

Meander Valley Council

W O R K I N G T O G E T H E R

# **ORDINARY AGENDA**

**COUNCIL MEETING**

**Tuesday 13 September 2016**

# **COUNCIL MEETING VISITORS**

Visitors are most welcome to attend Council meetings.

Visitors attending a Council Meeting agree to abide by the following rules:-

- Visitors are required to sign the Visitor Book and provide their name and full residential address before entering the meeting room.
- Visitors are only allowed to address Council with the permission of the Chairperson.
- When addressing Council the speaker is asked not to swear or use threatening language.
- Visitors who refuse to abide by these rules will be asked to leave the meeting by the Chairperson.

## **SECURITY PROCEDURES**

- Council staff will ensure that all visitors have signed the Visitor Book.
- A visitor who continually interjects during the meeting or uses threatening language to Councillors or staff, will be asked by the Chairperson to cease immediately.
- If the visitor fails to abide by the request of the Chairperson, the Chairperson shall suspend the meeting and ask the visitor to leave the meeting immediately.
- If the visitor fails to leave the meeting immediately, the General Manager is to contact Tasmania Police to come and remove the visitor from the building.
- Once the visitor has left the building the Chairperson may resume the meeting.
- In the case of extreme emergency caused by a visitor, the Chairperson is to activate the Distress Button immediately and Tasmania Police will be called.



PO Box 102, Westbury,  
Tasmania, 7303

Dear Councillors

I wish to advise that an ordinary meeting of the Meander Valley Council will be held at the Westbury Council Chambers, 26 Lyall Street, Westbury, on **Tuesday 13 September 2016 at 1.30pm.**

Martin Gill  
**GENERAL MANAGER**

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**Evacuation and Safety:**

At the commencement of the meeting the Mayor will advise that,

- Evacuation details and information are located on the wall to his right;
- In the unlikelyhood of an emergency evacuation an alarm will sound and evacuation wardens will assist with the evacuation. When directed, everyone will be required to exit in an orderly fashion through the front doors and go directly to the evacuation point which is in the car-park at the side of the Town Hall.

Agenda for an ordinary meeting of the Meander Valley Council to be held at the Council Chambers Meeting Room, 26 Lyall Street, Westbury, on Tuesday 13 September 2016 at 1.30pm.

**PRESENT:****APOLOGIES:****IN ATTENDANCE:****CONFIRMATION OF MINUTES:**

Councillor xx moved and Councillor xx seconded, ***“that the minutes of the Ordinary meeting of Council held on Tuesday 9 August, 2016, be received and confirmed.”***

**COUNCIL WORKSHOPS HELD SINCE THE LAST MEETING:**

Date :	Items discussed:
9 August 2016	<ul style="list-style-type: none"> <li>• Council Audit Panel</li> <li>• Potential Property Purchase</li> <li>• 2016 Floods Response Actions</li> </ul>
23 August 2016	<ul style="list-style-type: none"> <li>• Presentation by Maree Tetlow, NTD</li> <li>• Capital Works Funding for Flood Impacted Assets</li> <li>• Capital Works Funding Budget Review</li> <li>• Extension of Percy Street, Carrick – Carrick Rural Living Zone Specific Area Plan</li> <li>• Building Compliance</li> </ul>

## **ANNOUNCEMENTS BY THE MAYOR:**

### **Wednesday 10 August 2016**

Meeting with Westbury Cricket Club and Meander Valley Suns Football Club

### **Thursday 11 August 2016**

Attended a meeting of the Mole Creek Progress Association

### **Friday 12 August 2016**

Northern Regional Flood Committee meeting

### **Thursday 18 August 2016**

Northern Regional Waste Committee WasteNoT awards

Attended Westbury Primary School Science Week Exhibition

### **Friday 19 August 2016**

Attended the launch of the Valley Central Investment prospectus

### **Saturday 20 August 2016**

Attended the Deloraine Junior Basketball Association Finals (Latrobe)

### **Tuesday 23 August 2016**

Attended Property Council lunch

Council Workshop

### **Friday 26 August 2016**

Northern Regional Flood Committee meeting (Westbury)

### **Friday 2 September 2016**

NTD Local Government Committee

### **Tuesday 6 September 2016**

Development services review Workshop

TasWater Councils Meeting

### **Friday 9 September 2016**

Northern Regional Flood Committee meeting

Tony Smibert Order of Australia investiture, Government House

### **Sunday 11 September 2016**

Westbury Bowls Club season opening

Deloraine Bowls Clubs opening

**DECLARATIONS OF INTEREST:**

**TABLING OF PETITIONS:**

# **PUBLIC QUESTION TIME**

## **General Rules for Question Time:**

Public question time will continue for no more than thirty minutes for 'questions on notice' and 'questions without notice'.

At the beginning of public question time, the Chairperson will firstly refer to the questions on notice. The Chairperson will ask each person who has a question on notice to come forward and state their name and where they are from (suburb or town) before asking their question(s).

The Chairperson will then ask anyone else with a question without notice to come forward and give their name and where they are from (suburb or town) before asking their question.

If called upon by the Chairperson, a person asking a question without notice may need to submit a written copy of their question to the Chairperson in order to clarify the content of the question.

A member of the public may ask a Council officer to read their question for them.

If accepted by the Chairperson, the question will be responded to, or, it may be taken on notice as a 'question on notice' for the next Council meeting. Questions will usually be taken on notice in cases where the questions raised at the meeting require further research or clarification. These questions will need to be submitted as a written copy to the Chairperson prior to the end of public question time.

The Chairperson may direct a Councillor or Council officer to provide a response.

All questions and answers must be kept as brief as possible.

There will be no debate on any questions or answers.

In the event that the same or similar question is raised by more than one person, an answer may be given as a combined response.

Questions on notice and their responses will be minuted.

Questions without notice raised during public question time and the responses to them will not be minuted or recorded in any way with exception to those questions taken on notice for the next Council meeting.

Once the allocated time period of thirty minutes has ended, the Chairperson will declare public question time ended. At this time, any person who has not had the opportunity to put forward a question will be invited to submit their question in writing for the next meeting.

## **Notes**

- Council officers may be called upon to provide assistance to those wishing to register a question, particularly those with a disability or from non-English speaking cultures, by typing their questions.
- The Chairperson may allocate a maximum time for each question, depending on the complexity of the issue, and on how many questions are asked at the meeting. The Chairperson may also indicate when sufficient response to a question has been provided.



- Limited Privilege: Members of the public should be reminded that the protection of parliamentary privilege does not apply to local government, and any statements or discussion in the Council Chamber or any document, produced are subject to the laws of defamation.

For further information please telephone 6393 5300 or visit [www.meander.tas.gov.au](http://www.meander.tas.gov.au)

## **PUBLIC QUESTION TIME**

### **1. QUESTIONS TAKEN ON NOTICE – AUGUST 2016**

Nil

### **2. QUESTIONS WITHOUT NOTICE – SEPTEMBER 2016**

## **COUNCILLOR QUESTION TIME**

### **1. COUNCILLOR QUESTIONS TAKEN ON NOTICE – AUGUST 2016**

#### **1.1 Cr Tanya King**

Cloud Seeding

I have read a copy of Hydro Tasmania's "Cloud seeding flight of 5 June 2016 Background and event final report".

The report is underwhelming and fails to address the broader issues. Perhaps these are addressed elsewhere in another of Hydro Tasmania's potentially more detailed reports.

The June flood events have significantly impacted on many Meander Valley residents and ratepayers, in particular, the losses for farmers in terms of infrastructure – fencing, roadways and the like as well as significant livestock losses must be acknowledged.

Could Council please contact Hydro Tasmania seeking more detail on the following issues;

- Given the weather forecast, why did Hydro Tasmania proceed with cloud seeding over the Western Tiers?

- How do Hydro Tasmania plan to better manage Tasmania's water storages to reduce the reliance on cloud seeding?
- What are Hydro Tasmania's current policies on the "export" of power in relation to low limit levels in water storages?
- Although no further cloud seeding is proposed for the remainder of the current "season", what communication can Tasmanian's expect for future cloud seeding operations?

***Response by Martin Gill, General Manager***

***I met with representatives from Hydro Tasmania on Monday 5 September.***

***I provided them with a copy of the above questions.***

***There are a number of matters that Hydro Tasmania could not respond to due to the announcement of the Flood Enquiry and the likelihood of a coronial enquiry.***

***They referred me to the following press release regarding the impact of cloud seeding:***

<http://www.hydro.com.au/about-us/news/2016-07/analysis-shows-no-impact-cloud-seeding-flight>

***Hydro Tasmania did want to highlight that there were no cloud seeding flights over the Great Western Tiers on 5 June 2016.***

***Hydro Tasmania have offered to come and speak to Council at a future workshop to address the questions.***

***I will plan the workshop for a time when Hydro will be less constrained in their responses.***

***In response to the question about future cloud seeding Hydro Tasmania advised that the plan was to undertake community consultation before resuming the practice.***

***The ongoing review of cloud seeding will also be supported by work with Bureau of Meteorology to improve storm event predictive modelling.***

## **2. COUNCILLOR QUESTIONS WITH NOTICE – SEPTEMBER 2016**

### **2.1 Cr Deb White**

#### **Heritage Protection – Meander Valley Interim Planning Scheme 2013**

Does Meander Valley have any local cultural heritage protection in the Meander Valley Interim Planning Scheme 2013?

What is the heritage protection status of the Meander Primary School?

**Response by Martin Gill, General Manager**

***The Meander Valley Interim Planning Scheme 2013 does not include local heritage schedule.***

***This follows a decision of Council not to populate this schedule following community consultation in 2010.***

***The Meander Primary School is not included on the State Heritage Register  
The St Saviours Church and Sunday School and Cemetery at 143 Main Road  
Meander, next door to the school, is listed.***

***The Meander Primary School is not listed by the National Trust.***

### **Teen Challenge**

In the August edition of the Meander Valley Gazette, in an article about community unrest over the awarding of the Meander Primary School site lease to Teen Challenge for a rehabilitation centre, Mayor Perkins is quoted as saying that "results of the (community) survey had been ***well considered*** by Council before the Teen Challenge proposal was accepted."

Given that at no time did Council sit down together to discuss the survey results before the Notice of Motion recommending that the tender for the Meander Primary School site be awarded to Teen Challenge was put, what process of consideration of the survey results was the Mayor referring to?

**Response by Mayor Craig Perkins**

***I recall my communication to the Gazette and other forms of media were that all Councillors considered all the information available to them, and have treated this matter very seriously and thoroughly. This includes individual Councillors consideration of the survey results.***

### **Willows – Westbury**

In the correspondence regarding the effects of the floods in June on vulnerable Westbury residents, the Hon Rene Hidding MP advised Council of the availability of funds to assist with flood prevention programs, such as the removal of the willows on the northern side of the Meander Valley Road bridge in Westbury.

Are Council officers able to work with concerned Westbury residents and/or relevant local groups to develop a proposal whereby they might secure this funding?

**Response by Dino De Paoli, Director Infrastructure Services**

**The funding program referenced in Minister Hidding's correspondence is the National Partnership Agreement on Natural Disaster Resilience (NAP). Council officers have contacted the SES Projects Coordinator for information on the eligibility criteria and closing time of the current funding round. Council officers have also been in contact with Department of Primary Industries Parks Water and Environment officers to commence discussion around clearing out the willows in Quamby Brook north of Meander Valley Road, as the tenure for this part of the Brook is Crown Public Reserve. Further information will be provided to Council on the above as information comes to hand.**

2.2 Cr Bob Richardson

**Helicopter Crash**

Media reports indicate that a helicopter crashed near Longridge Road on 20 July, 2016. Press photographs indicate that the crash occurred near watercourses and not far from several residences. The crash occurred at a time following heavy rains, including flooding, and a very high water table.

It is likely that aviation authorities will conduct an investigation into the incident. However, that is unlikely to be sufficient and investigation by environmental authorities should be essential.

**Responses by Martin Gill, General Manager**

1. Could Council refresh our memories of motions passed by this Council concerning use of pesticides, namely those related to
  - (a) aerial spraying in the Meander Valley; and
  - (b) banning use of specific pesticides in the Meander Valley Municipality.

**(a) At the 10 November 2015 Ordinary Meeting Council it was resolved that Council expresses its concern at the proposal by Forestry Tasmania, Forico and SFM Forestry Products to continue to use pesticides listed as highly hazardous by the Forest Stewardship Council (viz. Alpha-cypermethrin and Fipronil) in the Meander Valley Municipality and it strongly opposes any application by aerial methods. Council Officers accordingly wrote to Forestry Tasmania expressing Council's position. Council received no formal response but did receive a phone call from Forestry Tasmania and was referred to Forestry Tasmania's website. We are now included on the Forestry Tasmania's stakeholder email list.**

**(b) Apart from the concern expressed with the use of the specific pesticides in (a) above, Council has not passed a motion to ban use of a particular pesticide in the Meander Valley Municipality. Council cannot regulate or quarantine the use of particular pesticides associated with business activities not directly undertaken by Council i.e. Forestry and Agriculture. The registration and use of pesticides in all sectors is regulated by the Australian Pesticides and Veterinary Medicines Authority (APVMA) and other State Government Agencies such as Department of Primary Industries, Parks, Water and Environment (DPIPWE).**

**At the 12 April 2016 Ordinary Meeting of Council it was resolved that Council monitors current research into the effects of glyphosate and explores the use of available non-toxic alternatives.**

**Council Officers have continued to monitor the assessment of glyphosate and in May 2016 experts met at World Health Organisation (WHO) headquarters and concluded glyphosate is unlikely to pose a carcinogenic or genotoxic risk to humans. Council Officers will evaluate viable alternative methods to glyphosate but to date no further work or assessments have been undertaken.**

2. What has Council done towards implementation of these motions/policies?

**Actions detailed in 1(a) and (b) above**

3. Specific questions relating to the 20 July incident include:-

(a) It has been generally accepted that, on a still day, that sprays from a helicopter are spread at least 1km side to side/back to front. Has Council evidence to support this?

**No**

(b) From the crash site and from its spray flight path, were there any (even ephemeral) watercourses within 1km diameter?

**Yes**

(c) How many residences (from which drinking water is sourced from their roofs) are in this potentially contaminated area?

**Unknown**

(d) What chemical(s) was the helicopter spraying?

**Unknown**

(e) What proportion of the helicopter's chemicals were still aboard the aircraft at the time of its crash?

**Unknown**

- i. What fuel load was still aboard the aircraft when it crashed?

**Unknown**

- ii. Did these liquid loads spill? If so, what was done to contain any spillage?

***The Tasmania Fire Service (TFS) is initially the lead agency to these types of incidents. The Environment Protection Authority (EPA) Incident Response Unit were in contact with the TFS and based on the information provided it was determined that there was unlikely to be any adverse environmental impact as a result of the crash given the small quantity of chemical spilt. No further action was required by the EPA.***

- (f) Were residents in the potentially affected area forewarned of the spray program? If not, why not?

**Unknown**

***The Code of Practice for Aerial Spraying prescribes responsibilities and minimum standards applying to users (including property owner) of agricultural chemical products when these products are applied by aerial spraying operations in Tasmania. This Code includes a required exclusion zone of 100 metres from a dwelling or occupied building without permission from the occupants (s. 5(b)).***

4. Will Council write to the Premier asking what the Government's environment agencies have done to address these environmental issues arising from:
  - (a) aerial application of these poisons; and
  - (b) the crash of 20 July, 2016?

***If Councillors through a Notice of Motion support this action, then Council Officers will write to the Premier requesting a response to these points***

5. Is Council aware that watercourses surrounding the 20 July aerial spraying program run into the Meander River, which is the source of drinking water for Deloraine, Westbury, Carrick, Hadspen and Prospect Vale"?

**Yes**

**Water & Sewerage Charges**

1. Which year did the charging of sewerage service and fixed water charges last lie with Meander Valley Council?

***Response by Malcolm Salter, Director Corporate Services  
2008-2009***

2. In that last year, what were the following rates and charges for the property situated at 40 William Street, Westbury:-

- fixed water charge
- fixed sewerage charge
- total rates
- any variable charges, especially variable water charges.

*(40 William Street, Westbury, is my property, and I am willing to share this information with the community).*

**Response by Malcolm Salter, Director Corporate Services**

<b>fixed water charge</b>	<b>\$120</b>
<b>fixed sewerage charge</b>	<b>\$255</b>
<b>total rates</b>	<b>\$1788.56</b>
<b>any variable charges, especially variable water charges.</b>	<b>45c/kl (water)</b>

2 (a) For 2016/17 financial year, charges levied on 40 William Street are:-

- ex TasWater: Fixed water/sewerage charges \$1175.44
- ex Meander Valley Council rates \$1688.99.

What are the percentage increases in over the period from last (before TasWater) for each (relevant) charge to 2016/17, ie what % has the sewerage/water service charge increased over those years?

**Response by Malcolm Salter, Director Corporate Services**

**Water Fixed 173%; Variable 105% (from untreated chlorinated to fully treated)**  
**Sewerage Fixed 233%**

And the non-water/sewerage component of rates?

**19.5%**

3. Media comments indicate that TasWater intends to increase water/sewerage charges by 5% pa for each of the next 5 years. This translates to a compounded increase to ratepayers of 27.63%, or a real annual increase of 5.53%.

Can Council confirm that TasWater is going to charge Meander Valley community members this extra amount, and that:-

- it is likely to be well above CPI; and

- ii. that the TasWater moves are a consequence of the Tasmanian government forcing the removal control of water and sewerage services, firstly from Council and then from regional authorities?

**Response by Malcolm Salter, Director Corporate Services**

**No. TasWater pricing plans are approved by the State Government Economic Regulator on a triennial basis. 2016-17 is the second year of the current TasWater Price and Service plan.**

- i. **Given the current forecasts for low inflation in the next few years, TasWater increases are likely to be above CPI.**
- ii. **Only TasWater could answer this question**

4. In the past Councils, including Meander Valley Council, developed water and sewerage infrastructure. That infrastructure was designed for relatively long time spans – up to 40 and 50 years.

Councils expected to receive returns on that investment over the life-span of those investments. (similar to individuals paying off their family home over, say, 40 years).

It is therefore not unreasonable for Council (who represent their ratepayers) to expect a return on their investment in sewerage/water infrastructure?

**Response by Malcolm Salter, Director Corporate Services**

**This is not an unreasonable expectation from the owners of a Company, however when Council owned and operated its water and sewerage schemes it did not pay itself a dividend to subsidise General Rates but any surplus funds/profits were reinvested in water and sewerage infrastructure. Dividends from Esk Water, the bulk water supplier set up as a joint authority for the Launceston, West Tamar and Meander Valley (eastern end) were also reinvested by Council in water infrastructure up until 2008-09 when the regional corporations were being set up.**

5. TasWater has announced that it will not pay Meander Valley Council a dividend in coming years(s).

- a) Can Council confirm that this is the case?

**Responses by Malcolm Salter, Director Corporate Services**

**This appears to be incorrect. According to written advice from TasWater's Chairman, total distributions (ie dividends, guarantee fees, tax equivalents) paid to all Councils will be reduced from the forecast \$30m p.a. to \$20m p.a. for the seven years following 1 July 2018.**



- b) What is the expected decrease in income to Meander Valley Council?

**Based on a one third overall decrease to all Councils, a decrease of \$278,000 on the current \$834,000 per year is expected from 1 July 2018.**

- c) What is the likely impact upon Meander Valley Council's services to ratepayers/communities?

**This will be a matter for Council to consider and determine before July 2018.**

- d) Was Council consulted on TasWater's decision to cease payment of dividends?

**Council was not consulted on the reduction in distributions.**

- e) Has the Tasmanian Government, which initiated the change to TasWater, accepted any financial or moral responsibility for community members being slugged in the hip pockets?

**Council officers are not in the position to answer this question.**

If not, why not? (After all the "new" improved water/sewerage system is the Tasmanian Government's "baby").

**This is a matter for the State Government.**

6. It is understood that the Chairman of TasWater whose commitment to TasWater activities was initially seen to be a day a week (when there were 3 regional entities) and that the remuneration is some \$120,000.

- a) Can Council elaborate on TasWater Board and senior executive remuneration for the last reporting period?

**Response by Malcolm Salter, Director Corporate Services**

**These are published in the TasWater 2014-15 Annual Report (pages 52-53) which is available to the public. The 2015-16 Annual Report is yet to be published.**

- b) Were the jobs of these board members and senior executives formally undertaken by councillors/managers of councils as part of their duties?

**No. Independent expert boards have been appointed as far back as the inception of the Esk Water joint authority for the supply of bulk water.**

7. TasWater appears to be committed to provision of (at least, water) infrastructure to even the tiniest of communities, such as Pioneers.

Where in TasWater's priorities, does, say, Birralee and Whitemore lie?

**Response by Malcolm Salter, Director Corporate Services**

**TasWater is only responsible for water and sewerage schemes transferred to it from Councils (via the three former regional corporations) therefore does not have any responsibility for these areas where no scheme existed.**

8. Returning to my original question regarding 40 William Street, Westbury: the servicing of 40 William led to the establishment of rates charge.

- a) Is it true that the rates charge is set by Council after calculations of expected overall expenses and income from various sources, including TasWater dividends?

**Response by Malcolm Salter, Director Corporate Services**

**If setting annual rates and charges were that simple then the answer would be Yes, however there are other influencing factors on Council's rating decisions eg Council's financial strategy and long term financial plan where the policy direction is to maintain the General Rate in real terms ie increase at least by inflation.**

- b) What is the expected loss of income ex TasWater as a percentage of total expected income?

**1.3% of 2016-17 budgeted income**

- c) What then, is the likely % decrease in income on 40 William Street, Westbury (given that the decrease is spread over all rateable properties as an "even percentage" per property?

**2.46% However it is not a given that this will be the end result in 2018-19 as there will be other variances to both income and expenses before (and after) 1 July 2018**

9. Householders may disconnect from electricity, telephone, NBN and guide grids without penalty.

Advancements in technology and in sustainable housing are likely to witness increasing numbers of people install sustainable technology and thus disconnecting from electricity, gas and communications grids AND water (and possible sewerage treatment).

As a shareholder of TasWater, will council initiate discussion at local government level to consider the extension of more sustainable lifestyles, including promotion of on-site collection and use of water?

***Response by Malcolm Salter, Director Corporate Services  
This would be a matter for Council to decide***

### **3. COUNCILLOR QUESTIONS WITHOUT NOTICE – SEPTEMBER 2016**

## **DEPUTATIONS BY MEMBERS OF THE PUBLIC**

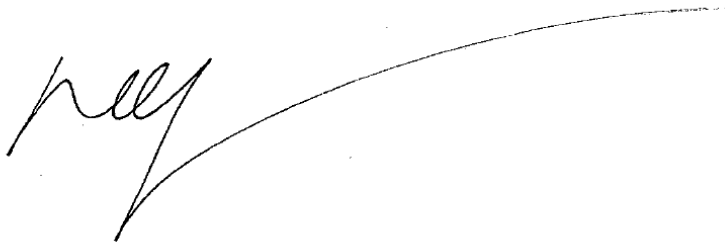
## **NOTICE OF MOTIONS BY COUNCILLORS**

- |       |   |
|-------|---|
| GOV 1 | STARTING AGE FOR SCHOOL CHILDREN – CR DEB WHITE                     |
| GOV 2 | SUPPORT OF ASHLEY YOUTH DETENTION CENTRE & STAFF – CR IAN MACKENZIE |

## CERTIFICATION

"I certify that with respect to all advice, information or recommendation provided to Council with this agenda:

1. the advice, information or recommendation is given by a person who has the qualifications or experience necessary to give such advice, information or recommendation, and
2. where any advice is given directly to Council by a person who does not have the required qualifications or experience that person has obtained and taken into account in that person's general advice the advice from an appropriately qualified or experienced person."

A handwritten signature in black ink, appearing to read 'M Gill', with a long, sweeping horizontal line extending to the right across the page.

**Martin Gill**  
**GENERAL MANAGER**

"Notes: S65(1) of the Local Government Act requires the General Manager to ensure that any advice, information or recommendation given to the Council (or a Council committee) is given by a person who has the qualifications or experience necessary to give such advice, information or recommendation. S65(2) forbids Council from deciding any matter which requires the advice of a qualified person without considering that advice."

# **GOV 1 NOTICE OF MOTION – STARTING AGE FOR SCHOOL CHILDREN - CR DEBORAH WHITE**

## **1) Introduction**

The purpose of this report is for Council to consider a Notice of Motion from Cr White that Council write to the Minister for Education, Jeremy Rockliff advising him of Council's view about the starting age for school students.

## **2) Background (Cr Deb White)**

Recent legislative changes have lowered the school starting age from 5 years to 4.5 years, though the Minister amended the original proposal to make this non-compulsory. That means 4.5 year olds can start full time prep, and 3.5 year olds can start kindergarten.

The August Briefing Reports contain extensive, detailed information from the Australian Education Union, (AEU) representing Tasmania's teachers, Early Childhood Australia, (ECA), Tasmanians Say No to a Lower School Start Age, and professionals in the field of child development. All these bodies decry the legislation, providing sound evidence for the benefits of starting formal education later rather than earlier, and describe the adverse effects of a too-early start for children which ultimately contributes to poorer educational outcomes rather than improved ones.

Feedback from concerned parents has also been added to the outcry against this legislation, which, while non-compulsory, will nevertheless constitute pressure on parents to give their children what they are being encouraged to believe is the best start, by enrolling them at the earlier start age, in spite of their own experience that tells them that their very young children are not ready for formal schooling at this age. The information cited above unanimously condemns the legislation as being educationally unsound, and uninformed.

A further concern is the impact on the Tasmanian childcare industry, and the use of considerable financial resources which will be needed to provide the facilities currently being provided by them, in schools. Without the 3.5 - 4.5 year olds in childcare centres around Tasmania, a vast majority would no longer be financially viable. Whilst the Minister cites "equality", the closure of many child care centres as a direct result of lowering the kindergarten

age, would mean many more 0-3 year olds would miss out. Smaller municipalities in particular would struggle to remain open without the inclusion of 3.5 - 4.5 year olds.

As the Minister's view is apparently informed by the belief that lowering the school starting age will assist in improving the retention rate of Year 11 and 12 students, advising him that as a Council we consider the health and well-being of our residents to be at risk if this legislation remains in place, could prove eventually to be valuable input.

### **3) Strategic/Annual Plan Conformance**

Not Applicable

### **4) Policy Implications**

Not Applicable

### **5) Statutory Requirements**

Not Applicable

### **6) Risk Management**

Not Applicable

### **7) Consultation with State Government and other Authorities**

Not Applicable

### **8) Community Consultation**

Not Applicable

### **9) Financial Impact**

Not Applicable

### **10) Alternative Options**

Council can elect to not write to the Minister for Education

## 11) Officers Comments

Council received a letter from Minister Rockliff on 19 August 2016 providing an update about the progress of the new Education Act and his response to concerns raised by parents, carers and representative organisations about setting a compulsory school starting age.

A copy of the letter is attached.

**AUTHOR:** Martin Gill  
**GENERAL MANAGER**

## 12) Recommendation (Cr Deb White)

*It is recommended that Council write to the Minister for Education, Jeremy Rockliff, advising him of Council's view that there would be better educational outcomes for students if the starting age for Kindergarten remained at 4 years, and that for Prep, at 5 years.*

**DECISION:**

**Deputy Premier  
Minister for Education and Training  
Minister for Primary Industries and Water  
Minister for Racing**

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19 August 2016

Mr Martin Gill  
Meander Valley Council  
[martin.gill@mvc.tas.gov.au](mailto:martin.gill@mvc.tas.gov.au)

Dear Mr Gill

I am writing to provide you with an update on the progress of the new Education Act, particularly as it relates to lowering the school starting age.

As I have previously stated, I am committed to providing every Tasmanian child, regardless of where they live or of their family circumstances, with the opportunity to engage with quality early learning. This is an objective I know that I share with each of you.

