to be held at the place where the Chair of the board of the meeting is or at any other place the Chair of the board of the meeting decides on, if at least one of the directors involved was at that place for the duration of the meeting.
- (d) A director taking part in a meeting by telephone or other electronic means is to be taken to be present in person at the meeting.
- (e) If, before or during the meeting, any technical difficulty occurs where one or more directors cease to participate, the Chair of the board may adjourn the meeting until the difficulty is remedied or may, where a quorum of directors remains present, continue with the meeting.

10.2 Calling meetings of directors

- (a) A director may, whenever the director thinks fit, call a meeting of the directors.
- (b) A company secretary must, if requested by a director, call a meeting of the directors.

10.3 Notice of meetings of directors

- (a) Notice of a meeting of directors must be given to each person who is, at the time the notice is given a director, except a director on leave of absence approved by the directors.
- (b) A notice of a meeting of directors:

- (i) must specify the time and place of the meeting;
 - (ii) need not state the nature of the business to be transacted at the meeting;
 - (iii) may, if necessary, be given immediately before the meeting; and
 - (iv) may be given in person or by post or by telephone, fax or other electronic means.
- (c) A director may waive notice of a meeting of directors by giving notice to that effect in person or by post or by telephone, fax or other electronic means.
- (d) Failure to give a director notice of a meeting of directors does not invalidate anything done or any resolution passed at the meeting if:
- (i) the failure occurred by accident or inadvertent error; or
 - (ii) the director attended the meeting or waived notice of the meeting (whether before or after the meeting).
- (e) A person who attends a meeting of directors waives any objection that person may have to a failure to give notice of the meeting.

10.4 Quorum at meetings of directors

- (a) No business may be transacted at a meeting of directors unless a quorum of directors is present at the time the business is dealt with.
- (b) Unless the directors decide otherwise, more than half of the current directors constitute a quorum.
- (c) If there is a vacancy in the office of a director, the remaining directors may act. But, if their number is not sufficient to constitute a quorum, they may act only in an emergency or to increase the number of directors to a number sufficient to constitute a quorum or to call a general meeting of the company.

10.5 Chair of the board and deputy Chair of the board of directors

- (a) The directors may elect, for any period they decide:
 - (i) a director to the office of Chair of the board; and
 - (ii) may elect one or more directors to the office of deputy Chair of the board.
- (b) The Chair of the board of directors is entitled (if present within ten minutes after the time appointed for the meeting and willing to act) to preside as chair at a meeting of directors.
- (c) If at a meeting of directors:
 - (i) there is no Chair of the board of directors;
 - (ii) the Chair of the board of directors is not present within ten minutes after the time appointed for the holding of the meeting; or
 - (iii) the Chair of the board of directors is present within that time but is not willing or declines to act as Chair of the board of the meeting,

the deputy Chair of the board if any, if then present and willing to act, is entitled to be chair of the meeting or if the deputy Chair of the board is not present or is unwilling or declines to act as chair of the meeting, the directors present must elect one of themselves to chair the meeting.

10.6 Decisions of directors

- (a) The directors, at a meeting at which a quorum is present, may exercise any authorities, powers and discretions vested in or exercisable by the directors under this constitution.
- (b) Questions arising at a meeting of directors must be decided by a majority of votes cast by the directors present and entitled to vote on the matter.
- (c) If the votes are equal on a proposed resolution, the chair of the meeting does not have a casting vote, and the motion will be taken to be lost.

10.7 Written resolutions

- (a) A resolution in writing of which notice has been given to all directors and which is signed or consented to by all of the directors entitled to vote on the resolution is as valid and effectual as if it had been passed at a meeting of the directors duly called and constituted and may consist of several documents in the same form, each signed or consented to be one or more of the directors.
- (b) A director may consent to a resolution by:
 - (i) signing the document containing the resolution (or a copy of that document);
 - (ii) giving to the company a written notice (including by fax or other electronic means) addressed to the company secretary or to the Chair of the board signifying assent to the resolution and either setting out its terms or otherwise clearly identifying them; or
 - (iii) telephoning the company secretary or the Chair of the board and signifying assent to the resolution and clearly identifying its terms.

10.8 Committees

- (a) The directors may delegate their powers to a committee of persons.
- (b) A committee must have at least one director.
- (c) The board must have a Terms of Reference for a committee.
- (d) The committee must exercise the powers delegated to it in accordance with any directions of the directors.
- (e) The provisions of this constitution applying to meetings and resolutions of directors apply, so far as they can and with any necessary changes, to meetings and resolutions of a committee of directors, except to the extent they are contrary to any direction given under rule 10.8(b).

10.9 Delegation to a director

- (a) The directors may delegate any of their powers to one director.
- (b) A director to whom any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.

10.10 Validity of acts

All acts done at any meeting of the directors or by a committee or by any person acting as a director are, notwithstanding that it is afterwards discovered:

- (a) that there was some defect in the appointment of any of the directors; or

- (b) the committee or the person acting as a director or that any of them were disqualified, valid as if every person had been duly appointed and was qualified and continued to be a director or a member of the committee (as the case may be).