The evidence is clear; investing in a child's early years is by far the most effective way of ensuring that he or she will lead a happy, healthy and productive life.

Tasmania has a proud history of being at the forefront of early childhood education. In 1968 Tasmania introduced universal access to publicly funded Kindergarten. We have since introduced a compulsory Prep year, innovative programs like Launching into Learning and Learning in Families Together, and we continue to develop our world-leading Child and Family Centres.

Tasmania also has a long history of providing quality education and care services, and has been very effective in implementing the National Quality Standards across the system.

Despite this, Tasmanians are still not achieving the educational outcomes that they deserve. Saying that we have done enough in the early years is, therefore, not an option.

That is why I have continued to champion lowering the school starting age from five years to four years and six months. I believe that we are at a point in time where, unless we make some significant structural changes to education in Tasmania, we will never bring about the improvement in educational outcomes that we all desire.

There are a range of individuals and groups that have voiced their strong support for this move, recognising the once in a generation opportunity it provides.

There are also those who are opposed to the proposed change, the reasons for which are varied. Having listened intently to these arguments, the Government has now made commitments to address a number of these concerns.



The first is that, in recognition that parents and carers are best placed to decide when their child should start school the Government has agreed that, although the age at which a child can commence in Prep will be lowered to four and half, the compulsory school starting age will remain at five. This still provides access to quality early learning sooner for all children in Tasmania and, at the same time, provides parents with choice.

The second is that, in recognition of the additional learning support that children of a younger age may require, the Government will commit an additional \$4.9 million per year to provide more staffing support in Prep across the government and non-government sectors. This is in addition to the \$17 million a year the Government has committed to supporting the change to the starting and leaving requirements. This includes funding to support students with disability and to provide extra professional staff such as speech therapists and school psychologists as the additional students move through the system in the implementation phase. The Government has always said it would resource the change and I want to assure you that will be the case.

The National Quality Standards will continue to be our guide. I have also committed that from 2020 all government kindergartens will be formally assessed against the Standards. The Department will immediately commence working with regulatory bodies to give effect to this commitment.

Finally, the Government will continue to build on the fantastic work being undertaken by our early childhood educators, to ensure that all Tasmanian students, from kindergarten to grade two, have access to appropriate, innovative, quality early learning. We will work with educators and support staff, with parents and carers, child care services, and the community, to ensure that every Tasmanian child has access to innovative early learning in environments that foster curiosity and wonder.

The Government will work with the child care sector to minimise the impact as we make the transition to the new arrangements.

An updated Early Years Fact Sheet which explains the proposed changes is available online, on the Department of Education Website:

<http://www.education.tas.gov.au/documentcentre/Documents/Early-Years-Education-In-Tasmania-Fact-Sheet.pdf>

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jeremy Rockliff', written in a cursive style.

Hon Jeremy Rockliff MP  
Deputy Premier  
Minister for Education and Training

## **GOV 2 NOTICE OF MOTION - SUPPORT OF ASHLEY YOUTH DETENTION CENTRE & STAFF – CR IAN MACKENZIE**

### **1) Introduction (Cr Mackenzie)**

The purpose of the report is for Council to consider a Notice of Motion from Cr Mackenzie that Council:

- a) communicate and promotes support of the staff at Ashely Youth Detention Centre
- b) writes to the State Government urging them to defend the role of Ashley Youth Detention Centre (AYDC) and its importance as a place for community safety.

### **2) Background (Cr Mackenzie)**

I am proposing this motion because I:

- have concerns for the health and wellbeing of staff at AYDC
- have concerns about the risk placed on our community in Tasmania in regards to number of chances given to juvenile delinquents in Tasmania
- think it is important that we show support for the victims of youth crime.
- believe that the without that AYDC as a place for detention of juveniles we place our community members at risk.

The staff at AYDC I believe have one of the hardest and most dangerous, jobs currently being undertaken in Tasmania. This job is made harder with the constant number of so called experts having their views aired in the media. In addition to this ADYC staff have their work constantly being viewed through a microscope by all which adds to anxiety and uncertainty to a job that is already tough.

The staff like many employed by the government are unable to speak out or defend their position, their view, or don't get or are not entitled to a right of reply. The AYDC staff do a great job almost all of the time. The residents at AYDC are often hard work, unpredictable, defiant, disrespectful and are not there because they have been model citizens. AYDC staff are parents, counsellors, mentors, teachers, police officers and nurses to these residents.

The Harker Report states that there was a number of examples of worrying behaviours towards colleagues, external visitors and detainees were presented to the reviewer, how many is a "number" there 365 days in a year?

We could all go and compile a report into the treatment of detainees and become experts but we were not that staff member that was threatened with shards of broken glass (as reported in the mercury) is so easy to say what you would do in that situation until you're in it.

As there have been many reports in regards to the treatment and programs offered the residents of AYDC when are we going to get the report on public safety and the risk to our community members?

Furthermore where in this debate has there been any mention of the victims of crime, what about their safety and how are we going to reduce the numbers of these?

Our community has to understand and accept that it costs money for Detention wherever it is. Unlike what you hear in the media AYDC is not a bad place nothing like Don Dale in NT and shame on those that have tried to draw comparisons. For many of the residents is a great place, its clean and tidy, you're feed, you're clothed, there's a bed, a hot shower, a toilet, a school, people who care, counselling, health care, rehabilitation if chosen and a place to dry out and as many feel that it is home, this should be the story told within our media and not the continual harassment given.

I also have great concerns for the risk that is placed on members of the community and as a councillor it is my duty to support the welfare and wellbeing of our community, I have issues with the continually bailing and number of chances young people get within our youth justice system. This is where the argument should be at, what is the risk that we are prepared to take and/or what is the level of risk we are prepared to put our community to? What is that price? Good luck to anyone trying to find out the number of juveniles currently on bail in Tasmania and whether there on their 1st 2nd 3rd 4th chance, we should know this risk.

We need AYDC, the argument and debate should not be about AYDC it should be about the processes within the centre whether there punitive, therapeutic or restorative and so but not the Centre itself that is a place for community safety. We don't need to build other buildings or pods in other areas of the state, we have a fully functional purpose built facility here, so let's support it. Research states that it takes months to rehabilitate, if not years and here we

expect results within weeks, provide AYDC the time and resources to do what we expect them to do.

As there have been many reports in regards to the treatment and programs offered the residents of AYDC when are we going to get the report in public safety and the risk to our community? If we are going to debate the viability and use of AYDC we need to debate all the issues and not one part.

AYDC has a capacity of around 50 residents, if it cost x amount of \$ to run the centre with 10 residents as it does to have 30 residents I am sure there are other young juveniles on bail on their 2nd and 3rd chance, that could do with some intervention and in turn keeping our community safe. If the millions of dollars spent to run AYDC saves a life well that in my view is money well spent. With the increase use of drugs and alcohol within our community, that life could be that of one the residents themselves.

**3) Strategic/Annual Plan Conformance**

Not Applicable

**4) Policy Implications**

Not Applicable

**5) Statutory Requirements**

Not Applicable

**6) Risk Management**

Not Applicable

**7) Consultation with State Government and other Authorities**

Not Applicable

**8) Community Consultation**

Not Applicable

**9) Financial Impact**

Not Applicable

## **10) Alternative Options**

Council can elect to not write to the State Government

## **11) Officers Comments**

No comment

**AUTHOR:** Martin Gill  
GENERAL MANAGER

## **12) Recommendation (Cr Mackenzie)**

***It is recommended that Council:***

- 1. communicate and promotes support of the staff at Ashely Youth Detention Centre***
- 2. writes to the State Government urging them to defend the role of Ashley Youth Detention Centre and its importance as a place for community safety.***

**DECISION:**

## **GOV 3      NORTHERN TASMANIA DEVELOPMENT – NEW GOVERNANCE MODEL**

### **1) Introduction**

The purpose of this report is for Council to consider the future governance model for Northern Tasmania Development.

### **2) Background**

At the August Council workshop Maree Tetlow the Executive Director of Northern Tasmania Development presented an overview of the proposed changes to the governance model of the organisation.

The move to a new governance model was a key recommendation in the *Review of Regional Bodies in Northern Tasmania – Final Report February 2016*.

The report advocated for a capable, responsive and accountable governance structure that enables collaboration between the three tiers of government and the private sector to grow the region and deliver regional priorities.

The proposed governance model would provide the most effective organisational structure to oversee the implementation of the Northern Regional Futures Plan.

The Regional Futures Plan has established a clearer economic direction for Northern Tasmania and provided the framework to proactively manage priority regional development actions.

The restructured NTD will align priorities, resources and efforts towards outcomes that are crucial to the long term prospects of the region. The major benefits of this 'whole of region' approach are:

- Better utilisation of limited resources;
- Improving efficiency by reducing duplication;
- Better use of the region's 'human capital';
- Improved ability to attract support for priority initiatives;
- Enhanced empowerment and accountability.

A statement of purpose for the restructured NTD which is described as a Regional Economic Development Organisation in Northern Tasmania is attached.

### **3) Strategic/Annual Plan Conformance**

Further the objectives of the Community Strategic Plan 2014 -2024 in particular:

- Future direction (2) - A thriving local economy
- Future direction (5) - Innovative leadership and community governance

### **4) Policy Implications**

Not Applicable

### **5) Statutory Requirements**

Not Applicable

### **6) Risk Management**

Not Applicable

### **7) Consultation with State Government and other Authorities**

The Implementation Committee has met with State Government.

### **8) Community Consultation**

Not Applicable

### **9) Financial Impact**

Council has been asked to fund the new organisation for three years at the current contribution amount.

### **10) Alternative Options**

Council can elect to not approve the recommendation.

## 11) Officers Comments

The Community Strategic Plan 2014 – 2024 Future Direction 5 – Innovative leadership and community governance includes the following specific strategic outcome:

*Councils in the region collaborate and share resources for the collective good of their communities.*

The proposed new governance model for NTD and the agreed emphasis on driving regional economic development furthers this strategic outcome.

The proposed model has been developed with input from the private business sector in the form of an implementation committee. This reflected the proposed management roles within the restructured NTD:

- Council's would be shareholders
- The new organisation would be overseen by a skills based board

If Council resolves to support the changes it will be working with the region on establishing a:

- Shared commitment utilising available resources
- Culture of collaboration
- Shared leadership on regional economic development
- Effective formal regional structure

The recommendation below has been developed by the NTD Local Government Committee and will be presented to each Council during September.

Copies of the proposed Constitution and Shareholders agreement have been attached.

**AUTHOR:** Martin Gill  
GENERAL MANAGER

## 12) Recommendation

***It is recommended that Council:***

- 1. supports the winding up of Northern Tasmania Development Inc. and the transfer of assets and liabilities to a successor organisation.***



- 2. endorses the creation of a successor organisation which shall be titled the Northern Tasmania Development Corporation Limited (NTDC) a company limited by guarantee**
- 3. resolves to become of member of NTDC on and from 1 January 2017 and in doing so endorse the:**
  - Constitution of Northern Tasmanian Development Corporation**
  - Northern Tasmania Development Corporation Limited – Shareholder Agreement**
- 4. commits to funding the contribution amount over a period of three (3) consecutive years from the date that the membership commences.**
- 5. agrees that at the end of each three (3) year cycle a review will be undertaken.**

## **DECISION:**

# Statement of Purpose – a Regional Economic Development Organisation in Northern Tasmania

## Background

Northern Tasmania has been lagging behind the rest of the State when it comes to employment growth, youth unemployment, productivity, and overall economic performance. There is agreement that this performance is unacceptable and needs to be urgently addressed.

The current economic lead indicators in the Northern region are unacceptable and having aspirational targets without agreed priorities and implementation plans is also unacceptable - as is doing nothing. We cannot rely on one big investment or the general economy to improve, there has to be leadership and change now. Worst case scenario planning paints a bleak picture for the Northern economy and for our quality of life.

Feedback from key State and Commonwealth stakeholders indicates that one of the reasons is due to the failure of the region to present agreed positions when advocating for investment, and articulate its consistency on regional priorities, the region underperforms and is not maximising on its economic outcomes.

The Northern Regional Futures Plan for the North recommends that we capitalise on three current key industry strengths (i.e. known as pillars): Food and Agribusiness; Tourism and Competitive Manufacturing.

The plan also indicates the need to foster other emerging industries to help achieve these economic aims. Two emerging sectors already identified as economic and social drivers within the region are Health and Community Services and Education.

## Targets

The North is targeting major improvements to its economic performance over the next 10 years to 2026. By increasing our **Gross Regional Products (GRP) by 5% pa to 2026, compared to 1.1% pa over the past 10 years**. We need to create 8,000 new jobs over the same period to reduce our unemployment rates below the national average, and we need to place particular emphasis on our issue of high youth unemployment that has reached the 18-19% range in recent months.

To see the **average weekly pay packet across the region increase by \$100 (in real terms) by 2026**, and in recognising the variation in incomes across multiple sectors, we need a priority placed on improving productivity and the development of private sector higher value jobs. This will allow for more discretionary income to be spent on services and products in our region. It is also understood these targets need to be revised and reviewed annually as conditions change and new data becomes available.

## A Case for Change

We cannot afford to maintain a ‘business as usual’ approach and expect a different result. The perceived lack of coherence across the region sends confused and contradictory messages, this in turn creates doubt about the merit of both private and/or government investment. Doubt leads to either inaction or a suggestion that a new strategy or study is required.

It is noted in the Bill Fox Report that “the North spends too much time planning and not enough doing”.<sup>1</sup>

All influential stakeholders should be provided with an opportunity to share a common goal. One which puts the region’s sustainable economic performance at the centre of any priorities. This means

<sup>1</sup> Review of Regional Bodies in Northern Tasmania – Final Report February 2016

<sup>2</sup> Competitiveness and the Role of Regions by Prof. Michael E. Porter 2002

# Statement of Purpose – a Regional Economic Development Organisation in Northern Tasmania

parochialism and intra-sector competition needs to be discarded. The region's stakeholders need to place greater value on collaboration and co-operation to achieve outcomes with a unity of purpose.

Co-ordinating industry groups based on contemporary models of collaboration<sup>2</sup> around our industry pillars will encourage sharing experiences and knowledge, and better define impediments (to remove barriers) with the purpose of increasing productivity, resource sharing, and increasing resilience and sustainability within the sectors.

A regional economic development organisation for the North has a major role to:

- Facilitate the skills development requirements across the sectors;
- Identify and plan to address impediments/enablers within the region;
- Support and advocate for the most important enabling infrastructure projects; and
- Communicate opportunities for the private and community sectors.

## Purpose

The new organisation is required to provide pro-active regional leadership, that is engaged with business and the shareholders to consolidate an agreed vision and implement a strategic economic action plan based on the Northern Regional Futures Plan framework. The organisation needs to be a strong advocate to government and investors to promote the region. It is understood that the regional city of Launceston, is dependent on the success of the North's regional towns and rural areas success and vice-versa.

The organisation will be governed by a skills-based board and independent chair, with the majority of membership coming from the private and community sectors.

The inaugural funding will comprise the current funding model of Northern Tasmania Development i.e. member Councils as major shareholders. It will be the intent of the new organisation to raise other funding support from other private and government sources, which must also be strategically aligned. Not funding without focus on the outcomes and accountabilities set by Council shareholders.

The new organisation will also adopt a process to determine the top regional priorities and to give these the necessary focus to ensure successful outcomes. This will be achieved through the following:

- must be strategic, research-based and market-driven,
- must be socially and environmentally considerate;
- prescribing the 'what', 'how' and 'when' of success;
- better engagement/connection with the business sector and the broader community;
- aligning projects with State and Federal priorities; and
- promoting private sector investment.

## The 'How' of the New Organisation

It is agreed that meeting KPIs and outcomes will be particularly important for the new organisation, as is the 'how'. The need to be an exemplar of contemporary best practice and collaboration throughout the region is a must.

This can be underpinned by staff secondments between agencies and co-location with other pro-active agencies to ensure the new organisation exposes as many stakeholders as possible to contemporary and innovative practices.

<sup>1</sup> Review of Regional Bodies in Northern Tasmania – Final Report February 2016

<sup>2</sup> Competitiveness and the Role of Regions by Prof. Michael E. Porter 2002

*Corporations Act 2001*

**Company Limited by Guarantee**

**Constitution**

**of**

**Northern Tasmania Development Corporation Limited**

**ACN \*\*\***

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Defined Terms

In this constitution:

- (a) “Act” means the *Corporations Act 2001 (Cth)*;
- (b) “Business Day” means a day on which banks are open for general business in the State other than Saturday or Sunday;
- (c) “Company” means Northern Tasmania Development Corporation Limited, also referred to as NTDC, to which this constitution relates;
- (d) “Company Secretary” means the person appointed to perform the duties of a company secretary of NTDC;
- (e) “Directors” means the director or directors of NTDC acting as a body and where the Company only has only one director means that director;
- (f) “Effective Control” means the ability to exercise control over the decision-making of the relevant entity and, for a company, means holding at least 50% of the shares issued in the company or having 50% of the voting power for that company;
- (g) “Guarantee” means the obligation of the members to contribute to the assets of NTDC on a winding up;
- (h) “Guarantee Amount” means the actual dollar amount of the Guarantee that each member agrees to pursuant to this constitution, being the sum of ten dollars (\$10.00);
- (i) “Initial Member” means all of those persons or entities listed in the Schedule of Initial Members, who are the founding members of NTDC;
- (j) “Member” means any holder of shares in NTDC entered in the register of members;
- (k) “Related Corporation” means a company that is related to another company as related bodies corporate under the Act;
- (l) “Secured Loan” means a loan where:
  - (i) 100% of the loan is secured by a registered mortgage over real-estate: and
  - (ii) the market value of the mortgaged property (after deducting any mortgages on the property which have priority) is at least 110% of the amount lent at the time the loan is made;
- (m) “Share” means any share in the capital of NTDC issued and not cancelled from time to time;

- (n) “Special Resolution” means:
  - (i) in respect of a resolution to be passed by the members, a resolution requiring 75% of votes from members entitled to vote on a motion in a general meeting; and
  - (ii) in respect of a resolution to be passed by the directors, a resolution requiring 75% of votes from directors voting on a motion in a directors meeting;
- (o) “State” means the State or Territory in which NTDC is incorporated;
- (p) “Tier” means the financial reporting tier level that NTDC is subject to pursuant to the Act;
- (q) “Transfer Notice” means a notice given in accordance with **clause 8.1**;
- (r) “Transmission Event” means:
  - (i) in respect of a member who is an individual:
    - A. the death of the member;
    - B. the bankruptcy of the member;
    - C. the member becoming of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health; or
    - D. the discontinuation, amalgamation or other reconstruction event relating to a Member; and
  - (ii) in respect of a member who is a body corporate, the dissolution of the member or the succession by another body corporate to the assets and liabilities of the member.

## 1.2 Interpretation

- (a) Section 46 of the *Acts Interpretation Act 1901 (Cth)* applies as if it were an instrument made by an authority under a power conferred by the Act as in force the day on which this constitution becomes binding on NTDC.
- (b) This constitution is to be interpreted subject to the Act. However, the rules that apply as replaceable rules to companies under the Act do not apply to NTDC.
- (c) Unless the contrary intention appears, an expression in a provision of this constitution that deals with a matter dealt with by a particular provision of the Act has the same meaning as in that provision of the Act.

- (d) Subject to clause 1.2(c), unless the contrary intention appears, an expression in a regulation, rule or other legislative instrument that is defined for the purposes of the Act has the same meaning as in that regulation, rule or other legislative instrument.
- (e) Clause headings are inserted for convenience only and are not to be used in the interpretation and construction of this constitution.
- (f) Words:
  - (i) importing the singular include the plural and vice versa; and
  - (ii) importing one gender include other genders.
- (g) A reference to:
  - (i) any party or other person includes that person's successors and permitted assigns;
  - (ii) a statute, ordinance or other legislation includes any amendment, replacement or re-enactment for the time being in force and includes all regulations, by-laws and statutory instruments made thereunder;
  - (iii) this or any other document includes a reference to that document as amended, supplemented, novated or replaced from time to time;
  - (iv) a clause is a reference to a clause of this constitution;
  - (v) writing includes all means of reproducing words in a tangible and permanently visible form;
  - (vi) a person includes a natural person, corporation, partnership, trust, estate, joint venture, sole partnership, government or governmental subdivision or agency, association, cooperative and any other legal or commercial entity or undertaking; and
- (h) Where a party comprises two or more persons any obligation to be performed or observed by that party binds those persons jointly and each of them severally, and a reference to that party is deemed to include a reference to any one or more of those persons.

### **1.3 Name of the Company**

The name of the Company is “Northern Tasmania Development Corporation Limited”. The Company may also be referred to in the abbreviated form of “NTDC”.

### **1.4 Type of Company**

NTDC is a not-for-profit public company limited by guarantee.

## **1.5 Limited Liability of Members**

The liability of the members is limited to the Guarantee Amount.

## **1.6 Guarantee**

Each member must contribute the Guarantee Amount to the property of the Company if NTDC is wound up whilst a member is a member, or within twelve (12) months of a member ceasing to be a member, for the purposes of paying the debts and liabilities of the Company that have been incurred prior to the member ceasing to be a member and including the actual costs of the winding up.

## **1.7 Prospectuses**

NTDC must not engage in any activity that would require disclosure to investors under Chapter 6D of the Act except as permitted by the Act.

## **2. MEMBERSHIP**

### **2.1 Initial Members**

The members of NTDC are:

- (a) The initial members set out in the Schedule of Initial Members;
- (b) any other person or entity that the directors allow to become a member, in accordance with this constitution.

### **2.2 Register of Members**

- (a) NTDC must establish and maintain a register of members, which must contain all of the initial members set out in the Schedule of Initial Members.
- (b) The register of members must be kept by the Company Secretary, and must contain:
  - (i) for each current member:
    - A. full name of member or joint-members;
    - B. address of the member, as last notified by the member to NTDC;
    - C. an alternative address, if any, nominated by the member for the receiving of notices; and
    - D. the date that the member was entered on to the register of members; and
  - (ii) for each person or entity who ceased being a member within the previous seven (7) years:
    - A. full name of member or joint-members;



- B.** address of the member, as last notified by the member to NTDC;
  - C.** an alternative address, if any, nominated by the member for the receiving of notices;
  - D.** the date that the membership commenced; and
  - E.** the date that the membership ceased.
- (c) NTDC must give access to the register of members to all current members.
- (d) Information that is contained on the register of members must only be used by NTDC and, if accessed by any member, by that member, in a manner that is relevant to the interests or rights of the members.

### **2.3 Eligibility to be a Member**

A person or entity who:

- (a) supports the purposes and objectives of NTDC;
- (b) is willing, by written deed, to become bound by this constitution and any other written instrument or obligation purporting to bind the members;
- (c) pays any application moneys for membership or for the issue of shares; and
- (d) is formally approved by the Directors

is eligible to become a member of NTDC. The Initial Members may, by Special Resolution in a general meeting of the Company, set any other specific criteria for membership of NTDC, but no member who is an existing member at the time any additional membership criteria is set under this **clause 2.3** can be expelled solely on account of not complying with the new criteria (i.e. all existing members would grand-fathered).

### **2.4 Application to Become a Member**

A person or entity who desires to become a member of NTDC may apply to the Company Secretary in writing, stating that the person or entity:

- (a) wishes to become a member of NTDC; and
- (b) is willing and able to comply with all of the requirements of **clause 2.3**; and
- (c) expressly, will pay the Guarantee Amount if and when called upon to do so.

### **2.5 Consideration of Applications**

- (a) The Directors must consider an application for membership within a reasonable time of the application being received by the Company Secretary.

- (b) If the Directors approve the application, the Company Secretary must, as soon as possible:
  - (i) enter the new members onto the register of members;
  - (ii) inform the new member in writing that the application has been successful, including notifying the member of the date on which the member's name was entered onto the register of members; and
  - (iii) if shares are issued in connection with the membership, issue a share certificate and send that to the member with the notification under **subclause (ii)**.
- (c) If the Directors reject the application, the Company Secretary must inform the applicant accordingly, but NTDC is not required to give reasons for the rejection.
- (d) For the avoidance of doubt, any defect in the application or approval process does not invalidate the approval of a member and if so approved, the member agrees to each of the matters set out in **clause 2.3**.

## **2.6 When a Member Becomes a Member**

Other than the Initial Members, a person or entity becomes a member of NTDC when that member's name is entered onto the register of members.

## **2.7 When a Member Ceases to be a Member**

- (a) A natural person immediately ceases to be a member of NTDC if that person:
  - (i) dies (but if a joint-member the surviving member continues as a member);
  - (ii) resigns as a member and disposes of any shareholding;
  - (iii) is expelled by the Directors for any reason; or
  - (iv) does not respond within three (3) months to a written request by the Company Secretary to the member to confirm the member's intention to remain as a member.
- (b) An entity immediately ceases to be a member of NTDC if that entity:
  - (i) is wound up or dissolved (whether voluntarily or otherwise);
  - (ii) resigns as a member and disposes of any shareholding;
  - (iii) is expelled by the Directors for any reason; or
  - (iv) does not respond within three (3) months to a written request by the Company Secretary to the member to confirm the member's intention to remain as a member.

## 2.8 Dispute Resolution for Members

- (a) The dispute resolution procedures set out in this **clause 2.8** apply to any dispute (disagreement) in relation to this constitution or other written instrument to which members are bound between a member or a Director and:
- (i) one or more members;
  - (ii) one or more Directors; or
  - (iii) the Company
- unless any other dispute resolution procedure exists in a written instrument that binds the members that purports to supersede or take priority to this **clause 2.8**, in which case that procedure must apply.
- (b) A member must not commence any dispute resolution procedure in relation to any matter that is the subject of a disciplinary proceeding under **clause 2.9** unless and until that disciplinary proceeding is completed in full.
- (c) Any party that has a dispute with another party that is subject to this dispute resolution procedure must give a written notice (“a Dispute Notice”) of that dispute to the other party. A Dispute Notice must include:
- (i) a general description of the dispute;
  - (ii) a statement as to how or why the notifying party believes the dispute to be a dispute;
  - (iii) a proposal or request to the other party about how the dispute can be satisfactorily resolved; and
  - (iv) notice of the party alleging the dispute, including preferred contact details and the signature of that party.
- (d) A party receiving a Dispute Notice must, in good faith, make all reasonable attempts to resolve the dispute directly with the notifying party within fourteen (14) days of receiving the Dispute Notice.
- (e) If the dispute is not resolved satisfactorily within the time period allowed under **subclause (d)**, either party may, within a further fourteen (14) days, refer the matter to the board of Directors (“a Referral Notice”) and if no referral is made by either party, the dispute is deemed to be resolved;
- (f) If the board of Directors receive a Referral Notice, the board may:
- (i) appoint one or more of the Directors to act as mediators to the parties in dispute; or

- (ii) in the case of a dispute with the Directors as a body, appoint an external mediator.

The appointed Directors, as mediators, or the independent mediator, must set a date for mediation within thirty (30) days of receiving a Referral Notice and the parties must, in good faith, attempt to settle the dispute by mediation. If for any reason a mediator cannot be appointed reasonably, either party may ask President of the Law Society of the state in which NTDC is incorporated, to appoint an independent mediator. All costs of an independent mediator must be shared equally by the parties, but otherwise the parties must bear their own costs of and incidental to the mediation.

- (g) Any mediator, whether a Director or independent:
  - (i) may be a member or former member of NTDC;
  - (ii) must not have a personal interest in the dispute or the outcome of the dispute;
  - (iii) must act impartially and fairly towards all parties to the dispute;
  - (iv) must ensure that the principles of due process and natural justice are strictly applied to the mediation process; and
  - (v) must not make a decision about the dispute but must, in good faith, assist the parties to come to a resolution.
- (h) if the parties in dispute have completed all of the steps set out in this **clause 2.8**, but no satisfactory resolution has been obtained, either party may then pursue whatever other remedies at law or in equity that the party may have.

## **2.9 Disciplinary Action for Members**

- (a) The disciplinary procedures set out in this **clause 2.9** apply to all members and Directors of NTDC unless any other disciplinary procedure exists in a written instrument that binds the members that purports to supersede or take priority to this **clause 2.9**, in which case that procedure must apply.
- (b) Any member or Director may make a complaint to the board of Directors about any other member or Director in respect of conduct that:
  - (i) is in breach of this constitution or any other written instrument that is binding on the members;
  - (ii) is objectionable or unbecoming of a member;
  - (iii) brings, or is likely to bring, NTDC into disrepute;
  - (iv) causes, or is likely to cause, injury, loss or damage to NTDC; or

(v) is illegal.

For the avoidance of doubt this **clause 2.9** does not apply to any private conduct of a member or Director toward another member or Director that is not related to the membership or directorship of the aggrieved or offending parties, regardless of whether the aggrieved party has any other private remedy at law or in equity.

(c) Any party that wishes to make a complaint about another party must give a written notice (“a Complaint Notice”) to the board of Directors. A Complaint Notice must include:

- (i) a general description of the complaint, including sufficient detail to make out the alleged facts;
- (ii) a statement as to how or why the notifying party believes the complaint to comply with **subclause (b)**;
- (iii) notice of the party making the complaint, including preferred contact details and the signature of that party.

(d) Upon receipt of a Complaint Notice, the board of Directors must:

- (i) provide written confirmation to the party making the complaint, including providing a copy of this **clause 2.9**, that the complaint has been received and will be considered under the terms of this **clause 2.9**; and
- (ii) consider the complaint at the next meeting of the board of Directors.

If the complaint is made against one or more of the Directors, those Directors must be excused from the proceedings of the board for that purpose, and the balance of the Board may consider the complaint as a sub-committee of the board, and no quorum provisions are deemed to apply. In the alternative, the board of Directors may appoint an independent panel and may refer the complaint to that panel to be considered.

(e) For the avoidance of doubt, any costs of appointing an independent panel, and the discharge of that panel’s tasks are to be paid by NTDC, but the Company is entitled to seek reimbursement from the party making the complaint if the complaint is found, objectively, to be frivolous or vexatious.

(f) In considering any complaint, the board of Directors, or the panel appointed:

- (i) must act reasonably in all regards, and in a timely way;
- (ii) may undertake whatever investigations and enquiries it thinks fit;
- (iii) may hear from the complainant or any other person in support of the complaint;
- (iv) may disregard the ordinary rules of evidence; and

- (iv) must allow the person who is the subject of the complaint to be heard, along with any other witnesses that the person the subject of the complaint may reasonably seek to have heard.
- (g) The board, either on its own consideration or on the recommendation of the panel, may elect to:
  - (i) dismiss the complaint as frivolous and vexatious, with or without seeking reimbursement from the party making the complaint;
  - (ii) dismiss the complaint as being not sufficiently made out;
  - (iii) make no finding of culpability;
  - (iv) take no action at all;
  - (v) resolve to issue a warning to the member;
  - (vi) suspend the member's rights as a member for a defined period of time not exceeding twelve (12) months at the discretion of the board of Directors;
  - (vii) expel the member; or
  - (vi) refer the matter to appropriate civil or criminal law enforcement agencies.

For the avoidance of doubt, the board of Directors does not have any power to impose a pecuniary penalty on any member or Director.

- (h) Upon completion of the disciplinary process, the Company Secretary must notify the affected party in writing of the outcome.
- (i) Any member or Director that is the subject of a disciplinary decision under this **clause 2.9** is entitled to appeal that decision, at that party's own cost, through normal legal channels.
- (j) For the expediency of all parties involved, including the party making the complaint, all details of the disciplinary proceedings must be kept confidential and no notification or publication of the outcome of the proceedings may be made by any party until the whole of the process is complete. If no adverse finding is made against a party, then no public notification of the fact of the proceedings is to be made.
- (k) No party making a complaint, nor the board of Directors or independent panel, nor NTDC itself is liable to any member of Director for any injury, loss or damage suffered by that party in account of a complaint being made against that party that is made in good faith under this **clause 2.9**.

### 3. SHARE CAPITAL AND VARIATION OF RIGHTS

#### 3.1 Power to Issue or Buy-back Shares

- (a) Notwithstanding that NTDC is limited by guarantee, subject to the provisions of this constitution and without prejudice to any subsisting special rights previously conferred on the holders of existing shares, the Company may, but is not bound to do so, issue share capital for whatever purposes the Company thinks fit, and the unissued shares in the Company are under the control of the Directors.
- (b) The Directors may allot or otherwise dispose of the shares, or issue or grant options in respect of shares, to any persons or entities on terms and conditions and at any time or times and with any preferred, deferred or other special rights, whether with regard to dividend, voting, return of capital or otherwise, as the Directors think fit.
- (c) The Directors may differentiate between the holders of partly paid shares as to the amount of calls to be paid and the time for payment.
- (d) Subject to the provisions of the Act, NTDC may reduce the share capital of the Company or buy-back shares of the Company or otherwise redeem its shares or share capital as permitted by the Act.

#### 3.2 Pro Rata Offers to Existing Holders

Before issuing shares of a particular class, the Directors must offer the shares to the existing holders of shares of that class. As far as practicable, the number of shares offered to each holder must be in proportion to the number of shares of that class that they already hold. To make the offer, the Directors must give the existing holders a statement setting out the terms of the offer, including:

- (a) the number of shares offered; and
- (b) the period for which the offer will remain open.

#### 3.3 Non Pro Rata Offers

The Directors may issue any shares not taken up under the offer under **clause 5** as it sees fit. NTDC may by resolution passed at a general meeting authorise the Directors to make a particular issue of shares without complying with **clause 5**.

#### 3.4 Preference Shares

NTDC has power to issue preference shares, including redeemable preference shares, which are redeemable:

- (a) at a fixed time or on the happening of a particular event; or
- (b) at the Company's option; or

- (c) at the holder's option.

### 3.5 Class Rights

- (a) If the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied or cancelled (whether or not NTDC is being wound up) only by:
  - (i) Special Resolution of the Company; or
  - (ii) Special Resolution passed at a separate meeting of the class of members holding shares in the class; or
  - (ii) with the written consent of the members with at least 75% of the votes in the class.
- (b) The provisions of this constitution relating to general meetings will apply to every separate meeting referred to in **sub-clause (a)** with any changes that are necessary but so that:
  - (i) the necessary quorum is two persons holding, or representing by proxy, one-third of the issued shares of the class; and
  - (ii) any holder of shares in the class, present in person or by proxy or power of attorney or as representative, may demand a poll.
- (c) Without limiting in any way the classes of shares that NTDC may issue or the rights that may attach to any classes of shares or the variation of those classes or rights, the Company may issue new shares, or (subject to this clause) vary existing shares, of a designated class and with rights attaching to that class as suggested in **Schedule 1**, to this Constitution
- (d) If the shares issued upon registration of NTDC are divided into different classes and are given particular rights and the wording used to designate those classes and rights is not identical to that contained in **Schedule 1**, then **Schedule 1** immediately ceases to have any application this Constitution.
- (e) If, at any time after registration of NTDC, the Directors determine or the members resolve that shares of a designated class that is also contained in **Schedule 1** have rights of any kind, then to the extent of the inconsistency **Schedule 1** immediately ceases to have any application to this Constitution.

### 3.6 Rights Affected by Further Issue

The rights attached to an existing class of shares issued with preferred, deferred or other special rights are deemed to be varied by the creation or issue of new shares ranking equally with those existing shares unless the new issue is authorised by:

- (a) the terms of issue of the existing shares; or



- (b) the Company's constitution (if any) as in force when the existing shares were issued.

### **3.7 Brokerage, Commission and Interest on Share Capital**

NTDC may exercise the powers of paying brokerage or commission conferred by the Act, provided that:

- (a) the rate, percent or the amount of the commission paid or agreed to be paid is disclosed in the manner required by the Act; and
- (b) the commission does not exceed the rate or an amount of ten percent of the total amount payable in respect of the shares upon their allotment.

Commission may be satisfied by any, all or a combination of the payment of cash or the allotment of fully or partly paid shares.

### **3.8 Trusts**

- (a) If a member holds shares non-beneficially then that member must give notice to NTDC of that fact in accordance with the Act.
- (b) However, even if NTDC has notice of a claim or interest, the Company is not bound by, nor can the Company be compelled in any way to recognise any equitable, contingent, future or partial interest in or claim to any share, option, unit of a share or (except as otherwise provided by this constitution or by law) any other rights in respect of any share except an absolute right to the entirety in the registered holder.
- (c) With the consent of the Directors, shares held by a trustee may be marked in the register in a way so as to identify those shares as being held subject to the relevant trust. Otherwise, NTDC will not recognise any person as holding any share upon any trust, even if the Company has notice of that trust.

### **3.9 Encumbrances**

- (a) A member must not provide that member's shares as security or create any encumbrance over those shares in favour of any person, except with the written approval of the Directors.
- (b) In granting a written approval under **sub-clause (a)**, the Directors may impose any terms or conditions that the Directors think fit.

### **3.10 Share Certificates**

- (a) Every person whose name is entered as a member in the register of members is entitled, without payment, to receive a share certificate executed by NTDC in accordance with the Act.

- (b) In respect of a share or shares held jointly by several persons, NTDC is not bound to issue more than one certificate.
- (c) Delivery of a certificate for a share to one of several joint holders is sufficient delivery to all such holders.

#### 4. LIENS

##### 4.1 Lien for Unpaid Moneys

- (a) NTDC has a first and paramount lien on:
  - (i) each partly paid share for all money (whether presently payable or not) called or payable at a fixed time in respect of that share; and
  - (ii) all shares registered in the name of a single person for all money presently payable by that person or that person's estate to NTDC.
- (b) The Directors may at any time declare any share to be wholly or partially exempt from the provisions of this clause.
- (c) NTDC's lien, if any, on a share extends to all dividends payable on that share and to the proceeds from the sale of that share.
- (d) Registration by NTDC of a transfer of shares on which the Company has a lien without giving to the transferee notice of its claim releases the Company's lien in so far as it relates to sums owing by the transferor or any predecessor in title.

##### 4.2 Sale under Lien

NTDC may sell, in any manner as the Directors think fit, any shares on which the Company has a lien where:

- (a) an amount in respect of which a lien exists under **clause 4.1** is presently payable;
- (b) NTDC has, not less than 14 days before the date of the sale, given to the registered holder of the share (or the person entitled to be registered by reason of the registered holder's death or bankruptcy) a notice in writing setting out, and demanding payment of, the amount in respect of which the lien exists as is presently payable.

##### 4.3 Transfer of Shares Sold

- (a) To give effect to any sale under **clause 4.2**, the Directors may authorise some person to transfer the shares sold to the purchaser.
- (b) The purchaser will be registered as the holder of the shares comprised in any transfer under **sub-clause (a)**.

- (c) The purchaser is not bound to see to the application of the purchase money, nor will the purchaser's title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.
- (d) The proceeds of a disposal of shares under this constitution must be applied in payment of:
  - (i) first, the expenses of the disposal;
  - (ii) second, all money presently payable by the former holder whose shares have been disposed of; and
  - (iii) the balance (if any) must be paid (subject to any lien that exists under **clause 4.1** in respect of money not presently payable) to the former holder:
    - A. in the case of an uncertificated holding, as soon as practicable after the disposal; and
    - B. in the case of a certificated holding, on the former holder delivering to NTDC the certificate for the shares that have been disposed of or any other proof of title as the Directors may accept.
- (e) The remedy of any person aggrieved by a disposal of shares under this constitution is limited to damages only and is against NTDC exclusively.

## **5. CALLS ON SHARES**

### **5.1 Making of Calls**

- (a) The Directors may from time to time make calls upon the members in respect of any money unpaid on their shares but may not call money unpaid according to the terms of issue of those shares which is payable at other fixed times.
- (b) Each member will (subject to receiving at least 14 days' notice specifying the time or times and place of payment) pay the amount called to NTDC at the time or times and place so specified.
- (c) The Directors may revoke or postpone a call or require the call to be paid by way of instalment or extend the time for payment of a call.

### **5.2 Timing of Call**

A call is deemed to have been made at the time when the resolution of the Directors authorising the call was passed and may be required to be paid by instalments.

### **5.3 Joint Holders' Liability**

The joint-holders of a share are jointly and severally liable to pay all calls in respect of the share.

#### 5.4 Interest on Calls

- (a) If a sum called in respect of a share is not paid on or before the day appointed for payment, the person from whom the sum is due must pay:
  - (i) interest on the sum from the day appointed for payment to the time of actual payment at a rate not exceeding that determined under **clause 5.8**; and
  - (ii) any costs, expenses or damages incurred by NTDC in relation to the non-payment or late payment of the sum.
- (b) The Directors are at liberty to waive payment of all or part of the interest or costs, expenses or damages payable under **sub-clause (a)**.

#### 5.5 Deemed Calls

- (a) Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date is, for the purposes of this constitution, deemed to be a call duly made and payable on the date that it becomes payable under the terms of issue.
- (b) In case of non-payment all the relevant provisions of this constitution in relation to payment of interest and expenses, forfeiture, or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.

#### 5.6 Differentiation between Holders

The Directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

#### 5.7 Moneys in Advance of Calls

- (a) The Directors may accept from any member all or any part of the money uncalled and unpaid upon any shares held by the member.
- (b) The Directors may (until the money received would, but for the advance, become payable) pay interest on the sum accepted under **sub-clause (a)** at a rate not exceeding the rate determined under **clause 5.8** and as agreed upon between the Directors and the member paying the sum in advance.

#### 5.8 Interest payable

- (a) For the purposes of **clauses 5.4(a)(i) and 5.7(b)**, the rate of interest payable to or by NTDC is:
  - (i) if the Company has fixed a rate, the rate so fixed; or
  - (ii) if the Company resolves a different rate, then that different rate; or
  - (iii) in the absence of any other rate or resolution, 12% per annum.

- (b) Interest payable under clauses **5.4(a)(i)** and **5.7(b)** accrues daily and may be capitalised monthly or at such other intervals as the directors think fit.

## **6. TRANSFER OF SHARES**

### **6.1 Form of Transfer**

- (a) Subject to this constitution, any member may transfer all or any of the member's shares by written transfer in any usual form or in any other form which the Directors approve.
- (b) The transfer must be executed by or on behalf of both the transferor and the transferee.

### **6.2 Holder until Registration**

A person or entity transferring shares remains the holder of the shares until:

- (a) the transfer is registered; and
- (b) the name of the person or entity to whom the shares are being transferred is entered into the register of members in respect of shares.

### **6.3 Pre-conditions to Registration**

The Directors are not required to register a transfer of shares in NTDC unless:

- (a) the provisions of this constitution (including, but not limited to **clauses 2, 8.1 and 8.2**) have been complied with;
- (b) the transfer and any share certificate have been lodged at NTDC's registered office;
- (c) the transfer has been duly stamped (if required by law to be stamped);
- (d) the Directors have been given any further information reasonably required to establish the right of the person or entity transferring the shares to make the transfer.

### **6.4 Right to Refuse Registration**

The Directors may refuse to register a transfer of shares in NTDC for any reason and without being bound to give any reason for the refusal or without specifying any grounds for the refusal.

### **6.5 Suspension of Registration**

The Directors may suspend registration of transfers of shares in NTDC at the times and for the periods that the Directors determine, provided that the period or periods of suspension must not exceed 30 days in any one calendar year.

## 7. TRANSMISSION OF SHARES

### 7.1 Death of a Member

- (a) In the case of the death of a member who is a natural person, the only persons NTDC will recognise as having any title to the member's shares or any benefits accruing in respect of those share:
  - (i) the legal personal representative of the deceased where the deceased was a sole holder; and
  - (ii) the survivor or survivors where the deceased was a joint holder with other natural persons.
- (b) Nothing contained in **sub-clause (a)** releases the estate of a deceased member from any liability in respect of a share, whether that share was held by the deceased solely or jointly with other natural persons.

### 7.2 Transmission Events Generally

- (a) A natural person who becomes entitled to a share as a result of a Transmission Event may, upon producing the certificate for the share and any other evidence as the Directors may require to prove that person's entitlement to the share, elect:
  - (i) to be registered as the holder of the share by signing and serving on NTDC a notice in writing stating that election; or
  - (ii) to have some other person or entity nominated by that person registered as the transferee of the share by executing a transfer of the share to that other person or entity.
- (b) The provisions relating to the right to transfer, and the registration of transfers of, shares apply, so far as they can and with any changes as are necessary, to any transfer under **sub-clause (a)(ii)** as if the relevant Transmission Event had not occurred and the transfer were signed by the registered holder of the share.
- (c) For the purpose of this constitution, where 2 or more persons are jointly entitled to any share in consequence of a Transmission Event they will, upon being registered as the holders of the share, be taken to hold the share as joint tenants
- (d) Notwithstanding **clause 7.1(a)**, the Directors may register a transfer of shares signed by a member prior to a Transmission Event even though NTDC has notice of the Transmission Event.

## 8. SHARE TRANSFERS

### 8.1 Redemption

Notwithstanding any other provision of this Constitution, where a member ceases, or gives notice to NTDC of the member's intention to cease, being a member, the Company has a first and overriding right to redeem the shares of that member rather than to consent and facilitate those shares being transferred to another member.

### 8.2 Pre-emptive Rights

Subject to **clause 8.1** any right to transfer shares is subject to the following provisions and restrictions namely:

- (a) any member wishing to dispose of shares ("the Transferor") must give written notice ("Transfer Notice") to NTDC that the member wishes to dispose of the member's shares;
- (b) the Transfer Notice must state the price per share ("Prescribed Price") that the Transferor is willing to accept for the Shares and that the Transfer Notice appoints NTDC as the Transferor's agent for the sale of all or (subject to this clause) any of the shares at the Prescribed Price;
- (c) once a Transfer Notice is given it is not revocable except:
  - (i) as provided below; or
  - (ii) with the consent of the Board;
- (d) a Transfer Notice may not be given by a member within 6 months after the giving by that member of a previous Transfer Notice except:
  - (i) with the prior written consent of the Board; or
  - (ii) where the Prescribed Price stated in the latter Transfer Notice is less than the Prescribed Price in the previous notice;
- (e) as soon as possible, and no later than 21 days, after receiving a Transfer Notice NTDC must offer the shares referred to in the Transfer Notice for sale to the members (other than the Transferor) at the Prescribed Price pro rata to those members' then respective shareholdings;
- (f) every offer referred to in **clause 8.2(e)** must be made by written notice served upon each of the members (other than the Transferor) specifying the number of Shares offered and limiting a reasonable time (not being less than 7 days) within which the offer must be accepted as to the whole or part of the shares offered and stating that so far as it is not so accepted it is deemed to be declined. Time in this respect is of the essence of the offer. Any shares declined or deemed to be declined by any of the members to which they are originally offered must be offered in the same manner (except as set out below) and proportions and at the Prescribed Price

to those of the members who have accepted all of the shares originally offered to them, and so on until either all the shares mentioned in the Transfer Notice have been purchased or it can be concluded that the last offers have been declined and none of the members are willing to purchase any further shares. The time within which further offers must be accepted is the time (not being less than 7 days) specified by the Board in the notice making the offer;

- (g) as soon as the final result of the offers is known to NTDC, the Company must give written notice of the results to the Transferor;
- (h) if less than the whole of the Shares offered as above have been agreed to be purchased the Transferor is entitled by written notice to NTDC given within 7 days of the giving of the notice pursuant to **Clause 8.2(g)** to revoke the Transfer Notice and upon that revocation any contract for the sale and purchase of the Transferor's shares becomes void;
- (i) if the whole of the shares offered as set out above have been agreed to be purchased or if less than the whole of the shares have been agreed to be purchased and the Transferor has failed to give notice pursuant to **clause 8.2(h)** revoking the Transfer Notice, the members who have accepted the offer are bound to purchase the shares accepted by them and the Transferor is bound upon payment of the Prescribed Price per Share to transfer those shares to those members respectively;
- (j) every notice given by NTDC under **clause 8.2(g)** must state which of the members are purchasers of the shares mentioned in the Transfer Notice and the number of shares agreed to be purchased by each of them;
- (k) sales and purchases of shares pursuant to **clause 8.2(i)** must be completed at places and times to be appointed by NTDC, not being more than 28 days after the date on which the notice under **clause 8.2(g)** is given;
- (l) If the Transferor, having become bound to transfer any shares to any member as purchaser, defaults in transferring the shares, NTDC is entitled to execute a transfer of the shares to a member on behalf of the Transferor and if so required by that member must execute a transfer of those shares and receive the purchase money and must, upon the transfer being executed by the member, enter the member's name in the register as the holder of the shares and must hold the purchase money in trust for the Transferor. The receipt of NTDC for the purchase moneys is a good discharge to the purchaser, and the purchaser is not bound to see to the application of the purchase moneys, and after the purchaser's name has been entered in the register in purported exercise of these powers, the validity of the proceedings may not be questioned by any person;
- (m) if the offer of shares made pursuant to **Clause 8.2(e)** does not result in the members or some or one of them agreeing to purchase all the shares mentioned in the Transfer Notice the Transferor may at any time within 3 months after receiving the notice referred to in **Clause 8.2(g)** transfer those shares that the members have



not agreed to purchase to any person or entity on a bona fide cash sale of those remaining shares at any price not less than the Prescribed Price;

- (n) before approving any transfer pursuant to **Clause 8.2(m)** the Board may require a statutory declaration from both the Transferor and the transferee named in the transfer and any other further evidence as the Board considers necessary that the shares included in the transfer are being transferred in pursuance of a bona fide cash sale for the consideration stated in the transfer without any reduction, rebate or allowance whatsoever to the transferee;
- (o) prior to any transfer being effected pursuant to this **Clause 8.2** the transferee (unless the transferee is already a member of NTDC) must agree to be bound by the terms of this constitution (as modified from time to time) and agree to execute a deed of adherence to any existing shareholders agreement in a form reasonably acceptable to the Directors;
- (p) the Board may decline to register a transfer of shares on which NTDC has a lien but otherwise and subject to this **clause 8.2** is bound to register a transfer of shares made in accordance with the provisions of this subclause;
- (q) the provisions of **clauses 8.2(a) to 8.2(n)** do not apply to a transfer to a person in accordance with **clause 8.4**;
- (r) any change in the Effective Control of any member is deemed to be the giving of a Transfer Notice by that member to NTDC upon the day upon which a change comes to the attention of the Board and the Prescribed Price in respect of those shares is the value of the shares as determined by the Board, the decision of which is conclusive; and
- (s) this clause may only be amended by a Special Resolution passed by NTDC and not otherwise.

### **8.3 Contravening Transfers**

Any transfer or purported transfer of shares which contravenes the provisions of **clause 8.2** is void.

### **8.4 Exception to Pre-emptive Rights**

The provisions of **clause 8.2** do not apply to a transfer:

- (a) to a person who is a spouse, parent, sibling or child of a member (being a natural person) or any children or remoter issue of those persons;
- (b) to a trustee of a trust, the beneficiaries of which are exclusively persons in this **Clause 8.3** and their Related Corporations;
- (c) by a trustee to a beneficiary of the trust who is the spouse, parent, sibling, child or remoter issue of the person who has Effective Control of the trustee;

- (d) to which all of the members have provided their written consent;
- (e) to a company, all the shares in which are beneficially owned by a person or persons in this **clause 8.4**; and
- (f) to a Related Corporation of the Transferor which, prior to the transfer, provides a written deed poll to NTDC to the effect that if at any time it ceases to be a Related Corporation of the Transferor it will transfer the shares back to the Transferor or to another Related Corporation of the Transferor.

## **9. FORFEITURE OF PARTLY-PAID SHARES**

### **9.1 Forfeiture for Non-payment of Calls**

If a member fails to pay any call or instalment of a call on the day appointed for payment, the Directors may, for so long as any part of the call or instalment remains unpaid, serve a notice on the member requiring payment of the unpaid amount of the call or instalment, together with any interest which may have accrued and all costs, expenses or damages that may have been incurred by reason of the non-payment or late payment of the call or instalment.

### **9.2 Notice of Forfeiture**

The notice must:

- (a) name a further day (at least 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made; and
- (b) state that in the event of non-payment at or before the time appointed the Shares in respect of which the call was made will be forfeited.

### **9.3 Non-Compliance with Notice**

- (a) If the requirements of a notice served under **clause 9.2** are not complied with, any share in respect of which the notice has been given may at any time after the date specified for payment in the notice, but before the payment required by the notice has been made, be forfeited by a resolution of the Directors to that effect.
- (b) A forfeiture of shares under **sub-clause (a)** includes all dividends, interest and other money payable by NTDC in respect of the forfeited shares and not actually paid before the forfeiture.
- (c) A person or entity whose shares have been forfeited ceases to be a member in respect of the forfeited shares and, except as otherwise provided by this constitution, the forfeiture of a share extinguishes all interest in, and all claims and demands against NTDC in respect of, the forfeited share and all other rights incidental to the share.

#### **9.4 Sale of Forfeited Shares**

- (a) A forfeited share may be sold or otherwise disposed of on the terms and in the manner that the Directors think fit.
- (b) The Directors may cancel a sale or disposition at any time before the forfeiture on any terms as the Directors think fit.
- (c) On sale of a forfeited share or shares, the balance remaining after deducting the amount owed to NTDC by the person or entity whose shares were forfeited must be returned to that person or entity.

#### **9.5 Continuing Liability to Pay**

- (a) The person whose shares have been forfeited remains liable to pay to NTDC all money which, at the date of forfeiture, was payable by the person to the Company in respect of the shares (together with interest at the rate determined by **clause 5.8** from the date of forfeiture on the money for the time being unpaid if the Directors think fit to enforce payment of interest).
- (b) The liability ceases if and when NTDC receives payment in full of all moneys in respect of the shares.

#### **9.6 Evidence of Forfeiture**

A statutory declaration in writing that the declarant is a director of NTDC or the Company Secretary, and that a share in the Company has been forfeited on a date stated in the declaration, is conclusive evidence of the facts stated in the statutory declaration as against all persons claiming to be entitled to the share.

#### **9.7 Transfer of Forfeited Shares**

- (a) A forfeited share becomes the property of NTDC and the Directors may sell, reissue or otherwise dispose of the share in any manner that the Directors think fit and, in the case of reissue or other disposal, with or without any money paid on the share by any former member being credited as paid up.
- (b) NTDC may receive the consideration, if any, given for a forfeited share on any sale or other disposition of the forfeited share and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of.
- (c) The person or entity to whom the share is sold or disposed of will be registered as the holder of the shares, and is not bound to see to the application of any purchase money.
- (d) The title to the share will not be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

## **9.8 Forfeiture for Non-payment of Deemed Calls**

The provisions of this constitution in relation to forfeiture apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable on allotment or at a fixed time as if the sum had been payable by virtue of a call duly made and notified.

## **10. GENERAL MEETINGS**

### **10.1 Convening Meetings**

- (a) Any director may call a meeting of members.
- (b) The Directors must call a meeting of members if requested by any of the Initial Members to do so.
- (c) The Directors must otherwise call a meeting of members if required to do so by the Act.

### **10.2 Notice of Meeting**

- (a) Subject to the provisions of the Act relating to agreements for shorter notice, at least 21 days' written notice (not including the day on which the notice is served or deemed to be served, but including the day of the meeting for which notice is given) must be given of any meeting of members.
- (b) The notice must be given to all persons and entities that are entitled to receive notices from NTDC and must:
  - (i) set out 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); and
  - (ii) state the general nature of the meeting's business; and
  - (iii) if any special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the motion supporting the special resolution; and
  - (iv) if a member is entitled to appoint a proxy, contain a statement setting out the following information:
    - A. that the member has a right to appoint a proxy;
    - B. whether or not the proxy needs to be a member of NTDC; and
    - C. that a member who is entitled to cast two or more votes may appoint two proxies and may specify the proportion or number of votes each proxy is appointed to exercise; and
  - (v) include a valid pro form proxy form for a member to appoint a proxy.