10.11 Appointment of advisory group

- (a) The directors may establish an advisory group.
- (b) The directors may appoint and remove members of the advisory group and terminate an advisory group at any time.
- (c) The functions of the advisory group will be decided by the directors.
- (d) The directors may specify
 - (i) the manner in which proceedings of an advisory group are conducted;
 - (ii) the matters which the advisory group must consider in carrying out its functions; and
 - (iii) any other matters concerning the advisory group or its functions that the directors decide.
- (e) For the avoidance of doubt, an advisory group established under rule 10.11(a) will not be delegated with any power of the board.

11 Company Secretary

11.1 Company Secretary

- (a) The company must have at least one company secretary appointed by the directors, who may be an employee of the company.
- (b) The directors may suspend or remove a company secretary from that office.

12 Indemnity and insurance

12.1 Officer's right of indemnity

Rules 12.2 and 12.4 apply:

- (a) to each person who is or has been a director, company secretary or executive officer of the company;
- (b) to any other officers or former officers of the company or of its related bodies corporate as the directors in each case determine; and
- (c) if the directors so determine, to any auditor or former auditor of the company or of its related bodies corporate, each an **Officer** for the purposes of this rule.

12.2 Indemnity

The company must indemnify each Officer on a full indemnity basis and to the full extent permitted by law against all losses, liabilities, costs, charges and expenses (**Liabilities**) incurred by the Officer as an officer of the company or of a related body corporate.

12.3 Scope of indemnity

The indemnity in rule 12.2:

- (a) does not operate in respect of any Liability of the Officer to the extent that Liability is covered by insurance;

- (b) is enforceable without the Officer having to first incur any expense or make any payment; and
- (c) is a continuing obligation and is enforceable by the Officer even though the Officer may have ceased to be an officer or auditor of the company or its related bodies corporate.

12.4 Insurance

The company may, to the extent the law permits:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance, for each Officer against any Liability incurred by the Officer as an officer or auditor of the company or of a related body corporate including, but not limited to:
- (c) costs and expenses in defending any proceedings, whether civil or criminal, whatever their outcome; or
- (d) a Liability arising from negligence or other conduct.

12.5 Savings

Nothing in rule 12.2 or 12.4:

- (a) affects any other right or remedy that a person to whom those rules apply may have in respect of any Liability referred to in those rules;
- (b) limits the capacity of the company to indemnify or provide or pay for insurance for any person to whom those rules do not apply; or
- (c) limits or diminishes the terms of any indemnity conferred or agreement to indemnify entered into before the adoption of this constitution.

12.6 Contract

The company may enter into an agreement with any Officer to give effect to the rights conferred by this rule or the exercise of a discretion under this rule on any terms as the directors think fit which are not inconsistent with this rule.

13 Minutes

13.1 Contents of minutes

The board must ensure that minutes are duly recorded in any manner it thinks fit and include:

- (a) the names of the directors present at each meeting of the company, the board and of committees; and
- (b) details of all resolutions and proceedings of general meetings of the company and of meetings of the board and committees.

13.2 Signing of minutes

The minutes of a meeting of the board or of a committee or of the company, if signed by the Chair of the board of the meeting or by the Chair of the board of the next meeting, are prima facie evidence of the matters stated in the minutes.

14 Inspection of records

14.1 Inspection by member

Except as provided by law, this constitution or as authorised by a directors' resolution, a person who is not a director does not have the right to inspect any of the board papers, books, records or documents of the company.

14.2 Access by director

The company may enter into contracts, and procure that its subsidiaries enter into contracts, on any terms the directors think fit, to grant a director or former director continuing access for a specified period after the director ceases to be a director to board papers, books, records and documents of the company which relate to the period during which the director or former director was a director of the company.

15 Notices

15.1 Method of service

- (a) The company may give a notice to a member by:
 - (i) delivering it personally;
 - (ii) sending it by prepaid post to the member's address in the register of members or any other address the member gives the company for notices; or
 - (iii) sending it by fax or other electronic means to the fax number or electronic address the member gives the company for notices.
- (b) Where a member does not have a registered address or where the company believes that member is not known at the member's registered address, all notices are taken to be:
 - (i) given to the member if the notice is exhibited in the company's registered office for a period of 48 hours; and
 - (ii) served at the commencement of that period, unless and until the member informs the company of the member's address.

15.2 Time of service

- (a) A notice from the company properly addressed and posted is taken to be given and received on the day after the day of its posting.
- (b) A notice sent or given by fax or other electronic transmission:
 - (i) is taken to be effected by properly addressing and transmitting the fax or other electronic transmission; and
 - (ii) is taken to have been given and received on the day of its transmission.
- (c) Where a given number of days notice or notice extending over any other period must be given, the day of service is not to be counted in the number of days or other period.

15.3 Evidence of service

A certificate signed by a director or company secretary stating that a notice has been given under this constitution is conclusive evidence of that fact.

15.4 Other communications and documents

Rules 15.1 to 15.3 (inclusive) apply, so far as they can and with any necessary changes, to serving any communication or document.

16 General

16.1 Submission to jurisdiction

Each member submits to the non-exclusive jurisdiction of the Supreme Court of the state or territory in which the company is taken to be registered for the purposes of the Corporations Act, the Federal Court of Australia and the courts which may hear appeals from those courts.

16.2 Prohibition and enforceability

Any part of this constitution which is prohibited or unenforceable in any place is, in that place, ineffective only to the extent of that prohibition or unenforceability.

16.3 Amendment to the constitution

Any amendment to this constitution must be approved by a special resolution of the members.