### **10.3 Place of Meeting**

NTDC may hold a meeting of members at two or more venues using any technology that gives the members, as a whole, a reasonable opportunity to participate.

### **10.4 Annual General Meeting**

NTDC must call and hold an annual general meeting within five (5) months of the end of each financial year, in accordance with the Act.

## **11. RESOLUTIONS WITHOUT MEETINGS**

### **11.1 Written Resolutions**

- (a) NTDC may pass a resolution without a general meeting being held if all members entitled to vote on the resolution sign a document containing a statement that the members are in favour of the resolution set out in the document.
- (b) Separate counterpart copies of the document may be used for signing by members if the wording of the resolution statement is identical on each counterpart copy.
- (c) The resolution is passed when the last member signs, by reference to the date on which the counterpart copies are signed.
- (d) If a share is held jointly, each of the joint members must sign.
- (e) A member may be deemed to have signed a document in accordance with this clause by e-mail (or other means) if that member has at any time provided NTDC with notice that the member may use e-mail (or other means) to sign Company documents, and that notice contains the e-mail addresses and electronic signatures (if any) that the member will use for these purpose, or any other information that NTDC requires, as determined by the Directors, to be able to identify the deemed signature as being that of the member.
- (f) The receipt by NTDC of a deemed signature of a member which complies with the notice given by the member in accordance with **sub-clause (e)** is conclusive evidence that the member has assented to the relevant resolution.
- (g) The provisions of this clause do not apply to a resolution to remove the auditor.

### **11.2 Sole Member Resolutions**

If NTDC has only one member then the Company may pass a resolution by the member recording the resolution and signing the record.

## **12. PROCEEDINGS AT GENERAL MEETINGS**

### **12.1 Quorum**

- (a) The quorum for a meeting of members is fifty percent (50%) of the members plus one (1), except where there is only 1 member and in those circumstances the quorum will consist of 1 member.
- (b) The quorum must be present at all times during the meeting.
- (c) No business may be transacted at any general meeting except:
  - (i) the election of a chairperson; or
  - (ii) the adjournment of the meetingunless a quorum of members is present when the meeting proceeds to business.

### **12.2 Proxies or Representatives in Quorum**

In determining whether a quorum is present:

- (a) individuals attending as proxies or under power of attorney or as representatives of bodies corporate are counted;
- (b) if a member has appointed more than one proxy, power of attorney or representative then only one of them is counted on behalf of the member;
- (c) if an individual is attending, both as a member and as a proxy or attorney under power or body corporate representative, the individual may be counted once in respect of each separate capacity in which that individual is attending; and
- (d) if any two or more joint-holders are attending, only one of those joint-holders is counted; and
- (e) if multiple individuals attend on behalf of an entity member, only one of those individuals is counted on behalf of that entity member.

### **12.3 Adjournment for Lack of Quorum**

If a meeting of the members of the Company does not have a quorum present within 30 minutes after the time for the meeting set out in the notice of meeting, the meeting is adjourned to the date, time and place the Directors may specify. If the Directors do not specify one or more of the following matters, then the meeting is adjourned to:

- (a) if the date is not specified – the same day in the next week; and
- (b) if the time is not specified – the same time; and
- (c) if the place is not specified – the same place.

#### **12.4 Lack of Quorum at Adjourned Meeting**

If no quorum is present at the resumed meeting within 30 minutes after the time for meeting, then:

- (a) if the meeting was called by the members, the meeting is dissolved;
- (b) in all other cases, the member or members present are a quorum.

#### **12.5 Chair of General Meeting**

- (a) The chair, if any, of the Directors will act as chair at every general meeting of NTDC.
- (b) If:
  - (i) there is no chair;
  - (ii) the chair is not present within fifteen minutes after the time appointed for the holding of the meeting; or
  - (iii) the chair is unwilling to act;

the members present may elect one of their number to be chair of the meeting.

#### **12.6 Adjournment Generally**

- (a) At a meeting at which a quorum is present, the chair may, with the consent of the meeting (and will if so directed by the meeting), adjourn the meeting to another time and, if the chair thinks fit, to another place.
- (b) No business will be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) When a meeting is adjourned for 1 month or more, notice of the adjourned meeting must be given as in the case of an original meeting. Otherwise it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

#### **12.7 Conduct of General Meetings**

Any question arising at a general meeting relating to the order of business, procedure or conduct of the meeting must be referred to the chair of the meeting, whose decision is final.

#### **12.8 Resolutions**

- (a) Except in the case of any resolution that, as a matter of law, requires a special resolution, motions arising at a general meeting are to be decided by a majority of votes cast by the members present at the meeting and any decision is, for all purposes, a decision of the members.

- (b) Before a vote is taken the chair must inform the meeting whether proxies have been received and how those proxies are to be cast.
- (c) A motion put to the vote at a meeting of members must be decided on a show of hands unless a poll is demanded.

### **12.9 Result on Show of Hands**

On a show of hands, each member is entitled to one (1) vote. A declaration by the chair and entry in the minute book of NTDC is conclusive evidence of the result. Neither the chair nor the minutes need state the number or proportion of the votes recorded in favour or against the resolution.

### **12.10 Demand for Poll**

- (a) A poll may be demanded on any resolution including the election of the chair or the adjournment of a meeting.
- (b) A poll may be demanded by:
  - (i) any member entitled to vote on the motion; or
  - (ii) the chair.
- (c) A poll may be demanded:
  - (i) before a vote is taken;
  - (ii) before the voting results on a show of hands are declared; or
  - (iii) immediately after the voting results on a show of hands are declared.
- (d) If a poll is demanded on a matter other than the election of the chair or the question of adjournment:
  - (i) it must be taken when and in the manner the chair directs;
  - (ii) any other business of the meeting can be transacted before the poll demanded is carried out; and
  - (iii) if directed by the chair of the meeting, there may be an interval or adjournment prior to the poll.
- (e) A poll on the election of the chair or on the question of an adjournment must be taken immediately.
- (f) A demand for a poll may be withdrawn.
- (g) On a poll, each member is entitled to one (1) vote for each share held by that member and the minutes must state the number or proportion of the votes recorded in favour or against the resolution.



### **12.11 Votes of Members**

Subject to any rights or restrictions attached to any class of shares, at a meeting of members of the Company:

- (a) on a show of hands, each member present, or person who is a representative of a member, has 1 vote; and
- (b) on a poll, each member present in person or by proxy or by power of attorney or representative has 1 vote for each share held by the member.

### **12.12 Votes of Joint Holders**

If a share is held jointly and more than one member votes in respect of their share, only the vote of the member whose name appears first in the register of members counts.

### **12.13 Votes of Members of Unsound Mind**

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 the member's committee or trustee or by any other person as properly has the management of the member's estate, and any committee, trustee or other person may vote by proxy or attorney.

### **12.14 Entitlement to Vote**

No member is entitled to vote at any general meeting unless all calls or other sums presently payable by the member in respect of shares in NTDC have been paid.

### **12.15 Disallowance of Vote**

A challenge to a right to vote at a meeting of members:

- (a) may only be made at the meeting; and
- (b) must be determined by the chair whose decision is final.

Every vote not disallowed by the chair under this clause is valid for all purposes.

### **12.16 No Casting Vote**

In the case of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting at which the show of hands takes place or at which the poll is demanded does not have a second or casting vote, and in the case of equality of votes, the motion is deemed to fail.

### **13. REPRESENTATION AT GENERAL MEETINGS**

#### **13.1 Representatives**

- (a)** Subject to this constitution, each member entitled to vote at a meeting of members may vote:
  - (i)** in person, or where a member is a body corporate, by its representative;
  - (ii)** by proxy; or
  - (iii)** by attorney.
- (b)** A proxy, attorney or representative may, but need not, be a member of NTDC.
- (c)** A proxy, attorney or representative may be appointed for all general meetings, or for any number of general meetings, or for a particular general meeting.

#### **13.2 Authority of Representative**

- (a)** Unless otherwise provided in the appointment of a proxy, attorney or representative or in the Act, an appointment will be taken to confer authority:
  - (i)** to agree to a meeting being convened by shorter notice than is required by the Act or by this constitution;
  - (ii)** to speak on any proposed resolution on which the proxy, attorney or representative may vote;
  - (iii)** to demand or join in demanding a poll on any resolution on which the proxy, attorney or representative may vote;
  - (iv)** even though the instrument may refer to specific resolutions and may direct the proxy, attorney or representative how to vote on those resolutions:
    - A.** to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
    - B.** to vote on any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the meeting;
  - c.** to act generally at the meeting; and
- (v)** even though the instrument may refer to a specific meeting to be held at a specified time or venue, where the meeting is rescheduled or adjourned to another time or changed to another venue, to attend and vote at the re-scheduled or adjourned meeting or at the new venue.

- (b) Where a member appoints 2 proxies or attorneys, the following rules apply:
  - (i) each proxy or attorney, as the case may be, may exercise half of the member's voting rights if the appointment does not specify a proportion or number of the member's voting rights the proxy or attorney may exercise;
  - (ii) on a show of hands, neither proxy or attorney may vote unless the instruments appointing the proxies or attorneys identify which proxy or attorney is authorised to vote on a show of hands and which proxy or attorney is not so authorised; and
  - (iii) on a poll, each proxy or attorney may only exercise the voting rights the proxy or attorney represents.

### 13.3 Instrument Appointing Representative

- (a) An instrument appointing a proxy or attorney may direct the manner in which the proxy or attorney is to vote in respect of a particular resolution and, where an instrument so provides, the proxy or attorney is not entitled to vote on the proposed resolution except as directed in the instrument.
- (b) An instrument appointing a proxy or attorney need not be in any particular form provided it is in writing, legally valid and signed by the appointor or the appointor's attorney.
- (c) Subject to **clause 13.3(d)**, a proxy or attorney may not vote at a general meeting or adjourned meeting or on a poll unless the instrument appointing the proxy or attorney, and the authority under which the instrument is signed, or a certified copy of the authority are:
  - (i) received at the registered office of the Company, a fax number at the Company's registered office or at such other place, fax number or electronic address specified for that purpose in the notice calling the meeting before the time for holding the meeting or adjourned meeting or taking the poll (as the case may be);
  - (ii) in the case of a meeting or an adjourned meeting, tabled at the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
  - (iii) in the case of a poll, produced when the poll is taken.
- (d) The directors may waive all or any of the requirements of **clauses 13.3 (b) and/or (c)** and in particular may, upon the production of such other evidence as the directors require to prove the validity of the appointment of a proxy or attorney, except:
  - (i) in an oral appointment of a proxy or attorney;

- (ii) an appointment of a proxy or attorney which is not signed or executed in the manner required by **clause 13.3(b)**; and
- (iii) the deposit, tabling or production of a copy (including a copy sent by fax) of an instrument appointing a proxy or attorney or of the power of attorney or other authority under which the instrument is signed.

#### **13.4 Validity of Representative's Votes**

- (a) Unless NTDC has received written notice of the matter before the start or resumption of the meeting at which a proxy or attorney votes, a vote cast by the proxy or attorney will be valid even if before the proxy or attorney votes:
  - (i) the appointing member dies; or
  - (ii) the member subsequently becomes mentally incapacitated; or
  - (iii) the member revokes the proxy's appointment; or
  - (iv) the member revokes the authority under which the proxy was appointed by a third party; or
  - (v) the Company has redeemed the share in respect of which the proxy was given
- (b) The appointment of a proxy or attorney is not revoked by the appointor attending and taking part in the general meeting but, if the appointor votes on any resolution, the proxy or attorney is not entitled to vote, and must not vote, as the appointor's proxy or attorney on the resolution.

### **14. DIRECTORS: APPOINTMENT, ETC.**

#### **14.1 First Directors**

The first directors appointed are the persons specified with the consent of those directors, as proposed directors, in the application for NTDC's registration. In accordance with the Act, there must be a minimum of 3 first directors, including the Chair, who is also a director of the Company.

#### **14.2 Number of Directors**

- (a) Unless otherwise determined by NTDC in general meeting, the number of directors will not be less than 3 nor more than 9.
- (b) At least one of the directors must be an Australian resident and there must be an Australian resident director of the Company at all times.

### 14.3 Appointment of Directors

Subject to **clause 14.2**, the Directors have power at any time, and from time to time, to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors.

### 14.4 Appointment of Directors by Sole Director

If, for any reason, NTDC has only one director, then that director must appoint another director by recording the appointment and signing the record, but any appointment of directors under this provision must be ratified by resolution of the members.

### 14.5 Appointment and Removal of Directors by Company

Subject to **clause 14.2**, the members of NTDC may by resolution remove any director and may by resolution appoint any person as a director.

### 14.6 Remuneration of Directors

- (a) Each director is entitled to be remunerated out of the funds of NTDC as determined by the Company by resolution.
- (b) For the purposes of this constitution, the amount fixed by NTDC as remuneration for a director will not include any amount paid by the Company or related body corporate:
  - (i) to a superannuation, retirement or pension fund for a director so that NTDC is not liable to pay the superannuation guarantee charge or similar statutory charge; or
  - (ii) for any insurance premium paid or agreed to be paid for a director under **clause 25.2**.
- (c) The remuneration of a director:
  - (i) may be a stated salary or a fixed sum for attendance at each meeting of Directors or both; or
  - (ii) may be a share of a fixed sum determined by NTDC in general meeting to be the remuneration payable to all directors, which is to be divided between the directors in the proportions agreed between the directors or, failing agreement, equally,

and if it is a stated salary under **clause 14.6(c)(i)** or a share of a fixed sum under **clause 14.6(c)(ii)**, will be taken to accrue from day to day.

- (d) In addition to his or her remuneration under **clause 14.6(a)**, a director is entitled to be paid all reasonable travelling and other expenses properly incurred by that director in connection with the affairs of NTDC, including attending and returning

from general meetings of the Company or meetings of the Directors or of committees of the Directors, accommodation and meal allowances.

- (e) If a director renders or is called upon to perform extra services or to make any special exertions in connection with the affairs of NTDC, the Directors may arrange for a special remuneration to be paid to that director, either in addition to or in substitution for that director's remuneration under **clause 14.6(a)**.
- (f) Nothing in **clause 14.6(a)** restricts the remuneration to which a director may be entitled as an officer of NTDC or of a related body corporate in a capacity other than director, which may be either in addition to or in substitution for that director's remuneration under **clause 14.6(a)**.
- (g) The Directors may establish or support, or assist in the establishment or support of, funds and trusts to provide pension, retirement, superannuation or similar payments or benefits to or in respect of the directors or former directors.

#### **14.7 Share Qualifications**

- (a) A director is not required to hold any shares of NTDC to qualify for appointment as a director unless determined otherwise by the members of the Company by resolution.
- (b) A director is entitled to receive notices of general meetings and attend and speak at general meetings even though that director is not a member of NTDC.

#### **14.8 Vacation of Office of Director**

In addition to the circumstances in which the office of a director becomes vacant by virtue of the Act, the office of a director is automatically vacated if the director:

- (a) becomes bankrupt; or
- (b) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health; or
- (c) resigns by giving written notice to NTDC at NTDC's registered office; or
- (d) becomes prohibited from being, or otherwise ceases to be, a director by virtue of the Act; or
- (e) dies.

#### **14.9 Death, Mental Incapacity or Bankruptcy of Sole Director**

If, in any case, a director who is both the sole director of NTDC:

- (a) dies or becomes mentally incapable, then the director's personal representative or trustee may appoint a new director of NTDC (including themselves); or

- (b) becomes bankrupt, then the trustee in bankruptcy may appoint a new director of NTDC (including themselves)

but any appointment under this **clause 14.9** must be ratified by a resolution of the members.

## **15. POWERS AND DUTIES OF DIRECTORS**

### **15.1 Management of the Company**

The business of NTDC is to be managed by or under direction of the Directors.

### **15.2 General Powers of the Directors**

The Directors may exercise all of the powers of NTDC except any powers that the Act or this constitution requires the Company to exercise in general meeting.

### **15.3 Formation Costs**

The Directors may pay out of NTDC's funds all expenses of the promotion, formation and registration of the Company and the vesting in it of the assets acquired by it.

### **15.4 Power of Attorney**

- (a) The Directors may by power of attorney appoint any corporation, firm, or person or body of persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys of NTDC for any purposes and with powers, authorities, and discretions (not exceeding those vested in or exercisable by the Directors under this constitution) and for any period and subject to any conditions as the Directors think fit.
- (b) The Directors may authorise any attorney appointed under **sub-clause (a)** to delegate all or any of the powers, discretions and duties vested in the attorney.
- (c) Any powers of attorney granted under **sub-clause (a)** may contain provisions for the protection and convenience of persons dealing with that attorney as the Directors think fit.

### **15.5 Negotiable Instruments**

The Directors may determine how cheques, promissory notes, bankers drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by or on behalf of NTDC.

### **15.6 Minutes**

- (a) The Directors will cause minute books to be kept in which NTDC records within one month:
  - (i) proceedings and resolutions of meetings of members;

- (ii) proceedings and resolutions of Directors' meetings (including meetings of a committee of the Directors);
  - (iii) resolutions passed by members without a meeting; and
  - (iv) resolutions passed by the Directors without a meeting;
- (b) Any powers of attorney granted under **clause 15.4** and any delegation of powers made under **clauses 16.10 and 16.13** must be recorded in NTDC's minute book.
- (c) The Directors must ensure that minutes of a meeting are signed within a reasonable time after the meeting by the chair of the meeting or the chair of the next meeting.
- (d) The director of a proprietary company with only 1 director must sign the minutes of the making a declaration by the Director within a reasonable time after the declaration is made.

### **15.7 Registers**

The Directors will cause the following company registers to be kept:

- (a) a register of members, in accordance with **clause 2.2**;
- (b) where options are issued, a register of option holders; and
- (c) where debentures are issued, a register of debenture holders.

## **16. DIRECTORS MEETINGS & DISCLOSURES**

### **16.1 Holding of Directors Meetings**

- (a) The Directors may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit.
- (b) A director may at any time, and the Company Secretary will on the request of a director, call a meeting of the Directors by reasonable notice individually to each director.
- (c) A director who is, for the time being, out of Australia is only entitled to receive notice of a meeting of the Directors if the director has given written notice to NTDC of an address for the giving of notices of meetings.

### **16.2 Holding of Other Offices**

A director may hold any other office or place of profit (except that of auditor) under the Company in conjunction with the office of director on terms and conditions as to remuneration and otherwise as agreed by the Directors or the Company in general meeting.



### 16.3 Directors' Interests

- (a) A director is not disqualified from holding any office or place of profit (except that of auditor) in the Company or in any company in which NTDC is a shareholder or otherwise interested by virtue of being a director of NTDC.
- (b) A director may contract with NTDC either as vendor, purchaser or otherwise and no contract, agreement or arrangement entered into by or on behalf of the Company in which any director is in any way interested will be avoided by reason of the director being a party to that contract or agreement or arrangement;
- (c) No director is liable to account to NTDC for any profits arising from any office or place of profit or realised by any contract, agreement or arrangement by reason only of the director holding that office or because of the fiduciary obligations arising out of that office.
- (d) Subject to **clause 16.3(e)**, a director who is in any way interested in any contract, agreement or arrangement or proposed contract, agreement or arrangement may, despite that interest:
  - (i) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract, agreement or arrangement or proposed contract, agreement or arrangement;
  - (ii) vote in respect of, or in respect of any matter arising out of, the contract, agreement or arrangement or proposed contract, agreement or arrangement; and
  - (iii) sign any document relating to that contract, agreement or arrangement or proposed contract, agreement or arrangement NTDC may execute.
- (e) **Clause 16.3(d)** does not apply if, and to the extent that, it would be contrary to the Act.

### 16.4 Disclosure of Interests

- (a) A director must declare the nature of the interest the director has in any contract, agreement or arrangement or proposed contract, agreement or arrangement or any other material personal interest in a matter relating to the affairs of NTDC at the meeting of the Directors at which the contract, agreement, arrangement or matter is first taken into consideration if the interest exists at the time of the meeting or, in any other case, at the first meeting of the Directors after the director acquires the interest unless the Act specifies that notice does not need to be given.
- (b) If a director becomes interested in a contract, agreement or arrangement after it is made or entered into, the declaration of the interest required by **sub-clause (a)** must be made at the first meeting of the Directors held after the director acquires the interest.

### **16.5 General Disclosure**

- (a) A general notice that a director is a member of any specified firm or company and is to be regarded as interested in all transactions with that firm or company is sufficient declaration under **clause 16.4** of a director's interest.
- (b) After a director gives a general notice under **sub-clause (a)**, it is not necessary for that director to give a special notice relating to any particular transaction with that firm or company.

### **16.6 Recording Disclosures**

The Company Secretary is obliged to record in the minutes any declaration made or any general notice given by a director under **clauses 16.4 and 16.5**.

### **16.7 Alternate Directors**

Any director with approval of the Directors may appoint another person as an alternate to exercise some or all of the director's powers for a specified period and:

- (a) if the appointing director requests NTDC to give the alternate notice of Directors meetings, the Company must do so;
- (b) when an alternate exercises the director's powers, the exercise of the power is as effective as if the powers were exercised by the director;
- (c) the alternate is not be required to meet the share qualifications for directors (if any);
- (d) NTDC is not be required to pay the alternate any remuneration but the alternate must be reimbursed for expenses incurred as for other directors under **clause 14.6(d)**;
- (e) the appointing director may terminate the alternate's appointment at any time; and
- (f) an appointment or its termination must be in writing, with a copy given to NTDC.

### **16.8 Quorum**

Unless the Directors determine otherwise, or there is only 1 director, the quorum for a Directors meeting is fifty percent (50%) plus one (1) and the quorum must be present at all times during the meeting.

### **16.9 Chair of Directors Meetings**

- (a) The Chair is the chair of all Directors meetings.
- (b) The Directors must elect another director present at the meeting to chair a meeting, or part of it, if the Chair is:
  - (i) unavailable for any reason to chair the meeting; or

- (ii) is not present to chair the meeting within 15 minutes of the designated start time of the meeting.

#### **16.10 Delegation to Committees**

- (a) The Directors may delegate any of the Directors' powers to committees consisting of some, but not all, of the directors as the Directors think fit and any delegation to a committee must be recorded in the minutes.
- (b) A committee must:
  - (i) conform to any regulations that may be imposed on it by the Directors in exercising the powers delegated by the Directors; and
  - (ii) exercise the powers delegated to it in accordance with any directions of the Directors,
- (c) The effect of a committee exercising a power consistently with this clause is the same as if the Directors exercised the power.
- (d) The appointment of a committee of the Directors may be a standing committee or an ad hoc committee.

#### **16.11 Conduct of Committee Meetings**

- (a) A committee may elect a chair of its meetings. If no chair is elected, or if at any meeting the chair is not present within 15 minutes after the time appointed for holding the meeting, the members present at the meeting may elect one of their number to be chair of the meeting.
- (b) A committee may meet and adjourn as that committee thinks proper or necessary.

#### **16.12 Votes at Directors and Committee Meetings**

A resolution of the Directors or a committee must be passed by a majority of votes of the directors entitled to vote on the resolution. In the case of an equality of votes the chair does not have a second or casting vote.

#### **16.13 Delegation to Individual Directors**

- (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.
- (c) Acceptance of a delegation in this form may, if the Directors so resolve, be treated as an extra service or special exertion performed by the delegate for the purposes of **clause 14.6(e)**.

#### 16.14 Validity of Directors' Acts

- (a) An act done by a person acting as a director or by a meeting of Directors or a committee of Directors attended by a person acting as a director is not invalidated by reason only of:
- (i) a defect in the appointment of the person as a director;
  - (ii) the person being disqualified to be a director or having vacated office; or
  - (iii) the person not being entitled to vote,
- if that circumstance was not known by the person or the Directors or committee (as the case may be) when the act was done.

#### 16.15 Written Resolution

- (a) If:
- (i) all of the Directors, other than:
    - A. any director on leave of absence approved by the Directors;
    - B. any director who disqualifies himself or herself from considering the act, matter, thing or resolution in question on the grounds that he or she is not entitled at law to do so or has a conflict of interest; and
    - C. any director who the Directors reasonably believe is not entitled at law to do the act, matter or thing or to vote on the resolution in question,assent to a document containing a statement to the effect that an act, matter or thing has been done or resolution has been passed; and
  - (ii) the directors who assent to the document would have constituted a quorum at a meeting of Directors held to consider that act, matter, thing or resolution.
- then that act, matter, thing or resolution is to be taken as having been done at or passed by a meeting of the Directors.
- (b) Separate counterpart documents may be used for signing by directors if the wording of the resolution and statement is identical in each counterpart copy.
- (c) The resolution is passed on that date on which the last director signs.

### **16.16 Sole Director Resolutions**

If the Company has only 1 director, that director may:

- (a) pass a resolution by recording it and signing the record; and
- (b) make a declaration by recording it and signing the record.

Recording and signing the declaration satisfies any requirement of the Act that the declaration be made at a Directors meeting. However, the powers of a sole director are limited to those powers necessary to appointing other directors to the Company to ensure that the minimum number of directors is appointed and a sole director must not undertake any other substantive business on behalf of NTDC apart from the appointment of additional directors.

### **16.17 Manner of Holding Meetings**

- (a) A Directors' meeting may be called or held using any technology consented to by all the directors.
- (b) A consent to use technology is deemed to be a standing consent and remains valid unless and until it is revoked by a Director.
- (c) A Director may only withdraw the Director's consent under this **clause 16.17** within a reasonable period before the meeting.

## **17. MANAGING DIRECTORS**

### **17.1 Appointment of Managing Director**

The Directors may appoint one or more directors to the office of managing director of NTDC for the period, and on the terms (including as to remuneration), as the Directors see fit.

### **17.2 Cessation of Appointment**

A person ceases to be managing director if they cease to be a Director.

### **17.3 Powers of Managing Director**

- (a) The Directors may:
  - (i) confer upon a managing director any of the powers exercisable by the Directors upon terms and conditions and with any restrictions as the Directors may think fit; and
  - (ii) authorise the managing director to delegate all or any of the powers, discretions and duties conferred on the managing director.
- (b) An act done by a person acting as the managing director is not invalidated by reason only of:

- (i) a defect in the person's appointment as a managing director; or
  - (ii) the person being disqualified to be a managing director;
- if that circumstance was not known by the person when the act was done.

#### **17.4 Appointment, Removal and Powers**

The Directors may revoke, withdraw, alter or vary:

- (a) an appointment; or
- (b) all or any of the powers conferred on the managing director.

### **18. ASSOCIATE DIRECTORS**

#### **18.1 Appointment, Removal and Powers**

- (a) The Directors may appoint any person to be an associate director and may at any time cancel appointment of an associate director.
- (b) The Directors may fix, determine and vary the powers, duties and remuneration of any associate director.
- (c) An associate director is not required to hold any shares to qualify for appointment nor has any right to vote at any meeting of the Directors except by the invitation and with the consent of the Directors.

### **19. SECRETARY**

#### **19.1 Appointment, Removal & Powers**

- (a) The Directors may, and if required by the Act will, appoint 1 or more Company Secretaries for the term, at the remuneration, and upon the conditions as they think fit.
- (b) Any Company Secretary appointed by the Directors may be removed by the Directors.

### **20. EXECUTION OF DOCUMENTS**

#### **20.1 Common Seal**

NTDC may have a common seal. If the Company does have common seal then:

- (a) the common seal must comply with the Act;
- (b) the Directors will provide for the safe custody of the common seal; and
- (c) the seal may only be used by the authority of the Directors or of a committee of the Directors authorised by the Directors in that respect.

## **20.2 Execution under Common Seal**

If NTDC does have a common seal then it may execute a document if the seal is fixed to the document and the fixing of the seal is witnessed by:

- (a) 2 directors of NTDC;
- (b) a director and a Company Secretary;
- (c) a director nominated for that purpose by the Directors; or
- (d) if NTDC has a sole director who is also the sole Company Secretary or a sole director and no secretary – that director, but only in accordance with **clause 16.6**.

## **20.3 Execution without Common Seal**

NTDC may execute a document without using a common seal if the document is signed by:

- (a) 2 directors of NTDC;
- (b) a director and a Company Secretary;
- (c) a director nominated for that purpose by the Directors; or
- (d) if NTDC has a sole director who is also the sole Company Secretary or a sole director and no secretary – that director, but only in accordance with **clause 16.6**.

## **20.4 Directors' Interests**

A director may sign a document to which the seal of NTDC is fixed even if the director is interested in the contract, agreement or arrangement to which the document relates.

## **21. ACCOUNTS & RECORDS**

### **21.1 Accounting Records**

The Directors will cause proper accounting and other records to be kept and will distribute copies of financial statements as required by the Act.

### **21.2 Access to Records**

- (a) The Directors will from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting and other records of NTDC or any of them will be open to the inspection of members not being directors.
- (b) No member (other than a director) has any right to inspect any accounting or other records of NTDC except as conferred by statute or as authorised by the Directors or by a resolution assessed at a general meeting.

## **22. NOT-FOR-PROFIT**

### **22.1 Determination of Income**

NTDC must determine income in accordance with ordinary accounting principles, and unless otherwise exempt, must pay all taxation liabilities on the derivation of that income as may be required from time to time.

### **22.2 No Dividends**

NTDC must not distribute any income directly or indirectly to members, whether as dividends or otherwise, but nothing in this **clause 22** prohibits the Company from contracting with, paying or reimbursing any member or Director of the Company in accordance with any other express provision of this constitution.

### **22.3 No Capital Distributions**

NTDC must not distribute any capital directly or indirectly to members, whether as cash or by *in specie* distribution.

### **22.4 Catch All**

For the avoidance of doubt, any other provision of this constitution, whether express or implied, that is inconsistent with the provisions of this **clause 22** is void and of no effect.

## **23. CAPITALISATION OF PROFITS**

### **23.1 Capitalisation of Reserves**

Subject to **clause 22** the Directors may resolve to capitalise any part of the amount for the time being standing to the credit of any of the Company's reserve accounts or to the credit of the profit and loss account or otherwise.

### **23.2 Powers of Directors**

Whenever a resolution under **clause 22.1** has been passed, the Directors must make all appropriations and applications of the undivided profits resolved to be capitalised by that resolution and generally do all acts and things required to give effect to that resolution.

## **24. NOTICES**

### **24.1 Giving of Notices**

NTDC may give notice to any director or member:

- (a) personally; or
- (b) by sending it by post to the address of the director as notified to the Directors or the address for the member in the register of members or the alternative address (if any) nominated by the director or member; or



- (c) by sending it to the facsimile number or electronic address (if any) nominated by the director or the member.

Any notice sent by post is taken to be given two Business Days after it is posted. Any notice sent by facsimile or other electronic means is taken to be given on the Business Day after it is sent.

#### **24.2 Notice to Joint Members**

Notice to joint members must be given to the joint member first named in the register of members.

#### **24.3 Notice to Representatives**

A notice may be given by NTDC to persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name; or by the title of representatives of the deceased, or assignee of the bankrupt, or by any similar description, at the address, if any, within Australia supplied for the purpose by the persons claiming to be so entitled, or (until an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

#### **24.4 Entitlement to Notices**

Notice of every general meeting will be given in any manner authorised by this constitution to:

- (a) every member except those members who (having no registered address within Australia) have not supplied to NTDC an address for the giving of notices to them;
- (b) every person entitled to a share in consequence of the death or bankruptcy of a member who, but for the death or bankruptcy, would be entitled to receive notice of the meeting;
- (c) the Directors of NTDC;
- (d) the Company Secretary or Secretaries; and
- (e) the auditor for the time being of NTDC.

No other person is entitled to receive notices of general meetings.

### **25. BY-LAWS**

**25.1** Subject to **clause 25.2**, the directors may pass any resolution to make by-laws that are binding on the members, whether to give effect to:

- (a) this constitution; or
- (b) any other written instrument that purports to bind the members;

**25.2** Any by-law that purports to limit or encumber the power of members in relation to the appointment and removal of the Directors must be approved by a Special Resolution of the members.

## **26. INDEMNITY AND INSURANCE**

### **26.1 Extent of Indemnity**

NTDC must indemnify (either directly or through one or more interposed entities) any person who is or has been a Director, Company Secretary or executive officer of the Company and, if so resolved by the Directors, the auditor of the Company, out of the funds of the Company against the following:

- (a) any liability to another person (other than NTDC or a related body corporate) unless the liability arises out of conduct involving a lack of good faith;
- (b) any liability for costs and expenses incurred by that person:
  - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
  - (ii) in connection with an application, in relation to those proceedings, in which the court grants relief to the person under the Act.

### **26.2 Insurance**

- (a) NTDC may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been an officer of the Company or of a related body corporate of the Company against a liability:
  - (i) incurred by the person in his or her capacity as an officer of NTDC or a subsidiary of the Company or in the course of acting in connection with the affairs of the Company or otherwise arising out of the officer holding any office provided that the liability does not arise out of conduct involving a wilful breach of duty in relation to the Company or a subsidiary of the Company or a contravention of sections 482 and 183 of the Act; or
  - (ii) for the costs and expenses incurred by that person in defending proceedings, whatever their outcome.

## **27. AUDIT**

### **27.1 Audit**

An auditor or auditors must be appointed by the Directors for NTDC if the Company is required to appoint an auditor by the Act and, if not so required, then the Directors have the discretion to appoint an auditor or auditors.

## 27.2 Compliance

In all other respects, NTDC must comply with generally accepted accounting principles in the jurisdiction in which the Company is based and must provide the necessary reports as required by the Corporations Law, in accordance with the Tier in which the Company is positioned from time to time.

## 28. PROVISION FOR DORSET COUNCIL

### 28.1 Acknowledgment

The Company and the Initial Members acknowledge that Dorset Council is entitled to be admitted as an Initial Member of NTDC.

### 28.2 Admission as an Initial Member

If, at any time after the registration of NTDC, Dorset Council, resolves to become a member of the Company, the Directors must admit Dorset Council as a member.

### 28.3 Rights on Admission

Subject to the terms of this Constitution and any other constituent document of the Company, Dorset Council is deemed to be an Initial Member of the Company and will enjoy all of the rights and privileges of being an Initial Member, albeit from the date that it is registered in the register of members.

## 29. COMPANY CAN BE A SPECIAL PURPOSE COMPANY

### 29.1 Variations when company acting solely as a superannuation fund trustee

*Intentionally omitted*

## 30. WINDING UP

### 30.1 No Distribution of Surplus Assets to Members

If NTDC is wound up (whether voluntarily or otherwise) no surplus assets may be distributed to any member of the Company or any former member of the Company, unless that members fits within the parameters of **clause 30.2**.

### 30.2 Distribution of Surplus Assets

After all of the liabilities (including employee entitlements) and expenses of winding up have been paid and settled, subject to:

- (a) the Act;
- (b) any other act or legislation that may apply; and
- (c) the order of any court of competent jurisdiction

NTDC may distribute any surplus assets to any one or more:

- (d) organisations with similar purposes and objectives to NTDC;
  - (e) charities registered with the Australian Charities and Not-For-Profits Commission
- provided that any recipient of surplus assets from NTDC must also have provisions in its constituent documents that:
- (f) prohibits the distribution of income and capital to its members; and
  - (g) requires the distribution of surplus assets to be treated in a similar manner as this **clause 30**.

#### **SCHEDULE OF INITIAL MEMBERS**

1. Break O’Day Council
2. Flinders Island Council
3. Georgetown Council
4. Launceston City Council
5. Meander Valley Council
6. Northern Midlands Council
7. West Tamar Council

**SCHEDULE 1**

**AGREEMENT**

Each of the undersigned, being the persons specified in the application for NTDC's registration as a person who consents to become a member, agrees to the terms of this Constitution.

<b>Full name and address of each member</b>	<b>Signature on behalf of the Member</b>
1. Break O'Day Council 32-34 Georges Bay Esplanade, St Helens Tasmania 7216	
2. Flinders Island Council PO Box 40, Whitemark Tasmania 7255	
3. Georgetown Council PO Box 161 George Town Tasmania 7253	
4. Launceston City Council PO Box 396 Launceston Tasmania 7250	
5. Meander Valley Council PO Box 102 Westbury Tasmania 7303	
6. Northern Midlands Council PO Box 156 Longford Tasmania 7301	
7. West Tamar Council PO Box 59 Beaconsfield Tasmania 7270	

**Northern Tasmania Development Corporation Limited**

**ACN \*\*\***

**Stakeholders Agreement**

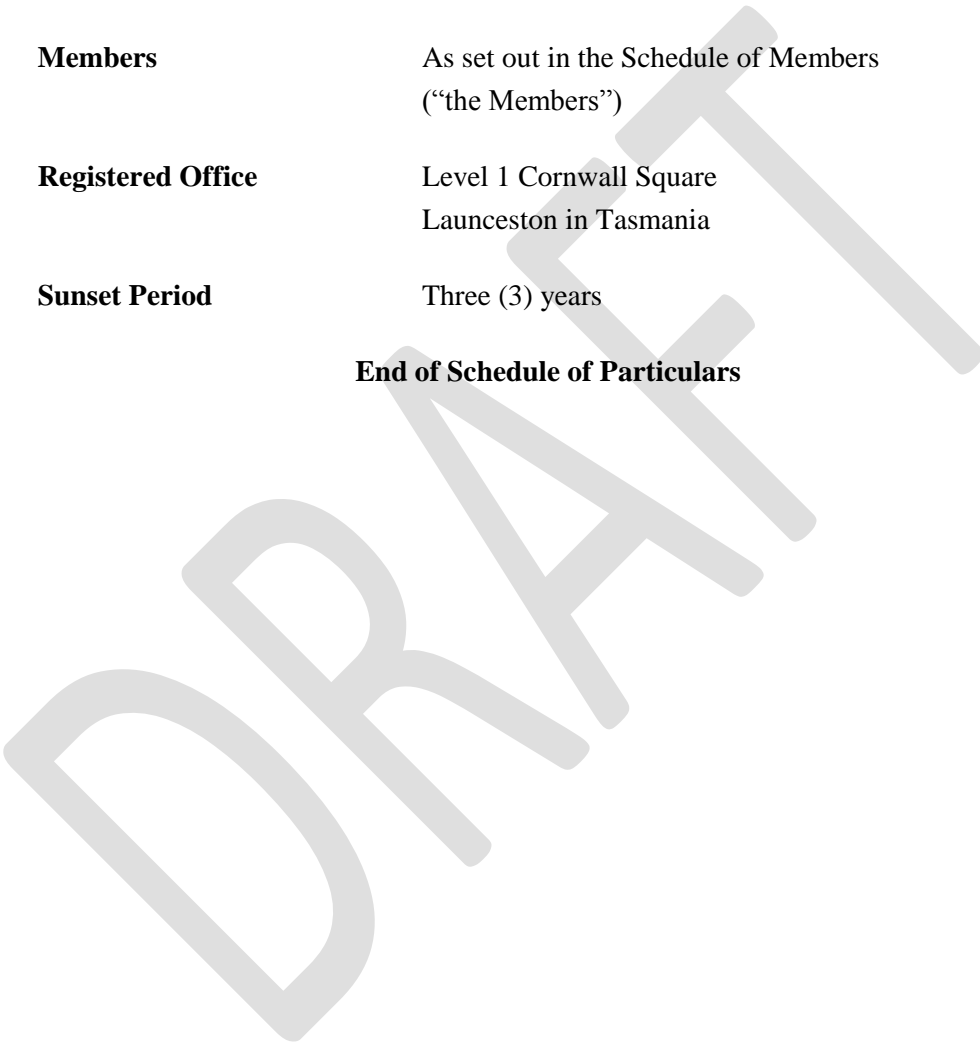
**LEVIS STACE & COOPER**  
*a division of Rae & Partners*

13 Fenton Street  
Devonport, Tasmania  
Tel: (03) 6424 0333  
Fax: (03) 6424 8833  
Ref: MJP:164421

**Schedule of Particulars**

- 1. Date of Agreement**                    The ..... day of ..... 20.....
  
- 2. The Organisation**                    Northern Tasmania Development Corporation Limited  
also trading as NTDC Limited  
("the Organisation")
  
- 3. Members**                                As set out in the Schedule of Members  
("the Members")
  
- 4. Registered Office**                    Level 1 Cornwall Square  
Launceston in Tasmania
  
- 5. Sunset Period**                         Three (3) years

**End of Schedule of Particulars**



**This Stakeholders Agreement** is made on the date set out at **Item 1** of the Schedule of Particulars.

**Between** The Organisation set out at **Item 2** of the Schedule of Particulars

**And** The Members set out at **Item 3** of the Schedule of Particulars

### **Background**

**A.** The Organisation set out in **Item 2** of the Schedule of Particulars is a properly constituted company limited by guarantee.

A copy of the Organisation's certificate of incorporation is annexed and marked "A".

A copy of the SAI Global Company Extract is annexed and marked "B".

A copy of the Company Constitution is annexed and marked "C".

**B.** Historically, the Organisation had previously existed as a not-for-profit company but was converted to an incorporated association in 2012<sup>1</sup>. However, upon the recommendation of Bill Fox & Associates, the stakeholders of the Organisation in its prior form agreed to adopt a recommendation to convert to a company limited by guarantee, as set out in Background Item A.

**C.** As at the date of this Agreement, the Members set out at **Item 3** of the Schedule of Particulars are:

- 1.** all bound by guarantee to contribute the Guarantee Amount, set out in the Constitution, to the Organisation on a winding up; and
- 2.** the legal owners of all of the issued shares/allocated units of the Company/Trust that undertakes the Organisation and each of the ownership entities, where an Owner is not natural person is owned or controlled by a Principal of the Organisation.

**D.** The Members have agreed to enter into this Stakeholders Agreement ("the Agreement") to more fully regulate their commercial and business relationships as members of the Organisation.

**E.** The corporate entity of the Organisation is also joined in to this Agreement in order to take notice of the provisions contained in this Agreement and as far as is permitted by the Corporations Law and its constituent documents, to conduct the Organisation and affairs of it as contemplated by the provisions of this Agreement.



## Agreement

### 1. Definitions and Interpretation

1.1 Unless there is something in the subject or context inconsistent the following meanings apply in this Agreement:

- (a) “Agreement” means this Stakeholders Agreement and all of the Background, Parts, terms, clauses, schedules, annexures, tables or exhibits to it, as amended by the parties from time to time;
- (b) “Assets” means the all of the assets, property (real and personal) and choses in action of the Organisation;
- (c) “Background” means the part of this Agreement that follows the heading of that name, and enumerated by letters rather than numbers;
- (d) “Confidential Information means and includes:
  - (i) any information concerning the Organisation, its methods of operation, strategic direction, marketing and other activities;
  - (ii) financial information concerning the Organisation and its related activities;
  - (iii) specialised or corporate documentation produced by the Organisation; and
  - (vi) specialised of corporate documentation produced by entities associated with the Organisation

which information, whether in the nature of trade secrets or otherwise, is not in the public domain;

- (e) “Constituent Documents” means:
  - (i) this Agreement;
  - (ii) the Company Constitution of the Organisation;
  - (iii) any by-laws created by the Organisation under the Company Constitution; and

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<sup>1</sup> Bill Fox & Associates, 2016, *Review of Regional Bodies of Northern Tasmania* Final Report, p6.

- (iv) any other document deemed to be a Constituent Document by the Organisation
- (f) “Corporations Law” means the *Corporations Act 2001* (Cth) as amended from time to time;
- (g) “Director” means, in the case of a natural person or persons, the respective heirs, personal legal representatives and permitted assigns of that person or persons;
- (h) “Division 7” means Division 7 of the *Income Tax Assessment Act 1997* in respect of inter-entity and related-party loans;
- (i) “Intellectual Property” has the following extended meaning:
  - (i) the Organisation’s name and all unregistered trading names used by the Organisation;
  - (ii) all copyright, moral rights, trademarks (registered and unregistered), designs (registered and unregistered) of the Organisation;
  - (iii) all of the documents, forms, processes, know-how, systems, of any description of the Organisation;
  - (iv) all domain names, telephone numbers and email addresses used in the the Organisation; and
  - (v) all hard copy images used in yellow pages and other advertising, if any, of the the Organisation;
- (j) “Member” means:
  - (i) in the case of a natural person or persons, the respective heirs, personal legal representatives and permitted assigns of that person or persons; and;
  - (ii) in the case of a corporation or trust entity, the officers, servants, agents, attorneys and permitted assigns of that entity;
  - (iii) in the case of any other body, however it is constituted, the officers, servants, agents, attorneys and permitted assigns of that body;
- (k) “Organisation” means, in the case of a corporation, the officers, servants, agents, attorneys and permitted assigns of the Organisation;

(l) “Part” means a reference to the relevant Part of this Agreement;

**1.2** Unless there is something in the subject or context that is inconsistent the following provisions apply in this Agreement:

- (a) any covenants implied by law (statutory or otherwise) are not negated but are deemed, to the extent of any inconsistency with the provisions of this Agreement, to be modified (where modification is permitted);
- (b) where two (2) or more persons are named as a party to this Agreement the terms, covenants, conditions, provisions, stipulations and restrictions contained in this Agreement bind each of them jointly and severally and benefit each of them jointly and severally;
- (c) if any term, covenant, condition, provision, stipulation or restriction contained in this Agreement is or becomes illegal or unenforceable, then this Agreement must be read and construed as if that term, covenant, condition, provision, stipulation or restriction, as the case may be had been severed and the balance of this Agreement remains in full force and effect;
- (d) a reference to any document or instrument (and, where applicable, to any of its provisions) is a reference to that document or instrument as amended, novated, supplemented or replaced from time to time
- (e) a reference to a right includes a benefit, remedy, discretion, authority or power;
- (f) a reference to the whole of property or a thing includes part of that property or thing unless stated otherwise;
- (g) a reference to a statute, code or other law includes regulations and other instruments under it, and consolidations, amendments, re-enactments or replacements of any of them occurring at any time before or after the date of the Agreement;
- (h) where any expression is defined, any other part of speech or grammatical form of that expression has a corresponding meaning;
- (i) where the word “including” is used, that use does not limit or exclude in any way unless the context requires otherwise
- (j) words importing the singular include the plural and vice versa;

- (k) words importing the masculine gender include the feminine and/or a corporation and vice versa;
- (l) words importing persons include a firm, a body corporate, an unincorporated association or an authority and vice versa;
- (m) headings are inserted for guidance only and are not deemed to form part of the provisions of this Agreement and must not be used for the purpose of construction;
- (n) the first letters of words and expressions defined in this document are indicated by capital letters for convenience and the absence of a capital letter alone does not imply the word or phrase is used with a meaning different from that given by its definition;
- (o) a reference to “dollar” or “\$” is a reference to the lawful currency of Australia;
- (p) a reference to a time or date affecting the performance of an obligation by a party is a reference to the time and date in Tasmania, even though the obligation is to be or may be performed elsewhere;
- (q) where the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday in the place in which that thing is to be done then that thing must be done on or by the next succeeding Organisation day;
- (r) if a period of time is expressed to be calculated from or after a specified day, that day is not included in the period; and
- (s) a provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement or the inclusion of the provision in this Agreement.
- (t) a reference to a person who is an “associate” of another person is a reference to a person who is an associate of that other person within the meaning of Part 1.2 of Division 2 of the Corporations Law.
- (u) a reference to a person “entitled to” shares in a company is a reference to a person entitled to those shares within the meaning of Part 1.2 of Division 2 of the Corporations Law.

## **2. Acknowledgments**

**2.1** The parties acknowledge that the Background of this Agreement sets out a true, accurate and complete representation of the commercial relationship between the parties and the circumstances surrounding the execution of this Agreement.

**2.2** Each party separately acknowledges for the benefit of each other party that:

- (a)** they have entered into this Agreement after mature consideration, reflection, and exercise of independent judgment;
- (b)** they have read and understood the provisions of this Agreement and that the provisions are just, equitable, fair, reasonable and satisfactory to them;
- (c)** they have entered into this Agreement of their own free will and volition and that no coercion, force, or undue influence has been used in the execution of this Agreement either by the other party or by any other person or persons;
- (d)** they have either obtained independent legal advice, or are aware of their right to do so, and have chosen not to do so; and
- (e)** they have not relied upon any representation or promise in entering into this Agreement except for those expressly stated in this Agreement.

**2.3** The parties expressly acknowledge and agree that if there is any inconsistency, discrepancy or conflict that arises in respect of the interpretation or application of any of the Constituent Documents, the order of priority of the documents to the extent of that inconsistency, discrepancy or conflict is as follows:

- (a)** the provisions of this Agreement take priority over all subordinate Constituent Documents;
- (b)** the provisions of the Company Constitution take next priority over all other subsequent subordinate Constituent Documents;
- (c)** the provisions of any by-laws created by the Directors take next priority over all other subsequent subordinate Constituent Documents; and
- (d)** any other document deemed by the parties to be a Constituent Document takes last priority.

### **3. Purpose and Objectives**

- 3.1** The parties agree to carry on the Organisation set out at **Item 2** of the Schedule of Particulars, (and under the trading name also set out at **Item 2** of the Schedule of Particulars) with the common purpose of achieving the primary objectives set out in **clause 3.2**.
- 3.2** The primary objectives of the Organisation are to:
- (a) provide regional economic, social and community leadership;
  - (b) consolidate an agreed vision for the development, sustainability and prosperity of the geographic region that the Organisation's Members encompass;
  - (c) and implement a strategic economic action plan based on the Northern Regional Futures Plan framework or similar; and.
  - (d) to provide effective representation and advocacy to State and Federal Government and other stakeholders.
- 3.3** It is a fundamental principal of the Organisation that the Members remain in effective control of the Organisation for the purposes of achieving the primary objectives for the benefit of the Members.

### **4. Corporate Governance Structure – Appointment of Chair and Directors**

- 4.1** The parties agree that the governance structure of the Organisation is as follows:
- (a) The Organisation has a board of Directors comprising not less than three (3) and not more than nine (9) directors ("the Board") but the parties agree that the optimal size of the Board is seven (7) Directors;
  - (b) One of the Directors from time to time is designated as the chairperson of the Board ("the Chair");
  - (c) The shareholders of the Organisation are the Members;
  - (d) The Board will appoint, from time to time, a competent person to serve the Organisation, as an employee, in the role of Chief Executive Officer ("CEO"); and
  - (e) All other employees of the Organisation will be appointed and managed by the CEO.

- 4.2** The parties agree that the person acting as Chair of the Board must be an independent chair and therefore must hold no other position of profit:
- (a) in or for the Organisation (apart from as Chair); or
  - (b) in or for any of the Members.
- 4.3** The inaugural Chair is to be appointed by the Organisation’s Selection Committee and the Members acknowledge that this function has been executed by the Members prior to the formal incorporation of the Organisation. Accordingly, as at the date of this Agreement, the Chair of the Organisation will already be selected and is operating in the role.
- 4.4** After the expiry of the term of the inaugural Chair, a new Chair will be appointed, from time to time, by the Board in accordance with the provisions of the Company Constitution, but subject at all times to **clause 4.2** of this Agreement, and subject always to the rights of the Members as the shareholders of the Organisation.
- 4.5** The Members acknowledge that to comply with the Corporations Law, the Organisation has been incorporated with not less than three (3) Directors, including the Chair, as reflected in the SAI Global Company Extract that is annexed and marked “**B**”.
- 4.6** The Members acknowledge that the inaugural directors have been selected in accordance with the principles set out below, and expressly agree that all directors appointed on or after the date of this Agreement must be appointed by reference to these principles:
- (a) the over-riding intention of the Organisation is to have a skills-based Board;
  - (b) selection criteria and the appointment process must be constructed to select potential directors based on the skills required to implement the primary objectives of the Organisation, including and especially by reference to implementing the economic action plan based on the industry priorities of the Northern Region Futures Plan;
  - (c) selection of Directors must address other issues including:
    - (i) previous board experience;
    - (ii) understanding of contemporary governance issues;
    - (iii) financial literacy;
    - (iv) political sensitivity;

- (v) commercial acumen; and
  - (vi) local knowledge and connection in the Northern Tasmanian region;
- (d) selection of directors must also reflect diversity and the regional spread of geographic, social, cultural and moral influences.

The Members agree that the selection and appointment of new Directors from time to time may create overlaps in skills and experience and the replacement of one outgoing director does not necessarily have to be on a like for like basis.

**4.7** The Members acknowledge that it be necessary, prudent and even advantageous to appoint up to nine (9) Directors initially, with a view to that number tapering down over time to the optimal number of seven (7) Directors and, accordingly, agree to do so.

**4.8** In order to facilitate a sustainable rotation of Directors after the initial terms are completed, the construction of terms of the inaugural Board of Directors is as follows:

- (a) the inaugural Chair is appointed for an initial period of three (3) years, with an option to extend for a second period of three (3) years, with the consent of the Members. Any period of service by the Chair prior to the formal incorporation of the Organisation is ignored and is in addition to this period. It is contemplated that the Chair will be replaced at the end of the Chair's full term;
- (b) the next two (2) Directors are also appointed for a period of six (6) years each, being two (2) full terms each of three (3) years. It is contemplated that these Directors will be replaced at the end of these Directors' terms;
- (c) the next two (2) Directors are appointed for a period of five (5) years each, being one initial term of two (2) years and one subsequent term of three (3) years. It is contemplated that these Directors will be replaced at the end of these Directors' terms;
- (d) the next two (2) Directors are appointed for a period of four (4) years each, being one (1) initial term of one (1) year and one subsequent term of three (3) years. It is contemplated that these Directors will be replaced at the end of these Directors' terms; and
- (e) if determined by the Members to be necessary, the Members may also appoint up to two (2) additional persons to serve as inaugural directors, but these appointments will only be for a period of one (1) term of three (3) years. For the avoidance of doubt, any one or more appointments by the Members under this provision may be a



representative of the Members to facilitate a smooth transition from the old association structure to the new company limited by guarantee structure.

- 4.9** Each Director, including the Chair, must give notice to the Board not less than six (6) months prior the end of that Director's current term of appointment of that Director's intentions, namely if the Director has only served one (1) term of three (3) years, whether that Director seeks to be reappointed for a second term, or whether the Director seeks to retire. The purpose of this obligation is allow the Board reasonable time to select a new Director if required to do so.
- 4.10** Except as provided for in **clause 4.11** in relation to the Chair, after expiry of the full terms set out for each Director in **clause 4.8** above, that Director is not eligible for reappointment as a director, except by Special Resolution of the Members.
- 4.11** Upon the retirement (regardless of cause) of the Chair, the Board must advertise for a replacement independent Chair and the following provisions expressly apply:
- (a) if the new Chair is an external appointment by the Board, that Chair may serve, without the need for re-election, for two (2) full terms of three (3) years each in that role;
  - (b) if the new Chair is appointed internally (i.e. from one of the existing Directors who applies and is appointed) then if that Director has less than one full term of three (3) years remaining, that Director may serve for an additional term of three (3) years, making a total of up to nine (9) years' of service for that Director, but not more than six (6) years as Chair.
- 4.12** An existing Director must give notice to the Board as early as practicable of that Director's intention to seek appointment as the next Chair and must submit to the Board's agreed selection procedure. An existing Director who seeks to be appointed as Chair must not participate in an deliberations or voting in relation to the appointment of a new Chair.
- 4.13** Notwithstanding the preceding provisions, an incumbent Chair is subject to removal by the Members under the Constitution in the same way as all other Directors.

## **5. Role of the Board**

**5.1** The role of the Board is to govern the Organisation, rather than to manage it. This includes providing leadership and strategic guidance. The Board is accountable to the Members and the community for the performance of the Organisation in the best interest of economic development in the region. The principal functions and responsibilities of the Board include:

- (a) determining, reviewing and maintaining the vision, purpose and values of the Organisation;
- (b) approving a strategic plan, establishing measurable KPIs, targets and an annual operations plan;
- (c) regularly monitoring performance against the strategic plan and the annual operations plan;
- (d) appointing the CEO and approving the terms and conditions of employment of the CEO;
- (e) monitoring the performance of the CEO and termination of the employment contract of the CEO if necessary;
- (f) ensuring the organisation is proactive to opportunities rather than reactionary, whilst focusing on priorities that will deliver successful economic development throughout the region;
- (g) approving annual budgets, setting delegation authorities and monitoring financial performance throughout the year;
- (h) ensuring appropriate internal controls exist and an auditor (or accountant when revenues less than \$1M) is appointed to audit (or review) the organisation's financial records on an annual basis;
- (i) providing annual reports and any other agreed reporting to key stakeholders;
- (j) ensuring that there is an appropriate separation of duties and responsibilities between itself and the CEO/management;
- (k) establishing and determining the powers and functions of subcommittees;
- (l) reviewing the Board's ongoing performance;

- (m) ensuring that the Organisation complies at all times with all legal responsibilities and compliance requirements that the Organisation is subject to;
- (n) identify and ensure the appropriate management of risks to the Organisation and the region as it relates to economic development;
- (o) supporting effective engagement and appropriate communication with Members and stakeholders; and
- (p) managing and reviewing business risks associated with the Organisation.

**5.2** The following governance principles outline the strategic function of the Board:

- (a) Principle 1 – the Board plays a key role in approving the vision, purpose and strategies of the Organisation. The Board must act in the best interests of the Organisation and is accountable to the Members as a whole;
- (b) Principle 2 – the Board sets the cultural and ethical tone for the Organisation. This includes the ‘how’ of undertaking the work of the Organisation by being an exemplar of contemporary best practice and collaboration throughout the region;
- (c) Principle 3 – all directors are responsible to exercise independent judgment and provide independent oversight of management of the Organisation;
- (d) Principle 4 – the Board should comprise an appropriate number of directors for the size and scale of the organisation, with a relevant and diverse range of skills, expertise, experience and background and who are able to effectively understand the Organisation’s business and regional context.
- (e) Principle 5 – the Board should have an appropriate system of risk oversight and internal controls put in place;
- (f) Principle 6 – Directors should act diligently on an appropriately informed basis and have access to accurate, relevant and timely information;
- (g) Principle 7 – the Board would normally delegate certain functions to management. Where it does so, there should be a clear statement and understanding as to the functions that have been delegated;
- (h) Principle 8 – the Board is responsible for the appointment of the CEO and the continuing evaluation of the CEO’s performance;

- (i) Principle 9 – the Board should ensure that the organisation communicates with Members and other stakeholders in a regular and timely manner. The Board and management will respect the rights of Members and will not speak publically against any Member; and
- (j) Principle 10 – the Board’s performance (including the performance of the Chair, the individual Directors and the Board’s subcommittees) needs to be regularly assessed and appropriate actions taken to address any issues identified.

**5.3** The following provisions apply to the operations and activities of the Board:

- (a) the Board will meet at least ten (10) times per year to discharge the business of the Organisation, with meetings to be held monthly except during the months of December and January in each year;
- (b) meetings will be principally held in the Registered Office of the Organisation as set out at **Item 4**, but the Board, or the CEO may nominate a different location for any meeting, depending on the needs of the Organisation at the time;
- (c) Directors are permitted to miss no more than three (3) meetings in any financial year without the prior consent of the Board;

meet at a place designated by the CEO. The

**5.4** All other mechanics as to the operation of the Board are outlined in the Company Constitution.

**6. Role and Responsibilities of the Chair**

**6.1** The primary roles of the Chair are to:

- (a) provide leadership and vision to the Organisation;
- (b) represent the Board and the Organisation to the Members and to the broader community; and
- (c) to communicate the Board’s position on all relevant matters.

**6.2** To effectively discharge the primary roles of the Chair, the Chair has the following responsibilities:

- (a) to set the tone for the Board, including the establishment and focus on a common purpose;
- (b) to ensure that the Directors understand the responsibilities of Directors and that Board and management abide by the delegations of authority as set by the Board;
- (c) to act as a link between the Board and the CEO/management of the Organisation;
- (d) to contribute to development of a strong positive profile for the Organisation;
- (e) to counsel and advise Board members where required;
- (f) to ensure that the performance of the Board, collectively and individually, is reviewed as and when agreed by the Board;
- (g) to provide political liaison in dealings with all levels of government; and
- (h) to Act as the spokesperson for the Organisation where required.

**6.3** In addition to the responsibilities, the Chair chairs all meetings of the Organisation and in connection with that function the Chair is responsible to:

- (a) convene Board meetings and general meetings when required;
- (b) chair:
  - (i) Board meetings in a manner which ensures that Board discussions are focused on matters before the Board and result in consensus and commitment to clear and unambiguous Board decisions; and
  - (ii) General meetings in a manner that ensures that the business of the meeting is properly discharged in a reasonable, orderly and timely way;
- (c) settle:
  - (i) Board agendas, in liaison with the Executive Office, to ensure appropriate matters are brought before the Board for information, discussion and decision including matters which directors may wish to raise; and
  - (ii) Notices of meetings to Members

- (d) monitor and review the accuracy of the information presented to the Board and any general meeting;
- (e) obtain further information considered necessary for consideration and decision making on any matter relevant to the Board including obtaining external advice or the making of independent enquiries;
- (f) presides over meetings to ensure equitable participation by Board members;
- (g) ensure that the minutes of Board meetings and general meetings properly reflect the decisions taken at those meetings;
- (h) foster a climate of openness, common purpose and debate at Board meetings where contributions by all Directors are valued; and

If the Chair is not present at a Board meeting or a general meeting, the Board will nominate another independent Director to temporarily undertake this role.

**6.4** In effecting the Chair's responsibility to act as a link between the Board and the CEO, the Chair is also responsible to;

- (a) ensure a good working relationship with the CEO by meeting regularly (more frequently than at the monthly Board meetings) and otherwise to be accessible and open to communication;
- (b) to provide high level assistance and support to the Executive Office when required;
- (c) to provide consultation and mentoring to the CEO where appropriate; and
- (d) to facilitate and supervise an CEO performance appraisal process at least annually.

## **7. Role and Responsibilities of the Directors**

**7.1** In line with the duties of the Directors under the Corporations Law, all Directors must:

- (a) act honestly, in good faith and in the best interests of the Organisation, its Members and the broader community;
- (b) carry out the duties and functions of Directors in a lawful manner;
- (c) ensure that the Organisation carries out its activities in accordance with the law and the specifically the *Corporations Act 2001*;

- (d) understand the business of the Organisation and use care and diligence in fulfilling the functions of office and in exercising the powers of office;
- (e) be independent in judgment and actions and take all reasonable steps to be satisfied as to the soundness of all decisions taken by the Board;
- (f) declare all interests that could result in a conflict between personal and organisational priorities;
- (g) refrain from making improper use of information acquired as a Director;
- (h) refrain from taking improper advantage of the position of Director;
- (i) exercise a Director's duty of ensuring the Organisation does not trade whilst insolvent or where a Director suspects it may be insolvent;
- (j) properly and diligently consider all papers for Board meetings prior to each meeting;
- (k) fully inform himself or herself about the financial performance, position, operations and risks of the Organisation;
- (l) obtain further information considered necessary for consideration and decision making on any matter relevant to the Board including obtaining external advice or the making of independent enquiries; and
- (m) comply with all procedural directives of the Board, whether a standing order or ad hoc.

**7.2** It is imperative that Directors avoid all conflicts of interest, whether perceived or otherwise. In order to ensure that a risk of a conflict arising is minimised, the Board places great importance on Directors making clear any existing or potential conflicts of interest. Conflicts of interest include a direct or indirect financial interest, or a conflict of interest, duty or roles such as a duty or obligation to an individual or another organisation, where a reasonable person would perceive there to be a potential conflict. To that end:

- (a) if any matter is to be discussed at a meeting of the Board which would involve one or more Directors having a material conflict of interest, then those Directors:
  - (i) must declare that conflict of interest;
  - (ii) may be present at the meeting whilst the matter is considered, and may speak to any motion or proposal; and

- (iii) must not vote on any matter in which those directors have any material interest, either financial or of interest or duty; and
  - (b) Directors must keep the Board advised on an ongoing basis, of any interest that could potentially conflict with those of the Organisation
- 7.3** Directors must, at all times, keep the proceedings of the Board, including papers submitted and presentations made to the Board, confidential and not disclose or release any information obtained by the Director in that context to any person other than Board members, except as required by law, the Members, or as agreed to by the Board.
- 7.4** Directors are entitled to be provided with information from management that is accurate, sufficient, relevant and timely in order to properly perform their role. Directors are required to liaise with the CEO prior to committing corporation funds for any external information considered necessary for consideration and decision making on any matter relevant to the Board.
- 7.5** All Directors must, upon initial appointment undertake a thorough induction process, to be administered by the Board in the affairs of the both the Board and the Organisation as a whole. Prior to attendance at the first Board meeting, new Directors will:
- (a) receive a copy of all of the Constituent Documents and other relevant legal governance documentation;
  - (b) current and recent Board and committee minutes;
  - (c) contact details for other Directors and key staff;
  - (d) the current year's meeting schedule; and
  - (e) participate in meetings with the Chair, CEO and relevant committee chairs for a governance familiarisation (the meeting may be held as a group session or with individuals).
- 7.6** All Directors must commit to ongoing learning and development. This may occur through attending specific conferences relating to key areas of regional specialisation, briefings at board meetings, governance-related forums, mentoring and reading of contemporary journals, articles etc, or through or by any other means that the Board reasonably thinks fit.



## **8. Delegations of Responsibility – Committees**

- 8.1** The Board may establish committees to assist with the operations of the Board. The Board is entitled to set the terms of reference for any committee of the Board and to specify which Directors are to be members of the Board, including nominating a chair.
- 8.2** Committees of the Board do not have any delegated authority, but have an advisory capacity. Committees should report regularly to the Board and make recommendations for consideration where appropriate.
- 8.3** Each committee of the Board must have an approved documented charter which defines its objectives and responsibilities and reporting requirements. Committees may, and are encouraged to, co-opt skilled members from the private, community and local government sectors to assist with the work of the committee.

## **9. Accountability**

- 9.1** The Board of Directors is accountable to the Members of the Organisation at all times. It is important that all Directors foster a relationship of trust and confidence with the Members, in order to properly represent the Members' interests at all times.
- 9.2** In addition to the material that must be considered at the AGM under the Corporations Law, , the Board must supply to the Members the following additional material, as part of the AGM process and must, at the AGM, be prepared to speak to and/or be accountable for:
- (a)** an annual report on the performance of the Company over the past relevant period as it relates to the KPI's agreed by the Members at the last AGM;
  - (b)** any changes to the KPIs as agreed by the Members
  - (c)** progress reports on all projects being undertaken by the Company at the relevant time; and
  - (d)** questions raised by any Member at the AGM (or must provide a written response within fourteen (14) days of the AGM if a question is taken on notice).
- 9.3** Any disputes will be dealt with through the dispute resolution procedures provided in the Company Constitution.

**9.4** In the nature of the purpose and function of the Organisation, the Organisation will report to Members on a quarterly basis, based on agreed KPI's and other information of interest. The process for reporting will include:

- (a) a strategic progress update by the Board;
- (b) an operational progress update by the CEO; and
- (c) an offer of a formal presentation to Members if requested.

**9.5** In accordance with the Corporations Law, the Organisation must hold an annual general meeting once every calendar year, within five (5) months after the end of each financial year.

**9.6** Members of the Organisation may call a Special Meeting of the Organisation in accordance with the Company Constitution.

**9.7** Members of the Organisation are entitled to appoint or remove Directors in accordance with the Company Constitution.

## **10. Director Protection**

**10.1** The Organisation will obtain and maintain at all times appropriate levels of Directors and Officers insurance to provide protection from litigation. Directors and Officers insurance will cover the costs of litigation and provide financial protection for Directors and officers of an organisation when those parties are alleged to have breached their respective duties.

**10.2** Directors and Officers Insurance is subject to the exclusion of negligent or criminal acts, for example, insolvent trading or acts of fraud or dishonesty will not be covered.

**10.3** The Organisation will do all things reasonably necessary to limit the liability of Directors and other officers of the Organisation, but the Organisation does not make any representation, promise or warranty to any Director or officer about the adequacy or sufficiency of these measures.

## **11. Role and Responsibility of the Company Secretary**

**11.1** The Company Secretary is responsible for supporting the Board to ensure the Organisation meets its obligations under the Corporations Law. This specifically includes:

- (a) organising meetings of the Board and Members (this includes the sending out of notices, the preparation of agendas, the compilation and distribution of board papers, the marshalling of proxies, and compilation of minutes);

- (b) ensuring minutes of meetings are recorded in accordance with legal obligations;
  - (c) maintain and communicating a Board calendar of upcoming Board meetings and committee meetings;
  - (d) ensuring the review of various Board policies in accordance to a set schedule;
  - (e) ensuring that the Board is provided with all necessary training (i.e. induction training and on-going governance training);
  - (f) lodging the annual forms and reports with ASIC within the specified timeframes;
  - (g) being aware of the procedures of meetings, particularly the relevant provisions of the Company Constitution and other Constituent Documents in relation to quorum requirements, voting procedures, proxy provisions etc. so as to be able to advise the Chair if the need arises;
  - (h) recording declarations of interest or conflicts of interest made by directors to a Board meeting;
  - (i) organising an annual general meetings and the related documentation;
  - (j) coordination of travel and attendance arrangements of Directors and of reimbursement (in accordance with Board-approved policies) for costs associated with such attendance; and
  - (k) ensuring the Organisation is complying with all obligations (including the reporting requirements) of any government funding contracts.
- 11.2** For the avoidance of doubt, the Members agree that it is permissible, even prudent, for the Executive Office to be appointed as, and to act as Company Secretary.

## **12. Role and Responsibility of the CEO**

- 12.1** The position of CEO is a paid employment position of the Organisation.
- 12.2** The CEO is directly responsible to the Chair, and through the Chair to the Board.
- 12.3** The Members acknowledge and agree that the Board of Directors delegates to the CEO all of the necessary powers and authority to manage the business of the Organisation.
- 12.4** The CEO has operational responsibility to employees in the Organisation.

- 12.5** The CEO is required to report directly to the Board on the operations of the Organisation in relation to:
- (a) the execution of the strategy approved by the Board; and
  - (b) the operational and business aspects of the Organisation.
- 12.6** The CEO is entitled to attend and participate in Board discussions, but the Board may excuse the CEO from any part of the meeting if it elects to do so.
- 12.7** Where appropriate the CEO may act as a spokesperson for Organisation with the approval of the Chair.
- 12.8** The Board must specify, in writing, the limits of financial authority delegated to the CEO. The Board may consider and set mechanisms for approval for the oversight and monitoring of larger payments, signatories and application of the Company Seal in relation to those transactions.
- 13. Remuneration**
- 13.1** The Chair is entitled to be remunerated for the work done and responsibilities undertaken by the Chair in that role. On and from the date of this Agreement, the Members to set the remuneration of the Chair at the rate of \$30,000.00 per annum. That rate will be reviewed to CPI (All groups, Hobart, or an equivalent index) at the end of each financial year.
- 13.2** Directors who are not the Chair are entitled to be paid a notional fee, to be set by the Board, to attend meetings and undertake the duties and responsibilities of the Directors. However, during the establishment phase of the Organisation it is considered that Directors will be making a significant “in-kind” contribution to the Organisation to ensure its success.
- 13.3** All employees of the Organisation, including the CEO, are entitled to be paid in accordance with the entitlements arising under the FairWork legislation and be reference to prevailing market rates for persons acting on this positions of employment in similar organisations.
- 13.4** All reasonable expenses of the Chair and the Directors will be met by the Organisation whilst travelling or undertaking approved business on behalf of the Organisation.

**14. Equity Funding – Contributions by Members**

**14.1** The Organisation relies primarily on its Members to fund the Organisation sufficiently to achieve its primary objectives. This includes both the:

- (a) execution of the strategic plan from time to time; and
- (b) day to day operations of the Organisation.

**14.2** The Organisation agrees to issue shares in the Organisation to the Members of the Organisations to recognise the monetary contribution made by individual Members, particularly in the circumstances where those contributions are made:

- (a) evenly by reference to the methodology for calculation of amounts contributed; and
- (b) unevenly, by reference to the dollar value produced by those calculations.

**14.3** The Members agree to contribute funds to the Organisation in accordance with the following formula:

$$MC = FC + VC$$

Where:

- (a) MC = the total amount of the Member Contribution per Member;
- (b) FC = the fixed component (commencing in the 2016-17 financial year) calculated by application of the following bands calculated based on the population of the municipal area of each Member:

(i)	Population of 0 – 5,000 people	\$4,000.00
(ii)	Population of 5,001 – 10,000 people	\$8,000.00
(iii)	Population of 10,001+ people	\$16,000.00

The FC component is indexed annually to CPI (All groups, Hobart, or an equivalent)

- (c) VC = the variable component calculated at a contribution rate of **approximately \$2.22 per head of population (figure used in May 2012)** in the municipal area of each Member multiplied by the actual municipal population.

The VC component is indexed annually to CPI (All groups, Hobart, or an equivalent).

- 14.4** The CEO will calculate the contribution amounts for the following financial year and must notify the Members of the required contribution amount not less than three (3) months prior to the end of each financial year.
- 14.5** The Members expressly agree that to remain as a member of the Organisation, and to hold shares of the Organisation, the Member must commit to make the contribution amount for three (3) consecutive years from the date that the membership commences. At the end of each three (3) year cycle a review will be undertaken in accordance with **clause 20**.
- 14.6** The parties agree to allocate shares in increments of \$20,000.00, as follows
- (a) \$1 – \$20,000 contributed = 1 share;
  - (b) \$20,001 – \$40,000 contributed = 2 shares;
  - (c) \$40,001 – \$60,000 contributed = 3 shares;
  - (d) \$60,001 - \$80,000 contributed = 4 shares;
  - (e) etc.

In the basis of the increments set out above the issue of shares to the Initial Members is as set out in the SAI Global Company Extract annexed and marked “**B**”.

- 14.7** Subject to the approval of the Board, there is no limit to the number of shares that any Member can hold, provided that the Member makes the required contribution per share for the relevant period.
- 14.8** In relation to the Members that are the Initial Members set out in the Schedule of Initial Members, the shares issued to those Members are “Ordinary Class” shares, in accordance with the Company Constitution. On account of the nature of the Organisation and the Members of the Organisation, the parties expressly agree that the rights, privileges and conditions attached to each Ordinary Class share are as follows:
- (i) the right to receive notice of, to attend, and to vote at all meetings of the Organisation in accordance with the Company Constitution;
  - (ii) no right to participate in the dividends declared on that share; and
  - (iii) no right to repayment of the paid issue price of that share in a winding up of the company and no right to participate in the division of surplus assets or profits of the company and in this regard to rank equally with all other shareholders so entitled.

**14.9** The Directors may accept applications from other persons or entities to become Members of the Organisation in accordance with the Company Constitution. Upon acceptance, the Board may issue shares to that Member that are Ordinary Class shares or that are some other class of Shares provided that at no time can the Board issue shares to any other Member that gives increased or superior rights than what are enjoyed by the Initial Members.

**14.10** The Directors expressly agree that the Board will not issue any shares of any class to any Member that would cause the Initial Members of the Organisation to lose a majority interest in the Organisation without a Special Resolution of the Initial Members to do so.

**14.11** If the Board issues shares to any new Member, it must only be on condition that the new Member enters into a written deed in a form acceptable to the Board by which the new Members expressly agrees to be bound by the Constituent Documents of the Organisation.

## **15. Debt Funding**

**15.1** The parties agree that the Organisation will not obtain, or seek to obtain, any debt funding for any purpose without a unanimous resolution of the Members to that effect.

**15.2** If any Debt Funding is obtained by unanimous resolution, each Member agrees to be liable for and guarantee the repayment by the Organisation of that debt funding in accordance with the proportionate amount of shares held by that Member as against all of the shares issued by the Organisation at the relevant time.

**15.3** Subject to the passing of an appropriate unanimous resolution, the Organisation may accept loans from any of the parties to this Agreement and if so accepted, the Organisation must create a credit ledger for that purpose.

**15.4** Subject to the unanimous consent of all Principals, the Organisation may grant loans to any of the parties to this Agreement and if so granted, the Organisation must create a debit ledger for that purpose.

**15.5** If any of the loan arrangements set out in **clauses 15.3** and **15.4** constitute a Division 7A loan, then the provisions of the Company Constitution in respect of Division 7A loans apply automatically.

## **16. Performance Expectations**

**16.1** Each party to this Agreement covenants and agrees to deal with each other party to this Agreement to deal with those other parties in good faith.

**16.2** In particular, all parties to this Agreement must:

- (a) by completely honesty in all communications to, with or on behalf of the Organisation and each other;
- (b) provide full disclosure about all material matters that arise from or may affect the Organisation and that party's involvement in it, including health (physical and mental) and wellbeing issues if relevant;
- (c) display appropriate and professional personal conduct at all times in the Organisation environment and when representing the Organisation externally; and
- (d) not make, publish or support any disparaging, defamatory or offensive remark, comment or communication about the Organisation, the Members, the Directors or officers of the Organisation, any employee of the Organisation or any other stakeholder on any fact, matter or concern that is within the knowledge or opinion of that party.

**16.3** Each party must only make use of Confidential Information for the purpose of carrying out the purpose and objectives of the Organisation.

**16.4** No party to this Agreement is permitted to:

- (a) give or disclose Confidential Information to anyone other person or entity;
- (b) use any Confidential Information for personal gain or profit; or
- (c) use any Confidential Information to cause injury, loss or damage to the Organisation or any other party to this Agreement.

**16.5** No party to this Agreement is permitted to make any promise, representation or warranty or to give any undertaking to any person, which purports to bind the Organisation, which that party is not authorised to make or give.

## **17. Financial Reports**

**17.1** Notwithstanding the appointment of external accountants, the Organisation may, in its sole and absolute discretion, elect to undertake routine accounting procedures internally or to engage an external book-keeper for that purpose.



**17.2** The Company Secretary must cause that proper and sufficient records, reports and financial statements of the Organisation, should be prepared in accordance with the relevant accounting standards on a weekly, monthly, quarterly and annual basis as:

- (a) the Directors may require;
- (b) the CEO may require for the proper management of the Organisation from time to time; or
- (c) as the Corporations Law or other statutes may require.

**17.3** The Organisation must comply with the auditing and review procedures of the Corporations Law relevant to the turnover Tier that the Organisation sits in from time to time.

## **18. Intellectual and Industrial Property**

**18.1** Each party agrees and covenants with each other party, as a separate agreement and covenant that that party will keep confidential and preserve all Intellectual Property of the Organisation at all times confidential.

**18.2** Each party agrees and covenants with each other party that that party will pass to the Organisation for use by the Organisation as the Organisation sees fit, free of charge, details of:

- (a) all of the technology know-how and research results relevant to the Organisation that are from time to time in that party's possession or knowledge and which that party is not restrained by obligations to others from passing to the Organisation;
- (b) all of the technology know-how and research results relevant to the Organisation that are developed, discovered or invented by that party from time to time;

provided that the Company gives to the relevant party each time an appropriate covenant to keep confidential those aspects of the technology know-how or research results which are confidential and the parties agree to cause the Organisation to give those covenants.

## **19. Restrictive Covenant**

**19.1** Upon:

- (a) the cessation as a Director by a Director for any reason;
- (b) the cessation of membership by a Member, for any reason

the provisions of confidentiality and protection of intellectual property continue to apply to that Director or Member indefinitely and do not merge on the resignation or cancellation of membership.

**19.2** The CEO must ensure that appropriate restrictive covenants are contained in each and every employment agreement for employees of the Organisation.

**20. Sunset Provisions - Review**

**20.1** Each party agrees to commit to participation in the Organisation, and to the terms of this Agreement for the Sunset Period set out in **Item 5** of the Schedule of Particulars, which period commences from the date of this Agreement.

**20.2** The parties agree that not less than three (3) months prior to the end of the Sunset Period, the Board will undertake a comprehensive review of the strategic purposes and operations of the Organisation for the purposes of recommending to the Members whether to:

- (a) continue the operation of Organisation in its then current form;
- (b) change the operation of the Organisation as the parties may then agree;
- (c) continue with the then current Members;
- (d) change the then current Members;
- (e) re-set the Sunset Period;
- (f) make any other required amendments, changes and modifications to:
  - (i) this Agreement; and
  - (ii) the operations of the Organisation; and
- (g) wind up the Organisation; and/or
- (h) deal with any other relevant matter at that time.

**20.3** In conducting that review, the Board may have recourse to any relevant material, matter or issue in making its recommendation to the Members.

**20.4** Upon the receipt of a recommendation arising from a review, the Members must pass a Special Resolution to either:

- (a) adopt the recommendation of the Board; or
- (b) to take some other course of action.

**20.5** After and as a consequence of a review under this **clause 20**, no Member is bound, nor can be compelled, to remain and continue as a Member and if a Member elects to cease being a Member, the shares of that Member are deemed to be forfeited.

**20.6** Every Member that elects to continue as a Member of the Organisation expressly agrees to commit to a further three (3) year funding cycle, subject to all relevant CPI adjustments for the new period, and the Board must record a resolution to that effect.

## **21. Dispute Resolution**

**21.** The parties agree to adopt and be bound by the dispute resolution procedures set out in the Company Constitution.

## **22. Default**

**22.1** If any party breaches that parties obligations under this Agreement, and does not remedy that breach to the satisfaction of the other parties after receiving not less than one (1) month's notice to do so, that party is in default of this Agreement.

**22.2** A party is also in default of this Agreement if any of the following occurs in relation to that party:

- (a) the party, being a natural person:
  - (i) commits any act of bankruptcy;
  - (ii) enters, or proposes to enter, into any arrangement, composition or compromise with creditors;
  - (iii) is convicted of any offence in any jurisdiction that carries any term of imprisonment;
  - (iv) is convicted of any offence of dishonesty;
  - (v) is convicted of any offence in relation to the Organisation or any other party to this Agreement; or

- (vi) fails to attend to that Party's responsibilities under this Agreement for a period of more than thirty (30) days for no explainable reason; or
  - (b) the party, being a company or trust or other body corporate:
    - (i) commits any act of insolvency;
    - (ii) enters, or proposes to enter, into any arrangement, composition or compromise with creditors; or
    - (iii) has a director or trustee who is convicted of any offence under **clause 22.2(a)(iii), (iv) or (v)**.
- 22.3** A party, being a natural person, is deemed to be in default of this Agreement if any of the following occurs to that party:
- (a) two competent medical practitioners declare that the party is of an unsound mind;
  - (b) some other event beyond the control of the party causes that party to lose legal capacity; or
  - (c) the party cannot be found for a period of more than ninety (90) days.
- 23. Disciplinary Proceedings**
- 23.1** The parties agree to adopt and be bound by the disciplinary procedures set out in the Company Constitution.
- 24. Winding Up**
- 24.1** The parties agree to adopt and be bound by the winding up procedures set out in the Company Constitution.
- 24.2** Upon a winding up of the Organisation, the following process must be followed, in the order set out below, after liquidation of all assets:
- (a) as much notice as possible of the winding up must be given to any employees of the Organisation who are not parties to this Agreement;
  - (b) all employee entitlements must be paid out as the first priority, including to any party to this Agreement, who is a natural person, who is also a bona fide employee of the Organisation in receipt of salary or wages, and superannuation;

- (c) all secured creditors must be paid out, but excluding any loan accounts in favour of parties to this Agreement;
- (d) all unsecured creditors must be paid out, but excluding any loan accounts in favour of parties to this Agreement;
- (e) all unpaid present entitlements;
- (f) all loan accounts must be paid out, subject to any set-off or adjustment for loans made to that party or to a related party of that party; and
- (g) the balance of net assets of the Organisation must be distributed in accordance with the winding up provisions of the Company Constitution.

**24.3** The Members expressly acknowledge and agree that no Member can receive any payment of capital, distribution of assets or other benefit from the Organisation on a winding up.

## **25. Notices**

**25.1** A notice or other communication in connection with this Agreement is to be in writing and:

- (a) may be given by the relevant party or its lawyer; and
- (b) must be:
  - (i) left at the address set out or referred to in the Details; or
  - (ii) sent by prepaid post to the address set out or referred to on the Details;
  - (iii) sent by fax to the fax number set out or referred to in the Details; or
  - (iv) sent by email to the last known email address of the relevant party or lawyer.

However, if the intended recipient has notified a changed postal address or changed fax number, then the communication must be to that postal address or fax number.

**25.2** Notices take effect from the time they are received unless a later time is specified in the notice.

**25.3** If a notice is sent by post, it is taken to be received two (2) days after posting (or seven (7) days after posting if sent to or from a place outside Australia).

**25.4** If a notice is sent by fax, it is taken to be received at the time shown in the transaction report as the time that the whole of the fax was sent.

**25.5** If a notice is sent by email it is taken to be delivered at the time it is sent, but only if the sender of the email notice has obtained a delivery receipt for that email.

**26. Additional Provisions**

**26.1** Each of the parties to this Agreement will sign and execute any further documents and do any deeds, acts and things as the other party reasonably requires for effecting the intention of the parties under this Agreement. However, this obligation does not extend to incurring a liability:

(a) to pay any money, or to provide any financial compensation, valuable consideration or any other incentive to or for the benefit of any person except for payment of any applicable fee for the lodgement or filing of any relevant application with any government agency, unless a provision of this Agreement expressly requires otherwise; or

(b) to commence any legal action against any person, to procure that the thing is done or happens.

**26.2** This Agreement constitutes the entire agreement between the parties about the subject matter of this Agreement. It supersedes and extinguishes all prior agreements, understandings, representations, warranties, covenants or agreements previously given or made between the parties about the subject matter.

**26.3** This Agreement may be executed by the parties in two or more counterparts, each of which is deemed to be an original, but all of which together constitute one and the same instrument.

**26.4** The parties must execute and exchange original signed counterparts of this Agreement unless there is a specific provision in the Agreement that permits the exchange of counterparts by facsimile or scanned email copy.

**26.5** This Agreement must not be amended, modified or supplemented except by a written instrument signed on behalf of the respective parties.

**26.6** Any clause, covenant or condition in this Agreement that requires a party to do something after completion does not merge on completion and that party is obliged to perform the obligation within the time allowed for doing so. A failure to perform an obligation of this nature is a breach of the Agreement retrospectively and gives rise to a claim for injury, loss and damage to the party with the benefit of the performance of the obligation.

- 26.7** No waiver by any party of any default in the strict and literal performance or compliance with any other provision, condition or requirement of this Agreement is deemed to be a waiver of the strict and literal performance of or compliance with any other provision, condition or requirement in this Agreement nor be a waiver of or in any manner release any other party from strict compliance with any provision, condition or requirement in the future nor will any delay or omission of any party to exercise any right under this Agreement in any manner impair the exercise of any right accruing to it after completion.
- 26.8** A provision of or a right created under this Agreement may not be:
- (a) waived except in writing, signed by the party with the benefit of that provision or right; or
  - (b) varied except in writing signed by the Parties.
- 26.9** The obligations of the parties under this Agreement are subject to the express condition that whenever a party is required to perform or do any act or thing, the performance of that obligation is not required if it is rendered reasonably or practically impossible by reason of any riot, civil commotion, strike, lockout, act of God, act of the public enemy, priority, allocation, rationing or the regulation or prohibition of the use of any material, heat, fuel, hours of work or award, of the party.
- 26.10** Each party warrants and represents to the other party that the signing or performance under this Agreement does not conflict with or result in a breach of its constitution, any writ, order, judgement, law, rule or regulation which is binding upon the party.
- 26.11** Any party who executes this Agreement on behalf of a party under a Power of Attorney warrants that he or she has no notice of the revocation of that Power or of any fact or circumstance that might affect his or her authority to execute this Agreement under that Power.
- 26.12** The rights, powers and remedies under the Agreement are in addition to and do not replace or limit any other rights, powers or remedies provided by law independently of the Agreement.
- 26.13** Where a party is required to give a consent, that party may give that consent conditionally, unconditionally or withhold it without giving reasons, unless expressly stated otherwise.
- 26.14** Whether or not any of the transactions contemplated by this Agreement are completed the parties must pay their own fees, costs and expenses of and incidental to the negotiation, preparation and execution of this Agreement, including the fees and disbursements of its lawyers and accountants.

**26.15** Where any party is entitled to take enforcement or recovery action against another party, that party is entitled to recover its fees, costs and expense of and incidental to the enforcement action from the other party.

**26.16** This Agreement is governed by and construed in accordance with the law of Tasmania and the Commonwealth of Australia and each of the parties submit to the jurisdiction of the Courts of the State of Tasmania and the Courts of the Commonwealth of Australia.

**End of Operative Part**

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**Execution**

*Organisation*

Signed for and on behalf of  
**Northern Tasmania Development Corporation Limited** \_\_\_\_\_  
**ACN \*\*\*** Sole/Director  
by its authorised officers under \_\_\_\_\_  
S127 of the *Corporations Act 2001* Director/Secretary

*Initial Members*

The Common Seal of  
**Break O'Day Council** \_\_\_\_\_  
was affixed in the presence *affix Seal here* Member  
the authorised officers of the Council  
of the Council \_\_\_\_\_  
General Manager

The Common Seal of  
**Flinders Island Council** \_\_\_\_\_  
was affixed in the presence *affix Seal here* Member  
the authorised officers of the Council  
of the Council \_\_\_\_\_  
General Manager

The Common Seal of  
**Georgetown Council** \_\_\_\_\_  
was affixed in the presence *affix Seal here* Member  
the authorised officers of the Council  
of the Council \_\_\_\_\_  
General Manager

The Common Seal of  
**Launceston City Council** \_\_\_\_\_  
was affixed in the presence *affix Seal here* Member  
the authorised officers of the Council  
of the Council \_\_\_\_\_  
General Manager

The Common Seal of  
**Meander Council**  
was affixed in the presence  
the authorised officers of the Council  
of the Council

*affix Seal here*

\_\_\_\_\_  
Member

\_\_\_\_\_  
General Manager

The Common Seal of  
**Northern Midland Council**  
was affixed in the presence  
the authorised officers of the Council  
of the Council

*affix Seal here*

\_\_\_\_\_  
Member

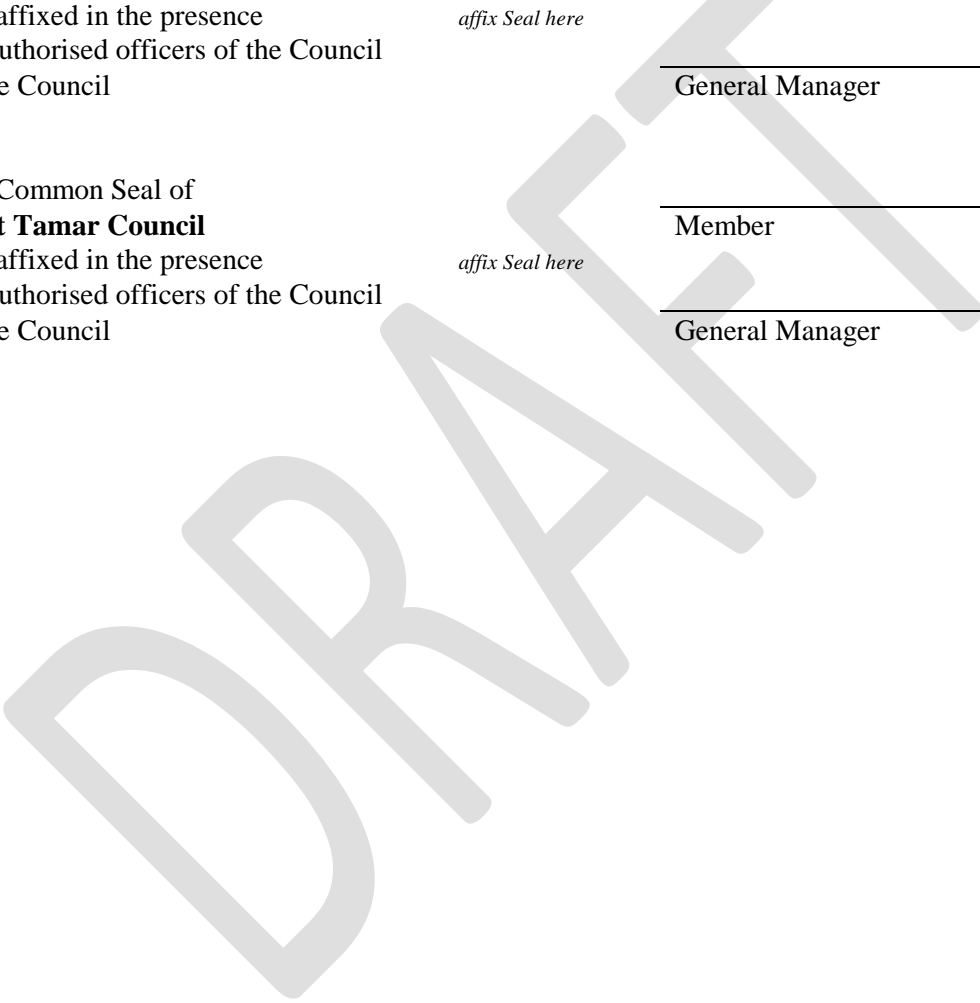
\_\_\_\_\_  
General Manager

The Common Seal of  
**West Tamar Council**  
was affixed in the presence  
the authorised officers of the Council  
of the Council

*affix Seal here*

\_\_\_\_\_  
Member

\_\_\_\_\_  
General Manager



**Annexures**

- A. Certificate of Incorporation**
- B. SAI Global Company Extract**
- C. Company Constitution**

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## **GOV 4 TOWNSCAPES, RESERVES AND PARKS SPECIAL COMMITTEE (TRAP) – TERMS OF REFERENCE**

### **1) Introduction**

The purpose of this report is for Council to adopt the revised Terms of Reference document for the Townscapes, Reserves & Parks Special Committee (TRAP).

### **2) Background**

Council in December 2011 adopted a new framework for Special Committees that act in an advisory role to Council.

The TRAP Special Committee was identified as one of these advisory committees and in May 2012 developed up a Terms of Reference document.

The TRAP Committee over the last few meetings have revised the Terms of Reference document to meet the requirements of Section 24 (2) of the Local Government Act 1993 and make some other minor amendments.

### **3) Strategic/Annual Plan Conformance**

Furthers the objectives of the Council's Community Strategic Plan 2014 to 2024:

- Future Direction (5) – Innovative leadership and community governance

### **4) Policy Implications**

Not Applicable

### **5) Statutory Requirements**

Local Government Act 1993

### **6) Risk Management**

Not Applicable

## **7) Consultation with State Government & other Authorities**

Not Applicable

## **8) Community Consultation**

Not Applicable

## **9) Financial Impact**

Not Applicable

## **10) Alternative Options**

Council can elect to amend the attached Terms of Reference document or defer until after the review of Special Committees is undertaken.

## **11) Officers Comments**

The revised Terms of Reference document was approved by the TRAP Special Committee at its meeting held on Wednesday 17 August 2016.

Also at the September Council Workshop the role, function and relevance of all Special Committees will be discussed.

Following is the revised Terms of Reference document which is recommended for adoption by Council.

**AUTHOR:** David Pyke  
DIRECTOR GOVERNANCE & COMMUNITY SERVICES

## **12) Recommendation**

***It is recommended that Council adopt the revised Terms of Reference document for the Townscapes, Reserves & Parks Special Committee, as follows:***

# TOWNSCAPES, RESERVES AND PARKS SPECIAL COMMITTEE (TRAP)

## TERMS OF REFERENCE

### 1. Role and function

The role of the Townscapes, Reserves & Parks Special Committee is to:

- Advise Council on the strategic development of townscapes, reserves & parks
- Monitor the maintenance of townscapes, reserves & parks
- Facilitate the improvement of townscapes, reserves & parks
- Consult with the community regarding the development of townscapes, reserves & parks

The functions of the Council are to:

- Provide appropriate & relevant professional advice to the Committee
- Provide secretarial services to the Committee
- Undertake appropriate design and supervision of all Council projects
- Consider the Annual Plan and approve an annual budget and Capital Works Program by 30 June each year, following receipt of TRAP Committee recommendations
- Determine if/when remuneration and allowances are to be paid to Committee members
- Undertake a review of the role and function of the Committee every four years

### 2. Structure

The Committee shall comprise:

- 3 Councillors
- 3 Council officers (Infrastructure, Works, Governance)
- Up to 7 community members with a range of relevant interests and skills

### 3. Membership

- As a guideline, the Townscapes, Reserves & Parks Special Committee shall have between nine and thirteen members
- One of these members will be appointed as Chair and another as Deputy Chair
- All community members shall be resident in the municipality
- Input from other Council staff and/or consultants may be invited

### 4. Appointment

Committee members are appointed by invitation from ~~the Mayor~~ Council following advice from the existing Chairman of TRAP. The Terms of Appointment will be administered by the Governance and Community Services Department.

Members are appointed for a ~~two-year~~ four-year term, and may be reappointed by ~~the Mayor~~ for additional terms by Council.

#### Termination of Appointment

Members may resign from the Committee by notice in writing to ~~the Mayor~~ Council. ~~The Mayor~~ Council may terminate the appointment of a Committee member by providing notice in writing. Reasons for termination shall be final and no correspondence will be entered into.

### 5. Roles and Responsibilities

The roles and responsibilities of the Committee member are to:

- Attend meetings
- Contribute to decisions of the Committee
- Undertake consultation and research

In addition, the roles and responsibilities of the Chair are to:

- Chair meetings equitably
- Address all Agenda items
- Keep to time

## 6. Meeting Protocols

Committee meetings will be held at least bi-monthly. The purpose of these meetings will be to:

- Monitor progress
- Review achievements
- Identify needs and actions
- Inform Council on current needs and actions
- Make recommendations to Council regarding TRAP matters for Council's consideration

At Committee meetings, more than 50% attendance by members constitutes a quorum. ~~provided that it contains a minimum of four community members.~~

The Chair will preside over meetings and in the absence of the Chair, the Deputy Chair will preside.

- Committee members are expected to attend (or apologise for) 100% of meetings per year
- Apologies should be received no later than noon of the meeting date
- Three non-attendances without apologies in any year will constitute a cessation of the position and the member will be informed in writing
- Meetings will commence within 10 minutes of the advised start time

## 7. Remuneration and Allowances

The Chair and Committee members act in a voluntary capacity

Committee members may claim allowances for legitimate expenses incurred in the execution of Committee duties.

Council will determine if remuneration and allowances are to be paid.

## 8. Resources

Budget and expenditure

The Committee has no budget allocation and no financial decision-making authority.



Secretariat

Council will provide staff for the role of the secretariat and administrative support.

## **9. Code of Conduct**

A member, attendee or observer:

- Will act honestly, in good faith and in the best interest of the Committee, Council and the organisation they represent
- Will not make improper use of information acquired from the deliberations of the Committee
- Must declare as soon as practicable to the Chair any direct or indirect pecuniary interest or conflict of interest in a matter about to be considered by the Committee. (Interest provisions are outlined in Part 5 of the Local Government Act 1993).

Should a conflict of interest disclosure be noted, the members or observers concerned shall not, unless the Committee determines otherwise:

- Be present during any deliberation of the Committee with respect to that matter
- Take part in any decision of the Committee with respect to that matter.

Committee members must ensure that any confidential information received in the course of their activities or deliberations is not disclosed or allowed to be disclosed, unless authorised by the person from who the information was provided, or if required by law.

## **DECISION:**

# **ED & S 1 POLICY REVIEW NO 76 - INDUSTRIAL LAND DEVELOPMENT**

## **1) Introduction**

The purpose of this report is for Council to review Policy No 76 – Industrial Land Development.

## **2) Background**

The Industrial Land Development Policy was adopted by Council in May 2011.

The policy was implemented to set guidelines for Council to facilitate and support the construction of headworks infrastructure for industrial development. This is particularly relevant where more than one landowner or developer is involved and there is a reluctance of any party to commence headworks construction when there is no ability to recover costs equitably from other land owners/developers who may benefit.

One of the policy objectives was to provide a mechanism to recognise the differential rating cost between rural zoned land, which has been rezoned to industrial zoned land.

The section of the policy that deals with the rating differential was put in place to ensure that developers would not be adversely affected in terms of a rate increase on zoned industrial land, which may sit unoccupied for an extended period of time as a result of economic downturn. Currently the policy allows for consideration of an extension of the rating differential beyond the initial three year period.

This policy was reviewed in August 2013 where some minor amendments were made.

## **3) Strategic/Annual Plan Conformance**

Further the objectives of the Council's Community Strategic Plan 2014 to 2024:

- Future Direction (2): A thriving local economy

#### **4) Policy Implications**

The process of policy review will ensure that policies are kept up to date and appropriate.

#### **5) Statutory Requirements**

Local Government Act 1993

#### **6) Risk Management**

Not Applicable

#### **7) Consultation with State Government & other Authorities**

Not Applicable

#### **8) Community Consultation**

Not Applicable

#### **9) Financial Impact**

Council has allocated \$4000 in the 2016-2017 Budget to allow for a subsidy to be provided should one be applied for by the Valley Central developers.

#### **10) Alternative Options**

Council can elect to amend or discontinue the existing policy.

#### **11) Officers Comments**

Council's Management Team and the Council Audit Panel have reviewed this policy and have recommended that it be continued.

The Cost of Capital definition at c) has been changed to ensure consistency with the definition contained in the Hadspen Urban Growth Area Policy that was recently approved by Council.

This policy continues to serve its purpose and remain effective when it is required to be applied and as such is recommended for continuation with the highlighted changes.

**AUTHOR:** Rick Dunn  
DIRECTOR ECONOMIC DEVELOPMENT &  
SUSTAINABILITY

## 12) Recommendation

***It is recommended that Council adopt the amended Policy No 76 - Industrial Land Development Policy, as follows:-***

# POLICY MANUAL

**Policy Number: 76**

**Industrial Land Development**

**Purpose:**

To establish guidelines for the provision of infrastructure by Council, to facilitate industrial development and the method for obtaining contributions from developers and landowners, to offset the cost to Council.

**Department:**

Economic Development & Sustainability

**Author:**

Rick Dunn, Director

**Council Meeting Date:**

~~13 August 2013~~ 13 September 2016

**Minute Number:**

~~145/2013~~

**Next Review Date:**

~~August 2016~~ August 2020

## POLICY

### **1. Definitions**

#### a) Developer Contributions

Developer contributions as distinct from head works charges, are contributions made by developers to directly compensate Council for the cost of providing infrastructure to a particular development.

#### b) Head Works Charges

These are charges Council may elect to impose on developers or landowners where there is a nexus between the development and the need for Council to upgrade infrastructure into the future.

c) Cost of Capital

15 year borrowing rate as provided by Tascorp, applied to the total cost of the Council's investment over a 15 year period.

The borrowing rate as provided by Tascorp, applied to the total cost of the construction of infrastructure over a period not exceeding 15 years which may include periodic interest rate reviews as determined appropriate to the financing arrangements.

## **2. Objective**

The objective of this policy is to provide:

- The parameters for Council to apply when considering investing in new infrastructure required to augment an industrial development.
- Council with the flexibility to consider the merits of each proposal and is therefore not intended to be definitively prescriptive.
- Appropriate risk management mechanisms and controls required to manage Council's financial exposure and risk to such developments.

## **3. Scope**

The Policy is applicable only to industrial development and only applies to developer contributions as defined above.

## **4. Policy**

a) Background

Due to varying circumstances Council may be required to provide shared infrastructure to an industrial development to facilitate its augmentation. This is particularly pertinent where more than one land owner is involved in the potential development and Council is required to provide shared infrastructure for the purposes of equity.

In committing to the provision of such infrastructure Council is taking on substantial financial risk and needs to apply appropriate due diligence to ensure this financial risk is acceptable to Council. This risk is predominantly the length of time it will take for Council to recoup its investment in the development.

b) Basis for Investment

As a guide, Council should only consider providing head works infrastructure where there is more than one land owner. Where there is only one land owner and the developer is reluctant to put in the required head works infrastructure, then Council should carefully

consider the motives and financial capacity of the developer and the associated financial risk to Council.

c) Total Investment Costs

Council's total cost of investment includes all direct expenses and is also to include a cost item representing the cost of capital required to finance Council's investment.

d) Cap on investment

Council's investment in any required infrastructure is capped at the lesser of the annual borrowing limit approved by State Treasury for the current financial year or 50% of the annual general rate in the current year.

e) Recoupment of investment

Council will recoup 100% of its investment in the development by way of developer contributions back to Council. The timing of the contributions back to Council will be determined at the discretion of Council based upon projected revenues from the development and the extent to which Council needs to provide a stimulus to the development.

- The developer contributions can either be recouped 100% from the initial developer or spread between the original developer and subsequent developers.
- Notwithstanding the above, a minimum of 50% of Council's investment will be recouped from the initial developer(s).
- The estimated time frame to recoup Council's investment will not exceed 15 years.

Having determined the timing of the contributions Council will recoup its investment by the following mechanisms.

- Via a part 5 agreement under LUPAA with payment of the specified developer contributions being payable on the sealing of the final plan, and/or
- Via a condition on a planning permit with payment of the per lot developer contribution being payable on the issuing of the certificate of occupancy signifying commencement of the use.

f) Calculation of Developer Contribution

The contribution will be apportioned on a per square metre basis and applied to each lot in the proposed subdivision accordingly.

g) General Rates Incentive

To ensure Council does not unwittingly place a financial impost on industrial development, the initial developer will be provided with the following rate subsidy:

- A subsidy will be paid by Council representing the differential between the rates (on a per hectare basis) on the land prior to the development and the subsequent rates per the revaluation as a result of subdivision. This subsidy will be available to the initial developer for a period of three years from the date of the sealing of the plan for the creation of the new lot(s).
- Council may extend the subsidy beyond the 3 three year period at its discretion in circumstances where the economic climate indicates the need for an incentive or rate relief and where a representation is made in writing by a developer and a case for extension is presented.
- This subsidy will only apply where land has been rezoned to industrial use and is subsequently subdivided into multiple lots.

## **5. Legislation**

~~Meander Valley Planning Scheme 1995~~  
Land Use Planning and Approvals Act 1993  
Local Government Act 1993

## **6. Responsibility**

Responsibility for the operation of the policy rests with the General Manager.

## **DECISION:**

# **INFRA 1 POLICY REVIEW NO. 2 – STOCK UNDERPASSES ON COUNCIL ROADS**

## **1) Introduction**

The purpose of this report is for Council to review Policy No. 2 – Stock Underpasses on Council Roads.

## **2) Background**

The purpose of this Policy is to outline the basis upon which Council will allow for the construction of underpasses on Council maintained roads.

## **3) Strategic/Annual Plan Conformance**

The Annual Plan requires Policy No. 2 to be reviewed in the September 2016 quarter.

## **4) Policy Implications**

The process of policy review will ensure that policies are kept up to date and appropriate.

## **5) Statutory Requirements**

Not Applicable

## **6) Risk Management**

Not Applicable

## **7) Consultation with State Government & other Authorities**

Not Applicable

## **8) Community Consultation**

Not Applicable



## 9) Financial Impact

The Policy indicates that Council may consider a contribution of up to 50% of the capital cost of a new underpass structure with an upper limit of \$50,000 where there is a significant benefit to road users.

## 10) Alternative Options

Council can elect to make further amendments or discontinue the existing Policy.

## 11) Officers Comments

In the last 10 years the Policy has been used once with a contribution of \$20,000 provided by Council toward the construction of a stock underpass on Dairy Plains Road in 2010/11.

Although rarely implemented, it is important that Council continues to maintain a policy that offers assistance to farmers wanting to construct underpasses. As well as improvements to road safety, stock underpasses assist farmers with improvements to productivity.

Minor wording amendments only are proposed to the Policy.

**AUTHOR:** Dino De Paoli  
DIRECTOR INFRASTRUCTURE SERVICES

## 12) Recommendation

***It is recommended that Council confirm the continuation of Policy No 2 – Stock Underpasses on Council Roads with amendments, as follows:***

# POLICY MANUAL

**Policy Number: 2**

**Stock Underpasses on Council Roads**

**Purpose:**

To outline the basis upon which Council will allow for the construction of underpasses on council maintained roads

**Department:**

Infrastructure Services

**Author:**

~~Ted Ross~~ Dino De Paoli, Director

**Council Meeting Date:**

~~10 September 2013~~ September 2016

**Minute Number:** 162/2013  
**Next Review Date:** September 2016 2020

## POLICY

### **1. Definitions**

Nil.

### **2. Objective**

To ensure a uniformity of acceptable standard of construction and an appropriate approval process for construction of underpasses that allow for the movement of stock across a road carriageway safely without affecting other users of the carriageway.

### **3. Scope**

This policy applies to the Council and its employees and any land owner wishing to install a stock underpass through a Council road.

### **4. Policy**

Council will permit underpasses to be constructed through a Council maintained road subject to the adjoining property owner obtaining all relevant permits.

The property owner requesting the underpass shall be responsible for all costs. Council may consider a contribution of up to 50% of the capital cost with an upper limit of \$50,000 where there is a significant benefit to road users.

Upon approval, the property owner shall enter into a Part 5 agreement under the Land Use Planning and Approvals Act 1993, which formalises the requirements for ongoing maintenance or replacement of the underpass, both of which will be the responsibility rest with of the property owner. Maintenance of the road pavement surface still remains with will be the responsibility of Council.

### **5. Legislation**

This policy is supported by the Local Government Highways Act 1982 Section 46 relating to Council issuing permission to others to do works within a Highway.

Local Government Act 1993

Local Government Highways Act 1982

Land Use Planning and Approvals Act 1993

## **6. Responsibility**

The responsibility for the operation of this policy rests with the Director Infrastructure Services.

## **DECISION:**

## **INFRA 2 POLICY REVIEW NO. 4 – SUBSIDISED WASTE DISPOSAL FOR COMMUNITY GROUPS**

### **2) Introduction**

The purpose of this report is for Council to review Policy No. 4 – Reimbursement for Disposal of Materials at Tip Sites.

### **2) Background**

The purpose of this Policy is to allow for the reimbursement of costs to community groups for tip fees where the work performed in the disposal of waste is to the benefit of the community.

### **3) Strategic/Annual Plan Conformance**

The Annual Plan requires Policy No. 4 to be reviewed in the September 2016 quarter.

### **4) Policy Implications**

The process of policy review will ensure that policies are kept up to date and appropriate.

### **5) Statutory Requirements**

Not Applicable

### **6) Risk Management**

Not Applicable

### **7) Consultation with State Government and other Authorities**

Not Applicable

### **8) Community Consultation**

Not Applicable

## 9) Financial Impact

There would be minimal cost to Council if the policy was applied.

## 10) Alternative Options

Council can elect to make further amendments or discontinue the existing Policy.

## 11) Officers Comments

This policy encourages not-for-profit community groups and service clubs in our community to provide assistance to individuals and groups in need by reducing the costs associated with waste disposal at Council's refuse disposal sites.

Minor wording amendments only are proposed to the Policy.

**AUTHOR:** Dino De Paoli  
DIRECTOR INFRASTRUCTURE SERVICES

## 12) Recommendation

***It is recommended that Council confirm the continuation of Policy No. 4 – Subsidised Waste Disposal for Community Groups with amendments, as follows:***

# POLICY MANUAL

**Policy Number:** 4

**Subsidised Waste Disposal for Community Groups**

**Purpose:**

The purpose of this Policy is to allow for the reimbursement of to community groups for tip waste disposal fees where the work performed is to benefit the community

**Department:**

Infrastructure Services

**Author:**

~~Ted Ross~~ Dino De Paoli, Director

**Council Meeting Date:**

13 September 2016 ~~10 September 2013~~

**Minute Number:**

~~161/2013~~

**Next Review Date:**

**September 2020** ~~September 2016~~

## POLICY

### **1. Definitions**

Nil.

### **2. Objective**

The purpose of this Policy is to allow for the reimbursement ~~to of~~ community groups for ~~tip waste disposal~~ fees where the work performed is to benefit the community.

### **3. Scope**

This policy is to apply to the Council and its employees and external ~~parties~~ service clubs and community groups who may wish to dispose of material at ~~tip~~ landfill and transfer station sites and obtain ~~remission for fees~~ reimbursement of fees paid.

### **4. Policy**

In recognition of the valuable work carried out by service clubs and other community groups in the Council area a mechanism will be made available to enable reimbursement of waste disposal fees at the Deloraine and Westbury landfill ~~disposal~~ sites, and the Mole Creek Transfer Station. This mechanism is available on the following basis:

1. The group must be a recognised service club or similar not-for-profit community group who are carrying out necessary community clean-up work which has the ~~prior~~ approval of Council or other appropriate authorities.
2. Reimbursement of fees will normally only apply to volumes of refuse not exceeding the capacity of a ~~single utility and/or single axle~~ trailer and the number of entries to the tip for each service club or not-for-profit group shall be restricted annually to ~~no more than 26~~.
3. Where a ~~service club or community group~~ may wish to conduct a large scale clean up where the volumes would exceed those listed above, contact must be made with the Director Infrastructure Services for approval of the type of material, volume of material and appropriate disposal location.
4. Material deposited at ~~the tip~~ Council's waste disposal sites is restricted to normal domestic waste, vegetation waste, construction and demolition waste ~~only~~, and shall ~~not include any hazardous or noxious material or tyres~~.

5. Normal tip fees shall be paid at time of disposal by the service club or community group Club or other body who shall then be reimbursed on production of the tip provide the receipt to the relevant Council Officer for approval prior to reimbursement.
6. Where possible material to be disposed of at the tip any Council disposal site shall be sorted for recycling purposes and deposited accordingly.

## **5. Legislation**

Councils refuse disposal sites operate under the *Environmental Management And Pollution Control Act 1994* and appropriate licences. Disposal of material is governed by these pieces of legislation and material to be disposed at tip sites falls within the legislative requirements

Local Government Act 1993

## **6. Responsibility**

The responsibility for the operation of this policy rests with the Director Infrastructure Services.

## **DECISION:**

## **INFRA 3 CAPITAL WORKS FUNDING FOR FLOOD IMPACTED ASSETS**

### **1) Introduction**

The purpose of this report is to provide information to Council on flood impacted assets resulting from the June 2016 floods and seek Council approval for the reallocation of funding within the Capital Works Program for work required to be undertaken on these new projects.

### **2) Background**

The Director Infrastructure Services and Director of Works have provided information to Council over the last two months on the extent of flood damage across the municipality and the status of works undertaken by Council staff and contractors to return damaged assets to their pre-flood level of service.

Funding will be provided by the Commonwealth Government to councils to cover some of the costs associated with the repair and reinstatement of flood affected assets. The gap in funding requirements will need to be provided by Council from within the approved 2016-2017 capital works program.

The Council assets most impacted by the floods include bridges and roads in the western part of the municipality.

It is noted that the overall financial objective in delivering Council's Capital Works Program is to maintain a zero net variation in the program funding provided by Council in the financial year. It is further noted that with the circumstances presented this year the ability to resource additional projects within the Capital Works Program is limited without deferring existing projects to a later time.

### **3) Strategic/Annual Plan Conformance**

Further the objectives of the Council's Community Strategic Plan 2014 to 2024:

- Future Direction (5) - Innovate leadership and community governance
- Future Direction (6) - Planned infrastructure services



#### **4) Policy Implications**

Not Applicable

#### **5) Statutory Requirements**

Section 82(4) of the *Local Government Act 1993* requires Council to approve by absolute majority any proposed alteration to Council's capital works budget outside the limit of the General Manager's financial delegation of \$20,000.

#### **6) Risk Management**

Not Applicable

#### **7) Consultation with State Government and other Authorities**

Not Applicable

#### **8) Community Consultation**

Not Applicable

#### **9) Financial Impact**

The recommended variations in this report will result in a nil net increase to the value of funding committed by Council in the 2016-2017 Capital Works Program.

The Capital Works Program will increase by \$2,419,500 (which is the amount of anticipated Commonwealth funding).

#### **10) Alternative Options**

Council can amend or not approve the recommendation.

#### **11) Officers Comments**

As previously discussed with Council, the Commonwealth Government indicated a commitment to provide flood recovery funding to local government that will cover up to 75% of asset repair and reconstruction costs. Funding will be administered through the State Government. Conditions apply to which activities undertaken by Council during the flood

recovery will be eligible for funding, however, it is anticipated that the capital works projects undertaken by contractors on behalf of Council meet the eligibility criteria for the funding.

The remaining 25% of funding required for these unforeseen capital works projects will need to be allocated by Council from projects already approved in the 2016-2017 capital works program.

The table below lists ten new projects for inclusion in the Capital Works Program as a result of the flood event. The Council funding requirement of 25% can be obtained through reallocation of funding from six existing projects as shown.

**TABLE 1: 2016-2017 CAPITAL WORKS BUDGET – NEW PROJECTS AND REALLOCATION OF PROJECT FUNDING**

<b>Project</b>	<b>Roads and Streets</b>	<b>Current CWP Budget Amount</b>	<b>Proposed Budget Changes</b>	<b>Estimated Gov't Flood Relief Reimburse. (75%)</b>	<b>Council Funding Required (25%)</b>	<b>Total Expenditure</b>
5607	NEW PROJECT Gulf Rd - Liffey - (Damage due to slip failure of roadside embankment next to the Liffey River. A consultant has been engaged to assist with design and documentation of engineering works)	\$0	\$125,000	\$375,000	\$125,000	\$500,000
6185	NEW PROJECT Union Bridge Rd - Mole Creek - (Reconstruction of pavement and seal)	\$0	\$17,500	\$52,500	\$17,500	\$70,000
6210	NEW PROJECT Porters Bridge Rd - Reedy Marsh (Reconstruction of seal)	\$0	\$5,000	\$15,000	\$5,000	\$20,000
6294	Westbury Roads Connectivity Program (Recommended transfer from this project based on low priority for this FY. Will be returned to Council for planning of the CW funding in 2017-18 in addition to operational funding to commence study of connectivity issues).	\$500,000	-\$241,500			
tbc	NEW PROJECT Old Gads Hill Rd - Liena (Damage to landslide and erosion. Works have not been scoped)	\$0	\$50,000	\$150,000	\$50,000	\$200,000
<b>Project</b>	<b>Bridges</b>					
5221	NEW PROJECT Mole Creek - Big Den Road (Mole Creek) - (Works are in progress)	\$0	\$50,400	\$151,200	\$50,400	\$201,600
5228	NEW PROJECT Mersey River - Liena Road (Liena) - (Contract awarded by	\$0	\$300,000	\$900,000	\$300,000	\$1,200,000

		<b>Current CWP Budget Amount</b>	<b>Proposed Budget Changes</b>	<b>Estimated Gov't Flood Relief Reimburse. (75%)</b>	<b>Council Funding Required (25%)</b>	<b>Total Expenditure</b>
	Council at August Meeting)					
5234	NEW PROJECT Lobster Creek - Parsons Road (Caveside) - (Complete with exception of road approach vehicle barriers)	\$0	\$50,400	\$151,200	\$50,400	\$201,600
5266	Un-Named Creek - Roseburn Road (Selbourne) - (Can be deferred until 2017-18)	\$170,000	-\$170,000			
5267	Western Creek - Montana Road (Montana) - (Can be deferred until 2017-18)	\$180,000	-\$180,000			
5285	NEW PROJECT Overflow Creek (Dry Creek) Union Bridge Road (Ugbrook) - (Work scheduled to be completed by end August)	\$0	\$95,400	\$286,200	\$95,400	\$381,600
5348	Cubits Creek - Western Creek Road (Western Creek) - (Can be deferred until 2017-18)	\$70,000	-\$70,000			
5369	Myrtle Creek - Myrtle Creek Road (Bracknell) - (Can be deferred until 2017-18)	\$125,000	-\$125,000			
5499	Bridge Program Scoping Budget - (reallocation. Scoping of 2017-18 bridge works not critical at the present time)	\$20,000	-\$20,000			
tbc	NEW PROJECT Lynds Creek - Old Gads Hill Rd (Liena) - (Scope of work to be determined)	\$0	\$47,800	\$143,400	\$47,800	\$191,200
tbc	NEW PROJECT Ration Creek - Echo Valley Rd (Liena) - (Scope of work to be determined)	\$0	\$65,000	\$195,000	\$65,000	\$260,000
<b>Total</b>			<b>\$0</b>	<b>\$2,419,500</b>	<b>\$806,500</b>	<b>\$3,226,000</b>

It is noted that many of the new project costs in the table above are best estimates only at this stage, and another report will be presented to Council later in the financial year to adjust project budgets when final costs are known.

**AUTHOR:** Dino De Paoli  
DIRECTOR INFRASTRUCTURE SERVICES

## 12) Recommendation

*It is recommended that Council approves the following changes to the 2016-2017 Capital Works Program.*

<b>Project Name</b>	<b>Original Budget</b>	<b>Council Funding Variation</b>	<b>New Budget</b>
<b><i>Gulf Rd - Liffey – Reinststate roadside embankment</i></b>	<b>\$0</b>	<b>\$125,000</b>	<b>\$500,000</b>
<b><i>Union Bridge Rd - Mole Creek – Pavement Reconstruction and seal</i></b>	<b>\$0</b>	<b>\$17,500</b>	<b>\$70,000</b>
<b><i>Porters Bridge Rd - Reedy Marsh - Reconstruction of seal</i></b>	<b>\$0</b>	<b>\$5,000</b>	<b>\$20,000</b>
<b><i>Westbury Roads Connectivity Program</i></b>	<b>\$500,000</b>	<b>-\$241,500</b>	<b>\$258,500</b>
<b><i>Old Gads Hill Rd - Liena – Reconstruction of pavement</i></b>	<b>\$0</b>	<b>\$50,000</b>	<b>\$200,000</b>
<b><i>Big Den Road Bridge Reconstruction (Mole Creek)</i></b>	<b>\$0</b>	<b>\$50,400</b>	<b>\$201,600</b>
<b><i>Liena Road Bridge Reconstruction (Mersey River)</i></b>	<b>\$0</b>	<b>\$300,000</b>	<b>\$1,200,000</b>
<b><i>Parsons Road Bridge, Caveside (Lobster Creek)</i></b>	<b>\$0</b>	<b>\$50,400</b>	<b>\$201,600</b>
<b><i>Un-Named Creek Bridge - Roseburn Road (Selbourne)</i></b>	<b>\$170,000</b>	<b>-\$170,000</b>	<b>\$0</b>
<b><i>Western Creek Bridge - Montana Road (Montana)</i></b>	<b>\$180,000</b>	<b>-\$180,000</b>	<b>\$0</b>
<b><i>Union Bridge Road Bridge (Ugbrook) - (Overflow Creek)</i></b>	<b>\$0</b>	<b>\$95,400</b>	<b>\$381,600</b>
<b><i>Western Creek Road Bridge (Cubits Creek)</i></b>	<b>\$70,000</b>	<b>-\$70,000</b>	<b>\$0</b>
<b><i>Myrtle Creek Road Bridge (Myrtle Creek)</i></b>	<b>\$125,000</b>	<b>-\$125,000</b>	<b>\$0</b>

<b><i>Project Name</i></b>	<b><i>Original Budget</i></b>	<b><i>Council Funding Variation</i></b>	<b><i>New Budget</i></b>
<b><i>Bridge Program Scoping Budget</i></b>	<b><i>\$20,000</i></b>	<b><i>-\$20,000</i></b>	<b><i>\$0</i></b>
<b><i>Old Gads Hill Rd, Liena (Lynds Creek)</i></b>	<b><i>\$0</i></b>	<b><i>\$47,800</i></b>	<b><i>\$191,200</i></b>
<b><i>Echo Valley Rd, Liena (Ration Creek)</i></b>	<b><i>\$0</i></b>	<b><i>\$65,000</i></b>	<b><i>\$260,000</i></b>
<b><i>Totals</i></b>	<b><i>\$1,065,000</i></b>	<b><i>\$0</i></b>	<b><i>\$3,484,500</i></b>
<b><i>Total CWP budget increase</i></b>			<b><i>\$2,419,500</i></b>

**DECISION:**

## **INFRA 4 REVIEW OF BUDGETS FOR THE 2016-2017 CAPITAL WORKS PROGRAM**

### **1) Introduction**

The purpose of this report is to provide information to Council on capital works projects budget variations and to seek Council approval for the reallocation of funding within the Capital Works Program where budget variations fall beyond the limit of the General Manager's financial delegation.

### **2) Background**

Project budget allocations within the Capital Works Program that are submitted to Council for approval prior to the commencement of each financial year are prepared using a range of methods. In some instances and depending on the availability of resources and time constraints, projects can be thoroughly scoped and accurate estimates prepared using available empirical or supplier information. Conversely, project cost estimates may only be general allowances prepared using the best information available at the time.

During the financial year detailed design, adjustment to project scope and the undertaking of additional works during construction results in project expenditure under and over approved budget amounts. New projects may also be requested for inclusion in the program.

The overall financial objective in delivering the Capital Works Program is to have a zero net variation in the program budget. As part of our ongoing management of projects, Council officers review project time lines, budgets, scope and available resources. Project savings are generally used to offset project overruns and additional funding can be requested to assist with balancing the budget or to finance new projects.

Some of the proposed budget changes were briefly discussed at the last Council workshop and the review by staff indicates that adjustments can be accommodated within the overall available capital works budget.

For this current review period there are five new projects listed for inclusion in the capital works program.

### **3) Strategic/Annual Plan Conformance**

Council's Annual Plan requires Council officers to report on the progress of capital works projects.

### **4) Policy Implications**

Not Applicable

### **5) Statutory Requirements**

Section 82(4) of the *Local Government Act 1993* requires Council to approve by absolute majority any proposed alteration to Council's capital works budget outside the limit of the General Manager's financial delegation of \$20,000.

### **6) Risk Management**

Not Applicable

### **7) Consultation with State Government and other Authorities**

Not Applicable

### **8) Community Consultation**

Not Applicable

### **9) Financial Impact**

The recommended variations in this report will result in a nil net increase to the value of the 2016-2017 Capital Works Program.

### **10) Alternative Options**

Council can amend or not approve the recommendation.

### **11) Officers Comments**

In order to deliver the outcomes required from capital works projects outlined in the Annual Plan, Council officers regularly review project scope, resourcing requirements and committed and forecast expenditure. Typically on a quarterly basis, project information is presented to Council where cost



variations have occurred, and formal approval is requested from the Council to reallocate funding within the Capital Works Program where variations are beyond the General Manager's financial delegation, or where new project works not previously approved in the Capital Works Program are required to be financed.

The table below outlines the five new projects to be included in the Capital Works Program and existing projects where reallocation of funding is required. The five new projects are;

- Purchase of property at 416/418 Westbury Road
- Deloraine Community Complex – Electronic score boards and scorers bench
- Queen Street footpath project, Westbury
- Goal Posts Upgrade Project
- Prospect Vale Park upgrade to grounds 5 and 6.

**TABLE 1: 2016-2017 CAPITAL WORKS BUDGET – NEW PROJECTS AND REALLOCATION OF PROJECT FUNDING**

No.	Project Name	Cost to date	Original Budget	Variation	New Budget	Delegation	Comments
5779	Monds Lane, Carrick - New Footpath	\$0	\$50,000	-\$50,000	\$0	Council	Transfer funds to Westbury Road property purchase
6294	Westbury Roads Connectivity Program	\$0	\$258,500 (1)	-\$258,500	\$0	Council	Transfer funds to Westbury Road property purchase. Refer Note (1)
tbc	Purchase of property at Westbury Road, Prospect Vale	\$0	\$0	\$475,000	\$475,000	Council	Funding allocation from PN5779, 6294, 7668. Subject to further resolution from Council.
tbc	Deloraine Community Complex – Electronic score boards and scorers bench	\$0	\$0	\$45,000	\$45,000	Council	Funding allocation from PN7668
7668	Westbury Recreation Ground - Building Upgrade	\$55,170	\$1,148,781	-\$248,067	\$900,714	Council	Transfer funds to Deloraine Community Complex scoreboards and Westbury Road property purchase. Transfer \$18K funds to PN7412 Transfer \$18,567 to goal posts project
5969	Queen Street Footpath Project	\$99,332	\$0	\$99,332	\$99,332	Council	Funding allocation from PN6284, PN6498 and PN6495
6284	New Footpath Developments - Westbury 15/16	\$355	\$240,000	-\$39,332	\$200,668	Council	Transfer funds to PN5969
6498	Open Drain Program, Westbury 15/16	\$0	\$100,000	-\$30,000	\$70,000	Council	Transfer funds to PN5969

No.	Project Name	Cost to date	Original Budget	Variation	New Budget	Delegation	Comments
6495	Urban Stormwater Drainage – Program Budget	\$0	\$239,500	-\$30,000	\$209,500	Council	Transfer funds to PN5969
7412 & 7425	Rosevale Hall - Kitchen, Fittings, Floor Coverings & Rewiring	\$450	\$37000	\$18,000	\$55,000	Council	The original budget figure includes \$7K grant. Additional funding allocation from PN7668
tbc	Goal Posts Upgrade Project (Prospect, Westbury, Bracknell & Deloraine)	\$0	\$0	\$18,567	\$18,567	Council	Funding allocation from PN7668.
7671	PVP Development Plan – Sportsground Upgrades	\$0	\$339,000	-\$339,000	\$0	Council	Transfer finds to PN7682 and new PN7684
7682	PVP Upgrade Grounds 7/8	\$5,432	\$260,000	\$160,000	\$420,000	Council	Funding allocation from PN7671
7684	PVP Upgrade Grounds 5/6	\$0	\$0	\$179,000	\$179,000	Council	Funding allocation from PN7671
	<b>Totals</b>		<b>\$2,672,781</b>	<b>\$0</b>	<b>\$2,672,781</b>		

Note (1) – The original budget of \$258,500 shown is based on Council approval of the recommended capital works funding adjustments for the flood affected asset work.

#### Monds Lane Footpath, Carrick

It is noted that this project will be discussed with Council again during considerations for the 2017-2018 capital works program. The Director of Infrastructure has discussed the potential Monds Lane footpath link to Meander Valley Highway with the affected land owner, however, there was no appetite to permit the footpath construction to proceed.

#### Westbury Township Roads Connectivity Program, Westbury

This project is considered to be a lower priority this financial year given the current work load on flood affected assets and in the context that assessment of the road network within Westbury has not yet been undertaken. This project will be returned to Council for planning the CWP for 2017-18, in addition to a recommendation to provide operational funding to commence the study of connectivity issues.

#### Westbury Road, Prospect Vale – Purchase of residential property

Refer to item in Closed Session report to Council.

#### Deloraine Community Complex – Electronic score boards and scorers bench

It has been noted by Council that the \$110,000 funding allocation for the new basketball rings installation at the Complex in 2015-16 was to reflect the Council contribution to the project, and not include the \$45,000 contribution from the Deloraine Amateur Basketball Association. Therefore, the \$45,000 provided to Council by the DABA is currently unallocated and is recommended for the installation of new electronic score boards and show court scorer's bench.

#### Westbury Recreation Ground - Building Upgrade

The Westbury Recreation Ground building upgrade project is considered to be Stage 1 of a potential future stage of work, which is subject to completion of a business case. The current budget for Stage 1 is considered to be in excess of that required to deliver the required outcome for the initial stage of work. Any potential further work will be brought to Council for consideration in due course and following completion of a business case or other change in circumstances.

#### Queen Street footpath project – Westbury

This project is now completed. The scope of work originally was to construct a new concrete footpath on the north side of Queen Street. It was determined during the work, after a contractor put his foot through an old drainage pipe, that the existing non-standard drainage in Queen Street should also be upgraded. The additional work included the installation of a number of pits and filling the open drain on the south side of the road.

Funding for this project is recommended to be transferred from budgets for the Westbury Footpath Projects, Westbury Open Drains Program and Urban Stormwater Program projects.

#### Rosevale Memorial Hall – Kitchen Refurbishment (incl. re-wiring of hall)

Council approved a budget of \$15,000 in the 2016-17 Capital Works Program for the renewal of the existing kitchen at Rosevale Memorial Hall, including replacing the existing floor coverings and relocating the existing partition wall. Council also provided approval in the 2015-16 Capital Works Program for the re-wiring of the Hall. The re-wiring work is ancillary to the kitchen refurbishment and the two projects are to be delivered concurrently.

Council was successful in securing funding of \$7,000 from the Commonwealth Government's Stronger Communities Program to go towards the refurbishment of the kitchen.

Upon inspection of the site it was brought to our attention that the existing Hall contains asbestos in the lining of the walls and the ceiling. Now that this issue has been identified we have a duty of care to remove it and make the building safe for future use and construction. It is requested that Council approve the transfer of \$18,000 in funds from the Westbury Recreation Ground Pavilion Upgrade project to cover the unforeseen costs associated with the asbestos removal.

#### Goal Posts Upgrade Project

Council has been successful in securing funding through the Commonwealth Stronger Communities Program for the installation of AFL standard goal posts at Prospect Vale Park, Westbury Recreation Ground, and at the Bracknell and Deloraine football grounds.

The total allocation received from the Department of Infrastructure and Regional Development was \$20,488.00. The AFL/AFL Tasmania have also demonstrated financial support towards the projects and have advised they will provide \$500 per ground. It is recommended that \$18,567 required from Council toward the project is transferred from the Westbury Recreation Ground Pavilion Upgrade project (PN7668).

#### Prospect Vale Park Upgrade Grounds 7/8 & 5/6

At the August 2016 Closed Council Meeting, Council awarded the contract to upgrade Prospect Vale Park (PVP) AFL ground 7/8 for an amount of \$480,823. Council was advised that Prospect Hawks Football Club and Council were submitting two grants application to Sport & Recreation Tasmania and the AFL requesting project funding to the value of

approximately \$130,000. Council Officers remain confident that one of the applications will be successful, therefore reducing the overall level of funding required from Council toward this project.

At the August Council Workshop the Director Works discussed the available budget for ground upgrade works at PVP under this financial years Capital Works Program and the merits of awarding a variation under the existing contract to address drainage issues on ground 5/6. Ground 5/6 is the primary playing surface for Launceston City Football Club that contests in the National Premier Leagues Tasmania competition. The value of this contract variation is approximately \$162,000 plus applicable Council overheads.

For this review period the inclusion of new projects in the Capital Works Program and transfer of funding outside the \$20,000 delegation of the General Manager requires Council approval. Overall, there is a zero net variation to the Program budget. The ability

**AUTHOR:** Dino De Paoli  
DIRECTOR INFRASTRUCTURE SERVICES

## 12) Recommendation

***It is recommended that Council approve the following changes to the 2016-2017 Capital Works Program.***

<b><i>Project Name</i></b>	<b><i>Original Budget</i></b>	<b><i>Variation</i></b>	<b><i>New Budget</i></b>
<b><i>Monds Lane, Carrick - New Footpath</i></b>	<b><i>\$50,000</i></b>	<b><i>-\$50,000</i></b>	<b><i>\$0</i></b>
<b><i>Westbury Roads Connectivity Program</i></b>	<b><i>\$258,500</i></b>	<b><i>-\$258,500</i></b>	<b><i>\$0</i></b>
<b><i>Purchase of property at Westbury Road, Prospect Vale</i></b>	<b><i>\$0</i></b>	<b><i>\$475,000</i></b>	<b><i>\$475,000</i></b>
<b><i>Deloraine Community Complex – Electronic score boards and scorers bench</i></b>	<b><i>\$0</i></b>	<b><i>\$45,000</i></b>	<b><i>\$45,000</i></b>
<b><i>Westbury Recreation Ground - Building Upgrade</i></b>	<b><i>\$1,148,781</i></b>	<b><i>-\$248,067</i></b>	<b><i>\$900,714</i></b>
<b><i>Queen Street Footpath Project</i></b>	<b><i>\$0</i></b>	<b><i>\$99,332</i></b>	<b><i>\$99,332</i></b>

<b><i>Project Name</i></b>	<b><i>Original Budget</i></b>	<b><i>Variation</i></b>	<b><i>New Budget</i></b>
<b><i>New Footpath Developments - Westbury 15/16</i></b>	<b><i>\$240,000</i></b>	<b><i>-\$39,332</i></b>	<b><i>\$200,668</i></b>
<b><i>Open Drain Program, Westbury 15/16</i></b>	<b><i>\$100,000</i></b>	<b><i>-\$30,000</i></b>	<b><i>\$70,000</i></b>
<b><i>Urban Stormwater Drainage – Program Budget</i></b>	<b><i>\$239,500</i></b>	<b><i>-\$30,000</i></b>	<b><i>\$209,500</i></b>
<b><i>Rosevale Hall - Kitchen, Fittings, Floor Coverings &amp; Rewiring</i></b>	<b><i>\$37000</i></b>	<b><i>\$18,000</i></b>	<b><i>\$55,000</i></b>
<b><i>Goal Posts Upgrade Project (Prospect, Westbury, Bracknell &amp; Deloraine)</i></b>	<b><i>\$0</i></b>	<b><i>\$18,567</i></b>	<b><i>\$18,567</i></b>
<b><i>PVP Development Plan – Sportsground Upgrades</i></b>	<b><i>\$339,000</i></b>	<b><i>-\$339,000</i></b>	<b><i>\$0</i></b>
<b><i>PVP Upgrade Grounds 7/8</i></b>	<b><i>\$260,000</i></b>	<b><i>\$160,000</i></b>	<b><i>\$420,000</i></b>
<b><i>PVP Upgrade Grounds 5/6</i></b>	<b><i>\$0</i></b>	<b><i>\$179,000</i></b>	<b><i>\$179,000</i></b>
<b><i>Totals</i></b>	<b><i>\$2,672,781</i></b>	<b><i>\$0</i></b>	<b><i>\$2,672,781</i></b>

**DECISION:**

## **ITEMS FOR CLOSED SECTION OF THE MEETING:**

Councillor xx moved and Councillor xx seconded ***“that Council move into Closed Sessions to discuss the following items.”***

The meeting moved into Closed Session at x.xxpm

Confirmation of Minutes of the Closed Session of the Ordinary Council Meeting held on 9 August, 2016.

### **GOV 4 LEAVE OF ABSENCE**

(Reference Part 2 Regulation 15(2)(h) Local Government (Meeting Procedures) Regulations 2015

### **ED&S 2 PROPERTY PURCHASE – PROSPECT VALE**

(Reference Part 2, Regulation 15(2)(f) Local Government (Meeting Procedures) Regulations 2015

### **INFRA 5 CONTRACT No 174-2016/17 - DESIGN AND CONSTRUCTION OF BRIDGE NO. 3137, UNION BRIDGE ROAD, MERSEY RIVER INFRA 5**

(Reference Part 2, Regulation 15(2)(d) Local Government (Meeting Procedures) Regulations 2015

### **WORKS 1 2016-17 ANNUAL TENDER – ROAD SEALING**

(Reference Part 2, Regulation 15(2)(d) Local Government (Meeting Procedures) Regulations 2015

Cr xxx moved and Cr xxx seconded ***“that Council move out of Closed Session and endorse those decisions taken while in Closed Session.”***



The meeting re-opened to the public at x.xxpm

Cr xxx moved and Cr xxx seconded "***that the following decisions taken by Council in Closed Session are to be released for the public's information.***"

The meeting closed at .....

.....  
CRAIG PERKINS (MAYOR)